



***2014-2015
ALAMEDA COUNTY GRAND JURY
FINAL REPORT***

ALAMEDA COUNTY BOARD OF SUPERVISORS

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ALAMEDA COUNTY GRAND JURY

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Alameda County
Grand Jury

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June 30, 2015

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

Dear Judge Smith,

The members of 2014-2015 Alameda County Civil Grand Jury are pleased to present our final report to the Superior Court and the people of Alameda County.

The State of California authorizes county grand juries and charges them with investigating the workings and efficiencies of county and local governments. As with grand juries seated before, we hope future juries will follow up on the recommendations contained herein to ensure suitable responses and changes by those investigated agencies.

This year's Alameda County Grand Jury assembled a diverse group of the most intelligent, hard-working, principled people with whom it has ever been my honor to serve. Their relentless, diligent, and tireless pursuit of truth was inspirational, and I am grateful to each and every one of the members. The people of Alameda County can truly be proud of the work done on their behalf.

The examinations undertaken by this panel were staggering in their complexity and depth. The Grand Jury extends its appreciation to the over 70 witnesses, government officials, and subject matter experts who provided us with invaluable orientation, testimony, and evidence. We note that several issues appeared repeatedly in our investigations:

- failure of government and other public agencies to follow their own established policies and procedures, often to the detriment of their organization and with considerable loss of public transparency;
- our unique form of county governance invites both actual and perceived interference with the efficient operation of our county's responsibilities;
- the failure of both elected and appointed officials to exercise their supervisory and fiduciary responsibility, resulting in significant losses of public money and jeopardizing public confidence in a critical service provider; and

Hon. Winifred Y. Smith

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June 30, 2015

- the importance of electronic communication used by public agencies to operate in an efficient, cost-effective manner; but also its importance in allowing thorough public review and transparency of the public's business.

I certainly hope and encourage the public and the media to scrutinize the cases contained in this report in order to understand the issues the Grand Jury investigated and the conclusions arrived at as a result. It is imperative that the business of all government agencies be open and available for public scrutiny and comment. The work that the Alameda County Grand Jury does through its investigations is most effective if the public takes interest in the findings and recommendations we have provided and ensures that those changes are made.

The 19 citizens on the Grand Jury represent the millions of residents in Alameda County and work diligently to ensure that government agencies, public utilities, school districts, healthcare, and other special districts and elected officials use best practices and an open public process to make the best use of the dollars and resources invested in them by the citizens of this county.

Due to our heavy workload, there are some cases we are referring to the 2015-2016 Grand Jury for further scrutiny. They involve a public agency not following their policies and procedures for an open bid solicitation and the matter of collected franchise fees, which may appear to be a hidden tax on our citizenry.

The Grand Jury is extremely proud of what we have accomplished this past year and must note that the detail and thoroughness of our investigations would not have been possible without the guidance, tireless dedication, and support of Deputy District Attorney Robert Warren and Legal Assistant Cassie Barner. Their expertise and advice helped us understand the process and negotiate consensus among 19 diverse citizens. We extend our heartfelt appreciation for their efforts on our behalf.

My fellow jurors and I are honored to have served on this year's Grand Jury and we humbly thank the court for the opportunity to serve the citizens of Alameda County. Our time with the Grand Jury has made us better, more informed citizens, and we are deeply grateful for the experience. It is my sincere hope that our dedicated, thorough work will result in positive changes not only by those entities we investigated, but that it will also encourage citizen involvement and better management of all agencies with responsibility to the people of Alameda County.

Sincerely,



GEORGE PHILLIPS, Foreman

2014-2015 Alameda County Civil Grand Jury

2014-2015 ALAMEDA COUNTY CIVIL GRAND JURY MEMBER ROSTER



Juror	City
Steven Chan	Fremont
Joseph Connell	Castro Valley
Karen Cross	Oakland
Charles J. Feltman	Oakland
Mary W. Harper*	Oakland
Dorothy C. Henderson	San Leandro
Michael Henn*	Piedmont
Timothy R. Jones	Livermore
Janet K. Kassouf	Hayward
Mary E. MacDonald	Oakland
Tom McAlone	Oakland
Marsha Carpenter Peterson	Oakland
George Phillips*	Alameda
Nikki Pooshs**	Oakland
Patrick K. Preminger	Alameda
Gail A. Smith	San Leandro
Geraldine Tanimoto	San Leandro
Anthony Theophilos*	Piedmont
Tom Tuttle	Alameda

* Jurors held over for a 2nd term by Presiding Judge Winifred Y. Smith
 ** Resigned, March 18, 2015

**2014-2015 ALAMEDA COUNTY GRAND JURY
OFFICERS and LEGAL STAFF**

OFFICERS

FOREPERSON: George Phillips

FOREPERSON PRO TEM: Karen Cross

SECRETARY: Timothy R. Jones

SECRETARY PRO TEM: Gail A. Smith

SERGEANT AT ARMS: Janet K. Kassouf

SERGEANT AT ARMS PRO TEM: Charles J. Feltman



LEGAL ADVISORY STAFF

Robert L. Warren, Deputy District Attorney

Cassie Barner, Paralegal

2014-2015 ALAMEDA COUNTY CIVIL GRAND JURY COMMITTEE ASSIGNMENTS



GOVERNMENT

Tom McAlone - Chair

Joe Connell
Karen Cross
Michael Henn
Timothy R. Jones
Marsha Carpenter Peterson
Patrick K. Preminger
Anthony Theophilos
Tom Tuttle

LAW & JUSTICE

Anthony Theophilos - Chair

Charles J. Feltman
Dorothy C. Henderson
Michael Henn
Timothy R. Jones
Marsha Carpenter Peterson
Nikki Pooshs
Gail A. Smith
Geraldine Tanimoto

HEALTH & SOCIAL SERVICES

Geraldine Tanimoto - Chair

Steven Chan
Karen Cross
Charles J. Feltman
Mary W. Harper
Janet K. Kassouf
Mary E. MacDonald
Tom McAlone
Gail A. Smith

EDUCATION & ADMINISTRATION

Steven Chan - Chair

Joe Connell
Mary W. Harper
Dorothy C. Henderson
Janet K. Kassouf
Mary E. MacDonald
Nikki Pooshs
Patrick K. Preminger
Tom Tuttle

EDIT COMMITTEE

Tom Tuttle - Chair

Joe Connell
Mary W. Harper
Dorothy C. Henderson





2014-2015 ALAMEDA COUNTY CIVIL GRAND JURY

Standing, left to right:

Tom McAlone, Michael Henn, Mary W. Harper, Karen Cross (*Foreman Pro Tem*), Dorothy C. Henderson, Steven Chan, Marsha Carpenter Peterson, Timothy R. Jones (*Secretary*), George Phillips (*Foreman*), Tom Tuttle, Janet K. Kassouf (*Sergeant at Arms*), Anthony Theophilos, Charles J. Feltman (*Sergeant at Arms Pro Tem*), Joseph Connell, Geraldine Tanimoto, Patrick K. Preminger

Seated, left to right:

Mary E. MacDonald, Hon. Winifred Y. Smith (*Presiding Judge*), Gail A. Smith (*Secretary Pro Tem*)

Not Pictured:

Nikki Pooshs (*Resigned March 18, 2015*)

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



Honorable Winifred Y. Smith
January 1, 2014 – Present

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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 §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 §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 California Attorney General 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 at the end of 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 drawing. 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 57 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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ALAMEDA COUNTY BOARD OF SUPERVISORS

CULTURE OF POLITICAL INTERFERENCE

Executive Summary

The Grand Jury received a complaint that the chief of staff (COS) of a member of the Alameda County Board of Supervisors (BOS) was inappropriately pressuring county departments to influence administrative decisions on behalf of a favored constituent. The Grand **Jury's** investigation uncovered that such interference by county political operatives is not uncommon and undermines the integrity of the governing and administrative operations of the county. In one instance, interference ended up costing a county department nearly \$100,000 in legal fees and hundreds of extra staff hours to remedy the matter. In another, the COS of a supervisor pressured administrative staff regarding several different projects after receiving a personal home loan from a mortgage company run by the applicant of the projects, creating an appearance of impropriety. This behavior is unethical and fosters a public perception that back-room deals and political favoritism are commonplace within county government.

While the Grand Jury understands that elected officials must represent constituents and, at times, must inquire with administrative staff regarding the status of a project or to pass on grievances about agency conduct, the degree of interference found within this investigation went well beyond acceptable constituent services. To varying degrees, political interference was applied to staff of the Public Works Agency, the Community Development Agency, and to a lesser extent, the Environmental Health Department.

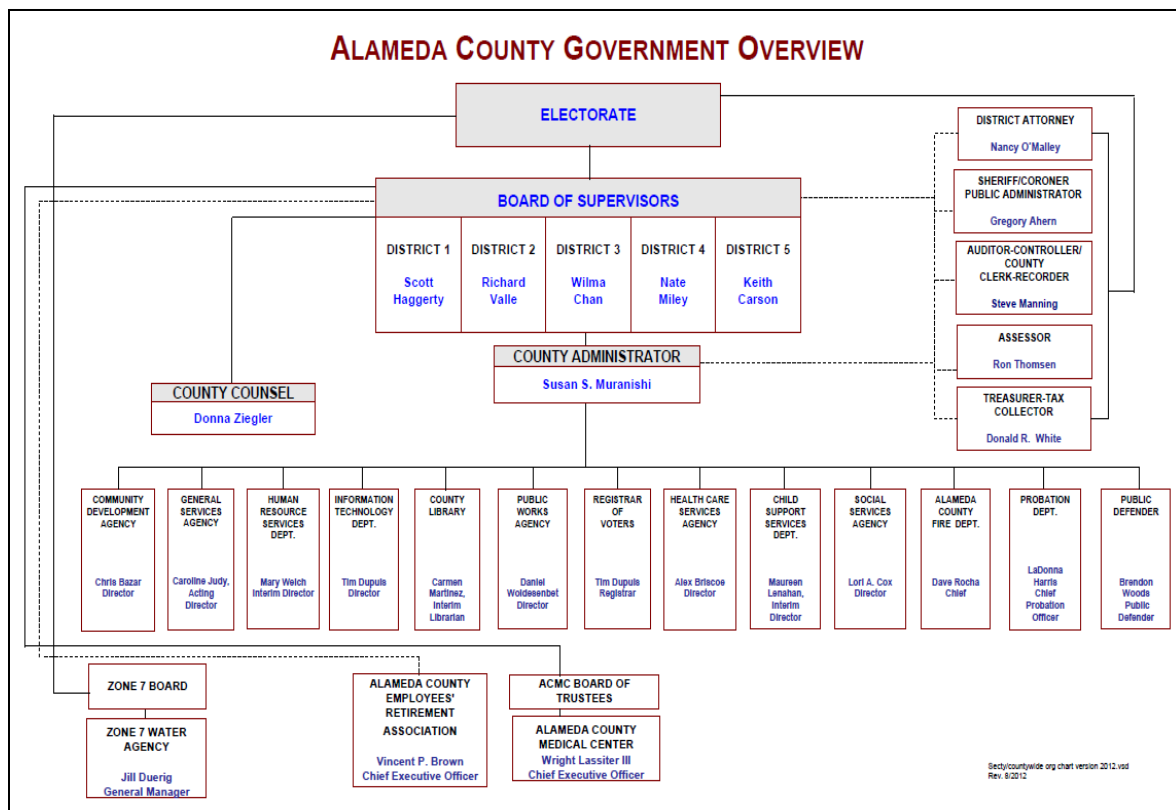
Public trust in the honest administration of government is essential. Citizens both demand and deserve to be treated fairly and equitably when dealing with the public agencies that are supposed to serve them. Political interference by elected officials or their agents applying pressure on administrative staff to give preferential treatment to favored constituents damages the effectiveness of government organizations and can quickly destroy an **agency's** hard-earned reputation.

Background

The government of Alameda County, through its 9,000 employees and multiple departments, has many responsibilities that are mandated by law. Among these are: to deliver health care and social services to vulnerable residents, to protect public health, and to enforce the law to ensure public safety and justice. It is also tasked to provide general government services in the **county's** unincorporated areas not served by city government, including formulating and enforcing land use policies.

Alameda County is governed by a five-member board of supervisors, who are directly elected by voters in their respective districts. The board of supervisors is responsible for providing policy direction, approving the county budget, and representing the county in a number of areas, including its special districts. The supervisors also hire the county administrator who advises, assists, and acts as an agent for the board of supervisors in all matters under the board's jurisdiction.

Alameda **County's** organizational chart depicts the county administrator as a buffer between the board of supervisors and department heads and staff. Yet, after examination of Alameda **County's** Charter and the Grand **Jury's** investigation, the organizational chart appears to misrepresent the actual county practice.



http://www.acgov.org/org_charts/gov_overview.pdf

In most local government agencies, chief administrators are responsible for hiring department heads and staff of their respective agencies. In contrast and per the Alameda County Charter, the board of supervisors appoints all non-elected county officers, assistants, deputies, and clerks. The BOS also annually approves department budgets, supervises the official conduct of the appointed directors, and conducts annual performance reviews of department heads.

The **BOS'** authority, like that of most other public governing bodies, lies with the board as a whole, not with individual board members. Individual board members have no authority to set policy or bind the county in contract. The Alameda County Charter makes no mention of the powers of individual board members other than their collective power to vote on a board action.

Many public agency charters go much further in defining the roles of and limits on their elected officials. The California State Association of Counties, of which

Alameda County is a member, states on its website that a board of supervisors should not direct the day-to-day operations of a county department, or in any way limit the discretion vested by law in a particular department head.

The charter of the city and county of San Francisco specifically states that its BOS may not interfere in the administrative responsibilities of the city administrator. Such interference is described as official misconduct (SF Charter 2.114). The San Diego County Charter states that neither their BOS nor its staff shall give orders or interfere with administrative staff actions or decisions. A violation of this rule constitutes official misconduct (SD Section 501.9).

The city of Oakland makes it a crime for city council members to interfere with the daily administrative functions of city staff. The Oakland City Charter states that a city council member may only contact city administrative staff to make inquiries. All council communications regarding administration of the city must be through the city administrator or mayor. A city council member shall not give orders to any administrative employee, either publicly or privately (Section 218).

Such rules are intended to protect the fair administration of government by insulating staff from political interference. These rules help ensure political favors do not become part of the equation when administrative staff attempts to effectively implement public policy.

While Alameda County has few administrative rules limiting the conduct of elected leaders and their staff, the county charter does address potential conflicts of interest. Section 2.02.170 of the charter precludes employees from receiving any money or thing of value, benefit or advantage directly or indirectly from service for the county other than their own salary. Such a violation could be grounds for disciplinary action.

Many departments in the county further stress avoidance of conflicts of interest. **The Alameda County General Services Agency's (GSA) responsibilities include**

soliciting and negotiating contracts with private vendors providing goods and services to the county. GSA notifies and trains its staff regarding appropriate interactions with those doing business with the county. Their policy states that GSA employees may never solicit or accept money, loans, credits, or prejudicial discounts, and must avoid accepting gifts, entertainment, favors, or services from present or potential customers and vendors that might influence, or appear to influence, business decisions. The BOS does not have a conflict of interest code independent of what is included in the county charter.

Investigation

In its investigation, the Grand Jury interviewed elected officials, county and state employees, including administrators and regulatory officials. The Grand Jury reviewed hundreds of pages of documents, including emails between county and **supervisors'** staff regarding land use, county policies, ordinances, bylaws, and mission statements, as well as the California State Association of **Counties'** best practices and training materials. In addition, the Grand Jury examined contracts, license agreements, state and local environmental inspection reports, and supporting documentation.

Case #1: Issuance of License for use of County Property to a Politically Favored Applicant

The first matter the Grand Jury examined involved allegations that a politically favored business owner was allowed to operate a business on county land, against the recommendations of county staff, and without obtaining required permits. The property in question was a parcel of county-owned land in east Alameda County that a constituent was licensed to use for operation of a private business.

The company, a wood chipping and recycling business, began operating in 1991 on a privately owned parcel and an adjacent small sliver of county-owned property that the business had leased in an unincorporated area east of

Livermore. The operation on the site consisted mainly of numerous outdoor piles of wood and organic debris that were ground into small pieces and resold as power-generating fuel.

