



***2012-2013
ALAMEDA COUNTY GRAND JURY
FINAL REPORT***

ALAMEDA COUNTY BOARD OF SUPERVISORS

District One – Scott Haggerty, Vice President
District Two – Richard Valle
District Three – Wilma Chan
District Four – Nate Miley
District Five – Keith Carson, President

ALAMEDA COUNTY GRAND JURY

1401 Lakeside Drive, Suite 1104
Oakland, California 94612

Phone: (510) 272-6259 / FAX: (510) 465-9647

E-Mail: grandjury@acgov.org / Web: www.acgov.org/grandjury

*Cover photograph courtesy of Seth Gaines, Germantown, Maryland.
[Used with permission.]*

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Alameda County
Grand Jury

1401 Lakeside Drive
Suite 1104
Oakland, California 94612

510.272.6259
fax 510.465.9647
www.acgov.org/grandjury

June 24, 2013

Honorable C. Don Clay, Presiding Judge
Alameda County Superior Court
1225 Fallon Street, Department One
Oakland, California 94612

Dear Judge Clay,

The members of the 2012-2013 Alameda County Civil Grand Jury are pleased to submit our final report to you and to the people of Alameda County. This report is the result of many hours of hard work and reflects the commitment to public service by the members of the Grand Jury. Each of us appreciates the opportunity to serve, and it is our hope that the findings and recommendations contained in this report receive the serious consideration that they deserve.

Established as an arm of the court by the California Constitution, grand juries in each county serve as watchdogs, investigating the operations of counties, cities and special districts. Members are nominated by superior court judges and selected in a random drawing to serve one-year terms. Each member of the Grand Jury served on two of the following committees: Government, Law & Justice, Health & Social Services, and Education & Administration. The Education & Administration Committee also served as the Response Committee, which monitored the responses to the 2011-2012 Final Report.

The 2012-2013 Grand Jury investigated citizen complaints and other issues it considered to be of importance to the proper functioning of government. We received over 70 complaints, and met with more than 80 witnesses during the course of our investigations and orientation. While all complaints were acknowledged, not all were investigated. Some were outside of our jurisdiction, while others were not pursued due to time or resource constraints.

Some of the major issues explored by the Grand Jury this year were: the processes surrounding the purchase and construction by the County of Alameda of the new Social Services building at 2000 San Pablo Avenue in Oakland; the status of Emergency Notification Systems throughout the county and in each city within the county; the planned pilot program for a health clinic located adjacent to a new fire station in Hayward; the processes surrounding the creation and renovation of the Digital Arts and Culinary Academy at the Rainbow Teen Center in East Oakland; and the inner workings of ACERA, the county's employee pension fund.

Hon. C. Don Clay
Page Two
June 24, 2013

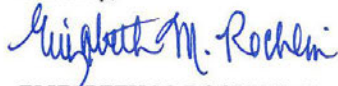
In these challenging economic times, it is crucial that our local government entities maintain the public trust by using taxpayer monies efficiently and effectively, by following proper procedures, and by modeling ethical behavior. The Grand Jury learned of several cases in which pushing the boundaries or simply ignoring those boundaries was the rule rather than the exception, and the lack of accountability or oversight is startling. We strongly recommend that future grand juries evaluate the responses to our findings and recommendations and do further investigation as needed.

In addition to our investigations, we also met with representatives from MGO, the accounting firm that conducts Alameda County's annual audits. The Grand Jury was impressed by the work that MGO has done for the county over the years. MGO was under contract with the county through 2013, and the Auditor-Controller's Office recommended extending the contract for one additional year, with which the Grand Jury concurred. However, the Grand Jury recommends that the county put the contract out to bid for next year, to ensure that the county takes advantage of the competitive market place.

We would like to thank all those who participated in our orientation, and all those who served as witnesses and provided information. Our profound thanks and sincere gratitude go to Deputy District Attorney Rob Warren, and to Cassie Barner of the District Attorney's Office. Their guidance and their expertise were invaluable, and it is no exaggeration to say that without them, this report would not be before you. Their patience, knowledge, and good humor made the process a pleasure.

Lastly, I am truly grateful to every member of the Grand Jury for their hard work. They are a wonderful and diverse group, with amazing life stories, and they came together as a team to serve the people of Alameda County. It has been an honor and a privilege to work with them.

Sincerely,



ELIZABETH M. ROCHLIN, Foreperson
2012-2013 Alameda County Civil Grand Jury

2012-2013
ALAMEDA COUNTY CIVIL GRAND JURY MEMBERS

JUROR	SUPERVISORIAL DISTRICT/CITY	NOMINATING JUDGE
Barer, Barbara M.	District 5, Piedmont	Judge Delbert Gee
Blackmon, Charla M.	District 3, Oakland	Judge Robert McGuiness
Byrd, Lorrana	District 4, Oakland	Judge C. Don Clay
Cox, William	District 3, Alameda	Judge C. Don Clay
Faulkner, James L.	District 4, Castro Valley	Judge C. Don Clay
Greene, Robert P.*	District 4, Oakland	Judge Vernon Nakahara
Henderson, Dorothy C.	District 4, San Leandro	Judge Vernon Nakahara
<i>Holzrichter, John F.²</i>	District 5, Berkeley	Judge Steven Brick
<i>Hunter, Veronique¹</i>	District 1, Fremont	Judge Vernon Nakahara
Lasky, Sandra	District 5, Oakland	Judge Vernon Nakahara
Lee, James M.*	District 3, Alameda	Judge Jon R. Rolefson
Lee, Kobin	District 1, Fremont	Judge Morris Jacobson
Lovette, Andrea	District 5, Berkeley	Judge David Krashna
Lyles, Dianne	District 4, Oakland	Judge C. Don Clay
McKeon, Tim	District 3, Alameda	Judge C. Don Clay
Pennell, Nancy L.	District 4, Pleasanton	Judge Vernon Nakahara
Pereira, Anthony M. (Sr.)	District 1, Livermore	Judge C. Don Clay
Rochlin, Elizabeth M.	District 3, Alameda	Judge C. Don Clay
Sheets, Jerry G.	District 4, Hayward	Judge Robert K. Kurtz
<i>Swalwell, Eric N. (Sr.)³</i>	District 1, Dublin	Judge C. Don Clay
Wyckoff, Robert J.	District 4, Pleasanton	Judge David Krashna

* Jurors held over for a second term by Presiding Judge C. Don Clay

1 *Resigned July 13, 2012*

2 *Resigned July 27, 2012*

3 *Resigned May 1, 2013 due to relocation out of the county*

**2012-2013 ALAMEDA COUNTY GRAND JURY
OFFICERS & LEGAL STAFF**

OFFICERS:

FOREPERSON: Elizabeth M. Rochlin

FOREPERSON PRO TEM: Andrea Lovette

SECRETARY: Barbara M. Barer

SECRETARY PRO TEM: Sandra Lasky

SERGEANT AT ARMS: Robert J. Wyckoff

SERGEANT AT ARMS PRO TEM: Robert P. Greene



LEGAL STAFF:

Robert L. Warren, Deputy District Attorney

Cassie Barner, Legal Assistant

**2012-2013 ALAMEDA COUNTY CIVIL GRAND JURY
COMMITTEE ROSTER**



GOVERNMENT

Nancy L. Pennell – Chair

Charla M. Blackmon
Lorrana Byrd
William Cox
Robert P. Greene – Chair Pro Tem
Kobin Lee
Tim McKeon
Eric N. Swalwell (Sr.) – Secretary
Robert J. Wyckoff

LAW & JUSTICE

James M. Lee – Chair

Charla M. Blackmon
James L. Faulkner
Robert P. Greene – Secretary
Sandra Lasky
Andrea Lovette – Chair Pro Tem
Dianne Lyles
Nancy L. Pennell
Jerry G. Sheets

HEALTH & SOCIAL SERVICES

William Cox – Chair

Barbara M. Barer
James L. Faulkner
Dorothy C. Henderson
Sandra Lasky
James M. Lee – Secretary
Anthony M. Pereira (Sr.) – Chair Pro Tem
Jerry G. Sheets
Eric N. Swalwell (Sr.)

EDUCATION & ADMINISTRATION

Tim McKeon – Chair

Barbara M. Barer – Secretary
Lorrana Byrd
Dorothy C. Henderson
Kobin Lee
Andrea Lovette
Dianne Lyles
Anthony M. Pereira (Sr.) – Chair Pro Tem
Robert J. Wyckoff



2012-2013 ALAMEDA COUNTY GRAND JURY

Standing, left to right:

Eric N. Swalwell (Sr.), Tim McKeon, Nancy L. Pennell, Robert P. Greene (Sergeant at Arms Pro Tem), Barbara M. Barer (Secretary), James M. Lee, Elizabeth M. Rochlin (Foreperson), Charla M. Blackmon, Andrea Lovette (Foreperson Pro Tem), Anthony M. Pereira (Sr.), Lorrana Byrd, James L. Faulkner, Sandra Lasky (Secretary Pro Tem), Kobin Lee, Robert J. Wyckoff (Sergeant at Arms), Jerry G. Sheets

Seated, left to right:

Dorothy C. Henderson, Judge C. Don Clay, Dianne Lyles

Not Pictured:

William Cox

**PRESIDING JUDGE OF THE
ALAMEDA COUNTY SUPERIOR COURT**



Honorable C. Don Clay
January 1, 2012 – Present

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HOW TO RESPOND TO FINDINGS & RECOMMENDATIONS IN THIS REPORT

Pursuant to the California Penal Code section 933.05, the person or entity responding to each grand jury finding shall indicate one of the following:

1. The respondent agrees with the finding
2. The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

The person or entity responding to each grand jury recommendation shall report one of the following actions:

1. The recommendation has been implemented, with a summary regarding the implemented action.
2. The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.
3. The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency where applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.
4. The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

SEND ALL RESPONSES TO:

Presiding Judge
Alameda County Superior Court
1225 Fallon Street, Department One
Oakland, CA 94612

A copy of all responses shall also be sent to: Alameda County Grand Jury,
1401 Lakeside Drive, Suite 1104, Oakland, California 94612, Attn: Foreperson.

All responses for the 2012-2013 Grand Jury Final Report must be submitted no later than 90 days after the public release of the report.

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INTRODUCTION TO THE ALAMEDA COUNTY GRAND JURY

The Alameda County Grand Jury is mandated by Article 1, Section 23 of the California Constitution. It operates under Title 4 of the California Penal Code, Sections 3060-3074 of the California Government Code, and Section 17006 of the California Welfare and Institutions Code. All 58 counties in California are required to have grand juries.

In California, grand juries have several functions:

- 1) to act as the public watchdog by investigating and reporting on the affairs of local government;
- 2) to make an annual examination of the operations, accounts and records of officers, departments or functions of the county, including any special districts;
- 3) to inquire into the condition and management of jails and prisons within the county;
- 4) to weigh allegations of misconduct against public officials and determine whether to present formal accusations requesting their removal from office; and,
- 5) to weigh criminal charges and determine if indictments should be returned.

Additionally, the grand jury has the authority to investigate the following:

- 1) all public records within the county;
- 2) books and records of any incorporated city or joint powers authority located in the county;
- 3) certain redevelopment agencies and housing authorities;
- 4) special purpose assessing or taxing agencies wholly or partly within the county;
- 5) nonprofit corporations established by or operated on behalf of a public entity;
- 6) all aspects of county and city government, including over 100 special districts; and,
- 7) the books, records and financial expenditures of any government agency including cities, schools, boards and commissions.

Many people have trouble distinguishing between the grand jury and a trial (or petit) jury. Trial juries are impaneled for the length of a single case. In California, most *civil* grand juries consist of 19 citizen volunteers who serve for one year, and consider a number of issues. Most people are familiar with *criminal* grand juries, which only hear individual cases and whose mandate is to determine whether there is enough evidence to proceed with a trial.

This report was prepared by a *civil* grand jury whose role is to investigate all aspects of local government and municipalities to ensure government is being

run efficiently, and that government monies are being handled appropriately. While these jurors are nominated by a Superior Court judge based on a review of applications, it is not necessary to know a judge in order to apply. From a pool of 25-30 accepted applications (an even number from each supervisorial district), 19 members are randomly selected to serve.

History of Grand Juries

One of the earliest concepts of a grand jury dates back to ancient Greece where the Athenians used an accusatory body. Others claim the Saxons initiated the grand jury system. By the year 1290, the accusing jury was given authority to inquire into the maintenance of bridges and highways, the defects of jails, and whether the sheriff had kept in jail anyone who should have been brought before the justices.

The Massachusetts Bay Colony impaneled the first American Grand Jury in 1635 to consider cases of murder, robbery and wife beating. Colonial grand juries expressed their independence from the Crown by refusing in 1765 to indict leaders of the Stamp Act or bring libel charges against the editors of the Boston Gazette. The union with other colonies to oppose British taxes was supported by a Philadelphia grand jury in 1770. By the end of the colonial period, the grand jury had become an indispensable adjunct of government.

Grand Jury Duties

The Alameda County Grand Jury is a constituent part of the Superior Court, created for the protection of society and the enforcement of law. It is not a separate political body or an individual entity of government but is a part of the judicial system and, as such, each grand juror is an officer of the court. Much of the grand jury's effectiveness is derived from the fact that the viewpoint of its members is fresh and unencumbered by prior conceptions about government. With respect to the subjects it is authorized to investigate, the grand jury is free to follow its own inclinations in investigating local government affairs.

The grand jury may act only as a whole body. An individual grand juror has no more authority than any private citizen. Duties of the grand jury can generally be set forth, in part, as follows:

1. to inquire into all public offenses committed or triable within the county (Penal Code §917);
2. to inquire into the case of any person imprisoned and not indicted (Penal Code §919(a));
3. to inquire into the willful or corrupt misconduct in office of public officers of every description within the county (Penal Code §919(c));
4. to inquire into sales, transfers, and ownership of lands which might or should revert to the state by operation of law (Penal Code §920);
5. to examine, if it chooses, the books and records of a special purpose, assessing or taxing district located wholly or partly in the county and the

methods or systems of performing the duties of such district or commission. (Penal Code §933.5);

6. to submit to the Presiding Judge of the Superior Court a final report of its findings and recommendations that pertain to the county government [Penal Code §933], with a copy transmitted to each member of the Board of Supervisors of the county (Penal Code §928); and,

7. to submit its findings on the operation of any public agency subject to its reviewing authority. The governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body and every elective county officer or agency head for which the grand jury has responsibility (Penal Code section 914.1) and shall comment within 60 days to the Presiding Judge of the Superior Court, with an information copy sent to the Board of Supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. (Penal Code §933(c)).

Secrecy/Confidentiality

Members of the grand jury are sworn to secrecy and all grand jury proceedings are secret. This secrecy guards the public interest and protects the confidentiality of sources. The minutes and records of grand jury meetings cannot be subpoenaed or inspected by anyone.

Each grand juror must keep secret all evidence presented before the grand jury, anything said within the grand jury, or the manner in which any grand juror may have voted on a matter (Penal Code section 924.1). ***The grand juror's promise or oath of secrecy is binding for life.*** It is a misdemeanor to violate the secrecy of the grand jury room. Successful performance of grand jury duties depends upon the secrecy of all proceedings. A grand juror must not divulge any information concerning the testimony of witnesses or comments made by other grand jurors. The confidentiality of interviewees and complainants is critical.

Legal Advisors

In the performance of its duties, the grand jury may ask the advice (including legal opinions) of the District Attorney, the Presiding Judge of the Superior Court, or the County Counsel. This can be done by telephone, in writing, or the person may be asked to attend a grand jury session. The District Attorney may appear before the grand jury at all times for the purpose of giving information or advice.

Under Penal Code Section 936, the Attorney General of the state of California may also be consulted when the grand jury's usual advisor is disqualified. The grand jury has no inherent investigatory powers beyond those granted by the legislature.

Annual Final Report

At the end of its year of service, a grand jury is required to submit a final report to the Superior Court. This report contains an account of its activities, together with suggestions and recommendations. The final report represents the investigations of the entire grand jury.

Citizen Complaints

As part of its civil function, the grand jury receives complaints from citizens alleging government inefficiencies, suspicion of misconduct or mistreatment by officials, or misuse of taxpayer money. Complaints are acknowledged and may be investigated for their validity. All complaints are confidential. If the situation warrants and corrective action falls within the jurisdiction of the grand jury, appropriate solutions are recommended.

The grand jury receives dozens of complaints each year. With many investigations and the time constraint of only one year, it is necessary for each grand jury to make difficult decisions as to what it wishes to investigate during its term. When the grand jury receives a complaint it must first decide whether or not an investigation is warranted. The grand jury is not required by law to accept or act on every complaint or request.

In order to maintain the confidentiality of complaints and investigations, the Alameda County Grand Jury only accepts complaints in writing. Complaints should include the name of the persons or agency in question, listing specific dates, incidents or violations. The names of any persons or agencies contacted should be included along with any documentation or responses received. Complainants should include their names and addresses in the event the grand jury wishes to contact them for further information. A complaint form has been **included in this report, and is also available on the grand jury's website at www.acgov.org/grandjury.**

Complaints should be mailed to: ***Alameda County Grand Jury, Attention: Foreperson, 1401 Lakeside Drive, Suite 1104, Oakland, CA 94612***, or faxed to (510) 465-9647. An acknowledgment letter is routinely sent within one week of receipt of a complaint.

How to Become a Grand Juror

Citizens who are qualified and able to provide one year of service, and who desire to be nominated for grand jury duty may send a letter with their resume or complete a Civil Grand Jury Questionnaire (contained in this report) and mail it to: ***Office of the Jury Commissioner - Alameda County Superior Court, Grand Jury Selection, 1225 Fallon Street, Room 100, Oakland, CA 94612; or by calling (510) 818-7575.*** On the basis of supervisory district, six members from each district for a total of 30 nominees are assigned for grand jury selection. After the list of 30 nominees is completed, the selection of 19 jurors who will actually be

impaneled to serve for the year are selected by a random draw. This is done in late June before the jury begins its yearly term on July 1. For more information, please visit the Alameda County Superior Court website at www.alameda.courts.ca.gov and follow the link to “jury” then “grand jury.”

Qualification of Jurors

Prospective grand jurors must possess the following qualifications pursuant to Penal Code section 893: be a citizen of the United States; at least 18 years of age; a resident of Alameda County for at least one year immediately before being selected; possess ordinary intelligence, sound judgment and fair character; and possess sufficient knowledge of the English language. Other desirable **qualifications include: an open mind with concern for others’ positions** and views; the ability to work well with others in a group; an interest in community affairs; possession of investigative skills and the ability to write reports; and a general knowledge of the functions and responsibilities of county and city government.

A person may not serve on the grand jury if any of the following apply: the person is serving as a trial juror in any court in the state; the person has been discharged as a grand juror in any court of this state within one year; the person has been convicted of malfeasance in office or any felony or other high crime; or the person is serving as an elected public officer.

Commitment

Persons selected for grand jury service must make a commitment to serve a one-year term (July 1 through June 30). Grand jurors should be prepared, on average, to devote two days each week to grand jury meetings. Currently, the grand jury meets every Wednesday and Thursday from 9:00 a.m. to 1:00 p.m., with additional days if needed. Grand jurors are required to complete and file a **Statement of Economic Interest as defined by the state’s Fair Political Practices Commission**, as well as a Conflict of Interest form.

Grand jurors are paid \$15.00 per day for each day served, as well as a county mileage rate (currently 56 cents per mile) portal to portal, for personal vehicle usage.

Persons selected for grand jury duty are provided with an extensive, month long orientation and training program in July. This training includes tours of county facilities and orientation by elected officials, county and departments heads and others. The orientation and training, as well as the weekly grand jury meetings, take place in Oakland.

An application is contained in this report for interested citizens. Selection for grand jury service is a great honor and one that offers an opportunity to be of value to the community.

