

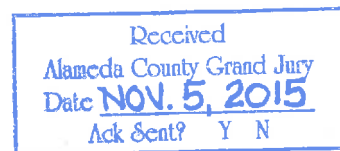


BOARD OF SUPERVISORS

SCOTT HAGGERTY
PRESIDENT
SUPERVISOR, FIRST DISTRICT

November 3, 2015

Honorable Winifred Y. Smith
Presiding Judge of the Superior Court
County of Alameda
1225 Fallon Street, Department One
Oakland, CA 94612



Subject: Alameda County Board of Supervisors' Response to the 2014-2015 Grand Jury Final Report

Dear Judge Smith:

Section 933 of the California Penal Code requires the Board of Supervisors to formally comment on Grand Jury findings and recommendations which pertain to matters under the control and authority of the Board.

In accordance with this statutory directive, I am hereby formally submitting the Alameda County Board of Supervisors' responses to the 2014-2015 Grand Jury Final Report addressing the following investigated areas: Alameda County Board of Supervisors Culture of Political Interference and Alameda Health System Governance and Oversight. The County's response was approved by the Board of Supervisors at its meeting of November 3, 2015.

Very truly yours,

Scott Haggerty, President
Board of Supervisors

SH/SSM:LL:ec/nr

Attachment

c: Other Members, Board of Supervisors
Susan S. Muranishi, County Administrator
George Phillips, Foreman, Alameda County Grand Jury
Robert L. Warren, Deputy District Attorney
Chad Finke, Interim Court Executive Officer

ALAMEDA COUNTY BOARD OF SUPERVISORS
MINUTE ORDER

The following action was taken by the Alameda County Board of Supervisors on 11/03/2015

Approved as Recommended Other

Unanimous Chan: Haggerty: Miley: Valle: Carson: -4

Vote Key: N=No; A=Abstain; X=Excused

Documents accompanying this matter:

Documents to be signed by Agency/Purchasing Agent:

File No. 29595

Item No. 42

Copies sent to:

Nerissa Riray

Special Notes:



I certify that the foregoing is a correct copy of a Minute Order adopted by the Board of Supervisors, Alameda County, State of California.

ATTEST:
Clerk of the Board
Board of Supervisors

By: *Quisha Campbell-Belton*
Deputy

COUNTY ADMINISTRATOR



SUSAN S. MURANISHI
COUNTY ADMINISTRATOR

October 28, 2015

Honorable Board of Supervisors
Administration Building
Oakland, CA 94612

Dear Board Members:

**SUBJECT: ALAMEDA COUNTY BOARD OF SUPERVISORS' RESPONSE TO THE 2014-2015
GRAND JURY FINAL REPORT**

RECOMMENDATIONS:

Accept and approve the Alameda County Board of Supervisors' Response to the 2014-15 Grand Jury Final Report; and

Authorize the Board President to sign a letter on behalf of the Board of Supervisors formally transmitting the Alameda County Board of Supervisors' Response to the Honorable Winifred Y. Smith, Presiding Judge, Superior Court, County of Alameda.

DISCUSSION:

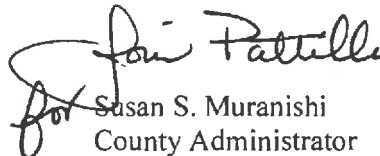
Section 933 of the California Penal Code requires the Board of Supervisors to formally comment on Grand Jury findings and recommendations which pertain to matters under the control and authority of the Board.

The 2014-2015 Grand Jury Final Report Response addresses the following investigated areas: Alameda County Board of Supervisors' Culture of Political Interference and Alameda Health System Governance and Oversight.

FINANCING:

There is no financial impact associated with approval of the recommendations.

Very truly yours,


for Susan S. Muranishi
County Administrator

SSM:DZ:LL:sh/nr

Attachments

c: Delvecchio S. Finley, Chief Executive Officer, Alameda Health System
Alex Briscoe, Director, Alameda County Health Care Services Agency
Donna Ziegler, County Counsel



**ALAMEDA COUNTY BOARD OF SUPERVISORS' RESPONSE
TO THE
2014-2015 ALAMEDA COUNTY GRAND JURY REPORT
FINAL REPORT**

**PREPARED FOR THE ALAMEDA COUNTY BOARD OF SUPERVISORS BY:
OFFICE OF THE COUNTY ADMINISTRATOR
OFFICE OF THE COUNTY COUNSEL**

**APPROVED BY :
BOARD OF SUPERVISORS
NOVEMBER 3, 2015**

Alameda County Board of Supervisors' Culture of Political Interference

Finding 15-1: There was unethical and persistent interference by a supervisor's chief of staff, which compromised the county's integrity and improperly influenced staff decisions regarding land use, resulting in wasted county resources.

