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## **1.0 INTRODUCTION**

### **1.1 STATEMENT OF PURPOSE (Adopted 6-13-95)**

The Santa Clara County Board of Supervisors directed the preparation of this manual for the purpose of articulating ethical standards and administrative policies that the Board has adopted. The policies in this manual guide the Board in its conduct and interaction with the public, various County commissions and committees, and persons and entities that may do business with the County. Officials and employees who conduct the business of the County are acting on behalf of the Board of Supervisors and are so directed to abide by the policies in this manual.

These policies were adopted pursuant to the authority that is vested in the Board of Supervisors by the Constitution, State codes, and the County Charter. The manual is not set by ordinance, nor is it legally binding. The Board reserves the right and may opt to vary from one or more of the policies in this manual when and if the Board deems such action necessary and in the best interests of the County.

The Clerk of the Board of Supervisors is responsible for maintaining and distributing copies of this manual at the direction of the Board of Supervisors. Inquiries regarding the content, maintenance, modification, and distribution of the manual shall be directed to the Clerk of the Board of Supervisors.

## **Policy Resolution No. 95-01**

WHEREAS, the Board of Supervisors wishes to give direction and set policy for such matters which, pursuant to the County Charter, State Code or specific ordinances, are within the policy-making authority of the Board of Supervisors; and

WHEREAS, the Board of Supervisors wishes to clearly state and compile policies and to provide for distribution of these policies to staff and affected decision makers; and

WHEREAS, this Policy Manual is not set by ordinance, is not legally binding, can be changed by adoption of a resolution approved by a majority of the Board of Supervisors, and is intended to give guidance to staff and future Board of Supervisors;

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors does hereby formally adopt or ratify those policies contained in the proposed Policy Manual; and

BE IT FURTHER RESOLVED that the Clerk of the Board is responsible for maintaining, updating and distributing copies of said Policy Manual when additions, deletions or modifications are adopted by Resolution of the Board of Supervisors.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Clara, State of California, on June 13, 1995, by the following vote:

AYES: Supervisors - Alvarado, Beall, Gonzales, Honda (Chairperson), McKenna

NOES: Supervisors - None

ABSENT: Supervisors - None



## **1.2 PROCESS TO ADD, AMEND OR DELETE A BOARD POLICY (Adopted 6-13-95; Amended 5-15-97)**

### **1.2.1 Origination of Policy**

- (A) Members of the Board of Supervisors, County Executive, elected officials, department heads and County boards and commissions may originate policy proposals to the Board of Supervisors for its formal consideration.
- (B) Preparation of policy items for consideration are the responsibility of the initiating office and will be submitted through the approved process to be placed on the Board of Supervisors' agenda.
- (C) Members of the public, officials from other governmental agencies and other governmental entities may originate policy proposals for submittal to the Board of Supervisors for their formal consideration.
- (D) Proposals from members of the public, officials from other governmental agencies and other governmental entities are to be submitted to the Clerk of the Board of Supervisors for placement on the Board of Supervisors' agenda for its consideration.
- (E) Pursuant to the Rules of the Board of Supervisors, the Clerk of the Board may withhold placement of any matter on the agenda that s/he deems inappropriate for scheduling purposes, lack of sufficient information or in need of staff review and report prior to Board consideration.
- (F) All policy proposals will be placed on the agenda in a resolution format as approved by County Counsel.
- (G) Board action related to policy proposals will be communicated to the originator of the proposal and if the policy is adopted, will be duplicated and distributed to holders of copies of the manual.
- (H) As required, the Clerk of the Board shall update the Table of Contents.

### **1.2.2 Amending or Deleting Policies**

- (A) All additions, deletions or amendments of Board policies must be approved by the Board as-a-whole at a regular or special meeting of the Board of Supervisors.
- (B) Policy additions, deletions or amendments must be approved by formal resolution of the Board as illustrated in (G) below.
- (C) Exceptions to the requirement of a resolution format may be made for reports, etc., that are determined, by the Board of Supervisors, to be included in this manual.

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- (D) The Clerk of the Board will be responsible for maintaining and printing the Board Policy Manual and all changes and updates. The Clerk shall maintain an accurate and fully updated control copy of the Board Policy Manual at all times. The Clerk shall make available to the County Executive sufficient copies of the Policy Manual and all changes and updates once adopted by the Board of Supervisors.
- (E) The County Executive shall be responsible for disseminating Board policies to all departments through their duly elected/appointed department head. To do this the County Executive will schedule all newly adopted changes to policies for review and discussion at the next regularly scheduled Department Head Meeting. The County Executive will maintain a controlled distribution list for tracking the distribution of the Board of Supervisors' Policy Manual.
- (F) Once disseminated by the County Executive, Departments will be responsible for training departmental personnel in the proper implementation of Board Policy. If special training is required, the County Executive will work with the Employee Services Agency and the effected departments to develop and provide special training.
- (G) Format for Policy Resolution:

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POLICY RESOLUTION NO. \_\_\_\_\_ \*

relating to

**[insert subject]**

WHEREAS, the Board of Supervisors wishes to give direction and set policy for such matters for which the responsibility of decision is placed on them by virtue of State codes, County Charter or specific ordinances and resolutions or relates to their broad policy-making authority to matters regarding Santa Clara County; and

WHEREAS, the Board of Supervisors wishes to clearly state and compile policies and to provide for distribution of these policies to affected decision makers; and,

WHEREAS, the Policy Manual is not set by ordinance, is not legally binding, and can be changed by adoption of a resolution approved by a majority of the Board of Supervisors and is intended to give guidance to staff and future Boards of Supervisors;

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors' Policy Manual is hereby amended by adoption of this resolution to **[add/delete/amend]** Section **[#]** as follows:

**[Insert Policy Change here]**

PASSED AND ADOPTED...

\* Policy Resolution Number to be issued by the Clerk of the Board upon agendaing matter for Board consideration.

### **1.3 PURCHASE OF BOARD POLICY MANUAL (Adopted 6-13-95)**

A copy of this Policy Manual may be purchased for a fee as set forth pursuant to Resolution adopted by the Board of Supervisors:

## **Resolution No. 95-02 - Authorizing Distribution and Sale of Board of Supervisors' Policy Manual and Setting Fee Thereof**

WHEREAS, the Board of Supervisors has adopted a Policy Manual to give direction and set policy; and

WHEREAS, incorporated cities, other governmental agencies and members of the general public desire to receive a copy of the manual; and

WHEREAS, GOVERNMENT CODE SECTION 60018 authorizes a governmental entity to charge a reasonable fee for the cost to provide services;

NOW, THEREFORE, BE IT RESOLVED, that a copy of the Board of Supervisors' Policy Manual is available free to all incorporated cities within the boundaries of Santa Clara County, free to other governmental agencies upon written request and with approval of the Clerk of the Board, and available to the public at a fee of \$15 to reflect the cost of printing, supplies and labor to maintain, update and assemble said Policy Manual. The Clerk of the Board may increase the fee to reflect increases in costs for the Policy Manual.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Clara, State of California, on June 13, 1995, by the following vote:

AYES: Supervisors - Alvarado, Beall, Gonzalez, Honda (Chairperson), McKenna

NOES: Supervisors - None

ABSENT: Supervisors - None

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## **2.0 POLICIES RELATING TO THE BOARD OF SUPERVISORS**

### **2.1 SELECTION OF THE BOARD CHAIRPERSON AND VICE-CHAIRPERSON (Adopted 6-13-95; Amended 11-3-15)**

It is a policy of the Board of Supervisors to select the Board Chairperson and Vice-Chairperson on a rotation basis. The selection is made by individual Supervisor and not simply a rotation by Supervisorial District. New Supervisors – those with less than one year in the seat – are generally exempt from serving as Chairperson or Vice-Chairperson during their first year, but they may be considered for both positions during the following year of their tenure on the Board.

Selection is generally made on a seniority basis and takes into account the number of years the member has not served as Chairperson while serving as a member of the Board. Generally, the member who is selected to serve as Vice-Chairperson is the Supervisor who is expected to assume Chairperson functions the following year after the completion of their tenure as Vice-Chairperson. While the Chairperson and Vice-Chairperson are formally nominated and elected on an annual basis, pursuant to the procedures set forth above, it is the custom and practice of the Board to select its Chairperson and Vice-Chairperson for two successive, consecutive years in order to provide for continuity and efficiency of Board operations.

Flexibility underlies this policy, and the policy does not attempt to formalize what constitutes a first year exemption; i.e., the Board may wish to consider a Supervisor for the position of Chairperson or Vice-Chairperson even if the member has served less than a full calendar year during his or her first year on the Board. Further, circumstances may require the Board to appoint a Chairperson or Vice-Chairperson with less than one year's service on the Board if at some future point the County Board of Supervisors experience a high rate of turnover and three or more newly elected or appointed members become Supervisors.

### **2.2 POLICY ESTABLISHING THE BOARD'S INTENDED PROCESS FOR FILLING A VACANCY ON BOARD OF SUPERVISORS OR IN ANOTHER COUNTY ELECTED OFFICE (Amended 6-22-04; Amended 8-3-04)**

#### **2.2.1 Background and Purpose**

On several occasions over the years, a member of the Board of Supervisors or an incumbent in one of the other elected county offices has vacated his or her office prior to the expiration of the term. In such circumstances the Board must address the manner in which the vacancy is filled. The purpose of this document is to establish how the Board will address such situations when they arise in the future, to provide the broadest range of available options and to meet legally imposed deadlines for action.

## 2.2.2 Procedures When a Vacancy Occurs

When a member of the Board of Supervisors or an incumbent in one of the other elected county offices vacates his or her office prior to the expiration of the term, the following steps shall be taken:

- (A) Notification and Placement on Agenda. When the Clerk of the Board becomes aware of a vacancy in any of the county elected offices (Supervisor, Assessor, District Attorney, or Sheriff), he or she shall immediately provide written notice to all Members of the Board, the County Executive, and the County Counsel. The Clerk shall also, after consulting with the County Counsel regarding appropriate wording, place an item on the Board's next regular meeting agenda which will allow the Board to discuss the vacancy and determine the steps that will be taken to fill the vacancy. If the next scheduled meeting of the Board of Supervisors is more than 10 days after the effective date of the vacancy, then the Clerk shall consult with the Chair of the Board and the County Counsel regarding whether a special meeting of the Board should be scheduled to consider the vacancy.
- (B) Consideration at Initial Meeting. At the initial Board meeting when the vacancy is considered, or at a later meeting to which the Board has continued the item, the Board shall make the following determinations:
  - (1) Board Vacancy. If the vacancy is on the Board of Supervisors, the Board shall determine whether to call for an election or to fill the vacancy by appointment.
    - (a) Appointment where a successor has already been elected. If a successor for the following term has already been elected, the Board may appoint the successor to fulfill the term of the vacating incumbent before the successor assumes the office for his or her elected term.
    - (b) Appointment where no successor has been elected. If the Board elects to fill the vacancy by appointment, and no successor to the office has been elected for the following term, the Board shall set the date for the meeting when the appointment will be made, and the procedure set forth in section (C) below shall be followed unless the Board chooses an alternate procedure. The date for making the appointment, or for calling for the election, shall be no later than the 45th day following the effective date of the vacancy. The Board may specify application requirements in addition to those set forth in this policy, for example, requiring all applicants to provide written responses to specific questions.
  - (2) Vacancy in Another Office. When the vacancy occurs in an office other than Supervisor, the Board shall set a date for making the appointment. The Board may specify application requirements in addition to those set forth in this policy. The Board shall also call for the election required under the Charter at the time required. The following process shall be used:



(C) Process for Making Appointment.

- (1) Notice. The Board shall instruct the Clerk to promptly publicize the vacancy and solicit applications from among qualified persons via notices published at least twice in a newspaper or newspapers of general circulation in the County. The County's Public Information Officer may be directed to pursue additional methods of publicizing the vacancy and the appointment process. The notice shall include the deadline for submitting applications, the application requirements, the date at which the Board will conduct any interviews, and the date when the next election for the position will be held. The deadline for submitting applications shall be no later than 5 p.m. on the 7th day prior to the date selected by the Board for interview and possible appointment.
- (2) Applications. Applications shall be submitted to the Clerk of the Board, and shall become available to the public upon request once received by the Clerk. The Clerk shall provide all Board members with copies of each application as soon as possible after receipt. Applications shall consist of the applicant's resume, any other written documents he or she wishes to submit, and any other material specified by the Board of Supervisors at the time the Board called for applications.
- (3) Selection for Interview. No later than 5 p.m. on the 5th day prior to the day selected by the Board for interviews and possible appointment, each Board member shall notify the Clerk in writing of the individuals that Board member wishes to interview for the position. The Clerk will compile a list of each Board member's requests, and based upon the list will notify those persons whom two or more Board members wish to interview that they will be interviewed on the selected date. The list is a public document. Persons to be interviewed will be notified at least 48 hours prior to the scheduled interview. The Clerk will notify all other applicants that they will not be interviewed.
- (4) Interview Process. At the Board meeting where the interviews will be conducted, all candidates will be publicly questioned by the Board concerning their qualifications for the position. Each candidate will first be allowed to make a two-minute opening statement; the statements shall be made in alphabetical order. Following the opening statements, Board members will ask questions of each candidate. The opportunity to ask questions will initially rotate from District One to District Five. After that, any Supervisor may ask questions as he or she wishes. After completion of the interviews and questions by Board members, the public shall have the opportunity to address the Board concerning the appointment. The time allotted for each speaker shall be determined by the Chair.
- (5) Appointment. After completion of the interviews, public comment, and Board discussion, the Board may make an appointment based upon majority

vote. The Board may continue the matter to a subsequent regular or adjourned meeting prior to voting.

## **2.3 TRAVEL OF THE BOARD OF SUPERVISORS (Revised July, 2003)**

Based on the large size of the Travel Policy, please see July 2003 Santa Clara County Travel Policy Desk Reference Manual and Ordinance No. NS-300.707 adopted (final) on March 25, 2003, which can be obtained in the Office of the Clerk of the Board of Supervisors Records Division or the Finance Agency, Administrative Office.

## **2.4 DISCLOSURE OF PUBLIC OFFICIALS' CALENDARS (Adopted 8-13-13; Amended 9-10-13)**

- (A) Calendars prepared and maintained in the ordinary course of business by members of the Board of Supervisors (Board) shall be posted to each Board member's website every Wednesday by 5:00 p.m. for the previous Monday through Sunday. In weeks when an official County holiday falls on a Wednesday, the deadline shall be extended to Thursday at 5:00 p.m.
- (1) Board members shall include all scheduled County-related appointments on their calendars, including regular and special Board, committee, and task force meetings; public events; speaking engagements; and meetings with constituents, developers, consultants, and lobbyists. Board members are encouraged to record unscheduled County-related meetings of a material nature.
  - (2) For each County-related appointment, Board members shall record the name(s), title(s), and affiliated organization(s) of scheduled attendees and a general statement of the topic of the scheduled meeting. The following information may be excluded:
    - (a) Personal appointments and personal travel;
    - (b) Information protected by the attorney-client privilege;
    - (c) Information protected by the attorney work product privilege;
    - (d) Information identifying persons who are subjects of County staff recruitment;
    - (e) Information identifying County employees involved in personnel issues;
    - (f) Information regarding efforts to recruit County staff for outside employment;

- (g) Information related to criminal investigations and security;
  - (h) Information identifying specific whistle-blowers;
  - (i) Information identifying individuals who may reasonably fear retaliation;
  - (j) Information that is otherwise protected or prohibited from disclosure; and
  - (k) Identities of individual attendees at events such as luncheons, dinners, conferences, seminars, and community meetings that Board members understand may be attended by more than ten persons or by persons whose identities are unknown.
- (B) Calendars prepared and maintained by other County officials may be made available to the public at these officials' discretion. A discretionary decision by one County official to waive exemptions to disclosure and to provide information from his or her calendar in response to a California Public Records Act request shall not be deemed to waive these exemptions with respect to other requests for calendars for different time periods, or for the calendars of other County officials.

**2.5 APPROVAL OF CEREMONIAL COMMENDATIONS AND PROCLAMATIONS (Adopted 8-26-14)**

- (A) The Board of Supervisors may adopt ceremonial commendations or proclamations acknowledging individuals, organizations, or events.
- (B) Ceremonial commendations or proclamations become official commendations or proclamations of the Board of Supervisors only upon their approval by a majority of the Board in an open and public meeting of the Board in accordance with Government Code section 54950 et seq.
- (C) A majority of the members of a legislative body shall not, outside an open and public meeting as described in subdivision (B), use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any ceremonial commendation or proclamation.
- (D) To facilitate the timely presentation of a ceremonial commendation or proclamation approved by the Board of Supervisors at an open and public meeting as described in subdivision (B), members of the Board may sign the commendation or proclamation before that meeting. Any signature by a member on a ceremonial commendation or proclamation before the Board has considered that commendation or proclamation at such a meeting does not communicate any comments or position of the Board member with respect to the commendation or proclamation. Instead, the signature shall be deemed to be equivalent to "attendance at a purely social or ceremonial occasion" until and unless a majority of the Board has approved the ceremonial commendation or proclamation at an open and public meeting as described in subdivision (B).



### **3.0 POLICIES RELATING TO ADMINISTRATION AND GENERAL GOVERNMENT**

#### **3.1 POLICIES GOVERNING ADVISORY BOARDS AND COMMISSIONS REGARDING LEGISLATIVE ACTIVITIES (Adopted 6-13-95; Amended 6-20-06; Amended 2-26-13; Amended 1-14-14)**

The Board adopted Resolution No. BOS-2013-26, suspending appointments to the Legislative Committee. This continues in effect until the Board directs otherwise. Legislative matters shall be referred to the other five Board Policy Committees for recommendations on support/oppose positions to the full Board, or to the full Board directly, depending on the subject matter of the legislation.

- (A) Commissions or Advisory Boards to the Board of Supervisors are authorized to recommend positions on public policy or legislative issues to the Board of Supervisors, and can advocate or take a position on local, state, national, or international public policy or legislative issues if the Board of Supervisors has authorized them to do so.
- (B) When any Commission or Advisory Board to the Board of Supervisors recommends positions on local, state, national, or international public policy or legislative issues, the Legislative Committee of the Board of Supervisors, at its regular meeting, will review the Commission or Advisory Board's proposed position and determine the appropriateness of the position.
- (C) All items for the Legislative Committee should be directed to the attention of the Deputy County Executive for Intergovernmental Relations, with a copy to members of the Legislative Committee, Board of Supervisors and the Legislative Director.
- (D) When the Legislative Committee considers a request or recommendation proposed by a Commission or Advisory Board for a position on local, state, national, or international public policy or legislative issues, the consideration and any recommendation shall be reported to the Board of Supervisors along with the regular Legislative Committee Report.
- (E) To the extent possible, Commissions or Advisory Boards to the Board of Supervisors should incorporate their legislative issues into the County's Legislative Policies and Priorities document to facilitate coordination with the legislative cycle.
- (F) If immediate action is needed, the Deputy County Executive for Intergovernmental Relations, or designee should be contacted. If the issue is within the priorities already established by the Board of Supervisors, the Deputy County Executive for Intergovernmental Relations, or designee, may seek direct approval from both

members of the Legislative Committee to support and serve notice on an official County position.

- (G) Commissions and Advisory Boards should advise the members of the Legislative Committee and the Deputy County Executive for Intergovernmental Relations of local, state, national, or international public policy or legislative issues that are under study, particularly if they are to be scheduled for referral to the Legislative Committee.

### **3.2 OFF-SITE MEETINGS OF ADVISORY BOARDS AND COMMISSIONS (Adopted 6-12-95)**

It is the policy of the Board of Supervisors that all Boards, Commissions, Authorities and Committees conduct their meetings at the County Government Center when the Board of Supervisors appoints a majority of its members.

This policy is established to facilitate tape recording requirements, alleviate travel by County support staff, and provide public accessibility at an established and public meeting site.

Pursuant to Government Code Section 54961, a legislative body may not conduct any meeting or function in any facility where racial or other discrimination is practiced, or which is inaccessible to disabled persons, or where members of the public must pay to attend the meeting. A facility is accessible if it fully satisfies the accessibility requirements of Government Code Section 4450 et seq. or Health and Safety Code Section 19955 et seq., as well as the Americans with Disabilities Act. If a meeting facility is inaccessible, the meeting must be moved to an accessible facility.

### **3.3 BUDGETS FOR COMMISSION BUSINESS (Amended 1-14-03; Amended 3-14-17)**

It is the policy of the Board of Supervisors that:

- (A) Budgets for Commission business be approved annually during budget hearings;
- (B) Miscellaneous Commission expenses for mileage, family care, and meals be reimbursed from the Clerk of the Board's budget;
- (C) Approval to expend additional funds for travel, fixed assets, and other necessary Commission business be approved in advance by the Board of Supervisors, with a funding source identified at the time the request is made; and
- (D) Incidental expenses of the Sister County Commissions, such as refreshments for visiting delegations, stationery, event and correspondence mailing - other than routine business needs such as minutes and agendas provided by the Clerk of the Board - are paid from the budget of the Office of the County Executive.

### **3.4 DISTRIBUTION OF AGENDA PACKET MATERIALS TO THE PUBLIC (Adopted 6-13-95; Amended 1-27-15)**

- (A) The Clerk of the Board of Supervisors shall prepare agenda packet materials (agenda packet) to be considered during regularly scheduled sessions of the Board of Supervisors meetings. The agenda packet shall be made electronically accessible by the public. The most current agenda packet shall be electronically accessible by posting it to the County website, by no later than noon Thursday preceding the regularly scheduled meeting of the Board of Supervisors.
- (B) The Clerk of the Board shall prepare up to fifteen packets for distribution to the Supervisors of the Board, Principal Aides to the Supervisors, the County Executive Office, and County Counsel if requested.

### **3.5 RESERVED (Section Deleted 11-1-16)**

### **3.6 OUTSIDE EMPLOYMENT POLICY (Adopted 10-28-86)**

#### SANTA CLARA COUNTY OUTSIDE EMPLOYMENT POLICY

- (A) California Government Code, Article 4.7, Sections 1125, 1126 and 1127, prohibits local agency officers and employees from engaging in activities which are incompatible, inconsistent or in conflict with their agency employment. These sections also require prior approval by the appointing authority of compatible outside employment.
- (B) County employees have the same right as other citizens to paid outside employment if they wish or if they feel the economic need. However, such employment must conform to Government Code limitations and must not interfere with the efficient performance of the employee's County duties or reflect discredit, cause scandal or cause unfavorable criticism of the employee's department or the County.
- (C) Any employee contemplating outside employment which may be incompatible with her/his position with the County shall first secure the formal approval of the appointing authority. Failure to secure this prior approval is cause for disciplinary action which may include suspension, demotion or dismissal as prescribed in Section A25-303 of the Santa Clara County Ordinance Code.
- (D) Each department shall provide employees with clearly defined conditions that would be incompatible with a particular department. Each department will have an Outside Employment form that must be completed by all employees upon initial employment with the department and at any time when the employee contemplates outside employment while working for the County. This form must then be submitted to the department head/supervisor for approval. A copy of the form will be returned to the employee indicating approval or disapproval of the request.

- (E) If disapproved, the employee will be notified in writing of the reason for the disapproval and may appeal such a decision to the appointing authority. If, after approval, outside employment is subsequently found to be incompatible with the employee's duties, or to require such time demands as to make the employee's County performance less efficient, such approval may be rescinded upon notification to the employee. New employees who have other employment found to be incompatible with their County employment will be informed when they begin employment with the County and will be given reasonable time to cease the incompatible employment.
- (F) Outside employment will be approved or disapproved based upon the following section of the Government Code:

An employee's outside activity or enterprise may be prohibited if it:

- (1) Involves the use for private gain or advantage his/her local agency time, facilities, equipment and supplies, or the badge, uniform, prestige or influence of his local agency office or employment or;
- (2) Involves receipt or acceptance by the officer or employee of any money or other consideration from anyone other than his/her local agency for the performance of an act which the officer or employee, if not performing such act, would be required or expected to render in the regular course or hours of his/her local agency employment or as a part of his/her duties as a local agency officer or employee or;
- (3) Involves the performance of an act in other than his/her capacity as a local agency officer or employee which act may later be subject directly or indirectly to the control, inspection, review, audit or enforcement of any other officer or employee of the agency by which he/she is employed or;
- (4) Involves such time demands as would render performance of his/her duties as a local agency officer or employee less efficient.

### **3.7 POLICY ON WORKFORCE DIVERSITY (Adopted 1-12-93; Amended 3-14-17)**

Santa Clara County's workforce has, for some time, reflected the "quilt" that is our community. We recognize that diversity includes but is not limited to racial and ethnic diversity and that valuing diversity is important in the way we do business and how we interact with each other. Valuing diversity must be embedded into our organizational culture.

We believe that a diverse workforce provides advantages both internally, in terms of the human resources potential offered by a variety of diverse perspectives, and externally, in increasing the County's ability to respond to an equally diverse community. In order to treat people fairly and provide equal opportunity, it is not enough to treat all people the



same. The organization must respect all people and seek to accommodate and learn from the different perspectives and values they contribute.

The County will:

- (A) Consistent with Government Code Section 11139.6:
  - (1) Engage in general recruitment and outreach programs to all individuals, including persons who are economically disadvantaged.
  - (2) Engage in inclusive public sector outreach and recruitment programs that, as a component of general recruitment, may include, but not be limited to, focused outreach and recruitment of minority groups (defined by race, ethnicity, and/or sexual orientation) and women if any such group is underrepresented in entry level positions at the County or determined to be significantly underutilized at any level of position at the County. Such focused outreach and recruitment may include, but is not limited to, placement of job announcements through:
    - (a) General circulation newspapers, general circulation publications, and general market radio and television stations, including electronic media.
    - (b) Local and regional community newspapers.
    - (c) Newspapers, publications, and radio and television stations that provide information in languages other than English and whose primary audience is residents of minority and low-income communities.
    - (d) Publications, including electronic media, that are distributed to the general market and to newspapers, publications, and radio and television stations whose primary audience is comprised of minority groups or women.
    - (e) Recruitment booths at job fairs or conferences oriented to both the general market and the economically disadvantaged as well as those events drawing a significant participation by minorities or women.
- (B) Build on the foundation of equal opportunity and embrace this concept as necessary to ensure fair representation and treatment of our diverse groups. An organization cannot value diversity if this basic concept is not an integral practice of the organization.
- (C) Ensure opportunities for upward mobility of our diverse workforce at all levels of the organization in order to move individuals beyond middle-management and break any perceived barrier or “glass ceiling.”

- (D) Create an organizational culture that fosters individual understanding of and accountability for learning about and appreciating employee differences.
- (E) Make valuing diversity a core organizational value, one which is practiced and communicated at all levels of the organization.
- (F) Conduct employee training to help create an openness to the experience of others.
- (G) Hold all managers accountable for demonstrating leadership in valuing diversity.

Valuing diversity can have a synergetic effect. With this policy guiding our actions, the workforce of Santa Clara County will be greater than the sum of its parts.

### **3.8 POLICY AGAINST DISCRIMINATION, HARASSMENT, AND RETALIATION (Adopted 8-5-03)**

The Board of Supervisors for the County of Santa Clara is committed to providing equal opportunity in employment and equal access to programs, services, and contracting opportunities.

Therefore, it is the policy of the Board of Supervisors that:

- no person shall be subject to discrimination or harassment with regard to any aspect of recruitment or employment with the County; and,
- no person shall be denied, or provided unequal access to, programs, services or contracting opportunities

on the basis of race, religious belief, color, national origin, culture, ancestry, age, gender, sexual orientation, gender identity, pregnancy, marital status, disability, medical condition, political belief, organizational affiliation or association with any individual in any of these groups.

A person who speaks up about discrimination or harassment, or files a complaint or participates in the complaint process, is participating in a “protected activity.” Retaliation against any person who participates in a protected activity is prohibited.

The County does not tolerate discrimination, harassment, or retaliation in any form; therefore, any violation of this policy will generate prompt and appropriate action. Those who commit acts of discrimination, harassment, or retaliation will be subject to discipline up to and including dismissal.

The Board recognizes that continuing efforts must be taken to prevent discriminatory practices and that merely prohibiting discriminatory practices will not ensure equal opportunity. Therefore, the Board assigns responsibilities pursuant to this Policy to all County employees.

The County Executive will ensure that this Policy is made known to all County employees and that procedures necessary to ensure compliance are implemented.

Agency/department heads, managers, supervisors, and leads are responsible for preventing discrimination, harassment, and retaliation. In addition, agency/department directors, managers, supervisors, and leads are responsible for upholding this Policy by:

- Avoiding participation in any form of discrimination, harassment, or retaliation. Monitoring to ensure the elimination of non-job-related barriers to employment and promotions in accordance with Department of Justice, Office of Civil Rights, regulations and guidelines governing Equal Employment Opportunity.
- Providing employees information on procedures for submitting complaints of alleged violations of this policy.
- Reviewing practices to remove barriers to equitable access to programs, services and contracting opportunities.
- Ensuring that the workforce is trained to recognize discrimination, harassment, and retaliation.
- Addressing and correcting issues of discrimination, harassment, or retaliation in a timely manner.
- Attaining objectives in the County's Equal Employment Opportunity Plan.

The Equal Opportunity Division is responsible for accepting, investigating, and processing complaints involving potential violations of this policy. Persons who believe they have been subject to discrimination, harassment, or retaliation should contact the Equal Opportunity Division. Employees and applicants for employment may also contact a manager, supervisor, the agency or departmental Equal Opportunity Officer or advisor, a union representative, an outside enforcement agency, or a private attorney.

### **3.9 POLICY ON SEXUAL HARASSMENT (Adopted 8-20-91)**

#### BOARD OF SUPERVISORS' POLICY ON SEXUAL HARASSMENT

Santa Clara County values each employee and strives to provide a nurturing environment where there is respect and mutual support. To foster an environment of respect and mutual support, no form of discrimination, sexual harassment or harassment because of sex, age, race, color, national origin, creed, disability, political beliefs, organizational affiliation, or sexual orientation can be tolerated. To ensure this, the Santa Clara County Board of Supervisors adopted a Policy on Equal Employment Opportunity which declares that no person shall be discriminated against with regard to recruitment, selection, appointment, training, promotion, retention, discipline or other aspects of employment.

The Board also adopted a policy on Sexual Harassment which declares that sexual harassment constitutes sex discrimination which is prohibited.

The Board further reaffirms that the County will maintain a discrimination-free work environment. Part of maintaining a discrimination-free work environment includes freedom from any form of sexual harassment. Therefore, it is important for all employees to know that no form of sexual harassment will be tolerated and those who commit acts of sexual

harassment will be subject to discipline up to and including dismissal. The following describes the type of conduct which constitutes sexual harassment and is prohibited:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- (1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- (2) Submission to or rejection of such conduct by an individual is used or threatened to be used as the basis for employment decisions affecting such individual, or;
- (3) Such conduct has the purpose or effect of interfering with any individual's work performance or creating an intimidating, hostile, or offensive working environment.

This policy applies to actions of County employees and non-employees who conduct business with County employees.

The Board further adds that retaliation against a person who complains of sexual harassment is prohibited.

County Department Heads are accountable for prevention and correction of sexual harassment occurrences in their areas of responsibility. Managers and supervisors at all levels are responsible for taking all steps necessary to prevent sexual harassment from occurring within their organizations. These steps should encompass:

- Discussion of the subject by providing training to County employees regarding each one's responsibility in preventing sexual harassment.
- Expression of strong disapproval of sexual harassment by informing County employees of possible penalties for violations of the policy.
- Provide to employees procedures for submission of complaints of sexual harassment. These procedures will include Countywide and Departmental procedures, alternative avenues for complaints should the complainant be unsatisfied with the Departmental response, and a listing of appropriate disciplinary actions which may include termination when acts of sexual harassment occur.

Any violation of this policy will receive prompt and appropriate action. Any employee or prospective employee who experiences sexual harassment should immediately contact her/his supervisor, her/his departmental Affirmative Action Advisor, the Equal Opportunity Division, the Coordinator of Women's Programs, or a union representative.

The County Executive will ensure that the Board's policy prohibiting sexual harassment is made known to all County employees and that procedures necessary to assure compliance are implemented.

### **3.10 POLICY ON FARM WORKER EXPOSURE TO PESTICIDES (Adopted 8-10-93; Revised 11-4-03)**

It is the policy of the Board of Supervisors of the County of Santa Clara to support legislation to limit the use of pesticides that are harmful to farm workers and consumers. It is also the policy of the Board to support efforts in the County and throughout the state to help educate and train farm workers on the use of pesticides.

This policy is adopted in honor of Cesar Chavez -- a great union leader who was internationally recognized for his commitment to improving the lives of migrant farm workers. Cesar Chavez called attention to the economic and social plight of people who toil daily in our agricultural fields. During his life, he worked to educate farm workers and consumers about the dangers of food contaminated with pesticides and to protect farm workers from unsafe and substandard working conditions.

### **3.11 OUTREACH TO DIVERSE BUSINESS ENTERPRISES (Adopted 12-11-94; Revised 11-15-16)**

It is the policy of the Santa Clara County Board of Supervisors that no person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military or veteran status be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity conducted by the County.

In this regard, it is the Board's policy pertaining to the utilization of minority-owned business enterprises (MBEs), women-owned business enterprises (WBEs), disabled veteran-owned business enterprises (DVBES), and LGBT-owned business enterprises (LBGTBEs), that focused outreach activities be taken as necessary and as permitted by law to ensure that these enterprises are provided the opportunity to compete for and participate in all contracts issued by the County for construction, services, and the purchase of supplies and equipment.

For the purposes of this policy, the following definitions shall apply:

- "Minority-owned business enterprise" or "MBE" shall mean a business that is (1) a sole proprietorship legitimately owned and controlled by an individual who is a minority person, as defined below; (2) a partnership or joint venture controlled by minority persons and in which at least 51 percent of the beneficial ownership interests are legitimately held by minority persons; or (3) a corporation or other entity controlled by minority persons and in which at least 51 percent of the beneficial ownership interests are legitimately held by minority persons.

- “Minority person” means an individual who is black, Hispanic, Asian American, Pacific Islander, or American Indian. Also, a “minority person” may include members of other groups found to be socially and economically disadvantaged by the Small Business Administration under Section 8(a) of the Small Business Act, as amended (15 U.S.C. 637 (a)).
- “Women-owned business enterprise” or “WBE” shall mean a business that is (1) a sole proprietorship legitimately owned and controlled by a woman; (2) a partnership or joint venture controlled by women and in which at least 51 percent of the beneficial ownership interests are legitimately held by women; or (3) a corporation or other entity controlled by women and in which at least 51 percent of the beneficial ownership interests are legitimately held by women.
- “Disabled veteran business enterprise” or “DVBE” shall have the same meaning as defined in Section 999 of the Military and Veterans Code.
- “LGBT business enterprise” or “LGBTBE” shall mean a business enterprise that is at least 51 percent owned by a lesbian, gay, bisexual, or transgender person or persons; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more lesbian, gay, bisexual, or transgender persons; and whose management and daily business operations are controlled by one or more of those individuals.

Focused outreach shall be taken to highlight opportunities for MBEs, WBEs, DVBEs, and LGBTBEs to participate equitably in County contracting activities. These are minimum actions. In instances where more stringent requirements are established by federal or state agencies as a condition for County participation in a program, the more stringent requirements shall apply. As authorized by Government Code Section 11139.7, Administration shall engage in focused outreach activities in addition to general outreach, for purposes of increasing participation by the small business sector and increasing diversity in the County’s contracting and procurement activities. Outreach activities may include the following:

- (1) Solicitations distributed to state and local small business and trade associations and chambers of commerce, including ethnic chambers of commerce, and other business and professional associations, including professional minority, women, disabled veteran, and LGBT-owned business and professional groups and associations, as appropriate.
- (2) Advertising concerning local contracting and procurement opportunities in trade papers and other publications focusing on small business enterprises, including publications in languages other than English and those whose primary readership is minority, women, disabled veteran, or LGBT-owned businesses.
- (3) Outreach to state and local small business and trade associations and chambers of commerce, including ethnic chambers of commerce, and other business and professional associations, including professional minority, women,

disabled veteran, and LGBT- owned business and professional groups and associations, as appropriate.

Administration may collaborate with other governmental entities to streamline or effectively promote provisions of this policy.

### **3.12 POLICY ON PURCHASE OF RECYCLED PRODUCTS (Adopted 3-16-93; Deleted 10-8-13)**

### **3.13 PROCUREMENT POLICY ON “DEGRADABLE” PLASTIC PRODUCTS (Adopted 4-24-90; Deleted 10-8-13)**

### **3.14 POLICY ON WASTE REDUCTION AND RECYCLING IN COUNTY FACILITIES (Adopted 5-9-95; Deleted 10-8-13)**

### **3.15 SUBPOENAS OF INFORMATION ON PUBLIC ASSISTANCE RECIPIENTS (Adopted 5-1-79)**

From time-to-time the Board of Supervisors is called upon to consider the execution of a subpoena to obtain information and personal records on individuals who are receiving or have applied to receive public assistance.

On May 1, 1979, the Board of Supervisors approved a policy that enables the Chairperson of the Board to execute subpoena documents on behalf of the full Board, thereby precluding the need for the names of those who are listed on the subpoenas appearing in the agenda packages that are considered by the Board and publicly released.

This policy reflects the Board's desire to ensure a proper review of applications for public assistance without unduly violating the privacy of those who are affected by a subpoena for information.

### **3.16 LATE ADDITIONS AND INSERTIONS - BOARD AGENDA PACKETS (Adopted 9-29-98)**

The Board discourages the adding of supplemental documents and information after the agenda is posted and packets of information are distributed. Providing documentation which is late and sometimes voluminous, impacts the Board decision-making process by not allowing adequate time for review and study by a Board member and may impact the public by not having complete materials available for public review. As a result, the Board may vote to hold the item to a future date for consideration.

However, in recognition that there are occasions and circumstances in which additional materials necessary for the decision-making process are received or prepared late, the County Executive is directed to develop and maintain a process for submitting late or sup-

plemental materials from County Departments. The County Executive will also establish a process for monitoring submittals of late materials.

The Board directs the Clerk of the Board to establish a process for accepting supplemental information from sources other than County Departments.

### **3.17 CONTROLLED SUBSTANCE AND ALCOHOL TESTING POLICY (Adopted 8-29-95)**

Santa Clara County has a long-standing commitment to maintain the highest standards for employee safety and health. The use of controlled substances and/or the misuse of alcohol is contrary to these high standards. The safety of the public, as well as the safety of fellow County employees, requires that no individual be permitted to perform duties while under the influence of drugs or alcohol.

It is the County's policy that each employee who performs safety-sensitive duties shall do the following:

- Participate in mandatory training about the effects and consequences of prohibited drug and alcohol use on personal health, safety, and the work environment; and
- Participate in the controlled substances and alcohol testing program; and
- Report to work without the presence of any controlled substance, or alcohol above a 0.02 blood alcohol concentration, in her or his body.

### **3.18 WORKPLACE VIOLENCE PREVENTION POLICY (Adopted 9-26-95)**

#### **3.18.1 Introduction**

Santa Clara County is committed to serving a wide range of citizens, some of whom can be under severe stress and have nowhere else to turn. Providing services to these and other persons can place County employees in a position of vulnerability to violence or threatening behavior. The County values its employees and clients and, with this Policy, the Board of Supervisors affirms its commitment to providing workplaces and facilities that are free from violence. This will be accomplished through:

#### **3.18.2 Types of Perpetrators**

(A) Strangers

To help protect employees from violent strangers in the community, the County will provide crime prevention information to employees and will address security issues involving worksites and facilities.

(B) Clients



Since employees in many departments deal with clients who are distressed and who may make threats or commit acts of violence, the County will provide support and guidance so that threats of violence can be recognized and prudently addressed, and so that acts of violence can be prevented if possible.

(C) Family Members or Acquaintances

If the workplace is affected by a violent act or threat of violence by an employee's family member or acquaintance, the County will provide support and guidance for the victim and his or her co-workers.

(D) Employees

The County of Santa Clara will not tolerate violent acts or threats of violence (either verbal or implied) by employees. In such cases, the County endorses immediate and definitive use of the disciplinary process up to and including discharge from County employment, consistent with ensuring the safety of co-workers. Criminal prosecution will be pursued as appropriate. The County also advocates a preventive approach whereby merit system rules and regulations are fairly and consistently administered, and where troubled employees receive guidance and, if necessary, professional help.

### **3.18.3 Roles and Responsibilities**

(A) County Executive

The County Executive shall ensure that this Policy is fully implemented and adapted to unique needs at the agency/department level, and that the County organization maintains an effective support structure for responding to acts and threats of workplace violence.

The Executive's Office of Occupational Safety and Environmental Compliance will include this Policy as part of the County's written Occupational Injury and Illness Prevention Program.

(B) Employee Services Agency

The Employee Services Agency has overall responsibility for maintaining this Policy and for identifying resources that agencies and departments can use in developing their training plans and violence prevention measures. The Employee Services Agency will also administer workplace violence prevention measures involving Labor Relations (including compulsory medical or "fitness for duty" examinations) and the Employee Assistance Program, and will coordinate post-incident activities involving employee services and claims management.

(C) Agency and Department Heads

Agency and Department Heads are responsible for ensuring that this Policy is implemented in their respective organizations and that the unique needs of their organizations are addressed through procedures and training. Each agency and/or department must develop a plan for preventing and responding to acts of workplace violence. These plans need not be lengthy, but they shall contain as a minimum a Facility Emergency Plan attachment that includes facility-specific procedures (such as alarm buttons and escape routes), notification lists, and a timeline for training designated employees.

(D) Managers and Supervisors

It is the responsibility of managers and supervisors to make safety their highest concern. When made aware of real or perceived threat of violence, management shall conduct a thorough investigation, provide support for employees, and take specific actions to help prevent acts of violence. Managers and supervisors shall also provide information and training for employees as needed.

(E) Employees

Employees should learn to recognize and respond to behaviors by potential perpetrators that may indicate a risk of violence. Employees shall also place safety as the highest concern, and shall report all acts of violence and threats of violence.

### **3.18.4 Physical Security**

Since the County is a public organization that wishes to remain accessible to its clients to the fullest extent possible, it is not the County's intent to implement a widespread "fortification" of its facilities. The County prefers to train its employees to be the primary means of reducing workplace violence. However, certain facilities, due to the nature of the service provided, may need barriers, cameras, metal detectors, better locks, and the like. Where such structures are necessary, they should be constructed in the least obtrusive way feasible.

### **3.18.5 Training and Information**

Although acts of workplace violence cannot be precisely predicted, a knowledge of how to respond to perpetrators can help County employees minimize the risk of violence or injury. The County will provide designated employees with training that will help them take appropriate precautions and respond wisely when confronted with a potentially violent individual. Departments will structure this training to meet the unique needs of each operation.

Since the vast majority of violent acts perpetrated by employees and employee family members are preceded by a number of behaviors that signal an escalating situation, the County will provide employees with written materials that will help them recognize the warning signs of violence, and will recommend professional consultation or initiation intervention measures before a violent act occurs.

### **3.19 POLICY STATEMENT ON EXPENSE REIMBURSEMENT AND USE OF PUBLIC RESOURCES (Adopted 3-21-95; Amended 12-18-12; Amended 4-17-18; Amended 8-13-19)**

#### **3.19.1 Introduction**

The County of Santa Clara (“County”) takes its stewardship over the use of its limited public funds very seriously. As such, those funds should only be used when there is a substantial benefit to the County. Such benefits may include:

1. The opportunity to discuss the community’s concerns with state and federal officials;
2. Participating in regional, state and national organizations whose activities affect the County;
3. Attending educational seminars designed to improve officials’ skill and information levels; and
4. Promoting public service and morale by recognizing such service.

The County further recognizes that:

1. Legislative and other regional, state and federal agency business is frequently conducted over meals;
2. Sharing a meal with regional, state, and federal officials is frequently the best opportunity for a more extensive, focused, and uninterrupted communication about the County’s policy concerns; and
3. Each meal expenditure must comply with the limits and reporting requirements of local, state, and federal law.

This Statement provides guidance to all individuals subject to the County’s expense reimbursement policies on the use and expenditure of County funds, as well as the standards against which those uses and expenditures will be measured. Officers and employees should direct any questions they have about this Policy, applicable statutes, ordinances, or related policies to the Office of the County Counsel.

#### **3.19.2 Authorized Expenses In General**

County funds may only be used for authorized County business - i.e., activities that relate to the County’s primary mission of providing quality public service. Any expenses incurred for authorized County business must be reasonable and prudent. County funds may not be used for personal or non-County business purposes.

- (A) Authorized Expenses

Authorized expenses may include, but are not limited to, expenses incurred in connection with the following types of activities (subject to certain limitations described below):

1. Communicating with representatives of regional, state, and national government on County adopted policy positions;
2. Attending educational seminars designed to improve officials' skill and information levels;
3. Participating in regional, state, and national organizations whose activities affect the County's interests;
4. Recognizing service to the County; and
5. Attending County events.

(B) Non-Reimbursable Expenses

Examples of personal expenses that the County will not reimburse include, but are not limited to:

1. Personal portion of any trip;
2. Political or charitable contributions or events;
3. Family expenses, including partner's expenses when accompanying official on agency-related business, as well as children- or pet-related expenses;
4. Entertainment expenses, including theater, movies (either in-room or at the theater), sporting events (including gym, massage, and/or golf related expenses);
5. Non-mileage personal automobile expenses, including repairs, traffic citations, parking tickets, insurance, or gasoline; and
6. Personal losses incurred while on County business.

Any questions regarding the propriety of a particular type of expense should be resolved by the appropriate approving authority before the expense is incurred. Reimbursement of County funds that were improperly expended is not a defense and does not excuse the improper expenditure.

### **3.19.3 Travel Policy**

*(Note: The Travel Policy can be found on the County's Internet Site under County Government/Board of Supervisors/Legislation/Expense & Reimbursement Policies. The link and path to the policy is:*

<http://www.sccgov.org/sites/bos/Legislation/Pages/ExpenseReimbursementPolicies.aspx>

The Board of Supervisors must approve the County Travel Policy and any amendments to the Policy.

County funds may only be used for travel that benefits the County (“County Travel”).

Travel is authorized for the minimum number of persons necessary to carry out the business purpose of the travel, and only for those whose job tasks are directly related to the purpose of the travel.

### **3.19.4 Meal Policy (Non-Travel)**

*(Note: The Meal Policy (Non-Travel) can be found on the County’s Internet Site under County Government/Board of Supervisors/Legislation/Expense & Reimbursement Policies. The link and path to the policy is:*

<http://www.sccgov.org/sites/bos/Legislation/Pages/ExpenseReimbursementPolicies.aspx>)

The Board of Supervisors must approve the County Meal Policy (Non-Travel) and any amendments to the Policy.

The Meal Policy (Non-Travel) covers light refreshments and business meals that are not documented on a Trip Expense Voucher pursuant to the Travel Policy. Each expenditure must comply with the limits and reporting requirements of local, state, and federal law.

### **3.19.5 Procurement Card (P-Card) Policy**

*(Note: The Procurement Card Policy can be found on the County’s Internet Site under County Government/Board of Supervisors/Legislation/Expense & Reimbursement Policies. The link and path to the policy is:*

<http://www.sccgov.org/sites/bos/Legislation/Pages/ExpenseReimbursementPolicies.aspx>)

The Board of Supervisors must approve the County Procurement Card Policy and any amendments to the Policy.

The County Procurement Card (P-Card) is a charge card that may be used by designated County officials and employees to purchase supplies, materials, equipment, and services for County business.

Use of the P-Card constitutes the expenditure of public funds and may only be used for authorized County business. The purchases may not exceed \$5,000 per transaction. All agency personnel who perform critical P-Card administrative functions (Agency Program Coordinators, Approving Officials, Cardholders and Billing Officials) must attend mandatory trainings. Each Cardholder must execute the Cardholder Acknowledgment Disclosure form before receiving the card.

### **3.19.6 Family Care Expense Reimbursement Policy for Members of County Brown Act Bodies**

*(Note: The Family Care Expense Reimbursement Policy for Members of County Brown Act Bodies can be found on the County's Internet Site under County Government/Board of Supervisors/Legislation/Expense & Reimbursement Policies. The link and path to the policy is:*

<http://www.sccgov.org/sites/bos/Legislation/Pages/ExpenseReimbursementPolicies.aspx>)

The Board of Supervisors must approve the Family Care Expense Reimbursement Policy for Members of County Brown Act Bodies and any amendments to the Policy.

Only members of County Brown Act bodies who serve without compensation, are not County elected officials, and are not otherwise employed by the County, are eligible to receive reimbursement under the Family Care Expense Reimbursement Policy.

### **3.19.7 Compliance with Laws**

County officials and employees should keep in mind that some expenditures may be subject to reporting under the Political Reform Act and other laws. All agency expenditures are public records subject to disclosure under the Public Records Act.

### **3.19.8 Violation of the Policies Highlighted In This Statement**

Under state law, use of public resources or falsifying expense reports in violation of an expense reimbursement policy may result in any or all of the following:

1. Loss of reimbursement privileges;
2. Disciplinary action, up to and including termination;
3. Demand for restitution to the County;
4. Demand for three times the value of the resources used;
5. The County reporting the expenses as income to the official or employee to state and federal tax authorities;
6. Civil penalties of up to \$10,000 per day; and
7. Criminal prosecution for misuse of public resources.

### **3.19.9 Local Government Officials' Ethics Training Requirement (AB 1234)**

Under state law, training in general ethics principles and ethics laws relevant to public service is required for any member of a local agency legislative body or an elected local

agency official where the local agency provides compensation, salary, stipend, or expense reimbursement to members of a legislative body. The Board of Supervisors may also designate additional employees to receive this ethics training.

Effective December 18, 2012, in addition to those required by state law to receive the AB 1234 ethics training for local government officials, all individuals holding a position in the County's Executive Leadership Salary Ordinance shall receive at least two hours of this training within one year from the date they become an executive leader and every two years thereafter. Each Executive Leader as of December 18, 2012, who is not already required to receive this training, shall receive their first training within one year from December 18, 2012.

Effective August 13, 2019, all individuals holding the position title Board Aide in the County's Salary Ordinance shall receive at least two hours of this training within one year from the date they become a Board Aide and every two years thereafter. Each Board Aide as of August 13, 2019, who is not already required to receive this training, shall receive their first training prior to December 31, 2019.

An individual who has a certificate of completion from an AB 1234 training may submit the certificate to determine the individual's next training due date. The training must specifically meet the content requirements for AB 1234 ethics training. The Clerk of the Board maintains the records of AB 1234 ethics training completion by County elected officials, members of County legislative bodies, County executive leaders, and Board Aides.

### **3.20 OPEN DOOR ADMISSION POLICY AT VALLEY MEDICAL CENTER (Adopted 8-15-95)**

#### POLICY ON THE OPEN DOOR ADMISSION POLICY AT VALLEY MEDICAL CENTER

Any obligations which the County may have to care for residents of the County of Santa Clara who are in need of medical care, regardless of their ability to pay, under Welfare and Institutions Code 17000 will be carried out by maintaining the present open-door admission policy at Valley Medical Center and other suitable appropriate, and existing County medical facilities.

### **3.21 SANTA CLARA COUNTY PROTOCOL FOR FAMILY NOTIFICATION (Adopted 2-11-97)**

#### **3.21.1 Patient Identification**

The hospital will identify incoming patients to the Emergency Department.

- Every effort shall be made to identify an unaccompanied, unconscious, or incompetent unidentified patient as soon as possible in order to notify family members.

- The process of patient identification shall be clearly documented in the medical record.
- Whenever necessary, the hospital shall contact the Law Enforcement agency having jurisdiction over the area where the patient was found, to assist in the identification process.
- As necessary, the hospital shall notify the public relations department to utilize the media in assisting in patient identification.

### **3.21.2 Law Enforcement Investigations**

When there is a patient involved in a police investigation, the hospital will document the officer's name, badge number and the case number (if available) in the medical record.

### **3.21.3 Family Notification**

The hospital shall notify the patient's family as soon as possible.

- At no time is treatment withheld in the case of a life threatening emergency due to lack of parental consent, or notification to the next of kin.
- The process of family notification shall be clearly documented in the medical record.
- When the patient is in the custody of Law Enforcement, the family will be notified after permission has been obtained from Law Enforcement.
- These guidelines recognize the right of Law Enforcement to request that the hospital delay notification to the next of kin for investigative purposes, or because of a substantial risk to the patient and/or hospital personnel. Under these circumstances, the requesting Law Enforcement officer shall notify the hospital when the next of kin can be notified.

### **3.21.4 Coroner Notification**

The hospital shall notify the coroner of any patient "dead on arrival" (DOA) or "dead after admission" (DAA) to the Emergency Department.

- The date and time the coroner was notified, the name of the person notifying the coroner, and the name of the individual taking the information at the coroner's office shall be documented on the post mortem record.
- When Law Enforcement request that the hospital delay notification to the coroner until a Law Enforcement field investigator has viewed the body and retrieved evidence, the requesting Law Enforcement officer shall take full responsibility for notifying the coroner.
- The hospital will document the officer's request, the officer's name and badge number, and the date and time of the request on the post mortem record.



- The responsible officer shall notify the hospital when the coroner has been notified, and the date and time of coroner notification shall be documented on the post mortem record.

#### DOA/DAA Cases

In compliance with Government Code Sections 27491 and 27491.1 and Health and Safety Code Section 10250, the coroner must be notified of all deaths in the Emergency Department.

A person who does not notify the coroner as required in these sections is guilty of a misdemeanor.

### **3.21.5 Law Enforcement Notification**

When the patient is part of an ongoing police investigation, the hospital shall notify the responsible Law Enforcement agency of the patient's death within one hour of their demise.

- The Law Enforcement agency notified shall be the agency that responded to and recorded the patient's incident.

### **3.21.6 Patient or Employee Questioning by Law Enforcement Agencies**

A Law Enforcement officer meeting to question a patient or employee shall notify the hospital prior to making contact with the patient or employee.

- Law Enforcement notification shall be made to hospital in order that they may facilitate the questioning process.

## **3.22 EMPLOYMENT SUPPORT POLICY ON ENTRY-LEVEL WORK OPPORTUNITIES (Adopted 12-16-97; Amended 3-8-22)**

It is the policy of the County of Santa Clara Board of Supervisors that, where appropriate, entry-level job classifications in all County departments be made available to support active participants of County programs with a vocational or employment service component ("County Programs"), in accordance with County Charter sections 701(a)(15) and 704(h) and applicable County Merit System Rules.

County Programs include those that are funded, administered, and/or coordinated by the County (e.g., CalWORKs, CalFresh Employment and Training, and Rapid Rehousing). The County Executive will determine whether specific programs are applicable to this policy.

This Employment Support Policy ("Policy") is part of the County's approach to helping economically disadvantaged individuals obtain gainful employment. As the third largest

employer in Silicon Valley, the County is responding to this challenge in the hopes that other employers in the public and private sectors will follow our example. Patterned after the highly successful “Unclassified Clerk Typist Program” that operated in the County’s Social Services Agency, this Policy will support efforts that create win-win situations for County Programs participants and the County departments that hire them.

- Pursuant to County Charter Sections 701(a)(15) and 704(h) and Footnote 126 of the Master Salary Ordinance, County departments may consider active participants from County Programs to fill available entry-level positions through unclassified appointment.
- County Programs may notify program participants of available County job opportunities and assist program participants with completing the County job application.
- Employee Services Agency (ESA)-Human Resources will screen the applications of candidates from County Programs to ensure candidates meet employment standards (i.e., minimum qualifications) of the entry-level classifications to which they have applied.
- County Programs should coordinate with ESA-Human Resources to refer qualified candidates from County Programs to hiring managers in County departments who have indicated an interest in considering these candidates.

Entry-level classifications are identified in Footnote 126 of the Master Salary Ordinance, which may be updated periodically. The designation as an entry-level classification is based on employment standards that:

1. Do not require post-secondary degree completion (i.e., up to the completion of some college credits); and
2. Require minimal to no experience (i.e., up to one year of relevant work experience).

Classifications that permit candidates to meet employment standards through certification may also be considered entry-level classifications if 1 and 2 above are also true.

### **3.23 DRINKING DRIVER PROGRAM SERVICES (Adopted 12-9-97)**

The purpose of this policy is to make clear the role that the County Department of Alcohol and Drug Services can and will play in the provision of Drinking Driver Program (DDP) services in Santa Clara County.

- (1) Under Title 9 of the State regulations, the duties and responsibilities of the County Department of Alcohol & Drug Services fall into the following categories: (1) to review and recommend applications for licensure; (2) to monitor the drinking driver programs operating in Santa Clara County to assure compliance with Title 9 regulations and report problems to the State Department of Alcohol and Drug Pro-

- grams; and (3) to act as a liaison with the Courts, the County Probation Department, Drinking Driver Programs, and interested parties at the County level.
- (2) The regulation of state-licensed drinking driver program providers is a matter within the exclusive jurisdiction of the State Department of Alcohol and Drug Programs.
  - (3) All State-licensed drinking driver program providers are eligible to receive Court referrals to provide Drinking Driver Program services in Santa Clara County according to the terms of their licensure. The County Department of Alcohol and Drug Services will provide the Courts with a list of the names, addresses, and telephone numbers of these providers for that purpose.
  - (4) In the event that the County Department of Alcohol and Drug Services determines that there is a need for additional State-licensed drinking driver program providers, after careful review and input from the Courts and State-licensed Drinking Driver Program providers in Santa Clara County, the County may issue Requests for Proposals to all persons or organizations interested in providing drinking driver program services, in accordance with the applicable provisions of Title 9 of the state regulations.
  - (5) The County Department of Alcohol and Drug Services has no legal right or authority to prevent or limit State-licensed Drinking Driver Program providers from making full use of their licenses to provide Drinking Driver Program services in Santa Clara County.
  - (6) The County Department of Alcohol and Drug Services will meet periodically with the State-licensed Drinking Driver Program providers; will provide the providers with administrative, coordinating and monitoring services; and will make recommendations, as necessary, to the County Board of Supervisors and to the State Department of Alcohol and Drug Programs.

### **3.24 COUNTY FAIRGROUNDS POLICY (Adopted 5-12-98)**

#### **3.24.1 Good Neighbor Policy**

It is the policy of the Board of Supervisors that the Santa Clara County Fairgrounds maintain a “Good Neighbor” relationship\* with the surrounding community; that the Fairgrounds be used for children and family-oriented uses; that the County Fair continue to be situated at the Fairgrounds; that the Fairgrounds become economically self-sufficient; and that the County of Santa Clara seek public/private partnerships to generate revenue to support capital improvements.

\*Note: The term, “Good Neighbor” relationship, for the purpose of this policy statement refers to the County having a relationship with the surrounding community in which the County is respectful and responsive to community concerns that arise from activities at the Fairgrounds.

### **3.24.2 Entertainment Events at the County Fairgrounds (Adopted 2-6-01)**

It is the policy of the Board of Supervisors that the following guidelines shall apply to entertainment events conducted at the Santa Clara County Fairgrounds. These policy guidelines are in addition to the existing policies that are embodied in the Santa Clara County - Fair Management Corporation (FMC) Management Agreement, and those policies adopted on May 12, 1998 with respect to the Fairgrounds Revitalization Plan.

Where these guidelines call for the development of specific programs or procedures to implement the policies, it is the direction of the Board that the County Executive's Office coordinate the joint development of such programs or procedures by the FMC, County Counsel, and the Office of the Sheriff. These policies shall also be incorporated into agreements between the FMC and promoters of events at the Fairgrounds. The FMC shall require event promoters, sponsors and concessionaires to enforce these policies for all events at the Fairgrounds.

#### Prohibition of Illegal Drug Use at Fairgrounds

It is the policy of the Board that the County Fairgrounds be designated as a "drug free zone." To reaffirm this policy, the FMC shall work diligently with the Office of the Sheriff, private security firms hired by promoters, the San Jose Police Department as applicable, County Counsel and other agencies as needed to create and implement a program for a drug free environment at the Fairgrounds. The language and procedures of this program shall be incorporated in the FMC's contracts with promoters, and those promoters will be held responsible under their contracts to enforce the County's policy. It is the policy of the Board that the possession, possession with intent to sell or distribute, or consumption of illegal drugs is strictly prohibited. It is the intent of the County that violators will be arrested and prosecuted to the full extent of the law. As noted in the ensuing section regarding security, the specific security requirements to implement this policy and discourage drug violations will be tailored on an event-by-event basis.

#### Restrictions on the Sale and Consumption of Alcoholic Beverages

It is the policy of the Board that the FMC and its promoters and concessionaires strictly enforce all laws pertinent to the distribution, sale and consumption of alcoholic beverages. The concessionaire shall routinely curtail the sale of alcoholic beverages at events where a high percentage of the participants, regardless of age, are observably under the influence of alcohol beyond the legal limit. In addition, alcoholic beverages shall not be sold in buildings at the Fairgrounds where events are hosted for, or predominantly targeted to persons under the age of 21. Alcohol sales shall be curtailed one hour in advance of the scheduled conclusion of events. Sponsors and distributors of alcoholic beverages who do business at the Fairgrounds shall be required by the FMC to cooperate in posting signs at events that encourage responsible consumption and moderation. The FMC and its promoters and concessionaires shall also require wristband identification screening at all events that are attended by a high percentage of persons who are under the age of 21. The FMC and its promoters and concessionaires shall strictly enforce proof of age requirements regardless of the age mix at events.

### Events Curfew

It is the policy of the Board that a 2:00 a.m. curfew shall be imposed on all events at the Fairgrounds except for events that may be scheduled for New Years Eve with the prior approval of the FMC and the County Executive's Office. Any such New Year's Eve event shall be confined to indoor venues and be limited to persons 18 years and older. Under existing FMC policy, there is a 9:00 p.m. curfew on outdoor amplified music, except during the annual Fair, when the curfew is 10:00 p.m.

### Safety and Security, Traffic & Parking Control, and Fire and Life Safety Requirements

It is the policy of the Board that the Office of the Sheriff shall be responsible for the coordination and planning of all security and safety at the Fairgrounds and at Fairgrounds events, regardless of what promoters are involved. In order to enhance the ability of the Sheriff's Office to perform this function, a newly designated Sheriff's Lieutenant or other appropriate position shall be assigned to the FMC to act as the Safety and Security Coordinator. The Coordinator shall be responsible to work collaboratively with the FMC to develop a Fairgrounds Safety and Security Plan and to coordinate advance planning for safety and security for all Fairgrounds events. The Coordinator shall also be responsible for the enforcement of the other requirements of this Board Policy with respect to illegal drugs and alcohol. The costs of this assigned Sheriff's position shall be borne by the various promoters of Fairgrounds events, on a pro rata basis determined by the FMC, so that there will be no impact on the County General Fund.

The FMC, through the Safety and Security Coordinator, shall coordinate with the San Jose Police Department for the provision of off-site security and traffic control for all large events. Decisions as to the need for off-site traffic control will be made on an event-by-event basis and involve input from the Sheriff, FMC staff, the FMC's contracted parking management firm, and the promoters of scheduled major events.

The FMC shall contract directly with the Office of the Sheriff for on-site security for the annual County Fair. The FMC shall act as a liaison between promoters and the Safety and Security Coordinator to provide security for all other events at the Fairgrounds, but arrangements for these services (whether sworn, private, or a mix of sworn and private) will be covered through contracts directly between the promoters and the Sheriff and/or independent security firms. Promoters of events also are required to pay for any Fire Marshal and on-site paramedic services that may be required for events. The Safety & Security Coordinator will conduct pre-event planning meetings with the FMC and event promoters to assess and arrange for requirements in these areas.

The FMC shall assess the need and feasibility of imposing a parking permit program for neighborhoods that surround the Fairgrounds. The FMC shall assist the Fairgrounds neighbors in this effort and will coordinate their efforts with the City of San Jose.

The Safety & Security Coordinator shall ensure that representatives of paramedic providers are included in all pre-event planning meetings that involve projected attendance in excess of 5,000 patrons. The Coordinator will ensure that adequate medical and paramedic resources are on the site for all such events.

It is the policy of the Board that, with respect to any events held at the Fairgrounds, the public health and safety of the community is of paramount concern. It is the policy of the Board that the FMC and its representatives will treat all groups and patrons with courtesy and respect, and that the legal rights of all groups and patrons will be upheld. Event promoters, at their own discretion, may authorize their security staff to conduct legally permissible gate searches to prohibit illegal drugs or weapons from being brought onto the Fairgrounds.

The FMC and the Office of the Sheriff shall conduct appropriate background checks on promoters of large events at the Fairgrounds. The FMC and the Office of the Sheriff shall evaluate the existing event sponsorship application process and develop improvements to the process as needed to meet the intent of these Board policies. Consistent with the Board's policy about equitable treatment for all groups and individuals, and consistent with legal requirements, the FMC may decline applications to book events if the applicant has misrepresented the nature of its business or has a history of promoting activities that pose a demonstrated threat to the public health and safety.

### **3.25 POLICY RELATING TO CONFIDENTIALITY OF DOCUMENTS (Adopted 3-9-99; Amended 1-26-21)**

#### **3.25.1 Introduction**

The purpose of this policy is to help identify which County documents are confidential, and to specify how those documents should be handled to ensure that they remain confidential. Generally, unless subject to statutory privileges or protections, County records are not confidential;<sup>1</sup> they are public documents, as required by the Public Records Act (the "Act"), California Government Code § 6250 et seq. The Act states that access to public information is a fundamental right and requires government agencies to either disclose requested information or justify their refusal to do so by citing a specific enumerated exception to the Act, which courts have narrowly construed. Public records are defined as "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." Government Code § 6252(d). The courts have further declared that "this definition is intended to cover every conceivable kind of record that is involved in the governmental process and will pertain to any new form of record-keeping instrument as it is developed." *San Gabriel Tribune v. Superior Court* 143 Cal. App. 3d 762, 774 (1983).

#### **3.25.2 Policy**

Santa Clara County is committed to ensuring that the public shall have access to information concerning the conduct of the people's business, as is their right under the Act. The

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1. This does not include, for example, privileged legal documents or records relating to County clients, patients, inmates, or employees that are subject to statutory confidentiality requirements and/or the constitutional right to privacy.

law does, however, provide that certain documents may not or should not be publicly disclosed, in order to protect the privacy of individuals and/or the best interests of the County. To ensure that such confidential County documents remain confidential, County officers and staff shall employ the following actions to maintain the confidentiality of documents exempt from the requirements of the Public Records Act:

- A. Confidential documents and communications shall be labeled as such.
- B. Confidential documents should be maintained in separate files or kept in some other manner designed to ensure their confidentiality is maintained.
- C. County departments shall establish policies to limit access to confidential documents and the information therein to those properly having access to such documents.
- D. Each member of the Board of Supervisors may designate any person(s) on the Supervisor's staff who is/are authorized to have access to confidential documents and information, in accordance with Section 3.25.4, below.
- E. Confidential documents shall be shredded before they are discarded.
- F. Confidential emails shall not be forwarded or otherwise shared with unauthorized persons.
- G. If unauthorized persons do gain access to privileged materials, immediate steps shall be taken to obtain their destruction or return.
- H. County employees with access to confidential documents shall be informed about this policy by their supervisors and provided a copy of it.

### **3.25.3 Confidential Documents - Definitions and Discussion**

For the purposes of this policy, "confidential documents" are those County records exempt from disclosure under the Public Records Act, documents received during or related to closed sessions of the Board, and any other documents protected from disclosure by law.

#### **A. Records exempt from the Public Records Act**

The Public Records Act exempts particular records from disclosure. The exemptions listed below are broadly applicable to the County's business. This is not an exhaustive list, however. Many specific exemptions and confidentiality laws apply to different aspects of the County's work. County employees should receive training on exemptions and confidentiality laws applicable to their area of work, and County Counsel should be consulted about any questions regarding the applicability of the Public Records Act to a particular document.

- 1. Preliminary Drafts, Notes, or Inter-agency Memoranda

Preliminary drafts, notes, or inter-agency memoranda are exempt from disclosure if they are not retained by the agency in the ordinary course of business and if the public interest in nondisclosure outweighs the interest in disclosure. *See* Government Code § 6254(a). Courts have interpreted this exemption narrowly, placing the burden upon the government agency to prove both that such records are ordinarily not retained and that there is an overriding public interest in nondisclosure. *See Citizens for a Better Environment v. Dept. of Food & Agriculture*, 171 Cal. App.3d 704, 715 (1985) (holding that memoranda normally retained and consisting of factual material or severable factual material along with deliberative material may be disclosed without doing violence to the public interest in withholding such records).

2. Records Prepared for Pending Litigation

Records pertaining to pending litigation, until the litigation is finally adjudicated or settled, are exempt from disclosure. *See* Government Code § 6254(b). A document is protected from disclosure only if it was specifically prepared for use in litigation; documents that are at issue in a litigation, but that were not prepared for the litigation and are not otherwise exempt, are not shielded by this provision. *See City of Hemet v. Superior Court*, 37 Cal. App. 4th, 1411, 1420 (1995) (holding that because public interest in the activities of a public agency are highest when the agency is being sued, the litigation exemption should be narrowly construed). This exemption may apply more broadly than attorney-client privilege and attorney work product doctrine, to exempt, for example, confidential correspondence between opposing counsel and parties during the pendency of the litigation. *See Bd. of Trustees of California State U. v. Super. Ct.*, 132 Cal. App. 4th 889, 900 (2005).

3. Personnel, Medical, or Similar Records

The Public Records Act exempts from disclosure medical records, personnel records, and similar records if their disclosure would constitute an unwarranted invasion of privacy. Government Code § 6254(c).

Employers have a duty to protect the privacy rights employees have in certain personnel records and other personal information. *Valley Bank of Nevada v. Superior Court*, 15 Cal. 3d 652 (1975); *see also Braun v. City of Taft*, 154 Cal. App. 3d 332, 344-45 (1984) (a council member was allowed access to records pertaining to appointment of transit administrator; irrelevant personal items could be taken out before being made public). In some instances, however, personnel records must be disclosed, and County Counsel should be consulted to determine whether a particular record is subject to disclosure. *See* Penal Code § 832.7(b) (requiring disclosure of certain peace officer personnel records).



In addition, individuals served or employed by the County have constitutional and statutory rights to the privacy of their medical information as well as other personal information. *See, e.g.*, Cal. Const. art. I, § 1 (state constitutional right to privacy); Civil Code § 56 et seq. (Confidentiality of Medical Information Act). Unlawful disclosure of protected personal information can result in monetary and criminal penalties. Because state and federal privacy laws are frequently updated and amended, staff should consult County Counsel regarding the confidentiality requirements applicable to specific types of employee and client records.

4. Client/Patient Records Exempt from Disclosure under State or Federal Law

In addition to the exemption for personnel and medical records, the Public Records Act exempts records the disclosure of which is exempted or prohibited by state or federal law. Government Code § 6254(k). This exemption applies to a wide range of records containing personal information of individuals served by the County. For example, medical and mental health records, juvenile records, criminal offender record information, public benefits information, and financial records, among others, may be exempt and barred from disclosure under this provision and relevant state or federal laws. As noted above, unlawful disclosure of protected personal information can result in monetary and criminal penalties. Because state and federal privacy laws are frequently updated and amended, staff should consult County Counsel regarding the confidentiality requirements applicable to specific types of employee and client records.

5. Taxpayer Information

Information required from any taxpayer in connection with the collection of local taxes may not be disclosed if the information was received in confidence and disclosure would result in an unfair competitive disadvantage to the person who supplied the information. Government Code § 6254(i).

6. Attorney-Client Privilege and Attorney Work Product

In addition to the exemption for records prepared for pending litigation, the Public Records Act exempts from disclosure certain privileged legal documents and communications, regardless of whether litigation is pending. Government Code § 6254(k). This exemption applies to County records subject to the attorney-client privilege and/or the attorney work product doctrine. Evidence Code § 952; Code of Civil Procedure § 2018.030.

Documents subject to the attorney-client privilege include memoranda from and correspondence (including email) with a County Counsel attorney and/or outside counsel for the purpose of providing confidential legal advice or consultation. Records subject to the attorney work product doctrine include documents prepared by an attorney, or others working with the attorney, in investigating, researching, analyzing, or assessing legal matters, including

but not limited to any document that reflects an attorney's impressions, conclusions, opinions, or legal research or theories.

Attorney-client privileged documents and attorney work product are confidential and exempt from disclosure. However, these legal protections may be waived and confidentiality potentially forfeited if (1) the Board of Supervisors (or, in the case of work product, the County Counsel) affirmatively acts to waive attorney-client privilege or work product protection, or (2) protected information is shared with unauthorized persons or otherwise not maintained as confidential. Because the attorney-client privilege is between the County and County Counsel, in most cases only the Board of Supervisors can voluntarily waive the privilege. All County staff must ensure that attorney-client privileged records and attorney work product remain confidential.

To preserve confidentiality, attorney-client privileged information and attorney work product should be shared only with County staff who reasonably need the information to accomplish the purpose for which legal advice was sought. In addition, all staff who receive attorney-client privileged information or attorney work product should take measures to maintain its confidentiality and should properly label and secure privileged documents. Staff should not discuss attorney-client privileged information or attorney work product in a public place or with unauthorized persons, leave privileged information where it can be seen by others, or forward emails containing attorney-client privileged information or attorney work product to unauthorized persons or to staff who do not have a need to know. It is the responsibility of each County employee or official with access to attorney-client privileged documents and/or attorney work product to take appropriate steps to maintain confidentiality.

## 7. Law Enforcement Records

The Public Records Act contains a number of exemptions for law enforcement records. Government Code § 6254(f), (k). Generally, investigative files and records are exempt from disclosure. However, the Act requires disclosure of certain information regarding arrests, complaints and requests for assistance, and video or audio recordings related to critical incidents, and it requires certain additional disclosures to victims and insurance carriers. Government Code § 6254(f). In addition, certain law enforcement personnel records and information may be subject to disclosure. *See Long Beach Police Officers Assn. v. City of Long Beach*, 59 Cal. 4th 59, 64 (2014) (names of police officers involved in on-duty shootings subject to disclosure, absent safety concerns); Penal Code § 832.7(b) (requiring disclosure of certain peace officer personnel records).

## B. Closed Session Documents/Information

Documents received during, or in relation to, closed sessions of the Board of Supervisors are confidential. Closed session meetings of the Board are authorized under specified circumstances by the provisions of the Brown Act, Government Code § 54950 et seq.

1. Divulging Information to Members of the Public

The purpose of a closed session meeting is to prevent disclosure of the matters discussed to the general public. The Brown Act authorizes closed session meetings in a narrow range of sensitive contexts including, for example, to allow the Board to instruct its negotiators or attorneys on specified matters relating to litigation and real estate transactions, and in certain instances where confidential personnel or labor relations information is involved. The California Attorney General has stated “it would be improper for information received during a closed session to be publicly disclosed without authorization of the governing body as a whole.” 76 Cal. Op. Atty. Gen. 289, 290 (1993); 51 Cal. Op. Atty. Gen. 203, 206 (1968); 44 Cal. Op. Atty. Gen. 147, 149 (1964). Accordingly, no member of the Board or staff member authorized to attend closed session should disclose information received during or in connection with the closed session meeting, unless authorized by the Board as a whole or required by law.

2. Divulging Information to Staff

The only persons who may be present in closed sessions of the Board are those actually necessary to advise or take direction from the Board, in light of the specifically permitted purpose of a particular closed session discussion. The Board may determine which individuals should attend a closed session, consistent with the Brown Act. Other County staff, and the staff of the Supervisors, are not authorized to be present in closed session. The Board as a whole may make the determination that it is appropriate for business reasons to permit disclosure of information from closed session to specified staff members, as they could do in relation to the general public.