Due to ongoing problems associated with its operations, the property and business in question was well known to regulators and county staff. County Environmental Health Department and the California Department of Resources, Recycling and Recovery (CalRecycle) reported that this operation was prone to health and safety concerns, and was poorly maintained. In addition, the Grand Jury heard testimony and read supporting county records that staff was concerned that the business had been operating for years without a Conditional Use Permit (CUP) from the county, which staff concluded was necessary for the business to be in compliance with county zoning and environmental rules. Staff also learned that the business had not been paying license fees (rent) for the county parcel for some time.

In the fall of 2013, the business was forced from the private site after a long legal battle with the property owner. Concurrently, the county began efforts to revoke **the company's license to occupy the sliver of county-owned property**. When it was apparent the business could not find an alternative site on which to operate, the business set its sights on another county-owned parcel adjacent to the property from which it was ordered to leave. But county staff was not interested in licensing the property to anyone. Public Works was considering plans for the property to be used as a future corporation yard and for public trails. In addition, county staff knew the history of the business and did not want a problem tenant.

One supervisor's chief of staff began to strongly and persistently pressure county staff members from the Community Development Agency and the Public Works Agency to allow the business to move its operation to the county-owned site and to speed up the approval and permit process. County employees were all too familiar with the business, not only because of the problems it had created for county staff at the previous site, but also because the supervisor's COS had

previously advocated for the business during efforts to expedite attempted approvals to operate at alternate sites. These efforts included emails, phone calls, **and a meeting at the supervisor's office with key county staff and the owner of the company.** The Grand Jury found no evidence that the member of the BOS was directly involved or had detailed information regarding the process. Updates **from the COS were either vague or did not include specifics regarding the COS' actions.**

During the same period, in July 2013, the business owner made a \$5,000 **contribution to the supervisor's 2016 re-election** campaign, three years before the election. The Grand Jury also learned that the business owner had made at least one prior contribution to the supervisor.

The Grand Jury reviewed several dozen emails showing efforts to facilitate the move to the county-owned site, as well as testimony regarding several phone calls and meetings on the topic where inappropriate pressure was applied on county staff to make decisions that were not in the best interest of the county. In particular, when the Public Works Agency, which owned and managed the county-owned site, was asked in January and July of 2013, if the site could be **leased or licensed, the answer was a resounding, "No."** The Grand Jury learned that the Public Works Agency abruptly reversed its position. The director of **public works was contacted by the supervisor's chief of staff, and after that contact, the director told his subordinate to reverse the department's position** and grant the license. The justification for reversing the decision and granting the license was that it was an effort to help a local business that was in jeopardy of closing unless it found a temporary home. The Grand Jury questions why the department head claims he did not vet the company since the staff person he **overruled had a working knowledge of the company's poor environmental and enforcement history.**

The county required the business owner to sign a license agreement with specific conditions to be met before the business could begin operating. These conditions required that the business obtain a Conditional Use Permit from community development (something it had been operating without for years), obtain bonding, and provide environmental health notifications to the county.

To the surprise of county regulators, the company moved onto the county property and began operations without meeting many of the key requirements of **the license agreement, all while in communication with the supervisor's chief of staff.** The Grand Jury heard testimony regarding the county Environmental **Health Agency's inspections of the business. One witness testified that county** environmental health inspectors had been told by their superiors not to report further violations, but to inspect only quarterly, the minimum number of times required by state law. Other witnesses denied this. Normally, recycling facilities with violations receive more frequent inspections until compliance is achieved.

Ironically, a competing recycling business, one without political contacts, made efforts to license (lease) the county property without success, and ultimately sought to move onto the property that the original recycling business had been forced to leave. The competing business, prior to beginning operations, lawfully sought and obtained many different permits and was forced to clean up after the prior tenant, all at great expense. To make matters worse, public records indicated that the politically favored business even formally opposed the county granting the competitor a permit to operate, generating an appeals process that cost the new company even more money and contributed to an additional 11-month delay. A witness testified that the chief of staff opposed granting the Conditional Use Permit for the competing business.

Public records indicated the high level of frustration of the new competitor after the county allowed the politically favored business to not only operate for years without expensive permits or environmental studies, but also to do so on county property. When the competitor attempted to complain about his treatment, the

Grand Jury learned that he was directed to take his complaint to none other than **the same supervisor's chief of staff. Consequently, the chief of staff helped create an un-level playing field, which poisons the public's perception of how the county operates.**

The interference became such a distraction that it appeared line staff and some **department heads would not make some decisions without seeking the COS'** input. In fact, when one staff member contacted the politically favored business, the staff member was chastised by a superior, and told that action should not be taken unless the COS was in the loop.

Ultimate Price of Interference – Cost to the County

According to several letters from the Public Works Agency to the politically favored company, from the beginning of the license period there were numerous and continued violations of the terms of the agreement. Violations included failure to post bonds, failure to obtain a Conditional Use Permit, failure to obtain Health Department approvals, and attempted payment by check drawn on a closed account.

The license agreement with the company was intended to be temporary, lasting only six months to May 1, 2014. The company continued to operate until early March 2015, when the sheriff padlocked the gate following a court eviction action **initiated by the county. Testimony indicated that the County Counsel's bill to the** Public Works Agency for the legal costs of the eviction alone were reported to be \$99,000.

Surprising to the Grand Jury, the supervisor's COS continued to communicate with the politically favored business well into 2015, long after the bad check, blatant violations of the county license, failure to obtain a Conditional Use Permit and required bond, as well as the filing of the legal action by the county to remove the company.

Case #2: Interference on Behalf of Another Political Supporter

Pressure from the supervisor's chief of staff on administrative staff to push the recycling business through the permit process was not an isolated incident. The Grand Jury heard testimony and saw corresponding county emails highlighting a number of other inappropriate lobbying efforts by the same COS. The Grand Jury learned of several instances where the COS strongly advocated and lobbied county staff (including department heads) and even other public agencies on behalf of one large property owner and political donor.

In one instance, the COS applied relentless pressure on staff to reconsider their initial rejection of a large home and pool construction project because staff concluded that it exceeded the maximum square footage allowed per county **environmental rules. The COS' efforts moved from lower level staff all the way to the head of the department.** The chief of staff, while using his county email account, **boasted to the landowner, that he was "bending these motherf***ers,"** and attached internal county email discussions showing how he pressured county staff and department heads. This conduct is unacceptable and undermines the fair administration of government.

Another project with the same landowner involved attempts to exclude an agricultural construction project from requiring a very expensive CEQA environmental report. During the process, one department head emailed the **COS stating, "As promised, I got my staff...to review and approve the submittals in less than a couple of days!"** It is troubling to the Grand Jury that the COS had the power to help one favored applicant speed up the process while other applicants must stand in line. At one point, another department head attempted to push back in an email, stating that staff needed time to investigate concerns and that asking for an immediate sign-off on a permit was premature regarding a sensitive project. There was no email response from the chief of staff, but the permit was issued the next day.

Regarding another proposed deal with the same party, both the supervisor and the chief of staff pressed for the county to purchase a golf course from another Bay Area public agency. The chief of staff, through email communication, told the agency that the property would be acquired for county use as a community asset. The county spent thousands of dollars of public money to investigate the feasibility of the transaction for public use, while the COS privately communicated by county email with the private party about having the county **sell or trade the property to them after the county's acquisition. At one point, the private party asked the COS for an update on the county negotiations with the other agency and the chief of staff replied, "If I explain where we are at on the [project] you promise me you will shred this email?"** The chief of staff then proceeded to provide the party with intimate details of the confidential negotiations knowing that it was inappropriate.

When discussions regarding the land deal began, the chief of staff was beginning the process of obtaining a home loan for his personal residence through the same **private party's company, with the party telling the COS in email, "I got you covered" regarding the loan application. At that moment, the staff person should** have reported that he had a conflict of interest, recused himself, and no longer participated in any county business involving that individual.

While the Grand Jury did not further investigate the circumstances surrounding the personal home loan obtained by the COS, the existence of the relationship created an incentive for the chief of staff to inappropriately pressure county administrative staff on behalf of the private party. Further, this conduct may have violated rules governing conflicts of interest within the Alameda County Charter.

Conclusion

The Grand Jury believes good governance is demonstrated when decision making is done in a fair and transparent manner. Policy decisions should be implemented by county professional staff in an equitable and effective manner without political

interference. Members of the public seeking permits and approvals deserve impartial treatment. Staff should be insulated from backroom political pressure applied by elected officials directly, or by their staff, to ensure a fair process.

The Grand Jury concludes that county department heads being dependent on and subordinate to the board of supervisors invites unethical interference into day-to-day operations by board members. It puts inappropriate pressure on county staff to acquiesce and abandon good judgment and the objective of fairly administering county policies, rules, and regulations. **Alameda County's organizational chart depicts the county administrator's position as a buffer protecting department staff from the type of meddling by county supervisors revealed by the Grand Jury's investigation.**

The Grand Jury has documented several examples of inappropriate conduct that **damaged the county's reputation and caused it to suffer direct economic losses.** This inappropriate conduct was also responsible for indirectly damaging Alameda County residents and business owners who appeared to be punished because they followed the rules.

To protect against damaging conduct, many public agencies have rules in place forbidding political interference. Unfortunately, Alameda County does not. The Grand Jury believes that developing and implementing robust anti-interference and conflict-of-interest policies would best serve Alameda County. Finally, the Board of Supervisors should immediately take steps to enforce the conflict policies within the county charter by investigating questionable practices and taking swift action to deter undue political interference.

FINDINGS

- 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.
- 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.
- Finding 15-3:*** The Alameda County Board of Supervisors directly 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.

RECOMMENDATIONS

Recommendation 15-1:

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

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.

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.

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.

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.

RESPONSES REQUIRED

Responding Agencies - Please see page 125 for instructions

Alameda County Board of Supervisors	Findings 15-1 through 15-3 Recommendations 15-1 through 15-5
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NEWARK UNIFIED SCHOOL DISTRICT GOVERNANCE ISSUES

Executive Summary

Based on a citizen's complaint, the Grand Jury investigated allegations of improper conduct by members of the governing board of the Newark Unified School District (NUSD) during the 2013-2014 academic year. The investigation focused on alleged violations of the Brown Act, California Government Code section 54952.2, NUSD bylaws, and the board's responsibilities under its own Governance Team Handbook.

The Grand Jury found that some board members displayed wanton disregard for rules and regulations governing their behavior and how they conduct the **public's** business. This disregard manifested itself as a dysfunctional culture of interference in administrative affairs that poisoned interpersonal relationships and created a crisis in district leadership.

During an era when NUSD continues to suffer from fiscal challenges year after year, the board and administration need to come together to lead the district rather than engaging in painful power struggles. These sustained battles have caused long-term damage to the reputation of the district at the expense of its mission.

Background

One of three cities forming the Tri-City area of southern Alameda County, Newark was incorporated in 1955 and encompasses 13.9 square miles. The city and the Newark Unified School District serve a racially diverse population of

approximately 44,000 people. Its public school district has about 6,900 students and employs approximately 700 teachers, administrators, and non-certificated personnel.

A five-member, community-elected board of trustees (or board of education) governs NUSD. Its responsibilities include: setting policy, approving the budget, hiring the superintendent, serving as an appeals board in disciplinary matters, and providing both citizen oversight and responsiveness to community values.

The superintendent of NUSD, employed by the board, is the district's chief executive officer. Duties of the superintendent include: functioning as the **district's top administrator; implementing** policy; hiring, firing and disciplining staff; assisting the board; and both guiding and overseeing the educational process.

While the roles of California public school superintendents and governing boards are detailed in the California Education Code, NUSD has created a Governance Team Handbook that further explains each of their roles and responsibilities. A guide developed over time, the handbook is a detailed document designed to help **define and refine the district's mission, relationships, and responsibilities, as well** as describe what is expected of board members and the superintendent. It also gives the public an overview of how the district is supposed to operate.

The board hired the current superintendent in July 2011. It was well known publicly at the time that the district was struggling with ongoing economic issues, high staff turnover, and leadership problems.

During his first three years in office, the superintendent was credited with **significantly improving the district's educational climate and helping pass a** \$63 million school improvement bond (Measure G). In 2013, NUSD students achieved the largest growth in California Academic Performance Index (API) test scores in Alameda County and two schools earned state Distinguished School

status. The superintendent was named 2014 Superintendent of the Year for Region 6 of the Association of California School Administrators.

At the same time that these academic measures were improving, however, the relationship between the superintendent and board members seriously deteriorated. In May of 2014, the superintendent notified the board that he was resigning effective September 30, citing an unworkable relationship with the board. **His resignation reportedly was due to trustees' interference in the superintendent's role, duties, prerogatives, and responsibilities.**

Examples of board interference in administrative matters found by the Grand Jury included:

- **A trustee telling the superintendent beforehand that he had “zero faith” in, would not vote for, and would tell other board members his views about an employee being considered for promotion.**
- **A trustee intervening with a teacher to get a student's grade changed, much to the principal's chagrin.**
- **A trustee giving an opinion about a teacher being considered for discipline to a member of a peer evaluation panel overseeing the matter.**

The superintendent's notification of his resignation in May 2014 was a surprise and ill-received by the community, triggering a summer of turmoil. Heavy criticism by the public and by district staff was leveled at the board in general and at some of its members specifically. The resignation became the number one issue at board meetings. Trustees were accused of trying to micromanage the district, fomenting a dysfunctional working environment, and forming bad relationships with employees and parents. Bargaining units for both administrators and teachers declared that they had **“no confidence” in the board.**

The acrimony became so intense that one board member resigned and another decided not to run for another term after being a trustee for twelve years. A new board member was appointed to fill a vacancy in September 2014 and another **was elected in November. The board also rescinded the superintendent's** resignation in September, after rejecting its withdrawal by a 3-2 vote in August, and he was reinstated.

On August 26, 2014, the Grand Jury **received a citizen's complaint alleging that** the NUSD board participated in inappropriate activity and communications **related to the superintendent's resignation. The complainant alleged three** violations:

- California Government Code section 54952.2, prohibiting trustees **from using “a series of communications of any kind to discuss, deliberate, or take action on any item of business” that has or will appear on the board's agenda.**
- California Government Code, section 54950 (Ralph M. Brown Act), which requires local government business to be conducted at open and public meetings, with rare, specified exceptions. The Brown Act regulates legislative bodies, such as governing boards, regarding public and closed meeting requirements and communications among fellow board members, staff, and constituents.
- Newark Unified School District bylaw 9200, which places limits on **trustees' authority by stating that the board is a “unit of authority” and members have “no individual authority.”** Trustees also are to place **education of the district's students “above any partisan** principle, group interest, or personal interest.”

Investigation

The Grand Jury delved into several sources of information while investigating the **complainant's assertions. The Grand Jury:**

- Read between 2,000 and 3,000 NUSD email communications written between 2012 and October 2014. The emails included communications between trustees, staff, and community members **on topics related to education, board conduct, the superintendent's resignation, and his reinstatement.**
- Examined board minutes and other NUSD documents related to board and superintendent conduct and communications.
- Attended governing board meetings, observed streamed and archived meetings online, as well as examined related public documents.
- Heard testimony from witnesses with direct knowledge of and experiences with the board and superintendent before, during, and **after events leading up to the superintendent's resignation and reinstatement.** Witnesses included members of the governance team, employees, and outside officials with some responsibility for monitoring the district.
- Read numerous media reports focusing on the period between April and November 2014 to see how the public became aware of issues surrounding the **superintendent's resignation and its aftermath.**

Governance Team Handbook

Adopted in 2005 and amended in 2012, NUSD’s Governance Team Handbook is a unique document that outlines the beliefs, cultural norms, goals, rules, responsibilities, structures, and vision of the district’s governing team.

Praised by board members, administrators, and employees alike, the 27-page handbook identifies the board of education as the district’s legislative body and the superintendent as its “chief executive officer.” It urges those governing the district to “operate with the highest ethical standards and fairness” when dealing with fellow board members, students, employees, parents, and community members.

Trustees are to “provide a road map and support for the superintendent,” who they hire, evaluate, and can fire. The district also is supposed to “create an atmosphere of respect,” provide a “safe and nurturing environment,” and facilitate “effective and efficient communication.”