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA
Office of the Jury Commissioner
1225 Fallon Street, Room 100
Oakland, CA 94612
(510) 510-818-7575

CIVIL GRAND JURY QUESTIONNAIRE
(Please print or type)

Name: _____
(First) (Middle) (Last)

Address: _____
(Street) (City) (State) (Zip)

Contact Information: _____
(Home Phone) (Work Phone) (Cell Phone)

Driver's License No.: _____ E-mail _____

LEGAL QUALIFICATIONS

- | | | | | | |
|------------------------------|-----------------------------|--|------------------------------|-----------------------------|---|
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | I am a US Citizen and at least 18 years old. | <input type="checkbox"/> Yes | <input type="checkbox"/> No | I am presently serving on a trial jury. |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | I will have been a resident of Alameda County for at least 1 year by next July 1. | <input type="checkbox"/> Yes | <input type="checkbox"/> No | I have been discharged as a grand juror within the past year. |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | I am in possession of my natural faculties, of ordinary intelligence, of sound judgment, and fair character. | <input type="checkbox"/> Yes | <input type="checkbox"/> No | I have been convicted of malfeasance in office or a felony. |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | I understand the spoken and written English language. | <input type="checkbox"/> Yes | <input type="checkbox"/> No | I am presently serving as an elected public officer. |

Education:

Highest Grade Completed (high school, college, advanced degree, etc.): _____

List any degrees or certifications you hold: _____

Employment History:

Employer: _____

Occupation: _____

If retired, please list employer, occupation and date you retired: _____

Have you held public office or been employed by a public agency? Yes No

(If "yes", please list all positions held)

Do you currently have plans to be absent from Alameda County for longer than three continuous weeks from July 1, 2013 to June 30, 2014? Yes No

(If "yes", please give details)

Are you able to commit to the meeting schedule of the Grand Jury? (Meetings are typically each week on Wednesday & Thursday from 9:00 a.m. until 1:00 p.m. throughout the year, with extra meeting days in July for orientation. There will also be extra meeting days in the Spring.) Yes No

Do you have the ability or any experience in writing/ editing reports, or taking minutes of meetings? Yes No

Are you aware the Grand Jury is required to publish a final report of issues they have investigated? Yes No

Are you aware of the requirement to assist in writing the Grand Jury's annual report? (Previous reports can be viewed at www.acgov.org/grandjury) Yes No

If you are employed, does your employer understand this jury service is voluntary and will he/she permit your participation as a juror, for the period that the jury shall be in session? Yes No

Grand Jurors are required to file "Statements of Economic Interests" which are intended to disclose financial interests that may create conflicts of interests. These are not confidential. Are you willing to submit such a statement? Yes No

If selected as a Grand Juror, you will be required to swear to or affirm an oath. Have you any objections to taking such an oath or affirmation? Yes No

How did you hear about the Grand Jury?

What can we do to assist you if you have any physical disability that might restrict your service as a Grand Juror? _____

Briefly state your reasons for wishing to serve as a Grand Juror:

List any areas of expertise you possess that may be helpful to the Grand Jury service (i.e., accounting, education, budgets, writing, researching, etc.):

Pursuant to Penal Code Section 903.2, I understand an investigation that will include a criminal record check will be conducted to help determine my eligibility to serve as a Grand Juror. I further understand that if my name is drawn as a Grand Juror or as an alternate, I may be required to attend grand jury training; if I am seated as a Grand Juror, I will be available to attend grand jury meetings and devote the required time to complete grand jury work for one year, from July through June. I further understand that if my name is drawn as an alternate, I will remain available for one year to serve as a member of the grand jury if called upon.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: _____
(Please insert date signed)

Signature: _____
(Please sign your name here)

For questions about Grand Jury service, please call Cassie Barner at (510) 208-9855.

For statistical records, please mark appropriate boxes.

Age Range; specifically: 18-25 26-34 35-44 45-54 55-64 65-74 75 and over

Gender: Male Female

Race or Ethnicity: American Indian or Alaskan Native
 Asian Black or African American
 Hispanic/Latino Native Hawaiian or other Pacific Islander
 White (Anglo) Other Race or Ethnicity (Please state _____)
 Decline to Answer

Place of Residence by Supervisorial District:

District 1 District 2 District 3 District 4 District 5

FOR COURT USE ONLY

Qualified under PC893 and PC896?

Yes No

Schedule interview with jury commissioner?

Yes No

Dated: _____

Signature: _____
(Jury Commissioner)

CITIZEN COMPLAINT GUIDELINES

The Civil Grand Jury welcomes communication from the public as it can provide valuable information regarding matters for investigation. Receipt of all complaints will be acknowledged. The information provided will be carefully reviewed to assist the Grand Jury in deciding what action, if any, to take. If the Civil Grand Jury determines that a matter is within the legally permissible scope of its investigative powers and would warrant further inquiry, additional information may be requested. If the matter is determined not to be within the **Grand Jury's authority** to investigate (e.g., a matter involving federal or state agencies or institutions, courts or court decisions, or a private dispute), there will be no further contact by the Grand Jury.

By law, the Grand Jury is precluded from communicating the results of its investigation, except in one of its formal public reports. All communications are considered, but may not result in any action or report by the Grand Jury.

The jurisdiction of the Civil Grand Jury includes the following:

- Consideration of evidence of misconduct by officials within Alameda County.
- Investigation and reports on operations, accounts, and records of the officers, departments or functions of the county and cities, including special districts and joint powers agencies.
- Inquiry into the condition and management of jails within the county.

Additional information about the Grand Jury, including previous jury reports, is available on our website: <http://acgov.org/grandjury>

CITIZEN COMPLAINT FORM

Alameda County Grand Jury
1401 Lakeside Drive, Suite 1104
Oakland, California 94612
Voice: 510-272-6259 Fax: 510-465-9647

Date _____

Complainant's Name _____ Phone _____

Address _____

Email address _____

Your complaint is confidential. Disclosure of your complaint by the Grand Jury is a misdemeanor. A complaint should only be submitted to the Grand Jury after all attempts to correct the situation have been fully explored. This may include, but is not limited to appealing to a supervisor or department head and requesting intervention by the District Attorney or Board of Supervisors.

What agency, city, district or county department are you complaining about?

Is the complaint regarding a specific official or local government employee of a city, district or county department?

Official or Employee Name

Please explain the nature of your complaint providing as many details as you can, including dates, times, and places where the events you are complaining about took place. Describe specific instances instead of broad statements. Include any available photographs, correspondence or documentation supporting this complaint. Please attach additional sheets of paper if necessary.

Please list other persons or agencies you have contacted about this complaint and the result.

What do you believe should be the proper outcome of the Grand Jury involvement in this complaint?

Provide names and telephone numbers of others who can substantiate your allegations or provide more information, including citizens and agency employees.

Attach additional sheets if necessary. All communications to the Grand Jury are confidential.

Signature _____

Please mail your complaint to:

**Alameda County Grand Jury
Attention: Foreperson
1401 Lakeside Drive, Suite 1104
Oakland, California 94612**

Or you can fax your complaint to 510-465-9647

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MISGOVERNING THE CITY OF OAKLAND

INTRODUCTION

The Grand Jury received a complaint alleging that a member of the Oakland City Council overstepped their authority when a council member inappropriately led efforts to open a teen center in their district between 2007 and 2011. After interviewing numerous witnesses and sorting through hundreds of documents, the Grand Jury found that city contracting, purchasing and hiring rules were circumvented during the teen center project. The Grand Jury determined that one council member stepped out of their role on the council and inappropriately made administrative decisions throughout the process, often with full knowledge and complicity of some city staff. Former city executives as well as current and former department heads failed to stop this inappropriate conduct. This allowed the project to move forward at a time when other parks and recreation programs were being cut and projects with higher priorities went unfunded. After the project was completed, the city council looked the other way by retroactively waiving competitive bidding requirements and failed to support a thorough **investigation of the matter, demonstrating the city council's inability to self-police.** Finally, the Grand Jury determined that while the city has a public ethics commission, the city council had not given the commission the tools necessary to address such transgressions that undermine the notion of fair and open government.

BACKGROUND

The city of Oakland has a mayor-council form of government, which is headed by the mayor **who serves as the city's chief executive, and the city council that serves as the city's legislative body.** The mayor serves a four-year term with a two-term limit. The mayor appoints the city administrator subject to confirmation by the city council. While the mayor is not a member of the city council, he or she may

cast a tiebreaking vote. The mayor can suspend legislation passed by the city council, but such suspension can be overridden by five votes from the council.

The Oakland City Council has eight council members representing seven districts in Oakland with one member elected at-large. Council members serve staggered four-year terms. There are no term limits for the city council. The city charter and municipal code specifically outline the powers of the city council.

City Council Powers

The Oakland City Council is the governing body of the city with all powers of legislation, but the council has no administrative powers (City of Oakland Charter, section 207). With very few exceptions, the powers of the city council are granted only to the full body, not to individual council members acting on their own. The City Council Code of Ethics states that council members must adhere to the American ideals of government, the rule of law, the principles of public administration, and high ethical conduct in the performance of public duties.

City council powers as a whole include, but are not limited to, the following:

- Pass ordinances (laws), resolutions, and policies (Charter section 207, 210).
- Adopt a bi-annual budget for the city.
- Adopt or amend an administrative code (Charter section 219).
- Establish, alter, or abolish city departments, offices or agencies (Charter section 600).
- Provide for a fine or other penalty or establish a rule or regulation for violation of which a fine or other penalty is imposed (Charter section 219).
- Order public works (Charter section 504).
- Be fully advised as to the financial condition and needs of the city (Charter section 504).
- Create city boards and commissions (Charter section 601).
- Prescribe by ordinance the manner that the city administrator purchases or contracts for equipment, materials, supplies and public works (Charter section 807).
- Prescribe by ordinance, conditions and procedures for any purchase or contract, including advertising and bidding requirements (Charter section 808).

- Award public contracts (municipal code section 2.04.030).
- Establish departments, divisions, offices and positions of employment by ordinance, and may change or abolish the same and prescribe their powers, functions and duties. By resolution provide for temporary employment of services when required (Charter section 902).

Individual council members also have the powers to:

- Ask for written legal opinions (Charter section 401(6)).
- Make inquiries of administrative staff (Charter section 218).

Section 218 of the city charter states that the city council cannot interfere in administrative affairs, and can only deal with administrative affairs through the mayor or city administrator.

Administrative affairs are generally the duties exclusive to the city administrator, city attorney or city auditor. They specifically include:

- Giving orders to any subordinate of the city administrator or such other officers including the city attorney and city auditor, either publicly or privately.
- Actions of the city administrator or such other officers, in respect to any contract or purchase of any supplies with the understanding that the city council awards public contracts.
- The appointment of any person to or his removal from office by the city **administrator's subordinates** or the subordinates of other officers (city attorney and city auditor).

The Oakland Municipal Code sets forth clear procedures for all contracts authorized by the council or city administrator. Such rules are common throughout government. They help to ensure that public monies are spent wisely and contractors are not chosen because of political patronage. Such rules encourage transparency with checks and balances to make sure agencies take advantage of an open and competitive marketplace while still complying with state and federal laws.

INVESTIGATION

During our investigation, the Grand Jury viewed thousands of pages of documents and emails relating to council interaction with city staff and vendors. We also reviewed city policies, ordinances, procedures, investigative reports, contracts, invoices, purchase orders and documentation related to the recreation centers, and viewed video of council meetings. The Grand Jury met with numerous city employees, current and former city officials, staff members of various departments in the city of Oakland, and city administrators from outside the city of Oakland to determine the best practices in governance.

The Grand Jury made numerous attempts by telephone, email, FAX and in writing in order to have the council member, who was the focus of much of this report, appear before the Grand Jury. The council member refused to cooperate **with the Grand Jury's investigation.**

City Council Interference

Efforts by council members to influence administrative decisions outside the council chambers are not new in the city of Oakland. While council members are **required to go through the city administrator's office to deal with traditional** administrative issues (Charter section 218), the Grand Jury learned that some council members would often put pressure on city staff to get their own issues prioritized above other city matters. District elections, a history of hands-off mayors, and the fact that large government bureaucracies operate using policies and procedures that can cause change or improvements to occur slowly, all contributed to this behavior. The Grand Jury heard testimony that this created **the perception that council members operated as if they were "mayors of their own districts."** Over the years, this problem led city administrators and city attorneys to issue numerous written reminders to council members explaining that interference in administrative affairs violates the city charter. While these reminders raised the issue, they did little to change the culture of interference.

Such conduct on the part of the council may appear to be insignificant and even well-meaning in many circumstances. The Grand Jury heard testimony that the Fruitvale Transit Village (neighborhood improvements near the Fruitvale BART station) may never have been completed without the pressure exerted by a former member of the city council. The interference included causing a public library to be uprooted from its established neighborhood location, and relocated to a second floor space to serve as an anchor tenant and revenue stream for the project.

However, the Grand Jury learned about many other instances of individual **council members' interference that went well beyond being merely an annoyance.** Project logs examined by the Grand Jury showed that on many occasions staff within the Office of Parks and Recreation (OPR) would not move forward on a host of projects until they obtained approval from a specific council member. This approval ranged from the replacement of trash cans and benches, to making decisions about the exterior design and façade.

Another example involved the Arroyo Viejo Recreation Center. In 2007, during the planning stages of the renovation, a city architect coordinated the efforts. Staff appeared to follow city purchasing rules as they were seeking bids from **different vendors for the center's equipment needs. However, staff and city council email showed that major decisions were made only after obtaining a council member's approval. In May of 2008, a private architecture firm hired by the city would not move forward until they received design approval from the council member. Similarly, by July, a city architect would not proceed until they received approval from the council member for the project's estimate, design, and equipment list.**

During the Grand Jury's interviews of city staff, administrators and elected officials, we learned that both the city charter and the city municipal code should have prevented individual council members from making key decisions as projects move forward. Yet, council interference would go even further when one

member took the unofficial role of project manager during the creation and renovation of a teen center within their district.

Digital Arts and Culinary Academy (DACA)

In 2007, the Oakland City Council approved the purchase of a building located at 5818 International Blvd. in Oakland with \$790,000 in redevelopment funds. The 4,000 square foot building, next to the Rainbow Recreation Center, was to be used as a neighborhood teen center but first needed extensive renovations. The project was spearheaded by the council member representing the neighborhood. Interference with staff began almost immediately after the purchase. Less than a month after the city purchased the building, the council member sent an email to **city staff asking, “When can I have the keys?” From that moment forward, it was very clear that the council member exerted control over nearly every element of the project, making demands of staff from multiple city departments at all levels. City administration, including department heads, allowed the improper conduct to continue, even though the council member lacked the experience and expertise to ensure that city rules – and more importantly – state laws intended to protect the city, were followed. What ensued was a complete fiasco that diverted city administration’s attention away from many other dire issues the city was facing.**

Whether city officials condoned the conduct because they were focusing their time on more important issues, or because they simply chose to ignore the **situation because of the council member’s history of being incredibly difficult to deal with**, city staff, not the council member, should have been in charge of the DACA project. The Public Works Agency should have managed the construction and planning for operation of the teen center. The Redevelopment Agency should have played a supporting role relating to financing of the construction. The Office of Parks and Recreation should have operated the facility and hired the employees. These agencies were staffed with experts who regularly handled the competitive bidding process, bonding issues, management, and project delivery.

During the planning stages of DACA, with the head of the Office of Parks and Recreation department copied on email, the facilities complex manager for the Public Works Agency sought approval from the council member to store valuable parts for a nearby city project in the vacant DACA building. The council member tersely denied the request, yet there were no consequences for the council member's actions. **The OPR department head should have demanded the keys to the center, along with control over the facility's rehabilitation. If the department head was unsuccessful, the city administrator should have intervened.** Yet this did not occur and the interference continued. Once again, a private architecture firm waiting to begin the design concept sought the council member's "blessings" before they continued.

By 2008, the DACA project and many other planned city projects stalled due to **the city's dire financial situation, fueled in part by the global financial crisis.** In November 2008, the city had to address a \$42 million budget gap. Among other things, the city eliminated 146 positions resulting in 65 layoffs. On top of that, the 2009-2011 City of Oakland Adopted Budget described an additional \$91-97 million annual shortfall, requiring the city to eliminate or freeze an additional 190 positions, resulting in 69 more layoffs. The cuts deeply affected every city government service. Not only was the DACA renovation and opening delayed, but other operating teen centers in Oakland were also losing funding.

In early March 2010, the council member, acting on behalf of the city without authority, negotiated with a private contractor and a local non-profit organization **to perform the center's renovation. The Grand Jury heard testimony that the** council member later met with the then-city administrator, explaining that the contractor and the non-profit would be donating the work. The city administrator directed the council member to meet with the director of the Community and Economic Development Agency to ensure that the proper permits were obtained. Yet the **Grand Jury learned that the council member's agreement with the builder** called for reimbursement to the builder for some labor and/or materials, but the details were unclear.

The amount of the reimbursement to the builder, which was expected to be in excess of **\$100,000, would have required competitive bidding under the city's** contracting rules or waiver of such rules by the city council. Neither action took place prior to the project moving forward. State law also required bidding because the project was a Redevelopment Agency-owned property. Bringing the matter before the city council would have been problematic because at that time, the council had been forced to make huge cuts to virtually every city department. Yet these rules were followed in other projects such as the Raimondi and Bella Vista Park rehabilitations, even when non-profits donated their efforts. The law requires these steps to ensure that the city is protected from liability should something go wrong, and to ensure that public funds are being used properly.

The Grand Jury learned that a junior staffer from within the Redevelopment Agency was directed to seek several bids after the city purchasing department raised questions as to whether city policies were followed. These bids were inappropriately sought once work was completed, and also inappropriately included a bid from someone who participated in the original renovation. It should be noted that long after construction was complete, the city council retroactively waived the bidding requirements, choosing to not hold anyone accountable.

The source of city funding for the reimbursement to the builder was unclear from the start. The council member summoned a staff member from the Redevelopment Agency to a meeting with the builder in early March 2010. The Grand Jury heard testimony that no one from the Parks and Recreation Department was present at the meeting, which was unusual. There were inaccurate assumptions by redevelopment staff that Parks and Recreation had plans for on-going funding of the facility. Staff was directed to locate construction funding immediately because work was to start within days. Emails showed that staff scrambled for funding ideas, first recommending the use of a city façade improvement grant, but quickly realizing the facility was publicly owned and there would need to be public hearings regarding the funding. Emails

stated that they settled on using Neighborhood Preservation Initiative funds that had previously been generically approved for a teen center.

Construction of DACA moved forward. The contractor and a non-profit entity refurbished a portion of the building, which included construction of a kitchen, a video and recording studio with an editing room, an office, and restrooms. The exterior façade was designed, fencing was installed, and the yard was landscaped, which included adding walking paths and a small garden.

The builder billed the city for reimbursement costs for the items that were not donated, raising red flags within the city's **purchasing department**. **There were** concerns of contract-splitting, which may have been an effort by staff to keep the billing increments under the competitive bidding limit and council-approval thresholds. In addition, some of the billing was for labor costs. This billing caused the purchasing department to question if wages were paid appropriately. State law required that prevailing wage be paid for all labor involved in the project. Prevailing wages had not been paid. The troubles for the teen center did not end there.

DACA Staffing Issues

The council member continued to control the teen center project by choosing the staffing levels for the center and overseeing the hiring of all the staff, using funds from their own district office budget. Yet it was clear these employees would, at some point, be managed by the Office of Parks and Recreation, which should have been in charge of both facility operations and hiring from day one. The city charter and labor contracts required Parks and Recreation employees to be hired through a competitive process and with specific qualifications for the job. These rules were circumvented.

Parks and Recreation employees are subject to civil service and other city rules. Part-time employees of individual council districts are exempt from these rules.

The council member hired the DACA employees as council staff and set their hours and salaries (as high as \$25/hour) with neither an appropriate official job description nor appropriate city job posting. The city human resources (HR) department processed the hiring paperwork based on the employees being hired **to work for the council member's district and not as Parks and Recreation staff.** The Grand Jury reviewed email from the city payroll department asking the council member for job descriptions and salaries of the DACA employees after they had already been hired. This indicated to the Grand Jury that the employment process did not follow the proper city procedures.