C. Other Documents Protected from Disclosure by Law

Numerous state and federal laws impose confidentiality restrictions on records held by the County. These confidentiality laws are incorporated in the Public Records Act through Government Code section 6254(k), which exempts from disclosure any record that cannot be disclosed, or is exempt from disclosure, pursuant to state or federal law.

### **3.25.4 Designation of Staff Authorized to Receive Confidential Information**

In adopting this Policy, the Board of Supervisors has determined that in order to perform the official duties of Board members, it may be necessary for specified staff of Board members to have limited access to confidential documents and information provided to

the Board member. The Board hereby finds that given the nature and volume of significant issues coming before the Board, and the extent of background information necessary for each Board member to review in order to fulfill the duties of the Board of Supervisors, each Board member may appropriately allow his or her Chief of Staff access to confidential material directed to that Board member, so that the Chief of Staff may assist the Board member.

Any Board member who determines that any other member or members of his or her staff must have access to confidential documents in order to allow that Board member to adequately perform the duties of his or her office may authorize such access verbally or in writing. Such authorization automatically terminates when the staff member terminates employment with the Board member, and may be terminated at any time by the Board member. Persons so designated should have access to confidential information only to the extent reasonably necessary to achieve the purpose of the confidential communications to the Board member. It is the policy of the Board that no person other than the Board member should have access to confidential materials that relate to personnel issues concerning individuals who are appointees of the Board.

### **3.26 POLICY SPECIFYING CRITERIA AND PROCEDURES FOR PROCESSING OFF-CYCLE FUNDING REQUESTS FROM COMMUNITY-BASED ORGANIZATIONS (CBOs) (Adopted 12-8-98; Amended 5-25-99)**

This policy specifies criteria and procedures to be followed when CBOs (Community Based Organizations) request general fund support outside the Budget Process and months of the year when funding requests are normally given consideration by the Santa County Board of Supervisors. This policy is limited to requests made by CBO's directly to the Board of Supervisors and not through departments. Normal opportunities for funding occur through RFP processes (various months), budget requests sponsored by Board Committees or individual Supervisors (May and June), or at the mid-year budget review (January).

#### **3.26.1 Criteria for Off-Cycle Funding**

Four criteria will be utilized when determining whether or not to fund a CBO requesting off-cycle financial support directly from the Board of Supervisors. In order to be considered, a request must meet *all* four criteria, as follows:

- **Current Contract** - The CBO must have a contract or similar relationship with the County in the current fiscal year;
- **Verifiable Crisis** - The CBO must be on the verge of interruption or termination of services due to a verifiable financial or facility-related crisis;
- **Critical Service** - The CBO must provide a critical service that other similar organizations could not provide without significant difficulty and/or delay;

- **Significant Impact** - Interruption or termination of the services provided by the CBO must have a significant impact on the number of residents affected or the duration of the impact.

### **3.26.2 Procedures for Use of the Criteria**

The CBO's request for funding would be referred to the Finance and Government Operations Committee for evaluation.

If all four criteria are met, the Committee forwards the request to the Board of Supervisors for action, along with a recommendation to grant or not grant the request, accompanied by reasons for the recommended action. Even if the Committee finds that the four criteria are met, it may cite overriding concerns for not granting the request.

If the Committee grants the request, it is the policy of the Board of Supervisors that a repayment plan is developed so the funds can be repaid to the County over a mutually agreeable timeframe.

The Finance and Government Operations Committee and the Board of Supervisors have the ability, on an exception basis, to provide a grant that does not require repayment if they believe the financial circumstances of the organization in question support such a decision.

If the request fails to meet the criteria, in the opinion of the Finance and Government Operations Committee, the CBO would be notified that its request has been rejected at the Committee level. The CBO would be advised of its right to appeal the Committee's recommendation at a meeting of the full Board of Supervisors.

Upon receiving the Finance and Government Operations Committee's recommendation, and/or upon hearing the CBO's appeal, the Board of Supervisors has three options:

- Grant the request, for the reasons stated (e.g., the extreme urgency of taking this action, which affects large numbers of residents over a significant period of time);
- Deny the request, for reasons stated (e.g., the matter is not urgent enough to take action at this time, and could damage the perception that the Board of Supervisors allocates funds to CBOs in a fair and impartial manner); or
- Refer the matter to a Board Policy Committee having jurisdiction over the type of services the CBO provides, requesting that it be brought back to the full Board if the request has merit, in the opinion of that Committee.

### **3.27 POLICY REGARDING COUNTY COUNSEL REVIEW OF DOCUMENTS AND TRANSACTIONS; PARTICIPATION IN CONTESTED MATTERS (Adopted 1-12-99; Amended 8-27-02; Amended 12-13-11; Amended 1-26-21)**

#### **3.27.1 Document Review**

It is the policy and expectation of the Board of Supervisors that all legal documents (such as contracts, memoranda of understanding/memoranda of agreement, side letter agreements, ordinances, and resolutions) being presented to the Board for approval, or for approval based on a delegation of authority, be first reviewed (and approved as to form and legality) by the Office of the County Counsel. This policy does not apply to routine, non-urgency salary ordinance amendments that concern only the addition of positions, removal of positions, or wage adjustments pursuant to a Board-approved agreement prepared using a form previously approved by the Office of the County Counsel and so identified. All other salary ordinances must be reviewed and signed as to form and legality by County Counsel. Any legal document not bearing signature approval as to form and legality by the Office of the County Counsel is voidable and is not binding on the County or any other entity for which the Board is the governing body.

In order to implement this policy, Agencies, Departments, Districts, officers, and other parties intending to place such items on the Board's agenda or otherwise process such items for approval shall provide the Office of the County Counsel with all relevant material sufficiently in advance of the Board meeting or applicable deadline to allow thorough legal review and modifications or clarification where required. "All relevant material" includes the legal document in question together with all exhibits and/or attachments, a copy of the draft transmittal, and information regarding the target date for Board or delegate consideration. In the case of contract amendments, the original contract and all previous amendments shall be provided.

It is further the policy of the Board of Supervisors that all transmittals to the Board which raise potential legal issues should first be reviewed by the Office of the County Counsel. This includes, for example, memoranda which reference prior or current legal advice of the County Counsel's Office, interpretations of statutes or ordinances, or conclusions or recommendations regarding legal liability of the County or other parties. It also must include any transmittal which requires the Board to make legal findings and/or take a legal action in a legislative or quasi-judicial hearing.

#### **3.27.2 Timing of Review**

Ordinarily, such materials shall be provided to the Office of the County Counsel no later than three (3) weeks prior to the Board meeting or applicable deadline at which it is desired that the matter be considered, which is approximately one week prior to the date items for that meeting must be submitted to the County Executive's Agenda Review Committee. This time period will usually allow adequate time for review, identification of any legal issues, any necessary changes to the document(s), and where necessary, preparation

of a separate written communication to the Board or delegate regarding legal matters. Where special circumstances exist which prevent a department from adhering to this schedule (such as a Board referral with a short turnaround time, an urgency situation, or changed circumstances or funding which require immediate amendment to a contract), the department shall contact the County Counsel or the attorney assigned to that department to make mutually-acceptable arrangements for review of the documents.

If the County Counsel's Office determines that there is insufficient time to permit a thorough review of the matter, the County Counsel's Office will inform the Board or person with delegated authority.

### **3.27.3 Training**

To assist in the smooth implementation of this policy, County Counsel will provide training to staff regarding the legal requirements for documents being presented to the Board for approval.

### **3.27.4 Involvement in Negotiation of Contracts and Other Transactions**

In order to protect and to further the interests of the County, and to avoid delays when County Counsel is first consulted late in the process of developing or negotiating significant transactions, it is the policy and expectation of the Board that County staff shall consult with County Counsel regarding significant transactions at a time early enough to allow meaningful consideration of legal strategy and risk analysis. For purposes of this policy, a "significant transaction" is a proposed contractual arrangement, project or program that may result in non-routine changes to the County's fiscal or legal obligations or in the operations of a county program. A "significant transaction" in labor contract negotiations is a proposed change in contract language, including, for example, settlement agreements and side letter agreements, but excluding changes solely relating to base salary or corrections of a clerical nature.

### **3.27.5 Involvement in Contested Matters**

In order to reduce County liability and to protect and further the County's interest, it is the policy and expectation of the Board that County staff shall consult with the Office of the County Counsel in any matter in which an attorney is handling a matter adverse to the County. This includes but is not limited to labor grievance resolutions, labor arbitrations, personnel board matters, any agreement that settles a contested matter regardless of the name of said agreement, and land use hearings. For purposes of this policy, when County staff consult with the Office of the County Counsel, they shall collaboratively determine the appropriate handling and staffing of the matter.

### **3.27.6 Involvement in Written Responses to State and Federal Investigative Agencies**

In order to reduce County liability and to protect and further the County's interest, it is the policy and expectation of the Board that all formal written responses to State or Federal agencies investigating alleged violations of law, including but not limited to the Department of Fair Employment and Housing (DFEH), the Equal Employment Opportunity Commission (EEOC), the Department of Justice (DOJ), the Public Employment Relations Board (PERB), and other regulatory and licensing agencies, shall be reviewed by the Office of the County Counsel prior to submission to those agencies. In order to implement this policy, written responses and all relevant materials shall be provided to the Office of the County Counsel sufficiently in advance of the due date for submission of the written response to allow for an appropriate and meaningful legal review.

### **3.28 POLICY ON TIME CERTAIN FOR REPORTS BACK TO THE BOARD AFTER REFERRAL HAS BEEN MADE (Amended 12-17-02; Amended 3-23-04)**

A Board referral is any request for information made by a majority vote of the Board of Supervisors and referred to a County Department or Agency for report back. A referral can also be made by a Board Committee, and the report back to that committee will be subject to the same time constraints outlined in this policy.

Unless otherwise specified in a referral to staff made by the Board of Supervisors or Board Committee, reports back to the Board of Supervisors or its standing Committees shall be due on the Board or Committee agenda within 45 days from the date of the referral, or the next Board/Committee meeting date after the 45 days. Upon completion, the Department or Agency will submit a report back to the originating body through the transmittal process, or if originally specified, an off-agenda report to the members of the Board/Committee, the Clerk of the Board and the County Executive.

If a Department or Agency responding to the referral discovers that it cannot meet a report back deadline, an off-agenda extension request shall be sent to the Board or Board Committee, the Clerk of the Board, and the County Executive by the referral due date. The request shall state the amount of time, the amount of work and a description of the effort required to respond to the referral. After reviewing the off-agenda extension request, any Board member may direct the Department or Agency to prepare a transmittal to agendize the referral on the next available Board or Committee meeting for discussion and to make a decision as to the appropriate handling of the referral. Possible decisions by the Board or Committee include, but are not limited to, adjusting the scope of the referral by limiting the work to be done, or determining relative time priority or referral priority compared to other referrals that may be pending.

The Board Referral Matrix will be used to keep the Board of Supervisors updated on the status and progress being made on all pending referrals.



Any referral originated by a Board Committee must be reported to the Board as part of the Committee report agenda at each Board meeting.

This policy does not apply to Board Budget letters. This policy shall not prevent an individual Board member from requesting verbal or written information that may require minor staff time, or is already contained in reports already prepared by the Department consistent with the Department's work program or normal work process.

### **3.29 POLICY RELATING TO USE OF DOUBLE-SIDED COPYING IN COUNTY FACILITIES (Adopted 4-6-99; Deleted 10-8-13)**

### **3.30 EARLY CHILDHOOD DEVELOPMENT COLLABORATIVE SHALL BE AN ADVISORY COMMITTEE TO THE COUNTY CHILDREN AND FAMILIES FIRST COMMISSION (Adopted 3-23-99)**

The Early Childhood Development Collaborative shall be an Advisory Committee to the County Children and Families First Commission. The County Commission may also establish other advisory committees as deemed necessary or appropriate to provide geographic breadth or interest group input.

Proposition 10 sets forth that a county commission shall establish one or more advisory committees to provide technical and professional expertise and support for any purposes that will be beneficial in accomplishing the purposes of the act.

It is the policy of the Board of Supervisors that the Early Childhood Development Collaborative (ECDC) shall be an advisory committee to the county commission, and that it act under the direction of the Executive Director to provide professional expertise in support of the purposes of the commission and in the development of the strategic plan. This advisory committee will meet and make recommendations and produce reports as deemed necessary.

Consistent with the language of Proposition 10, the county commission may also establish other advisory committees as deemed necessary or appropriate.

### **3.31 USE OF SPECIFIC CRITERIA TO MAKE APPOINTMENTS TO THE COUNTY CHILDREN AND FAMILIES FIRST COMMISSION (Adopted 3-23-99)**

It is the policy of the Board of Supervisors that when making individual appointments to the County Children and Families First Commission, Board Members shall give strong consideration to the categories of persons described below.

- Parent who is a recipient of project services included in the county strategic plan;

- Educator associated with elementary level education and/or specializes in early childhood development;
- Representative of a community-based organization that specializes in parent education or represents children of special needs or specializes in prevention or early intervention for families at-risk;
- Representative of a community-based organization that specializes in early childhood development research and/or child advocacy; and
- Physician of a local medical, pediatric, or obstetric association or society.

The one category of persons that is included in Proposition 10, but that is not listed among the categories described in the policy statement is “representatives of a local child care resource or referral agency or a local child care coordinating group.” The CFC (Children and Families Committee) accounts for this category in its recommendation establishing a designated seat for the Santa Clara County Local Child Care Planning Council.

The rationale for the categories of persons recommended by the CFC:

1. Parent who is a Recipient of Project Services included in the County Strategic Plan

This category is slightly different in that we emphasize a “parent who is a recipient of project services” rather than a “recipient of project services.” When we refer to a “parent who is a recipient of project services,” we mean that either the parent is receiving the services or the child of the parent is receiving services. In both instances, the parent would be eligible to serve on the county commission.

Any initiative focused on early childhood development cannot overlook the perspective of parents. We recommend that a parent who is a recipient of the services contained in the County Children and Families First Commission’s strategic plan be eligible for a place on the commission because he or she would have first-hand understanding of the resources and support that are needed to raise healthy children.

Parents may also be recipients of project services. Proper parenting skills, for example, are essential for the healthy development of children. We expect then that programs that teach parents nurturing and parenting skills will be among the services that are funded in the strategic plan.

2. Educator associated with Elementary Level Education and/or Specializes in Early Childhood Development

This category is slightly different in that we expanded it to enable “educators associated with elementary level education” to also be eligible. Recent research shows that a child’s first three years are the most critical in stimulating brain development. These three years offer opportunities that will enable children to enter school in good health, ready-to-learn, and emotionally well-developed. Educational practitioners are aware of the web of support that successful children have in their lives

from a very early age, such as adult nurturing, access to quality medical care, and positive social experiences.

We recommend that an educator associated with elementary level education and/or who specializes in early childhood development be eligible for a place on the commission because he or she would bring first-hand knowledge of what experiences in the early years affect a child's future success in school. This knowledge, which is obtained through direct interaction and observation of young children and their families, is distinct from the knowledge and experience that other members who have a theoretical background in child development would bring to the commission.

3. Representative of a Community-Based Organization (CBO) that Specializes in Parent Education or Represents Children with Special Needs or Specializes in Prevention or Early Intervention for Families At-Risk

This category is different from that described in Proposition 10 in that we place a special emphasis on CBOs that specialize in parent education or represent children with special needs. The rationale for this emphasis is provided below.

A) CBOs Specializing in Parent Education

Proper parenting and nurturing are vital to the healthy development of children. A number of community-based organizations provide support to parents to help them deal with the challenges of parenting, understand the benefits of nurturing, and celebrate the joy that children bring to their lives. The support and education provided by such organizations lead to enhanced child cognitive development, improved parent-child relationships, and the improved emotional well-being of children.

We recommend that a representative of a community-based organization specializing in parent education have an opportunity for a seat on the commission because one of the purposes of the county commission is to establish parental education and family support services relevant to effective child development, and this representative would inform and advance this charge.

B) CBOs Representing Children with Special Needs

Parents of children with special needs often struggle to obtain access to critical services such as special education and child care. This population of children is often neglected because the type of support the child and family need to be successful are distinct from the support that children without these special needs require and the level of support that is required is more substantial.

We recommend that a community-based organization representing children with special needs have an opportunity for a seat on the commission because such organizations understand the types of support parents of children with

special needs require as well as the barriers that preclude access to vital services. A place on the commission is one way in which to represent this population and advocate for services within the strategic plan to be directed toward this population.

C) CBOs Specializing in Prevention or Early Intervention for Families At-Risk

Family support services are sometimes necessary for proper parenting. Indeed, substance abuse, poor impulse control and anger management, and inadequate parenting skills can lead to domestic violence, child abuse, or poor parenting. One of the purposes of the county commission is to fund community-based family support services so that families can function more successfully and children can benefit from proper parenting and nurturing.

In addition to family support services, it would also be beneficial to have a representative of an organization involved in smoking cessation activities for three reasons: 1) Smoking and second-hand smoke endanger the physical development of a child; for example, smoking during pregnancy accounts for 20 to 30 percent of low birth weight infants; 2) One of the purposes of Proposition 10 is to promote smoking cessation activities and education on the dangers of smoking; and 3) The sole source of revenue for this initiative is a surtax on tobacco products.

We recommend that a community-based organization specializing in prevention or early intervention services for families at-risk have an opportunity for a seat on the commission because such organizations can assist the commission to make sound decisions with respect to the strategic plan and the funding of these types of services. We also want to call out that organizations such as the Tobacco Control Coalition and the American Lung Association which focus on smoking cessation efforts would qualify for participation on the commission under this category.

D) Representative of a Community-Based Organization that Specializes in Early Childhood Development Research and/or Child Advocacy

This category is different from that described in Proposition 10 in that we place an emphasis on early childhood development research and child advocacy.

A number of local organizations conduct research and evaluate programs to educate practitioners and the public on the most effective strategies (best practices) to promote healthy early childhood development. Advocates use the findings from research and evaluation to influence public policy and leverage funds to enhance or create needed child development services.

We recommend that a non-profit or private community-based organization specializing in childhood development research and/or child advocacy be eligible for a place on the commission because such organizations under-

stand what environments and services benefit children as they are developing and can advise the commission on steps to take to sustain our efforts far into the future.

E) Physician of a Local Medical, Pediatric, or Obstetric Association or Society

This category is slightly different from that described in Proposition 10 in that we specify that the representative of a local medical, pediatric, or obstetric association or society be a physician, preferably a pediatrician. This recommendation came at the suggestion of our County Public Health Officer who felt it important that a physician be on the county commission.

The physical development of children is one of the foci of early childhood development. Conditions such as inadequate access to health care and poverty harm a child's physical health and can, in turn, diminish his or her life prospects. Research and studies show, for example, that low birth weight infants are especially at-risk for severe physical and developmental complications. We recommend that a physician of a local medical, pediatric, or obstetric association or society have an opportunity for a place on the commission because he or she would share the most current medical research and assure that the physical development of children is not neglected in the work of the commission and in the strategic plan.

### **3.32 CODE OF ETHICAL CONDUCT (Adopted 5-9-00)**

The County of Santa Clara affirms that public service is a public trust. The mission of the County of Santa Clara is to provide quality public services to our residents. In order to perform its mission, the County must have the trust and confidence of the public it serves. The "County" is its employees, and the trust of county residents is dependent on those county employees discharging their duties honestly, forthrightly, objectively and with personal integrity.

Every employee of Santa Clara County is responsible for performing their duties in a way that maintains the trust and confidence of the public, including placing the interest of the public good ahead of our own interest and working for the common good.

These standards of ethical conduct include:

- Upholding principles of equality, fairness, and objectivity;
- Treating all individuals with respect and dignity;
- Upholding federal, state, county and local laws, ordinances and regulations;
- Respecting and protecting privileged and confidential information.

Professional and personal affairs must be conducted in a manner that demonstrates that one could not be improperly influenced in the performance of official duties or that one

seeks personal gain through their position, regardless of the level of responsibility of the individual employee.

### **3.33 GUIDELINES FOR CONSIDERING ISSUES WHICH HAVE NATIONAL AND INTERNATIONAL IMPLICATIONS (Approved 1-25-00; Amended 6-20-06; Amended 2-26-13; Amended 1-14-14)**

*The Board adopted Resolution No. BOS-2013-26, suspending appointments to the Legislative Committee. This continues in effect until the Board directs otherwise. Legislative matters shall be referred to the other five Board Policy Committees for recommendations on support/oppose positions to the full Board, or to the full Board directly, depending on the subject matter of the legislation*

When a Commission or Advisory Body to the Board of Supervisors desire to take a public position on legislative issues or other issues which have a national and/or international implication, the following guidelines will be followed:

- (1) The Commission or Advisory Body, or a subset of members as designated by the Commission or Advisory Body, will make a preliminary determination on the appropriateness of the Board of Supervisors considering the matter.

In making this determination, the following criteria will be utilized:

- (a) Consistency with the Ordinance, Charter, and Bylaws of the Commission or Advisory Body.
- (b) Documented financial and/or programmatic impact on Santa Clara County government.
- (c) Impact on identified communities within Santa Clara County.
- (d) Consistency with existing Santa Clara County policies or positions on similar or related issues.

The process for this preliminary determination, and any further review by the Commission or Advisory Body, shall be determined by each Commission or Advisory Body and shall be consistent with the Ordinance, Charter, or Bylaws of such, as well as the Brown Act.

The Office of Intergovernmental Relations is available to Commissions and Advisory Boards to provide and/or consult regarding resources for evaluation of criteria b-d above.

- (2) Upon determination by the Commission or Advisory Body, or a subset of members as designated by the Commission or Advisory Body, that the matter under consideration is appropriate according to the criteria set forth in

item 1 a-d above, the matter may be placed on the agenda of the Commission or Advisory Body for consideration by the members at a properly noticed public meeting.

- (3) Should the Commission or Advisory Body vote to request the Board of Supervisors approve a public position on legislative issues or other issues which have a national and/or international implication, a letter summarizing the recommendation, how it meets the criteria set forth in item 1 a-d above (with supporting data), and reasons for the position will be submitted to the Deputy County Executive for Intergovernmental Relations, with a copy to members of the Legislative Committee, the Legislative Director and County Counsel. If the request includes adoption of a Resolution or Proclamation of the Board, a draft document will also be included.
- (4) Once referred to the Legislative Committee, the Committee's consideration and any recommendation shall be reported to the Board of Supervisors along with the regular Legislative Report.
- (5) Once the Board of Supervisors has acted, the Clerk of the Board will forward a copy of the Summary Minutes from the meeting to the Commission or Advisory Body to inform them of the Board's action.

### **3.34 FORM AND CONTENT OF MINUTES OF COUNTY LEGISLATIVE BODIES (Adopted 2-27-01; Amended 2-10-09; Amended 11-22-11; Amended 6-9-15; Amended 4-12-16)**

The Rules of the Board of Supervisors, Santa Clara County Ordinance Code, and California Government Code require that the Clerk of the Board, or deputy clerk designee, attend all regular and special open meetings of the Board of Supervisors and record the proceedings.

In particular, Government Code §25101 requires that the Clerk of the Board shall “keep and enter in the minute book of the Board a full and complete record of the proceedings, including the entry in full of all resolutions and of all decisions on questions concerning the allowance of accounts.” With the approval of the Board of Supervisors, the Clerk of the Board may keep a resolution book in which all resolutions are kept, rather than entering them in full in the minute book. Where this approval has been given, the resolutions can be referred to in the minute book by number and subject reference.

The law also requires that the minute book be kept in the custody of the Clerk and available for public inspection during normal business hours.

The purpose of this policy is to set forth the form and content of the Clerk of the Board minutes which will fulfill the legal requirement that a “full and complete record of the proceedings” at all Board of Supervisors open meetings is maintained. By adopting this policy, the Board of Supervisors gives its approval for the Clerk of the Board to keep a

“resolution book” pursuant to Government Code § 25102.1, thereby eliminating the need to set forth “in full” in the minute book the text of each resolution passed and adopted by the Board of Supervisors.

### **3.34.1 Content of Minutes**

The Clerk of the Board, or deputy clerk designee, shall enter into the minute book a full and complete record of the proceedings of each regular or special open meeting of the Board of Supervisors.

The Clerk shall prepare and distribute summary action minutes (minutes) of Board of Supervisors’ open meetings. The summary action minutes shall consist of the brief statement of each item posted on the agenda plus all motions, resolution and ordinance numbers related thereto, recusal information, all votes recorded thereon, and the final action taken by the Board, including any referrals or direction to Administration included as part of the motion. The minute book entry recorded for each meeting shall be the webcast video of the meeting, coupled with written minutes in summary action minute format.

The Clerk of the Board, or deputy clerk designee, may maintain discretion to include any other entries in the minute book not required to be included under the above provisions, but which concern statements, information, or events occurring during an open Board meeting which the Clerk of the Board determines should be included in the minutes. For open sessions held solely for the purpose of recessing into a closed session, the County Counsel or designee shall attend and document the information for the open session minutes.

Open sessions held solely for the purpose of recessing into a closed session and open sessions held for the purpose of training are not webcast.

### **3.34.2 Content of Other Legislative Body Meeting Minutes**

The Clerk of the Board, or deputy clerk designee, shall attend each regular and special open meeting of the Board of Supervisors’ policy committees and enter into the minute book a full and complete record of the proceedings of each such meeting. The minute book entry recorded for each meeting shall be the webcast video of the meeting coupled with written minutes in summary action minute format.

For open sessions of Board of Supervisors’ policy committees held solely for the purpose of recessing into a closed session, the County Counsel or designee shall attend and document the information for the open session minutes. Open sessions of Board of Supervisors’ policy committees held solely for the purpose of recessing into a closed session are not webcast.

The Clerk of the Board, or deputy clerk designee, shall attend each regular and special open meeting of the various advisory boards and commissions assigned to the Clerk of the Board, and certain corporations, task forces, and other bodies established by the Board of Supervisors, and enter into the minute book a full and complete record of the proceedings



of each such meeting. If the meeting is webcast, the minute book entry recorded for each meeting shall be the webcast video of the meeting coupled with written minutes in summary action minute format.

For other legislative bodies not staffed by the Clerk of the Board, the assigned departmental staff shall clerk the meetings. If the meetings of the legislative body are webcast, the minute book entry recorded for each meeting shall be the webcast video of the meeting coupled with written minutes in summary action minute format. The summary action minutes shall consist of a brief statement of each item posted on the agenda which shall include all motions, resolution and ordinance numbers related thereto, recusal information, all votes recorded thereon, the final action taken by the legislative body, and any referrals or requests to Administration, included as part of the motion.

For all meetings of all legislative bodies that are not webcast, the minute book entry recorded for each meeting shall be the written minutes which contain the following information:

- (A) Opening of the Meeting
  - (1) The date and time the meeting is called to order; and,
  - (2) The roll call.
- (B) Late Arrivals
  - (1) The time and Agenda item number during which any member joins the meeting after roll call.
- (C) Public Comment/Presentations
  - (1) The number of individuals that address the body;
  - (2) A brief summary of the subject matter (any matter not on agenda); and,
  - (3) Any Board referrals, including to which committee, department and/or person the referral is addressed, and any due date(s) and time(s) directed for report delivery.
- (D) Approval of the Minutes
  - (1) Any action taken on the approval of prior meeting minutes, and if approved, the motion, second, and vote outcome including any no vote, abstention, and absence of a member previously present in the meeting.
- (E) Approval of Consent Calendar Items
  - (1) The Agenda number of each item scheduled as part of the consent calendar approval;

- (2) The description of each item scheduled as part of the consent calendar approval as listed on the agenda;
  - (3) The Agenda number of each item removed from the consent calendar approval. Such items will then be documented in the minutes as agenda items discussed and/or considered;
  - (4) Recusal information for each item remaining on the consent calendar approval; and,
  - (5) The motion, second, and vote outcome including any no vote or abstention for each item voted on as part of the consent calendar approval, and absence of a member previously present in the meeting.
- (F) Agenda Items Discussed/Considered
- (1) The Agenda item number;
  - (2) The description of the item as listed on the Agenda;
  - (3) Recusal information;
  - (4) The motion, second, and vote outcome including any no vote, abstention, and absence of a member previously present in the meeting; and,
  - (5) Any referrals, including to which committee, department, and/or person the referral is addressed, and any due date(s) and time(s) directed for report delivery.
- (G) A brief synopsis of any announcements and/or correspondence.
- (H) Adjournment: time that the meeting adjourned, the date and time of next meeting, and name and title of who adjourned the meeting.

### **3.34.3 Form of Minutes**

The minutes shall be recorded in written form and, following approval by the legislative body, posted on the same web site as the agenda of the body. The written minutes, with a full and complete archived webcast of the meeting if available, shall constitute the minute book. As such, the Clerk of the Board shall convert the webcast video to new and appropriate technologies as available and necessary.

- (A) Verbatim Minutes
- (1) Upon the request of any member of the Board of Supervisors, the County Executive, or County Counsel, the Clerk of the Board shall prepare verbatim minutes of any agenda item for meetings that are webcast and are clerked by the Clerk of the Board.

### **3.34.4 Availability to the Public**

For Board of Supervisors, Board Policy Committees, and other legislative bodies clerked by the Clerk of the Board, the Clerk of the Board shall keep custody of a copy of the minute books, to be made available for public inspection during normal business hours, and members of the public may contact the Office of the Clerk of the Board to make arrangements to review them.

For other legislative bodies not staffed by the Clerk of the Board, the assigned departmental staff shall keep custody of a copy of the minute books, to be made available for public inspection during normal business hours.

## **3.35 MANAGEMENT AUDITOR POLICY (Adopted 6-26-01; Amended 4-5-05; Amended 5-25-10)**

### **3.35.1 Policy Statement**

County Charter Section 302c grants the Board of Supervisors the authority to inquire into the conduct of any office or department to which the County contributes money and examine all their records and accounts. The Board's policy is to establish and maintain a management audit function that is independent of the Board's appointees and the other independently elected County officials so that the Board may carry out the Board's power under Section 302c. The Board further recognizes the degree of independence reserved to the Management Auditor in conducting audits under the General Accounting Office's Government Accounting Standards. The Board currently contracts with a private firm for management audit services and the contract provisions will supersede this policy statement where they are in conflict.

### **3.35.2 Management Auditor Duties**

To conduct these inquiries and examinations the Board assigns the management auditor the following duties:

- Performance Audits - Economy and Efficiency
- Performance Audits - Program Performance
- Management and Technical Audits
- Ancillary Audit Services
- Budget Analysis
- Whistle Blower
- Special Studies or Projects

### **3.35.3 Management Auditor Performance Expectations**

The Board has the following performance expectations of the Management Auditor in carrying out the Board's assigned duties:

- (A) Conduct all assigned duties in accordance with the agreed upon contract terms and with the General Accounting Office's (GAO) Governmental Auditing Standards. The Management Auditor will, at all times, remain professional in dealings with all County staff. The Board expects the Auditor to approach the assigned duties vigorously and comprehensively while maintaining, at all times, professional communication and conduct with Agency and Department management.
- (B) Be sensitive to the impact that requests for information or documentation have on the County staff's ability to carry out their normal duties and responsibilities to their primary customers.
- (C) Alert Agency/Department management prior to the release of the final draft audit report to the discovery of any significant issues or the conclusion that line staff has not provided sufficient information or adequate documentation requested on a particular topic. Prior to the release of the final draft report, the Management Auditor will give Agency/Department management an opportunity to explain their perspective on the issue and/or provide the necessary documentation or information.
- (D) Maintain the strictest confidentiality regarding any issues relating to the audit's subject matter prior to the release of an audit's public report. Those inside the County must have a clear business need to know and those outside the County must be authorized by law or regulation to receive the information. The Management Auditor may contact other jurisdictions or agencies to obtain information where the contact is reasonable or necessary to complete the audit.
- (E) Deliver all work products in a timely manner and issue public reports, unless otherwise directed by the Board. The Board values the discovery or raising of significant, systemic, or strategic-level policy issues about how the County agencies use public resources, achieve Board adopted goals and objectives, or comply with applicable laws and regulations. The quality of the issues raised and recommendations made is more important than the quantity. In communicating findings and recommendations, shorter is better.

### **3.35.4 Agency/Department Performance Expectations**

In working with the Management Auditor, the Board has the following performance expectations of County agency and department management that report to Board appointees. The Board requests that the Court, the independently elected County officials, and independent jurisdictions that receive County funds also follow these guidelines.

- (A) Provide timely access to staff and records as requested by the Management Auditor to complete the Board's assignments. All County staff will cooperate fully with

the Management Auditor and they will communicate and conduct themselves at all times in a professional manner with Auditor staff.

- (B) Return to the Management Auditor all copies of all draft audits issued by the Management Auditor.
- (C) Respond proactively and constructively in the development of corrective action to significant issues identified by the Management Auditor even prior to the issuing of the Auditor's final report to the Board.
- (D) Maintain the strictest confidentiality regarding any issues relating to the audit's subject matter prior to the release of an audit's public report. Those inside the County must have a clear business need to know and those outside the County must be authorized by law or regulation to receive the information. Agency/Department management may contact other jurisdictions or agencies to obtain information where the contact is reasonable or necessary to respond to the audit. If prior to the public release of the audit, Agency/Department management believes release of audit information outside the County is required or warranted, it will contact the County Counsel who will bring the issue to the Board as appropriate.
- (E) Provide a written response to each audit, which must be incorporated in the final audit report, and focus the written response on the significant, systemic, or strategic level policy issues raised in the Auditor's report. The quality of the comments in terms of being concise, clear and to the point is more important than the quantity. In communicating responses to the Auditor's findings and recommendations, shorter is better.

### **3.35.5 Monitoring Implementation**

The appropriate Board Appointee or independently elected Official will have responsibility for reporting on the implementation status of high priority audit recommendations that the Board approved. The County Executive will report the status of those audit recommendations that the Board refers to the Committee or the Administration for further review prior to a final Board decision. The Finance and Government Operations Committee (FGOC) will review implementation status reports as may the Board Policy Committee that has oversight of the agency covered by the Audit. At the request of the Board or the Committee, or at the Management Auditor's discretion, the Management Auditor will provide an independent assessment of the implementation status of all Priority One recommendations approved for implementation.

### **3.35.6 Management Auditor Evaluation**

Following FGOC published procedures, the Management Auditor will submit periodic status reports on the annual audit work plan, provide a written annual self-assessment performance evaluation, and arrange for an external quality control review of the County's Management Audit Program in accordance with current GAO Government Accounting Standards.

### **3.36 E-MAIL POLICY (Adopted 4-10-01)**

#### Purpose of Policy

This policy addresses access to and the disclosure of information created, transmitted, received and stored via the County's e-mail systems. Access to e-mail is provided to employees and occasionally to other persons such as authorized contractors or volunteers (collectively referred to as "employees" in this policy), to assist them to perform their work, and their use of e-mail must not jeopardize operation of the County's information systems or the reputation and integrity of the County. This policy is intended to ensure that County employees know their rights and responsibilities in using e-mail, and to ensure the appropriate, cost effective, and efficient use of County e-mail systems.

Use of the County's information systems must withstand public scrutiny. The California Public Records Act (CPRA), Government Code Section 6250, *et. seq.*, requires the County to make all public records available for inspection and to provide copies upon request. A public record is any writing, including electronic documents, relating to the conduct of the people's business. Any information sent via e-mail may be subject to disclosure under the CPRA or requested in the process of litigation discovery. In addition, no use of licensed or copyrighted material should be made without permission from the holder of the license or copyright.

#### **3.36.1 Appropriate Use of E-Mail**

E-mail is provided as a business tool, however, its reasonable, incidental use for personal purposes is acceptable, so long as such use does not interfere with performance of work duties nor with the operation of the County's information systems.

- (A) No employee may use e-mail for inappropriate purposes, such as, but not limited to the following:
  - (1) Personal profit, including commercial solicitation or conducting or pursuing their own business interests or those of another organization.
  - (2) Unlawful or illegal activities.
  - (3) Creation or dissemination of harassing or demeaning statements toward any individual or group for any reason, including on the basis of sex, age, race, color, national origin, creed, disability, political beliefs, organizational affiliation, or sexual orientation.
  - (4) The dissemination of hoaxes, chain letters, or advertisements.
  - (5) The knowing propagation or downloading of viruses or other contaminants.
- (B) Employees should not create, send, forward, or reply to distribution lists concerning non-County business. Employees should consider the impact on the County's networks when creating and using large, work-related distribution lists.

### **3.36.2 Access to Messages**

- (A) Employees should have no expectation of privacy in any messages sent via e-mail over the County's networks; employees should not use the system for any messages that they wish to remain private. Any electronic information transported across the County's networks is potentially subject to access by technical support staff, and review, monitoring, and disclosure by an audit authority designated by an employee's department head (or by the County Executive with respect to usage by department and agency heads). All computer applications, programs, and work-related information created or stored by employees on the County's information systems are County property. If employees make incidental use of the e-mail system to transmit personal messages, such messages will be treated no differently from other messages.
- (B) The use of employee passwords and other message protection measures, other than those specifically authorized by the County, are prohibited. The County's authorization to use a password or other data protection measure shall not constitute consent by the County to maintain the messages as private.
- (C) This policy does not supplant the legal protections available to shield confidential, internal County communications from third party requests, such as information exempt from disclosure under the CPRA, shielded by attorney-client privilege, or subject to state law mandating confidentiality for specific subject matter.

### **3.36.3 Retention Policy**

E-mail that is not necessary to the ordinary course of business should be routinely deleted.

### **3.36.4 Enforcement**

Any violation of the County's e-mail policy may result in appropriate disciplinary action up to and including termination. Any improper e-mail will not be disclosed by the County to others except to the extent necessary to consider and to implement discipline, for other employment related purposes, or to respond to litigation requests. Potential criminal conduct which is revealed by improper e-mail will be referred to the appropriate law enforcement authorities.

## **3.37 INTERNET USAGE POLICY (Adopted 4-10-01)**

### Purpose of Policy

The Internet has become an increasingly important source of information for County employees. Many County employees, and occasionally others such as contractors and volunteers (collectively referred to in this policy as "employees"), are provided access to the Internet to assist in the performance of their work for the County. However, the diversity of information available on the Internet brings with it the potential for abuse. This policy

is intended to ensure that County employees know their rights and responsibilities in using the Internet, and to ensure the appropriate, cost effective, and efficient use of County Internet access capabilities.

Use of the Internet via the County's system must withstand public scrutiny. The California Public Records Act (CPRA), Government Code Section 6250, *et. seq.*, requires the County to make all public records available for inspection and to provide copies upon request. A public record is any writing, including electronic documents, relating to the conduct of the people's business. The CPRA applies to information processed, sent and stored on the Internet. Additionally, records of Internet use may be requested during litigation discovery. No use of licensed or copyrighted material should be made without permission from the holder of the license or copyright.

### **3.37.1 Appropriate Internet Use**

Access to the Internet is provided as a business tool, however, its reasonable, incidental use for personal purposes is acceptable, so long as such use does not interfere with performance of work duties or the operation of County information systems.

- (A) No employee, however, may use the Internet for inappropriate purposes, such as, but not limited to the following:
  - (1) Personal profit, including commercial solicitation or conducting or pursuing their own business interests or those of another organization.
  - (2) Unlawful or illegal activities, including the downloading of licensed material without authorization, or downloading copyrighted material from the Internet without the publisher's permission.
  - (3) To access, create, transmit, print, download or solicit material that is or may be construed to be harassing or demeaning toward any individual or group for any reason, including on the basis of sex, age, race, color, national origin, creed, disability, political beliefs, organizational affiliation, or sexual orientation.
  - (4) To access, create, transmit, print, download or solicit sexually-oriented messages or images.
  - (5) The knowing propagation or downloading of viruses or other contaminants.
- (B) Internet Relay Chat channels or other Internet forums such as newsgroups or net-servers may be used only to conduct work-related business.

### **3.37.2 Access to Usage Records**

- (A) Employees should have no expectation of privacy in their usage of the Internet. An audit authority designated by a department head may monitor usage of the Internet



by department employees, including reviewing a list of sites accessed by an employee within the department; audit and examination of usage by an agency or department head shall be performed by a person designated by the County Executive. For this purpose, records of access to sites, materials and services on the Internet may be recorded and retained for a time period set by the County. The County or department head may restrict access to certain sites that it deems are not necessary for business purposes.

- (B) This policy does not supplant the legal protections available to shield confidential, internal County communications from third party requests, such as information exempt from disclosure under the CPRA, shielded by attorney-client privilege, or subject to state law mandating confidentiality for specific subject matter.

### **3.37.3 Enforcement**

Violation of the County's policy on Internet use may result in appropriate disciplinary action up to and including termination. Any improper Internet usage will not be disclosed by the County to others except to the extent necessary to consider and to implement discipline, for other employment related purposes, or to respond to litigation requests. Potential criminal conduct which is revealed by improper Internet usage will be referred to the appropriate law enforcement authorities.

## **3.38 RECOGNIZING THE CONSULAR IDENTIFICATION ISSUED BY THE MEXICAN AND OTHER FOREIGN GOVERNMENTS AS OFFICIAL IDENTIFICATION (Adopted 8-6-02)**

It is the policy of the Board of Supervisors that:

- (A) The identification card issued by the Mexican Consulate, entitled the *Matricula Consular*, shall be accepted as a valid form of identification by County departments and agencies.
- (B) County departments and agencies shall accept an identification card that is issued by a country, other than Mexico, to its citizens or nationals as a valid form of identification if the County Executive has determined that the identification card meets the following requirements: (1) the issuing country authorizes the use of the card as an alternative to a passport for re-entry into the issuing country, (2) the card has a photograph of the person and the person's date of birth, (3) the card holder was required to provide reliable identifying information in order to obtain the card, and (4) the card has features reasonably designed to protect against fraud and counterfeit reproduction, including the use of bonded paper, lamination, a hologram, an imbedded signature of the issuing officer and serialization. The County Executive shall compile and make available to County departments a list of the identification cards and the issuing countries that the County Executive has determined meet the requirements of this paragraph. Any County Department and any member of the

public may request that the County Executive review an identification card for compliance with this paragraph.

- (C) Nothing in this policy prohibits a County department from asking for additional information from individuals in order to verify a current address or other facts that would enable the department to fulfill its responsibilities.
- (D) The sole purpose of this policy is to facilitate the establishment of a person's identity. It does not establish any legal status or entitlement to any benefits.
- (E) The requirements of this policy do not apply under circumstances where (1) a federal or state statute, regulation, court decision or other applicable law requires the County to obtain different identification, (2) a federal or state statute, regulation, court decision or other applicable law preempts local regulation of identification requirements, (3) the County would be unable to comply with a condition imposed by a funding source, causing the County to lose funds from that source, or (4) there are reasonable grounds for a determination that a specific card is counterfeit, altered, improperly issued to the card holder, or is an otherwise unreliable form of identification.
- (F) It is not the intention of the Board of Supervisors that County departments and agencies use the *Matricula Consular* to assist federal agencies in the enforcement of federal immigration law. Furthermore, County departments and agencies shall not consider the possession of a *Matricula Consular* as evidence of illegal immigration status.
- (G) In adopting and implementing this policy, the County is only acting to promote the general welfare. The County is not assuming, nor imposing on its officers, agents and employees, an obligation the breach of which imposes liability on the County for money damages.

### **3.39 SISTER COUNTY COMMISSIONS (Adopted 1-14-03)**

It is the policy of the Board to encourage and support the creation of Sister County commissions. Sister County commissions create a unique partnership between county governments, the business community and volunteer community residents. These commissions benefit the County by promoting an intercultural understanding and enhance the knowledge and acceptance of others.

*Mission Statement: The County of Santa Clara encourages the creation of Sister-County commissions to promote friendship and understanding and to build bridges with countries of origin for various ethnic populations residing in the County. These relationships enhance the region's international profile; encourage mutual understanding and foster cultural, educational, technological and business exchanges between people of the County of Santa Clara and the people of our Sister communities.*

Sister County Commission Program Elements:

- (A) The County Executive's Office of Public Communication and Community Outreach (Office) provides programmatic and administrative support to the Sister County commissions. The Clerk of the Board provides secretarial support and both provide financial management support. County agencies and departments may be called on for direct involvement in Sister County commission programs. It is the policy of the Board that a ratio of one staff liaison is assigned to every two Sister County commissions. The Board will examine in consultation with the Clerk of the Board, whether additional clerical support is required.
- (B) The budget of the Sister County commissions will comply with the Board of Supervisors' Policy Manual, Section 3.3. Incidental expenses of a Sister County commission relating to stationery, mailing and refreshments for visiting delegations are paid out of the budget of the Office of the County Executive.
- (C) Sister County commissions are to implement cultural, educational, technological, and economic exchange programs and require raising necessary funds, beyond County funds to support these programs and activities. The local sponsoring committee will secure and the Sister County will provide a significant artifact of indigenous art for public display representing the Sister County.
- (D) The process to evaluate prospective Sister County commissions:
  - (1) A local sponsoring committee submits an *Affiliation Application* to the County Executive, Office of Public Communication and Community Outreach.
  - (2) The Office will review the *Affiliation Application* based on the following criteria: community characteristics of the Sister County, the demonstrable commitment of at least 15 residents from a local sponsoring committee, an established United States diplomatic presence, political ease of partnership, an identifiable funding source to support the relationship beyond County funds, a work plan for accomplishing goals and objectives, and consistent with Sister Cities International (SCI) guidelines, to limit affiliations with counties that already have partnerships with U.S. jurisdictions. The Office will prepare a recommendation to the Board of Supervisors.
  - (3) If the Board of Supervisors approves the proposed Sister County commission, the Office will obtain official recognition with the SCI documenting the new partnership and send a welcoming letter to the presiding official of the new Sister County.
  - (4) If the Board of Supervisors does not approve a prospective Sister County's *Affiliation Application*, the local sponsoring committee may re-submit the application one year from the date of denial.

- (5) The Board may waive any or all criteria during the review and approval process to accommodate underserved populations.
  
- (E) Before ending a Sister County relationship, the Office must determine whether there is a community-based support for continuing the relationship. If continuing community-based support exists, the Office sends a letter to the presiding official of the Sister County commission stating that the County is prepared to reactivate the relationship. If the Sister County commission agrees, staff will develop an action plan to rejuvenate the link. If the Sister County commission does not respond, has no further interest in continuing the relationship, or if there is insufficient community-based support, the County will inform the Sister County commission and Sister Cities International in writing that the relationship has terminated.

### **3.40 GENERAL POLICY RELATING TO THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPAA) (Adopted 2-25-03; Amended 8-31-04; Amended 10-18-22)**

It is the policy of the Board of Supervisors that:

- (A) Pursuant to the Health Insurance Portability and Accountability Act of 1996, the County of Santa Clara designates itself as a hybrid entity performing both covered and non-covered functions.
  
- (B) Accordingly, the County designates the following health care components:
  - (1) County of Santa Clara Health System, excluding:
    - (a) Emergency Medical Services; and
    - (b) Components of the Public Health Department, as identified in writing by the Director of the Public Health Department.
  
  - (2) Health Plans:
    - (a) Valley Health Plan; and
    - (b) Staff of the Employee Services Agency who administer the Flexible Spending Account for Health Care.
  
  - (3) Staff within the following departments providing support services to and on behalf of designated health care components, which require access to individually identifiable health information:
    - (a) the Office of the County Executive, including Information Security Office, Internal Audit, and Risk Management;
    - (b) the Department of Tax and Collections;

- (c) the Office of the County Counsel;
  - (d) Technology Services and Solutions; and
  - (e) the Board of Supervisors.
- (C) The Office of the County Executive and the Office of the County Counsel with the County of Santa Clara Health System Ethics, Privacy, and Compliance Office will develop, maintain, and administer the HIPAA Compliance Policy concerning the use and disclosure of protected health information in compliance with applicable HIPAA regulations.
- (D) The County of Santa Clara Health System Ethics, Privacy and Compliance Office will oversee the training of the County's affected workforce on the policies and procedures for HIPAA compliance in a manner consistent with their respective job responsibilities.

### **3.41 DEVELOPING AND PRODUCING INFORMATION FOR THE PUBLIC REGARDING BOARDS AND COMMISSIONS (Adopted 11-15-05; Amended 12-12-06)**

- (A) Boards and Commissions may develop or produce informational and educational materials for distribution in hard copy or for inclusion on the County web site, relating to their roles, responsibilities and meeting information. Material and information shall be in compliance with enabling legislation, State statutes and local Ordinance Codes, the Boards and Commissions Handbook, County Board and Administrative Policies and Board direction.
- (B) Informational and educational information may be distributed in the form of handouts, brochures, fact sheets, and any other pamphlet or booklet as well as on the County website so long as the distribution is cost-sensitive and complies with Board policy.
- (C) Information included in the material or on the County website must be informational-only and related to the work of the board or commission as identified in the Santa Clara County Ordinance Code, other enabling legislation, the Board action which established the Body, or as a result of a specific Board of Supervisors' referral. The information shall not be for the purpose of advocating or promoting (for or against) a position or fundraising unless specifically authorized by enabling legislation or an act by the Board of Supervisors. The Sister County Commissions may engage in revenue producing activities that directly support the purpose of the Commission. A board or commission may request additional information be included on hardcopy materials or on the County website subject to availability of funding and approval by County Administration.
- (D) Basic information to be included on all material and the County website must include: The name of the Body, a date the material is created (hardcopy materials

only), a concise description of the role and/or purpose of the board or commission, appropriate contact information, the County website address (hardcopy materials only) and the County Seal. All information is subject to approval by County Administration.

- (E) The following shall apply to producing hardcopy informational materials:
- (1) Reasonable costs for producing informational material shall be at the expense of the County within the budgetary parameters established by the Board of Supervisors and the County Executive and limited to the amount of funding available in the budget of the Clerk of the Board of Supervisors for such expenditure.
  - (2) All documents will be printed using County resources to assure standardized paper stock, binding, and print size.
  - (3) The Clerk of the Board of Supervisors or designee will work in concert with the chair or designee(s) of each board or commission, except for the Sister County Commissions, during the development of the informational or educational material. The Office of Public Affairs will work with the Sister County Commissions or designee, during the development of educational or informational material.
  - (4) A majority of the entire membership of the board or commission must review the draft document and take action to request the production of informational or educational material at a regular meeting properly noticed by the Clerk of the Board of Supervisors.
  - (5) Matters of conflict or disagreement which cannot be resolved at the administrative level shall be forwarded to the Board of Supervisors for final decision as to the appropriateness for production and distribution.
  - (6) Copies of boards' and commissions' informational material will be retained by the Clerk of the Board of Supervisors.
- (F) The following shall apply to producing County board or commission websites and the content contained on the website:
- (1) It is the policy of the Board of Supervisors that all board and commission websites are hosted on the County's website, [www.sccgov.org](http://www.sccgov.org) in accordance with the policies and guidelines approved by the Board of Supervisors.
  - (2) The Clerk of the Board of Supervisors and the Information Services Department shall provide and maintain a hosting process for advisory board and commission websites. This hosting process will include templates, guidelines and procedures as well as the hardware, software and network infrastructure necessary for maintaining websites.

- (3) Board and commission website content may be maintained, in compliance with the content hosting process, by County Departments other than the Clerk of the Board of Supervisors or the Information Services Department.
  - (4) Boards and commissions must comply with the existing County policies relating to the online information privacy, security, links, acceptable use and the County “look and feel.”
- (G) This policy applies to all County boards and commissions except those who are an independent legal entity separate from the County of Santa Clara.

### **3.42 SUBSCRIPTION SERVICE FOR TRANSMITTING REQUESTED COUNTY INFORMATION VIA US MAIL (Adopted 3-16-04)**

The Board of Supervisors is committed to providing public access to various types of County information and recognizes that there are numerous options as to what method is used to provide information to ensure efficiency, less labor-intensiveness, and reduced cost.

In an effort to enable the public and all interested parties to obtain copies of agendas, full agenda packets and minutes for the meetings of the Board of Supervisors; Board Committees, Task Forces; Advisory Boards/Commissions and any other legislative body staffed by County personnel, it is policy that:

- Requests for copies of agendas, full agenda packets, and meeting minutes will be accommodated through the use of computer technology, free of charge.
- If computer technology is not feasible, requests will be accommodated through the use of a subscription service fee based on current postage (mailing rates) and copy charges established by County administration.
- The fee will be calculated annually based on multiplying the applicable per agenda material charge by the particular mailing frequency of each specific Board, Commission, Committee, or other qualified entity.
- The Clerk of the Board of Supervisors is authorized to administer the Subscription Service Program and to maintain and/or modify the subscription fee as appropriate.

### **3.43 ARCHIVE POLICY (Adopted 9-14-04)**

The Board of Supervisors recognizes the need for a formal archive policy to insure the preservation and availability for historical and evidentiary purposes of the official papers and artifacts of the County of Santa Clara; and

The purpose of the County of Santa Clara Archive is to preserve those historically valuable materials which document the origins, activities, and achievements of the County of Santa Clara; and

The County has acquired a facility suitable for the collection, cataloging, preservation and access of historical materials pertaining to Santa Clara County; and

The Board of Supervisors approved the formation of an Archive Committee charged with the responsibility to oversee the development and maintenance of an archive program.

It is County policy to establish and maintain a Countywide Records Management program, utilizing the cooperation and support of County agencies and departments, and to identify it as a priority to enable the County to systematically control the creation, maintenance, and disposition of all County records, as well as provide a County archive facility for use by the public, the County organization, and any individual or organization in need of historical and evidentiary information about the County of Santa Clara.

### **3.44 USE OF COUNTY FACILITIES (Adopted 3-1-05; Amended 3-26-13; Amended 5-14-13; Amended 1-10-17)**

#### **Purpose**

To identify the conditions under which County facilities, excluding those park facilities that are subject to Board Policy 7.6, may be used for meetings and events, who may use those facilities, and when they may be used. This policy further details the responsibilities of the County and the user of the County facility with regard to non-County meetings and events. Through this policy, the Board of Supervisors establishes criteria for the use of County facilities and delegates to the County Executive or his or her designees the responsibility to implement this policy. All below fair market real property, franchise and concession agreements involving County property, shall be subject to and comply with the provisions of Board Policy Section 5.9.5.6.

This policy is not in conflict with and does not supersede the Santa Clara County Ordinance Code, including, but not limited to, the following sections:

- Div. A21. License Agreements and Permits to Enter.
- Div. A25-396. Use of county buildings.
- Sec. B13-10. Restricted areas of public buildings.
- Div. B14. Parks and Recreation.

#### **Organizations Authorized to Request Use of Facilities**

This policy relates to two categories of users:

- County agencies and departments meeting on County business.
- Non-County organizations.

#### **County Agencies and Departments Meeting on County Business**

The Board of Supervisors, County boards and commissions, and County departments/agencies may use County facilities for County business when space is available and



through arrangement with the department responsible for scheduling. No special provisions are required for insurance, security, or financial charges. Governmental bodies that contain one or more members of the Board of Supervisors, who are officially representing the County, reserving meeting rooms to conduct Board meetings in County facilities shall be considered as using the rooms for County business. (Examples of such bodies include, but are not limited to, the Valley Transportation Authority Board and the Santa Clara County Library Joint Powers Authority Board.)

### **Non-County Organizations**

There are several types of organizations that are considered non-County organizations.

- (A) *Agencies and officers of federal, state or other local governments for government functions.* Organizations in this category are subject to the cost recovery provisions of this policy. However, they are not subject to the indemnification and insurance provisions.
- (B) *Registered or recognized County employee organizations.* Organizations in this category are subject to the cost recovery provisions of this policy. However, they are not subject to the indemnification and insurance provisions. If an organization in this category hosts a meeting or event that has attendees who are not County employees, then that meeting or event would be subject to all provisions of this policy.
- (C) *Non-profit organizations and other organizations.* Organizations in this category are required to meet all requirements of this policy, including but not limited to insurance, security and payment of charges. This applies equally to organizations that have sponsorship from the County and those that do not.
- (D) *Groups formed and authorized by departments and agencies for the purpose of furthering the provision of County-related services.* Groups in this category include medical support groups formed by clinical leaders with the goal of sharing information and managing through a disease state. Social Services Agency client groups would also belong to this category. Groups in this category would be required to meet the security provisions of this policy, but would not be responsible for cost recovery, indemnity or insurance.

Organizations that are not part of the Federal, State, County or other local government are referred to as “non-government organizations” with respect to several elements of this policy. All organizations outside of County of Santa Clara (including other governmental organizations) are referred to as “non-County organizations.”

### **Requirement for a License Agreement**

A written agreement is required for all non-County organizations (as defined in (A) through (D) above) use of County facilities. The Director of the Facilities and Fleet Department is responsible for developing an agreement template, subject to approval by County Counsel as to form and legality, which shall be used by all County Executive des-

ignees when a County space, facility or property is to be used by or is offered for use to non-County organizations.

The County Executive, or his or her designees, is authorized to negotiate, amend and execute space use agreements for the use of County facilities or space by non-County organizations if: (1) the use is for a duration of no more than 10 days per year, (2) the rent or fee for the use is less than \$10,000 per month, (3) the agreement is non-renewable, (4) the use serves a public purpose, (5) the County executive or his or her designee will ensure that the use will comply with all other applicable provisions of the County Board of Supervisors Policy Manual (including but not limited to Board Policy 5.9.5.6 pertaining to fair market rent/fees), the County Ordinance Code and other laws pertaining to such use, (6) an executed copy of the space use agreement is provided to the Director of the Facilities and Fleet Department immediately upon execution, and (7) FAF presents an annual report to the FGOB with a table summary of all agreements executed within the prior twelve months.

Exemptions to this policy must be authorized by the Board of Supervisors.

### **Priorities for Facility Use**

Generally, the priority for use of a County facility shall be as follows:

1. Meeting of the Board of Supervisors.
2. Meeting of Board Committees.
3. Meeting held and attended by individual Board member for the purpose of conducting County business.
4. County boards and commissions.
5. Santa Clara County Departments/Agencies.
6. Federal, State and local governments.
7. Non-government organizations.

The County's need to use its facilities during declared states of emergency, for emergency response, or under unusual security conditions, such as a change in the Homeland Security Threat condition, will take precedence over all of the categories listed above.

### **Cancellation by the County**

Authorization to use a County facility may be cancelled if the space is needed for County business and no other appropriate space is available. The County will make all efforts to find replacement space, and, when possible, 24-hour notice will be given. However, there may be occasions when this is not possible. Emergency situations such as those described in the preceding paragraph could lead to cancellation with no advance notice.

### **Reservation Review and Approval Process**

Departments and agencies with responsibility for scheduling County facilities for use by non-County groups shall develop procedures for reservation application, review and approval. To ensure consistent application of the Board of Supervisors' Policy, these procedures will be reviewed and approved by the County Executive or his or her designee. Reservations must be requested and an application form submitted a minimum of thirty (30) business days in advance of the meeting or event to allow time for processing the request and verifying insurance requirements.

### **Hours/Days Authorized for Facility Use**

Hours and days authorized for use shall be established by the department responsible for the facility with review by the County Executive and the Facilities and Fleet Department and shall be in accordance with the County Security Plan or Agency/Department Security Plans, Energy Conservation Policy, and any other applicable County policies.

### **Indemnification and Insurance**

Non-government organizations using County facilities must provide, in advance, evidence of insurance and must agree to indemnify, defend, and hold the County harmless for claims or loss arising out of facility usage. Insurance requirements and indemnification language shall be as required by Risk Management and County Counsel. If these requirements are not met, authorization to use County facilities shall not be granted.

### **Excess Cost Recovery**

By charging non-County organizations for the use of County facilities for costs that exceed the normal operating costs of the County, the County can ensure that no private group will be accorded additional benefits at taxpayers' expense. Prior to approval for the use of County facilities, a deposit shall be made with the County for the estimated cost of all expenses that would not otherwise be incurred by the County if the non-County organization was not using the County facility. If actual charges are less than estimated, a refund shall be provided. If actual charges are greater than estimated, the difference shall be billed to the organization using the facility. Expenses may include, but are not limited to:

- Janitorial/cleanup costs
- Equipment setup/removal costs (stages, tables, chairs, audio-visual equipment, etc.)
- Security
- County employee time to open/close facility
- Repair of damages

Actual charges for services shall be determined by the agency/department providing the services. Cost recovery reimbursements will be provided to the agencies/departments providing the services.

### **Security**

With the exception of designated park facilities, security will be required for non-County groups that allow members of the public into County buildings during County non-business hours. Security may be required for any other event as determined by the County Executive or his or her designee. County Executive approval is required for the use of County facilities by non-County groups during periods when the National Terror Advisory system has issued an active alert affecting County buildings or operations. Security will be provided by the Office of the Sheriff or other recognized law enforcement agency approved by the County Executive or his or her designee. Departments with appropriate County security staff may utilize those employees as adequate security. User groups will reimburse the County for the County's incurred cost of providing security.

### **Other Considerations**

- Meetings and events held by non-government organizations must be open to the public. Medical support groups and Social Services client groups that are meeting in the furtherance of County services may require privacy in order to be effective and shall be exempt from this provision.
- Admission may not be charged and funds may not be raised at meetings and events held in County facilities. This does not preclude the availability or dissemination of membership information.
- Organizations using County facilities must disclose all activities planned to occur during scheduled meetings or events.

### **Health, Safety and Property Protection**

The County Executive will develop facility use procedures that protect the health and safety of users of County facilities and County employees and that protect County property. All facility use policies must comply with all other County policies. Areas to be addressed in these procedures shall include, but are not limited to:

- Food and beverage use
- Prohibition on smoking and alcohol use in County facilities
- Decorations
- Hazardous activities

### **Facility Clean-Up after Events**

- Groups using County facilities are expected to clean and leave the facilities, including restrooms, in the condition in which they found them.
- If the County is required to clean up after a group, charges will apply.

### **Audio-Visual (AV) Equipment Needs**

All AV equipment, including equipment for the hearing impaired, must be provided by the organization using the County facility, unless exempted through the reservation request process, and be used only with the approval of the County.

### **Policy Non-Compliance**

Non-compliance with the provisions of this policy may preclude future use of County facilities or warrant additional requirements or restrictions for future use as determined by the County Executive.

### **Related Policies**

- Use of County Facilities at 70 W. Hedding Street and 55 W. Younger Avenue - <https://connect.sccgov.org/sites/policies/policypages/Pages/Use-of-County-Facilities>

This section of the Board Policy Manual, in its original format, can be found at <http://www.sccgov.org/sites/bos/Legislation/BOS-Policy-Manual/Documents/BOSPolicyCHAP3.pdf>

## **3.45 NUTRITIONAL POLICY RELATING TO VENDING MACHINE PRODUCTS AND COUNTY-SPONSORED MEETINGS AND EVENTS (Adopted 11-15-05)**

In order to ensure consistency with the healthcare mission of the County and to provide healthy food and beverage choices to the public and our employees, the County will strive to provide healthy choice options in vending machines and at County-sponsored meetings and events.

### **3.45.1 Nutrition Standards Relating to Vending Machine Products**

There will be a phase in of healthy options in County vending machines with 20 percent meeting the standard below in 2005-2006 and 50 percent meeting the standard thereafter.

- (A) Beverages: Beverage selections offered in each vending machine shall be one or a combination of the following:
- (1) Water (with no additives).
  - (2) 100 percent Fruit Juices with no added sugars, artificial flavors or colors (limited to a maximum of 10 ounces per container).
  - (3) Dairy Milk: Nonfat, 1 percent and 2 percent only (no flavored milks).
  - (4) Plant-derived (i.e. rice, almond, soy, etc.) milks (no flavored milks).
  - (5) Artificially-sweetened, calorie-reduced beverages that do not exceed 50 calories per 12-ounce container (i.e. teas, electrolyte replacements).
  - (6) Other non-caloric beverages, such as coffee, tea, and diet soda.
- (B) Snacks/Foods: Snacks and Food selections offered in each vending machine shall meet the following criteria:

- (1) Not more than 35 percent calories from fat with the exception of nuts and seeds; snack mixes and other foods of which nuts are a part must meet the 35 percent standard.
- (2) Not more than 10 percent calories from saturated fat.
- (3) Does not contain trans fats added during processing (hydrogenated oils and partially hydrogenated oils).
- (4) Not more than 35 percent total weight from sugar and caloric sweeteners with the exception of fruits and vegetables that have not been processed with added sweeteners and fats.
- (5) Not more than 360 mg. of sodium per serving.

### **3.45.2 County Sponsored Meetings and Events**

Foods and beverages intended for County functions should provide variety, nutritional benefit and choice to employees and the public. When foods are provided, there should be a consideration of reduced fat, salt and sugar items. When possible, provide fruit and vegetable options.

## **3.46 CORPORATE SPONSORSHIP, MARKETING AND ADVERTISING POLICY (Adopted 6-19-07; Amended 12-14-10)**

### **Purpose**

The purpose of this policy is to provide guidelines for the development, implementation, and administration of Marketing and Advertising Plans developed by County departments pursuant to Ordinance Code Section A36 and Government Code Sections 26109 and 26110. The objectives of this policy are:

- (A) To establish guidelines for entering into Corporate Sponsorship or Advertisement Agreements with third parties who will adhere to the County's commitment to deliver quality programs and services to County residents.
- (B) To generate revenue from Corporate Sponsorship or Advertisement Agreements that can be used to fund County programs, activities, and services.
- (C) To ensure that Corporate Sponsorship and Advertisement Agreements are consistent with and appropriate to the County's mission to advance the health, safety, and welfare of the general public and show sensitivity to the County's values, while maximizing revenue and public benefits and minimizing the perception that the County has become commercialized or inappropriately subjected to advertising.
- (D) To maintain a position of neutrality on political and religious issues.

- (E) To enable the County to market its assets to the greatest extent possible subject only to the limitations imposed by the laws of the State of California and of the County of Santa Clara, including, but not limited to Government Code Sections 26109 and 26110 and the Santa Clara County Ordinance Code, Sections 1-8 of Division A36, and this policy.
- (F) To ensure coordination of County department efforts through the County Executive.

**Development of Marketing Plans**

- (A) Prior to soliciting offers to enter into any corporate sponsorship and licensing agreement, a County department shall consult with a qualified licensing agent to develop a Marketing Plan for consideration by the Board of Supervisors and adoption by resolution that shall:
  - (1) Identify marketing and licensing opportunities, including but not limited to, sale of advertising space and provision of exclusive/non-exclusive designation promotions;
  - (2) Outline a method for evaluating both the revenue potential of proposed contracts and the future revenue impact of a proposed contract;
  - (3) Establish procedures for comparing the revenue potential of alternative contracts;
  - (4) Identify opportunities to attract advertisers with messages promoting products and services that assist in implementing the County's Policy on Sustainability (Board Policy 8.0), including, but not limited to products or services that promote sustainability;
    - (a) Walking, carpooling, car-sharing, bicycling and use of public transit and other sustainable transportation methods;
    - (b) Purchase of locally made products, locally grown produce, or minimally processed and nutritious food;
    - (c) Increases use of renewable resources;
    - (d) Planting trees;
    - (e) Reduced electrical energy usage through conservation and improved energy efficiency;
    - (f) Increased reuse, recycling and solid waste diversion from landfills; and
    - (g) Reduced water consumption.

- (5) Identify opportunities to attract advertisers promoting products and services that meet or exceed the County's Environmental Preferable Purchasing Policy Goals (5.3.17.2);
  - (6) Provides procedures for auditing the licensee's performance (if applicable);
  - (7) Provide outreach to public agencies for (paid) advertising of public service messages;
  - (8) As appropriate, ensure County property and resources will continue to be used for County messages; and
  - (9) Detail short-term and long-term revenue goals.
- (B) All corporate sponsorship and licensing agreements must be formalized in a written contract approved by the Board of Supervisors. Contractual language will be consistent with all applicable County policies, ordinances, and good business practices, and will be approved as to form and legality by County Counsel. In general, corporate sponsorship and licensing agreements will include the following:
- (1) Specified term of agreement;
  - (2) Renewal options, if any;
  - (3) Consideration, such as fee, commission, or in-kind goods or services;
  - (4) Description of County programs, projects, and activities that will benefit;
  - (5) Rights and benefits of all parties; and
  - (6) Termination provisions.

### **Development of Advertising Plans**

- (A) Prior to soliciting offers to enter into any advertising agreement for the sole purpose of raising revenue, a County department shall develop an Advertising Plan for consideration by the Board of Supervisors and adoption by resolution that shall:
- (1) Identify opportunities for advertising on County real or personal property, including in electronic or written publications;
  - (2) Identify opportunities to attract advertisers with messages promoting products and services that assist in implementing the County's Policy on Sustainability (Board Policy 8.0), including, but not limited to products or services that promote sustainability:
    - (a) Walking, carpooling, car-sharing, bicycling and use of public transit and other sustainable transportation methods;



- (b) Purchase of locally made products, locally grown produce, or minimally processed and nutritious food;
  - (c) Increases use of renewable resources;
  - (d) Planting trees;
  - (e) Reduced electrical energy usage through conservation and improved energy efficiency;
  - (f) Increased reuse, recycling and solid waste diversion from landfills; and
  - (g) Reduced water consumption.
- (3) Identify opportunities to attract advertisers promoting products and services that met or exceed the County's Environmental Preferable Purchasing Policy Goals (5.3.17.2);
  - (4) Evaluate the revenue potential of proposed contracts;
  - (5) Compare the revenue potential of alternative contracts;
  - (6) Provide outreach to public agencies for (paid) advertising of public service messages;
  - (7) As appropriate, ensure County property and resources will continue to be used for County messages; and
  - (8) Detail short-term and long-term revenue goals.
- (B) All advertising agreements must be formalized in a written contract approved by the Board of Supervisors. Contractual language will be consistent with all applicable County policies, ordinances, and good business practices, and will be approved as to form and legality by County Counsel. In general, advertising agreements will include the following:
- (1) Specified term of agreement;
  - (2) Renewal options, if any;
  - (3) Consideration, such as fee, commission, or in-kind goods or services;
  - (4) Description of County programs, projects, and activities that will benefit;
  - (5) Rights and benefits of all parties; and
  - (6) Termination provisions.

### **Standards for Proposals for Agreements**

- (A) Any offer to enter into a corporate sponsorship, licensing or advertising agreement must comply with the following standards:
- (1) The proposed agreement may not result in any loss of County jurisdiction or authority.
  - (2) In adopting this policy, the County in no way intends to establish any forum for the exchange of views. Therefore, no advertisement, license or sponsor recognition shall be erected on County property or included in a County publication pursuant to a corporate sponsorship, license or advertising agreement unless the sole and exclusive purpose of the advertisement is to (1) propose a consumer transaction, (2) to publicize the names of sponsors of County programs, services, or facilities, or (3) to publicize a public service message from a public agency.
  - (3) If an advertising, sponsorship or license opportunity would make use of a limited County resource, the Advertising or Marketing Plan should call for an open and competitive selection process, or explain why the advertising should be limited to a defined group of commercial enterprises. If the Advertising or Marketing Plan mandates an open and competitive selection process, an offer that conforms to these Standards for Proposals, as well as any additional neutral standards in the Plan, shall not be rejected based solely upon the content of the proposed advertisement. The Plan shall:
    - (a) Explain whether advertising will be limited on the basis of a neutral standard reasonably related to the purpose of the Advertising Plan (e.g., the Department of Parks and Recreation may limit advertising in trail maps to outdoor recreation companies);
    - (b) Describe how the selection process will meet the purpose of this policy;
    - (c) Include a statement that the County will reject any offer that does not conform to the Standards for Proposals, or to any additional neutral standard in the Plan; and
    - (d) Include a statement that the County may reject any third party offer at its sole discretion.
  - (4) Because one of the purposes of this policy is to further the health, safety, and welfare of the general public, proposed agreements should not conflict with the County's mission. Accordingly, no corporate sponsorship, license or advertising agreement will be entered into that would involve the County's endorsement of, advertisement on County property of, advertisement in County publications of, or use of the County's logo in connection with (1) alcoholic beverages, (2) tobacco products, (3) adult businesses, (4)

gambling enterprises, (5) illegal drugs or drug paraphernalia, (6) firearms, (7) beverages, single food items or meals meeting nutritional standards described in Section A18-352 of the Ordinance Code in advertisements targeting children or adolescents, or (8) beverages, snacks or food items that do not meet the minimum nutrition standards in Board Policy 3.45.1. For the purpose of this policy:

Alcoholic beverages and brand references will be excluded to limit exposure by minors to alcoholic beverage advertisements, consistent with findings in Section B13-36 of the Ordinance Code that underage drinking threatens public health, safety, and welfare.

- (a) Tobacco products and brand references will be excluded consistent with findings in Section B13-79 of the Ordinance Code that tobacco products contribute to air pollution, cause cardiovascular disease, and impair respiratory function.
- (b) Adult businesses, as defined in Section 2.10.040 of the County's Zoning Ordinance, will be excluded consistent with the County's authority under Section 4.10.020 of the Zoning Ordinance to regulate these businesses in the interest of public health, safety, and welfare.
- (c) Gambling enterprises, including cardrooms and bingo enterprises, as defined in Section B2-11 and B3-76 of the Ordinance Code, will be excluded consistent with County ordinances prohibiting and regulating such enterprises in furtherance of public health, safety, and welfare.
- (d) Illegal drugs and drug paraphernalia will be excluded consistent with Sections A20-53 *et seq.* of the Ordinance Code, which restrict the sale and display of drug paraphernalia to minors.
- (e) Firearms will be excluded consistent with the County's authority in Section B19-1 of the Ordinance Code to regulate the sale and advertisement of dangerous weapons in the interest of public health, safety, and welfare.
- (f) In advertisements targeting children or adolescents, beverages, single food items or meals meeting the nutrition standards described in Section A18-352 of the Ordinance Code shall be excluded consistent with findings in Section A18-350 that such items contribute to childhood obesity and other health problems.
- (g) Beverages, snacks or food items that do not meet the minimum nutrition standards described in Board Policy 3.45.1 shall be excluded consistent with the healthcare mission of the County as stated in the policy and elsewhere.

- (5) The Board may revise this policy to exclude other categories of products and businesses from corporate sponsorship, license or advertisement agreements. Such exclusions shall be reasonably related to the purpose of the County's mission as expressed in ordinances and Board policies, and the Board shall expressly incorporate the exclusion into this Board policy.
- (6) No corporate sponsorship, license or advertisement agreement will involve the licensing of the private commercial use of the County name, logo, or other intellectual property, or the depiction of County property, unless the corporate sponsorship, license or advertisement agreement contains assurances by the corporate sponsor, licensee or advertiser that it does not discriminate against employees or customers solely on the basis of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, marital status, or other criteria listed in Board Policy 5.3.5.
- (7) Consistent with the purpose of this policy, no advertisement displayed pursuant to a corporate sponsorship, license or advertisement agreement shall contain content that:
  - (a) Is false, deceptive, or misleading;
  - (b) Constitutes trade defamation or defames the character of any person;
  - (c) Is lewd, lascivious, obscene, or otherwise highly offensive to a reasonable person; or
  - (d) Engenders harmful stereotypes, hatred, or discrimination on the basis of any social category enumerated in Board Policy 3.8.

