



***2015 - 2016  
ALAMEDA COUNTY GRAND JURY  
FINAL REPORT***

---

**ALAMEDA COUNTY BOARD OF SUPERVISORS**

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

---

**ALAMEDA COUNTY GRAND JURY**

1401 Lakeside Drive, Suite 1104

Oakland, California 94612

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

E-Mail: [grandjury@acgov.org](mailto:grandjury@acgov.org) / Web: [www.acgov.org/grandjury](http://www.acgov.org/grandjury)



**SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA**

- Do you want to increase the efficiency of local government, save taxpayers' dollars, and improve services?
- Are you a good listener?
- Can you cooperate with 18 others towards a common goal?
- Can you keep a secret? *All of your work must be kept confidential.*
- Can you commit yourself to a full year of work?
- Can you ask thoughtful questions, review documents, and help write reports?
- Can you attend at least two morning meetings each week in Oakland?
- Can you contribute a substantial amount of time to the Grand Jury? *(at least 10-20 hours or more per month)*

*The privilege of serving as a Grand Juror comes with many rewards including the satisfaction of making a worthwhile contribution to the improvement of your community.*

**How to Apply**

**1**

**Get an application!**

**2**

**Fill it out!**

**3**

**Give it to us!**

- Online: [acgov.org/grandjury/juror.htm](http://acgov.org/grandjury/juror.htm)
- In person (ask staff in the Court's Jury Room)
- Call, email, or mail:  
Cassie Barner  
Grand Jury Recruitment  
1401 Lakeside Drive, Suite 1104  
Oakland, CA 94612  
[cassie.barner@acgov.org](mailto:cassie.barner@acgov.org)  
510-208-9855

*For more information, contact the Grand Jury staff or visit the Grand Jury's website at [acgov.org/grandjury](http://acgov.org/grandjury)*

*The Grand Jury serves on a fiscal year basis, from July 1 through June 30. Applications are accepted throughout the year and are reviewed each spring for service beginning July 1st. You must be over 18, have lived in Alameda County for at least one year, and possess sufficient knowledge of the English language. Grand Jurors are paid \$15 per day plus mileage.*

## **TABLE OF CONTENTS**

Alameda County Board of Supervisors	1
Table of Contents	3
Foreperson's Letter	5
Grand Jury Members	7
Officers and Legal Staff	8
Grand Jury Committee Assignments	9
Grand Jury Photograph	10
Presiding Judges of the Alameda County Superior Court	11
Introduction to the Alameda County Grand Jury	13
<hr/>	
Political Interference with Oakland Townhouse Project	19
City of Oakland's Costly Pursuit of Zero Waste Franchise Contracts	31
The Failure of Eden Township Healthcare District's Mission	43
Alameda Local Agency Formation Commission	57
Oversight of County Funded Community Based Organizations	61
Constraints of the Measure A Oversight Committee	73
The Public's Right to Know: Electronic Records Retention and Access	79
The Oakland Unified School District and Charter Schools	85
Management Issues Within the City of Oakland Revenue Division	95
Jail Inspections	
Alameda County Juvenile Justice Center - Juvenile Hall Inspection	103
Hayward Police Department Jail Inspection	107
Fremont Police Department Detention Facility Inspection	111
Wiley W. Manuel Courthouse Jail Inspection	115
Urban Shield 2015	119

---

## **APPENDIX**

How to Respond to Findings & Recommendations	125
Citizen Complaint Guidelines	127
Grand Jury Citizen Complaint Form	129
Application to Become a Grand Juror	131

[This page intentionally left blank]



Alameda County  
**Grand Jury**

1401 Lakeside Drive  
Suite 1104  
Oakland, California 94612

510.272.6259  
fax 510.465.9647  
[www.acgov.org/grandjury](http://www.acgov.org/grandjury)

June 1, 2016

Hon. Morris D. Jacobson, Presiding Judge  
Alameda County Superior Court  
1225 Fallon Street, Department One  
Oakland, California 94612

Dear Judge Jacobson:

On behalf of the 2015-2016 Alameda County Grand Jury, I am pleased to present this Final Report of Civil Investigations to this Court and to the citizens of Alameda County.

To the citizens of Alameda County, we feel it is important for you to understand the Grand Jury history and purpose. The Grand Jury dates back over 800 years to the Magna Carta in 1215, and was brought forth to the Continental Congress in 1789 by James Madison in the Fifth Amendment of the Bill of Rights. The Grand Jury came about in California in 1872 with the adoption of the California Penal Code.

This Final Report is the result of dedicated work performed by the nineteen members of the Alameda County Grand Jury. Our members volunteered one year of their life for public service in order to help improve the local government, law and justice, health and social services, and education and administration throughout Alameda County on behalf of its citizens. The jury applied their extensive and diverse experience to this challenge, and to understand the issues at hand. Additionally, our jurors were extremely dedicated, passionate and worked tirelessly to become content experts on the investigations they performed, and the reports they have written.

The Final Report is a compilation of eight individual investigations. These reports address a wide range of local issues throughout our cities and county. The Grand Jury also completed its mandate to inspect and report on several jail facilities within Alameda County. An account of each is contained in this Final Report, as well as our comments on Urban Shield.

This year, the Grand Jury investigated a variety of complaints and has provided reports on topics we feel are important to the residents in our communities. These topics include:

Hon. Morris D. Jacobson  
Page Two  
June 1, 2016

- 1) Political interference by the Oakland City Council
- 2) The City of Oakland's Zero-Waste franchise contracts
- 3) Eden Township Healthcare District
- 4) Oversight of county funded Community Based Organizations
- 5) The Measure A Oversight Committee
- 6) City retention policies on electronic records and email
- 7) The Oakland Unified School District and Charter Schools
- 8) Management of the Oakland Revenue Division

It was my honor to have been given the opportunity to serve as the Foreman of this august panel. It was my pleasure to be a part of this team of diverse citizens who worked together with commitment and perseverance to fulfill their duty. A special thanks goes to the committee and subcommittee chairs, secretaries and pro-tems, who showed excellent leadership and organizational skills over the course of this term. It would also have been impossible to complete the work of this jury without the dedication, knowledge and guidance of both Assistant District Attorney Robert Warren and Legal Assistant Cassie Barner. To them, we offer our sincere thanks. The county is extremely fortunate to have these two individuals focused on the Grand Jury process and proceedings.

In closing, the 2015-2016 Alameda County Grand Jury is proud of its accomplishments, and our service to the citizens of this county.

Sincerely,



TIMOTHY JONES, Foreman  
2015-2016 Alameda County Grand Jury

## 2015-2016 ALAMEDA COUNTY CIVIL GRAND JURY MEMBER ROSTER



Name	City
Barbara M. Barer	Piedmont
Jaswant S. Bhatti	Fremont
Janet M. Clark	Oakland
Joseph Connell**	Castro Valley
Sam Davis	Berkeley
Dennis Gambs	Livermore
Walter L. Johnson, Sr.	Oakland
Timothy Jones**	Livermore
Janet Kramer	Oakland
Scott A. Law	Oakland
Charlene Lewis-Blackwell	Oakland
Isabelle R. McAndrews	Fremont
William J. McGahan	Oakland
Timothy J. McKeon^^	Alameda
Marsha Carpenter Peterson**	Oakland
Sara Rozzano	Fremont
Raymond A. Souza	Oakland
Thomas J. Tuttle**^	Alameda
Aihua Zelinsky	Castro Valley

\*\* Jurors held over for a 2<sup>nd</sup> term by Presiding Judge Winifred Y. Smith

^ Resigned, October 2015

^^ Resigned, March 2016

**2015-2016 ALAMEDA COUNTY GRAND JURY  
OFFICERS and LEGAL STAFF**

---

***OFFICERS***

FOREPERSON: Timothy Jones

FOREPERSON PRO TEM: Joseph Connell

SECRETARY: Barbara M. Barer

SECRETARY PRO TEM: Janet Kramer

SERGEANT AT ARMS: Sara Rozzano

SERGEANT AT ARMS PRO TEM: Charlene Lewis-Blackwell



***LEGAL ADVISORY STAFF***

Robert L. Warren, Assistant District Attorney

Cassie Barner, Legal Assistant



## **2015-2016 ALAMEDA COUNTY CIVIL GRAND JURY COMMITTEE ASSIGNMENTS**



### GOVERNMENT

*Isabelle R. McAndrews – Chair*  
Jaswant S. Bhatti  
Janet M. Clark – *Secretary Pro Tem*  
Dennis Gambs – *Chair Pro Tem*  
Scott A. Law  
William J. McGahan – *Secretary*  
Marsha Carpenter Peterson  
Thomas J. Tuttle\*  
Aihua Zelinsky

### LAW & JUSTICE

*Marsha Carpenter Peterson - Chair*  
Dennis Gambs  
Janet Kramer – *Secretary*  
Isabelle R. McAndrews  
William J. McGahan – *Chair Pro Tem*  
Timothy J. McKeon\*  
Sara Rozzano  
Raymond A. Souza – *Secretary Pro Tem*  
Aihua Zelinsky

### HEALTH & SOCIAL SERVICES

*Joseph Connell – Chair*  
Barbara M. Barer – *Secretary*  
Jaswant S. Bhatti  
Sam Davis  
Walter L. Johnson, Sr.  
Scott A. Law – *Chair Pro Tem*  
Charlene Lewis-Blackwell  
Timothy J. McKeon\* – *Secretary Pro Tem*  
Sara Rozzano

### EDUCATION & ADMINISTRATION

*Sam Davis – Chair*  
Barbara M. Barer  
Janet M. Clark – *Secretary*  
Joseph Connell  
Walter L. Johnson, Sr. – *Chair Pro Tem*  
Janet Kramer  
Charlene Lewis-Blackwell  
Raymond A. Souza – *Secretary Pro Tem*  
Thomas J. Tuttle\*

\* *Jurors who resigned during the term*





## **2015-2016 ALAMEDA COUNTY CIVIL GRAND JURY**

### *Standing, left to right:*

Raymond A. Souza, Sam Davis, Barbara M. Barer (*Secretary*), Dennis Gambs, Isabelle R. McAndrews, Jaswant S. Bhatti, Janet Kramer (*Secretary Pro Tem*), Sara Rozzano (*Sergeant at Arms*), Timothy Jones (*Foreman*), Aihua Zelinsky, Joseph Connell (*Foreman Pro Tem*), Marsha Carpenter Peterson, Scott A. Law, Janet M. Clark, Timothy J. McKeon, Charlene Lewis-Blackwell (*Sergeant at Arms Pro Tem*)

### *Seated, left to right:*

William J. McGahan, Hon. Morris D. Jacobson (*Presiding Judge*), Walter L. Johnson, Sr.

### *Not Pictured:*

Thomas J. Tuttle (*Resigned October 2015*)

## **PRESIDING JUDGES OF THE ALAMEDA COUNTY SUPERIOR COURT**



Honorable Morris D. Jacobson  
January 1, 2016 – Present



Honorable Winifred Y. Smith  
January 1, 2014 – December 31, 2015

[This page intentionally left blank]

## **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](http://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](http://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 54 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.

[This page intentionally left blank]

## **POLITICAL INTERFERENCE WITH OAKLAND TOWNHOUSE PROJECT**

### **EXECUTIVE SUMMARY**

The Grand Jury received a complaint that an Oakland city councilmember improperly used her elected position to oppose city approval of a proposed townhouse project next door to her Oakland residence. It was alleged that the councilmember violated state ethics rules and city regulations by inappropriately attempting to influence a city administrative decision, and that the city council and the Oakland Public Ethics Commission (PEC) failed to take action.

The State Political Reform Act and Oakland's Government Ethics Act were established as minimum ethical standards to help ensure that public officials serve as stewards of our public resources. The public expects their elected officials to wield the power of their office with the public's best interests in mind, rather than serving their personal interests.

The Grand Jury conducted a comprehensive investigation and found that the councilmember had a conflict of interest that prohibited her from using her elected position to influence an administrative decision on the townhouse project. The councilmember violated ethics rules by privately contacting a department head and city staff to argue personal objections, resulting in the department head re-evaluating the project. This gave the appearance that the department head was an advocate for the councilmember. City emails also revealed that the councilmember improperly used city resources by having her chief of staff draft a letter for her in opposition to the project for the councilmember. The Grand Jury believes that was a misuse of city resources solely intended to benefit the councilmember personally. Additionally, in violation of city and state rules, during a planning commission hearing, the councilmember inappropriately used her position to question city policy, to challenge staff, and to interrupt proceedings.

The Grand Jury concludes that the failure of the Oakland City Council and the Oakland Public Ethics Commission to recognize and address these breaches of ethical standards is unacceptable.

### **BACKGROUND**

The Grand Jury responded to a citizen complaint citing a news report of a councilmember using city staff for her personal benefit to oppose a development project. The complaint involved an Oakland property owner who proposed to

construct a number of townhouse units on his property next door to a city councilmember's residence. The property owner invested a substantial amount of time and money in amending his building application in response to multiple levels of review within the city's Planning and Zoning Division.

Building applications fall under the purview of the Oakland Planning and Zoning Division that operates within the city's Planning and Building Department. It has the responsibility to process and issue zoning permits for development projects within the city. The director of Planning and Building (planning director), the department head for this umbrella agency, manages 135 employees and reports to the assistant city administrator.

Small building projects, such as the matter the Grand Jury investigated, are approved by the zoning manager within the Planning and Zoning Division. Case planners, supervised by the zoning manager, are assigned to individual projects to ensure proposed designs comply with city zoning and planning codes. Their decisions can be appealed to the Planning Commission by opponents of any project.

### **INVESTIGATION**

During the townhouse project investigation, the Grand Jury heard testimony from several witnesses, including city employees, and reviewed numerous documents, as follows:

- Hundreds of emails pertaining to the townhouse project (obtained from the city);
- The [Oakland Government Ethics Act](#);
- The California Political Reform Act, Government Code section 87100 et seq.;
- The Oakland [City Charter Section 218](#). Non-Interference in Administrative Affairs;
- Oakland's [City Council Code of Ethics](#);
- Oakland's [City-wide Code of Conduct - for non-sworn employees, Administrative Instruction 596](#);
- City of Oakland Planning Commission meetings: staff reports, meeting minutes, and video recordings;
- Oakland's Design Review Committee staff agenda; and
- California Fair Political Practices Commission opinion letters on conflict of interest.

The Grand Jury acknowledges the councilmember's right to contact city staff regarding the townhouse project for the sole purpose of making inquiries. The Grand Jury also acknowledges the right of the councilmember to appeal the staff approval of the project and to publicly testify at planning commission hearings as a private citizen, but not as member of the city council. The Grand Jury did not evaluate the merits of either the property owner's proposed project or the councilmember's objections to the project; rather, the Grand Jury examined the councilmember's use of the power of her elected position to oppose the project.

### Townhouse Project

The owner of a vacant lot located in west Oakland proposed building a five-unit townhouse project (later downsized to four units) as permitted under city zoning. In November 2013, the property owner began working with a case planner within the planning department to prepare a design that would meet city requirements, including compatibility with neighboring properties. After reaching out to neighbors and implementing city staff recommendations, the owner's architect drafted a plan that appeared to meet the city's requirements. Shortly after submitting the building application on January 23, 2014, the property owner was contacted by the next-door neighbor who stated that his wife was an Oakland city councilmember and further stated that he and his wife would be working to stop the project if the design was not changed to their liking. This raised concerns for the property owner because his architect had already incorporated city staff recommendations into the project plans and approval of the townhouse project appeared imminent.

Soon thereafter, the councilmember contacted the city's Planning and Building Department director (planning director) to voice objections to the townhouse project. As a result, the planning director contacted the zoning manager and the assigned case planner, notifying them that she would be conducting her own design review of the project. After visiting the site, the planning director determined that the project was poorly designed, despite the fact that the project plans had already been evaluated by a group of city planners at a regular staff meeting. Subsequent to conducting an independent review, the planning director then suggested changes to the design plan. The director also suggested that the property owner present the revised plans to the councilmember and interested neighbors so that the final design could be completed and approved by the city.

While the assigned case planner remained involved, the planning director became the city's point of contact for the project. The Grand Jury heard testimony from witnesses that it was highly unusual for the head of the city Planning and Building Department to become directly involved with a project of

this relatively small size. The Grand Jury heard conflicting evidence as to whether this was common practice.

On March 21, 2014, after making revisions requested by the planning director, the property owner resubmitted the project plans. Shortly thereafter, the zoning manager approved the design review after planning staff determined that the proposed project complied with city zoning and other planning codes. Two weeks later, an appeal of the approval was filed on behalf of the councilmember's spouse.

Several months later, the appeal was considered by the Planning Commission at its August 6, 2014 meeting. At this meeting, the commission delayed ruling on the appeal and directed the property owner and appellants to try to find a mutually acceptable solution.

After the property owner completed revisions to the project, the planning director emailed the councilmember asking if the revisions were acceptable. The councilmember responded that the revisions were not acceptable and copied her staff in the email communication.

In November of 2014, the planning director emailed the property owner's architect warning him that, "...without a meeting (with the appellants and neighbors) and consensus, there is a risk that the Planning Commission will not approve the design." As documented in a number of emails, the property owner's architect had tried to meet with the councilmember and her husband, as well as other neighbors; however, the councilmember did not want to meet unless the property owner downsized the plan significantly and met other concerns.

In December, eight months after filing the appeal, the Planning Commission took final action. The property owner's new design reduced the number of units from five to four, and addressed privacy issues by facing some of the units away from the councilmember's home. These units previously had downtown views, but were now facing another neighbor's home and a freeway sound wall. The staff report for the Planning Commission's December 17<sup>th</sup> meeting noted that the project was consistent with the city's general plan objectives and policies for meeting current and future housing needs, encouraging infill development for vacant sites, and providing affordable housing. Planning Commission video from that meeting showed the councilmember broadly criticizing city policy. Later in the meeting, the councilmember interrupted the commissioners by abruptly speaking after the public comment period ended and indicated among other things that she would obtain advice from the city attorney on the issue. Ultimately, the staff's recommendation that the appeal be denied was approved

by the planning commission with the addition of some design review conditions. This allowed the project to move forward.

The Grand Jury heard testimony that a few days after the December appeals hearing, the planning director contacted the property owner by phone. It was alleged that the planning director urged the property owner to consider alternative project plans proposed by an outside architect with ties to the councilmember. Notwithstanding the denial of the appeal, it was also alleged that the planning director told the property owner that he could be sued unless a resolution was worked out with the neighbors.

In early January 2015, the city's planning staff sent the outside architect's plans to the property owner's architect. In an email to the property owner's architect, the planning director stated, "It would be good if your client would at least consider an alternative design that addresses most of the neighbors' concerns...just so you know, the neighbors have the right to appeal the Planning Commission's decision to the Superior Court." The planning director further stated, "If an alternative design could be agreed to by all parties, then such an agreement would prevent further actions that could prolong the review/approval process."

Since the project had already been approved by staff and the planning commission had denied the councilmember's appeal, the property owner decided not to make further major revisions to the design as recommended by the outside architect's plans. Finally, on February 11, 2015, the city's Design Review Committee approved the final plans submitted by the property owner.

The property was then listed for sale and as of the writing of this report, the project has not been built. The property owner is concerned that further battles with the city may occur while attempting to obtain permits and constructing the townhouse project. Witnesses to the Grand Jury testified that developers are reluctant to purchase the property due to the councilmember's interference. The Grand Jury heard testimony that real estate laws require the owner to disclose opposition to the project to any potential purchasers of the property.

### **Applicable City and State Ethics Rules**

#### Conflicts of Interests for Personal Gain

*A public servant shall not make, participate in making, or seek to influence a decision of the city in which the public servant has a financial interest within the meaning of the California Political Reform Act and pursuant to the Oakland Government Ethics Act.*

As a public servant, elected officials are precluded from seeking to influence a decision in which they have a financial interest. A public official has a “financial interest” in a government decision if it is reasonably foreseeable that the decision will have a material financial effect on the public official’s interests. The financial effect is material whenever the governmental decision affects real property located within 500 feet of the official’s property unless there would be no reasonably foreseeable measurable impact on the property. In this case, the councilmember has a material financial interest because the location of the townhouse project is next door to the councilmember’s primary residence.

The financial effect is also material if the decision would substantially alter things such as traffic levels, view, privacy, and noise levels, among other factors. Since the councilmember’s complaints included many of these factors, there is little question that the councilmember had a “financial interest” in the decisions pertaining to the townhouse project.

Accordingly, the councilmember had a material financial interest in governmental decisions based on the proximity of the townhouse project to her residence and the likelihood that her privacy would be adversely impacted.

As a result, the Grand Jury concludes that the councilmember had a conflict of interest and should have taken steps to ensure that she did not use her official position to influence the decision regarding the townhouse project. While there is an exception permitting a public official to appear as a member of the general public during a public meeting, the exception is narrowly interpreted, requiring the councilmember to limit comments to the specific project in question. An elected official may not speak to general policies or in any official capacity on matters in which the official has a conflict of interest. Additionally, a public official may not directly contact city staff behind the scenes to influence a government decision.

Here, the councilmember privately contacted a department head three levels above the staff person handling the project to register discontent with the project. This conduct directly violated ethics rules and alienated staff. The councilmember’s interference turned the department head into an intermediary (or even an advocate) for the elected official, giving the appearance that the public official was receiving special treatment.