California Education Code section 10911.5 requires that employees working with youth must submit to a criminal background check prior to starting their assignment. Employees must also pass a drug test and a tuberculosis test. **Additionally, city policy specifically states, "All potential employees and volunteers working with children and youth in any capacity must be fingerprinted and photographed as mandated by state law. All new hires and volunteers must complete the fingerprinting process before completing new hire forms ... and before they are allowed to work at OPR sites."**

The Grand Jury reviewed literature and email announcing the opening of DACA, and that classes began on March 14, 2011. Documents show that ten children signed up for classes. An email from the council member to the head of Parks and Recreation on March 14, 2011, stated, **"We finally opened the academy today. We need to have background checks run on the instructors. Tell me what the process is to have this done."** Excerpts from follow-up email dated March 18, 2011, from instructors to the council member stated, **"Although participation is a bit small and still being worked on, it seems to be growing every day."** From the records the Grand Jury reviewed, no evidence was found that any employee had cleared a background check prior to this date. Another email dated March 25, 2011, stated, **"... the first and second weeks of instruction ... The first day I had 4 students, then 6, then 9-10, and now back to 7 or 8."** The Grand Jury found that only one employee had been cleared on March 21 and another on March 23, 2011. It was

not until March 25, 2011, eleven days after the center opened, that the council member was notified by email that the background checks (which included fingerprinting, drug and TB testing) for all but one employee were completed. Yet, a memo dated March 6, 2012, from the council member to the city council, stated, “It is important that you know that all DACA employees were fingerprinted and went through background checks prior to working with any teens.”

Lack of Long-Term Planning

Even though the opening of DACA was celebrated by the council member, staff, some city department heads, and a few members of the community, the city council had not yet approved the operation of the teen center. This would obviously require a commitment to staff the facility long-term and to ensure that there was on-going funding to maintain the facility and pay for utilities.

It appears that no consideration was given to long-term city funding for the day-to-day operations of the center. The city had estimated that operating the teen center with four part-time staff members from 3PM to 9PM Monday through Friday would cost approximately \$150,000 annually, and on-going maintenance costs would be an additional \$10,000 annually. A commitment to spend this money was patently unfair to other Parks and Recreation facilities, many of which were in dire need of work. At least one center in another council district had to be closed because of budget cuts in the same period of time.

Equipment Purchase Problems

During the renovation of DACA, \$19,000 worth of electronic equipment was purchased for the teen center at the direction of the council member. City purchasing rules required competitive bids to ensure that the city did not overpay for the equipment. Such bids were not obtained as required. Upon delivery of the equipment, a dispute arose between the council member and the vendor

regarding the installation of the electronic items. The vendor explained that there were several issues, including the fact that a proper Internet connection was never installed at the center. Without the establishment of that connection, some of the equipment would not work.

The vendor claimed that they had never contracted to install the equipment, but rather made attempts to do so as a favor to the city. The dispute could have easily **been resolved if a proper contract describing the vendor's responsibilities existed**, but this was not the case. The council member, who handled the negotiations regarding the dispute, decided to have staff intercept the city check for payment for the equipment and withheld it for months until the vendor properly installed the items. This conduct flew in the face of the city purchasing policy. The vendor eventually threatened the involvement of his Loss Prevention and Legal Department in order to get paid.

Ironically, it was this same council member that touted Oakland's new automated procurement process in a press release in January 2010, and who was quoted as saying it would provide "greater transparency, accountability and collaboration in the contracting process" and that Oakland's Prompt Payment Policy – which the council member authored – would create greater opportunities for Oakland's businesses and residents.

Testimony indicated that throughout the different stages of the DACA project, there were concerns by some staff involved that if they failed to cater to the **council member's needs, their jobs could be in jeopardy. Since some city department heads were copied in a variety of emails, staff assumed they were to move forward with their efforts regardless of city rules and regulations.** Whatever the reasons, the Grand Jury finds a clear failure by the chain of command to stop the unauthorized behavior.

Whenever such interference occurs, there is a real danger that city and state policies which are intended to ensure fair and open government transactions will

be abused or simply ignored. The city and ultimately the taxpayers are at risk of being taken advantage of when business is conducted without written contracts and without competitive bidding. If transactions go bad, the city has little recourse to protect itself when its own policies are not followed. Vendors and their employees are at risk of not being paid in a timely manner. Such conduct discourages vendors from wanting to do business with the city of Oakland and leaves them with the perception that there is an unfair playing field with no rules.

REMEDIES

On paper, the city appears to have a multitude of oversight bodies that act as checks and balances for government misconduct. The Grand Jury examined three such oversight bodies and their powers.

City Auditor

The city auditor is an independently elected city official with the duty to audit the books and accounts of all city departments and agencies as well as evaluate the **city's internal controls to ensure that the city is safeguarded from fraud, waste, and mismanagement**. In addition, the auditor has the authority to examine whether there is compliance with council resolutions and policies as well as state and federal laws. Such results are to be reported to the city council.

While the auditor has no authority to institute changes in city policy or take action against anyone violating city **policies, the auditor's independent, public** voice can provide the citizens of Oakland with an educated examination of city government. The auditor can report quarterly to the council and the public regarding the implementation of recommendations for corrective action noted in **the city auditor's report. (City Charter section 403). Findings may also be forwarded to the District Attorney's Office for potential criminal prosecution.** It should be noted that a violation of section 218 of the city charter is a

misdemeanor and charges must be filed by the District Attorney within one year of the violation occurring.

City Council Censure

The city council Code of Ethics states that council members must adhere to the American ideals of government, the rule of law, the principles of public administration and high ethical conduct in the performance of public duties. The same code requires council members to maintain the highest standard of public conduct by refusing to condone breaches of public trust or improper attempts to influence legislation, and by being willing to censure any member who willfully violates the rules of conduct contained in the Code of Ethics.

The power to censure is a tool available to nearly every legislative body. It allows them to publicly condemn one of their own. Censure is a formal legislative resolution reprimanding someone for specific conduct. The elected official, who is the focus of the censure, has the right to be notified of the action and must be able to respond. Although common in its existence, censure is rarely used. It carries no penalty other than the verbal reprimand itself. Requiring a political body to self-police its own members with no legal penalty attached can be seen as a shallow attempt at checks and balances.

When the city administrator presented the facts surrounding the potential charter and ethics violations to the city council in early 2012, the city council chose not to fund any further investigation. The Grand Jury heard testimony that two of the council members who did not support further investigation of this matter were in heated election battles and strong council alliances were important. **This brings into question the council's ability to self-police.**

The council's history of its members protecting each other extends to their budgeting policies. While other budget units within the city transparently report **their expenditures in detail, individual council members' detailed budgets have**

traditionally been kept private, only accessible to the president of the city council. It has been tradition that the city administration did not examine or review the spending decisions of individual council members. The Grand Jury believes that city council budgets need to be treated no differently than other city department budgets.

Public Ethics Commission

In November of 1996, the voters established the Oakland Public Ethics Commission. Among other responsibilities, the Oakland Public Ethics Commission oversees compliance with the Oakland Sunshine Ordinance, Code of Ethics for city officials, Conflict of Interest regulations, Campaign Reform Ordinance and the Lobbyist Registration Act.

The commission is made of seven volunteer members serving three-year terms. Three members are appointed by the mayor and confirmed by the city council. The remaining four members are chosen by the Ethics Commission as a whole. They meet once per month. Currently, the commission has one full-time city staff person and two part-time staffers responsible for the day-to-day needs and operations of the department.

City budget cuts have affected the viability of the commission. The commission's 2011 Annual Report stated that the commission lacked the resources to fulfill its legal mandate and was forced to prioritize responsibilities partly due to the fact that the city cut the commission's budget by nearly 43%. This cut resulted in the ability to rehire only one full-time staff member. Additionally, the executive director retired in June of 2011 and was not replaced until April of the following year, effectively disabling the commission for nearly a year. In fact, it appears the commission met only once during that ten month span and had no staff. The cut in staffing and limited budget appear to have rendered the commission unable to execute its responsibilities. In comparison, San Francisco's ethics commission has a staff of 17 with an annual operating budget of approximately \$2.2 million,

while Oakland's ethics commission has a budget of only \$186,336 for fiscal year 2012-2013.

Oakland's Public Ethics Commission's strengths appear to be in the area of education and training. Staff has traditionally held annual trainings with city staff, informing them of various local and state ethics laws and requirements. They also develop educational materials for public officials, candidates and public employees. Yet one public official only remembered having received ethics training once in the past decade.

While the commission may conduct investigations and audits relating to complaints received, its enforcement powers are less than clear. The municipal code states that the commission may impose penalties and fines, yet these penalties and fines must be prescribed by local ordinance. The Grand Jury learned that neither the voters nor the city council have granted the commission the power to penalize and fine in all areas where it has jurisdiction, giving the commission no tools to take meaningful action when violations occur. In addition, violations of City Charter section 218, which prohibits council members from interfering with the administrative responsibilities of the city administrator, are punishable as a misdemeanor resulting in removal from office. However, such charges may only be filed by the district attorney or the attorney general. This remedy leaves the Ethics Commission without jurisdiction or any power of **enforcement although it may hold a hearing on the policy issues of the city's** ethics code and may also propose legislative recommendations to the city council to address these issues.

Both San Francisco and Los Angeles have robust ethics commissions, with full-time investigators and auditors on staff. Such commissions are most effective when they have the power to enforce the laws and impose penalties when **violations occur. While Oakland's Public Ethics Commission has many** responsibilities as provided by the voters, it has little authority to ensure that such ethics related rules are followed.

The Grand Jury finds that local independent oversight of public ethics is essential. An ethics commission with authority to issue fines, penalties or sanctions in a public setting is a more appropriate solution when violations do not rise to the level of removal from office. This would also better serve the citizens of **Oakland because traditionally, the city council's ability to self-police** or censure its own members who commit wrongdoing is an ineffective tool. Citizens and taxpayers deserve elected officials who perform to the highest standards. An ethics commission with appropriate resources and power to enforce ethical standards is of the utmost importance.

CONCLUSION

The city of Oakland has policies and rules in place to help ensure that its government runs in a fair, open and lawful manner. Abandoning such rules for the sake of expediency or a sense of control can damage the foundations of our democracy and give the public the perception that our government institutions are broken and or corrupt. Elected leaders need to honor their oath of office. Oversight bodies, such as the Oakland Public Ethics Commission, need to be given the authority and the funding by the city council to do their job to protect public integrity. Transparency and open communication are critical to building trust between elected officials and citizens. In the end, public awareness and involvement are essential to holding government accountable.

OAKLAND CITY CHARTER SECTION 218

Section 218. Non-interference in Administrative Affairs.

Except for the purpose of inquiry, the Council and its members shall deal with the administrative service for which the City Manager, Mayor and other appointed or elected officers are responsible, solely through the City Manager, Mayor or such other officers. Except for powers particularly reserved to the Mayor pursuant to Section 305 of this Charter, neither the Council nor any member shall give orders to any subordinate of the City under the jurisdiction of the City or such other officers, either publicly or privately, nor shall they attempt to coerce or influence the City Manager or such other officers, in respect to any contract, purchase of any supplies or any other administrative action; nor in any manner direct or request the appointment of any person to or his removal from office by the City Manager, or any of his subordinates or such other officers, nor in any manner take part in the appointment or removal of officers or employees in the administrative service of the City. Violation of the provisions of this section by a member of the Council shall be a misdemeanor, conviction of which shall immediately forfeit the office of the convicted member. (Amended by: Stats. November 1988 and Stats. November 2000.)

Section 218 of the city Charter states that the city council cannot interfere in administrative affairs, and can only deal with administrative affairs through the mayor or city administrators.

EXHIBIT A

OAKLAND CITY COUNCIL CODE OF ETHICS

Resolution No. 78307 C.M.S.RESOLVED: That the City Council hereby adopts the following Code of Conduct for each member of the City Council. Each member of the City Council has a duty to:

1. Respect and adhere to the American ideals of government, the rule of law, the principles of public administration and high ethical conduct in the performance of public duties.
2. Represent and work for the common good of the City and not for any private interest.
3. Refrain from accepting gifts or favors or promises of future benefits which might compromise or tend to impair independence of judgment or action.
4. Provide fair and equal treatment for all persons and matters coming before the Council.
5. Learn and study the background and purposes of important items of business before voting.
6. Faithfully perform all duties of office.
7. Refrain from disclosing any information received confidentially concerning the business of the City, or received during any closed session of the Council held pursuant to state law.
8. Decline any employment incompatible with public duty.
9. Refrain from abusive conduct, personal charges or verbal attacks upon the character, motives, ethics or morals of other members of the Council, staff or public, or other personal comments not germane to the issues before the Council.
10. Listen courteously and attentively to all public discussions at Council meetings and avoid interrupting other speakers, including other Council members, except as may be permitted by established Rules of Order.
11. Faithfully attend all sessions of the Council unless unable to do so because of disability or some other compelling reason.
12. Maintain the highest standard of public conduct by refusing to condone breaches of public trust or improper attempts to influence legislation, and by being willing to censure any member who willfully violates the rules of conduct contained in this Code of Ethics.

EXHIBIT B

FINDINGS

Finding 13-1:

The Oakland City Council's failure to provide the Public Ethics Commission with the power to fine and penalize for ethics violations renders the commission largely ineffective.

Finding 13-2:

The Oakland Public Ethics Commission lacks the financial resources to adequately do its job.

Finding 13-3:

A lack of participation in state-mandated ethics training could potentially lead to a breakdown in efficient and ethical administration and performance of duties.

Finding 13-4:

The Oakland city council's interference with, and intimidation of, staff diminish the overall effectiveness of city government.

Finding 13-5:

City council individual budgets are not subject to the same scrutiny (open review process) as other city department budgets, creating a potential for misuse of funds.

Finding 13-6:

Oakland city staff and department heads' failure to report or stop council interference contributes to the unacceptable culture of intimidation and leads to continued misconduct.

RECOMMENDATIONS

Recommendation 13-1:

The Oakland City Council must provide the Public Ethics Commission with the **power to enforce the city's ethics related ordinances (power to fine and punish, including the right to mandate specific training).**

Recommendation 13-2:

The Oakland City Council must provide the Public Ethics Commission with sufficient financial resources to properly investigate allegations of ethics violations.

Recommendation 13-3:

Elected officials within the city of Oakland must receive ethics training as required by AB1234 every two years and proof of compliance must be available to **the public through the city's website.**

Recommendation 13-4:

The individual Oakland City Council district budgets must be subject to the same scrutiny and transparency as other city department budgets.

Recommendation 13-5:

No member of the city council should conduct any city business outside of the realm of their council powers as designated in the city Charter and in the municipal code. Additionally, the council should follow its own Code of Ethics **including its mandate to “be willing to censure any member who willfully violates the rules of conduct contained in [the] Code of Ethics.”**

RESPONSES REQUIRED

Responding Agencies - Please see page 13 for instructions

Oakland City Council

Findings 13-1 through 13-6
Recommendations 13-1 through 13-5

Mayor, City of Oakland

Findings 13-1 through 13-6
Recommendations 13-1 through 13-5

NEPOTISM POLICIES IN ALAMEDA COUNTY

INTRODUCTION

The Grand Jury received several complaints alleging that two members of the Alameda County Board of Supervisors helped their own family members get jobs with the county or with contractors who do business with the county. While the Grand Jury was unable to substantiate that any impropriety occurred during hiring, the Grand Jury is concerned that public confidence in government is greatly damaged when there is a perception that government jobs are handed out as favors to elected officials and other county executives. Government agencies can make strong statements helping to eliminate the perception of patronage when meaningful policies involving conflict of interest and nepotism are adopted and enforced.

BACKGROUND

The Grand Jury asked the county of Alameda and each city within the county for a copy of their conflict of interest and anti-nepotism policies. We carefully reviewed the responses from all cities within the county and the county itself. **During the Grand Jury's investigation, we interviewed a retired city manager, a member of the Alameda County Board of Supervisors, a former member of the Oakland Public Ethics Commission, and other government administrators.** We also reviewed the following documents relating to ethics and conflicts of interest: the State of California Assembly Bill 1234 (AB1234); Institute of Local Government (ILG) training documents; California Government Code section 2.4 on ethics training; and Alameda **County's 2012 training material on AB1234.**

INVESTIGATION

Assembly Bill 1234, adopted in 2005 by the State of California, mandates elected and appointed officials, who are compensated for their services or reimbursed for their expenses, to complete ethics training every two years. In addition, local agencies can require that other designated employees of their organization receive the same training. The California State Association of Counties (CSAC) provides AB1234 guidelines and training opportunities through its affiliate, the Institute of Local Government (ILG), on the applicable ethics subjects. Local agencies are required to maintain proof of compliance for covered officials and employees. The law requires that these compliance records be available to the public. Beyond this, further oversight, legal consequences and penalties for failure to comply with the law are lacking.

ILG's training materials state the purpose of the training as:

“... the goal needs to be to acquaint local officials with the fact that there are laws that govern their behavior on each of these areas, to motivate officials to comply with such laws (among other things by explaining the consequences of missteps) and to alert them on when they need to seek the advice of qualified legal counsel when issues arise with respect to such laws.”

The ethics component of AB1234 requires that training include:

- (1) Laws relating to personal financial gain by public servants, including but not limited to laws prohibiting bribery and conflict-of-interest laws.*
- (2) Laws relating to claiming perquisites of office, including, but not limited to, gift and travel restrictions, prohibitions against the use of public resources for personal or political purposes, prohibitions against gifts of public funds, mass mailing restrictions, and prohibitions against acceptance of free or discounted transportation by transportation companies.*
- (3) Government transparency laws, including, but not limited to, financial interest disclosure requirements and open government laws.*

(4) Laws relating to fair processes, including, but not limited to, common law bias prohibitions, due process requirements, incompatible offices, competitive bidding requirements for public contracts, and disqualification from participating in decisions affecting family members.

Nepotism is favoritism granted to relatives regardless of merit. Of the 14 cities within the county, only the cities of Alameda and Fremont, and the county itself, lack formal policies regarding nepotism (See **EXHIBIT A**). The 12 cities that do have nepotism policies specifically prohibit near-relatives from supervising or reporting to other near-relatives. Some cities within the county apply these rules only to salaried employees, while other cities broadly retain the right to refuse to place relatives in the same department or division.

The intent behind these policies is to avoid the appearance of favoritism and bias. Most people have loyalties that may prompt them to want to aid family members. Anti-nepotism policies remind officials that old-fashioned cronyism is unacceptable, and such policies make a statement to the public that government hiring processes are fair, equitable, and transparent.

County of Alameda

While Alameda County lacks written anti-nepotism policies, the Grand Jury learned that the Human Resources Department has set goals to establish such a policy in the future. The Alameda County Human Resource Services Operation Plan, dated June 2012 sets goals and identifies new initiatives for the department. **Item 27 of the plan specifically states, “Develop a countywide Nepotism Policy” for fiscal year 2012-2013.** As of the writing of this report, no such policy has been adopted by the Board of Supervisors.

The county does regularly train key officials as required by AB1234. The Grand Jury learned that Alameda County’s training for the Board of Supervisors and other key staff was last conducted in 2012, and covered ethics laws, general ethics principles, and county policies. However, proof of compliance is not documented

on the county’s website. On the topic of hiring relatives, the county training focused on “doing the right thing” and emphasized the “need to consult with agency counsel, personal counsel, or regulatory agencies when in doubt or when ethics issues arise.”

Some local cities and agencies are more vigilant than others about providing such training. The Grand Jury was informed by one local elected city official that they had received training only once during the past decade. This is unacceptable.

City of Berkeley

The city of Berkeley’s nepotism policy is succinct and clearly written. Berkeley is the only city in Alameda County that requires “written approval” before the hiring of “near relatives.” However the policy does not apply to elected officials. The Grand Jury is unable to determine if a “written approval” requirement would withstand legal challenge as applied to elected officials. There appears to be no reason why the remaining nepotism rules cannot apply to elected officials, as they do in other jurisdictions outside the county.