### **Administration**

- (A) All activities relating to this policy will be coordinated by the Office of the County Executive or an appointed designee. The Office of the County Executive will be responsible for:
  - (1) Providing oversight and coordination of Marketing Plans;
  - (2) Providing guidance to all County departments regarding the implementation and application of this policy;
  - (3) Providing assistance and advice to departments regarding Marketing and Advertising Plans activities and implementation, while maintaining the existing departmental responsibilities for program areas that may be included in Marketing and Advertising Plans

- (4) Reviewing and assisting in the development of the corporate sponsorship, license or advertisement agreements;
- (5) Assisting the departments with administration, auditing, and monitoring of performance of corporate sponsorship, license or advertisement agreements developed through Marketing or Advertising Plans.

**Additional Provisions**

- (A) County departments can accept gifts in accordance with the limitations of Santa Clara County Code section A2-17. Any benefits conferred on the donor outside of mere acceptance must be in accordance with approved corporate sponsorship, license or advertisement agreements.
- (B) The County accepts the principle that third parties may become partners with the County in the sponsorship of County-approved programs, projects, events, facilities, or activities where such partnerships are mutually beneficial to both parties and in a manner consistent with all applicable policies and ordinances. In no event will such a partner be considered an employee, agent, officer, or servant of the County.

**3.47 NO SMOKING POLICY (Adopted 4-7-09; Amended 3-25-14)**

The health hazards from smoking tobacco products, as well as the second-hand smoke and third-hand smoke generated by such smoking, are well documented. The use of tobacco products is detrimental to the health of smokers and nonsmokers and is one of the most preventable causes of death. Second-hand and third-hand smoke endangers the health and well-being of nonsmokers by exposing them to many of the same carcinogens as the smoker.

The use of electronic smoking devices-such as e-cigarettes-and emissions from those devices also present health hazards. The U.S. Food and Drug Administration's analysis of electronic cigarette samples has found carcinogens and toxic chemicals to which individuals could be exposed. Therefore, for purposes of this policy, the term "smoking" shall include use of any electronic smoking device. "Electronic smoking device" shall mean an electronic and/or battery-operated device that can deliver an inhalable dose of nicotine to the user. "Electronic smoking device" includes any product meeting this definition, regardless of whether it is manufactured, distributed, marketed or sold as an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, electronic vape, vaporizer or any other product name or descriptor.

The Board of Supervisors adopts this policy to protect the public health and welfare of County employees and visitors.

**Prohibition on Smoking at and around County-Owned and Operated Facilities and County-Leased Facilities**

Smoking shall be prohibited within any enclosed structure owned or leased by the County, wherever located, and at all unenclosed places within 30 feet of any operable doorway, window, vent or other opening into such a building. At all current and future County-operated health facilities and clinics where patient care is provided, however, this smoking prohibition shall extend at least as far as the property line.

Staff have an ongoing obligation to work with the landlords of leased buildings where the County is one of several occupants, to encourage a prohibition on smoking in or within 30 feet surrounding those leased buildings.

### **Smoking Prohibition for County Vehicles**

It is the policy of the County of Santa Clara to prohibit smoking in all County vehicles.

### **Signs**

“No Smoking” signs that give notice of this County policy shall be posted in appropriate locations visible to County employees and visitors. Such signs shall explain that the prohibition includes use of electronic smoking devices.

### **Prohibition on Selling Tobacco Products and Electronic Smoking Devices on County-Owned and Operated Property**

The following products shall not be sold on any property owned and operated by the County: tobacco products, electronic smoking devices, as well as any components, accessories, or cartridges specifically designed for use with an electronic smoking device.

### **Promote Smoking Cessation**

A summary of the County's no-smoking policy shall be included in all contracts and leases, including personal service contracts, where smoking cessation could be influenced. Contractors shall be required to abide by this policy while working on County property described in this policy.

Smoking cessation resources should be placed alongside “No Smoking” signs, where feasible, to support those who would like to stop smoking.

## **3.48 COUNTY DISTRIBUTION OF TICKETS OR PASSES (Adopted 10-6-09; Amended 4-5-11; Amended 4-10-12; Amended 4-12-16)**

This policy establishes a procedure for the distribution, use and reporting of tickets or passes, provided to the County, to a facility, event, show or performance for an entertainment, amusement, recreational or similar purpose (hereinafter the “Event”) in compliance with section 18944.1 of the California Code of Regulations (hereinafter “FPPC Regulation”<sup>1</sup>). FPPC Regulation 18944.1 sets forth circumstances when a public agency’s distribution of tickets or passes, when no consideration of equal or greater value is provided by

the public official or employee, does not result in a gift to the public official or employee. Tickets or passes to an Event distributed and accounted for in compliance with this policy and FPPC Regulation 18944.1 will not be considered gifts to the County officials or employees who make use of donated tickets and passes.

The public purpose in distributing tickets and passes to Events, which is described in more detail in Section 3.48.3, is to promote County resources, programs and facilities, to monitor and evaluate County venues and County-sponsored events, and to promote cultural, recreational and educational facilities, services and programs available to the public within the County.

This policy is subject to all applicable FPPC Regulations and the Political Reform Act. Nothing in this policy is intended to alter, amend or otherwise affect the obligations of County officials and employees under the Political Reform Act and its implementing regulations or under any County policy or conflict of interest code.

### **3.48.1 Definitions**

“Ticket Administrator” means the County Executive or his/her designee(s) for County departments, agencies, and boards and commissions, and for elected County officials, the elected County officials’ staff designee. The Ticket Administrator has sole discretion to determine who shall receive the tickets.

“County official” means every member, officer, employee or consultant of the County of Santa Clara, as defined in Government Code Section 82048 and FPPC Regulation 18701. Such term shall include, without limitation, any County board or commission member or other appointed or elected official or employee required to file an annual Statement of Economic Interests (FPPC Form 700).

“Face value” means the price indicated on the ticket, or if no price is indicated, the price at which the ticket or similar pass would otherwise be offered for sale to the general public by the operator of the venue or host of the event who offers the ticket for public sale.

“Immediate Family” means spouse and dependent children.

“Ticket” means “ticket or pass” as that term is defined in FPPC Regulation 18944.1, as amended from time to time, but which currently defines “ticket or pass” as admission to a facility, event, show, or performance for entertainment.

### **3.48.2 Applicability**

This policy applies to tickets that are: (i) gratuitously provided to the County by an outside source; (ii) purchased by the County; (iii) received by the County pursuant to the terms of

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1. The FPPC Regulations can be found in Title 2 of the California Code of Regulations.

a contract for use of public property or because the County controls the event; or, (iv) received and distributed by the County in any other manner.

### **3.48.3 Public Purpose**

Any distribution of tickets in accordance with this policy to a County official, or to an individual or organization outside the County at the behest of a County official, must be in furtherance of a public purpose and be reported as provided in this policy. Public purposes under this policy include, but are not limited to, the following:

- (A) Facilitating the attendance of a County official at an event where the job duties of the County official require his or her attendance at the event.
- (B) Promotion of intergovernmental relations and/or cooperation and coordination of resources with other governmental agencies, including, but not limited to, attendance at an event with or by elected or appointed public officials from other jurisdictions, their staff members and their guests.
- (C) Official welcoming of visiting foreign officials and dignitaries.
- (D) Promotion of County resources and/or facilities available to the public.
- (E) Promotion of County-run, sponsored or supported community programs or events.
- (F) Increasing public exposure to, and awareness of, the various recreational, cultural, and educational venues and facilities available to the public within the County.
- (G) Promoting, supporting and/or showing appreciation for programs or services rendered by charitable and non-profit organizations benefiting County residents.
- (H) Attracting or rewarding volunteer service.
- (I) Attracting and retaining highly qualified employees in County service; recognizing or rewarding meritorious service by a County employee; and/or promoting enhanced County employee performance or morale.

### **3.48.4 Exemptions to Policy**

(A) Income

The County official treats the tickets as income consistent with federal and state income tax laws and the County reports distribution of the tickets or passes as income to the County official on the FPPC Form 802.

(B) Reimbursement



The County official reimburses the County for the face value of the tickets within thirty (30) days of receipt or acceptance of the tickets, as defined in the Political Reform Act.

### **3.48.5 Procedures for Distribution and Reporting**

#### **(A) Distribution**

- (1) Tickets that are donated or provided by an outside source and are earmarked for use by a specific County official by that source are considered gifts to the County official and are subject to the disclosure and reporting requirements applicable to gifts, unless one of the exemptions listed in Section 3.48.4 applies.
- (2) Tickets received by the County from an outside source without designation as to the specific County official who may use the tickets shall be forwarded to the Ticket Administrator. The Ticket Administrator shall determine the face value of the tickets or passes, the individuals who may use them, and report their distribution as provided in Section 3.48.5(B) below.
- (3) A County official may request use of tickets, or for distribution to an individual or organization outside the County, by completing Part 3 of FPPC Form 802 and submitting the request to the Ticket Administrator.

#### **(B) Reporting Requirement**

Tickets distributed by the County to a County official, or to an individual or organization outside the County at the behest of a County official, pursuant to this policy, or to a County official for admission to an event at which he/she will perform a ceremonial role or function on behalf of the County, shall be documented in a completed FPPC Form 802 (see Attachment "A") or such other form(s) as the FPPC may designate. The completed Form 802 must be filed with the Clerk of the Board within 45 days of distribution of tickets and must be maintained as a public record, be subject to inspection and copying under California Government Code Section 81008(a), and must be posted on the County's website. A link to the County's website shall be forwarded to the FPPC for posting on its website.

#### **(C) Transfer Prohibition**

A County official who receives tickets or passes distributed by the County according to this policy is prohibited from transferring or giving the tickets or passes to any other person except to members of the County official's immediate family or no more than one guest solely for their attendance at the Event. No person receiving a ticket or pass pursuant to this policy shall sell or receive reimbursement for the value of the ticket or pass.

#### **(D) Policy Application Limitations**

This Policy and the Form 802 reporting apply only to the benefits the official receives that are provided to all members of the public with the same class of ticket.

(E) Retention of Form 802

The original Form 802 must be retained by the Clerk of the Board for a period of not less than seven years.

Attachment A: FPPC Form 802 (Feb/16) (*Current Form Available on the FPPC website at [www.fppc.ca.gov](http://www.fppc.ca.gov) or toll-free helpline: 866-275-3772*)

**Agency Report of:  
 Ceremonial Role Events and Ticket/Pass Distributions**

**A Public Document**

<b>1. Agency Name</b>		Date Stamp	<b>California Form 802</b> For Official Use Only
Division, Department, or Region <i>(if applicable)</i>			
Designated Agency Contact <i>(Name, Title)</i>			
Area Code/Phone Number	E-mail	<input type="checkbox"/> Amendment <i>(Must Provide Explanation in Part 3.)</i> Date of Original Filing: _____ <i>(month, day, year)</i>	

**2. Function or Event Information**

Does the agency have a ticket policy? Yes  No  Face Value of Each Ticket/Pass \$ \_\_\_\_\_

Event Description: \_\_\_\_\_ Date(s) \_\_\_\_/\_\_\_\_/\_\_\_\_  
*Provide Title/ Explanation*

Ticket(s)/Pass(es) provided by agency? Yes  No  If no: \_\_\_\_\_  
*Name of Source*

Was ticket distribution made at the behest of agency official? Yes  No  If yes: \_\_\_\_\_  
*Official's Name (Last, First)*

**3. Recipients**

• Use Section A to identify the agency's department or unit. • Use Section B to identify an individual. • Use Section C to identify an outside organization.

A. Name of Agency, Department or Unit	Number of Ticket(s)/ Passes	Describe the public purpose made pursuant to the agency's policy
B. Name of Individual <i>(Last, First)</i>	Number of Ticket(s)/ Passes	Identify one of the following:
		Ceremonial Role <input type="checkbox"/> Other <input type="checkbox"/> Income <input type="checkbox"/> <i>If checking "Ceremonial Role" or "Other" describe below:</i>
		Ceremonial Role <input type="checkbox"/> Other <input type="checkbox"/> Income <input type="checkbox"/> <i>If checking "Ceremonial Role" or "Other" describe below:</i>
C. Name of Outside Organization <i>(include address and description)</i>	Number of Ticket(s)/ Passes	Describe the public purpose made pursuant to the agency's policy

**4. Verification**

*I have read and understand FPPC Regulations 18944.1 and 18942. I have verified that the distribution set forth above, is in accordance with the requirements.*

\_\_\_\_\_  
 Signature of Agency Head or Designee      Print Name      Title      *(month, day, year)*

Comment: \_\_\_\_\_

FPPC Form 802 (2/2016)  
 FPPC Toll-Free Helpline: 866/ASK-FPPC (866/275-3772)

**Agency Report of:  
Ceremonial Role Events and Ticket/Pass Distributions**

**California Form 802**

**A Public Document**

This form is for use by all state and local government agencies. The form identifies persons that receive admission tickets and passes and describes the public purpose for the distribution. This form was prepared by the Fair Political Practices Commission (FPPC) and is available at [www.fppc.ca.gov](http://www.fppc.ca.gov).

**General Information**

FPPC Regulation 18944.1 sets out the circumstances under which an agency's distribution of tickets to entertainment events, sporting events, and like occasions would not result in a gift to individuals that attend the function. In general, the agency must adopt a policy which identifies the public purpose served in distributing the admissions. The Form 802 serves to detail each event and the public purpose of each ticket distribution. FPPC Regulation 18942 lists exceptions to reportable gifts, including ceremonial events, when listed on this form.

When the regulation procedures are followed, persons, organizations, or agencies who receive admissions are listed on a Form 802. Agency officials do not report the admissions on the official's Statement of Economic Interests, Form 700, and the value of the admission is not subject to the gift limit.

The Form 802 also informs the public as to whether the admissions were made at the behest of an agency official and whether the behested tickets were provided to an organization or to specific individuals.

**Exception**

FPPC This form is not required for admission provided to a school or university district official, coach, athletic director, or employee to attend an amateur event performed by students of that school or university.

**Reporting and Public Posting**

**Ticket Distribution Policies:** An agency must post its ticket policy on its website within 30 days of adoption or amendment and e-mail a link of the website location to FPPC at [form802@fppc.ca.gov](mailto:form802@fppc.ca.gov).

**Form 802:** The use of the ticket or pass under the policy must be reported on Form 802 and posted on the agency's website within 45 days of distribution. A link to the website location of the forms must be e-mailed to FPPC at [form802@fppc.ca.gov](mailto:form802@fppc.ca.gov).

The FPPC will post on its website the link to each agency's policy and completed forms. It is not necessary to send an e-mail each time a new Form 802 is posted. It is only necessary to submit the link if the posting location changes.

This form must be maintained as a public document.

**Privacy Information Notice**

Information requested by the FPPC is used to administer and enforce the Political Reform Act. Failure to provide information may be a violation subject to administrative, criminal, or civil penalties. All reports are public records available for inspection and reproduction. Direct questions to FPPC's General Counsel.

**Instructions**

**Part 1. Agency Identification:**

List the agency's name. Provide a designated agency contact person, their phone number, and e-mail address. Mark the amendment box if changing any information on a previously filed form and include the date of the original filing.

**Part 2. Function or Event Information:**

Confirm that your agency has a policy for ticket distribution. Unless the ceremonial role or income box in Part 3, Section B, is marked, this form is only applicable if your agency has a policy.

Complete all of the other required fields that identify the ticket value, description of event, date(s) and whether the ticket was provided by the agency or an outside source. If an agency official behests the tickets, the official's name is also required. Use the comment field or an attachment to explain in full.

**Part 3. Ticket Recipients:**

This part identifies who uses the tickets. The identification requirements vary depending upon who received the tickets and are categorized into three sections. Each section must list the number of tickets received. Use the comment field or an attachment to explain in full.

**Section A.** Report tickets distributed to agency staff, other than an elected official or governing board member, pursuant to the agency's policy. It is not necessary to list each employee's name, but identify the unit/department for which the employee works. The agency must describe the public purpose associated with the ticket distribution. A reference to the policy is permissible.

**Section B.** Report: 1) any agency official who performs a ceremonial role; 2) any agency official who reports the value as income; or 3) tickets used by elected officials and governing board members (including those distributed pursuant to the agency's policy).

**Section C.** Report tickets provided to an organization. The organization's name, an address (website url is permissible), and a brief description of the public purpose are required.

FPPC Form 802 (2/2016)  
FPPC Toll-Free Helpline: 866/ASK-FPPC (866/275-3772)

**Agency Report of:  
 Ceremonial Role Events and Ticket/Pass Distributions  
 Continuation Sheet**

**California Form 802**  
**A Public Document**

Agency Name \_\_\_\_\_

**3. Recipients**

• Use Section A to identify the agency's department or unit. • Use Section B to identify an individual. • Use Section C to identify an outside organization.

A. Name of Agency, Department or Unit	Number of Ticket(s)/ Passes	Describe the public purpose made pursuant to the agency's policy
B. Name of Individual (Last, First)	Number of Ticket(s)/ Passes	Identify one of the following:
		Ceremonial Role <input type="checkbox"/> Other <input type="checkbox"/> Income <input type="checkbox"/> <i>If checking "Ceremonial Role" or "Other" describe below:</i>
		Ceremonial Role <input type="checkbox"/> Other <input type="checkbox"/> Income <input type="checkbox"/> <i>If checking "Ceremonial Role" or "Other" describe below:</i>
		Ceremonial Role <input type="checkbox"/> Other <input type="checkbox"/> Income <input type="checkbox"/> <i>If checking "Ceremonial Role" or "Other" describe below:</i>
		Ceremonial Role <input type="checkbox"/> Other <input type="checkbox"/> Income <input type="checkbox"/> <i>If checking "Ceremonial Role" or "Other" describe below:</i>
C. Name of Outside Organization (include address and description)	Number of Ticket(s)/ Passes	Describe the public purpose made pursuant to the agency's policy

### **3.49 SPONSORSHIP OF COUNTY-PRESENTED EVENTS (Adopted 1-12-10)**

It is the policy of the Board of Supervisors that no Supervisor who has made a financial contribution to a County-presented event will be listed as a sponsor of such event, so as not to imply support or non-support of a County program by Board members.

From time-to-time, members of the Board of Supervisors are solicited by County employees and members of County boards and commissions to make financial contributions to support a County-presented event. In exchange for the financial contribution, the Supervisor has been listed as a sponsor. It is the intent of this policy to prohibit the listing as a sponsor of a Supervisor who has made a financial contribution towards a County-presented event in all event-related materials, so as not to imply support or non-support of a County program by Board members.

This policy does not preclude a Supervisor's name from being listed on event-related materials in the absence of a financial contribution from that Supervisor.

#### **Definitions**

For purposes of this policy:

“County employee” means a person under any appointment or contract with the County and excludes an independent contractor.

“County-presented event” means an event that is solely organized, endorsed and controlled by a County agency, department, board or commission, and/or program and is an activity that is open to the public including, but not limited to conferences, meetings, awareness campaigns, educational seminars, social and cultural gatherings, performances, or concerts.

“Financial contribution” means a monetary payment of any value made from the personal funds or officeholder account of the Board member.

“Listed as a sponsor” means to identify by name, photograph, District number, or any other means that reveals the identity of the Board member who made a financial contribution to the County-presented event, including, but not limited to invitations, announcements, media bulletins, brochures, banners, inclusion in a sponsor list, or any event-related materials or announcements.

### **3.50 REPORTING OF IMPROPER GOVERNMENT ACTIVITY (Adopted 4-13-10; Amended 12-5-17; Amended 2-25-20)**

It is the policy of the Board of Supervisors that an effective process be established for the receipt, acceptance, investigation, documentation, monitoring, and reporting of allegations of improper government activity in accordance with County of Santa Clara Ordinance Code, Division A25, Sections A25-750 to A25-753. The process created by this Board

Policy for the reporting of improper government activity is entitled “24/7 Whistleblower Program.” The 24/7 Whistleblower Program shall operate under the direction of the Office of the County Counsel (County Counsel).

The 24/7 Whistleblower Program shall be guided by the following principles:

- (1) The public purpose in the reporting and investigation of improper government activity is the protection of integrity in governmental institutions. In furtherance of this interest, the County of Santa Clara encourages individuals to report to the 24/7 Whistleblower Program: violations of laws, regulations, and rules governing the conduct of County officers and employees; practices in County government that are wasteful and inefficient; or the misuse of County government funds.
- (2) Complainants, including but not limited to County officers and employees as well as members of the public, should not fear retaliation for filing a complaint with, or providing information about, improper government activity by County officers and employees.
- (3) Whenever possible the Whistleblower Program staff will provide complainants with information about more direct means by which they can seek to resolve their complaint or file their complaint with the specific County staff and program designed to receive such complaints. While urgent complaints should be prioritized over others, all complaints within the jurisdiction of the 24/7 Whistleblower Program should be investigated as promptly as possible. Complaints that lie outside the jurisdiction of the 24/7 Whistleblower Program include those involving non-County matters, issues under litigation, over which litigation is threatened, or those decided in prior litigation, or investigations deemed confidential by State Law (e.g., Public Safety Officers Procedural Bill of Rights Act).
- (4) Where improper government activity is uncovered it should be corrected.
- (5) All complainants should be kept informed to the extent reasonably possible of the outcome of their complaints as requested.
- (6) The 24/7 Whistleblower Program should be used as a tool to detect and correct systemic problems in County operations.
- (7) Any retaliation or reprisal by any County officer or employee against any complainant or informant is strictly prohibited. This prohibition against retaliation is in addition to the protections contained in Labor Code section 1102.5, and any amendment thereto. However, the filing of a complaint by a County employee in bad faith may result in the employee being subject to appropriate disciplinary action.

This policy supplements and does not supplant any and all other processes and procedures required by law or available for reporting and investigating complaints of improper government activity.

### **3.50.1 Reporting Procedures**

Complaints of improper government activity may be made via letter, web-based form, e-mail, telephone, or any other medium of communication established by the 24/7 Whistleblower Program. Information on how to file complaints shall be provided to the public and County employees via the County's website, and Whistleblower Program information will be made available at the County Information Desk, the reception area of the Board of Supervisors, and in other County facilities.

### **3.50.2 Receipt and Processing of Complaints**

As part of its overall responsibility for the program, County Counsel shall oversee the receipt and processing of all complaints submitted to the 24/7 Whistleblower Program. County Counsel may use a third-party vendor for receiving complaints. In addition to receiving complaints, such vendor may, under the direction of County Counsel, perform additional tasks for the 24/7 Whistleblower Program. All complaints and investigations shall be kept confidential to the greatest extent permitted by law and in accordance with the County Ordinance Code.

### **3.50.3 Investigation of Complaints**

#### **(A) Personnel Complaints**

Under the direction of County Counsel, all personnel complaints shall be referred for investigation to the Chief Operating Officer (COO). Examples of such personnel complaints include allegations of poor or lax management, falsification of time cards by colleagues, engaging in private business activity on County time, personal use of County resources, or nepotism. They also include allegations of violations of the County's merit system rules, e.g., allegations of improper consideration of transfers, improper hiring, requiring that employees work extra hours without commensurate pay, or impermissible discrimination or harassment of a County-protected class.

The COO shall direct his or her staff to conduct investigations into personnel complaints. To the extent that the complaints constitute violations of any collective bargaining agreement and such agreement includes a process for addressing such complaints, the complainant may be directed to pursue such remedies before filing a whistleblower complaint. The COO may also direct the Equal Opportunity Department (EOD) to investigate claims where the allegations indicate that a violation of the Board's Policy Against Discrimination, Harassment, and Retaliation (Board Policy 3.8) may have occurred.

If any complaint is directed against the Board of Supervisors or other elected officials, the County Executive, the Chief Operating Officer, or the County Counsel, such complaint shall be referred to an outside investigator.



All investigations must occur on a timely basis and must be conducted lawfully (without the complainant being retaliated against). The County Counsel shall be available to review investigation plans, and advise and direct the conduct of investigations regardless of the entity that conducts it.

(B) Non-Personnel Complaints

All non-personnel complaints shall be investigated by County Counsel. The County Counsel may refer appropriate complaints to the Board's Management Audit Division. Non-personnel complaints include allegations of waste, fraud, and abuse regarding the use of County resources by County officers, employees, or contractors such as: (i) violations of laws and regulations including the County Open Government Ordinance and Board Policy (except violations of Merit System Rules and personnel issues discussed above); (ii) waste or misuse of County resources by acts of omission or commission; (iii) inefficient or poor delivery of services and benefits; (iv) a substantial and specific danger to public health or safety; or (v) claims of fraud leading to the waste of County resources.

In instances of complaints related to the performance or activity of individuals or entities that contract with the County, County Counsel may refer such complaints to the County Agency/Department monitoring such contract.

In the discretion of the County Counsel, complaints may be referred to law enforcement for investigation.

### **3.50.4 Disposition of Complaints**

All complaints shall be investigated as appropriate based on the information provided. The investigation shall determine whether complaints are sustained, partially sustained, inconclusive, or not-sustained. A determination of a violation or breach of federal or state law, ordinance, policy, regulation, or contract shall be made by County Counsel in light of the facts uncovered in the investigation.

Where complaints are sustained or partially sustained, the County Executive's Office in consultation with the County Counsel's Office, shall determine or approve an appropriate corrective action plan and the County Executive shall direct County officers and employees to implement the approved corrective action plan(s). Such corrective action plan shall be documented and tracked with the complaint, with appropriate follow-up. The implementation of such steps shall be subject to verification. Methods by which to verify such may include reviewing a written report, interviewing departmental management, and/or visiting the related departmental worksite to review documents and observe operations.

### **3.50.5 Reporting of Complaints and Investigations**

County Counsel shall be responsible for reporting at least twice per year to the Board of Supervisors, through the Finance and Government Operations Committee, summary statistics on the complaints and disposition of complaints, as well as on any complaints

involving alleged retaliation for filing prior whistleblower matters, and any complaints involving violations of the County's Open Government Ordinance (Division A17). Such reporting may include the number of complaints received, timeliness of investigations, and analysis (including trend analysis) of complaints. The reports shall be published on the County's website.

### **3.51 POLICY TO PROTECT YOUTH (Adopted 5-11-10)**

It is the policy of the Board of Supervisors that juveniles under the age of 13 should not be placed in Juvenile Hall and that the County shall take every possible effort to find a more suitable placement for the juveniles.

### **3.52 COMPREHENSIVE VEHICLE POLICY (Adopted 6-22-10; Amended 10-25-11; Amended 9-10-13; Amended 10-7-14)**

#### **3.52.1 Policy Overview**

##### **3.52.1.1 Applicability**

All County agencies, departments, and offices shall apply this policy in the management of all County-owned or -controlled vehicles regardless of fund source. In addition, this policy applies to all County employees whether full time, part time, extra help, paid interns, unpaid interns, dependent contractors, or volunteers that drive County vehicles or their own vehicle in the conduct of County official business.

##### **3.52.1.2 Definitions**

- (A) "Assigned Take-Home Vehicle" as referred to in this policy is a County-owned vehicle that is used by a County employee for County official business and for commuting between the employee's home and work site.
- (B) "Assigned Vehicle" as referred to in this policy is a County vehicle assigned primarily to a department or County employee for County official business, but not for employee commuting to and from the employee's home and work site.
- (C) "Business need" as referred to in this policy means the need of a County employee to use a County vehicle for official County business; as opposed to personal use of a County vehicle, including after business hours use, weekend use, and non-County business use during work hours. This specifically excludes assignment of vehicles based on an employee's rank, management status or other category that does not reflect vehicle use based on the employee's actual day-to-day duties. Business use is further defined as vehicle use that is required in order to perform functions that are necessary for the County department to fulfill its duties and responsibilities as authorized by the County Ordinance Code, and State and Federal law.

- (D) “County” as referred to in this policy is the County of Santa Clara.
- (E) “County departments” as referred to in this policy include all County agencies, departments, and offices.
- (F) “County drivers” as referred to in this policy include County staff, whether full time, part time, extra help, paid interns, unpaid interns, dependent contractors, or volunteers that drive County vehicles or their own private vehicle in the conduct of County official business.
- (G) “County vehicles” as referred to in this policy includes all County-owned or controlled motor vehicles and motorized equipment.
- (H) “Designated Parking Area” as referred to in this policy is a County parking facility or lot which has been identified by an employee's department director as an acceptable overnight location for parking the assigned County vehicles.
- (I) “Assigned Work Location” as referred to in this policy is the office or site where a County employee normally reports to work and would park their personal vehicle should they commute to work.
- (J) “Official business” as referred to in this policy includes vehicle travel to directly perform the business needs of the department, including employee work assignments, parts/materials acquisition, meetings, training, authorized conferences or business related events, etc. County vehicles shall not be used for private or personal business unless otherwise indicated in this policy.

### **3.52.1.3 Purpose**

The purpose of this policy is to:

- (A) Clarify roles and responsibilities as related to management of County vehicles;
- (B) Establish guidelines for the management of the vehicle fleet size and the utilization of County vehicles; and
- (C) Establish and maintain improved internal controls and accountability as related to operations and maintenance of County vehicles.

### **3.52.1.4 Other Policies/Procedures**

- (A) This policy supersedes the following Board and Administrative policies, in whole or in part:
  - 407 - County Driver Permits;
  - 407.1 – Business Use of Private Vehicles;
  - 461 - County Driver Permits;

- 4.20 - Ten Year Fleet Plan;
- 706 - Safe Driving Program;
- 706.1 - Vehicle Use - County Driver Permits;
- 706.3 - County Vehicle Use;
- 706.4 - Department Motor Vehicle Accident Review;
- 301 - Travel Policy;
- Office of the Sheriff General Order #13.06; and
- Department of Correction Policy 1.55 - County Vehicles Use and Control.

(B) The following remain in effect until modified by the Board of Supervisors:

- County Ordinance Code, Division A31-Travel;
- County Executive Management Master Salary Ordinance; and
- County Salary Ordinance.

### **3.52.1.5 Management Responsibilities**

(A) The County Executive shall oversee Department Heads' implementation of, and make recommendations for changes to, this policy.

(B) Department Heads shall:

- (1) Forward suggested changes of policies and procedures to the County Executive;
- (2) Maximize the conduct of official business by using web meetings, conference calls, electronic mail, telephone, or other electronic/telecommunications means whenever possible, to minimize the need for County vehicles;
- (3) Follow procedures outlined in this policy regarding the acquisition, replacement, utilization, and disposal of department assigned County vehicles;
- (4) Create and implement any department specific supplemental guidelines necessary to address department specific needs while ensuring the effective and efficient management, operation, maintenance, and repair of County vehicles;
- (5) Forward a copy of all implementing documents and guidelines to the following:
  - (a) County Executive or designee
  - (b) Facilities and Fleet Department (FAF)
  - (c) Employee Services Agency (ESA)

- (d) Finance Agency
  - (6) Include motor vehicle management in department internal audit programs.
- (C) The Facilities and Fleet Department (FAF) shall:
  - (1) Be responsible for revising this policy;
  - (2) Develop technical instructions for and provide guidance to County departments concerning the acquisition, replacement, rental, utilization, and disposal of County vehicles;
  - (3) In collaboration with the Procurement Department, acquire, lease, and dispose of all County vehicles;
  - (4) Provide guidance to County departments regarding renting vehicles;
  - (5) Provide maintenance, repair, and fueling services;
  - (6) Provide guidance to County departments regarding the operations, maintenance, repair, and fueling of County vehicles; and
  - (7) Provide ongoing desk reviews of departments' implementation of this policy starting Fiscal Year 2011.
- (D) The Finance Agency shall:
  - (1) Provide guidance to the departments on budget and financial accounting for County vehicles;
  - (2) Provide guidance to FAF regarding conducting desk reviews of departments' implementation of this policy; and
  - (3) Annually review the results of the desk review conducted by FAF to determine if a comprehensive audit of the County's compliance with this policy is warranted and if so, conduct the audit and report findings to the County Executive and the Board of Supervisors.
- (E) The Employee Services Agency (ESA) shall:
  - (1) Ensure labor agreements and salary ordinances are aligned to reflect the take-home vehicle provisions of this policy;
  - (2) Ensure insurance coverage is in place for all County vehicles at all times;
  - (3) Manage the County Driver authorization program including conditions for issuance, renewal, and suspension/revocation of County driver authorizations;

- (4) Administer the Accident Review process for accidents involving drivers of County vehicles, except for those County drivers employed by the Sheriff's Office, that result in damages greater than \$1,000; or any driver of County vehicles, with the exception of the Office of the Sheriff, who demonstrates an inability to maintain a safe driving record or safe driving practice;
  - (5) Revoke the County-issued driver authorization of any driver of a County vehicle, with the exception of the Office of the Sheriff, who demonstrates an inability to maintain a safe driving record or safe driving practice; and
  - (6) Compile and provide the Board of Supervisors a semi-annual report of all accidents, losses or damages involving County vehicles, including personnel actions and other steps taken to prevent similar occurrences in the future.
- (F) The Procurement Department shall:
- (1) Acquire, lease, and dispose of County vehicles, and acquire fleet parts and related services consistent with Board procurement policies and applicable legislation;
  - (2) Report net revenue from the sale of assets to FAF, which will in turn transfer those revenues to the Fund that supported the acquisition of the vehicle; and
  - (3) Provide information to FAF regarding acquisitions and disposals so that transactions are tracked within the Fleet ISF management information system as well as SAP.
- (G) The Office of the Sheriff shall:
- (1) Administer the Internal Collision Review Board (CRB) for all accidents for those County employees using County vehicles employed by the Office of the Sheriff/Department of Corrections. The seven member CRB shall meet on a regular basis. The following representatives shall sit on the CRB: Assistant Sheriff ("chair"), Department Fleet Manager, Traffic Investigation Deputy, Administrative Sergeant from Patrol Division, Bargaining Unit Representative, Department Risk Manager and the Employee Services Agency Director or designee.
  - (2) Impose corrective measures against Office of the Sheriff employees in an effort to prevent future accidents;
  - (3) The Employee Services Agency Director will review CRB findings and recommendations to determine if the County-issued driver authorization of any employee of the Office of the Sheriff/Department of Corrections who demonstrates an inability to maintain a safe driving record or safe driving practice will be revoked; suspended or placed on a probationary period; and,

- (4) Compile and provide the Board of Supervisors an annual report of all accidents, losses or damages involving County vehicles driven by employees of the Office of the Sheriff, including personnel actions and other steps taken to prevent similar occurrences in the future.

### **3.52.2 Vehicle Acquisition/Replacement, Leases, Rentals, Outfitting, Modifications, and Disposal**

#### **3.52.2.1 Fleet Rightsizing, Acquisition, Outfitting, Disposal**

- (A) The Annual Vehicle Fleet Plan, as described by Appendix A must include:
  - (1) A recommendation for the optimization of the County vehicle fleet size and mix of vehicles as a whole and by each County department;
  - (2) A summary report of criteria used to make the recommendation is contained in Appendix B;
  - (3) A comparison of vehicle usage to the criteria to justify the ongoing asset costs;
  - (4) A summary of recommendations for repurposing and/or disposing of vehicles that do not meet the Board approved criteria; and
  - (5) A 5-YEAR FLEET PLAN update.
- (B) Department Heads shall:
  - (1) Follow the procedures outlined in Attachment A, the Annual Fleet Plan;
  - (2) Department Heads are responsible for determining the number and types of vehicles to meet the business needs of their department;
  - (3) Establish internal standards for and develop comprehensive specifications (type, accessories, safety) of their vehicles. These standards shall be consistent with this policy and the County Climate Action Plan Emission Reduction Goals, and should take into account the operational requirements, occupant safety, and lowest overall ongoing cost to the County, and include consideration of alternative fuel vehicles and alternative fuel availability. In general, the following criteria will be used unless otherwise approved by the County Executive:
    - (a) Vehicles selected for an individual task must be the best one suited by virtue of size, configuration, availability, and economy of operation to include consideration of alternative fuel vehicles and alternative fuel availability;

- (b) Vehicles will be commercially designed motor vehicles to meet general transportation requirements;
    - (c) Vehicles will be the least expensive trim line along with its standard option package for that trim line; and
    - (d) All vehicles will be white unless otherwise approved by the County Executive.
  - (4) Ensure that all County vehicles are essential to performance of departmental missions and that those vehicles that are no longer necessary, not utilized to the fullest extent, have according to FAF reached the end of their useful life, or require greater than 50 percent of their residual value for repair will be returned to FAF for reassignment, pooling, or decommissioning and removal from the inventory;
  - (5) Submit all requests for procurement, leasing outfitting, and disposal of all County vehicles to FAF including adding vehicles through grants or donations; and
  - (6) Submit changes to their Departmental 5-YEAR FLEET PLAN.
- (C) FAF shall:
- (1) Implement the steps required to develop the Annual Fleet Plan as described in Appendix A;
  - (2) Annually review and modify as necessary the criteria that will be used as a basis for the Annual County Vehicle Fleet Plan, Appendix B, and submit the criteria to the Board for approval;
  - (3) In developing the Annual Fleet Plan, include all County vehicles and vehicle use, e.g. month-to-month rentals, short-term rentals, vehicles borrowed from others, grant-funded vehicles, and business use of private vehicles.
  - (4) Provide supplemental guidance to departments related to the development of the Annual Fleet Plan and the criteria;
  - (5) Provide the Board a quarterly report regarding disposition and assignment of the vehicle fleet as a whole.
- (D) Off-cycle replacement requests that result from vehicle loss due to collision or mechanical failure will be reviewed by the County Executive and approved by the Board of Supervisors.



### **3.52.2.2 Vehicle Leases**

Departments shall include long-term vehicle lease requests for a period of 12 months or more as part of the Annual Fleet Plan.

### **3.52.2.3 Month-to-Month Rentals**

Provided the Department Head has made a determination that no other solution will satisfy the transportation requirement, County departments may obtain vehicles for terms exceeding 30 days, but not exceeding 6 months by using the State of California Department of General Services Vehicle Rental Contract. Any combination of rentals that exceed more than 6 months in any 12 month period shall be reported and addressed as part of Finance Agency's desk audit and the FAF annual utilization review in preparation of the Annual Vehicle Fleet Plan.

### **3.52.2.4 Short-Term Rentals**

- (A) To satisfy short-term travel requirements, temporary peak loads, unusual requirements, or emergencies, departments shall use the least expensive of the following options for vehicle rentals of less than or equal to 30 days:
  - (1) FAF pool vehicle on a reimbursable basis, if available; or
  - (2) The State of California Department of General Services Vehicle Rental Contract using Purchase cards.
- (B) FAF shall provide departments guidance regarding the use and costs associated with each of the aforementioned options.

### **3.52.2.5 Other Sources of Motor Vehicles**

Departments may use vehicles from Federal, State, local government agencies or non-profit business entities for a period not to exceed six months in one 12 month period without approval of the Board of Supervisors. Such vehicles shall be consistent with departmental business needs. Use of such vehicles exceeding 6 months shall be considered as part of the FAF annual utilization review in preparation of the Annual Vehicle Plan.

### **3.52.2.6 Modification of Vehicles**

Modification of vehicles shall not be performed without collaboration with FAF. The departments shall establish adequate configuration control to ensure vehicle modifications are limited to those required for safety, security, or accomplishment of their business needs. Limited modification for such purposes as providing wrecker service or two-way radio service, and for installation of emergency warning devices or auxiliary fire-fighting equipment, may be accomplished by FAF, but only after due consideration of the cost effectiveness of the action and with the approval of the County Executive.

### **3.52.2.7 Identification and Marking of Motor Vehicles**

#### **(A) General**

- (1) This section contains guidelines and procedures for the marking of all County vehicles. County vehicles shall, unless exempted, display the County logo, Fleet Vehicle Identification Number (VIN), and license plate. Additional markings, decals, and temporary signage are strictly prohibited and will be removed by FAF during maintenance cycles on a reimbursable basis.
- (2) Vehicles that are less than 26,000 pounds gross vehicle weight and are rented from commercial sources are exempt from having to display a County logo.
- (3) Long-term leased vehicles are subject to other marking and license plate requirements as noted herein.

#### **(B) Exemptions from Identification and Marking**

- (1) Marked Sheriff Patrol and cold-plate vehicles are exempt from the identification requirements but must follow departmental guidelines.
- (2) Assigned take-home vehicles are exempt from having to have a County logo displayed.
- (3) Other specific department logos must be approved by the County Executive.

#### **(C) Identification and Marking Procedures**

Departments will implement all vehicle identification and marking through FAF. Standard County logos, VIN, and license plates are part of the normal FAF Fleet Management rates. Other identification and marking requirements will be reimbursable.

### **3.52.3 Operations, Maintenance, Repair, and Fueling**

#### **3.52.3.1 General Operations Requirements**

##### **(A) Department Heads shall:**

- (1) Ensure that County employees are trained and reminded that operating a County vehicle is neither an employee's right nor privilege; rather it is a trust conferred to the employee to facilitate the necessary performance of departmental business needs that directly benefits the County;
- (2) Enable supervisors to determine, consistent with this policy, whether or not it is appropriate for an employee to operate a County vehicle;

- (3) Establish procedures to ensure vehicles are operated in a safe and serviceable condition, e.g. drivers are trained in accordance with the County Safe Driver Program, authorized, and licensed, vehicle maintenance is completed according to the FAF recommended schedule, vehicles are clean and ready for use, etc.;
  - (4) Provide for rotation of vehicles, where practical and economical, to equalize the equipment usage and to ensure attainment of life-cycle utilization goals within the vehicle life expectancy;
  - (5) Designate department primary point-of-contacts to coordinate vehicle maintenance and repair appointments with FAF and to be responsible for departmental pool vehicles;
  - (6) Ensure that all records of title, registration, and the purchase of outside fueling, services, maintenance and repair, vehicle supplies shall be provided to FAF for information and compliance tracking purposes;
  - (7) Ensure that all records related to short-term and month-to-month rentals are provided to FAF for information and compliance tracking purposes;
  - (8) Ensure that all travel outside of the County is supported by a completed Travel Authorization Form;
  - (9) Establish a Utilization Record of motor vehicle assignment which collects the name of the driver, date and time of assignment, return date and time, destination at time of checkout, mileage records (beginning and ending mileage), and contact number; and
  - (10) Ensure that managers and supervisors at all levels are responsible and accountable for using maintenance and operations data to measure the effectiveness of County vehicle activities under their control.
- (B) FAF shall furnish the following information to Department Heads for placement in the glove compartment of each County-owned or -leased vehicle:
- (1) Vehicle Registration Information;
  - (2) Blank Vehicle Accident/Incident Form;
  - (3) County's evidence of financial responsibility for self-insurance;
  - (4) Vehicle Self Inspection Forms;
  - (5) Roadside assistance and towing programs;
  - (6) Fuel locations;
  - (7) Vehicle wash facilities;

- (8) Maintenance and repair facilities; and
- (9) FAF contact information.

### **3.52.3.2 County Driver Requirements**

While driving a County vehicle, County drivers shall:

- (A) Remember that their actions represent the professionalism and character of all County employees to the citizens of the County and ensure their use of a County vehicle always leads to a positive perception by our citizens;
- (B) Be subject to applicable Local, State and Federal laws and be aware of new and existing laws;
- (C) Operate vehicles according to the official use of vehicles section set forth in this policy, drive defensively, anticipate emergency situations, follow the rules of the road, and make every reasonable effort to avoid accidents;
- (D) Know the mechanical and cosmetic condition of the County vehicle the employee is driving, promptly report any suspected equipment malfunctions, damage, or safety condition to his/her supervisor who will in turn notify FAF to schedule follow up repairs, and ensure that vehicles are promptly turned in for preventive maintenance and repair work;
- (E) Not transport family members or other passengers not engaged in County official business or required to be conveyed in the performance of duty;
- (F) Ensure that seat belts are to be worn by all occupants of a County vehicle while it is in operation, and children must ride properly buckled up in safety seats or boosters until they are at least 6 years old OR weigh at least 60 pounds;
- (G) Follow the anti-idling policy, Appendix C;
- (H) Keep vehicles clean and free of litter and debris;
- (I) Ensure that, absent emergency conditions, vehicles never have less than 1/4 tank of fuel in the event they are needed to assist in disaster response;
- (J) Be responsible for pre- and post-trip inspections. Documentation of these inspections shall be maintained at terminals as required by law for specific vehicle classes. Departments shall reference their specific procedures in the departmental policies and procedures;
- (K) Be responsible for any personal property stored or left in a County vehicle or private vehicle being driven on County business as the County assumes no such responsibility;

- (L) Ensure that no one smokes in a County vehicle;
- (M) Not eat or drink while operating the vehicle;
- (N) Excluding assigned take-home vehicles, not use a County vehicle to carry alcohol or firearms except in the performance of County official business unless otherwise approved by the County Executive;
- (O) Maximize the economical and efficient use of County vehicles by:
  - (1) Not driving vehicles unnecessarily;
  - (2) Taking the most direct route to, from or between job assignments;
  - (3) Ensuring tires are inflated properly;
  - (4) Removing equipment in excess of what is required to perform assigned duties for the purpose of obtaining optimum vehicle mileage; and
  - (5) Not using quick acceleration or rapid braking.
- (P) Not use Drive-thru lanes with the exception of the Sheriff Transportation Division vehicles that are governed by the Sheriff's General Orders;
- (Q) Not be entitled to any expectation of privacy with respect to a County-owned vehicle and allow inspection/search of a County-owned vehicle by their supervisor/department;
- (R) Verify the following information is in the glove compartment of each County-owned or -leased vehicle prior to use:
  - (1) Vehicle Registration Information;
  - (2) Blank Vehicle Accident/Incident Form;
  - (3) County's evidence of financial responsibility for self-insurance;
  - (4) Vehicle Self Inspection Forms;
  - (5) Roadside assistance and towing programs;
  - (6) Fuel locations and guidance;
  - (7) Vehicle wash facilities locations and guidance; Maintenance and repair facilities locations and guidance; and
  - (8) FAF contact information.

- (S) Be held responsible for immediate payment of losses resulting from negligence, including impound/storage fees, replacement or duplicate key charges, roadside assistance resulting from low fuel or other non-mechanical related causes, and daily charges for non-permissive use;
- (T) Be familiar with Spill Prevention Procedures at County stations and must immediately report any spills to the Environmental Coordinator via the MAC Room. Contact information is prominently displayed at all fuel locations;
- (U) Follow the safety, accident prevention, and accident/loss/damage reporting requirements set forth in this policy;
- (V) Immediately notify their supervisor/department of receiving any moving violation and/or parking citations while driving a County vehicle and:
  - (1) Pay for all moving violations and/or parking citations for which he/she is responsible; and
  - (2) Clear citations including all fees and penalties on their own time.
- (W) Immediately notify their supervisor/department if their driver's license is revoked, suspended, or restricted in any way;
- (X) Maintain a current County driver authorization;
- (Y) Complete the County driver training Course every three years; and
- (Z) Follow other sections of this policy and any supplemental department guidelines.

### **3.52.3.3 Driver Selection, Training, Driver Responsibility Statement**

Departments shall:

- (A) Before issuing a County driver authorization:
  - (1) Ensure their Fleet Liaison, in addition to their other duties, shall:
    - (a) Identify the County drivers within the organization that will need to read and sign the County Vehicle Drivers Responsibility Statement. Without exception this statement must be signed by all County drivers, whether full time, part time, extra help, paid interns, unpaid interns, dependent contractors, or volunteers that drive County vehicles or their own private vehicle in the conduct of County official business.
    - (b) Ensure County drivers are given reasonably sufficient explanation, briefings, and training regarding the Comprehensive Vehicle Policy and its implications.

- (c) Obtain and maintain signed County Vehicle Drivers Responsibility statements acknowledging their briefing of this policy.
- (2) Ensure that all County drivers complete and submit to their department Form 6409 - Request for Driver Authorization, and DMV Form INF 1101-Authorization for Release of Driver Record Information.
- (3) Verify that County drivers have a valid California Drivers License for the type of vehicle to be operated.
- (B) Assist with enrolling the new County employee or volunteer in the County Driver Training Course.
- (C) Obtain driving records directly from the DMV for County drivers.
- (D) Enroll all County drivers into the DMV Employer Pull Notice Program.
- (E) Once notice is received from the DMV Employer Pull Program that a County driver's California license has been revoked or suspended, the department must not allow the County driver to drive while on County business.
- (F) Discipline County drivers who fail to notify the Department that their license or County driver authorization has been pulled or revoked and who continue to operate County vehicles or private vehicles in conjunction with work.
- (G) Refer to the Vehicle Accident Review Board for possible revocation of County driver authorization of any County driver, with the exception of the Office of the Sheriff, who demonstrates an inability to maintain a safe driving record or safe driving practice.
- (H) Remove from the DMV Pull Program County drivers once they separate from the County.

#### **3.52.3.4 Official Use of Vehicles**

- (A) Unless otherwise stipulated below, County vehicles are only to be used for County official business.
- (B) Generally, the determination as to whether a particular use is for official business is a matter of administrative discretion of the Department Head. In making determinations Department Heads shall consider all pertinent factors, including: whether the transportation is the following:
  - (1) Essential to the successful completion of a County business need, function, activity, or operation; and
  - (2) Consistent with the purpose for which the motor vehicle was acquired.

- (C) Driving vehicles to commercial establishments for meals or breaks is prohibited unless:
  - (1) The County driver has an approved travel authorization for out-of-county travel and the reasonable and necessary mileage uses are subsequently approved by the department;
  - (2) The County driver is on official business and not within 10 minutes driving time to the driver's home work site or a County cafeteria/vending operation; or
  - (3) The County driver is a law enforcement officer driving a marked Sheriff's patrol vehicle that is governed by the Sheriff's General Orders.

### **3.52.3.5 Assigned Take-Home Vehicles**

- (A) Only positions indicated within the County Salary Ordinance or the County Executive Management Master Salary Ordinance shall be eligible for assigned take home vehicles. ESA shall make annotations in the ordinances to indicate Board approved take-home vehicles and their approved use, e.g. "commuting only" or "commuting and personal use." Effective July 1, 2010, employees that are not made eligible through one of these ordinances will not be eligible or assigned take home vehicles.
- (B) Certain positions having take-home vehicles that are stipulated as part of existing labor contracts or customarily assigned by long term practice will remain in force until the contractual provisions are renegotiated. This provision is not intended to prohibit County Departments' review of the need for adjustments to the number of take-home vehicles assigned for after hours on-call work, but a reporting of all assigned take-home vehicles will be included in an annual report to the Board of Supervisors.
- (C) Regardless of the salary ordinances listed above, County take-home vehicles may be assigned to individuals who reside within the County and in the case of those residing outside the County, the commute must not be more than thirty-five (35) miles from the County Government Center, 70 West Hedding Street, San Jose.
- (D) Unless otherwise indicated by one of the salary ordinances, assigned take-home vehicles are for the use of County employees only. Non-County employee passengers other than County clients are strictly prohibited.
- (E) Unless otherwise indicated by one of the salary ordinances, assigned take-home vehicles may not be used for non-business related purposes, other than for commuting.
- (F) ESA shall provide an annual report to the Board of Supervisors regarding assigned take home vehicles including domicile zip code.



- (G) The Finance Agency shall provide annual guidance to employees concerning the valuation of their take-home vehicle for personal income tax purposes. Employees, however, are ultimately responsible for filing their tax returns and ensuring they comply with the law.
- (H) A person who is “acting” in a position of an official entitled to receive an assigned take home vehicle is not entitled to this benefit unless the position was vacated due to resignation, death, or removal.
- (I) Temporary assignment of a take-home vehicle may be authorized by the County Executive when an emergency exists. “Emergency” means circumstances that are immediate, unforeseeable, and temporary where there is a need specific to the performance of a County mission. An emergency may occur where there is a major disruption of available means of transportation to or from a work site, an essential service must be provided, and there is no other way to transport those employees. All temporary assignments must be reported with start and projected end dates to the Finance Agency.
- (J) Exceptions to Temporary Assigned Take-Home Vehicles include instances wherein departments utilize common sense and practical assignment of vehicles for employees travelling to out-of-County meetings, in such cases where there is greater efficiency by allowing vehicles to be taken home the evening preceding the business meeting and retained the evening following the business meeting. In these cases the Travel Authorization Form shall be completed to reflect the temporary assignment, commute mileage shall be considered travel and the Travel Form shall be annually reported to the Controller.
- (K) All requests for assigned take-home vehicles shall be in writing and be approved by the County Executive or designee based on the nature of the on call assignment.

### **3.52.3.6 On-Call County Employees**

County vehicles that are to be used by on-call employees may be assigned as take-home vehicles and are individually approved by the County Executive or designee based on the nature of the on-call assignment.

### **3.52.3.7 Business Use of Private Vehicles**

- (A) Department Heads or their designee may authorize the use of private vehicles on County business.
- (B) Employees who utilize private vehicles to transact County business may apply for reimbursement at the rate established by the Internal Revenue Service.
- (C) In order to be reimbursed, employees shall make mileage claims according to the following:

- (1) If the amount is expected to be greater than \$100, claims shall be submitted by the pay period following the end of any month; and
  - (2) If the amount expected is less than \$100, claims shall be submitted no later than the first pay period following the end of any fiscal quarter. The fiscal quarters end September 30, December 31, March 31, and June 30.
- (D) Liability associated with the operation of a private vehicle on County business is the responsibility of and primary to the County driver. The County will not be responsible for collision, comprehensive or liability losses for private vehicles; the reimbursement rate is the full and complete compensation for use of a private vehicle.
- (E) Prior to reimbursing County drivers using private vehicles on County business, departments shall ensure that drivers:
- (1) Maintain a current County driver authorization;
  - (2) Hold a valid California driver license;
  - (3) Maintain and provide to their department valid proof of vehicle liability insurance in accordance with Sections 16450 and 16451 of the California Vehicle Code and County Ordinance, Division A31, Section A31-12;
  - (4) Provide written notice to their department ten days prior to expiration, termination or material change of such insurance policy; and
  - (5) Submit the Driver Responsibility Statement (Form 6448), to their department and receive approval on Form 6448 prior to driving a private vehicle on County business.

#### **3.52.3.8 Use of Vehicles by Other Agencies**

County vehicles may be furnished for short periods (less than 72 hours) of time to other local government agencies when the County use will not be impaired and the reason is one of the following:

- (A) An emergency, lifesaving situation;
- (B) Specifically authorized by the Board or statute; or
- (C) Direct support of a department function; provided the Department Head makes a determination that commercial transportation is not capable of satisfying the transportation requirement. In this case, reimbursement shall be computed to recover the total cost incurred by the County.

### **3.52.3.9 Contractor Operated Vehicles**

- (A) Independent contractors shall ordinarily furnish motor vehicles needed in performing County contracts, meeting insurance requirements established in the contract or service agreement.
- (B) Motor vehicles may be provided to contractors in accordance with contract stipulations only under a cost reimbursement contract when:
  - (1) The number of vehicles required for use by contractor personnel is predictable and is expected to remain fairly constant;
  - (2) The Contractor will bear the entire cost of the vehicle program;
  - (3) The vehicles will not be used on any contract other than for which the vehicles are to be provided;
  - (4) Prospective contractors do not have or would not be expected to have an existing and continuing capability for providing the vehicles from their own resources; and
  - (5) Substantial savings are expected.
- (C) The County Department sponsoring the contract is required to ensure that FAF is provided monthly reports that include vehicle make, model, fuel usage and mpg for emissions data and reporting purposes.

### **3.52.3.10 Maintenance and Repair**

- (A) Departments shall use FAF maintenance and repair services for all County vehicles.
- (B) FAF shall:
  - (1) Coordinate maintenance and repairs for all County vehicles except for:
    - (a) Rentals; and
    - (b) Private vehicles that are being operated to conduct County business.
  - (2) Include routine maintenance and repair services as part of the annually approved standard vehicle fleet rates except for the following:
    - (a) Beginning Fiscal Year 2011, departments shall reimburse Fleet for vehicle repair costs resulting from misuse, negligence, or accident damage greater than \$500; and
    - (b) Vehicles established as reimbursable which will be billed on a time and material basis.

- (3) Notify departmental fleet liaisons when scheduled maintenance is due;
- (4) Establish safety thresholds on vehicle wear items, including minimum tire tread depth, minimum brake pad thickness, etc. When FAF finds that a vehicle does not meet established safety thresholds, FAF shall:
  - (a) Take the vehicle out of service to affect the necessary repairs, and
  - (b) If necessary, coordinate a replacement vehicle with the Department.
- (5) In general, pull a vehicle from the department when the cost of repairs exceeds more than 50% of the fair market value of a vehicle and not perform repairs. FAF, working with the County department, will decide when it is no longer economically justifiable to make repairs and whether or not to dispose of the vehicle and, if necessary, pursue a replacement vehicle.

#### **3.52.3.11 Private Vehicles**

Private vehicles shall not be parked, garaged, or stored in any building except within designated parking areas. Private vehicles, vehicle units, parts, accessories, and equipment shall not be repaired, serviced, or manufactured in any County shop, garage, or other buildings. County owned vehicles, tools, modernized equipment, or supplies shall not be used to service or repair such private property.

#### **3.52.3.12 Fueling**

- (A) County vehicles may be fueled in one of three ways: County fuel pumps; County Credit Card; Reimbursement of employee fuel purchase. County employees shall make an effort to maximize the use of County fuel pumps.
- (B) Departments shall:
  - (1) Submit authorization for employee fuel privileges to FAF including the employee name, 5-digit employee number, department name and work phone number. Departments are responsible to report employee transfer and separation immediately to FAF; and
  - (2) Train all County drivers regarding Spill Prevention Procedures at County stations.
- (C) FAF shall:
  - (1) Document and post fuel credit card transactions on the County Intranet site;
  - (2) Administer requirements for direct-pay reimbursements of fuel including collection of receipts and explanations for failing to use County fuel pumps or credit card; and

- (3) Deactivate or cancel fuel card privileges of employees who have repeatedly failed, after notification by FAF, to comply with the County's established fuel card usage and accurate odometer reading reporting. FAF shall contact the employee's department before temporarily cancelling the fuel card and shall restore the card only after the Department takes corrective action to ensure that the employee complies with the established policies.
- (D) County vehicles, with the exception of specific equipment, are authorized to use unleaded grade 87 or ultra-low sulfur diesel fuel only. Unauthorized transactions for fuel blends or products will be the responsibility of the employee.
- (E) All employees that fuel vehicles must be familiar with Spill Prevention Procedures at County stations and must immediately report any spills to the Environmental Coordinator via the MAC Room. Contact information is prominently displayed at all fuel locations.

#### **3.52.3.13 Anti-Idle**

- (A) Idling creates harmful pollution and is a substantial source of carbon monoxide, toxic air contaminants and greenhouse gases. Idling results in wasted fuel expenses and creates unnecessary wear and tear on vehicles.
- (B) All County drivers shall turn off the engine upon stopping at a destination. Drivers may not allow an engine to idle at any location for more than 1 minute consecutively or a period or periods aggregating more than 5 minutes in any one-hour period.
- (C) The overview for the anti-idling policy, Appendix C, shall be prominently posted at each vehicle terminal, dispatch center or workplace that utilizes vehicles.
- (D) Departments shall:
  - (1) Train and inform staff of the anti-idling policy; and
  - (2) Investigate complaints and discipline violators.

#### **3.52.3.14 Telematics**

- (A) Departments shall coordinate with FAF for the installation of telematic devices or wireless information transponder equipment for selected vehicles.
- (B) Tampering, altering or removing these devices is prohibited by this policy. This equipment may be used to determine vehicle speeds, location, routes, usage, idling frequency and on board diagnostic information.

#### **3.52.3.15 Travel Authorization Requirements**

Departments shall issue Travel Authorization numbers in accordance with the Travel

Policy for all contract rentals and FAF pool not qualified as loaners for vehicles undergoing repair or maintenance.

**3.52.3.16 Safety, Accident Prevention, and Accident / Loss / Damage Reporting**

(A) Department Heads shall:

- (1) Within 24 hours of an accident, loss, or reported damage involving a County vehicle, make a report to ESA Risk Management and FAF;
- (2) Immediately identify the individual responsible for the custody and operation of the vehicle when an infringement, damage or loss occurs of all vehicles;
- (3) Within 10 business days submit all County vehicles involved in an accident to FAF for a vehicle damage estimate and/or repair;
  - (a) Vehicles with significant damages must be submitted directly to FAF;
  - (b) For vehicles with minor damages, a digital photo may be provided to FAF for a determination of whether or not repairs are warranted. Departments can contact FAF for advice on determining extent of damage.
- (4) With the assistance of the Employee Services Department (ESA), FAF, and County Counsel, investigate and make a determination concerning the causes and surrounding circumstances of each accident, loss, or reported damage involving a County vehicle including steps taken to prevent similar occurrences in the future; and,
- (5) Ensure that all vehicle accident records are accurate and complete.

(B) County drivers shall:

- (1) Report all accidents or losses for county vehicles to their immediate supervisor, regardless of fault, including undocumented damage;
- (2) In the event of an accident, or loss, or upon discovering damage to a County vehicle, complete a Vehicle Accident/Incident Report Form (Form 1542) by the next business day and submit it to their supervisor; and
- (3) Be responsible for contacting law enforcement to report all collisions and incidents involving other parties or property, and be responsible for recording file or case numbers on the Vehicle Accident Report Form.

(C) Vehicle Accident Review Board

- (1) All County drivers operating motor vehicles on County business are expected to drive defensively, to anticipate emergency situations, to know the mechanical condition of the vehicle they are operating, and to make every reasonable effort to avoid accidents. In order to prevent the occurrence and reoccurrence of vehicle accidents involving these drivers, the Vehicle Accident Review Board (VARB) will review all accidents reported to ESA Risk Management, except for the Office of the Sheriff, involving County vehicles in which total damages exceed \$1,000 or which involve circumstances of concern. The VARB will impose corrective measures against employees in an effort to prevent future accidents. The VARB will also review and impose corrective measures against employees who have accumulated excessive unresolved parking citations while in the possession of County vehicles. The responsibilities of the VARB consist of actions affecting employee County driver authorizations and supplemental employee driver training. The decisions of the VARB are appealable to the County Executive or designee, whose decision is final.
- (2) The eight-member VARB shall meet on a regular basis. One representative each from the District Attorney, FAF, Health and Hospital System, Office of the Sheriff, Parks and Recreation, Roads and Airports Department, and the Social Services Agency shall sit on the VARB. The Senior Loss Prevention Specialist with ESA Risk Management shall serve as the eighth-member and be responsible for administering the VARB. A Chairperson shall be elected in January each year.

### **3.52.3.17 Citations**

- (A) The Department shall:
  - (1) Be responsible for ensuring that County drivers clear all parking citations against County vehicles within 120 days;
  - (2) After 120 days, coordinate with the Finance Agency to transact wage garnishment for the value of parking citations;
  - (3) Will work with FAF to identify operators of confidential plate vehicles; and
  - (4) Refer County drivers having excessive parking citations while in possession of a County vehicle to the VARB.
- (B) The Finance Agency shall provide an annual report of unpaid citations to the Board of Supervisors.

### **3.52.4 Penalties for Misuse, Neglect, and At-Fault Accidents**

- (A) Disciplinary Action. The unauthorized use or willful misuse of a County vehicle, or the negligence of a County driver, or other circumstances where the County driver is found at fault, or the violation of this policy may be cause for:
  - (1) Disciplinary actions consistent with County Merit System Rules; and
  - (2) Administrative action including the revocation of the County driver's authorization.
- (B) Criminal Sanctions. Depending on the facts and circumstances, criminal sanctions of relevant laws and codes may apply.

### **3.52.5 Cost Accounting and Management Reporting**

- (A) Department Heads shall provide uniform data necessary for the efficient and effective management of motor vehicle assets, to include operation and maintenance as required by the County Executive, FAF, ESA, and/or the Finance Agency.
- (B) Data shall include cost summaries and forecast budget implications so that the County fleet as a whole can be better managed.
- (C) Departments shall review the proposed budget for assigned vehicles and provide comment back to FAF.
- (D) Departments must notify FAF of vehicle reassignments, planned additions or reductions.
- (E) Departments are responsible to review the monthly fuel credit usage and report any discrepancies to the Finance Agency

### **3.52.6 Appendix A - Annual Vehicle Plan**

- (A) The Annual Fleet Plan shall include the following:
  - (1) A recommendation for the optimization of the County vehicle fleet size and mix of vehicles as a whole and by each County department;
  - (2) A summary report of criteria used to make the aforementioned recommendation is contained in Appendix B;
  - (3) A comparison of vehicle usage to the aforementioned criteria to justify the ongoing asset costs;
  - (4) A summary of recommendations for repurposing and/or disposing of vehicles that do not meet the Board approved criteria; and



(5) A 5-YEAR FLEET PLAN update.

(B) Definitions:

The following definitions will be used by FAF in determining the disposition of any County vehicle:

Under Utilized

Any vehicle that does not meet minimum use guidelines over a 12 month period.

Guideline

The use or economic point at which vehicles are considered candidates for action by FAF in collaboration with the operating department. The intent of the action is to ensure that the size and composition of the County fleet is consistent with the best interests of the County.

Retain

Disposition of a vehicle that has met minimum use criteria or that has been determined to be more cost effective than other alternatives.

Reassign

Disposition of vehicles that have not met minimum use guidelines in current assignment but have the potential to be more fully used elsewhere in the County.

Pool

Disposition of a vehicle that has not met minimum use guidelines but may be economically or of operational value to the County if retained in the Fleet Management pool for short-term rental.

Decommission

Disposition of a vehicle that does not meet minimum use guidelines and/or is no longer needed in County operations. Unit will be disposed through normal channels consistent with County policy.

(C) Procedures

(1) FAF shall:

(a) Annually review and recommend any modifications to the criteria that will be used as a basis for the Annual County Vehicle Fleet Plan and submit the criteria to the Board for approval;

- (b) Annually prepare an analysis that assess the use and replacement of all vehicles once each year according to established criteria and determine if each vehicle meets or exceeds the minimum use guidelines;
- (c) Determine the cost effectiveness of departmental assigned vehicles, as compared to pool and private vehicle costs;
- (d) Propose actions for those vehicles that fail to meet the minimum use guidelines and contact the departments regarding its determinations;
- (e) If the department agrees with a recommended disposition other than “retain”, the department must surrender the vehicle to FAF within 30 calendar days;
- (f) Should the department disagree with the recommended disposition, the Department Head must notify FAF in writing within two weeks. The notification must state the nature of the disagreement and justification as to why the disposition should be altered. FAF may determine that the dispute cannot be resolved and in such case, FAF will arrange to meet the Department Head and the County Executive for resolution. The County Executive’s decision will be final; and
- (g) FAF will finalize the Annual Fleet Plan and submit it to the Board of Supervisors for approval.

### 3.52.7 Appendix B - Vehicle Review Criteria

As a general rule, the criteria contained herein shall not be used as hard and fast rules to disposition a vehicle, but instead shall be used as performance indicators that trigger closer review and discussion between FAF and the user department for the purpose of exploring alternatives that will result in lower costs to the County compared to status quo.

FAF will annually review and propose modifications of these criteria to the Board based on benchmarks of similar agencies for number of departmental staff compared to number of departmental assigned vehicles.

#### Vehicle and Equipment Utilization Criteria

Vehicle Type	Meter Type	Annual Utilization Guideline
Sedans	Miles	8,000-10,000
SUV	Miles	8,000-10,000
Vans, Passenger	Miles	6,000-10,000
Vans, Cargo	Miles	3,500-10,000
Trucks, Light	Miles	5,000-7,000

Trucks, Utility, 1 Ton +	Miles	1 Ton + Miles 4,000
Trucks, Specialty	Miles	3,000
Construction Equipment	Hour	250
Moving, Forklifts, Campus Vehicles	Hour	100

### Vehicle Equipment Replacement Methodology

Replacement of County vehicles and equipment shall be based on the following:

- (A) Take the number of vehicles in each class, divided by the Age/Miles replacement criteria, to arrive at an average number of vehicles per year to be replaced;
- (B) Use the cost per mile analysis (summary of all costs associated with the vehicle including labor and parts, excluding collision repair, as compared to class averages) for primary criteria in evaluating which vehicles within each specific class range should be replaced;
- (C) Use age of the vehicle as secondary criteria; safety is a primary concern and older vehicles present significant challenges to acquire parts;
- (D) Use odometer miles as third criteria since high miles create excessive wear and tear on major system components;
- (E) Use safety features, fuel economy and vehicle emissions characteristics to prioritize replacement vehicles;
- (F) Overall priority for replacement will be given to vehicles within those departments whose services relate to public health and safety and law enforcement; and
- (G) Fund sources other than General Fund may accelerate replacements to achieve emission reductions or increased fuel economy as recommended by the County Executive and approved by the Board of Supervisors Age/Mile Replacement Criteria.

### Age/Mile Replacement Criteria

The targeted replacement cycles, in terms of years and miles for the current fleet, are as follows:

Note: These criteria are intended to be used for analysis; condition, value and safety are factored into the annual replacement recommendation. In some cases vehicles may exceed the published replacement criteria provided they are deemed safe by FAF and continue to demonstrate usefulness to the County.

### Description Age and/or Miles

- (A) Sedans - 10 years and/or 100,000 miles

- (B) Law Enforcement Patrol - 5 years and/or 95,000 miles
- (C) Vans
  - (1) Passenger - 10 years and/or 100,000 miles
  - (2) Cargo - 10 years and/or 120,000 miles
- (D) Light Duty Trucks
  - (1) Sports Utility - 10 years and/or 100,000 miles
  - (2) Pickup and 4 x 4 – 10 years and/or 100,000 miles
- (E) Medium and Heavy Duty Trucks - 15 years and/or 150,000 miles
- (F) Buses - 15 years and/or 150,000 miles
- (G) Miscellaneous Equipment - By condition

### **3.52.8 Appendix C - Anti-Idle Policy Purpose**

The purpose of this policy is to limit idling for all vehicles. The State regulation limits unnecessary idling for in-use off-road diesel vehicles. The regulation states “no Vehicles or engines subject to this regulation may idle for more than five (5) consecutive minutes.”

This policy extends this requirement throughout the vehicle fleet, including on-road and off-road light, medium and heavy duty vehicles.

All County vehicle idling is limited to five (5) consecutive minutes or less.

#### **General Procedures**

All drivers of County vehicles or private vehicles while on County business shall turn off the engine upon stopping at a destination. Drivers may not allow an engine to idle at any location for more than one (1) minute consecutively or a period or periods aggregating more than five (5) minutes in any one-hour period.

Departments are responsible to label in-use off-road diesel vehicles with a dash board label that states “THIS ENGINE CAN NOT IDLE FOR MORE THAN 5 MINUTES. IT IS A STATE ENVIRONMENTAL REGULATION.”

Employees that wish to report non-compliant idle activities in vehicles should contact their Supervisor or the ESA. Violators of the policy will be subject to disciplinary action including possible revocation of the County driver authorization.

#### **Exceptions**

The idling limit does not apply to:

- (A) Idling when queuing that at all times is beyond 100 feet from any restricted area;
- (B) Idling to verify that the vehicle is in safe operating condition as required by law and that all equipment is in good working order, either as part of a daily vehicle inspection or as otherwise needed, provided that such idling is mandatory for such verification;
- (C) Idling for testing, servicing, repairing or diagnostic purposes, including regeneration or maintenance of the exhaust emission control device during engine idling when the dashboard indicator light, if so equipped, is illuminated indicating that regeneration or maintenance is in process;
- (D) Idling when positioning or providing a power source for equipment or operations, other than transporting passengers or propulsion, which involve a power take off or equivalent mechanism and is powered by the primary engine for:
  - (1) Controlling cargo temperature, operating a lift, crane, pump, drill, hoist, mixer, or other auxiliary equipment;
  - (2) Providing mechanism extension to perform work functions for which the vehicle was designed; and
  - (3) Collection of solid waste or recycling material authorized by contract, permit, license or permit by a local government.
- (E) Idling required to bring the machine system to operating temperature, as specified by the manufacturer; and
- (F) Idling necessary to ensure the safe operation of the vehicle.

**Allowable**

Allowable idling includes:

- (A) Buses may idle for up to ten (10) minutes prior to passenger boarding, or when passengers are on board;
- (B) Idling when vehicle must remain motionless due to traffic conditions, an official traffic control device, or an official traffic control signal for which the driver has no control, or at the direction of a peace officer;
- (C) Idling due to immediate adverse weather conditions affecting the safe operation of the vehicle or due to mechanical difficulties over which the driver has no immediate control;
- (D) Idling when operating equipment such as a wheelchair or people assist lift as prescribed by the Americans with Disabilities Act;

- (E) Idling while in immediate response to a disaster event, crime scene or other official law enforcement activity or operation; and
- (F) Idling to support or create traffic control signal or directional indicator.

### **3.53 DESIRED CHARACTERISTICS OF CANDIDATES FOR APPOINTMENT TO THE ASSESSMENT APPEALS BOARD AND VALUE HEARING OFFICERS (Adopted 1-11-11; Amended 6-7-22)**

State law defines the minimum qualifications for persons serving on assessment appeals boards and as hearing officers. The County of Santa Clara Ordinance Code provides additional minimum qualifications in the case of hearing officers. Given the complexity of property tax assessment appeals filed in the County, the Board of Supervisors adopts this policy regarding desired characteristics of candidates for appointment to the Assessment Appeals Board (AAB) and Value Hearing Officers.

#### **3.53.1 Appointment of Members to the Assessment Appeals Board**

It is the policy of the Board of Supervisors that when considering the appointment of members to the Assessment Appeals Board, Board members may, but shall not be obligated to, give preference to candidates possessing the following background:

- (A) Certified public accountants with experience in the appraisal/valuation of real and/or business personal property;
- (B) Licensed real estate brokers with a Certified Commercial Investment Member (CCIM) designation from the CCIM Institute, a Certified Real Estate Brokerage Manager (CRB) designation from the Council of Real Estate Brokerage Managers, a Certified Residential Specialist (CRS) designation from the Council of Residential Specialists, a Graduate Realtor Institute (GRI) designation from the National Association of Realtors, or a similar designation;
- (C) Real property appraisers with the designation of Member Appraisal Institute (MAI) or a similar designation evidencing experience with complex income property valuation;
- (D) Personal property appraisers with an Accredited Senior Appraiser (ASA) designation from the American Society of Appraisers or a similar designation;
- (E) Attorneys with experience with complex income and business property valuation; or
- (F) Individuals having experience which is comparable to that set forth in subsections (A) through (E) above.

In addition, Board members may, but shall not be obligated to, ensure that each separate AAB panel has at least one real property appraiser with the designation of MAI from the Appraisal Institute, or similar designation evidencing experience with complex income property valuation, as well as one experienced Assessment Appeals Board member.

### **3.53.2 Assessment Appeals Board IV**

Assessment Appeals Board IV may be dedicated to the resolution of appeals contesting a “change in ownership” or new construction determination by the Assessor, as well as appeals regarding the Assessor's valuation of real property. If so, then notwithstanding the guidelines above, Seat 1 of Assessment Appeals Board IV shall be filled by one member with experience as a real property appraiser with the designation of MAI from the Appraisal Institute or a similar designation evidencing experience with complex income property valuation. Seats 2 and 3 shall each be filled by a member who has a minimum of five years' professional experience in this State as an attorney, preferably related to real estate and property transfers, and who the nominating member of the Board of Supervisors has reason to believe is possessed of competent knowledge of property taxation. However, a panel that does not meet these requirements is not precluded from hearing any type of appeal.

### **3.53.3 Appointment of Value Hearing Officers**

It is the policy of the Board of Supervisors that when considering prospective value hearing officers, Board members may, but shall not be obligated to, give preference to candidates possessing the following background:

- (A) Residential real property appraisers with an SRA designation from the Appraisal Institute;
- (B) Residential real property appraisers licensed at the Certified Residential or Certified General level by the State of California Office of Real Estate Appraisers; or
- (C) Individuals having experience which is comparable to that set forth in subsections (A) and (B) above.