Finally, when the councilmember spoke to the planning commission at the December meeting, she did not identify herself as speaking as a private citizen; rather, the councilmember spoke broadly, criticizing city policy. The Grand Jury heard testimony that the councilmember interrupted the speakers several times during the meeting and rose after public comment had closed, summarizing her position and stating she would seek the city attorney’s advice. This gave the



appearance that she had special access to city resources. State ethics rules are intended to prevent such conduct that disrespects public process, city staff, and the community.

#### Misuse of City Resources or Position for Private Gain

*City ethics rules state that no public servant may use his or her position, or the power or authority of his or her office or position, in any manner intended to induce or coerce any person to provide any private advantage, benefit, or economic gain to the city public servant or any other person. Use of public resources includes city compensated time.*

During this investigation, the Grand Jury learned that the councilmember's chief of staff researched and prepared a letter using city resources for the councilmember in his capacity as a city employee stating opposition to the townhouse project. The chief of staff sent this letter, which was to be signed by the councilmember, from his city email account to the councilmember's city email address. The councilmember responded by thanking him. He, in turn, suggested that the correspondence be sent from the councilmember's home email address. This opposition letter was then sent the next day to the case planner from the councilmember's husband's email address. This was a direct misuse of city resources for the councilmember's private benefit.

The Grand Jury also learned that the councilmember's chief of staff prepared talking points or notes using city time and resources for the councilmember's opposition of the project in his capacity as chief of staff. He also had multiple conversations with staff, including the department head, about the councilmember's opposition to the project. The Grand Jury learned that he never met or spoke with any other neighbors but relied on the councilmember's representations regarding neighborhood sentiment.

It is common for the chief of staff to inquire with city staff about pending development projects or to publicly comment in writing as a staff member. It is also common to organize neighborhood meetings to notify the community about such projects and the city's approval process. However, the Grand Jury believes that the chief of staff's conduct in this instance went beyond normal constituent services and thus the councilmember misused city resources to benefit herself personally.

#### Non-Interference in Administrative Affairs

*As prohibited by City Charter Section 218, except for the purpose of inquiry, neither the council nor any councilmember shall give orders to any subordinate of the City under the jurisdiction of the City Administrator or such other officers,*

*either publicly or privately; nor shall they attempt to coerce or influence the City Administrator or such other officers, in respect to any administrative action.*

The Grand Jury identified emails to city staff documenting the councilmember's objections to the project. Specifically, the councilmember sent the planning director an email stating, "This process raises a series of serious concerns for your department including how well you track and enforce the city's procedures." The Grand Jury concludes that these communications gave the appearance that the councilmember was speaking not as a private citizen, but rather, inappropriately wielding her power as a councilmember to influence an administrative decision.

The councilmember also stated in her email, "What is revealed here is troublesome...I would hope that staff is sending a clear signal that the applicant [property owner] needs to return with the appellants to demonstrate that both parties have followed the process we agreed to at the hearing [August 6<sup>th</sup> Planning Commission Meeting]...What is happening here indicates the same level of disregard and disrespect that has characterized his [property owner] interactions with this community prior to the appeal. This has citywide implications. I'd like to meet with you to discuss a better process for all applicants and appellants. Let's include time for this in our next District conversation." This is a councilmember using her status as a public official to improperly influence senior staff for her own personal benefit.

#### Oakland Administrative Code for Employee Conduct

The city of Oakland Administrative Instruction AI 596 sets forth guidelines for professional and courteous conduct by all non-sworn city employees while conducting city business. Proper behavior includes impartial treatment of the public. This guideline also reaffirms the City Charter section 218 prohibition against employees taking direction from members of the council. If a councilmember does give direction to an employee or attempts to coerce or influence an employee regarding a contract, project, personnel matter or other administrative action, *the employee shall report the violation.*

The planning director became the city's primary point of contact for the project corresponding on numerous occasions with the property owner's architect and the councilmember. These emails had a pattern of advocating the councilmember's interest while at the same time placing a burden on the property owner to develop a mutually acceptable solution.

While the Grand Jury received information that the planning director may have informed the city administrator about this project, there was no indication that the director reported the councilmember's conflict of interest or inappropriate

interference with staff. Instead, the planning director continued to advocate for a conclusion that satisfied the councilmember. This advocacy gave the appearance that backroom conversations were taking place outside of the property owner's participation placing him at a disadvantage.

## **Remedies**

The Oakland Public Ethics Commission and the city council both have the authority and responsibility to address ethical violations.

### Oakland Public Ethics Commission

The Oakland Public Ethics Commission (PEC) is a seven-member board of Oakland residents. The PEC's responsibilities include overseeing compliance with the Oakland Government Ethics Act. Specific responsibilities include educating city staff on ethics-related issues and ensuring policies are in place and are being followed. The PEC is also authorized to conduct investigations and impose fines and penalties as part of its compliance responsibilities.

The PEC was originally created by city charter amendment in 1996. While the amendment appeared to set up a body of citizens with the goal of ensuring "fairness, openness, honesty and integrity" in city government, the PEC had very little enforcement authority and insufficient resources to carry out its mission. In response to ethical violations by local elected officials in the last decade, the citizens of Oakland took action by prioritizing the importance of integrity and high ethical standards for their public officials.

In 2014, voters amended the city charter to strengthen their PEC, giving the agency more authority and resources to educate and hold city leaders accountable for their actions. The PEC now has expanded structure, staffing, independence, and more importantly, authority to take action. As a result, the PEC now has the authority, the capacity to investigate, and the ability to enforce all of the ethical standards discussed earlier in this report.

### City Council Censure

The city of Oakland also has a code of ethics that applies to councilmembers. In part, it states that councilmembers must adhere to the American ideals of government, the rule of law, the principles of public administration, and high ethical conduct in the performance of public duties. The same code requires councilmembers to represent and work for the common good of the city and not for any private interest. Council members must also maintain the highest standard of public conduct by refusing to condone breaches of public trust or improper attempts to influence legislation, and must be willing to censure any

member who willfully violates the rules of conduct contained in the code of ethics. Relevant portions of the city rules go further to mirror many of the state rules governing conflicts of interests.

The power to censure allows the city council to publicly condemn a fellow councilmember. Censure is a formal legislative resolution reprimanding someone for specific conduct. The elected official who is the focus of the censure has the right to be notified of the action and must be able to respond. While the act of censuring a councilmember carries no penalty other than the verbal reprimand itself, it is a sign that the political body is self-policing its own members and making a statement that the conduct is unacceptable.

### **CONCLUSION**

Political interference from elected officials can erode public confidence and trust in government, thus damaging its effectiveness. Although the city of Oakland has regulations in place to prevent interference from a city councilmember, these regulations did not deter city officials from interfering with the approval process for the townhouse project. The councilmember used her position and office to advocate for private gain, and not for the common good of the city. The planning director, in effect, became a collaborator with the councilmember by advocating for design changes favorable to the councilmember while giving the impression that the revised design needed the councilmember's concurrence.

Recent legislative changes to strengthen the Public Ethics Commission were intended to combat such political interference. Now that the PEC is better staffed, concrete steps can be taken to provide training and enforce these rules. The PEC, which was created to ensure "fairness, openness, honesty and integrity" in city government, needs to take action to enforce these rules. The city council must also take action to ensure this conduct is acknowledged and addressed. City employees, especially senior staff, need to report improper conduct. Without proper checks and balances, residents and those investing in the community will lose faith in the integrity of the political process. Backroom dealing cannot be the standard by which the city of Oakland is governed.

## **FINDINGS**

### *Finding 16-1:*

The councilmember had a conflict of interest with the townhouse project and interfered with the project's approval process.

### *Finding 16-2:*

The councilmember's use of her city staff on the townhouse project was a misuse of city resources for her personal benefit.

### *Finding 16-3:*

The councilmember privately contacted senior city staff, attempting to improperly influence decisions, which subverted the public process.

### *Finding 16-4:*

The planning director's attempt to pacify the councilmember gave the appearance that she was collaborating with the councilmember to obstruct the property owner.

### *Finding 16-5:*

The planning director's failure to report to the city administrator's office or stop the councilmember's ethical violations undermined city staff and the fair treatment of those doing business with the city.

## **RECOMMENDATIONS**

### *Recommendation 16-1:*

The city of Oakland Public Ethics Commission must conduct its own investigation of facts surrounding the townhouse project and take appropriate enforcement actions.

### *Recommendation 16-2:*

The city of Oakland Public Ethics Commission must reinforce its ethics training for elected officials and city employees regarding conflicts of interest, misuse of city resources or position, and professional conduct, including reporting council interference.

### *Recommendation 16-3:*

The Oakland City Council must follow its Code of Ethics, including its mandate to "be willing to censure any member who willfully violates the rules of conduct contained in the Code of Ethics."

**RESPONSES REQUIRED**

*Responding Agencies - Please see page 125 for instructions*

Oakland City Council:

Findings 16-1 through 16-5

Recommendation 16-3

Mayor, City of Oakland:

Findings 16-1 through 16-5

Recommendations 16-3

City of Oakland Public Ethics Commission:

Recommendations 16-1 and 16-2

## **CITY OF OAKLAND'S COSTLY PURSUIT OF ZERO WASTE FRANCHISE CONTRACTS**

### **EXECUTIVE SUMMARY**

The Grand Jury received numerous citizen complaints concerning increases to garbage and composting collection rates in the city of Oakland as a result of the city's new Zero Waste franchise contracts. The Grand Jury also received citizen complaints that these 2015 franchise agreements for garbage and recycling collection had been awarded improperly; that garbage collection rates charged to Oakland businesses violated California law; and that \$30 million in franchise fees paid to the city passed on to Oakland ratepayers are an alleged "illegal tax."

The Grand Jury undertook a comprehensive investigation related to the solicitation and award of the city's Zero Waste contracts. The Grand Jury determined that: (1) although intended, the city's contracting process failed to achieve a competitive bidding environment; (2) the city's contracting process was for all intents and purposes abandoned by the city council before the process was completed; (3) even though intended, the city's contracting process lacked reasonable transparency; (4) collection rates paid by Oakland businesses and multi-family residences were markedly higher than surrounding communities; and (5) franchise fees paid by the city's garbage collection contractor, passed on to Oakland ratepayers, are disproportionately higher than franchise fees paid to other Bay Area municipalities and special districts.

A franchise agreement is an authorization granting an exclusive contract by a government entity to a private enterprise enabling them to carry out specified commercial activities. Oakland ratepayers are the primary beneficiaries of the Zero Waste franchise contracts.

The city council owed a duty to, among other things, safeguard the ratepayers' financial interests. Nevertheless, the city council failed its duty. Reasonable financial analysis of numerous ancillary collection services directly impacting rates was not performed, and there was little to no public debate concerning disproportionately high franchise fees.

### **BACKGROUND**

In 2006, the city of Oakland enacted a Zero Waste policy and corresponding strategic plan. The city's intent was to reduce refuse tonnage deposited in landfills by 90%, from 400,000 tons in 2006, to 40,000 tons in 2020.

Over the next nine years the city implemented its Zero Waste strategic plan. They designed a process and schedule for soliciting franchise contracts for collection, diversion, recycling and landfill disposal services. These were essential elements to achieving the city's environmental goals. These contracts needed to be in place well in advance of June 2015, the expiration of an existing citywide collection and disposal services contract with Waste Management of Alameda County (WMAC), and a recycling collection contract with California Waste Solutions (CWS) that covered a portion of Oakland. A lapse of service between contracts would result in uncollected garbage creating a significant public health crisis.

In 2009, the city hired a consulting firm to assist its public works staff in developing and implementing a Request for Proposal (RFP) process for the award of franchise contracts for: (1) garbage and compostables collection (in the city's RFPs, garbage and compostable materials are referred to as "Mixed Material and Organics"), (2) residential recycling collection, and (3) landfill disposal services. In addition to setting forth the technical performance requirements for the anticipated contracts, the city's RFPs also sought to foster a competitive bidding environment. In short, the city hoped to receive multiple contract proposals from a spectrum of potential contractors.

In the course of developing the RFP, the city council issued 32 policy directives to public works staff. Specific directives required: that licensing recyclers serve Oakland businesses; that franchise contracts include provisions on city policies for equal benefits, living wage, and campaign contributions; that disclosure of a felony history be eliminated from initial job applications; requirements to pay competitive wages and benefits, defined as equivalent or better than collectively bargained contracts in surrounding counties; inclusion to the maximum extent possible of Oakland local business and employment of Oakland residents; labor peace plans in the event of labor disputes or unrest; and requirement for a customer service call center located within Alameda County. During the RFP process, a specific policy directive mandated a "cone of silence" which was imposed to safeguard the integrity of the city's RFP process by keeping proposers from improperly influencing elected officials.

In 2012, the city issued two formal, comprehensive RFPs for: (1) collection of garbage and compostables, and collection of residential recycling, and (2) landfill disposal services. The city's two RFPs collectively numbered more than 500 pages of contract requirements and bid submission procedures. The city issued fourteen addenda to the original RFPs for the two collection services contracts, and seven addenda to the original RFP for landfill disposal services. Most of the city's issued addenda answered bidder's questions, clarified contract provisions, or revised proposal submittal times.



On April 24, 2012, in a report to the city council, staff cautioned that “established industry standards for these types of Contracts necessitate thoughtful application of provisions to secure the desired economic and social benefits ... [and] the RFP process must strike a balance between securing economic benefits for Oakland and achieving the best customer rates for the services, it must guard against unintentional bias or infeasible requirements that would suppress competition.”

Over the course of the next three years, the city engaged in what can only be described as a tortured procurement process. This process evolved dramatically toward its conclusion and culminated in the award of three franchise contracts to two incumbent firms. Even though the city started the contracting process in 2011, and with good intentions, the city ultimately ran out of time and thus lost control of key final decisions. The city’s goal was that the selection process be open and transparent. However, the process moved to “behind closed-door” negotiations between the two contractors. In the end, the public and even city staff were left on the sidelines.

## **INVESTIGATION**

During the course of its investigation the Grand Jury reviewed thousands of pages of documents, screened several hours of Oakland City Council meeting videos, reviewed statutes and ordinances, and interviewed city officials, complainants and other citizens.

The documents examined by the Grand Jury included: RFP’s for each of the three franchise agreements, contract proposals submitted by WMAC and CWS, best and final offers submitted by WMAC and CWS, Oakland Public Works staff and consultant’s reports, city council meeting minutes, the Memorandum of Agreement between WMAC and CWS, correspondence, and the final executed franchise contracts awarded to WMAC and CWS.

The Grand Jury examined and analyzed hundreds of pages of garbage and recycling collection rate sheets submitted to the city by WMAC and CWS, including the final rate sheets incorporated into the executed franchise contracts. In addition, the Grand Jury examined garbage, composting, and recycling rates charged in other Alameda, San Francisco, and Contra Costa communities, and examined franchise fees paid to other California municipalities for comparable garbage, composting, and recycling services.

### **The City Received Only Two Responsive Contract Proposals**

The RFP requirements never achieved the city’s goal to create a competitive bidding environment for the city’s Zero Waste franchise contracts. Initially, six

potential bidders expressed interest for garbage and recycling collection services, and five potential bidders for landfill disposal services. However, in January 2013, the city received contract proposals from only two firms, the incumbent entities CWS and WMAC. A third proposal was received that was deemed unresponsive to the city's bidding requirements.

CWS submitted a contract proposal for garbage and recycling services, but not for landfill disposal services. WMAC submitted a contract proposal for all three franchise contracts. In its proposal, WMAC submitted a discounted, "bundled rate" structure, conditioned on the city awarding all three franchise contracts to WMAC. In the evaluation process, city staff raised questions whether the CWS proposal was in fact responsive in light of infrastructure required to perform garbage collection services and in the time frame required to perform the service.

The Grand Jury reviewed documents showing that an innovative bid was contemplated by a third contractor. This bidder indicated that they were capable of providing the services, but the structure of the RFP was inflexible after its release. For example, the contractor believed that the city might be better served with a city-owned transfer station, but the RFP did not appear to allow for such innovation.

As a non-incumbent contractor, this third potential bidder would need to construct a transfer station, and observed its construction would be at a significant capital cost. Furthermore, environmental requirements could take 3-5 years to obtain approvals, which would delay a new transfer station being operable until half-way through the contract period. In the interim, the contractor would have to pay a third party a premium to perform that function. It was apparent to this contractor that such an investment was too risky. Unfortunately, the city did not recognize that the RFP favored an incumbent bidder with an existing infrastructure until it was too late.

#### City Staff Was Under-Resourced and Lacked the Time to Manage the Complexity of the RFP Process and Implementation of Oakland's Zero Waste Strategic Plan

The Grand Jury heard testimony that the city's RFP process was the first of its kind for the city of Oakland for establishing waste franchise contracts. No prior existing process was in place, and public works staff was challenged by the complexity and volume of what was required to evaluate and negotiate the contract proposals received from WMAC and CWS.

For close to six months, from January to June 2013, public works staff and the city's retained consultant evaluated proposals submitted by CWS and WMAC.

In June 2013, city staff presented its evaluation to the city council, recommending that staff conduct separate contract negotiations in parallel with CWS and WMAC. Acting on the city council's direction, public works staff commenced negotiations with CWS and WMAC. Noteworthy, staff's parallel negotiations would extend over the next year. Time for an ordered contract transition was quickly running out. Likely unintended, this extended period of negotiation also resulted in a vacuum of public information.

In May 2014, public works staff recommended the city award all three franchise contracts to WMAC. Staff advised the city council that WMAC's bundled rate structure provided the lowest overall rate option for Oakland citizens. However, the city council rejected those recommendations, directed staff to continue contract negotiations, and to solicit best and final offers (BAFO) from CWS and WMAC, and allowed CWS to expand its bid to include the landfill disposal services.

On June 13, 2014, CWS and WMAC submitted best and final offers. For the first time, CWS included in its BAFO a proposal for landfill disposal services. At this juncture, with just a year to the expiration of existing collection contracts, the contracting process started to devolve. New parties were injected into the contract negotiations at the last hour. City staff was presented best and final offers that were in many regards new contract proposals. Indeed, CWS' BAFO submission numbered more than 700 pages. The Grand Jury notes that initial proposals had taken more than 18 months to evaluate and negotiate. City staff was now asked to compress its evaluation and present final recommendations in less than six weeks. At this point neither the complex process that had been designed, nor the expertise of the consultants that had been hired, could be sufficiently utilized.

Following its review and analysis of the contractors' BAFO submissions, public works staff again recommended that the city's most prudent option was to award all three franchise contracts to WMAC. Staff pointedly advised the city council that WMAC's proposal "would provide the best value for the Oakland ratepayers and the best customer experience, while meeting the city's Zero Waste Goal." Further, in its agenda report to the city council, staff identified concerns that CWS lacked the existing infrastructure necessary to perform services at the expiration of the existing contract. Despite staff's warning that it risked a critical interruption to services at the expiration of the existing contracts, the city council voted to award all three franchise contracts to CWS.

In Light of a Negotiated Settlement Between WMAC and CWS, The City's Contracting Process Was in Essence Abandoned, Moved Behind Closed Doors, and Lacked Transparency

In August 2014 WMAC filed a lawsuit against the city and CWS alleging various irregular actions related to the contracting process. WMAC sought to rescind the ordinances awarding all three franchise agreements to CWS. At the same time, WMAC began collecting signatures for a ballot referendum that asked Oakland voters to invalidate the ordinances awarding the franchise contracts to CWS. Had the measure qualified for the ballot, the final determination of the Zero Waste contractor would have come after the existing contracts had expired. The city was in danger of potentially losing garbage services, and creating a public health crisis.

In September 2014, WMAC and CWS settled their dispute and as part of the agreement, WMAC dropped its lawsuit and referendum efforts. The parties signed a Memorandum of Agreement that provided WMAC would be awarded franchise contracts for garbage and compostable collection, and landfill/disposal services, and CWS would retain the portion of the new franchise contract for residential recycling collection. The parties also agreed that WMAC would pay a total of \$15 million to CWS: \$2.5 million in settlement of all costs and fees and other claims and \$12.5 million for “a ten year right of first refusal ... for any of CWS recycling businesses in Alameda County....” The parties’ Memorandum of Agreement was conditioned on the city council amending its ordinance to award the franchise contracts as CWS and WMAC had agreed.

Within days, the city council voted to adopt the agreement. With little time for staff analysis, on September 29, 2014, the city council voted to amend its ordinance to award a franchise contract for garbage and compostables collection and landfill disposal services to WMAC, and to maintain the franchise contract for residential recycling with CWS. Shortly thereafter, the city council voted to extend the term for CWS’ franchise contract from an initial 10 year term to 20 years pursuant to the MOA.

The Grand Jury investigated whether the city of Oakland was an integral party to the settlement agreement between WMAC and CWS, but found no such evidence. Instead, evidence presented to the Grand Jury suggests the city was marginally involved, if at all, other than simply ratifying the end result of the agreement.

The Grand Jury found that the city staff’s initial recommendation, to award all three franchise contracts to WMAC, was the least costly alternative for ratepayers. City council repeatedly rejected staff recommendations, placing the

contracting process and timeline for award in jeopardy. This undermined the contracting process and produced a non-competitive result.

Impact to Oakland Ratepayers Received Insufficient Attention from Public Works Staff and the Oakland City Council.

