



***2010-2011
ALAMEDA COUNTY GRAND JURY
FINAL REPORT***

ALAMEDA COUNTY BOARD OF SUPERVISORS

District One – Scott Haggerty

District Two – Nadia Lockyer

District Three – Wilma Chan

District Four – Nate Miley, President

District Five – Keith Carson, Vice President

ALAMEDA COUNTY GRAND JURY

1401 Lakeside Drive, Suite 1104

Oakland, California 94612

Phone: (510) 272-6259

FAX: (510) 465-9647

E-Mail: grandjury@acgov.org

WEB: www.acgov.org/grandjury

*Cover photograph courtesy of Seth Gaines, Germantown, Maryland.
[Used with permission.]*

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Alameda County
Grand Jury

1401 Lakeside Drive
Suite 1104
Oakland, California 94612

510.272.6259
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June 27, 2011

Honorable Jon R. Rolefson
Presiding Judge
Alameda County Superior Court
1225 Fallon Street, Department One
Oakland, California 94612

Dear Judge Rolefson:

The nineteen members of the 2010-2011 Alameda County Civil Grand Jury are pleased to submit our final report to you and the people of Alameda County. Established as an arm of the court by the California Constitution, grand juries in each county serve as watchdogs investigating the operations of the county, cities, and special districts. Members are nominated by superior court judges and then selected for one-year terms in a random drawing.

The 2010-2011 Alameda County Grand Jury investigated citizen complaints and other issues that it considered to be most important to the proper functioning of government. We received in excess of 70 citizen complaints. While we acknowledged the receipt of all complaints, not every complaint was investigated. Some were not within our jurisdiction and some weren't pursued given time, staffing or resource constraints. While California law requires all complaints and our deliberations to be confidential, this report will be posted on the internet along with each jurisdiction's responses to the recommendations at www.grandjury.org.

The four standing committees conducted investigations and made recommendations on the following topics:

Law & Justice Committee

Regional Emergency Communications – Alameda County and City of Oakland
Probation Department – Alameda County
Parking Bureau – City of Oakland

Government Committee

Building Services Division – City of Oakland
Small, Local and Emerging Business Program – Alameda County

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Health & Social Services Committee

In Home Support Services – Alameda County
Stop Waste – Alameda County Waste Management Authority and Alameda
County Recycling Board

Education Committee

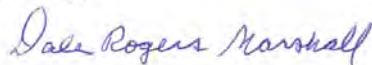
Peralta Community College District
Hayward Unified School District

In tight economic times it is more important than ever to re-think governmental processes and for all stakeholders to make shared sacrifices. Common themes in our recommendations include the importance of: improved data management to evaluate results and reduce fraud; consistent policies and procedures to ensure fairness and accountability; and strong leadership to promote innovation/cooperation/communication internally and externally with the community. Each agency must be a “learning organization” with shared vision and motivated employees to work “smarter” in challenging, changing times.

We thank everyone who participated in our orientation and assisted our investigations by being witnesses and providing information. We also thank Cassie Barner of the District Attorney’s Office for her talents and institutional memory that have been invaluable to grand juries for the past 16 years. In addition, we thank Deputy District Attorney Rob Warren who became the Grand Jury’s new legal counsel after 18 years in the DA’s Office and who had an excellent first year.

Finally, I am most grateful to all the members of the Grand Jury, who come from many different backgrounds and parts of the county, for their hard work and cooperative spirit even when the work escalated beyond expectations. All of us appreciate the opportunity to serve.

Sincerely,



DALE ROGERS MARSHALL, Foreperson
2010-2011 Alameda County Civil Grand Jury

2010-2011 ALAMEDA COUNTY CIVIL GRAND JURY MEMBERS

JUROR	SUPERVISORIAL DISTRICT/CITY	NOMINATING JUDGE
Suzanne Barba	District 4 – Castro Valley	Judge Yvonne Gonzalez Rogers
Ben Barrientos	District 1 – Livermore	Judge Jon R. Rolefson
Laura Brody	District 5 – Piedmont	Judge Jon R. Rolefson
Ted de Castro	District 4 – Castro Valley	Judge Jon R. Rolefson
Lawrence Contreras	District 2 – Hayward	Judge Jon R. Rolefson
John W. “Jack” Edney*	District 1 – Pleasanton	Judge Sandra Bean
Candace Fitzgerald	District 3 - Alameda	Judge Jon R. Rolefson
Maralen Goodenough	District 2 – Hayward	Judge Jon R. Rolefson
Trisha Gorman	District 4 – Oakland	Judge Jon R. Rolefson
Jerry Hadfield	District 5 – Oakland	Judge Jon R. Rolefson
Thomas R. Malia ¹	District 3 – Oakland	Judge Jon R. Rolefson
Anna M. Mantell*	District 5 – Berkeley	Judge Yolanda N. Northridge
Dale Rogers Marshall	District 5 – Piedmont	Judge Yvonne Gonzalez Rogers
Russell G. Miller	District 1 – Livermore	Judge Vernon Nakahara
John A. Polz	District 1 – Fremont	Judge Jon R. Rolefson
Patrick K. Preminger*	District 3 – Alameda	Judge George C. Hernandez Jr.
Anita Ramlo	District 4 – Oakland	Judge Jon R. Rolefson
Lloyd L. Rash	District 4 – Castro Valley	Judge Jon R. Rolefson
Richard S. Rounke	District 4 – Castro Valley	Judge Jon R. Rolefson
John K. Uilkema	District 5 – Piedmont	Judge Jo-Lynne Lee

* Jurors held over for a second term by Presiding Judge Jon R. Rolefson

¹ Resigned, July 1, 2010

**2010-2011 Alameda County Grand Jury
Officers & Legal Staff**

OFFICERS:

FOREPERSON: Dale Rogers Marshall

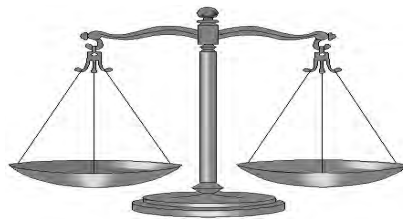
FOREPERSON PRO TEM: Patrick K. Preminger

SECRETARY: Trisha Gorman

SECRETARY PRO TEM: Laura Brody

SERGEANT AT ARMS: Jerry Hadfield

SERGEANT AT ARMS PRO TEM: John K. Uilkema



LEGAL STAFF:

Robert L. Warren, Deputy District Attorney

Cassie Barner, Legal Assistant



**2010-2011 Alameda County Grand Jury
Committee Roster**

GOVERNMENT

Russell G. Miller – Chair
Suzanne Barba
Ben Barrientos
Ted de Castro
Candace Fitzgerald
Trisha Gorman – *Secretary*
Patrick K. Preminger – *Chair Pro Tem*
Anita Ramlo – *Secretary Pro Tem*
John K. Uilkema

LAW & JUSTICE

Lloyd L. Rash – Chair
Suzanne Barba
John W. “Jack” Edney – *Chair Pro Tem*
Trisha Gorman
Jerry Hadfield
Russell G. Miller
John A. Polz – *Secretary*
Richard S. Rounke
John K. Uilkema

EDUCATION

Anna M. Mantell – Chair
Laura Brody
Lawrence Contreras
Ted de Castro
John W. “Jack” Edney – *Chair Pro Tem*
Maralen Goodenough
Jerry Hadfield
Patrick K. Preminger
Anita Ramlo – *Secretary*

HEALTH & SOCIAL SERVICES

Candace Fitzgerald – Chair
Ben Barrientos
Laura Brody – *Secretary*
Lawrence Contreras
Maralen Goodenough
Anna M. Mantell
John A. Polz
Lloyd L. Rash – *Chair Pro Tem*
Richard S. Rounke – *Secretary Pro Tem*



2010-2011 Alameda County Grand Jury

Standing, left to right:

John W. “Jack” Edney, Jerry Hadfield (*Sergeant at Arms*), Maralen Goodenough, Richard S. Rounke, Ben Barrientos, John K. Uilkema (*Sergeant at Arms Pro Tem*), Lloyd L. Rash, Trisha Gorman (*Secretary*), Ted de Castro, Russell G. Miller, Laura Brody (*Secretary Pro Tem*), John A. Polz, Suzanne Barba, Anita Ramlo, Dale Rogers Marshall (*Foreperson*), Anna M. Mantell, Patrick K. Preminger (*Foreperson Pro Tem*)

Seated, left to right:

Lawrence Contreras, Hon. Jon R. Rolefson (*Presiding Judge*), Candace Fitzgerald

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



**Honorable Jon R. Rolefson
January 1, 2010 – Present**

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INTRODUCTION TO THE ALAMEDA COUNTY GRAND JURY

The Alameda County Grand Jury is mandated by Article 1, Section 23, of the California Constitution. It is constituted and operates under Title 4 of the California Penal Code, sections 3060-3074 of the California Government Code, and Section 17006 of the California Welfare and Institutions Code. All 58 counties in California are required to have grand juries.

In California, grand juries have several functions:

- 1) to act as the public watchdog by investigating and reporting on the affairs of local government;
- 2) to make an annual examination of the operations, accounts and records of officers, departments or functions of the county, including any special districts;
- 3) to inquire into the condition and management of jails and prisons within the county;
- 4) to weigh allegations of misconduct against public officials and determine whether to present formal accusations requesting their removal from office; and
- 5) to weigh criminal charges and determine if indictments should be returned.

Additionally, the grand jury has the authority to investigate the following:

- 1) all public records within the county;
- 2) books and records of any incorporated city or joint powers authority located in the county;
- 3) certain redevelopment agencies and housing authorities;
- 4) special purpose assessing or taxing agencies wholly or partly within the county;

- 5) nonprofit corporations established by or operated on behalf of a public entity;
- 6) all aspects of county and city government, including over 100 special districts; and
- 7) the books, records and financial expenditures of any government agency including cities, schools, boards and commissions.

Many people have trouble distinguishing between the grand jury and a trial (or petit) jury. Trial juries are impaneled for the length of a single case. In California, *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 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);
 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 section 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. 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 section 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 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.

Under Penal Code Section 936, the Attorney General of the state of California 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 a detailed 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 for study it must first decide whether or not an investigation is warranted. The grand jury is not required by law to accept or act on every complaint or request.

In order to maintain the confidentiality of complaints and investigations, the Alameda County Grand Jury only accepts complaints in writing. Complaints should include the name of the persons or agency in question, listing specific dates, incidents or violations. The names of any persons or agencies contacted should be included along with any documentation or responses received. Complainants should include their names and addresses in the event the grand jury wishes to contact them for further information. A complaint form has been included in this report, and is also available on the grand jury's website at www.acgov.org/grandjury.

Complaints should be mailed to: Alameda County Grand Jury, Attention: Foreman, 1401 Lakeside Drive, Suite 1104, Oakland, CA 94612, or faxed to (510) 465-9647. An acknowledgment letter is routinely sent within two weeks 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 the attached Civil Grand Jury Questionnaire and mail it to: Office of the Jury Commissioner, Alameda County Superior Court, Grand Jury Selection, 1225 Fallon Street, Room 100, Oakland, CA 94612. On the basis of supervisory district, six members from each district for a total of 30 nominees are assigned for grand jury selection. After the list of 30 nominees is completed, the selection of 19 jurors who will actually be impaneled to serve for the year are selected by a

random drawing. This is done in late June before the jury begins its yearly term on July 1. For more information, please visit the Alameda County Superior Court website at www.alameda.courts.ca.gov and follow the link to “jury” then “grand jury.”

Qualification of Jurors

Prospective grand jurors must possess the following qualifications (pursuant to Penal Code section 893): be a citizen of the United States; at least 18 years of age; a resident of Alameda County for at least one year immediately before being selected; possess ordinary intelligence, sound judgment and fair character; and possess sufficient knowledge of the English language. Other desirable qualifications include: an open-mind with concern for others’ positions and views; the ability to work well with others in a group; an interest in community affairs; possession of investigative skills and the ability to write reports; and a general knowledge of the functions and responsibilities of county and city government.

A person may not serve in 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 51 cents per mile) portal to portal, for personal vehicle usage.

Persons selected for grand jury duty are provided with an extensive, month long orientation and training program in July. This training includes tours of county facilities and orientation by elected officials, county and departments heads and others. The orientation and training, as well as the weekly grand jury meetings, take place in Oakland.

An application is contained in this report for interested citizens.

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

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA
Office of the Jury Commissioner
1225 Fallon Street, Room 209
Oakland, CA 94612
(510) 272-5003

CIVIL GRAND JURY QUESTIONNAIRE
(Please print or type)

Name: _____
(First) (Middle) (Last)

Address: _____
(Street) (City) (State) (Zip)

Contact Information: _____
(Home Phone) (Work Phone) (Cell Phone) (Email)

Driver's License No.: _____ Expire: _____

LEGAL QUALIFICATIONS

- | | | | | | |
|------------------------------|-----------------------------|--|------------------------------|-----------------------------|---|
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | I am a US Citizen and at least 18 years old. | <input type="checkbox"/> Yes | <input type="checkbox"/> No | I am presently serving on a trial jury. |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | I will have been a resident of Alameda County for at least 1 year by next July 1. | <input type="checkbox"/> Yes | <input type="checkbox"/> No | I have been discharged as a grand juror within the past year. |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | I am in possession of my natural faculties, of ordinary intelligence, of sound judgment, and fair character. | <input type="checkbox"/> Yes | <input type="checkbox"/> No | I have been convicted of malfeasance in office or a felony. |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | I understand the spoken and written English language. | <input type="checkbox"/> Yes | <input type="checkbox"/> No | I am presently serving as an elected public officer. |

Education:

Highest Grade Completed: _____

List any degrees you hold: _____

Employment History:

Employer: _____

Occupation _____

If retired, please list occupation you retired from: _____

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

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

Do you currently have plans to be absent from Alameda County for longer than four continuous weeks from July 1, 2011 to June 30, 2012? Yes No

(If "yes", please give details)

Are you interested in being appointed foreperson of the grand jury? Yes No

If you are employed, does your employer understand the nature of the duties of a Grand Juror and will he/she permit your participation as a juror, for the period that the jury shall be in session? Yes No

Grand Jurors are required to file "Statements of Economic Interests" which are intended to disclose financial interests that may create conflicts of interests. These are not confidential. Are you willing to submit such a statement? Yes No

If selected as a Grand Juror, you will be required to swear to or affirm an oath. Have you any objections to taking such an oath or affirmation? Yes No

How did you hear about the grand jury? _____

What can we do to assist you if you have any physical disability that might restrict your service as a Grand Juror? _____

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

List any areas of expertise you possess that may be helpful to the grand jury service (i.e., accounting, planning, etc.): _____

Pursuant to Penal Code Section 903.2, I understand an investigation that will include a criminal record check will be conducted to help determine my eligibility to serve as a Grand Juror. I further understand that if my name is drawn as a Grand Juror or as an alternate, I may be required to attend grand jury training; if I am seated as a Grand Juror, I will be available to attend grand jury meetings and devote the required time to complete grand jury work for one year, from July through June. I further understand that if my name is drawn as an alternate, I will remain available for one year to serve as a member of the grand jury if called upon.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: _____ Signature: _____
 (Please insert date signed) (Please sign your name here)

For statistical records, please mark appropriate boxes.

Age Range, specifically: 18-25 26-34 35-44 45-54 55-64 65-74 75 and over

Gender: Male Female

Race or Ethnicity: American Indian or Alaskan Native
 Asian Black or African American
 Hispanic/Latino Native Hawaiian or other Pacific Islander
 White (Anglo) Other Race or Ethnicity (Please state _____)
 Decline to Answer

Place of Residence by Supervisorial District:
 District 1 District 2 District 3 District 4 District 5

FOR COURT USE ONLY

Qualified under PC893 and PC896? Yes No

Schedule interview with jury commissioner? Yes No

Dated: _____ Signature: _____
 (Jury Commissioner)

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ALAMEDA COUNTY CIVIL GRAND JURY
1401 Lakeside Drive, Suite 1104
Oakland, California 94612
Voice: 510-272-6259 Fax: 510-465-9647

Citizen Complaint Form

Your complaint is confidential. Disclosure of your complaint is a misdemeanor. A complaint should only be submitted to the Grand Jury after all attempts to correct the situation have been fully explored.

What is your name, address, phone number, and email address?

What governmental agency are you complaining against? (Include name of agency and all individuals)

What is the governmental agency's address and phone number?

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. (Use additional sheets of paper if necessary)

Action taken. Please list other persons or agencies you have contacted in attempt to resolve this complaint and any actions you have taken yourself.

Witnesses. Please provide names and telephone numbers of anyone else who can substantiate your complaint.

Date _____

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REGIONAL EMERGENCY COMMUNICATIONS

The 2010-2011 Grand Jury investigated the interoperability of the emergency communication systems in Alameda County in response to previous Grand Jury reports and on-going communication problems in emergencies. Most jurisdictions in Alameda and Contra Costa counties have joined an organization called East Bay Regional Communications Systems Authority (EBRCSA), but four have not: Berkeley, Oakland, Piedmont and Orinda.

The 2005-2006 Alameda County Grand Jury had written that there is a need for a multi-county radio communication system that would allow first responders in all jurisdictions in Alameda and Contra Costa counties to communicate with one another when responding to major disasters or terrorist attacks. They supported a proposal for a joint powers authority (JPA) composed of representatives from the two counties, all the cities within the two counties, and other emergency responders including those within university police and fire departments, and park and transit districts. In order to succeed, the proposal would require the political and financial commitment of all the jurisdictions. The 2006-2007 Alameda County Grand Jury went on to re-affirm that cooperation among the various jurisdictions in Alameda and Contra Costa counties is paramount in order for EBRCSA to achieve interoperability, and urged EBRCSA to promote wide membership.

Focusing on the question of why the city of Oakland has not joined EBRCSA, the current Grand Jury interviewed public safety officials from Oakland and EBRCSA. In addition, we reviewed the following documents: Alameda County Grand Jury final reports for 2005-2006 and 2006-2007; City of Oakland's California Interoperability Study Public Report (11/6/09) and an internal staff report (11/10/09), both by CTA Communications (CTA study); Final EBRCSA Design Evaluation Report for Contra Costa County (4/19/07); Interoperability

Assessment & Gap Analysis for the Bay Area Super Urban Area Security Initiative (SUASI) Interoperable Communication Project (1/4/08); and correspondence between various officials.

Unfortunately, based on our research, the current Grand Jury concludes that the goals of cooperation and interoperability are far from being achieved, and progress towards regional interoperability between the city of Oakland and EBRCSA is at a standstill. The delay in finding a joint solution for this issue leaves the lives of officers and the public in continued jeopardy.

Background

The East Bay Regional Communications System Authority is a joint powers authority that was formed in 2007. Thirty-six member agencies belong to EBRCSA including:

- Alameda and Contra Costa counties;
- 18 of the 19 cities in Contra Costa County (all except Orinda);
- 11 of the 14 cities in Alameda County (all except Berkeley, Oakland, and Piedmont);
- four Special Districts (excluding BART); and
- the University of California.

The goal of EBRCSA is to provide interoperability for the radio systems in Alameda and Contra Costa counties. Interoperability allows multiple parties to communicate when and where necessary, even when different systems are involved. Lack of interoperability can severely hinder coordinated responses to natural disasters, catastrophic accidents, civil unrest, and criminal actions. Examples include the 1979 BART tube fire, the 1982 Caldecott Tunnel fire, the 1989 Loma Prieta earthquake, the 1991 Oakland Hills fire, and public protests connected to the Mehserle/BART shooting case. In addition, police officers from one jurisdiction frequently pursue suspects across city and county lines. In those

situations, first responders from different jurisdictions need to communicate seamlessly and in real time to prevent the loss of life and property.

EBRCSA is supported by grant funds and bonds issued by the two counties. Starting in 2012 user fees will be used to service the debt. User fees will be based on the number of users in the system. Member agencies are currently paying to operate and maintain existing systems; the user fee will replace those costs. Agencies that join EBRCSA will also pay an upfront, one-time \$200 per radio fee.

Investigation

The Grand Jury learned that the city of Oakland uses a radio system from Harris Communications that it has operated for many years. In June 1992, Oakland voters passed Bond Measure I to enhance emergency preparedness. In 2010, the city initiated plans to upgrade its radios and communication system, fully funded by grant money. The grant funds would not cover on-going operations and maintenance.

Oakland has not joined the JPA because it has heavily invested in its own system and wants to avoid the additional costs. The city says that it moved ahead, stimulated by the 1991 Oakland Hills fire response problems, whereas the regional effort was slower to develop.

The Grand Jury learned that EBRCSA selected a P25-compliant Motorola system. P25 refers to a federally funded set of standards to be used by federal, state and local public agencies in North America to allow communication with one another and with mutual aid response teams in times of emergency.

The city of Oakland, in consultation with EBRCSA, commissioned a study by CTA, an independent consulting firm, to evaluate how it should proceed with interoperability. The CTA study for Oakland provided important information on the advantages and disadvantages of their options (CTA Communications,

“Interoperability Study,” November 8, 2009). According to this study, Oakland faced a choice of whether to build out its own Harris simulcast system at a cost in excess of \$5 million to become compliant with the new P25 interoperability standards, or to join EBRCSA’s simulcast system which would also be P25-compliant. Oakland used the complex recommendations in the CTA study to justify remaining separate. The Grand Jury does not find such a definitive conclusion in the CTA study.

Oakland claims it is being penalized for having taken the initiative in improving radio communications. The city’s position is that it would not be cost-effective and there would be no technological advantage for it to join EBRCSA. The city also claims it will be P25-compliant by late 2011, well before EBRCSA is P-25 compliant. However, regardless of when either becomes P25 compliant, interoperability fails unless both systems are able to be linked together.

A letter from Oakland’s fire chief to the chair of EBRCSA stated: “The city of Oakland has invested considerable funds and more than 13 years in upgrading our wireless system and finds it unacceptable to dismantle or surrender its operation.” He goes on to write that it is estimated that the city would incur an additional debt of more than \$1.2 million per year for the next ten years if it joined EBRCSA, based on a projected system cost of \$50 million. (February 14, 2008).

In contrast, the CTA study outlined several ways Oakland could reduce the additional costs of joining EBRCSA. One opportunity includes a memorandum of understanding with EBRCSA to contract with the Oakland Department of Information Technology radio shop to provide maintenance and subscriber support for the entire system. This would be financially beneficial to Oakland because all other jurisdictions through EBRCSA would pay for the maintenance. The CTA study noted that such an agreement would provide the city with “an opportunity to defer most of the costs of using EBRCSA.” The CTA study stated “coordination is required as soon as possible with EBRCSA to ensure that the

leveraging opportunities that exist today are not missed as the project moves forward.” Unfortunately, that cooperation has not occurred.

If Oakland does not participate in EBRCSA, easy communication between the Harris and Motorola systems would require establishing communication interface protocols. One way to accomplish this is via an infrastructure called Inter SubSystem Interface (ISSI). This, in turn, requires a memorandum of understanding that establishes communication protocols and specifies how to share the costs. Without these steps, seamless communication between safety personnel will not be built in, will not be automatic, and will be subject to unnecessary human error.

The Grand Jury heard a specific example where top officials in two different Texas jurisdictions, one using a Harris system and one using Motorola, worked with two vendors to create seamless communication using ISSI. As one witness told the Grand Jury, “It is a multi-vendor world and it always will be.” This suggests that vendors can create the necessary technology when they have the motivation to do so. The testimony indicated that the success of the Texas project resulted from the pressure applied by top elected leaders across jurisdictional boundaries.

Unfortunately, communication between the city of Oakland and EBRCSA broke down years ago and has not been repaired, to the detriment of the community’s public safety. The Grand Jury concludes that accommodations must be made both by EBRCSA and by Oakland. It does not seem reasonable to expect Oakland to change its vendor or completely abandon the new system they are building. The funding formula for Oakland may need to be different than that for other cities in order to motivate Oakland’s full participation. Lack of participation by a city the size of Oakland seems to be the major obstacle to a well-functioning multi-county radio communication system.

However, it does not seem reasonable for Oakland to expect to benefit from EBRCSA's efforts without paying its fair share. To determine reasonable compromises, the elected officials in all the jurisdictions should provide leadership to resolve the logjams, which are not only counterproductive but a significant danger to everyone living and working in the two counties. The Grand Jury was heartened to learn that in February 2011 a meeting of representatives from EBRCSA and the city of Oakland took place, but disappointed to learn that no framework for compromise appears to have resulted.

Radio Communications – Oakland Police Department

While investigating interoperability, the Grand Jury became aware of persistent radio communication problems within the city of Oakland (internal operability problems). The Grand Jury requested and received copies of reports of radio problems submitted by police personnel over the past year including reports of dead spots and radio failures. The sheer volume of reported problems from these reports, the CTA study, and from witness testimony can only be described as shocking.