In addition, Board members may, but shall not be obligated to, give preference to candidates with prior experience as either a hearing officer or arbitrator.

## **3.54 COOPERATION WITH U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (Adopted 10-18-11; Amended 6-4-19)**

It is the policy of the County of Santa Clara that County officials and employees may cooperate with United States Immigration and Customs Enforcement (ICE) only as follows:

- (A) Consistent with longstanding County policy, the California Values Act (Gov. Code, §§ 7284-7284.12), and the Fourth Amendment to the United States Constitution, the County does not, under any circumstances, honor civil detainer requests from ICE by holding inmates on ICE's behalf for additional time after they would otherwise be released from County custody.
- (B) It is the policy of the County that the Sheriff may exercise discretion to facilitate the transfer of an adult inmate to ICE custody if an ICE agent presents a valid arrest warrant signed by a federal or state judicial officer, or other signed writ or order from a federal or state judicial officer authorizing ICE's arrest of the inmate. An administrative warrant signed by an agent or official of ICE or of the Department of Homeland Security (such as a Form I-200) is not a judicial warrant and will not be honored. The Sheriff and Chief of Correction shall jointly develop transfer procedures to implement this paragraph.
- (C) Except as permitted by this Policy, the County shall not provide assistance or cooperation to ICE in its civil immigration enforcement efforts, including by giving ICE agents access to individuals or allowing them to use County facilities for investigative interviews or other purposes, expending County time or resources responding to ICE inquiries or communicating with ICE regarding individuals' incarceration status or release dates, or otherwise participating in any civil immigration enforcement activities. This Policy does not limit or prohibit giving assistance with the investigative activities of any local, state, or federal law enforcement agency relating to suspected violations of criminal laws.

### **3.55 DEFENDING PROFESSIONALLY LICENSED EMPLOYEES IN ADMINISTRATIVE PROCEEDINGS (Adopted 10-25-11)**

The County values its employees and desires to support them when they perform their duties within the scope of their employment in a good-faith manner and to the best of their abilities. The County acknowledges that its professionally-licensed employees often face difficult judgment calls that need to be made promptly and sometimes result in good-faith mistakes. The County considered these factors in adopting this policy.

Further, this policy may be applied retroactively to underlying actions or failures to act that form the subject matter of a professional-licensing entity proceeding, but is prospective in nature in that it applies only to matters that were initiated by a professional-licensing entity after the enactment of this policy.

#### **3.55.1 Policy**

Pursuant to Government Code section 995.6, the County does not have a legal duty to defend employees licensed pursuant to the provisions of the California Business and Professions Code ("professionally-licensed employees") in administrative proceedings initi-



ated by the respective professional licensing entities. The County may, however, provide a defense to its current and former employees if:

- (a) The administrative proceeding is brought on account of the employee's act or omission in the scope of his or her employment; and
- (b) The County determines that such defense would be in the best interests of the County and that the employee acted, or failed to act, in good faith, without actual malice, and in the apparent interests of the County.

In accordance with Government Code section 995.6, the County will decide on a case-by-case basis whether to defend professionally-licensed employees in administrative proceedings. The decision to defend employees is at the sole discretion of the County and will be provided only if all the requirements of Section 995.6 have been met.

The County will make the decision whether to defend employees in administrative proceedings at three stages. The first stage pertains to the initial investigation and written response to the inquiry from a professional-licensing entity; the second stage to the formal initiation of disciplinary charges if the written response does not resolve the inquiry; and the third stage to any appellate proceeding that the employee wishes to initiate following a decision adverse to the employee.

Even if the County initially agrees to defend an employee, the County has the right to withdraw its defense if it is established that 1) the proceeding was not brought on account of an act or omission in the scope of the employee's employment with the County; 2) the County determines that the defense would not be in the best interests of the County; or 3) the employee did not act in good faith, without actual malice, or in the apparent interests of the County. The right to withdraw during Stage 1, Stage 2, and Stage 3 is discussed below.

### **3.55.2 Procedures**

The following procedures will be followed to implement the County's policy for defending professionally-licensed employees in administrative proceedings:

(A) Stage 1

- (1) Immediately upon receipt of an inquiry from a professional-licensing entity, the employee, or the head of the department in which the employee works, must contact the Office of the County Counsel to request a defense in the proceeding if he or she wants to have County-appointed representation. (Note: In view of the Short response time involved in inquiries from the medical board to physicians, physicians who receive an inquiry, or the department head, will contact the deputy county counsel assigned to medical malpractice cases. The deputy county counsel will determine if the physician acted within the course and scope of his/her employment with the Santa Clara County Health and Hospital System and, if so, assist the physician in

drafting a response to the Board. If the medical board decides to initiate formal disciplinary proceedings against the physicians, all the provisions of Stage 2 will apply.)

This provision does not apply to the Office of the Public Defender that will handle Stage 1 of all inquiries “in-house” in recognition of the expertise developed in that office relating to Stage 1 inquiries. The Public Defender will, however, provide the Office of the County Counsel with notice of all inquiries that it will handle in-house and the responses thereto. The Public Defender's in-house handling of Stage I inquiries for its attorneys will not result in a waiver of the employee's entitlement to request a defense during Stage 2 or Stage 3 of said proceedings.

- (2) If an employee decides not to have County-appointed representation, the employee may be precluded from later receiving representation from the County. Under these circumstances, the employee will sign the attached waiver indicating that he or she understands and acknowledges that the County may refuse to represent him or her in Stage 2 or Stage 3 of the professional-licensing entity proceedings if he or she decides not to have County-appointed representation during Stage I or Stage 2 of said proceedings.
- (3) If a request for County-appointed representation is made, County Counsel will appoint an attorney in the Office of the County Counsel to review the matter as soon as possible after receipt of the inquiry. The employee is required to reasonably cooperate in good faith with the assigned attorney to provide all pertinent and known information and to assist in the preparation of a response to the inquiry. Failure to cooperate at any stage of the administrative proceeding may result in withdrawal of representation.
- (4) Before assuming the representation of an employee, the County and the employee will enter into an agreement in which the County, through the Deputy County Executive responsible for the Employee Services Agency (“Deputy County Executive”), reserves the right to withdraw its defense as follows:

At any time during Stage I of the proceeding if it is established that 1) the employee did not act within the scope of his or her employment; 2) the employee did not act in good faith, without actual malice, or in the apparent interests of the County; or 3) the employee failed to cooperate with the defense (“Stage 1 Requirements”).

At any time during Stage 2 of the proceeding if it is established that 1) the employee did not act within the scope of his or her employment; 2) the County determines that the defense would not be in the best interests of the County; 3) the employee did not act in good faith, without actual malice, or in the apparent interests of the

County; or 4) the employee failed to cooperate with the defense (“Stage 2 Requirements”).

At any time during Stage 3 of the proceeding if it is established that 1) the employee did not act within the scope of his or her employment; 2) the County determines that the defense would not be in the best interests of the County; 3) the employee did not act in good faith, without actual malice, or in the apparent interests of the County; or 4) the employee failed to cooperate with the defense (“Stage 3 Requirements”).

- (5) A decision by the Deputy County Executive to withdraw the County’s defense of an employee under any of these circumstances after the County initially agreed to defend the employee may be appealed to the County Executive, who in his or her sole discretion will make a final decision regarding withdrawal.
- (6) If, upon review of the inquiry or during the initial investigation, it is determined that the Stage 1 Requirements of Section 995.6 have not been met, the County will withdraw its defense. The Deputy County Executive will make the decision upon advice of counsel. The Office of the County Counsel will advise the employee in writing of the Deputy County Executive’s decision.
- (7) If, upon review of the inquiry or the initial investigation, the Deputy County Executive determines that the Stage 1 Requirements of Section 995.6 have been met, the assigned attorney from the Office of the County Counsel will represent the employee during the first stage of the proceedings. After consultation with the employee, the assigned attorney will prepare a written response to the inquiry from the professional-licensing entity.
- (8) The County will not assume payment of fees or costs incurred by an employee for representation by an attorney privately retained by the employee, unless specifically approved by the County before the commencement of such representation.

(B) Stage 2

- (1) If the professional-licensing entity decides to pursue formal disciplinary charges, the employee will be afforded the opportunity to meet with the Deputy County Executive to explain his or her account of the claims asserted against him or her and to request that the County provide him or her with a defense in Stage 2 of the proceedings.
- (2) If the employee decides at the outset of Stage 2 of the proceedings that he or she does not want County-appointed representation, the employee may be precluded from requesting County-appointed representation at a later date.

- (3) If the employee requests County-appointed representation, the Deputy County Executive will, upon advice of counsel, decide whether the County will continue to defend the employee. The decision will be made at the sole discretion of the Deputy County Executive.
- (4) If the Deputy County Executive determines that the County will not continue to defend the employee, the employee can appeal the Deputy County Executive's decision to the County Executive, who will independently review the decision. The decision on appeal will be made at the sole discretion of the County Executive.
- (5) The County Executive's decision, made upon advice of counsel, other than counsel defending the employee, will be final.
- (6) If the Deputy County Executive or the County Executive decides that the County will continue to defend the employee with respect to a formal disciplinary charge, the Office of the County Counsel will provide the defense, or at the sole discretion of the County Counsel, will appoint outside counsel of its choice.
- (7) The County will not assume payment of fees or costs incurred by an employee for representation by an attorney privately retained by the employee, unless specifically approved by the County before the commencement of such representation.

(C) Stage 3

- (1) If there is a finding adverse to an employee during Stage 2 of the disciplinary proceedings, and the employee wishes to appeal the finding, the County will, at the request of the employee, continue to provide him or her with County-appointed representation during the appellate process, subject to the provisions below.
- (2) If an employee decides during Stage 1 or Stage 2 of the proceedings that he or she does not want County-appointed representation, the employee may be precluded from receiving County-appointed representation during Stage 3.
- (3) If the County continues to provide County-appointed representation to the employee with respect to the appeal of a formal disciplinary charge, the Office of the County Counsel will provide the defense, or at the sole discretion of the County Counsel, appoint outside counsel of its choice.
- (4) If it is determined at any time during Stage 3 of the proceedings that the Stage 3 Requirements of Section 995.6 have not been met, the County will withdraw its defense. The Deputy County Executive will make such decision upon advice of counsel. The Office of the County Counsel will advise the employee in writing of the Deputy County Executive's decision.

- (5) If the Deputy County Executive determines that the County will not continue to defend the employee in Stage 3, the employee can appeal the Deputy County Executive's decision to the County Executive, who will independently review the decision. The decision on appeal will be made at the sole discretion of the County Executive.
- (6) The County Executive's decision, made upon advice of County Counsel, will be final.
- (7) The County will not assume payment of fees or costs incurred by an employee for representation by an attorney privately retained by the employee during Stage 3, unless specifically approved by the County before the commencement of such representation.

WAIVER

In Re the Inquiry/ Matter of \_\_\_\_\_

I, \_\_\_\_\_ [full name], an employee of \_\_\_\_\_ have received an Inquiry/Complaint from \_\_\_\_\_ in regard to actions arising in the course and scope of my employment for the County. I elect not to have County-appointed representation in this matter. I hereby understand and acknowledge that if I request County-appointed representation at a later stage of this proceeding, the County may refuse to represent me and that I will be solely responsible for my own representation throughout this matter. I further understand and acknowledge that I will not have the right to seek reimbursement from the County for any of the fees, costs, or expenses that I incur in providing my own representation in this matter.

\_\_\_\_\_ Name

\_\_\_\_\_ Date

## **3.56 LITIGATION HOLD POLICY (Adopted 2-28-12)**

### **3.56.1 Purpose**

The County is required to preserve existing and future records that are in any way related to pending or reasonably-anticipated lawsuits. This preservation requirement is commonly referred to as a “Litigation Hold” obligation. The purpose of this policy is to set forth the procedures for initiating, implementing, and releasing Litigation Holds.

### **3.56.2 Background**

The law requires that as soon as the County is notified or becomes aware of the filing of a lawsuit or facts that suggest the potential for a lawsuit, it is obligated to preserve all records that it knows or reasonably should know may be relevant to the lawsuit. The County's Litigation Hold obligation includes suspending routine destruction of records pursuant to any existing County and departmental records retention and destruction schedules and practices.

Courts have broad discretion in penalizing parties who breach their retention obligations. Those penalties could include monetary sanctions or a court order precluding the County from introducing evidence related to the destroyed documents.

### **3.56.3 Scope**

This policy applies to all County departments and employees, and to all documents and records as defined below.

### **3.56.4 Definitions**

(A) Documents/Records

Any writing containing information related to the conduct of the public's business prepared, produced, owned, used, retained, or received by the County, its departments, or employees, regardless of physical form or characteristics, including but not limited to: calendars, charts, databases, diagrams, electronically-stored information such as emails and text messages, exhibits, graphs, invoices, letters, logs, magnetic or paper tapes, maps, memoranda, microfilm, minutes, notes, papers, photographic films and prints, photographs, reports, spreadsheets, video and audio recordings, and voicemails.

(B) Electronically-Stored Information

Electronically-stored information (ESI) includes, but is not limited to: charts, drawings, graphs, images, photographs, sound recordings, writings, and other data or data compilations stored in any electronic medium (e.g., databases, diagrams, digital images, documents, e-mail, instant messages, records, spreadsheets, text

messages, voicemail, and other digital forms requiring the use of computer hardware or software) from which information can be obtained, translated if necessary, into a reasonably usable form that is within the possession, custody, or control of the County and includes embedded data and metadata.

(C) Litigation Hold

A “Litigation Hold” is a legal directive to cease destruction processes and preserve all “Official Records” and “Unofficial Records,” regardless of form, related to the nature or subject of pending or reasonably-anticipated litigation involving the County, its departments, or employees.

(D) Litigation-Hold Liaison

The “Litigation-Hold Liaison” is a person designated by departments to coordinate with the Office of County Counsel (County Counsel), information-technology personnel, ESA Risk Management, and Litigation-Hold Liaisons from other County departments to preserve documents/records.

(E) Official Records

Records are official records of the County's business activities when there is a legal duty to create and/or retain those records, or when they are created during the discharge of the County's official duties. Official records include those that relate to, document, or provide evidence of business activities of employees, departments, or the County as a whole; record decisions, decision-making processes, advice and/or direction; or support the institutional memory of employees, departments, and/or the County as a whole.

(F) Unofficial Records

Unofficial records do not have a role in explaining the functions or activities carried out by employees, departments, or the County. Unofficial records include personal working files that are not ordinarily kept in the course of business; publications, references, duplicates, preliminary drafts, notes, or memoranda that are not ordinarily kept in the course of business.

(G) Records Retention and Destruction Schedule

A Records Retention and Destruction Schedule is a written statement of retention or destruction actions to be taken regarding Official Records produced or maintained by the County. The schedule specifies the length of time that Official Records must be maintained before they are scheduled for destruction or archived.

### **3.56.5 Policy**

- (A) The County, its departments, and employees have a legal duty to preserve all documents that they know or reasonably should know may be relevant to pending or

reasonably-anticipated litigation, as soon as the County, through its Board of Supervisors, departments, or employees, (1) is notified of litigation or facts suggesting potential litigation, or (2) reasonably anticipates litigation.

- (B) The duty to preserve documents/records is not limited to the actual commencement of litigation. In other words, if the County, its departments, or employees receive information that would reasonably suggest that litigation is possible, the duty to preserve is triggered. Triggering events include, but are not limited to, the presentation of a claim, receipt of Notice of Intent to Sue letters, notice that a personnel matter has been filed with the Equal Employment Opportunity Commission (EEOC) or Department of Fair Employment and Housing (DFEH), or receipt of any correspondence that suggests litigation is reasonably foreseeable. The duty to preserve documents/records can, however, be triggered before an employee files a complaint if the County became aware of the possibility of litigation before such a complaint was filed.
- (C) When a County department or employee learns facts that reasonably suggest that litigation is possible, the department and employee are obligated to inform County Counsel of the potential litigation. As soon as a department or an employee is aware of potential litigation, the department and the employee are obligated to preserve all records that might relate to the anticipated litigation, including ESI, and suspend the destruction of documents/records related to the litigation.
- (D) Similarly, as soon as County Counsel or ESA Risk Management advises a department or an employee of the threat of litigation or reasonably-anticipated litigation, the department and its employees are obligated to preserve all documents/records that might relate to the anticipated litigation, including ESI, and suspend the destruction of documents/records related to the litigation.
- (E) When a department or an employee learns of pending or reasonably-anticipated litigation, or when County Counsel requests a department or an employee to institute a Litigation Hold, the department and the employee must promptly contact and coordinate with department personnel, including information-technology staff, to implement the Litigation Hold.
- (F) If a department or an employee is uncertain whether documents must be preserved, they must consult with County Counsel, who will provide the department or employee with direction regarding the nature and scope of records to be preserved pursuant to a Litigation Hold.
- (G) Each department must designate a Litigation-Hold Liaison to coordinate with County Counsel, information-technology personnel, ESA Risk Management, and Litigation Hold Liaisons from other County departments to accomplish Litigation Holds.
- (H) Litigation-Hold Liaisons are responsible for the following:



- (1) Identifying all records, both Official and Unofficial, that might be subject to the Litigation Hold.
  - (2) Assisting County Counsel to identify records, both Official and Unofficial, that might be subject to the Litigation Hold.
  - (3) Providing sufficient information regarding the subject of the pending or reasonably-anticipated litigation to allow employees to conduct a reasonable search for information related to the lawsuit.
  - (4) Taking immediate steps to preserve all records that are identified as related to the pending or reasonably-anticipated litigation until the conclusion of the litigation.
  - (5) Taking immediate steps to suspend the application of document-destruction policies to documents/records that are related to the pending or reasonably-anticipated litigation until the conclusion of the litigation.
  - (6) Coordinating with information-technology personnel to place a Litigation Hold on ESI that is related to the pending or reasonably-anticipated litigation.
  - (7) Coordinating with Litigation-Hold Liaisons from other departments, if any, involved in the pending or reasonably-anticipated litigation.
- (I) Only County Counsel can release Litigation Holds once implemented.

### **3.57 SANTA CLARA COUNTY RECORD RETENTION AND DESTRUCTION POLICY (Adopted 2-10-15)**

#### **3.57.1 Purpose**

This document sets forth a Record Retention and Destruction Policy (Policy) for the County of Santa Clara, its departments, agencies, offices, officers and employees as defined in sections A1 -17 and A1 -18 of the Santa Clara County Ordinance Code (County). The Policy sets forth mandatory procedures to properly and lawfully retain and destroy “Records,” defined in Section 3.57.2.

The Policy is intended to: (1) establish consistent procedures throughout the County for the management, retention, and destruction of Records; and (2) ensure compliance with laws that govern the retention and destruction of those Records that qualify as “Official Records,” defined in Section 3.57.2.

#### **3.57.2 Definitions**

- (A) Records

Records are synonymous with documents and include, but are not limited to, any handwriting, typewriting, printing, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing; any form of written communication or representation, including letters, words, pictures, symbols, or combinations thereof; and any record thereby created, regardless of the manner in which the record has been stored or its physical form or characteristics. Records include “Electronically-Stored Information,” as defined in this Section 3.57.2.

(B) Electronically-Stored Information

Electronically-Stored Information consists of Records stored on a computer or created by using a computer, or any other electronic medium or device for electronic processing, which requires a computer or other electronic medium or device to display or process the Records.

Electronically-Stored Information includes, but is not limited to, e-mails, text messages, instant messages, digital images, voicemail, photographs, sound recordings, compact disks, audiotapes, videotapes, spreadsheets and other data or data compilations stored in any electronic medium from which information can be obtained. Electronically-Stored Information also includes electronic information created through the use of, and contained in, Social Media Applications, as defined in the County's Social Media Application Policy.

(C) Official Records

An Official Record is a Record in the custody of the County that meets any of the following criteria: (1) the Record was prepared to disseminate information to the public; (2) the Record was prepared and retained to memorialize an official transaction; (3) the Record is required by law or regulation to be retained; or (4) the Record is necessary to the discharge of a County employee's official duties and was made or retained for the purpose of preserving its informational content.

Official Records do not usually include preliminary drafts, notes, or memoranda. But preliminary drafts, notes, or memoranda used in the preparation of Official Records may themselves be Official Records when their retention is necessary to disseminate information to the public, to memorialize an official transaction, or to the discharge of a County employee's official duties and was made to preserve their informational content. Official Records also do not include personal communications that do not meet one of the criteria above.

An email may or may not constitute an Official Record. When an email is sent to others simply to communicate messages, and not for one of the purposes described above (e.g., to disseminate information to the public), the email likely is not an “Official Record.”

(D) Record Retention and Destruction Schedules

Record Retention and Destruction Schedules are written statements of retention and destruction requirements that apply to County Records. The schedules specify the length of time that Official Records must be maintained before destruction. The Countywide Retention and Destruction Schedule (the Countywide Schedule) reflects retention and destruction requirements for general categories of Official Records pertaining to multiple County departments, agencies and offices (Departments). Departmental Record Retention and Destruction Schedules (Departmental Schedules) are prepared by County Departments and include retention and destruction requirements with respect to specific Official Records that Departments prepare, own, receive, use, or retain. Whether a Record constitutes an Official Record is a determination made by the Department(s) with custody of the Record.

### **3.57.3 Background**

The County generates, receives, handles, and maintains many Records in the performance of its business activities as a public entity. There are at least four reasons why the County must effectively manage and ensure the proper retention and destruction of Records. First, the efficient, effective, and economical management of Records in a regulated environment will ensure the availability of information in the conduct of County business and will allow the County to establish and maintain control over its information flow.

Second, the law requires that certain types of Official Records must be retained for specified time periods. To comply with these laws, it is essential that Official Records are properly managed and retained during the mandated retention period, and then timely destroyed.

Third, the California Public Records Act (CPRA) is intended to increase freedom of information by giving the public access to certain information in the possession of public agencies. (Govt. Code §§ 6250-6270.) The CPRA gives members of the public the right to inspect public records that are not exempt from disclosure. (Govt. Code § 6253.) To ensure public access to Records, it is essential that all Records are properly managed to comply with the law.

Fourth, the law imposes an obligation on the County to preserve relevant evidence as soon as the County reasonably anticipates litigation against or by the County. The duty to preserve evidence includes an obligation to identify, locate, and maintain Records that are relevant to specific, predictable, and identifiable litigation. Once the obligation to preserve Records has been triggered, record retention and destruction policies must be suspended and Litigation Holds implemented to ensure the preservation of relevant Records. (*See* Board Policy 3.56, Litigation Hold Policy.) Appropriate policies for the management of Records enable the County to properly implement Litigation Holds.

### **3.57.4 Scope of Policy**

This Policy applies to all Records generated, prepared, authored, produced, owned, used, created, retained, or received by the County during the ordinary course of County business, provided those Records are within the possession, custody, or control of the County.

This Policy is distinct from, and in addition to, the requirements of the CPRA, which gives members of the public the right to inspect “public records.” The term “public records” is defined more broadly in the CPRA (Govt. Code § 6252(e)) than the term “Official Records” is defined in this Policy. The CPRA defines “public records” to “include any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.” Govt. Code § 6252(e). Accordingly, a document that is not an Official Record may still qualify as a public record. Thus, compliance with this Policy does not ensure compliance with the CPRA; County employees must separately adhere to both this Policy and the CPRA.

### **3.57.5 Policy**

#### **(A) Departmental Record Retention and Destruction Policies and Retention Schedules**

The development of Departmental Record Retention and Destruction Policies (Departmental Policies) consists of four primary steps. First, Departments must prepare an inventory of their Records by identifying and cataloguing the types, classes, and categories of existing Records, where and how those Records are kept, the volume of those Records, and the uses of each type, class, and category of Records.

Second, Departments must appraise the catalogued Records by: (1) identifying Official Records and separating them from non-Official Records; and (2) identifying Records that can be destroyed immediately and the appropriate method of destruction.

Third, upon completion of Departmental Record inventories and appraisals, Departments must prepare Departmental Schedules, which must be consistent with the Countywide Schedule. To prepare these schedules, Departments must determine the retention period for each type, class, or category of Official Records as described in Section V. B. below. Also, Departments must determine whether Official Records have specifically-articulated vital, administrative, legal, fiscal, or research/historical/archival value, as defined in Section 3.57.5(B). Departmental Schedules must contain the title of each category of Official Records; a description of those Official Records; applicable retention periods; and applicable laws, regulations, and/or policies mandating or warranting the stated retention periods. Departmental Schedules must also identify Records with specifically-articulated vital, administrative, legal, fiscal, or research/historical/archival value, as defined in Section 3.57.5(B), and list the extended retention periods for those Records. The

Offices of the Board of Supervisors are not required under this Policy to prepare or maintain Departmental Schedules.

Departments must review their Departmental Schedules with County Counsel at least every five years to ensure that the schedules comply with the law and properly reflect Departmental record retention and destruction practices. Whenever there is a change in the legal requirements for record-retention periods or a significant change in Departmental record keeping practices, Departmental Schedules must be amended immediately. Departments should consult with County Counsel to determine whether any changes in Departmental record keeping practices are significant under this Policy. Departmental changes of mission, added functions, or new programs can require amendments to Departmental Schedules.

And finally, upon completion of the Departmental Schedules, Departments must prepare their own Departmental Policies, which must be consistent with this Santa Clara County Record Retention and Destruction Policy. Departmental Policies must define internal processes for the management, retention, and destruction of Departmental Records. Departmental Policies must be prepared in consultation with County Counsel to ensure compliance with the law. Departmental Schedules must be attached to Departmental Policies and be incorporated therein by reference. The Offices of the Board of Supervisors are not required under this Policy to prepare or maintain Departmental Policies.

Departments must include in their Departmental Policies procedures to manage, retain, audit and destroy Electronically-Stored Information commensurate with that accorded other forms of Records. Except as otherwise provided below, emails and other Electronically-Stored Information require the same degree of management, retention, and destruction as hard-copy Records and other physical media. To ensure its integrity and availability, Electronically-Stored Information must be maintained in a reliable electronic record keeping system that makes it readily accessible.

(B) Record Retention and Destruction Periods

As described in more detail below, record retention and destruction periods are determined as follows:

(1) General retention requirements

- (a) All Official Records, including emails and other Electronically-Stored Information, must be retained for a legally-mandated minimum period of at least two years (very limited exceptions to this two-year minimum period are provided by statute);
- (b) The law requires that certain types of Official Records must be retained more than two years. In these instances, the retention periods generally range between three and twenty years. When the law provides for a retention period of more than two years for specified

types of Official Records, Departments must retain the Official Records for the legally-mandated period; and

- (c) Official Records that have specifically-articulated vital, administrative, legal, fiscal, or research/historical/archival value may be retained longer than the legally-mandated period. The specific retention period applicable to such Official Records must be specified in the Departmental Schedules.

(2) Minimum two-year retention period

If the law does not provide a mandatory retention period for specific types of Official Records, the minimum retention period for Official Records is two years. (Govt. Code § 26202.) In such cases, all Official Records, including emails or other Electronically-Stored Information, must be retained for two years after preparation or receipt thereof.

Official Records should be destroyed after the two-year period has expired, unless: (1) Department Heads determine that they have specifically-articulated vital, administrative, legal, fiscal, or research/historical/archival value justifying a longer retention period; (2) there is a pending CPRA request; or (3) there is a Litigation Hold.

The two-year minimum retention period does not apply to non-Official Records.

(3) Specific retention periods greater than two years

The law provides mandatory retention periods for certain types of Official Records. When the law provides a specified retention period for Official Records of more than two years, they must be retained for the specified period.

Official Records should be destroyed after the legally-mandated period has expired, unless: (1) Department Heads determine that they have specifically-articulated vital, administrative, legal, fiscal, or research/historical/archival value justifying a longer retention period; (2) there is a pending CPRA request; or (3) there is a Litigation Hold.

(4) Retention periods for Official Records that have vital, administrative, fiscal, legal, and research/historical/archival value

Official Records may be retained for longer than the legally-mandated period only when Department Heads determine that the Records have a specifically-articulated vital, administrative, fiscal, legal, or research/historical/archival value that justifies a retention period longer than the legally-mandated period. In determining whether to retain Official Records for more than the legally-mandated retention period, Department Heads must consider

the Official Records' vital, administrative, fiscal, legal, and research/historical/archival value, defined as follows:

- (a) Vital Value: Records generally have vital value when they are essential for the reconstruction and continuation of operations if a disaster or an emergency negatively impacts the County's business.
- (b) Administrative Value: Records generally have administrative value as long as they can be shown to significantly assist the County in performing current or future public-entity business.
- (c) Legal Value: Records generally have legal value if they contain evidence of the County's legally-enforceable rights or obligations.
- (d) Fiscal Value: Records generally have fiscal value if they pertain to financial transactions.
- (e) Research/Historical/Archival Value: Records generally have enduring research/historical/archival value if they reflect significant historical events or document a significant aspect of Departmental history or development.

If Department Heads determine that certain types of Official Records must be retained permanently or for a period exceeding the legally-mandated period, Department Heads must specify the extended retention period and the reason justifying the extended retention period. The extended retention period must be included in Departmental Schedules. These Official Records should be destroyed once the extended retention period has expired or they no longer serve a vital, administrative, legal, fiscal, or research/historical/archival purpose, whichever comes first, unless: (1) the Department Head determines that the Official Records must be retained for a longer period of time; (2) there is a pending CPRA request; or (3) there is a Litigation Hold.

Department Heads may further extend an extended retention period if they determine that the Records continue to have a specifically-articulated vital, administrative, legal, fiscal, or research/historical/archival value. Department Heads must specify the duration of the further extended period and the reason justifying the further extended retention period, which should be included in the Departmental Schedules.

(5) Retention of non-Official Records

Non-Official Records should be deleted or destroyed immediately or as soon as reasonably practicable unless they are subject to a Litigation Hold (*See* Litigation Hold Policy) or pending CPRA request.

(6) Deletion of electronic mail (emails) more than two years old

If an email is not an Official Record, the email does not have to be preserved and should be deleted.

If an email constitutes an Official Record, the user must take affirmative steps to retain the email. All emails that constitute Official Records must be retained for a minimum period of at least two years. Emails that constitute Official Records should be permanently deleted after two years from preparation or receipt unless they are subject to a legally-mandated period exceeding two years. If the emails are subject to a legally-mandated retention period exceeding two years, steps must be taken to ensure that they are not prematurely deleted after two years.

The same steps must be taken for Official Records that serve a specifically-articulated vital, administrative, legal, fiscal, or research/historical/archival purpose. Failure to take such steps may result in the inappropriate deletion of Official Records. Official Records and non-Official Records that are subject to a pending litigation hold and/or a pending CPRA request must not be deleted without prior approval by the Office of County Counsel.

(C) Duplicates and Reproductions

In determining whether, when, and how to manage, preserve, and destroy Official Records, including emails and other Electronically-Stored Information, the following guidelines must be considered:

- (1) A duplicate copy of an Official Record may be destroyed before the expiration of any minimum retention period, provided the original Official Record or a true and accurate digital reproduction of the original Official Record is preserved throughout the minimum retention period. (Govt. Code §§ 26201, 26206.7.) This provision applies to both hard-copy and digital Official Records.
- (2) An original Official Record, whether in digital or hard-copy (e.g., paper) form, may be destroyed before the expiration of the applicable retention period if:
  - (a) No law expressly requires that the original Record be maintained in its original form;
  - (b) The original Official Record is reproduced and stored using a reliable system of digital reproduction and storage that does not permit additions, deletions, or changes to the original Record. Best practices require a combination of techniques, policies, and procedures for which there is no plausible scenario in which a document retrieved from or reproduced by the system could differ substantially from the original Record (Govt. Code §§ 26205.1, 12168.7.); and,
  - (c) The reproduction is available for public use.



(D) Destruction of Records

(1) Destruction of Official Records, including emails

Official Records, including emails, should be destroyed after the following determinations have been made:

- (a) The Official Records have been retained for the legally-mandated period specified in the Countywide Schedule and the Departmental Schedules; and
- (b) If no such legally-mandated retention period exists, the Official Records have been retained for the minimum two-year retention period; and
- (c) The Official Records have been retained for the period, if any, determined by Department Heads and set forth in the Departmental Schedules specifying that the Official Records have vital, administrative, fiscal, legal, or research/historical/archival value; and
- (d) The Official Records are not subject to a Litigation Hold (*See Litigation Hold Policy*) or pending CPRA request.

(2) Destruction of non-Official Records, including emails

Non-Official Records, including emails, should be destroyed after the person or Department in possession of the Official Records has determined that the Records are not subject to a Litigation Hold (*See Litigation Hold Policy*) or pending CPRA request.

(3) Destruction methods

- (a) Non-confidential Records must be recycled if possible.
- (b) Confidential Records must be destroyed pursuant to Board Policy 3.25, Policy Relating to Confidentiality of Documents.
- (c) Non-confidential and confidential Records in the form of emails or Electronically-Stored Information must be permanently deleted.

(E) Department Head Responsibilities

- (1) Department Heads or their specifically-appointed designees will be responsible for the preparation and implementation of Departmental Policies and Departmental Schedules, and will appoint a specific person responsible for the preparation and implementation thereof.
- (2) Department Heads or their specifically-appointed designees must update the Departmental Schedules immediately upon legal changes pertaining to

retention periods or significant Departmental changes. Regardless of any amendments, Departments must review their Departmental Schedules with County Counsel at least every five years to ensure the Departmental Schedules accurately and completely reflect the Departments' records retention and destruction policies.

- (3) Department Heads or their specifically-appointed designees must communicate Departmental Policies, Departmental Schedules and the Countywide Schedule to all employees; ensure that all Department employees receive training regarding the provisions, application, and implementation of Departmental Policies and Departmental Schedules; and ensure compliance with Departmental Policies, Departmental Schedules and the Countywide Schedule.
- (4) Department Heads or their specifically-appointed designees must appoint individuals to act as records-management program coordinators to assist employees in records-management functions and to coordinate records management with other Departments, when appropriate.
- (5) Department Heads must be familiar with other statutes bearing on destruction of records.

(F) Approval of Departmental Schedules

The Board of Supervisors must authorize the destruction of specific categories of Official Records by approving the Countywide Schedule and the Departmental Schedules. Each Department shall submit to the Board for its approval a Departmental Schedule that sets forth the specific retention period for each category of Official Records in the Departmental Schedule. County Counsel must approve each Departmental Schedule and the Countywide Schedule before it is submitted to the Board. When a Department revises a Departmental Schedule, it must, before implementation, submit the revised Departmental Schedule first to County Counsel for review and then to the Board for approval.

### **3.58 LANGUAGE ACCESS (Adopted 3-24-15; Amended 6-6-23)**

Santa Clara County is a linguistically diverse community, with its residents speaking more than 100 distinct languages from across the globe. According to the 2020 U.S. Census, Santa Clara County has the highest percentage of foreign-born residents in the State and more than half of its residents speak a language other than English at home. Additionally, according to the Centers for Disease Control and Prevention, 5.7 percent of U.S. adults are deaf or have serious difficulty hearing and 4.9 percent of U.S. adults have a vision disability with blindness or serious difficulty seeing even when wearing glasses.

Language access services are critical to serving Santa Clara County residents. To effectively serve its diverse community, the County of Santa Clara seeks to ensure that every resident has meaningful access to County services, programs, benefits, and information.

To further this goal, the County strives to meet the language access needs of residents to help them obtain County information and reduce barriers to meaningful engagement. In general, the County's threshold languages based on 2020 Census data include English, Spanish, Chinese, Vietnamese, and Tagalog. Departments and agencies may have different threshold languages based on applicable Federal or State laws and/or data specific to the languages spoken by the members of the public that the department or agency serves.

The County reaffirmed its commitment to addressing language access needs by establishing the Language Access Unit in the County's Division of Equity and Social Justice. The Language Access Unit connects, provides, and promotes high-quality and culturally appropriate language services to County departments and agencies that interact with individuals with limited English proficiency and those who have language access needs related to a disability. The Language Access Unit partners with County departments and agencies to lead more systemic efforts to expand the provision of language services, as well as procure and manage Countywide language access services through authorized vendors. The Language Access Unit seeks to ensure all residents, regardless of their language background or ability, can access the critical information, benefits, and services offered by the County.

In furtherance of this goal, the County is committed to striving to achieve the following:

- (A) Every County department and agency shall ensure that members of the public who are limited English proficient are provided language interpretation services including sign language at no cost to ensure meaningful access to County public information, benefits, and services. Language interpretation services shall be available as provided in the County's Language Access Guidelines and Procedures to those attending public County functions and meetings, visiting County facilities, and participating in public County programs and services. Interpretation services may be provided in person, over the phone, or via videoconferencing.
- (B) Every County department and agency shall at minimum translate into the County's threshold languages all client or public-facing vital documents, including any client or public-facing materials that are necessary for applying for or explaining services available to the public. Departments and agencies must identify the categories of documents that are considered vital documents as provided in the County's Language Access Guidelines and Procedures.
- (C) In consultation with the Language Access Unit, every client or public-facing County department and agency shall identify public areas in which to post notices regarding the availability of interpretation services in at least the County's threshold languages. Examples of public areas departments should consider include front lobbies and other areas of departmental facilities where members of the public regularly interact with staff, as well as websites and social media (if applicable). Notices should communicate that interpretation service(s) and other language access services are available at no cost to the public and the languages for which interpretation service(s) are available. In addition, client or public-facing facilities should work to ensure that signage and wayfinding notices incorporate universal

symbols and are posted in public locations. The Language Access Unit may provide template notices upon request; departments and agencies must customize the templates to their unique needs, including to comply with any legal requirements applicable to the particular department or agency.

- (D) The County values bilingualism and the ability of bilingual employees to communicate directly with members of the public who are limited English proficient. Consistent with the Dymally-Alatorre Bilingual Services Act, the Language Access Unit, in collaboration with the Employee Services Agency, shall support County departments and agencies in staffing a sufficient number of qualified bilingual persons who regularly interact with members of the public as part of their job duties. Qualified bilingual employees who regularly interact with the public may communicate directly, in their certified language, with the public about services and programs related to their roles. However, as a reminder, qualified bilingual employees may or may not be qualified to serve as interpreters or translators. Therefore, County departments and agencies are reminded to confirm that qualified bilingual employees are trained or certified in interpretation or translation before relying on the employees to offer such services.
- (E) When planning for and responding to crisis, emergency, and public safety situations, all County departments and agencies involved shall prioritize language access services and work with the Language Access Unit to the extent feasible to ensure the appropriate staff are present and available to assist individuals with limited English proficiency and other language access needs as necessary. If the crisis, emergency, or public safety situation requires the posting of warning signs, the departments and agencies shall if feasible translate those signs to, at a minimum, the threshold languages as soon as practicable.
- (F) Client or public-facing County departments and agencies will consult with the Language Access Unit and the Office of the County Counsel to determine whether a Language Access Plan should be developed, as provided in the County's Language Access Guidelines and Procedures, which will be updated to reflect the updates made to this Policy.
- (G) Client or public-facing County departments and agencies in partnership with the Language Access Unit shall make reasonable efforts to gather and retain information relating to the language access needs of the members of the public served by the County department or agency, as well as the provision of language access services by the department or agency, as provided in the County's Language Access Guidelines and Procedures.

The above requirements and guidance are in addition to, and do not supersede, any requirements under Federal or State law that may apply to the County or certain departments or agencies within the County. To the extent requirements in any applicable laws or regulations differ from the requirements set forth in this Language Access Policy, County departments or agencies should consult with the Office of the County Counsel.

While this Policy is not intended to address the supports and services required by the Americans with Disabilities Act and its implementing guidelines and regulations, or any other legal requirements related to supports and services for individuals with disabilities, the County is committed to supporting language access for people with disabilities. Language supports for those with disabilities include services for individuals who are deaf or hard of hearing and communicate using sign language, or who are blind or have low vision.

### **3.59 LACTATION ACCOMMODATION (Adopted 4-21-15)**

The County of Santa Clara recognizes that breast milk is the optimal food for growth and development of infants. Extensive research documents diverse and compelling advantages to infants, mothers, families, and society from breastfeeding and the use of human milk for infant feeding. These include health, nutritional, immunological, developmental, psychological, social, economic, and environmental benefits.

Both Federal law (29 U.S.C. § 207(r)) and California law (Lab. Code §§ 1030-1033) require employers to provide a location to express breast milk in private and a reasonable amount of break time to accommodate women wishing to express breast milk. The Board of Supervisors affirms that it is the policy of the County of Santa Clara to provide a room or other private location and a reasonable amount of break time for County employees who wish to express breast milk or nurse an infant at work.

Therefore, it is the policy of the Board of Supervisors that:

(A) Breaks

- (1) A reasonable amount of break time must be provided to employees who want to express breast milk or nurse an infant.
- (2) The break time shall, if possible, coincide with any paid break time already provided to the employee. Additional break time that does not run concurrently with the break time authorized for the employee by the County shall be unpaid.

Generally, a nursing mother needs to express breast milk every 2-3 hours, and a typical pumping session requires 20-40 minutes, including time for travel to and from the private lactation space, expression of milk, clean up and storage.

- (3) With supervisory approval, the employee may use personal leave, vacation time, compensatory time off (comp time), a flexed work schedule, or any other arrangement allowed under the employee's labor agreement to cover any unpaid break time.

(B) Space

- (1) Every County department shall make reasonable efforts to provide employees with a room or other private location in which to express milk or nurse an infant. This space must not be a bathroom (29 U.S.C. § 207(r)(1)(b)) or a toilet stall (Lab. Code § 1031), and the space should be in close proximity to the employee's work area. For the purposes of this policy, "close proximity" means generally not more than a 5-minute walk.

A room or location can be made private by placing a message on the door that the room is in use, drawing blinds or curtains, covering windows, or setting up a portable partition. The room or location may include the place where the employee normally works if it is shielded from view, free from intrusion from coworkers and the public, and otherwise meets the requirements of this policy.

- (2) At existing County buildings designated as Major County Facilities by the County Executive, the County shall make available, at minimum, one dedicated lactation accommodation room with each of the following characteristics:
  - (a) A door that locks with a thumb lock, key pad lock, or ID badge reader.
  - (b) An electrical outlet that will accommodate a breast pump.
  - (c) Close proximity to a refrigerator.
  - (d) Close proximity to a sink with running water for hand washing and cleaning of equipment.

When the County constructs a new facility or acquires a facility, a dedicated lactation accommodation room with these characteristics is required, unless waiver is granted by the Office of the County Executive for small buildings, special uses, or occupancies, etc. Waiver will only be granted after advance consideration of the appropriateness for such rooms in the planning process. Public access to dedicated lactation accommodation rooms should be provided when doing so does not compromise the security of County operations. California law permits a mother to breastfeed her child in any location, public or private, where the mother and child are otherwise authorized to be present (Civ. Code § 43.3).

- (3) The County Executive shall maintain a list of Major County Facilities that contain dedicated lactation accommodation rooms and ensure that the list is available to all County employees, and that the procedures necessary for employees and visitors to access these spaces are implemented. For employees at non-traditional County worksites, the employee's supervisor will work with the employee to create a mutually acceptable solution. This may include a flexible schedule to allow the employee to return home for such activity, a temporary transfer to another facility, or other resolution. Addi-

tionally, the County should endeavor to make available dedicated lactation accommodation rooms containing these characteristics at every County facility where doing so would be feasible and when it is determined that a permanent room is the best way to ensure that the requirements of this policy are met.

(C) Storage

- (1) A hygienic and secure location will be available for employees to store expressed milk.

(D) Notification/ Education

- (1) A copy of this policy shall be disseminated to every incoming and current employee.
- (2) Breastfeeding accommodation information shall be included in employee orientation materials.
- (3) Managers and supervisors shall be familiar with County Lactation Accommodation policies.
- (4) A breastfeeding education packet, including a copy of this policy and breastfeeding support after returning to work, shall be made available to employees prior to their maternity leave.
- (5) Materials related to breastfeeding and lactation accommodation shall be posted on the County of Santa Clara website, to be made available to employees and the community.
- (6) Information promoting the benefits of breastfeeding and lactation accommodation shall be displayed in break areas.

(E) Atmosphere of Acceptance

- (1) Breastfeeding should not constitute a source of discrimination in employment or in access to employment. It is prohibited under this policy to harass a breastfeeding employee or exercise any conduct that creates an intimidating, hostile or offensive working environment. Any incident of harassment of a breastfeeding employee will be addressed in accordance with the County of Santa Clara's policies and procedures for discrimination and harassment.

(F) Children in the Workplace

- (1) Except as described above, this policy does not change existing County practice concerning children in the workplace.

The County Executive shall ensure that the Board's policy on lactation accommodations is made known to all County employees, and that the procedures necessary to assure compliance are implemented.

### **3.60 POSTING OF BAIL AGENT AND CRIMINAL DEFENSE ATTORNEY INFORMATION IN COUNTY JAILS (Adopted 11-1-16)**

The County of Santa Clara recognizes that it is essential for individuals held at County jail facilities to have access to information about all available options for pretrial release and legal representation. As long as state law permits jail inmates to obtain pretrial release by posting a commercial bail bond, the information provided in County jail facilities should include contact information for bail agents together with or alongside information regarding all other available release options. In addition, because not all jail inmates qualify for, or wish to use the services of, the County of Santa Clara Public Defender Office, the information provided should include contact information for private criminal defense attorneys.

The County also recognizes that the information provided about bail agents and criminal defense attorneys should be neutral and accurate and should facilitate prompt pretrial release and legal representation. Individuals held at County jail facilities who choose to use the services of bail agents and/or private criminal defense attorneys are more likely to obtain prompt release and representation if they have access to bail agents and criminal defense attorneys who comply with state licensing requirements and are located in Santa Clara County. Therefore, it is the policy of the Board of Supervisors that duly licensed bail agents and criminal defense attorneys located in Santa Clara County be given an opportunity to submit information for posting in County jail facilities, in accordance with the following provisions.

(A) Posting of Information

- (1) Information on bail agents and private criminal defense attorneys may be posted in all County jail facilities. As used herein, the term "bail agent" refers to either a bail bond company or an individual bail agent. Information shall be limited to one listing per bail bond company (i.e., one name, address, phone number, etc., per company). If a bail bond company employs multiple bail agents, the individual bail agents shall not be named or listed separately.
- (2) Information shall be limited to bail agents and criminal defense attorneys who have an office in and do business in Santa Clara County, and who provide their information to the County as required by this Policy.
- (3) Posted information shall include, in a standardized, black and white, text-only format:
  - (a) The name of the bail agent or criminal defense attorney;



- (b) The name of the bail agent's company or the attorney's law firm, if applicable;
  - (c) The California Department of Insurance Bail License number or California State Bar number of the bail agent or attorney;
  - (d) A local phone number for the bail agent or attorney;
  - (e) The local address where the bail agent or attorney conducts business;
  - (f) The bail agent's or attorney's email address and/or web address, if any;
  - (g) An indication of whether the bail agent or attorney is able to conduct business in Spanish and/or any other language in which the Santa Clara County Registrar of Voters provides election materials pursuant to Election Code Section 14201.
  - (h) An indication of whether the bail agent or attorney has been disciplined by the Department of Insurance or the State Bar of California, or has been convicted of unlawful activity related to the provision of bail bonds or legal services, within the past five years.
- (4) The information shall be posted in locations that enable individuals in custody to make calls to bail agents and/or criminal defense attorneys at appropriate times. Reasonable efforts shall be made to provide this information together with or alongside information about other pretrial release options, including the Office of Pretrial Services, and the services of the County of Santa Clara Public Defender Office.
- (5) The posted information shall be updated annually.
- (6) Information about bail agents and criminal defense attorneys shall be posted in random order and re-ordered on an annual basis. The random order shall be computer-generated, for example by using spreadsheet software to randomize a list of bail agents and attorneys. Bail agents shall be listed separately from criminal defense attorneys.
- (B) Requests to Have Information Posted
- (1) Any bail agent or criminal defense attorney who wishes to have his or her information posted in County jail facilities must submit a request on an annual basis, at a time and through a process determined by the relevant County department. However, a bail bond company employing multiple bail agents, or a law firm employing multiple attorneys, is limited to one request; individual bail agents or attorneys within the same company may not submit separate requests and may not be listed separately. It shall be a rebuttable

presumption that individuals using the same phone number or address are associated together.

- (2) The request must include the following information:
  - (a) All information listed in Section (A)(3) above.
  - (b) A list of any disciplinary actions taken by the California Department of Insurance or the State Bar of California against the bail agent or attorney within the past five years, and the dates of any such actions.
  - (c) A list of any convictions against the bail agent or attorney within the last five years related to the provision of bail bonds or legal services, and the dates of any such convictions.
- (3) The request must include a certification, under penalty of perjury, that:
  - (a) The information provided in the request is true and correct.
  - (b) The bail agent has an active license issued by the California Department of Insurance or the attorney is an active member in good standing of the State Bar of California.
  - (c) In providing bail or legal services in Santa Clara County, the bail agent or attorney complies with all applicable state, federal, and local laws, rules, and regulations.
  - (d) The bail agent or attorney (or the attorney's law firm) has complied with any applicable local licensing or permitting requirements.
  - (e) The bail agent or attorney conducts business out of a physical office located in Santa Clara County. For purposes of this Policy, the term "office" means a location that maintains files; is listed with the Department of Insurance or the State Bar of California as the office address of the bail agent, bail bond company, or attorney; and is open to the public. As applied to bail agents, the address of the office must match the address posted on the face sheet of the bonds issued by the bail agent or bail bond company.
  - (f) The local phone number provided connects the caller with the bail agent's or attorney's physical office in Santa Clara County.

(C) Requirement to Update Information

- (1) If any information provided or verified by a bail agent or attorney changes after a request has been submitted, the bail agent or attorney must notify the relevant County department within 15 business days.

- (2) If a bail agent or attorney provides notice that he or she is no longer actively licensed by the California Department of Insurance or in good standing with the State Bar of California, the bail agent or attorney's information may be removed from County jail facilities.
- (3) If a bail agent or attorney provides notice that he or she no longer conducts business out of an office physically located in Santa Clara County, the bail agent or attorney's information may be removed from County jail facilities.
- (4) If a bail agent or attorney provides notice that his or her local phone number or address has changed, but is still located in Santa Clara County, efforts may be made to update the bail agent or attorney's information in County jail facilities. This provision does not obligate the County to update the information more than annually.

(D) Non-Compliance

Failure by a bail agent or attorney to comply with the provisions of this Policy shall result in removal of the bail agent's or attorney's information from County jail facilities; denial of the bail agent's or attorney's request to have information posted at the next annual posting of information; and/or a requirement that the bail agent or attorney submit documentation to verify the information provided in subsequent requests. Repeated or serious violations may result in disqualification from all future postings.

### **3.61 MEDICAL EXAMINER-CORONER'S OFFICE DETERMINATIONS OF MANNER AND CAUSE OF DEATH (Adopted 12-6-16)**

Except as provided for by state law, it is the policy of the Board of Supervisors that determinations of cause and manner of death by the Medical Examiner-Coroner's Office shall not indicate, reflect, or suggest criminal or civil fault or liability, which is a determination to be made by a court or appropriate administrative body.

### **3.62 RESTROOM ACCESS (Adopted 3-14-17)**

In accordance with the County's Policy Against Discrimination, Harassment, and Retaliation, the County of Santa Clara seeks to ensure that every visitor to County facilities has meaningful access to County programs, services, and facilities. To further this goal, the County shall strive to provide adequate and necessary access to restroom facilities to all members of the public visiting County facilities as well as to all employees.

The Board of Supervisors recognizes that transgender and gender-nonconforming persons may experience harassment in public restrooms, or in restrooms at their places of work. Required use of gender-specific restrooms can create unnecessary risks of transgender and gender-nonconforming individuals being denied access, verbally harassed, or physically

assaulted in these facilities. These experiences, in turn, may deter participation in public life, and may discourage those individuals from seeking resources and services.

The Board recognizes that the provision of all-inclusive restrooms reduces these risks, and also benefits the wider community. All-inclusive restrooms provide universal access for families with children, people with disabilities who rely upon personal care assistance from an attendant or family member, and seniors who require assistance or supervision.

All-inclusive restrooms become essential to individuals in the process of transitioning and for those whose gender identity is non-binary. The mission for the County of Santa Clara includes, “to plan for the needs of a dynamic community, provide quality services, and promote a healthy, safe and prosperous community for all.” As such, the County takes measures to ensure inclusion, promote diversity, and strive toward equity for our community relevant to race, color, sex, religion, gender, sexual orientation, ability, and all of the protected classes in the State of California.

Within the constraints of the California Building Standards Code, it is the policy of the Board of Supervisors that:

- (A) Individuals shall have the right to use gender-specific restrooms at County facilities that are consistent with and appropriate to their gender identity, regardless of their sex assigned at birth, anatomy, medical history, appearance, or the sex indicated on their identification.
- (B) Individuals shall not be required to provide medical or legal documentation of their gender to have access to gender-specific restrooms at County facilities, except in situations where all persons are asked to verify their gender.
- (C) For construction of new County-owned buildings where restrooms are provided, the County must include at least one all-inclusive restroom in the building, and it must be accessible to both members of the public and County employees. For purposes of this policy, “County-owned” includes buildings designed and/or built by third parties that are to become property of the County upon completion. This requirement will apply only to the construction of County-owned buildings beginning design on or after the date of adoption of this policy.
- (D) When extensive renovations are made to either restrooms or one or more of the floors of an existing County-owned building that does not already contain an all-inclusive restroom, the project shall include an all-inclusive restroom. For the purposes of this policy, “extensive renovations” is defined as when the construction cost for the renovation exceeds 50% of the replacement cost of the area being renovated. This requirement will apply only to renovation of County-owned buildings beginning design on or after the date of adoption of this policy.
- (E) All-gender signage and wayfinding notices in County facilities shall comply with the all-gender restroom signage standard that incorporates universal symbols and be posted in public locations. All single-user restrooms shall be identified as all-

gender restrooms by signage and be designated for use by no more than one occupant at a time or for family or assisted use.

- (F) In instances where hardship may preclude full compliance with these guidelines, a waiver from this policy may be approved by the County Executive or designee. For example, if it is determined to be physically impracticable to provide an all-inclusive restroom in a County building, the County may elect to provide an all-inclusive restroom in a nearby building. For purposes of this policy, “nearby” is defined as a building within two minutes of pedestrian travel between building entrances.

The Board of Supervisors delegates to the County Executive the responsibility to implement this policy.

### **3.63 AUTOMATIC RECOUNTS IN LOCAL RACES (Adopted 2-27-18)**

The Registrar of Voters shall conduct, prior to certification of election results, manual recounts in all contests wholly contained within Santa Clara County (excluding those for state and federal office) where the margin of victory is either less than 0.25 percent of the ballots cast, or less than 25 votes, except for countywide races or citywide races in the City of San Jose for which machine recounts may be used.

### **3.64 POLICY ON THE OFFICE OF CORRECTION AND LAW ENFORCEMENT MONITORING (Adopted 4-17-18)**

This Policy supplements the Ordinance Code, Division A20, Chapter V (“the Ordinance”) by providing Board policy direction regarding the Office of Correction and Law Enforcement Monitoring (“Office”).

#### **3.64.1 Selection of the Monitor**

The Board shall select an independent contractor (“the Monitor”) to perform the functions of the Office through a formal competitive solicitation process. The Clerk of the Board shall administer the solicitation process in consultation with County Counsel.

An ad hoc committee of the Board of Supervisors shall perform an initial evaluation of proposals received pursuant to the solicitation and select finalists for further consideration as follows: After the Clerk of the Board, in consultation with County Counsel, identifies qualified proposals, the ad hoc committee shall evaluate those proposals in a confidential setting.

The Board intends to use an inclusive solicitation process that involves participation and input from affected communities. As part of this process, the Board shall appoint an evaluation committee to evaluate the finalists selected by the ad hoc committee. The evaluation committee should include representation from the following affected communities:

- Families of incarcerated individuals;
- Registered employee organizations representing staff in the Sheriff's Office, Department of Correction, Custody Health, and other affected departments;
- A current or retired judge;
- The Employee Services Agency;
- Medical and mental health professionals;
- Current or former directors of law enforcement monitoring bodies; and
- The general public.

The Board may modify or add other representatives to this list at its discretion. The evaluation committee shall consider and evaluate the finalists in open, public meetings and make recommendations to the Board. The Board shall consider the evaluation committee's recommendations in selecting the Monitor.

### **3.64.2 Contract Oversight**

The Board shall oversee the contract with the Monitor. The Board shall designate a Board Member or Board Appointee to serve as the contract liaison for the purpose of managing the services provided by the Monitor under the contract. The contract shall provide for the development of work plans, reporting, and performance standards consistent with this Policy.

The Monitor shall serve as an independent contractor that shall have discretion to determine the manner and method by which it develops and implements its work plans and satisfies performance standards, including discretion over the hiring, supervision, training, and compensation of its staff.

### **3.64.3 Development of Work Plans; Mission Alignment**

The Office shall annually prioritize issues that it believes should be monitored under the Ordinance and policies that it believes the Board should consider. These priorities shall be identified in an annual work plan approved by the Board.

The work plan shall also discuss how the Office intends its work to support mission alignment relating to law enforcement and jail operations and ensuring that the Board's goals and the purposes of the Office as described in Ordinance Code Section A2-61 are met.

### **3.64.4 Reporting to the Board and Public**

Consistent with its Board-approved work plan, the Office shall report to the Board on its activities at least quarterly. In addition, the Office shall provide at least one public, annual report each November.

### **3.64.5 Measuring Effectiveness**

The Board shall annually establish performance standards for the Office, and the Office shall report on its adherence with such standards in its annual report. The Office shall also describe in its annual report how its work contributes to the overall effectiveness of the criminal justice system, including but not limited to reducing recidivism, enhancing public safety, and furthering the safety of staff.

### **3.65 PROHIBITION ON BULLYING IN YOUTH-FACING DEPARTMENTS AND PROGRAMS (Adopted 6-19-18)**

The County of Santa Clara seeks to ensure that the County's departments, programs, and facilities that serve youth provide a safe and positive environment for all youth. Lesbian, gay, bisexual, transgender, and queer (LGBTQ) youth, and youth who are perceived as LGBTQ, face an increased risk of being bullied, among other vulnerable categories of youth.

For the purposes of this Policy, the Board defines bullying as any severe or pervasive act or conduct, whether physical, electronic, or verbal, committed by a youth against another youth, that:

1. May, but need not, be based on a youth's actual or perceived characteristics, including but not limited to race, color, ethnicity, religion, national origin, age, gender, gender identity or expression, sexual orientation, immigration status, or disability; and
2. Can reasonably be predicted to: (a) place the youth in reasonable fear of physical harm to the youth's person or property; (b) cause a substantial detrimental effect on the youth's physical or mental health; or (c) substantially interfere with the youth's ability to access, participate in, or benefit from the services, activities, or privileges provided by the County.

Bullying may include, but is not limited to:

1. Kicking, hitting, slapping, or shoving to gain power over another youth.
2. Using teasing, name-calling, or jokes to belittle or demean another youth.
3. Ostracizing and spreading rumors about a youth.
4. Posting, sending, or spreading images, threats, rumors, or information through text, email, or social media.
5. Sexual bullying, whether in-person or online, which may include crude comments, vulgar gestures, uninvited touching, sexual propositioning, and pornographic material.

Acts of bullying, harassment, and intimidation are an affront to the County's core values. While the County recognizes that any form of bullying, whether carried out by a youth or an adult, is a serious concern, this Policy focuses on bullying by a youth against another youth. To better enable the County to serve youth in a safe and positive environment, County departments that provide youth-facing programs and facilities shall adopt department- or program-level policies that prohibit bullying as described in this Policy. Each policy shall clearly communicate that bullying is prohibited and provide procedures for reporting and responding to incidents of bullying.

## **3.66 POLICY ON ORGANIZATIONAL HEALTH AND WELL-BEING (Adopted 11-6-18)**

### **3.66.1 Purpose**

The County of Santa Clara Board of Supervisors affirms that County employees are central to the County's provision of efficient, customer-focused service delivery. The Board further recognizes that to reach optimal service delivery, the County must support a workplace culture and organizational practices that contribute to optimal employee health and well-being.

Workplaces addressing the health of their organizations are more focused, high-performing, inclusive, and cohesive. Some common themes for healthy organizations are their ability to be:

- Vision-focused and able to grow, learn, and change to efficiently and effectively utilize resources;
- Flexible to adjust based on feedback and organizational needs;
- Data-driven in decision-making with regular check-ins with departments and employees;
- Communicative to provide clear, frequent, and ongoing opportunities for employees to engage and dialogue.

### **3.66.2 Practice**

The Board desires to create a work environment reflecting the qualities described above and acknowledges that:

- A well workforce is healthy, productive, engaged, and resilient;
- Supporting employees holistically allows them to provide optimal service to the community;
- Endorsing countywide and departmental procedures and practices that promote healthy workplaces will provide a supportive environment for employees to incorporate personal and organizational well-being into daily operations; and



- It will be necessary to align programmatic resources to create workday and worksite opportunities for County employees to be their healthy best.

To integrate support for individual and organizational health and well-being into County objectives, the County shall seek to:

- Educate and provide tools, materials, and resources to all employees on the dimensions of well-being and the role these dimensions play in creating workplace and organizational health; and
- Offer all employees multiple means and opportunities to participate in professionally and personally meaningful well-being initiatives.

The County will seek to provide the following types of offerings related to the dimensions of well-being, including but not limited to:

- Increasing the number and types of physical and nutritional well-being offerings available to employees at their worksites before, during, and after the workday;
- Augmenting emotional well-being services to assist employees with developing resiliency skills;
- Promoting social well-being by encouraging employees to participate in department and local office activities;
- Providing opportunities for employees to learn financial well-being strategies;
- Supporting or initiating strategies that provide work locations with amenities and collaborative spaces that promote well-being and work-life balance; and
- Creating supportive spaces for employees to gain exposure to, and to practice, skills which enrich professional development and career growth.

The County Executive may develop administrative guidelines to support this policy as needed.

### **3.67 COUNTY BLOOD DONATION EVENT SERVICES (Adopted 12-18-18)**

#### *Background*

The United States Food and Drug Administration (FDA) has issued guidance on blood donor eligibility, including deferrals for potential donors who have recently undergone specified medical procedures or received certain vaccinations, have certain infections or illnesses, or who are taking specified prescribed medications. Included in this guidance is a deferral period of twelve months since last sexual contact for men who have had sex with another man (MSM). The 12-month deferral period is unnecessary and reinforces stigmas and misguided beliefs around sexual activity. The deferral applies categorically and excludes an entire population of men who could donate blood and advance the safe increase of the nation's donor pool, and does not take into account modern screening and

diagnostic tools that can detect HIV infection as early as weeks after last exposure with a high degree of sensitivity, preventing the addition of blood infected with HIV or other pathogens into the donated blood supply.

### *County-sponsored Blood Drives*

The Board of Supervisors supports the inclusion of all members of the community in the donation and collection of blood. While all blood collectors in the United States are required to follow the rules and regulations issued by the FDA, County-sponsored blood drives (i.e., blood drives that receive County funding, or that occur on County-owned or -leased property) should engage blood donation services, where possible, that take actions to include and educate as many members of the community as possible within the current guidelines. Such actions may include:

- A. Accepting blood donations without an appointment, to avoid discouraging persons who are interested in donating but were unaware of a blood drive.
- B. Explaining the FDA MSM deferral policy in any marketing material that advertises an upcoming blood drive, and on the blood collection organization's website, including making clear that the FDA's prior lifetime ban on donation no longer exists.
- C. Providing information at blood drives to donors and potential donors relating to the MSM deferral period, and how donors and potential donors can contact their elected representatives and/or the FDA to voice any concerns they may have.
- D. Encouraging the participation of individuals who are affected by the MSM deferral period in education and outreach efforts, including volunteering for an event or bringing a friend who is eligible to donate to make a blood donation in their place.
- E. Hosting blood drives in conjunction with other community donation drives, including but not limited to clothing drives, bone marrow registries, volunteer events, and donation of other life-impacting services, to allow any person to participate regardless of health status or other factors.

## **3.68 DONATIONS AND SPONSORSHIPS USING COUNTY ASSETS (Adopted 8-27-19; Amended 4-20-21; Amended 5-2-23)**

### **3.68.1 Purpose**

The purpose of this County Donation and Sponsorship Policy ("Policy") is to set forth the conditions under which donations and sponsorships may occur by County Agencies/ Departments and Board of Supervisors offices.

### 3.68.2 Definitions

For purposes of this Policy:

**“County Assets”** means (a) any funds available for use by the County, including but not limited to the General Fund, enterprise funds, and any special funds; (b) the efforts or work of any County employee or contractor while being compensated by the County; and (c) the use of County property. For the purpose of this Policy, County Assets do not include private funding sources designated for donations or grant funds.

**“Donation”** means a transfer of County Assets to a non-County entity or person in any manner other than explicitly pursuant to a County contract, purchase order, or authorized invoice for goods and/or services received by the County.

**“Eligible Organization”** means (1) either a nonprofit organization defined by section 501(c)(3) of the Internal Revenue Code or a government entity; and (2) for short-term loans of County equipment, either a nonprofit organization defined by section 501(c) of the Internal Revenue Code or a government entity.

**“Short-term loan of County equipment”** is a type of Donation that involves the use of designated County-owned equipment (such as tables, chairs, canopies, audio-visual equipment, and stage) for a period of 96 hours or less for an event hosted by an Eligible Organization.

**“Sponsorship”** is a type of Donation by the County to support an event, including but not limited to, a conference, meeting, awareness campaign, educational seminar, social or cultural gathering, performance, or concert that is not organized and controlled by a County Agency/Department, Board office, and/or County Board or Commission.

### 3.68.3 Restrictions on County Donations and Sponsorships

A short-term loan of County equipment and associated Sponsorship of an event by an individual Board Member may be approved by that Board Member. All other Donations and Sponsorships may only be made with express authorization of the Board of Supervisors or an agent of the County authorized by the Board to make a specific donation for a specified purpose.

Donations and Sponsorships must support an activity, event, or program that serves a County purpose.

Transfers of County Assets are not permitted for (a) religious purposes or for the endorsement or disapproval of any religion; (b) campaign purposes or events that influence or attempt to influence the action of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any ballot measure; or (c) any activity prohibited by law. Only an Eligible Organization, as defined above, may receive a Donation or Sponsorship.

All Donations and/or Sponsorships authorized under this Policy are subject to an agreement between the County and the Eligible Organization, except for short-term loans of County equipment and associated Sponsorship of an event by an individual Board Member. The County Executive or designee is authorized to enter into such agreements, subject to review and approval by County Counsel as to form and legality. Such agreements shall require, where applicable, as a condition of the Donation or Sponsorship, that an Eligible Organization acknowledge the contribution of the County in its annual reports and all publications related to the County-sponsored event or activity, and that the County shall retain all rights, title, and interest in and to its name, seal, and logos.

Short-term loans of County equipment and associated Sponsorship of an event authorized under this Policy are subject to agreement by the Eligible Organization of standard requirements to be developed by the County Executive and County Counsel, including a waiver of liability and language addressing possible damage to such equipment. Eligible equipment is limited to equipment available to Board offices in the normal course of business and designated for such use by the County Executive, consistent with Section 404(g) of the County Charter.

Sponsorships associated with short-term loans of County equipment that are approved by individual Board members may not involve transfers of County Assets (including but not limited to cash donations) that normally require express authorization of the Board or an agent of the County authorized by the Board to make a specific donation for a specific purpose.

The County Executive shall develop procedures that are necessary for the implementation of this Policy.

#### **3.68.4 Additional Criteria When Initiated by a Board Member**

In addition to complying with the foregoing provisions of this Policy, the following additional criteria apply to Donations and Sponsorships initiated by a Board Member:

1. No Donation or Sponsorship shall exceed \$5,000.
2. Board approval of a Sponsorship must occur at least 30 days before the event/activity, in part to ensure that the County is appropriately acknowledged as sponsor for the event/activity.
3. Any Donation or Sponsorship of an event or organization focused on one Supervisorial District shall involve that Board Member as one of the Board Members initiating the request. This provision does not apply to events or organizations of a countywide nature.
4. Total Donations and Sponsorships per fiscal year per Supervisorial District shall not exceed \$20,000. Where two Board Members jointly initiate the request, the amount shall be divided equally between the two districts.

Subsections (2) and (4) do not apply to short-term loans of County equipment authorized under this Policy.

### **3.68.5 Exclusions to Policy**

This Policy shall not apply to:

- County sponsorship, promotional, donation, or fundraising activities by a County Agency/Department that have been separately authorized by action of the Board of Supervisors.
- The use of County facilities by non-County organizations as set forth under Board Policy 3.44.
- Private commercial uses of County property, consistent with a Board of Supervisors-approved County marketing plan under Division A36 of the Ordinance Code.

### **3.69 REQUIREMENTS FOR BOARDS' AND COMMISSIONS' EXEMPTION REGARDING FREQUENCY OF MEETINGS (Adopted 12-18-18)**

The Board of Supervisors ("Board") values the important role served by its advisory boards and commissions ("commissions") and seeks to strike an appropriate balance with the workload placed on facilities and staff in holding commission meetings. Ordinance Code section A6-3 provides that regular meetings of commissions established pursuant to Charter section 506 shall be held no more frequently than once every two months unless specifically exempted from this requirement by the Board. In addition to regular meetings, a commission may set a special meeting when necessary, in compliance with the Brown Act and County policies.

To apply for an exemption to the frequency of regular meetings under Section A6-3 of the Ordinance Code, a commission shall demonstrate to the Board the justification for the exemption and the ability of the commission members to meet regularly on a more frequent basis. Exemptions may only be granted for any of the following grounds:

1. The commission has a legal requirement to meet more frequently based on the opinion of the County Counsel;
2. The commission serves a quasi-judicial function for the County and/or holds hearings as part of a quasi-judicial County process; or
3. The commission has a specific task the Board approved on the commission's annual workplan that must be completed within the next 12 months, and that cannot be accomplished through the combined use of subcommittees and the schedule of regular meetings as provided in the Ordinance Code.

A commission may seek an exemption by formally approving a request for exemption at a commission meeting, following Board approval of the commission's annual work plan. Upon approval by the commission, the Clerk of the Board shall forward the request for exemption to the Board. The exemption request must include the following information:

1. If in the opinion of the County Counsel there is a legal requirement for the commission to meet more often.
2. If there is a specific task the Board approved on the commission's annual workplan that must be completed within 12 months, and that cannot be accomplished through the combined use of subcommittees and the schedule of regular meetings as provided in the Ordinance Code. The commission shall specify the task and a detailed timeline of what is to be accomplished each month for a monthly meeting schedule through the December 31st end date of the requested exemption.
3. The number of regular meetings of the commission scheduled in the prior 12-month period, and the number of those meetings that had a quorum, based on the records of the Clerk of the Board.
4. The number of special meetings of the commission scheduled in the prior 12-month period, and the number of those meetings that had a quorum, based on the records of the Clerk of the Board.
5. If the commission had an exemption approved in the prior calendar year, and the status of the task that needed to be completed under that exemption.

The Clerk of the Board and any department or agency that provides staff assistance to the commission may provide input to the Board regarding the commission's request.

Requests approved under Exemptions 1 and 2 may be granted on an ongoing basis, subject to review upon changes to legal requirements or to the duties of the commission. County Counsel will review changes to legal requirements and notify the Clerk of the Board if an ongoing exemption approval may no longer be applicable under Exemption 1 or 2.

Requests approved under Exemption 3 shall remain in effect for no more than 18 months ending on December 31, such that a request approved during a given Fiscal Year will remain in effect for the remainder of that Fiscal Year and for the six months immediately following the end of the Fiscal Year.

### **3.70 POLICY REGARDING PUBLIC RECORDS REQUESTS (Adopted 2-25-2020)**

In accordance with the County's Open Government Ordinance, the County of Santa Clara is committed to transparency, public participation, and accountability. The California Public Records Act (CPRA) provides that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state."

Under the CPRA, the public has the right to inspect and to obtain copies of public records that are not exempt from disclosure requirements.

The purposes of this Policy are to: (1) ensure the County's responses to public records requests comply with the CPRA and the County Open Government Ordinance, and (2) identify the role and responsibilities of the Office of the County Counsel and all County departments, agencies, and offices (collectively, "departments") in the processing of records requests.

### **3.70.1 Designated Office for Coordinating Public Records Requests**

In accordance with the County Open Government Ordinance section A17-12, the Office of the County Counsel is responsible for receiving and coordinating the County's responses to CPRA requests. Individual departments continue to have responsibility for responding to requests for, and producing, routine records as determined by the Office of the County Counsel. For non-routine records requests, the Office of the County Counsel shall coordinate with the department(s) that maintains the requested records for searching, compiling, and reviewing records, responding to the request, and producing non-exempt records.

In order to ensure the protection of private information (e.g., protected health information, confidential criminal justice information, and personal information such as social security numbers), the Office of the County Counsel is responsible for providing legal review of records for appropriate redactions or exemptions to disclosure prior to the production of records.

### **3.70.2 Receipt of Requests for Records**

Requests for public records may be made via letter, e-mail, telephone, or any other medium of communication established by the County. The County shall establish a centralized intake portal for public records requests under the oversight of the Office of the County Counsel. Upon creation of the centralized intake portal, all requesters shall be encouraged (but are not obligated) to use the County's portal. Information on how to submit requests for records shall be provided to the public via the County's website, and information regarding the intake portal, once established, will be made available at the reception areas of the Office of the County Counsel and the Board of Supervisors.

### **3.70.3 Department CPRA Coordinators**

Each County department shall identify and provide to the Office of the County Counsel the name of at least one primary designated CPRA Coordinator and at least one back-up. The Office of the County Counsel shall maintain the list of the departments' CPRA Coordinators.

Each CPRA Coordinator is responsible for being the departmental liaison with the Office of the County Counsel relating to the receipt of non-routine records requests, as well as

any departmental coordination for the searching and compiling of records, responding to a request, and producing non-exempt records. Each department must ensure that all its staff are aware of the identities of the department's CPRA Coordinators, and that it updates the Office of the County Counsel when there are updates to its designated CPRA Coordinators.

### **3.70.4 Routine and Non-Routine Records Requests**

Departments have existing processes in which individuals may inspect and order or otherwise request copies of non-exempt public records. To streamline these routine requests and ensure that there is no undue delay in providing records to the public, each department, in consultation with the Office of the County Counsel, shall develop a department protocol that identifies the types of records that are routinely provided by a department and do not require coordination through the Office of the County Counsel. The department protocol must be approved by the Office of the County Counsel. Requests for all other records not specified as routine shall be processed as non-routine records requests.

Notwithstanding a department's protocol, the following records requests must be forwarded to the Office of the County Counsel for processing:

- Requests for records maintained by one or more other County department(s);
- Requests for records involving a Board of Supervisors Office or the County Executive;
- Requests from an attorney or law firm;
- Requests that pertain to an issue that is the subject of potential or existing litigation;
- Requests that seek materials on private devices;
- Requests that pertain to issues that may be of a controversial nature; and/or
- Requests that include both routine and non-routine records.

### **3.70.5 Responsibilities of the Office of the County Counsel and Department CPRA Coordinators**

Upon receipt of a CPRA request for non-routine records that do not fall under a County Counsel-approved department protocol, the receiving department shall provide the request to the Office of the County Counsel via email on the same business day. A department must not turn away a records request directed to it.

