

CITY OF OAKLAND



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Office of the Mayor  
Honorable Sheng Thao

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November 14, 2024

Dear Presiding Judge Honorable Thomas Nixon:

Pursuant to California Penal Code section 933.05, please find attached the City of Oakland Mayor's Office responses to the 2023-2024 Alameda County Grand Jury Report, entitled "Hasty Council Decision on Billboards Costs Oakland Millions." Our office is hereby submitting the responses by the agreed-upon deadline of Friday, November 15, 2024.

Please let me know if you have any questions or need anything further.

Sincerely,

A handwritten signature in black ink that reads "Sheng Thao".

Sheng Thao  
Mayor  
City of Oakland

# **RESPONSE TO JUNE 24, 2024 GRAND JURY FINAL REPORT, ENTITLED:**

## **“HASTY COUNCIL DECISION ON BILLBOARDS COSTS OAKLAND MILLIONS”**

### **FINDINGS**

#### *Finding 24-9:*

The Oakland City Council disregarded expert City staff and an impartial consultant’s recommendations to select Becker/Outfront over an option that would have paid the City substantially more money with less visual impact.

#### **Response:**

**The Mayor is not able to agree or disagree with the Finding because the Mayor was not a decisionmaker or voting member in the City Council’s decision. Any response to this finding would be speculative. As such, the Mayor must disagree with this Finding to avoid making speculative assumptions as to the state of mind of the Councilmembers other than what is already adduced from the administrative record.**

**It would be speculative to conclude that the City Council “disregarded” expert City staff and the impartial consultant’s recommendations. While the record reflects that Council disagreed with City Staff’s and the consultant’s conclusions, the Mayor cannot ascertain whether, or to what extent, the Council disregarded those recommendations. As the record reflects, the Mayor did not participate in the City Council vote to approve the Billboard item involving Becker and Outfront Media.**

**Thus, the Mayor is not able to make the assumptions asserted in the above Finding related to the City Council’s state of mind or the method they each used to arrive at their final decision. This finding is more appropriately directed towards the City Council.**

#### *Finding 24-10:*

Out of public view, the Oakland City Council used a non-competitive process to select a revenue producing billboard provider.

#### **Response:**

**The Mayor is not able to agree or disagree with the Finding because she was not a decisionmaker or voting member in the City Council’s decision, nor was she part of any alleged “non-competitive process” outside of public view. Any response would be speculative. As such, the Mayor must disagree with this Finding to avoid making speculative assumptions as to the state of mind of the Councilmembers other than what is already adduced from the administrative record.**

**The Mayor lacks personal knowledge to respond to this Finding since she was not a party to any conversations or correspondence that were “out of public view” between any billboard company and a specific Councilmember. Requiring the Mayor to respond to this Finding would require her to assume facts that she cannot verify with personal knowledge since she was not a party to any of the purported communications involving a “non-competitive process” as alleged in the above Finding. As stated above, the Mayor did not participate in the Council vote to approve the billboard proposal of Becker/Outfront Media.**

**Nevertheless, the Mayor authorized the City Administration to voice concerns through a publicly available City Staff Report, urging the Council to conduct an open competitive bidding process given the Clear Channel proposal appearing to offer more monetary value to the City than the Becker/Outfront proposal.**

*Finding 24-11:*

Out of public view, the Oakland City Council used a non-competitive process to select nonprofit organizations to receive billboard revenue and free advertising space.

**Response:**

**The Mayor is not able to agree or disagree with the Finding because she was not a decisionmaker or voting member involved in the City Council’s decision, nor was she part of any “non-competitive process” outside of public view. To respond would be to generate a speculative response. As such, the Mayor must disagree with this Finding to avoid making speculative assumptions as to the state of mind of the Councilmembers other than what is adduced from the administrative record.**

**The Mayor lacks personal knowledge to respond to this above Finding since she was not a party to any conversations or correspondence that were “out of public view” between any billboard company and Councilmember. Requiring the Mayor to respond to this Finding would require her to assume facts that she cannot verify with personal knowledge since she was not a party to any of the purported communications involving a “non-competitive process” as alleged in the above Finding.**

**Nevertheless, the Mayor and City Administration did voice concerns through a publicly available City Staff Report, urging the Council to conduct an open competitive bidding process given the Clear Channel proposal appeared to offer higher monetary value to the City than the Becker/Outfront proposal.**

*Finding 24-12:*

An Oakland City Council member should have recused themselves from consideration of nonprofit recipients because their spouse has been a board member of one of the organizations and has been a paid consultant to another.

