Alameda County
Grand Jury

1401 Lakeside Drive
Suite 1104
Oakland, California 94612

510.272.6259
fax 510.465.9647
www.acgov.org/grandjury

June 26, 2018

Board of Education c/o
Aimee Eng, President
Oakland Unified School District
1000 Broadway, Suite 680
Oakland, CA 94607

Dear Board of Education:

Enclosed please find a copy of the 2017-2018 Alameda County Grand Jury Final Report. The California Penal Code requires you to respond to certain findings and recommendations made by the Grand Jury. You must respond in writing to the Presiding Judge of the Alameda County Superior Court *and* to the Grand Jury. Please address the original of your response to: Honorable Wynne Carvill, Presiding Judge, Alameda County Superior Court, 1225 Fallon Street, Department One, Oakland, CA 94612; ***and submit one copy to***: Alameda County Grand Jury, c/o Cassie Barner, 1401 Lakeside Drive, Suite 1104, Oakland, CA 94612.

Penal Code section 933.05(a) requires you to respond to the Grand Jury's findings by stating that you agree or disagree with each individual finding, and if you disagree, you must explain the reasons. When responding to each individual recommendation, the statute requires you to include one of the following with each response: the Grand Jury's recommendation *has been implemented*; the recommendation will be implemented in the future *with a timeline for implementation*; the recommendation will not be implemented *with an explanation why*; or the recommendation requires further analysis, with an explanation of the scope and parameters of an analysis and the timeframe for review. Copies of the specific instructions contained in the code sections are enclosed for your reference. **Incomplete responses or responses not in accordance with the Penal Code will not be accepted.** All responses will be posted on the Grand Jury's website at www.acgov.org/grandjury. Extra copies of this report are also available on the Grand Jury's website.

Please respond to:
Findings: 18-6 through 18-12
Recommendations: 18-7 and 18-14

Your response is due ***no later than Wednesday, September 26, 2018.*** If you have any questions please call the Grand Jury's Legal Advisor, Assistant District Attorney Rob Warren at (510) 272-6320, or the Grand Jury's Senior Program Specialist, Cassie Barner at (510) 208-9855. We appreciate your time and consideration.

Sincerely,

Jane Cosgriff Sullwold

JANE COSGRIFF SULLWOLD, Foreperson
2017-2018 Alameda County Grand Jury

encl: 2017-2018 Final Report; How To Respond to Findings & Recommendations; Penal Code sections 933 and 933.05

HOW TO RESPOND TO FINDINGS AND 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 Wynne Carvill
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 to the 2017-2018 Grand Jury Final Report must be submitted no later than **Wednesday, September 26, 2018.**

CA Penal Code section 933.

(a) Each grand jury shall submit to the presiding judge of the superior court a final report of its findings and recommendations that pertain to county government matters during the fiscal or calendar year. Final reports on any appropriate subject may be submitted to the presiding judge of the superior court at any time during the term of service of a grand jury. A final report may be submitted for comment to responsible officers, agencies, or departments, including the county board of supervisors, when applicable, upon finding of the presiding judge that the report is in compliance with this title. For 45 days after the end of the term, the foreperson and his or her designees shall, upon reasonable notice, be available to clarify the recommendations of the report.

(b) One copy of each final report, together with the responses thereto, found to be in compliance with this title shall be placed on file with the clerk of the court and remain on file in the office of the clerk. The clerk shall immediately forward a true copy of the report and the responses to the State Archivist who shall retain that report and all responses in perpetuity.

(c) No later than 90 days after the grand jury submits a final report on the operations 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 elected county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 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. In any city and county, the mayor shall also comment on the findings and recommendations. All of these comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury. A copy of all responses to grand jury reports shall be placed on file with the clerk of the public agency and the office of the county clerk, or the mayor when applicable, and shall remain on file in those offices. One copy shall be placed on file with the applicable grand jury final report by, and in the control of the currently impaneled grand jury, where it shall be maintained for a minimum of five years.

(d) As used in this section "agency" includes a department.

(Amended by Stats. 2002, Ch. 784, Sec. 538. Effective January 1, 2003.)

CA Penal Code section 933.05.

(a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding.

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

(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity 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 when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

(c) However, if a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the board of supervisors shall respond if requested by the grand jury, but the response of the board of supervisors shall address only those budgetary or personnel matters over which it has some decision-making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

(d) A grand jury may request a subject person or entity to come before the grand jury for the purpose of reading and discussing the findings of the grand jury report that relates to that person or entity in order to verify the accuracy of the findings prior to their release.

(e) During an investigation, the grand jury shall meet with the subject of that investigation regarding the investigation, unless the court, either on its own determination or upon request of the foreperson of the grand jury, determines that such a meeting would be detrimental.

(f) A grand jury shall provide to the affected agency a copy of the portion of the grand jury report relating to that person or entity two working days prior to its public release and after the approval of the presiding judge. No officer, agency, department, or governing body of a public agency shall disclose any contents of the report prior to the public release of the final report.

(Amended by Stats. 1997, Ch. 443, Sec. 5. Effective January 1, 1998.)

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Final Report

Alameda County Board of Supervisors

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

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June 1, 2018

Hon. Wynne Carvill, Presiding Judge
Alameda County Superior Court
1225 Fallon Street, Department One
Oakland, California 94612

Dear Judge Carvill:

The members of the 2017-2018 Alameda County Civil Grand Jury are pleased to present our final report to the Superior Court and the people of Alameda County. We report the results of eight detailed investigations into activities of city and county governments and agencies, as well as three jail inspections.

Our report is the result of a year of hard work by 19 dedicated and passionate Alameda County citizens, each of whom who took substantial time from an already busy life to perform this essential public service. Our members applied their extensive and diverse skills and experience to investigate, analyze, understand, and write about a large variety of important county issues. It was my honor to have served as foreperson for this impressive group.

My colleagues join me in extending special thanks to Assistant District Attorney Rob Warren, who served as our legal advisor, and to Senior Program Specialist Cassie Barner, who served as both den mother and fearsome editor-in-chief. I can't imagine how this important work could be done without them. We also thank the Court for giving us the opportunity to serve. Our time with the Grand Jury has made us better, more informed citizens, and we are extremely grateful for the experience.

The 2017-2018 Alameda County Civil Grand Jury is proud of its accomplishments, and its service to the citizens of this county. We hope that our report will result in positive changes by the entities that are the subject of our investigations, and that other citizens will be encouraged to follow in our footsteps.

Sincerely,

Jane Cosgriff Sullwold

JANE COSGRIFF SULLWOLD, Foreperson
2017-2018 Alameda County Civil Grand Jury

2017-2018 ALAMEDA COUNTY GRAND JURY MEMBER ROSTER

Name	City
Ginnon A. Cunningham	Alameda
Rod J. Gutierrez	Berkeley
Patricia Laurine	San Leandro
Robert Livsey[3]	Piedmont
Joyce A. McConeghey	Alameda
Ted Normart	Oakland
Edward O'Neil	Alameda
Meredith D. Orthwein**[1]	Alameda
Robert M. Price	Berkeley
David R. Saenz	Piedmont
David Schwoegler	Oakland
Daryl R. Silva	Pleasanton
Gary Stower	Oakland
George A. Strait, Jr.**	San Leandro
Jane Cosgriff Sullwold**	Alameda
Melanie Sweeney-Griffith	Oakland
Mark Wasserman[2]	Berkeley
Petar Zegura**	Fremont
Ann B. Zucker	Fremont

** Jurors held over for a 2nd term by Presiding Judge Morris D. Jacobson

1 Resigned October 2017

2 Resigned February 2018

3 Resigned March 2018

2017-2018 ALAMEDA COUNTY GRAND JURY
OFFICERS AND LEGAL STAFF

OFFICERS

Foreperson:	Jane Cosgriff Sullwold
Foreperson Pro Tem:	Robert M. Price
Secretary:	Joyce A. McConeghey
Secretary Pro Tem:	Mark Wasserman
Sergeant at Arms:	Ted Normart
Sergeant at Arms Pro Tem:	Edward O'Neil

LEGAL STAFF

Robert L. Warren, Assistant District Attorney
Cassie Barner, Senior Program Specialist

2017-2018 ALAMEDA COUNTY GRAND JURY COMMITTEE ASSIGNMENTS

GOVERNMENT

Rod J. Gutierrez – *Chair*
Patricia Laurine
Robert Livsey[3]
Robert M. Price – *Chair Pro Tem*
Daryl R. Silva – *Secretary Pro Tem*
Gary Stower - *Secretary*
George A. Strait, Jr.
Mark Wasserman[2]
Petar Zegura

LAW & JUSTICE

Petar Zegura – *Chair*
Robert Livsey[3]
Meredith D. Orthwein[1]
Robert M. Price
David R. Saenz – *Secretary Pro Tem*
David Schwoegler – *Secretary*
Daryl R. Silva
Gary Stower
Melanie Sweeney-Griffith – *Chair Pro Tem*

HEALTH & SOCIAL SERVICES

Edward O'Neil – *Chair*
Ginnon A. Cunningham - *Secretary*
Rod J. Gutierrez
Joyce A. McConeghey
Ted Normart
Meredith Orthwein[1]
David Schwoegler
Melanie Sweeney-Griffith
Ann B. Zucker – *Chair Pro Tem & Secretary Pro Tem*

EDUCATION & ADMINISTRATION

George A. Strait, Jr. – *Chair*
Ginnon A. Cunningham – *Chair Pro Tem*
Patricia Laurine
Joyce A. McConeghey – *Secretary*
Ted Normart
Edward O'Neil
David R. Saenz
Mark Wasserman[2]
Ann B. Zucker – *Secretary Pro Tem*

1 Resigned October 2017
2 Resigned February 2018
3 Resigned March 2018

2017-2018 ALAMEDA COUNTY GRAND JURY PHOTOGRAPH

Standing, left to right:

George A. Strait, Jr.; Ted Normart (Sergeant at Arms); Ann B. Zucker;
Robert M. Price (Foreperson Pro Tem); Patricia Laurine; Gary Stower;
Ginnon A. Cunningham; Joyce A. McConeghey (Secretary); David Schwoegler;
Jane Cosgriff Sullwold (Foreperson); Daryl R. Silva; Petar Zegura; David R. Saenz;
Rod J. Gutierrez; Melanie Sweeney-Griffith

Seated: Hon. Wynne Carvill, Presiding Judge

Not Pictured: Edward O'Neil

ALAMEDA COUNTY SUPERIOR COURT
PRESIDING JUDGE

Hon. Wynne Carvill
Presiding Judge
January 1, 2018 – Present

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OAKLAND'S $860 MILLION CRISIS: UNFUNDED RETIREE HEALTHCARE

EXECUTIVE SUMMARY

Years ago, Oakland city leaders made a commitment to provide healthcare benefits to their employees after they retire. Like many other public agencies, Oakland now faces a fiscal crisis because elected officials did not understand the implications, including future costs, of the promises they were making. The cost of retiree healthcare benefits, better known as Other Post Employment Benefits (OPEB), coupled with skyrocketing pension costs, are starting to undermine the fiscal health of the city.

Instead of putting enough money away to fund future healthcare benefits for active employees, Oakland chose to pay only current costs of retiree healthcare as billed. The result is that related debt increases by more than $40 million annually. As of fiscal year 2016, the city's total liability for future OPEB costs reached a staggering $860 million. By using this deferred payment process, elected officials are leading the city toward service insolvency.

To address this problem, the city should have paid approximately $75 million in 2017, yet the city only budgeted $27 million to pay the benefits it owed that year, along with $20 million to partially fund future benefits in the 2017-2019 proposed budgets. To put this in perspective, the shortfall of nearly $40 million each year equals the total budgets for all city libraries along with parks and recreation, or the equivalent of the cost of nearly 200 police officers or firefighters. While the city established a trust in 2004 to begin to pre-fund OPEB, the trust has not been sufficiently funded (3% of total liability) and has failed to address the massive obligation.

The Grand Jury is concerned that, without radical changes, the city will never be able to pay for what it promised.

The Grand Jury is concerned that, without radical changes, the city will never be able to pay for what it promised. This dilemma is already starting to crowd out essential government services. City revenues are growing at a much slower pace (traditionally, 2% annually) than projected spending. The city has no new revenue source to keep up with the exploding annual costs of healthcare let alone to address the $860 million unfunded liability already

accumulated. In 2007, the city spent $10 million to pay healthcare benefits for current retirees. By 2027, the projected annual cost will be more than $67 million, and the unfunded OPEB liability will likely have increased by another half-billion dollars.

Elected officials are leading the city toward service insolvency.

Solutions are complicated. Many cities facing similar issues, like Concord and Sausalito, have cut back on these benefits or converted their OPEB into defined contribution programs. Some like Santa Cruz have asked employees to contribute more to the costs of the programs. Public agencies like BART and the Alameda County Water District have taken aggressive approaches to prefund healthcare benefits. Finally, in cities like Vallejo, Stockton, and San Bernardino, unfunded OPEB obligations were a significant contributing factor in their bankruptcies.

At this point, Oakland's unfunded liability of nearly one billion dollars is too large to tackle without using a combination of solutions, yet the city currently has no viable plan in place. Without leadership to address the issue, Oakland is adding $40 million to its liability each year and will shortly face increasing cuts to essential government services. The city must immediately develop a long-term, multifaceted plan to address OPEB, or accept that municipal bankruptcy is an option in the future.

BACKGROUND

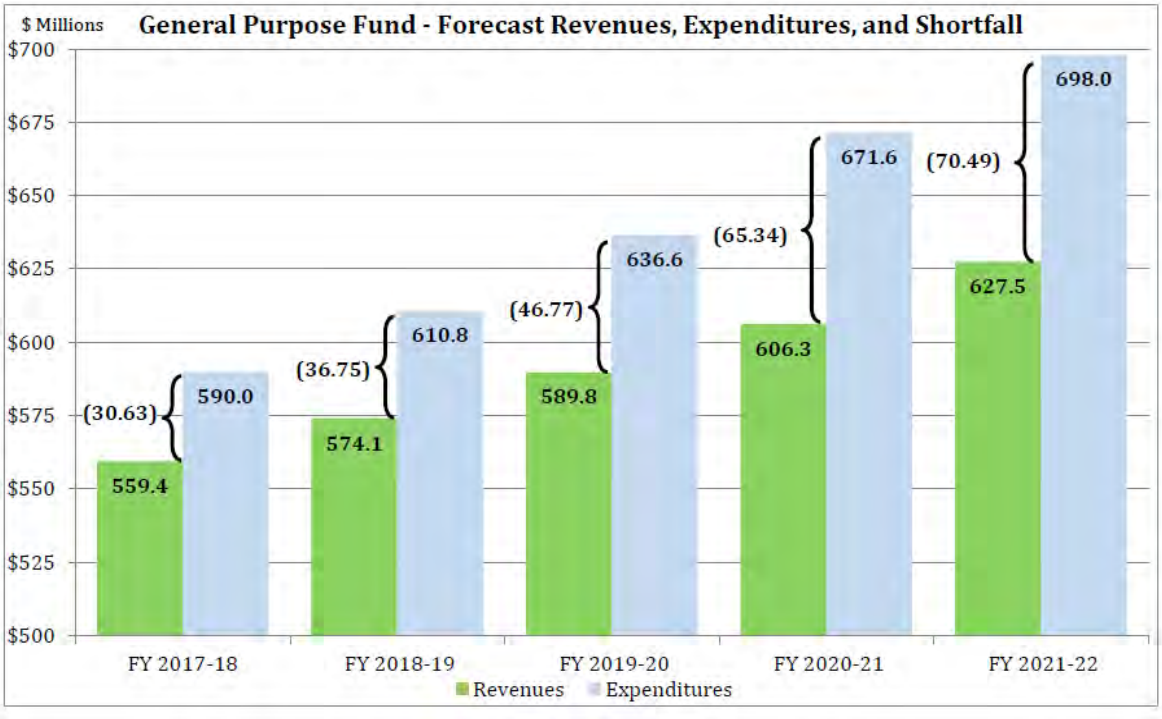
Oakland's City Budget

The city of Oakland adopts an annual budget that describes how the city will use public dollars to provide services to its residents. The budget identifies two principal types of data: projected revenues and planned expenditures. Revenues are divided into those that can be expended on general city activities and those that are restricted for specific purposes. Expenditures are classified as either restricted, meaning there is no discretion as to whether the city must pay them, or general purpose, those that are not legislatively or contractually mandated. The city council is legally required to submit a balanced budget annually: expenditures must match revenues.

Oakland's unfunded liability of nearly one billion dollars is too large to tackle without using a combination of solutions, yet the city currently has no viable plan in place.

Historically, general purpose fund revenue has grown at less than 2% annually. Consequently, to achieve a balanced budget, any expenses that grow at a faster annual compounded rate must be paid either from reserves or by reducing other general purpose fund expenses.

The chart below represents the city's five-year financial forecast related to city general purpose fund revenues and expenditures. It shows that city revenues are not keeping up with expenditures. The difference must be made up be either cuts in programs, increased taxes, or borrowing.

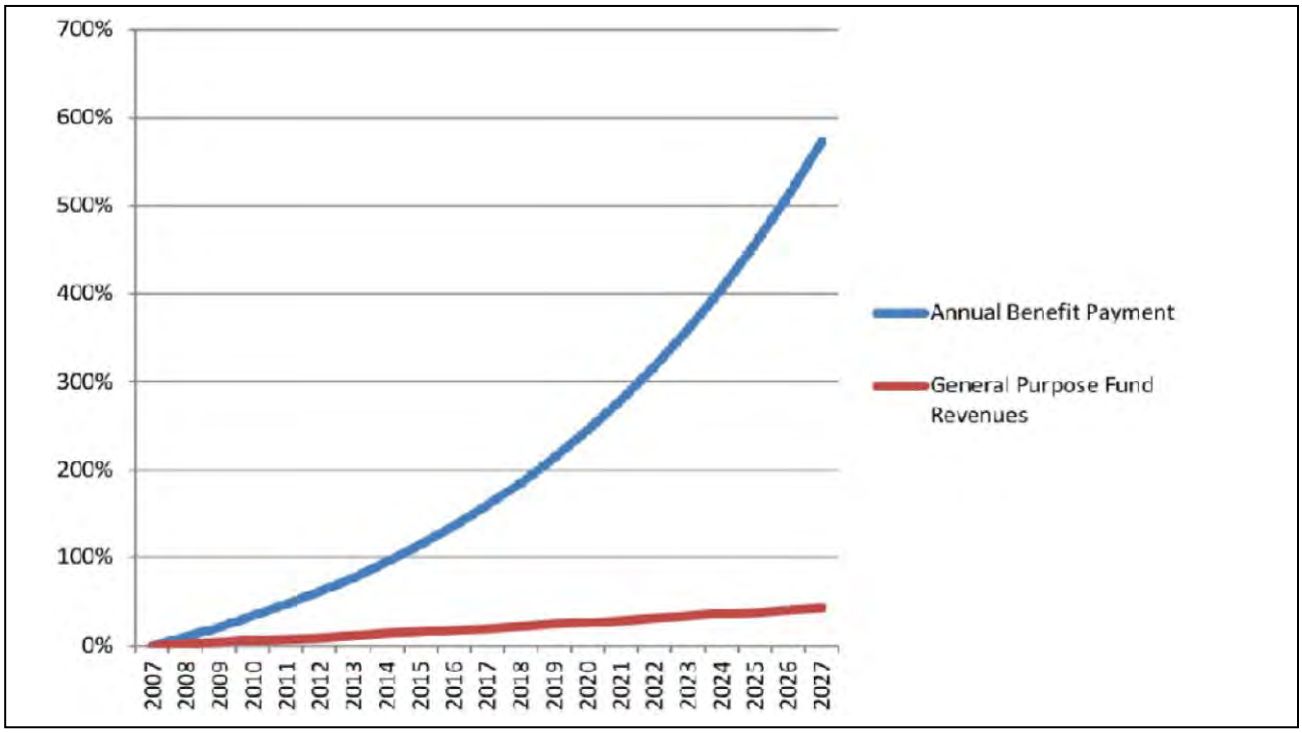


Source: City of Oakland Five-Year Financial Forecast, FY 2017-18 – FY 2021-22

The city of Oakland's five-year forecast has already acknowledged a growing gap in general purpose revenues and expenses. One alarming example of this projected budget shortfall is the disproportionate and rapidly increasing OPEB/retiree healthcare cost.

The city spent $10 million in FY 2006-2007, $26 million in FY 2016-2017, and is projected to spend $67 million in FY 2026-2027 on healthcare benefit payments for those currently retired ("pay-as-you-go"). These costs have been growing at a compounded rate of about 10% per year. This is more than five times the growth of general purpose fund revenues.

The chart below best illustrates this growing gap (shown compounded annually):



There are only two categories of general purpose fund expenses in Oakland's budget that are large enough to cut in order to provide sources for paying the growing OPEB costs: (1) operations and maintenance, representing 17% of 2017-18 budgeted general purposes fund expenses, and (2) salaries, representing 45% of those expenses.

City Employees Entitled to Healthcare Benefits

For decades, city leaders have been negotiating agreements with labor organizations that promised to pay a portion of the cost of health insurance premiums for most classes of retired city employees. Benefits are based on age, years of service and class of employee. Employees' rights to these benefits are vested after five years of service, but the employee must retire directly from the city of Oakland to be eligible. The city's contribution on behalf of miscellaneous employees (not police or fire) can reach a maximum of approximately $580 per month. The cost for retired firefighters with a full-family plan can top out at about $19,968 per year, and at $18,996 annually for retired police officers.

The city currently has approximately 6,000 participants in the OPEB program. They include active employees who are vested to get OPEB benefits when they retire, and former employees

who are currently receiving the benefit. As of July of 2015, a total of 1,963 retirees, 399 disabled retirees, and 241 spouse survivors of retirees are collecting benefits.

INVESTIGATION

The Grand Jury began its examination of this public finance crisis after receiving a complaint that elected officials in Oakland were not taking seriously an unfunded retiree health care liability that is approaching one billion dollars and growing exponentially. The Grand Jury inquiry focused on whether the city can pay for the health care benefits it has promised its retired workers, and, ultimately, whether the city's forecasted long-term revenue can keep up with long-term expected health care expenditures. Unfortunately, like those who have conducted similar investigations in other cities, what we found was of great concern.

The retiree healthcare benefits promised to city employees have been chronically underfunded, and the deficit is growing annually.

During the investigation, the Grand Jury heard testimony from a number of witnesses, including current and former city of Oakland employees, elected public officials, and statewide experts in municipal finance. The Grand Jury also reviewed the city of Oakland five-year budget forecasts, Oakland's annual budgets, past consolidated annual financial reports, staff reports to Oakland City Council, the city's bi-annual actuarial reports, and studies from the League of California Cities and other public agencies.

Discovering the Unfunded Liability (GASB 45)

In 2004, the Government Accounting Standards Board (GASB) issued a new rule requiring government agencies to report their future OPEB liabilities every two years. The reporting requirement was a victory for transparency. It began a conversation about the looming debt created when elected leaders made generous contractual promises to pay retirees healthcare benefits without a complete understanding of the costs associated with those promises or whether the benefit packages were sustainable.

Unfortunately, while the new reporting rules required public entities to disclose their long-term unfunded liabilities/debt, those agencies were not required to change the methods used to fund the benefits.