If a department receives an oral request for non-routine records, the department may ask the requester to complete the County of Santa Clara Public Record Request Form (Request Form) or complete the Request Form for the requester. Upon establishment of the County's centralized intake portal, all requesters shall be encouraged (but not obligated) to use the intake portal for their requests. If a department or employee receives a non-routine request outside of the portal and the requester does not or cannot use the por-



tal to submit the request, the County department/employee shall submit the information into the portal for tracking and assignment by the Office of the County Counsel.

The Office of the County Counsel shall log the records request and assign an attorney to coordinate with the appropriate department(s) on the records search, records review, records redaction as needed, response to the request, and production of records.

The Office of the County Counsel is responsible for determining whether any exemptions from disclosure apply to any records or portions of records, and for overseeing any necessary redactions.

The Office of the County Counsel and department CPRA Coordinator(s) shall coordinate regarding any communications with the requester, including the response to the request, written notice of extension to respond to the request, and production of records.

### **3.70.6 Administrative Policies and Implementing Guidelines**

To effectuate the goals of this Policy and the County's Open Government Ordinance, and to ensure centralization and coordination of the County's response to CPRA requests, the County Counsel may adopt administrative policies and implementing guidelines.

## **3.71 GENDER-INCLUSIVE LANGUAGE (Adopted 12-07-21)**

### **Purpose**

The Purpose of the Gender-Inclusive Language Policy is to ensure that to the maximum extent possible, and to the extent permitted by law, all official documents and communications from the County of Santa Clara are drafted with gender-inclusive language.

### **Definitions**

For purposes of this policy, the following definitions apply:

"Gender-inclusive language" means using gender-neutral terminology, including pronouns such as "they" (for both singular and plural uses) and/or rephrasing and editing sentence structure to avoid the use of gendered pronouns, such as by repeating the noun rather than using a pronoun. To the extent feasible, rephrasing and editing sentence structure to avoid gendered pronouns is preferred. When gendered pronouns are used in phrasing, the authors should default to "they" or include a minimum of three gendered pronoun options such as "she/he/they."

"Gendered pronouns" means pronouns such as "he," "she," "him," "her," "his," "hers" and binary combinations such as "he/she," "him/her," and "his/hers."

"Personal pronouns" means the pronouns that people use to refer to themselves. These pronouns may include more than one set of pronouns, if an individual so chooses. Some common personal pronouns include, but are not limited to, "he/him/his," "she/her/hers,"

“they/them/theirs,” and “ze/hir/hirs.” Personal pronouns are determined by the individual and should not be presumed.

### **County Ordinances, Resolutions, and Proclamations**

All new County Ordinances, Resolutions, and Proclamations of the Board of Supervisors shall be drafted using gender-inclusive language to the extent permitted by law. When referring to specific individuals, County documents and communications may use the appropriate personal pronouns. County staff may respectfully inquire with the individual to ensure use of appropriate personal pronouns. In limited other circumstances, and in consultation with County Counsel, gendered pronouns may be used when necessary to convey the intended meaning of the official action.

As existing ordinances and Board policies are being updated for any purpose (for example, ordinances being revised to comply with changes in state or federal law), Administration and County Counsel shall ensure that the ordinance or policy updates include revisions to use gender-inclusive language to the extent permitted by law.

### **County Administrative Policies, Forms, and Other Documents**

All new official documents and communications from County agencies, departments, boards, and commissions—including, but not limited to, administrative policies, procedures, forms, websites, press releases, and social media communications—shall be drafted using gender-inclusive language to the extent permitted by law. When referring to specific individuals, County documents and communications may use the appropriate personal pronouns. County staff may respectfully inquire with the individual to ensure use of appropriate personal pronouns. In limited other circumstances, specific gendered pronouns may be used when necessary to convey the intended meaning of the official document or communication.

All County agencies and departments shall periodically, and as time and resources permit, review existing official documents and communications and revise them to use gender-inclusive language to the extent possible and to the extent permitted by law. Priority shall be given to revising existing forms and websites that are public-facing to facilitate members of the public interacting with the County encountering gender-inclusive language.

## **3.72 LOCAL VOTER RIGHTS ACT POLICY (Adopted 3-8-22)**

### **Purpose**

The purpose of this Local Voter Rights Act Policy is to declare the County of Santa Clara’s unwavering commitment to ensuring that all residents of the county that are eligible to vote are empowered to register to vote and to exercise their right to vote. The County, through this policy, reaffirms its commitment to sustaining and expanding access to the ballot through policies including, but not limited to, language access programs, disability accessibility initiatives, voter education and outreach programs, and other initiatives to provide voters with more flexibility in when, how, and where they vote. Through

this policy, the County intends to support making voting a cultural norm throughout the county. This policy further aims to ensure that to the maximum extent possible, and to the extent permitted by law, all departments and agencies in the County participate in voter engagement efforts coordinated by the Registrar of Voters.

### **Registrar of Voters as Lead Voter Engagement and Outreach Coordinator**

The Registrar of Voters, as the County of Santa Clara's elections official, shall serve as the lead department in the County charged with coordinating voter engagement and outreach activities. In that capacity, the Registrar of Voters will, to the extent permitted by time and resources and consistent with applicable law, maintain voter engagement and outreach materials and plan and execute meetings, forums, and other activities designed to inform community organizations and voters about voter registration, election processes, and specific upcoming elections. The voter engagement and outreach materials may include a range of materials from flyers and posters to more fulsome explanations of voter rights and responsibilities. Such materials will be available in those languages designated for election materials pursuant to state law to the extent appropriate for such materials. The Registrar of Voters will include in its outreach and education plan, to the extent time and resources permit, efforts and materials targeted to specific populations such as new citizens, young voters, justice-involved individuals, homeless and unhoused voters, students, senior citizens, voters with disabilities, voters who need language assistance, and the hospitalized and homebound. As a part of the Local Voter Rights Act voter education and outreach plans coordinated by the Registrar of Voters, the Registrar of Voters will seek to work with other County agencies and departments, particularly those that serve targeted populations, as well as other local jurisdictions, school districts, community organizations, members of the public, and state and federal agencies such as designated voter registration agencies.

### **Collaboration of County Agencies and Departments Collaborate in Voter Engagement and Outreach**

All County agencies and departments shall, to the maximum extent possible, as time and resources permit and consistent with applicable law, become familiar with existing voter engagement materials provided by the Registrar of Voters (including locally created materials as well as those created by state and federal agencies and community organizations) and collaborate with the Registrar of Voters to share materials with members of the public. Priority shall be given to informing residents who interact with County agencies and departments for social safety net services of voter registration and upcoming elections, including members of the public who are new citizens, young voters, justice-involved individuals, homeless and unhoused voters, students, senior citizens, voters with disabilities, voters who need language assistance, and the hospitalized and homebound. Each direct service County agency and department shall identify at least one point of contact for coordinating with the Registrar of Voters on voter education and outreach activities to identify opportunities for improving the reach and efficacy of the County of Santa Clara's Local Voter Rights Act voter engagement and outreach program.

### **3.73 POLICY ON THE COUNTY PRIVACY OFFICE (Adopted 8-30-22)**

The Privacy Office is an office established within the County under the authority of the County Executive. There is within the Privacy Office the position of Chief Privacy Officer, who reports to the County Executive or designee.

#### **(A) Function and Duties**

The Privacy Office, under the direction and approval of the Chief Privacy Officer, shall perform the following duties and functions:

- (1) Work collaboratively with departments to protect personal information maintained by the County, including by providing resources and support for best practices to protect personal information and by assisting departments with implementing legally mandated protections for personal information.
- (2) Promote a culture of protecting privacy throughout the County.
- (3) Develop and maintain privacy training courses for County employees, consistent with any administrative policies issued by the County Executive and in consultation with the Office of the County Counsel and Office of the County Executive.
- (4) In consultation with the Office of the County Counsel, maintain the County Website Privacy Policy and serve as a point of contact for inquiries from the public about the policy.
- (5) Participate in the further development of policies and practices to prevent and respond to breaches of personal information.
- (6) Perform designated functions pursuant to the administrative policy issued by the County Executive relating to a notification required under California Civil Code section 1798.29 relating to security breaches of personal information.
- (7) Perform the functions and duties required by the Surveillance Technology and Community Safety Ordinance, Division A-40 of the County of Santa Clara Ordinance Code.
- (8) Regularly conduct research, make policy recommendations, identify best practices, and consult with the Board of Supervisors, the County Executive, and other County departments on privacy, technology policy, and related topics. Such topics may include, but are not limited to, data security, data sharing, surveillance technology, facial recognition, and algorithmic information processing

- (9) Establish a Privacy Center of Excellence that will bring together experts in academia, business, advocacy groups, and government to discuss and encourage privacy practices and solutions that better protect people and organizations.
- (10) In consultation with the Office of the County Counsel, assist departments with compliance with County policies that protect personal information and with local, state, and federal privacy laws.
- (11) Such other duties and functions assigned by the County Executive or Chief Operating Officer.
- (12) The Privacy Office shall work collaboratively with the Office of County Counsel; the Privacy Office shall also ensure the Office of the County Counsel reviews and analyzes any inquiries the Privacy Office receives from County departments concerning compliance with County policies and local, state, and federal privacy laws, including inquiries from County departments related to the sharing of personal information with other County departments and external entities.

The duties and functions of the Privacy Office do not include those duties in Policy 3.40 that are assigned to the Health System Ethics, Privacy and Compliance Office related to compliance with the Health Insurance Portability and Accountability Act of 1996.

**(B) Guiding Principles**

The Privacy Office will be guided by the following principles when performing its functions and duties:

- (1) Protecting and safeguarding individuals' fundamental right to privacy is a vital part of the County's duties.
- (2) The County seeks to maintain strict compliance with local, state, and federal privacy laws.
- (3) The County recognizes that the limited and appropriate sharing of personal information between departments enables the County to provide robust, efficient, and evidence-based services and programs to the community.
- (4) The County strives to balance the County's need to collect and process personal information when providing services to the community with the County's responsibility to safeguard personal information.

### **3.74 POLICY ON IMPLEMENTATION OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW) (Adopted 4-18-23)**

#### **Purpose**

This policy is adopted to implement the provisions of Chapter VIII of Division A18 of the Ordinance Code related to the implementation of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Definitions from Chapter VII of Division A18 of the Ordinance Code shall be applicable to this Policy.

In order to implement the CEDAW principles, the County will engage in regular and ongoing analyses to identify gender inequities, analyze the root causes of those inequities, and identify barriers to gender equity and remedy their discriminatory effects. These analyses will include elements such as analyzing the operations of County departments, agencies, and programs to identify factors perpetuating gender inequity in, but not limited to, budgetary allocations, contracting, employment, and the provision of direct and indirect services to county residents.

#### **Baseline Intersectional Gender Analysis and Action Plan**

The County Executive or designee shall be responsible for coordinating and directing the completion of a baseline intersectional gender analysis of the entire County, including its components. This analysis will establish the baseline for subsequent analyses that shall be conducted by the County. All baseline analyses will be conducted externally by qualified individuals.

The baseline intersectional gender analysis will include elements such as:

- (a) The continued collection of and review of existing appropriate disaggregated data, including disaggregated data regarding all county residents; and
- (b) An evaluation of intersectional gender equity in the operations of each County department, agency, office, program, board, commission, or other operational unit, including in, but not limited to, budget allocations, contracting, employment, and the provision of direct and indirect services.

The County Executive or designee shall engage with the Commission on the Status of Women and retain the assistance of appropriate qualified expert(s) in planning for and conducting the baseline analysis.

Within 180 days following the effective date of the ordinance adding Chapter VIII of Division A18 to the Ordinance Code, the County Executive or designee will develop and present the Board of Supervisors with a proposed plan for completing the baseline analysis, including funding procurement of consultant(s), and timeline for completion. The

Commission on the Status of Women shall provide input in the development of the proposed plan.

The baseline analysis shall be conducted in an efficient manner that leverages available County resources, including existing or concurrently developed information, data, and analyses. A baseline intersectional gender analysis for purposes of this policy is not required where qualified expert(s) determine the same or similar analysis was recently conducted, or will be conducted by the completion of the baseline analysis, pursuant to a County, state or federal policy, law, or regulation.

The results of the baseline intersectional gender analysis will be presented in a public meeting of the Board of Supervisors.

### **Intersectional Gender Equity Action Plans**

The County Executive or designee shall develop a Countywide Intersectional Gender Equity Action Plan that analyzes policies and procedures and present this Action Plan to the Board at a public meeting. The Commission on the Status of Women shall provide advice in the development of the Action Plan.

The Countywide Intersectional Gender Equity Action Plan shall address how to integrate human rights principles into the County's operations, how to further implement the local principles of the CEDAW, and the measures recommended to correct issues identified at the countywide level.

The Countywide Intersectional Gender Equity Action Plan shall also identify priority areas for the development of individual Intersectional Gender Equity Action Plans for County departments, offices, programs, boards, commissions, and other operational units, and include a plan for incorporating gender equity action planning into the regular work planning process of each unit.

The presumed initial scope of the Countywide Intersectional Gender Equity Action Plan shall be five years, unless otherwise determined by the County Executive or designee.

The County Executive or designee shall present the Countywide Intersectional Gender Equity Action Plan in a public meeting of the Board of Supervisors, after consultation with the Commission on the Status of Women.

### **Countywide Technical Assistance and Support**

The County Executive or designee will coordinate and develop technical assistance resources and supports for the implementation of the CEDAW principles and the Intersectional Gender Equity Action Plan. These resources may include trainings, templates, analysis toolkits, monitoring assistance, and reporting tools as well as subject matter expertise and consultation from qualified experts (both internal and external, as needed).

As a result of the breadth of the County, the County Executive or designee will coordinate and develop concerted efforts to train appropriate employees across all departments with a

verifiable/measurable commitment to integrate CEDAW into operations, programs, services, and funding.

### **Role of the Board of Supervisors**

The Board will provide oversight and direction regarding the implementation of CEDAW principles in the County, as well as in the design, implementation, and monitoring of the Intersectional Gender Equity Action Plan(s).

The County Executive or designee will provide annual reports at public meetings of the Board regarding the implementation and monitoring of the Intersectional Gender Equity Action Plan(s), as well as any updates to the Plan(s). The reports will address any need for subsequent data collection and analysis, and the updating of the Intersectional Gender Equity Action Plan(s).

### **Role of the Commission on the Status of Women**

The Commission on the Status of Women serves in an advisory role to the Board of Supervisors and shall be consulted on the development and ongoing integration of CEDAW into County operations.

### **Role of the County Executive or designee:**

The County Executive or designee shall:

1. Provide technical assistance to the County throughout the intersectional gender analysis process and shall develop timelines for completion of the County's Intersectional Gender Equity Action Plan and any individual Intersectional Gender Equity Action Plans.
2. Oversee the implementation of and reporting on Intersectional Gender Equity Action Plan(s), including ensuring the analyses, reports, plans, and technical assistance resources are publicly accessible and regularly updated.
3. Work towards supporting all County departments, offices, programs, boards, commissions, and other operational units in incorporating intersectional gender equity action planning into their regular work planning processes.



## **4.0 FISCAL AND BUDGET POLICIES (Adopted 1982)**

In 1982, the Santa Clara County Board of Supervisors adopted several policies to ensure the long-term fiscal health of the County. Those policies were augmented in 1984 with guidelines that were adopted by the Board on annual contingency reserves. All of these policies were revisited in a 1991 workshop that the Administration prepared and presented to the Board of Supervisors. During the workshop, the Board reaffirmed its commitment to the following policy guidelines:

### **4.1 APPROPRIATION POLICY (Adopted January, 1982)**

The Board requires the Administration, through the Office of Budget and Analysis and the Department of Finance, to ensure that expenses are controlled in such a manner that department budgets are not expended above the levels that are appropriated in the annual budget or beyond that which the County has the funds to pay.

#### **4.1.1 Retiree Health Program Unfunded Liability (Adopted 6-19-98)**

The following policy was adopted by the Board of Supervisors on June 19, 1998 (Policy Resolution No. 98-01):

The Board of Supervisors hereby adopts the policy that any savings generated from reduced Public Employee Retirement System (PERS) costs be used to further reduce the existing unfunded liability for the Retiree Health Program.

### **4.2 REVENUE POLICY**

The Board expects that revenues will only be budgeted when there is substantial assurance of their receipt in the fiscal year that is being considered. No revenues will be budgeted unless there is concurrence by the Department of Finance and the Office of Budget and Analysis.

#### **4.2.1 Revenue Policy Relating to Investments**

Variances between the cost of investments and the fair value of investments shall not be considered budgetary resources or uses of resources unless the value of investments is permanently impaired because of decreased issuer credit worthiness or it is determined that the Treasurer will be unable to hold investments to maturity.

### **4.3 CONTINGENCY RESERVE POLICY (Adopted 1984; Amended FY 1991; Amended 6-19-98; Amended 5-25-99; Amended 1-11-00; Amended 2-10-04)**

The Board has established the goal of setting the Contingency Reserve at 5 percent of general fund revenues, net of pass-throughs, by July 1, 2007 (FY 2008). In order to achieve this goal, the Board has established targets to set the contingency Reserve at 2.5 percent of

general fund revenues in FY 2005, 3 percent in FY 2006 and 4 percent in FY 2007, all net of pass-throughs.

By direction of the Finance and Governmental Operations Committee, the Administration has developed several policy guidelines that will guide the allocation of the Contingency Reserve in future years.

The Contingency Reserve will be used to support costs on a one-time basis for the following purposes:

- When the County is impacted by an unanticipated reduction in State and/or Federal grants and aid.
- When the County faces economic recession/depression and the County must take budget actions before the beginning of any one fiscal year.
- When the County is impacted by a natural disaster.
- When the County is presented with an unanticipated or unbudgeted lease expense that is necessary for the delivery of local services.
- When the County is affected by unforeseen events that require the allocation of funds.

The Contingency Reserve may be used to support ongoing costs, as a financing mechanism, when presented with critical program initiatives that have a time requirement that cannot be deferred. The program initiatives would become part of the next year's operating budget and be subject to review by the Board at that time.

In each case when a request for contingency reserve funding is made, the Department requesting the funds must provide an analysis demonstrating that funds do not exist within their current modified budget. The County Executive's Office of Budget and Analysis will review and verify that funding cannot be taken from existing appropriations. The County Executive's Office will also verify that the action requested cannot be deferred until the next budget cycle. These statements will appear in each transmittal presented to the Board requesting the allocation of contingency reserve funds along with statements of which allocation criteria are used and why.

The allocation of contingency reserve funding should occur at the mid-year budget review if possible.

#### **4.4 POLICY ON USE OF ONE-TIME FUNDS (Adopted 1982)**

In 1982, the Board adopted a policy of dedicating one-time revenues only for use as one-time expenditures. Since that time, and particularly since 1991, the County has had great difficulty balancing the General Fund budget in the face of downturns in the economy and State cuts in subventions for locally mandated services. As a result, the Board has seen fit to modify this policy to allow for the use of one-time sources of funds to ease the transition to downsized and/or reorganized operations.

## **4.5 SALARY SAVINGS POLICY (Amended 3-11-03)**

The Board of Supervisors adopts annual operating budgets that generally incorporate a three to six percent salary savings factor in the calculations for salaries and most fringe benefits for most County operations. This means that a portion of the funding that would be required to cover the full cost of all approved positions is withheld from most department budgets at the outset of each fiscal year and is reflected as a negative line-item in the Object 1 grouping of appropriations. At the same time, the Board has recognized that certain departments, either because of size or unique operating requirements, are unable to generate salary savings; those departments are therefore exempt from this policy requirement.

## **4.6 POLICIES ON USE OF FUND BALANCE**

General Fund balance that is available at the end of any given fiscal year is estimated during the final stages of the budget development process for the following year. In recent years, fund balance has ranged from between two and three percent of the General Fund budget. Roughly half of this amount is derived from the GF Contingency Reserve that is appropriated in the budget, and the remainder is generated through salary savings and other unencumbered free balances that are generated in department operating budgets. This latter amount is treated as a one-time source of funding and has historically been earmarked to support capital projects, fixed asset purchases and the acquisition of computer systems. Board policy has historically prohibited the use of fund balance to support ongoing operations, although this source has occasionally been used for transition purposes.

## **4.7 DEBT POLICIES (Amended 9-23-03; Amended 9-26-06; Amended 9-26-17)**

Since 1982, the Board of Supervisors has supported the Administration's effort to limit the issuance of short-term debt to cover cyclical cash flow needs. Every effort has been made to incorporate actions in the County's adopted annual budget that capitalize ongoing operations with existing revenues, thus avoiding or severely restricting situations where short-term deficits are financed through long-range indebtedness. Board policy does allow for the issuance of long-term debt to finance major capital improvements. However, the County historically has required a careful assessment of capital improvement priorities, capital costs, annual debt service capacities, and annual operating and maintenance costs on the scheduled improvement in advance of incurring the indebtedness. On occasion, the Board also has supported the issuance of debt when market conditions could be optimally leveraged along with arbitrable opportunities.

### **4.7.1 Debt Management Policy (Adopted 9-23-03; Amended 9-26-17; Amended 1-24-23)**

This Debt Management Policy sets forth certain debt management objectives for the County and establishes overall parameters for issuing and administering the County's debt. Recognizing that cost-effective access to the capital markets depends on prudent management of the County's debt program, this policy will be incorporated into an annual

debt report presented to the Finance and Government Operations Committee with ultimate recommendation to the Board of Supervisors.

#### **4.7.1.1 Debt Management Goals and Objectives**

The County's debt issuance activities and procedures shall be aligned with the County's vision and goals for providing adequate facilities and programs that support the residents. The County shall consider the overall impact of the current and future debt burden of the financing when determining the duration of the debt issue. When issuing debt, the County shall ensure that it:

1. Maintains accountability for the fiscal health of the County, including management and transparency of the County's financing programs.
2. Attains the best possible credit rating for each debt issue in order to reduce interest costs, within the context of preserving financial flexibility and meeting capital funding requirements.

The purpose of this Debt Management Policy is to assist the County in pursuit of the following objectives:

- Minimize debt service and issuance costs
- Maintain access to cost-effective borrowing
- Achieve the highest practical credit rating
- Full and timely repayment of debt
- Maintain full and complete financial disclosure and reporting
- Ensure financial controls are in place with respect to proceeds of debt issuances
- Ensure compliance with applicable State and Federal laws

#### **4.7.1.2 General Provisions**

##### **(A) Scope of Application**

##### **(1) Entities Covered**

These policies establish the parameters within which debt may be issued by the County of Santa Clara and the Santa Clara County Financing Authority. The County, as a member of any joint powers authority, shall take these policies into account when considering the issuance of joint powers authority debt.

Supplemental policies, tailored to the specifics of certain types of financings, may be adopted by the Board of Supervisors in the future. These supplementen-

tal policies may address, but are not limited to, any future County general obligation, enterprise, multifamily housing, and land-secured financings.

(2) Types of Debt that May be Issued

The following types of debt may be issued under this policy subject to State and Federal law, the County's Charter and County Ordinances and Policies as may be applicable. Prior to issuance of debt, a reliable revenue source shall be identified to secure repayment of the debt. Cost savings are not a revenue source for the purposes of securing debt repayment.

- a. General obligation bonds
- b. Bond or grant anticipation notes
- c. Lease revenue bonds or notes, certificates of participation and lease-purchase transactions
- d. Other revenue bonds or notes and certificates of participation (COPs)
- e. Tax and revenue anticipation bonds or notes (TRANs)
- f. Land-secured financings, such as special tax revenue bonds and limited obligation assessment bonds
- g. Conduit financings, such as financings for affordable rental housing and qualified 501(c)(3) organizations
- h. Special financing programs or structures offered by the federal or state government such as Qualified Energy Conservation Bonds (QECBs) or other tax credit obligations or obligations that provide subsidized interest payments, when the use of such programs or structures is determined to result in sufficiently lower financing costs compared to traditional bonds and/or COPs
- i. Derivatives. While the County currently has one interest rate swap in its outstanding debt portfolio, no further issuance of derivatives is contemplated.

Debt may be publicly issued or privately placed and may be issued on either a long-term basis ("Long-term Borrowing") or short-term basis ("Short-term Borrowing") consistent with the provisions of this Policy.

From time to time, the Board of Supervisors may find that other forms of debt, or that an exception to the revenue requirement, consistent with the Objectives and Goals of this Policy, would further its

public purposes and may approve the issuance of such debt without an amendment of this Policy.

(B) Responsibility for Debt Management Activities

The Finance Agency shall be responsible for managing and coordinating all activities related to the issuance and administration of debt, including the implementation of internal control procedures to ensure that the proceeds of debt are directed to the intended use. The Director of Finance is appointed by the County Executive and is subject to his or her direction and supervision. In accordance with the County Charter and the County Ordinance Code, the Director of Finance is charged with responsibility for the conduct of all Finance functions.

Departments implementing debt-financed capital programs will work in partnership with the Finance Agency to provide information and otherwise facilitate the issuance and administration of debt.

(1) Debt Management Policy Review and Approval

This policy shall be presented to the Finance and Government Operations Committee as part of the annual debt report and reviewed annually by the Finance Agency to ensure its consistency with respect to the County's debt management objectives. Any modifications to this policy shall be presented to the Finance and Government Operations Committee with ultimate approval by the Board of Supervisors.

(2) Debt Administration Activities

The Finance Agency is responsible for the County's debt administration activities, particularly the timely payment of debt, investment of bond proceeds, monitoring compliance with bond covenants, continuing disclosure, and arbitrage compliance for tax-exempt debt. The Finance Agency is also responsible for implementing internal control procedures to ensure that bond proceeds or other debt is directed to the intended use.

(3) Annual Debt Report

The Finance Agency shall prepare an annual debt report for review by the Finance and Government Operations Committee containing the following:

- Description of the currently outstanding debt portfolio
- Refunding and restructuring opportunities
- Future financings
- Debt administration

#### 4.7.1.3 Purposes For Which Debt May be Issued

(A) Long-term Borrowing

Long-term borrowing may be used to finance the acquisition or improvement of land, facilities, or equipment for which it is appropriate to spread these costs over multiple budget years, attempting to match the useful life of the assets acquired by the financing. Long-term borrowing may also be used to fund capitalized interest, costs of issuance, required reserves, and any other financing related costs which may be legally capitalized. Long-term borrowing shall not be used to fund operating costs.

(B) Short-term Borrowing

Short-term borrowing, such as TRANs (tax and revenue anticipation notes) and lines of credit, will be considered as an interim source of funding to be utilized when appropriate. Short-term debt may be issued for any purpose for which long-term debt may be issued, including capitalized interest and other financing related costs.

(C) Refunding and Restructuring

Periodic reviews of outstanding debt will be undertaken to identify refunding and restructuring opportunities. Refunding will be considered (within federal tax law constraints) if and when there is a net economic benefit of the refunding. Refundings which are non-economic may be undertaken to achieve objectives relating to changes in covenants, call provisions, operational flexibility, tax status, issuer or the debt service profile.

In general, refundings which produce a net present value savings of at least three percent (3%) of the refunded debt are considered economically viable. Refundings which produce a net present value savings of less than three percent (3%) will be considered on a case by case basis. Refundings with negative savings will not be considered unless there is a compelling public policy objective that is accomplished by retiring the debt.

Restructuring may be undertaken with the objective of minimizing long-term volatility and the exposure to future market conditions on the overall debt portfolio.

#### 4.7.1.4 Debt Issuance

(A) Debt Service Limit

The County shall establish an affordable level of debt service to preserve credit quality and ensure financial stability. As such,

- (1) Total Governmental Fund debt service shall not exceed eight percent (8%) of Total Governmental Fund expenditures and

- (2) Lease Revenue Bond debt service shall not exceed eight percent (8%) of Total General Fund expenditures

(B) Relationship to County's Budget

The County will keep outstanding debt within the practical limits of the County's debt rating and any applicable law.

The County shall assess the impact of new debt issuance on the short-term and long-term affordability of all outstanding and planned debt issuance, including additional operating costs. Such analysis recognizes that the County has limited capacity for debt service in its budget, and that each newly issued financing will obligate the County to a series of payments until the bonds are repaid. Tools include, but are not limited to, the County's Debt Affordability Model which helps evaluate the impact of proposed debt on the operating budget as well as on the County's credit ratings.

(C) Credit Quality

The County seeks to obtain and maintain the highest possible credit ratings for all categories of short and long-term debt. If appropriate from a cost-benefit standpoint, and appropriate from a sale structure, the County will consider the issuance of bonds that do not carry investment grade ratings.

The County has traditionally benefited from strong ratings and shall take any necessary steps to maintain favorable ratings.

(D) Structural Features

The Director of Finance shall be responsible for determining the appropriate structure for the debt financing considering factors including, but not limited to, the inter-generational benefit of the financing and current market conditions.

(1) Debt Repayment

Debt will be structured for a period consistent with a fair allocation of costs to current and future beneficiaries of the financed capital project. The County shall structure its debt issues so that the maturity of the debt issue is consistent with the economic or useful life of the capital project to be financed.

(2) Variable-rate Debt

The County may choose to issue securities that pay a rate of interest that varies according to a pre-determined formula or results from a periodic remarketing of the securities. Such issuance must be consistent with applicable



law and covenants of pre-existing bonds, and in an aggregate amount consistent with the County's creditworthiness objectives. When making the determination to issue bonds in a variable rate mode, consideration will be given in regards to the useful life of the project or facility being financed or refinanced or the term of the project requiring the funding, market conditions, and the overall debt portfolio structure. The Director of Finance shall evaluate the use of variable-rate debt on a case by case basis to determine whether the potential benefits are sufficient to offset any potential costs.

(3) Tax Structure

The County may choose to issue securities on a taxable or tax-exempt basis. The Director of Finance shall evaluate the use of taxable versus tax-exempt bonds on a case by case basis to determine which structure will be most effective and beneficial.

(E) Professional Assistance

The County shall utilize the services of bond counsel on all debt financings. The County shall utilize the services of independent financial/municipal advisors when deemed appropriate by the Director of Finance. The Director of Finance shall have the authority to periodically select service providers as necessary to meet legal requirements and minimize net County debt costs. Such services, depending on the type of financing, may include financial advisory, underwriting, trustee, verification agent, escrow agent, arbitrage consulting, and special tax consulting. The goal in selecting service providers, whether through a competitive process or single-source selection, is to achieve an appropriate balance between service and cost.

(F) Method of Sale

Except to the extent a competitive process is required by law, the Director of Finance shall be responsible for determining the appropriate manner in which to offer any securities to investors. The County has used competitive bid, negotiated sale, and private placement to sell its bonds. On a case-by-case basis the Director of Finance will make a determination as to the most effective method of sale.

#### **4.7.1.5 Debt Administration**

(A) Investment of Bond Proceeds

Investment of bond proceeds or other forms of debt shall be consistent with federal tax requirements, the County's Investment Policy as modified from time to time, and with requirements contained in the governing bond documents.

(B) Disclosure Practices and Arbitrage Compliance

(1) Financial Disclosure

The County is committed to full and complete primary and secondary market financial disclosure in accordance with disclosure requirements established by the Securities and Exchange Commission and the Municipal Securities Rulemaking Board, as may be amended from time to time. The County is also committed to cooperating fully with rating agencies, institutional and individual investors, other levels of government, and the general public to share clear, timely, and accurate financial information.

(2) Arbitrage Compliance

The Finance Agency shall maintain a system of record keeping and reporting to meet the arbitrage compliance requirements of federal tax law.

#### **4.7.1.6 Compliance with Internal Control Procedures**

The Finance Director shall establish internal control procedures to ensure that the proceeds of any debt issuance are directed to the intended use. Such procedures shall assist the County in maintaining the effectiveness and efficiency of operations, properly expending funds, reliably reporting debt incurred by the County and the use of proceeds, complying with all laws and regulations, preventing fraud and avoiding conflict of interest.

The County shall be vigilant in ensuring that bond or other proceeds are only expended in accordance with the stated purposes at the time such debt was incurred as defined in the text of the voter-approved bond measure or other governing document. This includes maintaining records of draws on said proceeds which identify the purpose and payee of said draw.

Proceeds of debt will be held either by (a) the County, to be held and accounted for in a separate fund or account, the expenditure of which will be carefully documented by the County; or (b) by a third-party trustee or fiscal agent, which will disburse such proceeds to or upon the order of the County upon submission of one or more written requisitions by the Finance Director or designee.

The policy of the County is to comply with all federal tax and securities law which may be applicable to its debt, which may include requirements relating to arbitrage, rebate and continuing disclosure. Reviews of such requirements in connection with prior and new debt issues may be conducted by County Counsel or bond counsel. Any county personnel involved in conducting such reviews may receive periodic training regarding their responsibilities as needed.

In addition, the Finance Director or designee shall ensure that the County completes, as applicable, all performance and financial audits that may be required for any debt issued by the County, including disclosure requirements applicable to a particular transaction.

#### **4.7.2 Interest Rate Swap Policy (Swap Policy) (Adopted 9-26-06)**

The purpose of the Interest Rate Swap Policy (Swap Policy) of the County of Santa Clara (County) is to provide guidelines for the execution and management of swaps in connec-

tion with the County's Debt Management Policy. While the use of such derivatives can reduce the County's exposure to interest rate risk on its variable debt, careful monitoring of such a financial management tool is required to preserve and maintain the County's credit strength and budget flexibility.

This policy describes the circumstances and methods with which a swap can be used, the guidelines that will be imposed on them, and who in the County is responsible for implementing these policies.

#### **4.7.2.1 Purposes for Interest Rate Risk Mitigation Products**

The purposes for which the County may utilize Interest Rate Risk Mitigation Products are specified in Section 5922(a) of the California Government Code. The Director of Finance shall evaluate the use of such products on a case-by-case basis to determine whether the potential benefits are sufficient to offset any potential costs.

As required by the Government Code, no local agency may enter into any contracts or arrangements unless its governing body first determines that the contract, arrangement or program of contracts is designed to reduce the amount or duration of payment, currency, rate, spread, or similar risk or result in a lower cost of borrowing when used in combination with the issuance of bonds or enhance the relationship between risk and return with respect to the investment or program of investment in connection with, or incident to, the contract or arrangement which is to be entered into. When the Director of Finance recommends the use of such derivatives, the Director of Finance shall provide information to the County Executive and Board of Supervisors (Board) necessary to make the determination required by the Government Code.

#### **4.7.2.2 No Speculation**

Swaps will not be used for speculative purposes.

#### **4.7.2.3 Form of Swap Agreements**

To the extent possible, the swap agreements entered into by the County will contain the terms and conditions set forth in the International Swap and Derivatives Association, Inc. (ISDA) Master Agreement, including any schedules and confirmation. However, the County reserves the right to amend these terms and conditions, including the remedies and obligations, and any other section of such agreement, as appropriate to benefit the County.

#### **4.7.2.4 Professional Assistance**

The County shall utilize the services of independent financial advisors when deemed appropriate by the Director of Finance. The County shall utilize the services of bond counsel on all debt financings. The Director of Finance shall have the authority to periodically select service providers as necessary to meet legal requirements and minimize net County debt costs. Such services, depending on the type of financing, may include financial advisory, underwriting, trustee, verification agent, escrow agent, bond counsel, disclosure counsel, arbitrage consulting, and special tax consulting. The goal in selecting service pro-

viders, whether through a competitive process or negotiated sale, is to achieve an appropriate balance between service and cost.

#### **4.7.2.5 Method of Sale**

Except to the extent a competitive process is required by law, the Director of Finance shall be responsible for determining the appropriate manner in which to offer any securities to investors. The County has used competitive bid, negotiated sale, and private placement to sell its bonds. On a case-by-case basis, the Director of Finance will make a recommendation as to the most effective method of sale to the Finance and Government Operations Committee (FGOC).

#### **4.7.2.6 Aspects of Risk Exposure**

Before entering into a swap agreement, the Director of Finance will evaluate risks inherent in the transaction. The risks to be evaluated may include, but are not limited to, the following: amortization risk; basis risk; credit risk; counterparty risk; interest rate risk; rollover risk; tax event risk; and termination risk. Important consideration will be given to diversifying counterparty risk by having separate swap issuances with different counterparties as much as prudently possible.

Identification of the risks and discussion of the means, if any, employed to mitigate the risks will be contained in the Director of Finance report recommending to the County Executive and Board approval of the swap agreement.

#### **4.7.2.7 Counterparty Credit Standards**

To protect the County's interests in the event of a credit problem, the Director of Finance will recommend entering into a swap agreement with a counterparty only if it meets the following standards:

- (A) At least two of the counterparty's credit ratings are rated at least "Aa3" or "AA-", or equivalent, by any two of the nationally recognized rating agencies (i.e. Moody's, Standard and Poor's, or Fitch); or
- (B) The payment obligations of the counterparty are unconditionally guaranteed by an entity with such a credit rating.

#### **4.7.2.8 Collateralization on Downgrade**

In the event of a downgrade, the obligations of the counterparty will be collateralized at levels and with securities acceptable to the Director of Finance, as set forth in the swap agreements, should the rating:

- (A) of the counterparty, if its payment obligations are not unconditionally guaranteed by another entity, or
- (B) of the entity that unconditionally guarantees its payment obligations, if so secured,

does not satisfy the requirements set forth in Section 4.7.2.7 Counterparty Credit Standards above.

#### **4.7.2.9 Refunding**

While the adopted County Debt Policy threshold for a standard refunding is 3 percent net present value (NPV) savings, the criteria for a swap structured refunding threshold will be 5 percent NPV savings to compensate for the inherent higher risk factor of a swap financing. The Director of Finance shall be responsible for determining the appropriate type of swap structure to be used in the refunding. Additionally, any swap structured refunding analysis will also take into account the percentage amount of swaps in the overall debt portfolio with the goal of having a balanced portfolio.

#### **4.7.2.10 Debt Portfolio Distribution**

Aggregate net (including offsetting reverse swaps) notional amount of all County swaps should not exceed 40 percent of the County's overall debt, assuming that the swaps have an average life of 20 years. If the life of the swaps are longer or shorter than 20 years, percentages may be adjusted accordingly, e.g. the percentage would be reduced for longer life since risk increases.

#### **4.7.2.11 Termination**

A termination payment to or from the County may be required in the event of termination of a swap agreement due to default of either the County or the counterparty, certain additional termination events or optional termination by the County. Prior to making any termination payment due to default of the counterparty, the Director of Finance will evaluate whether it is financially advantageous for the County to obtain a replacement counterparty to avoid making such termination payment.

#### **4.7.2.12 Legality**

The County shall receive appropriate legal opinion that swap agreements entered into by the County are legal, valid and binding obligations of the County.

#### **4.7.2.13 Responsibilities**

The Director of Finance is responsible for determining the appropriate uses for derivatives in conjunction with the County's debt financing and programmatic needs and making recommendations to the County Executive and the Board of Supervisors.

The Board is responsible for approving all debt issuances and approval of all official documents related to such issuance. County Counsel is responsible for approving all documents in any such issuance.

The County Controller is responsible for monitoring and reporting on all County debt obligations and reporting on such debt to the County Executive and Board. In this capacity, the County Controller will review and report on the activities and assumptions related

to the various swap transactions. In addition, the Controller is responsible for reflecting the use of interest rate swap agreements and other financing transactions on the County's financial statements in accordance with Generally Accepted Accounting Principles (GAAP) and with rules promulgated by the General Accounting Standards Board (GASB).

#### **4.7.2.14 Monitoring and Reporting**

The Director of Finance will issue a report to the County Executive and Board as deemed appropriate during the term of the interest rate swap agreement. One such report that will be issued is a quarterly report on portfolio balance to the Finance and Operations Committee. Additionally, the Director of Finance will include, in an Annual Debt Report, the following information, to the extent applicable:

- (A) Highlights of material changes to interest rate swap agreements including counterparty downgrades and/or terminations;
- (B) A summary of new interest rate swap agreements entered into by the County since the last report;
- (C) A summary of planned interest rate swap transactions and the impact of such transactions on the County;
- (D) A description of each outstanding interest rate swap agreement, including a summary of its terms and conditions, the notional amount, rates, maturity, the estimated market value of each agreement, the method of procurement (competitive or negotiated), and the full name, description and credit ratings of the agreement's counterparty and, if necessary, its applicable guarantor;
- (E) Amounts which were required to be paid and received, and any amounts which actually were paid and received under each outstanding interest rate swap agreement;
- (F) Credit enhancement, liquidity facility or reserves associated with the swaps including an accounting of all costs and expenses incurred, whether or not in conjunction with the procurement of credit enhancement or liquidity facilities under each outstanding interest rate swap agreement; and
- (G) An assessment of the counterparty risk, termination risk, and other risks associated therewith, which will include the aggregate mark-to-market value for each counterparty and relative exposure compared to other counterparties and a calculation of the County's Value at Risk for each counterparty.

This report will also include a copy of this Policy in the quarter after it is adopted or subsequently modified. The Director of Finance, with the assistance of the Counsel, and the County Controller, will periodically review this Policy for changes in best practices (i.e. GFOA Recommended Practices) and recommend modifications to this Policy to the County Executive and Board.

## **4.8 TREASURY INVESTMENT POLICY (Adopted 3-17-98; Amended 12-14-99; Amended 12-12-00; Amended 2-6-01; Amended 1-29-02; Amended 1-11-11; Amended 4-10-12; Amended 12-17-13; Amended 1-13-15; Amended 6-21-16; Amended 4-17-18; Amended 5-7-19; Amended 4-21-20; Amended 3-14-23)**

### **4.8.1 Statement of Intent**

The purpose of this document is to set forth the County of Santa Clara's policy applicable to the investment of short-term surplus funds. In general, it is the policy of the County to invest public funds in a manner that will provide a competitive rate of return with maximum security while meeting the cash flow requirements of the County, school districts and special districts whose funds are held in the County Treasury, in accordance with all state laws and County ordinances governing the investment of public funds.

### **4.8.2 Scope**

This investment policy applies to all financial assets held by the County. Those assets specifically included in this investment policy are accounted for in the County's Comprehensive Annual Financial Report and are included here as part of the County's Commingled Investment Pool.

### **4.8.3 Objectives**

The following investment objectives shall be applied in the management of the County's funds.

- (A) The foremost objective of the County's investment program shall be to safeguard principal. Investments shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio.
- (B) The secondary objective shall be to meet the liquidity needs of its participants. The investment portfolio shall remain sufficiently liquid to meet all operating requirements that may be reasonably anticipated.
- (C) The third objective shall be to attain a market rate of return (yield) throughout budgetary and economic cycles, taking into account the County's investment constraints and cash flow characteristics. The core of investments will be limited to low risk securities in anticipation of earning a fair return relative to the risk being assumed.

### **Risk Mitigation**

Those factors that can lead to an unexpected financial loss can be broadly grouped into the following categories: credit risk, liquidity risk, interest rate risk and operational risk. Credit risk is the possibility that a bond issuer will default or that the change in the credit

quality of counter-party will affect the value of a security. Liquidity risk for a portfolio that does not market value its holdings on a daily basis is the risk that sufficient cash or cash equivalents are not available and a security may have to be sold at a loss (based on its original cost) in order to meet a payment liability. Interest rate risk is the risk that the value of a fixed income security or portfolio will fall as a result of an increase in interest rates. Operational risk refers to potential losses resulting from inadequate systems, management failure, faulty controls, fraud and human error.

It is part of this policy to pursue the listed actions below to reduce the risk of exposure to the County's investments.

### **Credit Risk**

- Diversifying the investment portfolio so that potential losses on individual securities will be minimized.
- Only purchasing securities that meet ratings standards specified in this policy.
- Conducting ongoing reviews as needed of all credit exposures within investment portfolios.
- Rating restrictions for all investments are denoted as requirements at time of purchase. If a security should incur a downgrade by either rating agency, placing the security on special surveillance to identify and monitor any continuing deterioration trends and, if warranted, selling the security.
- Reviewing the possible sale of a security whose credit quality is declining to minimize loss of principal.

### **Liquidity Risk**

- To the extent possible, matching investment maturities with anticipated cash demands, also known as creating static liquidity. Alternatively, apply application software to analyze and validate that cash from investment activity is sufficient to cover all liabilities.
- Since all possible cash demands cannot be anticipated, maintaining portfolios largely of securities with active secondary or resale markets (dynamic liquidity).
- Making investments that could be appropriately held to maturity without compromising liquidity requirements.
- Prior to approving or disapproving a withdrawal request (a reduction of liquidity), the County Treasurer shall determine that the proposed withdrawal will not adversely affect the interests of the other depositors in the County pool.

### **Interest Rate Risk**



- Not investing in securities maturing more than five years from the settlement date unless the issuer is an Federal Agency of the United States or the credit is backed by the full faith and credit of the United States Government and the underlying remaining weighted average life of the debt security is less than five years at time of purchase.
- Limiting the weighted average maturity of the County's Commingled portfolio to three years or less.
- Limiting segregated investments to maturities of five years or less unless a longer term is specifically approved by the appropriate legislative body.
- Not investing in any funds in financial futures, option contracts, inverse floaters, range note or interest-only strips that are derived from a pool of mortgages, or any security that could result in zero interest accrual if held to maturity.
- Ensuring that adequate resources are devoted to interest rate risk measurement.

### **Operational Risk**

- Establishing a system of internal controls, which is designed to prevent losses of public funds arising from fraud, employee error, and misrepresentation by third parties, unanticipated changes in financial markets, or imprudent actions by employees and officers of the County.
- Having an audit review to examine the system of internal controls to assure that established policies including risk management procedures are being complied with.

#### **4.8.4 Standards of Care**

- (A) **Prudence.** The County Treasurer is a trustee and therefore a fiduciary subject to the prudent investor standard. When investing, reinvesting, purchasing, acquiring, exchanging, selling, and managing public funds, the County Treasurer shall act with care, skill, prudence, and diligence under the circumstances then prevailing, that prudent person acting in a like capacity and familiar with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the County and the other depositors. Within the limitations of this section and considering individual investments as part of an overall investment strategy, the County Treasurer is authorized to acquire investments as authorized by law.

The overall investment program shall be designed and managed with a degree of professionalism that is worthy of the public trust. The County recognizes that no investment program is totally riskless and that the investment activities of the County are a matter of public record. Accordingly, the County recognizes that occasional measured losses are inevitable in a diversified portfolio and shall be considered within the context of the overall portfolio's return, provided that the portfolio is adequately diversified and that the sale of a security is in the best long-term interest of the County. Significant adverse credit changes or market price

changes on County-owned securities shall be reported to the Board of Supervisors and the County Executive in a timely fashion.

- (B) **Competitive Transactions.** Where practicable, each investment transaction shall be competitively transacted with brokers/dealers/banks approved by the County Treasurer.
- (C) **Indemnification.** Investment officers acting in accordance with state laws, County ordinances, this policy and written procedures, and exercising due diligence shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided that deviations from expectations are reported in a timely fashion and appropriate action is taken to control adverse development.

**Ethics and Conflicts of Interest.** County employees involved in the investment process shall refrain from personal business activity that could conflict with the proper execution and management of the investment program, or that could impair their ability to make impartial decisions. Investment officials shall disclose any material interests in financial institutions with which they conduct business. They shall further disclose any personal financial/investment positions that could be related to the performance of the investment portfolio. Employees and investment personnel shall subordinate their personal investment transactions to those of the County, particularly with regard to the timing of purchases and sales.

County officers and employees involved with the investment process shall refrain from accepting gifts that would be reportable under the Fair Political Practices Commission (FPPC) regulations.

Members of the Treasury Oversight Committee shall not accept any honoraria, gifts or gratuities from advisors, brokers, dealers, bankers or other persons with whom the County Treasury conducts business that would be reportable under the FPPC regulations, or prohibited under any applicable law or policy.

#### **4.8.5 Authorized Financial Dealers and Institutions**

The County Treasurer shall establish an approved list of brokers, dealers, banks and direct issuers of commercial paper to provide investment services to the County. It shall be the policy of the County to conduct security transactions only with approved institutions and firms. To be eligible for authorization, firms that are commercial banks must be members of the FDIC, and broker/dealers:

- Preferably should be recognized as a Primary Dealer by the Market Reports Division of the Federal Reserve Bank of New York, and
- Must maintain a secondary position in the type of investment instruments purchased by the County.

In addition, the firm must also qualify under SEC Rule 15C3-1 (Uniform Net Capital Rule). Approved broker/dealer representatives and the firms they represent shall be licensed to do business in the State of California.

The criteria for selecting security brokers and dealers from, to, or through whom the County Treasury may purchase or sell securities or other instruments, prohibits the selection of any broker, brokerage, dealer, or securities firm that has, within any consecutive 48-month period following January 1, 1996, made a political contribution in an amount exceeding the limitations contained in Rule G-37 of the Municipal Securities Rulemaking Board, to any member of the governing board of any local agency that is a participant in the County Treasury or any candidate for those offices.

No public deposit shall be made except in a qualified public depository as established by state law. An annual analysis of the financial condition and professional institution/bank rating will be conducted by the County Treasurer and reported to the County Treasury Oversight Committee. Information indicating a material reduction in ratings standards or a material loss or prospective loss of capital must be shared with the Board of Supervisors, the County Executive, and the Oversight Committee in writing immediately.

To be eligible to receive local agency money, a bank, savings association, federal association or federally insured industrial loan company shall have received an overall rating of not less than “satisfactory” in its most recent evaluation by the appropriate federal financial supervisory agency of its record of meeting the credit needs of California communities, including low- and moderate-income neighborhoods, pursuant to Section 2906 of Title 12 of the United States Code.

#### **4.8.6 County Treasury Oversight Committee**

A County Treasury Oversight Committee shall be established by the Board of Supervisors pursuant to Government Code Section 27130 et seq to advise the County Treasurer in the management and investment of the Santa Clara County Treasury. The Oversight Committee shall be comprised of six members representing the County, school districts and other local government agencies whose funds are deposited in the County’s commingled pool and other segregated investments. Members of the Oversight Committee will be nominated by the Treasurer and confirmed by the Board of Supervisors. The Committee is comprised of the following members:

- (1) County Director of Finance.
- (2) County Executive appointed by the Board of Supervisors.
- (3) Representative appointed by a majority of the presiding officers of the legislative bodies of the special districts in the County that are required or authorized to deposit funds in the County Treasury.
- (4) County Superintendent of Schools or his or her designee.
- (5) Representative selected by a majority of the presiding officers of the governing bodies of the school districts and community college districts in the County.
- (6) One member of the public that has expertise in and or an academic background in public finance.

Each member may designate an alternate to serve in the absence of the member. The alternate shall take the oath of office and file a conflict of interest report with the Clerk of the Board. The alternate shall exercise the vote of the member at meetings where the member is not present.

It is the responsibility of the County Treasury Oversight Committee to approve the investment policy prepared annually by the County Treasurer, to review and monitor the quarterly investment reports prepared by the County Treasurer, to review depositories for County funds and broker/dealers and banks as approved by the County Treasurer, and to cause an annual audit to be conducted to determine the County Treasury's compliance with all relevant investment statutes and ordinances, and this investment policy. Any receipt of honoraria, gifts, and gratuities from advisors, brokers, and dealers, bankers or other persons with whom the County Treasury conducts business by any member of the County Treasury Oversight Committee is limited to amounts that would not be reportable to the Fair Political Practices Commission. These limits may be in addition to the limits set by a committee member's own agency or by state or local law or policy.

Nothing in this article shall be construed to allow the County Treasury Oversight Committee to direct individual investment decisions, select individual brokers, or dealers, or impinge on the day-to-day operations of the County Treasury.

#### **4.8.7 Eligible, Authorized and Suitable Investments**

All investments shall conform with state law including but not limited to Government Code 53600 et seq and any further restrictions imposed by this policy (Authorized Investments). Where this section specifies a percentage limitation for a particular category of investment or specific issuer, that percentage is applicable only at the date of purchase. If subsequent to purchase, portfolio percentage constraints are above the maximum thresholds due to changes in value of the portfolio or changes due to revisions of the policy, then affected securities may be held to maturity in order to avoid principal losses. However, the County Treasurer may choose to rebalance the portfolio if percentage imbalances are deemed to impair portfolio diversification.

If after purchase securities are downgraded below the minimum required rating level the securities shall be reviewed for possible sale within a reasonable amount of time after the downgrade. Significant downgrades and the action to be taken will be disclosed in the Quarterly Investment Report.

**U.S. Treasury and Government Agencies.** There shall be no limit in the amount that may be invested in debt obligations that are backed by the full faith and credit of the United States government. This includes but is not limited to U.S. Treasury bills, notes or bonds. However, this does not include Medium-Term Corporate Notes or Deposit Notes, as described below.

There shall be no limit in the amount that may be invested in Federal Agencies of the United States or United States government sponsored-enterprise obligations, participations, and bond issuances including those issued by or fully guaranteed as to principal and interest by federal agencies or the United States government.

**Repurchase Agreements.** A repurchase agreement consists of two simultaneous transactions under the same agreement. One is the purchase of securities by an investor (County Treasury) from a financial institution. The other is the commitment by the financial institution to repurchase the securities at a specified price and on a date mutually agreed upon.

Repurchase agreements shall be entered into only with financial institutions which have executed a Master Repurchase Agreement with the County. Counterparty dealers must be recognized as primary dealers with the Market Reports Division of the Federal Reserve Bank of New York.

- The term of the repurchase agreement is limited to 92 days or less. The securities underlying the agreement may be obligations of the United States Government, its agencies, or agency mortgage backed securities. For repurchase agreements that exceed 15 days, the maturities on purchased securities may not exceed 5 years.
- The purchased securities shall have a minimum market value, including accrued interest, of 102 percent of the dollar value of the agreement. Purchased securities shall be held in the County's custodian bank as safekeeping agent either as a purchase versus delivery or a tri-party arrangement, and the market value of the securities shall be marked-to-market on a daily basis.

**Reverse Repurchase Agreements.** A reverse repurchase agreement consists of two simultaneous transactions under the same agreement. One is the sale of securities by the County Treasury to a bank or dealer. The other is the commitment by the County Treasury to repurchase the securities at a specified price and on a date mutually agreed upon.

Reverse repurchase agreements may only be transacted with dealers and financial institutions which have executed a Master Repurchase Agreement with the County as approved by the Board of Supervisors, and which are Primary Dealers of the Federal Reserve Bank of New York. Reverse repurchase transactions must meet the following requirements:

- Sold securities must be owned and fully paid a minimum of 30 days prior to transaction.
- The total of all reverse repurchase and securities lending agreements cannot exceed 20% of the portfolio's base value.<sup>1</sup>
- The term of the reverse repurchase agreement is not to exceed 92 days unless the agreement includes a written codicil that guarantees a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement and the final maturity date of the same security.
- Funds obtained through a reverse repurchase agreement shall not be used to purchase another security with a maturity longer than 92 days from the initial settlement date of the reverse repurchase agreement unless the reverse repurchase agreement includes a

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1. Base value of the County's Pool refers to the dollar amount obtained by totaling all cash balances placed in the pool by all pool participants, excluding any amounts obtained through selling securities by way of reverse repurchase agreements or securities lending agreements.

written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement and the final maturity date of the same security.

- Reverse repurchase agreements may only be used to effect a “matched” transaction whereby the proceeds of the reverse are reinvested for approximately the same time period as the term of the reverse repurchase agreement.
- Reverse repurchase agreements may not exceed \$90 million.
- Investments in reverse repurchase agreements in which Treasury sells securities prior to purchase with a simultaneous agreement to repurchase the security may only be made upon prior approval of the Board of Supervisors.

Reverse Repurchase Agreements will be used solely for the intent of accessing liquid funds on a temporary basis and will not be used as a means to amplify portfolio returns.

All other cost effective means of obtaining liquidity will be considered prior to exercising this option.

In exception to the above, a trial transaction will be permitted on a periodic basis as emergency preparation to ensure that internal systems and staff members remain up-to-date on processing procedures. The amount of the trial transaction will not exceed pre-established limits set by the Treasurer.

**Securities Lending.** The mechanics behind a securities lending transaction consist of the County lending a security. The borrower, a financial institution, pledges collateral consisting of cash to secure the loan. Borrowers sometimes offer letters of credit as collateral. The lending agreement requires that the collateral must always exceed the market value of the security by 2%. Changes in the security’s price during the term of the loan may require adjustments in the amount of collateral. The cash collateral obtained from the borrower is then invested in short-term assets for additional income. Also, the County is entitled to all coupon interest earned by the loaned security. At the end of the loan term, the transaction is unwound, the securities and collateral, which are held by a custodian bank, are returned to the original owners. The borrower is obliged to return the securities to the lender, either on demand from the County or at the end of any agreed term. Lending transactions must meet the following requirements:

- Loaned securities must be owned and fully paid a minimum of 30 days prior to transaction.
- The total of all reverse repurchase and securities lending agreements cannot exceed 20% of the portfolio’s base value.
- The term of the securities lending agreement is not to exceed 92 days.
- Funds obtained through a securities lending agreement shall not be used to purchase another security with a maturity longer than 92 days from the initial settlement date of the securities lending agreement.
- The objective of the transaction is to produce positive earnings.

To qualify as a counter-party to the County in a securities lending transaction, the broker/dealer must be recognized as a Primary Dealer by the Federal Reserve Bank and the County's custodial bank must indemnify the County against losses related to the broker-dealer.

**Non-negotiable Time Deposits (CDs) that are FDIC Insured and Collateralized Time Deposits.** Time deposits with banks or savings and loan associations shall be subject to the limitations imposed by the Government Code, as amended, and additional constraints prepared by the County Treasurer that would limit amounts to be placed with institutions based on creditworthiness, size, market conditions and other investment considerations.

**Negotiable Certificates of Deposit.** The bank issuing a negotiable certificate of deposit with a maturity of one year or less, must reflect the following or higher ratings from at least two of these *nationally recognized statistical rating organizations* (NRSRO's): Moody's (P1), Standard and Poor's (A1), and Fitch (F1). Certificates that exceed one year, must reflect the following ratings or higher by at least two of these NRSRO's: Moody's (Aa3), Standard and Poor's (AA-), and Fitch (AA-). Negotiable certificates of deposit shall not exceed 30% of the surplus funds of the portfolio. No more than 5% of the portfolio shall be in a single bank.

**Bankers' Acceptances.** Investments in eligible bankers' acceptances of United States or foreign banks shall not exceed 180 days maturity from the date of purchase. This debt must reflect the following or higher ratings by at least two of these NRSRO's: Moody's (P1), Standard and Poor's (A1), and Fitch (F1). Bankers' Acceptances shall not exceed 40% of surplus funds. No more than 5% of the portfolio shall be invested in a single commercial bank.

**Commercial Paper.** Investments in commercial paper shall not have a maturity that exceeds 270 days. Commercial paper must reflect the following or higher ratings by at least two of these NRSRO's: Moody's (P1), Standard and Poor's (A1), and Fitch (F1). The issuer must meet the qualifications as indicated below pursuant to California Government Code:

If the commercial paper is short-term unsecured promissory notes issued by financial institutions or corporations, the issuer must:

- Be organized and operating in the United States as a general corporation;
- Have total assets in excess of five hundred million dollars (\$500,000,000); and
- If the issuer has senior debt outstanding, the senior debt must reflect the following ratings or higher by at least two of these NRSRO's: Moody's (A3) Standard and Poor's (A-) and Fitch (A-).

If the commercial paper is asset backed, the issuer must:

- Be organized within the United States as a special purpose corporation, trust, or limited liability company; and

- Have program-wide credit enhancements including, but not limited to, over collateralization, letters of credit or surety bonds and include a liquidity vehicle.

Commercial paper shall not exceed 40% of the local agency's funds. No more than 5% of the portfolio shall be invested in any single issuer of commercial paper.

**Medium Term Corporate Notes or Deposit Notes.** The purchase of corporate notes shall be limited to securities that reflect the following ratings or higher by at least two of these NRSRO's: Moody's (A3), Standard and Poor's (A-), and Fitch (A-), but no single NRSRO rating can be lower than A- or equivalent. Medium term corporate notes or deposit notes (five years or less) shall be limited to 30% of surplus funds. No more than 5% of the portfolio shall be invested in any single corporation including those issuers whose debt is fully guaranteed as to principal and/or interest by federal agencies or the United States government.

**Local Agency California Investment Fund (LAIF).** Funds may be invested in LAIF, a State of California managed investment pool up to the maximum dollar amounts in conformance with the account balance limits authorized by the State Treasurer.

**Municipal Obligations.** The purchase of municipal obligations shall include the following:

- (A) **Treasury notes or bonds of the state of California**, including other obligations such as registered state warrants, certificates of participation, lease revenue bonds and bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the state or by a department, board, agency, or authority of the state.
- (B) **Bonds, notes, warrants, certificates of participation, lease revenue bonds or other evidences of indebtedness of any local agency within this state**, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency, or by a department, board, agency, or authority of the local agency.
- (C) **Registered treasury notes or bonds of any of the other 49 United States in addition to California**, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by a state or by a department, board, agency, or authority of any of the other 49 United States, in addition to California.

For those instruments that are rated, long-term obligations must reflect the following ratings or higher by at least two of these NRSRO's: Moody's (A3), Standard and Poor's (A-), and Fitch (A-). Short term obligations must carry the following ratings or higher by at least one of these NRSRO's: Moody's (MIG-1), Standard and Poor's (SP-1), and Fitch (F-1). No more than 10% of surplus funds shall be in such obligations.

**Money Market Funds.** Companies issuing such money market funds must have assets under management in excess of \$500,000,000. The advisors must be registered with the



Securities and Exchange Commission (SEC) and have at least five years' experience investing in such types of investments. The fund must reflect the highest rating by at least two of these NRSRO's: Moody's (Aaa), Standard and Poor's (AAA), and Fitch (AAA). No more than 20% of the Treasury's funds may be invested in money market funds and no more than 10% of the Treasury's funds may be invested in one money market fund. If the money market fund is tax-exempt then only one "AAA" rating by an NRSRO is required. The money market fund must also be "no-load", which is a fund that does not compensate sales intermediaries with a sales charge or commission that is deducted from the return of the fund.

**Asset Backed Securities.** Asset backed securities (ABS) are notes or bonds secured or collateralized by pools of loans such as installment loans or receivables.

- The asset backed security itself must reflect the following ratings or higher from at least two of these NRSRO's: Moody's (Aa3), Standard and Poor's (AA-) and Fitch (AA-).
- Asset backed securities may not exceed 20% of the Treasury's surplus money.

**Agency Mortgage Backed Securities.** Mortgage backed securities (MBS) are collateralized by pools of conforming mortgage loans or multi-family mortgage loans insured by FHLMC or FNMA and or guaranteed by FHA (GNMA).

**Supranational Debt Obligations.** United States dollar-denominated senior unsecured unsubordinated obligations issued or unconditionally guaranteed by the International Bank for Reconstruction and Development of the World Bank (IBRD) or the Inter-American Development Bank (IADB), with a maximum remaining maturity of five years or less, and eligible for purchase and sale within the United States. Investments must be rated "AAA" by at least two of the following, NRSRO's, Moody's, Standard and Poor's or Fitch and shall not exceed ten percent, in aggregate, of the Treasury's surplus funds.

## General Parameters

### *Socially and Environmentally Responsible Investments*

Whenever possible, in addition to and subordinate to the objectives set forth in section 4.8.3 herein, it is the County's policy to create a positive impact by investing in socially and environmentally responsible corporations and agencies as defined by priorities set by the Board of Supervisors.

### *Ineligible Investments*

Ineligible investments include common stock, inverse floaters, range notes, mortgage-derived interest only strips and any security that could result in zero interest accrual if held to maturity or any security that does not pay (cash or earn accrued) interest in one year or at least semi-annually in subsequent years and any investment not authorized by this policy unless otherwise allowed by law and approved by the Board of Supervisors.

### *Combined Issuer/Institutional Limits.*

No more than 5% of the portfolio shall be invested in aggregate of any single institution of the following types: Bankers Acceptances, Commercial paper, Negotiable Certificates of Deposit, and Corporate Notes.

### *Swaps*

Investments will be reviewed for the possibility of a swap to enhance yield when both securities have a similar duration so as not to affect the cash flow needs of the program. Swaps should have a minimum of five basis points before being transacted.

#### **4.8.8 Maximum Maturity**

The County Investment portfolio shall be structured to provide that sufficient funds from investments are available to meet the anticipated cash needs of the depositors in the County's commingled investment pool. The choice of investment instruments and maturities shall be based on an analysis of depositors cash needs, existing and anticipated revenues, interest rate trends and specific market opportunities. The average weighted maturity of the portfolio will not exceed three years and investments will have a maturity of no more than five years from the settlement date unless specifically approved by the Board of Supervisors or the provisions set forth elsewhere in this policy.

#### **4.8.9 Segregated Investments (excludes Commingled Funds)**

Segregated investments of instruments permitted in Government Code Section 53601 can be made upon proper authorization where cash flow or other factors warrant segregation from the commingled pool. Examples that may justify such segregation are bond or note proceeds, Retiree Health funds or Workers Compensation funds where longer term or matching term investments are warranted.

For segregated investment funds, no investment shall be made that could not appropriately be held to maturity without compromising liquidity requirements.

Segregated investments shall be limited to five years maturity unless a longer term is specifically approved by the appropriate legislative body.

Government Code Sections 53620 and 53622 grant the County authority to invest the assets of the Santa Clara County Retiree Health Trust in any form or type of investment deemed prudent by the governing body. Accordingly, the County Board of Supervisors has determined that up to 67 percent of the Trust's assets, excluding near-term liability pay-outs, may be invested in equities through mutual funds or through the direct purchase of common stocks by a money management firm(s) approved by the Board of Supervisors.

In accordance with the prudent person standard in Government Code Sections 53620 through 53622, the assets of the Santa Clara County Retiree Health Trust may be invested in bonds that have a final maturity of 30 years or less from purchase date, and in bonds that reflect the following ratings or higher from at least two of these NRSRO's: Moody's (A3), Standard and Poor's (A-), and Fitch (A-).

#### **4.8.10 Safekeeping and Custody**

All security transactions, including collateral for repurchase agreements, shall be conducted on a delivery-versus-payment (DVP) basis. Securities will be held in the name of the County by a custodian designated by the County Treasurer and evidenced by trade confirmations and safekeeping holdings reports.

The County Treasurer will approve certain financial institutions on an annual basis to provide safekeeping and custodial services for the County. Custodian banks shall be selected on the basis of their ability to provide service to the County's account and the competitive pricing of their safekeeping related services. All securities purchased by the County under this section shall be properly designated as an asset of the County and held in safekeeping by a custodial bank chartered by the United States Government or the State of California. The County will execute custodial agreement(s) with its bank(s). Such agreements will outline the responsibilities of each party for the notification of security purchases and sales, address wire transfers as well as safekeeping and transaction costs, and provide details on procedures in case of wire failures or other unforeseen mishaps along with the liability of each party.

To be eligible for designation as the County's safekeeping and custodian agent, a financial institution shall meet the following criteria:

- Have a Moody's rating of P-1 or Standard and Poor's rating of A-1 for the most recent reporting quarter before the time of selection.
- Qualify as a depository of public funds in the State of California as defined in Government Code Section 53638.

The County Treasurer shall require each approved custodial bank to submit a copy of its Consolidated Report of Condition and Income (Call Report) to the County within forty-five days after the end of each calendar quarter.

It is the intent of the County to mitigate custodial credit risk by insuring that all securities are appropriately held.

Securities typically clear and settle as electronic book entries through the following clearinghouses: (1) the Depository Trust Corp. (DTC), a member of the Federal Reserve Bank; or (2) the Fed Book-Entry System, owned by the Federal Reserve. Governments generally do not have their own account in the Fed Book-Entry System or at DTC, but have access to those systems through large financial institutions who are members and participants. The County's securities within the clearing system are held under the Custodial Bank's name. The Custodial Bank's internal records identify the County as the underlying beneficial owner of securities.

Infrequently, physical certificates are used to reflect ownership of a security. When physical securities are received by the Custodial Bank, they are sent to a transfer agent to be registered into the Custodial Bank's nominee name. It is kept in the bank's vault until

redeemed or sold. The Custodial Bank records identify the County as the underlying beneficial owner and include the securities on the County's Safekeeping report.

#### **4.8.11 Internal Controls and Accounting**

The County shall establish a system of internal controls, which is designed to prevent losses of public funds arising from fraud, employee error, and misrepresentation by third parties, unanticipated changes in financial markets, or imprudent actions by employees and officers of the County.

The County maintains its records on the basis of funds and account groups, each of which is considered a separate accounting entity. All investment transactions shall be recorded in the various funds of the County in accordance with Generally Accepted Accounting Principles as promulgated by the Government Accounting Standards Board.

The County shall establish a process for an annual review by either the County's internal or external auditor. This review will examine the system of internal controls to assure that the established policies and procedures are being complied with and many result in recommendations to change operating procedures to improve internal control.

#### **4.8.12 Reporting**

##### **(A) Methods.**

(i) The County Treasurer shall prepare an investment report quarterly, including a management summary that provides a clear status of the current investment portfolio, quarterly transactions, investment philosophy and market actions and trends. The management summary will be prepared in a manner which will allow the County to ascertain whether investment activities during the reporting period have conformed to the investment policy. The report should be provided to the Board of Supervisors, the County Executive, the County Treasury Oversight Committee, Internal Auditor, and local agencies with funds on deposit in the County pool. The report will include the following:

- A listing of individual securities by type of investment and maturity held at the end of the reporting period.
- A composite of transactions purchased during the reporting period by type of security.
- Unrealized gains or losses resulting from appreciation or depreciation of securities held in the portfolio, by listing the cost of market value of securities.
- Average weighted yield to maturity of the portfolio and benchmark comparisons.
- Weighted average maturity of the portfolio.
- A summary of purchases during the reporting period by broker/dealers or banks showing the purchase date, issuing agency, amount purchased, cost and purchase date.

- A statement denoting the ability of the County to meet its pool's expenditure requirements for the next six months, or provide an explanation as to why sufficient money shall, or may not, be available.

(ii) The County Treasurer shall prepare a monthly report with a brief summary of the investment report and a listing of the transactions conducted during the month. The report will be provided to the Board of Supervisors, Treasury Oversight Committee and the local agencies with funds on deposit in the County Pool.

Material deviations from projected budgetary investment results shall be reported no less frequently than quarterly to the Board of Supervisors and the County Executive.

**(B) Performance Standards.**

The investment portfolio will be managed in accordance with the parameters specified within this policy. The portfolio should obtain a market average rate of return during a market/economic environment of stable interest rates, taking into account the County's investment risk constraints and cash flow needs.

The basis for measurement used to determine whether market yields/rate of return are being achieved shall be the State Treasurer's Local Agency Investment Fund (LAIF). It should be recognized, however, that since the investment parameters of LAIF are broader than the County's investment policies, the returns realized by the County cannot necessarily be expected to exceed the returns realized by LAIF on a regular basis.

- (C) The County utilizes the following methods to pay for banking services and County administration of the investment function:

**General Banking Services.** General banking services such as safekeeping, items deposited, statements, account maintenance, etc., may be paid to the bank through direct payment or a combination of direct payment and compensating balance.

**Investment and Banking Administration Costs.** The County recovers staffing and other costs relating to the County's administration services for banking and investment functions provided to the County Treasury. The administrative costs are allocated against the earnings of the County pool prior to apportionment of earnings.

**Earnings Apportionment.** Earnings of the County pool are apportioned quarterly to all participants of the pool based on the average daily balance of each fund during the quarter.

Realized capital gains (the gain from securities sold at a higher price compared to cost) are added to quarterly earnings. Realized capital losses (the loss from securities sold at a lower price compared to cost) reduce quarterly earnings. To the extent that a realized capital loss exceeds the quarterly aggregate earnings of the Pool, the loss will be shared across all funds. The size of the write-down for any individual fund balance will be based on the average daily balance of each fund during the quarter in which the loss occurred.

Any apportioned earnings may not be available for withdrawal until all monies that have been earned (i.e., accrued) have actually been received by the County Treasurer.

#### **4.8.13 Investment Policy Adoption**

Pursuant to Government Code Section 27133 the County Treasurer annually prepares an investment policy that is reviewed, monitored and approved by the County Treasury Oversight Committee. Any changes must be approved by the Board of Supervisors. Copies of the approved investment policy shall be circulated annually to local agencies with funds on deposit in the County pool.

#### **4.8.14 Voluntary Participants**

The County provides the opportunity for local agencies to deposit excess funds within the County's Commingled Pool pursuant to Government Code Section 53684. In order to participate, voluntary participants must sign the County's Disclosure and Agreement for Voluntary Deposits which outlines the terms and conditions of participation, including constraints on deposits and withdrawals from the pool. Voluntary participants must also submit a resolution duly adopted by its governing board authorizing the deposit of funds into the Investment Pool.

It is the County's policy to not allow access to the pool unless the voluntary participant agrees to a long-term relationship utilizing the pool and County Treasury for its primary banking needs. The County does not wish to enter into relationships where an entity is placing funds because yields for a time may be higher than what is available at other organizations, because such activity can have an adverse and unfair impact on the other participants. Upon approval of the Treasurer, accommodations may be made to utilize the County resources to make specific investments or manage segregated funds for a voluntary participant at an agreed cost.

##### **4.8.14.1 Temporary Loans to Pool Participants**

Various public entities maintain funds on deposit with the County Treasury. From time to time, these public entities experience cash flow problems. Allowing these entities to temporarily borrow from the commingled investment pool is an alternative way to address their short-term cash flow problems. In order to ensure that these temporary loans comply with all legal requirements and investment pool objectives, no such transfers shall be made unless all of the following requirements are met:

- Because the commingled investment pool consists of deposits from both restricted and unrestricted sources, all transfers shall comply with all requirements of Government Code Sections 53601, 53840, 53841 and 53842, including the requirements that they be legally characterized as loans and formalized with "evidences of indebtedness," and meet maturity and security criteria.
- All transfers shall comply with Article XVI, Section 6 of the California Constitution, including the limitations on borrowing amounts and loan periods.

- No transfers shall be made during any fiscal year unless the Board of Supervisors has adopted a resolution authorizing transfers for that fiscal year. (Cal. Constitution Article XVI, Section 6; Government Code Section 25252.)
- Any inter-fund transfers between school district and community college accounts shall be formally approved by the district's governing board and shall comply with all other requirements of Education Code Sections 42603, 42620 and 85220, including requirements regarding repayment, sufficient income, and maximum transfer amounts.
- No transfer may occur until the fund needing the transfer meets the revenue sufficiency test, consistent with state law and County investment pool investment-risk constraints, established by the Director of Finance to ensure repayment.
- Direct borrowing from the pool should be a last resort funding alternative. Pool participants will be encouraged to use all available internal sources for cash flow needs through inter-fund borrowing between the participant's various funds.

The Director of Finance shall do all of the following:

- Proactively monitor fund balances.
- Establish early warning triggers to identify those funds most likely to incur an overdraft and require a transfer.
- Establish a revenue sufficiency test for the purpose of assessing repayment ability.
- Place tax apportionments assigned to an overdrawn fund in a lock box sequestered for credit to the investment pool.
- Establish and monitor investment pool exposure limits.
- Monitor funds to ensure that loans meet dry period (last Monday in April through June 30 of the fiscal year) financing restrictions.
- Restrict certain individual funds (e.g., bond reserve funds) from use as a borrowing source in inter-fund borrowing across funds held by pool participant.
- Establish a hierarchy of associated funds owned by each pool participant to be used as alternative funding sources in the event any of the participant's funds needs a loan.
- Implement accounting procedures that either manually or automatically transfer funds from one fund to another based on preset rules.
- Report within the Quarterly Investment listing all loans extended by the investment pool to participants.

The County's external financial auditor shall regularly review all of the practices and procedures in this Section to ensure compliance with all legal requirements.