From the onset, staff and city council knew that implementing the Zero Waste policy would result in substantial increases for Oakland's ratepayers, thus emphasizing the need for thorough cost and rate analysis. The Grand Jury looked for evidence that analysis of the estimated costs of the services provided under the franchise contracts bore a reasonable relationship to rates charged to Oakland's citizens. The Grand Jury also sought evidence that numerous economic provisions identified in the city council's 32 policy directives had been analyzed to identify costs and corresponding impact to Oakland's ratepayers. However, no evidence was presented to the Grand Jury indicating the value of many ancillary service costs had been analyzed, or that other economic provisions had been analyzed for potential impact to ratepayers. The Grand Jury also heard testimony that no analysis was performed related to ancillary collection services, such as bin push rates.

It appears to the Grand Jury that the city council paid minimal attention to the impact of the cost for services provided to the ratepayers. The contract awarded to WMAC for garbage collection and landfill disposal services includes the following provisions directly impacting ratepayers:

- (1) rates are adjusted annually to fully capture WMAC's increased costs based on new or increased franchise fees and government fees;
- (2) rate adjustments include additional 1.5% over and above other adjustments for the second through fifth contract years resulting in lower first year costs;
- (3) a special Local 6 labor wage adjustment for the second through fifth contract years;
- (4) proposal reimbursement fees of \$750,000 paid to city;
- (5) city may set other fees as it deems necessary, with garbage collection service rates adjusted to include such other fees; and
- (6) WMAC collections services for the city, as enumerated in the contract, are provided without charge.

The city council neither requested, nor performed, its own analysis to determine the corresponding economic impact to Oakland ratepayers for these contract requirements.

In addition, again with no apparent economic impact analysis, the city council required WMAC to subcontract for services that WMAC was capable of providing on its own. WMAC was obligated to enter into a subcontract with a jobs training nonprofit to “provide organics collection for commercial ratepayers on a subscription basis,” and a subcontract with a local utility district “for processing and diversion of organics collected from commercial ratepayers.” Evidence presented to the Grand Jury indicated WMAC could self-perform these services at a lower cost to ratepayers.

#### Public Not Clear How Rates Paid for Residential and Commercial Collection Services Are Reasonably Related to the Actual Cost of Services

In order to establish the impact of the new contract rates on the citizens of Oakland, the Grand Jury collected rate sheets for nine Alameda County cities. The Grand Jury compared monthly rates for the standard residential single-family dwelling garbage, recycling and organics collection as well as the rates for commercial trash and organics collection for one to six cubic yard bins from one to six times weekly.

The Grand Jury’s comparison showed Oakland’s rate for residential single-family dwellings as well as the rates for commercial trash collection to be toward the higher end, but reasonably similar to the other cities in the county. However, at the time of the study by the Grand Jury, all rates for the collection of organics from commercial ratepayers were 33% higher than average and the highest in the county.

In response to the outcry of local small businesses and multi-unit residential ratepayers, these rates have since been adjusted closer to the county average. This rate reduction was achieved at the expense of a number of original requirements the city council demanded, including a local call center, extension of the contract term, community outreach, and options to increase rates further in the future.

A second comparison study was also performed by the Grand Jury contrasting the rates in the original proposals of both WMAC and CWS, their best and final offers and the final contract awarded to WMAC by the city. This study clearly shows reductions across the board for single family residential as well as commercial waste collection and recycling, along with significant increases in the rates for the collection of organics from those same commercial customers, in an apparent attempt to balance out the needed reductions.

The Grand Jury also requested a recap of the total book of business (the anticipated rates that would be collected under the core contract) resulting from these contract negotiations. The city estimate was \$111.3 million annually, which was \$655,000 more than WMAC's original proposal and \$1.4 million over their "best and final offer" for each year.

The Franchise Fees Paid to the City Are Disproportionate in Size Compared to Similar Fees Paid to Other Municipalities.

The franchise agreement awarded to WMAC provides for a \$30 million "franchise fee," paid annually, and passed on per the agreement to ratepayers. A franchise fee has been in existence in previous waste contracts. The Grand Jury surveyed franchise fees paid to surrounding government entities and found that the franchise fees paid to the city of Oakland by WMAC under its contract are disproportionately higher than those surrounding government entities. Over the life of this ten-year agreement, with annual increases as provided, over \$300 million in additional fees are to be absorbed by Oakland's ratepayers.

The Grand Jury is troubled that these fees, which represent 30% of the ratepayers' monthly bills, were not transparently reported or openly discussed with the public at any time during the contracting process.

## **CONCLUSION**

Evidence presented to the Grand Jury indicates that significant resources were allocated to design and achieve a competitive bidding environment for the city's RFP without achieving its goals. The city of Oakland paid over \$1 million for consulting services for guidance in the RFP and contract award process. Several years of work by city staff were also dedicated to the creation of a competitive bidding process. Given the inordinate time and resources expended during the course of the RFP process, and the substantial monetary value of the anticipated franchise contracts, the city expected multiple bidders and competitive contract proposals. However, the process was ultimately ineffective and failed to achieve this result.

The process was originally designed to be independent of political influence with every effort to ensure transparency. For example, the Zero Waste website published every major document, staff report, and notices of meetings relating to the process. It was a genuine effort to educate the community with continuous updates on the process. In the end, this process was abandoned. The final decisions about how the contracts would ultimately be awarded, the rates, and the last minute payouts between contractors were a mystery to the

public and to the city. New rate tables and the contractors' settlement were distributed to staff and to the council. And, without meaningful analysis, the contracts were approved by the Oakland City Council a short time later.

## **FINDINGS**

### *Finding 16-6:*

Financial analysis of numerous contract provisions providing for economic benefits to the city was insufficient. Little or no analysis of the ultimate financial impact to ratepayers was performed.

### *Finding 16-7:*

The city of Oakland's contracting process failed to achieve a competitive bidding environment.

### *Finding 16-8:*

The city drafted RFP provisions that favored the incumbents and suppressed competition.

### *Finding 16-9:*

The city's official contracting process was abandoned and replaced by the contractors' closed-door negotiations.

### *Finding 16-10:*

Public transparency was undermined by the contractors' closed-door negotiations.

### *Finding 16-11:*

There was little to no public debate before the city council concerning disproportionately high franchise fees.

### *Finding 16-12:*

Collection rates paid by Oakland businesses and multi-family residences were markedly higher than those in surrounding communities.

### *Finding 16-13:*

Franchise fees paid by the city's garbage collection contractor, passed on to Oakland ratepayers, are disproportionately higher than franchise fees paid to other Bay Area municipalities and special districts.



## **RECOMMENDATIONS**

### *Recommendation 16-4:*

Given the complexity and enormous financial impact of the existing franchise contracts, the city of Oakland should start planning and preparing to solicit competitive bids for contracts to be in place sufficiently in advance of the expiration of the existing agreements.

### *Recommendation 16-5:*

The city of Oakland should ensure, when available, that the RFP processes be flexible enough to allow potential vendors to propose alternative, innovative responses.

### *Recommendation 16-6:*

The city of Oakland must ensure that subsequent agreements are solicited and awarded with complete transparency to the ratepayers, the parties whom ultimately bear the cost of the services. Rates charged should be reasonably related to the cost of the services provided.

### *Recommendation 16-7:*

To ensure transparency, the city of Oakland must publicly report on and have public discussion regarding franchise fees (and how those fees are to be used) in any city contract.

### *Recommendation 16-8:*

The Oakland City Council must ensure adequate resources to validate the completeness and accuracy of contract proposals. This may require the support of an independent financial analysis.

### *Recommendation 16-9:*

The city of Oakland should immediately begin to consider a long term strategy to correction of the short-comings of the current contract, including:

- a) Specific timelines and milestones required to assure a truly competitive process is developed;
- b) Evaluation of innovations such as a city-owned transfer station;
- c) Regular financial review and assessment focused on the actual cost of services provided and ratepayer impact; and
- d) Involvement of impacted communities and public transparency.

**RESPONSES REQUIRED**

*Responding Agencies – Please see page 125 for instructions*

Mayor, City of Oakland:

Findings 16-6 through 16-13

Recommendations 16-4 through 16-9

Oakland City Council:

Findings 16-6 through 16-13

Recommendations 16-4 through 16-9

## **THE FAILURE OF EDEN TOWNSHIP HEALTHCARE DISTRICT'S MISSION**

### **EXECUTIVE SUMMARY**

The Grand Jury received a citizen complaint that the Eden Township Healthcare District (ETHD, dba Eden Health District) does not adequately provide for healthcare needs of its residents. The complaint also questioned whether the district should continue to exist.

According to its Mission Statement, the district exists:

*To improve the health of the people in our community by investing resources in health and wellness programs that meet identified goals.*

After a thorough investigation, the Grand Jury found that ETHD has failed in its core mission effectiveness; that is, how the organization carries out its planned goals and objectives. The district does not engage in advanced strategic planning practices, but rather, has chosen to muddle through governance and managerial responsibilities. Its poor management and absence of innovation results in very little impact on the health of Alameda County residents within the district.

ETHD is a multi-million dollar healthcare district. In examining the district's financial statements, budgets, projections and planning documents, the Grand Jury found that the district provides no direct medical services and its forecasted grant awards to service providers account for a mere 12% of the district's total expenses. The Grand Jury found that 88% of the district's budget is spent on real estate, administration, legal and consulting fees. In effect, ETHD is essentially a commercial real estate management operation rather than an indirect (or direct) healthcare provider for citizens of the community.

Having determined the district's ineffective execution of its mission, the Grand Jury found the citizen complaint to be valid and questions whether the Eden Township Healthcare District should continue to exist.

### **BACKGROUND**

Eden Township Healthcare District is one of 78 healthcare districts in California. Healthcare districts are among a broader class of special districts which were created to deliver public health services to a resident population. Virtually all healthcare districts today were once named

“hospital districts” with one common purpose: to construct and operate community hospitals. Currently, only 40% of districts provide *direct* healthcare services; for example, owning and operating hospitals, clinics, assisted care or primary care facilities, ambulance transport, or senior housing. Others, like ETHD, provide *indirect* services to residents through third party healthcare providers; for example, providing funds to support community based organizations. Funding district operations for these services is usually achieved by resident-approved property tax assessments and/or through for-profit business ventures.

The primary purpose and mission at the time of the district’s founding in 1948 was to finance, construct and operate a community hospital in Castro Valley, which subsequently opened in the fall of 1954 as Eden Medical Center (EMC). Once the accumulation of capital for district expansion projects was no longer needed during the 1960s and into the 1970s, the district ceased levying taxes to fund its operations in 1977.

Eden Township Healthcare District boundaries include Castro Valley and San Lorenzo, Hayward and San Leandro. District residents numbered over 360,000 in 2010, and that number is projected to increase to over 437,000 by 2035. ETHD does not currently levy taxes, although it is considering levying a parcel tax on residents in the near future. Rather, it owns and operates office buildings and generates rental income for district operations and mission activities.

In 1994 the state mandated specific seismic upgrades for all hospitals. The district had three options to comply: replace the old Eden Medical Center (EMC) with a new hospital by 2013; retrofit EMC; or, close EMC operations by 2020. ETHD needed \$300 million to replace and construct a new hospital in Castro Valley. It asked Sutter Health (a not-for-profit healthcare system) to form a partnership to complete the project. In April 1997, district voters authorized ETHD to sell its major assets (Eden Medical Center and Laurel Grove Hospital) to Sutter Health for \$80 million, on the condition that the district retain Eden Medical Center’s \$57 million building fund and its community health fund, valued at \$37 million.

With these funds, ETHD purchased two medical office properties to generate income. The district used funds and other capital derived from its sale of assets to Sutter Health. The buildings that were purchased were: the San Leandro Medical Arts Building in 2004 (\$3.2 million) and the Dublin Gateway Building in 2007 (\$82 million). In 2013, the district opened the Eden Medical Building (\$7.2 million) that it built, owns, and operates. Property purchases were partially financed by mortgages amounting to \$45.5 million.

In 2004, ETHD acquired San Leandro Hospital and immediately leased it to Sutter, with an option to purchase. In 2009, Sutter exercised that option to purchase, but ETHD refused to comply due to concerns by some in the community that the emergency department would be closed. Sutter Health soon after sued, alleging that ETHD violated their agreement. From 2009 to 2013, ongoing lawsuits and appeals resulted in the district not prevailing in any of them. All in all, the judgment against ETHD was \$19 million including interest and fees. The district has made one payment, bringing the current liability to \$17.7 million.

## **INVESTIGATION**

The Grand Jury initiated an investigation to determine: (1) whether the *purpose* of ETHD is relevant since it no longer owns and operates a district hospital or otherwise provides direct healthcare needs for district residents; (2) whether the district's *mission activities* are effective; and (3) what factors, if any, contribute to the question of whether or not ETHD should continue to exist. The Grand Jury reviewed numerous reports, public documents and heard witness testimony during its investigation.

### Discussion

Eden Township Healthcare District has two main functions: 1) oversight and management of its development and maintenance of property holdings, leasing office units, and handling its investments; and 2) administering grants and sponsorships to various organizations, which are more or less associated with ETHD's purpose and mission. The district's oversight and management of its real estate holdings currently contributes little, if any, value to delivering healthcare services. However, the district spends a disproportionate amount of time managing its holdings. Consequently, it has little time to administer grants and sponsorships to various organizations to provide healthcare services.

### Business Enterprise Activity: Real Estate Ownership and Management

The Grand Jury heard testimony that the district's main business is in rentals and investments, which consists of developing and maintaining the organization's real-estate assets and lease operations. The district's three income-generating medical office buildings are not managed by ETHD; rather, ETHD pays third parties to manage building operations, including tenant recruitment, lease executions, and staffing. These facilities are expected to generate \$2.8 million, \$822,000, and \$434,000 respectively in lease income for 2016. Additionally, in March 2016, the district completed the sale of a portion of one property (4000 Dublin Gateway) in the city of

Dublin for a sale price of \$33.9 million, with all proceeds used to pay part of the mortgage for that property.

### Health and Wellness Projects

The district administers income generated from a \$12 million cash management portfolio and other investments for purposes of funding a community grants program for the marginalized, underserved, high-risk and special needs populations of the district.

Grants and sponsorships are awarded to third party, healthcare community-based organizations (CBOs) or to government related agencies. In the past three years, the district annually awarded between \$200,000 to \$300,000 in grants, which is less than 5% of the organization's total expenses. In the previous 15 years, ETHD dispersed \$10 million in grants to over 60 organizations. Current district policy is to allocate 65% of its regulated investment proceeds to community grants.

The district's failure to perform advanced (strategic) planning has jeopardized the district's ability to fund third party CBOs. For example, in 2010-2011, ETHD actually suspended grants to third party CBO health providers. However, the Grand Jury noted that the district chose to make two funding awards. The first was an award of \$500,000 to the Davis Street Family Resource Center for the purchase of a building. The second was a \$3 million loan to St. Rose Hospital in order for St. Rose to meet its payroll expenses. St. Rose has since suspended repayment of the loan back to ETHD.

The Grand Jury noted that Eden Township Healthcare District provided partial funding for a diabetes education and health fair event in September 2015, which was co-sponsored by a multinational pharmaceutical company. The event involved several local community health organizations. A few other events were planned in the spring of 2016, each focusing on health education issues. The stated purposes of these events were two-fold: (a) to educate the general public and provide free resources for the prevention, diagnosis and treatment of health issues such as diabetes; and (b) to generate awareness of the purpose and mission of the ETHD. Given the lack of follow-up data, however, the Grand Jury was unable to assess the impact or value for all district residents.

In November 2015, the district entered into a partnership agreement with Davis Street Family Resource Center to assist that organization in funding community health needs. The agreement requires ETHD to commit \$250,000 annually, to be paid in monthly installments for a period of five

years. However, this agreement may be jeopardized due to the district's pending lawsuit with Sutter. The lawsuit is subject to final resolution on appeal, and until the appeal has been resolved, there remains a risk that the district may be unable to fund the Davis Street project as required by its agreement. The lawsuit poses a \$17.7 million liability to the district. The remaining issue on appeal is whether the district will be required to pay the \$17.7 million as a lump-sum payment or whether the district may satisfy its liability through payments over ten years.

#### District Financial Summary

The district's recent sale of its Dublin property to a tenant, who exercised a lease option to purchase, will materially impact its debt, asset, book value, and cash flow. The figures for 2016 include adjustments to its original budget provided by the district to the Grand Jury, and reflect approximations for planning purposes. *(Please refer to the chart on page 49 for greater details.)* In light of this sale and the information provided, the Grand Jury notes ETHD's financial condition as follows:

- 1) An analysis of the 2015-2016 budget and audited financial statements, indicate that ETHD has \$12 million in cash reserves. After the Dublin property sale, the district forecasted approximately \$800,000 in positive cash flow for FY2016, reflecting a decrease in cash flow from approximately \$2 million.
- 2) Only a minimal amount of profits derived from the real estate activities are allocated for the district's mission-related community grants program for the underserved or other district residents. All real estate tenants are either medical professionals or related medical operations, such as medical labs paying market rate rents. There is no evidence that any of the spaces leased in the district's office buildings are used by non-profit or community based organizations.
- 3) A full 76% of the district's 2015-2016 operating budget is spent on real estate activities (which includes paying down debt on ETHDs medical office buildings, property management, maintenance, administrative expenses and staffing), while an additional 12% is spent on district administration, legal, and consulting expenses. Total spending on items other than direct or indirect healthcare programs is approximately 88% of the district's total budget.

- 4) The long-term debt of the district is \$29.3 million. This sum includes:
  - \$11.6 million mortgage debt remaining on medical office buildings; and
  - \$17.7 million remaining debt as a result of the failed lawsuits and counter suits between the district and Sutter Health.
- 5) Based on the ETHDs financial statements for budget years 2013-2015, funds allocated for the organization's community grants program has historically been in the range of 2% to 3.5% of district expenses. After the recent Dublin Gateway property sale, community grants would increase to 12% of the organization's expenses with the revised FY2016 budget.

The Grand Jury is concerned that residents of the district are unaware of ETHD's financial priorities and inability to provide a wide range of direct healthcare and/or health related services. The failed Sutter lawsuit continues to negatively impact the already precarious financial condition of the district originally caused by a series of management and legal missteps with Sutter Health. There is little evidence of *ongoing*, serious strategic planning practices for the allocation and expenditure of public resources that focus on meeting clearly identified goals. In the opinion of the Grand Jury, the district's decision to prioritize its financial planning for real estate management, rather than to deliver healthcare services for the benefit of its residents, has led to an unfortunate misallocation of public resources.

On another note, in November 2015, ETHD officials were certified by the Association of California Healthcare Districts for meeting high healthcare district governance standards set for participating members in the association. The district is one of twelve in the state to have received such certification. Because of the commendable public transparency of the district, the Grand Jury was able to study a variety of easily accessible documents such as audited financial statements, planning documents, budgets, board agendas, meeting minutes, and other information. The availability of these documents enhanced the Grand Jury's investigation into a citizen's allegations against the district's purpose, mission and operations. Thus, ETHD residents and other stakeholders have open access to the district's current operational realities.



Summary of District Finances 2013 through 2016

4/6/2015	ETHD, \$ 000's			As of 3/22/2016		
	Audited	Audited	Audited	Original	Gateway	Pro Forma
				Plan	Plan	Estimate
	2013	2014	2015	2016	2016	2016
Rental Income	3,763	4,306	4,708	4,854	2,230	2,624
Tenant Income	669	838	947	890	431	459
Taxes	0	0	0	0	0	0
Operating Income	4,432	5,144	5,655	5,744	2,661	3,083
Operating Expenses	6,762	6,693	6,789	6,584	2,156	4,428
Operating loss	-2,330	-1,549	-1,134	-840	505	-1,345
Interest income	388	322	303	314	0	314
Other income	200	50	750	0	0	0
Gain/(loss) on invest	-233	-46	-153	0	0	0
Interest Expense **	-1,480	-1,346	-1,378	-1,349	-733	-616
Legal settlement charge			-19,673			
Net Loss	-3,455	-2,569	-21,285	-1,875	-228	-1,647
Depreciation & Amort	3,674	4,073	3,977	3,952	1,508	2,444
Legal settlement charge	0	0	19,673			
Cash generated	219	1,504	2,365	2,077	1,280	797
Grants & Sponsorships	134	186	229	278		278
Davis Street Commitment				250		250
% of total expenses	2.0%	2.8%	3.4%	8.0%		11.9%
% of cash expenses	4.3%	7.1%	8.1%	10.6%		14.0%
** Note interest expense adjusted to reflect new estimate of \$616,000 on remaining mortgage of 11,600,000 per ETHD projections						

### Lack of Advanced (Strategic) Planning Practices

In 2013, district officials adopted what they described as a five-year plan. Prior to 2013, the last time ETHD conducted a plan review was 2009. The Grand Jury found this planning to be insufficient. It failed to demonstrate *advanced* planning practices within the organization as described by Alameda County's Local Agency Planning Commission (ALAFCo). Rather, the planning stance of the district consists of wait-and-see or what the Grand Jury concludes as one of muddling through. One witness testified that district officials stand by and wait to respond to community health needs so the organization may remain "nimble." The Grand Jury finds that the district's planning is anything but nimble; rather, it is fairly characterized, at best, as plodding.