The most recent, revised version of the handbook says the board and superintendent are to work with each other, exhibit “professional demeanor” and “promote a positive personnel climate.” It advocates open, honest, respectful, and dignified communication. It is important that board members be good listeners and consistent in their responses to each other, staff, and community. **They need to stay within their function and not attempt to personally “fix” problems.**

The Grand Jury found the handbook to be a commendable document that could serve as a model for other legislative bodies. Unfortunately, during the 2013-2014 school year, several Newark trustees failed to abide by the rules, vision, and code of conduct they themselves authored and adopted two years before. For example, some trustees habitually used their position and influence inappropriately, undermining the authority of the superintendent. In doing so, they lost sight of the big picture in the district they were elected to govern.

Other Issues

During the course of the Grand Jury investigation, and in addition to the complainant's allegations, other issues related to the governance of NUSD were found.

- **Culture of Interference:** In spite of a clear separation of powers outlined in legal, professional, and district documents, board members routinely and wrongly bridged the divide and intervened in executive affairs. Some board members regularly intruded into administrative and educational matters clearly in the superintendent's purview. Those intrusions included frequent direct contacts and dialogues with employees on school and educational issues. Some trustees visited school campuses without informing the superintendent or site administrators, which was required by board rules.
- **Crisis in Leadership:** Some administrators and employees bypassed the superintendent and took issues, concerns, and opinions – academic and otherwise – straight to board members. Such acts violated board rules and undermined the chief executive by creating rivalries and further confusing everyone as to who was in charge. The result was a crisis in leadership that resulted in the superintendent's resignation and eventual reinstatement.
- **Noncompliance with its own rules:** Although trustees praised their governance handbook, they often failed to abide by it. Instead of using its guidelines to empower their superintendent, they ignored the document and undermined him.
- **Ineffective fiscal oversight:** Although not part of either the original complaint or investigation, the Grand Jury discovered that NUSD has failed to solve ongoing fiscal problems. Both state and county agencies in recent years have been concerned that the

district's annual income failed to meet ongoing expenses. The district has tried to cover continuing costs by relying on one-time or short-term infusions of income. This has led to a recurring cycle of financial problems as temporary or one-time sources of income dry up, leaving the district with recurring costs that its income does not cover.

The following is an overview of incidents in which trustees violated state law, their own bylaws, handbook, and other guidelines for official conduct.

- ◇ On February 7, 2014, members of the five-person board conducted a three-way e-mail exchange about construction work on a piece of district property. *California Government Code Section 54952.2 prohibits members of a legislative body from using “a series of communications of any kind” to “discuss, deliberate, or take action on any . . . business . . . within the subject matter jurisdiction of the legislative body.”*

Grand jurors also found other examples of serial meetings in which more than two board members addressed such issues as instructions to staff, student testing schedules, and personnel matters.

- ◇ On February 13, 2014, the superintendent notified board members that some of them did not follow governance team norms when they directly contacted employees, vendors, and community members about district business.
- ◇ Also in February 2014, a member of the board bypassed the superintendent and emailed the chairman of the social science department, criticizing a proposal to add a geography class to the ninth grade curriculum. The course was proposed to meet a State Board of Education recommendation that districts beef up social science for ninth graders.

Intervention in administrative matters by members of the Newark Board of Education became epidemic during the 2013-2014 academic year. Some trustees bypassed the superintendent to directly communicate and intervene with educators and staff so often that it was an almost daily occurrence.

Contributing to the confusion, the Grand Jury heard inconsistent testimony about whether the superintendent told trustees that they could talk to anyone in the district, or just members of his executive cabinet, about school issues whenever they wanted. Testimony indicated that some trustees might have interpreted that communication as *carte blanche* to discuss internal and external issues with district employees.

Hundreds of emails were exchanged between board members – one trustee was particularly active – and members of the executive cabinet, school administrators, union officials, teachers, and support staff. Subjects included everything from curriculum, grades, personnel, labor, staff transfers, building and grounds, and legal matters, to the evaluation of the superintendent.

Testimony indicated that some employees took issues that were clearly in the **superintendent’s jurisdiction** directly to board members. Grand Jurors also **heard that the perceived permission to talk to “anyone you want . . . backfired” and was “the wrong thing to do.”** Testimony further indicated that some employees came to perceive board members as their bosses, rather than the **superintendent. One example involved a member of the superintendent’s** executive cabinet bypassing him and a site administrator to take an air-conditioning issue to a **board member who described himself as “the go to guy”** on such matters.

Although the superintendent wrote a lengthy treatise to the board before 2014 bemoaning trustee intrusion into administrative affairs, it did not have much impact. Exchanges between board members and employees -- initiated by both parties -- continued, and may have even multiplied, afterward.

The Grand Jury found no indication that the superintendent tried to affirm authority with employees who participated in or initiated direct contact with trustees. Strong leadership and direction by the superintendent could have helped limit or alleviate such incidents.

Further Examples of Board Interference

Here are a few more examples of board intrusion that Grand Jurors gleaned from minutes, documents, interviews, and staff emails filed between April and August of 2014.

- On April 28, a board member bypassed the superintendent to demand that a staff member provide more oversight of a literacy program.
- On May 5, a board member visited a school about plant problems and repairs without notifying the superintendent or principal. Three days later the trustee apologized for his failure to do so, **calling it a “knee-jerk reaction” to a parent’s complaint.** The Newark governance handbook says board members are to *“advise the Superintendent of their intention to visit specific schools . . . and. . . inform the Superintendent of their impressions following school site visits.”* They are also to *“advise the school site administrator in advance of their planned visit.”* Another board member reportedly made frequent visits to school sites without notifying the superintendent or campus administrators.
- On May 30, the board president reprimanded a trustee for seeking **the advice of legal counsel without “approval of the majority of the board,” a violation of bylaw 9124.**
- On June 4, a staff member and union officer complained about the **board and administrator’s “failure to act in accordance with”** its own governance handbook.

That same day, a trustee apologized for **“my public trashing of board members, the superintendent and his staff,”** saying he was sorry **“that I trashed people behind their backs.”**

- On June 23, a board member wrote emails to NUSD human resources personnel and three principals asking them for understanding and communications about turmoil within the **district spawned by the superintendent’s resignation.**
- The very next day, the principals wrote to the board and superintendent saying they were **“uncomfortable” with the trustee’s correspondence. They suggested board members follow “formal, professional and appropriate channels for board business and communication.”**
- On June 25, **the superintendent’s executive assistant emailed the board president about trustees demeaning her in public, creating an “intimidating and offensive work environment,” discriminating against “female administrators,” interfering with day-to-day operations, and “not allowing the superintendent to do his job.”**

Later that day, the board president replied, saying she had tried to **“muzzle” offending trustees, but, “I might as well be talking to a tree.”**

- In a written communication on June 30, the board president admitted in **writing that some trustees had “not maintained confidentiality in labor negotiations, litigation and the substance of the superintendent’s evaluation.”** Government Code section 54963 (the Ralph M. Brown Act) prohibits deliberative bodies and their

spokespersons from disclosing “confidential information or information received in closed session except when authorized by a majority of the board.”

- In August, trustees, by a 3-2 vote in closed session, rejected an attempt by the superintendent to rescind his resignation. Upon reporting the action publicly, however, the board, on advice from its attorney, refused to reveal how each trustee voted. California Government Code section 54957.1(a) (the Ralph M. Brown Act) reads: **“The legislative body of any local agency shall publicly report any action taken in closed session and the vote or abstention on that action of every member present.”**

Failure to report how each trustee voted subverted both the intent and spirit of the Brown Act. The state statute was adopted to make sure the public has access to government deliberations, decisions, and how members of governing bodies vote. This vote occurred at the height of a period of intense community interest **and debate about the Newark superintendent’s resignation and** the reasons behind it. The Grand Jury believes citizens deserved to know who voted to rescind the resignation and who did not.

Conclusion

The Grand Jury concludes that the board of the Newark Unified School District routinely and continuously violated its own rules of governance and behavior during the 2013-2014 school year. Such misconduct had escalated over several years. Some trustees regularly bypassed, and therefore undermined, the superintendent by directly interacting with and directing administrators and staff. Board members also violated terms of the Brown Act. Although the board in 2012 adopted a revised Governance Team Handbook that is a model for board behavior, some trustees habitually ignored its guidelines and policies.

The Grand Jury believes that both sides share responsibility for the breakdown in leadership, but most of it resides with school trustees. They intruded into administrative affairs, fueling the crisis. Trustees have the ultimate power – they hire and can fire the superintendent. Voters can remove trustees, but usually only when they are up for election.

The Grand Jury believes that it behooves the board to be conscious of and to respect the separation of powers implicit in school governance. To intrude into **the administrator's domain is to weaken and, in the worst circumstances**, usurp the powers of its chosen chief executive. Such impositions inject confusion and division into the governing equation and can create leadership crises akin to what occurred in Newark.

Trustees must avoid undermining the chief executive. When the superintendent **was hired, Newark's trustees led him to believe that they didn't want to** micromanage the district and intervene in daily affairs. He tried to call the board on its interference a year or so later, but without success. Some board members were unable – or unwilling – to curb such behavior. A witness testified that **efforts to rein in rogue conduct were like “blowin’ in the wind.”**

It all amounted to petty power politics. And, the outcome is a culture of interference that creates a dysfunctional working environment that is churlish, hostile, immature, anxiety-ridden, disruptive, and ultimately destructive.

While the district's governance handbook was designed to foster teamwork and cooperation, day-to-day operations were governed by conflict and disagreement. As a result, the Grand Jury believes NUSD must take it upon itself to establish - and abide by - clearer, firmer boundaries of separation between the board and superintendent. Governing team members are supposed to heed the guidance written into the handbook. Instead, trustee interference with the **superintendent's authority as district administrator prompted him to resign**, and spawned a summer of turmoil.

The atmosphere became so toxic that one member of the board resigned under public pressure and another decided not to run for re-election. Three members of the old board remain in place and the superintendent has resumed his duties, but tensions clearly remain.

Extra measures are needed to keep NUSD board members - future and present - from interfering in administrative affairs. False assumptions, intervention, usurpation of power, mistrust, and dysfunction have been key ingredients in the **district's board/superintendent relationships during the tenure of at least three administrators.**

The Newark Unified School District's governing team needs to treat its handbook as a guide for day-to-day operations. The Grand Jury believes more needs to be done.

- A. The district needs to be much more explicit about the separation of powers **between the board and superintendent. Being vague hasn't worked. Board members have erased well-defined lines of separation and intruded into the superintendent's domain far too often. The bylaws and handbook must be amended to erect stronger boundaries between NUSD's legislative and executive branches.** We recommend that the board adopt a policy similar to the **city of Oakland's section 218, "Non-interference in Administrative Affairs."** It would require that board members not get involved in executive affairs without first going through the superintendent. That includes contacting the superintendent before visiting campuses and interacting with members of the district staff and faculty on school issues.
- B. The board needs to follow its recently adopted policy enabling a majority of board members to censure members when they violate laws, rules, or regulations.

- C. Both the school board and superintendent need to abide by the roles and responsibilities outlined in the governance handbook.

Rather than addressing educational issues and ongoing financial problems, the **board and superintendent became bogged down in petty politics. It didn't help** when the superintendent gave trustees permission to discuss school affairs directly with district employees, even executive cabinet members, whenever they wanted. That act amounted to a forfeiture of administrative power in the eyes of some trustees, encouraging misconduct.

The Grand Jury believes that the citizens of Newark need to pay close attention to the governance and management of their school district. The same people who formulated, wrote, and approved the governance handbook were also the foremost offenders of its rules, regulations, and guidelines. Four of the five members of the 2013-2014 school board were also trustees when the handbook was passed in 2005 and amended in 2012. They ignored their own rules.

FINDINGS

- Finding 15-4:*** Members of the Newark Unified School District Board of Education, with alarming regularity, ignored and violated the rules, regulations, guidelines - and sometimes even the laws - **created to govern how they conduct the public's business**, which **negatively affected the public's confidence in the** governance and management of the school district.
- Finding 15-5:*** Individual members of the Newark Unified School District Board of Education frequently intruded into the duties and responsibilities of the superintendent, to the detriment of the district, by causing confusion about the leadership of the district.
- Finding 15-6:*** The distinction between the lines of authority of the Newark Unified School District Board of Education and the office of the superintendent became muddled, fostering conflict and taking time and resources away from the business of educating students and managing the district. The Grand Jury found that the infighting within the board and with the superintendent took time away from conducting the district business during board meetings.
- Finding 15-7:*** **The Newark Unified School District Board of Education's** intervention into executive affairs has gone on for years.
- Finding 15-8:*** Previous efforts by the Newark Unified School District Board of Education to self-police its own misconduct have been unsuccessful.

RECOMMENDATIONS

Recommendation 15-6:

The Newark Unified School District Board of Education must abide by state laws, including the Brown Act and the California Education Code.

Recommendation 15-7:

The Newark Unified School District Board of Education must follow its own bylaws and its Governance Team Handbook when members perform their duties and interact with the superintendent, staff, teachers, parents, and community members.

Recommendation 15-8:

The Newark Unified School District Board of Education must amend its bylaws and handbook by adding a formal policy that does not allow **individual** board members to interfere with faculty and staff on school issues, or visit school sites, without permission from the superintendent or from the board as a whole. The city of Oakland has a model that might be helpful.

Recommendation 15-9:

The Newark Unified School District Board of Education must follow the recently adopted formal policy allowing a majority of its board members to censure or otherwise sanction trustees when they violate laws, as well as their own rules and regulations.

RESPONSES REQUIRED

Responding Agencies - Please see page 125 for instructions

Board of Education,
Newark Unified School District

Findings 15-4 through 15-8
Recommendations 15-6 through 15-9

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ALAMEDA HEALTH SYSTEM GOVERNANCE AND OVERSIGHT

Executive Summary

The Grand Jury became aware last summer of a looming financial crisis facing Alameda **County's** safety-net hospital system. Due to concerns about its governance and management, the Grand Jury undertook an investigation into the Alameda Health System (AHS), which is tasked with providing indigent health care. AHS has a nearly \$200 million debt owed to the County of Alameda Consolidated Treasury and is suffering from significant issues regarding its financial structure. The recent acquisitions of Alameda Hospital and San Leandro Hospital have exacerbated these financial challenges.

The Alameda County Board of Supervisors depth of commitment to AHS and its mission is unquestioned. This is clearly illustrated by its financial support (\$700 million for the Highland Hospital Acute Tower replacement). However, the Grand Jury is concerned that the lack of leadership and scrutiny on the part of the AHS board of trustees and lack of oversight by the county board of supervisors contributed to the financial problems at AHS. In the course of its investigation, the Grand Jury learned of breakdowns in communication among AHS management, the AHS trustees, and the Alameda County Board of Supervisors (BOS). These breakdowns created a roadblock to crafting a comprehensive solution to the \$59.1 million gap between **AHS'** obligations to the county and its actual performance as of June 30, 2014.

The Grand Jury further notes that before **AHS'** precarious financial situation became widely known to the public, voters extended Measure A, a half-cent sales tax, for 20 years to continue giving AHS approximately \$100 million a year to

supplement its operational costs. The measure mandates that a public oversight committee review the expenditure of these funds. The Grand Jury is concerned that the **citizen's** oversight committee has not been provided with sufficient information to ensure these funds have been spent in conformity with the **measure's** intent.

Background

Alameda County is obligated by law to provide medical care for the indigent, people with special needs, and general populations who have no other means of support. To fulfill this obligation, the Alameda County Infirmary, the **county's** first public hospital, was founded in the 1860s. It grew into the Alameda County Medical Center (ACMC) and since March of 2013, has been known as the Alameda Health System (AHS). It is an integrated public health care system with over 800 beds and 1,000 physicians across nine major facilities. Among **AHS'** facilities are Fairmont Hospital, Highland Hospital, the John George Psychiatric Pavilion, numerous neighborhood wellness centers, and the recently acquired San Leandro and Alameda Hospitals.

In 1998 the governance, operation, and management of AHS was transferred from the county to a public hospital authority. The county maintained control of the AHS bylaws and ownership of Highland Hospital, John George Psychiatric Pavilion, and Fairmont Hospital, which housed the medical delivery systems at that time. In addition, the county continues to provide financial support to AHS by advancing needed funding in the form of a line of credit through the Alameda County Consolidated Treasury, with the intent that this line be reduced over time and eventually eliminated. In addition, Alameda County Health Care Services Agency (ACHCSA) contracts with AHS and pays for services for the indigent. Taxpayers also support AHS through a half-cent sales tax that was extended until 2034 by voters in June of 2014. It currently raises over \$100 million annually to supplement AHS' operations.