Accounting for OPEB Costs

In June of 2006, Oakland hired an outside consultant to conduct actuarial studies relating to its OPEB obligation. Findings from the study were presented to the city council in October 2007.

The report dropped a number of fiscal bombshells. First, it let the city council and public know that the city funded OPEB differently than the way it funded its employee pensions. Rather than putting aside money to pay future retiree healthcare benefits as they were accruing, the city used the pay-as-you-go method to defer the costs until after the employees retired.

By contrast, the California Public Employees' Retirement System (CalPERS) requires public agencies to contribute to pensions when they are earned – while the employee is still working – and Oakland makes its required payments each year. CalPERS holds the money it receives in trust, investing it until the employee retires and begins collecting the pension. The investment income helps pay for the overall cost of the benefit.

Oakland's failure to take the tough steps necessary to address the problem has pushed its budget to the straining point, even in this period of relative economic prosperity.

The second revelation uncovered by the 2006 actuarial report was that the city had already accrued a massive liability of $524 million because it had not prefunded OPEB in the past. At that time, the city was paying about $10 million annually for current retiree health benefits. The actuaries determined that the city would have to contribute an additional $30 million every year for 20 years to pay down the unfunded portion of the benefits already earned. The extra amount the city would have to pay was nearly equivalent to the amount it was spending on the parks and recreation department and libraries combined.

With 3,640 active employees and 2,410 retirees in 2006, coupled with rapidly increasing costs of healthcare, the actuaries showed that the city's liability would grow exponentially as more retirees enter the pool if the city continued on its pay-as-you-go approach. Ultimately, however, city leaders took no action other than ordering further study of the problem and potential solutions.

The Grand Jury found no evidence that the city ever followed up with the promised study.

In short, the 2006 actuarial report showed that the city was locked into a very expensive long-term benefit for retired city workers that it ultimately could not afford if it continued down the pay-as-you-go path, but the city council chose to "kick the can" down the road rather than figuring out a responsible way to alter those benefits or to fund them sufficiently.

Establishment of Trust Fund: Oakland's Response

In 2010, the Finance and Management Agency for the city of Oakland recommended that the city "address its OPEB liabilities by implementing a prefunding mechanism, or dedicated trust, to decrease the required funding." Heeding that recommendation, Oakland established an irrevocable OPEB trust fund in 2014. City council put $3.9 million into the account in November 2016, and pledged to add another $20 million in the 2017-2019 bi-annual budget. As of September of 2017, the trust fund balance was just over $15 million, representing just 2% of the unfunded liability.

While this was a step in the right direction, it was not nearly enough to make a meaningful dent in the unfunded OPEB liability. Anything less than a $50 million annual contribution to the trust ends up increasing the total liability rather than amortizing it. Unfortunately, annual contributions in that amount are just not possible. Revenue forecasts indicate that Oakland's general purpose fund revenue will increase at a far lower rate than its general purpose fund expenses, particularly as CalPERS increases Oakland's annual required contributions for employee pensions, and increasing health care costs cause huge annual increases to the "pay-as-you-go" amounts. Oakland needs to look at other ways to address the problem.

2016 OPEB Actuarial Study

In the 2016 actuarial study, it was reported that, as of July 2015 (FY 2015-2016), the city's unfunded OPEB liability had ballooned to $860 million. It concluded that, instead of making pay-as-you-go payments (which by then had reached about $26 million annually), Oakland should have been making annual payments of $74.1 million.

Moody's Credit Challenge

In early 2017, a credit opinion from Moody's called Oakland's pension-driven budget pressures "significant." The report concluded that Oakland's largely unfunded OPEB liability of

$860 million constitutes an exceptionally high 238% of covered payroll. These facts could lead to a downgrade of the city's bond ratings, making it more expensive for the city to borrow money.

Oakland's OPEB Funding Structure

Many public agencies throughout the state, like Orange County, fund their healthcare using cafeteria-style plans, where the amount the employer pays for the employee's health insurance is deducted from the employee's gross income and used exclusively for that purpose. Because Oakland police and fire health plans are not funded through cafeteria plans, state law requires that active and retired health benefit packages be identical. For this reason, OPEB plans for Oakland public safety retirees are more expensive. Many of these employees – those hired before state pension reform in 2013 – can retire as early as age 50, when they may still have young families, requiring the city to make full contributions of $1,500 to $1,600 per month until the beneficiary enrolls in Medicare or there is a change in status of dependent or spouse. If the city establishes a cafeteria-style healthcare funding plan for all active employees, there would be no state mandate that the benefits for retirees be identical to those provided to active employees, and this issue would be a subject for negotiation with labor unions.

How Other Cities Are Responding to the Crisis

The Grand Jury heard that the city of Sausalito, admittedly a much smaller city than Oakland, addressed its OPEB problem by a dual-pronged program. It began by closing its defined benefits plan to newly hired employees and offered them instead a defined contribution plan. "Defined benefits" is where the employer promises to provide equivalent health insurance, e.g., to a basic Kaiser plan, and is obligated to pay the increased cost to purchase that type of plan even as premiums rise. "Defined contribution" is where the employer promises to pay a fixed amount annually toward the retiree's insurance costs, often with a cost-of-living rider.

Sausalito also offered a "buyout" plan to new or newer employees that offered an immediate cash payment of $1,000 per year for each year of employment in exchange for the employee waiving his or her right to post-employment health insurance. We learned that 50% of the eligible Sausalito employees took the buyout option.

Both of these changes required substantial negotiations with Sausalito's public employee unions. We heard that the city officials needed to lay all their cards on the table during negotiations,

showing with incontrovertible evidence that the current system was not sustainable in the long run, and that Sausalito would be unable to pay its OPEB obligations in the future if changes were not made.

Some public agencies like BART and the Alameda County Water District have begun fully prefunding their OPEB costs. While this required massive investments by the organizations, they now have plans in place to erase their unfunded obligations. But, unlike Oakland, BART and the Water District do not have to go to the voters to raise revenue to pay for these initiatives – their boards can simply vote to increase rider fees and water rates.

In 2008, as a result of Grand Jury scrutiny, the city of Concord established a task force to address OPEB. As a result of the task force's recommendations, the city sat down with its labor organizations to craft a long-term plan that included material sharing by employees (14% at that time) of the cost of the program, and capping the benefits for existing employees. Prior to that, employees did not contribute to the cost. The city also established a trust and began to prefund its OPEB costs.

The city of Danville does not offer a traditional OPEB program and, therefore, has no unfunded OPEB liability. Instead, the city contributes to a health savings account, which in effect amounts to a defined contribution plan.

The city of Alameda appointed a task force in 2012 consisting of city officials, labor representatives and ordinary citizens to review Alameda's pension and OPEB obligations. After months of meetings, the task force submitted several recommendations regarding OPEB, none of which had unanimous support of all members:

- Modify vesting and eligibility rules for new hires beyond those made in 2011 in response to California's Public Employees' Pension Reform Act (PEPRA).
- Establish a 401(a)(h) plan in which all current employees are required to make contributions now for future health care. (New hires were already contributing to such a plan.)
- "Buy out" the benefit with a program giving employees the option to take cash or a tax-advantaged account in exchange for their defined benefit.
- Work with employee bargaining groups to negotiate down the liability.

In a follow-up report on OPEB liability in April 2015, Alameda staff, acknowledging that a multi-pronged approach was necessary and had to be coordinated with the city's bargaining units, discussed additional options to be considered along with those identified by the 2012 task force:

- Create a trust fund to pre-fund benefits.
- Budget more with existing funds to make payments above what is required under pay-as-you-go, with the excess going into the trust.
- Negotiate with labor for employees to contribute toward the cost of OPEB in exchange for the city making contributions toward pre-funding.
- Strengthen the tiered-benefit program that was created in response to PEPRA by making city contributions proportionate to the number of years of employment (so that the benefit would increase the longer the employee's years of service), and by lengthening the period before the benefit fully vested.
- Cap the city's medical contribution rate by changing to a defined contribution plan for new hires.
- Place further limits on spousal benefits. After PEPRA, spouses of employees hired after June 2011 were not eligible for OPEB. Staff suggested that it could modify OPEB benefits for spouses of pre-2011 hires by switching them to a defined contribution plan.

In September 2016, the OPEB Task Force of the League of California Cities issued a detailed report entitled "Retiree Health Care: A Cost Containment How-To Guide." After describing the OPEB problem, the task force discussed strategies California cities might employ to address it, including:

- Creating and funding an OPEB trust fund
- Changing benefits for existing employees
- Changing contributions to fixed amounts
- Limiting the duration of retiree medical benefits
- Closing the benefits to new employees
- Increasing vesting requirements
- Covering only retirees, not dependents
- Making city insurance secondary to other health insurance, such as veterans programs or coverage under a spouse's plan
- Buying down or buying out retiree benefits for current employees

- Changing health care plans
- Auditing retiree medical benefits
- Enrolling otherwise non-eligible retirees in Part A Medicare coverage
- Utilizing the federally subsidized prescription plan for Medicare retirees
- Buying down or buying out benefits for current retirees

CONCLUSION

Oakland's elected and appointed leaders are responsible for the welfare of their residents, for the stewardship of city finances, and for honoring or renegotiating the promises they and their predecessors made to public employees who serve the city.

The retiree health care benefits promised to city employees have been chronically underfunded, and the deficit is growing annually. Continuing the program of pay-as-you-go, without making a dent in the unfunded liability for future benefits, raises the prospect of massive budgetary cutbacks to programs deemed essential to the safety and welfare of its citizens.

These circumstances are not unique to Oakland, or even to the state of California, but Oakland's failure to take the tough steps necessary to address the problem has pushed its budget to the straining point, even in this period of relative economic prosperity. Moreover, other expensive issues, such as affordable housing, homelessness, decaying infrastructure, and more, are looming.

Inaction, or insubstantial action, on this matter is no longer tolerable. An economic downturn following years of growth will only make the problem worse. Failing to take bold action risks further cutbacks to essential and valued services like public safety, parks and libraries, and also risks worsening Oakland's bond ratings, imperiling its borrowing power, thus making Oakland a less desirable place to live and work. An informed community and courageous elected city officials must face this challenge head on to ensure a thriving and safe Oakland.

FINDINGS

Finding 18-1: The city of Oakland's current method of funding OPEB benefits underfunds its annual required contribution by at least $40 million.

Finding 18-2: The city of Oakland currently has no meaningful plan to address its $860 million unfunded OPEB liability, jeopardizing the city's long-term financial viability.

Finding 18-3: Rapidly increasing retiree health costs are squeezing city budgets and reducing funding for essential city services.

Finding 18-4: The city of Oakland has no revenue stream (anticipated revenue growth, new taxes or new bonds) sufficient to make payments that will amortize its unfunded OPEB liability over the next 20 or 30 years.

Finding 18-5: Solving Oakland's OPEB problem will require substantial political will and the cooperation of Oakland's bargaining units to make complex and unpopular structural changes to Oakland's retiree benefits program.

RECOMMENDATIONS

Recommendation 18-1: The city of Oakland must develop and implement a long-term comprehensive plan to address its $860 million unfunded OPEB liability.

Recommendation 18-2: Any long-term OPEB plan must include discussion of additional city funding and substantial structural change in benefits that are responsible for these growing liabilities.

Recommendation 18-3: The city of Oakland must develop a long-term cost-containment plan for OPEB that gives serious consideration to the options discussed by the League of California Cities and other California cities that have addressed this issue, including but not limited to:

- Capping or reducing premium contributions for current employees.
- Replacing defined benefits OPEB plans with defined contribution plans.

- Eliminating portions of the benefits, like dental and vision care.
- Limiting the length of medical coverage (e.g., to Medicare age).
- Eliminating or reducing coverage for spouses and children.

Recommendation 18-4: The city of Oakland must consider requiring current and future employees to share in paying for the cost of OPEB benefits.

Recommendation 18-5: City of Oakland staff must provide elected leaders and the public with clear and understandable reports, including graphs and charts, illustrating the impact of current OPEB funding decisions as well as the cumulative impact of deferred costs of these programs over a 15- to 20-year period.

Recommendation 18-6: The city of Oakland must decouple or separate the benefits offered to current public safety employees from those paid to retired police and firefighters, ending the pooling of active employees with retirees for rate setting.

RESPONSES REQUIRED

Oakland City Council
Findings 18-1 through 18-5
Recommendations 18-1 through 18-6

Mayor, City of Oakland
Findings 18-1 through 18-5
Recommendations 18-1 through 18-6

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OAKLAND UNIFIED SCHOOL DISTRICT: HARD CHOICES NEEDED TO PREVENT INSOLVENCY

EXECUTIVE SUMMARY

At the beginning of the 2017-2018 school year, the Oakland Unified School District (OUSD) faced a $15 million deficit, criticism from outside experts that "the district had lost control of its spending," and repeated calls to consolidate schools in order to save money and improve performance. Nevertheless, two new schools were opened, one serving 53 students, the other 125 students. While the new schools may serve laudable purposes, the school board abandoned the district's established budgeting process by approving them without proper funding and without a plan to ensure they would be sustainable. The decision put further strain on an already overstretched budget, which, among other things, meant taking money from other underfunded schools and inching the district closer to insolvency.

This term, the Grand Jury chose to examine some of the underlying issues responsible for the district's continuing financial quagmire. After a nine-month investigation, the Grand Jury determined that these school openings are emblematic of system-wide failures including:

- Hiring and program spending that is made outside of budgetary control.
- Operating nearly double the number of schools than can be justified by the enrollment numbers.
- No accountability, lack of trust, and high teacher and administration turnover.

We concluded that these management and governing problems are chief reasons why OUSD has been on average between 20 and 30 million dollars in debt for the last 15 years, and may help to explain why one in five Oakland public schools scores in the bottom 5% statewide in math and English language arts proficiency.

The new superintendent, the fifth in the last nine years, has promised publicly to address the district's problems. She sought help from the state's Fiscal Crisis and Management Assistance Team; she has made changes in the system's budget office; and she is developing a Blueprint for

Quality Schools program that is expected to set forth an aggressive plan to fix the district's fiscal and educational woes as well as to ensure accountability.

In the Grand Jury's investigation it became clear that schools need to be consolidated if the district is to survive.

These actions are all steps in the right direction, but, unfortunately, similar spending freezes and budget fixes proposed in the past have been stymied by stiff opposition. Many of the problems identified by the state team have not been addressed due to lack of political will. As a result, district reserves have now dropped below the state's minimum requirements.

The elected board of education, district staff and the community must realize that failure to support a unified effort at comprehensive reform is marching the district towards state takeover. This certainly was not the answer to this district's problems in 2002 when the state took over the first time: it meant more debt for decades and loss of local control.

While students in OUSD seem to pay a heavy price for this poor governance, experts tell the Grand Jury that those responsible, the board and the district's decision-makers, seem to pay little or no price for their actions or inactions.

This report will address a number of structural hurdles the district will have to overcome to address these financial and educational challenges. The Grand Jury hopes this report will support those who are serious about reform.

BACKGROUND

Fiscal Performance

OUSD educates 36,900 students in the 86 non-charter schools that it operates. At the start of this last school year, the district employed 2,317 teachers and 2,564 additional staff, 719 of whom worked in the central office.

For more than a decade, numerous experts and outside reviewers, including the grand juries in 2013-2014 and 2015-2016, have highlighted the fiscal deficits plaguing OUSD. In fiscal year 2017-2018, like so many previous years, OUSD operated in the red. Its initial budget was $762.8 million, $15.1 million more than it had to cover expenses. At a board meeting last fall, the superintendent recommended cutting $15 million. Later, the amount to be cut dropped to

$9.1 million ($4.25 million to come from school sites, and $4.85 million to come from central office functions). But, due to prior contractual obligations, the proposed cuts were not fully implemented, further exacerbating the district's financial woes.

The state's Fiscal Crisis and Management Assistance Team found that "the district's policies and procedures in the area of budget development and monitoring are minimal and do not meet the applicable professional standards."

The laundry list of errors and poor decisions contributing to the fiscal crisis was familiar and striking.

- Errors in enrollment estimates reduced district revenue by $3.9 million.
- Failure to reduce teacher overstaffing to match actual enrollment cost another $3.2 million.
- The Board of Education used the self-insurance fund to help the district stay afloat, underfunding it by $30 million.
- Ever-growing pension costs and the skyrocketing cost of special education's unfunded mandates overwhelmed the district.

In fact, OUSD has been in financial peril for more than 15 years. In June 2002, OUSD's board believed it had a budget surplus. By January 2003, the district found it was tens of millions of dollars in debt and unable to meet its obligations to students and staff. Six months later, the state of California placed the district in receivership and made an emergency $100 million loan. OUSD still owes $30 million on that loan.

At that time, the state's Fiscal Crisis and Management Assistance Team (FCMAT), an independent agency designed to help California's local educational agencies fulfill their financial and management responsibilities, found that "the district's policies and procedures in the area of budget development and monitoring are minimal and do not meet the applicable professional standards."

Faced with another ocean of red ink, early last year OUSD's new school superintendent hired FCMAT again to analyze the district's current finances. In its August 2017 report, FCMAT concluded, "The district has lost control of its spending, allowing school sites and departments to ignore and override board policies by spending beyond their budgets. In many cases, board policies are knowingly ignored and/or circumvented without consequences."

Educational Performance

Student performance has long been recognized to be a measure of the quality of the educational services provided. It is no coincidence that well-run districts have high student achievement. Unfortunately, OUSD's test scores mirror its governance issues. While some innovative programs, especially those directed toward English learners, have shown progress, student performance at too many schools has been described by witnesses as miserable.

For instance, the Grand Jury heard testimony that seven in ten African American students in the district read below grade average. Overall, since 2014, nearly half of the students in OUSD (46% -48%) failed to meet the lowest level of English language arts and literacy achievement and just over half (52%) failed the lowest level in math. The chart below shows recent performance data from the state of California.

Area Performance Level	3rd Grade	4th Grade	5th Grade	6th Grade	7th Grade	8th Grade	11th Grade	Average
Reading: How well do students understand stories and information that they read?								
Above Standard	15%	13%	15%	10%	12%	13%	16%	13%
Near Standard	37%	35%	36%	34%	39%	37%	44%	37%
Below Standard	48%	52%	49%	57%	49%	50%	40%	49%
Writing: How well do students communicate in writing?								
Above Standard	15%	13%	18%	12%	14%	13%	16%	14%
Near Standard	39%	39%	37%	40%	44%	41%	39%	40%
Below Standard	47%	48%	45%	49%	42%	46%	45%	46%
Mathematics: How well can students show and apply their problem-solving skills?								
Above Standard	19%	14%	13%	9%	10%	9%	5%	12%
Near Standard	40%	39%	30%	35%	38%	45%	40%	38%
Below Standard	41%	46%	56%	56%	51%	46%	54%	50%

Area Performance Level	3rd Grade	4th Grade	5th Grade	6th Grade	7th Grade	8th Grade	11th Grade	Average
Communicating/Reasoning: How well can students think logically and express their thoughts in order to solve a problem?								
Above Standard	18%	15%	12%	9%	11%	7%	7%	12%
Near Standard	49%	37%	37%	45%	47%	46%	50%	44%
Below Standard	33%	48%	51%	46%	42%	47%	43%	44%

In 2016, only a third of OUSD high school seniors were prepared to go to college. And in five of the seven major performance indicators used by the state – English language progress, college and career readiness, chronic absence rates, English, and mathematics skills – OUSD scored in the average or lowest category.

A weary community and the new superintendent inherited these problems. The new leadership immediately began to educate the public and other stakeholders about the district's financial missteps with a transparency that had not previously existed. With the help of FCMAT and a new fiscal advisor appointed by the state, the superintendent began developing proposals to help reestablish financial order.

In its investigation this year, the Grand Jury focused on the chief drivers of this cycle of debt and poor educational performance. Our hope is to support changes that set the district on a path toward fiscal sustainability, which will, in turn, create the kind of managerial and educational excellence that students, parents and staff deserve.

INVESTIGATION

In order to understand the sources of financial instability, chaotic decision-making and poor student performance experienced by the district, the Grand Jury heard testimony from elected officials, current and former district administrators and staff, and local and state education experts. The Grand Jury also examined staff reports, FCMAT materials, and dozens of other finance and student performance documents, and watched OUSD board meetings both in person and electronically. We found seven major hurdles that the district needs to overcome.

Ad Hoc Decision-Making

In September 2017, OUSD opened its first dual language middle school, the School of Languages (SOL), and the Rudsdale High School for sixteen to eighteen-year-old students who are at risk of not graduating from comprehensive high schools. Each was opened in response to the community's clamor for quality schools and each was championed by the district's head of Continuing School Improvement.

Opening a new school can cost as much as one million dollars just to pay for required staff: a principal, a minimum of six teachers, a counselor and a custodian. Reopening at a vacated site also requires construction work to bring the buildings up to code. Witnesses told the Grand Jury that SOL and Rudsdale were a surprise to the central budget office. It didn't learn about the new schools until seven months before they were to be opened. Notification came just days before OUSD was supposed to present a new budget and while the district was in the middle of a budget freeze. The Grand Jury heard testimony that the OUSD Board of Education did not have a complete understanding about how much the new schools would actually cost, but approved them anyway because of the academic value of the programs, community pressure, and moving presentations during board meetings.

In its August 2017 report, FCMAT concluded, "The district has lost control of its spending, allowing school sites and departments to ignore and override board policies by spending beyond their budgets. In many cases, board policies are knowingly ignored and/or circumvented without consequences."

From a best practices standpoint, opening a school requires significant financial planning. Budget planning is a complicated process that takes months and requires district officials to prioritize funding needs and ensure that new programs have sustainable ongoing revenue sources. The Grand Jury heard testimony that the proposal to add these two new schools came shortly before the budget process closed and was not subject to the same level of scrutiny given to other programming needs. Since it was obvious that SOL and Rudsdale would not be financially self-sufficient – they were so small that per-pupil funding from the state would not cover compensation for required staff – the district needed to raid its already diminished reserves and other funds to operate them.

Decisions like these, that circumvent established policies and financial best practices, are not uncommon. The Grand Jury heard testimony about other school site personnel or community leaders approaching board of education members directly to propose a new program or additional positions rather than going through normal channels at the central office or through the superintendent. One witness called it the "squeaky wheel" process. The central office staff would often capitulate to the desires of individual board members to keep in their good graces, and the members themselves capitulated to pressure from the community members who had elected them, contrary to the financial well-being of the district.

This is a grave mistake by staff and the board. Elected board members do not have individual powers to direct staff but rather collective powers to set broad policy and hire a superintendent. The superintendent's responsibility is to run the day-to-day operations of the district and to propose new initiatives to the board that might come from lower-level school leaders. When individual board members intervene in the day-to-day operations of the district by proposing new positions and circumventing the regular budgeting processes, financial best practices go out the window and the governance structure breaks down.

Position Control

Another of the structural budgetary problems exposed by the opening of the new schools was the district's failure to maintain an effective position control system. This allows the district to track staffing allocations along with payroll by assuring that there are no new hires unless there is money in the budget to pay for them. The new positions in the recently opened schools were created outside of standard position control policies. If best practices had been followed, the district would have realized they had no money to fund the positions.

The Grand Jury learned that such practices were commonplace. FCMAT reported that the former superintendent rushed new unfunded positions through the process without regard to budget appropriation. The Grand Jury heard testimony that he created or reclassified 66 non-teacher positions, giving pay increases to people with the same or similar responsibilities without budgeting for the new positions. This cost the district millions.