The Grand Jury suggests that Berkeley’s anti-nepotism policy be used as a model by Alameda County and other cities within the county. In addition, the Grand Jury believes that the policies should apply to elected officials as allowed by law.

The Grand Jury believes that all cities and the county should maintain written documentation whenever a situation arises involving the potential hire of a near relative. For example, if a city official hires his brother-in-law, and the question is **later raised if his hiring was permitted under the city’s anti-nepotism policy**, the written record would allow for a transparent review of that decision. **These records should be kept in a centralized location such as an employee’s HR file (as opposed to individual agency files).**

The Grand Jury also encourages the county to include a prohibition of near-relatives from being supervised by or reporting to other near-relatives in any anti-nepotism policy it adopts. While the Grand Jury realizes that the hiring of near-relatives may occur, especially in large organizations, policies to protect the **public's trust must be in place.**

CONCLUSION

The Grand Jury is encouraged by the fact that 12 of the 14 cities within Alameda County have adopted anti-nepotism policies. Some city policies could be made stronger to include specific instructions to document the outcome of questions relating to the hiring of near-relatives.

Government should hire employees based on ability and not because of personal relationships. The goal of establishing an effective anti-nepotism policy must be to promote the highest standards of ethical behavior in government.

Transparency is key to public trust. Public officials are public servants and image is an **important part of maintaining public confidence. As Alameda County's ethics training presentation summarized: "Values such as trustworthiness, respect, fairness and responsibility promote public trust and avoid the appearance of impropriety."**

SUMMARY OF NEPOTISM POLICIES IN ALAMEDA COUNTY

Agency	Policy Status on Nepotism?
County of Alameda	No. The policy referred to in item #27 on County HR Operational Plan has not yet been implemented.
City of Alameda	No. City is reviewing and codifying a policy under development.
City of Albany	Yes. Personnel Rules and regulations 6.1
City of Berkeley	Yes. Administrative Regulation 2.12 – “Employment of Near Relatives”
City of Dublin	Yes. Personnel Rule 2.4
City of Emeryville	Yes. Personnel Rules and Regulations section 2.05 – “Employment of Relatives”
City of Fremont	No
City of Hayward	Yes. City Charter section 8.07
City of Livermore	Yes. Personnel Rules and regulations 5.05 – “Employment of Relatives”
City of Newark	Yes. Personnel Rules and Regulations section 5 – “Conflict of Interest due to personal relationship”
City of Oakland	Yes. City Charter Article V, Section 907; Ordinance, Title 2, Chapter 2 – “Prohibition on Nepotism”; Title 9, Chapter 2.38
City of Piedmont	Yes. City Personnel Rules, Section VI(A)(4)
City of Pleasanton	Yes. HR Policy
City of San Leandro	Yes. City Charter section 705 – “Nepotism.” Administrative Code, Title 10, Chapter 7 (revised 2.6.2012) – “Employment of Relatives.” PD directive (1988) – “Anti-Nepotism”
City of Union City	Yes. Administration Policy, Memorandum #64 – “Employment of Relatives”

EXHIBIT A

FINDINGS

Finding 13-7:

Alameda County does not have a formal anti-nepotism policy.

Finding 13-8:

While the county of Alameda regularly trains officials as to AB1234, **documentation of compliance is not available on the county's website.**

RECOMMENDATIONS

Recommendation 13-6:

The County of Alameda must adopt an anti-nepotism policy that applies both to county employees and elected officials.

Recommendation 13-7:

The nepotism policy for the County of Alameda must require written documentation relating to the hiring of near-relatives, and must maintain these records in a centralized location.

Recommendation 13-8:

The County of Alameda must list AB1234 compliance documentation on the county website along with the outline of the training provided to key officials.

RESPONSES REQUIRED

Responding Agencies - Please see page 13 for instructions

Alameda County Board of Supervisors Findings 13-7 and 13-8
Recommendations 13-6 through 13-8

County Administrator Findings 13-7 and 13-8
Recommendations 13-6 through 13-8

CITY OF HAYWARD
MEASURE G SCHOOL PARCEL TAX
AND PARCEL EXEMPTION

INTRODUCTION

The Grand Jury received a citizen complaint regarding the notification of exemption for the city of Hayward’s Measure G School Parcel Tax. Measure G, the “Quality Local Schools and Academic Excellence Measure” Parcel Tax was approved by Hayward voters on June 5, 2012. The Grand Jury, in investigating the complaint, learned that the deadline for citizens to file for the exemption was a mere 24 days after the tax was passed. The exemption applies only to senior homeowners over the age of 65 who own and occupy their property as their primary residence. The Grand Jury noted that the limited notification time was insufficient, but found that it was unavoidable.

BACKGROUND

The Measure G tax was introduced to voters as one that would raise money to directly fund Hayward public school classrooms. This tax is intended to protect critical programs with funds that cannot be withheld by the state, including math, reading, writing, hands-on science classes and labs, enhancing library services, technology, and college preparation programs. The tax is also intended to provide programs for students to meet state academic standards as well as to attract and retain qualified teachers in Hayward. This parcel tax is expected to raise approximately \$2.2 million annually by assessing \$58 per parcel for 5 years. This tax was passed by over 70% of the voters, notably with no organized opposition.

INVESTIGATION

During the investigation, the Grand Jury reviewed information from the city of Hayward and the Hayward Unified School District (HUSD) regarding the administration of the tax and application for exemptions. The Grand Jury also **examined the school district's website and HUSD board of education meeting minutes**. Former and current school district officials were interviewed.

Although one selling point for voters was that qualified senior citizens would be exempt from paying this tax, the timing of the process for applying for the exemption proved to be a problem. Voters passed the tax on June 5, 2012. Those exempt from paying this tax had only 24 days to apply for the exemption that first **year. Only 24 days were allowed in order to meet the county's deadline to include** the tax in the annual property tax bills.

To qualify for this tax exemption the senior must 1) have turned 65 years of age prior to July 1, 2012, and 2) own and occupy their property as their primary residence. The Grand Jury learned that a total of 779 senior applications for exemption were received by the June 29, 2012 deadline. In view of the fact that only 723 applicants received the exemption (in a city of over 150,000 people), a concern exists that many qualified seniors may not have been aware that the exemption was available.

HUSD responded to this concern by stating that notification was provided in the following ways:

- Mailings to registered voters: first in the voter pamphlet six weeks before the election and secondly, 30 days before the election with the mailed ballots;
- A press release in the Hayward Daily Review newspaper on June 12, 2012;
- Notice on bulletin board; Channel 15/KHRT
- Notice on Hayward Unified School District website;
- Announcements at HUSD board meetings.

HUSD has promised to use the media to remind property owners annually of the tax exemption.

The first year this tax was enacted, the exemption forms were available at various locations the morning after the election:

- Electronically at www.husd.k12.ca.us
- In person at
 - the HUSD office at 24411 Amador Street, Hayward
 - Hayward Area Senior Center, 22325 North Third Street, Hayward
 - Hayward Main Library, 835 C Street, Hayward
 - Weekes Branch Library, 27300 Patrick Avenue, Hayward
- By request from the Measure G Parcel Tax administrator by calling (800) 273-5167 ext. 120 for an application by mail or email.

The Grand Jury learned that criteria for an oversight committee have been established as provided by the measure. Committee members have been selected, but as of April 2013 the oversight committee has not yet met. The responsibility of this committee is to oversee how the tax funds are utilized.

If a senior did not qualify or failed to meet the deadline for the exemption, filing for an exemption is allowed in any successive year until the tax expires. Once an exemption is granted, it is valid for the duration of the tax and there is no need to reapply.

CONCLUSION

The Grand Jury finds that notification of the Hayward Measure G Tax exemptions was done in an appropriate manner considering the time constraints involved. The Grand Jury recommends that outreach, education, and notification regarding this exemption must be on-going. The Grand Jury suggests expansion of notifications to include senior centers, churches, media/public service announcements, and through various other senior services such as Meals on Wheels. The Grand Jury realizes that many seniors struggle financially on a daily basis but we believe that citizens must take responsibility to become aware of issues that directly affect them.

FINDINGS & RECOMMENDATIONS

None

RESPONSES REQUIRED

None

CITY OF HAYWARD

EMERGENCY SERVICES FACILITIES TAX

INTRODUCTION

In 1990 the city of Hayward adopted an Emergency Services Facilities (ESF) tax to provide funding for seismic retrofitting of essential city facilities. The tax was adopted following the Loma Prieta earthquake in order to seismically retrofit government buildings against future quakes. The Grand Jury received a complaint questioning how this ESF tax was being collected and utilized. The Grand Jury ultimately determined that the ESF tax is correctly administered and the tax dollars collected are being used appropriately to pay the costs of retrofitting and rebuilding designated government structures in the city of Hayward.

BACKGROUND

The purpose of the ESF tax was to raise funds to help repay bonds that were sold **to finance the seismic retrofit of five of the city's facilities that were identified as being essential to public safety.** These buildings included three fire stations, the **city's corporation yard, and city hall.** **The strengthening or building of new facilities** would allow for better responses to public needs in the event of an emergency.

This tax, adopted by the Hayward city council, is collected from residents and business owners, and is assessed at \$24.00 per year for mobile homes and \$36.00 per year for single and multi-family units. Businesses are taxed at a rate of \$15.00 to \$550.00 per year based upon the number of employees. There is a 20% penalty for late payment of this tax.

INVESTIGATION

The concern brought before the Grand Jury questioned if the funds collected by **this tax were being used appropriately. Since the money went into the city's** general fund it was not clear how these funds were being spent, in what amounts, and for which specific retrofit projects.

During the Grand Jury's investigation, we sent a letter to the city of Hayward requesting information regarding the amount of tax dollars collected, a list of the retrofitted or rebuilt facilities, information on oversight, auditing, and tax exemptions. In addition, the Grand Jury examined city financial documents detailing the tax collection from 1990 through 2011. The Grand Jury reviewed city council minutes, internal city documents, the city's **seismic safety retrofit program, along with potential financing options and the city's tax ordinance. The Grand Jury also examined public responses to the city's proposals at the time the** tax was adopted.

The Grand Jury's investigation of the ESF tax revealed that tax rates are levied in designated amounts based on households and on the number of employees in a business. The ESF tax is not a property or utility tax. It is not based on property ownership or the amount of utilities consumed. The tax is collected either separately, via the water service bill, or when the business tax is due (*Hayward Municipal Code section 8-14.25*).

Facilities Retrofitted

Upon the inception of the ESF tax, the following essential buildings were designated to be retrofitted or completely rebuilt: Hayward Centennial Hall and adjacent parking structure, Hayward Civic Center, the Corporation Yard building, and multiple fire stations. The city chose not to retrofit one fire station and the civic center building. Rather, they used a portion of these funds to build new

facilities that have since been completed. The retrofitting of the other essential facilities has also been completed.

Bonds and Tax Dollars Collected

In order to finance the construction projects, bonds were issued by the city of **Hayward in the amount of \$37.1 million. The city's annual collection of the ESF tax, in the amount of \$1.9 million, does not fully cover the bond repayment. Each year, a \$2.6 million annual payment is required by the city to repay the bonds. The balance due of \$0.7 million is paid from the city's general fund. The ESF tax will expire in 2027, at which time the bonds will be repaid.**

The Grand Jury learned that when the city council originally determined the amount of the ESF tax, the amount charged to residents was not enough to cover the full repayment of the bonds. Rather, the amount charged was based on what city officials thought residents would accept. At the time, state law allowed the city council to implement this tax without voter approval. The law has since changed, requiring voter approval for such a tax.

Exemptions

Very low-income residents (as defined by the state of California) as well as individuals in hospitals, intermediate care homes, and convalescent, rest or nursing homes are exempt from paying this tax.

Oversight and Auditing

Although Hayward city ordinance states that the ESF tax is a general tax and can be used for any public purpose, the legislative intent was to use the funds to retrofit facilities. The tax revenue goes into the general fund and is delineated in the budget. The city conducts annual audits of its financial statements and the ESF funds are included in this audit. The Hayward city council required the city

manager to report to the city council annually for the first five years and every five years thereafter on the status of these funds. The Grand Jury found that this requirement has been met.

CONCLUSION

The Grand Jury has determined that the ESF tax was and continues to be correctly administered and the tax dollars collected were appropriately used to pay the costs of retrofitting and rebuilding emergency service facilities in the city of Hayward.

FINDINGS & RECOMMENDATIONS

None

RESPONSES REQUIRED

None

LOCAL EMERGENCY NOTIFICATION SYSTEMS

INTRODUCTION

In April 2013 two bombs went off near the finish line of the Boston Marathon, killing several people and injuring over 250 others. In 2012 a more localized concern arose when a fire occurred at the Chevron refinery in Richmond, California, spreading a toxic cloud, potentially affecting residents throughout the **region. These brought to mind Alameda County's own disasters, such as the 1989 Loma Prieta earthquake and the 1991 Oakland Hills fire.** Accordingly, the Grand Jury examined the current state of warning systems in Alameda County and how prepared the county is to warn its citizens in the event of emergencies.

While many cities and the unincorporated areas within Alameda County have individualized emergency warning systems, the Grand Jury learned that Alameda County lacks one countywide emergency warning system. A single countywide system would enable all cities and municipalities within Alameda County to participate collectively in the federal Integrated Public Alert Warning System (IPAWS). IPAWS is a federal protocol that allows for emergency managers to utilize a common format among multiple alert systems. Participating in IPAWS allows local agencies to use the Wireless Emergency Alerts (WEA) program, which has the ability to provide notification to cell phones located within a precise targeted area. For example, if an emergency occurs at a large public gathering, all cell phones within the area, regardless of billing address, would receive an emergency warning notification message.

The Grand Jury believes the implementation of one unified emergency warning system consistent with IPAWS would serve the citizens of Alameda County by being able to deliver consistent and simultaneous messages to residents. The Grand Jury concludes that a single countywide system could be established and maintained at a reasonable cost.

INVESTIGATION

During the Grand Jury's investigation, we interviewed emergency services officials from Alameda County and neighboring counties. We also interviewed representatives from a local fire department, the Alameda County Office of Emergency Services, Alameda County Department of Environmental Health, Alameda County Board of Supervisors, and county executives. We also reviewed news articles and numerous documents from various cities outlining their emergency warning notification systems. Additionally, we reviewed federal documents and publications relating to the IPAWS system and city and county publications relating to emergency communications, including the Alameda County Emergency Operation Plan. We also reviewed the publication, *Public Alert and Warning Notification Services by County* by the California Public Utilities Commission (Summer 2008).

Emergency Warning Systems in Alameda County

Jurisdictions within Alameda County currently use various means of communication to disseminate warnings to citizens, including landline phones (Reverse 9-1-1), cell phones, sirens, press releases, text messages, email, radio, television, and social media.

The cities of Alameda, San Leandro and Fremont use the community alert system from CodeRED. CodeRED is a private vendor that provides a high-speed notification system, which allows city officials to warn residents of emergencies. One service that CodeRED offers is a type of reverse 9-1-1 system that notifies residents and businesses by using their landline phone numbers without **requiring them to sign up. Also, individuals can sign up through their city's** website to receive notifications by email, text message, cell or work numbers. The city of Alameda pays approximately \$22,500 per year, and the city of Fremont pays approximately \$44,500 per year for this service.

The University of California, Berkeley, uses the Alert Warning System (AWS). AWS uses sirens to warn individuals. Upon hearing a siren, citizens are alerted to shelter in place (remain indoors and shut doors and windows). Citizens can check the status of the emergency by calling a hotline number, logging onto the campus emergency web page, or by listening to the campus radio station to find out details. Individuals can also sign up to receive emergency notifications by phone or email.

The city of Oakland uses a siren system that alerts citizens that there is an emergency in the area as well as a voluntary email and text notification system (Nixle). Nixle allows police departments to communicate with the public via text message, email and Internet posts regarding public safety alerts. Nixle requires self-registration and is free to subscribers. Oakland has no reverse 9-1-1 automatic notification system.

The cities of Livermore and Pleasanton have jointly purchased a Communicator Automated Notification System (CANS) to provide emergency notifications. CANS is a limited automated notification reverse 9-1-1 system. The system enables the cities to broadcast messages to residents and businesses through landlines by group or geographical location. The Grand Jury learned that the system costs \$15,000 for three years. The Pleasanton, Livermore, Hayward and Fremont police departments also use Nixle.

The city of Berkeley Emergency Notification System (BENS) allows the city to call residents at home in order to provide emergency information. BENS is a reverse 9-1-1 system. The system has the ability to target a geographical area for notification. Like many other private vendors, BENS is managed by a company located outside of California, so that in the event of a natural disaster, their operations facilities would not be disabled. BENS costs the city of Berkeley approximately \$21,000 per year.

Automatic BENS notifications are currently limited to residents and businesses with AT&T landlines. Cell phone users or others with non-AT&T service must sign up to participate in the BENS system. Email notification is also available. The city of Berkeley also uses the 1610AM radio station to announce emergencies **over the radio. At the time of the Grand Jury's investigation, the city of Berkeley** was attempting to expand its ability to notify residents through other communication carriers.

In 2012, the Alameda County Sheriff's Office (ACSO) partnered with a private vendor, AlertID, which allows public safety information on emergencies and crimes to be distributed through text messaging and email. Citizens must enroll in this on-line notification service for free at www.AlertID.com. There is no cost **to the Sheriff's Office. Participants are notified of severe weather, criminal** activity, and other information.

One of the responsibilities of the Alameda County Department of Environmental Health (ACEH) is to notify businesses of food recalls. As the number of these recalls grew to nearly 50 per year, the department wanted a quick way to disseminate recall and other emergency information to businesses as well as to ACEH staff. They contracted with Everbridge, a private vendor that provides pre-recorded phone notifications. Everbridge is paid approximately \$5,000 per year after an initial set-up fee of \$7,500. ACEH has had success in reaching its employees during the first year of use, but attempts at reaching businesses have been less effective. There is a need to regularly update the contact numbers for the businesses and improve the notification messages.

Most of the expenses to run this system are offset by revenue from local businesses, such as small fees on waste collections. This system shows the ability of an agency to control costs in selecting a notification vendor, do it with minimal bureaucracy, and adapt it to their needs. On the other hand, this plan is currently limited to food businesses and employees of the agency and is not set up for mass notification.

The Grand Jury learned that none of these emergency warning systems is foolproof. Many jurisdictions limit their use of these systems due to inefficiencies such as problems with duplicate calls, inconsistent messaging with other jurisdictions, and outdated phone numbers of residents. While some systems can target specific areas for notification, they are often limited to the use of landlines. Some systems can call or text cell phones but only if the cell phone owners have signed up for the service. The Grand Jury believes that only a very small percentage of county residents have signed up for these services.

Contra Costa County

Contra Costa County has one countywide warning system that alerts citizens to imminent threats to their lives and safety. The system provides the ability to notify residents via landline telephone, cell phone, email, Twitter and Facebook. The system costs \$1.5 million annually and is funded through fees imposed on businesses that deal with hazardous materials, of which \$450,000 of this amount **is used to maintain and operate the county's 42 sirens and repeaters.** Because Contra Costa County has a large number of oil refineries, the amount collected through these fees is substantial. The Grand Jury acknowledges that **Contra Costa County's needs are different due to the number of refinery incidents and** the frequent use of their notification system.

The Grand Jury learned that Contra Costa County's landline component has problems such as delayed notification similar to those in other jurisdictions. We heard of one incident where the goal to notify residents within 30 minutes unfortunately took two to three hours.

Integrated Public Alert Warning System (IPAWS)

IPAWS was developed by the Federal Emergency Management Agency (FEMA) as a protocol/common format for public alert systems. IPAWS outlines the way in which counties participate in the national warning system that allows the

President or other authorized officials to communicate with the public in times of emergency via television, radio, landline, cell phone, and other communication pathways.