Investigation

During the Grand **Jury's** investigation, the following was reviewed:

- Formal proceedings, including board and board committee meeting notes of both the AHS board of trustees and the Alameda County Board of Supervisors as well as BOS health committee minutes. In addition, the Grand Jury reviewed video recordings of the BOS meetings and the health committee meetings;
- Minutes and board packets of the joint board of trustees/board of supervisors meetings;
- Governing documents for both the AHS Board of Trustees and the board of supervisors;
- Agreements between Alameda County and AHS governing their relationship;
- AHS independent audits;
- Consulting reports related to **AHS'** financial status;
- Measure A oversight committee reports; and
- Previous Grand Jury reports.

The Grand Jury also heard witness testimony from members of the board of supervisors, AHS trustees and executive staff, and county departments. The Grand Jury attended several AHS board and BOS meetings.

Alameda Health System Financial Obligation to the County of Alameda

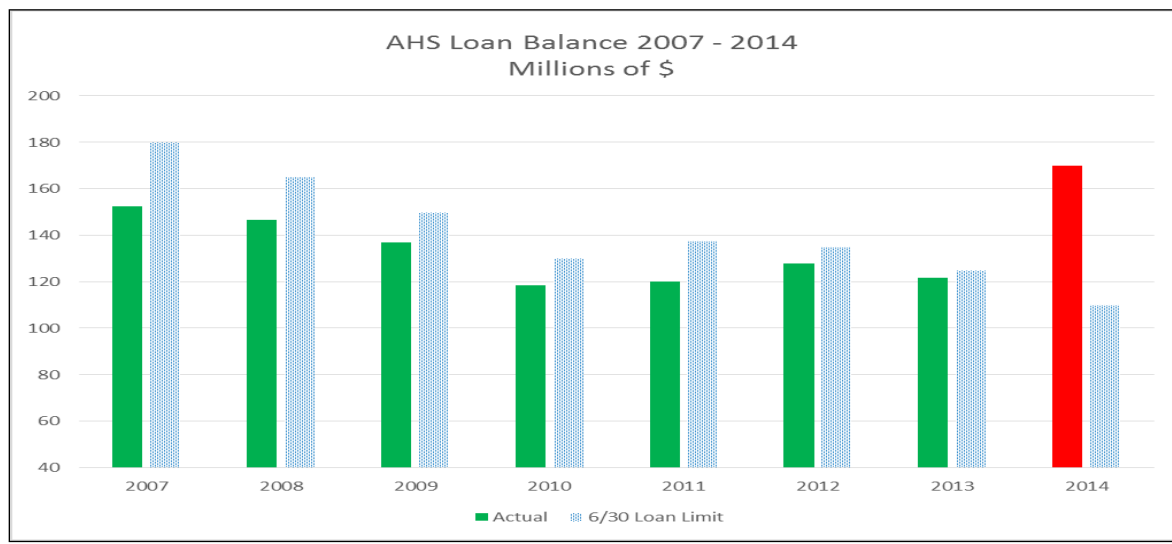
In the early 2000s, AHS faced a monumental financial crisis. To cover cash flow shortfalls and accumulated debt, it increased its borrowing with a line of credit from the Alameda County Consolidated Treasury. In August of 2004, the balance of the line of credit was approximately \$191 million. The BOS imposed a \$200 million cap on **AHS'** line of credit and required a repayment schedule to reduce the total balance to \$30 million over ten years.

The AHS trustees hired a new leadership team in 2005. With an infusion of Measure A monies and guidance from the new team, AHS began to pay down its debt to the county. From 2005 to 2008 it had a positive operating margin and in 2006 a financial improvement project resulted in revenue and expense savings of \$28 million. By 2010, the \$191 million loan balance to the Alameda County Consolidated Treasury had been reduced to \$118.4 million, which was better than projected.

In April of 2011, the agreement was amended with an updated repayment schedule and a requirement for quarterly financial updates with an obligation for immediate written notification to the board of supervisors if cash-flow projections forecast a year-end shortfall. The ultimate goal was to reduce the balance to \$30 million by June 2018.

By the fall of 2013, **AHS'** financial situation had drastically changed. While attempting a transition to a new integrated electronic system for linking patient medical services and billing, AHS was also finalizing the acquisition of two struggling hospitals, San Leandro and Alameda, and was faced with major liquidity problems. Vendors were not being paid on time, accounts receivable were not being efficiently collected, and after the county inquired, AHS informally signaled to the county that it would not be meeting its year-end obligation to the consolidated treasury. AHS management indicated to its finance committee that AHS would require an additional \$220 million in order to maintain financial stability.

In September of 2013, there were informal discussions between the Alameda County Auditor-Controller and **AHS'** management, but there was no written notification as required by the amended agreement. The seemingly sudden slide from the solid financial trajectory of 2005-2008 into a larger financial crisis prompted the Grand Jury to focus on the related governance and management issues that may have contributed to these problems.



AHS Governance Structure and its Relationship with Alameda County

A board of eleven trustees appointed by the Alameda County Board of Supervisors governs the public hospital authority. **AHS'** board is comprised of various sub-committees, including executive and finance committees. The board is responsible for the management, administration, and control of the system as well as hiring the chief executive officer, who manages the day-to-day operations.

Although AHS is governed by an independent public hospital authority (board of trustees), the Alameda County Board of Supervisors appoints the trustees and has control over the bylaws of AHS.

The Grand Jury learned through testimony that the selection of trustees has been a serious point of contention between **AHS'** trustees and the board of supervisors. The last revision of AHS board bylaws, finalized November 23, 2013, formalized the long-standing practice of submitting suggested appointees to the board of supervisors. The Grand Jury believes this pre-selection process by the trustees breeds insularity and a lack of independence among incoming trustees, which can suppress vital information flow. As the Grand Jury learned, a previous attempt

by the board of supervisors to install an independent trustee was met with resistance by AHS. The Grand Jury heard testimony that the appointment was originally rejected by AHS but once they realized they did not have the authority to reject an appointment, AHS made efforts to stall the appointment.

The Grand Jury heard testimony that the relationship between the trustees and the supervisors is unclear and that neither is sure of their respective roles. The Grand Jury learned that some trustees felt that supervisors only knocked on the **trustees'** door when they wanted something. For example, the Grand Jury learned that one member of the BOS called the CEO of Alameda Health System on behalf of a labor organization, intervening to prevent the closure of clinics. The closures were an effort by AHS to curtail expenses by consolidating operations. In the end, the Grand Jury was told by AHS that there were ultimately no closures, only consolidations. While it is unclear whether one **supervisor's** call affected **AHS'** decision regarding potential closures, this is not the type of supervisorial oversight needed to ensure AHS is headed in the right direction.

The Grand Jury also learned that some trustees were under the impression that when they communicated with an individual member of the board of supervisors the information would be relayed to the full BOS. Such communications cannot replace formal communications that are necessary to ensure transparency and accuracy. Additionally, testimony from several members of the board of supervisors indicated their lack of understanding of **AHS'** financial status, in part due to their limited communication with trustees.

The importance of indigent care and the **county's** large financial stake demands that the BOS have an independent and effective communication channel into major AHS operational and financial decisions.

Critical Events For AHS in 2013 and 2014

The Grand Jury learned that the acquisitions of San Leandro Hospital and Alameda Hospital, the economy, and changes in government healthcare reimbursements all led to a perfect storm for AHS in 2013.

Timeline and Elements of the San Leandro Hospital Acquisition

In May 2013, AHS, at the urging of a member of the board of supervisors, signed a non-binding letter of intent to take ownership of San Leandro Hospital, a 93-bed primary acute care facility with an emergency department. Since 2004, the hospital had been operated by Sutter Health on behalf of the Eden Township Healthcare District. When Sutter entered into an agreement with Eden Township to pay for construction of the new Eden Hospital in Castro Valley and ultimately take over its ownership, it also obtained the option to purchase San Leandro Hospital. Sutter Health claimed that San Leandro Hospital had been losing millions of dollars annually and intended to close it. In 2009, Sutter exercised its option to purchase San Leandro Hospital and agreed to lease the building to AHS. The county wanted to relocate its acute rehabilitation facility from Fairmont Hospital, which did not meet state seismic standards. Lawsuits, community anger, and political pressure mounted when it appeared that San Leandro Hospital would be closing. All of this contributed to a solution, including keeping the emergency department open, brokered in part by one member of the BOS, but ironically not agreed to or even voted on by the full board of supervisors. The agreement entailed Sutter Health donating the San Leandro Hospital building, land, and equipment to AHS and providing approximately \$22 million to help offset ongoing operating losses for two years.

While the agreement may have served the city of San **Leandro's** interests for a local emergency department, the lack of financial oversight through proper due diligence by **AHS'** trustees set in motion a chain of events that set back hard won financial progress many years and may ultimately result in layoffs. Below is a

chronology of key events documenting how the AHS board failed to protect its financial gains by acceding to **management's** risky push to complete the San Leandro acquisition without providing a sound, up-to-date financial case.

◇ ***Cash Flow Crisis Begins July 2013:***

The implementation of a new computerized billing system that began on July 1, 2103 caused a shortfall of cash receipts. Consultants estimated the shortfall to be as much as \$59 million for the period July 1 to September 30. Billing timelines and poor processing eventually resulted in fiscal year-end write offs for 2013-2014 in excess of \$10 million.

◇ ***Potential Withdrawal and Renegotiation:***

During the August 27, 2013 AHS board meeting, trustees discussed withdrawing from completing the San Leandro Hospital acquisition and returning it to Sutter Hospital with a request for further negotiation, as well as identifying the risks of proceeding. AHS management, driven by its expansionary strategic plan and previous pressure from political leaders, wanted to move ahead with the acquisition. AHS management agreed to give further updates to the board and relevant board committees regarding **management's** progress.

◇ ***\$220 Million Cash Flow Shortfall Identified:***

On September 16, 2013, the interim CFO apprised AHS' finance committee members of significant financial problems relating to cash flow shortfalls jeopardizing their ability to meet current obligations (as discussed further, below).

◇ ***No Financial Plan Revisions:***

As documented by a consultants report, AHS was using an outdated financial model from 2012. It failed to include the need for a \$220 million cash infusion. The Grand Jury also learned that a portion of the \$22 million established by Sutter to offset ongoing losses was used to fund San Leandro Hospital until the

transaction was completed. Several public documents indicated that AHS ultimately only received \$14 million.

♦ ***Eden Township Support:***

As outlined in the AHS September 16, 2013 cash flow analysis, Eden Township had agreed to support the acquisition with \$17-20 million. The Grand Jury learned that several AHS trustees were led to believe that this was a firm commitment. The Grand Jury heard testimony that the trustees ultimately learned, after the acquisition was completed, that this commitment was not legally binding. Eden Township indicated that its commitment was to collaborate and support, but not necessarily to deliver \$17-20 million. Without taking a position on which party reneged on the agreement, it is clear that the money should not have been counted on to support the acquisition of San Leandro Hospital.

♦ ***November Board Retreat:***

In several meetings, AHS management presented the November retreat as a forum to discuss and review risk mitigation plans for the San Leandro acquisition. The Grand Jury questions this timing, as the agreement with Sutter Health to finalize the acquisition was executed on October 31, 2013, before the retreat occurred. The material presented at the retreat included a three-year negative \$92 million cash flow impact directly due to the San Leandro Hospital acquisition. Additionally, the financial risk mitigation plan to relieve the cash flow crisis included both revenue anticipation notes from Measure A funds, and a commercial borrowing program against \$30 million in future government reimbursements. Think of taking a mortgage out on your future earnings and you can understand why these plans never made it out of the retreat. These events appeared to confirm trustee complaints that, while they had serious questions about the risks of the acquisition, they did not feel those questions were ever answered in a timely manner.

◇ ***Financial Damage:***

Between the \$17 million of Eden Township support that evaporated and the substantial \$92 million negative cash flow three-year estimate from the November retreat, it is clear that the San Leandro Hospital acquisition contributed significantly to the financial crisis. Unfortunately, a January 2015 consultant report from Toyon did not provide any information regarding the San Leandro Hospital acquisition financial impact to clarify this estimate of financial damage.

Alameda Health System Financials and Decision Making

The September 16, 2013 minutes of the AHS finance committee meeting indicated that the committee was notified by management of major financial problems. The first of these was negative cash flow affecting **AHS'** ability to pay vendors. The Grand Jury learned that the following issues surfaced at that meeting:

- The cash available to AHS to pay its expenses was significantly reduced due in part to their failed transition to their new computer system.
- Cash flow projected a working capital loan balance with the county of Alameda of \$171 million. This was in excess of the year-end target of \$110 million.
- AHS was not currently collecting sufficient cash to meet the fiscal year-end working capital loan balance target.

The minutes further indicated that management felt AHS needed a cash infusion of approximately \$220 million to maintain financial stability and to provide for other cash needs to operate the facilities (payroll, vendor payment, etc.), including the acquisitions of San Leandro and Alameda hospitals that were in progress at the time. The Grand Jury also learned that the AHS finance committee members were concerned about where the cash infusion would come

from, and if there was a firm commitment in place from the county and other funding sources. According to the minutes, one trustee “**want[ed]** to understand what **we’re** going to do while **we’re** hemorrhaging cash until we catch **up**.” Another trustee asked (in relation to the San Leandro Hospital acquisition), “**if** there was a timeline for mitigation and/or resolution and what resources are **needed?**” Management indicated, “**Most** of the identified risks do have tight timeframes for resolution, but many do not yet and are being **studied**.” The finance committee requested a plan and management agreed to prepare one for discussion at the scheduled board retreat in November. The finance committee agreed to a resolution to authorize spending \$29 million of the board-restricted hospital fee funds on mergers and acquisitions.

At the September 24, 2013 full board of trustees meeting, the trustees were informed that \$220 million would be needed to support the two new hospital acquisitions, the capital needs of the system, and debt restructuring. The Grand Jury could not determine if there was any further discussion about these matters. The resolution proposed by the finance committee to authorize the spending of restricted hospital fee funds (\$29 million) was not included in the minutes of this meeting. The Grand Jury is concerned that the full board failed to have an open and candid discussion regarding the need for the \$220 million, as reflected in the public minutes. The minutes show only two sentences briefly summarizing the issue.

At the October 1, 2013 four-member executive committee meeting, the expenditure of the \$29 million of the restricted hospital fee funds was approved for release. The Grand Jury found no public notice, no agenda, nor any minutes of this meeting.

The November 2013 retreat was a key forum where the second major financial challenge was clearly articulated for the entire board of trustees. The long-term baseline financial plan, including the acquisitions of San Leandro and Alameda

Hospitals, showed that AHS was expected to lose \$24 million in 2014, and losses would further erode to \$45 million annually by 2018. AHS consultants recommended implementation of multiple cost-saving and revenue-generating improvements that would support the total \$84 million improvement over a period of five years. The labor-intensive nature of **AHS'** cost structure indicates that labor cost savings would need to be substantial. The Grand Jury is concerned that again the magnitude of these challenges is not recognized.

At the full board meeting on November 26, 2013, a motion to ratify the use of \$29 million of board-restricted funds was finally presented to the full board. As opposed to the robust publicly documented discussion and passage of a similar measure in the September 16, 2013 finance committee meeting, this came through the back door as a generic authorization for the use of restricted funds previously approved by the executive committee on October 1, 2013. As best the Grand Jury can reconstruct, 1) only five out of eleven trustees voted for this \$29 million expenditure; 2) the October 1, 2013 four-member executive committee meeting had no public visibility; and 3) while there were only six people attending the November 26 meeting, which meets the quorum requirements, the copy of Resolution 2013-10 that was sent to the board of supervisors supporting the dispersal of funds (included the wording that it was authorized by a majority vote by the board of trustees), appears misleading.

At this same meeting the external auditors reviewed the 2013 audit report that reinforced previous information the board had received regarding its significant liquidity issues. The Grand Jury is concerned that there was an active effort by Alameda Health System to manage this bad financial news. Unfortunately, this effort appears to have been successful until August 2014.

Inadequate Alameda Health System Governance

The Brown Act

The Ralph M. Brown Act (Brown Act) was passed in the 1950s. Its purpose was to create transparency in government by ensuring that meetings of public bodies are open and public. The act applies to all state and local agencies. AHS is a public hospital authority and is subject to the Brown Act. The Brown Act requires in part that the AHS Board of Trustees make documents distributed to the board for public meetings readily available to the public, unless they are deemed confidential as hospital trade secrets.