Examples include:

- Dead spots regularly occur, particularly between dispatchers and users in many highly sensitive locations.
- During a lengthy high-speed chase and crash, the radio system failed. Officers had intermittent radio coverage during the deadly confrontation, which hampered efforts to secure an immediate medical response.
- A lone police officer recognized a dangerous suspect with warrants relating to an armed robbery. The officer attempted to contact dispatch while confronting the suspect but a radio malfunction precluded the dispatcher and the officer from communicating with each other. Fortunately another officer was able to hear the attempted transmission over the radio and self-dispatched other

officers to the scene. The confrontation quickly escalated to a near deadly struggle because the suspect was armed with a firearm. Up until back-up arrived, the officer had no idea whether dispatch even knew about the situation.

- Officers responded to a potential hostage situation inside a public building in East Oakland. While confronting the suspect inside the building, officers were unable to use their radios. An officer had to use a phone inside the building to contact dispatch while another officer ran out to the street to use the radio.
- While responding to a burglary call, an officer was provided with the incorrect address. As the officer arrived at the scene, dispatch could not contact him to correct the mistake. The suspect saw the officer approach the wrong house and fled. Other officers joined in the pursuit of the fleeing suspect but radio “dead spots” hampered the chase.
- The red emergency button on police radios has resulted in multiple communications failures. When pushed, a channel is reserved for that specific officer. In certain areas of the city, when multiple red buttons are pressed at the same time, other officers cannot use the system.

The current radio system does not work for Oakland and sufficient resources have not been applied to fixing the system. The Grand Jury heard testimony that TV satellite trucks show up when a news story breaks about Oakland police communication problems, but when they depart, attention to the problems end. Oakland officials claim that the upgrade underway will eliminate the internal operational problems.

In early 2011, the city of Oakland’s Department of Information Technology, along with an independent engineering firm, completed a three-week inspection of their radio system as a result of the numerous radio failures reported by Oakland police. The inspection validated all of the problems reported by Oakland police

officers. The report resulted in modification and/or recommendations to replace a number of the 17-year old components to the system until the new radio system could be operational, which is expected to be running sometime in late 2011. The Grand Jury is troubled that it took repeated system failures over a lengthy period of time to address the issues and bring in independent experts to evaluate the problems. The Grand Jury is more troubled that the system has continued to malfunction even after many of these modifications have been made. The Grand Jury also questions whether the city of Oakland has the capacity to sustain and maintain a stand-alone radio system without the long-term interface with EBRCSA.

During the writing of this report, the Grand Jury learned that the Oakland police radio system failed due to a malfunction on April 7, 2011. Officers were requested not to make high-risk stops during that period. Patrol officers were relegated to using their cell phones to communicate with the police department. The department was forced to limit police response to only the highest priority calls. If an earthquake hit Oakland during a radio shutdown, a coordinated emergency response would be next to impossible.

The Grand Jury heard testimony that monthly meetings of a radio working group have recently been initiated between Oakland's Information Technology Department and the Police Department, including field commanders. We are disheartened that this working group has not been used throughout the upgrade process to ensure user input for solutions to current problems. This lack of interaction between these two organizations has led to the officers being inappropriately blamed for user error. Additionally, training on the system is insufficient. Memos are not a substitute for hands-on training.

Conclusion

The Grand Jury recognizes that interoperability and internal operability are complex problems. However, the persistent problems and the breakdown in relationships necessary to resolving the issues are of the utmost seriousness. They merit pro-active intervention by elected officials and top administrators in all the jurisdictions of both counties.

Although the Grand Jury realizes all radio communication is important, internal operability among police emergency personnel is of the highest immediate concern. It is unacceptable that a police radio communication system should ever fail, risking the lives of police and citizens of Oakland. The Grand Jury is very concerned about Oakland's radio communication system and the potential for life-threatening problems when it fails.

The city of Oakland should reconsider its "go it alone" mentality. Oakland and EBRCSA must work together to agree on a mechanism for mediation to determine reasonable compromises. The process requires top-down leadership. This means getting the vendors in the same room and telling them, "You will make this work." Compliance with P-25 standards is just the first step. In practice, regional emergency communication also requires effective governance, standardized operating procedures, effective training and exercises, and inter-jurisdictional coordination.

RECOMMENDATIONS

Recommendation 11-1:

The city of Oakland and the East Bay Regional Communications Systems Authority (EBRCSA) must comply with P25 specifications and ensure interoperability of radio communications immediately in order to achieve seamless automatic roaming.

Recommendation 11-2:

The city of Oakland and the East Bay Regional Communications Systems Authority (EBRCSA) must have regularly scheduled meetings to end the impasse.

Recommendation 11-3:

The city of Oakland and the East Bay Regional Communications Systems Authority (EBRCSA) must negotiate with both Motorola and Harris vendors to achieve interoperability.

Recommendation 11-4:

The city of Oakland's Information Technology Department in conjunction with the mayor's office must report quarterly to the Oakland City Council on radio communication failures, the status of the new system, and its upgrades.

Recommendation 11-5:

The city of Oakland's Information Technology Department and the Oakland Police Department must bridge the communication gap between front-line public safety personnel and information technology staff to ensure that problems are quickly and satisfactorily addressed.

RESPONSES REQUIRED

Mayor, City of Oakland

Recommendations 11-1 through 11-5

Interim City Administrator, City of Oakland

Recommendations 11-1 through 11-5

Executive Director, East Bay Regional Communications Systems Authority

Recommendations 11-1 through 11-3

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ALAMEDA COUNTY PROBATION DEPARTMENT

Due in part to media reports of juvenile escapes over the past year from facilities managed by the Alameda County Probation Department, the Grand Jury chose to visit the Alameda County Juvenile Justice Center (JJC) and Camp Wilmont Sweeney (Camp Sweeney). The investigation that followed focused on different aspects of the management of the juvenile division of the Probation Department.

The Juvenile Justice Center is a 24-hour secure detention facility capable of housing 299 minors. It holds those not eligible for release prior to adjudication of their case because of potential risks associated with the serious nature of their crimes, or because of the risk of danger to the community. The modern facility appears to be well designed, offering a host of services to troubled youth awaiting trial with the help of other government agencies and community partners.

Camp Wilmont Sweeney, administered by the Alameda County Probation Department in conjunction with the Alameda County Office of Education and the Alameda County Health Care Services Agency, is a 24-hour residential detention facility with a capacity of 105 male juvenile offenders who have been ordered removed from their homes as a result of a court order *after* adjudication of their cases. The unlocked camp, currently housing just under 50 male offenders age 15-18, is located on property adjacent to the new JJC in the city of San Leandro. Its location takes advantage of proximity to family and community to allow families easier access.

There are stark differences between the two facilities. While Camp Sweeney is scheduled to be replaced in the future after full funding has been obtained, the camp suffers from more significant deficiencies than just its outdated and deteriorating physical plant. It was not surprising that one official report stated that there were nearly 80 detainees that escaped or walked away from the facility

during a 12-month period in 2008-2009. Rather than a place representing hope for rehabilitation, it appeared more like a jail from another time.

On average, there are approximately 2,000 juvenile offenders under the supervision of the Alameda County Probation Department. An overwhelming majority of the juveniles live at home, while approximately 200 juvenile offenders are supervised outside of their homes each month. Often upon recommendation by the Probation Department, the juvenile court will order these offenders to be placed in out-of-home facilities. Out-of-home placement can include group homes throughout the region, more structured locked programs out of the county, Camp Sweeney or the State Division of Juvenile Justice (formerly the California Youth Authority).

Investigation

During this Grand Jury term, the Alameda County Board of Supervisors appointed a new chief probation officer. The new chief acknowledged to the media that there were problems with the current design and structure of the agency. The Grand Jury is hopeful that the chief can inject the department with new energy and innovative solutions to overcome leadership, training and employee morale problems.

The Grand Jury visited the Alameda County Juvenile Justice Center and Camp Sweeney. We interviewed witnesses who work (or have worked) for the Alameda County Probation Department, after which we requested documentation from the department. Among the documents we reviewed were:

- *The Alameda County Juvenile Facilities Needs Assessment Final Report* (December 5, 2008) by Carter Goble Lee, consultant to Vanir Construction;
- *Comprehensive Study of the Alameda County Juvenile Justice System* (December 31, 2004), Huskey & Associates;
- *Redesigned Wilmont Sweeney Camp Program* (undated final draft);

- Several newspaper stories on juvenile escapes;
- Camp Wilmont Sweeney program materials for detainees;
- *Correction Program Assessment Inventory – Camp Wilmont Sweeney* (September 1, 2005 by Edward Latessa); and
- *Corrections Standards Authority Inspection* (January 6, 2010).

Camp Sweeney

The Grand Jury was appalled at what we heard and saw during our November 2010 visit to Camp Sweeney. There were overgrown weeds throughout the unkempt facility; old abandoned mops in buckets sat outside the cafeteria; several bulletin boards showed photos of activities that had not been updated in years; the room that the interim camp supervisor identified as the library appeared more like a ransacked storage room, smelling of mold and mildew; and outside one door was a dead mouse.

The Grand Jury also saw:

- Ceilings that were sagging with evidence of leakage;
- A fan in the eating facility that was broken and useless;
- A physical fitness room that was jammed with so much used equipment that it greatly impacted the safety of the juveniles; and
- A large open dormitory that was the only location for sleeping, risking the safety of detainees and staff.

In a 2008 report to the Alameda County Board of Supervisors, the chief probation officer at the time described the camp as the only Alameda County facility for chronic offenders with high-level needs (such as mental health issues) who had previously been committed to the State Division of Juvenile Justice (juvenile state prison). The chief stated that these juvenile offenders required a fully supported secure care facility and that the Probation Department could not provide the level of care required using the existing facility.

Camp Sweeney is housed in facilities that were built in 1957. In June 2008, a needs assessment was conducted to evaluate the current and future safety and security requirements of Camp Sweeney. Carter Goble Lee wrote that, “[Camp Sweeney] is an aged, obsolete facility that needs earthquake retrofitting, and it should be replaced as soon as feasible . . . it is inappropriately designed for secure care, in a condition which does not merit renovation, and *presents unusual liability to the community and County*. Camp Wilmont Sweeney should undergo planning for replacement.” The report further stated that Camp Sweeney, “does not comply with minimal standards and criteria of the California Title 24 statute. Several required standards for fire safety, health and sanitation, sleeping areas for general and disabled, medical and mental health, acoustics, and security are deficient.”

There were so many areas of building non-compliance that the report recommended the buildings be torn down and new facilities built. The Alameda County Board of Supervisors approved the recommendation and authorized the chief probation officer to execute a funding grant from the state. Funding for the project was estimated in 2008 at \$38.9 million with the county assuming responsibility for \$7.8 million of the total.

The Carter Goble Lee report also stated that, “The current physical plant does not support a therapeutic evidence-based program. Best practices for juvenile treatment call for facilities that support small groups to enhance personal contact and involvement of staff with youth.” In the meantime, the new Juvenile Justice Center, a secure facility, was built and began operation in 2007. But, to this date, no visible progress has been made in tearing down and constructing a new Camp Sweeney.

The Grand Jury was told that the facility was unlocked by plan, but there is a fence surrounding the property that provides a sense of security. That feeling of security evaporates quickly when the fence is examined more closely. It contains holes that allow offenders to escape. In addition, the camp is not equipped to

house females or males who are a danger to the community. It is also not an option for gang members because there is no capability for rival members to be separated.

Programs

Camp Sweeney, a large group environment, is intended as a place where juvenile offenders have individualized treatment plans with the goal of returning each minor to his community in a positive frame of mind as a productive citizen. The detainees attend school on-site daily. Classes are administered by the Alameda County Office of Education. The Probation Department relies on outside community-based organizations and governmental agencies to provide a majority of additional programming.

The Grand Jury heard testimony that programming is not always focused on the specific needs of the offenders. In the past, if outside organizations were able to secure grant funding for a program, there was a good chance they would be invited to offer their programs without evidence that the specific programming was of any value.

Camp Sweeney offers a number of programs, including literacy and construction skills. The basic literacy tutoring class is offered to 10 to 12 of the 50 detainees. The Grand Jury learned that on average only three to six of the 50 residents take part in language arts and math tutoring. Based on witness testimony, the Grand Jury surmised that there has not been enough emphasis on literacy classes for detainees. The Grand Jury heard repeated testimony that programming must be strengthened and basic literacy instruction outside of existing classes should be required for all residents. Having a library program at Camp Sweeney would support this goal. Camp Sweeney offers a good emergency medical technician (EMT) program, but not many camp detainees have taken advantage of it due to their low literacy rates. Problems with basic math also make a sophisticated training such as EMT more challenging.

One of the few programming options offered and administered by probation personnel is the Aggression Replacement Training (ART) program. The ART program is intended to educate the juveniles about dispute resolution and dealing with aggression. The Grand Jury heard testimony that it currently is only offered to a small percentage of residents because only a few of the camp counselors are trained as instructors. The ART program should be mandatory for all detainees.

Another surprising fact the Grand Jury learned was that camp detainees are not asked to participate in the upkeep of the camp. The Grand Jury heard that the detainees are not always cooperative when asked to help clean up, so such attempts have been abandoned. At the time of our tour, it appeared that no one was responsible for the upkeep of the camp.

Camp Sweeney is staffed by juvenile institutional officers and probation officers. Staff assignments for the juvenile institutional officers - case managers and counselors - are not chosen by the camp administration. The Grand Jury learned that the Probation Department's memorandum of understanding with its labor organization allows juvenile institution officers with the most seniority to choose their assignments regardless of competency or commitment to the position. The Grand Jury heard testimony that this leads to a stagnant culture. Probation officers assigned to duties within Camp Sweeney are not supervised by the camp's director. Probation officers answer directly to a separate supervisor located outside of the camp, adding to the problem that the camp director lacks full control of the camp's staff.

Data Collection

When the Grand Jury toured the Juvenile Justice Center, one of the first questions asked of leadership was about juvenile recidivism rates in the county (or the rates at which the juveniles re-offend). The Grand Jury was told that such data was not collected. This is unacceptable.

The new chief probation officer recently acknowledged publicly that the department lacks coordination of services, and that staff has been experimenting with its own approaches in lieu of a systematic approach. He went on to say this was partly due to ineffective collection of key data to track the effectiveness of programs, particularly the rate at which youth re-offend.

The Grand Jury also heard testimony that no effective system was in place to collect essential data to allow for a broad evaluation of the programs offered. This data is invaluable to probation officers assigned to evaluate juvenile offenders. Probation officers must provide recommendations to juvenile judges regarding rehabilitative opportunities. Without broad evaluation of their successes and failures, individual probation officers have been forced to make programming recommendations based on their own personal experiences with specific programs and individuals. Without long-term planning, the department appears to lack a clear strategic direction.

The Grand Jury heard testimony that when specific data was collected, it was often used for a one-time purpose of obtaining grants or to satisfy state mandates. There was also concern that the data gathered was sometimes unreliable and incomplete.

Training of Probation Department Staff

Over the past two years, there were several high profile escapes that highlight lapses in training and procedures. One escape involved two detainees accused of murder and another accused of assault with a deadly weapon. The three jumped over a fence at the JJC and escaped at the end of the workday. There were accusations that some of the staff responsible for supervision of the detainees had violated department policy and were inappropriately distracted. Another embarrassing escape incident involved allegations that employees had refused to follow direct orders, had received poor training, and had provided inaccurate explanations of the event.

These events can be partially attributed to the fact that the Probation Department lacks an updated comprehensive field operational manual. We heard testimony that the department has been working on updating the document for nearly a decade, but that no one had taken a leadership role in finishing the project. The Grand Jury heard testimony that some employees do not always know what their jobs are. Specific protocols addressing a multitude of key situations and roles are absent. The Grand Jury heard testimony that, without established procedures, employees are hesitant to make decisions for fear of failure. One witness described the situation as, “you can’t get in trouble for *not doing* your job, but you *can* get in trouble for doing your job.”

The Grand Jury received a draft copy of the proposed Juvenile Services Manual. One explanation for the manual still being in draft form was that it had not been presented yet to the affected labor organizations. Without clear written policies and procedures, adherence to state mandates and legal obligations can become inconsistent over time.

One such legal mandate involves referring cases for prosecution in a timely manner. The Grand Jury heard evidence that the Probation Department often does not refer out-of-custody cases to prosecutors for up to two months after the event due to the volume of cases and lack of resources. The law requires that the Probation Department refer felonies to prosecutors within 48 hours of their receipt. Any delay can have dire consequences, because the suspected juvenile offender is walking the streets with no supervision, without home monitoring, and without therapy or treatment. In addition, there appears to be no system in place that notifies victims that these alleged offenders are out of custody and not being monitored by Probation.

Probation Department Leadership

The Probation Department has been without consistent leadership for over a decade. There have been five different probation chiefs since 1993. Key

leadership positions in the department have been held by interim, retired annuitants for some time. This hiring delay prevented building a leadership team that could establish long-term goals. Awareness among staff that leadership is temporary can damage morale and discourage loyalty and trust. Lack of energy to build a comprehensive strategy for the whole department has led to a dysfunctional and fractured organization. Continuity is a key ingredient to institutional strength and integrity.

The Grand Jury is also troubled by repeated testimony that staffing decisions are often a result of negotiated labor agreements. This creates an atmosphere in which leaders of the department are taking all of the responsibility for the success and failure of the organization without the power to make staffing changes necessary to improve the organization. Assignments should be based on an individual employee's ability. Leaders must be able to fill key staff positions with individuals who are the best qualified and not based solely on seniority. It is very difficult to build a team working towards a specific goal when there is a perception by many of the staff that some co-workers are merely "keeping a seat warm" until they can begin collecting their pensions. It also discourages employees from trying to be innovative when rewards only come about through longevity.

In 2010, the Probation Department had an opportunity to apply for a state grant through the Administrative Office of the Courts (AOC) that would have provided a comprehensive assessment of juvenile probation services. The Grand Jury learned that the Probation Department was strongly encouraged by several of its governmental agency partners with offers of assistance to seek the grant. While it appears the department submitted a proposal to the AOC, when it came time to interview with AOC staff in Sacramento, the Probation Department inexplicably withdrew its application without telling its partners. The presiding judge of the juvenile court drove to Sacramento in support of Alameda County's grant, only to be told when she arrived that the Probation Department was no longer interested in the assessment.

The Grand Jury was unable to conclusively determine why the department failed to follow through on such a promising opportunity. One explanation provided by a witness was that senior leadership in the department did not feel that Probation's partners would be supportive of the process. This was clearly contrary to all other information provided to the Grand Jury, considering that Probation's partners were the ones to inform the department of the grant in the first place. It should be noted that the assessment would have been led, in part, by a nationally recognized juvenile justice expert who had previously provided a very critical assessment of Camp Sweeney nearly a decade prior to that time. Whether this was a result of fear that the Probation Department would be scrutinized critically, or failure due to common negligence, this example highlights the department's need to improve communication and relationships with its partners and to be open to change and innovation.

Conclusion

The Grand Jury concludes that there are serious problems with the Camp Sweeney facility and its programming. From our observation and the 2008 *Alameda County Juvenile Facilities Needs Assessment Final Report*, we learned that Camp Sweeney is unfit to house, rehabilitate, educate and protect juvenile detainees. Juveniles assigned to the camp have many different needs and juvenile institution officers and probation officers must work together to better meet those needs by developing and implementing individualized programming as recommended in the report, *Redesigned Wilmont Sweeney Camp Program*.

The Grand Jury questions why nothing has been done to improve an obviously substandard situation. While we can certainly understand why a new facility has been delayed due to budget constraints, the Probation Department should not abdicate its responsibility for the basic upkeep of the existing facility. The new Camp Sweeney leadership is encouraging. The Grand Jury hopes the leadership will commit to and implement their vision as described in the *Redesigned Wilmont Sweeney Camp Program* report: "The camp will be focused on

residential treatment, accountability, rehabilitation and transition services to enable youth to return home better prepared to be law-abiding, productive and self-sufficient.” The Grand Jury further believes that implementation of a strong vision statement must incorporate the goal that a juvenile, when released, should be a better and more productive person, rather than returning to the same criminal behavior.

There are also serious problems throughout the juvenile division of the Probation Department including: no system to collect data and evaluate programs, inadequate training to improve performance, and an absence of effective and sustained leadership. We also heard that there has been a lack of consistent communication between levels of leadership personnel. Based on witness testimony, the Grand Jury suggests reestablishing a juvenile justice advisory committee with the participation of citizens, community based organizations, service providers, the county and the Probation Department. A previous advisory committee was under the leadership of a former member of the Board of Supervisors, but has since been suspended. The Grand Jury found the advisory committee filled an important need. The reestablishment of this advisory group would be very helpful in making suggestions for the department including the new Camp Sweeney design and programming and advocating for reforms in juvenile justice.

The Grand Jury commends many of the men and women in the Probation Department who -- in the past, and now in the present -- rehabilitate, counsel, educate and protect juveniles under their supervision. They need to be provided the necessary tools and strategies to ensure positive outcomes for the juveniles and the community.

RECOMMENDATIONS

Recommendation 11-6:

The Alameda County Probation Department must immediately address and correct the obvious deficiencies at Camp Wilmont Sweeney, ensuring compliance with state Health and Safety codes.

Recommendation 11-7:

The Alameda County Probation Department must accelerate the process for replacing Camp Sweeney and secure any additional funding needed in order to begin building a new camp as soon as possible.

Recommendation 11-8:

The Alameda County Probation Department must implement the final draft of the *Redesign Wilmont Sweeney Camp Program* including the establishment of a functional library and individualized evidence-based educational programming, ensuring availability for all detainees.

Recommendation 11-9:

The Alameda County Probation Department must secure Camp Sweeney to prevent future escapes or ensure that no high level offenders are placed at the camp.

Recommendation 11-10:

The Alameda County Probation Department must enforce strict, consistent, department-wide training for juvenile probation staff, including enforcement and communication of rules, regulations and policies.

Recommendation 11-11:

The Alameda County Probation Department must complete and implement a new juvenile probation department policy and procedure manual.

Recommendation 11-12:

The Alameda County Probation Department must revise its assignment policy for staff, allowing the new chief probation officer to make assignments that take into consideration qualifications and competence along with seniority.

Recommendation 11-13:

The County of Alameda must reestablish a juvenile justice advisory committee.

RESPONSES REQUIRED

Alameda County Chief Probation Officer

Recommendations 11-6 through 11-13

County Administrator, County of Alameda

Recommendations 11-7 and 11-13

Alameda County Board of Supervisors

Recommendations 11-7 and 11-13

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CITY OF OAKLAND PARKING BUREAU

A citizen of Alameda County sent a letter to the Grand Jury complaining about a parking ticket issued on March 11, 2010 by the Parking Bureau of the City of Oakland. The citizen alleged that the hand written citation falsely stated that the car had been parked for more than the allowed two hours and that the citation appeal was inappropriately denied. Although the Grand Jury does not investigate an individual's parking ticket, we do investigate systemic issues, and we are aware that parking citations are typically a source of citizen complaints in Oakland. The Jury also noted a press release from the Office of the City Administrator, dated May 20, 2010, and titled "City of Oakland to Implement New Parking Citation Data System."

Based on the citizen complaint and the city's press release, the Grand Jury investigated the implementation of the new parking citation data system. After requesting information from the city administrator, the Grand Jury reviewed the city administrator's response and the city auditor's studies of various aspects of its parking bureau's operations (2006-2009, and June 18, 2010). The Grand Jury also visited the parking office in November 2010 for a demonstration of the new system.

Investigation

Oakland issues two types of citations: those that are handwritten or those generated by an electronic handheld device. The use of handheld devices to issue citations, a main feature of the new system, was fully implemented as of September 30, 2010. The date and the time of the citation are generated automatically thus eliminating possible errors or illegible writing by the parking enforcement staff. With the Electronic Citation Issuance Reporting System (ECIRS), the Motorola MC95 handheld computer device and Zebra MZ320 printer are used to issue citations. Two photographs are taken by the handheld

device that show the vehicle license plate and the vehicle identification number (VIN), and are integrated into Department of Motor Vehicle records. Ten years of historical data have been added to the new system showing past citations, payments, and appeals. It is expected that motorists would be able to view the photos associated with their citations online in 2011. A small portion of citations (7 or 8%) are still handwritten because handheld devices would require those issuing tickets to carry additional heavy gear (e.g., police officers at the airport).