An example of negligent planning is shown in the results of a district survey of residents in May 2012, titled *Public Perception of ETHD*. The survey's purpose was designed to assess residents' awareness and opinions about the district. Survey results show that 55% of respondents prior to taking the survey had never heard of Eden Township Healthcare District. An additional 24% of respondents had heard of the organization, but had no opinion about it. Only 18% of the responses were positive. The Grand Jury found no evidence of formal planning by ETHD officials to remedy the community's unawareness of the district as revealed by the 2012 survey.

The Grand Jury reviewed ETHD and Alameda Local Agency Formation Commission (ALAFCo) documents relating to the district's strategic plan and goals. Beginning in 2013, district officials reported to ALAFCo on its various plans and goals, attempting to articulate what had been accomplished. (See *Alameda Local Agency Formation Commission*, page 57.) Since there are insufficient *advanced* district-wide strategic plans, the Grand Jury noted that many goals referring to future plans are not *proactively* formulated from within the district. Rather, district goals are short-term *reactions*, forced by unanticipated circumstances, or ideas from outside the organization. For example:

- District officials reported to ALAFCo during ETHD's November 13, 2015 oversight review meeting that it was exploring possibilities of providing dental services in the city of Dublin. The Grand Jury learned that this idea was not developed through internal planning processes, but rather from an idea suggested by an elected Dublin official.

- The district publicized that it had loaned cash-strapped St. Rose Hospital \$3 million to make payroll, a loan that is still partially outstanding. This took place only *after* the hospital reached out to the district after being turned away from other funding sources.
- It was reported that ETHD was considering asking voters to approve a parcel tax. The Grand Jury learned that this was an idea that came from a member of the Alameda County Board of Supervisors.
- ETHD recently sold its Dublin Gateway office building and used the money from the sale to pay down its debt. This action was not the result of strategic planning from within ETHD, but rather, the building's tenant exercising its option to purchase the building.

The district's plan document, *Strategic Plan Priorities*, has seven priority declarations that are not goal statements even though the organization's mission states that it invests in resources "...that meet identified goals." The priorities lack language that would inform residents and other stakeholders that any mission-accomplishments of the district are planned for and budgeted. The following list is a verbatim presentation of the district's seven priorities:

- (a) Providing educational programs to promote health among adults and children in collaboration with schools, libraries and health centers.
- (b) Providing funding through the Community Health Fund for the underserved population of the district.
- (c) Providing services directly, such as urgent care or outpatient psychiatric services, which are needed in the community.
- (d) Continuing to maintain investment properties that serve a medical or health purpose or provide revenue that may support such a purpose.
- (e) Strategically manage and divesting itself of properties that may better promote the district's other strategies.
- (f) Increasing awareness of the districts purpose and value to the residents of the district as evidenced by substantial increase in the number of people of the district who understand its purpose and its services to the community.

- (g) Remaining financially sound and manage its operations towards this goal.

These priorities fail to articulate, or to detail in any reasonable fashion, how and when the district intends to accomplish its core mission: to deliver health services to the community.

#### Examples of Lack of Planning

In a planning-related document obtained by the Grand Jury, and from corroborating information gathered from witness testimony, the Grand Jury learned that:

- In the fall of 2015, the district pivoted from providing *direct* healthcare to *indirectly* providing loosely defined programs and services. The Grand Jury observed that such a major decision was executed in the absence of advanced planning. ETHD failed to provide information to the community and did not provide opportunities for public input.
- The Grand Jury heard testimony that ETHD officials do not believe that promoting or creating public awareness, such as marketing of the organization, is necessary for its mission.
- The Grand Jury found no evidence that the district integrates its planning to achieve meaningful collaboration with Alameda County Healthcare Services, the government organization mandated to serve the needs of the poor and underserved in Alameda County.
- The Grand Jury found that district residents and other stakeholders have little information on how the district correlates grant awards and sponsorships in order to meet the health needs of the community.
- District officials leverage resources through the formation of third party partnerships to *indirectly* deliver health programs and services to district residents. The Grand Jury found little or no evidence that ETHD performed meaningful evaluations to determine if these third party providers achieved the specific intended outcomes for which they were funded.

## CONCLUSION

Strategic plans describe *what* an organization intends to be in the future (the *vision*), and *how* it intends to achieve that vision (the *plan*).

Strategic planning is essential. It is what elected officials and managers of governmental agencies are expected to do for the efficiency, effectiveness, and economical delivery of public services. And it is equally essential to ensure transparency and accountability. In the case of the Eden Township Healthcare District, it neither has a vision nor a mission plan consisting of stated goals, objectives, and strategies that describe how the district expects to navigate its future existence and be relevant for the citizens it serves.

In the absence of meaningful strategic planning practices, ETHD's elected officials govern the organization's mission from a reactive perspective. The Grand Jury believes district residents and other stakeholders appear to be unaware of the implications of this situation.

ETHD spends 88% of its resources managing its real estate holdings and only 12% on mission-related activities. With this balance of resource allocation, the district struggles to deliver (directly or indirectly) adequate healthcare services for all residents. There is minimal evidence of active, informed citizen participation in district affairs. Agency officials do not solicit district-wide feedback or input from other healthcare organizations to evaluate and plan for greater mission effectiveness. Equally troublesome, there is no meaningful strategic planning in place to correct these matters.

The district's original purpose is no longer relevant since ETHD no longer owns and operates a district hospital or other *direct* care assets to deliver acute healthcare solutions. Unless ETHD has a clear vision and a defined strategic plan to be relevant, it should be dissolved.

The citizen's complaint, which initiated the Grand Jury's investigation, is warranted. It reflects accurate perceptions concerning the mission-realities of the Eden Township Healthcare District.

## FINDINGS

### Finding 16-14:

The Eden Township Healthcare District lacks a clear vision of its future as a viable governmental agency.

*Finding 16-15:*

The execution of the Eden Township Healthcare District's mission is ineffective because it does not engage in advanced strategic planning practices. The district lacks information concerning the needs of its residents and fails to take steps to assess those needs.

*Finding 16-16:*

The amount of resources devoted to the Eden Township Healthcare District's primary mission is only 12% of its total expenses. Although an improvement over the historical 5%, this ratio is an indication that the district's attention has been diverted away from its primary mission, which is to "improve the health of the people in our community."

*Finding 16-17:*

Survey data showing that district residents have little or no knowledge or opinion of ETHD's existence demonstrates ETHD's failure to deliver on its stated mission.

*Finding 16-18:*

Eden Township Healthcare District's current priorities lack concrete action plans, timelines, funding sources, or a rationale that would inform residents how and when plan priorities will be achieved.

*Finding 16-19:*

ETHD's stated priority to provide direct healthcare services to the community is unachievable under its current operating structure. This problem highlights the fact that the district has not aligned its strategic priorities with the reality of its operating structure.

*Finding 16-20:*

The Eden Township Healthcare District's passive approach to planning has resulted in a lack of short- and long-term objectives. It reduces the organization to haphazardly funding its priorities on a reactionary or politically driven basis.

*Finding 16-21:*

There is little or no evidence of collaboration between the Eden Township Healthcare District and the Alameda County Health Care Services Agency. Lack of collaboration is wasteful and detrimental to the community the district serves.

## **RECOMMENDATIONS**

### *Recommendation 16-10:*

The Eden Township Healthcare District must conduct community assessments giving all district residents and other stakeholders the opportunity to provide input for strategic planning purposes.

### *Recommendation 16-11:*

The Eden Township Healthcare District must create and articulate a clear vision for the district that serves as a basis for advanced strategic planning practices that meet the expectations of residents and other stakeholders.

### *Recommendation 16-12:*

The Eden Township Healthcare District must take steps to correlate its grant programs to meet specific identified needs of the diverse demographic of its residents.

### *Recommendation 16-13:*

The Eden Township Healthcare District must collaborate with the Alameda County Health Care Services Agency and show evidence that they have identified short- and long-term priorities that address the district's core mission and functions.

### *Recommendation 16-14:*

The Eden Township Healthcare District must take additional steps to publicly provide health information, educational resources, news and community events to all district residents.

### *Recommendation 16-15:*

In conjunction with Eden Township Healthcare District's next board election, the district must provide the electorate with a choice to vote on whether the district should continue to exist.

## **RESPONSES REQUIRED**

*Responding Agencies – Please see page 125 for instructions*

Eden Township Healthcare District Board of Directors:

Findings 16-14 through 16-21

Recommendations 16-10 through 16-15

[This page intentionally left blank]



## **ALAMEDA LOCAL AGENCY FORMATION COMMISSION**

### **EXECUTIVE SUMMARY**

Pursuant to state mandate, the Eden Township Healthcare District (ETHD, dba Eden Health District) falls within the oversight jurisdiction of the Alameda Local Agency Formation Commission (ALAFCo). During the Grand Jury's investigation of ETHD, ALAFCo's oversight role in relation to the district came into question (See *The Failure of Eden Township Healthcare District's Mission*, page 43). The Grand Jury sought to determine whether ALAFCo's oversight of the district's advanced (strategic) planning processes initiated by the 2013 Municipal Service Review (MSR) was adequate.

The findings and conclusions from the Grand Jury's ETHD investigation suggest the district does not implement advanced (strategic) planning practices. As a consequence, there is no accountability system to monitor the spending of public resources that are earmarked to provide effective healthcare deliverables to all district residents, including, most importantly, the marginalized and underserved.

As a result of the Grand Jury's investigation, it was found that there has been insufficient monitoring of the 2013 MSR and of ALAFCo's follow-up protocols for 2013, 2014, and 2015. Additionally, ALAFCo lacked political will to confront the reality of ETHD's ineffective execution of its mission and delivery of services. The district's residents cannot be assured that the Eden Township Healthcare District provides meaningful and inclusive public health services as stated in its mission.

### **BACKGROUND**

In 1963, the California Legislature created and mandated that each of the state's 58 counties establish a "regulatory boundary agency" called a Local Agency Formation Commission (LAFCo). All LAFCos are political subdivisions of the state created by the legislature made up of appointees representing counties, cities, special districts and the public. Commissions oversee and establish procedures for changes in the organization of local governments within their jurisdictions for purposes of shaping and increasing local governmental efficiencies in the delivery of public services.

The legislative intent of Local Agency Formation Commissions is to:

- Encourage orderly growth of governmental agencies.
- Promote efficient and orderly formation of local governmental agencies.
- Contribute to logical and reasonable development.
- Shape development of local agencies to provide for present and future needs of the county and its communities.
- Ensure efficient, sustainable public services.
- Preserve agricultural land resources, open space and discourage and prevent urban sprawl.

In California, LAFCos oversee 2,109 independent special districts. By comparison, there are only 482 city governments and 58 county governments in the state. These agencies conduct municipal service reviews every five years for special districts and other local jurisdictions within their respective counties. Each LAFCo is required to review and report that local governments provide balanced, effective public services and that the delivery of those services is done efficiently and economically.

### **INVESTIGATION**

The findings of the Grand Jury's investigation into a citizen's complaint pertaining to the ineffectiveness and execution of the mission of the Eden Township Healthcare District led to the Jury's questioning the oversight role ALAFCo has played in recent years. Specifically, the Grand Jury needed to establish whether ALAFCo's oversight of ETHDs 2013 MSR has been adequate for residents served by the district.

Including witness testimony, the Grand Jury analyzed the following ALAFCo documents: (a) 2004 Sphere of Influence Service Review of ETHD; (b) ETHD 2013 MSR; (c) Resolution 2013-14: *Adopting Municipal Service Review Determinations, Sphere of Influence Determinations, and Updating the Sphere of Influence for the Eden Township Healthcare District*; (d) Resolution 2014-07: *Updating the Sphere of Influence for the Eden Township Healthcare District*; and (e) Staff memo dated November 5, 2015 to the commissioners regarding ETHD CEO's "status report" updating Resolution 2014-07 for the commissioner's November 12, 2015 meeting.

The Grand Jury determined that ETHD does not engage in advance strategic planning practices, and spends too little of its resources on its primary mission. As a result of this investigation, the Grand Jury found (a) that ALAFCo missed opportunities to authenticate and identify these problems; and (b) the responses to ETHD's annual 2013 follow-up reports

did not appear to be aligned with or responsive to ALAFCo's earlier demands.

Critics of LAFCos claim the commissions have a bias towards maintaining local governmental agencies. As a result of that bias, LAFCos rarely if ever muster the political will to dissolve or consolidate special districts even if the district's purpose and mission are no longer justified. ALAFCo's lack of awareness and verification that ETHD district officials have not and do not participate in sufficient advanced planning practices to guide its mission and future operations is unfortunate. This lack of attention gives credence to LAFCo critics about a bias of maintaining the status quo.

## **CONCLUSION**

The Alameda Local Agency Formation Commission has provided inadequate oversight of the Eden Township Healthcare District resulting in maintaining the status quo of a public agency whose purpose and mission are no longer relevant or effective.

## **FINDINGS**

### *Finding 16-22:*

As a result of ALAFCo's lack of oversight of ETHD's advanced (strategic) planning practices, residents and other stakeholders of the district are unaware whether ETHD has long-term capacity, or even the intent, to provide well-planned delivery of efficient and sustainable health programs and services.

## **RECOMMENDATIONS**

### *Recommendation 16-16:*

The Alameda Local Agency Formation Commission must ensure that the Eden Township Healthcare District's strategic planning aligns with ETHD's current operational structure.

### *Recommendation 16-17:*

The Alameda Local Agency Formation Commission must provide greater scrutiny and oversight of the Eden Township Healthcare District to ensure that current and future Municipal Service Reviews are effectively constructed to meet the district's adherence to advanced (strategic) planning practices and on-going reporting to residents and other stakeholders of successful mission outcomes.

*Recommendation 16-18:*

The Alameda Local Agency Formation Commission must employ its initiatory powers (planning and regulatory) to decide the public value of the Eden Township Healthcare District in light of the overall needs of the district and act accordingly by either recommending dissolution or consolidation.

**RESPONSES REQUIRED**

*Responding Agencies – Please see page 125 for instructions*

Alameda Local Agency Formation Commission Board

Finding 16-22

Recommendations 16-16 through 16-18

## **OVERSIGHT OF COUNTY FUNDED COMMUNITY BASED ORGANIZATIONS**

### **EXECUTIVE SUMMARY**

Four years ago, the Grand Jury examined how both the Alameda County Social Services Agency (SSA) and the Health Care Services Agency (HCSA) monitored and evaluated the nearly half billion dollars in contracts that it had with community based organizations (CBOs). Ultimately, the Grand Jury recommended that the county bolster their oversight efforts by adopting results-based accountability (RBA). As a result, the county accepted the Grand Jury's recommendations, and both agencies took concrete steps to improve their oversight of contracts they had with community organizations. Currently, an estimated 60% of all CBO contracts with the county have some reporting requirement on outcomes. This figure is too low.

The 2015-2016 Grand Jury examined these departments' progress in the implementation of this improved oversight method. There still appears to be insufficient resources assigned to this effort and key champions who initiated these programs have left their positions. The Grand Jury has found that many county contracts are still being renewed, year-after-year without competitive rebidding or, at the very least, without meaningful evaluation of outcomes. There is little to indicate that under-performing CBOs are being held accountable. Nearly a half billion dollars a year has been committed to fund CBO programs, but the Alameda County Board of Supervisors (BOS) approves these contracts without having any certainty that the money has been or will be well spent.

### **BACKGROUND**

The US Census Bureau estimates that more than 200,000 people, or 13% of Alameda County's population, live in poverty. The county government has the primary responsibility to act as the safety net for those residents. In response, Alameda County provides an impressive range of health and social services to the county's most vulnerable populations.

The \$1.4 billion combined budgets of the Alameda County Social Services Agency (SSA) and the Alameda County Health Care Services Agency (HCSA) (including nearly half billion contracted to CBOs), as well as the dedication of county staff, are testaments to the county's commitment to serving citizens in need. Some of those dollars go directly to fund traditional programs such as General Assistance, CalFRESH (food stamps), and In-Home Support Services.

The county also contracts with over 200 local non-profit community based organizations to provide direct services to the needy. For example, SSA contracts with over 30 CBOs, spending \$30 million annually related to CalWORKS, and over 45 CBOs, spending another \$30 million annually on children and family services.

There are several reasons why the county relies upon CBOs to provide direct services to those in need. These contracted organizations are best equipped to meet the needs of those served within their diverse communities and are often already embedded into the communities they serve. Many CBOs are relatively small organizations and therefore can easily adapt to changing conditions and needs of their target populations. Since contracts with CBOs are usually only 1-3 years, the county has the flexibility to discontinue programs as needs change, although there is little evidence this occurs. By not being the direct provider, the county reduces the number of permanent full-time employees needed while also reducing its pension obligation. Fewer permanent staff also reduces the need for office space. Finally CBOs are part of a place-based economic development strategy. They can facilitate the flow of capital into communities that then leads to potential employment opportunities.

The procurement, contracting, and managing of so many independent entities is a large and complex undertaking. The Grand Jury heard testimony ranging from staff being overwhelmed, to the oversight of programs not being properly resourced or funded. More than one witness described the county's range of services as rich, but, primarily due to staffing issues, poorly managed in some areas.

Since the Grand Jury's recommendations in 2012, SSA established the Program Evaluation and Research Unit (PERU) to develop performance-based metrics for the CBOs under contract. PERU also began developing computer programs that provide real time outcome data for some of the agencies. SSA also trained staff and senior administrators regarding results-based accountability. In August of 2015, the BOS approved a Health Care Services Agency proposal to spend \$1 million over four years to improve the oversight of nonprofit contractors using result-based accountability. A portion of these funds is used by HCSA's Community Assessment, Planning, and Evaluation Unit to train managers in results-based accountability.

## **INVESTIGATION**

The Grand Jury interviewed numerous witnesses including county elected officials, administrators in the Social Services Agency, the Health Care Services Agency, the General Services Agency, staff from community based organizations, and experts in the field of CBO oversight and evaluation. The

Grand Jury visited service centers throughout the county wherein both county employees and CBOs provide information and services, and attended public meetings wherein county services were discussed. In addition, the Grand Jury reviewed county procurement rules, the administrative code, CBO contracts, selected contracting and bidding documents, board approval letters, oversight and evaluation documents, and CBO results-based accountability data.

The Grand Jury heard testimony that while contracting with CBOs offers many advantages, the oversight, evaluation, and consistency of so many independent entities requires far more thoroughness and rigor than is occurring. Much of the problem is due to a lack of resources, a lack of continuity in leadership positions in SSA and HCSA, and a lack of the political will to demand objective data on the efficacy of programs.

### How CBO Contracting Works

Just as government funding sources are diverse, so is the manner in which CBOs are selected. Normally, programing staff within SSA and HCSA or federal and state policy makers determine the health and social service needs within the community. Oftentimes, the state or the federal government provides funds for specific target populations, and the county agencies respond by proposing programs that fulfill the funding guidelines. Local dollars, such as Measure A funds (See *Constraints of the Measure A Oversight Committee*, page 73) which are generated through an Alameda County ½ cent sales tax, are also used to fund such programs. In most circumstances, once funding is identified or assigned, a request for proposal (RFP) is issued outlining the program scope, the dollar amount of a contract, its duration, and its reporting requirements. The county's General Services Agency is responsible for developing county procurement policies and can help individual departments manage the bidding process.

Typically, a panel of outside experts evaluates the responses to the RFP. The proposals are ranked on a numerical scoring system covering a variety of measures. There are no site visits currently required by the county procurement rules. Staff prepares a letter for the BOS with its recommendations and rankings of the bidders. Any contract award above \$25,000 must be approved by the board of supervisors.

The Grand Jury is concerned that a large percentage of existing contracts are renewed, year after year, without requiring a new RFP. A review of the BOS agenda each week reveals how many of the contracts that go before the board are augmentations or extensions of existing contracts. Some contracts are renewed because county staff believes a CBO is performing well, but the Grand Jury heard from multiple witnesses that many others are renewed because county staff is simply overwhelmed.

Testimony revealed that once under contract, few CBOs are non-renewed or defunded by the county. Several reasons were provided; chief among them is that there has been little data other than anecdotal information that justifies a termination of a contract or a non-renewal. Another reason given for retention of a suspected under-performing CBO was that the county would rather help them improve through assistance and training, particularly if the CBO has a capacity to serve a specific population in need. More than one witness suggested that there is political pressure from the board of supervisors to retain some CBOs if a particular CBO is important to a constituency in their district, particularly if there is no data suggesting poor performance. This echoes evidence heard by the 2011-2012 Grand Jury.

The Grand Jury repeatedly heard that decision makers at all levels know to a degree which CBOs are under-performing. Meaningful evaluations provide county leaders with the necessary leverage to make change. The Grand Jury heard testimony that it is not uncommon to hear comments such as, “We just spent this much money to get what?” The county should not be beholden to mediocre work when significant funds are intended to save lives.

#### Request for Proposal Innovations

Preparing a response to an RFP does not necessarily correspond to the capacity of a CBO to actually provide high-quality services. While some CBOs have longstanding staff and consistency within their organization, the Grand Jury learned that others do not. Some CBOs hire professional writers. As a result, they may be awarded contracts merely on the ability to submit an effective response to an RFP, without having the ability to deliver the services effectively.

Witnesses testified that the selection process has to be more thorough to ensure the capabilities of an organization and its professional staffing. The RFP should include a statement by the CBO as to staff training, development, and how people within the organization are encouraged to innovate to accomplish its mission.