Also, the Grand Jury heard testimony that five teachers had been hired for an after-school program without budget authority or even the principal's knowledge. These decisions are not

single-year budget problems, but have significant long-term impacts because the new positions must be funded every year going forward.

Commenting on the position control issue, one witness said, "This is why FCMAT says we have lost control of our spending."

School Site and Department Autonomy

Individual schools and departments have annual allocations and the authority to spend that money, sometimes over the objection of the central office and the board of education. Last year, to address a significant budget shortfall, the superintendent gave schools 24-hours' notice of an impending spending freeze. Many OUSD school officials spent what remained in their annual allotments the next day. The result was millions in lost savings and pointed criticism of the district from FCMAT for "allowing school sites and departments to ignore and override board policies."

Local staffing decisions have also been problematic. Some schools have a long history of ignoring the rules for how overtime is to be paid, making it difficult for those writing the district's budget to plan accordingly. Witnesses described how some principals ignored budgetary restrictions and policies by elevating staff not otherwise eligible for salary increases or promotions to new, higher positions without first confirming that the school budget had money to cover the added expense. In addition to creating district budget deficits, this practice led to serious morale problems at the schools involved.

Budget problems at school sites are aggravated by the fact that many on-site officials lack training to understand how to:

- Improve the budget development process by accurately projecting enrollment, revenues and expenditures.
- Improve budget controls and monitoring to prevent budget overruns.
- Improve the accuracy and timeliness of recording and reporting accounting transactions and information.

High Staff and Program Turnover

Governance and management of large public school systems are challenging undertakings, and are made even more difficult when there is constant new management championing new programs and advancing new ideas for how to move forward.

OUSD has had five superintendents in the last nine years, 12 budget directors in 12 years, and each year there are dozens of new principals managing schools and scores of new teachers taking over classrooms.

Frequent turnover has created whiplash. Every new superintendent comes in with bold new ideas to address urgent problems, but ends up finding it difficult to deliver. Consequently, the board, staff, principals, teachers and students have been regularly subjected to new plans, few of which have been successfully implemented.

OUSD has had five superintendents in the last nine years, 12 budget directors in 12 years, and each year there are dozens of new principals managing schools and scores of new teachers taking over classrooms. Frequent turnover has created whiplash.

Experts call it churn: staff churn, teacher churn, and program churn. Almost as soon as new ideas and new ways of operating are instituted there is a change. That means those plans and those implementing them never get a chance to determine if they might work. Witnesses admitted that it is very difficult, if not impossible, to teach students and serve their other needs in this kind of an environment. They described a direct correlation between high educational performance and low administrative and teacher turnover.

This churn has other adverse consequences: no consistent clear goals for the district, no well-established mechanisms to hold persons accountable, and no agreed-upon consequences for persons who do not follow the rules.

Lack of Transparency and Trust

While attending school board meetings, members of the Grand Jury were struck by the animosity between the public and the board and superintendent. This observation was confirmed by witness testimony. Much of the often-loud discussion centered on the budget and how members of the public generally did not believe the numbers.

From what the Grand Jury was told, that lack of trust was justified. We heard testimony that, in some cases, finance officers were instructed to withhold "bad news" from the board and other decision makers. Witnesses confirmed that the previous superintendent and other leadership instructed staff not to tell the board that the system could be as much as $30 million over budget.

In addition, witnesses described to the Grand Jury various ways that officials hide money off the budget to fund special projects and take personnel actions. One is called *vacancy offset savings*. At the beginning of each year, budget staff estimates how many positions will be filled. If positions go unfilled, that creates a pool of money that can be spent. The problem is that budget writers regularly overestimate the number of positions, allowing the excess funds to be available for previously unbudgeted expenses. Last year there were $15 million in such "savings." Although not illegal, the use of vacancy offset savings lacks transparency and puts OUSD leaders at a disadvantage when making decisions.

Too Many Schools for Declining Enrollment

Over the last 15 years, student enrollment in OUSD-operated schools has fallen from nearly 54,000 to approximately 37,000. Because state funding formulas are based on student attendance, declining enrollment results in decreased revenue. Yet, witnesses say, OUSD operates as if there has been no decline in enrollment. Oakland currently operates 87 district-run schools, making the average school size 412 students. In comparison, Fremont Unified School District has a student population of 35,000 but operates only 42 schools. Its average school size is double that of Oakland. San Jose Unified School District operates 41 schools with a student population just over 30,000, making its average school size 731 students.

Over the last 15 years, student enrollment in OUSD-operated schools has fallen from nearly 54,000 to approximately 37,000. Yet, witnesses say, OUSD operates as if there has been no decline in enrollment.

Smaller schools may sound enticing but are a huge financial drain when they are operating in a larger facility at less than capacity. Not only do they feel empty, but OUSD has more of them to serve the same number of students than other districts.

For instance, Markham Elementary had 419 students eight years ago but shrank to 363 students in 2016-2017. The school has the capacity to hold almost 600 students. West Oakland Middle School went from 215 to 179 students over the same period at a school site designed to hold 759,

and Hoover Elementary went from 318 to 282 at a site that can accommodate over 500. Many of these under-enrolled schools are not self-sustaining because the state funding they receive per student cannot cover the cost of the site staffing. When teachers staff under-enrolled classrooms, the district must employ more teachers than other districts with similar student populations. As a result, OUSD is forced to supplement the under-enrolled schools with funds that could, and perhaps should, be going to other schools in the district with larger student populations. This ultimately causes financial difficulties for every school in the district and affects the quality of the education available to students.

Each of the last five superintendents has acknowledged that the district is operating too many schools, and yet each has failed to convince the school board to make the difficult decisions in the face of community backlash.

The district has made many attempts through the years to close or consolidate under-enrolled schools, but these efforts have been met with intense backlash from teachers, parents, and students. Each of the last five superintendents has acknowledged that the district is operating too many schools, yet each has failed to convince the school board to make the difficult decisions in the face of community backlash. Nearly a decade ago, the superintendent then in office lobbied to close 25 to 30 schools to bring the district in line with actual enrollment. After closing five schools, enormous community criticism followed. He departed from the job a short time later.

This situation makes the opening of SOL and Rudsdale this year even more astonishing. To its credit, at the direction of the new superintendent, the district is developing the Blueprint for Quality Schools. A broad group of stakeholders has conducted an examination of facility conditions, adequacy, and capacity. Their findings show that OUSD operates 35 schools with fewer than 400 students. Thirty-six of the school sites are at 75% capacity or less, and 17 school sites are operating at 60% capacity or below. Importantly, 20 of the under-enrolled schools are also underperforming academically. After a series of public meetings, the Blueprint committee will make recommendations for school consolidation.

In the Grand Jury's investigation it became clear that schools need to be consolidated if the district is to survive. To do so, the board must begin by explaining to the public the financial and educational consequences of operating too many schools. Ultimately, the board needs to consolidate schools even if opposition remains strong.

The Charter School – Public School Wars

School size and campus utilization become more complicated when charter schools are included in the equation. A number of OUSD campuses house both charter and traditional public schools as a result of a state law that requires a school district to offer vacant campus space to charters. The Grand Jury heard examples of where the relationships between charters and district schools are unproductive mainly because administrators and teachers treat the other as competitors. But we also heard testimony about how they might work together productively.

While charter and district run schools operate independently, the Grand Jury learned that opportunities exist where collaboration between the schools at these shared campuses can help ease financial burdens on both organizations and, more importantly, improve the educational experience for children.

Opportunities exist where collaboration between public and charter schools at shared campuses can help ease financial burdens on both organizations and, more importantly, improve the educational experience for children.

At East Oakland's Castlemont campus, OUSD operates a traditional high school and shares the campus with a charter high school. Great effort has gone into repairing relationships that had been strained for years. Now, administrators from both schools meet regularly; security personnel coordinate their efforts; and sports teams that wouldn't exist because of lack of participation are now drawn from both schools. In addition, Proposition 51 funds were used to rebuild part of the campus to house college-level classes open to students from both schools.

Teacher collaboration lags behind administrative cooperation due to longstanding organized labor animosity towards charters, but collaboration must be encouraged when it is in the best interest of students.

Charter schools and traditional public schools need to learn to coexist and must take advantage of opportunities to improve relations and better serve students.

CONCLUSION

The "U" in OUSD stands for unified. It is clear that there is little unity in the Oakland school system. Staffs come and go. Administrators come and go. So many ideas tried but so little to show for that effort. Trust and unity comes from achieving something. Failure breeds mistrust

and that mistrust can be infectious. Principals won't trust that a new superintendent can deliver. Teachers won't trust that a principal will last. Most troubling of all, these can lead to a system that thinks its students cannot deliver.

On its website, OUSD makes five commitments to the citizens of Oakland:

- Provide every student with access to a high-quality school
- Ensure each student is prepared for college, career, and community success
- Staff every school with talented individuals committed to working in service of children
- Create a school district that holds itself and its partners accountable for superior outcomes
- Guarantee rigorous instruction in every classroom, every day

The Grand Jury has determined that the district has failed in at least three of these commitments.

FINDINGS

Finding 18-6: Staff and Board of Education efforts to circumvent established budgeting policies along with board efforts to interfere in the administrative responsibilities of the superintendent invite financial instability and contribute to Oakland Unified School District's financial problems.

Finding 18-7: Oakland Unified School District's inability to control overstaffing and poor position control decisions have contributed to the district's financial instability.

Finding 18-8: Lack of transparency related to Oakland Unified School District's financial positions has led to mistrust between the district, the community, and labor organizations.

Finding 18-9: High turnover of key administrators has created an atmosphere of mistrust, destroying the continuity of the district's educational mission, and crippling the district's effectiveness in addressing its most pressing fiscal issues.

Finding 18-10: Financial instability and high staff turnover contribute to poor student performance.

Finding 18-11: Operating 86 schools is unsustainable and will lead the district to insolvency.

Finding 18-12: Collaboration between traditional public schools and charter schools operating in the district benefit all students in Oakland Unified School District.

RECOMMENDATIONS

Recommendation 18-7: The Oakland Unified School District Board of Education must participate in governance training, emphasizing that they are policy makers, not day-to-day administrators.

Recommendation 18-8: The Oakland Unified School District Board of Education members must communicate with district officials through the superintendent.

Recommendation 18-9: The Oakland Unified School District must establish a position control system that tracks staff allocation and spending, and better interfaces with payroll systems.

Recommendation 18-10: The Oakland Unified School District must provide school site administrators with comprehensive training regarding position control and budgetary policies.

Recommendation 18-11: The Oakland Unified School District must not hire any new staff or institute any new program unless there is money in the budget beforehand to fund them.

Recommendation 18-12: The Oakland Unified School District must develop a transparent budget platform that better informs the Board of Education and the public regarding long-term consequences of financial decisions.

Recommendation 18-13: School occupancy must be assessed and painful decisions made regarding closure and consolidation as soon as possible.

Recommendation 18-14: The Oakland Unified School District must expand collaboration between traditional district-run schools and charter schools, especially those sharing campuses.

RESPONSES REQUIRED

Board of Education, Oakland Unified School District
Findings 18-6 through 18-12
Recommendations 18-7 through 18-14

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COLISEUM TICKET BONANZA

EXECUTIVE SUMMARY

In April 2017, the City of Oakland's Public Ethics Commission released a report concerning use of free tickets to events at the Oracle Arena and the Oakland-Alameda County Coliseum by Oakland city officials. The ethics commission was extremely critical of the city's distribution policies and practices, and challenged Oakland's elected officials to reform procedures for allocating and using the tickets and enforcing the new rules. The report carefully limited its conclusions to the tickets belonging to Oakland, and did not discuss or make recommendations about the policies and practices of Alameda County or the Oakland-Alameda County Coliseum Authority, both of which control an equal number of tickets to the same events.

The Grand Jury took up the implicit challenge from the ethics commission: to investigate and report on tickets controlled by Alameda County and the Coliseum Authority. Unfortunately, we found many of the same problems, as well as some new ones:

- Expensive tickets seem to be treated as a perk of office or employment: They are often used repeatedly by the same elected or appointed officials and their staff members.
- Although approximately 30% of tickets are given to worthy non-profit organizations for use in fundraising, almost none of the most valuable playoffs and finals tickets go to community groups.
- Many tickets go unreported on Form 802s mandated by the state Fair Political Practices Commission, including tickets for some of the most expensive and desirable events, such as Warriors playoffs, Raiders games and big name concerts.
- Tickets that are reported are supposedly being used for approved public purposes, such as inspecting the facilities. Although not a requirement, no reports are ever generated by officials following their visits, suggesting that the so-called "public purposes" are merely a vehicle for attending exciting games and concerts without having to declare the ticket values as gifts or income.
- No uniform and publicized process for community-based organizations to apply for and receive tickets exists; instead, the allocation is handled on an ad hoc basis by the staff of the officials responsible for distributing them.
- No uniform and publicized process for all of the 6,000+ employees of the county to apply for and receive tickets exists; instead, the vast majority of employees who receive tickets are the staff members of the officials responsible for their distribution.

- Neither the county nor the Oakland-Alameda County Coliseum Authority has a policy to limit or restrict excessive use of tickets by particular individuals, permitting overuse by some, such as appointed authority commissioners, who used the most valuable tickets hundreds of times.
- The only reports filed and posted regarding ticket usage by officials and employees were designed for another purpose – making free tickets non-reportable as gifts and income – and are of limited value in providing meaningful data to enable tracking of ticket usage, and enforcement of ticket distribution policies that need strengthening.
- Ticket reports are inconsistent across the offices responsible for preparing them; the individuals who fill out the forms sometimes omit important data such as dates and numbers of tickets; and at least some of the reports include highly inaccurate information about who is really using the tickets.

The Grand Jury recognizes that some of these problems will disappear naturally over the next few years as our professional sports teams leave the Coliseum complex. Nevertheless, we believe a major overhaul of the procedures and practices for distributing tickets is warranted so long as the facility remains in public ownership.

BACKGROUND

The Oakland-Alameda County Coliseum Complex

The Oakland-Alameda County Coliseum Complex is jointly owned by the city of Oakland and Alameda County. The complex is composed of two parts:

- *Oracle Arena*, an indoor stadium and event facility that seats approximately 19,000 patrons. The Arena is home to the Golden State Warriors, and also hosts many concerts, shows and other sporting events. In addition to floor seating, the Arena contains 72 luxury suites, each seating 20.
- *Oakland-Alameda County Coliseum,* an outdoor stadium seating up to 63,000 patrons. The Coliseum is home to the Oakland Athletics (A's) and the Oakland Raiders, and hosts other sporting events and concerts. It contains 147 luxury suites of varying sizes, seating from 12 to 24 guests.

Although day-to-day management of the complex is handled by AEG Facilities, complex operations are overseen by the Oakland-Alameda County Coliseum Authority, a joint powers authority (JPA) made up of elected officials and citizens from the city and county. The JPA's board of commissioners is made up of two members of the Oakland City Council, two citizens appointed by the city, two Alameda County supervisors, and two citizens appointed by the county.

As part of the lease contracts between the JPA and the home teams, three luxury suites at each facility for each scheduled event are reserved for the JPA (suite M-39 at the Arena; suite L-16 at the Coliseum), the city (suites M-13 and L-53) and the county (suites M-14 and L-54). The Coliseum suites reserved for the JPA, the city and the county each seat 18; the Arena suites seat 20.

County Officials Are Responsible for Distributing Thousands of Tickets Each Year

According to the Coliseum Complex website, in the 19 months between January 1, 2016, and July 31, 2017, the Arena held 172 different events, for which a total of 3,440 tickets to the county's luxury suite, M-14, were available to be distributed by the county, and the same number for the JPA's suite L-16. The numbers for the Coliseum during the same period were 148 events and 2,664 tickets in luxury suites L-54 and L-16. The county also received varying numbers of field level seats for many A's games.

From January 1, 2016, through July 31, 2017, county and JPA officials were each responsible for distributing – to themselves or others – 3,440 luxury suite tickets to events at the Arena and 2,664 luxury suite tickets to events at the Coliseum.

All of the county's tickets were provided to the members of the board of supervisors to use themselves or distribute to others. The process for distribution of the county tickets is more or less as follows: At the beginning of the year, when the schedule of events for at least the first few months is made available, the president of the board of supervisors allocates full suites to some events to individual supervisors, and decides that seats to other events will be parceled out among the supervisors. For example, each supervisor might be assigned the whole Arena box for one or two events, and tickets for the remaining events will be divided evenly, with each supervisor responsible for four tickets per event.

The different districts then assess and fill ticket requests that have come in from organizations and individuals, paying particular attention to requests from non-profits for tickets that can be auctioned or raffled in fundraisers. Tickets are also assigned to the supervisors themselves, or to members of some supervisors' staffs.

The actual tickets are delivered to the office manager for the board of supervisors, who, in turn, distributes them monthly to the supervisors and their staff based on the initial allocation. The

office manager is also responsible for collecting the completed reporting forms and posting them on the county's website.

During the same period, all of the JPA's commissioners, including the two supervisors on the JPA's board, as well as certain other county officials, were entitled to and did occasionally receive tickets for the JPA's luxury suites for their own use or for distribution to others. Unlike the county tickets, the JPA's tickets were available upon request on a first-come, first-served basis in a priority established by the JPA.

California Fair Political Practices Commission Rules Regarding Free Tickets

The Fair Political Practices Commission (FPPC) is a five-member independent, non-partisan commission with primary responsibility for administration of California's Political Reform Act of 1974. Among many other tasks, the FPPC is responsible for ensuring that those who are required to do so – elected officials, staff members, commission members, government administrators, government lawyers, and many others – file a Statement of Economic Interests, known as Form 700, that discloses potential financial conflicts of interest that the filer might face in performance of his or her duties.

In order to be exempt from reporting free tickets as gifts on their Statements of Economic Interests, county and JPA officials and employees must use the tickets for an approved public purpose.

Form 700 requires the filer to disclose gifts valued at more than $50 received during the year. Those required to file Form 700 are prohibited by Government Code section 89503 from receiving gifts from any single source valued at more than $470 annually. Reportable gifts include tickets to sporting or entertainment events.

In 2009, the FPPC adopted Regulation 18944.1, specifying a number of circumstances under which persons are exempt from reporting tickets as gifts on their Form 700s. The agency that distributes the tickets must have a written policy identifying the possible public purposes served by their distribution, and must prepare and post a report, known as Form 802, describing the tickets, their value, the recipient(s), and the particular public purpose among those described in the agency policy for which they were given. (*See Exhibit A, page 62*)

The county and the JPA have both adopted ticket policies that comply with the FPPC regulation, and both prepare and post Form 802 reports on their respective websites regarding tickets to events at the complex. (*See Exhibit A, page 62*)

The ticket distribution policy adopted by the Alameda County Board of Supervisors on June 21, 2009, states: "the distribution of any ticket or pass by the county to one of its officials, or distributed to a third-party at the request of the county official, must accomplish a 'public purpose' of the county." Appropriate "public purposes" include:

(1) To obtain oversight of facilities or events that have received county funding or support;

(2) To review facilities or events that may require county funding or funding in the near future or to gather information about the operation of a facility similar to one presently or potentially operated by the county;

(3) To promote tourism as a form of economic development;

(4) To evaluate the ability of a facility, its operator, or a local sports team to attract business and contribute to the local economy;

(5) To review the ability of a facility or it operator to participate in the county's job creation goals or job training programs;

(6) To evaluate the contribution of a facility or an event to the county's goals for fostering arts, culture, and entertainment opportunities for county residents. . . ;

(7) To reward a county employee for his or her exemplary service to the public or to encourage staff development;

(8) To reward a community volunteer for his or her service to the public;

(9) To promote attendance at a county sponsored event or event held at a county facility in order to maximize potential county revenue from parking and concession sales;

(10) To reward a school or nonprofit organization for its contributions to the community;

(11) To reward a student for outstanding scholastic achievement;

(12) To provide opportunities to those who are receiving services from county agencies consistent with the agency's goals for the particular population (i.e., for use by juvenile wards in the custody of the chief probation officer . . .); or

(13) To promote heath, motivate and provide expanded opportunities to vulnerable populations in the county such as the disabled, underprivileged, seniors and youth in foster care.

The JPA's ticket distribution policy is different. It states that, in order to fulfill management responsibilities and to serve its public purpose, the JPA has the continuing duty:

(1) to supervise the managing agent;

(2) to insure that all duties of the licenses are fulfilled;

(3) to investigate the efficiencies of the operations of the various sporting and other events that occur at the Coliseum Complex;

(4) to promote the Coliseum Complex for use by the general public and businesses to maximize revenues;

(5) to provide opportunities to community groups to utilize the facility;

(6) to review the performance of food and beverage concessionaires;

(7) to observe the conduct of the managing agent's employees and subcontractors;

(8) to provide incentives to city and county employees that provide services to the Authority; and

(9) to investigate complaints of the Warriors, the Raiders and the A's about the complex.

The policy concludes: "To the extent the authority distributes to an authority official tickets for any of the foregoing purposes, the use of such tickets by such authority official shall accomplish a public purpose of the authority."[1]

INVESTIGATION

The Grand Jury started its investigation by creating a database from the Form 802 reports posted by the county and the JPA during the period January 1, 2016, through July 31, 2017. The database included:

- The date of the event;
- The name of the event (game, concert, etc.);
- The number of tickets distributed to the recipient(s);
- The value of each ticket;

[1] "Authority officials" are identified earlier in the policy as "the Commissioners, the Auditor, the Secretary/Treasurer, the Executive Director, the City Administrator, the County Administrator, the County Counsel and the City Attorney. . . ."

- Whether the reporting agency provided the tickets;
- The official who distributed the tickets;
- The ticket recipient(s); and
- The public purpose for which the tickets were given.

After analyzing the data from the reports, the Grand Jury heard from a number of different witnesses, including county officials, individuals associated with the JPA, and employees responsible for preparing the 802 forms, regarding their practices concerning the free tickets. What we found in our investigation was very troubling.

Free Tickets: Public Purpose or Personal Perk?

During the 19 months for which we examined posted 802 forms, thousands of tickets to the county and JPA luxury suites were distributed. All were reported as having served a public purpose; none was reported as income to the recipient. The Grand Jury investigated whether these reported tickets were actually used for the purposes listed.