The Grand Jury heard complaints from trustees that on several occasions, the board discussed matters in closed session that should have occurred during their open meetings. The Grand Jury also heard testimony that both management and the trustees felt that they could have received better guidance regarding the Brown Act and that there is now a focus on compliance. While the Brown Act does not require that meeting minutes be posted online, many public agencies do so. AHS board meetings are not videotaped.

Inadequate Board Documentation

The Grand Jury heard testimony that in many cases meeting minutes were incomplete and did not include key discussions. In one instance, because of incomplete minutes, it was difficult for trustees to verify past discussions. A trustee was sure that an agreement had been reached about the composition of the board after the Alameda Hospital acquisition, yet was unable to search back and confirm this from the minutes.

The lack of **AHS'** documentation also made it difficult for the Grand Jury to recreate how and when key decisions were made. When the Grand Jury began its investigation in September of 2014, AHS had not posted its meeting minutes or

board packets online for over a year. However, upon request, AHS staff was very cooperative and provided the Grand Jury with minutes and board packets.

Measure A Funds

Measure A provides for a **citizen's** oversight committee to monitor and ensure that Measure A funds are spent in accordance with the measure, namely to support indigent health care in Alameda County. As mandated, the oversight committee prepares and presents to the BOS an annual report of how the funds are spent. The Grand Jury learned that past Measure A committee reports contained complaints by committee members that AHS did not sufficiently document how Measure A money was spent.

Although Measure A funds are a large part of its budget, AHS does not prepare an accounting of how the funds are spent. The Grand Jury heard testimony that such accountings could be done, although it is not a priority item.

Board of Supervisors and Alameda Health System

Communication Channels

There are three communication channels that should have brought to light **AHS'** financial problems in a timely manner, which would have allowed the board of supervisors to effectively oversee AHS. As outlined below, all of these channels failed until public awareness began to build in September 2014.

The first channel is the BOS health committee, which is comprised of two members of the board of supervisors, and is the **county's** primary conduit of public communication with AHS. The Grand Jury learned that the remaining three BOS members have traditionally had very little contact with Alameda Health System. It appears that the BOS health committee has the responsibility to relay information about the condition of the hospital system to the rest of the board of supervisors. While the BOS health committee met fifteen times between July 2013 and the start of September 2014, the Grand Jury could find only two

meetings during that key period when AHS made it on the agenda, and neither appeared to have anything to do with **AHS'** finances.

The Grand Jury heard testimony that some of the AHS trustees believed that their communications to the BOS health committee, or for that matter a single member of the board of supervisors, would in fact be communicated to the entire board. As noted previously, the Grand Jury learned that individual BOS members would occasionally lobby on behalf of specific health related projects, one being the acquisition of San Leandro Hospital. The Grand Jury is concerned that some AHS trustees believed that this pressure came from the entire body of the BOS, which was incorrect. The shift in intensity of oversight by the BOS health committee did not begin until after the formal AHS default to the county treasury as of June 30, 2014. It should be noted that since the fall of 2014, AHS management has provided regular, detailed, accurate monthly updates to the board of supervisors health committee.

The second channel involves the Alameda County Auditor-Controller. Based on the **county's** financial relationship with AHS, certain financial transactions are processed through the **county's** consolidated treasury account. In simple terms, the county administers and issues checks and deposits to and from **AHS'** account. Additionally, weekly reports are prepared summarizing the net cash balances in the consolidated treasury account and the funds received from Measure A. These reports went to each member of the board of supervisors and **AHS'** board of trustees. The Grand Jury heard testimony confirming that staff discussions were held between the county auditor-**controller's** office and AHS' financial management during the fall of 2013, regarding the significant cash flow issues, and **AHS'** projected inability to meet the June 30, 2014 \$110 million negative loan balance. Unfortunately these communication streams failed to alert the board of supervisors health committee or the full board to the impending significant reversal of **AHS'** financial performance for 2013-2014. The first formal notification of the problem came in a letter dated July 28, 2014, documenting

that AHS had defaulted on its agreement with the county sent by the county auditor-controller to **AHS'** chief executive officer.

The Grand Jury questions whether a more proactive approach from the auditor-controller's office, by demanding in writing from AHS formal notice, would have triggered a fully functional corrective action plan to be in place by early 2014. Unfortunately, this major AHS financial problem remained out of public view until the board of supervisors health committee meeting of September 22, 2014, when a member of the board, speaking as a member of the public, raised the issue.

The third communication channel is the mandated joint meeting between the county board of supervisors and **AHS'** board of trustees. Per **AHS'** bylaws, at least one of its board meetings was to be held jointly with the county board of supervisors. A presentation from AHS management at a board of supervisors retreat in July 2013 was the only “**joint**” meeting. The Grand Jury characterizes the information presented as aspirational (six AHS strategic priorities) and overly optimistic (cash flow days on hand increasing from 2013) just as the financial crisis was developing. The Grand Jury heard testimony that ten months later, the May 2014 formal joint meeting had a similar tone. It should be noted that the challenge of cost improvement for fiscal year 2015 of \$57 million was included. However, the minutes did not include any discussion or action by the board of supervisors or **AHS'** board of trustees. Fortunately, the most recent joint meeting held on December 9, 2014 included accurate, detailed AHS financial reports focused on actual performance.

Toyon Report

As a result of the Alameda Health System default in July of 2014, an outside consultant (Toyon) was hired to assess **AHS'** current financial operating condition, develop financial projections, develop specific recommendations for improving financial sustainability, and develop on-going metrics. The

consultant's report included a detailed forensic comparison of cash collections to net revenue, which clearly documented the July 2013 beginning of the cash flow crisis. The report focused on needed revenue cycle enhancements, operating cost reductions, and other payer mix issues. A fundamental issue is the poor linkage between the operating metrics and the large top-down cost reduction initiatives. Total cost increases for fiscal years 2014 and 2015 outpaced revenue growth, negating the bottom line impact of any cost controlled initiatives. The January 2015 Toyon Report helped to close the information gap that had persisted for the preceding twelve to fifteen months.

Key Resolution Efforts

After **AHS'** default on its financial obligation to the county treasury, the county has taken significant steps not only to identify the causes of **AHS'** financial distress, but also to use its lending leverage to ensure that the Alameda Health System adopts structural financial changes. The county hopes that this will open future and more reliable streams of communication between the two organizations to ensure the county can oversee AHS more effectively. More specifically, the county has:

- Hired a hospital consulting organization that identified the root causes of **AHS'** financial problems, and made comprehensive recommendations to move AHS towards financial sustainability.
- Proposed a new AHS repayment schedule with greater accountability.
- Proposed that AHS regularly provide the county auditor with data needed to track the progress and financial sustainability of AHS as a condition of any new repayment agreement. AHS must also update the BOS health committee once per month on the financial status of its operations and provide the BOS with biannual updates on its comprehensive strategic financial and operating plans.
- Proposed changes to Alameda Health **System's** bylaws, which would give the county supervisors more authority over the selection of both the AHS board and its CEO.

- Proposed the creation of a Joint Collaborative Planning Committee comprised of two AHS trustees and two members of the board of supervisors responsible for overseeing planning and operation, long-term debt, board of trustee training, and communications.
- Proposed that all future cash requests and cash flow projections from AHS be reviewed and approved by the Alameda County Health Care Services Agency director.

The Grand Jury believes that these proposals are steps in the right direction but real improvement cannot occur in the governance of the hospital authority unless the trustees agree to make changes.

Conclusion

Beginning in July 2013, the Alameda Health System faced very serious cash flow issues due to a difficult transition to new health records and financial billings systems and the acquisition of two struggling hospitals. It also faced ongoing structural financial issues, but some of the financial damage was self-inflicted as the AHS board failed to perform sufficient due diligence of the San Leandro Hospital acquisition.

The Grand Jury is concerned that the AHS board relied on executive staff recommendations and was swayed by political leaders regarding the acquisition of San Leandro Hospital, without demanding the due diligence it had earlier requested. This resulted in **AHS' board of trustees finalizing the acquisition** without fully understanding the negative financial consequences.

Failures in the channels of communication between AHS executive staff and its board, and also between AHS and the Alameda County Board of Supervisors, exacerbated the financial problems. These breakdowns in communication also became barriers that delayed both agencies from crafting comprehensive solutions, in effect preventing both boards from carrying out their mandated

responsibility to oversee the finances of the massive and complicated organization.

The Alameda Health System Board of Trustees must now make very difficult decisions to remedy structural financial problems. To ensure that AHS stays on track, the Alameda County Board of Supervisors must demand detailed and regular financial reporting from AHS. This will help the board of supervisors reestablish its oversight of the health system. The board of supervisors must also mandate that the Alameda Health System implement a sustainable financial model with clearly defined performance-related metrics to ensure that public funds are spent in a prudent and responsible manner. Finally, both organizations must ensure that the public has access to such information in order to help rebuild confidence in the viability of this essential county service.

FINDINGS

- Finding 15-9:*** The Alameda Health System Board of Trustees failed to ensure that a prudent and professional due diligence process was conducted from the period of May to October 31, 2013, allowing the financially damaging acquisition of San Leandro Hospital to be completed.
- Finding 15-10:*** By the end of November 2013, the Alameda Health System Board of Trustees was fully aware of the major financial issues Alameda Health System faced and the fact that Alameda Health System would not meet its year-end financial obligation to the county, but failed to provide the contractually obligated written notice to the county.
- 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.
- Finding 15-12:*** There was a need for at least \$50 million in cost reductions to provide the Alameda Health System with a sufficient operating margin to repay the county loan and pension obligations, while attempting to achieve its strategic vision. This was first identified in November 2013, but little action was taken for at least one year in response to this need.
- Finding 15-13:*** The resulting delay in implementing the cost savings program of at least \$50 million means that Alameda Health System will need to add additional savings projects of similar magnitude in subsequent years to remain financially viable.
- 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.

RECOMMENDATIONS

Recommendation 15-10:

The Alameda Health System Board of Trustees must make available online, board audio or video recordings for all of its public meetings and ensure that agendas, minutes and board packets are posted in a timely manner.

Recommendation 15-11:

The Alameda Health System must provide detailed, accurate, ongoing financial reports to the Alameda County Board of Supervisors health committee to ensure data is available to support effective oversight.

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.

Recommendation 15-13:

Alameda Health System must develop a set of metrics satisfactory to the Alameda County Health Care Services Agency, linking its financial performance and delivery of medical services to provide an additional layer of oversight and support.

Recommendation 15-14:

Alameda Health System must provide the Measure A Oversight Committee with performance indicators consistent with the requirements of the measure.

RESPONSES REQUIRED

Responding Agencies - Please see page 125 for instructions

Alameda Health System
Board of Trustees

Findings 15-9, 15-10, 15-12, 15-13 and 15-14
Recommendations 15-10, 15-11, 15-13 and 15-14

Alameda County
Board of Supervisors

Findings 15-11 and 15-14
Recommendation 15-12

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ZONE 7 WATER AGENCY PURCHASE OF PATTERSON RANCH

Executive Summary

Zone 7 Water Agency (Zone 7) is a self-governing special district charged primarily to provide water and manage flood control systems. As a wholesaler of treated and untreated water, its retail customers include several Tri-Valley municipalities. **In early 2013, the agency's board of directors initiated a process to negotiate the price and terms of payment to acquire 4,784 acres of watershed land near Lake Del Valle Reservoir. The acquisition became the subject of a citizen's complaint that alleged that the process lacked public openness, transparency, and exhibited Brown Act violations. The Grand Jury investigated the complainant's allegations and found that the acquisition process violated Zone 7's organizational core values of being open and transparent in its public business, in addition to Brown Act infractions.**

Background

The Alameda County Flood Control and Water Conservation District was created in 1949 by the California Legislature. The district encompasses approximately 425 square miles, which forms eastern Alameda County, and is responsible for maintaining protection of county roads and residential and business properties from damage or destruction caused by flooding. In addition, the district works to safeguard unpolluted water runoff from watersheds, prevent the exportation and promote the conservation of water, and other public benefits.

The Zone 7 Water Agency was carved out from the Alameda County Flood Control and Water Conservation District in 1957. It became a special district with

a mission to primarily provide reliable supplies of water and manage effective flood control systems. The organization is overseen by the Alameda County Board of Supervisors, even though it is locally governed by an elected board of seven directors. Zone 7 revenues are generated from wholesale water sales, property taxes, and a number of assessed-for-service fees. The agency supplies wholesale potable water to the cities of Livermore, Pleasanton, the Dublin-San Ramon Services District, and the California Water Services Company. These **municipalities and agencies are Zone 7's** retailers who in turn distribute water to their customers. The agency also provides wholesale, untreated irrigation water (primarily to local vineyards) and manages and maintains assets such as water treatment and demineralization facilities, groundwater basins, flood control channels, and watersheds.

Eighty-three percent of the agency's water is imported from the State Water Project, South Bay Aqueduct system. In addition, Lake Del Valle Reservoir, which is owned by the California Department of Water Resources, supplies water in amounts determined by certain water rights held by Zone 7 and other agencies **sharing the reservoir's water storage.**

On July 17, 2013, the board of directors authorized the purchase of 4,784 acres of various parcels of land collectively referred to as the Patterson Ranch property. Since the acquisition of the land, current Zone 7 terminology refers to the Patterson Ranch property as the Lake Del Valle Property. The purchase price of the Patterson property was \$18.6 million.

The property is located near Lake Del Valle Reservoir. It is regulated by agricultural and rangeland planning protocols of the Eastern Alameda County Conservation Strategy of which Zone 7 and twelve other local agencies are participants. The Patterson property represents five percent of the Arroyo Valle **Watershed. Agency officials believe Zone 7's long-term** stewardship of the property will enhance watershed management, rangeland grazing, and quality of

the water supply, habitat conservation, flood protection, and other public benefits.

Zone 7 is currently pursuing incremental strategies to accomplish jurisdictional separation from Alameda County – a longtime goal of the agency. It postulates that its case for independence will better serve its constituents by reducing administrative costs and streamlining operations. The validity of these and other claims will eventually be evaluated by the Alameda County Local Agency Formation Commission, which will either approve or disapprove the **organization's request** for independence.

As noted above, in November 2013 the Alameda County Grand Jury received a **citizen's complaint about the lack of public input, openness, transparency, and Brown Act violations during the organization's process of acquiring the Patterson property. In July 2014, the Grand Jury decided to investigate the complainant's** allegations against the Zone 7 Water Agency.

Investigation

The Grand Jury's investigation assessed the validity of the complainant's allegations against Zone 7. The Grand Jury researched a variety of reports, public documents such as board meeting agendas and minutes, and heard testimony of a number of witnesses. The following documents were provided by the agency:

- Written appraisal (September 2011)
- Memo of Understanding, East Bay Recreation and Parks District (April 2013)
- Written Appraisal (May 2013)
- Phase I Environmental Site Assessment (June 2013)
- Fidelity National Title Company Preliminary Report (July 2013)

- Staff Report: Watershed Protection (July 2013)
- Agreement of Purchase and Sale of Joint Escrow Instructions with Price (August 2013)
- Staff Report: Authorize Watershed Protection Property Acceptance with Certificate of Acceptance (September 2013)
- Buyer Final Closing Statement (November 2013)
- Grant Deed Recorded (November 2013)
- Blanket Agreement and Bill of Sale (November 2013)

Discussion

It is important to note that the Grand Jury does not question the \$18.6 million purchase price of the property. The appraisal, price, and terms of payment appear **to be comprehensive, complete, and supportive of the agency's decision to** acquire the property at the appraised price. However, the Grand Jury does take issue with Zone 7 acquiring the largest piece of property at the highest purchase price in its history without any meaningful public participation. For example:

- ◇ Before initiating the purchase process, the agency failed to make a public case for the purchase and management of the property consistent with its mission, values, and strategic priorities.
- ◇ **There was little, if any, evidence of public awareness of the agency's** rationale for acquiring the property prior to purchase. Further, it was unclear whether the property acquisition was for purposes of **“watershed,” or “protection of water rights,” or “watershed protection”** – each suggesting different planning priorities.
- ◇ There was no public discussion concerning the purchase of the property; nor were there opportunities provided for the public to understand how Zone 7 funding mechanisms were planning to be used prior to property acquisition.