New pay-by-phone, pay-on-line, and lock box processing of checks, also part of ECIRS, were implemented on June 14, 2010. It was acknowledged that previous customer service had been poor, the old system was slow because different computer programs had to be accessed, there were long lines in the office and long waiting times on the phone, and recorded announcements were incorrect. For example, a recording accessed at midnight said, incorrectly, that the wait time for assistance was 45 minutes. In spite of reductions in the staff from 15 to 10, customer service is expected to improve with the new system. It was stressed that there is no quota for the number of tickets issued. Additionally, the parking citation division has improved the training for the enforcement staff. By doing so it hopes to be more efficient in processing citations and enhance customer service.

The appeals process for disputing parking citations continues to conform with the California Vehicle Code. A motorist receiving a parking citation may request an administrative review after receipt of a citation. Once a written request for an administrative review has been received, the citation is placed on hold and no late penalties will be added until the review has been completed. After receiving the results of the review, a motorist may request an administrative hearing within 21 days. This second level hearing is conducted by an independent reviewer.

In April 2011, the Grand Jury requested and received additional information from the Parking Bureau on the impact of the new parking citation data system. The number of tickets is down about 10% as of April 2011. The Grand Jury was

told other California cities are also experiencing a reduction in tickets issued. This decrease in Oakland would therefore not seem to be a result of the new system. Other information received:

- Number of appeals is down by approximately 17.3% for the period July 2010 - March 2011 compared with July 2009 - March 2010.
- In Fiscal Year 2009-2010, 54.58% of the appeals were found to be justified and 31.67% were denied. From July 2010 - April 2011, 47.44% were found to be justified and 27.80% were denied.
- The current collections rate is 72.7%, an increase of approximately 3% from the previous collection rate.

While these indicators are moving in a positive direction, it is too early to know what impact the new system is having. It is important to continue to monitor trends carefully.

Conclusion

While the new system may not solve all parking citation problems, the Grand Jury is pleased that the city of Oakland's Parking Bureau is keeping up with new technology. To make the system more effective, it would be valuable to have 100% of those issuing tickets use this electronic system. The Parking Bureau should track performance of the new system carefully to document strengths and weaknesses, continue to train staff on its use, and make adjustments as necessary.

RECOMMENDATION

Recommendation 11-14:

The City of Oakland must issue an annual report on parking citations that includes the following: number of tickets issued, number and outcome of appeals, length of time to resolve appeals, length of phone waiting time, and fine recovery and collection rates. This report should be made available to the public and posted on the city's web site.

RESPONSES REQUIRED

Mayor, City of Oakland

Recommendation 11-14

Interim City Administrator, City of Oakland

Recommendation 11-14

ALAMEDA COUNTY SHERIFF'S OFFICE PRISONER COMPLAINT

The Grand Jury received a complaint from a citizen who was detained by the city of Albany, California, for a traffic matter. The citizen was taken to the Alameda County Sheriff's Office (ACSO), Glenn Dyer Jail in Oakland for booking. The citizen complained about being interrupted while making a permitted phone call, and then not being able to make another phone call.

The complaint was against the Alameda County Sheriff's Office and it questioned the policies pertaining to phone calls while in jail. Although the Grand Jury does not investigate complaints on behalf of individuals, we did contact the Alameda County Sheriff to request information relating to telephone access for arrestees in custody. The Grand Jury was interested in possible systemic issues in the processing of prisoners from one location to another and consistencies in maintaining an individual's rights from one facility to the next (i.e., prisoners going from a holding facility to Santa Rita Jail or another holding facility.) The Alameda County Sheriff's Office has a procedure for ensuring prisoners have been offered the opportunity to make free phone calls, including calls to a bondsman, a family member, and an attorney.

After reviewing ACSO's policy and procedure manual for arrestees, the Grand Jury learned that, as part of the booking process, deputies make sure the new arrestee is placed into a holding cell with a telephone. The policy states: "All inmates, including those in administrative segregation and protective custody, will be provided reasonable and equitable access to telephones." The Grand Jury observed a booking process to confirm this procedure was being followed. The Alameda County Sheriff's Office has the authority to monitor all calls, including recording conversations on any telephone within its facilities. The Grand Jury

was able to confirm that the Alameda County Sheriff's Office has in place proper and adequate facilities and procedures to maintain access to telephones for new arrestees.

RECOMMENDATIONS: None

RESPONSES REQUIRED: None

JAIL INSPECTIONS IN ALAMEDA COUNTY

The Grand Jury is responsible for inspecting jails and court holding facilities within Alameda County as required by California Penal Code section 919(b). In determining which jails to inspect, the Grand Jury reviewed jail inspection reports for Alameda County for the past ten years, chose facilities that had not been recently inspected or ones that had previous reports of deficiencies, and attempted to get an overview of conditions and management of the Alameda County public prison system.

To facilitate these inspections, the Grand Jury reviewed reports from previous grand juries, current inspection reports from the Alameda County Department of Public Health, and inspection reports from the California Board of Corrections.

One purpose of the current Grand Jury inspections was to verify the recommendations for improvement made by the Alameda County Department of Public Health and the California Board of Corrections. Additionally, the Grand Jury visited the Juvenile Justice Center in San Leandro on July 16, 2010, and Santa Rita Jail in Dublin, meeting with the Sheriff's Office Command Staff on July 19, 2010.

Inspections were conducted by two to four members of the Grand Jury after giving each facility 24 hours notice in order to avoid any unnecessary delays due to arranging for staff to be present for the inspections. The Grand Jury conducted these inspections within a 60 day period and inspections occurred between 8:00 a.m. and 5:00 p.m., Mondays through Fridays. The 2010-2011 Grand Jury inspected the Berkeley City Jail, the Glen Dyer Detention Facility located in Oakland, the Alameda County Sheriff's Office (Eden Township) Patrol Substation, the Hayward City Jail, and toured two juvenile facilities, the Juvenile Justice Center and Camp Wilmont Sweeney.

The Grand Jury devised an inspection questionnaire to address specific questions about operations, including: population of inmates, handling of inmates with special needs, medical screening of inmates, training of staff, policies and procedures, and programs followed at facilities.

In addition, the Grand Jury observed the food-handling and meal-serving procedures, general processing of inmates, and overall conditions of health care for inmates. During its inspections, the Grand Jury reviewed policies and procedures on booking, inmate visitation, and observed local and state jail health inspection reviews and follow-up. The Grand Jury also investigated the overall treatment of inmates, including the condition of the jail cells, cleanliness of the facilities, and how jails book adult and juvenile arrestees.

Each of the jails inspected was found to be in compliance with local and state laws. The Grand Jury determined all of the adult facilities inspected were in acceptable condition and noted no violations.

RECOMMENDATIONS: None

RESPONSES REQUIRED: None

ALAMEDA COUNTY REGISTRAR OF VOTERS LOGIC & ACCURACY PUBLIC TESTING

In October 2010 the Alameda County Grand Jury was invited to attend the testing of the election system equipment at the Logic & Accuracy Public Testing. The testing was conducted at the Alameda County Registrar of Voters (ROV) Office. This test was to validate the accuracy and security of the vote counting equipment and system. The Grand Jury participates in the Logic and Accuracy Public Testing each year.

Oakland voters approved the use of Ranked-Choice Voting in 2010. Ranked-Choice Voting is a process in which the voters indicate their top three choices for mayor and other local offices. Supporters believe that it will help cut costs by eliminating the need for run-off elections.

Registrar's Duties

The Registrar of Voters is responsible for registering voters and conducting federal, state, county, special and local elections. The registrar prepares the published notices of elections and lists of offices for which candidates are to be elected. It is the registrar's duty to accept and check the nominating petitions of candidates for office; prepare and print official and sample ballots in English, Spanish and Chinese; mail sample ballots to over 600,000 registered voters in Alameda County; recruit over 4,000 elections officers and 1,000 polling places; and provide the roster and street index and other supplies for use by the election officers at the polls.

Grand Jury Participation

At the Logic & Accuracy Public Testing, members of the Grand Jury were asked to observe the accuracy of sample results compared to known results after ballots

were fed through a scanner (a machine used to count ballots). A zero report was first produced. Ballots were marked and then fed into the machine; the results were processed and read, printed and compared. This machine has a locked compartment that stores the computer chip containing the results of ballots put through the machine. This compartment is secured throughout the voting process and only accessible by authorized personnel. When the computer chip containing the results is removed it is then connected to a computer and printed for reading results. A Touch Screen voting machine for the disabled was also tested.

This testing provided the Grand Jury with insight into the vote counting process and the accuracy of the system. The Grand Jury also found that vote-by-mail ballots awaiting counting were adequately secured, in an unopened state. All tests conducted were sufficiently accurate. No problems were observed by the Grand Jury.

RECOMMENDATIONS: None

RESPONSES REQUIRED: None

CITY OF OAKLAND

BUILDING SERVICES DIVISION

The 2010-2011 Alameda County Grand Jury received numerous complaints from property owners regarding building inspection fines, protocols, and abusive practices in the city of Oakland's Community and Economic Development Agency's (CEDA) Building Services Division (Building Services). These complaints were consistent with issues that had been raised by the 1999-2000 Alameda County Grand Jury wherein they recognized improvement was needed in Building Services. The current Grand Jury's investigation determined that the recommendations of the previous Grand Jury had not been addressed, and in fact, the situation had deteriorated. The reviews, reports, interviews, and testimony provided to the current Grand Jury indicate that significant reform is needed as set forth in the body of this report.

Introduction

The city of Oakland addresses issues of neighborhood blight and substandard buildings through the Building Services Division of CEDA. This division is divided into two areas: 1) engineering for plan review and issuance of permits for new construction and renovation, and 2) inspections and code enforcement of property (buildings and grounds) suspected of being out of compliance with various blight, nuisance and safety standards.

The engineering group issues permits and reviews contracts and documents that are required for any construction project. After permits are issued, inspectors review the construction projects to make sure they are proceeding according to plan and to ensure current building codes and standards are being met.

The inspections group investigates and responds to complaints of violations, unsafe or unsanitary conditions, construction work without permits, graffiti,

substandard buildings, illegal dumping, trash and other blight-related issues. Additionally, inspectors have the authority to identify problem properties while in a neighborhood without having received a complaint.

Investigation

In 1999 an Alameda County Grand Jury investigated the city of Oakland's Building Services Division's operations, policies and procedures. That investigation resulted in three recommendations: 1) that the Building Services Division publish clear, written instructions for permit applications and for renovation of residential and small commercial properties; 2) that the Building Services Division's policy to aggressively seek building code violations be limited to include only life or health and safety violations; and 3) that the Building Services Division use prospective liens as a last resort.

In the complaints received by the current Grand Jury from property owners, the allegations included:

1. inconsistent standards for citing blight and nuisance/substandard violations;
2. lack of timely and understandable notice of violations;
3. lack of clarity about the abatement process;
4. difficulty in contacting and working with inspectors;
5. inconsistent evaluations by different inspectors working on the same case;
6. unprofessional, retaliatory and intimidating treatment by inspectors;
7. excessive and exorbitant fees, fines and liens;
8. unclear and ineffective appeals process that is sometimes ignored by Building Services personnel;
9. lack of a reasonable amount of time to comply and take corrective measures;
10. impropriety in the selection of abatement contractors, including allegations of ethical violations in awarding contracts and a lack of transparency; and

11. citizens feel discouraged from correcting blighted or substandard properties because it is too difficult and expensive to work with Building Services.

Upon review of the citizen complaints, the 2010-2011 Grand Jury examined the city of Oakland's Building Services operations, policies and procedures. Additionally, the Grand Jury compared the codes under which the cities of Oakland, San Jose and San Francisco handle blight issues.

In order to understand the department's process of blight abatement and make recommendations for improvement, the Grand Jury reviewed every written complaint received and supporting documentation about citizens' problems working with Building Services, and interviewed some property owners who filed complaints. We also met with current and former Building Service employees as well as contractors and city officials.

From the Building Services Department we requested information regarding several aspects of its code enforcement process, specifically regarding:

- a. inspectors (qualifications, training, performance standards, evaluation, supervision and authority);
- b. the inspection and abatement process (internal operating procedures, brochures and documentation provided to the public, notification of property owners, inspector communications with property owners, documentation of blight/nuisance cases, timelines for abatements, and compliance plans);
- c. the appeals process (explanation of process, fees, communication with property owners, frequency and number of appeals);
- d. fees (types, amounts, application, how appeal fees are determined);
- e. the use of liens (types of liens, timing, amount, purpose); and
- f. the city's process for performing abatement work (timing, procedures, communication with property owners, selection of contractors, and billing of owners).

The Grand Jury reviewed the information received from Building Services and studied nearly 50 of their files on properties with code violations. In contrast, when we reviewed the complaints from property owners, many of which included copies of their property files and documents from the city, we found they contained documents not provided to the Grand Jury by the city of Oakland. Despite making the request by subpoena, the city provided the Grand Jury with files that were incomplete which reflects the poor record keeping of the Building Services Division.

The Grand Jury’s investigation found flaws in the following areas: abatement process; policies, procedures and training; information communication and data management; due process; contracting; and appeals, as noted below.

Abatement Process

Throughout the Grand Jury’s investigation we noted a contrast between what the city stated its abatement process is and what many property owners experience.

The way it <i>should</i> work per Building Services	The way it <i>does</i> work per many property owners
An inspector visits the property, confirms whether there is a violation, and determines whether it is blight, public nuisance/substandard or dangerous/imminent hazard.	Definition of blight, public nuisance/substandard or dangerous/imminent hazard is not applied consistently by all inspectors, leading to confusion by homeowners.
A notice of blight or declaration of public nuisance/substandard is mailed to the property owner as listed on the Alameda County property rolls. The notice includes a description of the conditions, required actions and timeline, recourse for non-compliance, right to appeal (with payment of fees), and notice that failure to appeal waives the right to a future administrative hearing.	Notice is confusing; notice not received in all cases; insufficient effort is made by the city to contact property owners beyond the initial mailing.

(Abatement Process, continued)

The way it <i>should</i> work per Building Services	The way it <i>does</i> work per many property owners
Usually the owner has 14-21 days to appeal the violations; enforcement actions are suspended while the appeal is reviewed.	Appeals process confusing to homeowners; notice not received until appeal deadlines have expired; enforcement actions not suspended during appeal; building services inspectors discourage homeowners from appealing.
For violations deemed a dangerous or imminent hazard, the city can take immediate action to remedy the hazard, and the owner has 7 days to appeal.	In some cases, the city misapplies the imminent hazard designation and undertakes the abatement before the property owner has had a chance to appeal.
The owner must obtain permits (if applicable) and commence abatement work within 30 days; abatement work must be completed 30 days later. (Building Services can grant extensions as appropriate.)	Timelines to take necessary steps to remedy problems are unrealistic. It often takes the city so long to approve a permit that the property owner's deadline for abatement has already passed.
Building Services issues a demand for payment, including various fees and penalties and cost recovery if the city has performed abatement work. If the owner does not pay within 7 days, the city files a lien, special assessment of general tax levy or nuisance abatement lien against the property.	Unrealistic timeline for payment as the fees and penalties can cost many thousands of dollars; demand notice for payment not always received on time.

Policies, Procedures & Training

The Grand Jury learned there is a lack of consistency among inspectors in identifying and treating blight. For example, in one instance, an inspector cleared a property of a blight violation and two weeks later a different inspector visited the same property and offered a contradictory opinion, and told the property owner there was still a violation.

The Grand Jury found inconsistencies were due in part to the lack of a policy and procedure manual with clearly written guidelines for the day-to-day process of code enforcement. Instead, inspectors receive periodic training and are directed

to the city code that they are to enforce for guidance. Three Building Services witnesses who testified before the Grand Jury confirmed that there is no policy and procedure manual. Management fails to provide systematic, consistent standards or procedures, leaving inspectors to rely on each other for application and interpretation of the code.

The Grand Jury also learned that oversight of field operations of inspectors is lacking and there is no consistent system for maintaining files. Property records are not kept in one central location but rather in several locations, including individual inspectors' desk drawers. When asked, the city was unable to provide complete records because of this record-keeping problem. Moreover, there is no system in place for the department to get feedback from the public, or to make improvements. Improved training should include standards for interacting with the public.

The Grand Jury received complaints from property owners expressing fear of filing appeals or complaining in writing about the Building Services Division due to feeling intimidated by inspectors. These property owners gave examples of inspectors telling them they will lose their appeal and it will cost more money in the long run. In one case, it was alleged by a property owner that they were threatened with the possible loss of their home.

Information/Communication/Data Management

Building Services' data base is inadequate and fails to track various records associated with notifying homeowners for violations, inspections, upgrades, permits, appeals, etc., unless information is manually input by individual inspectors. The city imposes a 14.75% records management and technology enhancement fee to all property owners who receive violations, but it does not appear that this fee has resulted in an effective Building Services computer system.

The Grand Jury learned that the computer system currently being used by Building Services to input notes on cases is nearly 30 years old; there are different systems that are not coordinated and do not function together; and there is no central access to a file for either inspectors or the property owners. In addition, the city stated it does not have a tracking system for appeals and cannot provide any information on them.

Due Process (notice, liens, fees & fines)

Building Services' procedures for giving notice, recording liens and assessing fees and fines fail to provide due process. Building Services lacks clear written instructions or brochures to assist property owners in understanding their rights and responsibilities if they receive a notice of abatement, or what the process is for solving the problems in the most efficient and effective way. Efforts to notify property owners are inadequate.

A common problem noted by many property owners and acknowledged by the city is that the notice of violation does not always get to the property owner. City code allows for personal delivery, posting notice conspicuously at the property, or mailing a letter to the owner listed on the Alameda County Tax Assessor's Rolls. Common practice by Building Services is to mail a letter to the owner as listed on the County Tax Rolls and to take no further action to notify the owners. The tax rolls are often inaccurate. They often don't get updated until months after properties change hands or mailing addresses have changed. Failure to actually notify an owner does not stop the abatement process. This practice can immediately place a property owner in an untenable situation during a very time-sensitive process where fines can quickly accrue.

The Grand Jury found there is ineffective communication between inspectors and property owners. Owners complain that inspectors are difficult to reach because telephone hours are limited to two hours in the morning and two in the evening

on different days, and inspectors generally do not provide cell phone numbers for property owners to reach them during the day.

Many properties are declared blighted and prospective liens recorded before there is an opportunity for appeal or the property owner has had a chance to respond. The Grand Jury found examples where a prospective lien was recorded against the property within days of issuing the initial abatement notice. A prospective lien is a notice intended as a warning to property owners. Filing a prospective lien has been perceived as an encumbrance on a property, thus interfering with financial transactions related to the property. The Grand Jury reviewed property records from 2007 through 2010 with prospective liens ranging from hundreds of dollars to tens of thousands of dollars. Although Building Services has recently revised its procedure for prospective liens to be “not less than \$1,000,” the Grand Jury believes the use of prospective liens is inappropriate at any level.

According to property owner complaints, in many cases the city requires a compliance plan before an appeal can take place or before a lien will be cleared. A compliance plan is a written list of fees related to work that needs to be completed by the property owner. There is a city-imposed fee ranging from \$400 to \$1500 just to file this plan. Even the compliance plan includes fees unrelated to the actual cost to remedy blight: a 9.5% records management fee and a 5.45% technology fee. *(See Exhibit A, Compliance Plan)*

According to property owner complaints, Building Services imposed deadlines that were unreasonable and impossible to meet. For example, Building Services would give a homeowner seven days to correct a problem that required a permit, but the permit issuing process takes 14 days according to the city’s timeline. If a property owner fails to meet the deadline, significant penalties accrue, which may ultimately cost the property owners thousands of dollars. *(See Exhibit B, Code Enforcement Billing Request)*

The Grand Jury learned that fines are not aligned with the actual cost to remedy blight, but appear to be punitive in many cases. There is a perception by property owners that the fees are simply a way to generate funds for the city without regard for the residents' due process.

Examples of Liens, Fees and Fines

Issue	Alleged Violation	Comments
Excessive prospective lien with no abatement work performed by the city.	Vacant home. Damaged interior wall and ceilings. Building unsecured.	Property was vacant because it was transferring ownership at the time. Prospective lien for \$50K was filed 29 days from initial notice of violation. No remediation work had been done by the city. New owner required to sign a compliance plan and pay fees incurred by previous owner before prospective lien was released.
Excessive prospective lien with cleanup performed by city in January 2010.	Trash and debris. Abandoned construction site.	Prospective lien amount in excess of \$827K plus interest.
Excessive fees/fines.	Trash and debris, blight.	"Trash and debris, blight" turned out to be children's toys in the yard. This resulted in fees/fines of over \$18K and having to demolish a garage converted to an indoor/outdoor recreation room that had been approved more than 20 years earlier.

(Examples of Liens, Fees and Fines, continued)

Issue	Alleged Violation	Comments
Excessive lien.	Overgrown vegetation and trash and debris and feces in rear yard. Stagnant water in partially filled swimming pool.	Contract to clean up and fill swimming pool with dirt cost the city \$25K. Prospective lien placed for \$45K.
Excessive prospective lien with cleanup performed by city.	Parking lot - overgrown vegetation, trash, debris, and graffiti.	Prospective lien amount was \$50K plus interest.
Excessive prospective lien with NO work performed by city.	Overgrown vegetation, graffiti, trash, debris, broken windows.	After owner cleaned up and case was closed on 8/7/2009, prospective lien for \$35K was placed on 8/10/2009.
Egregious abuse of authority.	Blight, overgrown vegetation, trash and substandard interior.	Building inspectors had a warrant for entry to premises for inspection only (not to remove items); they removed and disposed of EVERYTHING in the house and had animal control take the property owner's dog. Subsequently the city recorded a lien for \$30K.
Fees/liens paid and reapplied.	Permit violation/owner change.	Previous owner paid off all fees and liens on closing. Within 2 weeks, Building Services reapplied all charges, fees and liens in the amount of \$29K to the new owner – with no work done by the city.

(Examples of Liens, Fees and Fines, continued)

Issue	Alleged Violation	Comments
City contracts for clean up before owner contacted.	Overgrown vegetation.	The contract bid for clean up of a property was approved prior to Building Services making contact with the property owner. A 10-day notice to abate should be given to owners with a 21-day appeals period. In this case, Building Services placed a \$10K lien because of the untimely contract to abate.

Contracting

The Grand Jury received information that suggested appearances of impropriety in the contracting process when the city undertakes abatement. When Building Services hires contractors to do abatement work on private property, it does not use the contracting procedures employed by other city departments. Instead, it maintains its own short list of qualified contractors and uses a short bidding process. Although many of the contracts are small clean-up projects costing only a few hundred dollars, many are in the range of thousand or even tens of thousands. Generally, in situations deemed to be an emergency, the contractor is selected by a building inspector in the field. In awarding emergency contracts, oftentimes the building inspector will call selected individual contractors and award the contract at the site through an abbreviated selection process. In reviewing property records and contracts, the Grand Jury learned that the same few contractors show up in the field on a regular basis and the winning contract appears to be disproportionately awarded to the same contractor.

The Grand Jury consistently heard that one contractor had inappropriate access to the private office of the former inspection manager. This particular contractor appeared to receive a disproportionately large percentage of contracts and

submitted a disproportionately large number of change orders that were approved. Testimony was provided that this same contractor had inappropriate access behind the business counter in the Building Services division. The contractor would submit the lowest bid and then provide a change order for a higher amount that was approved by the then-inspections manager. These change orders inflated the final price of the contracts, increasing the cost of the lowest winning bid. The Grand Jury received testimony that there was a personal relationship between the then-inspections manager and this contractor who was awarded the majority of the city's clean-up bids. This relationship included a personal 10-year interest-only loan that was given to the inspections manager by the contractor (reported two years after the fact on the inspections manager's Fair Political Practices Commission Form 700). Public records show the former inspections manager at one time also listed her address at a property owned by the contractor. The Grand Jury notes that this relationship contributes to a perception of impropriety.

Appeals

There is no clear, comprehensive appeals process, and Building Services does not always suspend its proceedings against property owners while an appeal is pending.

Many property owners complained that they are required to pay substantial fees prior to filing an appeal (or upon losing an appeal). The external review process described in the municipal code is rarely used and is costly and generally not understood. Property owners report they almost always lose appeals at the first step. The same inspector that issued the citation often conducts the initial appeal. The next level of the appeal involves a Building Services supervisor, who, it is reported, routinely denies the appeal. More fees are required to continue the appeals process, oftentimes adding up to more money than the actual citation itself. Property owners report it is cheaper to pay the fines than file an appeal.

Inconsistent record keeping makes it difficult for property owners to file appeals or obtain records for their appeal. Inadequate record keeping in Building Services also impacts the ability to track appeals. As an example, the Grand Jury requested the number of appeals denied by Building Services for a specific time period but Building Services was unable to provide this information.