An important benefit of having a unified countywide emergency alert and notification system is that it would allow for the use of Wireless Emergency Alerts (WEA), a new federal program, to notify cell phone users in a targeted area without requiring them to subscribe in advance. The WEA system was used successfully by Santa Clara County in conjunction with its AlertSCC system during a recent child abduction incident. Local cell towers were used to send alerts to any phone with WEA capability in the targeted area. That means local residents and out of town visitors in the affected area were also notified. Likewise, a resident who was out of the area was not notified. Before this program, cell phone users had to subscribe to receive emergency alert and notification messages.

Monterey and Tulare counties have adopted the IPAWS system. Monterey County received just under \$1 million from the Federal Homeland Security Grant Program.

Alameda County's Unique Considerations

Alameda County is unique not only in its coastal location, but also for its broad array of county, state and national agencies and businesses that are considered to be high risk by Homeland Security. Alameda County would benefit from a notification system that can assist the public with warnings and up-to-date information should the need arise. An emergency notification system is needed that could also interface with the surrounding counties and the Homeland Security Warning and Alert Systems.

- The Oakland International Airport serves both domestic and international airline flights and processed over 10 million passengers for arrivals or departures in 2012. Major security concerns center around terrorist activities, aircraft emergencies and accidents as well as land disaster possibilities.
- The Port of Oakland, which is now the fifth busiest container port in the United States, has the same major areas of concern as the airport except they deal with cargo ships. Both the airport and the seaport need to have an adequate warning system in place not only for their immediate employees and surrounding physical areas but also for notifying the public and working with Homeland Security if a serious threat occurs.
- Sandia Laboratories, Lawrence Livermore National Laboratories and UC Berkeley Laboratories, due to their nuclear research and capabilities, are at a high risk for accidents or terrorist plots. Although security may be high in these labs, there also should be a system in place to notify the public, the county, and Homeland Security should any acute need arise.
- Northern California frequently experiences earthquakes along various fault lines, many of which run through Alameda County. The ability to provide emergency notifications is critical.

Inconsistent Messaging

Without a countywide coordinated community emergency warning system, there is the potential for inconsistent messages being disseminated by neighboring jurisdictions, compounding public confusion during times of emergency. One example occurred during a refinery explosion in Contra Costa County. Citizens in areas near the refinery were alerted to potential danger through the countywide emergency notification system. Other county residents, in Moraga and Lafayette, were not notified because officials believed they were outside the potential danger

zone. At the same time, the city of Oakland sent out a mass email to everyone signed up for its emergency alert notifications that a toxic cloud from the refinery explosion was headed towards Oakland. While this example involved emergency warnings from two different counties, it did show how inconsistent messaging could create unnecessary confusion.

If Alameda County were to participate in IPAWS, there would be one messaging system for all cities and unincorporated areas, better serving the citizens of the county.

Barriers to Countywide Emergency Notification System

Regional cooperation in creating and operating multi-jurisdictional programs can be complicated by a number of different issues. Funding, control over management, inconsistent needs and poor timing often stand in the way of moving forward.

Upfront and on-going operational funding is a barrier for nearly all new programs. If state or federal grant funding is available to start projects, someone must take the lead in applying for those funds. The Grand Jury learned that there is a \$300,000 one-time federal grant available to help fund a countywide notification system but the grant comes with significant strings attached. Many smaller counties have stepped forward and applied for similar grants with the understanding that grant requirements for training and protocol were quite complicated. Within our county, no agency has taken the lead to apply for the grant due to an 11-month compliance timeline and lack of commitment to fund the system long-term. In order to move forward with grant funding, local leaders need to be committed to funding the system annually. The Grand Jury learned that one vendor estimated that a countywide system, meeting the federal requirements to participate in IPAWS, would cost approximately \$257,000 a year.

Alameda County has over 1.5 million residents living in 14 cities and six unincorporated communities. If a joint powers authority (JPA) were created to raise funds and operate a countywide system, each of the JPA members must ensure that costs of the system are fair and equitable to all involved. A JPA is created when two or more public agencies formally agree to work together for specific purposes, usually over a larger geographic area than is represented by the individual agencies.

Agreement must be made regarding how each jurisdiction would contribute to on-going operations, whether it be by population served or by the number of messages individual jurisdictions send out. The good news is that many cities in the county have already invested in their own systems for many different purposes. The Grand Jury learned that six cities within the county spend a total of approximately \$120,000 annually for their emergency warning systems. If those cities were willing to replace their systems with a countywide system, and the remaining eight cities and the county representing the unincorporated areas also contributed, the funding issue would become less of a barrier.

Over the past decade, approximately forty public agencies joined forces, using federal and local funds to build one interoperable emergency radio system for first responders in both Alameda and Contra Costa Counties. One key city, Oakland, did not participate in the new radio system.

Two years ago, a Grand Jury reported on the multiple reasons for Oakland's decision. At that time, after the Oakland Hills fire, Oakland had just invested in a new police and fire radio system. Joining the two-county system would have required Oakland to abandon parts of its new system. Oakland has been reluctant to scrap the investments already made to that system and to start over by joining one regional system.

Just as Oakland has invested in its own police and fire radio system, some cities within the county have also invested in their own emergency notification systems.

The Grand Jury learned that several cities currently have multi-year contracts with different emergency notification vendors, which have staggered expiration dates. This may cause some cities to want to delay investing general fund dollars in order to participate in one countywide system until their contracts expire.

Questions have also arisen as to who would operate the countywide emergency notification system and who would sit on the governing board. In addition, many of the cities currently operating notification systems use them for different reasons and with different regularity.

CONCLUSION

The Grand Jury believes that a countywide emergency notification system utilizing federal IPAWS protocols would best serve the citizens of Alameda County. It would allow the region to participate in the innovative WEA emergency alert program. The patchwork of systems currently being used within the county invites inconsistent messaging during emergencies. Pooling financial resources would allow a countywide system to be operated with minimal investments by each local jurisdiction. The Grand Jury believes that the Alameda County Office of Emergency Services is in the best position to take the leadership role to seek federal grants through FEMA to create an appropriate system.

Investing in one countywide emergency notification system could save lives and be implemented with an annual estimated cost of less than 25 cents per resident. The Grand Jury believes this would be a worthwhile use of taxpayer funds.

FINDINGS

Finding 13-9:

Alameda County does not currently have a unified countywide emergency notification system.

Finding 13-10:

Wireless Emergency Alerts (WEA) is an essential component in a successful emergency alert system.

RECOMMENDATION

Recommendation 13-9:

Alameda County must take the lead in developing a unified countywide emergency notification system utilizing federal IPAWS protocols.

RESPONSES REQUIRED

Responding Agencies - Please see page 13 for instructions

Alameda County Board of Supervisors Findings 13-9 and 13-10
Recommendation 13-9

County Administrator Findings 13-9 and 13-10
Recommendation 13-9

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JAIL INSPECTIONS IN ALAMEDA COUNTY & URBAN SHIELD

The Grand Jury is required by California Penal Code section 919(b) to inspect jails and holding facilities within Alameda County. To determine which facilities to inspect, the Grand Jury chose jails that had not been inspected within a three-year period, or required re-inspection due to report deficiencies. During fiscal year 2012-2013, the Alameda County Grand Jury inspected the Hayward Courthouse holding facility, the Hayward Police Department Jail, the Alameda County Juvenile Justice Center and the Glen Dyer Detention Facility.

Prior to conducting inspections, the Grand Jury reviewed inspection reports from previous grand juries, the California Board of Corrections (BOC) and the Alameda County Department of Public Health (DPH). The BOC conducts biennial inspections of jails in Alameda County and requires a corrective response to be filed by each agency whenever a deficiency is found. The DPH conducts yearly inspections of all jails and also requires the jails to address any health inspection deficiencies.

Among the issues the Grand Jury looks for when inspecting a facility are cleanliness, record keeping, adherence to department policies and procedures, booking and medical care of prisoners, special accommodations, and meal serving policies. Additionally, the Grand Jury reviews any corrective responses by the BOC and DPH and follows up on changes that still need to be made. Inspections were conducted by three or four members of the Grand Jury. The Grand Jury attempted to provide twenty-four hour notice to each facility to ensure staff was available to accompany the inspection team.

Hayward Courthouse Jail

The Hayward Courthouse Jail is a holding facility used only to accommodate prisoners awaiting court appearances and is staffed by members of the Alameda County Sheriff's Office. **Prisoners are not held at this facility overnight. The Grand Jury inspected this facility on September 18, 2012 and found the staff professional and competent when answering the Grand Jury's questions. The policy and procedures manual was stored in a visible place and conveniently located for staff access. There are no kitchen facilities on site. Bag lunches are provided at Santa Rita Jail prior to transport to the Hayward Courthouse jail. The Grand Jury noticed a water pressure problem in one of the cells and was informed that the problem was being addressed. Other than this one issue, the Grand Jury found no deficiencies with this facility and was satisfied that corrective action was underway.**

During the Grand Jury's inspection, we witnessed an emergency evacuation of the courthouse and observed first-hand the ability of the Sheriff's Office to handle the emergency successfully. The Grand Jury was kept informed of the situation and the evacuation appeared to go smoothly.

Hayward Police Department Jail

The Grand Jury inspected the Hayward Police Department Jail on September 18, 2012. This facility handles the booking and housing of prisoners waiting to be transferred to the custody of the Alameda County Sheriff. The Grand Jury inspected the jail, reviewed the policies and procedures, and met with jail staff while conducting the inspection. The Hayward Jail has twelve holding cells and can accommodate 85 total prisoners. Prisoners are housed for a short time, generally not more than 24 hours, and are transferred to Santa Rita Jail if they will continue to be held in custody.

Prisoners are prescreened for health and dietary issues during the booking process. Food - which includes fresh fruit or other dietary accommodations - is purchased from local stores and served to prisoners while in custody. Jail staff has access to a certified dietician at a local hospital if any questions arise. On the date the Grand Jury inspected this facility there were eight prisoners in custody. The facility was neat and clean. The Grand Jury found no problems or issues with this jail.

Alameda County Juvenile Justice Center

The Grand Jury completed a site inspection at the Alameda County Juvenile Justice Center on October 18, 2012. This facility houses juveniles awaiting a detention hearing. If detained after a hearing, the average length of stay is 27 days. The average daily juvenile population is approximately 100, with a ratio of **80% males to 20% females. The facility's maximum housing is 354 detainees. On the date of the Grand Jury's inspection, there were 175 males and 22 females** in custody. The Juvenile Justice Center serves a multitude of local agencies, **including the FBI, DEA, Alameda County Sheriff's Office and all city and local** police departments.

Upon inspection, the Grand Jury found the holding cells and restrooms to be clean and neat. If it is deemed during arrest that a juvenile has a medical issue, they must be cleared by an outside hospital before acceptance to the Juvenile Justice Center. The facility has on-site medical staff for detainees through a **contract with Children's Hospital, Oakland, as well** as dental and optical services. The Juvenile Justice Center is equipped to refer juveniles for care including psychiatric and other services; for example, they provide access to guidance clinics and on-site counseling services, or refer detainees to outside psychiatric clinics such as Willow Rock Mental Health located at the John George Psychiatric Pavilion.

The housing units and medical units were found to be state-of-the-art. Access to medical supplies and medication is managed through a secure computerized system that only allows access by medical staff. It requires individual access codes assigned to each medical staff member. This computer system maintains a tracking log to monitor all dispensing of medications to detainees.

The Juvenile Justice Center has on-site classrooms, a library, a gymnasium, laundry unit, and a kitchen unit that were all well maintained. Meals are prepared at Santa Rita Jail under contract with Aramark Company, which transports the meals to the Juvenile Justice Center. A dietician addresses special needs of detainees. The kitchen unit at the facility was clean and well-stocked. This kitchen is used to store snacks that are provided to the detainees each night, as well as the food received for the daily meals. Additionally, a three-day emergency supply of food and water is stocked on each floor. Clothing is made available to juveniles upon release, if needed.

The Juvenile Justice Center has separate housing units and exercise areas for males and females. There are individual cells with two beds in each cell in pod-style housing. The Grand Jury inspected the cells and found no issues.

The educational program at the Juvenile Justice Center is operated by the **Alameda County Office of Education**. **Each student's** individual needs are assessed and students are placed in classes based upon ability. During the **Grand Jury's inspection, we observed a variety of classes taking place, including yoga, a U.S. History class, and physical education in the gymnasium.**

The Juvenile Justice Center appears to be performing in accordance with state health and safety standards and the Grand Jury found no violations or issues with this facility.

Glen E. Dyer Detention Facility – Alameda County Sheriff's Office, Oakland

The Grand Jury inspected the Glen E. Dyer Detention Facility in Oakland on October 23, 2012. Staff was knowledgeable and prepared to address all of the **Grand Jury's questions. The Grand Jury inspected all levels of this facility** including the rooftop. This jail has on-site booking facilities and is equipped to house prisoners for extended periods of time. The facility is a high-rise style jail designed to hold maximum-security inmates. Glen Dyer has 576 cells and on the **day of the Grand Jury's inspection** 407 prisoners were in custody.

Females prisoners are not housed at this facility and after booking are transferred to Santa Rita Jail in Dublin. The Glen Dyer facility has two outdoor recreation areas, a laundry room, and a medical unit. Meals are prepared at the Santa Rita Jail kitchen and are transported by Aramark Company to this jail on a daily basis.

The Grand Jury found the jail to be well-maintained and very clean. The Grand Jury found no violations or issues with the Glen E. Dyer detention facility.

2012 Urban Shield

On October 27, 2012, several Grand Jury members attended the 2012 Urban Shield event. Urban Shield is a multi-day comprehensive regional preparedness training exercise for emergency first responders. Urban Shield tests regional integrated systems for prevention, protection, response and recovery in our high-threat, high-density urban area. The exercise evaluates existing levels of preparedness and capabilities, identifying not only what is done well, but also areas that may be in need of improvement. It is also a coordinating exercise to determine how a multitude of local agencies work together in the event of a mass-scale emergency. **Thousands participate in Urban Shield's training each year.**

On the day the Grand Jury attended, we received a presentation by the site commander who provided an in-depth description of the operation; outlined the participants and various agencies that were involved; and explained the integral components of each segment of the drills and scenarios. The Grand Jury viewed events on closed-circuit monitors as they unfolded in real time, and observed two training exercises that included hazardous material handling and hostage situations.

The Grand Jury found the Urban Shield event to be exemplary in that it included **emergency personnel from across the U.S. and throughout the world.** This year's event included participants from the U.S. Military, Homeland Security, FEMA, and representatives from Brazil in their attempt to prepare for the 2016 Olympics. The event provides agencies with the opportunity to interface with new technology and equipment and allows law enforcement throughout the world to share new techniques in handling emergencies. Urban Shield also allows for the evaluation of current tactical policies and anti-terrorism methods. The Grand **Jury commends the Alameda Country Sheriff's Office for its annual efforts in** organizing and hosting this world-class comprehensive exercise.

FINDINGS & RECOMMENDATIONS

None

RESPONSES REQUIRED

None

BUILDING PURCHASE BY ALAMEDA COUNTY 2000 SAN PABLO AVENUE, OAKLAND

INTRODUCTION

In 2004, the Alameda County Board of Supervisors (BOS) entered into a non-competitive build-to-suit agreement with a private developer for construction of a county building at 2000 San Pablo Avenue in Oakland. The new building, to house the Alameda County Social Services Agency (SSA), would provide an essential regional location for client services along with office space for senior staff. **The contract between the developer and the county specified the county's** commitment to a 30-year lease of the property. The entire construction of the project was financed through bonds sold through the California Infrastructure and Economic Development Bank. The county began occupancy in 2005. In 2011, the county purchased the building (with the exclusion of 5,000 square feet of ground floor space) and a limited number of associated parking spaces. The purchase price of \$50.8 million was paid for by the county assuming \$45.7 million in bonds and paying a balance of \$4.785 million cash to the seller at the close of escrow, plus previously advanced funds in the amount of \$310,000 that were retained by the seller.

The Grand Jury investigated the original lease transaction and purchase process in response to a complaint that the county grossly overpaid for the 2000 San Pablo Avenue property. **The complainant's allegations were: there was no need** for the county to purchase the building; the purchase process was inappropriately **managed by a member of the county administrator's office rather than by the Alameda County General Services Agency's (GSA) real estate department;** the price paid by the county was excessive; the purchase violated the principles and practices of good government.

The Grand Jury concluded that the county failed to rely on common best practices in both transactions. While concerns were raised by county department heads, the Board of Supervisors approved the purchase by a 3-2 vote with little or no public discussion. The Grand Jury found a complete lack of transparency in the entire 2000 San Pablo building purchase process. The Grand Jury concludes that the process surrounding the purchase of 2000 San Pablo leads to the question as to **whether the final decision was in the county's best interest.**

BACKGROUND

The General Services Agency, one of the thirteen agencies reporting to the county **administrator, is the agency responsible for nearly all of Alameda County's real estate transactions. GSA, through its Property Management Division, "manages the purchase and disposition of County real estate and negotiates and manages leases for County departments." In fulfilling its purchasing responsibilities,** environmental issues, code compliance, and physical condition are assessed, and document reviews are performed. Appraisals are usually sought in order to estimate the value of subject properties. More specifically, the GSA process includes identifying a property-need requirement, checking existing inventory that might meet that need, negotiating deal points, drafting a purchase agreement, addressing and complying with the California Environment Quality **Act (CEQA) process, and seeking the Board of Supervisors' approval to publish a public notification of intent to purchase real property.** While GSA commonly follows these practices, there appears to be no written policy specifically describing such procedures. In the purchase of the 2000 San Pablo property, the Grand Jury learned that this transaction was instead overseen by a senior **member of the County Administrator's Office (CAO).**

The CAO is responsible for the implementation of policies and decisions of the Board of Supervisors. The CAO is composed of six units that provide and oversee programs serving the entire county. These units include intergovernmental affairs and civic engagement, clerk of the board of supervisors, diversity

programs, East Bay Economic Development Alliance, risk management, and budget and finance. The public finance responsibilities of the CAO include all county bond relationships.

INVESTIGATION

In investigating the concerns raised by the complainant, the Grand Jury interviewed members of GSA, county administrator staff, county financial experts, members of the board of supervisors, and others with real estate expertise. Several members of the Grand Jury toured the subject property. In addition, the Grand Jury reviewed thousands of pages of documents and correspondence. We also examined the original lease and its amendments, the bond indenture that covered the original construction financing, appraisals, and building engineering reports related to the subject property, consultant reports, a preliminary title report, the escrow instructions covering the purchase, the **buyer's closing statement, and the final title report. It should be noted that these** documents were not maintained in one single repository, but rather were found in the possession of various county agencies.

The county's Social Services Agency's Welfare to Work Department had operated an office at 4501 Broadway, Oakland since 1971. Because of neighborhood concerns about street parking and frequent presence of clients waiting outside the office, the county planned to relocate the Broadway office at the expiration of the lease in 1997.

Over a four-year period between 1997 and 2001, the county prepared several Requests for Proposal (RFP) for a new SSA site. Numerous proposals were received but rejected by the county because of concerns raised by the city of Oakland and from residents in the proposed neighborhoods.

In December 2001, an unsolicited proposal was submitted. A private developer approached the county with the idea that he would purchase property at the

intersection of 20th Street and San Pablo Avenue and build-to-suit a facility that the county would ultimately agree to lease with an option to buy at the end of the **lease. This property, designed to house the county's social services agency,** became known as 2000 San Pablo. The redevelopment site was situated in an **area that met the county's use requirements and was consistent with the city's** plans to improve the general area.