The Grand Jury heard testimony that customary land purchasing practices of the agency were not followed during the process of acquiring the Patterson property. Board meeting agenda reports were conspicuously void of explanations for the property purchase. Specifically, there was no public disclosure of the intent to purchase, and there was little, if any, opportunity for public review of or **comment on the agency's rationale for acquiring the property.**

The Grand Jury learned that public attendance at Zone 7 board meetings is minimal at best, which makes it difficult for the organization to be assured of sufficient opportunities for public comment and scrutiny. This situation is further complicated by deficiencies in reporting board actions taken in closed **meeting sessions.** The Grand Jury's investigation found that eight board meetings were held from February 2013 through September 2013. A number of those meetings included closed sessions scheduled to discuss the price and terms of the sale of the property to the agency. The Grand Jury is concerned that some matters that should have been discussed in open session were discussed in closed session.

For example:

- During a board meeting on February 20, 2013, action was taken in closed session that was not reported out to the public for information or comment. That topic should have been included in the agenda and addressed in open session. It later became known that the board **authorized the agency's general manager to execute a memo of understanding (MOU)** with the East Bay Regional Parks District (EBRPD). The MOU dealt with a partnership between Zone 7 and EBRPD in matters of mutual interest concerning the purchase of the Patterson property. The MOU was dated to go into effect on April 16, 2013, without any prior opportunity for public comment. The MOU became public after a report on the matter by the general manager during the board meeting of April 17, 2013.

- **The agency's 2013-2014 annual budget was approved on May 15, 2013.** It presented four separate fund expenditure accounts described as **"watershed investments" totaling approximately \$25 million.** Records indicate there were inadequate opportunities for public comment concerning watershed investment.
- **The Patterson property purchase was not included in the agency's Capital Improvement Program (CIP) list of strategic priorities for capital expenditures previously approved by the board of directors in October 2012.**
- On October 16, 2013, the board of directors approved a watershed resolution to amend the CIP Strategic Planning Priorities – an action inappropriately taken by the board after the property purchase. The resolution gave the appearance that the agency was justifying the **property's purchase after the fact.**

The Grand Jury did not conduct a legal analysis of the question of whether restricted Mitigation Impact Fee accounts were inappropriately used for the purchase of the Patterson property. However, the Grand Jury did receive testimony that restricted funds collected from developers for drainage impact fees were used for the land purchase. Such fees are justified provided the proceeds are spent to defray the cost of public improvements related to the impact of the project. For example, if a fee is charged to defray the cost of drainage or flood control improvements necessitated by the increased runoff created by a project, then the collected funds must actually be spent on such flood control expenses, or similar downstream improvements related to a construction project.

However, one of the restricted reserve accounts used for the purchase of the Patterson property raises questions. Specifically, Account 210 that funded \$2.97 million towards the purchase was restricted for flood protection and storm water drainage development impacts. This was funded by drainage fees charged to developers and is restricted to defraying the cost of drainage improvements

presumably downstream of a development project. The Patterson property is located in the watershed located upstream of any urbanized areas served by Zone 7. The Grand Jury questions the logical nexus between the upstream ranch purchase and the purposes for which that money was collected.

Conclusion

Three of the eight core values that Zone 7 professes to guide its mission were ignored during the acquisition of the Patterson property. The Grand Jury believes **that the board of directors seriously failed to uphold its organization's core values.** The core values that were ignored were:

Open and Transparent: Zone 7's website states, "The Board's meetings and communications shall be open and public except when the Brown Act authorizes otherwise." **The Grand Jury concluded that the board of directors failed to maintain a process for purchasing property that was consistent with the Brown Act, and was open and transparent as required by Zone 7's stated core values. Agency officials discussed items in closed session that should have been placed on the agenda and discussed in open session.**

The Grand Jury believes the public is entitled to know:

- Why did the agency decide to fast track the acquisition process?
- **Why was the property not included in the Capital Improvement Program's Strategic Priorities prior to the acquisition process and approval of purchase agreements?**
- Who benefited from the purchase and why?
- Why did the purchase of the property take priority over other projects listed in the Capital Improvement Program?

- Why was there no public explanation prior to the purchase of the property **of how the land acquisition fit into the larger scheme of the agency's** mission and vision?
- Why was there no public justification on whether the purchase price and terms of payment were a proactive use of agency reserves in relation to other strategic priorities?
- How was the property purchase justified as fiscally responsible, innovative, proactive, and environmentally sensitive?

Integrity: Zone 7's website states, "We practice the highest ethical standards and maintain open, honest communications at all levels of the organization at all times." **The Grand Jury believes that the board of directors** failed to maintain high standards of organizational integrity throughout the property acquisition process.

For example:

- ◇ Prior to approval of the 2013-14 annual budget, there was a lack of opportunity for public scrutiny or comment of how the allocation and budgeting of funds for purchasing the property was decided.
- ◇ The board of directors failed to make a public case to support and justify the land purchase prior to initiating a process to acquire the property.
- ◇ The board of directors appeared to be rushing to insert a watershed management resolution into its Capital Improvement Program Strategic Planning Priorities after the purchase price and terms of payment were established and the property was acquired.

Fiscally Responsible: Zone 7's website states, "We will operate in a productive, cost effective, transparent and efficient manner to ensure sound financial stability." **The board of directors failed to provide for appropriate disclosures and**

public comment during certain critical junctures of the property acquisition process, such as, planning for an \$18.6 million fiscal impact on other capital expenditures and the adoption of the 2013-2014 annual budget. Also, the board failed to document whether other agencies that **benefited from Zone 7's financial** investment were asked to share the financial burden.

The Grand Jury's investigation concluded that the Zone 7 Water Agency Board of Directors did not provide appropriate disclosures and opportunities for public input, openness, and transparency. It also improperly applied the Brown Act during the process of acquiring the Patterson Ranch property. The Grand Jury finds that the citizen's complaint against the Zone 7 Water Agency was credible.

FINDINGS

- Finding 15-15:*** The Zone 7 Water Agency Board of Directors failed to follow the Brown Act, limiting opportunities for public comment and discussion throughout its decision-making process of the Patterson Ranch property purchase.
- Finding 15-16:*** The Zone 7 Water Agency Board of Directors failed to follow its organizational core values of openness, transparency, and fiscal responsibility throughout the process of acquiring the Patterson Ranch property.
- Finding 15-17:*** The Zone 7 Water Agency Board of Directors failed to make a public case supporting and justifying the purchase of the Patterson Ranch property prior to the actual acquisition of the same.
- Finding 15-18:*** The Zone 7 Water Agency failed to publicly disclose funds to acquire the Patterson Ranch property, except as a broad watershed investment, when its Capital Improvement Program Strategic Priorities were adopted.
- Finding 15-19:*** The Zone 7 Water Agency failed to adequately disclose detailed budget information regarding the purchase of the Patterson Ranch property prior to adoption of the 2013-2014 annual budget. The purchase included a questionable use of restricted funds.
- Finding 15-20:*** The Zone 7 Water Agency claimed that the acquisition of the Patterson Ranch property would provide important **“watershed” or “watershed protection” or “protection of water rights,” broadening its strategic interests in the region.** These interests were not explained to the public until inserted in the documents after the actual acquisition of the property.
- Finding 15-21:*** The Zone 7 Water Agency Board of Directors did not follow Brown Act protocols by failing to disclose in a timely manner actions taken during closed session that affected a Zone 7 partnership with East Bay Regional Parks District serving mutual interests after the acquisition of the Patterson Ranch property.

RECOMMENDATIONS

Recommendation 15-15:

The Zone 7 Water Agency Board of Directors and general manager must strictly follow established rules and practices for conducting agency business in an open and transparent manner consistent with its organizational core values and the Brown Act. Specifically, the Zone 7 Water Agency must:

- (a) Post board meeting agenda items in advance of public meetings as required by law.
- (b) Provide ample time and opportunity for public comment and participation before taking actions.
- (c) Publicly report board decisions and actions made in closed meetings in a timely and complete manner.
- (d) Publicly report actions and individual votes made by each board member in closed sessions.

Recommendation 15-16:

The Zone 7 Water Agency must provide greater transparency, making archived video or audio of public meetings available on Zone 7's website.

Recommendation 15-17:

The Zone 7 Water Agency Board of Directors must implement a plan of action to ensure public awareness and provide opportunities for attendance and participation at board meetings.

RESPONSES REQUIRED

Responding Agencies - Please see page 125 for instructions

Zone 7 Board of Directors

Findings 15-15 through 15-21
Recommendations 15-15 through 15-17

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CITY OF FREMONT

EMAIL RETENTION POLICY

Executive Summary

The Grand Jury initiated an investigation based on a citizen's complaint that the city of Fremont systematically destroys all city emails after a 30-day period, **alleging a violation of California law.** The complaint also alleged that the city's administrative regulations define all emails as "preliminary drafts," thus excluding them from disclosure under the California Public Records Act. The Grand Jury examined California state statutes and Fremont policies governing the retention and purging of public documents, and spoke to advocates on both sides of the issue concerning the retention of emails. The Grand Jury is deeply **concerned with Fremont's loose interpretation of California government transparency and retention statutes and the city's apparent intentional efforts to exclude the public from accessing city emails.**

Background

In January 1956, Fremont was incorporated as a result of a merger of the five smaller communities of Centerville, Niles, Irvington, Mission San Jose, and Warm Springs. **The city's** government is headed by an elected mayor who also chairs a city council consisting of four members elected by the citizens of Fremont. The council appoints a city manager and a city attorney, adopts the city's budget, and decides all major policy issues. Various advisory bodies comprised of volunteers who serve without compensation are consulted by elected officials in the governance of Fremont. The city has approximately 832 employees organized into 22 departments to provide and maintain citizen services with an annual budget of \$157 million.

As communications technologies have advanced, public agencies like Fremont have relied heavily on the use of email to transact governmental business. Users **of the city’s email system, for example, include city** employees and volunteers. Fremont email users receive approximately 3,000 emails per day, which are **distributed to about 1,300 individual mailboxes within the city’s email system.**

Investigation

The Grand Jury’s investigation focused on a citizen’s allegations about Fremont’s administrative regulations that define all unsaved email communications as preliminary drafts that are purged and unavailable after 30 days. The Grand **Jury’s investigation included interviews of city employees and a representative** of a nonprofit organization dedicated to First Amendment disputes. Examinations of documents such as the California Public Records Act (PRA), California Government Code Section 34090, other state and jurisdictional documents, and **the city of Fremont’s** Administrative Regulations (AR 1.14) on the Use of Electronic Communications were also made. (Note: for the purposes of this report, the term “retention/purge policy” refers to the city’s AR 1.14.)

The California Public Records Act

The Public Records Act is a cornerstone of the state’s efforts to ensure open government by giving citizens access to information, thereby providing opportunities for public oversight of governmental operations. The law provides the public with the capacity to request documents and records from government agencies, including emails, which helps to explain how and why such agencies have made important decisions.

Built into the Public Records Act are, however, certain exceptions that prevent governmental agencies from disclosing some forms of information. These **exceptions focus on protecting an individual’s right to privacy (for example,** medical and personnel records) while other exceptions are intended to help

ensure efficient and effective administration of government functions, such as keeping some investigative reports and information about pending litigation secret.

The Public Records Act specifically exempts public access to preliminary drafts, notes and inter-and intra-governmental agency memos. This exception allows agencies to protect deliberative processes to ensure that agency employees can have frank discussions without the fear of information becoming public. Nevertheless, before withholding such information, the agency must determine that **disclosure would undermine the agency's ability to perform its functions**. In addition, the agency must find that the public interest in withholding records clearly outweighs the public interest in disclosing them.

Government Code Section 34090: The California Retention Statute

While the Public Records Act requires the disclosure of public records, it does not contain any provisions regarding how long a public record must be retained by governmental agencies. Government Code section 34090, however, addresses **this issue and is referred to as the state's records retention statute**. The statute does require that nearly all city records be retained for at least two years. **Unfortunately, it does not define the term "records" and some public agencies have taken the position that their organization's emails are not records even though the Public Records Act clearly defines records to include email communications**. The Grand Jury noted that the city of Fremont takes the same position by defining its unsaved emails as preliminary drafts that are not kept in the course of business, thereby making emails exceptions to retention codes and statutes.

Fremont Administrative Regulation:

Use of Electronic Communications and Internet

The city of Fremont's treatment of email communications is contained within its Administrative Regulation 1.14 on the Use of Electronic Communications. This retention/purge policy provides that all city emails shall be retained for 30 days, at which time they are automatically purged unless an individual employee or volunteer determines that the email is a record that needs to be retained. The **city's policy states in part:**

Interface with the Public Records Act. All “public records” (which generally means any writing, whether electronic or paper, that contains **information relating to the conduct of the public's business**) are governed by the mandatory public disclosure requirements of the Public Records Act and its exceptions (Gov. Code 6250 et seq.). Because information on the E-Mail System is automatically purged, the city considers every E-Mail to be a preliminary draft (not retained in the ordinary course of business). Accordingly, users are required to determine whether information transmitted or received through the E-Mail system is a record that needs to be retained.

Rather than defining a public record as the Public Records Act does, the Grand Jury learned that the city of Fremont relies on a 24-year-old Attorney General **Opinion which describes a public record as “... a thing which constitutes an objective lasting indication of a writing event or other information which is [retained]... because it is necessary or convenient to the discharge of the public officer's duties and was made or retained for the purpose of preserving its informational content for future reference.”** (64 Ops.Cal.Atty.Gen. 317, 324 (1981)). It is the position of the city that its unsaved emails do not fit within the Attorney General Opinion; therefore, they are **not** public records as understood by the **state's record retention statute.**

As a result, Fremont maintains it is not required to retain all emails for two years like other public records in its possession. Because city emails are purged after 30 days (meaning the documents are not kept in the regular course of business), the city maintains they amount to preliminary drafts that are exempt from **disclosure under the Public Records Act. From the Grand Jury's perspective, Fremont's questionable logic appears to exempt all emails (unless separately saved) from disclosure, even though the Public Records Act specifically includes emails.**

The users of Fremont's email system are city employees and advisory volunteers. The city's retention/purge policy is distributed to email users, requiring them to determine on their own whether or not emails should be retained. If individual users decide an email communication should be retained, they are directed to transfer the information to an appropriate records storage medium such as printing hard copies for filing. If email users cannot decide whether an email should be retained beyond 30 days, they are required to consult their supervisors. However, the Grand Jury heard testimony that there are instances of little or no training for employees or volunteers on how to determine whether an email is **one that needs to be retained as a public record in the normal course of the city's** business. The Grand Jury is concerned that individual city employees and volunteers, who may not be qualified, are required to make decisions as to which emails must be retained.

The Grand Jury learned that when originally implementing its retention/purge policy, the city justified it by stating that the cost of retaining and storing an estimated one million emails per year, with the additional capacity to search and retrieve them, is cost prohibitive. The Grand Jury heard testimony from all sides of this issue that the cost of storage and retrieval of emails is no longer excessive; that the city is considering lengthening its period of retention from 30 days to **90 days. Other testimony corroborated that Fremont's email system (taking into account storage, search, and retrieval capabilities) could be greatly expanded at a minimal cost.** For example, one in-house option the city has investigated would

necessitate an estimated start-up cost of \$55,000 for setting up an email retention-retrieval system with an annual maintenance cost of \$6,500. By contrast, cloud storage would cost the city about \$40,000-\$50,000 per year. Either option **is just over one percent of Fremont's current annual information technology budget of approximately \$5.5 million.**

Conclusion

Government agencies rely heavily on the use of email communications to transact **the public's business. The Grand Jury believes all government agencies should be** open and transparent. Emails must therefore be retained as public records and must be accessible for public review when warranted.

The city of Fremont purges most email records after 30 days, depriving citizens access to vital information about how and why public policy, regulations, and laws are formulated.

Given the growth and evolution of the internet and computer technology in the past 20 years, rules and regulations classifying emails as preliminary drafts are both antiquated and inadequate. The city of Fremont must overhaul its email retention/purge policy, thereby responding to the need for public transparency. The Grand Jury also believes the state of California could resolve this matter by integrating its retention statute into the Public Records Act. The absence of uniform guidelines means government emails will continue to be treated inconsistently across jurisdictions.

Destroying emails prematurely not only prevents public access to vital information, but also impedes investigations of wrongdoing. For example, the PG&E pipeline explosion in San Bruno was mired in scandal as a result of emails being uncovered between PG&E staff and the state Public Utilities Commission. The inappropriate conduct of public officials involved in this case would not have become known had it not been for the retention of emails that enabled the public to uncover wrongdoing and demand accountability.