#### **4.8.15 Withdrawal of Funds by Voluntary Participants**

Public entities that are voluntary participants in the County pool who wish to make withdrawals for the purpose of investing outside of the County pool may request such withdrawals in accordance with the County Investment Management Agreement.

The County Treasurer will assess the proposed withdrawal on the stability and predictability of the investments in the County pool. Prior to approving or disapproving a withdrawal request, the County Treasurer shall determine that the proposed withdrawal will not adversely affect the interests of the other depositors in the County pool. Funds are withdrawn based on the market value.

#### **4.8.16 Warranties**

All depositors acknowledge that funds deposited in the Investment Pool are subject to market/investment risk, and that the County Treasurer makes no warranties regarding Investment Pool performance, including but not limited to preservation of capital or rate of return earned on funds deposited in the Investment Pool. Depositors knowingly accept these risks and waive any claims or causes of action against the County Treasurer, the County, and any employee, official or agent of the County for loss, damage or any other injury related to the Depositors' funds in the Investment Pool, with the exception of loss, damage or injury caused solely by the County Treasurer's material failure to comply with the County Investment Policy and all applicable laws and regulations.

### **4.9 MANUFACTURING PERSONAL PROPERTY TAX REBATE SANTA CLARA COUNTY GROWTH AND JOB CREATION POLICY (Adopted 9-19-95)**

The following policy was adopted by the Board of Supervisors on September 19, 1995:

#### **POLICY ON MANUFACTURING PERSONAL PROPERTY TAX REBATE SANTA CLARA COUNTY GROWTH AND JOB CREATION POLICY**

The County of Santa Clara supports efforts to maintain and expand manufacturing and research-and-development employment in Santa Clara County as a tool to improve living standards in our community. The County of Santa Clara, through Assembly Bill 1823 of 1993, is willing to assist manufacturers expand or relocate facilities, create good jobs, and increase property tax revenues.

Under provisions of AB 1823, the County of Santa Clara will, for eligible manufacturing facility projects, consider granting a rebate for up to five (5) years of a portion of the County's share of the 1 percent property tax levy on manufacturing equipment. The amount of the rebate granted shall not exceed the amount granted by the city within which the project is located.

The Board of Supervisors has established the following policy and application guidelines to ensure a prompt and thorough review of eligible projects.

#### **4.9.1 Eligibility**

- (A) Consistent with the intent of AB 1823, the County shall only grant personal property tax rebates to companies that, but for the rebate, would not otherwise have



expanded or located within Santa Clara County. The County shall not consider an application if, prior to filing for the rebate, any of the following actions have occurred:

- (1) A building permit for the subject development for which a deduction is being sought has been issued by a City within the County jurisdiction or construction of the subject development has begun; or
  - (2) Manufacturing equipment for which a deduction is being sought has been or is being installed.
- (B) The County shall look more favorably for the purposes of this tax rebate upon companies that:
- (1) Provide healthcare for all permanent employees;
  - (2) Have a history of fair labor practices;
  - (3) Have workplace health and safety policies in place;
  - (4) Pay wages at or above the competitive industry wages;
  - (5) Provide childcare for their workers;
  - (6) Hire County job training program alumni;
  - (7) Hire current residents of Santa Clara County;
  - (8) Locate the project so that workers can make use of mass transit;
  - (9) Have public giving programs that benefit the local community;
  - (10) Have a commitment to workplace training for all employees;
  - (11) Have policies in place to reduce the use of toxics and to reduce environmental damage;
  - (12) Have a history of mitigating environmental violations.

Please enclose your corporate policy on these items, if applicable.

#### **4.9.2 Application**

Any company applying for a Santa Clara County tax rebate shall provide the following information:

- (A) A copy of the applicant's most recent audited financial statement and shareholder report;

- (B) A description of the applicant's expansion or relocation plans which include project timeline and estimated total investment, including costs of real property and manufacturing equipment;
- (C) An estimated tax schedule for payments of real property tax and manufacturing equipment taxes, including an amortization schedule and anticipated rebate schedule;
- (D) An estimate of the construction jobs created by the proposed development or expansion;
- (E) An estimate of the total jobs and wage and benefit (or suitable alternative) scales by job category (including full-time, part-time, permanent, temporary, and manufacturing) created by the proposed development or expansion and the anticipated hiring dates;
- (F) A list of all other local, state and federal public bodies that the applicant has approached or will approach for additional financial incentives, abatements, rebates or subsidies related to the Santa Clara County application.

### **4.9.3 Approval**

Within 30 days of receipt of the completed application, the Board of Supervisors shall schedule the item for discussion and possible action at a regularly scheduled Board meeting. The Director of Finance will present a recommendation to the Board of Supervisors which evaluates the application and relevant information from state and/or city analysis of project.

### **4.9.4 Manufacturing Personal Property Tax Rebate Criteria**

#### **Minimum Standards:**

Companies with expansion projects approved for personal property rebates will:

- (A) Be eligible for a rebate on personal property taxes for up to 28.5 percent of the County portion of the 1 percent secured and unsecured property taxes paid over a five year period following project completion;
- (B) Create and sustain a minimum of ten (10) full-time permanent manufacturing jobs over the life of the rebate period;
- (C) Demonstrate competitive industry wages, by category and industry at a minimum of \$10 per hour, for both full-time and part-time jobs created by the expansion;
- (D) Provide health care benefits, or a suitable alternative, for permanent jobs created;
- (E) Appoint a contact person who will be responsible for working with the County's designated staff for the purposes of hiring and training job applicants when practi-

cal through County offices of the State of California Employment Development Department, locally sponsored Job Training Partnership Act Programs, and Santa Clara County's Greater Avenues for Independence, and to jointly submit an annual report regarding their progress.

#### **4.9.5 Accountability Criteria**

A company shall annually submit its claim for a tax rebate. The claim shall show proof of the 1 percent secured and unsecured property taxes paid in the current fiscal year.

The claim shall also list the number of manufacturing and other jobs created because of the project along with a summary of pay rates and health insurance coverage or suitable alternatives afforded its employees for the respective job categories.

Companies failing to meet projected job creation, wage rate, or health insurance coverage requirements shall be subject to a proportional claim reduction as defined in the contract.

The County shall have the right to recover a rebate from a company if it is determined, by way of a final decision of an administrative agency or court of competent jurisdiction, that the company has committed a willful or grossly negligent act with regard to the company's business within Santa Clara County.

### **4.10 CAPITAL OUTLAY POLICY (Adopted 9-23-97; Amended 12-5-06)**

It shall be the policy of the Board of Supervisors of Santa Clara County that Facilities Department General Fund capital projects shall be funded through the Capital Outlay Process which shall include a 10-Year Capital Improvement Plan. The capital project evaluation criteria will continue to guide priority setting.

#### **4.10.1 Capital Budget Concept Paper Phase**

Agencies/Departments prepare a conceptual project description and justification to allow policy makers to arrive at a tentative priority listing as well as assess viability and appropriateness of including the projects in the County's long-range capital outlay plan.

#### **4.10.2 Capital Budget Proposal (CBP)**

Agencies/Departments, in conjunction with the Capital Programs staff, develop the projects and justification to allow the Administrative Capital Committee to be able to make recommendations on whether to request funds for projects selected in the Concept Paper Phase.

#### **4.10.3 Capital Budget Proposal and 10-Year Plan (Amended 12-5-06)**

Capital Programs makes a final review and analysis of Capital Budget Proposals to advise the Administrative Capital Committee of their appropriateness and readiness to be submit-

ted as part of the County's capital budget submission. A draft priority listing of all projects is completed at this time.

#### **4.10.4 Preparation and Submission of County's 10-Year Plan and Budget Submission Phase (Amended 12-5-06)**

Once recommendations are reviewed and evaluated, this phase covers the actual development of the 10-Year planning document and budget submission through the County Executive's Office to the Board of Supervisors.

The Plan identifies what the Board is anticipated to consider in the next ten years for physical plant modifications, annual phasing and cash flow for each project and the Plan's project priorities.

#### **4.10.5 Board of Supervisors Review and Approval Phase (Amended 12-5-06)**

This phase includes several steps: approval from the Administrative Capital Committee and Finance and Government Operations Committee in the development and submission of the 10-Year Plan until its adoption by the Board annually in Budget Hearings.

The Facilities Department will be working very closely with operating departments throughout the entire process.

### **4.11 POLICY FOR PLANNING, REPORTING, AND FINANCING CAPITAL PROJECTS (Adopted 3-10-98; Amended 2-26-08)**

The Board of Supervisors believes that a high priority must be placed on the financing of capital projects. This approach allows for a capital expenditure strategy which enables the County to:

- provide appropriate facilities for its workforce and clients;
- manage maintenance, utilities and other facility ownership costs; and,
- plan for the future replacement of facilities.

The Board supports a rigorous annual planning process and application of well-defined and policy driven criteria. Board Policy 4.10 describes the annual Capital Outlay Process whereby departments will submit capital budget concept proposals for review to the Administrative Capital Committee. The Finance and Government Operations Committee will annually review capital project requests as submitted by the Administrative Capital Committee and will forward recommended projects to the full Board of Supervisors for consideration based upon the following criteria:

- **Legal Mandates** - legal requirements which require implementation of the proposed project.

- **Health and Safety Effects** - the degree to which a project reduces or eliminates the exposure of employees and residents to health and safety hazards.
- **Preservation of Existing Capital Facilities** - the ability of a project to eliminate an existing deficiency, substandard condition, or need for future major rehabilitation.
- **Service Level Changes (Quality of Service)** - the project's effect on the efficiency of County programs.
- **Fiscal Impacts** - the cost effectiveness of the project (cost-benefit, life cycle cost, pay-back term, risk assessment analysis).
- **Environmental Sustainability** - the potential for the project to improve one or more of the following indicators of environmental sustainability, consistent with Board Policy Section 7.14 (County Green Building Policy):
  - (A) Reduced energy use
  - (B) Reduced Greenhouse Gas (GHG) emissions
  - (C) Reduced water use
  - (D) Improvements to water quality
  - (E) Improvements to air quality
  - (F) Contribution of project to habitat conservation goals
- **Aesthetic or Social Effects** - the beneficial or adverse impact of a project on the quality of life for residents and/or employees.

#### 4.11.1 Reporting Capital Projects in the 10-Year Capital Improvement Plan

Capital projects are developed and reviewed by the Finance and Government Operations Committee and by the Board of Supervisors as described in Board Policy Section 4.10 (Capital Outlay Policy). Capital projects are reported in the annually updated 10-Year Capital Improvement Plan as described below:

- (A) Capital projects that exceed \$500,000 will be presented in the 10-Year Capital Improvement Plan and will include information on the stage of the project, estimated life cycle costs including one-time and ongoing costs, and additional costs of the service program, if any.
- (B) Capital projects that exceed \$500,000 and require more than one year for completion will be presented to the Board in a multi-year format with clear definition of the need for expenditures and/or encumbrances within each fiscal year based.
- (C) For capital projects that exceed \$500,000, distinct phases will be clearly defined separating the design phase from the construction phase. Though a total cost of all

phases will be estimated, funding for construction will normally be considered only at the completion of the design phase when accurate costs have been determined.

- (D) Projects to be funded from bonds or other sources outside the regular capital review process, such as Santa Clara Valley Health and Hospital capital accounts, will be included in the document for reference purposes.

Projects that are not requested during the annual Capital Projects planning process, as described in Board Policy Section 4.10 (Capital Outlay Policy), will not be considered for funding unless the need has been created by an emergency or other compelling reason.

#### **4.11.2 Capital Projects Descriptions**

This policy recommends that capital expenditures be sorted as based on the following categories of projects:

- (A) Preventative / Corrective Maintenance projects
- (B) Life Cycle Replacement / Major Maintenance projects
- (C) Special Program projects
- (D) New Construction / Alteration projects

#### **4.11.3 Preventative / Corrective Maintenance Projects (Amended 6-19-98)**

Preventative and corrective maintenance projects are the maintenance work needed to keep a facility and its systems functioning to the end of their engineered lives or “life cycle.” Preventative maintenance accomplishes facility system inspections and services in accordance with schedules established by manufacturers’ recommendations, industry standards, and government regulations. Corrective maintenance is the repair of a facility system that has failed unexpectedly prior to the end of the engineered life of that system. Most corrective maintenance projects are small repair projects that can be performed by County employees since the project work costs less than the dollar amount established by California Public Contract Code Section 22032(a).

These projects typically fall under the criteria of “Preservation of Capital Facilities,” “Legal Mandates,” and “Health and Safety Effects.”

Preventative and corrective maintenance projects are funded in department annual operating maintenance budgets from county “ongoing funds”, and are not capital projects per se. But, failure to perform this work will result in the creation of expensive capital repair projects. Larger corrective maintenance projects may be reclassified as “major maintenance” projects.

The Board of Supervisors has adopted a policy to determine a level of allocation for preventive maintenance based on the value of County-owned buildings. The preventative maintenance annual funding standard shall be 2% of the facility value.

#### **4.11.4 Life Cycle Replacement / Major Maintenance Projects**

Buildings and their systems are engineered for a useful design life. Life cycle replacement and major maintenance projects, also known within the County as Backlog projects, are those capital funded projects that replace or renovate buildings and their systems as those buildings / building systems reach the end of their useful lives. Large corrective maintenance projects may be reclassified as major maintenance projects due to the need to fund these projects with capital funds rather than from department annual operating budgets.

These projects typically fall under the criteria of “Preservation of Existing Capital Facilities,” “Legal Mandates,” and “Health and Safety Effects.”

The list of projects and desired level of annual capital funding for this work is identified through a Facility Condition Assessment process. A prioritized list of these projects is annually presented to the Board of Supervisors during the annual capital planning process.

Funding for these projects is typically provided from County “one-time” funds. Consideration should be given to using other sources of funding if “one-time” funds are insufficient to meet the life cycle replacement requirements of the County’s facilities.

Unexpected emergency maintenance projects are often funded from the County Contingency Reserve Fund. These projects are considered separately from the annual capital project review process due to the unexpected nature of their occurrence and the urgency with which the repair work must be completed.

#### **4.11.5 Special Program Projects**

Special program projects are those groupings of projects having unique characteristics that are of special interest to the County. Possible examples of such programs include energy conservation, water conservation, greenhouse gas reduction, Americans with Disabilities Act projects, security, and others. These projects may be reflective of one or more of the listed capital projects selection criteria.

These projects are prioritized within their groupings, and the suggested prioritized lists are annually provided to the Board of Supervisors for funding consideration. The program lists are often included in the 10-Year Capital Improvement Plan.

These projects are typically funded from “one-time” funds.

#### **4.11.6 New Construction / Alteration Projects (Amended 9-10-13)**

These projects provide new, or significantly or materially alter, improve or modify existing, facilities, facility design, parking needs, leased or licensed buildings, space or other properties. An alteration, improvement or modification to a facility, parking need, build-

ing, space or other property may be considered material or significant if it materially or significantly alters, modifies or changes the County's or a Department's fiscal, operational, management, structural or facility responsibility needs or obligations. While these projects may be selected due to a number of capital project selection criteria, the most commonly used criteria for these projects may be "Service Level Changes." Changes in Federal or State laws, regulations, and building codes may also create a need for such projects under the "Legal Mandates" criteria.

This policy will require the Administration to include comprehensive statements regarding the fiscal, operational, facility and management impact of new construction or design, and the alteration, improvement, or modification of new or existing capital projects on affected departments including, but not limited to, the impact on the Facilities and Fleet Department relating to utility, custodial, and maintenance costs, space and design needs and modifications, lease amendments and change orders, and to other support departments such as the Information Services Department. An additional requirement will be to demonstrate how the funding of such a project will improve the performance of particular departments as it relates to productivity, efficiency, service outcomes, or meeting legal mandates. It is anticipated that projects to provide (by lease, license, purchase or agreement) new, expanded, altered, improved or modified facilities, facility design, space, parking, buildings or properties will derive from the Facilities Condition Assessment process, the Real Estate Master Plan, and/or specific operational strategic plans that examine productivity, efficiency, service outcomes, short-term and long-term objectives, legal mandates and a cost/benefit analysis taking into account a lease versus purchase option (where applicable). An examination of the cost effectiveness including a life cycle analysis should be reported regardless of funding sources. All of these factors must be included in the justifications presented to the Finance and Government Operations Committee and the Board of Supervisors.

These projects may be funded from a variety of funding sources including Federal, State, grant, bond indebtedness, and County "one-time" funds; and special funds such as Tobacco Funds, Criminal Justice Funds, parcel tax, and other funding sources.

The financial amount required to fund a large new construction or major alteration project may exceed the financial resources available in any given year. These projects should be considered on a case by case basis and be evaluated separately from annual capital requirements.

#### **4.12 POLICY REGARDING CALCULATION OF THE RETIREMENT LEVY (Adopted 6-14-99)**

It shall be the policy of the Board of Supervisors to include all eligible costs in the calculation of the annual retirement levy.



### **4.13 TAX LOSS RESERVE FUND (Adopted 11-9-99; Amended 10-28-03)**

The Board of Supervisors exercises the option under the Revenue and Taxation Code to be governed by Section 4703.2. The Tax Loss Reserve Fund shall be maintained at not less than 25 percent of the total delinquent secured taxes and assessments for participating entities in the County at the end of the fiscal year, and any amount in the fund in excess of referenced 25 percent may be credited to the County General Fund.

### **4.14 BUDGETARY CONTROL OF CAPITAL PROJECTS (Adopted 1-14-03; Amended 1-13-04; Amended 12-6-05; Amended 12-5-06; Amended 2-26-08)**

It is the policy of the Board of Supervisors of Santa Clara County that capital project funds be managed according to the following guidelines.

#### **4.14.1 General Capital Funding Guidelines**

County departments shall develop policies and procedures for the budgetary control of capital funds. Guidelines should define the appropriation process; establish appropriate and prohibited uses for capital funds; set guidelines for handling funds at project close and fiscal year-end; and define reporting requirements for capital projects.

#### **4.14.2 Budgetary Control and Reporting of the Facilities and Fleet (FAF) and Santa Clara Valley Medial Center (SCVMC) Capital Funds (Amended 12-7-04)**

The Board of Supervisors approves FAF and SCVMC Capital Funds according to the guidelines established in Section 4.11 of this policy.

##### **(A) FAF Capital Fund and Appropriation Categories**

FAF Capital funds are typically appropriated by the Board during the annual Capital Budget Process or by subsequent Board actions. Board Capital Funds are appropriated as either Board Identified Programs or as Board Identified Capital Projects.

- (1) Board Identified Programs (BIP) - These purpose specific appropriations are maintained in the BIP account until an Administration Identified Capital Project (AICP) is established.
  - (a) Building Operations Division BIPs including, but not limited to, Life-cycle Infrastructure Investment Program/Deferred Maintenance Backlog (Backlog) and Energy Conservation Programs
    - (i) These Building Operations AICPs are approved by the Manager of FAF Building Operations Division within the

- BIPs scope, e.g., Backlog, to address either deferred maintenance backlog or equipment and building system life cycle replacement needs in County-owned facilities.
- (ii) There may be leased buildings for which FAF is contractually obligated to provide maintenance and in those cases, Backlog funds may be used in accordance with this policy. Energy Conservation Funds may also be used in leased buildings.
- (b) Capital Programs Division BIPs including, but not limited to, Security Master Plan, American's with Disabilities Act/Fire Marshal (ADA/FM), Unanticipated, Planning Programs
- (i) Capital Programs Division AICPs are approved in accordance with the procedures set forth in paragraph 4.14.2.B.1.b and then are managed by the Manager of Capital Programs to address facility needs within the scope of the BIP appropriation.
  - (ii) There may be leased buildings for which FAF determines that enhancements are needed and, in those cases, BIP funds may be used in accordance with this policy, e.g., Security Master Plan improvements.
- (2) Board Identified Capital Projects (BICP) - These are line-item appropriations with a defined project scope.

**(B) Appropriation Guidelines**

- (1) Board Identified Programs (BIP)
- (a) Building Operations, (i.e., Backlog, Energy Conservation Programs)
    - (i) Building Operations AICP scope must be in alignment with the BIP scope.
    - (ii) The FAF Building Operations Division may commit funds to and move funds between Building Operations AICPs using current year Building Operations BIP Funds only.
    - (iii) Building Operations BIP Funds allocated to an AICP in a prior fiscal year cannot be reallocated to another AICP by FAF. Prior year surplus or uncommitted funds shall be transferred to the appropriate holding account when the AICPs are closed out or the funds are otherwise no longer needed for designated AICPs.

- (b) Capital Programs, AICPs. (i.e., ADA/FM, Security Master Plan Programs)
  - (i) AICP scope must be in alignment with the BIP scope.
  - (ii) The Deputy County Executive, Office of Budget and Analysis (OBA) or designee may approve or augment an AICP up to \$250,000 that is funded entirely from one BIP.
  - (iii) AICP funding approved by OBA may be made in increments as long as the total funding for the AICP does not exceed \$250,000;
  - (iv) AICPs initiated and closed in the same fiscal year shall have unused funds returned to the BIP for reallocation;
  - (v) OBA may approve funding transfers between current-year AICPs within a single BIP.
  - (vi) OBA may augment the funding of a prior year AICP from within the same BIP using current year funding only.
  - (vii) BIP Funds allocated to an AICP in a prior fiscal year cannot be reallocated to another AICP by OBA. Prior year surplus or uncommitted funds shall be transferred to the appropriate holding account when the AICPs are closed out or the funds are otherwise no longer needed for designated AICPs.
  - (viii) AICPs requiring funding from more than one BIP or in an amount greater than \$250,000 must be approved by the Board or its designee. Upon Board action, the AICP is reclassified as a BICP and is subject to the guidelines in Section 4.14.2.B.2 of this policy.
- (2) Board Identified Capital Projects (BICP) - The Board or its designee must approve the following changes to a BICP:
  - (a) Total appropriation increases or decreases;
  - (b) Designated line item appropriation increases or decreases (i.e., land purchase); or
  - (c) Significant programmatic scope changes.

(C) **Holding Accounts**

- (1) Board Identified Programs (BIP)

- (a) For each approved BIP, a single holding account shall be established to receive any and all surplus or uncommitted funds returned from its AICPs that were allocated in any prior fiscal year. This account will be separate from the original BIP account. To the extent possible, holding accounts shall identify the year of initial appropriation.
  - (b) FAF shall transfer identified surplus or uncommitted prior year funds from AICPs to the designated BIP holding account.
  - (c) The Office of Budget and Analysis should provide recommendations to the Board for future allocations of holding account funds; however, only the Board or its designee may appropriate funds from these holding accounts.
- (2) Board Identified Capital Projects (BICP)
  - (a) One single holding account shall be established to receive any and all surplus or uncommitted funds from all BICPs that were allocated in any fiscal year. To the extent possible, holding accounts shall identify the year of initial appropriation.
  - (b) FAF shall transfer identified surplus or uncommitted funds from BICPs to the designated BICP holding account.
  - (c) The Office of Budget and Analysis should provide recommendations to the Board for future allocations of holding account funds; however, only the Board or its designee may appropriate funds from these holding accounts.
- (D) Guidelines for Appropriation Management at Fiscal Year End**
  - (1) FAF shall carry BICP appropriations across fiscal years until completion and closeout of the project; and
  - (2) FAF shall carry AICP allocations across fiscal years until completion and closeout of the project; and
  - (3) At fiscal year end, current BIP appropriations that are not committed to a project with an established scope and budget shall be transferred to the designated holding account.
- (E) Reporting Fund Transfers to the Board**
  - (1) FAF Building Operations Division shall report all BIP fund transfers annually to the Finance and Government Operations Committee (FGOC). That report shall include the following:

- (a) Funds allocated to Building Operations AICPs from current year BIPs
- (b) Funds returned to BIP holding accounts(s)
- (2) FAF Capital Programs Division shall report all BIP (AICP) fund transfers annually to the FGOC, no later than the April meeting, so the Board will have the information during the budget process. That report shall include the following:
  - (a) Funds allocated from current year BIPs to current and prior year AICPs
  - (b) Funds returned to current year BIPs from current year AICPs
  - (c) Funds transferred to the appropriate BIP holding account(s)
  - (d) Any funds transferred by the Board, OBA or FAF
- (3) FAF Capital Programs Division shall report all BICP fund transfers annually to the FGOC, no later than the April meeting, so the Board will have the information during the budget process. That report shall include the following:
  - (a) Funds appropriated to BICPs
  - (b) Funds returned to the BICP holding account
  - (c) Funds appropriated from the BICP holding account
- (4) SCVMC shall report all capital project fund transfers annually in the Final Budget document and reconcile this list at the end of the fiscal year during the re-appropriation request to the Board of Supervisors. These reports shall include the following:
  - (a) All projects equivalent to AICPs, including new and re-appropriated projects.
  - (b) At the time of re-appropriation request, a reconciliation of the prior year's Final Budget and the request for re-appropriation.

**(F) Procedures**

FAF and SCVMC shall develop internal procedures to implement this Board policy.

#### **4.15 SELF-INSURANCE FUNDING POLICIES (Adopted 3-11-03; Amended 6-19-15)**

It is the policy of the Board of Supervisors that:

- (A) The workers' compensation self-insurance program has targeted funding at no less than 70% confidence level and not more than 80% confidence level, unless the Board approves a lower or higher target for a single fiscal year.
- (B) The general liability, medical malpractice, and automobile claim self-insurance programs have a targeted funding at no less than 70% confidence level and not more than 80% confidence level for the most current two years' claims, and all other years' claims at the expected level, unless the Board approves a lower or higher target for a single fiscal year.
- (C) When actual funding is higher or lower than the targeted funding level for workers' compensation, general liability, medical malpractice, or automobile claim self-insurance program, then Administration will use a two-year rolling average funding method to refund surplus reserves and up to a five-year rolling average funding method to recover a reserve deficit.
- (D) The property insurance program will include a self-insurance component with targeted funding for an earthquake probable loss of a once in every 20 year earthquake event. The administration will use a fixed 20 year period to gradually collect contributions to achieve the targeted funding level by FY 2037.

#### **4.16 TOBACCO SETTLEMENT REVENUES (Adopted 11-18-03)**

It is the understanding of the Board of Supervisors that Tobacco Settlement Revenues are discretionary and can be allocated to any cost center as they see fit. With this in mind, it shall be the policy of the Board of Supervisors to allocate 100 percent of Tobacco Settlement revenues received in any year to support the delivery of any and all Health Care services and/or Health Related Costs.

Health Care Services and/or Health Related Costs include but are not necessarily limited to the following:

- Salary and benefit costs supporting the delivery of health services (both direct service and administrative costs)
- Service and supply costs supporting the delivery of health services
- Debt Service related to any facility where health services are delivered
- Facility costs that support the delivery of health services to include:
  - Capital costs related to construction or remodeling

- Equipment costs
- Technology/System Development or Upgrades

#### **4.17 FISCAL CONTROLS ON REPLACEMENT AND PURCHASE OF INFORMATION TECHNOLOGY ASSETS [Interim Policy Applicable for Fiscal Year 05] (Adopted 12-9-03)**

##### **4.17.1 Purpose**

The purpose of this policy is to establish fiscal controls for IT asset replacement and purchases for FY05. This policy applies to purchases of Desktops, Servers, Desktop/Server Software, Laptops, Monitors and Printers.

##### **4.17.2 General Requirements**

- New purchases of technology assets will be clearly identified in new project documentation.
- All IT infrastructure funding requests submitted to the ITEC Funding Request process will be reviewed according to the information provided by the Department and the criteria contained in this policy.
- Agency and Department Heads will determine if IT asset replacement requests comply with the policy prior to approval.
- State and Federal mandates or requirements will be excluded from applicability of the policy only if required.

##### **4.17.3 Replacement Criteria Applicable to Specific Equipment**

- IT replacement for desktops, servers, desktop/server software, monitors and laptops will comply with the following criteria:

Desktops:

- 4 years of age, or if one or more of the following:
  - Software levels are preventing Security patches from being applied
  - New Application or capability requirements
  - Repair, Upgrading or Maintenance is more expensive (time/material) versus purchase
- Redeployment versus disposal is a possibility

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Software/Maintenance: (Pertains only to Desktop/Server/Laptop Software)

- 3 to 4 years of age, or if one or more of the following:
  - Software levels are preventing Security patches from being applied
  - New Application or capability requirements
  - Upgrading is more expensive versus purchase
  - (Note: Dependent on established software licensing agreements)

Monitors:

- 6 years of age
- New Application or capability requirements
- Repair or Maintenance is more expensive (time/material) versus purchase

Laptops: (If Laptops are used as Desktops use Desktop criteria)

- 5 years of age, or if one or more of the following:
  - Software levels are preventing Security patches from being applied
  - New Application or capability requirements
  - Repair, Upgrading or Maintenance is more expensive (time/material) versus purchase
- Redeployment versus disposal is a possibility

Servers:

- 5 years of age, or if one or more of the following:
  - Software levels are preventing Security patches from being applied
  - New Application or capability requirements
  - Repair, Upgrading or Maintenance is not possible and/or is more expensive (time/material) versus purchase
- Redeployment versus disposal is a possibility

Printers:

- 6 years of age



- New Application or capability requirements
- Repair, Upgrading or Maintenance (including accessories) is more expensive (time/material) versus purchase
- Redeployment versus disposal is a possibility

#### **4.18 USE OF EXTRA HELP AND OVERTIME (Adopted 2-10-04)**

All departments shall stay within their respective budgetary allotment approved by the Board. Departments requiring the transfer of funds in an amount exceeding \$100,000 from one Object to another, or to augment either of these Objects using the Contingency Reserve, shall submit such requests to the full Board of Supervisors for approval.

All departments shall limit extra help usage in accordance with currently-effective agreement with SEIU Local 715, and the limits imposed by the County Executive for non-715 extra help. In addition, departments will comply with the requirements of the Merit System Rules and/or applicable labor agreements that limit the number of extra help hours worked per individual, and the allowance for extensions when necessary under limited circumstances and within the criteria outlined in the applicable ordinance or labor agreement.

#### **4.19 INFORMATION TECHNOLOGY (IT) CAPITAL INVESTMENT POLICY (Adopted 12-6-05)**

It shall be the policy of the Board of Supervisors of Santa Clara County that a Biennial Three-Year Information Technology Plan will be produced to provide an overview of the County's IT Strategy. The Plan will include a listing of funded, proposed and conceptual projects, consisting of projects that are over \$100,000, regardless of the source of funding for Board review and acceptance.

It shall be the policy of the Board of Supervisors of Santa Clara County that IT Capital Projects requiring General fund allocations shall be funded through the IT Investment Process, which shall include the prioritized list of IT Projects that are reviewed and accepted by the Finance and Government Operations Committee (FGOC) then recommended for funding, in the annual budget hearings for Board review and approval.

It shall be the policy of the Board of Supervisors of Santa Clara County that IT Capital Projects that have been approved and allocated General Funds or that are managed by Agencies or Departments that report to the FGOC, shall report progress of these IT projects through the Quarterly IT Status Report to the FGOC then to the Board for review and acceptance.

All IT projects, whether funded through the General Fund, state or federally funded, or as part of a larger business program, will be reviewed and accepted or approved by the Board of Supervisors through one of the five Board policy committees.

#### **4.19.1 Biennial Three-Year IT Plan Submission for Board Review and Acceptance**

Biennially, the CIO's office will develop a Three-Year Information Technology Plan based on Countywide, Agency and Department needs. The plan will be reviewed by the ITGC, ITEC and the County Executive's Office and forwarded to the FGOC for review and acceptance. These recommendations will be provided to the Board of Supervisors for review and acceptance.

The purpose of the Biennial Three-Year Information Technology Plan is to provide decision-makers with Countywide, Agency and Department Information Technology Plans covering a three-year planning period, or greater. The plans will cover strategic, tactical and conceptual IT programs and projects that are tied to the County, Agency and Department Business Strategies and their priorities. The plan will be published biennially, with any major changes being identified and reported annually.

The plan will cover all IT Projects for all Agencies and Departments regardless of funding sources. The intent of the plan is to assist decision-makers in budgetary planning, and understanding the impact of projects on the County or operational budgets. The plan will identify how technology is being used to improve services and productivity, and to provide an overall understanding of how the projects are connected to each other or to large programs or initiatives.

#### **4.19.2 IT Governance Structure**

The CIO will be the chairperson of the two technology committees that comprise the IT governance structure, they include: the Information Technology Executive Committee (ITEC) and the Information Technology Governance Council (ITGC). Both committees have Agency and Department representatives from across the County.

The purpose of the ITEC and ITGC is to develop decision-making processes regarding strategies, priorities, standards, and resource and cost allocations to assist policy-makers. Together the committees will provide the set of guidelines that determine how major IT decisions are made and how exceptions to standard practice are considered and are resolved.

The ITEC is comprised of the Chief Deputy County Executive and Agency and Department Heads. The function of the ITEC is to provide leadership in the direction of IT in the County in an advisory capacity, provide input in the formulation of IT Policy and recommendations, review strategies, projects, recommend prioritization, and serve as business advisors.

The ITGC is comprised of Department Managers and IT Managers whose function is to review and advise the ITEC regarding the validity and soundness of proposed technical solutions, provide input to the formulation of Policy, review strategies, projects and recommend prioritization, serve as technical and business advisors, and to develop IT standards.

### **4.19.3 IT Capital Funding Review of General Funded IT Projects and Agencies and Departments Reporting to the FGOC**

The CIO's Office will be responsible for developing the IT Capital Project Funding Review processes and forms for Agencies and Departments requesting General Fund allocations or who report to the FGOC. Templates, guidelines and review processes will be implemented to ensure that Agencies and Departments prepare appropriate business cases or concept papers that justify the need for funding the project, along with the cost/benefit analysis. The documents will be evaluated and reviewed by the ITEC and ITGC committees and the County Executive's Office to produce a recommended prioritized list for funding using the General Fund to be reviewed through the FGOC.

Non-General Fund requests from Agencies and Departments reporting to other Board committees will be submitted through the appropriate Board Policy committee based on their current processes.

### **4.19.4 Board of Supervisors Review and Approval**

The Board of Supervisors will review and approve IT Capital Projects until its adoption by the Board through the annual Budget Hearings.

### **4.19.5 IT Capital Project Quarterly Status Report for Review and Acceptance by the Board of Supervisors**

Owners of an active IT Capital Project will be required to report quarterly on the status of their project that will be incorporated into the FGOC Quarterly IT Status Report provided by the CIO's Office and reviewed by the County Executive's Office. This report reflects the summary of the status, including budget, resources or timeline slippages and reasons. A risk assessment by the CIO's office or an independent contractor is required for projects over \$1 million or deemed a high risk, is also submitted as part of the FGOC IT Quarterly Report.

The FGOC and the Board members will take appropriate action based on the Quarterly Status Report if an IT project's progress is deemed seriously unsatisfactory, based on recommendations provided in the report by the CIO and the County Executive's Office. If the project targets for budget, timeline or resources have not been reached by the Agency or Department they will be required to report to the FGOC at the discretion of the committee.

Agencies and Departments that report to other Board Committees will submit their transmittals and status to the assigned committee to reduce duplicate efforts.

When a project is initially defined, the Agencies and Departments will identify the benefits and outcomes, how they will track them and when the benefits will be achieved.

When a project is completed or the benefits are achieved per earlier identified timelines, the Agency or Department will work with the Office of Budget and Analysis and the Chief Information Officer's Office to validate the outcomes and report back to the FGOC through the Quarterly IT Status Report.

## **4.20 TEN-YEAR FLEET PLAN (Adopted 1-23-07; Repealed 6-22-10)**

## **4.21 CAP ON BUDGET INVENTORY ITEMS (Adopted 5-12-20)**

It is the policy of the Board of Supervisors that the cumulative total amount of all budget inventory items for each Supervisor shall be capped at \$500,000 per Supervisor for Fiscal Year 2020-2021. For purposes of this policy, “budget inventory item” means one-time funding appropriations, including one-time funding appropriations with multi-year commitments, submitted as part of the Budget Hearing to support community programs that augment or complement services provided by the County.

## **4.22 VACANT POSITIONS POLICY (Adopted 6-19-15)**

Employee Services Agency (ESA) will produce a list of all positions that have been vacant continuously for two years or more, and submit the list to the County Executive’s Office of Budget and Analysis (OBA) during the fall of each year.

OBA will review the circumstances related to each vacant position, with input from County departments, as part of the development of the Recommended Budget. OBA will review the findings with the County Executive and a recommendation to address the retention or deletion of these positions will be included in the annual County Executive’s Recommended Budget, with specific information to that effect.

The County will not maintain a vacant position for more than five years unless the Board approves an exception for a particular position or classification.

## **4.23 CHILDREN’S BUDGET (Adopted 2-11-20)**

The Children’s Budget is an annual County publication providing a description of the programs that are funded through the County of Santa Clara’s Adopted Budget and benefit the County’s children, youth, and families.

The Children’s Budget reflects the policy of the Board of Supervisors to enhance the welfare of the County’s children and youth and to ensure that Santa Clara County is a place where children, youth, and families can flourish.

Prior to the commencement of the public hearing on the County Executive’s Recommended Budget, the County Executive will present to the Board a list of all programs benefiting children, youth, and families proposed to be funded in the County Executive’s Recommended Budget. This list will include the name, description, and purpose for each program.

At the time of the publication of the Adopted Budget, the County Executive will publish the Children’s Budget.

#### **4.23.1 Board Priorities Related to the Children’s Budget**

The Board endorses measuring program outcomes and tracking community-level indicators of child and family well-being to target funding to the most effective programs that address the greatest needs.

Additionally, the Board is committed to strengthen and expand local children’s programs using local, state, federal, philanthropic, and other funds in the following areas:

- a. Childcare and early childhood education;
- b. Screening and early intervention services to foster healthy mental, emotional, and behavioral development in children and youth;
- c. Prevention of child abuse and other adverse childhood experiences;
- d. Housing and supportive services for homeless families and families at risk of homelessness;
- e. Food security for children, families, and caregivers; and
- f. Health promotion programs in home, school, and community settings.



## **5.0 POLICIES ON SOLICITING AND CONTRACTING (Adopted 2-28-12; Amended 11-26-13; Amended 11-17-15)**

### **5.1 INTRODUCTION**

This Chapter of the Board's Policy Manual contains the policies relating to the County of Santa Clara's solicitation and contracting processes. These policies reflect the Board of Supervisors' commitment to:

- establishing an open and competitive process for individuals and organizations that do business with the County;
- ensuring fairness and equal access to business opportunities in the County;
- promoting the most cost-effective use of taxpayer dollars and County resources in its contracting and solicitation processes; and
- increasing social and environmental awareness and responsibility and environmental sustainability in the County.

By implementing these policies, the Board's goal is to ensure that Agencies/Departments comply with applicable laws, regulations, and contractual obligations and follow industry best practices that result in the best outcome for the County. These policies set the framework by which the County, County Agencies/Departments, County officials and County employees should conduct their solicitation and contracting processes.

The County Executive's Office of Countywide Contracting Management ("OCCM") is responsible for reviewing these policies on an annual basis to ensure that they continue to comply with the Board's goals. Any proposed changes to these policies must be discussed with County Counsel and the Director of Procurement, prior to bringing the proposed changes to the Board for approval.

Procedures and guidelines related to some of these policies are contained in the OCCM's Administrative Guidelines, which may be issued from time to time, the Procurement Department's County Contracting Manual, and/or other procedures that may be developed by other Agencies/Departments relative to a particular subject area. These Guidelines, the Contracting Manual and procedures must be consistent with the policies contained in this Chapter, and all Agencies/Departments are required to follow these Guidelines, Contracting Manual and procedures, if applicable. If there is a conflict between any of the procedures or guidelines developed by Agencies/Departments and the County's contracting Manual and/or the Administrative Guidelines, the Administrative Guidelines and Contracting Manual shall govern.

## **5.2 CONFLICTS OF INTEREST, DISCLOSURE AND DISQUALIFICATION REQUIREMENTS AND ETHICAL BUSINESS PRACTICES**

### **5.2.1 Overview**

This section addresses the conflicts of interest, disclosure, disqualification requirements and ethical business practices that relate to soliciting and contracting in the County.

### **5.2.2 Policy**

It is the policy of the Board to promote business practices that facilitate compliance with conflicts of interest, disclosure and disqualification laws and requirements pertaining to Board members, other elected officials, appointed officials, commissioners and committee members, and County employees, contractors, consultants and agents, in their solicitation and contracting processes, and to ensure that the County conducts its contracting and solicitation processes in a legal and ethical manner while aiming to achieve the best outcome for the County.

### **5.2.3 Background**

Public entities, public officials, public employees and contractors are required by law to engage in fair and ethical business practices in their public procurement process. The County is accountable to the taxpayers on how public funds are spent.

### **5.2.4 Purpose**

The purpose of Section 5.2 is to establish a policy that safeguards against favoritism, fraud, and corruption and that prevents the misuse of public funds. Employees who knowingly fail to follow this policy may be subject to legal and/or disciplinary action.

### **5.2.5 Application of the Policy**

#### **5.2.5.1 Conflicts of Interest, Disclosure and Disqualification Requirements**

Laws establishing conflict of interest, disclosure and disqualification requirements create the framework for how the County should conduct its soliciting and contracting processes. Examples of the legal requirements include, but are not limited to:

- (A) County officers (elected or appointed), employees, and consultants must not make contracts in which they are financially interested, unless the financial interest at issue falls under an exception approved by County Counsel.
- (B) Certain County officials are required to disclose assets, income, business positions and/or real property that may be materially affected by their official actions. In appropriate circumstances, such officials are disqualified from acting in order to avoid a conflict of interest.



- (C) A Board member is prohibited from participating “in a governmental decision in which he or she has a close personal interest that would tend to impair the exercise of independent judgment in the public interest.” “Personal interest” includes interest arising from blood or marriage relationships or very close personal associations that would constitute a conflict of interest under common law. This prohibition is found in the County’s Ordinance Code and is different from the financial interest test under the California Government Code.
- (D) A Board member is prohibited from taking action that would result in a financial conflict of interest.
- (E) A public official must not serve two masters at the same time and must exercise the powers conferred on him or her with disinterested skill, zeal, and diligence and primarily for the benefit of the public.

### **5.2.5.2 Ethical and Best Business Practices**

Examples of practices that are prohibited and not consistent with best public procurement practices include:

(A) Segmenting or Splitting Contracts

Efforts to segment or split a contract (also commonly referred to as “incremental contracting”) into two or more contracts for the purpose of circumventing dollar limits or approval processes or other requirements are prohibited. To prevent incremental contracting, contracts for related and interdependent goods or services on a given project must be consolidated whenever feasible.

(B) Awarding Contracts to Unqualified Entities or Individuals

Agencies/Departments are prohibited from awarding contracts to any entity or individual that does not meet the required solicitation criteria for the award. If no entity or individual meets the required solicitation criteria, the Agency/Department must reevaluate its needs and the solicitation process that was conducted and engage in another solicitation process, if appropriate, that will result in the award of the contract to a qualified entity or individual. This prohibition includes the award of contracts to family members, friends or business associates who do not meet the established criteria for a given procurement process but are given an unfair advantage based on their pre-existing relationship with the County or an employee. In order to prevent these types of unfair awards, County employees and agents are required to disclose to their supervisor(s) any relationship to potential contract awardees as soon as they learn of such a relationship.

(C) Circumventing the Solicitation Process

Agencies/Departments are prohibited from selecting an inappropriate solicitation method as explained in Section 5.6 of this chapter, in order to circumvent the process, cut corners, or award the contract to a particular entity or individual.

(D) Contractor Conflict of Interest

A contractor that is awarded a contract to assist the County with drafting the selection requirements and/or criteria for a particular solicitation is prohibited from being awarded a contract resulting from that solicitation or any subsequent solicitation that is required, suggested, anticipated, or otherwise related to the original solicitation, unless the contractor was awarded a contract to do both the drafting of the selection requirements and criteria for the solicitation and performing the work resulting from that particular solicitation.

(E) County Employee's Travel Expenses

If a County employee has to travel to review and evaluate a vendor's proposal, the vendor bidding on that County contract is prohibited from paying the travel expenses of the County employee.

(F) Prohibition on Supervision

No County employee may negotiate or supervise a contract between the County and the employee's former private sector employer, or supervise work to be performed by the former private sector employer, within one year of leaving that employer. These restrictions do not prevent the County employee from providing information to the County, unless otherwise prohibited.

(G) Former County Employees

A former County employee is prohibited from engaging in certain activities related to a judicial, quasi-judicial or other legal proceeding if the subject contract of the proceeding is one in which the former employee participated, unless it falls within an exception approved by County Counsel.

(H) Accepting Gifts

County employees that are involved in the making of a contract, including monitoring the contract, are prohibited from accepting gifts from the contractor under that contract, unless it falls under an exception approved by County Counsel. These gifts include, but are not limited to, tickets to events hosted by the vendor.

### 5.2.5.3 Compliance with Policy

To ensure compliance with this policy, if a County official or employee is considering an action, matter or decision that may raise any issues related to conflict of interest, disclosures or disqualification, that individual should contact the Office of the County Counsel immediately for advice. To avoid violation of any of these laws or practices, County officials and employees must complete all required documentation and make all required disclosures, as well as refrain from participating in the decision-making process if there is a conflict of interest issue. Failure to comply with the applicable laws may result in the imposition of administrative, civil and/or criminal penalties on the individual. Also, a con-

tract may be deemed void or voidable and/or a solicitation canceled due to violation of these laws.

### **5.2.6 Applicable Legal Authority**

The applicable legal authority for this Section includes, but is not limited to the following:

California Government Code Sections 1090 - 1099; 81000, et seq. (known as the Political Reform Act of 1974)

County of Santa Clara Ordinance Code Division A3; Sections A25-601 and A25-800 2

California Code of Regulations Section 18700, et seq.

## **5.3 CONTRACTING AUTHORITY**

### **5.3.1 Overview**

This section addresses who has authority to enter into contracts on behalf of the County.

### **5.3.2 Policy**

It is the policy of the Board that Agencies/Departments conduct their contracting and solicitng processes pursuant to the contracting authority established by state law, County Ordinance Code, resolution, or express action of the Board.

### **5.3.3 Background**

The County has the power to make contracts that are necessary for the proper exercise of its powers.

### **5.3.4 Purpose**

The purpose of Section 5.3 is to establish the policy of the Board relating to contracting authority in the County.

### **5.3.5 Application of the Policy**

#### **5.3.5.1 Authority of the Board (Amended 5-7-19)**

The Board of Supervisors is the only body that has authority to enter into contracts and issue solicitations on behalf of the County, unless contracting authority has been specifically delegated to someone other than the Board pursuant to state law, County Ordinance Code, resolution, or express action of the Board.

The Board of Supervisors has delegated contracting authority by ordinance, Board resolution or other express Board action to Directors of certain Agencies/Departments. Because an Agency/Department is not a separate legal entity with contracting powers, however, even if the Board delegated authority to enter into a contract to an Agency/Department,

the contracting entity is still the County and the contract should identify the County as the contracting party.

### **Board Contracts**

Unless specifically delegated by law, ordinance, resolution or Board action, Agencies/Departments are required to bring all contracts to the Board for: (1) signature, (2) termination, and (3) amendments to the term, scope of services/products being procured, or the County's financial obligation. An amendment to the scope of services/products refers to a change that affects the performance of the contract. Agencies/Departments have authority to take all other actions related to the contract without obtaining further Board approval, for example, changes that are clerical, non-substantive, or not material to the performance of the contract. Such changes by Agencies/Departments must be approved by the Office of the County Counsel and Office of the County Executive.

As a limited exception, if an Agency/Department needs to have a contract executed, terminated, or amended to change the term, scope of services/products being procured, or the County's financial obligation, but it does not have sufficient time to obtain Board approval, then the Agency/Department must ask the County Executive to take the necessary action. The County Executive pursuant to this delegation has the authority to bind the County.

If an Agency/Department needs to increase the County's financial obligation during the time that the Board is not available, and terminating the contract or taking other actions is not an option available to the Agency/Department, the County Executive also has the authority to increase the financial obligation, provided that the increase is the minimum amount necessary to bridge the gap until Board approval can be obtained and that one of the following applies:

- (1) An unanticipated reduction in non-County funding of the contract.
- (2) The level/volume of the contractor's services exceeds original projections to the extent that the original contract award is insufficient to compensate the contractor for services provided, and this increase in level or volume could not have been anticipated by the Agency/Department.
- (3) Governmental requirements for regulations changed, causing additional costs to the contractor.
- (4) A reallocation of funds from one contractor to another will result in an improved ability to provide desired service levels.
- (5) Unforeseen and uncontrollable cost increases jeopardize the ability of the contractor to continue to provide needed services, and these cost increases could not have been anticipated by the Agency/Department.

If an Agency/Department needs to extend the term of the agreement during the time that the Board is not available, the County Executive has the authority to extend the term only

for the minimum amount of time necessary until further Board approval can be obtained. If the County Executive executes, terminates or amends a contract during the time that the Board is not available, the Agency/Department shall then bring the subject contract to the next Board meeting for Board action.

### **No-Cost Agreements**

All no-cost agreements, including but not limited to no-cost Memoranda of Understanding (MOUs) and no-cost intergovernmental agreements, and any amendments thereto may be approved by the County Executive, or designee, following approval by County Counsel as to form and legality. However, if the no-cost agreement or any amendments thereto expressly require the signature of the Board of Supervisors, the no-cost agreement shall be presented to the Board of Supervisors for review and approval following approval by County Counsel as to form and legality.

#### **5.3.5.2 Authority of Director of Procurement (Amended 5-7-19)**

The California Government Code provides for the employment of a County purchasing agent, who may then be authorized to execute contracts for goods, equipment, and services on behalf of the County. The Government Code and Public Contracts Code specify areas where the Board may authorize the purchasing agent to execute these contracts. The County's Director of Procurement serves as the County's purchasing agent. Unless prohibited under applicable laws or policies, the Director of Procurement can carry out his or her functions described herein by engaging in an electronic procurement process. The Director shall also be responsible for establishing an electronic procurement policy that governs how electronic procurement is conducted in the County.

The Director of Procurement may also designate his or her purchasing authority, provided that clear directions are set forth for the designation. Under such a designation, the Director of Procurement still retains the authority and is ultimately accountable to the Board.

All contracting that is conducted pursuant to the authority delegated to the Director of Procurement must conform to all applicable Board policies. The Director of Procurement shall submit to the Finance and Government Operations Committee at the end of each fiscal year or as otherwise requested a report of all new contracts in the preceding year.

If an amendment to a contract executed by the Director pursuant to the authority described below will exceed the Director's authority, such amendments must be taken to the Board of Supervisors for execution.

In addition to the authority granted by the County of Santa Clara's Ordinance Code, the Board authorizes the Director of Procurement to do the following:

- (1) Enter into, renew, amend, terminate and/or take any and all necessary action related to the purchase, lease, or license of supplies, materials, equipment, software, or other personal property required by any County Agency/Department, or any other public agency contracting with the County, including supplies, materials or equipment required for the construction or repair of

County roads and bridges. The authority to enter into click wrap, click-through, shrink-wrap license agreements for custom off-the-shelf software and license agreements for open source software or freeware is covered under this delegation.

- (2) Enter into, renew, amend, terminate and/or take any and all necessary action related to contracts for Non-Professional Services where the cumulative value of each contract, including any amendments, does not exceed \$200,000 per scope of services, per vendor, per fiscal year.
- (3) Enter into, renew, amend, terminate and/or take any and all necessary action related to contracts for Professional Services where the cumulative value of each contract, including any amendments, does not exceed \$200,000 per scope of services, per vendor, per fiscal year.
- (4) Enter into, renew, amend, terminate and/or take any and all necessary action related to contracts for services (for example, installation, project management, implementation, technical consultation, maintenance or system design) related to a current or past technology acquisition made by the Director of Procurement, provided the total dollar value, including any amendments or options, does not exceed \$500,000 per fiscal year, per contract, following review by County Counsel as to form and legality.
- (5) Award contracts for public projects up to the maximum dollar amount(s) set forth in the Public Contract Code.
- (6) Purchase all official badges and necessary identifying equipment for detectives and investigators of the Office of the District Attorney, for Deputy Sheriffs, for the County's motorcycle officers and motor police, and all other insignia of other County law enforcement officers that may be necessary in the performance of their duties.
- (7) Dispose of County surplus personal property by selling, leasing or using other forms of disposal.
- (8) Enter into, renew, amend, terminate and/or take any and all necessary action related to emergency contracts.
- (9) Enter into, renew, amend, terminate and/or take any and all necessary action related to Non-Disclosure Agreements (NDAs) on behalf of all Agencies/ Departments, following review and approval by County Counsel as to form and legality.
- (10) Enter into, renew, amend, terminate and/or take any and all necessary action related to revenue contracts and intergovernmental agreements, provided that the maximum contract value for each such contract, including any amendments, does not exceed \$300,000.

### **5.3.5.3 Delegated Authority to Agencies / Departments**

Agencies/Departments have the authority to enter into, renew, amend, terminate and/or take any and all necessary actions related to a contract if this authority has been delegated by law, ordinance or Board action. An Agency/Department seeking delegation from the Board must first demonstrate why such a delegation is necessary and in the best interest of the County. Most of these delegations have an expiration date and further Board action is required to modify contracts beyond the scope or maximum dollar authority of the original delegation.

Unless otherwise provided, execution of contracts by Agencies/Departments under a specific delegation of authority from the Board is subject to approval by the Office of the County Executive and approval by the Office of the County Counsel as to form and legality. Also, as part of the authority delegated to the Agency/Department to enter into an agreement, Agencies/Departments also have the authority to enter into ancillary agreements, such as but not limited to Non-Disclosure Agreements, indemnity agreements and Business Associate Agreements, if such agreements have been reviewed and approved by County Counsel as to form and legality and approved by the Office of the County Executive. Agencies/Departments also have the authority to enter into Business Associate Agreements when there is no existing underlying agreement, subject to review and approval by County Counsel as to form and legality and approval by the Office of the County Executive.

Agencies/Departments shall submit to the Finance and Government Operations Committee at the end of each fiscal year or as otherwise requested a report of all new contracts executed pursuant to delegated authority in the preceding year.

### **5.3.6 Applicable Legal Authority**

The applicable legal authority for this Section includes, but is not limited to the following:

California Government Code Sections 23004, 23005, 25500-25009; 31000

County of Santa Clara Ordinance Code Sections A34-78 - A34-91

Charter of the County of Santa Clara Article III, Section 300

Uniform Public Construction Cost Accounting Act

Public Contract Code Sections 20101; 20122; 22032

## **5.4 COUNTY CONTRACTING ACTIVITIES (Amended 5-19-15)**

### **5.4.1 Overview**

This section provides an overview of the County's contracting activities and sets forth the policy requirements for contracting activities in the County.

## **5.4.2 Policy**

It is the policy of the Board that Agencies/Departments conduct their contracting activities in conformance with the County's specific requirements for such activities.

## **5.4.3 Background**

The County contracts with individuals, private for-profit firms and corporations, private non-profit organizations, and other public agencies for various products and services. In this Chapter of the Board Policy Manual, these entities may be referred to as contractors, vendors, or suppliers.

## **5.4.4 Purpose**

The purpose of Section 5.4 is to establish a policy that describes the requirements for contracting activities in the County.

## **5.4.5 Application of the Policy**

### **5.4.5.1 Definitions**

#### **(A) County Contract**

A contract is an agreement between the County and a non-County entity or individual that contains a promise or set of promises or the mutual obligations of the parties. Agencies/Departments, however, cannot contract with each other.

Although Agencies/Departments may enter into intra-agency agreements and letter agreements describing arrangements reached between the departments, such intra-County documents are not contracts enforceable by an Agency/Department against another.

A document need not be titled "contract" or "agreement" to be considered a contract. Examples of contracts include, but are not limited to, a legally-binding MOU with a non-County entity, an amendment to a contract, a field purchase order, and Non-Disclosure Agreements. A document can be considered a contract even if there is no exchange of money.

#### **(B) Grants**

Funds provided by a government or other organization (grantor) for specified purposes to an eligible recipient (grantee). Grants are usually conditional upon certain qualifications, for example, use, maintenance of specified standards, and/or a proportional contribution by the grantee or other grantor(s).

#### **(C) Goods and Related Services**

Goods and Related Services refer to the goods, materials, software, equipment, and related services (such as delivery, installation, maintenance, consulting and warranty services) procured by the County, such as furniture and office supplies.



(D) Professional Services

Professional Services are any technical or consultant services that provide support to and facilitate department operations and the governmental functions of the County administration/management, program management or innovation. Professional services for purposes of the County's procurement process include, but are not limited to the following: (1) Licensed Professional services, such as Physicians, Psychologists, Marriage and Family Therapists; (2) Consulting Services; (3) Trainer Services; (4) Medical Services; (5) Legal Services; (6) Information Technology and Communications Consulting Services; (7) Fiscal Consulting Services; and (8) Human Services.

Professional Services are typically not furnished with the acquisition of goods and materials.

(E) Architect-Engineer-Construction Project Management Services

- (i) "Architectural, landscape architectural, engineering, environmental, and land surveying services" includes those professional services of an architectural, landscape architectural, engineering, environmental, or land surveying nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform;
- (ii) "Construction project management" means those services provided by a licensed architect, registered engineer, or licensed general contractor which have the requisite expertise and experience for management and supervision of work performed on state construction projects; and
- (iii) "Environmental services" means those services performed in connection with project development and permit processing in order to comply with federal and state environmental laws.

(F) Non-Professional Services

Non-Professional Services are all services not within the scope of the definitions of Professional Services, Architect-Engineer-Construction Project Management and Goods and Related Services above. They are non-technical or non-consultant services that provide support to and facilitate department operations.

Non-Professional Services for the purposes of the County's contracting process include, but are not limited to the following: (1) Laboratory Services; (2) Courier Services; (3) Equipment Maintenance Services; (4) Maintenance and Repair Operations Services; (5) Laundry Services; (6) Landscape Services; (7) Garbage and Recycling Services; (8) Records Retention and Destruction Services; and (9) Printing Services.

Non-professional services may be rendered with or without furnishing of goods and materials.

If an Agency/Department needs assistance in identifying the appropriate category of services being procured, it should consult with the Procurement Department.

#### **5.4.5.2 Types of County Contracts**

The County enters into numerous contracts annually, majority of them being contracts to procure goods and/or services. These include contracts with contractors that specialize in providing services to the public including, but not limited to the following: education and counseling services of a nonmedical nature; job training and placement services; disease prevention; paid and/or volunteer services for the elderly, handicapped, disadvantaged or indigent in the community; health, educational, or personal growth and improvement services; social welfare and self-help for the elderly, handicapped, disadvantaged or indigent in the community; and treatment services. For example, the County contracts with different organizations, such as Community Based Organizations (CBOs), to provide human services to the public. Human services refer to services that maintain or improve the social, economic, physical, or mental well-being of persons for whom the County bears such a responsibility. Funding for these contracts may come from grants and/or County funds.

The County also enters into revenue contracts and contracts for services with other federal and state agencies. Typically, the contracts with the federal and state agencies stipulate that the County will abide by various rules and regulations as a condition of receiving funds to carry out services that are supported in whole or in part by the federal and state governments. The County also may contract with the state and federal governments to provide certain services and may be compensated for those services, or with other public agencies to form joint powers authorities (JPAs). JPAs are generally formed to carry out specific responsibilities that are multi-jurisdictional in nature and reflect regional interest.

#### **5.4.5.3 Form of County Contracts**

The form of document used for a County contract will vary depending on the type of transaction, the source of the authority and/or the total value of the contract. For example, a standard form agreement that contains the County's mandatory contract provisions may be appropriate for a low-value consulting services contract. Agencies/Departments should consult with County Counsel, Procurement Department and/or OCCM on the appropriate form to use for a particular contract.

#### **5.4.5.4 Length of Term of Contracts**

The length of the contract term (beginning and ending date) may vary depending on the type of contract, but the term must not be more than 5 years, unless the contract falls under one of the exceptions below and the exception is approved by the required authority. The maximum 5-year term includes any amendments to the contract term.

An Agency/Department must obtain prior approval of the exception. If the exception is for a Board contract or contract pursuant to a delegation, the Agency/Department must submit written justification to OCCM demonstrating that an exception is warranted. If the exception is for a contract that falls within the Procurement Director's authority, then the

Agency/Department must submit written justification to the Procurement Director demonstrating that an exception is warranted. If an exception is approved, the Agency/Department can proceed with awarding the contract. If an exception is approved by the OCCM, Agencies/Departments will not be required to ask the Board to approve the exception, but must attach the OCCM approval to any legislative file submitted to the Board requesting approval of a contract based on such exception.

The 5-year maximum term for contracts does not apply to the contracts where Board Policy or other Board action provides for a different maximum term.

The exceptions to the maximum 5-year term are:

- (1) When the funding source for a contract provides that the contract term must exceed five years. Such funding sources may include the State or Federal government or an outside funding source (private or foundation grant);
- (2) When the County “piggybacks” on another jurisdiction’s contract that is more than five years or that is subsequently extended for more than the initial five-year term;
- (3) When a specific law, code or regulation requires that a particular type of contract includes certain contract term(s) that exceed 5 years;
- (4) Contracts for goods, which includes equipment, that have a lifespan that exceeds five years and the benefits to the County of exceeding a five-year term outweigh the benefits of creating and executing a new contract after five years;
- (5) Contracts for technology software or hardware that have a lifespan exceeding five years and the benefits to the County of exceeding a five-year term outweigh the benefits of creating and executing a new contract after five years;
- (6) Proprietary maintenance contracts;
- (7) Contracts for project-specific professional services where the length of the project is expected to exceed five years;
- (8) Revenue contracts;
- (9) Contracts with other governmental entities; and
- (10) When an Agency/Department is otherwise able to justify that it is in the County’s best interest to exceed the maximum 5-year term requirement. For example, an Agency/Department is able to demonstrate that the financial and/or programmatic impact on the County would be significant if the contract term does not exceed the maximum 5-year term requirement.

#### **5.4.5.5 Monitoring, Administration, and Evaluation of Contracts**

Monitoring, administration and evaluation of County contracts are essential to promoting the most cost-effective use of taxpayer dollars and County resources and to ensuring that the County receives the goods and/or services for which it contracts.

Although the method used to monitor, administer and evaluate a contract will depend on the type of contract, Agencies/Departments are required to develop performance standards and implement a process that incorporates monitoring, administration and evaluation of contracts. For example, self-monitoring and self-reporting may be appropriate for certain contracts.

Agencies/Departments must also document their performance evaluations of contractors. The retention period for this documentation should be the same as the retention period for the subject contract. These performance evaluations may be used by Agencies/Departments to evaluate the propriety of entering into contract extensions or future agreements with the same contractor. The Board or Board Committees may also request copies of evaluations from time to time.

#### **5.4.5.6 Contract Payment Terms**

Wherever possible, payment terms should be tied to performance or level of effort, and expense reimbursements for consulting contracts must be consistent with the County's travel policy, unless it is a fixed price contract, in which case no expense reimbursement above the fixed price is authorized. All consultant contracts where travel and per diem cost or other identified direct cost are reimbursed must also be consistent with the County's travel policy, unless such costs are included in either a fixed unit price or a firm fixed price. This policy does not require the County to pay for travel and does not prohibit Agencies/Departments from negotiating better terms for the County than what is contained in the County's travel policy.

#### **5.4.5.7 Contract Coordination**

Agencies/Departments must make every reasonable effort to ensure that services provided by and funding provided to contractors by other Agencies/Departments are not duplicated. Intra-agency agreements may be utilized to facilitate the coordination of effort and to avoid duplicating efforts if deemed advisable by Agencies/Departments and OCCM. Agencies/Departments that are responsible for oversight of human services contracts and their funding shall share contract inventories and any other information that may be appropriate to assist with the coordination effort with OCCM.

#### **5.4.6 Applicable Legal Authority**

The applicable legal authority for this Section includes, but is not limited to the following:

California Government Code Sections 4525, et seq.

## **5.5 GENERAL CONTRACT POLICIES AND PROVISIONS (Amended 11-4-14; Amended 12-16-14; Amended 12-13-16; Amended 3-14-17)**

### **5.5.1 Overview**

This section describes the contracting policies and provisions that should be included in County contracts, subject to approval from County Counsel.

### **5.5.2 Policy**

It is the policy of the Board that all County contracts include certain policies and provisions in order to ensure that the County's interests, including financial interests, are protected and that the County complies with applicable laws. This section also reflects the Board's commitment to increasing social and environmental awareness and responsibility in the County.

### **5.5.3 Background**

The County has identified certain contract provisions that generally should be included in all its contracts to ensure that the County's interests are protected. From time to time, the Board has also adopted policies that Agencies/Departments are required to incorporate into County contracts.

Most of the policies apply on an across-the-board basis regardless of the type of contract. Variations in this policy may be noted in other sections of this policy where a particular category of contract or procurement practice is discussed. Where a variation exists, the policy outlined for the particular category of contract or selection practice will prevail over the more general guidelines that are contained in this section.

### **5.5.4 Purpose**

The purpose of Section 5.5 is to establish a policy that addresses the provisions and policies that Agencies/Departments are required to include in all County contracts.

### **5.5.5 Application of the Policy**

#### **5.5.5.1 Legal Review by County Counsel**

All contracts must be reviewed and approved by County Counsel as to form and legality. This does not include standard template agreements, such as the County's Standard Service Agreement Form, because they have already been reviewed and approved by County Counsel. Attachments to the Standard Service Agreement Form, such as a statement of work, must not conflict with the terms and conditions of the Agreement Form. If an Agency/Department determines there is a potential conflict, it should ask County Counsel to review the Agreement Form and relevant attachment(s). If Agencies/Departments make changes to the Agreement Form, including attaching additional terms and conditions, then the Agreement Form needs to be reviewed and approved by County Counsel.

All contract templates must include a date on the template that indicates the last time the terms and conditions were reviewed and approved by County Counsel. County Counsel shall periodically review such templates.

#### **5.5.5.2 Contract Review**

All Agencies/Departments are required to have a review process for their contracts to ensure compliance with any applicable policies and laws and to protect the interests of the County. This process should include an acquisition planning phase that gives the Agency/Department sufficient time to conduct any necessary market research and complete the process in a timely and efficient manner.

#### **5.5.5.3 Mandatory Contract Provisions**

Unless otherwise provided, County contracts and solicitations must contain certain mandatory provisions adopted by the Board, which are incorporated herein and made part of Board Policy by this reference. If an Agency/Department has been delegated authority for a particular contract and the Agency/Department has questions related to the inclusion of the mandatory contract provisions, that Agency/Department must work with County Counsel and OCCM to resolve those questions. These mandatory provisions and the required language for these provisions are maintained by OCCM.

#### **5.5.5.4 Mandatory Policy Provisions**

The Board has also adopted the following policies that must be incorporated in all County expenditure contracts, unless otherwise provided. If an Agency/Department has been delegated authority for a particular contract and the Agency/Department has questions related to the inclusion of the mandatory policy provisions, that Agency/Department must work with County Counsel and County Executive to resolve those questions. There may be other policy provisions, which apply to some County contracts that are included in other sections of the Board Policy Manual. Agencies/Departments should consult with County Counsel to ensure that all applicable policies are incorporated into the contracts.

#### **Equal Opportunity/Nondiscrimination**

No party contracting with the County will discriminate against any subcontractor, employee, or applicant for employment, because of age, race, color, national origin, ancestry, religion, sex, gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status with respect to recruitment, selection for training including apprenticeship, hiring, employment, assignment, promotion, layoff, rates of pay or other forms of compensation. It is further the policy of the County that no party contracting with the County may discriminate in the provision of services under the contract because of age, race, color, national origin, ancestry, religion, sex, gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

It is the policy of the County that parties contracting with the County must comply with all applicable federal, state, and local pay equity laws, including, but not limited to, the Federal Equal Pay Act, Title VII of the Civil Rights Act of 1964, the California Fair Pay Act, and the California Fair Employment and Housing Act. A potential contractor that has submitted a formal bid to provide goods and/or services to the County may be disqualified if the potential contractor has been found, by a court, arbitrator, arbitral panel, or a final administrative action of an investigatory government agency, to have violated applicable pay equity laws in the five years prior to the submission of a bid to provide goods and/or services. A current contractor found by a court, arbitrator, arbitral panel, or final administrative action of an investigatory government agency to have violated applicable pay equity laws, in the five years prior to or during the term of the contract with the County, may be in material breach of its contract with the County if the violation is not fully disclosed and/or satisfied per County guidelines and contract requirements. Such breach may serve as a basis for contract termination and/or any other remedies available under law, including a stipulated remediation plan. Pay equity violations disclosed by a contractor or potential contractor will be assessed on a case-by-case basis in light of the totality of the circumstances, including whether the violation is serious, repeated, willful, and/or pervasive, the size of the contractor, and any mitigating factors.

### **Beverage Nutritional Criteria**

It is the policy of the Board that County funds that are being used to purchase food and beverages on behalf of the County must not be used to purchase beverages that do not meet the County's nutritional beverage criteria. These criteria may be waived in the event of an emergency or in light of medical necessity. The criteria for waiver are set forth in the Administrative Guidelines for this section.

### **No Smoking**

It is the policy of the County that all contractors and their employees, agents and subcontractors who will have any contact with County property pursuant to a contract with the County must comply with the County's No Smoking Policy set forth in Board Policy 3.47.

### **Contracting Principles**

It is the policy of the Board that all entities that contract with the County to provide services where the contract value is \$100,000 or more per budget unit per fiscal year and/or as otherwise directed by the Board, must be fiscally responsible entities and must treat their employees fairly.

To ensure compliance with these contracting principles, all contractors must: (1) comply with all applicable federal, state and local rules, regulations and laws; (2) maintain financial records, and make those records available upon request; (3) provide to the County copies of any financial audits that have been completed during the term of the contract; (4) upon the County's request, provide the County reasonable access, through representatives of the Contractor, to facilities, financial and employee records that are related to the

purpose of the contract, except where prohibited by federal or state laws, regulations or rules.

The factors the County considers in determining compliance with its contracting principles include, but are not limited to: wage levels, pay ranges, benefits for all positions and job classifications, medical insurance for employees, annual rate of staff turnover, number of hours of training for each position in subject areas directly related to the contract, number of legal complaints issued by an enforcement agency against the contractor for alleged violations of applicable federal, state or local rules, regulations or laws and the number of citations, court findings or administrative findings for violations of applicable federal, state or local rules, regulations or laws related to treatment of employees or the contractor's fiscal condition, and any collective bargaining agreements or personnel policies covering the contractor's employees.

Agencies/Departments must work with County Counsel to incorporate applicable provisions related to these principles into County contracts. Any violation of these principles by a contractor may be considered a material breach of the contract, and at the option of the County, constitute grounds for the termination or non-renewal of the contract, according to its terms.

### **Wage Theft Prevention**

It is the policy of the County that all parties contracting with the County must comply with all applicable federal, state, and local wage and hour laws, including, but not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any Minimum Wage Ordinance enacted by the County or any city within the County of Santa Clara. A potential contractor that has submitted a formal or informal bid to provide goods and/or services to the County may be disqualified if the potential contractor has been found, by a court or by final administrative action of an investigatory government agency, to have violated applicable wage and hour laws in the five years prior to the submission of a bid to provide goods and/or services. A current contractor found by a court or by final administrative action of an investigatory government agency to have violated applicable wage and hour laws, in the five years prior to or during the term of the contract with the County, may be in material breach of its contract with the County if the violation is not fully disclosed and/or satisfied per County guidelines and contract requirements. Such breach may serve as a basis for contract termination and/or any other remedies available under law, including a stipulated remediation plan.

#### **5.5.5.5 Living Wage Provisions in County Contracts (Adopted 12-16-14; Amended 12-13-16)**

##### Basic Wage and Benefit Standards

Employees of County Contractors, and their Subcontractors, who provide Direct Services within the geographic boundaries of Santa Clara County, as part of a County Services Contract, as those terms are defined in the County's Living Wage Ordinance, shall be compensated at least pursuant to the following standards for their work as part of the County Service Contract:



- As of the adoption date of this Policy, \$19.06 per hour shall be a minimum hourly wage, adjusted annually for cost of living using the identical methodology to that used by the City of San Jose, as follows: The rates will be reviewed each year, no later than the 10th of February, to determine if any adjustment should be made based on any change as of December 31st of the previous year in the federal poverty level standard or the geographic cost of living differential provided by the Economic Research Institute's Geographic Assessor. If either standard has changed the County shall recalibrate the wages by multiplying the federal poverty level standard for a family of 3 by said geographic cost of living differential. If neither standard has changed, the Consumer Price Index for all urban consumers (CPI-U) in the San Francisco-Oakland-San Jose regional area (United States Department of Labor, Bureau of Labor Statistics) shall be reviewed. If the CPI-U has increased by at least 1%, the wage rate shall be adjusted by the same percentage change in the CPI but not to exceed 3%.
- Employers who contribute to affordable individual health coverage for the employee shall have \$2.00 credited toward compliance with the minimum wage. Employers who contribute at least \$2.00 per hour to a retirement plan for the employee shall have another separate \$2.00 credited toward compliance with the living wage. Therefore, employers may qualify for none, one, or both credits.
- The resulting living wage is maintained by the Office of Countywide Contracting Management and available for reference online at <http://www.sccgov.org/livingwage>.
- Employees shall receive at least one hour of compensated time off earned per 20 hours worked, up to a maximum of 12 days earned per year, which may be used for the employee's own sickness or to care for an ill family member or designated person. If the employee has no spouse or registered domestic partner, the employee may designate one person as to whom the employee may use compensated time off to aid or care for the person. Paid sick days, paid vacation days, and paid personal days shall count toward the required compensated time off, if those days may be used for such illness situations.
- The employer shall offer paid time off for employees required to report for jury duty, up to at least five days per year. These Basic Wage and Benefit Standards do not apply to volunteers, interns, on-call and per diem wages, reimbursements by stipend, hourly wages not paid by County Service Contracts, or employees working for less than 5 hours per week as part of the County Service Contract.

#### Basic Job Security Standards

Employees of County Contractors, and their Subcontractors, who provide Direct Services within the geographic boundaries of Santa Clara County, as part of a County Services Contract, shall enjoy the following protections at work:

- Employers shall not retaliate against workers who request their rights under the Living Wage Ordinance or Board Policy 5.5.5.5.

- The employer shall follow the same policies regarding background checks and review of possible contact with the criminal justice system that are followed by the County with County employees providing similar services. Specifically, the employer shall not ask an applicant for employment to disclose, orally or in writing, information concerning the applicant's conviction history, including any inquiry about conviction history on any employment application, until the employer has determined the applicant meets the minimum employment qualifications, as stated in any notice for the position. This requirement shall not prevent the employer from conducting a conviction history background check after determining the applicant meets the minimum employment qualifications. This qualification-assessment-first requirement shall not apply to a position for which the employer is required by law to conduct a conviction history background check, to a position within a criminal justice agency as defined in Section 13101 of the Penal Code, or to any individual working on a temporary or permanent basis for a criminal justice agency on a contract basis or on loan from a governmental entity.
- Employers shall not retaliate against an employee for engaging in lawful efforts to unionize their workforce.

#### Limitations of Board Policy 5.5.5.5

This policy will apply only to contracts for Direct Services developed pursuant to a formal Request for Proposals process which is initiated on or after July 1, 2015, or any Formal or Informal Competitive Procurement process which is initiated on or after March 1, 2017.