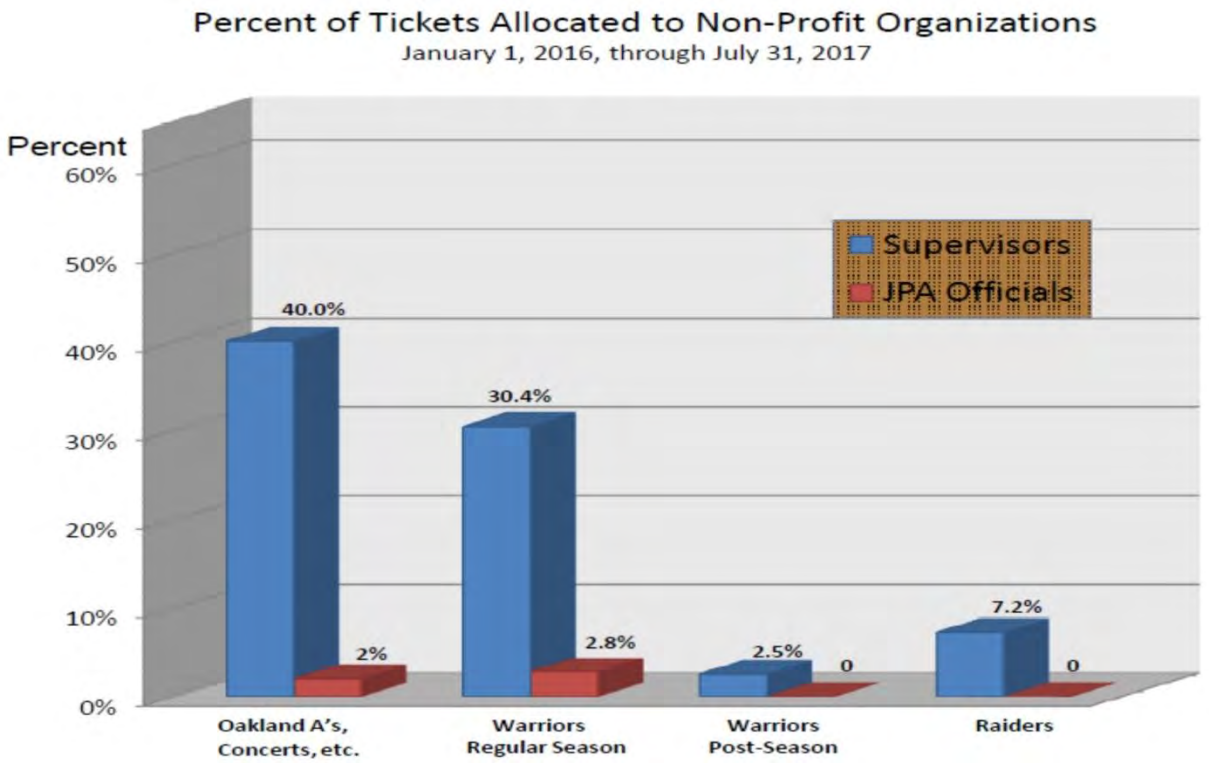
Failure to support the **county's** non-profit community-based organizations

Several witnesses told the Grand Jury that the highest and best use of the free tickets to events at the Arena and Coliseum is to give them to community-based organizations (CBOs) in Alameda County so that they can be used for fundraising. Indeed, access to free luxury suite tickets that can be raffled or auctioned would be a lucrative source of funds for revenue strapped non-profit community organizations. This is especially true for high-demand/high-value tickets such as those to Golden State Warriors and Oakland Raiders games. It is spectacularly so for tickets to the Warriors post-season games, when luxury suite tickets sell on the open market for thousands, even tens of thousands, of dollars per seat.

While it is all well and good to espouse a goal of helping worthy groups, the Grand Jury finds that there are no processes in place to make sure it actually happens.

The posted 802 forms report that county and JPA officials made only limited use of the tickets they controlled to support non-profit organizations. The chart below shows the percent of their

tickets that county supervisors and JPA commissioners distributed to non-profits in three distinct categories: (1) concerts, A's games, and other events with relatively low ticket values; (2) Warriors and Raiders regular season games; and (3) Warriors playoffs and finals games.



While county supervisors give non-profits nearly half of the tickets to relatively low-value events – A's games, Disney-on-Ice performances, concerts, motocross, and the like – there is a very significant drop off in distribution of Warriors and Raiders tickets to non-profits. When it comes to those tickets with the greatest fundraising potential – tickets to the Warriors post-season games – non-profits are nearly entirely left out.

The 802 forms show that, of the 1,001 reported[2] county tickets to regular-season Warriors games, 304 or 30.4% were distributed by the supervisors to non-profits.[3]

[2] The figures in this section were derived from the posted 802 forms for the county and the JPA. As discussed below, both agencies had a serious problem with unreported tickets. While the Arena luxury suites controlled by the county and the JPA each seat 20 patrons, it was often the case that the posted 802 forms accounted for far fewer tickets. In the period the Grand Jury examined, from January 1, 2016, through June 12, 2017, there were 91 Warriors games, so potentially 1,820 tickets (91 times 20) for each luxury suite were available for distribution. The county reported on only 1,408, and the Authority on 1,385.

[3] This figure also includes tickets given to reward students. One of the five supervisors was responsible for nearly two-thirds of the giveaways to non-profits and students – 194 out of the 304 regular season Warriors tickets.

For the Warriors tickets to playoffs and finals games, the numbers diminish to practically nothing: only 10 tickets out of 407 (2.5%) went to non-profit CBOs. For Raiders games, community groups received just nine out of 125, or 7.2%. The JPA tickets were even less likely to be offered to deserving community groups. Out of 993 Warriors regular-season tickets, only 28 or 2.8% were given to non-profit organizations. Community groups received no JPA tickets for Warriors post-season games, and none for Oakland Raiders games.

While it is all well and good to espouse a goal of helping worthy groups, the Grand Jury finds that there are no processes in place to make sure it actually happens. Both agencies must develop specific procedures for soliciting and handling ticket requests from CBOs, and must establish and enforce rules for appropriate allocation of tickets to those groups. The excuse we heard that it is impossible to give tickets for playoffs and finals to community groups because it is not known far enough in advance whether a team will make it into the post-season strikes us as disingenuous. The agencies could easily establish a CBO distribution program at the beginning of the season with playoff tickets in mind.

Providing Warriors and Raiders tickets to non-profit CBOs is a valuable use of county resources. To the extent that these tickets are used to raise funds, they fulfill an important public purpose. In that light, an increase in the distribution of these valuable post season tickets would strengthen the claim that a valuable public purpose is being achieved through the county's ticket policy. The Grand Jury recommends that both the county and the JPA adopt new procedures for tracking how non-profits use the tickets. At present it is not possible to measure the extent to which tickets have actually served to generate revenue for CBOs because there is no reporting mechanism. A new procedure requiring organizations that receive tickets to report their fundraising results would provide a means for the county and the JPA to measure the value of their respective ticket distribution policies.

Formal or substantive policy compliance?

A substantial number of Warriors and Raiders tickets were used by county officials themselves, their family members, and their immediate staff. Over the 19-month period covered by this investigation, reporting documents indicate that 22% of all Warriors tickets and 29% of all Raiders tickets were used by three of the county's five supervisors and approximately a dozen of their employees. Use of tickets by supervisors increases dramatically for post-season games.

During the regular season, supervisors and their staff used 16.3% of the 1001 reported tickets, while using 35% of 407 playoff and finals tickets. One or more supervisors or their staff members attended every single one of the 29 Warriors playoff and finals home games during the 2016 and 2017 post-seasons. Ticket use for Oakland Raiders games at the Coliseum follows a similar pattern to that of Warriors ticket use. One or more supervisors or their staff members attended each of the eight Raiders games, using 36% of the 89 reported tickets.

The JPA tickets were even more heavily used by officials and their employees. JPA officials filed Form 802s for 1,385 tickets to Warriors 2016 and 2017 games during the 19 months we examined. According to the forms, the officials themselves and their employees used 74.1% of those tickets – 71.2% of 993 regular game tickets and 80.8% of 392 tickets to post-season games. JPA officials and staff also used 72% of the reported 124 tickets to Raiders games in that period.

In addition to distributing tickets to themselves and their immediate staff, the 802s reveal that the supervisors distributed hundreds of sets of tickets to individuals identified only by first and last names; the relationship of these individuals to the county could not be determined by the Grand Jury.[4] The individuals in this category received a total of 508 (36%) of the reported tickets to Warriors games during the 19 months under review, and 32 (also 36%) of Raiders tickets. (The JPA did not provide tickets to unidentified individuals with the same frequency; only 82 Warriors tickets were passed out to those who were neither a JPA official nor a staff member.)

The Grand Jury asked whether the public is actually being served when officials, their associates, family, and staff members use free Warriors and Raiders tickets to attend games. The 802 forms filed when the officials themselves attend games nearly always indicate that the tickets are used to exercise some form of oversight of the Arena or Coliseum – to investigate efficiencies, enhance job creation, promote business, and the like. Oftentimes the same officials attend multiple games in a series, and use multiple tickets per game, purportedly for the purpose of overseeing or inspecting the facilities. (JPA officials, e.g., noted on their 802 forms that they used 714 Warriors and 92 Raiders tickets for this oversight purpose.)

[4] These individuals do not appear to be community volunteers, as the purpose of "rewarding a community volunteer" is used on other 802 forms when tickets were given to individuals and not community groups. Neither are they apparently employees of the county or the JPA, as separate purposes reported on the 802 forms are to "reward" or "incentivize" employees.

When officials distribute tickets to their staffs or their non-county-affiliated associates, the public purpose almost invariably reported on their 802s is "to promote attendance . . . in order to maximize potential revenue. . . ."

Providing oversight is an FPPC-approved public purpose under the ticket distribution policies of both the county and the JPA, and by reporting these purposes on their 802 forms officials who used the tickets have complied with those policies, and are relieved from the obligation of reporting the value of the tickets as gifts on their annual form 700 Statements of Economic Interests. But is that compliance real? Does it have substance in the sense of actually performing or achieving the purported purposes? Is it necessary to have multiple officials attending the same games and repeating the experience multiple times, while bringing along several additional people to assist, in order to inspect the Coliseum and Arena? Is it plausible that they are actually inspecting the building rather than simply enjoying the game?

Written inspection reports have never been prepared by officials attending events, and seldom do officials even make oral reports about facility conditions.

The Grand Jury thinks otherwise. If real inspections were conducted, one would expect some reporting of findings and recommendations, but multiple witnesses told us that written inspection reports have never been prepared by officials attending events, and that seldom do officials even make oral reports about facility conditions. It appears to us that the 802 process is mostly being used as a convenient cover for personal attendance at exciting sporting events.

The Grand Jury recognizes that two officials who receive JPA tickets, the JPA executive director and the Alameda County administrator, have job responsibilities that include oversight of facilities; thus, their attendance at Warriors and Raiders games serves a genuine public purpose. (The Grand Jury learned that the county administrator uses her personal season tickets, rather than the free JPA tickets, for this purpose.)

The public purpose indicated on 802s for the hundreds of tickets distributed to staff of the supervisors and JPA officials and individuals who are associates of the officials – promoting attendance – also lacks substance. How does attendance in the county or JPA luxury suite by John and Jane Doe promote attendance at events that are already consistently sold out – in the Warriors case for over 200 consecutive games? The obvious answer is that it does not. Again,

officials who distribute those tickets to others for "promoting attendance" have formally complied with FPPC rules but those using the tickets have not served any actual public purpose.

Possible Tax Consequence of Free Tickets

In 1980, the Internal Revenue Service issued two private rulings, finding that elected and appointed officials in the district where a stadium is located must report as taxable income the value of tickets received from the professional sports team occupying the stadium, even where the official does not use the tickets himself but gives them away.[5] If certain conditions specified by the IRS are met, however, free tickets could be found to be a non-taxable "working condition fringe benefit."

If the public purposes are not legitimate, use of the tickets by officials for those purported reasons might negate the potential working condition fringe benefit exclusion, and instead create a tax liability.

Although the Grand Jury is not qualified to determine whether the Arena and Coliseum tickets qualify as taxable income to the county employees and other officials who use them, we are concerned that writing "to inspect the facilities" or "to promote attendance" on 802 forms constitutes little more than pro-forma box checking. If the public purposes are not legitimate, use of the tickets by officials for those purported reasons might negate the potential working condition fringe benefit exclusion and, instead, create an income tax liability. Therefore, to the extent they have not already done so, we urge the county and the JPA to assure that tickets have been handled appropriately under the relevant IRS provisions. Failure to withhold taxes for taxable fringe benefits could subject those agencies to substantial fines and penalties.

*Are the **County's** Ticket Distribution Practices Fair and Equitable?*

Tickets go to the same employees time and again

One of the authorized public purposes for distributing the county's tickets to Arena and Coliseum events is to "[t]o reward a county employee for his or her exemplary service to the public or to encourage staff development." The 802 forms for the 19 months we investigated list this purpose 166 times for sets of county tickets to Coliseum and Arena events. But the rewards are not being

[5] See IRS Private Letter Ruling Nos. 8109003 and 8109004, filed October 31, 1980.

spread out evenly throughout the county. More than two-thirds of the times, the employees who are being rewarded are the staff members of the officials responsible for distributing the tickets.

The Grand Jury learned there is no program or mechanism in the county for the average employee to request and receive free tickets. This differs from a worthy system initiated by the Oakland city administrator's office, whereby the office accepts nominations from all city departments for staff members who deserve tickets as a reward for service, and then distributes tickets down the list in an orderly fashion. The Grand Jury strongly recommends that such a system be adopted for all tickets in the county's suite as well as tickets received by county officials for the JPA's suite.

A similar case can be made regarding another public purpose served by the county's ticket distribution policy: "To reward a community volunteer for his or her service to the public." During the period we reviewed, some 245 tickets were awarded to volunteers which, in our opinion, does further a valuable public purpose. As far as the Grand Jury is aware, however, as with the distribution to employees, there is no established system for the equitable distribution of tickets to the most worthy volunteers. A publicized system where volunteers could apply for or be nominated to receive tickets would enhance the public purpose already being served by the county's ticket distribution policy. The distribution of tickets to non-profits for fund-raising purposes could also benefit from a process where all Alameda County non-profits had an opportunity to apply for this valuable resource, with awards going to the organizations with the most compelling proposals.

Rewards are not being spread out evenly throughout the county. More than two-thirds of the times, the employees who are being rewarded are the staff members of the officials responsible for distributing the tickets.

Expensive and much-coveted tickets go unreported

While it is reasonable that some of the less-popular events at the Arena and Coliseum might not attract enough interested patrons to fill all of the county's and JPA's luxury box seats, that should not be the case for sold-out events like the Warriors playoffs and finals. In fact, we heard testimony from several people that it was "uncommon" to have unused basketball, football and

big concert tickets. Nevertheless, based on the posted 802 forms, this apparently occurred for more than half the post-season Warriors home games in 2016:[6]

Date	Agency	Event	Reported Ticket Value	Reported Number	Unreported Number
04/16/16	JPA	Warriors Playoffs	$5,000.00	16	4
04/18/16	JPA	Warriors Playoffs	$5,000.00	16	4
04/27/16	County	Warriors Playoffs	$5,000.00	14	6
04/27/16	JPA	Warriors Playoffs	$5,000.00	14	6
05/01/16	JPA	Warriors Playoffs	$5,000.00	14	6
05/03/16	JPA	Warriors Playoffs	$5,000.00	16	4
05/11/16	County	Warriors Playoffs	$5,000.00	16	4
05/11/16	JPA	Warriors Playoffs	$5,000.00	14	6
05/16/16	JPA	Warriors Playoffs	$5,000.00	16	4
05/18/16	County	Warriors Playoffs	$5,000.00	16	4
05/18/16	JPA	Warriors Playoffs	$5,000.00	16	4
05/30/16	County	Warriors Playoffs	$5,000.00	16	4
05/30/16	JPA	Warriors Playoffs	$5,000.00	16	4
06/02/16	County	Warriors Finals	$10,000.00	8	12
06/02/16	JPA	Warriors Finals	$10,000.00	18	2
06/05/16	County	Warriors Finals	$10,000.00	12	8
06/05/16	JPA	Warriors Finals	$10,000.00	14	6
06/13/16	County	Warriors Finals	$10,000.00	11	9
06/13/16	JPA	Warriors Finals	$10,000.00	16	4
06/19/16	JPA	Warriors Finals	$10,000.00	14	6

If the tickets were actually used, but not reported on a Form 802, then the FPPC rules have not been followed. If the unreported tickets were not used, then a valuable resource has gone to waste. While the county and the JPA are not allowed to sell unused tickets, the tickets could have been given to non-profit organizations to be auctioned off at market value, which was very high.

[6] Tickets also went unreported in the 2017 post season, but not to the same extent. Moreover, the numbers were complicated by the fact that one supervisor submitted reports for what appear to be post season games based on the reported ticket values, but failed to fill in the date.

This problem is not limited to the Warriors playoff games. The Grand Jury learned that fully 94 of the events with individual ticket prices of more than $100 in the period we examined had under-reported ticket numbers for the county luxury suites, with similar unreported numbers for JPA seats.

We also learned that no one at the county or the JPA keeps track of whether the 802 forms that are filed match up with the number of tickets received. We were told that maintaining such a database would be very difficult given the limited employee time that could be devoted to the task.

It is worth noting that, midway through the 2017 Warriors playoffs, the ticket values for playoffs and finals tickets reported on the 802 forms dropped to $312.50.

Some members of the JPA's Board of Commissioners are abusing the free ticket policy

Of the four non-elected members on the JPA board, the 802 forms showed that all but one used the tickets themselves and shared almost none with others. During the period we examined, the 802 forms showed that one commissioner used 289 sets of tickets (760 total tickets) and never gave a single pair away; another commissioner used 110 sets personally (318 total tickets), giving away only three pairs (one to a fellow commissioner); and a third commissioner used 102 sets (230 total tickets) and gave away none. (The fourth non-elected director went to four Warriors playoff games in 2017, but otherwise did not use tickets or distribute them to others.)

Although none of these three non-elected board members works directly for the county or city – indeed, all are unpaid volunteers – they are engaged in the business of administering a county and city asset. The Grand Jury believes these individuals are taking advantage of a loose and poorly-written policy to reward themselves, rather than share the largesse with other deserving members of the community.

Transparency in the form 802 reporting process

FPPC Regulation 18944.1 requires public agencies that distribute tickets to post the 802 forms, or a summary of them, on their websites. Presumably, this provision was added so that there might be transparency regarding the use of public resources. Unfortunately, the Grand Jury

discovered that the transparency goal was undermined by the careless and perfunctory manner with which some of the forms were prepared.

Many forms did not include the date of the event; some contained what was obviously an incorrect date; some omitted the number of tickets distributed to the identified recipient; and others incorrectly identified the kind of event, such as identifying a Warriors games on a date where the team did not play, but the Arena was instead used for a concert. For these forms, the Grand Jury made educated assumptions in order to re-categorize the data.

The Grand Jury discovered that the transparency goal was undermined by the careless and perfunctory manner with which some of the forms were prepared.

Other reporting errors could not be fixed. In three instances, there were no county 802 forms for Warriors games that were on the official schedule, and for which the JPA had filed forms for its luxury suite tickets. (These were games on November 9, 2016, December 12, 2016, and March 18, 2017.) Similarly, the JPA did not file any 802s for a Warriors game on January 11, 2016, which was on the Complex schedule and for which the county posted forms. It is difficult to believe that these four luxury suites were actually unoccupied at those games, so who used them?

Another serious reporting error involved a county official who was listed as the recipient of 140 JPA tickets to Warriors and Raiders games during the 19 months under Grand Jury review. The Grand Jury learned that these tickets were actually distributed to others, and were never used personally by the official; the mistake resulted from a staff training error.

Finally, some of the forms did not identify a public purpose for the recipient having used the tickets. This omission goes to the very essence of why this reporting system was created.

These examples of inaccurate reporting on filed 802 forms illustrate the lack of serious attention being paid by county and JPA officials to fulfilling their obligation for transparency in the distribution of Coliseum and Arena event tickets.

Other jurisdictions have much better policies and controls for ticket distribution

The Grand Jury obtained copies of the tickets policies for three other California cities that own stadiums leased to professional athletic teams: Los Angeles, Sacramento and San Diego. The Los

Angeles policy appears to have loopholes similar to those in the Alameda County policy, but the Sacramento and San Diego policies are much tighter.

Sacramento and San Diego each appoint a single ticket administrator, responsible for distributing all of the tickets that are retained by these cities as part of their contracts with the teams. City officials must request tickets from the ticket administrator.

Both cities establish priority lists for how ticket recipients are selected by the administrator. The Sacramento policy is the most specific: the ticket administrator must use best efforts to allocate tickets to community groups and tickets for economic development purposes. The policy limits the number of tickets for city employees and council members. Any city official who receives tickets is prohibited from transferring them to anyone other than a family member or one guest. (San Diego's policy has the same prohibition.)

CONCLUSION

The Grand Jury found a myriad of problems with the ways Alameda County and the Joint Powers Authority handle the free luxury suite tickets that they receive under the contracts with the teams occupying the Coliseum Complex. The problems fall into three categories: distribution practices, reporting practices, and uninvestigated potential tax liabilities.

Regarding ticket distribution, the Grand Jury discovered that tickets are repeatedly used by the same officials and employees, and not fairly distributed to other county workers, because there are no policies limiting the number of times individuals can use them, and no system in place to solicit applications from all eligible employees. The most valuable tickets are seldom given to community groups that could use them as important fundraising tools. There is no system in place to accept and rank ticket requests from community groups, resulting in unequal distribution to groups favored by the particular officials responsible for distributing them.

Regarding reporting, while the county and the JPA established ticket policies listing what sound like valid public purposes, in practice, the policies are relied upon as a cover for the same officials and employees to use the tickets over and over again to perform "inspections" that never result in written reports. Neither the county nor the JPA has an enforcement policy to ensure that the stated purposes are being fulfilled; indeed, neither has a system for making sure that all the tickets distributed are even reported. The Grand Jury also discovered that FPPC forms are

sometimes incorrectly prepared. They report the wrong dates, the wrong events, the wrong recipients, and the wrong ticket numbers (and sometimes omitting these items altogether), and occasionally leave off the alleged public purpose for which the tickets were distributed – the whole reason behind the creation of the reporting system.

Finally, the Grand Jury learned that neither the county nor the JPA has ever considered the potential income tax consequences of giving free tickets to elected officials and employees, relying on the fact that those who use them check off one of the approved public purposes on the 802 forms. But IRS rules about taxability of fringe benefits have no relationship to the requirements of a state political disclosure act. While an official can avoid having to disclose the tickets as gifts on a state form by checking off a box that says they were used to "exercise oversight" during an NBA playoff game, the IRS has far more stringent requirements about the business purposes for which tickets are used in order to make them non-taxable.

Although the Warriors and the Raiders will be leaving Oakland over the next few years, they will each spend at least one more full season at the Coliseum Complex. And, even after they depart, the facilities will be used for other events. Thus, it remains essential that the ticket distribution policies and practices of the county and the JPA be improved so that these valuable community resources are not squandered.

FINDINGS

Finding 18-13: The ticket policies of Alameda County and the Oakland-Alameda County Coliseum Authority allow elected and appointed officials and their staff members to attend multiple high-value events for the purpose of "inspecting," "reviewing, or "evaluating" the facilities when no reports are ever generated after the events about the conditions observed.

Finding 18-14: Free tickets often are used as a perk of office or employment rather than a public asset to be managed and utilized for a public purpose as required by law.

Finding 18-15: Some 802 forms are carelessly prepared, and omit or erroneously report important information such as dates of events, number of tickets distributed, the name of the event, the identity of the actual recipient, or the public purpose for which the tickets were used, undermining the goal of transparency required by FPPC regulation 18944.1.

Finding 18-16: The 802 forms often do not account for all of the tickets to Arena and Coliseum events in the Alameda County and the Oakland-Alameda County Coliseum Authority's luxury suites, indicating either that valuable resources have been wasted, or the tickets were used but not accounted for. No one is responsible for ensuring that all tickets to all events have been correctly and accurately reported.