Response: The Board of Supervisors disagrees with the finding. The approved job description for the Supervisor's Assistant/Chief of Staff includes the following under "Examples of Duties":

- Deals with questions from citizens and complaints relating to county services in a Supervisorial District. Receives and reviews correspondence, evaluates citizens' suggestions and complaints, and responds.
- Arranges for and conducts meetings with constituents and County staff in pursuit of duties of Supervisor.
- Responds to requests of constituents for assistance involving all the various services provided by the County of Alameda, including but not limited to, working with County staff in the provision of said services to constituents as required.

The actions of the Chief of Staff ("COS") fall within the above categories. The Grand Jury acknowledges that it did not investigate whether there was a relationship between the COS and any constituent that would cause the COS to be biased in the performance of such duties. The Board of Supervisors lacks any evidence that such bias existed.

The County will administer training to Board staff regarding the importance of: (1) avoiding conflicts of interest; (2) maintaining confidentiality/Brown Act compliance; and (3) avoiding the appearance of impropriety.

Finding 15-2: Multiple department heads and county staff were unable to perform their duties in a fair and consistent manner due to political interference.

Response: The Board of Supervisors disagrees with the finding. Board staff involvement is sanctioned by the approved Supervisor's Assistant/COS job description. See, response to Finding 15-1, above. Such involvement is not "political interference" when it falls within sanctioned job duties.

Further, as the elected representative of the governing body within a district, constituents look to the Supervisor to hold County departments accountable for the administration of programs and services consistent with County policy, practice and governing laws. It is acceptable for a Supervisor's office to facilitate a fair resolution of complaints if possible. But, the responsibility to make departmental decisions rests with the Department Head and is subject to the authority of the full Board, not any one Supervisor. Department heads and staff should feel enabled to

make decisions using their best judgment; they are not beholden to any one Supervisor's office or staff member.

All members of the Board of Supervisors completed anti-bullying/abusive conduct training on October 20, 2015. Additionally, the County will administer training to Board staff and Department Heads regarding: (1) the relative roles of each; (2) avoiding conflicts of interest; and (3) avoiding the appearance of impropriety.

Finding 15-3: The Alameda County Board of Supervisors participates in hiring and reviewing department heads, which creates a culture where political interference is allowed to permeate the day-to-day administration of county business.

Response: The Board of Supervisors disagrees with the finding. The Board of Supervisors appoints the non-elected department heads.¹ This county governance structure is a prevalent model. The National Association of Counties (NACo) reported in June 2015 that approximately one-third of counties use a structure where department heads are appointed by the Board of Supervisors and not the County Administrator. The other two-thirds are a mixture of models. The Alameda County model may be more prevalent in larger counties, for example, Los Angeles County, the largest county in the country (by population), is proposing to return to this model after switching away from it in 2007. Alameda County is one of the top 25 largest counties in the country.

The Board of Supervisors does not agree that the concerns raised by the Grand Jury are uniquely a product of this model, that this model of governance is flawed inherently, or that the model proposed resolves the Grand Jury's concerns.

Recommendation 15-1:

The Alameda County Board of Supervisors must investigate the unethical behavior reported by the Grand Jury and take appropriate measures.

Response: The recommendation has been implemented inasmuch as the County has collected additional documentation from the COS and reviewed additional information regarding the relationship between the COS and constituents. None of the information revealed that: (1) there was undue influence levied by constituents; (2) that the COS received more favorable loan terms than those available to the public at large; or (3) that the COS received anything of value that might improperly influence his actions.

The COS is a County employee and personnel matters regarding a County employee are confidential. The Supervisor of the District is the appointing authority for the COS and has the responsibility to address performance. The performance concerns raised--including matters of treating departmental staff with deference and respect while recognizing their need to perform their job duties with a level of independence--have been addressed with the COS:

¹ But not the directors of Environmental Health and Public Health as those departments are under the Health Care Services Agency umbrella.

Additionally, the County will administer training to Board staff regarding: (1) the relative roles of Board staff versus departmental staff; (2) the importance of avoiding conflicts of interest; and (3) avoiding the appearance of impropriety.