On January 20, 2002, the General Services Agency recommended to the Board of Supervisors of the County of Alameda **that the board approve GSA's request to enter into negotiations with the developer to "...lease build-to-suit space at fair-market-value rental rates for comparable buildings of similar size, location, quality, level of improvements, and credit worthiness of tenants."**

On February 5, 2002, the Board of Supervisors authorized sole source negotiations (i.e., no competitive bidding) with the Strategic Urban Development Alliance (SUDA), the developer of the property. SUDA was generally controlled by the aforementioned real estate developer. The owner/lessor of the property would be the North County Center for Self-Sufficiency Corporation (NCCSSC), a **non-profit entity also associated with the developer's group. It was unusual that** such an agreement would be entered into without competitive bidding. It would require extra scrutiny to ensure that taxpayer dollars were protected. At nearly the same time, the county was involved in a similarly large build-to-suit project in Hayward that had resulted from a more traditional and transparent competitively bid RFP process.

The developer of 2000 San Pablo (SUDA) proposed acquiring approximately ten parcels where the Royal Hotel and the old Oakland Post building had been located. The parcels were later reconfigured into two large parcels. One would be used as the site for a 100,000 square foot social services building (2000 San Pablo). The second parcel would be the site of a private condominium project constructed above a parking structure in which the county would lease 150

parking spaces. The county initially sought closer to 450 spaces, which would have been more consistent with the needs of an office building that size.

Public documents from the county clerk's office, along with financing and bond documents, indicate that the parcels for the proposed social services building and the private condominium project with parking were acquired by the developer for approximately \$8.4 million.

The original lease, between NCCSSC and the County of Alameda was dated December 17, 2002 and was a triple-net lease wherein the county agreed to pay all utilities, taxes, and maintenance. The lease term was for 30 years with an option to purchase for \$19.7 million at the lease termination. The monthly base rent plus other costs of the triple-net lease would be approximately \$378,000, which was significantly above market rate at the time but was justified by the county because the rent would be fixed throughout the term of the lease.

NCCSSC obtained construction financing in March 2004 from the State of **California's California Infrastructure and Economic Development Bank** through the issuance of \$51.7 million in Revenue Bonds, Series 2004. The lease was **structured so that the County of Alameda's lease payments would be sufficient** to repay both the principal and the interest on the bonds.

County emails during negotiations indicated that employees within GSA were concerned that bond proceeds might have also been used to fund or subsidize the acquisition of the adjacent property. **That property would house SUDA's** condominiums along with all parking spaces for both county and non-county use. GSA emails outlined the same concerns regarding the 5,000 square feet of space within the social services building that was retained by the developer. The Grand Jury never discovered any evidence that those questions were sufficiently addressed, rather it appeared that negotiations were wrestled away from GSA, ensuring that the project moved forward.

The Grand Jury is concerned that the revenue bonds that were used to fund the land purchase and construction cost of 2000 San Pablo, and the allocated 150 parking spaces, may have also been used to acquire the property rights for the SUDA condominiums and condominium parking, as well as construction of the developer-retained 5,000 square feet within 2000 San Pablo. The Grand Jury continues to have concerns about the use of the bond proceeds.

Problems began during the original build-to-suit and lease negotiations. It is common practice in a commercial build-to-suit transaction for the lessee to know the construction costs and the amount of profit included in the entire package so that an appropriate lease amount could be negotiated. In this case, the Grand Jury could find little evidence that the county was aware of all costs, nor did the county hire an independent project manager to track all of the project costs. **While the county was provided with a builder's estimate of the cost of construction and estimates of property acquisition costs, the county apparently never got a full accounting of the actual cost of the project nor of the developer's profit structure.** Such an accounting would have been appropriate especially since the project was not competitively bid.

Upon completion of the building construction, the lease term officially commenced on November 22, 2005 and was to be terminated on November 21, 2035. The lease covered 102,404 square feet of rental space in the newly constructed building but excluded approximately 5,000 square feet of commercial rental space on the ground floor, the ownership of which was retained by NCCSCC. The lease included 150 of the total parking spaces in the adjacent condominium parking structure that was also constructed by the same developer.

The lease negotiations were difficult and lengthy, leaving some county staff dissatisfied with the transaction. Subsequently, one staff member, as a private citizen, sued the county, claiming that the deal was unfair. The suit was later

dismissed as the court ruled that the statute of limitations had expired by the time the suit was filed.

The Grand Jury found it odd that in the lease the county agreed to pay property taxes, and that they continued to do so for several years. Although the county was conducting social services work in this building, which allows for a property tax exemption, it is the property owner who must file for the exemption. Meanwhile, these taxes, in excess of \$35,000 a month, were being paid by the county. At some point the county recognized their error and two years into the lease, the county requested that NCCSSC make a claim for the exemption and **seek a refund of the already paid property taxes. NCCSSC resisted the county's** numerous requests to do so but ultimately relented and filed for the exemption during negotiations for purchase of the building. Although the taxes up to that point were refunded to the county as the lessee, there was no promise by the owner to apply for the exemption in future years. The difficult working relationship with the owner regarding the tax exemption issue was later used as one justification by the county for purchasing the building. As the owner, the county itself could apply for the property tax exemption. It appeared that the tax issue was being used as leverage by the seller against the county in the purchase negotiations.

Building Purchase Negotiations

In 2008, the Alameda County SSA inquired about leasing the remaining 5,000 square feet on the ground floor. The real estate developer in turn asked the county if they had any interest in purchasing the building. The county was **already the lessee of the property and the location seemed to suit the county's** needs. There was no escalation provision in the lease, meaning that the annual lease payments were to stay constant over the thirty-year term of the lease.

In October 2008, GSA hired the same independent real estate appraiser used **two years earlier to inspect the property. The appraiser's report, dated** March 13, 2009, estimated the market value of the building and the 150 parking

spaces to be \$236 per square foot or \$24.1 million, based on the value of the lease that the county had signed. Comparable properties reviewed in the appraisal **indicated that the subject property's value, including the parking spaces**, would range between \$211 and \$311 per square foot.

After three years of negotiations, an agreement was reached between NCCSCC and the board of supervisors for the purchase¹. Included in the purchase were the 102,400 square feet of office space occupied by the social services agency and the 150 parking spaces. Ironically, the agreement excluded the 5,000 square feet of street level commercial space. It also excluded the solar panels located on the roof.

Through a review of the preliminary title report issued prior to the purchase by **the county, the Grand Jury discovered multiple mechanics' liens and two additional deeds of trust**, as well as a notice to foreclose recorded against the property. This led the Grand Jury to discover that the developer and related companies were experiencing significant financial difficulties. Further investigation revealed that the condominium project (with a \$37 million loan) adjacent to 2000 San Pablo Avenue had gone into foreclosure and that outside investors had purchased the condominium property and associated parking for approximately \$19.7 million. The Grand Jury is concerned that the county may have purchased 2000 San Pablo Avenue, in part, to ensure that the developer would not fail financially.

With regard to the purchase of the building, it was unusual that the assistant county administrator was the chief negotiator for the county. This involvement seems to run counter to the common practice and stated mission of GSA and more specifically, the **Property Management Division, which "... manages the purchase and disposition of county real estate."** GSA is staffed with experts who regularly negotiate significant real estate transactions, such as the Eden Area

¹ Sitting as the Alameda County Joint Powers Authority (JPA).

Center for Self-Sufficiency, a 176,000 square foot building that was being constructed around the same time that 2000 San Pablo Avenue was built.

The Grand Jury heard testimony that GSA and the Alameda County **Auditor/Controller's Office** were opposed to the purchase of the building. While the Grand Jury learned that the assistant county administrator received legal **support from the county counsel's office and outside advisors regarding the purchase**, it was clear that GSA real estate experts played a minimal role in the transaction. Rather than relying on a certified MAI (Member of the Appraisal Institute) appraiser to estimate the value of the building, the Board of Supervisors approved the hiring of a real estate consulting firm to provide supporting data and evaluations of the potential terms of the purchase.

From the start, that consulting firm made it clear to county leaders that it was not **asked to "determine the fair market value" of the transaction but rather to assess** the financial impact of the transaction on the county. The consultants were asked to determine if proposed costs were within a reasonable range for the county to consider paying. The county eventually paid the peak market purchase price (plus a premium) it initially contemplated paying at the signing of the lease, which was done at the height of the real estate market. No adjustment in price was ultimately made to reflect the depressed real estate market that existed at the time of the purchase. At the same time that this transaction was being negotiated, the county, led by GSA, purchased two foreclosed properties: 1111 Jackson Street in Oakland and 2015 Shattuck Avenue in Berkeley (177,000 square feet in total, not including parking) for approximately \$26 million or \$150 per square foot. This compares to the nearly \$500 per square foot that the county paid for 2000 San Pablo Avenue. While the Grand Jury acknowledges that the property was worth more to the county than it would be to an outside investor because of the lease obligations, questions arise as to the necessity to purchase the building at a time when the county was cutting department budgets across the board.

On December 13, 2011, the Alameda County Board of Supervisors by a vote of 3-2 authorized the purchase of 2000 San Pablo Avenue. The purchase price of \$50.8 million included a cash payment of \$4.8 million to NCCSCC at the close of escrow; the seller retaining previously advanced funds in the amount of **\$310,000; and the county's assumption of** the remaining bond principal of \$45.7 million. Board of Supervisor minutes from that meeting show that during the closed session held immediately prior to the public session, the assistant county administrator was the chief negotiator for the county. There was very little public discussion by the BOS relating to the reasons for or against the purchase. **The video for the board of supervisor's meeting at which the purchase was approved** reveals no meaningful discussion of the rationale for the vote.

It should be noted that the Brown Act allows for real estate negotiations to be dealt with by a governing body within closed session, meaning that the specifics of the negotiations would not be reported to the public during the process. It would be unwise for strategies to be made public during delicate negotiations. But public discourse regarding rationale and economic justification for a \$50.8 million taxpayer investment should be more transparent than the two-minute discussion in a nearly empty board meeting room after the transaction was completed. The Grand Jury found it unfortunate that an open public discussion did not occur prior to a purchase of this magnitude.

We heard testimony from witnesses who were asked to explain the rationale they used for recommending for or against the building purchase. Such reasons are listed below.

PROS

- The county would control the building by owning it;
- The purchase may reduce the long-term costs of occupancy of the building (maintenance and operations);
- The purchase resolved the controversy regarding payment of property taxes;
- The cost of the purchase would not exceed the cost the county would have incurred long-term under the existing lease with option to purchase agreement.

CONS

- **The county's common process** for the purchase of real estate was not followed;
- The county relinquished the flexibility to move out of the building at the end of its lease;
- The county did not acquire ownership of the entire building, making re-sale more difficult (5,000 square feet of ground floor space retained by the original owner);
- **The county did not acquire ownership of the building's solar panels;**
- The county has grossly insufficient parking rights in the adjacent shared garage;
- There was a discrepancy between the purchase price and the independent appraised value of \$24.1 million;
- The county paid a pre-market-crash price for the building;
- At a time when other county programs were being curtailed, the county made a cash payment of \$4.8 million;
- **The county's Real Estate Master Plan**, completed in 2009, mentioned the property as being under lease but made no mention of any intention to purchase it.

CONCLUSION

Transparent decision-making is a foundation of our democracy. Having meaningful written policies to guide staff during complicated and high-stakes real estate transactions ensures that checks and balances are in place to protect the public. Openly discussing application of these policies, in transactions such as the purchase of 2000 San Pablo, should aid in the perception that investments of taxpayer money are made in the best interest of the citizens of Alameda County and not in back rooms. Spending taxpayer money wisely, following industry best practices, and relying on those with expertise to efficiently execute business transactions are of the utmost importance when conducting county business. The Grand Jury believes that there were systemic failures in the negotiations for the construction, lease, and purchase of 2000 San Pablo Avenue.

FINDINGS

Finding 13-11:

Industry best practices were not followed by the County of Alameda during the lease and purchase negotiations for 2000 San Pablo Avenue, Oakland.

Finding 13-12:

A lack of written policies relating to real estate purchase and lease transactions helped enable negotiations to be wrestled away from the General Service Agency's real estate experts and into more political hands.

Finding 13-13:

Failure to understand and fully account for the cost structure of the original build-to-suit transaction (acquisition, entitlement, construction, profit) put Alameda County at a disadvantage when negotiating the lease and later purchase of 2000 San Pablo Avenue, Oakland.

Finding 13-14:

The Alameda County Board of Supervisors authorized a \$50.8 million purchase of a building without appropriate public discussion, thus exhibiting a lack of transparency.

RECOMMENDATIONS

Recommendation 13-10:

The Alameda County General Services Agency must develop written policies that clearly outline best practices for all real estate transactions. The Alameda County Board of Supervisors must adopt these written policies.

Recommendation 13-11:

The Alameda County Board of Supervisors must ensure that the General Services Agency is the primary manager of the purchase and disposition of county real estate. The Board of Supervisors must also ensure that the General Services Agency manage and negotiate leases of county departments.

Recommendation 13-12:

The Alameda County General Services Agency must maintain the primary real estate files for the county to include important documents such as closing statements, title insurance policies, meeting minutes, etc.

Recommendation 13-13:

In build-to-suit agreements, the Alameda County General Services Agency must follow industry-wide best practices ensuring that the county knows the total cost structure of projects. This includes determining construction costs, negotiating **developer's fees and profits, and tracking expenses.**

Recommendation 13-14:

Once real estate negotiations are completed, county staff must provide a thorough analysis with pros and cons of a project to the Alameda County Board of Supervisors, and ultimately the public, when making a recommendation.

RESPONSES REQUIRED

Responding Agencies - Please see page 13 for instructions

Alameda County Board of Supervisors Findings 13-11 through 13-14
Recommendations 13-10, 13-11 & 13-14

County Administrator Findings 13-11 through 13-14
Recommendations 13-10 through 13-14

General Services Agency, Director Findings 13-11 through 13-13
Recommendations 13-10 through 13-14

FIRE STATION HEALTH CLINICS

INTRODUCTION

Alameda County suffers from a critical shortage of health care access for the uninsured and impoverished. This shortage currently drives many to seek care in hospital emergency departments (ED) that are already overcrowded. Providing non-urgent care in an emergency department leads to an inefficient and expensive health care delivery system. The need for more primary care provisions will only increase as millions of Americans gain access to healthcare coverage through the Affordable Care Act. Alameda County has attempted to improve this system by opening many community-based health clinics and has pioneered the establishment of school-based health clinics to help better serve this population.

The Grand Jury learned that the Alameda County Health Care Services Agency (ACHCSA) has proposed a pilot program to build community-based health clinics at a number of firehouses throughout the county. The intention is to provide basic levels of preventive care in safe, convenient centralized locations at a lower cost to taxpayers than hospital EDs. Just as importantly, staff at these clinics will be able to help patients enroll into the healthcare system.

BACKGROUND

During our investigation, the Grand Jury met with multiple representatives from the ACHCSA, representatives for nurses and other health care workers who would staff these firehouse clinics, representatives for firefighters, and several elected county officials. We toured two community-based clinics and two school-based clinic sites.

The Grand Jury reviewed numerous reports and documents about the proposed fire station health clinics. These included the 2012-2013 county budget, the July 2012 Fire Station Health Clinic Proposal, the General Acute Care in Alameda County Hospital Strategy, the School Health Services Coalition Publication, the Costs of Acute Care, and several publications and reports from the Alameda County Health Care Services Agency.

Each county within the state is responsible for managing a government healthcare safety net that ensures that the poor and underserved have access to services. Within Alameda County, the ACHSCA has the responsibility to provide health care services through a network of public and private community-based organizations with the goal of offering access to health care services for those in need. The ACHSCA uses its \$650 million annual appropriation to fund its programs. Its funding comes from federal, state and local sources including Measure A (a local sales tax ordinance) that raises approximately \$27 million annually.

Based on financial documentation reviewed by the Grand Jury, the pilot program for a fire station health clinic is anticipated to not increase the financial burden on the taxpayers of Alameda County. A combination of government and philanthropic funding will be used to construct the new clinic. Additionally, Measure A funds and federal reimbursements will pay for the operational costs for the first three years. The clinic will be 80% reimbursed by the federal government for the cost of delivering services. The remaining 20% will come from established county funds.

INVESTIGATION

The Grand Jury learned that the number of medically uninsured in Alameda County has increased by nearly 20% since 2009 and now stands at more than 200,000. This population is primarily made up of the working poor who find

health care unaffordable even though they are employed. Health care services for these populations, with a large cultural and language diversity, are overburdened.

Currently, care is often sought at the highest cost setting, i.e., the emergency departments of local hospitals. The Grand Jury learned that approximately 50% of emergency department patients could have been successfully treated elsewhere at a lower cost. One study reported that the average cost of treating patients in an emergency department is approximately \$800. If a patient seeks treatment outside of the emergency department, the Grand Jury learned that the average cost of care drops to \$400.

It is not uncommon for firefighters to respond to a call for medical attention, resulting in the patient being transported to the emergency department to have a prescription filled, or be treated for cold or flu-related symptoms. By law, the fire department must respond to 9-1-1 calls. The Grand Jury learned that for fiscal year 2010-2011, over 80% of total fire department emergency calls in Alameda County were for medical reasons.

To help the uninsured and under-served populations in Alameda County, and to prepare for the newly insured individuals under the Affordable Care Act to be implemented between 2014-2018, ACHCSA is proposing an innovative fire station health clinic project. The intent is to provide an alternate source of care to those residents facing health care access problems. Patients could seek non-emergency treatment at a fire station clinic rather than visiting a more costly hospital ED.

Community-Based Clinics

ACHCSA currently supports more than 30 community-based clinics that provide free or low cost medical and dental services to county residents. These clinics offer basic care for local residents at a lower cost to the health care system. **During the Grand Jury's site visits to several community-based clinics in**

Alameda County, we found that they were easily accessible, well utilized, offered a multitude of services, and served a culturally diverse population.

School-Based Clinics

Alameda County currently oversees the operation of 26 school-based clinics. These clinics, specifically designed for youth, are located on school campuses in lower income communities. Health care services available to students include immunizations, health care advice, dental care (often for the first time ever), psychological help, reproductive information, and health education, without the student having to leave school. School-based clinics provide accessible health care for students, promoting healthy development both physically and academically. They also offer convenience to families; for example, a parent does not have to miss work to take the student to the doctor or dentist. School-based clinics have shown that among students themselves, there has been a positive response to the age-specific care offered at the school site setting.

Services are covered by MediCal or other insurance coverage programs. Because both community-based and school-based clinics in Alameda County are federally qualified health centers (FQHC), they receive the maximum federal reimbursement possible for the services they provide. This level of reimbursement helps the county provide these services as effectively as possible at a minimal **direct cost to the county's general fund.** **These clinics are also** supported through private funding.

Advantages of Fire Station Clinics

Fire station health clinics would provide another means of access to health care for the working poor and indigent in Alameda County. Fire station locations are commonly known to neighborhood residents. Studies have shown that males age 18-30 are the least likely to seek medical care. Individuals in this demographic group may be more likely to visit a fire station clinic because of proximity,

convenient hours, and the positive association with the fire department. Fire station health clinics would offer routine health care services in a way that has not been tried before.

Advantages include:

- Convenient evening hours from 2pm – 10pm, Monday through Friday;
- Diagnosis of previously undetected health issues and referral to primary care or more specialized care;
- Follow-up care helps the patient avoid a return visit to an emergency department;
- Reduced costs to the health care system;
- Assistance for patients applying for Medi-Cal or other health care programs;
- Links to the regional medical records network allowing for consistency in patient care.

The clinics would be operated by federally qualified health centers just as school-based clinics are currently operated. Patients would utilize fire station clinics for basic medical needs. Although the clinics would be located on fire department sites, fire department personnel would not be staffing the clinics. The proposed fire station clinics would have a staff of four consisting of a registered nurse, a medical assistant, a nurse practitioner, and a patient care technician. Many primary care patients can be appropriately treated by such clinic staff. Patients needing a higher level of care would be evaluated and referred to primary care physicians for further treatment.

Clinic staff will be qualified to conduct many services, including:

- TB testing
- Blood pressure checks
- Wound care
- Monitoring weight gain/loss
- Immunizations
- Sports physicals
- Chronic disease management
- Occupational health (such as a urine test)
- Authorization of prescription refills

The Grand Jury heard testimony in opposition to fire station health clinics. The concerns include some labor opposition, firefighter concerns of shared site use such as community impact (increased traffic and parking concerns), and lack of sustainable funding. Many of these concerns are being addressed.