Finding 18-17: The ticket policies of Alameda County and the Oakland-Alameda County Coliseum Authority list reasons for attending events that are vague and lack credibility.

Finding 18-18: The ticket policies of Alameda County and the Oakland-Alameda County Coliseum Authority do not contain limitations on the number of tickets that can be used by officials and employees, allowing tickets to be used by the same individuals over and over again.

Finding 18-19: Alameda County and the Oakland-Alameda County Coliseum Authority have no defined procedures and practices for offering tickets to worthy community organizations and individuals, or county employees other than those working directly for the officials who distribute them. Distribution practices vary from office to office.

Finding 18-20: Although Alameda County and the Oakland-Alameda Coliseum Authority claim an important public purpose for the tickets is to give them to worthy community-based organizations for use as fundraisers, the 802 forms show that high-value tickets with the biggest fundraising potential are seldom distributed to non-profits or schools, especially the most valuable playoff tickets.

Finding 18-21: Alameda County has insufficiently analyzed whether its distribution of free tickets to elected officials and county employees meets the IRS criteria for exclusion from taxable income, putting the county at risk of sanctions for improper withholding.

RECOMMENDATIONS

Recommendation 18-15: Alameda County and the Oakland-Alameda County Coliseum Authority must revise their respective ticket policies to:

- Establish central ticket distribution systems that accept applications or nominations from all interested employees and worthy community groups who would like to receive tickets, and a policy that distributes the tickets fairly among those individuals and groups.
- Limit appropriately the number of tickets officials and employees can use to attend events in one season.
- Require that officials and employees who use tickets for purposes relating to inspection or oversight of the facilities submit written reports of their findings.
- Track the fundraising results when tickets are given to community-based organizations for that purpose.
- Otherwise conform their policies, where applicable, to the recommendations of the Oakland Public Ethics Commission in its April 2017 report.

Recommendation 18-16: Alameda County and the Oakland-Alameda County Coliseum Authority must provide employees who prepare Fair Political Practices Commission 802 forms training on the proper way to fill out the forms, and on the need for accuracy, and must institute systems to ensure that all distributed tickets are reported on filed 802 forms.

Recommendation 18-17: Alameda County must determine whether the free tickets distributed to salaried officials and employees should be treated as taxable income, requiring appropriate tax withholdings.

RESPONSES REQUIRED

Alameda County Board of Supervisors
Findings 18-13 through 18-21
Recommendations 18-16 through 18-17

Oakland-Alameda County Coliseum Authority
Findings 18-13 through 18-20
Recommendations 18-15 and 18-16

Reset Page Print Form

Agency Report of:
Ceremonial Role Events and Ticket/Pass Distributions

A Public Document

1. Agency Name

Division, Department, or Region *(if applicable)*

Designated Agency Contact *(Name, Title)*

Area Code/Phone Number | E-mail

Date Stamp

California Form **802**

For Official Use Only

☐ Amendment *(Must Provide Explanation in Part 3.)*

Date of Original Filing: _____ *(month, day, year)*

2. Function or Event Information

Does the agency have a ticket policy? Yes ☐ No ☐ Face Value of Each Ticket/Pass $ _____

Event Description: _____ *Provide Title/ Explanation* Date(s) ___/___/___ ___/___/___

Ticket(s)/Pass(es) provided by agency? Yes ☐ No ☐ If no: _____ *Name of Source*

Was ticket distribution made at the behest of agency official? Yes ☐ No ☐ If yes: _____ *Official's Name (Last, First)*

3. Recipients

• Use Section A to identify the agency's department or unit. • Use Section B to identify an individual. • Use Section C to identify an outside organization.

A. Name of Agency, Department or Unit	Number of Ticket(s)/ Passes	Describe the public purpose made pursuant to the agency's policy

B. Name of Individual (Last, First)	Number of Ticket(s)/ Passes	Identify one of the following:
		Ceremonial Role ☐ Other ☐ Income ☐ *If checking "Ceremonial Role" or "Other" describe below:*
		Ceremonial Role ☐ Other ☐ Income ☐ *If checking "Ceremonial Role" or "Other" describe below:*

C. Name of Outside Organization (include address and description)	Number of Ticket(s)/ Passes	Describe the public purpose made pursuant to the agency's policy

4. Verification

I have read and understand FPPC Regulations 18944.1 and 18942. I have verified that the distribution set forth above, is in accordance with the requirements.

Signature of Agency Head or Designee | Print Name | Title | *(month, day, year)*

Comment: _____

FPPC Form 802 (2/2016)
FPPC Toll-Free Helpline: 866/ASK-FPPC (866/275-3772)

EXHIBIT A

AFFORDABLE HOUSING OVERSIGHT IN OAKLAND

EXECUTIVE SUMMARY

Last August, a concerned Oakland resident called the Grand Jury's attention to a particular sentence in a recent newspaper article. It stated that "Oakland has loaned a total of $4.1 million to the E.C. Reems Apartments owners and received no repayments. . . ." The Grand Jury was also intrigued by the statement – how do you avoid repaying a loan? The article also described the deplorable conditions of the complex and management's apparent abandonment of the project. The Grand Jury decided to investigate.

The city of Oakland plays an integral role in fostering local affordable housing projects by administering state and federal loans or grants. Developers receive soft loans that in effect become grants in exchange for covenants that keep rents affordable for low-income residents. Currently, the city is a party to regulatory agreements and loans related to over 100 housing projects in Oakland. When the projects are managed appropriately by the owners of the property, low-income residents benefit greatly. But when management and oversight goes wrong, in situations like the E.C. Reems Apartments, residents live in substandard conditions for years.

Affordable housing financing is structured as a loan, even when there is no realistic expectation that the "loan" will ever be repaid. This mechanism gives the city the authority and the obligation to exercise legal and financial oversight and governance over the housing projects.

The Grand Jury learned through its investigation why affordable housing financing is structured as a loan, even when there is no realistic expectation that the "loan" will ever be repaid. This mechanism gives the city the authority and the obligation to exercise legal and financial oversight and governance over the housing projects.

While the city has legal authority to take some action when property owners in effect abandon management of the projects, the regulatory agreements that supposedly empower the city with oversight authority actually can discourage city intervention because of the complicated web of state and federal financial participation. On top of this, shrinking local resources have resulted in inadequate staffing, poor training, and outdated technology systems that have prevented

effective local oversight of these public investments. This makes it even more important that the city use best practices in selecting qualified affordable housing developers.

Oakland, like most other communities in California, faces a severe affordable housing crisis. It is not enough simply to finance projects. Oakland needs to improve its selection process for developers and its oversight practices for managing properties.

BACKGROUND

The city of Oakland coordinates efforts to support local affordable housing through its Housing and Community Development Department. While the projects and support for the programs were more robust during the era of redevelopment agencies, the city still invests millions of dollars a year in helping developers, mostly non-profit, rehabilitate and, in some circumstances, construct affordable housing projects. Some of that money has been replaced by a $100-million bond the city floated to support such programs. Since 1988, the city boasts that it has helped build over 6,000 units of affordable housing. In return for loaning these developers money, the city puts deed restrictions on the properties for the term of the loans.

Loans for rental projects are typically provided at a low interest rate for up to 55 years. In exchange for the city's loan, the property's rents are restricted to remain affordable to lower income households. The agreement is legally described as a loan, but it is more practically treated as a grant. Loan payments are received by the city if the project has sufficient cash flow, although that rarely happens. The city is really providing the funds for restricted rents in return for these "soft loans." Although the property's deed of trust may be designated as security, these soft loans usually are subordinate to other lenders' loans, most often state or federal.

Loan payments are received by the city if the project has sufficient cash flow, although that rarely happens. The city is really providing the funds for restricted rents in return for these "soft loans."

The regulatory agreements become the city's most significant enforcement tool to ensure that the properties are livable and that the specified percentage of housing units is deemed affordable. To guarantee compliance, best practices require that, at a minimum, each property be inspected annually.

A decade ago, Oakland Community Housing, a major manager of public housing projects, ceased operations and abandoned 25 affordable housing projects with 638 units spread throughout the city. The city had invested $24 million in those projects, many of which had fallen into severe disrepair with residents living in deplorable conditions. The city was left trying to find new property owners. (*See Grand Jury report of 2011-2012, p. 135*.) In many of the projects, the California Housing Finance Agency, which provided additional funding to Oakland Community Housing, refused to foreclose because it did not want the liabilities associated with receivership – violence, lack of security, lack of maintenance, and responsibility to relocate renters during building repairs. That year, the Grand Jury criticized the city for failing to protect its $24 million investment by not adequately monitoring the various properties and failing to take action when the properties fell into disrepair.

At the time, the city promised to take steps to train staff and improve the oversight process. In 2012, the city claimed that its employees visited each property in the city's inventory, and did onsite audits of 15% of the individual housing units at those facilities to ensure the units were in livable condition and that income levels of renters were consistent with regulatory agreements. That commitment has now disappeared.

INVESTIGATION

The Grand Jury reviewed city staff reports and loan documents concerning E.C. Reems Apartments and other affordable housing projects, and heard testimony from current and former Oakland employees involved with affordable housing.

Originally built in 1948 as market-rate housing, a privately-owned apartment complex near Golf Links Road and MacArthur Boulevard in Oakland had devolved by the 1980s and 1990s into a haven for drug traffic and violence. In 1995, the bank that held the mortgage on the property foreclosed on the owners. The city helped a Southern California non-profit, Corporation for Better Housing (CBH), acquire the property and convert it into 126 units of affordable apartments, where it became known as E.C. Reems Apartments (named after a well-known Oakland pastor, whose family acquired a 1% interest in the project).

Oakland loaned CBH $2 million in 1996 to acquire and renovate the buildings with funds it received from three federal and state affordable housing programs. The Grand Jury learned that the terms of this loan are typical of those made to finance the development of affordable housing

throughout the country. Unless there is an annual positive cash flow (which as a practical matter, is very unlikely), payments of principal and interest are deferred until the earliest of (1) 30 years, (2) the date the property is sold or refinanced, or (3) in the event of a default by CBH that has not been cured.

The loan agreement set forth a variety of requirements specifying what CBH would accomplish during the renovations and what it was required to do regarding occupancy by income-qualified families and management of the property after construction was completed. This financing arrangement is a typical way for public agencies to support this sort of housing.

If a grant was made directly, then the public agency would lose its ongoing ownership position in the lien and thereby lose any power to correct for mismanagement or failure by the developer to be in compliance with its contractual obligation. By maintaining a lender position, the public agency can exercise its right to foreclose and reassign ownership to a more responsible party.

Over the next five years Oakland increased the loan amount three times, resulting in a principal balance of $2,939,500 as of March 20, 2001. Oakland's loan, however, was subordinate to a multi-million dollar acquisition loan to CBH insured by the Department of Housing and Urban Development (HUD), which complicated and diluted Oakland's ability to enforce the covenants set forth in its loan agreement.

Building conditions quickly deteriorated and crime resumed. There were frequent turnovers in on-site property management. CBH claimed that cash flow problems prevented it from doing both routine and extraordinary maintenance, resulting in multiple complaints by tenants regarding mold, broken stairs, poor lighting, damaged mailboxes, and more. At one point a city crew had to make emergency repairs to the complex in order to stop raw sewage from contaminating a nearby creek. Despite a well-publicized affordable housing crisis in Oakland, a substantial number of the units remained unoccupied. Over the years, Oakland tried to make CBH comply with its obligations by sending many default letters and meeting with CBH and HUD officials multiple times, all with little result.

Eventually, by the spring of 2017, HUD was threatening to foreclose on its senior loan and put the complex on the open market. In order to prevent its secondary lien from being erased and to preserve the property, bad as it was, for occupancy by low-income tenants, Oakland's city council

voted in July 2017 to purchase HUD's mortgage for approximately $3.6 million. By that time, principal plus accrued interest on the city's loan had reached approximately $4.2 million.

Thereafter, the city issued a Request for Proposals (RFP) for a new owner/developer/property manager to take over the project from CBH, and to assume the outstanding loans. The city received two responses. The proposals were evaluated by Oakland's Housing and Community Development staff and by a three-person panel consisting of two former employees plus an industry expert. The outside panelists asked the city for financial information regarding the two companies submitting proposals, but it was not provided to them, although it apparently was available for at least one of the two proposers. The panel accordingly made its recommendation without sufficiently evaluating the finances of the two competing bidders.

One of the two proposals was to tear down the existing structures and rebuild; the other was to rehab the apartments within 12 months and operate the complex with new management. According to the staff report presented to city council, the evaluators selected the developer that proposed rehab rather than tear-down. The evaluators touted the developer's willingness to self-finance (although without knowing whether the developer had the financial wherewithal to do so), and its successful renovation of two failed Oakland Community Housing projects in East Oakland (77 units) after obtaining them from the state for $10,000. The city council approved the loan assignment to the developer on November 21, 2017.

Although the Grand Jury shares the city's hope that the new developer will turn the E.C. Reems Apartments around, we remain concerned that adequate policies, structures and staff are not in place to ensure that the new company complies with its contractual obligations. We learned that, for the last several years, the city had only one employee with an inadequate housing inspection background to oversee approximately 100 affordable housing projects on a part-time basis. While the Grand Jury learned that the city recently hired a staff member with building inspection experience, it has been years since the city has been able to complete annual inspections and audits of all of its properties.

Housing and Community Development records are maintained on spreadsheets that only contain a limited amount of information rather than on project-tracking software that allows for complete reporting and monitoring.

Moreover the city has not invested in an appropriate database system for managing its affordable housing inventory. The Grand Jury heard that the department's records are maintained on

spreadsheets that only contain a limited amount of information rather than on project-tracking software that allows for complete reporting and monitoring. If one coordinator leaves, the next may not have an accurate record of the project status if the first was not a good record-keeper.

CONCLUSION

Cities and counties play an essential role in helping to administer and oversee significant public investments in affordable housing. In Oakland, both the voters and city leaders have been committed to providing such investments for decades. Most recently, voters approved $100 million in bonds for affordable housing construction. The city of Oakland is distributing the funds in the form of loans but it is important for voters to understand that these are loans that most likely will never be repaid. Over the past 25 years, the city has provided private developers, including non-profit organizations, with these soft loans to build or refurbish thousands of rental units in over 100 affordable housing projects. In exchange, the developers were contractually obligated to keep the projects both habitable and available to low-income residents for decades.

Despite some success stories related to building such projects, the city has a poor history of ensuring that failing housing project owners and managers are held accountable when residents are living in substandard conditions. Decades of mismanagement at the E.C. Reems Apartments have exposed the city's failure to invest in proper oversight and enforcement of developer covenants. Lack of proper staffing, failure to inspect and audit each project annually, antiquated record-keeping systems and insufficient vetting of developers can only invite more failures like those that occurred at E.C. Reems and Oakland Community Housing before it. At a time when affordable housing is so essential, the city must make a more serious commitment to both protect this significant public investment and the vulnerable residents that these programs are supposed to support.

FINDINGS

Finding 18-22: Loans from the city of Oakland for affordable housing rental projects are typically provided for a term of up to fifty-five years and, in exchange, rents are restricted for that same period, making the rents affordable to lower-income households. No repayment is expected until the end of the loan period or upon transfer of the property, giving the public the perception that these transactions are grants of public money rather than traditional loans.

Finding 18-23: Oakland's Housing and Community Development Department has failed to inspect and audit all of its affordable housing stock annually, putting lower-income households renting at projects like E.C. Reems at risk of living in substandard conditions.

Finding 18-24: The Housing and Community Development Department's failure either to provide building inspection training for staff or partner with Oakland's Building Services Department to inspect its affordable-housing stock inhibits the agency's ability to respond to tenant complaints and protect the residents properly.

Finding 18-25: The Housing and Community Development Department's use of outdated technology to catalogue and manage data regarding the city of Oakland's affordable-housing stock prevents consistent oversight of those projects, putting public funds at risk.

Finding 18-26: Failure to maintain consistent policies related to the selection process for affordable housing developers, especially in the area of financial strength of applicants, invites project management failures like the one that took place at the E.C. Reems Apartments.

RECOMMENDATIONS

Recommendation 18-18: The Oakland Housing and Community Development Department must hire and train staff capable of properly inspecting and auditing all of Oakland's affordable-housing stock annually.

Recommendation 18-19: The Oakland Housing and Community Development Department must acquire a technology solution to help staff catalogue inspection, audit and other affordable-housing oversight data.

Recommendation 18-20: The Oakland Housing and Community Development Department must update policies surrounding the process for selecting affordable-housing developers to ensure that developer applicants provide sufficient information to city decision-makers about their financial capacity to build and manage these projects over the long-term.

RESPONSES REQUIRED

Oakland City Council
Findings 18-22 through 18-26
Recommendations 18-18 through 18-20

Mayor, City of Oakland
Findings 18-22 through 18-26
Recommendations 18-18 through 18-20

ALAMEDA HEALTH SYSTEM: CONTRACTS, COMPENSATION, AND CARE

EXECUTIVE SUMMARY

Over the past century the Alameda Health System (AHS) has evolved into an essential part of the health care fabric of Alameda County. Beginning as Highland Hospital, the effort initially was to become one of the principle providers of specialty care in the East Bay. Currently, Highland and the other facilities within the AHS umbrella provide a full range of medical services to county residents. AHS came to the attention of the Grand Jury in past years and was the subject of a Grand Jury report in 2014-2015 regarding governance and finances. This year's Grand Jury recognizes that efforts have been made to make improvements and that progress has been achieved.

The current Grand Jury received a citizen complaint regarding the management of physician contracts by AHS. The jury investigated this complaint and found that the old contract ending in 2016 did have significant problems, but that important changes have been made in the processes leading to the current contract. Nonetheless, some issues remain as to how AHS is structured and performs in its role of overseeing physician contracts, the levels of compensation for these services, the use of public resources for direct support of the medical group, and the governance and management of federal, state and private foundation contracts and grants.

BACKGROUND

The Alameda Health System was created in March of 2013 and is an organizational outgrowth of the Alameda County Medical Center. It is an integrated public-health delivery system, operating over 800 beds across nine major facilities in the county of Alameda, and providing a variety of service from ambulatory primary care, specialty care, and behavioral health care. Institutions in the system range from community health centers to Highland Hospital.

While AHS maintains its independence as a public organizational entity of the public hospital authority, it is linked to Alameda County in three important ways. First, the Alameda County Board of Supervisors appoints the eleven trustees of the AHS board. There are corresponding

reporting obligations from AHS back to the board of supervisors. Second, while the county no longer directly subsidizes AHS in its financial operation, it indirectly provides financial support by giving AHS a line of credit from the county treasury to back up its operations against periodic and at times significant cash flow issues. Finally, AHS is the service provider to residents of the county who have no other means to pay for care. The county pays for these services through HealthPAC.

AHS and its relationship to the county were the subjects of a Grand Jury investigation in 2014-2015, and were part of its final report. Many of the report's findings and recommendations are relevant to the investigation conducted this term and merit review here. The 2014-2015 Grand Jury found a general failure in the governance and communications relationship between the county and AHS. It also found that management systems for financial and operational oversight within AHS were inadequate. These two factors combined to create failures by AHS in the acquisition and management of San Leandro and Alameda Hospitals, both now part of the system. The Grand Jury made recommendations for more transparency, improved communication between the board of supervisors and AHS, and attention to performance metrics from Alameda County Health Care Services Agency.

A general complaint was filed with the current Grand Jury, claiming that the governance and management structure and operations of AHS physician contracts lacked transparency and were inadequate, leading to significant waste, fraud and abuse. We decided that several of the issues in the citizen complaint had merit and decided to pursue an investigation.

INVESTIGATION

The citizen complaint focused on five issues related to how Alameda Health System provides oversight for the contracted relationships it maintains with medical groups and individual physicians. The services provided include: clinical care of patients, medical governance, general medical administration, and medical education, particularly related to the graduate medical education provided for the residency training programs that are sponsored by the hospital. These contracts represent an annual expenditure in excess of $40 million dollars, and these physician services are fundamental to the overall quality of care received within AHS.

The general questions investigated were:

- Does AHS provide adequate governance and clinical, operational and financial oversight for contracted groups and physicians that provide care at AHS?
- Does AHS pay an excessive amount for the volume and quality of physician services it purchases from medical groups and individual physicians when compared to other systems?
- Has AHS inappropriately compensated groups or physicians for making diagnostic or treatment referrals to AHS?
- Has AHS inappropriately provided support, equipment, material or other services of value to contracted groups or physicians?
- Has AHS adequately managed contracts and grants that have been received by independent groups and physicians, but that are officially received and managed by AHS?

To pursue these questions the Grand Jury reviewed a number of sources of information, including over 800 documents related to the operational relationship between AHS and contracted groups and physicians, a past Grand Jury report related to AHS, and a comprehensive report on physician contracts at AHS conducted by an outside consulting firm. The jury also received testimony from individuals with direct knowledge of the governance and oversight process, both as managers and leaders.

During the review of the material and interviews with witnesses, it became apparent that past contracting problems and issues existed across many, if not most, of the relationships between AHS and groups and individual physicians; however, the dominant issue in terms of its overall size as a part of the entire physician practice at AHS was with one medical group: OakCare Medical Group, Inc. (OakCare). OakCare employs more than 50% of the physicians who provide medical care at AHS. Given the size and centrality of OakCare's role at AHS, the Grand Jury decided to limit its investigation to the contracting process and oversight associated with OakCare.

OakCare Medical Group employs more than 50% of the physicians who provide medical care at Alameda Health System.

OakCare is a private professional group owned by an independent physician board. The group was created in 1995 with a stated mission to provide medical services to Alameda County's public hospital system. The group provides physician coverage for general internal medicine, specialty

The OakCare contract with Alameda Health System ending in 2016 was in excess of $34 million annually.

medicine in cardiology, critical care (Intensive Care Unit), diabetes, geriatrics, hematology-oncology, obstetrics and gynecology services, emergency medicine and neonatology. The group also provides the medical administration and leadership for the units represented by these services, as well as more general medical leadership services to AHS. In addition, OakCare provides academic services for the educational programs associated with these clinical service lines. The contract ending in 2016 was in excess of $34 million annually. OakCare is deeply identified and affiliated with AHS, and a member of OakCare's board sits on the AHS board.

Other medical groups and individual physicians also contract to provide clinical services to AHS. In reviewing extensive documentation regarding these contracts, the Grand Jury found that the same problems regarding lack of transparency, communication, accountability, and responsiveness that were characteristic of AHS's relationship with OakCare also were evident in the other relationships.

Does AHS provide adequate governance, clinical, operational and financial oversight for contracted groups and physicians that provide care at AHS?

During its investigation, the Grand Jury found that there has often been a contentious, and, at times, uneasy relationship between AHS and OakCare. In previous contracts OakCare failed to:

- Provide a description of services provided by their physicians in support of AHS's service lines, after it was requested by AHS.
- Provide adequate justification for the volume of service actually provided on each service line, after it was requested by AHS.
- Provide adequate itemization for invoices for services after it was requested by AHS.
- Keep AHS informed about changes in staffing.
- Keep its own roster of physicians updated for AHS.

Many of these issues have been partially addressed in the current contract, but key problems still exist. The relationship between OakCare and AHS seems to be "one-way," with OakCare's power derived from its role of providing the majority of physician services and virtually all of the medical leadership at AHS. This dynamic is made even more difficult as OakCare is organized as

a private for-profit medical group. Most county hospitals and academic medical centers in California directly employ their medical staff and medical leadership.