Recommendation 15-2:

The Alameda County Board of Supervisors must adopt a code of ethics policy covering all county employees, similar to the policy used by the General Services Agency, but revised to include a confidential reporting mechanism covering observations of unethical conduct.

Response: The Board of Supervisors will consider drafting and adopting a code of ethics policy applicable to County employees that is similar to the General Services Agency's policy. The Board notes that adequate safeguards currently are in place because County employees are subject to various conflict of interest laws and policies that address this need. These include: County Charter Section 66; County Administrative Code Section 2.02.170; the California Political Reform Act (California Government Code Sections 81000 *et seq.*); California Government Code Sections 1090 *et seq.* regarding conflicts of interest in government contracting; and the extensive conflict of interest regulations promulgated by the California Fair Political Practices Commission ("FPPC"). Many employees are subject to the FPPC's Form 700 reporting requirement that requires disclosure of specified business interests and promotes transparency in business dealings. County elected officials are required to complete AB 1234 Ethics Training every two years. (County Department Heads have been invited to attend this training as well.)

Additionally, Labor Code Section 1102.5 protects employees from reprisal in addition to County Administrative Code Chapter 3.52, and Government Code Sections 53296 *et seq.* These laws afford County employees protections as "whistleblowers".

The Board of Supervisors is committed to avoiding conflicts of interest and maintaining high ethical standards. The County will provide additional training for Board staff and department heads similar to the ethics training mandated for elected officials by AB 1234.

Recommendation 15-3:

The Alameda County Board of Supervisors must adopt an anti-interference policy to ensure elected officials and their staffs do not inappropriately influence the administrative responsibilities of county staff.

Response: See responses, to Findings 15-1 and 15-2, above. For the reasons explained above, this recommendation will not be implemented and is not warranted. Among other duties, a Board staff member:

- Deals with questions from citizens and complaints relating to county services in a Supervisorial District. Receives and reviews correspondence, evaluates citizens' suggestions and complaints, and responds.
- Arranges for and conducts meetings with constituents and County staff in pursuit of duties of Supervisor.
- Responds to requests of constituents for assistance involving all the various services provided by the County of Alameda, including but not limited to, working with County staff in the provision of said services to constituents as required.

Adopting the policy recommended by the Grand Jury would eliminate the duties contemplated as part of the long-standing job description. The Board of Supervisors is committed to avoiding conflicts of interest and will mandate training for Board staff regarding: (1) the relative roles of Board staff versus departmental staff; (2) the importance of avoiding conflicts of interest; and (3) avoiding the appearance of impropriety.

Recommendation 15-4:

Training for elected officials and county staff must be conducted under the new anti-interference and ethics policies, including state whistle-blower statutes.

Response: This recommendation is not applicable based upon the responses to 15-2 and 15-3, above. However, the Board of Supervisors takes seriously the concerns raised by the Grand Jury. The County will administer training to Board staff regarding: (1) the relative roles of Board staff versus departmental staff; (2) the importance of avoiding conflicts of interest; and (3) avoiding the appearance of impropriety. Elected officials will continue to receive ethics training as mandated by AB 1234, and Board staff will also receive such training.

Recommendation 15-5:

The Alameda County Board of Supervisors must take steps to have the county charter amended to relinquish its control of hiring of non-elected department heads to the county administrator.

Response: The recommendation will not be implemented because it is not warranted. The Board of Supervisors appoints the non-elected department heads. This county governance structure is a prevalent model. The National Association of Counties (NACo) reported in June 2015 that approximately one-third of counties use a structure where department heads are appointed by the Board of Supervisors and not the County Administrator. The other two-thirds are a mixture of models. The Alameda County model may be more prevalent in larger counties, for example, Los Angeles County, the largest county in the country (by population), is proposing to return to this model after switching away from it in 2007. Alameda County is one of the top 25 largest counties in the country.

The Board of Supervisors does not agree that the concerns raised by the Grand Jury are uniquely a product of this model, that this model of governance is flawed inherently, or that the model proposed by the Grand Jury resolves the Grand Jury's concerns.

Alameda Health System Governance and Oversight

The 2014-2015 Alameda County Grand Jury Report was published on June 30, 2015. The Final Report included a report titled *Alameda Health System Governance and Oversight* that requires responses from the Alameda County Board of Supervisors. California Penal Code Section 933.05 provides direction on the form and content of required responses to the Grand Jury.