**Response:**

**The Mayor is not able to agree or disagree with this Finding because it states a legal conclusion that is outside of the purview of the Civil Grand Jury to assert and of the Mayor's Office to develop a response. In addition, the Mayor lacks information as to the identity of the specific Councilmember cited in the Finding.**

**Notwithstanding the above, if a Councilmember was considering to vote on a matter where an organization stood to benefit from that decision and where the Councilmember's spouse served at the time as either a board member or paid consultant of the organization, the Mayor believes it would appropriate that the Councilmember consult with the City's Public Ethics Commission ("PEC") and the City Attorney's Office before engaging in any public discussion, hearing or decision on the item, in order to determine whether a recusal was either legally required or at least recommended under the Fair Political Practices Act ("FPPA"), Council rules, and/or another law, rule, or guideline.**

**The Mayor lacks information as to whether a particular Councilmember sought advice from the PEC and/or City Attorney's Office prior to voting on the matter and whether the unidentified Councilmember decided to follow their advice (if it was sought in the first place).**

*Finding 25-13:*

The Oakland City Council allowed lobbyists for billboard companies to have undue influence over the process by providing content and language that was inserted verbatim into official council documents.

**Response:**

**The Mayor is not able to agree or disagree with the Finding because she was not involved in, or witness to, any communications between any Councilmember and a billboard company. Any response would be speculative. As such, the Mayor must disagree with this Finding to avoid making speculative assumptions as to any communications a Councilmember may have had with a billboard company.**

**The Mayor does not have personal knowledge as to whether a billboard company transmitted to a Councilmember any content or language that was inserted verbatim into official Council documents since the Mayor was not a decision-maker or sponsor of the legislation that was approved by the City Council. As such, it is not appropriate for the Mayor to respond to this Finding given her lack of personal knowledge as to what communications may have occurred between lobbyists, any billboard companies, and Councilmembers.**

**RECOMMENDATIONS**

*Recommendation 24-7:*

The Oakland City Council must take into consideration the expert advice of staff and consultants before passing legislation and resolutions. When staff recommendations show large differences in

potential revenue from competing proposals, such matters should not be put on the consent calendar. There must be council deliberation and debate on such items.

**Response:**

**The recommendation will not be implemented because it is not warranted or is not reasonable *in toto*.**

**The Mayor agrees with the first sentence of Recommendation 24-7; the Council must take into consideration the expert advice of all staff and consultants before passing legislation and resolutions.**

**As to the second sentence of the Recommendation, as stated above, the Mayor is not in a position to determine whether the City Council considered City Staff's and the consultant's expert advice when making its legislative decision.**

**Pursuant to the Oakland Charter, the City Council can schedule and consider legislation at its discretion. Existing practice provides for legislation to be discussed in City Council committees' public meetings as well as, at times, before the full City Council. Nevertheless, the City Council could consider responding to this Finding by adding to the Council Rules of Procedure a requirement that certain legislation that meets objective standards be heard as a Non-Consent or Public Hearing item. However, that policy change is in the discretion of the City Council and does not appear to be required by State law.**

*Recommendation 24-8:*

When choosing providers of revenue-generating resources such as billboard advertising rights, the Oakland City Council must use a competitive request for proposal with written criteria for selection, submission requirements, deadlines, and head-to-head comparisons of competing proposals as analyzed by expert staff.