Alternative Health Care Provision

There must be an alternative source of primary care to thousands of publicly insured, uninsured, and underinsured residents facing health care access problems, with the goal of being able to mitigate the problem of costly but avoidable emergency room visits through preventive care. An article published by the Alameda County Health Care Services Agency dated Feb. 6, 2012 stated, **“The necessity to help integrate the underserved population into the coverage system and to provide newly insured individuals with access to health care is now critical.”** In preparing for an expected 56,000 new clients under Medi-Cal, the county of Alameda must consider promoting a new approach to medicine to reduce costs and meet the needs of a growing population.

Financial Savings

The Grand Jury learned that health care costs are rising at five times the rate of wages, with health care premiums doubling in the last decade and projected to at least double in the next decade. There are over 200,000 uninsured residents in Alameda County and more than 56,000 residents will be eligible to receive Medi-Cal benefits by 2018 due to the Affordable Care Act, creating an even larger demand for health services.

Fire station health clinics would help reduce costs by providing routine services, such as immunizations or treatment for sinusitis, that are currently overburdening primary care physicians and emergency departments. These same services make up approximately 15% of all primary care physician visits and 20% of all emergency department visits. The savings will occur because treatment at a

fire station health clinic is much less expensive than at a primary care physician's office or ED. In addition, services at fire station clinics may include hospital after-care to ensure that patients are following their discharge instructions, thus potentially reducing readmissions to the hospital.

Local Access and Hours

Fire station clinics will be located in communities that are underserved, typically have a high number of ED visits, a high poverty rate, and a concentration of residents who will be newly eligible for health care benefits. In neighborhoods with insufficient primary care access, the population tends to have a higher rate of chronic health problems, disease, and death. Barriers to care can take the form of cultural, language, or transportation challenges, as well as inconvenient hours and locations. Because of the neighborhood locations, fire station health clinics will help alleviate some of these issues.

The Grand Jury learned that fire station clinics would be open from 2pm to 10pm, compared to most other medical facilities that are closed in the evening hours. These extended hours should help reduce the number of expensive visits to overcrowded emergency departments. As stated previously, approximately 50% of emergency room visits could have been handled elsewhere at a lower cost. The evening hours of fire station clinics would be beneficial to working people and would reduce the need to take time off from work in order to handle routine medical issues.

Pilot Program in the City of Hayward

With the cooperation of the Hayward fire department and its labor organizations, an initial clinic is expected to be built next to a new fire station in the coming year. This proposed clinic, sometimes referred to as a **“fire station portal,”** will be closely watched by the Alameda County Health Care Services Agency and other community stakeholders. The Grand Jury commends all who are involved in this

project for their openness and willingness to move forward on this innovative concept.

Although the Grand Jury heard some firefighter testimony in opposition to other proposed fire station clinics, the Hayward Fire Department actually requested that the clinic be included as part of their proposed new fire station. Initial objections have been addressed in the revised pilot program design of the clinics. The idea behind a pilot program is to ascertain the success or failure of the concept, before moving forward with a larger program. The Grand Jury learned that concerns are being considered by the ACHCSA and believes that the pilot program will determine their validity. Based on our investigation, the Grand Jury endorses the pilot program.

CONCLUSION

Based on the successes of Alameda County's pioneering school and community-based clinics, the Grand Jury believes that initiating fire station health clinics is a creative approach to providing access to health care for all ages. Fire station clinics would be well suited to serving the basic health care needs of the general population in a nontraditional and practical location. Fire station clinics are proposed to be located in communities where health care is insufficient and would be conveniently open on weekday evenings. A further advantage is the **public's universal** trust and view of fire stations as a source of help.

Regarding this proposal from a cost perspective, health care costs continue to rise at rates well above the inflation rate, and are projected to continue on that path with the Affordable Care Act increasing the demand for health care services. Fire station health clinics are expected to deliver health care at a lower cost by reducing the demand for emergency department care. The Grand Jury concludes that for economic and humanitarian reasons, the Board of Supervisors and the City of Hayward should proceed with a pilot program to establish an on-site fire station health clinic in Hayward.

FINDING

Finding 13-15:

The fire station health clinic proposal is an innovative and worthwhile idea to both improve the delivery of basic health care and reduce the burden on local emergency departments.

RECOMMENDATION

Recommendation 13-15:

The Board of Supervisors must approve the construction and funding of a health care clinic at the site of the new fire station in the City of Hayward.

RESPONSES REQUIRED

Responding Agencies - Please see page 13 for instructions

Alameda County Board of Supervisors	Finding 13-15 Recommendation 13-15
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REGIONAL TRANSIT EMERGENCY PLANNING

INTRODUCTION

On Thursday, June 14, 2012, just after 2 a.m. there was a three-alarm fire at a construction site very near the West Oakland BART station (Bay Area Rapid Transit). The fire caused electrical and other damage to the BART tracks, forcing the stoppage of service from the East Bay through the Transbay Tube to San Francisco for over 14 hours.

With BART service halted during the morning commute, traffic on the Bay Bridge was essentially gridlocked. The media reported that the public complained of seeing a large number of AC Transit (Alameda County Transit) buses parked idly at their maintenance lots. The Grand Jury investigated this matter because of the impression that these empty buses could have been used to substantially ease traffic congestion. Through its investigation, the Grand Jury learned that the immediate availability of even an unlimited number of buses could not alleviate the problem of transporting 40,000 displaced commuters by bus during the morning rush hour.

In response to this breakdown in services, a regional transit working group was assembled to evaluate the situation. One conclusion was the recognition that public transit agencies need to improve their methods of alerting the public in the event of an unexpected transit shutdown. Furthermore, there needs to be a public education program to inform commuters of the importance of preparing their own contingency plan.

BACKGROUND

During our investigation, the Grand Jury interviewed multiple regional transit personnel and representatives of the Bay Area Metropolitan Transportation Commission (MTC). The MTC is a regional planning, oversight, and funding agency for Bay Area transportation with the responsibility of coordinating regional emergency and security planning. We also reviewed regional emergency planning documents, AC Transit maintenance records, and recommendations for the AC Transit fleet composition plan.

The Bay Area has 27 different transit agencies. These include:

- BART, which provides regional rapid rail transit service to 43 BART stations in Alameda, Contra Costa, San Francisco and northern San Mateo counties;
- AC Transit, which provides bus and paratransit services to portions of Alameda and Contra Costa counties;
- MUNI in San Francisco, which operates buses, and the MUNI Metro, a light rail system that runs mostly on converted streetcar lines. It also has a tunnel under Market Street that is shared with BART;
- SamTrans, the San Mateo County Transit bus and paratransit bus service in San Mateo County with connections to San Francisco, Alameda, and Santa Clara counties;
- CalTrain, a commuter rail service that connects San Jose and cities along the peninsula with San Francisco and with BART by way of the Millbrae Station;
- AMTRAK, which has several train stations throughout the Bay Area, with major stations in Martinez and Emeryville. The Capitol Corridor connects Bay Area cities to the northern California cities of Sacramento and Auburn, and features BART transfer stations at Richmond, and at the Oakland Coliseum.

There are other bus transit agencies that serve the Bay Area such as the Santa Clara VTA, Golden Gate Transit, County Connection, and Union City Transit. In addition, there is an assortment of ferry systems that carry approximately 4,500-

5,000 passengers daily throughout the Bay Area waterways. Ferries transport approximately 2,500 commuters daily between Oakland/Alameda and San Francisco.

Specifically, AC Transit provides bus and paratransit service in Alameda and Contra Costa counties from Fremont to Pinole. It has a fleet of approximately 569 buses with a range in capacity from 55-90 passengers per bus. AC Transit transports 190,000 passengers per day. Its service from the East Bay to San Francisco includes 30 different bus routes transporting 12,000 passengers per day to and from the Transbay Terminal.

By federal government standards, AC Transit is mandated to have 20% of its bus fleet in reserve as spare vehicles to allow for regular maintenance, ranging from major mechanical repairs to interior clean up. Approximately 450 buses are on the road at peak times. The Grand Jury heard testimony that only about 8-10 standby buses are readily available to be put into immediate service. Otherwise buses must be re-routed from other service routes. Even in the event that extra buses would be available, AC Transit has a limited number of substitute drivers **available at any given time. Per AC Transit's labor agreement**, drivers are limited to 10-hour shifts, unless ordered by the police department. Furthermore, labor agreements prevent supervisors from driving passenger buses in an emergency, even if they are certified drivers.

INVESTIGATION

Almost immediately after the outbreak of the fire, the BART operations center sent out an e-mail notification at 2:15 a.m. regarding a “significant event.” The e-mail went to BART officials, police, fire, PG&E, and other agencies. The fire damaged the BART tracks and required closure of the West Oakland BART station which is the main line that runs through the Transbay Tube from Oakland to San Francisco.

Between 6:30 and 7:00AM, once the fire department ascertained that all safety precautions had been taken, BART was given clearance to evaluate the damage and initiate repairs. The damage was determined to be to the third rail insulators and cover boards, which needed replacement. Half the commuters crossing from the East Bay to San Francisco travel by BART. As a result, the 40,000 people who commute across the bay on BART in the peak morning hours between 6:30 and 9:30AM had to find other options.

BART does not run buses or ferries. If BART tracks are closed, BART has no alternate resource of its own to transport passengers. BART must enlist the aid of other regional transit agencies, realizing that those agencies are all operating close to capacity during those same peak hours. While other transit agencies have little potential for adding capacity on short notice, BART, on the other hand, can readily add more cars or trains as necessary. A 10-car BART train can carry as many as 1,200 people with only one operator, whereas ten buses require ten drivers.

The Grand Jury found that if BART service is compromised, other transit agencies can only provide limited assistance. During the peak three-hour morning rush hour period, 700 bus trips would be needed to carry the nearly 40,000 commuters who normally travel on BART during this time.

During the morning commute, BART typically carries roughly the same number of passengers as a six-lane freeway. The Grand Jury learned that on the morning of the fire it took twice as long as usual for cars on Interstate 880 to reach San Francisco, and four times as long for those driving on Interstate 580.

AC Transit took some immediate action to assist with transporting riders to San Francisco, such as not collecting fares and holding over drivers for extended shifts to the extent allowed by their labor contract. At the time of the fire, AC transit provided four extra buses by about 5:00 a.m. and supplemented that with eleven additional buses by mid-day. AC Transit carried 12,500 extra passengers

throughout the day of the fire. The Water Emergency Transportation Authority provided additional ferry service on three routes that transported approximately 7,000 extra passengers across the bay that day.

By the evening commute hours the MTC and AC Transit took the lead by coordinating a bus bridge using mutual aid from several outside transit agencies. This consisted of additional buses shuttling commuters across the bay from the SF Transbay Terminal to the MacArthur BART station in Oakland. By 3:45 p.m. full BART service was restored.

The Grand Jury believes that transit agencies need to be realistic when announcing temporary alternatives. For example, if they report setting up a bus bridge they must convey the actual capacity of that alternative which can only accommodate a minimal percentage of the displaced commuters.

The Grand Jury examined plans of major Bay Area transit agencies and their proposed responses to a localized emergency. While mutual aid agreements between transit agencies were in existence at the time of the fire, the specificity of these agreements was unclear.

The Grand Jury heard testimony that information to the public was disseminated from a number of different sources, leading to inconsistent messages. For example, there were varying reports about service being restored, ranging from anywhere between 3pm and 5pm. We learned that in the future, all transit emergency notifications will be disseminated through the 5-1-1 system. During **the BART fire incident, the Bay Area travelers' information system, which is www.511.org** or 5-1-1 by phone, was an essential resource for transit agencies to disperse information to commuters regarding the status of the situation and possible transit alternatives. In fact, on the day of the fire, it was reported that there was a 117% increase in the use of the 5-1-1 phone system. In addition, there was almost a 400% increase in the use of the **www.511.org** website, with approximately 84,000 user sessions.

While www.511.org is equipped to assist commuters in finding alternatives, the public should be prepared with a personal proactive plan to cope with a transit emergency. Station agents and bus drivers cannot provide individual trip planning advice. In an emergency, employers and workers need to have a plan in place to help avert commuter gridlock.

Regional Planning Efforts

After the 1989 Loma Prieta earthquake, the MTC addressed the need for regional coordination for transportation alternatives in the event of a system-wide emergency. **After Oakland's BART fire, the MTC established a working group** with representatives from regional transit agencies to review ways to minimize the impact of a temporary emergency transportation shutdown. They began working on an emergency playbook that considers three potential scenarios. One, the BART Transbay Tube is closed and the Bay Bridge is open; two, the Bay Bridge is closed and the BART Transbay Tube is open; three, BART is limited to a single track in the Transbay Tube and the Bay Bridge is closed. In each of these situations it is recommended that riders call 5-1-1 or visit the website www.511.org for updated transit information. It is further suggested that transit agencies improve signage to alert prospective passengers of a current emergency.

Transit agencies need to update mutual aid agreements dealing with short-term emergencies. In addressing problems that occurred during the June 2012 BART transit emergency, the MTC recognized the value of the universal use of the CLIPPER card in enhancing cooperation among transit agencies. Furthermore, it is hoped that employers would adopt flextime to help relieve traffic congestion during the peak commute hours.

CONCLUSION

The Grand Jury concludes that BART and AC Transit worked cooperatively with their limited resources during the Transbay Tube closure, and the Grand Jury investigation revealed that both agencies did the best they could under the circumstances. However, the Grand Jury found that improvements could be made in communicating updates on the status of emergencies to the public. In the future, notifications to the public will be disseminated from a single source to avoid confusion. That source will be www.511.org or 5-1-1 by phone. The Grand Jury suggests that BART, AC Transit, and other transit agencies continue to work closely with the MTC to coordinate responses and to create a public relations campaign to educate commuters about alternate solutions during times of transit emergencies.

In the event of another Transbay Tube closure, regardless of what mutual aid is available, it is impossible to seamlessly transport 40,000 displaced peak hour commuters across the bay. Both commuters and transit agencies need to take actions to address the impact of short-term emergencies on the transportation system. It is advisable for employers and workers to have alternate emergency plans in place to avoid gridlock; for example, allowing for flex hours, telecommuting, and planning alternate routes to work. In this crowded urban area, interruption in one of the major commuter arteries – in this case, the BART Transbay Tube – will necessarily impact travelers. Other transit agencies and advance planning can only ease, but not replace, the lost commuter service.

FINDINGS & RECOMMENDATIONS

None

RESPONSES REQUIRED

None

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OAKLAND UNIFIED SCHOOL DISTRICT CHALLENGES

INTRODUCTION

For many years, the Oakland Unified School District (OUSD) has been faced with seemingly insurmountable hurdles preventing it from making significant gains in student achievement. High teacher turnover within OUSD affects continuity and stability for students. There now appears to be a real unified effort by district leadership to build better schools. The district has developed a five-year Community School Strategic Site Plan, a multi-pronged effort to help address some of the challenges OUSD is facing. This plan is highlighted on the OUSD website and on *thrivingstudents.org*. **Many of the district's proposals have been implemented, while others have been met with criticism and come into conflict with existing labor agreements. One of the goals of the plan is to amend the district's current teacher assignment policy. The Grand Jury decided to examine the OUSD's initiatives surrounding staffing reform, teacher assignment procedures, and teacher evaluations.**

BACKGROUND AND INVESTIGATION

During our investigation, the Grand Jury met with current and former school administrators, teachers, union officials, human resource employees, principals, a member of the school board, and education experts. We also reviewed school board meeting minutes and videos, and attended school board meetings. Additionally, we examined numerous OUSD documents relating to teacher transfer policies and evaluation procedures, along with similar data from other school districts throughout the country.

The Oakland Unified School District operates 84 schools and serves 37,000 students with an annual budget of \$520 million for fiscal year 2012-2013, down from \$610 million the previous year. Student enrollment has steadily declined by

nearly 19,000 over the past decade, which impacts state funding that is based on average daily attendance. The district believes that annual budget deficits will continue unless new funding sources appear or the district reduces the number of schools they operate.

Financial problems have compounded as a result of the movement towards smaller schools over the past decade, which was intended to give high-risk students extra attention and a sense of community. The academic outcomes of the smaller schools have been mixed at best. With smaller schools, the district must employ significantly more teachers. While smaller class sizes may sound enticing, they come at a huge price. The district operates at a higher staffing level than other school districts within Alameda County, and as a result, OUSD teachers are paid dramatically less than teachers in surrounding districts. Data from 2012 shows that OUSD had 19 pupils per teacher while the county average was 22.7 pupils per teacher (Source: Ed-data). The Grand Jury learned that if OUSD adjusted its ratio to be consistent with county averages, they would save approximately \$16 million per year in salaries and associated costs.

During the 2011-2012 school year, the average teacher salary within the Oakland Unified School District was approximately \$54,000. The average public school teacher salary throughout the county was over \$68,000 (Source: Ed-data). It is not difficult to understand why OUSD has very poor retention among its **teachers. Approximately 13% of Oakland's teachers leave the district each year,** which is about twice the state average, and 70% leave within the first five years.

OUSD Teacher Assignment Initiatives

Complicating OUSD's administrative efforts to improve schools are the current policies controlling how open teaching positions are filled. On-going cuts, school closures, and declining enrollment have left the district with a large number of **unassigned teachers, referred to as OUSD's consolidated teacher pool. Current** labor rules require that any classroom opening within the district must be offered first to the most senior, subject-qualified teacher from the consolidated teacher

pool. Because seniority takes precedence, the receiving site principal must accept the placement of that particular teacher. The current staffing rules disregard quality or fit. School administrators have the responsibility to make improvements but often lack the authority to choose staff or ensure that newly **assigned teachers agree with the school's plans and goals.**

Current regulations create a situation where the most senior teachers often choose to move to open positions in favored schools (i.e., desirable neighborhoods, more manageable teaching challenges, less truancy, and fewer disciplinary issues). This leaves the less desirable schools with the loss of experienced teachers and little consistency or continuity resulting in morale issues for staff, students, and parents.

OUSD Administrative Initiatives

In June 2010, OUSD's superintendent invited the community to work with the school district to create a five-year strategic plan with the goal of providing high quality schools for every neighborhood in the district. As a result, OUSD proposed two innovative teacher assignment programs: the Mutual Matching program and the Teacher on Special Assignment (TSA) program.

Mutual Matching

Mutual Matching was intended to change the way teacher vacancies were filled. The proposal was modeled after a program underway in the state of Colorado. If an OUSD teacher wished to transfer to another school with an opening, the proposal required interviews between the receiving school and the teacher. A teacher transfer to a new school site would be achieved through a mutual match or consent of both the teacher and the receiving school site. The Oakland Education Association (OEA), the labor organization representing OUSD teachers, rejected this proposal as it went against their core belief that seniority

should prevail in teacher placement. Due to conflict with the labor agreement, Mutual Matching was never implemented.

The administration then proposed an alternative compromise to Mutual Matching that was not in conflict with current labor policies. The solution they offered was called Advisory Matching. While the principal would have the opportunity to provide input regarding suitability of an eligible teacher, the transfer would ultimately be determined by the teacher with the most seniority.

Teachers on Special Assignment

Advisory Matching did not provide OUSD administrators with sufficient control over teacher **placements. As a result, the district utilized “Teachers on Special Assignment” (TSA), an existing OEA contract provision for teacher selection.** OUSD identified three high-needs schools - Castlemont, Fremont, and McClymonds. All teaching assignments at these high schools for the 2012-2013 school year were designated as TSA positions. Any teacher who wanted to teach, or continue teaching, at one of these schools was required to submit a TSA application. These positions were filled through a process other than by seniority, as allowed by the labor contract. Teachers at these schools work additional time with additional pay, which gives them more time to spend with their students and in planning with their colleagues. TSA positions are assigned for one school year at a time.