Moreover, in the past, AHS has not had adequate systems for effective tracking and monitoring physician activity at the unit level and this has made it impossible for AHS to monitor whether or not contracted services were being provided appropriately.

In its investigation, the Grand Jury found that the latest contract between AHS and OakCare has much more detailed descriptions of the services to be provided, specifies accountabilities, and has enhanced the overall transparency. Also, the operational capacity within AHS for tracking and monitoring physician activity has been improved considerably. While this remains a work in progress, seemingly headed in the right direction, there is additional work that needs to be done in order for this obligation of good management to be met by AHS. This ongoing work must focus on governance and management oversight of the contract, the implementation of an integrated information system that can effectively monitor the provision of care called for in the contract, and more authority by AHS to enforce the contract.

The relationship between OakCare and Alameda Health System seems to be "one-way," with OakCare's power derived from its role of providing the majority of physician services and virtually all of the medical leadership at Alameda Health System.

Does AHS pay an excessive amount for the volume and quality of physician services it purchases from medical groups and individual physicians, when compared to other systems?

The concern about the level of compensation for physicians at AHS is driven by two things: the Affordable Care Act, and the county's half-cent sales tax that supports AHS. The Grand Jury heard testimony confirming that the Affordable Care Act had provided a more favorable financial environment for AHS and that the system was moving toward more financial "independence" from the county.

As the provider of care for the uninsured and medically indigent of the county, AHS continues to receive public funds directly and indirectly for this service. A half-cent of the county sales tax is dedicated to AHS and provides approximately $100 million annually to support AHS. Good stewardship of these funds is essential for AHS to be an accountable public institution. In addition, well over half of the insurance coverage for patients at AHS comes from Medicare or

MediCal. These programs require that provider organizations receive compensation for providing care at or near the fiftieth percentile when compared to similar compensation practices in the area.

The previous contract between OakCare and AHS was far too general to allow any conclusion about the compensation levels paid to OakCare physicians for their work. This is possible because OakCare is a private for-profit entity. The new contract has been evaluated by an outside physician compensation consulting firm, which concluded that "the contract is within the limits required by federal payers." While the Grand Jury welcomes this assurance, it does observe that while the level of work remains the same, the total amount of compensation in the contract went up by 5% over the last contract. A reasonable conclusion would be that the contract remains more generous than either good management or federal guidelines might allow.

To address this issue, witnesses indicated that it would be desirable to explore the possibility of purchasing physician services from alternative medical groups or providers. Included in these suggestions were the ideas to expand the existing in-house medical group, Alameda Health Partners; acquire OakCare and other independent medical groups and practices; or affiliate with other systems in the area.

Has AHS inappropriately compensated groups or physicians for making diagnostic or treatment referrals to AHS?

The relationship between health-providing organizations, such as hospitals, and physicians who make referrals to them for diagnostic and therapeutic services, is carefully controlled by federal and state law and regulation. One of the principal concerns of these laws is to prohibit organizations that provide care services from inappropriately incentivizing physicians and other professionals to order unnecessary and inappropriate services. The federal anti-kickback and Stark laws address these issues.

In its current investigation, the Grand Jury found no evidence indicating that financial arrangements between AHS and its affiliated physicians have violated the principles of inappropriate financial incentives to effect prescribing behaviors.

Has AHS inappropriately provided support, equipment, material or other services of value to contracted groups or physicians?

This issue concerns itself with the appropriate stewardship by AHS of public resources entrusted to its management. The leadership of AHS supervises an extensive staff of professionals and support personnel. They also manage many physical facilities and equipment. All of these are public resources and are intended to be used to support public purposes pursued by AHS. It is inappropriate for AHS to barter these resources for private gain or to align them in ways that contribute to private gain. The Grand Jury heard testimony that resource misuse occurred, such as giving office equipment to OakCare, providing free office space to OakCare to conduct business that benefits OakCare exclusively, and providing staff resources to carry out work that is the responsibility of OakCare.

Alameda Health System has not been as judicious as required in insuring that AHS resources do not inure to the benefit of OakCare.

The line between what benefits AHS and OakCare separately is difficult to draw and recognize. The Grand Jury concludes from its review of documents and interviews with witnesses that AHS has not been as judicious as required in insuring that AHS resources do not inure to the benefit of OakCare. There seems to be little recognition by staff and leaders that this is a real issue, few safeguards in policy or practice, and enough examples of questionable or clearly wrong practice to conclude that this is an issue to be addressed.

Has AHS adequately managed contracts and grants that have been received by independent groups and physician, but that are officially received and held by AHS?

An important part of professional practice and development for many physicians, particularly when they are affiliated with an academic or public health oriented institution such as AHS and its mission to serve the public and to advance education, is the pursuit of contracts and grants that advance this academic or public health work.

The principles for good practice of such activity should include:

- alignment of the work of the contract or grant with the mission of the host institution (in this case AHS),
- avoidance of conflict of interest between the lead professional's (in this case typically a member of OakCare) ethical obligations and the work carried out by the contract or grant,

- appropriate and publicly transparent compensation for the lead professional supervising the grant that does not conflict with his or her pre-existing duties and compensation,
- adequate and appropriate oversight by the host institution, such as AHS, of the contract or grant and the lead professional, even if that individual is not a direct employee of the host institution.

The Grand Jury received evidence that individual members of OakCare have secured private and public contracts and grants that are administered by and through AHS. The Grand Jury also received testimony from executive officers at AHS that this process has not been formal, transparent, or carried out in an intentional, consistent, and professional manner in accordance with the principles listed above.

CONCLUSION

The complaint brought to the Grand Jury the issue of the appropriateness of the contracts and the adequacy of oversight by AHS of its financial relationships through contract with medical groups and individual physicians. The Grand Jury focused its investigation on the largest of these contracts, the one with the OakCare Medical Group.

For the contract ending in 2016, the Grand Jury concluded that the contract was inadequate as to its specifications of performance standards, compensation, oversight, remedies, and evaluation elements. Moreover, it found that the nature of the relationship between AHS and OakCare was not characterized by open communication, responsiveness, or collaboration, all of which would be necessary to ensure the best level of patient care and the judicious use of resources. There is evidence that OakCare did not operate in a manner that ensured full compliance with the clinical service obligations set forth in the contract.

The Grand Jury found evidence that many of these issues have been partially addressed in the current contract; however, some of the concerns regarding lack of transparency and alignment remain. The Grand Jury concludes that the major contributor to this flawed dynamic is the outsized power that OakCare has in its relationship with AHS. OakCare provides the majority of physician services and virtually all of the physician leadership at AHS's Highland Hospital.

The Grand Jury also found evidence that contracts and grants were received by AHS for individuals who were members of OakCare, and that policies and practices for proper oversight and management of these grants were not in place or not followed in order to ensure proper

operation. Similarly, the Grand Jury found evidence that a proper understanding of the organizational boundary between AHS and OakCare is not well understood throughout AHS, nor is there a proper set of policies and practices in place and followed for ensuring that public resources are not used to benefit OakCare.

FINDINGS

Finding 18-27: The relationship between Alameda Health System and OakCare Medical Group has been characterized, in the past, as contentious and lacking in transparency. In large measure, this is a function of the outsized role that OakCare plays in the medical leadership and medical staff at Alameda Health System. While the contract and management processes have improved under the current contract, the ability to build a sustainable health system to serve the county is hampered by lack of alignment between the medical leadership and staff and the strategic directions of Alameda Health System.

Finding 18-28: Policies and procedures related to the use of public resources by management and leadership OakCare have been inadequately developed and followed. This includes use of public space, public equipment, and direct public budgetary expenditures for activity that supports the private medical group.

Finding 18-29: Policies and procedures related to the acquisition and management of contracts and grants received from federal and state agencies and private foundations by affiliated physicians who are members of OakCare Medical Group have been inadequately developed and followed.

RECOMMENDATIONS

Recommendation 18-21: Alameda Health System must continue to improve its contracting process with medical groups and independent physicians making sure that staffing requirements and performance standards are clearly established, complied with by the medical groups and individual physicians, and are transparent.

Recommendation 18-22: Alameda Health System must continue to improve its internal monitoring capacity to assess compliance and performance by all groups and physicians providing care in the system.

Recommendation 18-23: Alameda Health System must establish and enforce policies and procedures related to the use of public resources by private contractors.

Recommendation 18-24: Alameda Health System must establish and enforce policies and procedures related to the acquisition and management of private and public contracts and grants by affiliated physicians.

Recommendation 18-25: Alameda Health System should aggressively pursue the expansion of its medical staff and leadership along the employed medical staff model. This is the most effective way to fully align physician services, service lines and the public mission of Alameda Health System.

RESPONSES REQUIRED

Board of Trustees, Alameda Health System
Findings 18-27 through 18-29
Recommendations 18-21 through 18-25

OAKLAND'S AGING SEWER SYSTEM AND HOW IT AFFECTS LAKE TEMESCAL

EXECUTIVE SUMMARY

Lake Temescal has long been considered a jewel that sits above the Rockridge and Temescal neighborhoods. Historically, the lake has been a summer go-to spot. Parents, toddlers, teens and couples lie on the sandy beaches, swim in the water, and even enroll in lifeguard camp. But the Grand Jury has found that the lake has had recurring problems about which the public has not been adequately informed.

For the past four years the lake has been closed on and off – even the lifeguard camp has been shuttered. The stated reason has been toxic algae blooms, but the Grand Jury has found that the situation is far more complicated than just algae.

Sometimes referred to as the East Bay's "hidden gem," Lake Temescal receives approximately 200,000 visitors a year.

The Grand Jury received citizens' complaints that led it to investigate practices at the Sewer Services Division of the Oakland Public Works Department, East Bay Municipal Utilities District, and the East Bay Regional Park District. During the investigation the Grand Jury found that algae blooms at Lake Temescal were a serious problem. We learned that citizens were not being adequately notified about sewage spills at the lake. We also learned of issues concerning Oakland's use of private sewer contractors and the need for more mandated technical training certification for public works employees working on sewer crews.

Sewer and water systems across the nation are in need of massive repairs, and Oakland's are no different. Because Lake Temescal is an urban watershed – a catch basin for water and sewer run off – it is especially vulnerable to contamination. Fixing the water and sewer problems that affect the lake and Oakland overall will take decades and cost millions. But the Grand Jury has concluded that fixing communications problems that often keep the public in the dark about the true health of the lake would only take recognition of the problem and a coordinated staff plan to address it.

BACKGROUND

The Sewer Services Division of the Oakland Public Works Department (OPW) is responsible for performing preventive maintenance to over 930 miles of Oakland's sewer pipes, which range in size from six inches to over 66 inches in diameter. The sewer pipes are an integral part of the city's waste water collection system, a system that includes 31,000 structures and seven pump stations. Through this system, wastewater from homes and businesses throughout Oakland is conveyed to the East Bay Municipal Utilities District (EBMUD) treatment plant. EBMUD is then responsible for sanitary sewer effluent treatment and disposal.

Because Lake Temescal is an urban watershed – a catch basin for water and sewer run-off – it is especially vulnerable to contamination.

Property owners are responsible for the sewer laterals, the pipes connecting a home or business to the public sewer system or sewer mains. The city of Oakland is responsible for servicing and maintaining the sewer main pipes that carry waste to the EBMUD treatment plant. EBMUD's water bills have a sewer service charge to help fund capital repairs and maintenance of the system.

The sewer division's preventive maintenance consists of cleaning the pipes, periodic inspections by closed circuit television, and performing minor repairs. Sewer division staff make recommendations to city engineers for pipe rehabilitation projects, which may include replacing pipes. The sewer division employees also clear blockages and stop spills, which typically are caused by debris, oils and grease, and tree roots that have penetrated the sewer pipes. Most of the pipes are over 50 years old and made of clay, with some sections of the system over 100 years in age. These pipes are most vulnerable to leaks caused by tree roots.

Rainwater can leak into sewer pipes, especially during winter storms. Local sewer pipes were not intended to collect storm water, yet they do. During heavy storms, storm water can enter these underground pipes through overflows and cracks in the mostly clay pipes. This "infiltration and inflow" is a common occurrence in older sewer collection systems. Locally, it may even cause occasional releases of partially treated sewage into the Bay.

EBMUD began building large storage systems in the late 1980's, called wet-weather facilities, to prevent heavy storms from causing raw sewage overflows into the Bay. Simultaneously, Oakland

began repairing leaky sewer pipes to lower the amount of storm water entering the system and reduce the chances of sewage water and rain water mixing.

In 2009, the Environmental Protection Agency filed complaints in federal court against several local cities, including Oakland, and water districts, including EBMUD. These lawsuits alleged that Bay Area wet-weather facilities were no longer able to meet the tougher standards for wastewater treatment, particularly the one precluding discharge of partially treated sewage into San Francisco Bay.

Negotiations among federal and state regulators, the cities and water districts, as well as state and local environmental groups, resulted in a federal consent decree among all parties in June 2014. The settlement gave the cities and districts until 2036 to repair and replace their aging sewer infrastructure, reduce the amount of inflow and infiltration, and reduce discharges into San Francisco Bay during heavy storms.

Witnesses explained that the consent decree is basically a long-term mandate to separate waste water collection from storm drainage. The consent decree specifically requires Oakland to:

- Rehabilitate 13 miles of sewer pipes per year.
- Clean the entire sewer system by 2018 and 140 miles of pipe per year thereafter.
- Inspect 92 miles of sewer pipes per year.
- Treat 50 miles of sewer pipes with root foam (to remove tree roots that grow in sewers and can occasionally cause blockages) per year.
- Renovate all seven sewer pump stations by 2022.
- Eliminate high priority storm water inflow sources within two years wherever found.
- Inspect and clean sewer hot spots annually.
- Require private sewer lateral rehabilitation (initiated in 2012, regional requirement).
- Report defective sewer laterals owned by local, state or federal entities to EPA.
- Rehabilitate identified sewer laterals owned by the city within 10 years.
- Notify owners of private property defective sewer laterals within 90 days.
- Enforce repairs on high priority defective sewer laterals.
- Assist EBMUD in development of a sewer lateral education program.

INVESTIGATION

Lake Temescal

Lake Temescal was created in the 1860s by damming Temescal Creek in order to provide drinking water to a growing East Bay population. In 1936, Lake Temescal opened to the public as one of the first three parks established by the East Bay Regional Park District (EBRPD). Its amenities include a beach-like shore for swimming, a well-established hiking trail around the lake, and numerous picnic tables. In addition, the lake is stocked with small game fish for fishing. Sometimes referred to as the East Bay's "hidden gem," Lake Temescal receives approximately 200,000 visitors a year.

What the public may not know is that Lake Temescal is also an "urban watershed" that collects water coming off the ridges of the Caldecott Tunnel, Broadway Terrace, and Thornhill. The lake has many sources of contaminants that have caused multiple closures in recent years. Pollutants such as oil, gas, fertilizers, and pesticides are carried with water run-off and may adversely affect fish, wildlife, plants, and people.

A particularly troubling source of contamination is untreated sewage that periodically seeps into the lake's usual water flows.

A particularly troubling source of contamination is untreated sewage that periodically seeps into the lake's usual water flows. Sewage overflows can happen anytime of the year, but most frequently occur during and immediately after winter storms. The main cause is the area's aging clay pipes, which may be broken or are simply inadequate in size to manage high volumes of runoff during severe storms. Clay pipes have a reasonable life span of 75-100 years and a significant percentage of Oakland's pipes, both main and lateral lines, have reached this ripe age and need replacing. The old storm drains and sewer pipes alike are simply overloaded, resulting in contaminations.

EBRPD conducts periodic tests of the water quality. In the winter after rainstorms, on-site park managers call EBRPD headquarters to initiate testing if they perceive a problem. From April to early October, the lake's high use period, testing is done weekly at sites where streams flow into the lake and at two locations in the beach area. If the water quality tests poorly, additional and more frequent testing is done. In the absence of algae blooms, the water tests focus on E. coli

bacteria to determine if the concentration exceeds EPA recommendations for waters permitting recreational use.

The Grand Jury examined the most recent cluster of sewage issues at the lake and found numerous shortcomings. During the heavy storms of January 2017, OPW received a communication from the park district of a spike in pollutants. The responding sewer crew could not find the source of the contamination at first. Eventually the problem was tracked to a cross-connection between a storm drain and a waste water drain upslope from Lake Temescal. According to testimony, a "long-term temporary fix" was eventually installed to block the intersection. Meanwhile, substantial amounts of untreated sewage water had flowed into the lake for at least ten days according to the sewer division's overflow reports, and even longer according to some witnesses.

Since this sewage flowed into Lake Temescal during the off-season, the public was told only that the lake was closed, and was not notified of the reasons, either by EBRPD or OPW. It was not clear from testimony which public agency had the primary responsibility for such communications. The Grand Jury concluded that defined lines of responsibility and a formal process for notifying the public when the lake closes (including an accurate description of the reason for the closure) must be established. Simply informing the public that the lake is closed is insufficient.

The next set of major storms will be a stress test to this "long-term temporary fix." It was explained to the Grand Jury that an ideal permanent fix would require re-engineering the storm drain system to an entirely new route. This would involve very complex engineering, and would create prolonged inconvenience to the public because of necessary traffic diversion due to the project's proximity to Highway 13. It would also require a thorough feasibility and budget analysis. Even if feasible, the enormous scale of such a project would likely prove cost prohibitive.

Fixing communication problems that often keep the public in the dark about the true health of the lake would only take recognition of the problem and a coordinated staff plan to address it.

During our investigation the Grand Jury learned that communications between EBRPD and OPW could be vastly improved. While OPW was responsive to calls from EBRPD staff, the details of when OPW planned to arrive on-site and when their planned testing and maintenance was

scheduled at various sites was unknown to EBRPD staff. Witnesses told the Grand Jury there was no direct sharing of reports between the two agencies.

The park district relies on its website and the posting of signs at the lake for communicating with the public about all events at Lake Temescal, including issues of contamination. Press releases and other more pro-active messaging to the public are rarely used. Newsletters to the neighborhood and an advertising campaign are ideas that the EBRPD employees would like to implement to keep the public better informed.

Sewage contains nitrogen, phosphorus and ammonia which are suspected of producing ambient water quality conditions conducive to algae growth. Moreover, the lake is constantly becoming shallower due to sediment runoff. Shallower water experiences stronger sun penetration and warmer temperatures which are also suspected of aiding algae growth. Lake Temescal is approximately 20 feet at its deepest point today compared to 80 feet when it first opened to the public in 1936.

Prior to 2014, there were no documented cases of algae blooms in Lake Temescal according to the East Bay Regional Park District. Since 2014, the lake has experienced periodic blue-green algae blooms triggering closures of the lake with increasing frequency. Immediate closure of the lake and water testing are critical whenever a blue-green algae bloom occurs because this particular algae may produce harmful toxins. Animals can die from drinking the water, and the risk to humans comes from prolonged contact or from swallowing the water. Symptoms from ingestion can include headaches, nausea, muscular pains, diarrhea and vomiting. Severe cases could include seizures, respiratory problems and liver failure. The severity of the illness is related to the amount of water ingested and the concentrations of the harmful toxins. Paradoxically, not all blue-green algae produce these toxins, making timely and accurate testing even more critical.

Immediate closure of the lake and water testing are critical whenever a blue-green algae bloom occurs because this particular algae may produce harmful toxins.

Well-informed coordination of corrective actions by the park district and OPW are key factors to a speedy containment of any problem.

Oakland's *Use of Private Sewer Contractors*

The Grand Jury learned that the city routinely hires private contractors to do repairs on Oakland's sewer system that are beyond the expertise of the city employees, such as water sampling, lab analysis and occasional emergency work (e.g., during the 2017 Oakland city workers strike). Service contracts are prearranged whenever possible, but monitoring of the work of these private contractors is not done thoroughly. Contractors are simply not responsible for any reporting functions, as they are not "registered users" of the California Integrated Water Quality System (CIWQS) and are not allowed to become registered users on behalf of the city. Therefore, when work is done by a private contractor, it is not well-documented. Without good records for reviewing what has been done, future problems may be hard to troubleshoot. This makes "trust but verify" supervision from OPW even more imperative.

Sanitary Sewer Overflow Volume Estimates

State law requires that the city provide comprehensive reporting to the California Water Quality Board when sewer overflows occur. OPW described its system for reporting overflows. Information from sanitary sewer overflow reports submitted by sewer division crews is input into a database. Then a legally responsible official must certify the report. OPW currently has three legally responsible officials, usually sewer division crew supervisors. While there are three methods for estimating the volume of a sanitary sewer overflow, volume estimates are very subjective and far from an exact science. First responders take still photos and videos then write field reports with preliminary volume estimates. This data is then passed on to a supervisor who certifies it and enters it into CIWQS.

Two overflow estimates by field inspectors of more than 50,000 gallons were reduced below the 50,000-gallon threshold in the final report at the sole discretion of a crew supervisor who was not on the site during the overflow.

When 50,000 gallons or more of sewage spills into surface waters, state law requires the following additional measures:

- Water quality sampling must be conducted within 48 hours after initial sewage overflow notification, and results uploaded into CIWQS.
- A technical report must be submitted within 45 calendar days after the end of the spill.

- A water quality monitoring program must be developed and implemented to assess the spill impacts.

OPW acknowledged that, on two occasions in 2017, overflow estimates by field inspectors of more than 50,000 gallons were reduced below the 50,000-gallon threshold in the final report at the sole discretion of a crew supervisor who was not on site during the overflow. As a result, OPW reported there were no sanitary sewer overflows exceeding 50,000 gallons during 2017's rainy season, so that additional state reports and testing were not required.

The Grand Jury finds this somewhat surprising given the record rainfall, the age of the sewer system, and because it is difficult, perhaps impossible, to determine exactly when sewage overflows begin, making underestimates more likely. The lack of mathematical precision in the process leads to significant differences of opinion between onsite and supervisory personnel as to the volume of a given overflow. This, in turn, makes it possible for important sewer system failures to be underreported to the State Water Quality Board. It also makes it impossible for OPW to make consistently sound decisions regarding what remedial priority to assign to a given overflow.

Certifications of Sanitary Sewer Division Employees

Within OPW's sanitary sewer division, field crews consist of: (1) lead operators, licensed to operate large maintenance equipment and (2) crew workers, who must work with a lead operator. The Grand Jury learned that high employee turnover is a major problem within the agency.

Crew workers are encouraged to get enhanced technical training and certifications to prepare for advancing to lead operator positions. The certificates, however, are not required as a condition of employment, and not many employees take advantage of the additional training. In addition, city policies and tight budgets, union-mandated work conditions and administrative hurdles make hiring difficult and time-consuming. This makes it even more difficult to maintain well-trained teams and knowledgeable candidates for advancement.

The Grand Jury is concerned that the sewer department has not developed appropriate succession planning. If operators leave OPW, or otherwise become unavailable, there are insufficient numbers of trained crew workers capable of jumping into next level roles to ensure

operational continuity and flexibility. Only mandated continuous education programs focusing on the necessary technical skills can make this kind of "bench strength" possible across all sanitary sewer division crews.