Property owners are discouraged from filing appeals by Building Services personnel. Many complained they could not appeal without entering into a compliance plan and that fines would multiply if they lost an appeal. The abatement process is not always stopped while the property owner seeks an appeal. Inspections continue and abatement contracts are awarded, sometimes even before the period for appeal has run out. *(See Exhibits C & D, Code Enforcement Violation Appeal and Fee-Charged Re-inspection(s) Schedule)*

Examples of Property Owners' Comments About the Building Services Appeals Process:

One property owner bought a fixer house in Oakland. He claims he was told there is an appeals process but Building Services won't tell you about it and you cannot appeal until after you sign a compliance plan (which costs additional money).

One property owner received a warning notice threatening large fines if abatement did not occur. The owner did not understand because the property was well kept. The owner discovered that an employee of the city's Keep Oakland Beautiful Program gave a packet of blank warning notices to a neighbor who then distributed the notices throughout the neighborhood. The property owner then received a formal citation from Building Services regarding "offensive plant overgrowth" and then filed a written appeal that was misplaced by the city. The owner subsequently trimmed a shrub and the inspector told her by phone to disregard the notice. The owner asked for written confirmation of dismissal and the inspector refused. The property owner scheduled a re-inspection and the inspector failed to appear.

One property owner was fined twice, \$865 each time, for having garbage cans in his driveway. The second fine was after the property owner had removed the cans, but before he appealed. He claims he was then told by a Building Services inspector not to appeal, because if he lost, he would be fined a third time for \$865.

(Examples of Property Owners' Comments About the Building Services Appeals Process, continued)

The city continued to visit a property during the appeals process, even though all action is supposed to stop until the case is reviewed by an independent examiner. The original citation indicated there was overgrowth and debris on the property. The property owner cleaned up, but Building Services placed a lien anyway. Building Services denied the owners appeal, but sent the denial notice to the wrong address. There are multiple city actions, including inspections, which should have stopped as the result of the appeal. Ultimately, the work was completed and the inspector noted that the condition had been abated; however, a \$50K lien was left in place.

A bid for corrective work was awarded and approved by Building Services within 20 days of an abatement letter, before the 21 days for appeal had run.

Building Services awarded a clean-up contract within 30 days, prior to service of the notice (eliminating opportunity to appeal). Abatement letter was not sent to current owner.

Comparison to San Jose and San Francisco

The Grand Jury compared the municipal codes under which the cities of San Jose, San Francisco, and Oakland address blight, nuisance, and other property code violations. The Grand Jury discovered that these Bay Area cities handle blighted property issues differently. (*See Exhibit E, Comparison Chart*)

- San Jose and San Francisco both specify neutral hearing officers to review all appeals. Property owners are to be notified early in the process of the time and location of such hearings. In Oakland, appeals generally are handled within the Building Services division.
- Neither San Jose nor San Francisco uses prospective liens in their processes, whereas the Oakland code appears to allow prospective liens as a way of notifying the property owner of a demand for payment (Municipal

- Code section 15.08.13). San Jose and San Francisco use liens only after all invoices have been sent to the owner and payment has not been received within 30 days.
- San Francisco's code authorizes summary abatement (immediate abatement by the city) only if there is imminent danger in the adjacent public right-of-way. Oakland's code gives Building Services much more discretion in undertaking summary abatement actions.
 - San Jose and San Francisco allow 30 days for payment of invoices for fees and abatement costs. Oakland allows only 7 days.
 - San Jose and San Francisco call for contract bidding for abatement work to be handled in the same manner as other city contract bids, whereas Oakland uses a bidding process unique to the Building Services Division.
 - San Jose and San Francisco specify fees that appear to be based on the actual cost of handling abatement violations. Their fees and charges appear to be invoiced toward the end of the process, after appeals have been considered. In Oakland, significant fees and fines begin immediately and are a central part of the abatement process. For instance, a compliance plan is essentially a list of fees; there is a fee for every action taken by Building Services, including generating and receiving individual documents it requires from the property owner. *(See Exhibit F, Master Fee Schedule)*

Conclusion

Building Services' code enforcement inspectors have aggressively pursued blight and sub-standard properties throughout Oakland as determined by their individual interpretations of the applicable city code. This has led to an inconsistent enforcement program backed by inspectors' threats of filing large liens on the offending properties. This creates an institutional reluctance to lend on these properties and reluctance by property owners to improve their properties.

In 2000 an Alameda County Grand Jury recommended that Building Services limit the use of prospective liens. The city's 2000 response suggested that it would consider use on a case-by-case basis. The current Grand Jury finds that the use of prospective liens continues to be abusive and inappropriate in that they are excessive in number; the amounts are open-ended; liens are not always mailed to the correct property owner; these prospective liens encumber the property title whether intended or not, and there is a perception that the fees associated with the liens are used by the city as a source of revenue. The 1999-2000 Grand Jury recommended that prospective liens should only be used as a last resort. The current Grand Jury recommends that Building Services stop using prospective liens altogether.

The Grand Jury found that property owners complained that it is extremely difficult to understand the process for appealing a citation, or to resolve issues with Building Services inspectors. Testimony confirmed there are no standard operating manuals or guidelines for Building Services inspectors. Property owners were frustrated by their inability to speak with inspectors who are only available for short periods of time on an irregular schedule.

The Grand Jury found an atmosphere of hostility and intimidation toward property owners within the Building Services division. When property owners complained, they were sometimes threatened with more fines or, in one case, even loss of their home. Some inspectors inappropriately used their law enforcement authority and their city-issued badges to intimidate property owners. Therefore, the Grand Jury believes that the city of Oakland should reevaluate its policy of granting law enforcement authority and related badges to building inspectors.

The Grand Jury is appalled by the actions of the city of Oakland's Building Services Division and its impact on property owners of Oakland. The significant contradictions between the testimony of Building Services employees and the testimony of property owners and contractors are disturbing. The division's

practices and its treatment of property owners appear to be a direct reflection of poor management, lack of leadership, and ambiguous policies and procedures. The Grand Jury concludes from witness interviews and reviews of documents that the city of Oakland's Building Services Division is an organization that needs a comprehensive outside management review, and one that could benefit from benchmarking other cities and counties.

RECOMMENDATIONS

Recommendation 11-15:

The city of Oakland Building Services Division must ensure that the true property owners are notified of violations through every stage of the abatement process.

Recommendation 11-16:

The city of Oakland Building Services Division must provide the property owner a clear written description in simple-to-understand language on the notice of violation, and not just refer the property owner to a city code section.

Recommendation 11-17:

The city of Oakland Building Services Division must implement a training program that emphasizes working with – not against – property owners.

Recommendation 11-18:

The city of Oakland Building Services Division must eliminate the use of prospective liens.

Recommendation 11-19:

The city of Oakland Building Services Division must revise fees and base them on actual reasonable costs incurred by the city.

Recommendation 11-20:

The city of Oakland Building Services Division must establish deadlines for inspectors to respond to property owners.

Recommendation 11-21:

The city of Oakland Building Services Division must develop an operations manual to ensure inspectors operate in a consistent manner in applying code enforcement.

Recommendation 11-22:

The city of Oakland Building Services Division must develop a centralized case management system that is easily accessible to all inspectors and property owners.

Recommendation 11-23:

The city of Oakland Building Services Division must establish a clear, simple, effective appeals process that is easily understood by property owners and provides clear instructions for use.

Recommendation 11-24:

The city of Oakland Building Services Division must immediately establish an ombudsman function (not a Building Services manager or inspector) to review all appeals and to assist the property owner.

RESPONSES REQUIRED

Mayor, City of Oakland

Recommendations 11-15 through 11-24

Interim City Administrator, City of Oakland

Recommendations 11-15 through 11-24

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COMMUNITY & ECONOMIC
DEVELOPMENT AGENCY

Community and Economic Development Agency
Building Services
250 Frank H. Ogawa Plaza, 2nd Floor
Oakland, CA, 94612
(510) 238-3388

COMPLIANCE PLAN

Property Address: _____ Complaint# _____

Abatement Action: OHC- Substandard OMC - Injurious OPC - Nuisance OBC - HAZARDOUS

Parcel# _____ Station _____ District _____

_____	Owner/Seller	_____	Buyer/Owner
_____	Owner/Seller	_____	Buyer/Owner
_____	Address	_____	Address
_____	City/State/Zip	_____	City/State/Zip
_____	Telephone	_____	Telephone

PERMIT ISSUANCE

OAKLAND MUNICIPAL CODE SECTION 15.08.370 PROVIDES FOR EXPEDITIOUS COMPLETION OF CORRECTIVE WORK ASSOCIATED WITH PRIOR ABATEMENT ACTIONS BY THE CITY. THE REHABILITATION SCHEDULE ATTACHED HERETO IS SUPPLEMENTAL AND IN ADDITION TO ANY OTHER CONDITIONS, RESTRICTIONS, OR REQUIREMENTS FOR PERMIT ISSUANCE. OWNER AND BUYER ACKNOWLEDGE THAT FAILURE TO ADHERE FULLY AND IN ALL MANNERS TO ALL PERMIT ENCUMBRANCES MAY RESULT IN IMMEDIATE REVOCATION OF PERMITS, FORFEITURE OF ALL FEES, AND CONTINUATION OF ABATEMENT ACTIONS.

COMPLIANCE PLAN TYPE (Check One): Not Substandard \$396.00* OR Substandard \$1,485.00*

Fee Applied: Yes No 3-R Report \$198.00* Fee Applied: Yes No Substandard Termination \$297.00*
3-R Report# _____

Permit# _____ Permit Expires _____ (No Extensions)

City Abatement Charges Due: \$ _____ Transferred County Fees: \$ _____

Performance Bond \$ _____ Performance Bond Processing Fee: \$297.00*

Monitoring Security Fees:

Monthly Completion _____ Phased Work
 Bi-Monthly \$99.00* X _____ Units = \$ _____ Schedule _____ Continuous

Certificate of Occupancy \$693.00 + \$99.00* X _____ Units = \$ _____

Construction _____ Loan OR Financing: _____ Bank Account

***Indicated Fees Do Not Include 9.5% Records Management Fee and 5.25% Technology Enhancement Fee
ALL FEES NON-REFUNDABLE**

_____	OWNER'S/SELLER'S SIGNATURE	_____	DATE	_____	BUYER'S SIGNATURE	_____	DATE
(AGENT MUST PROVIDE NOTARIZED AUTHORIZATION)				(AGENT MUST PROVIDE NOTARIZED AUTHORIZATION)			

***IF CHANGE OF OCCUPANCY, CERTIFICATE OF OCCUPANCY APPLICATION NEEDED AT DATE OF PERMIT ISSUANCE.**

PERMIT RELEASED FOR ISSUANCE: _____ DATE _____
PRINCIPAL INSPECTION SUPERVISOR

July 2010

EXHIBIT A
Building Services Division



Building Services Department
 Inspection Services Section
 250 Frank H. Ogawa Plaza, 2nd Floor
 Oakland, California 94612
 (510) 238-3381

Code Enforcement Billing Request

Property Address: _____ Date: _____

 Complaint#: _____ Parcel Number: _____
 Owner's Name: _____ Mailing Address: _____

 Attach Assessor & Win2Data print-outs _____

 _____ City/State/Zip

Instructions

1. Fill-in date in sequential order of each site inspection to be billed and check the Violation box that applies. (See PTS 503 screen)
2. Submit a separate Billing Request for the first and each subsequent site inspection.
3. Submit one Billing Request for the 1st & 2nd site inspections. Submit separate Billing Requests for subsequent site inspections.
4. Attach copies of the Prospective Lien processing form and a copy of the Clean Up Board Up Bid Request form.
 (For a Blight violation)
5. Attach a copy of the Prospective Lien processing form. (For a Tenant violation)
6. Forward completed form and attachments to District Supervisor for approval, then forward to Accounting for processing.

<p>Site Inspection(SI) Dates (To Be Billed) *</p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p>4. _____</p> <p>* Manager's approval required to bill more than 4 SI</p> <p>Fee Assessment Period: _____ to _____</p>	<p>Violation (check one)</p> <p><input type="checkbox"/> Blight (Attach copy of Lien processing form and Bid Request forms)</p> <p><input type="checkbox"/> Tenant (Attach copy of Lien processing form)</p> <p><input type="checkbox"/> Garbage & Refuse</p> <p><input type="checkbox"/> Inspection Warrant (Attach copy of Warrant signed by a judge)</p> <p><input type="checkbox"/> Repeat Violator (Prior Complaint # _____)</p> <p><input type="checkbox"/> Registration Citation (Foreclosed and Vacant Building)</p> <p><input type="checkbox"/> Blight Citation (Foreclosed and Vacant Building)</p> <p><input type="checkbox"/> Other _____</p>
---	--

By: _____ Approved: _____
 Type/Print Inspector's Name Supervisor's Signature

Submit separate Billing Request for separate parcels

Violation	Site Inspection		Processing Fee	Notice to Abate	Scheduled Re-Inspection	Prepare Invoice Fee	Record & Tech Fee	Total Fees Invoiced
	First + Second	Subsequent						
Blight and Tenant	First + Second	\$ 99	\$ 396	\$ 297	\$ 0	\$ 297	14.75 %	\$ 2,045.00
	Subsequent	\$ 396	\$ 0	\$ 0	\$ 297			
Garbage and Refuse	First + Second	\$ 50	\$ 0	\$ 0	\$ 0	\$ 0	0 %	\$ 100
	Subsequent	\$ 50	\$ 0	\$ 0	\$ 0			
Inspection Warrant	Each	\$ 0	\$ 693	\$ 0	\$ 0	\$ 297	14.75 %	\$ 1,136.00
Repeat Violator	SUBMIT SEPARATE BILLING REQUEST FOR EACH SITE INSPECTION (see above for fees)							
Registration Citation	Total Fee: \$5,000.00							
Blight Citation	Daily Fee: \$1,000.00							

August 2010

EXHIBIT B
 Building Services Division



CITY OF OAKLAND, COMMUNITY AND ECONOMIC DEVELOPMENT
AGENCY (CEDA) BUILDING SERVICES DEPARTMENT 250 Frank H. Ogawa Plaza, 2nd Fl.,
Oakland, CA 94612 Inspection Services: 238-3381 FAX: 238-2959 TDD: 238-3254

CODE ENFORCEMENT VIOLATION APPEAL

Return this form and the mailing envelope within 21 days of receipt to:

City of Oakland
CEDA, Building Services Department
Inspection Services Section 250 Frank Ogawa Plaza, 2nd Floor
Oakland, Ca 94612

Property Address: _____ APN _____

Complaint# _____ Owner's Name _____

Mailing Address: _____
City State Zip

Contact Number: _____

Briefly describe the reason you believe the City has erred or abused it's discretion in determining that a violation exists. (Attach pictures, written documentation etc.)

You should contact the inspector, as indicated in your violation notification, if you have corrected the violation to avoid fee charges or to make arrangements to correct the violations. Your appeal will be reviewed and you will be notified of the status of your appeal within thirty (30) days.

If your appeal is **denied** and you do not correct the violations the City will continue abatement actions which include fee assessment, administrative fees and a **\$113.00 appeal processing fee. No further appeal action will be granted.** You may file against the City in Small Claims Court to recover any fees, penalties, or remove liens the City has charged or recorded on your property.

<i>Office Use Only</i>		
Receive Date: _____	District _____	Forwarded to _____
Determination: Approved _____		
Denied: Owner Record Error <input type="checkbox"/> Violation Corrected <input type="checkbox"/>		
21 Day Appeal Deadline <input type="checkbox"/> Other _____		
Owner notice mailed _____	Date Contacted by Phone _____	Inspector _____

July 2010

EXHIBIT C
Building Services Division



Community and Economic Development Agency
 Building Services
 250 Frank H. Ogawa Plaza, 2nd Floor
 Oakland, California 94612
 (510) 238-3381

FEE-CHARGED REINSPECTION(S) SCHEDULE

To: _____ Date: _____
 Complaint#: _____
 Re: _____
 Parcel #: _____

A scheduled Fee-Charged Reinspection made on _____ has revealed that previously described code violations have not been completely corrected. You are hereby notified that Fee-Charged Reinspections of the subject premises are scheduled to take place on the following dates:

Date	AM (9 – 12)	PM (1 – 3)	Reinspection Performed (Inspector's initials)
Fee-Charged Reinspection #1	<input type="checkbox"/>	<input type="checkbox"/>	
Fee-Charged Reinspection #2	<input type="checkbox"/>	<input type="checkbox"/>	
Fee-Charged Reinspection #3	<input type="checkbox"/>	<input type="checkbox"/>	
Fee-Charged Reinspection #4	<input type="checkbox"/>	<input type="checkbox"/>	

(NOTE: Should abatement not be fulfilled by the above time frame, an additional Fee-Charged Reinspection schedule will be sent to you.)

You or your agent is required to be present to permit access for the required Reinspections. Should access not be possible, you will be billed accordingly. Should the bill not be paid as required, a lien shall be placed on the property with the Alameda County Recorder's Office. If you have any questions regarding this matter, contact the undersigned inspector.

MASTER FEE SCHEDULE

Fee-Charge Re-inspection Fee	<u>\$396.00*</u>
Lien Fee	<u>\$446.00</u>
Invoice Fee	<u>\$297.00</u>

Antoinette Renwick
 Inspections Manager

By: _____
 Combination/Specialty Inspector
 Phone: (510) 238 - _____

*Fee Does Not Include 9.5% Records Management Fee and 5.25% Technology Enhancement Fee

FOR OFFICE USE ONLY:	Date Submitted _____	Supervisor's Initials _____
BILLING REQUEST	APN No. _____	For Fee-Charge # _____

July 10

EXHIBIT D
 Building Services Division

EXHIBIT
Comparison of San Francisco, San Jose, and Oakland Blight Abatement Codes

Code Provisions	SF Administrative Code Chapter 80 - Anti-Blight Enforcement Procedure	SJ Municipal Code Chapter 17.02 – Abatement of Nuisance on Private Property	Oakland Code of Ordinances Title 8-Health & Safety, Chapter 8.24 – Property Blight	Oakland Code of Ordinances Title 15-Buildings & Construction, Chapter 15.08 – Oakland Bldg. Maintenance
Responsible Party	Director of Public Works	Code Enforcement Division	8.24.05 Building Official	15.08.08 Building Official
Property Definitions	Blight – nuisance; substantial adverse impact on neighboring properties; accumulations of junk, vegetation, etc.; unpainted; deteriorated; defaced; containing equipment, vehicles, debris. (Does not include unsafe buildings which are responsibility of Dept. of Building Inspection.)	Nuisance – threatens injury or damage to health, safety, welfare or property; obstructs free use of property of others; interferes with comfortable enjoyment of life or property; failing to provide minimum standards of safety and habitability	8.24.02 Blight – abandoned, attractive nuisance, disrepair, inadequately maintained, dangerous condition, inappropriate vehicles/equipment, prohibited activities, lack of permits; detrimental to health, safety, general welfare; public nuisance, substantially impacts aesthetic or economic value of neighborhood	15.08.34 Substandard and Public Nuisance – unsafe, inadequate sanitation, nuisance, hazard (structural, electrical, plumbing, mechanical, fire, exits, vegetation, toxic, unstable), faulty weather protection
Enforcement Authority	Inspect, issue Notices of Violation, initiate abatement actions, pursue administrative penalties	Every abatement action or order is subject to review by designated commission	8.24.05/06 Inspect, enforce, establish guidelines, assess fees, abate per procedures of Chapter 15.08	15.08.08 Inspect, enforce, with powers of law enforcement officer
Notice of Violation	<ul style="list-style-type: none"> • Describes violation • Gives owner 15 days from service to commence abatement or appeal • How to request a hearing • How to request work extension. • After 15 days, Director may initiate abatement, impose administrative penalty, charge for city’s abatement at \$400 or cost, charge for hearing costs 			15.08.35 Declaration of Public Nuisance-Substandard: <ul style="list-style-type: none"> • Description of conditions • Required actions, timeline • Recourse for non-compliance • Right to appeal-with payment of fees • Notice that failure to appeal waives right to administrative hearing
Proposed Abatement Order	(May be concurrent with Notice of Violation) <ul style="list-style-type: none"> • Identify property 	<ul style="list-style-type: none"> • Identify property • Describe conditions requiring abatement 		

Code Provisions	SF Administrative Code Chapter 80 - Anti-Blight Enforcement Procedure	SJ Municipal Code Chapter 17.02 – Abatement of Nuisance on Private Property	Oakland Code of Ordinances Title 8-Health & Safety, Chapter 8.24 – Property Blight	Oakland Code of Ordinances Title 15-Buildings & Construction, Chapter 15.08 – Oakland Bldg. Maintenance
	<ul style="list-style-type: none"> Describe need for abatement Specify abatement actions and timing Advise if not completed in time, Director may cause abatement work and charge costs to owner Specify time and place of public hearing for owner to protest. 	<ul style="list-style-type: none"> State whether it will be restricted for use Specify actions to be taken and time limit Advise if not completed in time, City may restrict use and/or cause abatement work, charge costs to owner Specify time and place of public hearing for owner to protest 		
Method of Serving Notice of Violation or Abatement Order	<ul style="list-style-type: none"> Personally or by certified mail to address on assessment roll; otherwise, mail to property Effective at date of mailing 	<ul style="list-style-type: none"> Personally or by certified mail to address on assessment roll; otherwise, mail to property Effective at date of mailing 		15.08.11 Personally, by certified mail, or public posting
Timing for Abatement	<ul style="list-style-type: none"> If no City permit is req'd, work commences ≤15 days of date of Notice of Violation; completed ≤ 30 days after commencement. If City permit is req'd, permit application ≤ 15 days of date of Notice of Violation; work begins ≤ 30 days of permit; completed ≤30 days later. 	<ul style="list-style-type: none"> If no City permit is req'd, work commences ≤15 days of date of decision by reviewing commission. If City permit is req'd, permit application ≤ 15 days of date of decision by reviewing commission; work begins ≤ 30 days of permit. 	8.24.08 Building Official may establish time durations for abating blight . . . “which serve the best interests of the city . . .”	15.08.37 Owner must obtain permits within 30 days of Declaration; complete work 60 days later
Fees (separate from cost of Abatement)	<p>Upon Notice of Violation, fees are imposed to cover costs of inspection and enforcement.</p> <ul style="list-style-type: none"> Blight inspection fee = \$250 +/- CPI, calculated to match costs. May add actual itemized costs (time & mat’ls., incl. other depts.) 		8.24.06 “Abatement” includes fees, charges, penalties, interest, cost to repair/remove condition, or any other abatement action determined by Building Official	15.08.13 Abatement of Violations - fees, costs, penalties, interest, per Master Fee Schedule including obtaining ownership reports, affecting abatement, ascertaining violations, collecting fees, processing and recording liens, providing

Code Provisions	SF Administrative Code Chapter 80 - Anti-Blight Enforcement Procedure	SJ Municipal Code Chapter 17.02 – Abatement of Nuisance on Private Property	Oakland Code of Ordinances Title 8-Health & Safety, Chapter 8.24 – Property Blight	Oakland Code of Ordinances Title 15-Buildings & Construction, Chapter 15.08 – Oakland Bldg. Maintenance notices
Failure to Comply	City may grant extension or cause abatement work necessary to remedy the nuisance	City may cause property to be restricted from use and/or cause conditions requiring abatement to be repaired, demolished, or abated.	8.24.06 & 8.24.08 City undertakes repairs, abates deficiency	<ul style="list-style-type: none"> 15.08.35 Building Official will order vacancy; may demolish building and charge costs to owner 15.08.36 Building Official files Certificate of Substandard & Public Nuisance
Summary Abatement by City	<ul style="list-style-type: none"> Must have “condition in the public right-of-way that is imminently dangerous” Send Notice of Summary Abatement Itemized costs recovered by City 	<ul style="list-style-type: none"> If “imminently dangerous” Issue Notice of Summary Abatement, incl. actions by City to abate imminent danger Advise charges will be assessed, describe cost recovery procedure Advise how to protest at public hearing 	<ul style="list-style-type: none"> 8.24.07 If “dangerous and imminently hazardous”, may restrict use of property and require immediate repair 8.24.060 Any condition . . . may be abated by Building Official . . . in accordance with the procedures . . . in Chap.15.08 	15.08.37 “Failure to . . . complete the required work . . . shall result in the demolition of the building by the Building Official.”
Recording of Abatement Orders and Compliance	Director files certification of: <ul style="list-style-type: none"> Nuisance property Proposed abatement actions City’s right to abate if owner fails to do so Cost of city’s abatement actions may become lien Notices have been served Director records Compliance Certificate upon completion of work and payment of fees/costs	City files certification of: <ul style="list-style-type: none"> Nuisance property Proposed abatement actions If abatement actions req’d. after public hearing are not performed, City may cause abatement actions Cost of city’s abatement actions may become lien Notices have been served City files certification of compliance upon completion		15.08.36 If compliance is not had . . . Building Official files certification of Substandard and a Public Nuisance. Following compliance or demolition, Building Official files certification
Appeals	<ul style="list-style-type: none"> Within 15 days of date of Notice of Violation, owner files with Director a request for hearing 	Every abatement action or order is subject to review by designated commission		15.08.100 If deteriorated condition: <ul style="list-style-type: none"> Written appeal must be received by Building