This policy does not apply to the following types of contracts:

- Contracts with community-based nonprofit contractors. This section of the Policy will be changed by the Board upon review and vetting of a non-profit specific Policy.
- Contracts and grants that provide the County with revenue, or where reimbursement to the contractor is linked to a match from another entity, whether or not the revenue is through the County to another entity or utilized directly by the County.
- Compensation contracts with providers who charge the County health system for medical, mental health, and substance abuse services rendered to clients for whom the County has a legal responsibility to provide reimbursement for services.
- Contracts with other governmental entities.
- Contracts with employees of the County, dependent agencies of the County or their employees.
- Contracts under \$100,000 for the term of the contract, unless the Contract is amended, extended, or renewed, such that the amendment, extension or renewal will result in a total expenditure exceeding \$100,000 for the underlying contract and any amendments, extensions, and renewals, in which case the amended, extended, or renewed contract is a new "Service Contract," as defined in the living wage ordinance, from the date of the amendment, extension, or renewal.

- Contracts with IHSS workers.
- Contracts for “public works” as defined under California Labor Code Sections 1720 and 1720.2, and subject to payment of prevailing wages under the California Labor Code.
- Contracts for which the law prohibits such limitations. In addition, parties subject to the Living Wage Ordinance and this policy may by collective bargaining agreement provide that such agreement shall supersede the requirements of the Ordinance and this policy.

#### **5.5.5.6 Contract Execution**

##### Electronic Signatures

It is the policy of the County to allow the use of electronic signatures in lieu of manual or ink signatures to execute contracts, provided the electronic signatures are appropriate, comply with applicable laws, and have been approved by County Counsel. The type of electronic signature used in the County must be approved by County Counsel and OCCM. This policy applies to all County Agencies/Departments and governs the use of electronic signatures in the County.

##### Definition of Electronic Signatures

An electronic signature is an electronic sound (e.g., audio files of a person’s voice), symbol (e.g., a graphic representation of a person in JPEG file), or process (e.g., a procedure that conveys assent), attached to or logically associated with a record, and executed or adopted by a person with the intent to sign the record.

##### Use of Electronic Signatures

Unless otherwise prohibited by law or County policy, an electronic signature shall have the same force and effect as a contract executed with an original ink signature. Agencies/Departments may use electronic signatures to execute all County contracts and related documents, provided the electronic signatures are appropriate, available, comply with applicable laws, and have been approved by County Counsel.

##### Electronic Copies of Signed Contracts

Unless otherwise prohibited by law or County policy, an electronic copy of a signed contract shall have the same force and effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format.

##### Guidelines and Procedures

Administration may develop guidelines and procedures and provide training related to the use of electronic signatures and electronic copies of signed contracts in the County. These guidelines and procedures should include adequate controls to ensure integrity, security, confidentiality and accountability in the process and to eliminate or reduce abuse and unauthorized actions. Agencies/Departments are responsible for ensuring that County contracts include a provision reflecting this policy, where applicable.

### **5.5.6 Applicable Legal Authority**

The applicable legal authority for this Section includes, but is not limited to the following:

Davis-Bacon and Related Acts

California Labor Code Section 1771, et. seq.

## **5.6 PROCUREMENT PROCESS (Amended 5-19-15, Amended 3-19-19)**

### **5.6.1 Overview**

This section describes the policies related to contractor selection that Agencies/Departments are required to follow in their solicitation and contracting process, unless otherwise provided.

### **5.6.2 Policy**

It is the policy of the Board that the County conduct an open, fair and full competitive solicitation process for the procurement of goods and/or services, with exemptions for certain goods, services and classes of procurement, and case-by-case exceptions, subject to an approval process.

This policy does not address the use of Field Purchase Orders, Direct Pay or P-cards.

### **5.6.3 Background**

The County solicits services and goods and related services by conducting one of the following types of procurement, which are described in this section: (1) Formal Competitive Procurement, (2) Informal Competitive Procurement, and (3) Non-Competitive Procurement.

The formal competitive procurement requirements of this policy may be satisfied through conducting either (a) Formal Bidding, or (b) Competitive Negotiated Procurement.

Formal Bidding refers to a competitive procurement process in which prospective vendors respond to a solicitation for bids, for example, an Invitation to Bid (ITB). On the other hand, Competitive Negotiated Procurement refers to a procurement process in which prospective vendors respond to a solicitation for pricing and other information, and the nego-

tiation of contract terms occurs prior to contract award, for example, a Request for Proposals (RFP).

The County of Santa Clara may also act as the lead agency in a cooperative purchasing process provided that the process complies with County's Board of Supervisors' Policy on Soliciting and Contracting and any other applicable laws. Cooperative purchasing occurs when two or more public agencies identify a common need and combine their requirements into a single solicitation.

In addition to the processes described above, the County utilizes other solicitation methods to acquire goods and related services, professional services and non-professional services, some of which are described in this policy. The County's Contracting Manual includes a description of the different solicitation methods and guidance on when to use a particular method. These solicitation methods must also adhere to the policies contained herein. Unless otherwise prohibited under applicable laws or policies, Agencies/Departments can engage in an electronic procurement process to conduct the procurement process described herein.

#### **5.6.4 Purpose**

The purpose of Section 5.6 is to promote the efficient procurement of services, and goods and related services from contractors doing business with the County.

#### **5.6.5 Application of the Policy**

##### **5.6.5.1 Solicitation Process (Amended 5-7-19; Amended 8-27-19; Amended 6-23-20; Amended 9-1-20; Amended 3-8-22)**

In order to ensure a successful solicitation process, Agencies/Departments are required to engage in advance acquisition planning after identifying a need to ensure that the selected solicitation process will result in the best outcome for the County. Agencies/Departments must also maintain proper documentation reflecting how the process was conducted, as well as justification for the selection of a contractor, and they must ensure that employees involved in the contracting process are adequately trained.

#### **(A) Review and Approval of Solicitations**

##### **(1) Review Process**

##### **(a) RFPs and Request for Grant Applications (RFGAs)**

OCCM and the Procurement Department should develop a process by which RFPs and RFGAs are reviewed and approved before being issued. The purpose of this process is to ensure that the soliciting and contracting processes being utilized by Agencies/Departments result in the most cost-effective use of taxpayer dollars and County resources, while ensuring that Agencies/Departments are following

the guidelines and procedures established in the Administrative Guidelines and County Contracting Manual.

Proposed RFPs and RFGAs for Goods and Related Services and Non-Professional Services are reviewed by the Procurement Department.

(b) Informal Competitive Procurement

Prior to engaging in an informal competitive procurement process, an Agency/Department must first obtain advance approval from the Director of Procurement. The written justification to the Director of Procurement seeking approval must explain why a formal competitive process is not appropriate for the services being procured. If an Agency/Department receives approval to engage in this process, the Agency/Department will still need to explain to the signature authority how the Agency/Department selected the 3 or more vendors to participate in this informal process.

(2) Reports to the Board

An Agency/Department is required to submit to the Board a report of all RFPs and RFGAs it plans to issue prior to the anticipated issuance date of these documents. Therefore, an Agency/Department must wait until after informing the Board of the RFP or RFGA to issue the document. If an Agency/Department is not able to present the report prior to issuance, it is required to do so at the first Board meeting following the issuance of the RFP or RFGA. The purpose of the report is to keep the Board informed of what is being solicited in the County. The information that should be contained in the report is outlined in the Administrative Guidelines.

(B) Formal Competitive Procurement

(1) Goods and Related Services and Non-Professional Services

Goods and related services and non-professional services are acquired by the Procurement Department. This policy requires competitive procurement of goods and related services and non-professional services, with exemptions for certain goods, services, and classes of procurement, and an approval process for case-by-case exceptions. It is the policy of the Board of Supervisors that the County shall procure goods and related services and non-professional services on a competitive basis.

(2) Professional Services

As with all County contracting, Agencies/Departments are required to engage in competitive procurement for the acquisition of professional services, unless another method of procurement is required for that particular

type of service. If an Agency/Department determines an exemption or exception applies, then the Agency/Department is required to comply with the policy set forth in Section 5.6.5.1(D) below.

(3) Grant Applications

Board review and approval are required for competitive grant applications and any resulting contracts that have a total value of over \$250,000. If the Board is not available to approve a grant application or an agreement, the County Executive has authority to approve such applications and agreements, and the Agency/Department is required to bring the subject contract to the next Board meeting for Board action. If the application has a value of \$250,000 or less, the County Executive has the authority to review and approve the grant applications and execute the resulting grant agreements, following review and approval by County Counsel as to form and legality.

(C) Informal Competitive Procurement

(1) Goods and Related Services and Non-Professional Services

Procurement of up to a total contract value of \$100,000 in goods and related services and non-professional services where the procurement is made in accordance with the policies and procedures set forth by the Director of Procurement and provided that the Director of Procurement determines that the price or cost to the County is fair and reasonable.

(2) Professional Services

This process may be used to procure professional services with a contract value of no more than \$100,000 per budget unit per fiscal year, unless a particular method of procurement is required for that type of service. The term for the contracts resulting from the solicitation must not exceed five years. A contract with cumulative totals exceeding \$300,000 which began with an informal competitive procurement process will be subject to formal competitive procurement. Also, if the cumulative total for a Professional Services contract will exceed \$300,000 within a 5 year period and each year did not exceed more than \$100,000 per budget unit per fiscal year and the Director of Procurement executed the original contract and any amendments to the contract, the Agency/Department is required to obtain approval from the Board. Agencies/Departments utilizing this process must send the solicitation document to a minimum of 3 vendors. The solicitation document for this process is not required to be posted or made public.

(D) Non-Competitive Procurement

(1) Exemptions to Competitive Procurement

There are limited exemptions to competitive procurement. If an Agency/Department determines that an exemption applies, the Agency/Department must obtain prior approval of the exemption. If the exemption is for a Board contract or contract pursuant to a delegation, the Agency/Department must submit written justification to the OCCM demonstrating that an exemption applies. If the exemption is for a contract that falls within the Procurement Director's authority, then the Agency/Department must submit written justification to the Procurement Director demonstrating that an exemption applies. If an exemption is approved, the Agency/Department can proceed with awarding the contract or engaging in a process to select a contractor. If an exemption is approved by the OCCM, Agencies/Departments will not be required to ask the Board to approve the exemption, but must attach the OCCM approval to any legislative file submitted to the Board requesting approval of a contract based on such exemption.

Where a request for an exemption to competitive procurement is denied, the procurement shall be conducted through the use of the appropriate process.

The following are exemptions to competitive procurement:

- (a) **Utility Services:** The item or service to be procured is from a utility company where service connections are allowed only in geographically-defined service territories or where the work involves a utility system and only the utility company itself is allowed to perform the work.
- (b) **Educational Services:** Procurement of educational services from a nonprofit institution. "Educational services" are services for instruction or training to employees or clients; "educational services" do not include consulting services for evaluation or non-instructional activities.
- (c) **Intergovernmental Agreements:** Agreements exclusively with the State of California, the federal government, or other governmental entities within the State of California. All parties to these agreements must be governmental entities. These agreements are categorically exempt and do not require pre-approval by OCCM or Procurement.
- (d) **Standard Commercial Off-the-Shelf Software Packages (COTS) or Hardware Products, Maintenance, Installation Assistance and Training:** Procurement of software or hardware products, which may include maintenance, installation assistance and training, that are ready-made, available for sale to the government and to the general public, and designed to be easily integrated into existing systems without the need for extensive customization. COTS software can either be installed on the County computers or delivered over the internet as software. Hardware products are self-contained appli-



ances that include pre-installed software and that are minimally configurable, and may include maintenance and/or associated installation assistance and training. Installation assistance may be on-site or remotely provided and is of limited duration not to exceed 40 hours or 5 working days.

- (e) Equipment/Hardware Services: Maintenance Services Agreements provided by the equipment/hardware manufacturer or dealers/distributors as a result of a Life Cycle Cost Purchase determination or which are not available from a satisfactory alternate source as determined by the Director of Procurement.
- (f) Software, Software Licenses and Maintenance Services: Where the County has procured software, including operating systems, for its use, procurement of the continuing maintenance and upgrades of the software, and renewal of software licenses, from the developer or manufacturer.
- (g) Newspapers and Publications Services: Notices and publication services used to post notices required by law, or the purchase of newspapers or publications sold by one vendor.
- (h) No cost memoranda of understanding (MOUs) or revenue agreements that are “non-exclusive.” “Non-exclusive” means that County participation in the MOU or revenue agreement does not prevent the County from entering into similar agreements on similar terms and that sufficient County resources are available to meet demand from others who may be interested.
- (i) Limited Extensions During Pending Protest: Extension of existing contracts where the goods and/or services provided under the existing contract are the subject of an ongoing procurement and the results of that procurement have been protested in accordance with Board Policy Protest Procedures.
- (j) Open Source, Freeware, and Maintenance Services: Where contract licensing agreements have been reviewed and approved by County Counsel, the County’s Information Technology Governance Council, and the Director of Procurement.
- (k) Contracts with law firms, expert witnesses, consultants and investigators hired by the County through its County Counsel’s Office to assist in legal matters.
- (l) Contracts with (i) retirees or previous employees performing duties similar to those performed during the time the individual was a County employee, (ii) individuals to temporarily cover vacant positions, and (iii) individuals hired according to the merit system pro-

cess, which is a competitive process, but is governed under County Ordinance Sec. A25-34, relating to the Personnel Department - Merit System Rules, as opposed to the Procurement process.

- (m) Pilot Program and Product Demonstration Agreements: The County Executive, or designee, may enter into pilot project and product demonstration agreements with County vendors or prospective County vendors for the purpose of testing and evaluating technology, products, and services provided that such agreements: (1) are for a period not to exceed twelve months from the initiation of the pilot project or demonstration, unless an extension beyond one year is approved by the Board of Supervisors; (2) do not grant any exclusive rights to the vendor, nor provide any in-kind, or advertising commitments by the County; (3) provide for appropriate indemnification of the County; (4) provide for County ownership of any data generated during the testing and observation period; (5) are terminable at will by the County; (6) do not exceed \$50,000 for the term of the agreement, including any and all amendments thereto, not to exceed one year in total (unless an extension beyond one year is approved by the Board of Supervisors); and (7) are in adherence with section 5.2.5.2(D) – Contractor Conflict of Interest – of this chapter and any other applicable conflict of interest rules.

Each pilot project or product demonstration must be established by an agreement that shall be subject to review and approval by County Counsel as to form and legality prior to execution. In the event that the County seeks to procure a similar technology, product or service as the one that is part of the pilot project or project demonstration through the County’s competitive procurement process, relevant information regarding the pilot project or project demonstration and the technology, product, or services tested will be made available to all competing proposers/bidders.

Pilot project and product demonstration agreements may not serve as a basis for any non-competitive purchase and may not serve as the sole basis of the public interest justification of any single or sole source approval relating to the relevant agreement.

Agreements that qualify under this exemption are required to seek pre-approval from the OCCM prior to execution.

An off-agenda report of all executed pilot project and product demonstration agreements will be provided to the Board on an annual basis.

- (n) Non-exclusive contracts for health or behavioral health call coverage, primary care, specialty care, or telehealth services provided by

individual physicians or physician practices where the contracted services will be provided by no more than 6 full-time equivalent physicians or advanced practice providers provided at any of the County's health, behavioral health, or custodial facilities. "Non-exclusive" for the purpose of this exemption means that County participation in the agreement does not prevent the County from entering into similar agreements on similar terms with other individuals or practices. If a contract for physician services is executed pursuant to this provision, that contract may contain an option for the County to extend, at its sole discretion and in writing, the contract beyond the original expiration date for a period of up to six (6) months and to make payment for such services during the pendency of negotiation of a new contract. This option may be exercised only in unusual circumstances where a new contract or contract amendment is being negotiated between the parties and the parties are unable to execute the new contract or amendment in a timely manner before the original contract's expiration date.

(2) Exceptions to Competitive Procurement

The competitive procurement requirements of this policy may not apply if, under the particular circumstances of the procurement, an exception is warranted. If an Agency/Department determines that an exception applies, the Agency/Department must obtain prior approval of the exception. If the exception is for a Board contract or contract pursuant to a delegation, the Agency/Department must submit written justification to the OCCM demonstrating that an exception applies. If the exception is for a contract that falls within the Procurement Director's authority, then the Agency/Department must submit written justification to the Procurement Director demonstrating that an exception applies. If an exception is approved, the Agency/Department can proceed with awarding the contract or engaging in a process to select a contractor. If an exception is approved by the OCCM, Agencies/Departments will not be required to ask the Board to approve the exception, but must attach the OCCM approval to any legislative file submitted to the Board requesting approval of a contract based on such exception.

*Board-initiated exceptions:* If a Board member initiates an action whereby an exception to competitive procurement is likely to occur (e.g., through a Budget Inventory Item or Board Referral identifying a particular vendor), the Board member shall request Board approval of the use of the exception to competitive procurement at the same time as the request for approval of the related item. Board members are encouraged to use the forms and guidelines provided by the OCCM in bringing forward such requests. Board approval of such an exception is a sufficient basis for use of the exception in the contracting process by an Agency/Department, the Procurement Director, and the OCCM.

Where a request for an exception to competitive procurement is denied, the procurement shall be conducted through the use of the appropriate process. The following examples are illustrative of circumstances that may be considered in authorizing case-by-case exceptions to this policy.

- (a) Sole Source and Single Source procurements are used in the procurement of products or services. They should only be utilized when justified and necessary to meet the County's needs and when the procurement needs warrant award on a sole source or single source basis. Sole source and single source requests must be supported by evidence that due diligence has been performed in an objective market analysis to arrive at the determination. Although the sole source and single source procurements are exceptions to competitive procurement, Agencies/Departments must still aim to make the process as competitive as is practicable under the circumstances.

- (i) Sole Source: A Sole Source Procurement is a sourcing method used to procure a product or service without competition when it has been determined that there is only one source for the required product or service that is capable of meeting the requirements of the acquisition as defined in the Scope of Work or specifications.

Sound procurement practice requires that a Sole Source procurement occur if it has been determined that there is only one source for the required product or service and not as an attempt to contract with a favored service provider or for a favored product.

- (ii) Single Source: A Single Source Procurement is a sourcing method used to procure a product or service from one source, without soliciting competition, even though there are other vendors that can provide the product or service. The County must determine and establish that a situation exists that makes the application of all requirements of competitive sealed bidding or competitive sealed proposals impracticable or contrary to the public interest. Costs associated with a competitive bidding process is not sufficient to justify a single source.

Agencies/Departments must show through documentation that the selection of the source was based on an objective basis and justifiable reason, and the source selected is the most advantageous for the County to fulfill a given requirement as defined in the Scope of Work or specifications and the competitive bidding or competitive proposal process

would be contrary to the public interest or would adversely impact the County.

- (b) Competition is precluded because of the existence of patent rights, copyrights, secret processes, control of the basic raw material(s) or similar circumstances, and there is no equivalent item or service.
- (c) Absolute Compatibility Related to Goods:
  - (i) The procurement is for replacement parts or components for equipment, and no information or data is available to ensure that the parts or components obtained from another supplier will perform the same function in the equipment as the part or component to be replaced;
  - (ii) The procurement is for replacement parts or components for equipment, and the replacement parts or components would compromise the safety or reliability of the product, or would void or invalidate a manufacturer's warranty or guarantee; or
  - (iii) The procurement is for upgrades, enhancements or additions to hardware or for enhancements or additions to software, and no information or data is available to ensure that equipment or software from different manufacturers or developers will be as compatible as equipment or software from the original manufacturer(s) or developer(s).

(E) Accessing Competitively Established Government Contracts

The County may access competitively established contracts ("piggyback") from other government entities when it is deemed to be in the best interest of the County, provided the contracts to be accessed were established by another governmental entity as a result of a full and open competitive procurement process and meet the scope and/or specifications of the County's business requirements. The County may not access such a contract for a period longer than the term established in the accessed contract.

Approvals to access these contracts are within the discretion of the Director of Procurement, or designee. In the event a Department wishes to access a competitively established contract, it shall file an Accessing Governmental Contract Transmittal and Checklist to the Procurement Department for review and approval. The applicable signature authority for all resulting contracts shall apply as designated by County Ordinance or Policy for goods and related services, professional services, and nonprofessional services. Each competitively established government contract shall be subject to review and approval by County Counsel prior to the County accessing it for use.

### 5.6.5.2 Local Preference Policy

In a formal solicitation of goods or services, the County shall give Local Businesses the preference described below.

“Local Business” means a lawful business with a physical address and meaningful “production capability” located within the boundary of the County of Santa Clara. The term “production capability” means sales, marketing, manufacturing, servicing, provision of services, or research and development capability that substantially and directly enhances the firm’s or bidder’s ability to perform the proposed contract. Agencies/Departments should work with County Counsel to determine whether the business has meaningful production capability within the County. Post Office box numbers, residential addresses, a local sales office without any support and/or a local subcontractor hired by the contractor may not be used as the sole basis for establishing status as a “Local Business.”

In the procurement of goods or services using an Invitation to Bid or another solicitation method in which price is the determining factor for award of the contract, five percent (5%) shall be subtracted from a bid submitted by a responsive and responsible Local Business in determining the lowest responsive responsible bidder. If application of the 5% results in a Local Business bid being lower than the non-local business bid, the contract award shall be made to the Local Business at the Local Business’ original bid price. If after applying the 5% discount, two or more competing vendors have bid the same price, local businesses shall be given preference.

In the procurement of goods or services in which best value is the determining basis for award of the contract - for example, a Request for Proposals - five percent (5%) of the total points awardable will be added to the Local Business score.

When a contract for goods or services, as defined in this policy, is presented to the Board for approval, the accompanying transmittal document shall include a statement as to whether the proposed vendor is a Local Business, and whether the application of the local preference policy was a decisive factor in the award of the proposed contract. The local preference policy may only be applied based on the entity submitting a bid or proposal and not a subcontractor or business partner.

This Local Business preference shall not apply to the following:

- (1) Public works contracts;
- (2) Where such a preference is precluded by local, state or federal law or regulation;
- (3) Contracts funded in whole or in part by a donation or gift to the County where the special conditions attached to the donation or gift prohibits or conflicts with this preference policy. The donation or gift must be approved or accepted by the Board in accordance with County policy; or

- (4) Contracts exempt from solicitation requirements in accordance with Board policy, state law and/or the County of Santa Clara Ordinance Code.

### **5.6.5.3 Protest Process**

It is the policy of the County that contractors have a process in which they can submit a protest to an award of a contract to another contractor or to otherwise challenge any steps taken during a solicitation process that the contractor believes constitutes an abuse of process by County officials or evaluation team members, misconduct or impropriety by County officials or evaluation team members, or abuse of discretion by County officials or evaluation team members.

The protest process should be made known to the vendors as part of the solicitation process.

The decision resulting from the established protest process shall be the final decision of the County.

### **5.6.5.4 California Public Records Act**

Under the California Public Records Act (CPRA), the County must give the public access to information in its possession, subject to certain exemptions. If information relating to the solicitation and/or contracting process is requested, including documents received from contractors, Agencies/Departments are required to contact County Counsel immediately and prior to responding to the CPRA, in accordance with Ordinance Code Division A17.

### **5.6.6 Applicable Legal Authority**

The legal authority that applies to this section includes, but is not limited to the following:

California Government Code Sections 6250 – 6276; 25508

County of Santa Clara Ordinance Code Division A17

## **5.7 PUBLIC WORKS CONTRACTS**

### **5.7.1 Overview**

This section discusses public works contracts and the unique requirements for such contracts.

### **5.7.2 Policy**

It is the policy of the Board that all public works contracts comply with applicable laws and administrative codes, including the Public Contract Code (PCC) and Uniform Public Construction Cost Accounting Act (UPCCAA), which was adopted by the County.

### **5.7.3 Background**

The County enters into public works contracts for the purpose of erecting, constructing, altering, repairing, or improving real property or any public structure, building, road, or other public improvement of any kind. The UPCCAA, PCC and State Controller's decisions guide the preparation, solicitation, award, and administration of the County's public works contracts.

The County may commission a variety of public works projects and fund those projects with federal, state and local funds. Examples of public works projects include building construction and remodels, transportation improvements (roads, sidewalks, bikeways, rail, parking lots, and airport projects), utilities projects, parks and recreation projects, and water and sewer projects. This work typically requires the preparation of detailed work plans and specifications, and the projects must be carried out in accordance with complex laws, rules and regulations, including, but not limited to building codes, Labor Code, Government Code, Business and Professions Code, Public Contract Code and California's Environmental Quality Act.

### **5.7.4 Purpose**

The purpose of Section 5.7 is to establish the policy for soliciting and contracting related to public works.

### **5.7.5 Application of the Policy**

#### **5.7.5.1 Authority**

The Director of Procurement has the authority to administer the solicitation, award and contract management of Minor Public Works contracts, which are contracts valued at a certain maximum statutory limit established by the State Controller. The Director of Procurement's authority includes the ability to amend the contract value of Minor Public Works contracts up to the maximum statutory limit in order to allow for payment of incidental changes or additions to the work necessitated by unforeseen conditions or requirements. Contract value increases that are beyond the maximum statutory limit and the authority of the Procurement Director must be submitted to the Board of Supervisors for approval.

#### **5.7.5.2 Method(s) of Solicitation (Amended 10-8-19)**

The procedure and type of solicitation methods in public works contracts are governed in detail by applicable California law, and the County has little discretion in the application of that law. Generally, in the case of a public works contract, the County must prepare complete plans and specifications or performance specifications sufficient to describe the desired construction services and result, advertise for bids, and award the contract to the lowest responsive responsible bidder, a process known as the design-bid-build project delivery method. The Public Contract Code authorizes the County to also use the design-build and construction manager at-risk project delivery methods. Design-build and construction manager at-risk projects are generally awarded on a best value basis. For design-



build projects, the County has a single contract with an entity to do both design and construction. Construction manager at-risk projects have separate contracts with design and construction firms, but require the construction firm to work with the designer to refine and improve the design before commencing construction.

The County recognizes that before rejecting any low bidder as “not responsible,” that bidder must be given a hearing on the issue of its responsibility before a panel or an individual designated by the Board or County Executive. If the bidder is found to be not responsible at the hearing, then the County must state its reasons for this finding in writing. It is the County’s policy to honor the bidder’s rights to such due process in every case.

It is also the County’s policy to thoroughly investigate each low bidder’s fitness and capacity to perform the contract work, and to act aggressively to reject those bids where the evidence of a bidder’s responsibility merits rejection.

The type of solicitation method used will depend on the value of the contract. Therefore, Agencies/Departments must consult with the Procurement Department or the Facilities and Fleet Department to determine the appropriate method of solicitation. Regardless of the value of the contract, Agencies/Departments are required to engage in competitive pricing.

Agencies/Departments must issue a new solicitation when there is a major change in scope of the project or if the change causes a major delay, or a change to the schedule that makes the fee structure inappropriate, or if a reasonable price for a contract change order cannot be negotiated.

Questions regarding the UPCCAA and/or PCC in relation to a public works bid or contract should be referred to County Counsel.

### **5.7.5.3 Contractor Prequalification**

Public Contract Code (PCC) Section 20101 enables public entities to prequalify contractors (and subcontractors) for bidding on public works projects. The establishment of a uniform system to evaluate the ability, competency, and integrity of bidders on public works projects is in the public interest; will result in the construction of public works projects of the highest quality for the lowest cost; and is in furtherance of the objectives stated in the Public Contract Code for competitive bidding. This policy evidences the County’s desire to achieve these goals and implement the process set forth in statute.

The Director of the Facilities and Fleet Department, the Director of the Roads and Airports Department, the Director of the Parks and Recreation Department, or the Director of Facilities for the SCVHHS, may recommend to the Board, on a project-by-project basis, approval of contractor prequalification and implementation of a standard questionnaire in accordance with the requirements of PCC Section 20101. The County will use the California State Department of Industrial Relations (DIR) model questionnaire as a guide in drafting its own questionnaire; any deviations from the model are subject to review by County Counsel. The DIR documents and any procedure adopted by the County must meet the requirements of PCC Section 20101. Completed prequalification questionnaires

and financial statements, as well as information gathered from contractors' references will be evaluated by a review panel established by the appropriate Agency/Department Director or designee. Only bidders determined to be qualified will be provided with bid packages and invited to bid on the particular project subject to the prequalification procedure.

#### **5.7.5.4 Project Labor Agreements (Amended 4-26-16)**

A Project Labor Agreement (PLA) is an agreement typically negotiated between a project owner and one or more labor organizations prior to award of a construction contract. A PLA is designed to eliminate potential project delays resulting from labor strife, ensure a steady supply of skilled labor on a project, and provide a contractually binding means of resolving worker grievances. Pursuant to a PLA, an owner agrees to require all contractors and subcontractors to accept the PLA's terms.

##### **(A) Purpose**

The purpose of this policy is to promote efficiency of construction operations during the County's construction of capital projects and to provide for the peaceful settlement of labor disputes and grievances without strikes or lockouts, thereby promoting the public interest in assuring the timely and economical completion of projects.

The types of projects that are most amenable to PLA usage are large capital projects that have a substantial financial requirement, are technically complex, involve numerous contractors and employees in different trades, have critical time lines for completion, and require a skilled and properly-trained workforce to successfully complete the work in a proper and timely manner.

##### **(B) Threshold for Use of PLA**

All projects estimated to have a construction component exceeding two million dollars (\$2,000,000), shall include a PLA in order to further the County's interests, i.e., time sensitivity in maintaining or providing a vital government service. The PLA must be forwarded to the Board of Supervisors at the time the Board is requested to approve and adopt plans and specifications. The Office of the County Executive may recommend to the Board of Supervisors individual exemptions.

For capital projects having construction costs at or below two million dollars (\$2,000,000), agencies/departments may also evaluate whether there is a unique feature or requirement of a project (i.e., time sensitivity in maintaining or providing a vital government service) that would benefit from the use of a PLA. When staff determines that a County interest is furthered by implementing a PLA for a particular capital project, the recommendation will be forwarded to the Board of Supervisors for consideration.

##### **(C) Targeted Hiring**

All County funded construction projects determined to benefit from a Project Labor Agreement (PLA) shall include a hiring program for underrepresented individuals in the field of local construction. The hiring program, shall include established utilization rates for hours to be performed by underrepresented workers who are graduates from a State and/or County approved pre-apprenticeship programs.

An underrepresented worker is an individual who prior to commencing work on a project, is a current or past County client, including but not limited to clients of Social Services, Reentry, and Foster Care.

The hiring program shall not be included where prohibited by federal or state law or if its inclusion would jeopardize state or federal funding available for the project.

#### **5.7.5.5 Conflict of Interest Policy for Design-Build Projects (Adopted 10-8-19)**

Public Contract Code section 22162, subdivision (c), requires the County to develop guidelines for a standard organizational conflict of interest policy, consistent with applicable law, regarding the ability of a person or entity that performs services for the County relating to the solicitation of a design-build project to submit a proposal as a design-build entity, or to join a design-build team for a design-build project procured pursuant to Public Contract Code section 22160 *et seq.* This policy is intended to supplement and be consistent with existing applicable conflict of interest law, including but not limited to the Political Reform Act, Government Code section 87100 *et seq.*, and Government Code section 1090 *et seq.*

All persons and entities who perform services for the County relating to the creation of a solicitation for a design-build project (“Project”) are prohibited from submitting a proposal for that Project, either individually, or by joining a design-build team that submits a proposal for the Project.

#### **5.7.5.6 Best Value Construction Policies and Procedures; Conflict of Interest Policy (Adopted 6-23-20)**

Best value procurement for public works construction contracts is a procurement process whereby a contractor is selected on the basis of objective criteria to determine the best combination of price and qualifications. To engage in the best value construction procurement method, Public Contract Code section 20155, subdivision (c) requires the Board of Supervisors to adopt and publish procedures and required criteria that ensure all selections are conducted in a fair and impartial manner. These procedures are required to conform to Public Contract Code section 20155 *et seq.* County departments shall be authorized to utilize the best value procurement method for public works construction for standalone projects in excess of one million dollars (\$1,000,000), or such other amount authorized by State law, as allowed under Public Contract Code section 20155. County departments shall also be authorized to utilize the best value method for public works construction for annual contracts for repair, remodeling, or other repetitive work according to unit prices, up to three million dollars (\$3,000,000), adjusted annually to reflect the percentage change in the California Consumer Price Index. Use of the best value procurement method for

public works construction shall be subject to approval by the Board of Supervisors, under the following conditions:

- (A) Before engaging in the best value selection method, contractors shall be prequalified using procedures pursuant to Public Contract Code section 20101 and Board Policy Manual section 5.7.5.3. The information required pursuant to this section shall be verified under oath by the bidder in the manner in which civil pleadings in civil actions are verified. Information submitted by the bidder as part of the evaluation process shall not be open to public inspection to the extent that information is exempt from disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).
- (B) Pursuant to Public Contract Code section 20155.4, subdivision (a), a best value contractor shall not be prequalified unless the contractor has agreed to and provides an enforceable commitment to the County that the contractor and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades, in accordance with Chapter 2.9 (commencing with Section 2660) of Part 1 of the Public Contract Code. Pursuant to Public Contract Code section 20155.4, subdivision (b)(1), the then existing Santa Clara County Countywide Project Labor Agreement, dated January 24, 2017, between the County of Santa Clara and the Santa Clara and San Benito Counties Building & Construction Trades Council, or equivalent document that binds all contractors and subcontractors performing work on the project or contract to use a skilled and trained workforce, shall qualify as an enforceable commitment required by subdivision (a), provided the contractor agrees to be bound by that project labor agreement.
- (C) Pursuant to Public Contract Code section 20155.3, subdivision (a), the Board of Supervisors, in its discretion, must make a written finding at a public meeting that awarding the contract on the basis of best value, for the specific project under consideration, will accomplish one or more of the following objectives: reducing project costs, expediting the completion of the project, or providing features not achievable through awarding the contract on the basis of the lowest bid price. If the Board of Supervisors fails to make this finding, selection on the basis of best value shall not proceed.
- (D) Pursuant to Public Contract Code section 20155.3, subdivision (b), after the Board of Supervisors makes the requisite written finding approving of the selection on the basis of best value, the solicitation for bids shall be prepared, and notice shall be given pursuant to Public Contract Code section 20125. The solicitation may identify specific types of subcontractors that are required to be included in the bids. Compliance with Chapter 4 (commencing with Section 4100) of Part I of the Public Contract Code with regard to construction subcontractors identified in the bid, is mandatory, if applicable. Annual contracts for repair, remodeling, or other repetitive work to be done according to unit prices, shall allow listing of subcon-

tractors at the time the contractor submits a job order proposal in response to a job order request from the County.

- (E) Pursuant to Public Contract Code section 20155.3, subdivision (d), the best value solicitation shall do all of the following: (1) invite prequalified bidders to submit sealed bids; and (2) include a section identifying and describing the criteria that will be considered in evaluating bids, the methodology and rating or weighting system that will be used in evaluating bids, and the relative importance or weight assigned to the criteria identified in the request for bids.
- (F) At a minimum, the criteria used to evaluate the bids shall include the criteria set forth in Public Contract Code section 20155.1, subdivisions (e) through (j).
- (G) Pursuant to Public Contract Code section 20155.5, the Director of the Department responsible for the solicitation shall appoint an evaluation committee to evaluate the qualifications of the bidders based solely upon the criteria set forth in the solicitation documents. The evaluation committee shall assign a qualifications score to each bid. Pursuant to Public Contract Code section 20155.3, subdivision (e), final evaluation of the best value contractor shall be done in a manner that prevents cost or price information from being revealed to the committee evaluating the qualifications of the bidders prior to completion and announcement of that committee's decision.
- (H) Pursuant to Public Contract Code section 20155.5, subdivision (a)(2), members of the evaluation committee shall be free from conflicts of interest. Before appointing any person to the evaluation committee, prospective members shall be free from conflicts of interest. This includes, but is not limited to, compliance with Board Policy Manual section 5.2 and existing applicable conflict of interest law, including but not limited to the Political Reform Act, Government Code section 87100 *et seq.*, and Government Code section 1090 *et seq.*
- (I) Pursuant to Public Contract Code section 20155.5, subdivision (b), if fewer than three responsive bids are received in response to the solicitation, no award shall be made.
- (J) Except as provided in Public Contract Code section 20155.5, subdivision (c), the award of the contract shall be made to the bidder whose bid is determined, in writing, to be the best value. To determine the best value contractor, each bidder's price shall be divided by its qualifications score. The lowest resulting cost per quality point will represent the best value bid.
- (K) Pursuant to Public Contract Code section 20155.5, subdivision (d), following determination of the best value contractor, a written decision of the contract award shall be issued. Pursuant to Public Contract Code section 20155.5, subdivision (e), the written decision shall identify the best value contractor to which the award is made, the project, the project price, and the selected best value contractor's score based on the evaluation criteria listed in the request for bids. The notice of award shall be made public and include the score of the selected best value contractor in

relation to all other responsive bidders and their respective prices. The contract file shall include documentation sufficient to support the decision to award.

- (L) Any award made on the basis of this Section shall conform to the requirements for withholding retention as set forth in Public Contract Code section 20155.6.
- (M) This Section shall not apply to the best value selection method for Construction Management At-Risk contracts, as set forth in Public Contract Code section 20146.
- (N) This Section shall expire and be automatically repealed as of January 1, 2025, unless the Legislature extends the County's participation in the best value contracting pilot program.

### **5.7.6 Applicable Legal Authority**

The applicable legal authority for this Section includes, but is not limited to the following:

Uniform Public Construction Cost Accounting Act

Public Contract Code Sections 20101; 20122; 22032

## **5.8 ARCHITECT-ENGINEERS-CONSTRUCTION PROJECT MANAGEMENT AND OTHER RELATED CONTRACTS**

### **5.8.1 Overview**

This policy covers the soliciting and contracting requirements for architect-engineers-construction consulting, project management and related services contracts.

### **5.8.2 Policy**

It is the policy of the Board that all solicitation and award of Professional Service Agreements (PSAs) and Professional Service Contracts (PSCs) for architect, engineer, and other related services are awarded and administered in accordance with all applicable laws.

### **5.8.3 Background**

The County contracts with firms and individuals to assist the County with its project development and administration of construction contracts. This includes analysis, planning, surveying, design and construction, and inspection to directly and indirectly support construction of new or remodeled buildings, the design and installation of new or significantly modified systems within existing facilities, the design and installation of build-to-suit improvements on leased facilities, specialized assessments and feasibility studies on facilities and their attendant systems, traffic analyses, or various other undertakings attendant to any public works project that may be requested by the County. Professional firms are also used to develop documents and assist with ensuring compliance with the California Environmental Quality Act.

#### **5.8.4 Purpose**

The purpose of Section 5.8 is to establish the policy for selecting and contracting with entities for professional architectural and engineering, and related professional services including construction project managers, landscape architects, environmental scientists, archeologists, biologists, arborists, surveyors, and inspectors.

#### **5.8.5 Application of the Policy**

##### **5.8.5.1 Authority**

All contracts for services covered in this section that have a cumulative total value of more than \$300,000 per budget unit must be approved and signed by the Board of Supervisors, unless otherwise delegated. If the value is \$300,000 or less per budget unit, the Director of Procurement has the authority to approve selection and execute the contract.

##### **5.8.5.2 Method(s) of Solicitation**

Architects, engineers, landscape architects, environmental, land surveying services and related services under this section, must be selected using a Qualification Based Selection (QBS) procedure. Selection shall be done on the basis of “demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required.” These selection procedures assure that these services are procured on the basis of demonstrated competence and qualifications for the types of services to be performed and “at a fair and reasonable price to the public agencies.”

If an Agency/Department determines that the QBS does not apply because, for example, the services needed are not included in the professions described above, then they may use another solicitation method that is appropriate, as described in Section 5.6 of this Policy.

(A) Professional Consultant Selection - Contracts Valued at Over \$300,000 and On-Call Consultants

A Review Board process shall be used to select professional consultants required during the planning, design and construction phases of major projects.

- (1) The Agency/Department Director or designee will periodically solicit a current list of qualified professional consultant firms and will request the consultants to submit their qualifications. Performance in providing previous services to the County shall be among the criteria considered in compiling the list.
- (2) The Agency/Department Director will appoint a Review Board of qualified professionals, including individuals familiar with the type of project proposed and the nature of the services required. If possible, at least one professional who is not an employee of the County or of the Department requiring the services should be included on the board. The Review Board will review

the qualifications submitted, establish a list of finalists, and interview the finalist firms. The list may be maintained for up to two years.

- (3) The Agency/Department Director will negotiate an agreement with the top-ranked firm regarding the extent of services, the amount and method of compensation, and other conditions, subject to Board approval. If an agreement cannot be reached, the Agency/Department Director will terminate discussion with the top-ranked firm and open negotiations with the second-ranked firm, and repeat the process with suitably qualified firms until an agreement is negotiated. Upon successful negotiation, the Agency/Department Director or designee shall present the contract for approval to the Board. At its discretion, the Board may accept the Agency/Department Director's recommendations or direct the Agency/Department Director to enter negotiations with a lower-ranked firm.
- (4) Alternatively to the process outlined above, the Agency/Department Director may utilize the Review Board selection process to establish eligible lists of consultant firms from which Professional Service Agreements (PSAs) would be awarded. These types of contracts should be used for miscellaneous work and not significant capital projects or buildings. The eligible lists may be maintained for one or two years depending on the requirements of the Agency/Department for various professional services and the availability of appropriately qualified firms. Evaluations of a contractor's performance in providing previous service to the County shall be among the criteria that are used to judge the qualifications of the contractor. Award of a PSA to an eligible firm for miscellaneous projects shall be for a term not to exceed five years, and no more than a cumulative total value of \$1,000,000.

(B) Professional Consultant Selection - Contracts Valued at \$300,000 or Less

The Agency/Department Director shall periodically solicit qualified consultants for professional services. The Agency/Department Director or designee shall convene an internal Review Board to evaluate consultants for specific or miscellaneous projects based on capability and qualifications. This Review Board should consist of at least two qualified County staff familiar with the type of project proposed and the nature of the services required. The Agency/Department Director will be responsible for final selection and negotiating the consultant's fee.

Evaluations of a contractor's performance in providing previous service to the County shall be among the criteria that are used to judge the qualifications of the contractor. Award of a Professional Services Contract (PSC) to an eligible firm or consultant for such projects shall be for a term not to exceed five years, and the value shall be no more than \$300,000 per budget unit for each contract. The Board or the Director of Procurement has authority to execute PSCs.

### **5.8.6 Applicable Legal Authority**

The applicable legal authority for this Section includes, but is not limited to the following:



Government Code Section 4525, et seq.

## **5.9 REAL PROPERTY, FRANCHISE AND CONCESSION CONTRACTS (Adopted 2-28-12; Amended 3-16-12; Amended 9-10-13; Amended 6-24-14; Amended 8-5-14)**

### **5.9.1 Overview**

This section describes the different types of real property, franchise and concession contracts entered into by the County and applicable legal requirements relating to these contracts.

### **5.9.2 Policy**

It is the policy of the Board that all real property, franchise and concession contracts entered into on behalf of the County comply with applicable laws, while recognizing the unique nature of such contracts. Sections 5.4 and 5.6 of this Chapter do not apply to these contracts. The policies governing those contracts are described in this section.

### **5.9.3 Background**

The County enters into different types of real property, franchise and concession contracts including lease, rental, franchise, and concession agreements. The County may act as the landlord, tenant, lessor, lessee, or franchisor.

### **5.9.4 Purpose**

The purpose of Section 5.9 is to establish a policy of the Board relating to the soliciting and contracting processes for real property, franchise and concession contracts.

### **5.9.5 Application of the Policy**

#### **5.9.5.1 Leases or Rentals**

Prior to any request for the lease or purchase of property for use by a County Department or Office, the requesting Department or Office shall develop and present to the Office of the County Executive, the Director of Facilities and Fleet, the Director of Parks and Recreation or the Director of Roads and Airports, as applicable, (each a "Property Managing Department") a written plan demonstrating the fiscal, operational and management objectives associated with the need for the property and its intended use (short term or long term, as applicable), and shall work with the Property Managing Department to develop Project Specifications and Performance Standards ("Specifications") for the lease or purchase of the property, identifying at a minimum:

- (1) All key and material deliverables;
- (2) The performance, industry and other standards to be achieved or applied to measure and determine successful project completion (including achieve-

ment of Department fiscal, operational and management goals) for the period of intended property use; and,

- (3) A financing mechanism to be used to cover or recapture the costs of the Property Managing Department to administer, manage and oversee the project improvements.

Using the requesting Department's written plan and other relevant information, the Property Managing Department will develop an analysis to determine the cost/benefit of leasing versus purchasing the property.

(A) County as the Lessee/Tenant

From time to time, the County enters into rental or lease contracts with public or private entities for County use of real property. No other Office or Department other than a Property Managing Department is authorized on behalf of the County to negotiate or enter into a rental or lease contract with public or private entities for County use of real property. The Budgetary Contingency mandatory provision that allows the County to terminate the agreement if it does not have sufficient funds to sustain the agreement shall not apply to real property rental or lease agreements. Where a lease, rental contract or agreement for County use of a facility, parking structure, building, space or other property involves or may potentially involve any construction, alteration, renovation or improvement to the facility, structure, building, space or property, then said lease, rental contract or agreement shall include, at a minimum, terms and conditions that address the following:

- (1) Payment of prevailing wage.
- (2) A requirement that the landlord (where needed/negotiated) obtain a minimum of three (3) competitive bids from prospective contractors for performance of work under the lease, and/or provide cost schedules for instances of landlord self-performance.
- (3) A provision identifying by title the County's representative from the applicable Property Managing Department authorized to agree to any property improvements or new construction, and to negotiate, approve, enter into and sign any and all amendments, change orders, fee or cost increases, other modifications to the scope of work or terms of the lease or rental contract on behalf of the County.
- (4) Where applicable, as determined by the Property Managing Department, implement and incorporate by reference the County's Project Specifications and Performance Standards ("Specifications"), including the development, and incorporation by reference, of a mutually acceptable implementation work plan that meets the Specifications and which contains at a minimum:
  - (a) All tasks to be completed.

- (b) Critical Path Milestones (including Milestone start and finish dates).
- (c) Detailed description of Landlord action items.
- (d) Detailed description of County action items.
- (e) Detailed description of third party action items.
- (f) Dates and frequency of status meetings and reports.
- (g) Method and process for content, submission, review, approval and authorization of Change Orders.
- (h) Definition of material change in project scope.
- (i) The fee and cost structure, including any fees and costs associated with changes in project scope.
- (j) Definition of “Project Acceptance” or “Completion of Work” to include method and means for validating and reviewing completion of performance, and identification of the County representative from the applicable Property Managing Department authorized to make this determination.
- (k) Process for correction of defects or other modifications needed to achieve or demonstrate “Project Acceptance.”
- (l) Process for post-project acceptance corrections of defects and alterations.
- (m) Warranty period and coverage after completion of work.
- (n) Identification of authorized and unauthorized pass-through charges.
- (o) Invoicing and payment process.
- (p) Method and process for dispute resolution concerning completion of work plan.

(B) County as the Lessor/Landlord

The County may rent or lease a County facility to a private firm or another public entity, in which case the County acts as the landlord under a rental or lease agreement with a tenant. The County may also allow Community Based Organizations or other County contractors holding valid County contracts to utilize County owned property on a loan basis in lieu of purchasing or leasing similar property with contract funds to perform the services, or for the benefit of the program under the valid contract provided the agreement meets the requirements of Section 5.9.5.6.

(C) County as the Lessor/Landlord and Lessee/Tenant

Agencies/Departments cannot contract with each other. When one Agency/Department desires to “rent” real property from another Agency/Department, however, and one of the two Agencies/Departments operates through use of general funds and the other operates with restricted funds, the Facilities and Fleet Department (FAF) is responsible for coordinating the arrangement, obtaining approval for this arrangement, including Board approval, if applicable, and preparing the “rental agreement.” FAF will coordinate with County Counsel to ensure that the rental costs satisfy the requirements of United States Office of Management and Budget Circular A-87, to the extent it is applicable. Nothing in this policy is to be construed to supersede the duties or authority of the Board-appointed County Road Commissioner with respect to the Road Fund’s real property assets.

**5.9.5.2 Franchise or Concessions**

The County enters into franchise and concession agreements when the Board approves a concession and/or a lease of County-owned property to an individual or firm. Under this type of agreement, the individual or firm is authorized to manage a business for specifically-described purposes and under limited conditions on the County property in question. This also applies when the Board grants a license to do business in the County. For example, the Board may license one or more firms for the limited purpose of providing paramedic and ambulance services within the County.

By law, the County serves as a franchising authority that grants access and easements on public property within the County’s geographical boundaries to public utilities and cable television operators. The utilities and cable operators may be granted exclusive or nonexclusive franchises by the Board. These types of franchises are awarded by the Board by ordinance, which sets forth the terms and conditions under which the franchise may operate within the County. The term of any lease or concession agreement, including any extensions, shall be limited to a total of 30 years, after which a competitive bid must be undertaken for a new lease or concession agreement. All lease or concession agreements shall require a security deposit or performance bond in accordance with the County’s financial risk at stake in the agreement.

Other commonly recognized forms of franchises and concession agreements include leases of County-owned property for various purposes and the granting of concessions or operating permits for enterprises on County-owned property.

All franchise and concession contracts must incorporate the following conditions:

- (A) Performance requirements that are imposed on the franchise and the conditions under which the license to operate may be cancelled for failure to perform;
- (B) The length of the franchise and the conditions under which the license to operate may be extended or re-bid; and

- (C) The franchisee's financial capacity to carry out the terms and conditions in the agreement with the County and the franchisee's demonstrated experience and past performance in providing the service in question.

The Board shall seek compensation for a lessee's or concessionaire's use of County-owned property consistent with fair market values that prevail at the time of soliciting and contracting. Using the process and criteria provided for in Section 5.9.5.6 below, the Board may waive fair market considerations if it determines that such action is needed to support a County-sponsored program and/or subsidize the cost of the lessee's enterprise for the purpose of serving (1) economically or (2) physically disadvantaged persons or for other reasons as determined by the Board. Under such circumstances, the Board will strive to maintain a balance between the County's interest in generating revenue and the need to ensure reasonable public access to the service in question.

Conditions calling for a subsidy of an enterprise that is granted a franchise or permit to operate on County-owned land shall be set forth in an agreement between the County and the contractor.

### **5.9.5.3 Authority**

Subject to certain restrictions and exceptions, (1) the Director of the Facilities and Fleet Department (FAF), (2) the Director of the Roads and Airports Department (Roads), and (3) the Director of the Parks and Recreation Department (Parks) have authority to enter into rental or lease agreements on behalf of the County. This includes a facility rental by a Department. Agencies/Departments should consult with the appropriate department (FAF, Roads, or Parks) or County Counsel to determine which exceptions and restrictions apply.

### **5.9.5.4 Method(s) of Solicitation**

All leases of County-owned real property to private firms or individuals, including all concessionaires that are allowed to operate privately held businesses on County-owned real property, must occur pursuant to a formal competitive bidding or sole source criteria that are set forth in this policy and Ordinance Code Division A21.

The bid process for real property leases and any contract emanating from that bidding process must minimally account for the following:

- (A) The expected uses and use limitations on the property;
- (B) Rental rates, escalators in the rates, and revenue sharing requirements (if any);
- (C) Lessee and lessor requirements with respect to capital improvements and the maintenance of improvements on the property;
- (D) The length of the agreement and the conditions under which the lease and/or concession will be extended and/or re-bid; and

- (E) Performance requirements that are imposed on the lessee and the conditions under which the lease and/or concession may be cancelled for failure to perform.

### **5.9.5.5 Use of Commercially Licensed Real Estate Brokers and Agents**

The use of or payment by the County or any Department of the County of a licensed real estate broker for any real property transaction is not required.

#### **5.9.5.5.1 Payment of Commission by County to Buyer's Agent**

If the County is selling or leasing County-owned property, and it wants to pay any part of the commission of a licensed real estate broker serving as the procuring agent of the buyer or lessee ("Buyer's Agent"), then the County will comply with the requirements of Section 25527 et seq. of the Government Code.

#### **5.9.5.5.2 Payment of Commission by County to County's Agent**

When the County is acquiring or disposing of real property by sale or lease, a licensed real estate broker may be used by the County as County's agent ("County's Agent") provided the terms of the real estate broker agreement have been approved by the Board of Supervisors prior to entering into the agreement.

For the sale or lease of County-owned real property, the County may, at its discretion, require in the real estate broker agreement that County's Agent share a percentage of its commission with the Buyer's Agent in which case the requirements of Section 25527 et seq. of the Government Code shall be followed.

#### **5.9.5.5.3 Payment of Commission by Third Party**

If the County has engaged the services of a licensed real estate broker (as the procuring cause) for the disposition by sale or lease of County-owned real property, and the commission will be in excess of \$100,000 and paid by a third party, then the commission must be approved by the Board of Supervisors in advance of the payment unless due to the nature of the transaction prior approval is not possible.

If the County engages the services of a licensed real estate broker (as the procuring cause) for the acquisition by purchase or lease of real property for County use, and the commission will be in excess of \$200,000 and paid by a third party, then the commission must be approved by the Board of Supervisors in advance of the payment unless due to the nature of the transaction prior approval is not possible.

#### **5.9.5.5.4 Real Estate Broker Selection**

In addition to all other requirements of this Section 5.9.5.5, if any County Department intends to enter into an agreement with a licensed real estate broker to serve as County's exclusive agent for the purchase or lease of real property for County use or for the sale or lease of County-owned real property, then the Department shall select a broker from the list(s) of brokers available through the Facilities and Fleet Department's Office of Prop-

erty Management (“OPM”), or OPM designee, which list(s) shall be valid for five (5) years and generated through a request for qualifications process administered, updated, modified and managed by the OPM, or OPM designee.

#### **5.9.5.6 Below Fair Market Value (Amended 12-8-15)**

(A) Intent

Non-profit or volunteer groups or organizations and public agency uses of County property at below fair market value (“BFMV”) rent or fee can sometimes be justified due to the important public benefit or services provided through such use. Such uses can be justified through demonstrated need and accountability in compliance with the spirit and intent of County ordinances and other applicable law, including but not limited to Government Code Section 26227. These public purpose uses can provide benefit to County residents by increasing the scope and diversity of services and benefits available Countywide.

(B) Managing the Relationship

The County manages these relationships through a variety of County departments and agencies. Generally, the responsibility for managing the day-to-day use of County Property resides primarily within the County Executive’s Office of Asset and Economic Development, the Facilities and Fleet Department, the Parks and Recreation Department and the Roads and Airports Department.

(C) Below Fair Market Value Agreements

Except as allowed herein or in Section 5.9.5.6 (D) and (E) or where otherwise expressly allowed by applicable law or County ordinance, the County shall not enter into any below fair market value agreements (“BFMV Agreement”) for the use of County real property or space (“County Property”). In addition, except as expressly allowed by applicable law, the County shall not enter into BFMV Agreements with any for-profit business, person, entity, partnership or other group or organization.

- (1) Without first having to comply with any other provision of Board Policy Chapter 5.9 and without first obtaining Board of Supervisors approval, each of the Directors of the Roads and Airport Department, Facilities and Fleet Department, Parks and Recreation Department and Office of Asset & Economic Development are hereby delegated the authority to negotiate, amend, enter into and execute leases, licenses and other space use agreements or contracts for the use of County facilities, space or real property at or below fair market value with any third party if (1) the term of the agreement is less than 12 months, (2) the rent or fee for the use is less than \$10,000 per month, (3) the agreement is non-renewable, (4) the agreement has been reviewed as to form and legality by County Counsel and has been approved by the Office of the County Executive, (5) the use serves a public purpose, and (6) the department with the delegation has complied with all other applicable provi-

sions of the Ordinance Code or law pertaining to such use (by way of example and not limitation, County Ordinance Code A21-20.b).

(D) Below Fair Market Value Justification

For purposes of this section, a below fair market value justification will require the following:

- (1) an appraisal or an economic opportunity evaluation. If an economic opportunity evaluation is performed it should include, if needed, consideration of the following: lease vs. sale economics, net present value comparisons, marketing options, market trends, proposed timing for use, minimum bid recommendations, development pro-forma, title encumbrances (restrictive easements or bond financing encumbrances) or a discussion of the non-applicability of any of these elements if that is the County staff's determination. If the property is a park, then the analysis in this section (D)(1) is not required;
- (2) a determination that the proposed use is consistent with the County's goal of serving the public purpose;
- (3) a preliminary assessment of whether CEQA is applicable and has been satisfied;
- (4) a determination that the proposed use would be in the public interest and would not substantially conflict or interfere with the County's use of the space or the use of other County properties;
- (5) the proposed user has demonstrated that the fee or rent at fair market value is not economically feasible and the proposed below fair market fee or rent is otherwise justified for the intended use. An effort should be made to quantify the public benefit associated with the grant of a below fair market fee, rent or payment, including any savings to the County; and,
- (6) the proposed user has demonstrated that it has the financial and operational ability or expertise to perform the public service or provide the benefit contemplated.

(E) Approving the Below Fair Market Value Agreement

Prior to entering into any BFMV Agreement, the BFMV Agreement shall:

- (1) be in writing, and subject to review and approval by County Executive (or designee) and review and approval by County Counsel as to form and legality; and,
- (2) be subject to the Board of Supervisors approval.



(F) Effective Date

This Section 5.9.5.6 shall apply from the date of adoption and shall not be retroactive.

**5.9.5.7 Uses of Property Not Belonging to County (Adopted 12-8-15)**

(A) Without first having to comply with any other provision of Board Policy Chapter 5.9, the Board of Supervisors delegates to the County Executive or designees the authority to negotiate, amend, enter into and execute leases, licenses and other space use agreements or contracts for the use of facilities, space or property belonging to another if (1) the term of the agreement is ten (10) days or less, (2) the rent or fee for the use is less than \$7,500, (3) the agreement is non-renewable, (4) the use serves a public purpose, (5) the department with the delegation has complied with all other applicable provisions of the Ordinance Code or law pertaining to such use, (6) an executed copy of the agreement is provided to the Director of the Facilities and Fleet Department, and (7) an off-agenda memo is sent to the Board of Supervisors with a summary and a copy of that agreement.

(B) Effective Date

This Section 5.9.5.7 shall apply from the date of adoption and shall not be retroactive.

**5.9.6 Guidelines/Procedures**

Additional information may be found in the OCCM's Administrative Guidelines Manual, the County's Contracting Manual and any other applicable procedures developed for this subject area.

**5.9.7 Applicable Legal Authority**

The applicable legal authority for this Section includes, but is not limited to the following:

County of Santa Clara Ordinance Code Division A21

California Government Code Section 25525, et seq.

Board Resolution Authorizing the Directors of the Facilities and Fleet Department, Parks and Recreation Department, and Roads and Airports Department to execute and amend leases and license of Real Property for use by the County, dated May 22, 2007.

## **5.10 [RESERVED]**

## **5.11 INFORMATION TECHNOLOGY (IT) PRODUCT AND SERVICE CONTRACTS**

### **5.11.1 Overview**

This Section addresses Software, Hardware, Maintenance, and IT Services.

### **5.11.2 Policy**

It is the policy of the Board that the procurement of IT Product and Service is consistent with applicable laws, while achieving economies of scale and ensuring appropriate support models are established so that the County's IT is consistent with industry standards and practices, and is capable of handling the ever-changing information technology industry and the multiple variations provided by software, hardware, maintenance and IT service providers.

### **5.11.3 Background**

The County contracts with different entities to procure Software, Hardware, Maintenance, and IT Services.

(A) Examples of products include, but are not limited to:

- (1) Commodity software and maintenance/upgrade agreements, including office productivity products, such as email, word processing, and presentation products;
- (2) Commodity hardware, such as servers, microcomputers, Smartphones, tablets, and printers;
- (3) Enterprise software solutions, such as a financial or payroll systems;
- (4) Shared software solutions, such as applications shared by a sub-group within the County, such as the Law and Justice Community;
- (5) Business-specific software applications that only address a specific business need, such as an electronic health record system;
- (6) Software products that provide capabilities that are available for free or with minimal maintenance fees; and
- (7) Hardware products and maintenance that meet countywide infrastructure or department-specific needs.

(B) Examples of services include, but are not limited to:

- (1) Business analysis, system/application design, development, implementation, project management, technical consulting, training or maintenance.

#### **5.11.4 Purpose**

The purpose of Section 5.11 is to ensure that all IT Product and Service contracts are:

- (A) Consistent with County policies and procedures;
- (B) Procured through requests and methods of procurement that have been reviewed and approved as defined in the County's IT Product and Service Contracting Guidelines;
- (C) Appropriate for County business purposes only;
- (D) In alignment with established County IT Principles and Standards Guidelines developed by the County Chief Information Officer or designee and the County Information Technology Council, to achieve economies of scale, to ensure appropriate support models are established, and to be consistent with industry standards and practices;
- (E) Comply with all applicable laws, including but not limited to laws related to security, privacy, confidentiality, HIPAA, discrimination, copyrights, trademarks, and accessibility under Section 508 Amendment to the Rehabilitation Act of 1973; and
- (F) Follow the exemption procedures within the County's IT Product and Service Contracting Guidelines.

#### **5.11.5 Application of the Policy**

##### **5.11.5.1 Administration**

The policies and guidelines covered by the Information Technology Product and Service Contracting Policy will be developed and managed by a governance committee or council reporting to the County's Executive Governance Steering Committee assigned to oversee the management of Information Technology in the County.

- (A) The responsible committee or council, in conjunction with the Procurement Department and County Counsel's Office, is responsible for, but not limited to, the:
  - (1) Development and ongoing management of the County's IT Principles and Standards;  
  
Development and on-going management of the County's IT Product and Service Contracting Guidelines;
  - (2) Development and on-going management of the County's IT Principles and Standards Guidelines;

- (3) Development and on-going management of requirements to establish Master contracts for Countywide use;
- (4) Oversight and guidance to assist in the development of requirements and appropriate solicitation methods as defined in the County IT Product and Service Contracting Guidelines; and
- (5) Other responsibilities and tasks as identified by the Executive Governance Steering Committee.

#### **5.11.5.2 Method(s) of Solicitation**

The Information Technology industry and contracting approaches change rapidly. In order to maintain appropriate methods of solicitation, guidelines are provided and managed on an ongoing basis in the County IT Product and Service Contracting Guidelines. These guidelines must be consistent with this Chapter of the Board Policy, the Administrative Guidelines and the County's Contracting Manual.

#### **5.11.6 Applicable Legal Authority**

The applicable legal authority for this Section includes, but is not limited to the following:

California Government Code Sections 23004, 23005, 25500 – 25009; 31000

County of Santa Clara Ordinance Code Sections A34-78 – A34-91

Charter of the County of Santa Clara Article III, Section 300 Section 508

Amendment to the Rehabilitation Act of 1973

### **5.12 LEGAL SERVICES CONTRACT**

#### **5.12.1 Overview**

This policy addresses the legal services procured by the County from outside legal counsel.

#### **5.12.2 Policy**

It is the policy of the Board that the County enters into contracts for legal services under certain circumstances and that certain conditions may be placed on the outside legal counsel providing such services.

#### **5.12.3 Background**

The County contracts with outside legal counsel for legal services when issues pertinent to a negotiation, arbitration or litigation are specialized in nature that cannot be handled by the Office of the County Counsel, or when a legal conflict merits the retention of outside counsel, or when the existing workload of the County's attorneys renders it impractical to

assign County staff to undertake a particular matter. A court may also order the retention of a court-appointed counsel, which generally will result in a contract for the services of an outside legal counsel to represent a County party for the duration of a particular court case.

#### **5.12.4 Purpose**

The purpose of Section 5.12 is to establish the policy of the Board related to the retention of outside legal counsel and the conditions governing such an arrangement.

#### **5.12.5 Application of Policy**

##### **5.12.5.1 Approval Process**

Prior to retaining outside legal counsel, agencies and departments must first ask County Counsel to prepare a written certification to the County Executive that the Office of the County Counsel is unable to provide legal services to the Agency/Department on the matter at issue and it has no objections to the Agency/Department hiring the proposed outside legal counsel.

##### **5.12.5.2 Pro Bono Policy**

- (A) A contract for legal services with the County must include a written representation by the contracting firm that the firm will make a good faith effort to provide at least 12 hours of pro bono legal services, during each year of the contract, multiplied by the number of full-time attorneys in the firm. The number of hours can be pro-rated on a calendar day basis for any contract period that is less than a full year.
- (B) For the purpose of this policy, pro bono legal service means:
  - (1) Provision of legal services without fee or expectation of fee:
    - (a) to low-income individuals, or
    - (b) to charitable, civic, community, governmental or educational organizations in matters that are designed primarily to address the needs of low-income individuals;
  - (2) Provision of legal services without a fee or with a substantially reduced fee to groups or organizations seeking to secure or protect civil rights, civil liberties or public rights; or
  - (3) Participation in activities without a fee to improve the law, the legal system or the legal profession.
- (C) Contracting firms are encouraged to provide pro bono legal services through the Pro Bono Project (which provides pro bono legal services to low-income individu-

als with civil disputes in the County of Santa Clara), or to individuals or organizations within the County of Santa Clara.

- (D) Each contracting firm must provide the County Counsel with a report on the firm's pro bono activities within 30 days of the end of each contract year, or contract term if less than a year, and again when submitting the firm's final invoice to the County. The report must include the number of full-time attorneys in the firm, the number of pro bono hours provided by the firm, and, if appropriate, the nature of the pro bono legal services provided.
- (E) If a contracting firm fails to make a demonstrated good faith effort to meet the requirements of this policy, such a failure constitutes a breach of the agreement and may also be considered by the County in determining whether to renew the firm's existing contract, or whether to award the firm any future contracts.
- (F) This policy is not applicable to contracts with a maximum amount payable of less than \$50,000 for each year of the contract.
- (G) This policy is not applicable to contracts with, or appointments made by, the judiciary for the purpose of providing legal representation to low or middle-income persons, in civil, criminal, or administrative matters.
- (H) These services cannot include the representation of a client, directly or indirectly, in any action or complaint filed in any forum against the County or its agents or employees. This restriction does not apply to administrative proceedings to obtain or maintain public benefits or services for clients.

#### **5.12.6 Applicable Legal Authority**

The applicable legal authority for this Section includes, but is not limited to:

County of Santa Clara Ordinance Code Section A22-16

### **5.13 CONTRACTING WITH INDIVIDUALS (Amended 5-19-15)**

#### **5.13.1 Overview**

This section addresses contracting with individuals who will assume a defined set of responsibilities and/or perform services for the County.

#### **5.13.2 Policy**

It is the policy of the Board that the County contract with individuals to assume certain responsibilities and/or perform services when such contracts will result in the best outcome for the County.

### **5.13.3 Background**

Under certain circumstances, the County may determine that it is in its best interest to contract with an individual. Individuals may enter into contracts with the County as a contract employee or as an independent contractor. Individuals under contract may work on a part-time or full-time equivalent basis.

### **5.13.4 Purpose**

The purpose of Section 5.13 is to establish a policy that describes when the County may contract with individuals.

For purposes of this section, this policy does not apply to individuals who are employees of a corporation or firm that has a contract with the County.

### **5.13.5 Application of Policy**

#### **5.13.5.1 Contract Employee vs. Independent Contractor**

A determination must be made whether an individual retained pursuant to contract is a contract employee or an independent contractor. Agencies/Departments should contact OBA or County Counsel for advice in making this determination.

#### **5.13.5.2 Solicitation/Approval Process**

Unless an exception or exemption applies, Agencies/Departments are required to engage in competitive procurement to hire an individual pursuant to contract. If an Agency/Department believes that an exemption or exception applies, the Agency/Department must comply with the policy set forth in Section 5.6.5.1(D) above.

Generally, the Board will only approve an Agency/Department's use of contracts for individuals when such use is needed to provide specialized skills, address emergency situations or provide assistance to meet an unusual or temporary operational requirement.

Agencies/Departments are prohibited from hiring individuals pursuant to a contract if the intent is to circumvent the position control process that is administered through the adoption of and amendments to the annual budget, or if the action is in conflict with the County's classified service and collective bargaining agreements/processes.

### **5.13.6 Applicable Legal Authority**

The applicable legal authority for this Section includes, but is not limited to the following:

County Charter Article VII, Section 701

## **5.14 CONTRACTING DURING AN EMERGENCY**

### **5.14.1 Overview**

This section describes the type of contracting permitted during an emergency, and its limitations.

### **5.14.2 Policy**

It is the policy of the Board that the County's ability to contract during an emergency is not limited while ensuring that County's actions still comply with applicable laws.

### **5.14.3 Background**

The purpose of procuring professional and non-professional services, or goods and related services, an emergency is a sudden, generally unexpected occurrence or set of circumstances that demands immediate action, the absence of which would undermine essential County services or cause a significant economic loss to the County. An emergency does not include an urgency that results from an Agency/Department's delay in engaging in a solicitation process to procure services or goods.

### **5.14.4 Purpose**

The purpose of Section 5.14 is to establish a policy of the Board that describes the contracting authority during an emergency and the limitations on such authority.

### **5.14.5 Application of Policy**

In an emergency, Agencies/Departments are required to submit a written request with sufficient justification to the Board of Supervisors, Director of Procurement or the County Executive to forego the normal bid solicitation and contracting process for goods and services.

All emergency procurement and contracts that are approved without the benefit of a public meeting must be brought by the County Executive, or the Director of Procurement, if it is not within the Director's authority, to the Board of Supervisors, as soon as practicable, for ratification at a public meeting.

Emergency purchases to repair or replace a public facility shall be made in accordance with County Ordinance Code Section A34-82.

### **5.14.6 Applicable Legal Authority**

The applicable legal authority for this Section includes, but is not limited to the following:

County of Santa Clara Ordinance Code Section A34-82



## **5.15 SUSTAINABLE PURCHASING POLICY (Adopted 12-7-21)**

### **Background**

In accordance with the County of Santa Clara's Policies on Sustainability in Chapter 8 and elsewhere in this Policy Manual and the Sustainability Master Plan adopted by the Board of Supervisors on January 12, 2021, the County recognizes its responsibility to reduce greenhouse gas emissions, build resilience and support a vibrant and just economy, healthy environment, and social equity with a whole-systems approach. The County also understands that the types of products and services it buys have inherent environmental, economic, human health, and social impacts and that it should make sustainable procurement decisions that embody the County's commitment to sustainability.

Sustainable purchasing is purchasing that considers social, human health, environmental, and economic impacts, while supporting a diverse, equitable, and vibrant community and economy.

### **Purpose**

This Sustainable Purchasing Policy is intended to:

- Communicate the County's commitment to sustainable purchasing to its employees, vendors, and community;
- Achieve cost optimization to build a financially sound organization by choosing products that are more resource-efficient and by considering the total life cycle cost;
- Spur the growth of sustainable and innovative technologies and cost-effective market-based solutions to further support sustainable purchasing;
- Empower employees to be innovative and demonstrate leadership in sustainability by considering sustainability benefits when making purchasing decisions; and
- Enable administration of sustainable purchasing standards, including the development of supporting guidelines and training.

This policy, along with related policies in Chapter 7 (Policies on Land Use and Environment) and Chapter 8 (Policies on Sustainability), work together to implement the County's sustainability vision and goals.

### **Policy**

County agencies, departments, employees, and contractors (prime and subcontractors) when doing business on behalf of the County, shall consider and apply, to the extent practicable, environmental, economic, and social equity sustainability outcomes when identifying, soliciting, and evaluating products or services procured with County funds.

Environmental, economic, and social equity sustainable purchasing priorities are those that:

- proactively combat climate change by lowering greenhouse gas emissions associated with the purchase, use, and disposal of products, and the provision of contracted services;
- protect, enhance, and restore natural resources by choosing products and services that conserve resources and ecosystems;
- protect and improve the health of our community by choosing products and services that reduce cumulative impacts of environmental hazards; and
- cultivate a vibrant, prosperous, and just regional economy by considering vendors, products, and services that promote social equity.

### **Applicability of the Policy**

Compliance with this policy shall not deem an agency, department, employee, or contractor exempt from complying with all other sections of this Chapter 5 and all other applicable procurement policies and procedures, including applying a satisfactory level of competition, acquiring products and services that meet performance requirements, and are available at a reasonable price in a reasonable period of time. Nothing in this policy shall be construed as requiring any agency, department, or employee to terminate an existing contract to comply with this policy.

Where funding sources or emergency purchases prohibit the acquisition of products or services in conformance with the sustainable purchasing priorities in this policy, the County shall attempt to minimize negative sustainability implications resulting from the acquisition of the alternative goods or services.

### **Administration, Monitoring, and Evaluation Procedures**

A Sustainable Purchasing Working Group, led by the Office of Sustainability and the Procurement Department in partnership with the Office of Countywide Contracting Management and the Facilities and Fleet Department, shall oversee implementation of the Sustainable Purchasing Policy, including training and outreach. Specific elements of the policy, including sustainable purchasing requirements and best practices, will be developed by the working group for inclusion in the Procurement Administrative Guidelines and/or future contracting manuals.

County-specific purchasing standards established to support the priorities in this policy, shall be recommended by the Director of Sustainability to the Chief Procurement Officer for consideration in accordance with the process set forth in County of Santa Clara Ordinance Code Section A34-91 and the Procurement Administrative Guidelines. Proposed sustainable purchasing standards developed through this process will be presented to the County Executive or designee and if adopted, shall be incorporated into the Procurement Administrative Guidelines. Any sustainable purchasing standards mandated by State or Federal laws or regulations are not required to follow the process in section A34-91 and instead shall be developed, in consultation with the Office of the County Counsel and other departments as appropriate, for approval by the Chief Procurement Officer and shall be incorporated into the Procurement Administrative Guidelines as a minimum standard.

The Office of Sustainability shall report once a year to the Finance and Government Operations Committee (FGOC) and the Housing, Land Use, Environment, and Transportation Committee (HLUET) on the County's sustainable purchasing activities and the cost and effectiveness of this policy as part of the annual reporting for the Sustainability Master Plan. As needed, the Office of Sustainability shall also coordinate or support data collection with respective County agencies and departments for reporting in accordance with State and Federal regulations.

This policy will be reevaluated and updated as needed to ensure alignment with any new sustainability policies and priorities. Any revisions to this policy shall be developed in consultation with the Procurement Department, and the Office of Countywide Contracting Management to ensure compliance with other procurement-related policies and processes.



## 6.0 LEGISLATIVE POLICIES

### 6.1 CURRENT YEAR LEGISLATIVE POLICIES

Annually, the Board of Supervisors will adopt a listing of priorities related to legislation which address issues that are high priority and which may be actively addressed by the State Legislature or Congress.

For further information, see annual “Legislative Policies and Priorities” document published by the Office of Strategic Planning.

### 6.2 LEGISLATIVE COMMITTEE PROCEDURES (Adopted May, 1997; Amended 2-26-13; Amended 1-14-14)

*The Board adopted Resolution No. BOS-2013-26, suspending appointments to the Legislative Committee. This continues in effect until the Board directs otherwise. Legislative matters shall be referred to the other five Board Policy Committees for recommendations on support/oppose positions to the full Board, or to the full Board directly, depending on the subject matter of the legislation.*

The existing policy of the Board of Supervisors requires formal approval by the Legislative Committee and the Board of Supervisors on any pertinent state or federal legislative issue. Board members, Agency and Department heads, and County Boards and Commissions may submit an issue or piece of legislation for consideration by the Legislative Committee and Board.

If an issue fits within the priorities laid out in the Board of Supervisors Legislative Priorities Document, then Board approval is not necessary. However, the Board will be kept apprised of action taken via copies of all correspondence sent.