Alameda County Grand Jury Findings and Responses

Finding 15-11: Effective oversight by the Alameda County Board of Supervisors health committee and joint board meetings between the Board of Supervisors and the Alameda Health System Board of Trustees, failed to bring to light the major financial issues that Alameda Health System was dealing with between July 1, 2013 and June 30, 2014. Coincidentally, in June 2014, the voters approved an extension of the Measure A sales tax benefiting Alameda Health System.

Response to Finding 15-11: The Alameda County Board of Supervisors (BOS) partially disagrees with the finding that the Health Committee and the joint meetings between the BOS and AHS Board of Trustees failed to identify the financial issues at Alameda Health System between July 2013 and June 2014. AHS presented a Budget and Finance Update during a Joint BOS – BOT meeting on May 13, 2014 that showed significant decreases in net operating income between Fiscal Year 2012-13 year-end actuals and Fiscal Year 2013-14 year-end projections. In February 2014 and June 2014, the BOS received requests from the BOT for additional financial expertise when considering appointments to vacant Trustee positions.

In addition to the internal challenges identified on Page 54 of the Grand Jury report, Governor Brown signed Assembly Bill 85 (Chapter 24, Statutes of 2013) into law on June 27, 2013. AB 85 provided a mechanism to redirect state health sales tax funding (commonly referred to as, 1991 Realignment) to fund social service programs. The state redirected funding for health care for the poor based on a formula and the belief many would receive health insurance on January 1, 2014 because of the Affordable Care Act. Though Alameda County has been highly successful at converting the uninsured to insured, the funding redirection, which began in early 2014, resulted in a loss of indigent health care funding of \$11 million in FY 2013-14 and \$42 million in FY2014-15. It is also important to recognize that the newly insured now have options on where they might receive care. The combined effect of such significant changes in federal and State health care policies and funding would have been difficult to identify prospectively or in real time.

Members of the Board of Supervisors have taken swift action since September 2014 to provide stronger oversight and guidance, resulting in a reduction in the line of credit balance from the Consolidated Treasury to \$133 million as of June 30, 2015. The Board of Supervisors approved a contract with Toyon Associates in November 2014 to provide an operational and financial assessment of Alameda Health System, make recommendations on

actions to increase the financial sustainability and develop monthly tracking metrics for the Board to monitor the progress of AHS. The balance is down from approximately \$188.2 million in December 2014 and below the \$150 million target established per the terms of the interim agreement on June 30, 2015.

Finding 15-14: Had open, transparent communications and proper oversight by both the Alameda Health System Board of Trustees and the Alameda County Board of Supervisors been in place from July 2013, the cash flow issues would have been controlled earlier and cost-restructuring targets achieved sooner, mitigating the impact of the current delay.

Response to Finding 15-14: The BOS partially disagrees. AHS may have controlled their cash flow issues earlier and potentially engaged in an earlier cost restructuring through open and transparent communication and oversight. However, many external forces beyond the authority of the BOS, as cited in the response to Finding 15-11, contributed to the cash flow issues and those external forces would have been required to assist in mitigating the impacts. The Board of Supervisors relied on financial and operational reports from AHS executives that now appear to have been incomplete.

Alameda County Grand Jury Recommendation and Response

Recommendation 15-12: The Alameda County Board of Supervisors must develop a closer working relationship with the Alameda Health System Board of Trustees and management by implementing the Board of Supervisors' recently proposed joint planning committee, comprised of two supervisors and two trustees, or a similar model.

Response to Recommendation 15-12: This recommendation has been implemented. The BOS has developed a closer working relationship with the AHS BOT and management. Since, September 2014, the BOS Health Committee has received monthly financial status reports and operational responses to the financial challenges from AHS executive officers. The interim agreement between the County and AHS requires the continuation of this monthly reporting as a prerequisite for ongoing liquidity assistance. AHS has complied with the reporting requirements since September 2014. In the past two months, an enhanced operational and financial report has been implemented. The enhanced report was jointly designed by county and AHS staff as is presented to the BOS Health Committee and the BOT.

A joint BOS - BOT meeting occurred on December 9, 2014 and meetings between members of the BOS Health Committee and members of the BOT continue on an ad hoc basis. The December 2014 agenda included discussions on the status of the Alameda Health System CEO Search process, an update on AHS operational performance and status of the Long-term Debt Restructuring agreement. Also on the joint agenda were discussions on mutual Board relations and the status of the Acute Care Tower Project. Future BOS-BOT meetings may take different forms to respond to relevant circumstances and address specific needs.