Code Provisions	SF Administrative Code Chapter 80 - Anti-Blight Enforcement Procedure	SJ Municipal Code Chapter 17.02 – Abatement of Nuisance on Private Property	Oakland Code of Ordinances Title 8-Health & Safety, Chapter 8.24– Property Blight	Oakland Code of Ordinances Title 15-Buildings & Construction, Chapter 15.08 – Oakland Bldg. Maintenance
	<ul style="list-style-type: none"> Request for hearing suspends abatement order Failure to file written protest or appear at hearing waives administrative remedies 			<p>Official ≤ 21 days of Notice</p> <ul style="list-style-type: none"> Must include payment of fees Failure to appeal waives right to administrative adjudication <p>If hazardous condition:</p> <ul style="list-style-type: none"> Owner may appeal to Hearing Examiner regarding alternatives to meet requirements <p>15.08.35 Written appeal of Declaration of Public Nuisance-Substandard:</p> <ul style="list-style-type: none"> Must be received by Building Official within 14 days of service of Declaration (7 days if “dangerous or imminent hazard”) Must include payment of fees <p>15.08.44 Enforcement of any declaration is stayed during appeal process (except vacate orders)</p>
Appeals Hearing	<ul style="list-style-type: none"> Within 7 days of receipt of appeal, Director notifies owner of hearing to be held within 45 days of appeal Owner and City exchange written information at least 5 days before hearing Hearing uses neutral Hearing Officer outside Dept. of Public Works 	<ul style="list-style-type: none"> Commission considers all evidence presented Hearing 15-60 days from date of service of notice Commission issues written decision “within a reasonable time” If commission finds summary abatement was not warranted, owner will 		<p>15.08.41</p> <ul style="list-style-type: none"> As soon as practicable, Building Official sets date, time, place of hearing Written notice of hearing at least 7 days in advance <p>15.08.43 Hearing officer considers only issues included in written request</p>

Code Provisions	SF Administrative Code Chapter 80 - Anti-Blight Enforcement Procedure	SJ Municipal Code Chapter 17.02 – Abatement of Nuisance on Private Property	Oakland Code of Ordinances Title 8-Health & Safety, Chapter 8.24 – Property Blight	Oakland Code of Ordinances Title 15-Buildings & Construction, Chapter 15.08 – Oakland Bldg. Maintenance
	<ul style="list-style-type: none"> Burden of proof is on City Decision within 10 days 	not be invoiced		
Abatement by City	By City or by contract, work only as necessary to abate or remedy nuisance	By City or by contract, work only as necessary to abate or remedy nuisance	8.24.06 & .08 City undertakes repairs, abates deficiency	
Contract Bid Process		Awarded pursuant to Title 4 of Code (i.e. like other city contracting processes)		
Recovery of Abatement Costs	<ul style="list-style-type: none"> Periodically or at the end, Director provides itemized invoice of enforcement and abatement actions, costs, and allowable inspection fees. Due 30 days after service of invoice Failure to pay may result in lien proceedings 	<ul style="list-style-type: none"> Upon completion of each or all necessary abatement actions, City prepares itemized invoice of costs and allowable inspection fees Due 30 days after service of invoice Failure to pay may result in lien proceedings 	8.24.080 – Fees, charges, penalties and interest assessed for any abatement action . . . by the City . . . shall be recovered per Chapter 15.08.	15.08.13 <ul style="list-style-type: none"> Demand for Payment includes itemized list of fees, costs, penalties, etc. Served by regular mail, personal delivery, or public notice, including filing of Prospective Lien If not paid within 7 days of service, Bldg Official files lien or tax assessment
Appeal of Charges		<ul style="list-style-type: none"> Charges may be protested in writing to City Clerk; reviewed by City Council Protest in writing at least 24 hours before hearing on non-payment Notice is sent to owner at least 10 days before hearing Hearing by City Council may result in lien Delinquency fee of 10% may apply if not paid 30 days after lien is recorded 		



City of Oakland
Master Fee Schedule
Effective July 6, 2010

**COMMUNITY & ECONOMIC
 DEVELOPMENT**

FEE DESCRIPTION	FEE	UNIT
BUILDING SERVICES		
ADMINISTRATION		
A. DUPLICATION OF DOCUMENTS		
1 Microfilm Records	0.65	Document
2 Mailing	Actual	Cost
B. PERMIT APPLICATION FEE		
1 Building, Electrical, Mechanical, Plumbing Permits		
a. Filing	16.00	Permit
b. Routing - Project Value \$2,000 or Less	47.00	Permit
c. Routing - Project Value \$2,001 or Greater	55.00	Permit
d. Routing - Application and Issuance by Internet Connection	47.00	Permit
2 All Other Permits and All Other Engineering Process and Approval Requests (Application)	16.00	Permit
a. Filing	16.00	Permit
b. Routing	55.00	Permit
3 Mailing and Handling Charges Per 25 Count for Permit Application Forms	Actual cost or 8.25	Mailing
4 Service Charge for Verification of Proof of License and Workers Compensation Information Required by State Law for Approval of Permit Application	15.00	Verification
5 Zoning Sign-Off	54.00	Sign-Off
C. DUPLICATION OF ANY DOCUMENT NOT SPECIFICALLY DESCRIBED IN THE MASTER FEE SCHEDULE		
1 Documents Routinely Produced in Multiple Copies for Distribution	0.10	Page (single sided)
2 Documents Routinely Produced in Multiple Copies for Distribution	0.20	Sheet (double sided)
3 Documents Not Routinely Produced in Multiple Copies for Distribution, Sent to a Commercial Copier for Direct Billing to the Requester	Actual	Cost
D. PLANS/MAP PHOTO COPY (COPIES LESS THAN 11"x17")	0.85	Map
E. DOCUMENT RESEARCH FEE	Actual cost or 7.00 minimum	Each, whichever is greater
F. PROCESS BILLING APPEALS AND REFUND REQUESTS THAT ARE DETERMINED TO BE UNFOUNDED	99.00	Appeal

EXHIBIT F (page 1 of 6)
 Building Services Division



City of Oakland
Master Fee Schedule
Effective July 6, 2010

**COMMUNITY & ECONOMIC
 DEVELOPMENT**

FEE DESCRIPTION	FEE	UNIT
G. PROCESS BILLING APPEALS WITH REFERRAL TO "COLLECTIONS"	99.00	Appeal
H. PROCESS BILLING APPEALS FOR SECOND RESEARCH/REVIEW	99.00	Appeal
I PROCESSING SECURITY DEPOSITS (BONDS, CASH, CERTIFICATE OF DEPOSITS, ETC.)	297.00	Each
J RECORDS MANAGEMENT FEE	9.5%	All Permit & Code Enforcement Fees, Penalties, & Interest
K TECHNOLOGY ENHANCEMENT FEE	5.25%	All Permit & Code Enforcement Fees, Penalties, & Interest
L. ELECTRONIC PAYMENT TRANSACTION FEE	Actual cost or 2.35 minimum	Each
M. COLLECTIONS -- PERMITS & CODE ENFORCEMENT		
a. Alameda County Collection Surcharge on General Levy	1.70%	Lien
b. City Collection Transfer to or Rescission from County	3.00%	Lien
c. Interest on Unpaid Fees and Penalties	10.00%	Annual

CODE ENFORCEMENT

A. VARIANCE FROM OAKLAND BUILDING MAINTENANCE CODE REQUIREMENTS		
1 Administrative	396.00	Application
2 Hearing Examiner	990.00	Application
B. SERVICE FEES		
1 Reinspection to Verify or Monitor Progress of Violations Abatement		
a. Conditions of Compliance	99.00	Inspection
b. All Others	396.00	Inspection
2 Certificate of Occupancy		
a. Basic	693.00	Building

EXHIBIT F (page 2 of 6)
 Building Services Division



City of Oakland
Master Fee Schedule
Effective July 6, 2010

**COMMUNITY & ECONOMIC
 DEVELOPMENT**

FEE DESCRIPTION	FEE	UNIT
B. SERVICE FEES		
2 Certificate of Occupancy		
b. Surcharge	99.00	Each tenant unit / space over 2
c. Re-Inspection	99.00	Inspection
3 Third-Party Contract	Actual	Cost
4 Complaint Investigation	99.00	Inspection
C. ADMINISTRATIVE FEES		
1 Contracted Work		
a. Demolition	31% or 1,980 minimum	Instance or Contract, whichever is greater
b. All Other	31% or 693.00 minimum	Instance or Contract, whichever is greater
c. Bid/Contract Development	396.00	Instance
d. Contractor Mobilization	10% or 297.00	Instance or Contract
2 Public Documents (Order, Invoice, Demand, Notice, Declaration, Lien, Release, Termination, etc.)		
a. Preparation	297.00	Document
b. Notarizing	99.00	Document
c. Recording	Actual cost or 50.00 minimum	Document
3 Court Action		
a. Judgment	Actual cost or 262.00 minimum	Instance, whichever is greater
b. Inspection Warrant	693.00	Instance
4 Real Property Title Research		
a. Report	Actual cost	Report
b. Processing	31% or 198.00 minimum	Report, whichever is greater
5 Compliance plan		
a. Building not declared substandard	396.00	Plan



City of Oakland
Master Fee Schedule
Effective July 6, 2010

**COMMUNITY & ECONOMIC
 DEVELOPMENT**

FEE DESCRIPTION	FEE	UNIT
C. ADMINISTRATIVE FEES		
5 Compliance plan		
b. Building declared substandard	1,485.00	Plan
6 Process Violation	396.00	Instance
D. SUBPOENA		
1 Witness Fee (Not Related to Employee's Duties)	150.00 + 0.585	Request + Mileage
2 Witness Fee (Related to Employee's Duties)	150.00	Request or Actual Cost
E. APPEALS TO HEARING EXAMINER		
1 Filing Fee	396.00	Instance
2 Review Appeal and Conduct Hearing	99.00	Instance
3 Processing Fee	Actual cost	Appeal
4 Reschedule Appeals Hearing	594.00	Appeal
	99.00	Instance
F. DUPLICATE RELEASE OF LIEN OR TERMINATION OF SUBSTANDARD PUBLIC NUISANCE		
	50.00	Document
G. PUSH CART FOOD VENDING		
1 Application Processing	75.00	Pushcart (non-refundable application fee to be applied to the permit fee)
2 Initial Permit Fee	455.00	Pushcart (includes application/ processing fee)
3 Permit Renewal Fee	455.00	Pushcart / Year
4 Late Fee		
a. Assessed as a percentage of permit fee based on length of time after date of the renewal letter as follows:		
1 30-60 Days	10.00%	Delinquent Per Permit
2 60-90 Days	20.00%	Delinquent Per Permit
3 After 90 Days	50.00%	Delinquent Per Permit
5 Legalizing Illegal Vendor	914.00	Pushcart

EXHIBIT F (page 4 of 6)
 Building Services Division



City of Oakland
Master Fee Schedule
Effective July 6, 2010

**COMMUNITY & ECONOMIC
 DEVELOPMENT**

FEE DESCRIPTION	FEE	UNIT
L. GRADING PERMIT		
2 Surcharge		
d. Over 10,000 Cubic Yards	0.55	Each C.Y. Over 10000
3 Review of Materials Related to Request for Emergency Grading Permit	917.00	Permit
4 Review of Plan Revisions		
a. Outside of Regular Working Hours	191.00	Hour or Fraction of
b. Regular Working Hours	131.00	Hour or Fraction of
M. WORK WITHOUT A GRADING PERMIT		
1 Work Commenced	Double all Fees	Permit
2 Re-Inspection Fee	393.00	Inspection
N. CONSULTATION REQUESTED FOR PRELIMINARY REVIEW OF IMPROVEMENTS AND CONSTRUCTION PROJECTS	131.00	Hour or Fraction of
O. MYLAR PLAN RETRIEVAL	4.65	Plan
P. CITY OF OAKLAND MAPS AND PLANS		
1 2,400 Scale	7.50	Map
2 1,500 Scale	7.50	Map
3 Plans (copies larger than 11"x17")	7.50	Sheet
Q. S-11 ENGINEERING REVIEW	917.00	Report
R. PARCEL MAP		
1 Tentative Map	1,310.00	Map
2 Parcel Map	1,179.00	Map
3 Amended Tentative Map or Parcel Map	524.00	Map
4 Revisions to Tentative Map or Parcel Map		
a. Regular Working Hours	131.00	Hour or Fraction of
b. Outside of Regular Working Hours	191.00	Hour or Fraction of
5 Certificate of Correction	524.00	Certificate
S. EIR ENGINEERING REVIEW		
1 Application	1,048.00	Review
2 Revisions	131.00	Hour or Fraction of



City of Oakland
Master Fee Schedule
Effective July 6, 2010

**COMMUNITY & ECONOMIC
 DEVELOPMENT**

FEE DESCRIPTION	FEE	UNIT
A. INSPECTION		
2 As Required by the Oakland Building Code or the Oakland Sign Code the Issuance of a Permit For Repairs/Additional/Alteration		
d. \$2,001 to \$25,000 Construction Value		
2 Surcharge	10.50	Each Add'l \$500
e. \$25,001 to \$50,000 Construction Value		
1 Basic	602.00	Permit First \$25,001
2 Surcharge	10.00	Each Add'l \$1,000
f. \$50,001 to \$200,000 Construction Value		
1 Basic	849.00	Permit First \$50,001
2 Surcharge	9.25	Each Add'l \$1,000
g. \$200,001 and Higher Construction Value		
1 Basic	2,246.00	Permit First \$200,001
2 Surcharge	7.25	Each Add'l \$1,000
B. INSPECTION AS REQUIRED BY THE OAKLAND BUILDING CODE FOR THE ISSUANCE OF A DEMOLITION PERMIT		
1 Basic	173.00	Permit
2 Surcharge	0.15	Square Foot
3 Commencing Work without Obtaining a Permit	10x	All Fees
C. COMMENCE OR COMPLETE WORK FOR WHICH PERMITS ARE REQUIRED BY THE OAKLAND BUILDING CODE, OAKLAND SIGN CODE, OR WINDOW BAR ORDINANCE WITHOUT FIRST HAVING OBTAINED THE REQUIRED PERMITS		
1 Work Commenced	Double All Fees	Permit
2 Investigation of Work	99.00	Inspection
3 Work Commenced and Completed Prior to Inspection	Quadruple All Fees	Permit
D. EXTRA INSPECTIONS		
1 Building Permit		
a. \$1.00 to \$2,000 Permit Value	99.00	Each Inspection Over 3

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ALAMEDA COUNTY

SMALL, LOCAL and EMERGING BUSINESS PROGRAM

The 2010-2011 Grand Jury received a complaint regarding the effectiveness, operational efficiency, cost, and value of operating the Small, Local and Emerging Business (SLEB) program in Alameda County. This program was initiated in 2000 by the Board of Supervisors to encourage more county contracts with local Alameda County businesses.

The complaint to the Grand Jury was that the Alameda County Board of Supervisors had changed from a policy of “lowest and most responsible bid” to a policy of using local firms that have local connections. As a result, the county could be paying more for contracts under SLEB, and the work quality could be substandard, thus costing additional dollars to fix the poor performance of the original SLEB contractor.

The Grand Jury learned about perceived problems associated with the SLEB program. Some of these problems include:

- mandating the use of businesses which may be inexperienced, unqualified or less competent;
- inability to award/retain contracts for good performing non-SLEB companies;
- creating additional costs for the SLEB bureaucracy;
- no mechanism for evaluation of the cost effectiveness of SLEB contracts;
- SLEB bidders who are unable to complete the application process or qualify for bonding assistance, necessitating additional county resources; and
- potential that the federal government could object to mandated selective contracting with SLEB.

Background

In 2000 the Alameda County Board of Supervisors approved the SLEB program to increase participation of small, local and emerging businesses in county contracts. An Alameda County Availability Study noted that the county recognizes that there are obstacles to the participation of small, local and emerging businesses in county contracts. The SLEB program aims to level the playing field for them. (Mason Tillman Associates, Ltd., October 2004). To be certified as SLEB firms, the businesses must meet the specified standards for local and also small and emerging. Small is defined according to the Federal Small Business Administration Standards.

Individual county departments handle their own procurement for contracts up to \$25,000 and must award them to SLEB certified firms. Alameda County General Services Agency (GSA) handles procurement for contracts over \$25,000. SLEB firms are eligible for up to a 10% preference in the competition for contracts over \$25,000 (5% for being local and 5% for being small/emerging). In addition, non-SLEB firms are required to subcontract a minimum of 20% of the contract with a SLEB. Waivers are possible under specified conditions such as the absence of any SLEBs to provide the needed products or services.

Three county agencies have responsibility for different aspects of SLEB. The Office of Contract Compliance (OCC) in the Auditor-Controller's Office administers the applications and maintains a list of qualified firms. The Office of Acquisition Policy in GSA is responsible for the procurements in excess of \$25,000, and providing leadership, policy guidance, and technical assistance to county departments and evaluation of effectiveness. Established in 2008, the Contractor Bonding Assistance Program (CBAP) in the County Administrator's Office of Risk Management is designed to help small contractors to obtain bids. It assists with payment and performance bonds since bonding had been identified as a major impediment to small contractors. CBAP is administered by Merriwether & Williams Insurance Services, a private risk management firm.

Investigation

During this investigation the Grand Jury interviewed managers involved with SLEB and reviewed numerous documents and reports, including information on the Office of Acquisition Policy, certification instructions, subcontracting information, the First Source Program (hiring prospective employees from CALWorks participants), Community Based Organization Master Contract, requirements for contracting with the Alameda County Social Services Agency, insurance requirements, language access requirements for contractors, SLEB requests for preference, department and suspension certification, the contractor bonding assistance program, as well as copies of brochures and a sample of the SLEB preference rating form.

As a result of this investigation the Grand Jury learned about the process used to assist SLEB applicants in completing the bonding paperwork. The October 4, 2010 auditor-controller's report to the Procurement and Contracting Policy Committee indicated that between the 2000-2003 and 2007-2010 contracts, participation by SLEBs increased from 10.45% to 31.86% as did the contract dollars awarded to SLEBs, from \$57.7 million to \$242.2 million. The report also compared local and non-local contracts awarded and gave a breakdown of SLEB contracts awarded by type, ethnicity, geography and amount. It indicated that approximately 1,288 SLEBs were certified.

In 2006 the Board of Supervisors approved "unbundling" contracts into smaller parts so that more local and small businesses would have an opportunity to bid. This cost the county more but it gave access to additional SLEB companies.

The Board of Supervisors asked GSA to evaluate the impact of bid preferences on increasing the cost of goods and services contracts and identify the benefits of the program. The county wanted to know if the costs outweighed the benefits to the community. In response, in 2009, graduate students at the Goldman School of Public Policy at University of California, Berkeley, completed a study called

The Costs and Benefits of the Small, Local and Emerging Business Program in Alameda County: Are Targeted Bid Preferences Beneficial?

The Goldman study only examined the impact of SLEB on new contracts for greater than \$25,000. The county provided a sample of contracts but it wasn't sufficient to quantify how much the 10% preference program or the 20% subcontracting requirement is costing the county, so the study supplemented the sample by using aggregate data from GSA's quarterly reports to construct a cost estimation model based on a series of assumptions.

The study concluded that "the cost of the 10% preference program is minimal ... [and] the cost of the preference is at least partially offset by the increase in competition from small business." The study also found that "the cost of the 20% subcontracting requirement is not clear but may be substantial." Focusing on employment, it said, "even if the 20% subcontracting requirement requires the county to pay more for goods and services, the benefits may outweigh the cost in terms of increased employment in the county." It estimated that the SLEB program has increased jobs in the county by 1,000 to 1,250 since 2000.

A major recommendation of the Goldman study was that the county should improve its data collection in order to more accurately estimate costs. It stressed the importance of collecting data on non-winning bids and the dollar amount of the contract awards. This would enable the county to determine how many of the SLEBs were awarded contracts due to the bid preference and at what cost.

The Grand Jury was provided with the following examples of possible problems with SLEB:

- A county department was told to eliminate any contracts from entities outside Alameda County. One property had a janitorial service the county contracted with directly that was a well-known organization based in San Francisco. The county had to cancel that contract and then contract with a

- local firm in Oakland that was not professionally run and cost approximately three times the previous contract.
- There were instances where shoddy construction work had to be re-done at county expense and where materials ordered from SLEB contractors were not up to standard.
 - There were complaints, especially from Asian contractors, regarding perceived discrimination in the awarding of SLEB preferences and contracts.

Although we did not have the time or resources to investigate these allegations, the Grand Jury is concerned about them and the implications they may have for the county.

According to the Alameda County Auditor-Controller's Office, the program's annual administrative expenses are approximately \$566,000 for the Auditor's Office and \$835,000 for GSA.

Based on testimony from each of the three departments responsible for SLEB programs, the Grand Jury estimates that at least \$1.4 million is spent just on wages and benefits for staff assigned to the SLEB programs. Many other overhead costs are not tracked. For instance, the Grand Jury estimates that the Alameda County Contractor Bonding Assistance Program alone spent in excess of \$1 million from May 2009 to December 2010 to provide bonding assistance to 53 SLEBs, of which 14 are now pre-approved for bonds, and seven received contracts or subcontracts for county projects. The cost of the bonding program appears high for the small number of businesses that are being assisted.

The Grand Jury learned of conflicting evidence about the quality of the work done by SLEB firms. On the one hand it is claimed that the controller does not make payments for work until it is satisfactory and that there are few complaints about work quality. Yet there are claims of favoritism, shoddy work, and increased project cost via change orders once a firm has been given a contract.

Proponents of SLEB say that it does not go far enough because some departments go around the requirements since procurement is so decentralized. Proponents also deny the allegations of favoritism. The Grand Jury heard positive examples of small enterprises that had obtained subcontracts, which enabled them to grow and thrive. We also heard examples of large contractors who at first claimed that they couldn't find SLEB firms for subcontracts but when the county made a more pro-active and creative search, including unbundling, SLEB firms were identified.

The Grand Jury did not find any systematic mechanisms for evaluating the performance of contractors and for considering performance ratings during contract renewals. Similarly there is no re-certification of the SLEB pool that would enable companies to be "graduated" out of it.

Conclusion

The investigation revealed that there has never been a comprehensive cost analysis of this program. The Grand Jury is concerned about the county's inability to measure the cost effectiveness of its SLEB program. It can identify the percent of contracts awarded to companies certified as SLEBs, but it has not identified the total cost of the SLEB programs. Furthermore, it cannot measure the impact on the cost of county contracts of favoring SLEB contractors because it has not tracked SLEB vs. non-SLEB bids. At times it does not receive non-SLEB bids because such contractors know they will not be awarded contracts. The Grand Jury also heard anecdotal evidence that additional expenses were incurred by county departments to compensate for inexperience and poor performance of some SLEB contractors. At a minimum, GSA should conduct a thorough evaluation and cost effectiveness study of the program as set forth under recommendations below.

While the Grand Jury understands there are important social and economic benefits of encouraging SLEBs within the county, we are concerned about the bureaucracy created in three different departments (GSA, the Auditor-

Controller's Office of Contract Compliance, and the County Administrator's Office of Risk Management's Special Contractor Bonding Assistance Program). Individual departments using contract services also must comply with additional procedures under the SLEB programs.

Procurement is inevitably controversial. Thus, it is all the more important that the county communicate more fully about the criteria being used and the results being accomplished. This should help increase the public's understanding of SLEB's purposes and confidence in the fairness of the program.

RECOMMENDATIONS

Recommendation 11-25:

The Alameda County General Services Agency must prepare an annual report available to the public that shows the true cost of the Small, Local and Emerging Business Program compared to the open bidding process.

Recommendation 11-26:

The Alameda County General Services Agency must evaluate every contractor's job performance in the Small, Local and Emerging Business Program at the conclusion of the contract. This evaluation must be maintained on file and considered in the award process for new or renewed contracts.

Recommendation 11-27:

Alameda County General Services Agency must develop a system for tracking Small, Local and Emerging certified businesses and enforcing limits on their time in the program that comply with SLEB criteria.