CBOs are given very little latitude to develop innovative programs in the current RFP and renewal process. One suggestion made to the Grand Jury was that the county describe the problem, not the solution, and then seek the CBO that presents the most compelling program to address the issue. Another suggestion was that those in the community should be involved in developing some RFPs as they have insights and understanding of the types of interventions that might work in a particular neighborhood. The Grand Jury acknowledges that some funding agencies prescribe program methodologies that limit innovation.



Data Collection: Measuring Outputs Not Outcomes

When assessing the performance of CBOs, Alameda County has traditionally focused on output or number of clients served. This data provides little information about whether anyone is better off. It was not uncommon for county staff to question the accuracy of the numbers, but because results-based accountability reporting was not a part of the CBO contract with the county, staff was left with little leverage to hold anyone accountable. In many contracts, multiple state and federal funding agencies determine the metrics and data collected to fulfill legal and audit requirements. This data generally measures output and is required in order to comply with the law. This is especially a factor in HCSA programs.

As an example of the need to reorient data to outcomes, the Grand Jury heard evidence of a CBO with a contract to provide 104,010 hours of service spanning 34 different programs. Its report to the county for fiscal year 2014-2015 documented the provision of 99,980 hours of service to 2,343 eligible clients. Such a report tells nothing of how the services helped the client, but rather simply how many people were accessed. Witness testimony suggested that it would be far more effective to monitor and report on client progress throughout the treatment program. This may be accomplished in many ways. For example, in the case of behavioral and mental health programs, a CBO could document the length of stay in a facility, the treatment progress, and reason for discharge. In a job placement program, data would include what type of job was obtained, if the job was full-time, and how long the client remained employed.

The same is true in child protective services. Simply reporting on how many families were served tells nothing about whether anyone is better off.

The Grand Jury acknowledges that the collection of more meaningful outcome data has improved within both SSA and HCSA since the 2011-2012 Grand Jury Final Report. The reporting requirements in new contracts have begun to increase the emphasis on outcomes in addition to outputs. In SSA, for example, evaluation requirements embodied in CBO contracts now appear to focus on these basic concepts:

*How much was done? (output)*

*How well was it done? (outcome)*

*Is anyone better off? (outcome)*

Currently, an estimated 60% of all CBO contracts with the county have some reporting requirement on outcomes. The Grand Jury concludes that this figure is too low given the four years since the board of supervisors acknowledged the need for results-based accountability.

In addition to helping write RBA outcome measures into CBO contracts, the SSA's Planning, Evaluation and Research Unit (PERU) has the responsibility to periodically evaluate certain federal and state grant programs and provide those reports to the granting agencies. Although they only complete a handful of these evaluations each year, the Grand Jury was impressed with the two comprehensive reports it examined. The following is a summary of one evaluation by PERU, dated July of 2014. The Grand Jury views this type of report as essential in monitoring CBOs.

*The Gathering Place (TGP) is a visitation center for children in foster care to visit with their families. It is a collaboration between Alameda County Department of Children and Family Services, Alameda County Behavioral Health Care Services, and CBO contractor Alternative Family Services. It opened in Oakland in April of 2011 and in Pleasanton in March of 2012 with a budget for fiscal year 2013-14 of approximately \$1 million. It provides three types of visitation, therapeutic, supervised, or observed, each with appropriate professional counselors. The goal is to help families progress to unsupervised visitation and to facilitate early, stable reunification, and permanence.*

*The evaluation report includes the complete description of the clientele, sixteen key findings of the program since its inception, and makes seven recommendations based on surveys of parents, child welfare workers, and focus groups. The report specifies areas with high levels of satisfaction, areas for improvement, and suggestions for improvement. It also includes quotes from parent participants.*

The aforementioned report is very thorough, complete with numbers, graphs and descriptive material that critically evaluates if participants are better off with the services received. The above report provides a detailed analysis of the therapeutic and supervised visits. The conclusion includes describing both the efficacy of the program as well as concerns regarding less impressive findings.

Both SSA and HCSA are also beginning to rely on dashboards (a computer program used to display data collected from CBOs). These dashboards provide statistical snapshots of a program that allows staff to monitor CBOs and more easily ascertain performance, particularly by comparing with similar CBOs. Program staff may make periodic visits to CBOs under their purview, but the Grand Jury learned that more on-site visits early in the contract period would help identify data collection issues that could then be corrected before a reporting deadline.

### Data Collection Issues

The Grand Jury heard testimony that developing outcome measures must be individualized for different types of contracts. With hundreds of contracts, this process can be difficult if the effort is not properly staffed and funded. The Grand Jury learned that too many measures can be overly burdensome. Within SSA, outcome measures are developed by PERU, which collaborates with programming staff who oversee the day-to-day operations of the CBOs, the contracts department which writes the contracts, along with the finance department.

These four different departments within SSA had little contact with each other before the results-based accountability program was initiated. There were concerns and tension that PERU was spying over the other departments' work but the Grand Jury heard testimony that as relationships developed, their interaction only strengthened the overall mission of the Social Services Agency. The Grand Jury believes there is insufficient staff to create the measurement tools, make them operational, and then evaluate the results. Because county staff is beleaguered managing the existing system, they are unable to undertake new procedures or innovations. There is also a difference of opinion within agencies of what can and should be measured and no culture of collaboration to resolve these differences.

Including RBA measures in CBO contracts in itself is insufficient. CBO's must have the capacity to collect and report necessary outcome data. The data must be evaluated and then passed on to programming staff to determine the needs of the community. This provides leverage to determine if the CBO has fulfilled its mission.

One major concern that the Grand Jury has identified is that several champions of RBA have left their departments, and the programs may no longer be a top priority. Without commitment to results-based accountability throughout the organization and without the support of the Alameda County Board of Supervisors, little will change.

### Management of CBOs

Over \$485 million was expended by Alameda County this year to contract with 256 CBOs. The procurement, contracting, and management of so many independent entities is a large and complex endeavor.

The Grand Jury heard testimony from several witnesses that the number of CBOs makes it near impossible, given the number of staff within SSA and HCSA, to assure that each is performing well and providing the highest level of

service to the public. Some of these CBOs have highly professional staff with long-term employment and excellent management systems that include employee training, promotion and retention. Some have a high level of technical expertise to support data acquisition, analysis, and reporting, and have excellent reputations within the communities they serve. Many of these CBOs have contracts with other agencies outside the county and are supported in large part through grants, other public funding, and philanthropy. However, many are small, have high staff turnover, rely primarily on county funding, and have little technical capacity.

Generally, if a CBO is struggling to provide contracted services, county staff may not be aware until it is time for contract renewal, as some CBOs provide insufficient or inaccurate performance data. The Grand Jury heard testimony that while the county can and does provide some assistance, it is the CBO's responsibility to train its staff and provide professional development within its organization.

The Grand Jury heard evidence that many of the smaller CBOs do not have the in-house capability to adopt new data systems if required by a county contract. The Grand Jury believes that the county must provide more administrative and technology support for CBOs. This will not only help these organizations evolve, but also improve the quality of services they offer.

Witnesses suggested a variety of strategies to strengthen those CBOs with less service capacity and few professional staff. One such strategy is to provide more technical support for a group of contracted CBOs with contracts under \$1 million. For example, the county could provide a specialized CBO management team that would evaluate staff needs and detect problems quickly. Such support would include employee development, data collection, analysis, and reporting.

Based on testimony, the Grand Jury suggests that the overall organization of CBOs be reconsidered. Rather than the county contracting individually with so many different entities, it could cluster smaller CBOs under one umbrella CBO which would then subcontract to providers in a given program area, such as for youth services. The main contractor would then be responsible for collecting, analyzing and disseminating data among all the subcontracted CBOs and the county. This strategy would also reduce the oversight required by county staff, allowing them to focus on program development, increasing CBO capacity, and strengthening its RFP management. A further benefit is that CBOs, when working collaboratively, may approach services with more innovation.

The Grand Jury heard testimony from multiple sources that there is too little collaboration among different county agencies contracting for the same services. This leads to the concept of blending funds, so that larger, more coordinated contracts may be provided to fewer CBOs. For example, several funded programs for child support services could be combined and then contracted to fewer CBOs for this set of services.

## **CONCLUSION**

Given the hundreds of CBOs contracted with Alameda County, it takes considerable county staff time to monitor the entire enterprise. The Grand Jury is convinced that if there were more innovative management strategies, and better performance data, Alameda County would see substantial improvement in services provided by individual programs and CBOs.

The Grand Jury concludes that a far more concerted effort to improve the metrics, collection, and analysis of performance data is necessary to allow CBOs to focus on outcomes and thereby best serve their clients. The improvement of outcome data and analysis will strengthen the RFP and renewal process. While this is beginning to occur, there are far too few resources to have sufficient impact or to provide county leaders and the board of supervisors with meaningful data to make difficult contract closure and to make CBO replacement decisions. There are not enough champions in either HCSA or SSA leading the effort for data-driven performance evaluation. Without a strong commitment from both the Alameda County Board of Supervisors and county agencies to results-based accountability, little will change.

## **FINDINGS**

### *Finding 16-23:*

Some CBOs responding to an RFP have little or no outcome/output data. Others are renewed with no evaluation report and without a re-issued RFP. Decision makers are left without sufficient information to make sound judgments.

### *Finding 16-24:*

There are insufficient requirements in the RFP process to assess a CBO as to its staff training, development, and how people within the CBO are encouraged to innovate to accomplish the mission. This would ensure more confidence that the contracted CBO could efficiently and effectively fulfill its long-term goals and to adequately do the job.

*Finding 16-25:*

The RFP process often limits the ability for CBOs to have innovative solutions for the provision of services.

*Finding 16-26:*

The amount of funding and personnel devoted to the results-based accountability effort is insufficient for the scale of the task. The PERU group (Planning, Evaluation and Research Unit) reports on too few CBOs each year among all the CBOs under contract. When fully staffed, the group is only five people (out of the 2400 employees within SSA). A comparable group within HCSA is not yet fully operational. There are too few resources in both departments to effectively evaluate CBO performance.

*Finding 16-27:*

Too few CBO contracts with Alameda County include results-based accountability requirements to measure effectiveness and to inform decision makers during the renewal process.

*Finding 16-28:*

Output data (number of people serviced) provided by some CBOs can be unreliable.

*Finding 16-29:*

Many smaller CBOs lack infrastructure to innovate and adopt new reporting systems that could lead to both incomplete and inaccurate data being provided to the county.

*Finding 16-30:*

There are an insufficient number of on-site visits to CBOs during the term of the contracts limiting the ability of county officials to identify, evaluate, and address problems early on.

*Finding 16-31:*

There is political pressure from the Alameda County Board of Supervisors to retain some under-performing CBOs. This undermines confidence in the contracting process.

## **RECOMMENDATIONS**

*Recommendation 16-19:*

Alameda County must ensure that all CBO contracts have outcome and output measures.

[Recommendation 16-20:](#)

Alameda County must ensure that no CBO contract be re-issued or extended without either a full report on its performance or results-based accountability analysis available to the decision makers.

[Recommendation 16-21:](#)

Site visits by county evaluators must be required during the selection process of any CBO applying for a contract of over \$1 million. If the infrastructure does not yet exist, the site visit must occur within the first six months of the contract.

[Recommendation 16-22:](#)

The Alameda County Board of Supervisors must assign a full-time professional with sufficient supporting staff and budget to lead the countywide efforts on results-based accountability.

[Recommendation 16-23:](#)

As a test case, SSA and HCSA should provide a master contract to a well-established CBO that would then subcontract to a cluster of smaller CBOs that deliver comparable services. The CBOs with the master contracts would be responsible for the data collection and analysis of all subcontractors under its purview.

[Recommendation 16-24:](#)

Alameda County, or those organizations with master contracts, must provide CBOs with sufficient administrative support/training for collecting, reporting, and analyzing performance data, and for employee development within those organizations.

[Recommendation 16-25:](#)

As a pilot project, and whenever allowable by funding sources, an RFP should define the problem and allow a CBO the latitude to propose using best practices and innovative approaches for the provision of services.

## **RESPONSES REQUIRED**

*Responding Agencies – Please see page 125 for instructions*

Alameda County Board of Supervisors:

Findings 16-23 through 16-31

Recommendations 16-19 through 16-25

[This page intentionally left blank]



## **CONSTRAINTS ON THE MEASURE A OVERSIGHT COMMITTEE**

### **INTRODUCTION**

In March 2004, county voters passed Measure A, a ½ cent sales tax increase for Alameda County residents. This measure provides additional financial support for emergency medical, hospital in-patient, out-patient, public health, mental health and substance abuse services to indigent, low-income and uninsured adults, children, families and seniors. Subsequent to the initial passage, the tax was extended through June 2034. This sales tax generates over \$120 million each year. The measure requires an annual fiscal review by a citizen's oversight committee to ensure that the funds are spent appropriately.

The Grand Jury learned that the Measure A Oversight Committee is severely restricted in its ability to evaluate the expenditures of county-funded agencies that provide needed health care services to impoverished residents of Alameda County. The committee is bound by legislation that limits its role in assessing program efficacy and cost-effectiveness, and simply allows for an annual review of expenditures after the fact. The annual reports of the oversight committee indicate that its members view their role as essentially "a rubber stamp committee" with no control of the quality of services, nor how the funds are allocated.

### **BACKGROUND**

The Alameda Health System, which includes Highland Hospital and other county medical facilities, receives \$90 million of the funds generated by the Measure A sales tax. The Alameda County Board of Supervisors (BOS) oversees the other \$30 million, most of which is allocated to community based organizations (CBOs) under the management of the Alameda County Health Care Service Agency (HCSA). Included in this \$30 million is \$750,000 that is distributed ostensibly for health care services, at the discretion of the board of supervisors, each of whom allocates \$150,000.

The Measure A Oversight Committee, as of this writing, consists of 17 members. Five are appointed by the board of supervisors (one from each district), two from the labor council of Alameda County, two from the League of Women Voters, two from the City Managers Association, one from the city of Berkeley, four representing various medical associations, and one seat in abeyance to represent the Alameda County Taxpayers Association, Inc. There is one full-time staff member who supports the committee's operations.

The Grand Jury finds that the Measure A Oversight Committee members have a wide range of expertise and are committed to improving health care in the county. Members represent the medical professions, city administration, unions, public health commission, community activists and other vital organizations, all of whom can be of great benefit to decision makers in how funds are allocated.

The committee is charged to annually review each recipient's expenditures of the Measure A funds for the prior year and report to the board of supervisors on the conformity of expenditures to the ordinance. The committee meets monthly and publishes a final report based on individual reports submitted by fund recipients at the end of each year. The Measure A Oversight Committee bases its work on self-reported information provided by the approximately 70 different recipients of the funds, most of which are CBOs. The committee does not make on-site visits of these organizations, although a limited number of agencies make a presentation to the committee each year. When the committee determines that the reporting is insufficient, it seeks more definitive information.

Members of the oversight committee annually prepare a substantial report for the BOS that includes a summary of each agency's program, how it used its Measure A funding, and highlights of the program. The report also incorporates any concerns regarding the use of Measure A funds.

The 2011-2012 Grand Jury recommended that the Alameda County Health Care Services Agency include evaluations of Measure A programs as part of its initiative to improve oversight and outcomes in all of its programs. While this recommendation was endorsed, and some progress has been made, there continues to be little or no information on the efficiency of programs, as well as a lack of resources to fund a staff person to undertake more extensive reviews and evaluations of these programs. (See *Oversight of County Funded Community Based Organizations*, page 61, for further details.)

## **INVESTIGATION**

The Grand Jury heard testimony that there is frustration with the way the Measure A ordinance is sparsely written resulting in the oversight committee's inability to oversee how the funds are allocated. In essence, the committee lacks any authority or power in making recommendations. The Grand Jury interviewed several witnesses from HCSA, members of the oversight committee, elected officials, attended a Measure A Oversight Committee meeting, and reviewed meeting minutes, annual reports, and a previous 2011-2012 Grand Jury investigation of Community Based Organization Oversight.

In response to a recommendation from the previous Grand Jury investigation relevant to the Measure A Oversight Committee, the board of supervisors explained that:

“Language in the statute established an oversight committee, but limits its role to retrospective review of whether expenses conform to purposes set forth within the statute, not whether the service delivery performance was adequate.”

While testimony from witnesses acknowledged these limitations in the ordinance, they saw no reason why the BOS could not expand the role of the oversight committee, to provide it with added powers independent of the ordinance, or at least appoint another committee to provide input into the distribution of funds. In the absence of evaluation data, decisions on fund distributions may be subjective, or a result of a constituent group lobbying for a particular program.

From a review of the 6th annual report (FY2011/2012) from the oversight committee, a recurring issue was that Measure A recipients often do not offer any information as to whether the service being provided targets or benefits the population as stated in the Measure A ordinance. For example, it was noted that “the providers report does not include measureable objectives, nor does it specify whether those served by the program are indigent, low income and/or uninsured as specified in Measure A.”

A recurring concern throughout the Measure A annual reports to the BOS is the finding that the use of Measure A funds for a particular agency’s purpose appears to fall outside the scope of the ordinance. The providers often include no specific measurements or statistics to indicate the effectiveness of the program. The lack of meaningful data has been noted in several reports.

*Multiple provider reports listed objectives that are not measureable and/or stated positive outcomes without quantifying the statements. For example, Behavior Health Care Services at the Juvenile Justice Center notes “increased coping skills” and “a great benefit” from court-ordered evaluations, without quantifying these statements. The Mind Body Awareness Project was unable to collect data during the reporting period due to organizational transitions, which made it difficult for the Committee to determine program effectiveness. (report #7- FY2012/2013)*

The Measure A Oversight Committee recommends that HCSA create a process for recipients of Measure A funds to certify that they are appropriately using the funds to serve the populations listed in the measure. This would involve training CBOs on how to effectively collect and report demographic data on the populations they serve, and the effectiveness of their services. The committee

advocates that HCSA be sufficiently staffed to successfully implement such a training program for the CBOs under contract.

The Grand Jury learned that there is insufficient accountability for the \$750,000 distributed directly by the board of supervisors, as these funded programs have even less oversight than other Measure A programs. There is an inherent conflict when political decisions take precedence over well-informed, data-supported evaluations.

## **CONCLUSION**

The Grand Jury concludes that the role of the Measure A Oversight Committee should be expanded to include input into the selection and retention of CBOs. Such an expanded role would benefit taxpayers, and care recipients, by providing more transparency in how funds are allocated and spent.

## **FINDINGS**

### *Finding 16-32:*

The Measure A Oversight Committee is reactive, not proactive. It is limited by legislation that restricts it from making recommendations regarding the efficiency of programs funded, or how the funds should be expended.

### *Finding 16-33:*

The Grand Jury finds that both the Health Care Services Agency and the Measure A Oversight Committee are underfunded for administrative staff needed to oversee the effective use of public funds distributed to the widespread range of community based organizations.

### *Finding 16-34:*

The Measure A ordinance so limits the Measure A Oversight Committee that its current role is insufficient to assure taxpayers that the funds are providing the services that are needed.

## **RECOMMENDATIONS**

### *Recommendation 16-26:*

The Alameda County Board of Supervisors must expand the role of the Measure A Oversight Committee to include its input into the decision-making of funding allocations. While the Measure A ordinance specifies the role of the Oversight Committee, the Board of Supervisors could expand that role, or appoint a separate committee with the same membership to undertake the task.

*Recommendation 16-27:*

The Alameda County Board of Supervisors must provide the Health Care Services Agency with sufficient funding that will allow for additional staff to oversee the collection and analysis of both outcome and output data on those receiving Measure A funds.

**RESPONSES REQUIRED**

*Responding Agencies – Please see page 125 for instructions*

Alameda County Board of Supervisors

Findings 16-32 through 16-34

Recommendations 16-26 and 16-27

[This page intentionally left blank]

## **THE PUBLIC'S RIGHT TO KNOW: ELECTRONIC RECORDS RETENTION AND ACCESS**

### **EXECUTIVE SUMMARY**

One year ago, the Grand Jury investigated complaints about one city's e-mail retention policies and how the city limited the public's access to emails. After that Grand Jury's Report was made public, the Grand Jury received additional complaints about the same city systematically forwarding city business emails to the personal accounts of councilmembers. This policy insulated those records from public access thus circumventing the Public Records Act (PRA). The purpose of the act is to allow public access to information enabling citizens to monitor government operations and decision making.

Given the multiple complaints about this one city's handling of email communications, the current Grand Jury decided to explore how all cities in the county interpret the PRA as related to electronic data in their possession. As a result, the Grand Jury surveyed all fourteen cities within Alameda County to determine their practices.

The survey results indicated that most cities have uniform standards for keeping all city related email, including those of elected officials, for at least two years. This is consistent with the state retention statute. However, the Grand Jury learned that several cities still systematically destroy city related email within 60 to 90 days, unless specifically saved by individual city employees. Other cities forward elected officials' email to their private email accounts, making that information inaccessible to public inquiry or accessible only after examination and release by the public official holding the documents. The Grand Jury believes that such practices are inconsistent with the spirit of the California Public Records Act and the state's records retention statute.