Two other examples are found within this 2014-2015 Grand Jury report. These examples, like the PG&E case, further illustrate that access to email communications is essential to ensure that government business is conducted in an ethical manner. Emails were often key to determining whether there was misconduct by government agencies.

The Grand Jury concludes that the city of Fremont's interpretation of California statutes cited in this report is contrary to the spirit of open and transparent government and must be changed.

FINDINGS

Finding 15-22: **The city of Fremont's classification of emails as preliminary drafts deprives the public of key opportunities to oversee government operations.**

Finding 15-23: **The city of Fremont's classification of emails as records not kept in the regular course of business, unless specifically saved, deprives the public of important opportunities to monitor government.**

RECOMMENDATIONS

Recommendation 15-18:

The city of Fremont must change its email retention policy to require that emails are stored and retained for at least two years.

Recommendation 15-19:

The city of Fremont must change its email retention policy so that no emails are classified as preliminary drafts, but rather that all such emails are retained in the regular course of business and subject to the Public Records Act.

RESPONSES REQUIRED

Responding Agencies - Please see page 125 for instructions

Fremont City Council

Findings 15-22 and 15-23
Recommendations 15-18 and 15-19

One Grand Juror did not participate in this investigation due to a conflict of interest.

OAKLAND HOUSING AUTHORITY

BOARD TRAVEL

Executive Summary

In February of 2014, a Bay Area TV station aired an investigative report regarding questionable travel expenses for the Oakland Housing Authority (OHA) Board of Commissioners. While the report focused on what appeared to be clerical errors in reimbursements for one commissioner, the Grand Jury was struck by the significant amount of public funds spent by the board for travel year after year. For instance, between January 2010 and December 2013, a former commissioner spent over \$67,000 attending at least a dozen out-of-town conferences. The Grand Jury questioned whether this was of value to Oakland residents. Between 2010 and 2013, the entire board (which is a part-time board) spent over \$155,000 on **travel. This spending prompted the Grand Jury's investigation.**

Background

The Oakland Housing Authority was established in 1938 by a city of Oakland ordinance under the Health and Safety Code of the State of California. The authority was established to receive federal funds, through the U.S. Department of Housing and Urban Development (HUD), to provide housing for low-income residents of the city of Oakland. It is governed by local, state, and federal laws, rules, and regulations.

Housing authorities are unique agencies; funded entirely by the federal government, the authorities are governed and managed locally. OHA has a total annual budget of \$750 million for its programs and operations.

OHA is the largest landlord in Oakland, serving a diverse population across many neighborhoods. Currently, OHA provides subsidized housing for nearly 16,500 families and is the second largest housing authority in the state behind the Los Angeles Housing Authority.

OHA's Leased Housing Department is responsible for administering the Housing Choice Voucher Program, also known as the Section 8 Program. Another sponsor-based program is the Moving To Work (MTW) demonstration program. OHA has also been selected by HUD to work with experienced non-profit partners and other governmental agencies, having demonstrated new solutions for access to quality affordable housing in Oakland.

Investigation

During this investigation, the Grand Jury examined OHA's bylaws, rules, meeting agendas, commission meeting minutes, the Comprehensive Annual Financial Report for the fiscal year ending June 30, 2014, and the 2010-2013 travel audit. The Grand Jury heard testimony from OHA staff, and also surveyed other housing authorities throughout California.

The Role and Responsibilities of the Commissioners

OHA's board of commissioners has seven members, two of whom are tenants and serve two-year terms. The other five are residents of Oakland and serve four-year terms. The commissioners are appointed by the mayor of Oakland and are subject to city council approval. They receive a \$50 stipend for each meeting.

The OHA board is scheduled to meet monthly. The Grand Jury reviewed the agendas and minutes and noted that they met ten times in 2014, ten times in 2013, and thirteen times in 2012. In preparation for the monthly meetings, commissioners are expected to read board packets, which summarize what will be discussed at the upcoming meeting.

The Grand Jury heard testimony that commissioners may also serve on subcommittees of the full board. These subcommittees meet sporadically and appear to require less of a time commitment than that the regular board meetings. The Grand Jury learned that some commissioners play a limited role, mainly attending monthly meetings, while others take a more active role by participating in housing-related community events.

Commissioners are responsible for setting some policy direction for OHA; however, most of the operations of the authority are governed by federal housing rules. The commissioners do not run the day-to-day operations of OHA, nor do they act as negotiators for the district or lobbyists for local funding. The commissioners hire the executive director and approve the annual budget that is prepared and presented by staff. The commissioners may be best described as local HUD ambassadors.

Travel Policy

OHA has a policy that governs travel and reimbursement of expenses of commissioners, employees, and other representatives. The policy specifically states that the board must approve commissioner travel. It also limits commissioner travel to one trip per year outside of the Bay Area, unless the board approves additional trips.

Historically, the amount spent on travel by the commissioners was not readily available to the public or even to the commissioners themselves. While commissioners routinely sought and received board permission to travel outside the state, the commissioners were never provided with cumulative spending totals for individual commissioners.

In 2008, OHA staff began to publicly report on commissioner travel at the **board's annual budget presentation, identifying each commissioner's total travel**

expenditures for the prior year. The Grand Jury heard testimony that at first this practice was not well received by commissioners, but has since gained acceptance. It is the responsibility of the commissioners to monitor their own travel spending, but the Grand Jury heard testimony that the board had difficulty policing itself and that the commissioners were reluctant to censure each other.

The Travel Audit

In response to the media's investigative report, OHA's executive office requested an audit of travel expenditures for the period of January 2010 through December 2013. The audit revealed that there were some clerical errors and some deficiencies with travel reimbursements. It also revealed significant differences in individual commissioners' travel frequency.

One former commissioner, the top spender, was reimbursed over \$67,000 for conference travel between 2010 and 2013. The only other commissioner coming close to that was a current commissioner who was reimbursed nearly \$40,000 over the four-year period. This meant that two commissioners were responsible for over 65 percent of the board travel.

What stood out to the Grand Jury was the fact this part-time local board spent \$155,404 for conferences and travel over a four-year period. Two board members were responsible for more than \$100,000 of those expenditures. In contrast, the current board chair was reimbursed only \$10,427 over the four years, averaging only \$2,606 a year, and another commissioner was reimbursed only \$739 over the four years.

In 2011, the top spender accumulated over \$17,339 in out-of-town expenses after attending twelve separate conferences, meetings, or summits. He traveled to Phoenix, Napa, New Orleans, San Francisco, Louisville, Sacramento, St. Louis, Rancho Mirage, and Detroit. He also traveled to Washington, D.C. three separate times. In 2012, he spent \$18,236 on travel and conference fees. At one point that

year, he was in Washington, D.C. for three days, returned home for a week then traveled back to D.C. for four days, then went straight to Arizona for three days, then directly to New Orleans for four more days. During the four-year period, he traveled to conferences for a total of 161 days, averaging over 40 days each year.

Travel/Conference Reimbursement

As noted above, the commissioners' responsibilities are part-time, highlighted by a monthly meeting. The Grand Jury does not minimize the work of the commissioners or their role in the community. However, this information is used to judge the value and efficacy of spending over \$155,000 in taxpayer funds over a four-year period so a handful of commissioners could attend conferences all over the country. It must be noted that some commissioners should be commended for their apparent restraint when it came to travel.

Conclusion

The Grand Jury believes that local public governing boards have a fiduciary responsibility to ensure that public money is used for the benefit of the public.

Two Oakland Housing Authority commissioners expended a considerable amount of money and time traveling. This appeared to be a direct contradiction **to the primary objective of OHA's mission. The Grand Jury believes this** indicates a failure of the board of commissioners to rein-in fellow commissioners who exploit the system.

Limited travel may be necessary for networking or training on the part of the commissioners, however, their specific oversight responsibilities are more heavily weighted to understanding budgets and financial reports, evaluating the operations of the Oakland Housing Authority, and setting and enforcing policy within the framework set by the Federal Government.

The Grand Jury acknowledges that the main travel offender has left the OHA board, and the Grand Jury commends staff for their efforts to now report board travel more transparently. However, the board and not the staff are responsible to self-police such matters.

To avoid actual or perceived misuse of public funds, commissioners must have a firm understanding of and a conviction to enforce their own rules and policies. Ethical considerations must be applied at all times to ensure the public trust.

Public participation and oversight of boards such as OHA is understandably limited. It is therefore incumbent on the board itself and the mayor of Oakland, who appoints the board members, to be mindful that taxpayer funds should be spent judiciously in furthering the mission of the Oakland Housing Authority.

FINDING

Finding 15-24: Between 2010 and 2013 the Oakland Housing Authority Board of Commissioners' failure to rein in excessive travel spending by two board members violated the public's trust in the Oakland Housing Authority's management of taxpayer funds.

RECOMMENDATIONS

Recommendation 15-20:

The Oakland Housing Authority Board of Commissioners must set a policy that total travel expenditures be publicly reported quarterly, and copies of these reports be sent to the mayor of Oakland.

Recommendation 15-21:

The Oakland Housing Authority Board of Commissioners must ensure that training and other materials of value obtained from travel are shared with other commissioners and publicly report on the value of the travel.

Recommendation 15-22:

The Oakland Housing Authority Board of Commissioners must take advantage of local training and teleconferencing opportunities.

RESPONSES REQUIRED

Responding Agencies - Please see page 125 for instructions

Oakland Housing Authority
Board of Commissioners

Finding 15-24
Recommendations 15-20 through 15-22

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PERALTA COMMUNITY COLLEGE DISTRICT

Executive Summary

The Grand Jury received a complaint alleging financial mismanagement by the **Peralta Community College District's (PCCD) chancellor and trustees**. These allegations included excessive travel, spending, and other expenses. The **Grand Jury's investigation** revealed that PCCD has made improvements since a previous Grand Jury made recommendations for change in their travel policies and spending on meals and other related irregularities. However, this Grand Jury found instances of policy violations, weak documentation, and lax oversight, all of which need review and correction.

Background

The Peralta Community College District is located in northern Alameda County and consists of four community colleges: Berkeley City College, Laney College and Merritt College in Oakland, and the College of Alameda. It serves approximately 29,000 students, with over 850 full-time employees and over 1,250 part-time faculty and staff. A seven-member board of trustees elected by the public governs the district.

In 2010 an Alameda County Civil Grand Jury investigated PCCD for numerous spending, travel, and **policy violations**. **The Grand Jury's prior report and responses from PCCD** can be found at www.acgov.org/grandjury.

Investigation

The Grand Jury reviewed the **2009-2010 Grand Jury report and PCCD's** responses. The Grand Jury also reviewed documents from September 2013 to September 2014 relating to reimbursements paid to the chancellor, individual trustees, vice-chancellors, college presidents, the general counsel, and other

executive staff. In addition, the Grand **Jury reviewed PCCD's policies** in connection with reimbursements, travel, food, purchasing, and gifts. The Grand Jury also heard testimony from a district employee knowledgeable in paying reimbursements.

The Grand Jury learned that since June of 2011, PCCD has:

- Implemented new board policies and administrative procedures, including the creation of specific forms for expenditures and reimbursements through the introduction of specific administrative and business procedures;
- Eliminated individual credit cards for trustees, implemented the use of CalCards, and confined their use to a limited number of cardholders; and
- Implemented a per diem process for reimbursements using standard federal rates.

The Peralta Community College District is to be commended for implementing policies that require more financial oversight. However, the Grand Jury found instances where the revised policies appear to have not been followed. There were instances when trustees were reimbursed solely on the basis of an approval signature, where justification was required for those expenses. There were also instances of department heads approving their own reimbursements, which gives the appearance of impropriety.

The Grand Jury reviewed hundreds of reimbursement submittals and found multiple violations of policy. For example, the trustees appear to be given preferential treatment when being reimbursed for travel meals and are not always required to provide receipts. This indicated to the Grand Jury that better compliance, accountability, training, and safeguards are needed in order to prevent misuse of taxpayer funds. This was particularly apparent in out-of-area conference reimbursements at the executive level.

Another violation the Grand Jury discovered was that policy requires that transportation expenses be submitted on a monthly basis. The chancellor, however, submitted his reimbursements cumulatively after six months. This gives **the appearance that the chancellor's reimbursements are not held to the same approval process as others' reimbursements are held.**

Peralta allows for a \$25 incidental payment per-travel-day, which is in addition to the per diem allowances and other reimbursable expenses. It requires no explanation or receipts. The Grand Jury learned PCCD employees and trustees consistently apply for this stipend. The Grand Jury believes this payment is inconsistent with best practices for most other public agencies and should be discontinued. Receipts should be required for all expenses not covered by per diem. This \$25 daily reimbursement of taxpayer money for miscellaneous expenses should be held to the same reporting standards as other reimbursements.

Conclusion

While PCCD has improved travel and reimbursement policies based on a **previous Grand Jury's recommendations, there is still a need for improvement** and better enforcement of the policies. Adherence to policies must apply equally to all, including the trustees, the chancellor, and employees. Better training is needed to prevent erroneous reimbursements. The \$25 per day incidental payment needs to be eliminated. The Grand Jury is concerned that the current practices have fostered a culture of entitlement that benefits the individual and not the college as a whole.

**FINDINGS & RECOMMENDATIONS
RESPONSES REQUIRED**

*None
None*

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EMERY UNIFIED SCHOOL DISTRICT PARCEL TAX MEASURE

Executive Summary

Like the municipality defining it, the Emery Unified School District (EUSD) is comparatively small; it consists of two schools: one elementary school and one secondary school. Within the last dozen years, Emeryville voters approved school parcel tax initiatives. The current one (Measure K) passed in 2007 and more recently was extended until 2037. Measure K authorizes the expenditure of funds earmarked for defined EUSD educational programs. In addition, the measure **mandates the formation of a citizens’** oversight committee that is charged with monitoring district compliance with Measure K purposes.

In June 2014, the Grand Jury received a complaint alleging that EUSD revenue **from Measure K was not being spent according to the measure’s intended** purpose. The complainant also questioned whether an oversight committee existed to monitor the disbursements of Measure K funds. As a result of its investigation, the Grand Jury found that the EUSD is in compliance in its spending of parcel tax revenue as **intended by Measure K and a citizen’s oversight** committee does exist, but it has not followed the Brown Act and its transparency guidelines.

Background

Emeryville is a small town located between the cities of Berkeley and Oakland. While there are only about 7,000 residents, 20,000 to 25,000 people are employed by Emeryville businesses. The city of Emeryville is known for its arts and technology, and as a large retail center. Its school district, Emery Unified School District, is one of the smallest in the state of California. It has only two

schools – Anna Yates, which serves kindergarten through 8th grade, and Emery Secondary School.

In 2003, in response to statewide school budget cuts, including those to the arts, Emeryville voters approved a measure for a parcel tax to provide supplemental funding for the schools. In 2007 the tax was extended to 2017. In the last election, the voters approved another extension of the tax to 2037. The original measure was known as Measure A and is now known as Measure K (parcel tax). **The funds from the parcel tax make up approximately 25 percent of EUSD’s budget.**

Investigation

The Grand Jury received a complaint that EUSD was using the parcel tax funds improperly. Specifically, funds for music programs were being used for other purposes and that a vacancy, due to the death of a music teacher, was not filled.

The Grand Jury reviewed **EUSD’s website, documents relating to the parcel tax oversight committee, as well as the committee’s bylaws.** The Grand Jury also reviewed the parcel tax measure. In addition, the Grand Jury heard testimony from school officials, as well a member of **the EUSD’s parcel tax measure oversight committee.**

Parcel Tax

Funds from the parcel tax are to be used to support EUSD’s budget. The parcel tax states that funding is to be used “[t]o strengthen and improve academic curriculum and educational programs in mathematics, science, literacy, music and visual and performing arts.” Monies from the tax are not to be used for general education, but for the specific educational purposes listed in the measure. With the guidelines set forth in the measure, EUSD’s governing board determines which specific educational purpose will be funded and the amount of the funding.

The measure does not specify how the funds are to be divided among the **identified programs. A citizen’s oversight committee monitors compliance.**

The measure originally passed with 77.7 percent of the vote in 2003, and in 2007 passed with 86.9 percent of the vote. In the most recent election, the measure passed with 85.6 percent of the vote. The tax is unique in that it is based on developed square footage for both residences and businesses. The rate is 15 cents for each developed square foot.