RESPONSES REQUIRED

Director, Alameda County General Services Agency

Recommendations 11-25 through 11-27

County Administrator, County of Alameda

Recommendations 11-25 through 11-27

Alameda County Board of Supervisors

Recommendations 11-25 through 11-27

ALAMEDA COUNTY IN-HOME SUPPORT SERVICES PROGRAM

In-Home Support Services (IHSS) is a statewide program administered by each county as directed by the California Department of Social Services. The program is intended to provide services to low-income, disabled and elderly persons (clients) in order to enable them to remain in their own home rather than being placed in an assisted care facility at a higher cost to the state. IHSS chore providers (the individuals hired by the clients to provide in-home care) perform a range of household tasks and personal care services based on an individual's needs, including bathing, dressing, cooking, feeding and paramedical tasks. Currently, there are over 18,000 IHSS clients in Alameda County who receive assistance in their homes, with their chore providers earning around \$11.50 per hour plus health and other benefits. The IHSS program in Alameda County costs \$313 million annually, \$28 million of which Alameda County pays as its share of the cost.

A previous Grand Jury received allegations of IHSS fraud and abuse and upon investigation learned that new state reforms within IHSS were intended to address these issues. These reforms were to include background checks and fingerprinting of chore providers, unannounced home visits and fraud detection training for social workers. The current 2010-2011 Grand Jury continued monitoring IHSS to review the effects of these reforms and examined the county's current administration of the program.

During the course of the investigation, the Grand Jury interviewed IHSS management personnel, Alameda County Social Services Agency (SSA) caseworkers and supervisors; fraud investigators; IHSS clients; a representative of the Public Authority Advisory Board; social services personnel responsible for data input and chore provider payroll; and reviewed numerous documents,

including statistical and financial information, as well as reports from the State of California, and reports from Sacramento, Santa Clara and San Diego counties.

The Grand Jury has concluded that statewide attempts to combat fraud have done little to diminish waste, fraud and abuse. In addition, county Social Services should take basic steps to improve administration and oversight of the program to prevent fraud and improve public confidence.

The Program

A prospective IHSS client is first screened for eligibility by an intake caseworker at Alameda County SSA. The caseworker reviews the client's economic situation to ensure the client meets income/asset limits. If the client is eligible economically, that individual's needs are evaluated often based on a medical professional's certification of physical/mental inability to perform certain activities of daily living, along with a caseworker's site visit to the home. The caseworker determines the number of hours per week needed for personal services (such as housekeeping, meal preparation, laundry, bathing, transportation to medical appointments) and for paramedical services. By law, each client is to be reassessed by an in-home visit every 12 months.

The IHSS client is responsible for hiring a chore provider, who submits a time sheet twice a month to be input by the IHSS payroll section. The client is responsible for approving the time sheet for accuracy prior to submission. This can be difficult in cases where the client has limited cognitive functioning.

Chore providers can be selected from the client's family, personal acquaintances, or drawn from a registry maintained by the Public Authority for IHSS. It is estimated that close to 70% of IHSS chore providers are relatives of clients. Requirements to be a chore provider include identification (for example, California driver's license, original social security card, or prison inmate ID card), documentation to prove residency, and fingerprinting. Persons convicted within

the last 10 years of elder abuse, child abuse or welfare fraud are ineligible from participating as a chore provider. All chore providers are members of the Services Employees International Union.

Statewide, the program is very large and expensive. Last year, it was estimated that 462,000 persons received IHSS aid employing about 376,000 chore providers. Responsibility for funding for the program is shared between federal, state and local governments. Within Alameda County, there were 12,237 IHSS clients in 2003. That number has increased to over 18,000. (*See Exhibit A, Chart*)

Investigation

The IHSS Program presents a quagmire. The program helps provide essential care for those elderly and disabled clients who cannot care for themselves; however, it lacks meaningful safeguards to ensure that satisfactory care has been provided. The burden of complaining about abuse rests squarely on the elders and disabled who very often are not capable of doing so. Beyond that, elders are rarely willing or able to complain when the paid caregivers are family members. Testimony revealed that chore providers, in some circumstances, become overly dependent on IHSS income to the detriment of the elder or disabled client's care. There have been examples where family-paid chore providers have turned to violence directed towards Adult Protective Services (APS) workers when the social workers have tried to remove elders from an abusive situation.

There is a potential cost savings to the state of providing in-home care to our aged and disabled population rather than paying the higher cost for their care in a skilled nursing facility. However, this assumes that all those receiving IHSS funding would be placed in a facility if they did not receive such government aid. The program assumes that friends and family, if available, would not step up to help care for the program clients. As indicated above, an overwhelming majority

of the IHSS employed chore providers in this county are family members of the client and a majority of those providers, in fact, live in the same household.

Fraud

The Grand Jury understands that public attention has been focused on the IHSS program due to allegations of fraud throughout the state. Lack of public confidence in this program has endangered its funding due in part because the state designed the program with little to no oversight. In addition, local administration of the program places emphasis on disbursement of funds while attention to the prevention of abuse and fraud appears to be lacking.

The Grand Jury heard testimony about a number of IHSS fraud cases prosecuted within the county. The following are examples:

1	John and Mary are both IHSS providers for their son, William. Mary is also being paid to be a provider for her husband, John. However, John is ineligible to receive services because he is also a care provider for William, a violation of IHSS rules. John and Mary submitted timecards for services they were ineligible to perform. John was listed in the system as both a care provider and a client. John committed fraud by submitting timesheets claiming to be taking care of William while also being taken care of by Mary. Mary committed fraud by claiming to take care of both John and William.
2	While IHSS client Jane was in the hospital, her care provider, Karl, was submitting timecards and getting paid for services he was not performing. Jane had a friend, Barbara, who was also submitting timecards and getting paid, claiming she was also a caretaker of Jane. Jane told investigators that Barbara never cared for her and was never employed by her. Both caretakers were submitting fraudulent timecards.
3	Bob and Cathy were care providers for Wanda and Mary. Bob and Cathy subcontracted all of their work out to other caretakers but submitted timecards claiming they were performing the work themselves. Bob and Cathy also went on vacation out of the country for two weeks and submitted timecards for the entire two weeks, claiming to have taken care of both Wanda and Mary. Bob and Cathy committed fraud by claiming to have worked many hours they either subcontracted or did not work at all.

(Examples of IHSS fraud, continued)

4	Jackie is a care provider for several clients. Upon investigation, it was discovered that Jackie was listed as a care provider for 7 clients, 3 in Alameda County and 4 in Contra Costa County. Jackie claimed over 433 hours of work for a single month, and this is excessive considering a normal 40 hour work week is 160 hours a month. Jackie committed fraud by submitting fraudulent timesheets. Also, it is impossible for her to have provided simultaneous care for 7 people in two different counties at the same time.
5	John, a registered sex offender, was submitting timesheets claiming he was caring for Jenny. Jenny was in the hospital for several months while John claimed he was caring for her. John violated IHSS rules by submitting fraudulent timecards. At the time of submitting these false timecards, John was being investigated as a suspect in numerous sexual crimes.
6	IHSS client Martha passed away in 2007. Her care provider, Robert, continued to submit timesheets after her death for 6 months until 2008.
7	Care provider Michael submitted timesheets from May 2009 to August 2010, claiming he cared for Beth. Michael was never a care provider for Beth. Michael committed fraud by submitting false timesheets.
8	Betty obtained false identification under the name "Margaret." Betty then submitted timesheets to IHSS, claiming she was the care provider of "Margaret." Betty (aka Margaret) committed fraud by receiving payment for taking care of herself.

While we cannot estimate the actual fraud rate within the IHSS program, the Grand Jury is troubled that the current design allows for such fraud to go on for an extended period of time without discovery.

The Grand Jury interviewed a wide variety of witnesses closely involved with IHSS to obtain their input on ways to strengthen local oversight to help reduce fraud. The Grand Jury fully understands that administrative funding has been reduced which may impact the ability to fully combat the fraud problem. However, an increased fraud detection effort could well pay for itself and reduce total costs of the program.

Needs Assessments and Reassessments

Upon receipt of the IHSS application, an intake social worker is assigned to go to the client's home to perform an initial assessment of needs. The social worker is supposed to return to the home annually to reassess the client's needs. All decisions regarding necessary level of care are based on interviews with the clients. The Grand Jury heard testimony that the client's overstatement of need is an on-going concern. Other than an initial IHSS form asking a medical professional for a description of a client's condition, no formal medical records are required in determining a client's true needs. The medical records are also not available to confirm the client's claims of need unless volunteered by the client. The Grand Jury also learned that coverage would not be declined in the event medical records are not submitted. The yearly reassessment is a scheduled appointment at which the chore provider does not even need to be present. Other than the once a year reassessment, oversight is lacking.

The Grand Jury heard very conflicting evidence on the consistency of annual reassessment visits. One social services employee stated that annual reassessments are completed 100% of the time, as required by law, while several other employees stated that annual visits are completed at a much lower rate. One client testified that no reassessment had been done for three years.

To clarify discrepancies, the Grand Jury formally requested the rate at which the Social Services Agency reassessed clients in 2011. We were initially provided with a copy of a public monthly report that stated 85.7% of the "timely renewals" were completed for the month of December 2010. When the Grand Jury sought clarification of these statistics, the Social Services Agency sent different information showing that reassessments as of February 2011 were being completed at a rate of 69%. The Grand Jury was unable to determine the actual reassessment rate due to receiving different statistical information from different sources, ranging from 60-100%. The Grand Jury is also very concerned about the reliability of the information being presented to the public.

The focus of the yearly reassessment hinges on whether the client needs more hours or fewer hours of care. This reassessment should be expanded to ensure more accountability for quality of care. The Grand Jury heard testimony about dozens of fraud schemes that could have been prevented with proper oversight. In one case, with fraudulent overpayment exceeding \$100,000, a mother and son, both IHSS clients, conspired to have the IHSS payment checks delivered to themselves rather than to the stated providers. The mother's main provider had been incarcerated for more than three years, yet time sheets were signed and sent in regularly. Three annual in-home assessments had been completed by social workers without suspicion. The son had set up nine caregivers over the same period, but their checks were deposited directly to the son's checking account. He would pay caregivers small amounts of cash to provide the services. The reassessment process should be redesigned with a renewed focus on oversight. Clients should be questioned about chore provider care. Chore providers should be interviewed in a separate room at the annual assessment. Their identities should be confirmed.

The law now allows for unannounced visits by IHSS Social Workers. Alameda County does not currently use this oversight tool. The current procedure of scheduled reassessments allows for orchestrated deception. The Grand Jury was presented with a Craigslist advertisement soliciting someone to provide an address to use for a fraudulent social services visit. *(See Exhibit B, Craigslist Ad)*

The Grand Jury understands that social workers have been educated and trained to help people who cannot help themselves, but they are not sufficiently trained in recognizing fraud. We have heard testimony that it is difficult for the social workers to be gatekeepers, which requires them to closely scrutinize claims of IHSS clients. Further, because of the poor design of the program, the social workers play little to no role in choosing and evaluating chore providers. Social workers, chore providers, public health nurses and APS workers should have the

opportunity to work as a team to maximize the safety and care of frail and vulnerable IHSS clients.

While the state relies on the counties to administer the IHSS program, clients have the right to appeal local decisions through a state administrative law judge. The Grand Jury heard testimony from one social worker that the county is fined \$4,000 for each appeal that is granted. The Grand Jury later found out that this is not true, but this perception would have the effect of discouraging social workers from challenging questionable claims for additional hours.

Another obstacle facing the IHSS program is that well-funded organized advocacy groups coach clients how to respond to social worker questioning. The Grand Jury examined one advocacy website that provides an online guide which describes the appeals process thoroughly by listing “county excuses” used to deny eligibility then outlining ways to refute and respond.

Additionally, relationships between the social services agency and fraud investigators can be improved. The Grand Jury heard testimony that over the last decade when a more robust and structured welfare fraud division existed, the social services agency staffed a liaison position to work with law enforcement in obtaining essential documents to substantiate fraud. That position no longer exists and therefore the relationship with social services and fraud investigators is no longer as effective.

Data Management System

Currently there is no one comprehensive system to manage data collected by the IHSS program. Needs assessment forms, chore provider contracts and medical authorizations are stored separately from chore provider timesheets. Hard copy timesheets are bundled and stored in boxes and held by the payroll clerks who process them. There is no uniform data management filing system.

Fraud cases are more difficult to prove without an audit trail provided by documents, especially signed timesheets. Poor accessibility significantly hampers these investigations. Information is not easy to obtain due to the haphazard way in which client files are maintained.

Chore providers are allowed to be employed by multiple clients. There is no viable system that verifies the accuracy of the hours being billed in a pay period by individual client, or alerts the payroll department if excessive hours are submitted for pay. For example, there have been fraud cases where a chore provider has submitted multiple timesheets for more hours than are available to be worked in a week. There is no cross-check system that prevents this submission of fraudulent timesheets (*see example #4, page 111*). Time sheets reflect total hours worked in a day, not specific times, so there is no way to detect billing for the concurrent hours for different clients. (*See Exhibit C, Timesheet*)

There is also no timely matching of data between clients and hospital admittance, incarceration or death records; similarly, there is no matching between chore providers with these same records. For example, when an IHSS client dies, social services does not immediately close out the file and in some cases, the chore provider continues to submit timesheets.

An improved data management system would allow social services departments such as IHSS or APS to red flag problem chore providers. While there is a computer program that scans documents, the Grand Jury heard testimony that scanning is not always done uniformly. In addition, the program is difficult to navigate making the information difficult to access.

Regional Assignments

The Grand Jury learned that IHSS social workers have extremely high caseloads and these caseloads are spread throughout the county. For example, a social

worker can be required to visit clients living in the cities Fremont, Berkeley and Pleasanton on the same day. In Alameda County, there are currently over 18,000 clients who need to be visited by a social worker at least once a year for reassessment. The social worker must spend valuable time driving throughout the county instead of spending that time visiting clients. These clients' cases should be assigned in close geographic proximity to ensure better use of the social workers' time. Assignment of social workers in closer geographic locations would enable the department to be more efficient in handling more of these visits. Further, the Grand Jury heard testimony that a social worker can become more familiar with local elder services, and police and medical resources if they focus on a limited geographic area. The department previously had regional assignments but some social workers, through their union, lobbied to change assignments because it caused some workers to be assigned only to regions perceived to be less desirable. Management subsequently changed the assignment policy of social workers.

Alameda County is currently implementing a climate action plan for government operations. One initiative involves promoting alternative travel modes for business travel. It would appear that regional assignments would greatly decrease vehicle miles and reduce social services' carbon footprint.

Public Authority

The Public Authority is a publicly funded organization whose handbook states it provides limited training for IHSS chore providers. It also operates a provider registry for IHSS clients who need to find someone to care for them temporarily or long-term. Very few chore providers are hired through the registry because most clients choose to hire their own friends or family members as their chore providers. Unfortunately, very few of these chore providers take advantage of the non-mandated training medical classes, such as CPR and basic first aid, offered by the Public Authority.

The Grand Jury heard conflicting information regarding the screening of registry chore providers by the Public Authority. While the Public Authority handbook states that they actively screen providers, the Grand Jury heard testimony from several witnesses that the only people who are excluded from becoming a chore provider are those who have been convicted within the last ten years of elder abuse, child abuse or welfare fraud. Convictions of other major felonies allow for participation in the program and no additional screening takes place by the Public Authority. As of February 2011, chore providers who have been convicted of a *serious or violent felony* as defined by the California Penal Code cannot act as chore providers unless the client is given notice and consents in writing.

Potential problems arise because clients have the sole responsibility to hire, train and supervise the chore providers themselves even though the intent of the program is to serve a population that is disabled and often not capable of performing these tasks. The Grand Jury heard testimony that some county employees recommend that clients not use the registry because inviting a minimally screened worker into the home of a vulnerable program client has the potential for financial abuse or neglect. The Grand Jury is concerned when a social worker trying to help a vulnerable client recommends against using a county funded resource because they are worried it might expose the client to an abusive situation.

The advocacy function of the Public Authority also troubles the Grand Jury. The organization provides an opportunity for clients to air grievances on program implementation; however, their advocacy role also involves lobbying for more funding and expanded services at a state level. This appears to be using government money to lobby for more government money. The Public Authority should focus on training, airing grievances about program management, and improving their screening process of chore providers. The Grand Jury is further concerned about the Public Authority description in their own handbook that they are responsible for negotiating salaries, wages and benefits of the union-represented chore providers. The Public Authority sometimes acts as a liaison to

very aggressive advocacy groups who put enormous amounts of pressure on public officials to expand the boundaries of the program. The Grand Jury believes this is a conflict of interest.

Broken Program Structure and Responsibilities

The attached exhibit entitled “*Who is the Homecare Worker’s Employer?*” describes the role of the consumer (client), the State of California and the Public Authority for IHSS. It shows that the county Social Services Agency lacks an oversight role. (See *Exhibit D, Who is the Homecare Worker’s Employer?*)

The client, not the Alameda County Social Services Agency, is the sole decision maker who hires, manages and fires each chore provider. If there is concern that the client is being neglected or abused, the Social Services Agency cannot have the chore provider removed short of a criminal action being filed. As an example, vulnerable clients with severe dementia can be responsible for managing their chore provider and signing off on their work hours.

Adult Protective Services

Alameda County Adult Protective Services is the department within the Alameda County Social Services Agency that is responsible for investigating allegations of financial and physical abuse including neglect of adults with developmental disabilities, physically and mentally disabled adults, and the elderly. Many victims of elder abuse are receiving IHSS services. It is all too common in these cases that the chore providers, most often family members, are the focus of the financial abuse and neglect investigations. APS social workers investigate these cases, help remedy these abusive situations and forward cases to law enforcement when necessary. The Grand Jury heard testimony about a family that took a client out of a skilled nursing facility and returned her home so that they could continue to bill the program as chore providers, with total disregard for her well-being. The client subsequently died from a lack of care. The Grand Jury heard

evidence that IHSS income can become a priority of chore providers rather than the health and well being of the client.

APS workers in Alameda County share office space with IHSS workers, yet the Grand Jury learned that the relationship between these two departments is less than collaborative. It would seem essential that these two departments work closely when there are allegations of abuse involving an IHSS client. In nearby counties, APS workers and IHSS workers jointly respond to a victim's home to investigate abuse cases and IHSS files are shared in order to quickly address allegations of harm. However, the Grand Jury learned that in Alameda County, APS workers have been instructed not to go directly to the IHSS workers in order to inquire about a specific case. Instead, they have been told to request that their supervisor ask the IHSS worker's supervisor to set up a time when they might meet. The policy represents an unproductive and broken relationship between two groups that work not only within the same agency but also on the same floor and in the same space.

Conclusion

The Grand Jury concludes that the IHSS program's current design and lack of accountability allows for abuse, increases client dependency, does not adequately eliminate fraud, and creates a new entitlement at a very high public cost. IHSS was intended to help the elderly and disabled to stay in their homes at a cost savings to the state, but instead the program has grown into a massive social program often compensating family members to provide services that have traditionally been provided by families without government support. In some cases, the county ends up paying for services where services may not even be needed. Although the Grand Jury believes the IHSS program has merit, the current design of the program places emphasis on the disbursement of funds while the prevention of abuse and fraud appears to be a low priority.

RECOMMENDATIONS

Recommendation 11-28:

The Alameda County Social Services Agency must improve its data management system to include scanning timesheets and case records to ensure that easy retrieval is available.

Recommendation 11-29:

The Alameda County Social Services Agency must research a way to improve its In-Home Support Services computerized cross-tracking of clients and chore providers to flag any problems when participants (clients and chore providers) have died, been admitted to a medical facility, been incarcerated, or when a chore provider is reporting excessive hours.

Recommendation 11-30:

The Alameda County Social Services Agency must provide for standardized on-going training for In-Home Support Services social workers regarding prevention of fraud and recognition of elder abuse.

Recommendation 11-31:

The Alameda County Social Services Agency must determine a way to ensure that at least one unannounced home visit take place each year for each client by an In-Home Support Services social worker, documenting the quality of care and chore provider accountability.

Recommendation 11-32:

The Alameda County Social Services Agency must require In-Home Support Services social workers to meet annually with the chore providers as well as the client.

Recommendation 11-33:

The Alameda County Social Services Agency must assign In-Home Support Services social worker cases regionally to ensure that their client caseload is located in close proximity to each other.

Recommendation 11-34:

The Alameda County Social Services Agency must require photo identification to be included in the files of each In-Home Support Services client and chore provider.

Recommendation 11-35:

The Alameda County Social Services Agency must require In-Home Support Services clients and chore providers provide photo identification during each contact with a social worker, matching the photo identification on file.

Recommendation 11-36:

The Alameda County Social Services Agency must require that client admission to the In-Home Support Services program and periodic reassessment must be based on more rigorous medical justification.

Recommendation 11-37:

The Alameda County Social Services Agency must reestablish the liaison between In-Home Support Services staff and fraud investigators of the District Attorney's Office to help address welfare fraud.

Recommendation 11-38:

When abuse has been alleged of an In-Home Support Services client, the Alameda County Social Services Agency must improve collaboration between In-Home Support Services and Adult Protective Services by requiring In-Home Support Services social workers to accompany Adult Protective Services social workers on home visits, and allowing Adult Protective Services to have better access to In-Home Support Services records.

Recommendation 11-39:

The Alameda County Social Services Agency must revise the In-Home Support Services chore provider contract to include a ban on subcontracting.

Recommendation 11-40:

The Alameda County Social Services Agency must revise the In-Home Support Services client/employer responsibility checklist to include that the agreement be signed by the client or their representative under penalty of perjury.

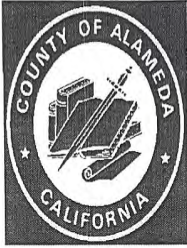
Recommendation 11-41:

The Alameda County Social Services Agency must create a supplemental In-Home Support Services timesheet with clock hour increments versus the current block time accounting to be submitted by the chore provider. This timesheet must indicate the exact time worked each day (e.g., 9am-2pm) and not just the hours (e.g., 5 hours) and be signed under penalty of perjury.

RESPONSES REQUIRED

Interim Co-Directors, Alameda County Social Services Agency

Recommendations 11-28 through 11-41



In-Home Support Services

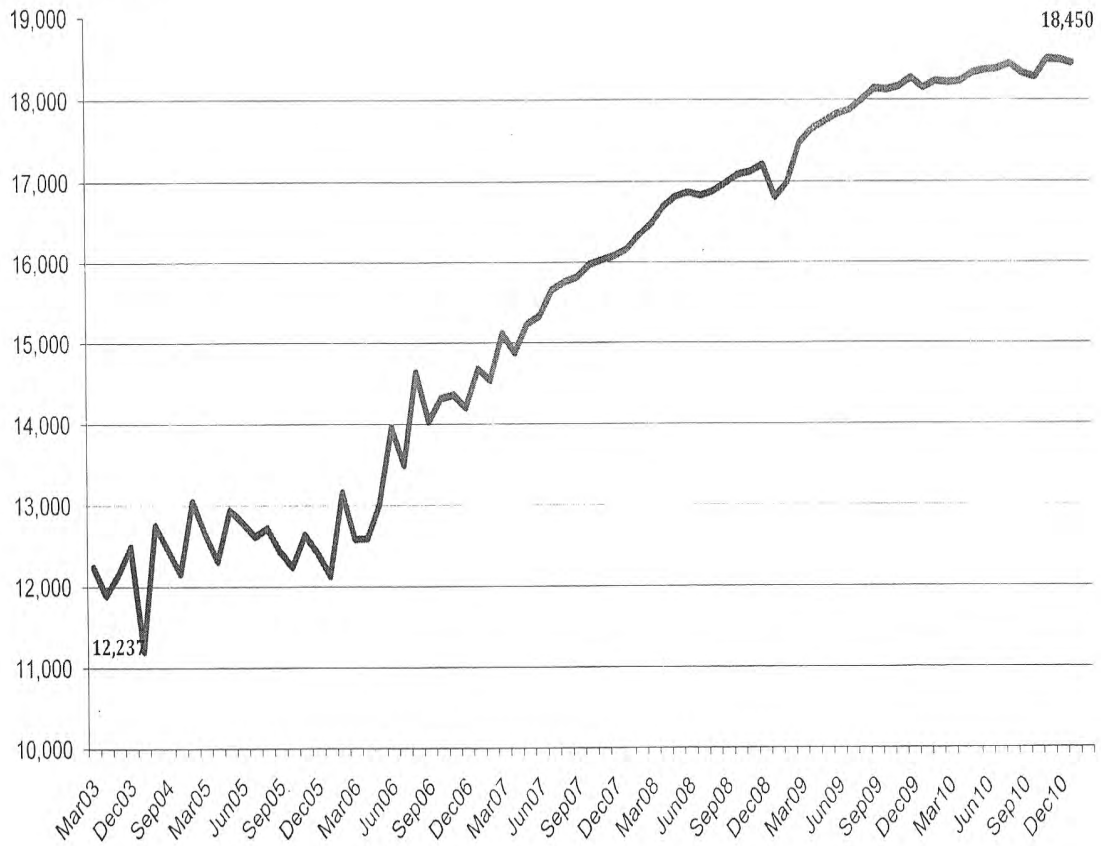


EXHIBIT A
In-Home Support Services

SF bay area craigslist > east bay > housing > room/share wanted email this posting to a friend

Stating a discriminatory preference in a housing post is illegal - please flag discriminatory posts as prohibited

Avoid scams and fraud by dealing locally! Beware any arrangement involving Western Union, Moneygram, wire transfer, or a landlord/owner who is out of the country or cannot meet you in person. [More info](#)

please flag with care: [?]