Mutual Matching, Advisory Matching and Teacher on Special Assignment **illustrate the district’s attempt to reduce teacher turnover. The administration** faced significant opposition to these proposals from the labor organization representing teachers. Conflict like this was consistent with the on-going problems the district has historically encountered in negotiating with OEA.

Labor Relations

OUSD has operated without a labor agreement since 2008 when their previous labor agreement expired. Relationships between OEA and the district have been strained for many years. The inability of both sides to reach agreement led the district to impose a contract on teachers in 2010. The Grand Jury believes a lack of a negotiated contract is unacceptable. Fortunately, discussions have finally begun toward reaching a new agreement and both sides show signs of cooperation.

Teacher Evaluations

Failure to update labor agreements have led to consequences that go well beyond teacher pay and transfer policies. OUSD has an established system of employee evaluations that are described in depth within its labor agreement with teachers. The Grand Jury learned that stakeholders from all sides are dissatisfied with this current evaluation process that has not been comprehensively updated in many years. All would agree that this process, which is described in the 60-page “Oakland Unified School District Evaluation Handbook,” is extremely cumbersome and ineffective. The handbook states, in part, the following:

“Tenured employees shall be evaluated at least every two years. A random method of selection shall be used to determine the evaluatees [sic] for odd and even years. Probationary employees shall be evaluated annually except for first year employees who shall be evaluated twice a year. Each year, the human resources division shall distribute to the sites a list of employees at the site who must be scheduled for evaluation that year. However, this does not preclude informal evaluation/observation of tenured employees throughout the year. In fact, constructive feedback is encouraged for all employees throughout the year to improve the quality of the educational program.”

Completing evaluations is an integral component of the principal's job. Budget constraints and staffing reductions have affected some principals' abilities to complete evaluations. As a result, principals are not held accountable when evaluations are not completed. The Grand Jury learned that there is a perception that evaluations are primarily used when laying the groundwork for dismissing poor performing teachers.

Furthermore, the Grand Jury learned that OUSD currently does not have a centralized database to collect and manage teacher evaluations and other personnel information. **To help with teachers' professional development, there is a need to track evaluations and report by site the status of each teacher's performance.**

The Grand Jury believes that the goal of a teacher evaluation system is to help teachers identify strengths and weaknesses, highlight areas for improvement, and allow the district to track performance and maintain accurate records.

The Grand Jury heard testimony from a former OUSD principal that if any part of the evaluation process was left out or not completed in a timely manner, the union could file a grievance based on the procedure not having been followed. The focus seemed to emphasize process rather than the evaluation itself.

This problem of ineffective teacher evaluations is not unique to OUSD. The Grand Jury learned that school districts nationwide are introducing new ways to evaluate teachers emphasizing the importance of professional reviews including multiple measures of performance.

OUSD currently has a task force composed of teacher representatives, parents, and students charged with improving teacher effectiveness, performance, and evaluations. It is a work in progress with the goal to produce an effective evaluation system and a framework to negotiate with OEA.

CONCLUSION

The Grand Jury found that the Oakland Unified School District has many problems including high teacher turnover, low teacher pay, teacher assignment issues, an ineffective and cumbersome teacher evaluation system, contractual issues, and a history of a strained relationship with the Oakland Education Association. **These issues coupled with the district's financial difficulties are** challenges that district leaders have begun to address. While there appears to be true progress in rebuilding the relationship between the Oakland Unified School District administrators and the Oakland Education Association, they have yet to sign a new contract. Because of a lack of agreement, there can be no immediate improvement in the teacher evaluation process or resolution to the controversies surrounding teacher transfer policies.

FINDINGS

Finding 13-16:

The Oakland Unified School District's lack of a labor contract with the Oakland Education Association has impeded efforts to improve its outdated and ineffective teacher evaluation system.

Finding 13-17:

The Oakland Unified School District's current teacher transfer policy, as defined by the current labor contract, has contributed to an imbalance in the district, with senior teachers choosing to move to more desirable schools. This leaves the administration with little control over assigning the most experienced teachers where student need is the greatest.

Finding 13-18:

OUSD does not have a centralized database with which to store and track its teacher evaluations and other personnel information. This results in the inability of the district to track teacher performance, aid in teacher development, and manage teacher assignments and resources at the district level.

RECOMMENDATIONS

Recommendation 13-16:

The Oakland Unified School District must immediately work to resolve the expired labor contract issues.

Recommendation 13-17:

Oakland Unified School District must work collaboratively with the Oakland Education Association on a system for teacher assignments that is not based solely on seniority.

Recommendation 13-18:

The Oakland Unified School District must redesign and streamline its evaluation process in conjunction with the Oakland Education Association.

Recommendation 13-19:

The Oakland Unified School District must conduct regular performance evaluations for every teacher, with emphasis on offering support for teachers to become more successful.

Recommendation 13-20:

The Oakland Unified School District must provide principals with the resources and time to complete teacher evaluations, and hold principals accountable for completing these tasks.

Recommendation 13-21:

The Oakland Unified School District must invest in a human capital database to track teacher status and evaluations, making the information readily accessible to administrators.

Recommendation 13-22:

The Oakland Unified School District must work to bring the teacher-student ratio in line with the county-wide teacher-student ratio, which would allow more money for teacher support, salaries, and training.

RESPONSES REQUIRED

Responding Agencies - Please see page 13 for instructions

Board of Education,
Oakland Unified School District

Findings 13-16 through 13-18
Recommendations 13-16 through 13-22

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ALAMEDA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

INTRODUCTION

The downturn of financial markets since 2007 has drawn national attention to the long-term viability of pension funds. Public pension systems are of universal concern because of the generosity of existing benefits, the cost of funding them, and how well the plans are managed. Recognizing that no recent Alameda County Grand Jury has reviewed the administration of the **Alameda County Employees' Retirement Association (ACERA)**, the 2012-2013 Grand Jury embarked on a review that focused on administrative costs.

The Grand Jury found that while administrative practices for ACERA have improved since the hiring of a new CEO, high administrative costs remain a concern. The Grand Jury found that ACERA maintains a larger staff than other similarly sized systems in order to administer its program. The Grand Jury believes that identifying and implementing efficiencies in administrative expenses is important. Reductions in the cost of administration would ultimately translate into savings for Alameda County taxpayers.

BACKGROUND

ACERA was established in 1947 as a quasi-independent agency of Alameda County. ACERA serves seven county government employers that collectively **share the risks and costs, including benefits costs, of supporting ACERA's defined benefit retirement plan**. The seven participating employers are: the County of Alameda, Alameda County Medical Center, Alameda County Office of Education, First 5 Alameda County, Housing Authority of the County of Alameda, Livermore Area Recreation and Park District, and the Superior Court of California for the County of Alameda. It currently provides members with retirement pensions,

and disability and death benefits. In addition, ACERA administers health, dental, and vision plans for retirees. This is an uncommon practice as usually these **benefits are administered by the retirees' former employers.**

ACERA is governed by an 11-member Board of Retirement that is comprised of nine trustees and two alternates. Four are appointed by the Alameda County Board of Supervisors, six are elected by the ACERA membership (current employees and retirees), and the Alameda County Treasurer is an ex-officio member. The trustees of the board also have the responsibility for hiring a CEO **who manages ACERA's staff of approximately 100 employees.**

ACERA's board is responsible for establishing policies governing the administration of the retirement plan and overseeing the investments of the **system's** \$5.6 billion in assets. The investments are managed by professional investment managers. **ACERA's 2013 Approved Expense Budget of \$50.3 million** is comprised of approximately \$18.4 million in administrative expenses and approximately \$31.8 million in outside investment expenses. **ACERA's current** membership is approximately 20,000 of which about 8,000 are receiving retirement benefits. Its member employers and employees contribute approximately \$250 million annually to cover expenses and fund retirement benefits.

In conducting our investigation, the Grand Jury reviewed ACERA's budgets and internal audits for the past several years, ACERA's 5-year business plan, a statewide study on the health of public pension plans, and financial reports for several other California counties' pension plans. We met with pension reform experts, ACERA executives, board members, and several Alameda County elected officials and executives.

INVESTIGATION

For reporting purposes, public pension systems separate operating costs into administrative expenses and investment expenses. Administrative expenses include the costs of internal departments of the organization, while investment expenses cover outside fees and costs of investing and managing the pension fund accounts (portfolio management investment expenses).

Administrative Expenses

The operating costs of the ACERA retirement system are reported as administrative expenses. These include staffing, professional service expenses, communications, depreciation, insurance, audit fees, and other such expenses. California law limits the amount that public pension systems can spend on most administrative expenses to 0.21% of the pension fund liability (Actuarial Accrued Liability). Some expenses, including actuarial, legal, and technological expenses, are excluded from the statutory limit, as are outside investment expenses.

Staffing costs are a major component of ACERA's administrative expenses. The Grand Jury heard testimony that these annual costs are several million dollars more than those of counties with similarly sized plans. In order to confirm this information, the Grand Jury compared the 2011 Comprehensive Annual Financial Reports (CAFR) for Alameda, Contra Costa and Sacramento counties, which are the most recently published reports available. The 2011 ACERA staffing expenses reported in the CAFR totaled \$8.468 million. Excluding approximate staff expenses for administering health benefits, which are not administered by other county retirement systems, would put ACERA's reported staff expenses at about \$7.7 million, compared with Contra Costa's \$4.4 million, and Sacramento County's \$3.5 million.

The staffing costs reported in the administrative expense section of the CAFR do not paint the full picture regarding staffing costs. As stated previously, state law

allows these pension systems to separately report certain costs. ACERA reported \$7.7 million in staffing costs in the statutory limit section of the CAFR. In fact, ACERA budgeted \$12.3 million for total staffing costs in 2011, a large portion of which is included in the non-statutory section of the financial report. Staffing costs within the 2013 operating budget have risen to \$12.7 million.

ACERA's staff size has grown from 12 in 1996 to nearly 100 in 2013. The Grand Jury recognizes that **ACERA's membership has grown significantly over the** years, and the complexity of managing investments has required increased staffing. However, the Grand Jury questions why staffing has increased over eight-fold, currently including over 35 employees in the benefits department, over 17 in fiscal services, 11 employees in investments, 14 in operations, and 8 in the legal department.

Although ACERA remains within the state mandated statutory administrative cost limit, the Grand Jury learned that other counties with similar-sized pension funds operate well below the legally allowed limit. The Grand Jury finds that ACERA would best serve taxpayers by reducing its administrative costs. Based on the costs of other plans we studied, this seems possible. (*See FUND COMPARISONS table, next page*).

Benefits Department

ACERA spends approximately \$5 million annually for a benefits department, which provides customer service with benefit information and calculations of payments for all active, deferred, and retired members. An examination of **ACERA's benefits department raised questions for the Grand Jury.** The department staff includes an assistant CEO, a retirement benefits manager, four assistant retirement benefits managers, and 31 retirement specialists.

The Grand Jury heard testimony that staff handles approximately 2,000 phone calls per month. In 2012, ACERA enhanced its website in order to address many

of its members’ questions on a 24/7 basis – a solution that seems to have no impact on the size and cost of the benefits department in the 2013 budget.

The Grand Jury questions why this department requires so many managers and so many employees. The Grand Jury heard testimony that much of the cost of **the benefits department is driven by the retirement board’s commitment to providing an exceptionally high level of customer service to its members.**

FUND COMPARISONS

County	Financial Report Period Ending Date	Net Assets	Actuarial Accrued Liability (AAL)	Total Admin. Expenses	Admin. Expenses subject to Statutory Limit*	Percent of AAL	Admin. Expenses Not Subject to Statutory Limit*	Investment Expenses
Alameda	12/31/2011	\$5.1 billion	\$7.1 billion	\$13.8 Million	\$10.1 million	0.1423%	\$3.6 million	\$29.2 million
Contra Costa	12/31/2011	\$5.1 billion	\$6.7 billion	\$6.3 Million		0.0940%		\$30.7 million
Orange	12/30/2011	\$8.6 billion	\$13.5 billion	\$12.8 million	\$10.4 million	0.0772%	\$2.4 million	\$30.7 million
Sacramento	06/30/2012	\$6.1 billion	\$7.8 billion	\$6.3 Million		0.0808%		\$29.3 million
San Bernardino	06/30/2012	\$6.2 billion	\$8.6 billion	\$8.0 million	\$6.2 million	0.0930%	\$1.8 million	\$80.0 million
Fresno	06/30/2012	\$3.1 billion	\$4.2 billion	\$3.6 million		0.0857%		\$15.1 million
Santa Barbara	06/30/2012	\$2.0 billion	\$2.9 billion	\$4.0 Million	\$3.5 million	0.1207%	\$0.5 million	\$6.1 million

* Shown if indicated in Financial Report

Human Resources (HR)

The HR department is responsible for developing and organizing personnel management, training programs, and policies and procedures within ACERA. They also facilitate and coordinate with department managers regarding performance evaluations, aid in the development of job classification, compensation guidelines, and provide consultation to department managers within ACERA relating to employee disciplinary action.

ACERA has a staff of three full-time employees in HR at an annual cost of approximately \$500,000. The Grand Jury heard testimony that until recently employee training was insufficient and performance evaluations were not conducted on a consistent basis. For example, there had been no performance evaluations of senior managers during the tenure of the two previous CEOs. We also learned that a lack of policies and procedures helped to contribute to poor business practices, lapses in ethical judgment, and a number of very costly personnel problems. The Grand Jury learned, for example, **that none of ACERA's top managers other than the CEO are "at will" employees. This was a short-sighted decision made by a previous CEO, as it prevents the CEO from replacing top managers at will.** Also, for several recent years, ACERA has spent a significant amount of money on temporary staff rather than filling open positions. In addition, a number of long-term staff absences were also very costly to the organization.

In 2007, HR had a goal of developing a staffing plan that could have addressed and potentially prevented many of the problems noted above. As of the 2013 budget, this staffing plan has not been completed.

The Grand Jury questions whether many of these issues could have been avoided had there been strong leadership, healthy staff development, and effective policies and procedures in place to ensure accountability. While past leadership should have been held responsible for these basic failures, the human resources

department itself has a role in setting up systems to regulate and support the growth and well being of ACERA's employees.

Investment Expenses

Investment expenses are the cost of utilizing outside investment firms and the cost of managing funds. The hiring of outside experts is common practice for retirement systems. ACERA hires outside managers to oversee their investments. **ACERA's internal investment department is responsible for hiring these outside managers and holding them accountable for their performance.**

INVESTMENT FUND COMPARISONS

County	Financial Report Period Ending Date	Net Assets	Investment Fees	Investment Fees % of Net Assets	Healthcare Benefits Payments*	# Retired Employees	Covered Employees
Alameda	12/31/2011	\$5.1 billion	\$29.2 million	0.57%	\$31.6 million	7,903	12,572
Contra Costa	12/31/2011	\$5.1 billion	\$30.7 million	0.60%		8,085	10,843
Orange	12/31/11	\$8.6 billion	\$30.7 million	0.36%		13,289	25,827
Sacramento	06/30/2012	\$6.1 billion	\$29.3 million	0.48%		9,239	15,006
San Bernardino	6/30/12	\$6.2 billion	\$80.0 million	1.29%		9,736	23,088
Fresno	6/30/12	\$3.1 billion	\$15.1 million	0.49%		6,148	8,059
Santa Barbara	6/30/2012	\$2.0 billion	\$6.1 million	0.31%	\$8.2 million	3,507	4,072

**Shown if indicated in Financial Report*

Alameda, Contra Costa, and Sacramento counties have pension plans with very similar fund balances. The annual investment fees for these three funds are almost identical.

Board of Retirement

The Grand Jury examined the role and responsibilities of ACERA's 11-member board of retirement. As a member of the California State Association of County Retirement Systems (SACRS), ACERA board members receive annual training in finance and governance. ACERA is in compliance with policies and regulations set forth by SACRS which govern the actions of its member retirement systems.

The Grand Jury heard testimony that members of ACERA's board have both operational and financial expertise and have demonstrated thorough due diligence with regard to their fiduciary responsibilities. However, the Grand Jury heard other testimony about the former management of ACERA; namely, a lack of day-to-day leadership from the top, lapses in the use of best practices within the agency, and expensive failures in human resource decisions that should have been addressed by the board.

There were board oversight problems and failures by a key ACERA staff member **prior to the start of the current CEO's administration. In 2011, the interim CEO** provided merit pay increases for several senior staff including a pay increase for herself. This self-dealing was not approved by the board in its 2012 budget and was contrary to the instructions provided by the board that there should be no budget changes until the new CEO arrived. This was not discovered by the board until staff and new leadership were preparing the budget for the following year. A lapse of this magnitude is an example of the fragmented relationship and poor communication that existed between the board and previous senior leadership at ACERA.

The Grand Jury questions whether long-term board members possess the ability to step forward and demand change when the system is broken. They appeared to

have neglected to identify the long-standing institutional failures in management. The board did not remove the prior CEO. Instead, they hired a new CEO after the previous one retired, being simply reactive rather than proactive. Fortunately, the new CEO is willing to take on the task of addressing these failures.

ACERA's New CEO

As of July 2011, under the administration of the new CEO, changes are finally taking place with regard to the efficient management of ACERA. The Grand Jury heard testimony from multiple sources that the new CEO has implemented many operational improvements, such as:

- Hiring a new fiscal services team
- Formalizing budget polices (began use of baseline budgets)
- Requiring regular performance evaluations of all staff to hold them accountable
- Establishing a new project management methodology ensuring that goals are tracked
- Prioritizing staff training and team building with emphasis on ethical and fiscal issues
- Linking the five year strategic plan with the budget
- Increasing transparency when communicating with the board
- Strengthening the internal audit process

Additionally, the Grand Jury understands that ACERA, in the coming months, will initiate desktop audits of workloads within the benefits department, and in the long term, plans consolidation of duplicative databases. We believe that identifying and executing such initiatives is essential to continued improvement in the effective management of the organization. The Grand Jury believes the level of professionalism that the CEO is bringing to ACERA is taking the organization in a positive direction.

CONCLUSION

The Grand Jury focused its inquiry on the administrative operations of ACERA. Although the Grand Jury acknowledges that ACERA has a history of successful investment strategies and returns for its members, we confirmed several areas that need improvement in terms of administrative oversight and efficiencies. The Grand Jury believes that a lack of institutional transparency in the past prevented **ACERA's board from recognizing the true depth of disturbing internal problems** that existed. The Grand Jury commends the new CEO for implementing significant reforms intended to improve effectiveness of operations. While this disciplined approach has led to better administrative practices, spending \$50.3 million a year to operate the organization warrants on-going scrutiny, especially since other similarly sized county pensions systems in California spend considerably less.

FINDINGS & RECOMMENDATIONS

None

RESPONSES REQUIRED

None

REVIEW OF THE RESPONSES TO THE 2011-2012 GRAND JURY REPORT

On June 25, 2012, the 2011-2012 Grand Jury publicly released its final report. The report was comprised of nine separate investigations, culminating in 31 recommendations. By law, the responsible local agencies were required to respond to any findings and to each recommendation. Responses were due to the Presiding Judge within 90 days from the publication date of the report, pursuant to section 933(c) of the California Penal Code. Each responding agency then had up to six months to begin to implement any recommendations with which they agreed.

The recommendations, and the agencies' responses to them, are posted along with the full report on the Grand Jury's website at www.acgov.org/grandjury.

The Grand Jury thanks all agencies for their timely and thorough responses to the 2011-2012 report. Although some recommendations were not agreed with, most agencies did concur with the Grand Jury. While government agencies must balance their fiscal responsibilities to the taxpayer with pressing concerns for the welfare of its citizens, it is incumbent upon these agencies to continually strive to **use the public's money in the wisest, most prudent, and most responsible ways possible.**

As of the writing of this report, several county agencies were nearing the six-month deadline for implementing recommendations made by the Grand Jury. We strongly encourage future grand juries to continue to monitor responses and to follow up as necessary, up to and including additional investigations where needed.



*Rene C. Davidson Courthouse, 1225 Fallon Street, Oakland, California
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