**Response:**

**This recommendation has been partially implemented, with a summary below regarding the implemented action.**

**There is precedent within the Oakland Municipal Code (O.M.C.) Section 2.42.170 that dispositions of public land for development must be pursuant to a competitive process unless the City Administrator determines that: (1) disposition through a competitive process is impractical, or (2) disposition through a process other than a competitive process is otherwise in the best interests of the City; and City Council must adopt findings in support of such a waiver when approving any such transaction. (See O.M.C. Section 2.42.170). Thus, if the billboard proposal involves public land, then this recommendation has already been implemented.**

**The City Council may elect to adopt a local statutory requirement that the development of new billboards on private must include a similar procedural requirement; however, further**

legal evaluation would be needed to determine whether such a requirement would be legal. Nevertheless, if legal, such adoption would be a policy decision for consideration by the City Council. Should the City Council direct the City Administrator or designee, consistent with the Charter, to assist in bringing such legislative changes to the Council for consideration, the City Administration would be responsible for bringing said legislation with recommendations for Council consideration. During Council consideration, the public would have the opportunity to provide written and oral comments at a Council Committee and before the full City Council.

*Recommendation 24-9:*

When selecting nonprofit entities to receive city resources, the Oakland City Council must use an open and transparent process that is accessible to all Oakland nonprofits. Selection criteria, submission requirements, deadlines, and head-to-head comparisons of competing proposals must be made public.

**Response:**

The recommendation has been partially implemented already, with a summary below regarding the implemented action.

The City Council adopted a policy directive on June 24, 2021 directing the City Administrator to create a process for City Council to make grants to community organizations to promote fairness, equity, process efficiency and alignment with City Council priorities. More information is available in an informational report presented to City Council on April 19, 2022 (*See* the following Oakland Legistar at [hyperlink](#)).

The City Administrator subsequently established a Direct Community Grant Program that created an eligibility list through a competitive process. This same process, if not the same eligibility list, could be utilized to select nonprofit entities to receive resources derived from future revenue-producing transactions whether related to billboards or otherwise. If directed by the City Council pursuant to the City Charter, the City Administrator or designee will consider whether and how to incorporate this procedure when developing legislative changes pursuant to Recommendation 24-8. If the Council elects to pursue this legislative action separately, the Mayor will support the direction and provide the appropriate legislative changes and recommendations for City Council consideration.

*Recommendation 24-10:*

Oakland City Council members must disclose conflicts of interest, including close family connections, prior to awarding contracts, exclusive negotiating rights, or relocation agreements.

**Response:**

This recommendation has already been implemented, with the below summary provided regarding the implemented action.

The City of Oakland already provides specific Conflict of Interest guidance to City officials. For example, the City's website advises that, under the Government Ethics Act, a Public

**Servant cannot make, participate in making, or seek to influence government decisions in which they have a financial interest. In such cases, there is a risk of biased decision-making that could sacrifice the public's interest in favor of the official's private financial interests. To avoid actual bias or the appearance of possible improprieties, the public official is prohibited from participating in the decision. (See the City's Conflict of Interest Guidance at the following [hyperlink](#).)**

**The Mayor is not aware of any legal requirement that a Public Servant disclose "close family connections," but it may be reasonable for the City Council to require, through ordinance or the Council Rules, that a Public Servant consult with either the PEC or the City Attorney's Office if the Public Servant becomes aware that a "close family connection" is involved in a decision.**

*Recommendation 24-11:*

In an effort to maintain transparency, the Oakland City Council must disclose when lobbyists with an interest in pending legislation provide specific content or language for official reports, memos, resolutions, or other documents.

**Response:**

**The recommendation has not yet been implemented, but the Mayor will recommend to the successor Mayor that the City Administration propose a resolution for Council consideration that would authorize the City Administration or their designee to explore legislative proposals, including but not limited to an Oakland Municipal Code (O.M.C.) amendment or an amendment to the Council Rules of Procedure, requiring that a Councilmember disclose when lobbyists with an interest in pending legislation provide specific content or language for official reports, memos, resolutions or other documents.**

**In formulating recommendations for Council consideration, the successor Mayor may need additional time to consult with the PEC and/or City Attorney's Office to ensure whether this proposal would be: (1) legally permissible; (2) appropriate to be proposed through an ordinance or resolution, and (3) the most appropriate location for such requirement (e.g., the O.M.C., Council Rules of Procedure).**

**Ultimately, the City Council would need to approve the additional requirement after consideration, since such policy change would be within the purview of the City Council in consultation with the City Attorney's Office.**