### **BACKGROUND**

Each of the fourteen cities in Alameda County operates as an independent governmental institution. While they must conduct business within the boundaries of the law, they are able to set their own policies and often govern and manage in very different ways from neighboring jurisdictions. One example is how each city applies and interprets the California Public Records Act and corresponding public records retention statute.

The Public Records Act is a cornerstone of California'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 right to obtain records (including emails) from government agencies which helps to explain how and why important decisions are made.

While the California Public Records Act is designed to give the public access to information and data held by public agencies, there are exceptions to disclosing some kinds of information. For example, medical and personnel records are kept confidential to protect an individual's right to privacy. Other exceptions include attorney-client discussions, access to preliminary drafts, and documents revealing the deliberative process.

While the Public Records Act governs disclosure of public documents, it does not govern how long these records must be retained by the public agencies. Government Code section 34090 addresses this issue, and is referred to as the state's records retention statute. The statute requires that nearly all public records be retained for at least two years.

### **INVESTIGATION**

Because of the concern for effective transparency in government, the current Grand Jury developed and circulated a questionnaire of ten questions to all cities in Alameda County. Every city in Alameda County responded to the questionnaire with significant detail and specificity. The Grand Jury appreciates the thoroughness of their answers and the amount of effort involved in producing this data. An analysis of these responses revealed which cities have policies and practices that provide the most transparency and access to its citizens, particularly with regard to the use of emails in conducting official business.

Any electronic management system and communication retention procedure that limits or minimizes easy and ready access by the public to information is not within the spirit of the law. This is true whenever information is not made public, as when public officials use private email accounts, or when public communications are retained for only brief periods.

The survey responses were grouped into four categories:

1. Who has an official email address that is used for public business?
2. Who determines what should be retained?
3. What is the retention period for email?
4. How easy is it for the public to gain access to records?



### Official Email Accounts for Public Business

Cities cannot be responsive to PRA requests or even internal data searches if their records are inaccessible, being kept in personal accounts or subject to personal deletion. The Grand Jury holds that in order to fulfill the spirit of the public records laws, cities must issue public email accounts for all city staff, appointed and elected officials who use email correspondence, and require that these accounts be used for all official business. The Grand Jury acknowledges exceptions, such as employees who do not use email accounts as part of their official duties.

The Grand Jury learned that most cities within the county do issue city email accounts for public related business to nearly all employees and public officials.

Two exceptions are the cities of Newark and Union City. Newark issues email addresses to council members but automatically forwards all email the council members receive to their personal email accounts. The city does not retain the contents of those emails and thus cannot fulfill public records requests unless they receive cooperation from the individual council member. This automatic forwarding of information is called an email relay. PRA requests must be fulfilled by the individual elected who is subject to the request. This is troubling because there is no oversight or independent determination that the official's response is accurate, complete and honest.

Union City also issues email addresses to their council members. Emails sent to those addresses are automatically forwarded to the council member's personal email accounts but that data is archived in the city email system for two years. Unfortunately, email sent by the council members from their personal email accounts, which includes responses they send regarding city related issues, are not archived by the city. Again, the city must rely on individual officials to fulfill any PRA requests related to email sent from their personal accounts. The Grand Jury believes this special treatment invites unequal application of the Public Records Act and calls into question the integrity of the city's processes.

Emeryville offers city email accounts to all employees and elected officials. Yet, the city allows elected officials to choose whether to use city email accounts or their own personal email accounts for city business. Again, the Grand Jury believes that elected officials should not receive special protection from the PRA.

It should be noted that the city of Fremont has recently revised its practices and has issued email accounts to all elected officials and is no longer relaying city-related emails to private accounts. The contents of those emails are now archived with other city email.

### Determining Which Email Records Should Be Retained

Most cities automatically archive all city related email, meaning that individual employees do not have to make judgment calls as to what documents must be saved as the law requires.

The Grand Jury is concerned with the practices of those cities which systematically purge email prior to the two year retention requirement for public records (Berkeley, Hayward, Newark and Pleasanton). For example, city of Berkeley employees must examine all email they receive with the complicated rules of the PRA in mind. They must then take the time to individually save or print each public record prior to its being automatically purged from the email server after 90 days.

The Grand Jury is further concerned about how the city of Berkeley defines emails in its administrative regulations. The regulation defines emails as being “generally preliminary drafts” and states emails shall be deleted as soon as the information is no longer required.

The Grand Jury finds that these are poor policies. All employees cannot be expected to have appropriate legal knowledge, leading to the danger of inconsistent application of the PRA rules. An individual who deletes email could be perceived as purposely hiding information to which the public has a right. Furthermore, requiring individuals to make retention determinations is an undue burden.

It is the view of the Grand Jury that all records should be automatically retained without regard to content or format. This ensures the greatest transparency while being simple and cost-effective.

### Retention of Email for Two Years Minimum

According to the California Retention Statute, most public records must be retained by public agencies for a minimum of two years. Those records include emails relating to the conduct of the public’s business that are prepared, owned, used or retained by local agencies.

As stated previously, most cities have decided to automatically archive all emails for at least two years. This protects against accidental, negligent or even intentional destruction of public documents.

Four cities have chosen another path. The city of Pleasanton purges all unsaved email after 60 days. The city of Hayward automatically purges all unsaved emails after 60 days except for those of elected officials and higher-level staff that are saved for longer periods. The city of Berkeley purges all unsaved email after 90 days. Finally, Newark purges all deleted and sent email after 30 days

and all other email in an inbox after 60 days. The Grand Jury is troubled by these policies. The Grand Jury learned of many complaints by public employees that they neither have the expertise nor the time to make appropriate decisions to save these documents.

Without diligent and impartial efforts by each city employee and elected officials, key documents are lost forever. The public would have no access to retrace crucial decisions and even wrongdoing. It is poor policy to give potential investigative targets the control over what information is saved and released.

#### Public Access to Records

In order for government to be truly transparent, it is not enough to retain documents. The public should have easy access to records created in the course of city business. All cities now have on-line request forms. Some are easier to navigate than others, and some have more streamlined response protocols than others.

Oakland's Sunshine Ordinance distinguishes the city's openness by making its public records requests and responses available for anyone to search online. Oakland benefited from working with Code for America, whose resident fellows developed a web application that allows the public to track the progress of PRA requests and once the request is fulfilled, the documents are posted online. This public records management system allows easy search and viewing of current and past public records requests. This innovation reduces the time and effort spent by city employees filling duplicate PRA requests.

### **CONCLUSION**

As a result of the inquiry into city email retention practices, the Grand Jury found that some cities stand out as positive examples of government transparency and fulfill the letter and the spirit of both the Public Records Act and the retention statute. The Grand Jury advises the following as best practices for all cities in Alameda County to ensure transparency in public records:

- Conduct business only on city issued email accounts;
- Eliminate the use of email relays to private email accounts;
- Preserve all emails for a minimum of two years; and
- Make public records easily accessible.

**FINDINGS & RECOMMENDATIONS  
RESPONSES REQUIRED**

*None*

*None*

## **THE OAKLAND UNIFIED SCHOOL DISTRICT AND CHARTER SCHOOLS**

### **EXECUTIVE SUMMARY**

Oakland has far more charter schools than any other city in Alameda County. These schools enroll 24.4% of the public school children in the city while the national average is 6%. Given this unusually large number, and because charter schools receive public funds, the Grand Jury examined the local approval and oversight process governing charter schools. The Grand Jury also examined the renewal procedures to determine if they are sufficient to protect taxpayers and to ensure that all students are receiving equitable and sufficient educational resources.

Charter schools were originally intended as educational laboratories wherein new methods and approaches could be developed and tested. While some charter schools do offer unique programs that differ from traditional district schools in their communities, the increasing number of charters in the city of Oakland is primarily a response to what many see as the diminished quality of traditional public schools.

The Grand Jury's investigation disclosed that although the office of charter schools in the city of Oakland is doing an adequate job in complying with the current standards required by the State Board of Education, the number and type of charter schools in the city have out-paced both the current legislation and the administrative process to oversee their activities.

### **BACKGROUND**

The Oakland Unified School District (OUSD) is comprised of 95 K-12 schools with an enrollment of approximately 48,000 students. Of the public schools within the city of Oakland, thirty-seven (37) are charter schools with a total enrollment of approximately 12,000 students. This represents nearly 25% of the total enrollment of the district.

Charter schools are public schools funded by taxpayer dollars allocated according to the same guidelines and in the same amount as district public schools. State of California funding for all public schools, charter and traditional, is based on the number of students enrolled. However, charter schools are not governed by the local school district and an elected board of education, but rather, managed by independent governing boards.

While charter schools are operated independently of the local school district, each must be authorized by a local school board. A charter school may also be authorized by a county for countywide charters, or by the state. If a local school board denies a petition, it may seek authorization from the county or ultimately the state.

According to current legislation, charter school approvals are subject to the following conditions:

1. An existing private school may not be converted to a charter school.
2. A charter school must be nonsectarian.
3. A charter school may not discriminate, nor can it charge tuition.
4. No pupil can be required to attend a charter school, nor can teachers be required to work in a charter school.
5. A charter school must have highly qualified, credentialed teachers in all core subjects.

Charter schools must admit all students who wish to attend; however, if the number of students exceeds the school's capacity, attendance may be determined by a public random drawing. Certain attendance preferences are available under state law.

The state also requires that the agency that granted the charter, be it a school district, county, or the state, is obligated to monitor that charter school. Among the authorizer's responsibilities are:

1. Visit each school annually.
2. Ensure compliance with all reporting requirements.
3. Monitor fiscal conditions.
4. Notify the State Department of Education if a charter is granted or denied, a charter is revoked, or if a charter will cease operating.

Every charter school must seek re-authorization every five years. The state determines pupil academic achievement, primarily through standardized test data, for the purposes of charter renewal. The authorizing entity (e.g. the school district) submits its report containing renewal documentation, test results, financial review, and other performance assessments to the State Department of Education.

## **INVESTIGATION**

The Grand Jury examined state law governing charter authorization and renewal, several charter applications and renewals approved by the Oakland Unified School District, and OUSD board minutes and staff reports. The Grand

Jury heard testimony from OUSD charter office staff and district administrators, a charter school administrator, and outside experts with a background in both OUSD and charter school management. The Grand Jury also examined test results from both the current California Assessment of Student Performance and Progress (CASPP) as well as Academic Performance Index (API) results for prior years.

### Why Charter Schools?

Through witness testimony and public documents the Grand Jury determined that the proliferation of charter schools in the city of Oakland has occurred in direct response to the decline in confidence in the school system and the crisis leading to a take-over by the State of California in the 1990's. Seven underperforming district schools became charter schools at that time. Subsequently, additional charters have been authorized in neighborhoods with underperforming schools either by concerned local groups or by professional charter school management organizations. This growth in charter schools has altered the original intention of the charter movement from "experimental laboratories" to one that attempts to address the sub-par results in district schools.

Witnesses described the major advantages of charter schools as compared to traditional public schools. Chief among these is autonomy from the bureaucracy of the district office, labor groups, and the politics of the elected school board. The Grand Jury heard testimony from several witnesses that many people involved in local charter schools today are teachers and administrators formerly with OUSD who were frustrated by the district's inability to innovate and govern. This autonomy also allows charter schools to place teachers in classrooms based on skills and not seniority. Charter schools can also employ additional assessment tools and methods not used in the district schools.

Regular school days in charter schools are typically longer than those in OUSD. OUSD schools are limited to 6.75 hours per day for grade schools, and 7.15 hours per day for high schools, as negotiated by local labor groups. Charter schools can be in session as many as 55 days per year longer than OUSD schools. This extended class time is seen by many as a major advantage of charters.

Witnesses testified that the shorter school days and school year, as well as the seniority rules for the assignment of teachers, are a result of the local labor groups' focus of taking care of their membership. Many see this as being an obstacle to the provision of quality education for our children in public schools, and as one of the main reasons for the growth of charter schools. Seniority may

be a factor in teacher placement, but it should not be the primary determinant. Because charters are not constrained by seniority rules, they are more able to create collaborative teams with a variety of skills and expertise that are essential to successful education.

However, the autonomy and independence granted to charter schools come at a cost. Charters operate without the same scrutiny as their district counterparts by the tax paying public. For example, a charter may change curricula, teaching methods, and budget allocation without approval from the authorizing district superintendent or the elected school board. They are also able to determine their own achievement standards, accountability, and systems of discipline or transfers between schools.

#### Issues And Concerns About Charter Schools And The Authorization Process

Testimony from several witnesses indicate that the OUSD Office of Charter Schools is performing well given the limitations of staffing levels and legislation currently in effect. However, there are several issues with the authorization and oversight process given the prevalence of charter schools in Oakland. This is of particular concern since the number of charter schools in Oakland is likely to continue to grow.

Using the California Assessment of Student Performance and Progress Test Results for English Language Arts/Literacy and Mathematics for 2015, the Grand Jury determined that of the 37 Oakland charter schools that participated, 17 scored below the blended average of all Oakland unified public schools and 24 scored below the statewide average in English. Nineteen scored below OUSD averages and 23 scored below the statewide average in mathematics. Within these results, there were 15 Oakland charter schools that scored below OUSD averages in both categories. Many of these charter schools have been in Oakland for years and scored similarly on the previous API tests that are no longer in use.

The Grand Jury acknowledges that test scores are not the only measure of success, as many other factors such as school culture and non-academic support personnel, must be taken into consideration. Nevertheless, it is a concern that some charters are not achieving expected results and yet may still be re-authorized.

#### Authorization and renewal

Current legislation requires the authorizer to “monitor fiscal condition” of charters, but beyond an annual financial audit, there is no oversight of charter school’s long term financial planning or budgeting.



The Grand Jury heard testimony that the state standards restrict authorizers' ability to adequately hold low performing charters accountable. At least one charter school had been granted renewal even though the OUSD Office of Charter Schools determined it should not. Renewal was ultimately granted because the school met minimum state requirements.

The OUSD Office of Charter Schools is understaffed and underfunded. Although they are managing to successfully comply with the current laws, it will be increasingly difficult to ensure the future success of the charter school program in the city of Oakland. The state provides a formula for authorizer staffing levels that would require 13 full time employees to support Oakland's charter schools. Current staffing was recently raised from five to six people.

#### Safety and welfare of students in charter schools

Charter schools are not required to comply with the same safety regulations as traditional district schools. While many charter schools share buildings with their district counterparts, or occupy buildings formerly used by the district, others are in alternative spaces. These alternative spaces need not comply with the state's Field Act that mandates a higher level of earthquake resistant construction for schools.

#### Equitable treatment and funding of students

A charter school is responsible for the maintenance only of the building, or portion of a building it occupies. Most charter schools are fully enrolled and therefore occupy space efficiently. This allows a charter to focus funds on teaching. On the other hand, OUSD is responsible for 130 buildings, many of which are under-enrolled schools that are far below maximum occupancy. Furthermore, each school must be staffed. Without closing or consolidating schools, the district must continue to maintain many of these underused structures, thereby diverting funds from the classroom.

In 1977, all school districts and county school offices were mandated to form consortiums in geographical regions to provide for the special education needs of children. Each region within a Special Education Local Plan Area (SELPA) developed its plan on how it would provide these special education services. Such plans considered the type and scope of services that were needed for the entire public school population in both traditional schools and charter schools.

Funding for special education services in each region is provided by the state on a per student basis. In 2010, the state allowed charter schools to withdraw from their SELPA district, and join any other such district they chose. Twenty-five of Oakland's 37 charter schools withdrew from the Oakland SELPA reducing the

funds available. These 25 charter schools continue to receive equivalent funds from their chosen district.

Because a SELPA district is intended to form collaborations and share special needs education resources across many schools, the departure from its SELPA of so many charter schools resulted in fewer funds for OUSD that still must serve the same broad range of special needs students including those with the most severe needs. The Grand Jury heard testimony that individual charter schools have fewer severely disabled students. The Grand Jury views this as creating an inequity for special needs students in Oakland's district schools.

A recurrent issue addressed by witnesses is the existing multiple enrollment systems whereby OUSD schools and each charter school must be accessed separately. The Grand Jury views this as an undue burden on families to seek out each school separately and enroll using that school's unique application and apply by its deadline. The Office of Charter Schools is a proponent of the common enrollment concept currently being evaluated by the Oakland Unified School District. This system allows families to review and select their desired choices from a single integrated process thereby providing an equitable access for all Oakland students.

There is no reporting or tracking to monitor potential wrongful expulsion or dismissal of "less desirable" students by charter schools. The Grand Jury heard testimony that some charter schools may counsel a student to leave that school for a variety of reasons including recurrent misbehavior or lack of achievement. Witnesses testified that this procedure would be unknown were it not for "whistleblowers."

#### Governance and Management

A charter school is governed by a board of directors that is not publicly elected. Members of such a board may have no expertise in education or have any particular qualifications for that role.

There is no requirement that the superintendent of the school district, or any member of the elected school board, attend charter school board meetings. The only oversight is through the current authorization and renewal process that requires some site visits throughout the school year.

#### Relationship Of District And Charter Schools

At present there is only a tangential relationship between the two types of schools. However, the Grand Jury heard testimony that a more collaborative approach would benefit both. OUSD has also initiated a Charter School

Compact, a document that attempts to focus all schools in OUSD on similar missions and goals. And although 87% of Oakland's charter schools have signed on, they are not required to participate. More than one witness testified that each entity could and should support the other, particularly in the sharing of teaching methodologies and best practices.

One element of this collaboration, in addition to the Charter School Compact, is the Memorandum of Understanding (MOU) that may be negotiated as part of the authorization of a charter. This MOU may include sharing of student data, tests, and using a common financial and procurement software.

There is no plan in place in OUSD to manage the proliferation of charter schools and no policy in place to manage or regulate growth. Such a plan would include facilities management, safety standards, and expected student outcomes.

The Grand Jury heard testimony that there is a definite desire on the part of OUSD administration to enact a common enrollment plan to ensure that every student in OUSD, regardless of the school they attend, is given an equal opportunity to be successful, but there are significant obstacles to achieving this goal. Chief among them are the labor agreements that limit the hours and days in the classroom and restrict administrators from forming collaborative teaching teams.

Furthermore, witnesses testified that members of the board of education see their responsibility primarily to their constituents and not necessarily in the best interests of all students, and this makes it less likely that they will champion new ideas and innovations that may be unpopular. In order to ensure the future success of OUSD, the board will need the political will to make the needed changes.

## **CONCLUSION**

The number and type of charter schools in the Oakland Unified School District have out-paced current legislation, and as a result, the administrative process in place to oversee their activities is insufficient.

Charter schools in Oakland have a distinct competitive advantage over OUSD traditional schools. Their independence from OUSD labor agreements allows them to select teachers according to best practices, and have longer and more school days. They can also focus their budgets on teaching rather than on facilities.

The Grand Jury believes that charter schools within the Oakland Unified School District require more rigorous oversight and a more collaborative relationship with district schools in order to better serve the interests of all of Oakland's students.

## **FINDINGS**

### *Finding 16-35:*

While charter schools use public funding, they are insulated from adequate public oversight.

### *Finding 16-36:*

The current authorization and evaluation systems of charter schools are insufficient to ensure that each provides equitable opportunities for all students.

### *Findings 16-37:*

There is no plan in place in the Oakland Unified School District to manage the proliferation of charter schools.

### *Finding 16-38:*

There is a desire on the part of the Oakland Unified School District administration to enact a plan to ensure that every student in OUSD, regardless of the school they attend, is given an equal opportunity to be successful, but there are significant obstacles to achieving this goal.

## **RECOMMENDATIONS**

The Grand Jury did not investigate any individual charter school or charter school organization, but rather focused on the need for more rigorous oversight by the Oakland Unified School District. Considering the number of Oakland students enrolled in charter schools and the public funds supporting them, the Grand Jury recommends:

### *Recommendation 16-28:*

The Oakland Unified School District must increase the staffing of the Office of Charter Schools to allow more thorough oversight of charter schools.

### *Recommendation 16-29:*

The Oakland Unified School District, Office of Charter Schools, must increase its number of on-site visits to charter schools.

[Recommendation 16-30:](#)

The Oakland Board of Education, the Office of Charter Schools, and OUSD's superintendent must attend charter board meetings to ensure compliance with state law and procedures, and to better assess the management and priorities of each school.

[Recommendation 16-31:](#)

The Oakland Unified School District must not authorize or renew a charter school unless that charter agrees to join the superintendent's proposed Oakland Equity Pledge, and to adhere to the same accountability system for measuring achievement.

[Recommendation 16-32:](#)

There must be a facilities review to ensure that all Oakland Unified School District charter school venues are safe and comply with appropriate safety and building codes.

[Recommendation 16-33:](#)

The Oakland Unified School District, in collaboration with its charter schools, must prepare a comprehensive strategic plan to ensure that the future growth of charter schools in the city will continue to improve student outcomes. The plan should address OUSD's expected outcomes, efficient use of available resources and maximize the uses of tax dollars for the benefit of all students.

[Recommendation 16-34:](#)

The Oakland Unified School District should seek independent legal counsel as well as advice from the state to ascertain how to exercise more rigor in the charter school renewal and approval process.

[Recommendation 16-35:](#)

The Oakland Unified School District should focus its lobbying efforts to seek state revision of charter school legislation to improve the authorization process.