[miscategorized](#)

[prohibited](#)

[spam/overpost](#)

[best of craigslist](#)

\$100 Proof of Residence (Alameda County)

Date: 2010-11-10, 5:04PM PST

Reply to: [REDACTED] (Errors when replying to ads?)

Hello we are actually looking only for proof of address for my husband in Alameda county for a case worker.

We are willing to pay \$100/month - on a month to month basis thru June 2, 2011.

The worker would make an initial visit for 15 to 30 min. so that the living/sleeping area can be pointed out. (Can simply be the couch.)

The worker doesn't ask anything about your personal information or financial arrangements.

It is highly possible they would schedule a few more 10 to 20 min. appointments over the course of the time, a couple of days in advance where we would meet at the address to verify the address is valid.

Please call [REDACTED] or Write back for more details (:

- Location: Alameda County
- it's NOT ok to contact this poster with services or other commercial interests

PostingID: [REDACTED]

Copyright © 2010 craigslist, inc. [terms of use](#) [privacy policy](#) [feedback forum](#)

[http://sfbay.craigslist.org/eby/\[REDACTED\]](http://sfbay.craigslist.org/eby/[REDACTED])

EXHIBIT B
In-Home Support Services

**IN HOME SUPPORTIVE SERVICES (IHSS)
INDIVIDUAL PROVIDER INITIAL/REPLACEMENT TIMESHEET**

Your
IHSS
Office

4. Your employer may have other providers working for him/her.
5. It is your employer's responsibility to tell you how many hours you may work during a pay period and what days you are to work.
6. If there is a share of cost liability or other liability shown on the attached timesheet, your employer is responsible for paying you that amount.
7. Be sure to enter the **hours you worked each day** and enter the **total hours** where indicated on the timesheet.
8. Be sure **both** you and your employer have **signed and dated** the timesheet.
9. **After you have worked** all of your hours for the pay period, **promptly return the attached timesheet** to the county address printed on the timesheet.
10. **Mail** the timesheet in the return envelope that was included with the timesheet.
11. Your next timesheet will be attached to the paycheck you receive in the mail.

Vea el reverso el cual contiene la traducción de instrucciones importantes.
Important Instructions

1. The person you work for is an IHSS **recipient** and shall be referred to as your **employer** in these instructions and on the timesheet.
2. You are referred to as a **provider** and are considered the **employee** of this recipient.
3. This timesheet is only for one pay period and includes those days you may have worked for an IHSS recipient.

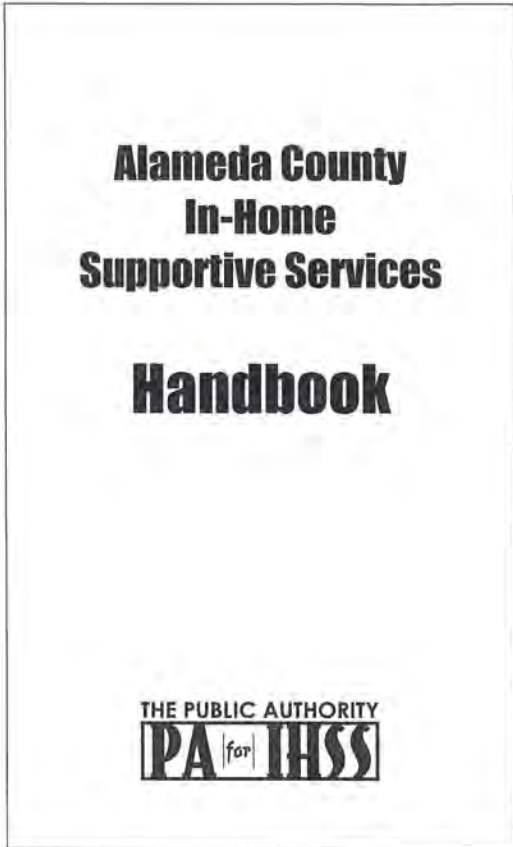
DETACH ON DOTTED LINE (SAVE THE TOP PART FOR YOUR INFORMATION)

THE TIMESHEET MUST BE COMPLETED WITH THE HOURS YOU WORKED AND RETURNED TO THE COUNTY IHSS ADDRESS LISTED BELOW
LA HOJA DE HORAS TRABAJADAS TIENE QUE SER COMPLETADA CON LAS HORAS QUE USTED TRABAJÓ Y DEBE SER REGRESADA A LA DIRECCIÓN DEL CONDADO PARA IHSS.

IHSS Timesheet																															
Recipient Number	Provider Number																														
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Hours Worked																															
Fill in hours for each day worked and place total here ▲ Llene las horas para cada día que trabajó y apunte el total aquí																															
Share of Cost Liability	Other Liability																														
<small>*Do not sign unless you have read and understand instructions above.* *No firme hasta que haya leído y entendido las instrucciones al dorso.*</small>																															
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<small>← After work has been completed, sign, date and mail to this address: Una vez que se haya completado el trabajo, firmase y envíese a esta dirección:</small>																															

This is to certify that the information contained in this form is true, accurate and complete, and that the provider and recipient have read, understand and agree to be bound by and comply with the statements, affirmations and conditions contained on the back of this form.
Por medio de la presente certifico que la información que contiene esta forma es verdadera, correcta y completa, y que el proveedor y el beneficiario han leído, entendido y están de acuerdo en someterse a, y cumplir con las declaraciones, al condiciones que contiene el dorso de esta forma.

EXHIBIT C



Who is the Homecare Worker's Employer?

Once enrolled with IHSS, the homecare worker has three "employers", each with different roles and responsibilities.




 The Consumer	 The State of California	 Public Authority
<ul style="list-style-type: none"> ✓ Selects worker ✓ Hires worker ✓ Supervises worker ✓ Fires worker ✓ Verifies hours worked ✓ Signs timesheets ✓ Pays Share of Cost (see p. 10) ✓ Provides employment references 	<ul style="list-style-type: none"> ✓ Pays IHSS hours worked ✓ Pays employer taxes ✓ Provides Workers Compensation, Unemployment and Disability insurance to those qualified 	<ul style="list-style-type: none"> ✓ Negotiates wages and benefits for workers ✓ Provides health insurance and transportation benefits enrollment for eligible workers ✓ Provides training classes to eligible workers

EXHIBIT D
In-Home Support Services

STOPWASTE

The Grand Jury received a complaint against the Alameda County Waste Management Authority Board (ACWMA), StopWaste, and the Alameda County Source Reduction and Recycling Board (Recycling Board). The complaint alleges that there is a waste of public funds because two separate boards (ACWMA Board and Recycling Board) within the organization, commonly referred to as StopWaste, result in redundant and overlapping operations; there are excessively high salaries of the full time staff; the full time staff has grown very large over the years; and the organization has partially, if not completely, fulfilled its original mandate and should be abolished or reduced in size.

History

Solid waste in Alameda County is collected from private residences and businesses by a number of both public and private agencies. Each individual agency sets its own fees for collection services. These fees have increased over time and in the past several years have increased as much as 50-60% and nearly doubled in some parts of the county. The waste collection agencies in turn pay fees at a transfer station or landfill site for waste processing.

There are several transfer stations throughout Alameda County and currently there are two landfill sites: the Altamont Landfill & Resource Recovery Site, and the Vasco Road Sanitary Landfill. Historically, all solid waste ended up in landfill sites. Over time, however, landfill space became limited. In addition, the community became more environmentally conscious, and restrictions were put in place to keep certain materials out of landfill and to process more materials for re-use (recycling). State laws were passed to require counties to reduce quantities and types of waste put into landfill. Over the years, more laws were enacted and

various agencies were formed to deal with the problems associated with waste disposal. Today, items such as yard trimmings are not allowed in landfills in Alameda County and instead must go to a composting facility. Metals, glass and most plastics go to recycling facilities.

A brief chronology of waste regulation and agency development:

- September 1976: The Alameda County Solid Waste Management Agreement, a Joint Powers Agreement (JPA), was created for the management of the Alameda County Solid Waste Management Plan. Joint powers are exercised when public officials of two or more agencies agree to create another legal entity or establish a joint approach to work on a common problem, fund a project, or act as a representative body for a specific activity.
- October 1987: The JPA was amended to create, among other things, the Alameda County Waste Management Authority which was empowered to engage in hazardous waste planning as well as solid waste planning.
- January 1990: California State Assembly Bill 939 (AB 939) became law. It called for the preparation of an integrated waste management plan. This mandated a reduction in the amount of waste going to landfill.
- November 1990: Measure “D” passed by Alameda County voters. This measure was intended to ensure that the county would meet and exceed the State of California AB 939 waste diversion mandates. The Alameda County Source Reduction and Recycling Board was also created from passage of Measure D.
- 1992 The 1976 JPA was amended to ensure compliance with requirements of AB 939.
- 1996 The domain name StopWaste.org came into existence when the Alameda County Waste Management Authority went onto the Internet and needed a web address.

The Alameda County Waste Management Authority

The ACWMA, with a 17-member board, is a public agency formed by a Joint Powers Agreement that is composed of representatives from Alameda County, each of the fourteen cities within the county, and two sanitary districts.

The ACWMA manages various programs including the Alameda County Integrated Waste Management Plan, the Alameda County Hazardous Waste Management Plan, the marketing for recycling programs, and public education programs. AB 939 set a goal of 75% diversion of waste for landfill and they have nearly reached that goal.

The ACWMA board meets monthly and each member receives a \$150.00 stipend per meeting. The funding for ACWMA comes from residents and business owners of Alameda County, and others who use Alameda County landfills, through fees and surcharges on solid waste delivered to the landfill sites in the county.

The Alameda County Source Reduction and Recycling Board

The Recycling Board was created in 1990 by the voters of Alameda County through a ballot initiative, Measure D. It is an eleven-member board that includes six citizens appointed by the Alameda County Board of Supervisors and five elected officials from the ACWMA Board. The Recycling Board meets monthly and each member receives a \$100.00 stipend per meeting. This board is responsible for programs that promote source reduction, residential and commercial recycling, recycled product procurement and market development. The funding for this board also comes from residents and businesses of Alameda County through a per-ton surcharge on solid waste delivered to the landfill sites in Alameda County, as outlined by Measure D.

Investigation

During the Grand Jury's investigation, we met with the complainant, the executive director of StopWaste, the president of the ACWMA Board and the president of the Recycling Board, and attended meetings of both the ACWMA Board and the Recycling Board.

Additionally, the Grand Jury reviewed the following documents:

1. StopWaste.org Annual Budget, Fiscal Year 2010-11;
2. *Governments Working Together, A Citizen's Guide to Joint Powers Agreements*, August 2007;
3. Correspondence regarding revisions to the JPA;
4. Revised Joint Powers Agreement for Waste Management, Resolution # 2547, 1/13/1990;
5. The Alameda County Waste Reduction and Recycling Initiative Charter Amendment, (Measure D);
6. State of California Assembly Bill 939 (AB 939);
7. Ordinance 2009-01, an ordinance establishing procedures and reporting requirements for the collection of the county-wide waste facility fee;
8. *The County-Wide Integrated Waste Management Plan (CoIWMP)*;
9. Alameda County Source Reduction & Recycling Board, 5-Year Audit Program Assessment, Revised Final Report, and Member Agency Program Summaries, January 2008 (191 page report by HF&H Consultants);
10. Five Year Financial and Compliance Audit for the Alameda County Source reduction and Recycling Board, Phase I, Fiscal Years 2006-07 to 2008-09, dated August 18, 2010. (140 page report by NewPoint Group, Management Consultants);

11. Final Report of the Classification & Total Compensation Study for the Alameda County Waste Management Authority, Volume I, Classification Study, January 2010 by Koff & Associates, Inc.;
12. Local Government Compensation Report from the California State Controller, found on line at www.lgcr.sco.ca.gov/compensationdetail;
13. Final Report of the Classification & Total Compensation Study for the Alameda County Waste Management Authority, Volume II, Total Compensation, February 2010 by Koff & Associates, Inc.;
14. Minutes of Alameda County Waste Management Authority Board meetings from February 2010 through January 2011;
15. Strategic Planning Discussion – Long Term Revenue memo to A&O Committee of Recycling Board, dated 8-19-09.

The StopWaste Staff

StopWaste is the public agency that administers waste management, reduction and recycling programs in Alameda County and provides staff for the two boards listed above. There are more than forty different programs listed in the current annual budget. In comparison with other counties, the Grand Jury learned that San Mateo County Recycle Works performed all of their state recycling mandates with a staff of eight employees.

The StopWaste website lists 26 full time staff, but documents reviewed by the Grand Jury in April 2011 shows 39 full-time equivalent positions. StopWaste also has an executive director whose salary is \$213,840 which does not include benefits. Personnel costs for StopWaste are budgeted at approximately \$4 million dollars per year.

There are several committees operating within StopWaste:

- Programs & Planning Committee
- Technical Advisory Committee (TAC)
- Administration & Organization Committee (A&O) (Joint committee with Recycling Board)
- Franchise Task Force
- Advanced Disposal Fee Task Force

Revenue & Expenses

The total operating budget for fiscal year 2010-2011 for StopWaste is \$19.5 million, with a midyear adjustment to include an additional \$7 million in grants, for a total of \$26.8 million. The Grand Jury learned that a large majority of the revenue to operate StopWaste is from tonnage related fees and surcharges. These fees and surcharges are levied by StopWaste in order for them to meet the requirements of AB 939 and Measure D. The monies collected are used by StopWaste for staff salaries, programs, and consultant services. Grants are given to public agencies, non-profit organizations, private businesses, and educational institutions for, among other things, marketing and use of recycled products. As required by Measure D, a portion of the revenue is distributed to the local jurisdictions of the JPA for use in their recycling programs and solid waste diversion projects. In Fiscal Year 2010-2011, it was reported to the Grand Jury that approximately \$5.5 million will be distributed to the JPA member agencies.

Boards

The Grand Jury learned that while each board has different responsibilities, they are closely related in their functions. Each board holds one meeting per month and five members serve concurrently on both boards. However, in 2010 there were three months when ACWMA meetings were not held. Of the nine meetings that were held, three were combined board meetings (ACWMA & Recycling Board).

The collective annual budget for both boards for stipends for members is \$43,800 per year (\$30,600 for the ACWMA Board and \$13,200 the Recycling Board). Generally, elected officials who serve on boards are already compensated for the elected positions they hold. Not only do these elected officials serve on each board, but there are five elected officials who serve on both boards. Each member receives stipends for meetings attended. The five officials who serve on both boards potentially cost \$15,000 per year for their stipends alone.

StopWaste Compensation Study

At the request of StopWaste, in 2010, an outside consultant performed a comprehensive classification and compensation study of StopWaste employees. This study cost the citizens of Alameda County \$22,338. The study can be found at www.StopWaste.org/docs/classification.pdf. It compared StopWaste's employee compensation rates with compensation rates of other similar government agencies. The study provided no comparison with private sector salaries. The board approved the recommendations of the study and salaries of staff were subsequently placed at the suggested median range in the Fall of 2010. These changes resulted in raises of approximately 5% for most employees for a total of \$119,000 additional annual costs. For FY 2010-2011 these costs were funded internally through operational efficiencies.

Examples of pay increases effective Fall 2010 (of these salary ranges, the cost of benefits is not listed):

<i>Job Title</i>	<i>Previous Salary Range (February 2010)</i>	<i>New Salary Range (Effective October 2010)</i>
Administrative Assistant	\$46,368 - \$68,100	\$54,408 - \$66,096
Executive Assistant	\$56,148 - \$74,892	\$66,780 - \$81,132
Program Manager I	\$73,272 - \$81,648	\$73,272 - \$89,028
Program Manager II	\$87,924 – \$97,958	\$87,924 - \$106,836
Senior Program Manager	\$84,492 - \$112,668	\$105, 516 - \$128,196
Principal Program Manager	\$121,344 - \$129,552	\$121,344 - \$147,432

The Grand Jury finds it inappropriate that StopWaste granted pay increases at a time when most other public agencies are cutting back and even furloughing staff.

Consultant Fees

The Grand Jury learned that consultants are frequently hired and managed by the StopWaste staff. However, we were unable to confirm the specific costs for these consultant services for fiscal year 2010-2011 based on the review of StopWaste’s budget. StopWaste has a large, highly paid staff. With the expertise expected of such highly paid professionals, the Grand Jury questions why outside consultants are used so often.

Conclusion

The Alameda County Waste Management Authority was originally formed to develop and implement a plan to reduce and manage solid waste disposal. Next,

it grew to include the management of hazardous waste. It then added recycling programs, which required education and community outreach. As the scope of ACWMA's responsibilities grew so did the staff size (StopWaste) and the Recycling Board was added.

California has established limits for the amount of solid waste that can be put into landfill. As time progresses and solid waste diversion goals are met, the size of the organization that achieved these goals should diminish. As the Grand Jury's investigation progressed we found that this is not the case at all. It appears that StopWaste has no intention of downsizing, even though ACWMA is steadily approaching its mandated goal of a 75% diversion from landfill. In fact it would seem that it is determined to stay in business, as noted in this statement from the StopWaste's Strategic Workplan 2020 (March 2010 Draft), "If possible, sustain the size of the Agency by diversifying revenue sources. Although there are some who would like the Agency to shrink as our tonnage-based revenue declines, and others who want to steadily raise fees on landfill materials, the majority opinion was that the organization needs to diversify its revenue sources and continue to deliver innovative services related to the entire materials management cycle, not just discard management."

The Grand Jury is concerned about the environment and proper management of solid waste and recycling. But the Grand Jury is also keenly aware of the problem of redundancy and how government agencies tend to grow over time into larger and larger bureaucracies. An excellent model of an agency that fulfilled its purpose and dissolved was the Bay Area Sewer Services Agency. This agency was formed several decades ago to create a plan for the collection and treatment of sewage in the nine Bay Area Counties. Once this plan for waste disposal was complete, the board disbanded because it had accomplished its intended purpose.

The Grand Jury finds that the redundancy of these boards, the growth of the staff, and some of the functions of StopWaste are questionable in an economy where

more emphasis is being placed on better use of taxpayer money. Some of these functions have been duplicated by the growth of both public and private organizations devoted to recycling, reuse and reduction of waste.

The 17 jurisdictions that signed the JPA must look closely at ACWMA and its Board and consider if it should be restructured, combined with the Recycling Board, or disbanded. Member agencies can dissolve a JPA when it no longer serves their interests. Given the current economic problems, the Grand Jury believes governments must aggressively assess agencies and programs to reduce or eliminate any that are unnecessary, outdated or redundant.

RECOMMENDATIONS

Recommendation 11-42:

Participants in the Joint Powers Agreement must reassess the current governance structure to consolidate the Alameda County Waste Management Authority Board and the Alameda County Source Reduction and Recycling Board.

Recommendation 11-43:

The Alameda County Waste Management Authority Board must eliminate the stipend paid to elected officials for board meeting attendance.

Recommendation 11-44:

The Alameda County Source Reduction and Recycling Board must eliminate the stipend paid to elected officials for board meeting attendance.

Recommendation 11-45:

The Alameda County Waste Management Authority Board and the Alameda County Source Reduction and Recycling Board must review program structure & content to determine which programs are redundant and can be eliminated or combined.

Recommendation 11-46:

The Alameda County Waste Management Authority Board and the Alameda County Source Reduction and Recycling board must reduce the number of consultants and use current staff to perform more of the work done by consultants.

Recommendation 11-47:

The Alameda County Waste Management Authority Board and the Alameda County Source Reduction and Recycling Board must restructure the entire StopWaste organization, eliminating the excessive growth of staff; stopping new fees or increases in current fees while raising revenue only when absolutely necessary and in direct relation to services originally intended.

RESPONSES REQUIRED

Alameda County Waste Management Authority Board
Recommendations 11-42 through 11-47

Alameda County Source Reduction and Recycling Board
Recommendations 11-42 through 11-47

Director, StopWaste
Recommendations 11-42 through 11-47

PERALTA COMMUNITY COLLEGE DISTRICT

Located in northern Alameda County, the Peralta Community College District (PCCD) serves more than 220,000 students and is comprised of four college campuses: the College of Alameda, Laney College, Merritt College and Berkeley City College. The district is governed by a seven-member board of trustees elected by the citizens of Alameda County and funded by taxpayer dollars.

In July 2010, the Accrediting Commission for Community and Junior Colleges (ACCJC), which operates under the Western Association of Schools and Colleges, placed the district on probation, citing concerns about “fiscal insolvency and stability,” jeopardizing the district’s accreditation. According to the US Department of Education, should a school lose its accreditation, credits earned by students may not be transferable to other colleges. Additionally, the federal government usually does not provide financial aid to unaccredited post secondary institutions. Most colleges rely heavily on federal aid funding, and the immediate withdrawal of federal financial aid could cause a school to close.

Introduction

The 2009-2010 Alameda County Grand Jury investigated PCCD and its management and fiscal oversight by the board of trustees. The Grand Jury reported:

The board of trustees and the chancellor did not receive regular financial reports on a monthly or quarterly basis. Because of this absence of financial data, the district did not remedy shortcomings identified in the FY 2007-2008 audit until well over a year had passed ... [T]he grand jury finds the inattention to financial matters of the district particularly troublesome and strongly encourages future grand juries to further investigate this area.

The former chancellor's contract was not renewed by the board of trustees, and in April 2010 an interim chancellor from within the district was appointed to guide the district's response to the ACCJC review. After the ACCJC conducted an in-depth review of the district, its accreditation letter of June 30, 2010, identified severe deficiencies in both the governance and fiscal management of the district, paying particular attention to the lack of timely and accurate financial information to the trustees and to problems associated with the implementation of a new software accounting system that was also of concern to the previous grand jury. The new system, coupled with inadequate training on the software and the failure to implement software updates, contributed to the inability of the district to complete annual audits and to develop viable budgets.

On April 14, 2010, Standard and Poor's Rating Services placed the district's general obligation and Other Post Employment Benefits (OPEB) bonds on a negative credit watch "because of the potential for a rating change as a result of the fact that the district has not adopted a budget for fiscal year 2010." The district also failed to close its financial books in a timely manner. When its independent auditors were finally able to complete the financial audit they found numerous material weaknesses and deficiencies.

The district took a number of actions to address these deficiencies, most notably (a) changes to high level personnel, (b) appointment of an expert and highly regarded consultant to guide fiscal recovery, (c) development of a multi-year recovery plan, and (d) creation of a Corrective Action Matrix addressing corrective actions needed for each deficiency that addresses the ACCJC's and the previous Grand Jury's concerns.

In response to the accreditation review, independent audit findings, and the recommendation of the 2009-2010 Grand Jury Final Report, the current interim chancellor and his leadership team, many of whom are newly hired or promoted, have adopted a comprehensive and specific matrix of corrective actions, specifying persons responsible for developing and implementing solutions, due

dates, and current status. The areas of concern have been years in the making and full resolution is likely to take considerable time; however, the Grand Jury believes implementation of this plan – still in early stages – has the potential for fully addressing the issues raised by both the ACCJC and the 2009-2010 Grand Jury

The current 2010-2011 Grand Jury elected to examine more closely the financial management of the district in general and its OPEB financial decisions in particular. The Grand Jury reviewed thousands of pages of documents provided by the district; heard testimony twice from a statewide expert in community college fiscal recovery; heard testimony from several district officials; and observed several meetings of the PCCD board of trustees and its audit and finance committee. The Grand Jury also learned that the district's obligations to retiree benefits pose a significant problem.