Issues other than legislative which involve a local, state or federal government body should also be brought before the Legislative Committee for approval.

The procedures for referring legislation and other intergovernmental issues to the Legislative Committee are as follows:

- The Legislative Committee meets the first and third Fridays of each month.
- The Deputy County Executive must receive any requests for items to be included on the agenda and pertinent background information a minimum of 10 work days before the Legislative Committee meeting. For time-sensitive issues, the ‘10 day’ guideline for referrals can be waived. Board members, Agency and Department heads, and Boards and Commissions may all refer items to the Legislative Committee.
- The Deputy County Executive will review legislative issues and make recommendations to the Committee.
- The Chair of the Legislative Committee will approve the Committee meeting agendas.

- When appropriate and time permits, legislation will be forwarded to the various Board policy committees for review.
- The Committee will review the issue and make a recommendation on a position to the Board. Generally, Legislative Committee recommendations will be placed on the agenda of the next Board meeting.
- If immediate action is required, accommodations can be made to get the issue before the Legislative Committee outside of the normal timeframe.
- In an urgent situation, actions taken by the Legislative Committee may be acted upon before the item receives approval by the full Board.

#### Use of Official Positions:

- Once a position is taken by the Board, staff tracks each bill through the legislative process.
- When appropriate, county representatives will testify or meet with legislators to advocate on behalf of the county.
- Correspondence is sent to appropriate legislators and other officials at each stage of the legislative process. Copies of all correspondence are sent to the Board of Supervisors. In addition, staff will frequently update the Board on the status of all pending legislation.

## **7.0 POLICIES ON LAND USE AND ENVIRONMENT**

### **7.1 TREE PRESERVATION POLICIES**

#### **(A) General Plan Requirements**

- (1) The County's General Plan calls for the preservation of healthy specimen trees and heritage trees. Heritage trees are listed on the "Heritage Resources Inventory".
- (2) The General Plan also speaks to protecting water resources by controlling the cutting of trees and riparian vegetation. The Plan also establishes guidelines for controlling vegetation along electric line corridors.

#### **(B) California Department of Forestry Regulations**

- (1) The State supersedes local jurisdictions in the regulation of commercial cutting of trees on more than three acres of land. This includes the cutting of trees for sale as either lumber or firewood.
- (2) The State exempts from its regulation the cutting of any number of trees on privately owned property when it is cut for the owner's own use.
- (3) Commercial cutting of trees on three acres or less can be regulated by the State at the County's option.

#### **(C) Zoning Ordinance Guidelines**

Most tree cutting in Santa Clara County that is not regulated by the State is covered by the zoning ordinance regulations for two zones -- hillsides and ranchlands. These regulations divide proposed tree cutting into three categories of use based upon acreage and the number of cords to be cut. The categories are determined (1) as a matter of right of the property owner, (2) subject to securing a special permit and (3) subject to securing a use permit. The regulations requiring use permits for the hillsides and ranchlands zones are for commercial firewood harvesting. The Board may direct the Planning Commission to adopt standards in that regard.

### **7.2 POLICIES ON THE NAMING OF STREETS (Adopted 5-1-84; Amended 4-19-05)**

#### **(A) Street Name Standards**

- (1) A proposed street name shall not duplicate or too closely approximate phonetically the names of any streets in the postal or ZIP code area.

- (2) The spelling, spacing and suffix abbreviations for each street name should be consistent on all maps, street signs, and listings.
  - (3) The definitions of non-English street names should be reviewed to assure that offensive or derogatory names are avoided.
  - (4) Street names shall not exceed 20 characters in length, including spaces but exclusive of any suffix.
  - (5) Where the street is a continuation of an existing street, the existing street name shall be used.
  - (6) Cul-de-sac streets will usually be called “Court”. However, “Place” also is acceptable. A cul-de-sac may carry the same name as the street to which it is connected.
  - (7) Loop streets will usually be called “Circle”.
  - (8) The use of names with historic significance is encouraged.
- (B) New Streets Created by Tract or Parcel Map
- (1) The County's Central Permit Office shall refer any tentative map with proposed new street names to County Communications and the United States Post Office for clearance of the street names. The referral map shall include signature blocs for approval, denial and comment.
  - (2) The County Surveyor shall verify the clearance of new street names prior to recording the final parcel map.
  - (3) The County Surveyor shall forward a copy of the final parcel map to County Communications, the United States Post office, and to the County Building Inspection Office.
- (C) Street Name Corrections to Recorded Maps
- (1) The County Surveyor may correct a street name by recording a Certificate of Correction. This process is restricted to corrections such as spelling and does not include the establishment or replacement of a new street name. The process includes:
    - (a) A written request to the County Surveyor outlining the reason for the correction request;
    - (b) A recording fee for the Certificate of Correction.
  - (2) The County Surveyor shall forward a copy of the map to County Communications and to the County Building Inspection Office.



(D) Public Streets -- Street Name Changes and Official Street Name Designations on Existing Streets

- (1) Prior to filing a formal “Street Name Request”, the applicant shall obtain clearance from County Communications and the United States Post Office, each individually as follows:
  - (a) Applicant shall complete and mail to County Communications and the U.S. Post Office a “Preliminary Street Name Request” form, copies available from the Central Permit Office, which shall include the following:
    - (1) A 500 scale map showing the street for which the name change is proposed and the names and addresses of all property owners within 300 feet of the street;
    - (2) The reason for the requested name change;
    - (3) The applicant's name, address and phone number;
    - (4) An approval/denial bloc on the map.
  - (b) County Communications and the U.S. Post Office shall mail their responses directly to the applicant.
- (2) Upon receipt of a favorable comment by both County Communications and the Post Office, the applicant shall submit an application to the Central Permit Office including the following:
  - (a) The completed and signed “Street Name Request” application;
  - (b) The mailing list and pre-addressed stamped envelopes including all property owners within 300 feet of the street;
  - (c) Copies of the “Preliminary Street Name Request” from the Santa Clara County Communications Department and the U.S. Post Office;
  - (d) A copy of the previously prepared map showing the street for which the name change is proposed including the names and addresses of property owners. The location of the notices to be posted shall be added to said map.
- (3) A public hearing will be scheduled before the County Surveyor within thirty (30) days from the acceptance of the application by the Central Permit Office.
  - (a) Notice of such hearing will be sent to all affected property owners as identified by the applicant.

- (b) The applicant shall post notice of the hearing as follows:
  - (1) A minimum of three (3) conspicuous locations along the street to be affected, as shown on the submitted map, including each end of the street and every thousand (1,000) feet on the street.
  - (2) Notices shall be posted a minimum of ten (10) days prior to the hearing.
  - (3) Notices shall be eighteen (18) inches by twenty-four (24) inches with letters that can be seen from a distance of fifty (50) feet.
  - (4) Notices shall be painted or printed on material that will withstand outdoor elements.
  - (5) A copy of the actual notice and pictures of the posted notices shall be submitted at the time of the hearing.
- (4) The County may initiate the name change procedure on its own motion by requesting a public hearing before the County Surveyor and subject to compliance with all noticing and review requirements.
- (5) After the public hearing is closed, the County Surveyor shall render a decision:
  - (a) If the name change is approved,
    - (1) The applicant shall pay the Public Works Department the cost of preparation and installation of the new street signs.
    - (2) The County Surveyor shall notify
      - Applicant
      - County Communication
      - Post Office
      - Transportation Agency
      - Any other agency or jurisdiction that the County Surveyor determines should be notified.
    - (3) The County Surveyor shall prepare an order changing the street name and file such order with the Board of Supervisors.
  - (b) If the name change is denied, the applicant may file an appeal as outlined in Section (F).

(E) Private Streets and Private Access Ways

- (1) Street name requests will be subject to all of the following:
  - (a) The access road is subject to one or more of the following:
    - (i) Serves three (3) or more residences as the principal means of access, or
    - (ii) The access is of a length, design or location that an official name is being supported by a governmental agency for emergency purposes.
  - (b) The request is being made, in whole or in part, by County Communications or the U.S. Post Office.
  - (c) The process is subject to the same application, referral, and hearing procedure as Section (D) above.

(F) Appeals

- (1) Any person dissatisfied with the decision of the County Surveyor may file an appeal with the Clerk of the Board of Supervisors within fifteen (15) calendar days of the decision.
  - (a) Appeals shall be filed at the Central Permit Office and shall include a non-refundable fee in an amount prescribed by resolution of the Board of Supervisors.
  - (b) The County Surveyor shall submit all maps, records, papers, and files which constitute the record in the action in which the appeal was taken.
  - (c) The Board shall hear the matter de novo.
  - (d) The decision of the Board of Supervisors upon appeal is final.

(G) Renaming of Existing County Expressways

Existing County expressways may not be renamed.

### **7.3 EMINENT DOMAIN POLICY (Adopted 3-6-90)**

The Santa Clara County Board of Supervisors supports a policy of acquiring property for parks, recreation and open space purposes. Generally, the Board will pursue that policy by acquiring real property from willing sellers.

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- (A) It is a policy of the Board to utilize eminent domain to acquire land for parks and recreation purposes only when any one or more of the following situations occur:
- (1) Whenever the action would serve the convenience and mutual interests of both a consenting seller and the County.
  - (2) When any property is threatened by imminent conversion to developed uses.
  - (3) When property other than property in active ranching, agricultural production or timberland production zones is planned for sale other than to family members and co-owners.
  - (4) When impasse has been reached after good faith mutual negotiations on price or terms, and the property is necessary to the County's acquisition program, and there is no feasible alternative.
  - (5) To acquire trails and trail easements only in non-rural areas located within city boundaries, including unincorporated areas within those boundaries, and any areas bordering the San Francisco Bay.
- (B) When a property owner, as provided in the provisions of the new Open Space Authority, files a timely appeal to an eminent domain action contemplated by the Authority, the Board of Supervisors sitting as the appeals Board to that action will utilize this policy as a guide together with California law, statutes and local ordinances in determining that the acquisition is not in the best interest of the public.
- (C) Subdivision will normally be evidence of intent to develop and sell. It is recognized that subdivision can be done for purposes other than immediate sale. The property owner can avoid forced eminent domain by certifying that the subdivided property is not for sale other than among family members or co-owners and giving the County a right of first refusal for a period of five (5) years. However, this right of first refusal shall not apply to sales among family members and co-owners.
- (D) If a portion of the property is offered for sale, only that portion, not the entire property, can be acquired by eminent domain. Except as provided in (A)(4) above, a seller can withdraw the property from the market within thirty (30) days after the County's staff has given written notice of its intent to pursue eminent domain. In this case, the property owner will give the County a five (5) year right of first refusal.
- (E) The property owner in any eminent domain proceeding may request all cash, deferred payment or combination thereof.
- (F) For the purposes of this policy, the following definitions shall be used:
- (1) "Developed uses" -- commercial, industrial or multiple residential uses.

- (2) "Family member" -- any immediate family member or any other family member named in a legal will or document that would give them legal interest in the property.
  - (3) "Planned for sale" -- posting of signs, listing with a real estate broker or written confirmation by the owner of an intent to sell.
  - (4) "Open space authority" -- Santa Clara County Open Space Authority Act of 1989, Chapter 1287, Public Resources Code Section 35100-35183.
- (G) This policy may be amended only by the Board of Supervisors following public hearing by the Planning Commission and the Parks and Recreation Commission. California law prevails in the interpretation of the policy. These policies are an element of a comprehensive Acquisition Policy for purchase of park lands and are not intended to be imposed on any other County function. Application of these policies is not intended to give rise to private rights or causes of action in individuals or other persons.
- (H) The right of first refusal procedure shall be based on the following:
- (1) The party desiring to sell any portion of the covered property in response to a bona fide offer shall give written notice to the County, specifying the property to be sold and the price and terms in the offer.
  - (2) Within sixty (60) days after the later of the date of the notice or the removal of any contingencies in the offer, so that the sale would otherwise become final, the County shall have the right to complete the purchase of the property covered by the offer at the price set therein.
  - (3) If the County does not so purchase the property, the owner may complete the sale only to the offering party on terms at least as favorable to the seller as those contained in the offer.
  - (4) Failure of the County to exercise its right to purchase the property offered does not affect its right of first refusal on any portion of the property covered by the right which is not sold pursuant to the offer.
  - (5) Neither the existence of the right of first refusal nor the failure to exercise the right of first refusal shall preclude the County from using Eminent Domain to acquire the covered property, if such action is otherwise consistent with this policy.

## **7.4 NAMING OF PARKS (Adopted 10-31-95; Amended 12-6-11)**

### **7.4.1 Naming Parklands Policy**

- (A) Total Park Naming. The County will normally adopt a name for each park based on topographic, geographic, natural or historic criteria identified with the area. Special recognition naming consideration may be given if the newly acquired park was acquired through a significant donation of land or money to the county park system.
- (B) Trails and Special Features. The County will normally adopt a name for each trail or special feature based on topographic, geographic, natural or historic criteria identified with the area. Naming of a trail or special feature may be considered to recognize families or individuals associated with specific areas over long periods of time, individuals with distinguished involvement relating to parks or park service, or individuals who make a significant donation of land or money to the county park system. Namings honoring individuals or families, other than those of historical association, will generally be in memoriam. Exceptions considered must be supported by compelling circumstances.
- (C) Renaming. There will be no renaming of existing parks. Only under compelling circumstances will the County rename portions of a park, trails or special features.
- (D) Creation of Ad-Hoc Committee. An ad-hoc committee will be formed and will meet on an as-needed basis to review applications for naming and recognition plaque narrative. The committee will consist of two Parks and Recreation commissioners and one Historical Heritage commissioner.

### **7.4.2 Process for Total Park Naming**

In determining new parkland names, the official naming process should begin as soon as possible following acquisition and may include a naming request(s) from the community.

- (A) Staff will forward all requests, along with the Department's recommendations and a full report, to the Parks and Recreation Commission ad hoc committee responsible for naming.
- (B) The ad hoc committee's recommendation will be brought before the full Parks and Recreation Commission.
- (C) If approved, a transmittal and resolution will be prepared by staff for consideration and approval by the Board of Supervisors.
- (D) Requests not approved will be forwarded to Parks staff for an appropriate reply to those who suggested specific names.

### **7.4.3 Process of Trail and Special Feature Naming**

Ideally, the naming of features within a park, specific trails or facilities within a park will occur during the master plan or site plan process.

When naming requests are received outside of the master plan or site plan process then the following guidelines will apply:

- (A) Requests for any such naming will be submitted in writing to the Parks and Recreation Department with supporting documentation. An application form will be forwarded to the requestee to be completed and returned to the Department before further consideration.
- (B) Such requests, with staff recommendations, shall be referred to the ad hoc committee of the Parks and Recreation Commission responsible for naming.
- (C) The ad hoc committee will make recommendations to the full Parks and Recreation Commission. Recommendations will be returned to staff for preparation of an informational transmittal to the Board of Supervisors.

### **7.4.4 Special Considerations**

- (A) Inter-Agency Agreements. The County will retain the name of parkland properties which, through inter-agency agreement, the County operates but does not own, when so requested by the owner agency.

## **7.5 POLICY ON THE NAMING OR RE-NAMING OF COUNTY-OWNED FACILITIES (Adopted 10-31-95)**

The following policy was adopted by the Board of Supervisors on October 31, 1995:

The naming of County owned buildings and other County-owned facilities shall be authorized by the County Board of Supervisors pursuant to a public hearing on the action that is considered and following the public adoption of a resolution affirming the Board's action. Said resolution shall not be adopted with less than a four-fifths affirmative vote of the Board.

The following policy guidelines shall be adhered to by the Board when it considers action to name or re-name a County-owned building:

- (1) Generally, County-owned buildings and facilities shall be named to reflect their location and primary function.
- (2) No building shall be named for a private individual unless that individual contributed a majority of the funding that was used to construct the facility or acquire the land upon which the building is situated.

- (3) In the event multiple donors contribute funds toward the construction or acquisition of a County-owned facility, the Board shall favor a functional title for the facility with plaques honoring those who contributed to the facility.
- (4) A room within a County-owned building may be named to honor an individual for that person's service to the community even though that individual may not have contributed funds toward the construction or acquisition of the building. The naming of a room to honor an individual shall occur by resolution of the Board of Supervisors and follow a minimum four-fifths vote to approve.
- (5) No County-owned facility shall be named for a public official while that official remains in public office.
- (6) Generally, a facility shall not be named after a public official or private individual unless that person is deceased. A decision to name a facility after a public official when that official is not deceased shall require a unanimous vote of approval by the Board.
- (7) When existing facilities or rooms within facilities are named after individuals, they shall not be renamed without a unanimous vote of the Board of Supervisors.

### **Public Input on Facility-Naming**

From time to time, a member of the public may ask one or more members of the Board of Supervisors to consider a nominated name for a recently acquired or newly constructed County building. Public nominations for this purpose shall be directed to the Clerk of the Board of Supervisors with copies to the Supervisor who is asked to sponsor the nomination. The nomination shall be submitted in writing and contain the following information:

- (a) The name, address and telephone number of the person submitting the nomination;
- (b) The location of the County building for which the nomination is submitted.
- (c) The basis under which the nomination qualifies under the criteria listed in the Board's policies (numbers 1 through 7 above);
- (d) A list of a minimum of three organizations in the community that are familiar with the historical significance of the nominated name or the public service record of an individual nominee.
- (e) A minimum of three written endorsements in support of the nomination.

Said nominations cannot be acted upon unless they are placed on the regularly scheduled agenda of the Board of Supervisors, and approval shall be conditioned upon the resolution and voting requirements that are set forth in this policy.



## **7.6 LEASE PREPARATION AND MONITORING POLICY FOR COUNTY PARKS (Adopted 9-23-97; Amended 12-9-08; Amended 7-30-12; Amended 5-14-13)**

Lease operations play an important role in providing a wide diversity of regional recreational opportunities within the Santa Clara County parks system. The Santa Clara County Parks and Recreation Department (Parks) administers leases and licenses of varying complexity and length of term with not-for-profit and for-profit individuals and organizations serving a Park Purpose. This policy will not apply to leases with governmental entities or to leases that must comply with or the Park Abandonment Act or other Government Code provisions applicable to County Parks relating to Park property used for other than Park Purposes. Parks is committed to initiating, all lease operations that 1) contribute to regional recreation opportunities and are consistent with Parks' mission to "provide, protect and preserve regional parklands for the enjoyment, education & inspiration of this and future generations", 2) conform to relevant policies or planning studies, 3) enhance public use, enjoyment and safety, and 4) generate sufficient revenue from the private sector so that public subsidy is not required. Parks' goal is to meet the needs and desires of park visitors, while ensuring that both Parks and tenants receive fair and equitable return on investment.

### **7.6.1 Administration and Monitoring Procedures**

- (A) Standard Lease/License Form - Definitions. All leases and licenses will be prepared by Parks Administration using a standard form approved by County Counsel. The form will provide for insurance, security deposits and bonds appropriate to the County's risk. Any modifications to lease and license language will be reviewed and approved by County Counsel.

Leases for a term certain will be used in those instances that involve major financial obligations on behalf of the tenant, particularly with regard to construction of significant capital improvements such as buildings, major repair to structures, major utility improvements, and the like.

Licenses will be used in situations in which public access and environmental concerns require Parks to reserve its right of non-exclusive use and immediate revocation if necessary, in the interest of public safety and resource protection.

- (B) Review of Concept/Proposal. Proposed activities for lease operations may be generated by Parks, through public forum(s) (i.e. master plan input, Parks and Recreation Commission meeting input), or through unsolicited proposals. Before entering into any new lease, Parks will carefully evaluate the proposed activity or land use using the following criteria:
- (1) Consistency with Parks' mission and regional recreation focus.

- (2) Consistency with the Board approved Commercial Development on Parklands policy, Parkland Range Management policy, Park Residence policy and any other relevant policies.
  - (3) Consistency with relevant Parks master plans and the Countywide Trails Master Plan.
  - (4) Preliminary assessment of potential environmental impacts and regulatory requirements.
  - (5) Evaluation of public benefit and demand.
  - (6) Analysis of alternatives to proposal. Evaluate whether proposed activity is more appropriate to another park or if modifications should be considered to better meet the needs of the public, department and tenant.
  - (7) Preliminary marketing and financial analysis.
  - (8) Preliminary risk analysis and analysis of liability concerns.
  - (9) Evaluation of neighborhood impacts. If appropriate, a public workshop may be held to identify issues, concerns and needs of adjacent neighbors.
  - (10) Proposed lessee's financial ability to perform public service activities for the entire period of lease operations including restoration of property, if appropriate.
- (C) Leasing or Licensing to For-Profit Individuals and Organizations. An important component of the Board's evaluation and approval of a proposed lease is potential revenue as it relates to public benefit and demand. In order to provide affordable services to the public and to ensure that lease rental rates are determined in a fair and credible manner, Parks Administration will either competitively solicit lease proposals or, if a no-bid lease is proposed Parks will perform a fair market value analysis. The fair market value analysis may also include a comparison review of similar facilities and services provided by other public or private entities in the Bay Area, including but not limited to, comparison of revenue sources, costs of facility operation and maintenance, and rent. In certain situations, where adequate market information is not available from the Bay Area market, a statewide comparison review may be provided. At Parks discretion a professional consultant may be used to perform the informal fair market value analysis and estimate of lost revenue when expertise or staff resources are not available in house.

All below fair market real property, franchise and concession contracts involving County real property shall be subject to and comply with the provisions of Board Policy Section 5.9.5.6. Proposed leases with a not-for-profit entity will not require competitive solicitation. Parks will consider a balance between public benefit and demand for services to be provided, and revenue potential given costs of conducting operations and providing and maintaining the facility. Lease controls will be in

place for any no-bid, not-for-profit lease to insure that revenues earned beyond costs of operation and facility maintenance and improvement are paid as rent to the County.

- (D) Lease Term. The term of any no-bid lease agreement, including any extension, will be limited to a total of 30 years.
- (E) Competitive Bid Lease Preparation Process. Parks will use the following process for competitively bid lease preparation:
  - (1) Prepare a request for proposal (RFP) and seek Board approval to advertise.
  - (2) Fulfill notice, advertising and selection requirements in accordance with Government Code Section 25525.
- (F) Existing Tenant. Upon expiration of lease term, existing non-profit tenants, who have demonstrated an ability to provide consistently high quality facilities and services to the public, based in part upon the evaluations performed as part of the onsite monitoring process (see Section J), will be given a first opportunity to continue under a separate renewal or renegotiated lease. Following advertising, existing for-profit tenants will be given the opportunity to compete with other qualified candidates in any subsequent lease negotiations, but will not be given first rights to renewal or renegotiation unless specified otherwise in the lease, and provided the lessee is not in default of any provision of the lease.
- (G) Pending Lease Proposals. Parks Administration will maintain an ongoing file of those activities and/or improvements which are desirable for future implementation, but for which conditions are not yet favorable for pursuit of a lease arrangement.
- (H) Subsidization. The County will not provide any monetary subsidy of Park's lease operations, except under specific authorization by the Board of Supervisors to continue valued services provided to the community. Unless specifically authorized, all lease operations must operate under full cost recovery mode.
- (I) Lease Records. Parks Administration will keep an active written inventory and status report on existing leases and will update the report regularly to reflect any necessary revisions. Parks Administration will examine lease records on a regular basis to monitor such items as:
  - (1) Term of lease and expiration date.
  - (2) Base rental and percentage of gross receipts, amounts and due dates.
  - (3) Insurance requirements.
  - (4) Bonding and security deposit requirements.

- (5) Financial statement or audit findings.
  - (6) Tenant performance history.
  - (7) Lease obligations (i.e. capital improvements, provision of services).
- (J) On-site Lease Monitoring. Parks Administration will conduct regular site visits, at a minimum of once annually to each lease operation to ensure compliance with lease terms and conditions and to ensure that facilities and services are provided to the public in a safe, pleasurable and equitable manner. On-site monitoring by Parks is also required to monitor tenant repairs and improvements. Parks will use a checklist format for conducting on-site monitoring. Monitoring will be conducted by a representative of Parks in conjunction with the tenant's representative. Any items noted in the checklist to be deficient or in need of follow-up action will be documented in writing by Parks and tenant will be given a reasonable length of time to respond and/or remedy. Parks will continue to monitor any deficiencies or follow-up items until satisfactory completion by the tenant or notice of default proceedings as provided by the lease agreement.

## **7.7 BOND PREEMPTION POLICY (Adopted 6-23-80)**

Neither state or County regulations preclude developers from constructing subdivision improvements prior to recordation of final subdivision maps and posting performance bonds. However, developers still run the risk of not receiving final County approval on their projects. In order to address this issue of advance, construction work, on June 2, 1980 the Board of Supervisors approved the following policy guidelines:

1. If the project is a major subdivision, the developer should make his/her request for advance construction directly to the Board of Supervisors. If the project is a minor land division, the request is made to the County Surveyor without a report to the Board.
2. If the request is approved, the plans for advance construction work must be fully completed and signed by the County Surveyor. Concurrently, a modified land development agreement approved by the County Counsel covering the work and ancillary items is to be signed by the developer and the County Surveyor.
3. All subdivision conditions of approval, except those which are obviously inappropriate at the time, shall be met prior to approval of the plans for advance construction work. The conditions of approval typically include (but are not to be limited to) payment of fees, posting of an appropriate bond (not less than 10% of the estimated cost of the advance work), signing a land development agreement, and providing clearance letters from all affected County departments and outside agencies.
4. If improvements to an existing county road are proposed to be included in the advance construction work, the performance bond shall include the full cost of such work. Any exceptions to this requirement are to be approved by the Board of Supervisors.
5. The developer shall provide written acknowledgment that any advance construction work will not be considered with respect to future proceedings or final approval of the subdivision map.

## **7.8 SURPLUS LAND POLICY - Also known as leasing or selling County-owned lands (Adopted 10-20-98; Amended 3-30-99; Amended 9-28-04; Amended 6-24-08; Amended 5-14-13)**

- (A) There is a limited amount of land owned by the County of Santa Clara and a great need for the County to provide services to the community now and in the future. Therefore, the process to evaluate the use of County-owned land, particularly urban land, must consider the public benefit derived from the use decisions made. This Board Policy 7.8 shall not apply to County parklands that are subject to Board Policy 7.6. All below fair market real property, franchise and concession contracts involving County real property shall be subject to and comply with the provisions of Board Policy Section 5.9.5.6.
- (B) The County owns properties that may not be currently needed for County use and a cautious, deliberate and flexible decision-making process is needed to determine whether to retain, sell or lease those properties. Consideration must be given to the County's near and long-term goals and the public benefit of the uses considered.
- (C) County-owned properties under consideration to be leased or sold through a Board action are referred to as "surplus" since that is common terminology and is contained in the Government Code sections regulating the process. However, these properties may become important to the County's needs in the future. Through leasing surplus land, the property would return to the County at the end of the lease term, i.e., no longer be designated "surplus" by the Board.
- (D) When feasible, it is more desirable to lease rather than sell County-owned property. Information on the economic benefit of leasing plus any issues that would restrict the ability to lease for economic benefit are essential elements to the decision-making process.
- (E) Procedures are required that ensure that County-owned land undergoes an appropriate level of analysis before determining if a specific parcel should be designated by the Board for the following dispositions:
- (1) A direct lease or sale to a nonprofit entity for a public purpose, or
  - (2) A direct lease or sale to a city for a public purpose, or
  - (3) Adoption of a resolution to declare it surplus (followed by offering it for lease or sale to housing, parks, schools and cities and then to private interests), or
  - (4) Retention (not leased or sold).

The procedures and analysis must be sufficient for the Board to give guidance to staff regarding such matters as: the level of competition or exposure to the marketplace that is desirable (direct vs. non-direct transactions), whether the property

should be leased vs. sold vs. retained and how funding or use restrictions stemming from the funding source are to be handled.

In order to provide directives regarding the decision-making process for analysis of County-owned property, on October 20, 1998 the Board of Supervisors approved the following policy guidelines:

- (A) Prior to agendizing to the Board an action that will result in the lease or sale of County-owned property, staff shall present an analysis to the Finance and Government Operations Committee, after presentations to other appropriate Board committees and/or commissions, if any.

The Finance and Government Operations Committee shall review and recommend resolutions/actions to the Board after the committee determines that appropriate analysis has occurred. The analysis should include the following features to a greater or lesser degree, dependent on the particular property.

- (1) An analysis of the County's potential near and long-term needs for the property. The criteria used to complete this evaluation would include:
  - (a) Discussion of any space or land use studies that show County use needs that are currently underway.
  - (b) Discussion of any space or land use studies that show County use needs that are completed.
  - (c) Analysis of how the needs enumerated in those studies might be met by the subject property now or in the future (with projected timelines).
  - (d) Information on whether there are funding source or use restrictions that would inhibit or preclude the use of County land for specific County purposes and the amounts of any full or partial funding reimbursements that may be required.
  - (e) A recommended length of a lease term if the property were leased for an interim period before needed for future County use.
- (2) General Plan considerations, for both the jurisdiction where the property is located and the County's General Plan policies.
- (3) Either an appraisal of the property or an economic opportunity evaluation study. If a study is chosen it shall include, when applicable: lease vs. sale economics, net present value comparisons, marketing options, market trends, proposed timing for disposal, minimum bid recommendations, development pro-formas, and title encumbrances (restrictive easements or bond financing encumbrances) and a discussion of the non-applicability of any of these elements if that is the staff determination.

- (4) Any known or anticipated CEQA issues.
  - (5) Any known or anticipated issues with the local jurisdiction or surrounding community.
  - (6) The potential for the property to be developed for affordable housing or the potential for the development to include an affordable housing component.
  - (7) Any known or anticipated interest in the property from schools, parks, cities or affordable housing groups.
  - (8) Any known interest in or potential use for the property that would serve a public benefit other than those uses mentioned above.
  - (9) Any unique opportunities or special consideration for the re-use of the subject property such as joint development or any known or possible market interest in the property.
- (B) Staff shall analyze the potential for leasing vs. selling property whenever it is economically beneficial for the County's long-term needs (or discuss why this analysis was not included) and whenever it:
- (1) Does not violate the Board's 1987 Policy on Commercial Development on Parklands to establish commercial leases on park property only when consistent with the environmental, esthetic, economic and social uses of the parks and the accompanying guidelines, and
  - (2) Would not be superseded by the State Controller's requirements that certain Road Fund properties no longer used for road purposes must be sold at fair market value or equivalent compensation must be paid to the State Highway User Tax Fund.
- (C) If there is uncertainty of the source of the original funding, then proceeds from the disposition of the property (net of costs related to preparing the parcel for sale including, but not limited to, environmental remediation, surveys, appraisals, maintenance, etc.) shall go to the General Fund.
- (D) County-owned land required by the State for highway or freeway projects which is not subject to conveyance to the State without compensation under the provisions of Section 83 of the Streets and Highways Code shall be conveyed to the State only upon payment by the State of fair market value or equivalent credit in the State Transportation Improvement Program (STIP).

## **7.9 RUBBERIZED ASPHALT PAVING POLICY (Adopted on interim 9-29-98; Amended 8-31-99; Deleted 10-8-13)**

## **7.10 ENERGY EFFICIENCY STANDARDS FOR NEW BUILDING DESIGNS, FACILITY LEASES, EQUIPMENT, AND EXPLORATION OF SOLAR ENERGY AND OTHER RENEWABLE RESOURCES (Adopted 12-10-02)**

It is the policy of the Board of Supervisors of Santa Clara County that energy efficient standards be implemented in order to ensure the continuation of energy conservation efforts as approved by the Board. The County's General Services Agency (GSA) shall consider direct energy use impact as a formal criterion in construction and purchasing decisions relating to new buildings, facility space leases, and equipment that use energy.

When retrofitting, building or acquiring facilities, it will be the goal of GSA to meet or exceed the California Title 24 Building Code energy standards for the reduction of energy consumption. To accomplish this goal, the following approach will be used in construction, facility acquisitions and equipment procurement, unless the facility meets specific exemption criteria developed by GSA:

- (A) Make energy efficiency expertise a criteria in selecting design consultants for building projects;
- (B) Incorporate a design goal for new facilities to meet or exceed Title 24 energy consumption regulations, including an evaluation of solar, renewable and/or other alternative energy sources;
- (C) Conduct independent energy analysis, when designing new buildings, as well as when buying or leasing buildings (when feasible), and perform peer review for new building energy design; and
- (D) To the extent that it is economical and practical, the construction design for each new building will include installation of individual power meters that are compatible and can be incorporated into GSA's Enterprise Energy Management System for appropriate data collection, analysis and feedback.

## **7.11 VEHICLE PROCUREMENT - LOW EMISSION VEHICLES (Adopted 2-10-04; Amended 3-27-07)**

The County will identify and give preference in its vehicle procurement to the acquisition of fuel efficient and the lowest emission vehicles available, practical, and reasonably cost competitive for a given application, or where funding is available to assure that such vehicles are reasonably cost competitive. Public Safety and emergency vehicles are exempt from this policy.



## **7.12 ROAD MAINTENANCE DISTRICTS (RMD) (Adopted 9-26-06)**

- (A) The El Matador Road Maintenance District and the Overlook Road Maintenance District shall each remain in existence provided the registered voters of the District reauthorize a special tax by a two-thirds majority prior to the expenditure of all remaining revenue from special taxes previously authorized by the voters of the District:
- (B) Liability insurance coverage related to services provided to the Road Maintenance Districts shall be obtained by County staff and funded from the Districts' special tax proceeds;
- (C) Establishment of new Road Maintenance Districts in the County shall not be considered unless a petition signed by at least two-thirds of the registered voters in the proposed RMD is submitted at least 18 months in advance of the proposed establishment date requesting that the County establish an RMD and certifying all of the following:
  - (1) An Engineer's Report has been prepared by a registered Civil Engineer and registered Traffic Engineer and submitted with the petition demonstrating that all roads contained within the proposed RMD meet current County standards for their respective functional classification as specified in the Roads & Airports Department standard details manual, including but not limited to adequate structural section, pavement width, pavement condition index (PCI), drainage, signage, striping and pavement markings.
  - (2) The proposed special tax rate is sufficient to fund the level of maintenance desired by the RMD for the duration of the special tax including the pro-rata share of the liability insurance policy required by paragraph (B) above, all County administrative costs and a sufficient level of reserves as demonstrated by a cost analysis submitted with the petition;
  - (3) Sufficient funds are available to pay the Registrar of Voters for the costs of conducting a mailed ballot election regarding the special tax as demonstrated by documentation submitted with the petition;
  - (4) An RMD Steering Committee has been established and the head of said committee has been appointed the sole point of contact with the County and has authority to act for the petitioners on all matters related to establishment and subsequent operation of the RMD;
  - (5) The petitioners have considered alternative methods of accomplishing road maintenance such as a Homeowners' Association and have attached to the petition a detailed analysis of all alternatives considered and the reasons why no other alternative to an RMD is feasible; and

- (6) If established, the RMD will indemnify and hold the County harmless from any claim, action, proceeding or liability arising out of the County's involvement in the RMD.

### **7.13 PROCUREMENT, MANAGEMENT AND DISPOSAL OF ELECTRONIC PRODUCTS (Adopted 2-28-06)**

It is the policy of the Board of Supervisors of Santa Clara County that environmentally preferred standards related to the procurement, management, and disposal of electronic products be implemented in order to help minimize the environmental impact of the manufacture, use, and destruction of these products.

Environmentally preferred standards related to electronic products are defined as follows:

- (A) Designed for Improved Environmental and Human Health
- (B) Promote Energy Efficiency and Improve User Health
- (C) Ensure Safe and Environmentally-Sound End-of-Life Management
- (D) Manufactured Responsibility

Guidelines for the purchase, procurement and acquisition of County electronic products:

- (A) The County will state its preference for environmentally preferable products in its solicitations for equipment. Such electronic products:
  - (1) Are easier to upgrade
  - (2) Offer longer life expectancy
  - (3) Contain less toxic and bio-accumulative pollutants
  - (4) Contain components with established reuse or recycle opportunities
  - (5) Maximize the use of components with established reuse or recycle opportunities
  - (6) Contain more remanufactured or recycled components
  - (7) Reduce the generation of hazardous waste during manufacturing and use
  - (8) Are more energy efficient
- (B) The County will require bidders to propose a program in which they agree to provide take back for electronic products that have reached the end of their useful life.

- (C) The County will support, to the greatest extent feasible, the effort of other governmental agencies and local businesses to stimulate a consumer demand for product stewardship and producer take back.

Guidelines for disposal of County Electronic products:

- (A) The Disposing Agent shall seek whenever possible, to employ a strategy for reuse of equipment which requires no repairs or changes, as a first option for disposing of electronic equipment that is not obsolete. This may include whole machine reuse by groups such as schools or non-profit organizations, or reuse of components such as memory, disk drives, circuit boards and microprocessor chips.
- (B) When County electronic products are no longer functional the Disposing Agent will take appropriate measures to ensure products are handled by a Recycling Agent who has been approved by the California Integrated Waste Management Board as a participant in the Covered Electronic Waste Recovery and Recycling Payment System provided by California's Electronic Waste Recycling Act of 2003, as amended, (Chapter 8.5, of Part 3 of Division 30 of the Public Resources Code, commencing with Section 42460, and Article 10.3, of Chapter 6.5 of Division 20 of the Health and Safety Code, commencing with Section 25214.9, and Title 14 of the California Code of Regulations (CCR), Division 7, Chapter 8.2, commencing with Section 18660.5).
- (C) It is the purpose of this policy to prevent the export of hazardous e-waste to developing countries with inadequate environmental standards to ensure the protection of public health and the environment. The County will select a recycler whenever feasible that processes hazardous e-waste in developed countries. Any recycler selected agrees to provide documentation defining the downstream disposition, including hazardous e-waste handled by intermediaries. Documentation will include management methods and final disposition of hazardous e-waste that ensures the protection of public health and the environment both here and abroad. All hazardous e-waste handled by recycling and/or reuse entities will be restricted in international markets as follows:
  - (1) Electronic products in working, usable order may not be marketed internationally as commodities or whole units for reuse.
- (D) All departments shall work cooperatively to further the purposes of this policy.

### **Definitions**

For purposes of this Board Policy relative to electronic products the following terms shall be defined as:

**Bio-Accumulative Pollutants** - are chemicals that accumulate in the environment over time. For example, heavy metals such as mercury and lead are bio-accumulative pollutants because minute traces of these elements can collect in human tissue. Similarly, some bio-accumulative pollutants concentrate in fish and can become even more concentrated in

humans who eat contaminated fish. As a result, the pollutants could create potentially harmful reproductive, developmental, hormonal, or other human health effects.

**Electronic Product** - Electronic products are devices powered by electricity or a battery that has a printed circuit board or video display attached. Examples include: televisions, computers, computer peripherals and components, hard drives, CD/DVD drives, printers, facsimile machines, copiers, telephone equipment, stereo equipment, cellular phones and wireless devices.

**End-of-Life Management** - Incorporating provisions that provide for environmentally sound reuse, recycling, and/or disposal of electronic products.

**Environmentally Preferable** - Products which are designed for improved environmental and human health, promote energy efficiency and improve user health, ensure safe and environmentally-sound end-of-life management, and are manufactured responsibly.

**Environmentally Responsible** - Having the objective of designing, manufacturing and/or recycling a product so that the environmental impacts are minimized or avoided.

**E-Waste** - An electronic product that has reached the end of its useful life and is being discarded by the user.

**Recycle** - The practice of taking electronic products which are no longer usable and disassembling the components - such as plastic, glass, and metals - which are then recovered and used to manufacture new products.

**Reuse** - The practice of taking used electronic products or components of electronic equipment which are in good repair and not obsolete and finding another user (outside of the County).

**Reuse Agent** - Groups such as schools or non-profit organizations that reuse components such as memory, disk drives, circuit boards and microprocessor chips.

**Take Back** - Requiring the manufacturer to take back electronic products after their useful life for environmentally sound reuse, recycling, and/or disposal of computers.

## **7.14 GREEN BUILDING POLICY FOR COUNTY GOVERNMENT BUILDINGS (Adopted 4-25-06; Amended 9-29-09)**

### **7.14.1 Background**

“Green building” is the practice of siting, designing, constructing, operating, maintaining and removing buildings in such a way as to increase the efficiency of resource use - energy, water and materials - while reducing building impacts on human health and the environment.

The Leadership in Energy and Environmental Design (LEED) program, as developed by the United States Green Building Council (USGBC) is the most extensive, authoritative and well-recognized standard that distinguishes green buildings from other buildings. A more recent approach, the GreenPoint Rated (GPR) program was developed locally by Build It Green, a collaborative nonprofit that is focused on residential projects including multi-family structures. The County's Green Building Ordinance for private sector buildings in the unincorporated County uses both sets of guidelines.

The County intends for this policy to correlate with the Green Building Ordinance for the Unincorporated County and to hold itself to the same or higher standards than those required of the private sector.

This builds on the Board Policy 4.11 (Planning, Reporting and Financing Capital Projects) which states that one of the criteria to be used in putting a project forward to the Board for approval is environmental sustainability.

The Board recognizes that benefits from green buildings and building spaces can be realized in savings from reduced energy and water consumption, reduced costs related to sewage and solid waste, reduced absenteeism, increased employee retention, better health and well-being of occupants, and an overall decrease in environmental impacts.

### **7.14.2 Policy**

It is the policy of the Board of Supervisors that all county facility projects incorporate green building standards, as defined by the USGBC in their Leadership in Energy and Environmental Design (LEED) program and achieve the LEED ratings described below. County facility projects affected by this policy include new buildings, renovations, and adaptive re-use of an existing facility, whether owned or leased. During negotiations for leased buildings and space, administration will strive for LEED EBOM and/or LEED CI as appropriate. Historical buildings are expected to be as green as possible without impacting the historical fabric of the structure. GreenPoint Rated guidelines, developed locally by Build It Green, may be used for residential buildings of any kind instead of LEED.

Furthermore, recognizing the need to both mitigate and plan for the consequences of climate change, future facility projects will be designed to be as efficient as possible in energy and potable water consumption. The County will continue to reduce water consumption in existing buildings and landscaping to ensure that new buildings do not increase the net potable water demand of County operations and facilities.

### **7.14.3 Specific Requirements (Amended 11-5-13; Amended 5-13-14)**

The LEED program has four levels of green building performance (Certified, Silver, Gold, and Platinum) which apply to different kinds of projects, such as commercial new construction, commercial interiors, core and shell and existing buildings.

The USGBC updates the LEED guidelines and adds new categories of buildings on a regular basis. LEED requirements will evolve and become increasingly stringent. This policy

requires that buildings meet LEED Silver using guidelines that are current at the time the design is approved.

The Board of Supervisors has the authority to grant an exception to this policy on a case-by-case basis.

The following requirements shall be met for new buildings, including parking lot improvements (where applicable as expressly stated in Section S below):

- (A) New buildings over 5,000 square feet will be designed and constructed to meet LEED Silver standards.
- (B) Buildings between 5,000 and 25,000 square feet can meet these requirements by having the building design and the LEED checklist reviewed by a LEED Accredited Professional (AP) or LEED Green Associate who is also a registered engineer or architect and has previously worked on a minimum of one LEED certified building. This LEED AP may be an employee of the County or the architectural firm, but should not be associated with the project that is under review.
- (C) Requirements for buildings over 25,000 square feet shall be met by registering and officially certifying the building with the USGBC. Capital Projects are encouraged to strive for higher than Silver standards when possible.
- (D) Alternative Means of achieving a green building are acceptable according to the same standards as required of private developers in the Green Building Ordinance.
- (E) Capital Project Managers may submit a request for exemption to the Board of Supervisors. A list of energy and water efficiency measures, waste reduction actions and other green building features shall be submitted at the time of the exemption request. It is expected that exempted buildings be designed and constructed to reach as high a green standard as practicable for that building type. Specific building types that are exempt from the Green Building Ordinance are automatically exempt from this policy.
- (F) To the extent that is practicable, each new building shall not increase the overall potable water demand of the County. County water use will be tracked and savings from water conservation projects may be used to offset any increased demand caused by the new building.
- (G) New County owned buildings will be designed to control storm water runoff in accordance with the requirements and procedures set forth in the Santa Clara Valley Urban Runoff Pollution Prevention Program.
- (H) County-owned residential buildings of any kind may use GreenPoint Rated Guidelines instead of LEED. In this case the buildings should meet or exceed the minimum requirements for similar buildings as covered by the Green Building Ordinance.

- (I) Within a reasonable distance of existing or planned recycled water infrastructure (purple pipes), new buildings shall be plumbed and landscaping shall be planned to utilize recycled water.
- (J) The design of new facilities and parking lots shall consider the incorporation of renewable energy systems to the maximum extent practicable, e.g. fuel cells, photovoltaic arrays and solar hot water. Provided the systems are economically feasible, project managers will incorporate renewable energy systems into the project. If the budget for the renewable energy systems is not specifically approved as part of the project, project managers will at a minimum include the installation of wiring and plumbing conduits to allow easy installation of renewable systems at a later time.
- (K) Capital project managers shall program budget and time for building operations and maintenance personnel to participate in the design and development phases to ensure optimal operations and maintenance of the building. Designers will be required to specify materials and systems that simplify and reduce maintenance requirements; require less water, energy, and toxic chemicals and cleaners to maintain; efficiently remove collected trash and recycling; and are cost-effective and reduce life-cycle costs.
- (L) All new staff parking areas should offer preferential parking for carpools, provide sufficient bicycle lockers and have electric recharging stations available, if electrical service is available. The design of the building shall consider options that will reduce greenhouse gas impacts related to commuting and client travel to the facility and encourage alternative commute choices.

The following requirements shall be met for retrofits, remodels and renovations:

- (M) The same standards will be applied to each County building retrofit, remodel and renovation project as are required of private sector projects.
- (N) Energy and water efficiency upgrades and potential for utilizing recycled water shall be considered in any renovation project greater than 5,000 square feet.

The following requirements apply to all building projects, regardless of size:

- (O) Green building expertise will be a criterion in selecting architectural and engineering firms. This may be shown through direct experience designing green buildings that meet LEED standards and familiarity with the certification process.
- (P) The construction design for each new building will include installation of individual power meters that are compatible with and can be incorporated into the Building Operations Enterprise Energy Management System for energy data collection, analysis and building energy management. Additional meters will be included in the facility and on site, as necessary, to track the progress of sustainability initiatives, including reductions in energy and water use and waste generation.

- (Q) Building materials that support the greenhouse gas emissions goals of the County and support good indoor air quality shall be identified and to the greatest extent practicable shall be utilized in building projects. Products that have significant impacts on greenhouse gas emissions or indoor air quality shall be identified and avoided, used minimally or mitigated to the greatest extent possible.
- (R) To the extent possible, buildings should be designed for passive survivability, which allows them to be utilized in the event of a disaster that may make one or more systems or public utility inoperable.
- (S) All County parking lot capital improvement projects valued at, budgeted or costing more than One Million Dollars (\$1,000,000) shall incorporate into the project scope of work and budget the following infrastructure:
- (a) Install infrastructure to support no less than a Level 2 (208/240 V, 40 amp) electric vehicle charging system including but not limited to conduit, prewiring and panel capacity to support and accommodate Plug-In Electric (PEV) vehicles at no less than 5 percent of the total parking spaces within the County parking lot (the “PEV Spaces”), with a 1:2 ratio of charging systems (dual head outlet) per every two PEV Spaces;
  - (b) Purchase and install electric vehicle charging stations for 3 percent of the total parking spaces within the County parking lot, with a 1:2 ratio of PEV charging systems (dual head outlet) per every two PEV Spaces; and,
  - (c) Each PEV charging station installed shall have the ability to accept payment for the use of the electricity by the PEV vehicles, including the ability to accept and process credit card payments in compliance with Payment Card Industry and other security standards applicable to such transactions.
- (T) All County capital improvement projects where (1) the project scope includes the improvement of the existing plumbing including drinking fountains, (2) where the value of the project exceeds \$500,000, (3) where the replacement of the drinking fountain is already required as part of any improvement, or (4) when practical, given the scope of work and impact of replacing an existing fountain, the County shall incorporate into the project scope and budget the following:
- (a) The installation of water bottle filling stations (hydration stations) at a ratio of one per floor within County-owned buildings that are required to install drinking fountains (per the California Building Code), or County-owned buildings that contain drinking fountains. Buildings with multiple wings will have more than one hydration station per floor;
  - (b) The hydration stations shall, where possible, be installed in a manner where both employees and other facility visitors including the public would have access; and,
  - (c) The hydration stations shall dispense chilled water.



#### **7.14.4 Operation and Maintenance**

The County shall establish a LEED for Existing Buildings Operations and Maintenance (LEED EBOM) Initiative to integrate a green building approach into ongoing maintenance and to guide the County's efforts in making buildings more energy and water efficient, more environmentally friendly and healthier for visitors and employees.

#### **7.14.5 Commercial Interiors**

LEED for Commercial Interiors (LEED CI) is the green benchmark for the tenant improvement market. It is the recognized system for certifying high-performance green interiors that are healthy, productive places to work; are less costly to operate and maintain; and have a reduced environmental footprint. LEED for Commercial Interiors gives the power to make sustainable choices to tenants and designers, who do not always have control over whole building operations.

The County will strive to achieve a LEED Silver for commercial interior installation in leased space, as practicable. Length of lease, size of project and County's potential operational and utility costs will be considered to determine practicability.

#### **7.14.6 Education**

The County shall support and/or provide green building training to project managers, maintenance or facility managers and all members of any design team for new buildings and shall encourage ongoing participation in green building professional organizations, conferences, trainings and other opportunities in order to expand expertise in green building, energy and water efficiency and innovative approaches to addressing environmental issues within facilities and operations.

### **7.15 RECOGNITION OF PARK DONATIONS OR SIGNIFICANT CONTRIBUTION OF PARK SERVICE (Adopted 12-6-11)**

#### **7.15.1 Acceptance of Contributions**

All donations of personal property must conform to current park facility standards and the design guidelines established for each park. Donations of cash directed to a specific park purpose, must further an identified objective of the Park's Department.

- (A) Recognition of Donations Less than \$10,000. The Director of the Parks and Recreation Department is authorized to accept and recognize personal property or cash donations valued at less than \$10,000 so long as the contribution furthers a County park purpose or identified objective of the County Parks Department. Parks Department staff will recognize the donation following principles and standards in the Parks Department's Donation and Recognition Guidelines manual. The Parks

Department shall report individual cash or personal property donations valued at less than \$10,000 in the semiannual Gift Report to the Parks and Recreation Commission and the Board of Supervisors.

- (B) Recognition of Donations Over \$10,000. All other gifts must be presented to the Board of Supervisors for acceptance and recognition by resolution of the Board of Supervisors.

Donors of gifts valued at \$10,000 or more may be recognized at an appropriate location in the park, following principles and standards in the Park Department's Donation and Recognition Guidelines manual.

- (a) The form of recognition in the Park will be recommended by Department staff and presented to the Parks and Recreation Commission for consideration of a recommendation to the Board of Supervisors.
- (b) The Parks and Recreation Commission recommendation for recognition will be presented to the Board of Supervisors for final approval.
- (C) Recognition of Significant Contributions of Park Service. Individuals who have contributed volunteer service will be recognized through the Parks Department's Volunteer Program annual banquet and awards dinner.

The Parks Department may recommend that the Board of Supervisors recognize significant contributions of volunteer service which may be memorialized by a plaque with a narrative of historic reference. The Department's recommendation must be supported by compelling circumstances.

- (a) The Department will present such recommendations to the Parks and Recreation Commission for consideration of a recommendation to the Board of Supervisors.
- (b) The Parks and Recreation Commission recommendation for recognition will be presented to the Board of Supervisors for final approval.

## **7.16 MONUMENTS ON COUNTY PROPERTY (Adopted 6-19-12)**

### **Purpose**

The purpose of this policy is to identify the circumstances under which the County will, on its own initiative, or in response to an offer or presentation by a third party, allow the erection and maintenance of monuments on County property. This policy further details the basis on which the County will consider the erection of monuments, and the limitations on the acceptance of monuments. Through this policy, the Board of Supervisors establishes criteria for the erection and maintenance of monuments on County property and reserves to itself, following receipt of a recommendation from the County

Executive, the responsibility for implementation of this policy. This policy is not intended to be in conflict with and is not subject to any provisions of the County of Santa Clara Ordinance Code.

**Reasons for Adoption of Policy**

The adoption of this policy is prompted by recognition of the following:

There is a finite amount of County-owned property.

There are aesthetic issues surrounding the placement of permanent objects in parks and other public areas.

The County wishes to preserve its public open space in a rational and systematic manner; permanent structures, displays, permanent signs, and monuments decrease the available open space and the visual perception of open space.

There are safety issues surrounding the placement of permanent objects in parks and public areas, such as sight obstructions and line of sight availability, and the County wishes to insure the placement of permanent objects on public property does not create safety hazards.

**Monuments Eligible for Consideration**

The County will consider the erection of monuments on County property which:

- (A) Relate to the history of Santa Clara County or the State of California; or
- (B) Honor individuals or groups that have played an important role in Santa Clara County or the State of California; or
- (C) Are donated by groups with long-standing ties to Santa Clara County or the State of California and which express sentiments consistent with Santa Clara County policies.

No physical feature, including but not limited to sculpture, memorial, structure, or landscape feature, shall be installed for the purpose of bringing attention to a special interest or cause unrelated to the eligibility factors stated above.

**Process**

Any person or entity wishing to donate a monument to the County must contact the County Executive.

- (1) A proposal shall be submitted in writing, and include a contact name, address and telephone information.

- (2) A proposal shall include a written statement detailing what it is that is proposed to be donated and background information regarding the significance of the intended donation.
- (3) The funding mechanism for creation, installation and maintenance must be detailed in the proposal. If no funding is proposed for any or all of the life-cycle of the monument, the County has the right not to process the proposal further.
- (4) County staff will verify if the intended site is County property. The County reserves the right to identify an alternate location.
- (5) A visual depiction or model, or the monument itself, must be provided to the County for review. The County reserves the right to require changes in design.
- (6) The appropriateness of the item will be evaluated by the County as it relates to the site, compatibility with the surroundings, impact on use of the property, aesthetic merit, safety and maintenance issues, and conformance to the eligibility and acceptance criteria contained in this policy. The County retains the legal right to approve or disapprove of the proposal.
- (7) If the County Executive determines the requirements of this policy have been met, the County Executive will make a recommendation to the Board of Supervisors, who will consider the proposal at a public meeting. Alternatively, the Board of Supervisors may, by referral made at a regular Board meeting, refer any proposal that is not recommended for approval by the County Executive to the Finance and Government Operations Committee for further consideration under this policy.
- (8) Fundraising or costs incurred by the donor in furtherance of the monument project prior to receiving County approval is at the donor's own risk and does not obligate the County to accept the monument or reimburse any individual, including the donor, for any costs incurred.
- (9) Prior to installation, a monument shall be reviewed to ensure it conforms to all representations made to and expectations of the County, and if it fails to do so, installation may not be permitted.

### **Evaluation Criteria**

The following criteria shall be considered in determining whether or not to accept a donation of a monument and the ultimate location of the donated monument:

- (1) Relevance of the monument to the placement location, such as historic or thematic relationship, and consistency with Board policies, if any.

- (2) Consideration of the long-term impact of a permanent monument and its ability to withstand conditions such as the weather, vandalism, vagaries of time, and changing attitudes.
- (3) No subjects that are trademarked or commercially licensed may be installed on County property.
- (4) The monument must be designed and sited to avoid disturbance of natural and cultural resources and values.
- (5) The monument cannot interfere with or prohibit existing or anticipated future uses of the property
- (6) The monument cannot encroach on any pre-existing work or be aesthetically intrusive.
- (7) The monument must not pose a safety hazard to passersby, curious spectators, or the environment. Sharp projecting elements, loose parts, and other hazard elements are prohibited.
- (8) The monument must be of high quality design and craftsmanship to assure permanence; inferior workmanship may be rejected and removal required.
- (9) No monument shall be accepted if it presents an unreasonable maintenance burden. The County retains the option of requiring the donor to enter into a contract to provide for routine maintenance.
- (10) While not absolute, monuments to living persons are discouraged; a minimum of seven years between an event and its commemoration is recommended to allow for sufficient historical perspective.

### **Additional Provisions**

All monuments on County property become the property of the County.

No vested rights shall be conferred or received by any individual, entity, group or community organization as a result of this policy.

## **7.17 PROCEDURES FOR CONSULTANTS TO PREPARE ENVIRONMENTAL DOCUMENTS FOR PRIVATE PROJECTS IN SANTA CLARA COUNTY (Adopted 12-15-15)**

On October 21, 1997, the Board of Supervisors adopted the “Procedures for Consultants to Prepare Environmental Documents for Private Projects in Santa Clara County” (“Procedures”) which specifies the methodology used by the County to hire consultants to prepare California Environmental Quality Act documents for private development

projects in the County. Pursuant to the Procedures, all services provided by the consultants under contract are paid for by private applicants and no County funds are expended. Consultants execute a professional services agreement with the County when selected to be placed on the County's consultant list and the Board of Supervisors may delegate authority to the Director of Planning and Development or designee to execute a "project agreement" for particular projects. The Procedures are incorporated and made part of this policy by this reference. The Board of Supervisors may update the Procedures from time-to-time by amending the Procedures.

## **7.18 ONE PERCENT FOR PUBLIC ART (Adopted 5-1-18, Amended 10-20-20)**

### **7.18.1 Purpose**

The Board of Supervisors of the County of Santa Clara recognizes that artistic and cultural resources are central to the overall quality of life of a community. Public art contributes significantly to the vitality of our community by creating beauty in our public spaces, and by fostering a sense of community identity. Public art can also commemorate significant milestones in a community's life, providing a link to our history.

### **7.18.2 Public Art Policy**

It shall be the policy of the Board to incorporate public art in the design and development of any new County capital construction project, and to include art in public areas in or surrounding project facilities. At minimum, one percent (1%) of the budget for each new capital construction project shall be allocated for works of art that are accessible by the public. Where funding restrictions partially preclude the allocation to art work, the allocation for art shall be made from the portion of the funds unrestricted for this purpose, if any, and shall constitute at least one percent (1%) of the unrestricted portion.

For new County capital construction projects that total less than \$1 million, County art funding required by this Policy may be aggregated for public art at other publicly accessible County facilities. Any public art funds that remain unexpended from an applicable County capital construction project will be aggregated for use on public art at other publicly accessible County facilities.

### **7.18.3 Exclusions**

The following County capital construction projects are excluded from the requirements of this policy:

- (a) Projects wherein a financing source by law, statute, regulation, or grant precludes such uses.
- (b) Capital projects involving no construction such as studies, reports, leases, and easements.

- (c) Capital projects involving construction for the repair, renovation, or improvement of existing County facilities.
- (d) Facilities and structures that are not open to the public (e.g. maintenance buildings in County Parks).

At the discretion of the County Executive or designee, County capital construction projects that are excluded from the requirements of the policy may include funding for artwork that is accessible by the public.

#### **7.18.4 Selection of Artwork**

The County Executive or designee is authorized to determine the method and process of selecting artwork for new County capital construction projects under this policy and shall adopt administrative guidelines for the selection and acquisition of public art for County facilities.

### **7.19 TEMPORARY EXHIBITION OF ARTWORKS AT COUNTY FACILITIES (Adopted 5-1-18)**

#### **7.19.1 Purpose**

The Board of Supervisors of the County of Santa Clara recognizes that artistic and cultural resources are central to the overall quality of life of a community. Public art contributes significantly to the vitality of our community by creating beauty in our public spaces, and by fostering a sense of community identity.

Public art may serve to educate the public about important community matters as well as human experiences that may be invisible to the larger community.

Public art can also commemorate significant milestones in a community's life, providing a link to our history and the people who built it. The purpose of this policy is to encourage the use of spaces in and around designated County-owned facilities for the temporary exhibition of artworks that may provide local story telling of the history of Santa Clara County and its people, while also encouraging the display of other artwork, and in a manner that preserves the County's control of the messaging and content in County facilities.

#### **7.19.2 Temporary Exhibition Of Artworks At County Facilities**

It shall be the policy of the Board to use certain spaces in and around designated County-owned facilities for the temporary exhibition of approved artwork for the benefit and enjoyment of the public and employees. For purposes of this policy, "County-owned facilities" means buildings and properties owned and operated by the County that the public regularly accesses, such as, County parks, plazas, building lobbies, or other County-owned and operated public spaces.

### **7.19.3 Criteria For Temporary Exhibitions At County Facilities**

The County endeavors to showcase original artworks that focus on Santa Clara County's rich and diverse history and culture, and permit other forms of art. The County Executive or designee is authorized to prepare administrative guidelines to set forth the process of selecting and approving artworks for designated County-owned facilities under this policy.



## 8.0 POLICIES ON SUSTAINABILITY

### 8.1 SUSTAINABILITY (Adopted 4-27-10; Amended 6-22-21)

The County of Santa Clara is committed to working towards building a livable, equitable and resilient community by reducing climate pollution, adapting to a changing global climate, enhancing natural resources and the environment, fostering a prosperous and just regional economy, and meeting the needs of current and future generations to ensure all people have equitable opportunities to reach their full potential.

#### Whole-Systems Approach and Equity

The County applies a whole systems approach that addresses the core elements of sustainability (economy, environment, and equity) to fulfill the needs of today without compromising the ability of future generations to meet their needs. The County is committed to addressing disparities caused by a long history of systemic discrimination to improve outcomes for all, and will build the infrastructure to apply an equity framework across its programs, services, and policies to address inequities and its root causes, including but not limited to those caused by systemic racism.

The County's sustainability mission is achieved through public policy, programs, and advocacy to support and promote actions across four priority areas:

- **Climate Protection and Defense**

The County works to combat climate change by accelerating approaches to become carbon neutral through transportation and commutes strategies, fossil-fuel free energy systems and buildings, smart growth, zero waste solutions, low carbon agriculture and ecology practices, and improving preparedness and capacity of all community members to adapt and persist through natural disasters, shocks, and stressors.

- **Natural Resources and the Environment**

The County strives to maintain a healthy environment; provide access to parks, open spaces, clean air and water; enhance and protect natural habitats and working lands to provide environmental, economic, and health benefits for all community members and businesses and promote stewardship and responsible resource management.

- **Community Health and Well-Being**

The County strives to improve the overall health and well-being of County employees and residents by reducing differences in health outcomes among population groups; working to ensure all are supported in getting their basic needs of housing, healthcare, food, and education met, and enhancing civic participation, leadership, and engagement of all.

- **Prosperous and Just Economy**

The County seeks to build financial security and prosperity for all through education, workforce training, and living wage job opportunities; a diversified and green economy through local hiring and small and minority business support; and procurement, investments and partnerships that advance sustainability and empower sustainability practitioners.

### **Providing Balance**

The interrelationships among the four priority areas are more important than any one area. The County will pursue a thoughtful, balanced approach when interests compete and the commitment of the County of Santa Clara Board of Supervisors to a sustainable future shall be reflected in public policy, programs, and services. Four cross-cutting approaches will drive how the actions will be implemented to integrate sustainability as a core function within County operations, coordinate sustainability efforts, enhance partnerships, and empower collective action and transformation to build a sustainable government agency and community:

- **Commitment to Equity**: Strive to eliminate disparities and environmental injustices experienced by historically marginalized communities based on income, race/ethnicity, age, ability, immigration status, sexual orientation, and gender identity, and help ensure that there is equitable distribution of benefits and burdens across all communities.
- **Collaborative**: Collaborate with all internal and external partners including nonprofits, community-based organizations, and community leaders to implement shared sustainability goals and develop solutions to build vibrant and thriving communities.
- **Creative Approaches**: Encourage innovation, creative thinking, piloting new tools and technologies, and developing state-of-the-art solutions and unique financing mechanisms to become a leader in the sustainability realm.
- **Change Agents**: Empower County employees and community members to be mindful sustainability practitioners who continually strive toward sustainability goals and actions within both their workplace and their communities.

## **8.2 ZERO WASTE EVENTS (Adopted 5-24-11)**

### **Policy**

All events presented and funded by the County<sup>1</sup> shall be “Zero Waste” events. Zero Waste events are those in which foods, decorations, program materials and service-ware are used that are either reusable or accepted in the County's composting and recycling program.

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1. County-presented event is defined in the Board of Supervisors' Policy Manual Section 3.49.

Event planners organizing County-funded events that are located in leased buildings where the County does not provide recycling and composting service shall plan events so that they create as little waste as possible.

Event planners organizing County-funded events in non-County venues shall use Zero Waste as one of the selection criteria in choosing a venue and shall negotiate with venue managers to obtain the most comprehensive waste reduction service that is feasible. To the extent practicable, reusable service-ware is preferable and can often be provided by the hotel or caterer.

Event planners should use the opportunity of a Zero Waste Event to inform the attendees on the benefits of zero waste event planning.

### **Background**

Zero Waste is a systems approach to eliminating the impacts of products and packaging, resource use and reutilization, through the implementation of modern materials management and greenhouse gas reduction programs. Impacts are designated as upstream impacts (e.g., pre-consumer, resource extraction and production of goods); and downstream impacts (e.g., post-consumer, end of life, waste management, and greenhouse gas emissions).

Achieving Zero Waste will reduce the environmental impacts of our current way of life and the amount of greenhouse gas emissions. Greenhouse gas emissions from materials consumption fall into two broad categories: (1) methane generated as organics decompose in a landfill, and (2) emissions produced in the extraction of resources, the use of energy in the production of goods and services and transportation of goods.

Zero Waste Events are one way in which the County can reduce upstream and downstream impacts from materials use and reduce greenhouse gas emissions relating to materials management.

## **8.3 GREEN CLEANING POLICY (Adopted 9-10-13)**

The County of Santa Clara seeks to protect the health and safety of all building employees, occupants and visitors, reduce impacts to the environment and support LEED certification through establishing strong standards on cleaning products and equipment used in County facilities.

The Green Cleaning Policy applies to all departments that have responsibility for cleaning and custodial work in buildings owned or leased by the County or that manage contracts and vendors that supply cleaning services.

All cleaning products used within County-owned or operated facilities shall be certified by a nationally-recognized, third-party, certifying organization or the products must be approved by the procuring department as equal to the green-certified products, unless green products are unavailable, not cost-effective or not practicable. Exemptions may additionally be granted to meet the needs of infectious disease control and security.

The Green Cleaning Policy is supported by Administrative Guidelines that detail purchasing and handling of green cleaning products and equipment, provide information on best practices, identify exemptions and note chemicals to avoid. The Office of the County Executive shall delegate responsibility for maintaining the Guidelines and facilitating a stakeholder committee, with representatives of departments that have responsibility for custodial staff or contracts and other interested parties, to update the Guidelines and grant exemptions, as needed.

As supplies are reordered and new contracts written, the practices and processes outlined in the Administrative Guidelines should be utilized or incorporated to the maximum extent possible to meet the objectives of this policy.

## **8.4 ZERO WASTE POLICY FOR COUNTY FACILITIES AND OPERATIONS (Adopted 10-8-13)**

### **Purpose**

The County seeks to reduce consumption of materials, to minimize unneeded materials being disposed in landfills and to maximize the highest use of products and materials that are no longer needed.

### **Responsibility**

The policy applies to all County departments and agencies.

### **Policy**

#### **(A) Source Reduction**

All County departments shall consider their purchasing practices and reduce the purchase and use of ongoing consumables to the extent that is practicable. At a minimum, departments shall ensure that:

- (1) Printing default on all computers is set to print double-sided.
- (2) Processes are developed that reduce paper use through utilizing electronic files or reducing the number of copies or forms needed.
- (3) Rechargeable batteries are used when available.
- (4) Unnecessary items are not purchased.
- (5) Items are bought in bulk and packaged in reusable or recyclable packaging.
- (6) Reusable options are considered when making purchasing decisions.
- (7) During office cleanouts, usable supplies and equipment should be reused within the department or given to Property Disposal.

Departments shall seek to reduce the use of natural resources and size purchases according to what will be used. Remainder materials can also be eliminated by refining processes and procedures to require less use of resources.

(B) Appropriate Purchasing Decisions

The County's Environmental Purchasing Policy (EPP) defines the requirements for green purchasing. This policy supports the EPP objectives of purchasing items with recycled content and/or buying long-lasting durable goods, as two criteria that support zero waste.

Purchasing decisions shall take into account the current zero waste program of the County and avoid choosing products for routine purchases that cannot be either composted or recycled. Selection of service-ware (plates, cups, utensils) shall comply with current requirements of the County's Zero Waste Program for facilities, which is coordinated by the Facilities and Fleet Department.

Purchasing decisions shall also consider product disposition at end of life and the special management required for hazardous waste. Purchasing solicitations for items such as paint, fluorescent tubes and batteries, shall require vendors to take back these products at end of life and manage them in a manner compliant with laws and regulations.

(C) Ongoing Consumables

Ongoing consumables are items that have a low cost per unit and are regularly used and replaced in the course of business, such as paper, janitorial supplies, service ware, batteries and food.

For discarded materials that are regularly picked up from County facilities by contracted hauling, recycling, composting and disposal companies, these contracts shall set a minimum goal of 75% for diverting materials from being landfilled or incinerated and contractors will be required to report regularly on progress.

For newly leased buildings where landlords are responsible for costs and oversight of waste management, the County shall require that the landlord provide, at a minimum, a strong recycling program.

All County buildings shall have conveniently located battery recycling containers for used batteries, with a goal of capturing a minimum of 80% of all County portable dry-cell types of batteries, including single-use and rechargeable batteries, used in towel dispensers, tools, radios, phones, cameras, computers and other devices or equipment. Departments in LEED buildings shall track the purchase and disposal of batteries to ensure that the 80% target is achieved, as required for certification.

(D) Durable Goods

Durable goods are items that have a useful life of two years or more and are replaced infrequently, such as furniture, office equipment, appliances and electronics.

The Surplus Property Disposal Section of the Procurement Department is responsible for managing all durable goods that are no longer needed. Property Disposal shall identify items able to be reused or recycled and only discard items with no value or which are unable to be sold, given away, recycled or refurbished.

For LEED certification projects, departments shall work with the Procurement Department to track durable goods purchasing and disposal shall be tracked by weight, volume or replacement cost with a goal of 75% diversion.

(E) Facility Alterations, Additions and New Construction

Construction and demolition debris (C&D) resulting from any new, remodeled or renovated County building shall be salvaged for reuse or taken to a C&D sorting facility. Leftover construction materials shall be either directed to another project for use or a salvage company as much as is feasible.

Buildings that contained hazardous materials such as asbestos shall be demolished or deconstructed within health and safety regulations and resulting materials shall be disposed of appropriately.

A goal of 90% diversion is set for all C&D and shall be noted in any construction contracts, unless there are extenuating circumstances that make this goal unreasonable. Contracts should also include the option to salvage any materials that have reuse value.

(F) Landscape Waste

Plant materials generated through landscaping maintenance and projects, including work done by contractors, shall not be disposed of in a landfill unless it is the only means in which to avoid spreading plant diseases.

Where practicable, discarded grass, clippings, trees, and leaves shall be handled on-site through low-impact grasscycling, mulching or composting processes. Plant discards from County projects or maintenance may also be directed to commercial composting facilities in the County.

## **8.5 SUSTAINABLE LANDSCAPING POLICY (Adopted 3-22-16)**

The County of Santa Clara finds and declares that the landscaping practices by County departments can have significant impacts on the environment. As of 2015, the County government owns 735 parcels and nearly 48,455 acres of land. Decisions regarding the development and maintenance of property under County jurisdiction provide an opportu-

nity to promote the sustainable use of water and land, conserve soils and vegetation, support natural ecosystem functions, conserve materials, promote human health and well-being, and ensure accessibility for all users, including those with disabilities. Therefore, County operations shall practice “Sustainable Landscaping” in accordance with the following principles, practices, and standards.

A sustainable landscape is a whole system approach to the design, construction and maintenance of the landscape in order to support the integrity of the regional watershed and local ecology. Sustainable landscapes embody community values for health and safety, wildlife and the environment. It is a healthy and resilient landscape that will endure over the long term and without the need for a high input of resources. The natural functions and processes of the landscape are able to maintain themselves into the future. The following principles and related practices shall serve as a foundation for the recommendations under this policy:

- Landscape Locally
- Landscape for Less to the Landfill
- Nurture the Soil
- Conserve Water
- Conserve Energy
- Protect Water & Air Quality
- Create & Protect Wildlife Habitat

### **Purpose**

This policy sets forth goals and strategies for County operations to achieve sustainable outcomes rather than specifying prescriptive solutions and technology. Decisions regarding the design, construction and maintenance of sustainable landscapes on property under County government jurisdiction can provide an opportunity to positively impact urban forestry; open space, parks, and trails; water conservation and quality; air quality and climate change; recycling and waste reduction; energy conservation and greenhouse gas emissions; mobility and transportation; community health and safety; food production and nutrition; disaster and emergency resilience, and strengthen the vitality and livability of the communities in which County facilities are located.

### **Scope (Applicability) of Policy**

This policy applies to all County departments, agencies, offices, officers, and employees for landscape practices and activities when constructing new, or rehabilitating existing County-owned land or space, or when landscaping improvements are otherwise planned on existing landscapes. This policy does not supersede the requirements contained in applicable County, State, or Federal law or regulations that may be more specific and/or more stringent.

All County departments, agencies, offices, officers, and employees should strive to balance natural resource management priorities with development needs (energy, security, infrastructure) while considering cultural, recreational, and environmental resources inherent in the landscape. This policy and associated Sustainable Landscaping Guidelines (Guidelines) are intended to enhance, not inhibit, County planning, operations and maintenance.

This policy shall be applied in a manner that achieves the maximum consistency with the landscaping performance standards contained in the “Sustainable Landscaping Principles, Practices and Standards” identified below. These best practices and performance goals for the design, construction, and maintenance of sustainable landscapes described in this document are drawn from the Bay Friendly Landscape Guidelines prepared by the Bay Friendly Landscaping Coalition and Stopwaste.org, and from Guidance for Federal Agencies on Sustainable Practices for Designed Landscapes issued by the Council on Environmental Quality.

This policy reflects the intent of the Board of Supervisors, and establishes a structure for planning, designing, installing, maintaining and managing water efficient landscapes in new construction and rehabilitated projects; establishes provisions for water management practices and water waste prevention for existing landscapes by utilizing sustainable landscaping, a whole systems approach to the design, construction and maintenance of the landscape.

### **Sustainable Landscaping Principles, Practices and Standards**

Sustainable landscaping is a whole systems approach to the design, construction, and management of the landscape in order to support the integrity of the regional watershed. The following principles serve as a foundation for the recommendations that are to be contained in the Guidelines on the best practices and performance goals for the design, construction, and maintenance of sustainable landscapes:

- (1) Landscape in harmony with the natural conditions of the local watershed
- (2) Reduce waste and recycling materials
- (3) Nurture healthy soils while reducing fertilizer use
- (4) Conserve water, energy and topsoil
- (5) Use integrated pest management to minimize chemical use
- (6) Reduce stormwater runoff and air pollution
- (7) Protect and enhance wildlife habitat and biodiversity

These principals are intended to inspire flexibility, innovation, and a culture change. They apply equally to new construction, major renovations and, to a lesser extent, alterations to



existing small scale landscaping efforts. The recommendations can be adapted to support the County's diverse environmental stewardship and sustainability missions and policies.

A well-designed and maintained sustainable landscape can cost less to maintain in the long run, as well as lead to increased customer satisfaction. By being proactive, the County can be part of the environmental solution rather than reacting to more severe water conservation and pollution controls that are increasingly likely due to our region's growing population and local changes in climate.



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