## **RESPONSES REQUIRED**

*Responding Agencies – Please see page 125 for instructions*

Oakland Unified School District Board of Education:

Findings 16-35 through 16-38

Recommendations 16-28 through 16-35

Superintendent, Oakland Unified School District:

Findings 16-35 through 16-38

Recommendations 16-28 through 16-35

[This page intentionally left blank]

## **MANAGEMENT ISSUES WITHIN THE CITY OF OAKLAND REVENUE DIVISION**

### **EXECUTIVE SUMMARY**

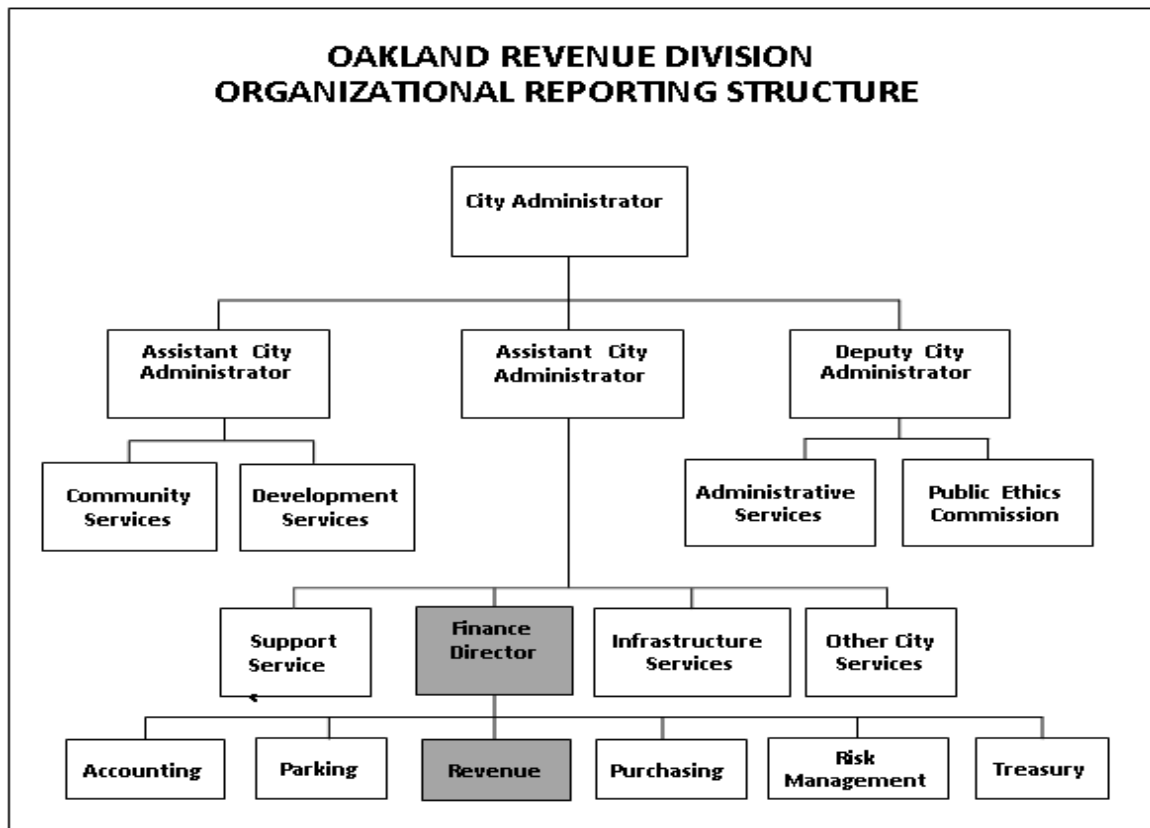
The Grand Jury received complaints alleging mismanagement by certain current and former city of Oakland Revenue Division employees. The complaint alleged that certain revenues were not being collected because of a failure to follow good business practices and that interest charges and fees were improperly waived. As the investigation proceeded, additional allegations concerning the Revenue Division surfaced; cronyism and termination of employee access to essential software were asserted. The Grand Jury combined all of these allegations into a single investigation.

The Grand Jury investigation started during the administration of a former revenue manager. As is typical with any new administration, the former manager brought in new faces and new ideas, including different accountability procedures. The Grand Jury heard testimony indicating that many employees were disaffected with these changes and confused about expectations within the Revenue Division.

The investigation led the Grand Jury to conclude that some of the allegations were without foundation, while a few had merit. The Grand Jury found that poor communication contributed to a dysfunctional work environment. In addition, there were instances of undocumented policies and lax oversight by senior executives. Finally, the division lacked a written penalty waiver policy.

### **BACKGROUND**

The Revenue Division is responsible for collecting municipal business taxes and fees, which are forecasted as \$150 million in the proposed FY2016 Oakland city budget. The Revenue Division also serves as the collection agency for all city departments for past due fees and fines, which are forecast as \$24 million in the FY2016 Oakland City Budget. The Revenue Division prepares reports and performs audits on entities that are obligated to pay for business licenses, garbage collection, utility consumption, transit occupancy, parking and occupancy taxes. In addition, the Revenue Division is responsible for collecting taxes from marijuana dispensaries, and certain delinquent fees. The Revenue Division has approximately 56 employees, including several collection officers, revenue analysts, accountants, auditors and tax enforcement officers. The division is part of the city's finance department as shown in the organizational chart below.



In recent years, the finance department has experienced significant changes at the senior management levels. Indeed, during one extended period, the finance director position was vacant. High turnover in the city administrator position has also affected the Revenue Division. Currently, the Revenue Division is managed by a senior administrator who reports to the finance director, who in turn reports to one of the assistant city administrators.

To provide services to the public, the Revenue Division relies on various software tools to track the taxes and fees collected. For reporting, accounting and auditing purposes, multiple tools are employed. Ultimately, the revenue data is fed into the city's treasury and general ledger accounting systems.

## INVESTIGATION

In conducting its investigation, the Grand Jury reviewed the following:

- Hundreds of pages of documents, including city financial, audit and budget reports; policies and procedures related to the city's financial and budget processes; ordinances; city organizational charts; and, pertinent correspondence concerning the city's Revenue Division;
- Financial policies and procedures of similarly situated municipalities;



- Minutes and videos of several public meetings; and
- Testimony from numerous witnesses, including public officials and city employees.

## **Oakland Revenue Division Management and Oversight**

### Leadership Turnover in Finance Department Leads to Confusion

The Revenue Division manager reports to the finance director as indicated by the organizational chart above. During the past five years, there were four different finance directors and five city administrators. The Grand Jury did not investigate the cause of the management turnover. However, without a finance director to oversee the Revenue Division manager, an organizational gap evolved, leading to organizational confusion.

In any organization as large as the city of Oakland, management turnover of this magnitude will create confusion regarding continuity of processes, strategy, and planning that is vital for efficient functioning. The frequent turnover inevitably led to turmoil that jeopardized the smooth operation of a division that is critical to collecting and accounting for city revenue. Consequently, the employees filed numerous grievances and their union petitioned the city council for relief. While the Grand Jury did not fully investigate any of these grievances, the Grand Jury did hear testimony that the city council was aware of employee discontent in the Revenue Division.

### Lack of Effective Communication and Allegations of Cronyism

The former manager hired several former associates to assist with division supervisory duties. When one of the associates suspended the practice of conducting field investigations with insufficient explanation, division employees became confused and discontented. Additionally, the Grand Jury heard testimony that employees faced new requirements for detailed time tracking with insufficient explanation. Management's alleged failure to clearly communicate changes in work procedures led to misunderstandings that resulted in an escalation of formal grievances including allegations of cronyism. After interviewing several witnesses, the Grand Jury did not find evidence that any of these newly hired employees were unqualified to perform revenue-related duties. Further, all new employees were hired through the standard civil service procedures. Thus, the Grand Jury did not uncover any evidence substantiating the allegation of cronyism.

The Grand Jury heard testimony that employee morale in the division plummeted, as reflected in approximately 90 complaints filed through the union grievance process. Union leadership summarized several of these issues in a letter to the mayor and to other city leaders. The Grand Jury found that the

significant number of grievances was attributable to leadership turnover and the ineffective communication by the former manager.

Eventually, in September of 2015, a new manager was promoted from within the division.

In summary, there was misunderstanding regarding the implementation of certain financial and management practices, and confusion regarding the rationale, goals and expected outcomes of these changes. The root cause of this misunderstanding appears to be the management style of the former manager of the Revenue Division.

### **Financial and Process Issues Investigated by the Grand Jury**

#### Violation of Policy on Penalties/Fee Waivers for Business Taxes

The Grand Jury heard testimony that the finance director has the authority to waive interest fees or penalties for late tax payments. However, the Grand Jury learned there is no approved written policy setting forth authority and procedures for interest and penalty waivers. Based on witness testimony and various audit reports, it appeared to the Grand Jury that the former Revenue Division manager had on occasion waived interest fees and penalties, despite lacking written authority to execute such waivers. At times during that manager's tenure, the city of Oakland was operating without a finance director, and it appeared that city administrators were unaware of the occurrence of the waivers.

The Grand Jury reviewed the Revenue Division's draft waiver policy that is now under consideration by senior management. The Grand Jury applauds the city's efforts to draft a waiver policy that requires waivers of penalties to be submitted in writing, but is concerned regarding the length of time it has taken to implement. To ensure that penalties are properly waived, the final waiver policy should clearly state: 1) the steps that must be taken by the taxpayer to request a waiver, including to whom the waiver request must be submitted; 2) whether the revenue manager can act unilaterally in waiving penalties; and 3) who can waive penalties in the absence of a finance director. These clarifications would produce an improved policy that can be consistently implemented by senior management.

#### Denial of Critical System Access to Employees

The Grand Jury heard testimony that there were limits placed on access to certain software tools within the Revenue Division. The Grand Jury found the software tools at issue were used for preliminary research purposes, rather than for transactional processing or financial reporting. These software tools enabled staff to research possible business sites; however, such information was not linked to transactional processing. Moreover, access to the tools was

later restored. Consequently, the Grand Jury found that restricting employees from using the specific software tools did not impede the effectiveness of the employees' collection duties.

#### Critical Business Software Licensing Issues

The Grand Jury heard testimony regarding issues concerning the possible availability of the tax collection software. The software is used by the Revenue Division to process the city's business, parking, and transient occupancy taxes. The software license agreement expired during the tenure of the former manager. Without a license, any future changes in functionality of the software or solutions for outages may not be supported by the vendor. The Revenue Division and the city IT department are currently engaged in finding a replacement. The Grand Jury is concerned that until the replacement software is implemented, the city may be at risk of revenue collection problems should the software fail.

#### Efficient Billing and Collection of Business Taxes

The Grand Jury found no substantial evidence of lax or inefficient processes in business tax collections by the Revenue Division. However, as revealed by various city council meetings, there is an apparent lack of trust between the city council and the Revenue Division administration on the validity of the division's revenue projections. The root cause of this mistrust may be due to the lack of clear benchmarks to measure the division's effectiveness in collecting city revenue.

Senior management should address members of the city council's skepticism toward the Revenue Division's revenue forecasts, especially with regard to budget planning. Specifically, the finance director and Revenue Division manager should establish metrics that are based on industry accepted economic and demographic assumptions. Both the assumptions and the metrics should be clearly communicated to city council and the city administrator in order to enable city leaders to evaluate the city's fiscal condition.

### **CONCLUSION**

Under prior management of the Revenue Division, clear communication was the exception rather than the norm, and numerous changes were implemented without sufficient explanation. To enhance morale, the finance director and revenue manager should collaborate in drafting division goals and objectives. These goals and objectives should be regularly discussed with employees to strengthen overall work culture.

The Revenue Division's current rules regulating the granting of penalty waivers are ambiguous and need to be revised. The lack of a clear written penalty waiver policy raises concerns regarding the integrity of the Revenue Division's written financial policies. The Grand Jury is concerned that the proposed waiver policy fails to clearly describe: 1) the steps that must be taken by the taxpayer to request a waiver, including to whom the waiver request must be submitted; 2) whether the revenue manager can act unilaterally in waiving penalties; and 3) who can waive penalties in the absence of a finance director. Once a clear policy is developed and approved, it should be instituted as soon as possible.

The Grand Jury is concerned with the expiration of a key collection software license. In order to protect against harmful system outages, the Revenue Division should ensure that the licensing issue is fully addressed.

In late 2015, a new manager was appointed to the Revenue Division. This manager has started to implement changes that are intended to improve the department's business practices.

## **FINDINGS**

### *Finding 16-39:*

City management's failure to effectively communicate process and organizational changes from the period of 2012 through August 2015 caused turmoil in the Oakland Revenue Division and adversely impacted employee morale.

### *Finding 16-40:*

Management turnover and undocumented policies for fee and penalty waivers left the Oakland Revenue Division without clear direction.

### *Finding 16-41:*

The lack of a current tax collection software license put the city at risk.

## **RECOMMENDATIONS**

### *Recommendation 16-36:*

The current city of Oakland finance director and Revenue Division manager must update division goals and objectives, which must be communicated to employees.

### *Recommendation 16-37:*

A new waiver policy for tax or penalty waivers must be implemented by the city of Oakland. The new policy should clarify to whom the waiver request must be submitted and who has waiver authority in the absence of a finance director.

### *Recommendation 16-38:*

The city of Oakland's tax collection software issue must be addressed by either re-authorizing the license for the current software or implementing software from a new vendor.

## **RESPONSES REQUIRED**

*Responding Agencies – Please see page 125 for instructions*

Mayor, City of Oakland:

Findings 16-39 through 16-41

Recommendations 16-36 through 16-38

Oakland City Council:

Findings 16-39 through 16-41

Recommendations 16-36 through 16-38

[This page intentionally left blank]

## **ALAMEDA COUNTY JUVENILE JUSTICE CENTER JUVENILE HALL INSPECTION**

### **INTRODUCTION**

On September 29, 2015, the Grand Jury inspected the Juvenile Justice Center (JJC), which is located in San Leandro at 2500 Fairmont Drive and operated by the Alameda County Probation Department. The Alameda County Juvenile Justice Center contains a 24-hour secure detention facility capable of housing 358 minors who are wards of the court awaiting adjudication of their pending criminal matters. The facility is staffed by juvenile institutional officers who supervise the minors and are responsible for their care, custody and control. On the day of the Grand Jury's inspection, 100 males and 15 females were in residence.

### **INSPECTION**

The facility's superintendent and assistant superintendent accompanied the Grand Jury on its inspection. The Grand Jury also heard testimony from a number of staff members of the Alameda County Probation Department as well as two members of the Alameda County Office of Education.

The Grand Jury was allowed access to all areas of the facility. The jurors toured housing units, the medical facility, gym, outdoor areas, food preparation kitchens and classrooms. The booking area and courtroom holding areas were also inspected.

#### Physical Plant

The Grand Jury found no problems or issues with the facility during the inspection. The facility was in immaculate condition. Opened in 2007, the buildings and grounds are well maintained. Detainee rooms, common areas, showers (five per unit) and restrooms, kitchens, classrooms, library and public spaces were spotless. During the inspection, a burned out lightbulb was noted by the superintendent and was addressed immediately.

#### Health Care

Basic health care is provided at the facility at an adequately equipped and sizable medical clinic operated through a contract with Benioff Children's Hospital of Oakland. Medical personnel (registered nurses) are on duty on a 24-hour basis to provide around-the-clock medical assessments, support and care of the youth. While there is no full-time medical doctor on site, detainees can receive supplemental medical and mental health assistance from Benioff

Children's Hospital in Oakland by using tele-medicine technology. There is no separate medical unit to house youth. Detainees with more serious medical issues are taken directly to Benioff Children's Hospital. There is, however, a separate unit for detainees with communicable diseases (such as TB, the flu, hepatitis, etc.). All medications are dispensed by medical personnel to detainees. Medications, medical files, and supplies are securely stored in the clinic.

All youth are medically screened upon entry to the JJC and are provided with a clean set of clothes, bedding, towels, a toothbrush, toothpaste, soap, and shampoo. Personal belongings and personal clothing are bagged and stored in a designated area unless they are determined to be evidence related to criminal investigations. The medical screening determines any health issues, food allergies, or special medical needs of the youth. Linen is cleaned once per week and detainee clothing is washed and exchanged daily. Youth are required to practice proper hygiene while being held at the JJC. While the Grand Jury did not physically inspect the condition of mattresses, the facility and detainees' rooms appeared to be very clean and well maintained.

Detainees suspected of being under the influence of alcohol or drugs are not accepted at the JJC, and instead are first examined/treated at Benioff Children's Hospital. While the JJC accepts pregnant youth, there were none in custody at the time of the Grand Jury's inspection. The Grand Jury was advised that special care and nutrition for pregnant detainees is provided upon entry to the facility. If a youth gives birth while housed at the JJC, special care and visiting time is provided to facilitate the bonding between baby and mother.

There is a small but adequate optical center on site at the JJC, equipped with donated eyeglasses. An optometrist visits the center twice a week to provide eye care services to the youth. Glasses can be obtained at the optometry clinic.

The Alameda County Behavioral Health Care Services Guidance Clinic (BHCS clinic) is located on site. The BHCS clinic provides mental health services to the youth housed at the JJC and to other youth referred from the Juvenile Court of Alameda County. The services BHCS provides includes court ordered psycho-diagnostic evaluations, assessment, crisis intervention, and individual, group, and family counseling. The BHCS clinic also has an adolescent sex offender treatment program that provides individual, group and family therapy to adjudicated sex offenders who reside in the community.

Overall, the health care at the JJC appears good, and is enhanced by the therapeutic care provided on site.



### Food Service

Food is provided by Revolution Foods (based in Oakland), which supplies both cold and hot meals to the youth. Breakfast, lunch and dinner are delivered daily and stored in a large refrigerated room. Hot meals are heated on site. Special diet meals (for example, lactose intolerant, religious restrictions, kosher or vegetarian needs) as well as fresh fruits and vegetables are provided by Kidango Foods. The Grand Jury reviewed a dietary binder, which included individual youths' names, unit numbers, and detailed records of any dietary restrictions. The binder appeared well maintained and was up-to-date. The Grand Jury noticed large cartons in the refrigerated food storage area labeled "Up to Day 1," "Up to Day 2," and "Up to Day 3" that contained fresh fruit that needed to be rotated by date, and never served beyond day three of storage. The refrigerated area was neat and well labeled for efficient food storage and use.

The Grand Jury noted emergency earthquake supplies in a separate storage area, including over 300 bottles of water that are replaced according to expiration date. There was also a large supply of dry cereal for emergency use.

The Grand Jury found no issues with the food service areas and noted that the JJC passed their most recent state inspection in this area.

### Other Observations

Youths are booked at the JJC and the Grand Jury noted no issues with the booking area. It takes approximately 30 minutes to book one detainee. After booking, youths are housed according to age, gender, gang affiliation (if any), mental and/or health issues, and other considerations for the safety and well-being of the detainees.

Phones were in working order, and detainees can make collect calls while housed at the JJC. Detainees are checked every 15 minutes while in their rooms, and all rooms are private and not shared. There is a complaint and discipline policy and each detainee is given a copy of the policies upon entry.

Detainees are required to attend school in on-site classrooms. The Grand Jury learned that very few detainees are not in school during the day. Detainees who have graduated high school have the opportunity to take college classes online, and there are also volunteer opportunities. Eight detainees recently received their high school diploma while at the JJC.

Visiting takes place on Saturday or Sunday, based on the detainee's last name. If the detainee and family are non-violent, they can spend time together in a large room, otherwise they have access to a traditional visitation room.

During the inspection, the Grand Jury asked about recidivism rates for juvenile offenders in Alameda County. The Grand Jury was advised that recidivism data

is not tracked. However, the Grand Jury understands that the Probation Department does collect extensive data relating to each detainee's prior criminal history. It appears that this information could be used to track recidivism rates. The Grand Jury believes this data could be used to evaluate the success or failures of JJC programs and should also be made available to the public.

### **CONCLUSION**

The Grand Jury noted no security issues during the inspection, and staff appeared to be engaged, promoting a positive atmosphere. It appears that disciplinary procedures are maintained at all times. The Grand Jury learned that the number of youths being housed was low because of a concerted effort to place as many youths as possible under GPS (ankle bracelet) or house arrest in lieu of detention at the JJC. At the time of the Grand Jury's inspection, 166 juveniles under the supervision of the Probation Department were monitored using these methods. As a result, two 60-bed units were closed, reducing staff overtime, which has been an issue in recent years at the JJC.

There appears to be a conscious effort to "de-institutionalize" the environment while maintaining strict order at the JJC. The youth wear uniforms, khakis, green tees and gray sweatshirts. The staff does not carry weapons or wear police uniforms. The staff greets each other formally by their surnames. The atmosphere appeared relaxed and staff morale appeared to be high. It was apparent that the staff is sensitive to the fact that they are dealing with youths.

In conclusion, the Grand Jury found the Alameda County Juvenile Justice Center to be efficient and well maintained. There appears to be strong and positive leadership at the JJC, exemplified by the superintendent and staff who were engaged, knowledgeable and responsive during our inspection.

### **FINDINGS & RECOMMENDATIONS RESPONSES REQUIRED**

*None*

*None*

## **HAYWARD POLICE DEPARTMENT JAIL INSPECTION**

### **INTRODUCTION**

On October 13, 2015, the Grand Jury inspected the Hayward Police Department Jail, located at 300 West Winton Avenue in Hayward, California. The jail administrator accompanied the Grand Jury during the inspection. The jail was built in 1978, with upgrades to the building last occurring in 1982. The Hayward Jail is a Type 1 facility, a local detention facility used for the detention of not more than 96 hours after booking, excluding holidays. The jail also serves the California State University East Bay police department.