CONCLUSION

Lake Temescal was designed in the mid-1880s to collect water that flows off the nearby Oakland hills. Dense urbanization, however, has made the job far more complex by significantly expanding the types of liquids that could flow into the lake. A substantial portion of the area's sewer and drain pipes were laid during the 1920s when residential neighborhoods were first being developed in the Temescal area. Preserving the integrity of this drainage system is challenging, and natural phenomena such as heavy rains, tree root incursions, and seismic activity can easily push the aging clay pipes beyond their limit.

The Grand Jury believes that these shortcomings can be managed. Doing so, however, requires OPW and EBRPD to focus on organizational fundamentals such as modern communication strategies, inter-agency partnerships, and staff training and development. In addition, these improvements must be supported by improved record-keeping.

Lake Temescal's popularity with the public and the potential health hazards from contamination make corrective actions absolutely necessary. With the public's interests in mind, the Grand Jury offers the following findings and recommendations for immediate consideration and action.

FINDINGS

Finding 18-30: The lack of clear lines of responsibility and communication between Oakland Public Works and the East Bay Regional Park District in notifying the public about Lake Temescal closures and the reasons for those closures gives the perception that public agencies are keeping important information from the community.

Finding 18-31: Failure to supervise third party contractors repairing Oakland's sewer lines and failure to require them to submit detailed reports of their repairs impede compliance with state reporting requirements and make it difficult to troubleshoot when future problems occurs on the same sewer lines.

Finding 18-32: Oakland Public Works' current sewer related training and technical certifications focus on only a few key employees, resulting in its sewer crews lacking broad technical knowledge. This lack of depth limits operational flexibility and succession planning.

Finding 18-33: The Grand Jury learned that in two cases during 2017, onsite estimates that sewage overflows exceeded 50,000 gallons were later reduced below 50,000 gallons by a supervisor back at the office, giving the perception that the volume was reduced to avoid additional testing and reporting required by the state.

RECOMMENDATIONS

Recommendation 18-26: Oakland Public Works and the East Bay Regional Park District must establish clear lines of responsibility between both agencies, and establish a clear written protocol for communications with the public concerning sewage spills or lake closures, including reasons for the closures.

Recommendation 18-27: Both Oakland Public Works and the East Bay Regional Park District must study the feasibility of using push alerts to nearby neighborhoods in the event of a spill or closure, and explore use of the web and social media for emergency communications for implementation in the winter of 2019.

Recommendation 18-28: Oakland Public Works must improve its reporting requirements and record-keeping systems for sewer system repairs by third party contractors, and must fully supervise all contractors working on city sewer lines.

Recommendation 18-29: Oakland Public Works must establish a system of mandatory continuous training and education for all its sewer crew workers.

Recommendation 18-30: Oakland Public Works must provide comprehensive training for all field crews regarding techniques for estimating sewer overflows.

Recommendation 18-31: Oakland Public Works must improve its overall process for handling sewage overflow reports that exceed 50,000 gallons. A second-level manager independent of Oakland Public Works' sewer crews must review such reports to ensure accuracy, and to ensure that operational expediency never interferes with protecting the environment from large sewage overflows.

RESPONSES REQUIRED

Oakland City Council
Findings 18-30 through 18-33
Recommendations 18-26 through 18-31

Mayor, City of Oakland
Findings 18-30 through 18-33
Recommendations 18-26 through 18-31

Board of Directors, East Bay Regional Park District
Finding 18-30
Recommendations 18-26 and 18-27

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WORKFORCE DEVELOPMENT FUNDING IN OAKLAND

EXECUTIVE SUMMARY

At a time when unemployment rates nationwide are at near historic lows, the city of Oakland continues to struggle to help segments of its population living in high poverty areas to find good-paying jobs. While the dollars are limited to attack these issues, the city has established the Oakland Workforce Development Board to administer, distribute, and oversee approximately $3.8 million in federally-funded employment and training programs each year, and to ensure that the community-based organizations receiving funding are getting results.

The Grand Jury chose to examine Oakland's efforts to reduce unemployment after reading in a November 2016 newspaper article that the city council handed out over $500,000 in supplemental job training funds to a few favored community-based organizations without the advice or even knowledge of the Oakland Workforce Development Board. Organizations receiving the funds were not required to report to the council on their outcomes, nor were they subject to oversight by the Oakland Workforce Development Board. The Grand Jury questioned why the city council would give out these funds if the organizations were not proven to be successful, why it would not require accountability and normal oversight required of other grantees, and why it bypassed the Workforce Development Board.

Organizations receiving the funds were not required to report to the council on their outcomes, nor were they subject to oversight by the Oakland Workforce Development Board.

BACKGROUND

The Oakland Workforce Development Board (OWDB) was created in 2016 as mandated by the federal Workforce Innovation and Opportunity Act of 2014. It operates within the city's Economic and Workforce Development Department. OWDB has a staff of six and an annual budget of approximately $5 million. OWDB staff members are guided by an appointed board comprised of up to 27 business, community and government leaders with expertise in the employment field.

The OWDB is responsible for managing Workforce Innovation and Opportunity Act funds, which are intended to foster local workforce development by supporting training initiatives, internships, job resource centers, and other programs. The OWDB also bears the responsibility for policy development and oversight of its grant funds. Each year, Oakland provides approximately $3.8 million from city, state, and federal sources to support community-based organizations (CBOs) and other contractors providing workforce services. After thorough vetting and use of a competitive bidding process, the OWDB selects partner organizations to carry out their goals. The city council ultimately approves these funding grants.

The OWDB goals are:

- *Education:* In its 2017-2020 strategic plan, the OWDB sets forth strategies intended to further develop "the range of short-term, high-quality training programs offering skill development opportunities. . . ." These include efforts to build and support "career pathway programs in Oakland that are being driven by adult education, community colleges, and other education/training partnerships." The programming goals no longer focus primarily on traditional job placement centers that merely provide soft skills, such as resume preparation and job fairs.

- *Collaboration with broad range of service providers:* The OWDB's strategic plan recognizes that it has limited funding to effect real change. To help extend its impact, OWDB has established partnerships with a broad range of organizations in the areas of education, health, safety, wealth, and housing. It also coordinates its work with three other East Bay workforce development boards including Alameda County, Contra Costa County, and the city of Richmond.

- *Evaluation (evidence-based accountability):* After identifying partnerships with CBOs and educational programs, the OWDB developed rigorous reporting requirements. The organizations that receive funding are required to identify, track, and report their efforts and outcomes. Traditionally, the city required CBOs to provide little feedback, often limited simply to the number of people served. This provided inadequate information to policy makers. As a result of a movement to measure the outcomes of those getting services, the OWDB now requires CBOs to report how many clients completed training programs, whether they obtained jobs, and how long they have kept these jobs. OWDB

employees perform site visits and prepare monitoring reports similar to an audit. If the service provider is underperforming or misreporting, the OWDB issues an order to correct, and offers assistance to resolve issues. This vital oversight allows the OWDB to focus its efforts and tax-payer dollars on programs that are creating sustainable, well-paying jobs.

INVESTIGATION

During the investigation, the Grand Jury:

- Interviewed Oakland Workforce Development Board staff and Oakland elected officials.
- Visited a job fair held at a "soft skills" center located in a high need area of Oakland.
- Reviewed:
  - CBO program reporting documents.
  - OWDB oversight documents, corrective action reports, and CBO responses.
  - OWDB website.
  - City of Oakland Workforce Development Plan – program years 2017-2020.
  - Federal regulations stating that service providers must close client files after 90 days of inactivity when there are no plans to provide further services.

In early 2016, the OWDB issued a request for proposals for experienced workforce development services to provide for adults and dislocated workers. The contracts were to be rewarded to organizations that would strive to meet the goals set by local and regional strategic planners. The output and success of those receiving grants would be scrutinized with rigorous oversight and reporting to ensure the money was spent effectively.

By mid-year 2016, the city council approved the OWDB budget and approved the contracts with CBOs recommended by the OWDB.

Later that year, the council decided to supplement the workforce development funding by adding $533,000 to the program. But when it came time to allocate the additional funds, the council bypassed OWDB experts, and gave the money directly to four favored CBOs. Little consideration was given to whether the funding would be used to further the strategic goals, and no accountability requirements were imposed. One of the CBOs, though it had been sharply

criticized by OWDB monitors in the past year, was given funding simply "to keep the doors open" without evaluating whether its programs were effective.

When it came time to allocate the additional funds, the council bypassed the Oakland Workforce Development Board experts and gave the money directly to four favored community-based organizations. Little consideration was given to whether the funding would be used to further the strategic goals, and no accountability requirements were imposed.

For years, the public and elected officials had questioned the value of workforce development programming. In fact, the predecessor board was disbanded and revamped when the current mayor took office to align with federal requirements and to maximize impact on those seeking jobs. Although the importance of job training is widely recognized, when public dollars are in short supply it is essential that programs providing that training be held accountable. CBOs that receive public money need to be focused on a regional strategy with input from the 27-member board of experts.

The Grand Jury examined CBO reporting documents and OWDB site visit and monitoring reports for one of the CBOs operating a neighborhood career center. In one report, inspectors discovered that the CBO listed hundreds of clients who were not receiving services and should not have been reported. These people had enrolled in the program more than two years earlier and the service provider had not been in contact with them for a significant period of time. In a particularly egregious case, an OWDB analyst discovered notes and a newspaper article in a client's file establishing that the client had died nearly four years earlier, but the service provider was still reporting his case as open and active. Federal regulations require that clients be removed from reporting documents after 90 days of inactivity (provided that there was no plan for future services). OWDB oversight and expertise in this instance showed that the non-profit was inflating its client numbers, giving the appearance it was more effective than it actually was.

In a particularly egregious case, an Oakland Workforce Development Board analyst discovered notes and a newspaper article in a client's file establishing that the client had died nearly four years earlier, but the service provider was still reporting his case as open and active.

The Grand Jury also attended a job fair at a one-stop career center and was underwhelmed by the small number of job seekers in attendance. We learned that there were at least 25 similar on-site recruitment events during the first quarter of 2017, with only 20 job placements resulting

from all of them. The Grand Jury wonders how this type of programming fits into the overall goals of the OWDB and whether OWDB experts could have spent the money more effectively.

CONCLUSION

The Grand Jury finds that the Oakland City Council's decision to bypass the city's own Workforce Development Board when making funding decisions was shortsighted. The unique skill set and expertise of the OWDB and its staff provide the city with the ability to develop a unified regional approach to attack joblessness and ensure that the CBOs they fund are held accountable.

Ironically, last winter one council member proposed diverting 5% of voter-approved funding for capital improvement projects to job training organizations of that councilmember's choosing, again circumventing the OWDB experts, and again without oversight or independent professional input regarding the long-term value of the programs.

The Grand Jury recognizes and supports the value of job training as a benefit to individuals, the local business community, and society as a whole. It commends the city council for wishing to further support workforce development. But since dollars are scarce, the city council must make targeted, thoughtful decisions. The Grand Jury believes that this can only be done when the city council uses the expertise of its own Workforce Development Board.

FINDING

Finding 18-34: The Oakland City Council bypassed its Workforce Development Board in 2016 by giving public funds directly to favored job programs without accountability standards built into the grants, without sufficient consideration of Workforce Development's strategic goals, and without appropriate evaluation as to whether the programs' efforts were successful.

RECOMMENDATION

Recommendation 18-32: The Oakland City Council must cease making grants to community-based organizations engaged in workforce development without advice from the Oakland Workforce Development Board, and without accountability measures written into the contracts.

RESPONSES REQUIRED

Oakland City Council
- Finding 18-34
- Recommendation 18-32

Mayor, City of Oakland
- Finding 18-34
- Recommendation 18-32

ALAMEDA COUNTY WATER DISTRICT'S RATE INCREASES

EXECUTIVE SUMMARY

For most people, water comes out when they turn on a tap – they never think about who provides the water or how the amount they pay each month is calculated. Many are dismayed when their water bills are high despite years of conservation during the drought, but they pay their bills without protest.

The Alameda County Water District has not been completely transparent with the public about the role employee compensation has played in rate increase decisions: regular increases to the salaries and benefits paid under generous labor contracts have made ACWD employees the highest paid within county water districts in California.

Last year, however, ratepayers in the Alameda County Water District (ACWD) were so upset by years of rate increases that they were driven to action: their average water bills had increased at an annualized rate of 6.1% since 2003, even in years when consumption decreased significantly with conservation. As a result, the Grand Jury chose to examine the district's practices to better understand what drove rate decisions and the role the public can play in the process.

The Grand Jury's investigation showed that, while water rates at ACWD are fairly comparable to those in other districts, ACWD has not been completely transparent with the public about the role employee compensation has played in rate increase decisions: regular increases to the salaries and benefits paid under generous labor contracts have made ACWD employees the highest paid within county water districts in California.

Transparency in this instance is especially important because ACWD, like most other water districts in California, operates as a functional monopoly. It is simply too expensive and too inconvenient for individual consumers to get their water any other way, so they are forced to take what is available. While consumers are offered an opportunity to protest rate increases they believe are unfair, as a practical matter ACWD has the ability to impose rates sufficient to cover whatever costs its board decides are reasonable. The Grand Jury believes the residents of southern Alameda County deserve to know more than they are currently being told regarding why their water bills rise each year.

BACKGROUND

ACWD began its operation as an independent water board on December 30, 1913. Today, it serves 81,000 customers in the southern part of Alameda County including the cities of Newark, Fremont and Union City, representing a population over 350,000. The district's fiscal year 2016-2017 budget for operations and capital expenditures was $119.6 million, and water sales for that year amounted to $86.3 million.

ACWD is governed by a five-member board of directors elected to staggered four-year terms. It employs 230 full-time employees. The district has an AAA Standard & Poor's credit rating and an Aa2 Moody's credit rating, both of which are excellent.

After property tax revenue was limited by the passage of Proposition 13 in 1978, local governments began to use special taxes, user fees and benefit-based assessments to raise additional funds for public services like water. In reaction to the increasing property tax bills that resulted, which was what Prop 13 was supposed to fix, Proposition 218, the "Right to Vote on Taxes Act," passed in 1996. Prop 218 requires two-thirds voter approval of local taxes, and property-related assessments, and gives voters the right to repeal or reduce certain local charges by initiative. Agencies – like ACWD – that provide essential public services – like water – are exempt from most Prop 218 restrictions, such as voter approval of increases, but are subject to provisions regulating how ratepayers can protest increases.

As a result, despite the restrictions of both propositions, ACWD and other water agencies can increase rates with a simple vote of their boards. Prior to a vote, they must provide written notice by mail 45 days prior to a public hearing with the following information:

- The amount of the fee or charge proposed to be imposed
- The basis upon which the fees or charges were calculated
- A statement regarding the reason for the new or increased fees
- The date, time and location of the public hearing regarding the fees

Prop 218 provides that a proposed water rate increase may not be imposed if a majority of the owners of identified parcels within the district submit written objections. Of the 81,000 ACWD customers, a majority means that 40,500 must submit written protest letters for a fee increase

to be denied. There is very little probability that such a number would ever be reached, thereby making inevitable any increase the board decides to impose.

INVESTIGATION

In its investigation, the Grand Jury reviewed state reports and websites, newspaper articles, videos of ACWD board meetings, and detailed material provided by ACWD. These documents dealt with governance, finance and budget, comparative practices, current challenges facing water districts in California, transparency of deliberations, decision-making and performance. In addition, the Grand Jury spoke with ACWD board and management representatives.

The central issues of the citizen complaints were:

- Salaries and benefits for the 230 full time ACWD employees are generous, with cost of living adjustments (COLA) and increases given even during years of recession.
- Rates have increased significantly over the past 10+ years, with a lack of transparency as to why.
- Customers do not understand why they are paying higher water bills while using less water, as required in a drought.
- The protocols to object to a rate increase under Prop 218 are difficult, effectively removing any possibility of a successful protest.

The Grand Jury learned that ACWD customers turned out in record numbers at an ACWD board meeting on February 9, 2017, to protest a proposed rate increase. Many ratepayers objected to the district's lack of clarity regarding the reasons behind the rate increase.

Salaries and Benefits of ACWD Employees

As in any business, employee salaries and benefits are a significant expense. The Grand Jury learned that regular and substantial increases to ACWD employee compensation and the district's decision to prefund generous retirement benefits are significant drivers behind annual water rate increases in the district.

According to a 2016 State Controller's Office report on more than 500 water enterprises in California, ACWD employees have the highest average wages of $116,623 (the next highest average being $111,697). Of the 3,063 special districts in the state, ACWD employees have the 12th highest average wages. ACWD justifies the higher compensation because of its proximity to

Silicon Valley. The Grand Jury heard testimony from one district representative who was proud that ACWD employees have never gone on strike or protested with any work stoppages.

Regular and substantial increases to ACWD employee compensation and the district's decision to prefund generous retirement benefits are significant drivers behind annual water rate increases in the district.

The average cost of benefits per employee at ACWD is $55,688 per year. The average cost of benefits per year for an ACWD retiree is $24,000 (primarily healthcare), which is about three times more than what the County of Alameda pays for its retiree benefits. Until July 1, 2014, ACWD paid 100% of medical, dental and vision premiums/coverage for employees and their dependents. Employees currently pay 1% of their salaries for health insurance, with dental and vision still fully paid by the district. Employees are also eligible to receive $5,000 per year in tuition reimbursement for taking courses related to their employment outside of normal working hours. Union employees currently contribute 8% of their salaries toward their pensions, while management/confidential/professional employees contribute 5.5%.

ACWD cost of living adjustments (COLAs) have been very generous. The following chart compares the ACWD COLAs to those given to social security recipients in the same year; ACWD workers received nearly twice as much over the ten-year period:

Year	ACWD COLA	Social Security COLA	Year	ACWD COLA	Social Security COLA
2008	4.0%	5.8%	2013	2.0%	1.5%
2009	4.0%	0.0%	2014	2.35%	1.7%
2010	4.0%	0.0%	2015	2.5%	0.0%
2011	4.0%	3.6%	2016	3.0%	0.3%
2012	4.0%	1.7%	2017	3.0%	2.0%

District customers complained that these COLAs were unreasonable, especially those awarded during recession years when many ratepayers' salaries as well as those of other public agencies stagnated. ACWD explained that the high COLAs after 2007 were set as part of a long-term contract with the union, signed before the recession. Nevertheless, the Grand Jury understands

the public's frustration with the lack of "shared sacrifice" on the part of ACWD employees and management during times of financial hardship.

The Grand Jury also investigated ACWD's management compensation. ACWD's "minimum" management salaries range from $149,000 to $190,000. The "maximum" management salaries for ACWD ranges from $188,000 to $236.000.

In summary, ACWD employee compensation is some of the most generous offered in the state. The Grand Jury is concerned that the practice of annually granting relatively substantial increases will mandate annual rate increases for customers, regardless of the other many factors that should affect rates.

Transparency and Clarity of ACWD in its Communications with the Public about Rates

ACWD has raised rates in every year but one for two decades. The average water bill has increased 143% over 15 years (from $49.41 in July 2003 to $120.31 in July 2018), including during times of significant conservation by consumers. The table below, derived from ACWD finance department data, describes what the average ACWD customer has been charged each year from 2008 through 2017:

Effective Date	2/1/08	2/1/09	2/1/10	3/1/11	2/1/12	2/1/13	2/1/14	7/21/14	5/1/15	3/1/17
Bi-Monthly Commodity Charge	$54.92	$58.21	$63.34	$68.40	$72.50	$72.50	$77.58	$77.58	$77.58	$93.08
Bi-Monthly Service Charge	$10.08	$10.68	$11.62	$12.55	$14.93	$29.86	$31.95	$31.95	$41.54	$49.84
Drought Surcharge	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$10.26	$10.36	$0.00
TOTAL	$65.00	$68.89	$74.96	$80.95	$87.43	$102.36	$109.53	$119.89	$129.48	$142.92
% Increase From Prev. Year	4.5%	6.0%	8.8%	8.0%	8.0%	17.1%	7.0%	8.0%	8.0%	10.4%

Many factors affect water rates, such as increasing capital costs from aging infrastructure and seismic improvements, environmental regulations, sharply reduced revenues from the drought combined with increased costs of purchasing water, electricity and chemicals used to treat water.

The Grand Jury, however, learned that a key factor behind ACWD rate increases in recent years is increased operating expenses caused by growing labor costs.

The Grand Jury acknowledges that ACWD has significantly increased its public outreach, and has been awarded a Certificate of Transparency from the Special District Leadership Foundation since 2015, which recognizes "its outstanding efforts to promote transparency in its operations and governance to the public and other stakeholders." In 2016, the ACWD hosted a series of seven well-publicized public workshops to discuss district finances, along with their mailing of Proposition 218 notices to the public, their Aqueduct newsletter and general information included with standard water bills. A concerted effort by ACWD was made to engage the public in the financial and operational status of the water district.

Nevertheless, the Grand Jury remains concerned that the district is far from candid in its communications to customers about why rate increases are needed. In its most recent communications regarding the rate increase, ACWD said that the drought-related water shortage and declining utilization were the principal reasons for the increase. It has regularly told the public that rising "water supply costs" explain why the district's expenses have increased, but did not make it clear that labor costs are embedded in the water supply figure.

The Grand Jury learned from ACWD records that the two most recent rate increases (20% in March 2017 and 5% in March 2018) will generate approximately $24 million. Labor-related expenses (salaries and benefits for current employees, post-employment medical benefits for former employees, and pre-funding for future pension and retiree health care benefits) will consume approximately $11.5 million or about 48% of this additional revenue. Similarly, approximately 40% of the additional revenue generated by rate increases in fiscal year 2014-2015 was used for labor and other employee costs.

If labor costs are addressed at all, the discussion is indirect: the Aqueduct Winter 2015 newsletter from ACWD spoke about "the high cost of doing business in the Bay Area"; the district's "Notice of Proposed Increase in Water Rates" to residents in late 2016 advanced seven reasons why rates were rising, but only one of its bullet points touched on labor costs by identifying "fund retiree benefits obligations."

Mostly, however, labor costs are not mentioned. On the rate protest page on its website, the district's two-page fact sheet does not discuss labor costs; and the message from ACWD's general

manager in the Aqueduct Winter 2017 newsletter said that rate increases were necessary because of the drought, rising water treatment costs, and aging infrastructure – again, no mention of labor costs.

The Grand Jury acknowledges that, unlike most governmental bodies in California, ACWD has budgeted for advanced funding of pension and retiree healthcare liabilities in an effort to fund these over the next 20 years. Making these payments over a 20-year period instead of 30 will save ACWD's ratepayers approximately $58 million in total payments. Once fully funded, the district can limit its annual contributions to these funds to the value of benefits earned during the current year only. We commend ACWD for doing what other California entities have been unable to do; funding these liabilities should reduce pressure on water rates in the long run.

Nevertheless, with such a significant portion of the revenue generated from the recent rate increases allocated to employee compensation and benefits, the Grand Jury concludes that ACWD should have provided this information in a more transparent and easily understood manner than was provided in the numerous recent outreach events, newsletters and notifications of rate increases.

Paying Higher Bills While Using Less Water

It is understandably frustrating for customers to be consuming less of a commodity and paying more for it. It is helpful to have an explanation of why this happens with water use.

Simply put, using less water reduces revenue to the water district by a greater degree than it reduces the expenses of the water district. This has to do with a fee structure that is heavily weighted to the rate of consumption that can be highly volatile and expenses that are heavily weighted to the fixed costs of operation. Fixed costs (plant, equipment, labor, debt) are about 70-80% of the ACWD budget. However, the fixed service charge portion of customer water bills is approximately 30-35%, with the balance dependent on the amount of water used.