Oversight Committee

The measure provides for an oversight committee, whose function is to meet with and advise the governing board about the expenditure of the funds. The committee is also responsible for reviewing the annual report prepared by EUSD regarding the funds collected and spent. The committee meets twice a year – a forward planning meeting and a meeting that occurs after the books are closed to review how funds were spent.

Transparency

Per the Brown Act, notices of the district board meetings are posted. However, the Grand Jury learned that notices and minutes of the oversight committee were not provided to the public. These meetings are open to the public, but without notice the public does not have the opportunity to attend. There are therefore limited opportunities for the public to have knowledge of and input on how the parcel tax monies are spent. The Grand Jury believes this creates a lack of transparency.

How Parcel Tax Funds Are Spent

The language of the measure is clear – **the funds are to be used “[t]o strengthen and improve academic curriculum and educational programs in mathematics, science, literacy, music and visual and performing arts” and not for general**

education. The measure does not specify how the funds are to be allocated among the various programs. That allocation is the responsibility of EUSD with the assistance of the oversight committee.

The Grand Jury found that funds were budgeted for music and that funds were expended for music. The Grand Jury **also found that EUSD's music program was** not disrupted because of a misuse of parcel tax funds, but rather the death of a music teacher.

Conclusion

The Grand Jury recognizes that the measure does not specify how its particular parcel tax funds are to be allocated, and the Grand Jury did not find that the Emery Unified School District improperly used those funds. The district is in compliance as described in the measure.

The Grand Jury strongly suggests that the oversight committee follow the guidelines of the Brown Act for noticing and conducting public meetings, which includes publicizing agendas and reporting to the public the results of meetings.

FINDINGS & RECOMMENDATIONS

None

RESPONSES REQUIRED

None

JAIL INSPECTIONS IN ALAMEDA COUNTY

The Grand Jury is required by California Penal Code section 919(b) to inspect jails and holding facilities within Alameda County. In order to determine which facilities to inspect, the Grand Jury chose jails that had not been recently inspected or that required reinspection due to deficiencies. During fiscal year 2014-2015, the Alameda County Grand Jury inspected Camp Wilmont Sweeney, the Oakland Police Department Juvenile Holding Area, the Albany Police Department Jail, the Pleasanton Police Department Jail, and the Rene C. Davidson Courthouse Jail. **The Grand Jury's reports are on the following pages.**

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CAMP WILMONT SWEENEY

Introduction

On October 7, 2014, the Grand Jury inspected Camp Wilmont Sweeney, which is located in San Leandro, adjacent to the Alameda County Juvenile Justice Center. Camp Sweeney is a 24-hour, 60-bed minimum-security program for 15-18 year-old males. It is a local alternative residential rehabilitation program for juvenile offenders operated by the Alameda County Probation Department. On the day of the Grand **Jury's** inspection, 43 males were in residence.

Inspection

Camp **Sweeney's** superintendent and a licensed clinical social worker accompanied the Grand Jury on its inspection. The Grand Jury also heard testimony from two staff members of the Alameda County Probation Department.

The Grand Jury learned that Camp Sweeney operates its program with a probation philosophy adapted from successful models from other juvenile institutions. Camp Sweeney staff work with incarcerated youth to develop individualized treatment plans which include goals related to specific behavioral and educational needs. It also works in conjunction with numerous community-based organizations to assist youths while in custody and after release.

Camp Sweeney Observations

The open style dormitory was clean, the communal showers, sinks and toilets were operable (with the exception of one sink), and the beds were neatly made. Pre-packaged meals are heated in an on-site kitchen and detainees have access to vending machines. There are recreational facilities consisting of basketball courts

and open spaces for other activities. There is a library, but the staff expressed a need for additional books. Overall, the Grand Jury observed that the facility is old and dilapidated. The Grand Jury was informed that structurally the campus is seismically deficient by current standards. Funds have been allocated to build a new facility, but no location has been finalized because of seismic concerns.

There is one large dormitory with video surveillance. However, the grounds lack audio or video monitoring. The Grand Jury was informed the lack of outdoor surveillance and sufficient security make it difficult to prevent contraband from being hidden on the grounds by visitors. The Grand Jury was informed that there are no funds available to pay for these security measures.

Basic health care is provided at the facility in a small medical office. If more than basic health care is required, youth are taken to the adjacent Juvenile Justice Center clinic, where medical personnel are on duty on a 24-hour basis, or to **Oakland's** UCSF Benioff **Children's** Hospital if needed.

Camp residents attend classes taught by the Alameda County Office of Education unless they have already received their high school diploma or General Education Development (GED) certificate. In the classrooms the Grand Jury visited, the youth appeared engaged and the teachers appeared enthusiastic regarding the subject matter. The Grand Jury observed camp residents who have graduated from high school or obtained their GED, but did not appear to have structured activities or supervision while other detainees attended class. Through testimony, the Grand Jury confirmed that the camp lacks post-high school vocational or educational programs during school hours.

Staffing Issues

During the Grand **Jury's** term, we heard allegations of staffing issues and other potential problems with Camp Sweeney.

The Grand Jury heard testimony that during the 2013-2014 fiscal year, a number of staff members were working excessive overtime, totaling \$454,098. Of this, \$119,014 was for overtime costs to cover for staff on administrative leave. In response to an inquiry to the probation department, the Grand Jury was advised that a total of 24.5 full-time equivalent employees were budgeted for Camp Sweeney, and that as of December 19, 2014, the camp was fully staffed. The amount of overtime spent at Camp Sweeney appears to conflict with the probation **department's** claim that Camp Sweeney is fully staffed.

The Grand Jury heard testimony that one cause of excessive overtime is the length of time required to complete investigations of employees on administrative leave for suspected wrongdoing. As of November 6, 2014, data provided by the probation department indicated that it was taking from 52 to 291 working days to complete these investigations. To meet the staffing requirements during the investigations, the Grand Jury was informed that many staff members work excessive overtime, including double shifts, to make up for absences attributed to administrative leave. This has resulted in staff burnout and increased **workers'** compensation claims.

Additionally, the Grand Jury was very troubled in that the probation department was unable to provide data regarding the recidivism rate of juveniles supervised by the probation department.

Conclusion

While the Grand Jury realizes that Alameda County has plans and is taking steps to replace Camp Wilmont Sweeney, the camp currently needs to improve security to address problems that have existed for years.

Camp Sweeny should have exterior cameras on the camp entrances and parking lots. The Grand Jury learned that contraband enters the camp through these areas. It is the opinion of the Grand Jury that this equipment should be installed as soon as possible.

The Grand Jury concludes that Camp Sweeney staffing is problematic due in part to the extended periods of administrative leave. The Grand Jury is concerned about the more than \$400,000 in annual overtime costs for Camp Sweeney, and the over \$4 million in overtime paid by the probation department as a whole. The Grand Jury believes that the probation department should shorten administrative leave investigation times.

The Grand Jury believes that vocational or educational programs should be established for camp residents who have completed their high school requirements. These programs should be available when other camp residents are attending high school level classes.

Finally, the Grand Jury suggests that the Alameda County Probation Department collect data that would enable the evaluation of the benefits and successes of the **department's** programs, as well as the recidivism rates of juvenile offenders.

FINDINGS & RECOMMENDATIONS

None

RESPONSES REQUIRED

None

OAKLAND POLICE DEPARTMENT JUVENILE HOLDING AREA

On October 21, 2014, the Grand Jury inspected the Oakland Police Department's juvenile holding area on the 4th floor of the police services building in Oakland. The area is used to temporarily hold suspected juvenile offenders immediately after arrest. The juveniles may be interviewed, fingerprinted, and photographed at the facility prior to their transfer to either the Alameda County Juvenile Justice Center or to parental control, as deemed appropriate. An Oakland police lieutenant, who was responsible for managing the area, escorted and answered questions for the Grand Jury during the inspection.

The Grand Jury was told that juveniles stay at this facility for an average of 90 minutes. However, on occasion, if there is an ongoing off-site investigation relating to the detention, a juvenile may stay for up to four hours. Based on department policy, detentions in excess of six hours require a written report by the investigating officers to the lieutenant in charge justifying the stay.

Outside the holding area on the fourth floor are weapons storage lockboxes where officers secure their firearms before entering the holding area. There is a corridor where detainees are fingerprinted and photographed. The corridor includes a windowed holding area with benches, an open cell with a sink and toilet, and four cells. Male and female detainees are held separately. There is an additional cell currently being used as a storage area. The Grand Jury was told that the holding area that was inspected has been earthquake retrofitted. The narrow entry corridor precludes processing wheelchair-bound detainees. The Grand Jury was told that those individuals are taken directly to the Juvenile Justice Center for processing.

Detention cell use is generally limited to times when multiple detainees are present who must be separated. When locked cells are used, a safety check is made every 30 minutes. The cells are close enough to the processing area to allow detainees to be heard by staff. If food or drink is required, granola bars or bottled water are made available. Oakland Police Department policy requires that detainees be immediately transferred to Highland Hospital if any serious medical issues arise. Staff allows parents or guardians to deliver required medication.

The entire secure area other than the inside of the cells is visible from a separate windowed area where officers are stationed. Officers have access to a First Aid Kit. There was no Automatic External Defibrillator (AED) located on the floor, which is an issue that should be addressed by Oakland.

The Grand Jury was offered copies of current procedures for review and was told that the policies were being updated. Aside from the wheelchair accessibility limitations and the lack of a readily accessible AED, the Grand Jury found this facility to be well run, clean, and in serviceable condition.

FINDINGS & RECOMMENDATIONS

None

RESPONSES REQUIRED

None

ALBANY POLICE DEPARTMENT JAIL

On September 30, 2014, the Grand Jury inspected the Albany Police Department Jail, located at 1000 San Pablo Avenue in Albany, California. The jail consists of several cells and a holding area. This facility is used to temporarily hold both juvenile and adult detainees before release or transfer to county facilities. An Albany police lieutenant, responsible for managing the jail, escorted and answered questions for the Grand Jury during the inspection.

Weapons storage lockboxes are located outside the secured holding area. Inside the secured area is a main holding room where detainees are processed. Adjacent to the main room are two cells, one used for storage and one with a bench, but no toilet or sink. There is also a holding room, with a window, that can be monitored remotely by staff. When detainees must be separated for safety issues or due to investigative needs, this windowed holding room is used.

There are two additional cells located down a hallway. The Grand Jury was informed that these two cells are rarely needed, and typically used only for detainees who are unable to care for their own safety due to drug or alcohol intoxication. The Grand Jury found that one of the toilets in the more remote cells was not working, but was informed that at the time of the writing of this report it had been repaired. A physical check on detainee status is performed every 30 minutes by staff any time these cells are in use.

Detainees ordinarily remain at the Albany Jail for only 20-30 minutes. They typically are held longer than 30 minutes when no vehicle is available to transfer the detainee to a booking facility, or for juveniles if no parent is immediately available for release to their custody.

Bottled water is available to detainees, and the police department purchases food **from a local McDonald's if needed. The Albany Fire Department is located in an** adjacent building and is called for assistance if any serious medical issues arise with detainees. A First Aid Kit and an external defibrillator device are available inside the secured main holding area.

The Grand Jury was shown recently updated policies and procedures. The Grand Jury found the Albany Jail facility to be generally clean and well run.

FINDINGS & RECOMMENDATIONS

None

RESPONSES REQUIRED

None

PLEASANTON POLICE DEPARTMENT JAIL

On November 4, 2014, the Grand Jury inspected the Pleasanton City Jail, located at 4833 Bernal Avenue in Pleasanton. A police sergeant escorted the jurors during the inspection. The Pleasanton City Jail serves the Pleasanton Police Department as a temporary holding facility. The jail has one processing cell and **four holding cells for adult detainees. On the day of the Grand Jury's inspection,** no detainees were being held at the facility. Most arrestees are held only for a short time at this jail, then transferred to another facility or released. The maximum holding time at this facility is usually six to eight hours. The Pleasanton Police Department reports that the average daily population is one detainee, but there are many occasions when there are no detainees in custody.

There are three juvenile holding cells at the Pleasanton Jail. Juveniles are under constant observation by officers until they are released to a parent or guardian, or transferred to the Alameda County Juvenile Justice Center in San Leandro.

Upon entry to the jail, staff medically screens detainees. Jail staff is trained to perform basic first aid as necessary. The Grand Jury confirmed that policies exist to deal with detainees who have medical or prescription drug needs. Detainees with more significant health needs are either transferred to Santa Rita Jail in Dublin or to a medical facility. The jail utilizes fire department paramedics for emergency medical evaluation of detainees, if necessary. The Grand Jury was advised that staff is trained and has access to First Aid Kits and automated external defibrillators.

The cells, toilets, and sinks at the Pleasanton Jail appeared clean and well maintained. Jail staff conducts regular safety checks of detainees every 15-30 minutes. The Grand Jury observed functioning cameras throughout the facility with video observation in the booking area.

Detainees at the Pleasanton Jail are provided food as needed. Food is purchased from vending machines on-site or, if necessary, outside the facility from local stores. Detainees needing interpreting services are connected with police department staff fluent in the needed language. If an interpreter is not available, AT&T language services are utilized.

The Grand Jury confirmed the existence of jail regulations that contain policies and procedures to follow in the event of emergencies, as well as various security measures for jail operations. Also observed were the forms used when booking **and the jail's detainee health questionnaire. Police weapons are secured in lockers prior to entry into the jail facility.** Additionally, the jail maintains a log to record prisoner complaints.

The Grand Jury found the Pleasanton Police Department Jail to be clean, well-managed and efficient.

FINDINGS & RECOMMENDATIONS
RESPONSES REQUIRED

None
None

RENE C. DAVIDSON COURTHOUSE JAIL

On November 12, 2014 the Grand Jury inspected the Rene C. Davidson Courthouse Jail in Oakland, accompanied by staff that included a captain, a **lieutenant, and two sergeants from the Alameda County Sheriff's Office.** The jail, although large, does not function as a traditional jail, but instead is a daytime holding area for defendants appearing in court on that day. As such, there are no overnight stays.

The Rene C. Davidson Courthouse has 13 courtrooms that are served by this facility. Detainees arrive by van or bus in the morning from other jails in the county and enter through an underground sally port from where they are taken by a special jail elevator to the top floor. This special elevator is partitioned to separate the detainees from the elevator operator and any accompanying officers.

The detainees are not booked at this facility, but are checked into a holding area. **The average length of a prisoner's stay is less than six hours.** The average number of detainees per day ranges from 60-70. Prisoner accommodations include several single cells, but there are also multi-person dayrooms with TV and reading options. The cells have benches but no mattresses. Lunches, as well as any needed medications, are brought with the prisoners when they arrive in the morning. Phone calls are not allowed.

The courthouse jail is under camera surveillance and appeared to be well staffed. The Grand Jury observed that the facilities were clean and well maintained. However, the Grand Jury learned that the **Alameda County Sheriff's Office** supplemented the county-provided jail janitorial services with its own janitorial services.

Jail staff is trained in first aid and CPR and have access to First Aid Kits as well as automated external defibrillators. The policies and procedures manuals were up to date and readily available to staff.

The Grand Jury found the Rene C. Davidson Courthouse Jail to be well run and efficient. The Grand Jury observed that staff had pride in the over 80-year-old facility. There were several remarks made about how solidly everything was built and how the old equipment still worked well.

FINDINGS & RECOMMENDATIONS

None

RESPONSES REQUIRED

None

Appendix

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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 therefore.

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 therefore.

SEND ALL RESPONSES TO:

Presiding Judge Winifred Y. Smith
Alameda County Superior Court
1225 Fallon Street, Department One
Oakland, California 94612

A COPY MUST ALSO BE SENT TO:

Cassie Barner c/o
Alameda County Grand Jury
1401 Lakeside Drive, Suite 1104
Oakland, California 94612

All responses for the 2014-2015 Grand Jury Final Report must be submitted no later than 90 days after the public release of the report.

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CITIZEN COMPLAINT GUIDELINES

The Alameda County 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 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 Alameda County 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.

Annual reports and additional information about the Grand Jury can be found at: <http://acgov.org/grandjury>

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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

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, 2015 to June 30, 2016? ☐ 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)

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*Rene C. Davidson Courthouse, 1225 Fallon Street, Oakland, California
Photograph courtesy of Seth Gaines, Germantown, Maryland
[Used with permission.]*