### **INSPECTION**

The Hayward Jail is staffed by correctional officers. They receive correctional training and certification. They are not sworn officers and do not carry firearms, although some jail staff do carry Tasers. Police officers secure their weapons in lockers with keys at various entry points prior to entering the jail facility.

The Hayward Jail is an older building that shows some signs of wear, but otherwise the Grand Jury found the jail to be in good condition and well maintained. Arrestees are booked, released or held for a pre-arraignment hearing at this facility. Telephone translation services are available when there are no officers to translate for non-English speaking detainees. The average stay for an arrestee at this facility is typically less than 24 hours. Upon entry to the jail, the detainee's personal belongings are inventoried, and the detainee is given a copy of that inventory.

The jail has temporary holding cells, as well as cells that accommodate 30 beds. There is a total maximum holding capacity of 85 detainees. A toilet, wash basin and fountain are available in the booking area and most of the jail cells. A shower is also available in the booking area. The jail has separate cells for female detainees, individuals with special needs, violent arrestees, and those who need sobering. All cells are equipped with emergency buttons for detainees to call for staff. The cells and surrounding areas are cleaned daily by a custodian.

Upon entry, all arrestees are asked about their medical condition, including whether they have TB or other communicable diseases. Responses to medical questions, visual observation, prisoner classification and other information are entered into a database. Detainees are given a toothbrush, soap and shampoo upon request. Linens are also provided, and the Grand Jury noted that mattresses appear to be in good shape.

Those who arrive with prescription medication have their medication verified and delivered as directed (detainees keep asthma inhalers with them at all times). Jail staff may contact a detainee's family to verify any request for medication. The family would then be requested to bring the medication to the jail. If injured, or when requiring further medical assistance, a detainee may be transported to St. Rose Hospital in Hayward, to John George Psychiatric Facility, or to Santa Rita Jail for evaluation and treatment.

The Grand Jury was told that all correctional officers are current in first aid and CPR training, and that every employee is provided with a CPR mask. Jurors observed that only one CPR mask was mounted in a prominent location within the facility. The Grand Jury noted that the location of first aid kits was not clearly marked, although they were well stocked. A private vendor disposes of jail hazardous waste. Disposable clothing is provided to detainees who need a change of clothes, and disposable gloves are provided to staff.

Staff conducts a safety check of cells every 30 minutes. Visitation of detainees is through a video camera. Attorneys may visit detainees in a special private cell. At the time of the inspection, security cameras and audio equipment were found to be in good working condition.

Telephones are located in most cells and in adjoining hallways. Detainees are provided a minimum of three free phone calls. The number of collect calls is not limited.

Although there is no formal written complaint procedure, detainees can make verbal complaints to correctional officers. Complaints may be investigated by the Hayward Police Department's Internal Affairs division.

A vendor provides food for detainees. Meals are delivered weekly and heated by jail staff in microwave ovens or stoves. The food area is very clean. Snacks are provided to detainees when booked late at night, and additional snacks may be purchased from vending machines with staff assistance.

In the event of an emergency evacuation, the detainees are handcuffed, escorted outside of the jail, and held along a fence line outside of the building in a secure yard. If needed, the jail calls for assistance from the Hayward Police Department or the sheriff's office at the Hayward Court, located next door to the jail.

## **CONCLUSION**

The Grand Jury found the Hayward Police Department Jail to be efficiently run and in good condition. A review of the first aid kit signage should be completed to ensure ready access if needed, and a written complaint procedure for detainees should be considered.

**FINDINGS & RECOMMENDATIONS  
RESPONSES REQUIRED**

*None*

*None*

[This page intentionally left blank]

## **FREMONT POLICE DEPARTMENT DETENTION FACILITY INSPECTION**

### **INTRODUCTION**

On October 20, 2015, the Grand Jury inspected the Fremont Police Detention Facility located at 1990 Stevenson Boulevard in Fremont, California. A police lieutenant serving as the detention facility manager, and two detention staff members escorted the Grand Jury throughout the facility. The detention facility serves the city of Fremont and occasionally houses prisoners for the following organizations: BART Police Department, CHP (California Highway Patrol), the California Department of Corrections (State Parole), East Bay Regional Park District, Newark Police Department, Union City Police Department, and the U.S. Immigration and Customs Enforcement (ICE). This facility opened in 2002.

### **INSPECTION**

The facility has a total of 96 holding cells. A toilet, washbasin and drinking fountain are available in each cell. Showers are available in each common area. The facility has five common areas called pods that connect to jail cells. Separate pods are provided for females and males. Persons with special needs may be placed in separate areas (cells or pods) for their protection. Violent detainees and gang members are housed in separate maximum-security areas. The pods include TVs, tables with built-in seating and telephones. Playing cards, reading materials, and board games are also available for detainees to use.

Visits are conducted in booths equipped with telephone handsets and a glass partition that separates the detainee from his/her visitor(s). Detainees are allowed three free phone calls with a five-minute limit for each call. The number of paid calls (money card or collect calls) is unlimited.

The Fremont jail is clean. Detainees are provided with soap and toothpaste after booking and receive clean towels daily. Detainees with soiled clothing are given a change of clothes. Verified prescriptions for detainees are stored in a secured control room. Staff is trained in CPR and first aid procedures. The location of first aid kits is prominently displayed within the facility. Upon booking, all detainees are screened and observed for mental and physical health issues. Detainees in need of detoxification, or who are determined to have significant medical needs, are sent to Santa Rita Jail, John George Psychiatric Pavilion, or Washington Hospital.

A phone number for interpreter services is listed in the processing area in the event an interpreter is needed to communicate for a detainee. In addition, procedures and safety rules are conspicuously displayed in the processing area for detainees to read.

There are approximately 20 security cameras at this facility that are monitored continuously. Each cell has an emergency button. Officers conduct a safety check on cells twice each hour. Detainees who are a threat to their own safety are not housed at this facility, but are taken directly to John George Psychiatric Pavilion, Washington Hospital, or Santa Rita Jail.

Prior to entering the secure jail area, police officers lock their weapons in a sally port (a secure transition area). Jail staff do not carry firearms but have access to pepper spray. The Fremont Police Department is adjacent to this facility and may be called upon if a serious or dangerous situation arises with detainees.

At booking, detainees' personal items are inventoried, logged in the presence of the detainee, heat sealed, and then locked in a property room. Belongings not held for evidentiary purposes are returned to the detainee when the detainee is released from the facility.

A food service company delivers meals for detainees, served three times daily. No special meals are provided for any allergies, but detainees can select what food is acceptable to them. There are several convection ovens, a refrigerator and storage area. The kitchen facility is very clean. Upon a detainee's late arrival, sandwiches are available. Additional food is available upon request. The Grand Jury noted that a July 8, 2015 county food inspection report made minor recommendations regarding food preparation. The Grand Jury confirmed that the jail was in compliance with these recommendations.

The Grand Jury found that emergency procedures are in place at this facility. For example, in the event of a large earthquake, misdemeanor offenders would be released, but felony offenders would be taken to the sally port.

The Fremont Jail has a unique program called "Pay to Stay," which enables those eligible to elect to pay to serve their time at the Fremont Jail rather than a larger, potentially more dangerous jail. The time served at Fremont is in a smaller and quieter pod (cell) at a cost of \$155 per day to the detainee, for up to four consecutive days at a time. This smaller pod has a capacity for up to four prisoners and contains a microwave oven, magazines, TV, and a shower. On the day of the Grand Jury's inspection, a detainee from another state was occupying this pod.



## **CONCLUSION**

The Grand Jury found the Fremont Police Detention Facility to be very clean and well managed. It was further observed that the detention facility employees enjoyed their work and had high morale. Management and staff are to be commended for contributing to a positive environment for detainees housed at this facility.

## **FINDINGS & RECOMMENDATIONS**

*None*

## **RESPONSES REQUIRED**

*None*

[This page intentionally left blank]

## **WILEY W. MANUEL COURTHOUSE JAIL INSPECTION**

### **INTRODUCTION**

On November 13, 2015 the Grand Jury inspected the holding cells and support areas of the Wiley Manuel Courthouse Jail located at 661 Washington Street in Oakland. These jail holding cells provide a secure environment for incarcerated individuals awaiting appearance in court. The jail operation is staffed entirely by sworn Alameda County deputy sheriffs who supervise the detainees and are responsible for their care, custody and control while in the courthouse. On the day of the Grand Jury's inspection 107 detainees were being held.

### **INSPECTION**

A lieutenant in charge of court services led the Grand Jury's inspection, along with two of the deputies on duty. The Grand Jury received an overview of the operation and asked specific questions for our report. Afterward, the jurors reviewed the video surveillance center and watched two deputies monitoring each of the cells where detainees were held. In addition to the continuous observation, physical checks of the cells are performed every hour or more frequently depending on the classification of detainees under their supervision.

There are 36 holding cells in the courthouse, each with a maximum capacity of 12 to 16 people, with a total maximum capacity of 494. The number of detainees on any given day is approximately 125. There were 107 detainees held on the day of the Grand Jury's inspection.

The facility was clean. The holding cells are in need of paint, and the Grand Jury was informed that this project is on the schedule for this year. Holding cells are equipped with benches, a basin and toilet. The cells were also clean and in working order. The jurors observed generally six to eight detainees in a cell with a few occupied by only one or two. Cell determinations are made daily and are based on the classification of the detainees scheduled to appear. Detainees are assigned to cells based on various criteria – behavioral issues, gang affiliations, etc. Sheriff's deputies carry firearms, batons, pepper spray and stun guns.

Detainees cannot make phone calls. All cells have two functioning cameras with two-way audio, so that detainees can communicate with the officers in charge of monitoring the cameras.

The Grand Jury was told that detainee complaints are rare, but when they occur they are usually related to a facility issue. Wiley Manuel Courthouse is owned by the state of California, therefore complaints about the physical plant are forwarded to the state representative managing the facility. This representative is responsible for remedying the problem.

Detainees can meet with their attorneys at the courthouse, and the Grand Jury inspected several representative meeting rooms. These rooms were not ADA compliant, but the Grand Jury was advised that there are ADA compliant cells and meeting rooms in the facility. The deputies accompanying the Grand Jury noted that Wiley W. Manual has a policy to ensure that special needs detainees are able to meet with their attorneys in a safe, private manner. Detainees with special needs receive assistance from deputies navigating small elevators and narrow hallways.

Detainees who are believed to be a threat to their own safety may be sent to Wiley W. Manuel. They are housed separately and put on a suicide watch. If they are unable to appear in court due to their state of mind or behavior and need medical attention, they are taken via a secure route to the adjacent North County jail, where they are provided with immediate care or taken to a medical facility.

There are no food preparation facilities but bag lunches are distributed to the detainees at the beginning of each day.

The court screens, in advance, for whether a non-English speaking detainee needs an interpreter. There are several bilingual deputies on staff.

The court has a deputy assigned to maintain safety equipment. The court has an emergency evacuation plan.

Juvenile detainees are seldom brought to the courthouse, but when they are, they are segregated from the adult detainees and kept under a continuous watch.

## **CONCLUSION**

The Grand Jury found that the Wiley W. Manuel Courthouse holding cells are run in an efficient manner. The mix of detainees on a daily basis poses a number of challenges for the deputies, but staff appears to have an efficient system in place.

**FINDINGS & RECOMMENDATIONS  
RESPONSES REQUIRED**

*None*

*None*

[This page intentionally left blank]

## **URBAN SHIELD 2015**

### **INTRODUCTION**

Urban Shield is an annual regional disaster preparedness exercise coordinated by the Alameda County Sheriff's Office. It is comprehensive in the scope of catastrophic scenarios presented to participating law enforcement, firefighter and emergency medical response agencies. It is staged and executed in a competitive format to enhance training experience, and to evaluate performance of participating responder teams under stress induced, real-world scenarios.

The Grand Jury was invited by the Alameda County Sheriff's Office (ACSO) to observe the 2015 Urban Shield exercises. The sheriff, along with ASCO command staff, led the Grand Jury on a tour of the Alameda County Emergency Operations Center. The Grand Jury observed live video feed of Urban Shield exercises, during which command staff highlighted and explained strategic objectives. The tour concluded with ASCO command staff answering the Grand Jury's questions concerning Urban Shield.

### **REVIEW**

The tragic events of September 11, 2001 forever altered the landscape in which law enforcement, fire and other medical emergency responders perform their duties. Major catastrophic events require manpower and resources beyond the ability of any single agency or organization. Communication and cooperation are essential when lives and communities are at risk.

The Alameda County Sheriff's Office created Urban Shield in 2007, to train and test first responders and their departments using realistic scenarios, and to prepare them to address these events in the most efficient, cost-effective way possible. Urban Shield has expanded to train first responders and agencies beyond the local area to those from all over the United States and around the world.

Urban Shield stages multiple real-world situations simulating catastrophic events. Many of these scenarios run concurrently, 24 hours a day, over the course of the event. Teams move swiftly from one completed scenario to the next. While first responders are in the field, they are in constant contact with their command teams. Because multiple teams from diverse agencies are participating, they must develop common ways to gather key information in real-time, determine what resources are needed and how to deploy those resources to get them to the first responders in a timely manner. This

interaction builds strong relationships across multiple municipalities and districts.

In 2015, law enforcement, fire and emergency medical teams were deployed to 56 different training exercise sites within the geographical boundaries of Alameda, Marin, San Francisco, San Mateo and Santa Clara counties. In addition, full-scale exercises also engaged Emergency Operations Centers in Monterey, San Benito, Santa Cruz and Sonoma counties.

As an example, one scenario involved a coordinated response to a derailed chemical train. First responders needed to discover what chemicals were present, what the hazards were, whether there was a chemical plume and if so, where it was headed and how long it would take to dissipate. They learned to ascertain who was nearby, who needed to be evacuated and who needed to be sheltered in place. Once completed, decontamination of people, search dogs or equipment had to be addressed. Through this exercise, Urban Shield allowed our first responders and their agencies to safely discover, solve and plan for such potential problems in advance, instead of at an actual scene where missteps may come at a high price to the safety and health of those on the scene.

The 24-hour nature of Urban Shield allows first responders to train for both day and night conditions, and enables teams to transition command operations. Those in command during the 12-hour day shift develop a list of goals and objectives to hand off to the commanders of the night shift, and they in turn do the same for the next day shift. These communication techniques better prepare responders to prevent situations in which exhausted individuals could make serious mistakes.

### Costs and Participants

Urban Shield receives much of its funding from the Department of Homeland Security. In 2015 the program cost \$1.5 million. Over 6,200 participants took part in the training which included volunteers and support personnel. Regional, state and international law enforcement teams competed in the exercises. Fire first responders, HAZMAT, land and water based search and rescue, and urban search and rescue teams also competed. Other participants represented hospitals and emergency medical personnel, local government public works and GSA staff.

### Reality Based Training for Real-World Situations

Urban Shield provides an opportunity for agencies around the Bay Area and beyond to meaningfully interact under realistic conditions. As a result of their



participation in Urban Shield, responders have developed a strong support network throughout the area. First responder agencies can now quickly muster and stage needed personnel and assets to respond to situations as they occur. These situations could be an isolated problem such as a plane crash at the San Francisco airport, or several wide-spread problems, such as we faced in the Loma Prieta earthquake and the Oakland Hills fire.

Urban Shield has yielded tangible real world benefits as well. In San Francisco, training from Urban Shield to execute a line rescue was applied to the actual rescue of a window washing team trapped on a downtown San Francisco high rise.

At the Boston Marathon bombing, first responders had participated in past Urban Shield exercises. As a result, they were on the scene swiftly and were well organized to respond in the most efficient manner. The public was able to see, first-hand, how quickly the injured were given medical aid, and how the bombers were caught at minimal risk to people and property.

In Japan, a robot tested at Urban Shield was used at the Fukushima Daiichi nuclear power plant to determine the extent of the damage. Without this robot and training, humans would have been exposed to lethal levels of radiation.

#### Technology Innovation Through Private/Public Partnerships

The Grand Jury learned that Urban Shield 2015 continued its private/public partnerships through integrating life safety and technology-based products and services into Urban Shield exercise scenarios. By subjecting new and existing technologies to real world applications, products have been improved to meet the critical needs of first responders. Over 70 corporate vendors participated in Urban Shield 2015.

One example of technology that has come into common use as the result of testing at Urban Shield is the body camera. The first generation camera tested proved to be too bulky and cumbersome. After repeated field tests at Urban Shield and other sites, body cameras are now smaller, lighter, easier to use and have more features.

Another product actively used at Urban Shield is the “live body” mannequin. This mannequin helps EMT’s and other first responders save lives by realistically modeling major injuries as might be seen in a natural disaster or a terrorist attack.

## **CONCLUSION**

Urban Shield provides critical training, coordination, and agency collaboration to prepare Bay Area first responders and agencies from around the world for catastrophic events. An analysis of the lessons learned during Urban Shield exercises has demonstrated that first responders are better prepared, trained and equipped for actual events under high stress situations.

The citizens and communities of Alameda County and beyond are directly benefited and are measurably safer as a result of Urban Shield. Furthermore, the Alameda County Sheriff's Office is to be commended for the vision, execution and accomplishments of this activity.

## **FINDINGS & RECOMMENDATIONS**

*None*

## **RESPONSES REQUIRED**

*None*

## ***Appendix***

[This page intentionally left blank]

## **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 Morris D. Jacobson  
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 2015-2016 Grand Jury Final Report must be submitted no later than 90 days after the public release of the report.

[This page intentionally left blank]

## **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>

[This page intentionally left blank]



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

Date \_\_\_\_\_

Your 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: Foreman  
1401 Lakeside Drive, Suite 1104



Superior Court of California  
COUNTY OF ALAMEDA

**Mail completed applications to:**

Cassie Barner, Recruitment  
Alameda County Grand Jury  
1401 Lakeside Drive, Suite 1104  
Oakland, CA 94612

## CIVIL GRAND JURY QUESTIONNAIRE

### APPLICANT CONTACT INFORMATION

Name: \_\_\_\_\_  
(First) (Middle) (Last)

Address: \_\_\_\_\_  
(Street) (City) (State) (Zip)

Contact Information: \_\_\_\_\_  
(Home 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 & EMPLOYMENT

Highest grade completed (high school, college, advanced degree, etc.): \_\_\_\_\_

List any degrees or certifications you hold: \_\_\_\_\_

Employer: \_\_\_\_\_

Occupation: \_\_\_\_\_  
(If retired, please list most recent employer, occupation, and the date you retired)

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

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

How did you hear about the Grand Jury? \_\_\_\_\_

## 2015-2016 Alameda County Grand Jury Final Report

---

Do you currently have plans to be absent from Alameda County for longer than three continuous weeks from July 1 to June 30 this year?

☐ Yes

☐ No

---

(If "yes", please give details)

If you have any physical disability that might restrict your service as a Grand Juror, what could we do to assist you? \_\_\_\_\_

List any areas of your expertise that may be helpful to the Grand Jury service (e.g., accounting, budgets, research, writing, etc.): \_\_\_\_\_

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

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 [acgov.org/grandjury](http://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 is in session?

☐ Yes

☐ No

Grand Jurors are required to file a "Statement of Economic Interests" that discloses 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. Do you have any objections to taking such an oath or affirmation?

☐ Yes

☐ No

#### CERTIFICATION

*I am aware that Alameda County Grand Jury service requires weekly attendance for a twelve-month period beginning July 1 through June 30 of the following year. (Reasonable vacations are permitted.)*

*I am aware that a background check will be conducted and that if the background check provides negative results, I may be disqualified from serving on the Grand Jury.*

*I hereby certify under penalty of perjury under the laws of the State of California and to the best of my knowledge and belief that:*

- (1) I shall keep secret all information I learn during Grand Jury proceedings including what I or other Grand Jurors have said or how I or other Grand Jurors have voted on any matter before the Grand Jury. I understand that the secrecy rules of the Grand Jury are for life, and apply even after my Grand Jury service has been completed. (California Penal Code section 924.1); and*
- (2) All of the statements I have made in this application are true and correct.*

Signature \_\_\_\_\_

Date \_\_\_\_\_

#### For questions about Grand Jury service, please call:

Cassie Barner at (510) 208-9855

[acgov.org/grandjury](http://acgov.org/grandjury)

#### STATISTICAL RECORDS

Please mark the appropriate boxes:

Age Range: ☐ 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 ☐ Native Hawaiian or other Pacific Islander  
☐ Asian ☐ White (Anglo)  
☐ Black or African American ☐ Other Race or Ethnicity (Please state \_\_\_\_\_)  
☐ Hispanic or Latino ☐ Decline to Answer

Place of Residence by Supervisorial District: ☐ District 1 ☐ District 2 ☐ District 3 ☐ District 4 ☐ District 5  
*(If you don't know your district, we will determine it for you.)*

#### FOR COURT USE ONLY

Qualified under PC893 and PC896? ☐ Yes ☐ No Schedule interview with judges? ☐ Yes ☐ No

Notes:

Signature: \_\_\_\_\_  
*(Legal or Court Staff)*

Dated: \_\_\_\_\_



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