It is understandably frustrating for customers to be consuming less of a commodity and paying more for it.

This produces the phenomenon that, when consumption is reduced significantly, as it was during the drought, ACWD still has to pay significant fixed costs, while receiving substantially less revenue from customers. Therefore, the per-unit cost of water has to go up to balance the

budget. This fact, though understandable, is nonetheless perplexing to ratepayers who are using less water and paying more for it.

Some members of the ACWD Board are considering ways to better align its revenues with actual costs, not overall expenses. There are two downsides to this approach. First the fixed costs – facilities, equipment, etc. – would be covered by higher hook-up fees, developer fees and perhaps even general tax revenue. This is likely to be seen or experienced as a more regressive form of tax or fee collection. Second, variable costs and their corresponding portion of the total fees paid would actually go down, as these costs (including the cost to purchase water and chemicals) are low when compared to the fixed costs. This change would result in a lower cost for additional water consumption, which might discourage much-needed water conservation. One controversial alternative would be to balance this by a sustainable increase in hook-up, developer's fees and general tax revenue to reflect more closely, but not actually capture all of the fixed costs. Another alternative is to tier rates or maintain the portion of the fees that are driven by use, up to a certain level of modest consumption, and increase the fees for excessive use as a way of discouraging wastefulness.

The Grand Jury appreciates this effort on the part of the district and encourages it to pursue this change in an open and transparent manner with the citizens it serves.

Protest Method

Proposition 218, passed by state voters in 1996, established the rules for stopping a rate increase. A majority (50%+1) of property owners or tenants who pay a water bill directly within the service district must submit written protests in order to prevent the provider from raising rates as proposed. Although ACWD received a record number of 6,598 protests this year, it is virtually impossible for the 40,500 threshold to be achieved. By comparison, the total voter turnout in the closely contested 2016 Fremont mayoral election was only 42,000. This threshold, though not created by ACWD, makes customers feel as if the protest method is "rigged," giving unlimited power to the five-member ACWD board to set rates for all customers.

The Grand Jury commends the ACWD for allowing customers to file a protest electronically via email or by filling out a form on their website. This option is not required by law, but ACWD acknowledged that the online process was more convenient for its customers.

CONCLUSION

When rates need to rise to support higher labor costs, ACWD should make the case on its merits rather than embed these costs under the water supply categorization. ACWD must explain to the public the need to retain quality employees for safety and continuity of care with the district's precious water supply.

The Grand Jury appreciates that ACWD continues to provide a reliable supply of high quality drinking water to its customers, and thanks the district for its cooperation with this investigation. We acknowledge that the business of running a public utility requires specialized knowledge that is not always easily communicated to ratepayers.

Nevertheless, board members are elected to be stewards of this process and stewards of the finances involved. They have a duty to ensure that citizens are paying a fair and equitable price for their water. When rates can be raised through a simple vote of a five-member board, the decision can appear to be out of the public's control. The public deserves assurances from the board that their hard-earned money is being spent as efficiently as possible. While the 230 ACWD employees are entitled to competitive salaries with good benefits, the public deserves assurance that the board is sensitive to the impact of employee costs on rates, and that it negotiates labor contracts in good faith on behalf of the ratepayers who have limited powers to protest a rate increase.

FINDINGS

Finding 18-35: The Alameda County Water District is not sufficiently transparent with its customers about the costs of current employee compensation and retiree benefits, and how these impact rate increases.

Finding 18-36: Droughts can significantly reduce the revenue of the Alameda County Water District, while the fixed costs of providing quality water remain high.

Finding 18-37: The Alameda County Water District has provided overly generous salaries and benefits to its employees over the years, even in times of economic downturns.

RECOMMENDATIONS

Recommendation 18-33: In all future rate increases, the Alameda County Water District must clearly indicate the percentage of the rate increase revenues attributable to labor and benefit expenses.

Recommendation 18-34: The Alameda County Water District must educate the public about the impact of droughts on ACWD revenues and the agency's ability to provide quality water and service.

Recommendation 18-35: The Alameda County Water District must educate the public on the true nature of the fixed and variable costs, the impact of water conservation on rates, and the components of the water bill received by each household.

Recommendation 18-36: When negotiating future compensation for employees, the Alameda County Water District must justify its negotiating position based on salary and benefit data from other Bay Area government agencies, including cities and counties, and should not look exclusively to compensation paid by other water districts.

RESPONSES REQUIRED

Board of Directors, Alameda County Water District
Findings 18-35 through 18-37
Recommendations 18-33 through 18-36

GLENN DYER DETENTION FACILITY INSPECTION

INTRODUCTION

On November 7, 2017, the Alameda County Grand Jury inspected the Glenn Dyer Detention Facility, located adjacent to the Alameda County Courthouse at 550 - 6th Street in Oakland, and operated by the Alameda County Sheriff's Office (ACSO). Prior to the inspection of the facility, the Grand Jury met with the management team of the jail, including the nursing supervisor.

INSPECTION

Glenn Dyer is a 20-level, 234,000 square-foot, maximum-security lockup. The facility provides booking, intake, and custodial services for all of Alameda County, but particularly the cities of Alameda, Berkeley, Emeryville, and Piedmont; it serves as the off-street booking facility for all male north county prisoners. The jail also books persons arrested by the California Highway Patrol and, under a contract with the U.S Marshal Service, houses many federal prisoners.

The Glenn Dyer facility, while showing some signs of age, appeared to be clean, well-maintained, and in good operating condition. The Grand Jury observed no security issues that are not in the process of being addressed.

The average daily inmate population of the jail is 400, with a maximum capacity of 834 male prisoners. (The jail formerly held female prisoners, but after a major program change regarding rape prevention several years ago, all women and self-identified transgender women and men are sent to Santa Rita Jail.) Glenn Dyer contains 576 individual cells in housing pods, and two cells on a medical floor. ACSO staff estimate that county and city inmates stay for an average of 90 days, while federal detainees could be housed for years.

The jail is staffed by 81 deputies, 41 technicians, and 12 civilian employees. Technicians and civilian employees have no direct inmate contact.

Physical Plant

Opened in 1984, the building contains six double-level housing floors, each with six housing pods per floor, and 16 cells per pod. Although the facility is incredibly clean, the structure shows

expected signs of aging. With no room in an urban setting for a recreation yard on the facility grounds, there are recreation facilities on the roof of the jail.

Glenn Dyer is accredited by the Commission on Accreditation for Law Enforcement Agencies, the American Correctional Association, and the National Commission on Correctional Health Care. The California Board of State and Community Corrections and the Alameda County Health Department also inspect the jail annually.

Health Services

Like Santa Rita (Alameda County's main jail in Dublin), the Glenn Dyer clinic/hospital is staffed by the California Forensic Medical Group, with mental health services provided by Adult Forensic Medical Health. Glenn Dyer has one full-time doctor, one nurse practitioner, one dentist, one full-time x-ray technician, and one psychiatrist on call. The nursing staff is divided into three shifts of three to five nurses per shift. No inmates are kept overnight in the medical unit. The Oakland facility maintains a contract with Royal Ambulance for non-emergency medical transfers. Patients with serious medical or mental health problems are transported to Santa Rita, or, in emergencies, to Highland or John George Hospitals.

The jail admits many prisoners going through withdrawal from alcohol or opiates. Severe cases are transferred directly to the hospital. Active detoxification is handled at Santa Rita jail, and prisoners on methadone maintenance are also transferred there.

Disabled or suicidal inmates are transferred to either John George or Santa Rita jail. For the one or two hours a suicidal detainee might be held at Glenn Dyer before transfer, deputy sheriffs begin a written log and keep close watch over the prisoner.

Discipline and Security

During booking, all personal items are taken and logged on a property receipt that is signed by and given to the prisoner. Only the property technician and the booking deputy have access to prisoner property before it is safely stored, until the prisoner is released or transferred.

Inmates at Glenn Dyer are provided with a disciplinary policy handbook that contains in-custody rules, and outlines the consequences for violating those rules (e.g., a loss of jail privileges such as commissary or time with visitors). The facility policy and procedures manual is also accessible

online. Deputies write disciplinary reports that are sent up the chain of command for review. An established process exists for prisoners to contest the reports. The disciplinary process works quickly, typically taking about three days. A database, which is maintained by ACSO, tracks the history for each prisoner.

When Glenn Dyer was built in 1984, it did not include ports in cell doors that allow prisoners to be handcuffed before the door is opened. Those are now being gradually installed. The ports are especially helpful for securing high-risk prisoners.

All keys for the jail are stored in a central key locker that was recently changed to a biometric access system. As a result, all keys are accounted for and monitored.

Each cell has an emergency button, and there is an intercom from the pods to the monitoring station.

Glenn Dyer houses a significant number of gang-affiliated prisoners – about 50% of the total inmate population – who are housed separately from prisoners not in gangs.

At the time of the Grand Jury's inspection, 81 prisoners (19% of the population) were housed in administrative segregation units due to violent incidents in the jail. Administrative segregation units are cells designed to keep individuals housed separately from other prisoners for their own or others' safety.

All guns are stored in lockers outside the prisoner area, locked and out of prisoner reach. Tasers and pepper spray are permitted only within the prisoner areas of the jail. Batons are also maintained within the jail inside locked storage areas, but are accessed only in emergencies. Staff reported that Tasers seldom have to be used, as the mere act of withdrawing them from holsters deters inappropriate behavior.

Uniformed staff wear body cameras that operate on a continuous loop. When any camera is activated, it automatically records the previous 30 seconds. Activation of one camera also activates those worn by other staff in the area. Turning off a Taser safety also activates cameras in that area.

Currently, the jail has 24/7 central video monitoring of all entries and exits, with visual inspections by jail staff of the living quarters. The jail is in the process of installing monitoring

cameras throughout the facility, including within pods; installation was expected to be complete before year's end.

Entertainment, Visitation, and Food Service

Last year, the Grand Jury learned about a trial program at Santa Rita in which prisoners were assigned phone-enabled tablet computers, enabling them to make outside recorded calls at their own expense, and access a variety of entertainment features. Staff reported that program had a positive effect on prisoner behavior, and was scheduled for expansion. The Grand Jury learned that Glenn Dyer has no current plan to institute that program, as it would require substantial expensive infrastructure upgrades in the aging Oakland jail.

Glenn Dyer, however, has successfully instituted a tablet-based Inmate eDiscovery Program for federal prisoners that allows them digital access to evidence and documents in their legal cases. By law, inmates are entitled to access their case files. Previously, evidence was stored in boxes of hard copies that required significant storage space; staff considers the electronic access program to be a major improvement.

Inmates are allowed face-to-face visits for one hour each week. In August 2017 a program of video visits began, with hour-and-a-quarter visits allowed weekly. These video visits are operated by an outside for-profit company. Since August, staff has measured a 30% increase in the average number of visits the inmates receive, but as of yet there are no statistics on whether the increase has resulted in behavioral improvements. There are also four separate attorney contact visiting rooms.

All laundry and cooking is done at Santa Rita jail in Dublin, and shipped to Glenn Dyer. Aramark is the outside company for food vending. Glenn Dyer jail maintains a stock of three days of food and supplies in the event of an emergency or natural disaster.

Special diets are accommodated, and food is available 24/7 for new intakes.

The food service and food storage facilities were spotlessly clean. While there was no evidence of scat or rodent intrusion, Glenn Dyer maintains contracts with exterminators to prevent vermin or vector intrusion and contamination.

Inmates perform most of the cleaning on floors where they are allowed. As one inspector noted while traveling through a corridor between the jail and the courthouse, the polished concrete floor was so spotless that "you could look down and comb your hair in the reflection."

Glenn Dyer offers a variety of educational opportunities. The education program is managed by Five Keys, a company that provides similar services to other county jails, including Santa Rita and jails in San Francisco, San Mateo and Los Angeles. Unlike Santa Rita, Glenn Dyer does not offer a re-entry program, but Five Keys conducts continuation courses outside jail for parolees so that they may finish their a course of study after release. The Grand Jury did not visit any classrooms during our inspection

Special Notes

After last winter's Oroville Dam spillway collapse, Glenn Dyer Detention Facility housed 300 inmates from Butte County. As a result of that exchange, both agencies learned that the transfer plan did not provide for sufficient buses to transport prisoners. This resulted in the implementation of a better transit plan for future mutual aid exchanges.

During the North Bay fires last fall, Glenn Dyer was scheduled to accept inmates from Sonoma County. Although this prisoner transfer did not occur, jail personnel assisted on site during the emergency. ACSO staff who participated in mutual aid told the Grand Jury that the training they received through the Urban Shield program was beneficial to their efforts, especially in terms of communications.

The Grand Jury inspection of Glenn Dyer jail took place a few days after the conclusion of a well-publicized multi-day hunger strike conducted by approximately 120 inmates in order to demand living condition improvements, particularly for those in solitary confinement. Inmates are isolated not only for rules violations, but also as a means to protect other inmates who may be in danger from the general population. The Grand Jury was told by jail staff that the administrative segregation program at Glenn Dyer violates no regulations or laws governing treatment of inmates.

CONCLUSION

The Glenn Dyer facility, while showing some signs of age, appeared to be clean, well-maintained, and in good operating condition. The Grand Jury observed no security issues that are not in the process of being addressed.

FINDINGS	*None*
RECOMMENDATIONS	*None*
RESPONSES REQUIRED	*None*

LIVERMORE CITY JAIL INSPECTION

The Grand Jury inspected the Livermore Jail on October 24, 2017. The jail is located at 1110 S. Livermore Avenue in Livermore, and serves as a temporary holding facility for the Livermore Police Department.

The jail is used very infrequently. The facility held only nine adult and three juvenile detainees from January 1 through October 24, 2017. At the time of the Grand Jury's inspection, there were no detainees at the jail.

The Grand Jury found the Livermore Jail to be very clean, well-maintained, and in good order for fulfilling the facility's limited uses.

The police department and jail share the same municipal building, which was built twenty years ago. The jail consists of two holding cells, two interview rooms and one room for meeting with attorneys. The holding cells have working sinks and toilets, and a shower room is located nearby. The holding cells do not have beds, but offer raised concrete slab benches for sitting and sleeping. A juvenile holding room, resembling a small conference room, is also located among the police department offices. It is surrounded with windows to permit constant observation of a juvenile detainee.

Adult detainees are brought to the jail and held for up to six hours awaiting police transportation to Santa Rita Jail in Dublin unless they are given a citation or released. Juvenile detainees are transported to the Alameda County Juvenile Justice Center in San Leandro if the seriousness of the case warrants further detention. Detainees are not booked at the jail, although exceptions are sometimes made for juveniles brought in for non-violent acts.

Upon arrival, a detainee completes a health questionnaire that is reviewed by police staff. Any detainee requiring immediate medical attention or a life-preserving prescription medication is transported by Livermore Fire Department EMTs to Valley Care Hospital in Pleasanton. The jail does not provide health care beyond basic first aid.

Detainees' personal items are bagged upon arrival and always transported with them to their next destination. Jumpsuits are available for detainees needing clean clothing. Blankets are also available upon request.

Detainees are permitted three local phone calls without charge, which enables them to contact family members as well as their attorneys. Due to the very short holding period, only attorneys are allowed to visit detainees at the jail.

CCTV cameras, monitored by police department staff, provide continuous visual coverage of the jail's physical space and access points. First aid and AED equipment are nearby, clearly marked and readily accessible. First aid kits were well-stocked, and police staff are trained on first aid, CPR and AED services. Fire extinguishers are inspected and certified monthly. Police officers use keyed lockers for storing their weapons before entering the jail area.

Food is not prepared on site. The police department provides detainees with water, soft drinks and snacks. A police officer may occasionally pick up local fast food for a detainee upon request.

Overall, the Grand Jury found the Livermore Jail to be very clean, well-maintained and in good order for fulfilling the facility's limited uses.

FINDINGS	*None*
RECOMMENDATIONS	*None*
RESPONSES REQUIRED	*None*

EAST COUNTY HALL OF JUSTICE HOLDING FACILITY INSPECTION

The Grand Jury inspected the new Alameda County Superior Court East County Hall of Justice holding facility on September 26, 2017. This facility is located in Dublin, part of the newly constructed East County Superior Court building that first opened in June of 2017, and is run by the Alameda County Sheriff's Office. The expense of running the new facility is jointly funded by the state and the county.

The court and holding facilities are located across the street from Alameda County's Santa Rita Jail. The proximity of Santa Rita to the court has lowered the cost of transporting detainees to their court appearances, even though they are still transported between facilities by vehicle. Initially, the court was used for all arraignments, but that has since changed, and many arraignments have been moved back to Superior Court in Oakland, lowering the number of detainees transported to the Dublin facility per day.

The Grand Jury focused its inspection of the holding facility on cells, hallways that provide detainee access to the courtrooms, attorney-client communication rooms, safety factors, and detainee transportation to and from the jail.

The jail facility contains 23 holding cells. All of these are mixed gender cells, but females and males are not held in cells together. No juveniles are brought to this facility. The large number of cells allows protective custody detainees to be held separately if needed. The holding cells have working sinks and toilets. The cells do not have beds or blankets, but offer raised concrete slab benches for sitting. All cells are ADA-approved. The holding cells and aisles the jury observed were very clean; a janitorial service operated by the county does nightly maintenance at the facility.

Although Santa Rita Jail is close to the holding facility, the only detainee transportation between the two facilities is by deputy-driven vehicle, primarily bus. Transportation is tightly controlled, and buses arrive in an enclosed garage where they are unloaded. Detainees are carefully checked in by deputies according to identification and passenger record. Santa Rita transports all detainees with morning court dates in time for their appearances, and returns them by noon.

Then the detainees with afternoon court times are transported, and returned to Santa Rita at the end of day.

The average detainee is held in these cells fewer than four hours due to the proximity of the originating jail, although the time may increase on occasion due to understaffing – the Grand Jury was told that funding allocations from the state do not defray the full cost of a sheriff's deputy. Typically, Mondays and Tuesdays are the highest volume days for court appearances, averaging 180 to 200 detainees. Normal volume during the rest of the week is from 140 to 170 detainees per day. At the time of our visit on a Tuesday morning, there were 159 detainees at the holding facility awaiting court appearances.

Due to the short amount of time most detainees spend at the holding facility, meals are eaten before arrival or after return. As a result, no food preparation facilities exist at the holding facility. Some detainees bring over snacks, and bagged lunches made at Santa Rita may be available based on scheduling.

The holding facility does not provide health care beyond basic first aid. First aid and AED equipment are located throughout the facility, clearly marked and readily accessible. First aid kits were well-stocked, and deputies and other non-sworn staff are trained on first aid, CPR and AED services. Fire extinguishers are inspected and certified monthly.

Safety within the courtrooms, hallways and cell areas is a high priority for the sheriff's office. Law enforcement personnel must store firearms in keyed gun lockers before entering the jail area or courtrooms. There are over 200 red emergency buttons located throughout the facility. These are placed approximately two to three feet off the floor so they can be reached from sitting or lying positions. (Initially, the emergency buttons were placed too high on the wall, but have been appropriately lowered.) Alarms and closed-circuit video feeds are centrally monitored so that assistance can be promptly directed to the correct location.

The facility has interview rooms attached to each courtroom for detainee communication with attorneys. When the facility first opened, the speakers embedded in the partitions in these rooms blocked out too much sound, and attorneys often resorted to shouting that could be heard in the adjacent hallway. The jury was told that the issue was being addressed.

This is a rather new facility, and the design seems to be working as planned. Overall, the Grand Jury found the Alameda County East County Hall of Justice Holding Facility to be very clean, well-organized, well-maintained, and in good order for fulfilling the requirements of the county.

FINDINGS	*None*
RECOMMENDATIONS	*None*
RESPONSES REQUIRED	*None*

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APPENDIX

ABOUT 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) non-profit 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.

Mail complaints to:

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

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 Grand Jury application (available at www.acgov.org/grandjury) and mail it to: *Cassie Barner, Recruitment, Alameda County Grand Jury, 1401 Lakeside Drive, Suite 1104, Oakland, CA 94612; or call (510) 208-9855* to have an application sent to you. 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 Grand Jury's website at www.acgov.org/grandjury.

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 department heads, and others. The orientation and training, as well as the weekly grand jury meetings, take place in Oakland.

Selection for grand jury service is a great honor and one that offers an opportunity to be of value to the community.

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

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
Oakland, CA 94612
Email: grandjury@acgov.org

HOW TO RESPOND TO FINDINGS AND 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.

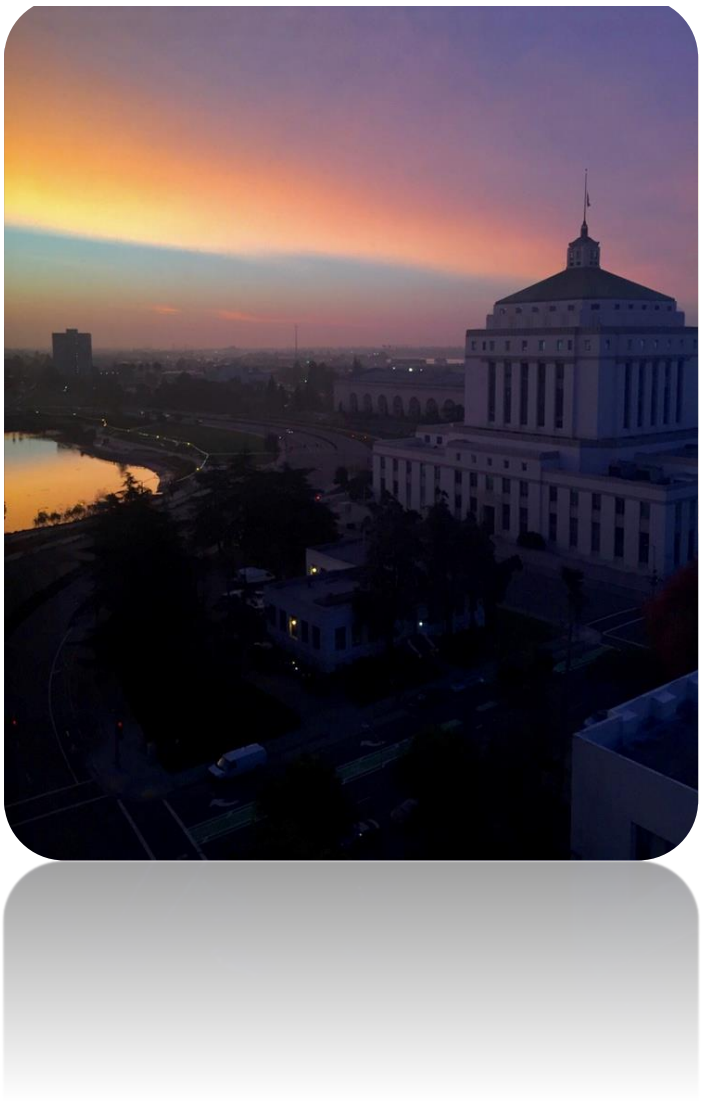
SEND ALL RESPONSES TO:

Presiding Judge Wynne Carvill
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 to the 2017-2018 Grand Jury Final Report must be submitted no later than Wednesday, September 26, 2018.



Sunrise behind the Rene C. Davidson Superior Courthouse, Oakland, California