Although many California community colleges face challenging OPEB obligations, PCCD's situation is unique. The Grand Jury investigated how the district's 2005 unfunded OPEB liability of \$134 million became a long-term liability of over \$750 million in part due to the use of aggressive financial derivatives. Currently the district only has approximately \$162 million in trust to help cover these liabilities.

The district now faces great financial challenges in paying for OPEB benefits and related debt because of unanticipated changes in financial markets and due to a series of unconventional borrowing decisions by the board of trustees. PCCD was the only educational district in the state that borrowed money using convertible auction rate securities (CARS) and derivative investment instruments to fund its OPEB obligations. The board's decisions were not as conservative as is fiscally appropriate for trustees of public funds. The board had a duty to make conservative financial decisions regardless of the appeal of the market.

Financial Management

In a July 20, 2010 performance evaluation of PCCD for the year ended June 30, 2010, the board concluded that

“... a number of management level evaluations were not accurate or applicable. The evaluation of the CFO and his deputy is a prime example. They were awarded high performance marks and we now know that the operation is a complete disaster and has led the entire institution to be placed on probation. This is a major deficiency. This must take a high priority within the institution.”

The board further concluded,

“The Peralta Colleges are not in a sound financial position. We have been placed on financial watch by the State Chancellor. Our accounting process and all numbers associated therein are suspect. The number of material and significant weaknesses that were cited in the qualified opinion of our external audit report continue to be of major concern and the recovery plan called for by the State Chancellor must be the top priority...”

Under the guidance of its expert consultant, the district developed a Corrective Action Matrix which lists and tracks actions necessary to pursue the recovery plan and correct the deficiencies in the district’s financial operations. Some examples include:

- Remedy deficiencies contained in independent audit reports.
- Produce monthly financial reports for all funds.
- Complete and submit annual budget on time.
- Monitor budget compliance on an on-going basis.
- Close financial books accurately and promptly.
- Adhere to calendar for filing required state and federal financial reports.
- Review inadequacies and correctly implement the computerized accounting system.
- Reconcile accounts.
- Train accounting staff.

PCCD hired a new vice chancellor of finance and administration, budget director, and other key staff to manage financial and computer operations. The Grand Jury learned that significant improvements have been made under the direction of the new vice chancellor:

- The financial books for 2009/10 were closed more quickly and accurately than in recent years.
- The 2009/10 independent financial audit was completed more quickly and effectively than in prior years.
- State and federal reports are now being submitted on time as required.
- The 2010/11 budget was produced and is being used to monitor spending.
- The financial software is being upgraded.
- Information technology and accounting personnel are being trained.
- District bonds are no longer under a negative credit watch as of August 2010.

Progress under the Corrective Action Matrix is reported to the chancellor and board of trustees on a regular basis. Work is still underway to implement new policies and procedures to ensure adherence to standard accounting practices.

Other Post Employment Benefits (OPEB)

Peralta Community College District faces significant financial obligations to cover health care benefits after retirement for its employees, referred to as Other Post Employment Benefits. The 2009/10 Independent Financial Audit concluded that:

“Further impacting the district’s financial condition is the ongoing and future debt payments that will be required from the unrestricted General Fund for the OPEB bond debt ... The impact of these payments will negatively impact the sustainability of the district as a whole and the required reserve levels within the unrestricted General Fund specifically.”

PCCD is obligated to pay health care benefits for 1,435 current and retired employees. Those employees hired before July 1, 2004 receive fully paid health benefits for their lifetime, including coverage of eligible dependants. Employees hired after July 1, 2004 receive fully paid health benefits only up to age 65, including coverage of eligible dependants.

In 2004, concerned about the magnitude of unfunded health benefit obligations of various government entities around the country, the Government Accounting Standards Board (GASB) issued new accounting rules for these obligations. Many institutions, including PCCD, were paying the cost of these benefits as they came due (pay-as-you-go method), but the new standards required a greater and more accurate projection of future costs. As a result, PCCD's General Fund would have to cover higher annual amounts for its OPEB obligations. In 2005, in an actuarial study by Bartel Associates, the district's unfunded OPEB obligation was estimated at \$134 million with costs spread primarily over 45 years. Annual costs were expected to grow from \$5 million (5% of 2006 General Fund revenues) to nearly \$12 million (8.5% of the General Fund) by 2020. The district explored ways to reduce annual costs of OPEB liabilities and/or increase the assets available to pay for them.

In June 2005 the PCCD board of trustees hired outside financial advisors to assist in issuing a series of bonds to "pre-fund" the OPEB obligations. The plan was that proceeds from the OPEB bonds would be placed in a trust and invested so as to earn a higher rate of return than the costs of the bonds. PCCD would, meanwhile, pay back the bonds from its General Fund on an orderly schedule and at a level supported by the district's budget. After hearing presentations in September 2005 by several large investment firms, the board of trustees selected Lehman Brothers as its investment banker.

Default Judgment

PCCD brought a legal action seeking court validation of the plan to sell bonds without voter approval. One requirement of the validation procedure was that the district must provide notice to the public regarding the legal action and bond plan. That would enable anyone to challenge the district's attempt to issue bonds without voter approval.

The district published notice, as required by law, in the *Oakland Tribune*. However, while the notice correctly listed PCCD as party to the action, it erroneously described the action as one in which the city of Fairfield intended to issue bonds to fund its liability to the California Public Employees Retirement System. Few could argue that this was appropriate notice of Peralta's plan. (*See Exhibit A, Tribune Notice*)

With no one opposing Peralta's plan in court, the district then requested the court to enter a default judgment in Peralta's favor finding that the plan to sell the bonds was valid and legal. The California Constitutional Debt Limitation, with few exceptions, precludes government entities, such as PCCD, from incurring debts without the express approval of the electorate. PCCD's position was that their plan fell under the limited exception because retiree health obligations were "obligations imposed by law." There was no case law directly on point supporting that position. With no opposition, in October 2005, the Alameda County Superior Court issued a default judgment authorizing the PCCD board of trustees to issue bonds without voter approval to fund the unfunded OPEB liability.

It is noteworthy that shortly after PCCD took its action, the State of California, through its Pension Obligation Bond Committee, filed a bond validation action similar to PCCD's validation action. The trial court determined that the state's attempt to validate the sale of pension obligation bonds to finance the state's contribution to the Public Employees Retirement System without voter approval was in violation of the Constitutional Debt Limitation and did not fall within the

exception of being an “obligation imposed by law.” The Court of Appeal, Third District, California affirmed that decision. (152 Cal.App.4th 1386)

Bond Financing Options

Two bond financing scenarios were presented to the board of trustees in October 2005 by outside financial advisors and Lehman Brothers. One scenario addressed the board’s goal of minimizing short-term payments by extending the debt period and deferring interest payments with unconventional instruments with a default interest rate of 17%. The other scenario called for even payments with interest payments starting immediately. Neither scenario relied on standard bonds commonly used by public school districts.

Of the \$154 million in bonds issued, \$20 million were traditional bonds. The remaining \$134 million were Convertible Auction Rate Securities, which were, in effect, six series of bonds with different maturity dates, on which interest was accrued (not yet paid), with the expectation that they would be refinanced in future years at interest rates in effect at that time. These CARS bonds could not be called (pre-paid), and a failure to sell them would result in an interest rate of 17%. At the time, there was an active market for auction rate securities, primarily among financial institutions, and they were promoted to PCCD as an opportunity to pay lower interest rates than would apply to conventional bonds. Although not described as such to the PCCD board of trustees, these convertible auction rate securities were “derivatives,” in that their value depended on subsequent financial transactions, in this case, specialized future auctions.

In December 2005, PCCD’s outside financial advisors made a presentation to the board of trustees of the benefits of their proposed OPEB bond structure, including a claim that the CARS “offer low interest rates with limited market risk” and that “initial cost reductions will allow the district to build significant retiree benefit reserves.” The board passed a resolution to issue OPEB bonds that were, in turn, issued on December 19, 2005.

This bond structure, with its use of CARS, was so far beyond a conventional approach that the [then] vice chancellor of finance and the financial advisors considered going on a speaking circuit to tout their “pioneering” program.

(See Exhibit B, Peralta News & Events Article)

The Grand Jury considers this financial strategy entirely too risky for Peralta to take with public funds. The board of trustees had a fiduciary responsibility to handle the public’s money in a traditional, conservative manner. The trustees chose to enter into markets that were known to be unconventional.

In 2006, PCCD refinanced the initial 3 years of bonds (\$9 million) and deferred payments on them until 2049. In 2008, the near-collapse of financial markets effectively eliminated the market for CARS, leaving PCCD holding massive debt at unknown future interest rates, subject to the 17% default rate. In 2009, PCCD refinanced some of the debt again by deferring the 2009-2010 payments to 2011-2015. This decision to defer interest payments made the total debt obligation much higher. Delaying payments cost the taxpayers even more money in the long term.

In 2010 the district hired new financial advisors who concluded that “after two restructurings, the OPEB debt service structure allowed the district to make effectively no debt service payments in the initial years in exchange for higher debt service payments in later years.” Based on a simple bond calculation model, the Grand Jury estimated that PCCD’s total OPEB bond cost (principal and interest) would have been \$390 million had they been conventional 45-year bonds with an \$8.6 million annual payment assuming a 5.19% interest rate. Instead, the district now faces bond costs of nearly \$540 million. Currently in 2011, for the third time, the board of trustees is considering refinancing a portion of the debt thus avoiding a \$20 million payment in 2016 and instead spreading it out over 20 years. The Grand Jury concluded, based on witness testimony, that the district utilized expensive, high-risk debt instruments to delay use of general fund dollars. These actions do not seem to match the criteria and purpose of

PCCD's 2005 court filing to validate the OPEB bonds. (*See Exhibit C, Original and Current OPEB Bond Structure*)

In 2006, PCCD also entered into a number of interest rate SWAPs (derivatives) intended to hedge some of the risk that interest rates would increase before the various series of the OPEB bonds were priced. Each interest rate SWAP can be understood as a contract in which PCCD and a financial institution “bet against each other” about the future levels of fixed and variable interest rates. The board resolution authorizing the SWAPs states the purpose was to “protect against future uncertainty in the setting of interest rates on the bonds.” (Resolution No. 06/07-13 dated 9/26/06). Two months later, SWAPs were presented to the board as “an attractive opportunity for potential savings” due to unusual interest rates in effect at that time. (Current Market Opportunity for OPEB Bonds, 11/14/06.) Whether these interest rate derivatives were intended as legitimate protection against huge interest rate risks on future bond sales or as an aggressive effort to derive financial advantage from what appeared to be temporary interest rate anomalies, they resulted in even greater financial costs to the district. By 2010, the OPEB bond obligations and related SWAPs were a significant drain on the district's general fund, which contributed to the ACCJC's decision to place the district on probation. Each additional action cited above incurred further transaction fees for the benefit of the same outside financial advisors.

In summary, there were several ways in which the board of trustees “pushed the envelope” of appropriate financing decisions:

- At substantial expense, PCCD restructured its OPEB debt twice and is considering a third restructuring so as to defer payments and release short-term General Fund dollars.
- The use of Convertible Auction Rate Securities exposed the district to poorly understood, complicated and expensive financial risks.

- The district used interest rate SWAPs (derivatives) not fully understood by the board, expecting to gain additional interest rate advantages to reduce short-term costs and boost revenues for the district.
- The Grand Jury learned of one other California community college district that issued bonds to “pre-fund” its OPEB obligations. The Grand Jury was informed that this other district chose more conventional methods of borrowing money to fund its OPEB trusts and is in a much better position today than PCCD to actually pay for both its OPEB costs and related debt. Most other districts chose the “pay-as-you-go” method.

Investment

The Grand Jury also investigated how PCCD monitored the invested proceeds from the OPEB bonds. The \$154 million in OPEB bond proceeds were placed in a trust and invested primarily in more conventional ways, similar to the investment strategies used by CalPERS and Alameda County. However, between 2006 and 2010, there was only limited reporting and review of these investments. As noted in the PCCD Annual Financial Report for the year ended June 30, 2009, the district’s independent auditors identified a “material weakness” in the oversight and reporting of OPEB investment activities:

- “Personnel and the district have not properly reviewed and reconciled the activity within the investment portfolio...”
- “... monthly statements received from the trustee ... were left unopened and not reviewed for months after receipt ...”
- “The investment policy requires the investment manager to only include investments with a rating of BB or above ... Approximately \$2 million of the purchased investments were below this threshold.”
- There was a transfer “...for which there was no formal, documented authorization...”
- Auditors were “unable to locate minutes of meeting [sic] of the OPEB Trust Investment noting a review or analysis of the holdings within the Trust.”

It should be noted that the audited statement for the year ended June 30, 2009, could not be finalized until August 5, 2010, over a year later, seriously delaying recognition of these weaknesses.

In November 2006 the board of trustees passed a resolution authorizing a retirement board for Peralta's public retirement system. This board was not established in 2006 and in March 2011, the board voted once again to authorize the retirement board, causing the Grand Jury to question the board's lack of ability to follow through on its own resolutions (Resolution 06/07-23). As of the writing of this report, the retirement board still has not been fully implemented.

Board Responsibility

The board of trustees entered into a series of financial transactions that not all members fully understood, yet the trustees continued paying for and relying on advice from the same outside financial advisors who had recommended such decisions. It should be noted that all but one of the board members who made the original OPEB financial decisions are the same board members today. It was not until the former chancellor and vice chancellor no longer held their positions and the recovery consultant recommended removal of the outside financial advisor that the board ceased to deal with these same advisors. Meanwhile, the district then paid millions of dollars in issuance and advisory fees.

Outlook

In 2005 PCCD faced an unfunded OPEB liability estimated at \$134 million. The actuarial report for 2010 shows that this same estimated OPEB liability increased to \$217 million. The obligation increased not only because of updated estimates of health care costs, but also because the data submitted by the district to the actuarial firm in 2005 failed to include the benefits of prescription plans and Part B Medicare. Currently, the OPEB Trust is valued at \$162 million. The district also faces a long-term OPEB debt obligation (principal and interest) of nearly

\$540 million plus payments of at least \$3 million related to existing interest rate SWAPs.

In addition to the fiscal challenges of funding OPEB costs and related bonds, there remains the issue of whether the board of trustees will avoid similar risks in the future. During 2010, PCCD saw the departure of the former chancellor, a vice chancellor of finance, and the outside financial advisors who oversaw the OPEB financing. The board of trustees is still comprised of all but one of the same elected members who were ultimately responsible for each of the financing decisions:

- The board of trustees chose exotic, high-risk financial instruments to fund a large liability for OPEB. Because of the complexity of these investments, the district hired new outside financial advisors just to monitor these derivative investments and bond positions at considerable cost to taxpayers.
- The board of trustees made a series of decisions, each of which worsened the district's financial exposure by refinancing bonds to avoid payments from the general fund in the initial years and to try to increase revenues on the basis of temporary interest rate anomalies.
- The board of trustees failed to recognize signs that the district's financial management was seriously deficient; e.g., unable to perform basic functions of producing budgets, closing the financial books, completing financial audits, and submitting required reports on time.

There are important signs that many of the conditions leading to such poor decisions are being addressed:

- As a result of a critical letter (November 18, 2009) and subsequent probation (June 30, 2010) by the ACCJC, the district hired an eminently qualified consultant to assist with developing sound fiscal management of the district.
- This new consultant has guided the district through many steps, including the establishment and implementation of a Corrective Action Matrix.

- In April 2010 the district hired an interim chancellor. He is considered to be highly qualified, credible and able to take the difficult, yet necessary steps to guide the district's future. His contract extends through June 2012.
- A new vice chancellor of finance and administration was hired in June 2010. He is also considered highly qualified, credible and able to manage the district's financial affairs. Other key financial and information systems positions also have been filled.
- New outside financial advisors were hired to review the OPEB bond structure and recommend prudent steps to enable the district to manage its debt over time.
- Guided by its consultant and new management, the board is making progress in improving its fiscal decision-making and creating appropriate financial policies.

Conclusion

It is suggested that future grand juries monitor the district's progress, with particular attention to the measures taken to avoid the shortcomings of the past. Of particular importance will be the ability of the board of trustees to effectively conduct its leadership role in making educated financial decisions based upon current and accurate data. Central to that function will be conservative financial decisions that ensure responsible stewardship of tax dollars.

The board and district suffered by following the ineffective leadership of the previous chancellor whom the board had appointed. The board must be alert to red flags, such as missing financial reports, which were due periodically but never completed or filed.

Implementation and evaluation of PCCD's Corrective Action Matrix will take place over time. It appears to the Grand Jury that the financial management of the district is now in competent hands. Since the trustees are now receiving

timely and accurate financial data, they are in a stronger position to make informed financial decisions.

The Grand Jury concludes that the current board is now heeding the advice of its expert consultant as outlined in the Corrective Action Matrix, which the ACCJC requires. Periodic reviews and training sessions are currently taking place.

The appointment of the present interim chancellor through June 2012 is a positive development for the district, both in terms of stability and continuity, showing promise to guide the district through the recovery plan. The Grand Jury believes it is critical that the board hire a permanent chancellor with experience in community college governance and fiscal recovery. The Grand Jury hopes that the board has learned from past mistakes and will take every necessary step to remedy the district's financial situation.

RECOMMENDATIONS

Recommendation 11-48:

The Peralta Community College District Board of Trustees must adhere to the Corrective Action Matrix.

Recommendation 11-49:

The Peralta Community College Board of Trustees must track compliance with the calendar of required financial reports and budgets, ensuring that each financial deadline is met.

Recommendation 11-50:

The Peralta Community College Board of Trustees must develop and follow a policy requiring the use of conservative conventional financing appropriate for public education funds.

Recommendation 11-51:

The Peralta Community College Board of Trustees must solve the OPEB bond situation, ensuring that all restructuring options are resolved in a timely and responsible manner.

Recommendation 11-52:

The Peralta Community College Board of Trustees must fully utilize its new retirement board to make informed fiscal recommendations.

RESPONSES REQUIRED

Peralta Community College District Board of Trustees

Recommendations 11-48 through 11-52

OAKLAND TRIBUNE

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401 13th Street, Oakland, CA 94612
Legal Advertising
(800) 595-9535 option 4

PROOF OF PUBLICATION

In the matter of:
NO. RG 05-228682
Peralta Community College District, Plaintiff,
vs. All persons interested in the matter of the
issuance and sale of bonds, Defendants

I am a citizen of the United States; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter. I am the Legal Advertising Clerk of the printer and publisher of The Oakland Tribune, a newspaper published in the English language in the City of Oakland, County of Alameda, State of California.

I declare that The Oakland Tribune is a newspaper of general circulation as defined by the laws of the State of California as determined by this court's order, dated December 6, 1951, in the action entitled in the Matter of the Ascertainment and Establishment of the Standing of The Oakland Tribune as a Newspaper of General Circulation, Case Number 237798. Said order states that "The Oakland Tribune is a newspaper of general circulation within the City of Oakland, and the County of Alameda, and the State of California, within the meaning and intent of Chapter 1, Division 7, Title 1 [§§ 6000 et seq.] of the Government Code of the State of California." Said order has not been revoked, vacated, or set aside.

The PUBLIC NOTICE

I declare that the notice, of which the annexed is a printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to wit:

September 1, 8, 15, 2005

I certify (or declare) under the penalty of perjury that the foregoing is true and correct.

Hermana Salsola
Public Notice Advertising Clerk

Legal No.



FILED
ALAMEDA COUNTY

SEP 24 2005

ARTHUR SIMS, EXEC. UT/Clerk
By Yasmin Reddy

SUMMONS
CITATION JUDICIAL
(5880 et seq. of the
Code of Civil Procedure)
Fee Exempted:
Govt. Code § 81033
No. RG 05-228682

IN THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA IN
AND FOR THE COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

PERALTA COMMUNITY COLLEGE
DISTRICT,
Plaintiff,

ALL PERSONS INTERESTED IN THE
MATTER OF THE ISSUANCE AND SALE
OF BONDS FOR THE PURPOSE OF
REFUNDING CERTAIN OBLIGATIONS
OWNED BY THE PERALTA COMMUNITY
COLLEGE DISTRICT IN RESPECT OF
EMPLOYEE HEALTH CARE BENEFITS
AND ALL PROCEEDINGS LEADING
THERE TO, INCLUDING THE ADOPTION
OF A RESOLUTION AUTHORIZING THE
ISSUANCE AND SALE OF SUCH
BONDS.
Defendants:

NOTICE: YOU HAVE BEEN SUED. THE
COURT MAY DECIDE AGAINST YOU
WITHOUT YOUR BEING HEARD UNLESS
YOU RESPOND NOT LATER THAN THE
20TH DAY OF SEPTEMBER 2005, WHICH IS
AT LEAST TEN (10) DAYS AFTER
COMPLETION OF PUBLICATION OF THIS
SUMMONS. READ THE INFORMATION
BELOW.

AVISO: USTED HA SIDO DEMANDADO.
EL TRIBUNAL PUEDE DECIDIR CONTRA USTED
SIN AUDIENCIA. A MENOS QUE USTED
RESPONDA NO MAS TARDE DEL 20 DE
SEPTIEMBRE 2005, QUE ES AL MENOS DIEZ (10) DIAS
DESPUES DE LA TERMINACION DE LA
PUBLICACION DE ESTA CITACION LEA LA
INFORMACION QUE SIGUE.

TO ALL PERSONS INTERESTED IN THE
MATTER OF THE ISSUANCE AND SALE OF
BONDS FOR THE PURPOSE OF
REFUNDING CERTAIN OBLIGATIONS OWNED
BY THE CITY OF FAIRFIELD TO THE
CALIFORNIA PUBLIC EMPLOYEES
RETIREMENT SYSTEM UNDER THE PUBLIC
EMPLOYEES RETIREMENT LAW, AND ALL
PROCEEDINGS LEADING THERETO,
INCLUDING THE ADOPTION OF A
RESOLUTION AUTHORIZING THE
ISSUANCE AND SALE OF SUCH BONDS:

PLEASE TAKE NOTICE that a complaint
has been filed by plaintiff against you
pursuant to California Code of Civil
Procedure Section 800 et seq. and California
Code Section 5880 et seq. for the purpose
of validating the proposed issuance of
bonds, the proceeds of which will be issued
for the purpose of discharging the City's
unfunded accrued actuarial liability to the
California Public Employees Retirement
System, and to validate other related matters.
If you wish to contest the legality or validity of
this lawsuit you must appear and answer said
complaint by filing a written pleading in
response to said complaint not later than the
20th day of September 2005, which date is
at least 10 days after completion of
publication of this summons. Your pleading
must be in the form required by the California
Rules of Court. Your original pleading must
be filed in the Court with proper filing fees
and proof that a copy thereof was served on
Plaintiff's attorneys.

Unless you do so, your default will be
entered upon application by the plaintiff, the
plaintiff may apply to the court for the relief
demanded in the complaint. PERSONS WHO
CONTEST THE LEGALITY OR VALIDITY OF
THE MATTER WILL NOT BE SUBJECT TO
PUNITIVE ACTION, SUCH AS WAGE
GARNISHMENT, OR SEIZURE OF THEIR
REAL OR PERSONAL PROPERTY.

IF YOU MAY SEEK THE ADVICE OF AN
ATTORNEY IN ANY MATTER CONNECTED
WITH THE COMPLAINT OR THIS
SUMMONS, SUCH ATTORNEY SHOULD BE
CONSULTED PROMPTLY SO THAT YOUR
PLEADING MAY BE FILED OR ENTERED
WITHIN THE TIME REQUIRED BY THIS
SUMMONS.

SI USTED DESEA SOLICITAR EL
CONSEJO DE UN ABOGADO EN ESTE
ASUNTO, DEBERIA HACERLO
IMEDIATAMENTE, DE ESTA MANERA, SU
REPUESTA ESCRITA, SI HAY ALGUNA,
PUEDE SER REGISTRADA A TIEMPO.

The name and address of the Court is:
SUPERIOR COURT OF THE STATE OF
CALIFORNIA IN AND FOR THE COUNTY
OF ALAMEDA
RENEE C. DAVIDSON
ALAMEDA COUNTY COURTHOUSE
1225 FALLON STREET
OAKLAND, CALIFORNIA 94612
The names and addresses of the Plaintiff
attorneys are (for summons y direcciones del
abogado del demandante son):
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COURTNEY L. COOPER
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(STATE BAR #213125)
PERALTA COMMUNITY COLLEGE
DISTRICT
333 EAST EIGHTH STREET
OAKLAND, CALIFORNIA 94608
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DATED: AUGUST 19, 2005
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA
ARTHUR SIMS, CLERK
EXECUTIVE OFFICER/CLERK
BY: CLERK (ACTUARIO)

EXHIBIT A

Peralta Community College District

News & Events

Peralta Community College District

news home | peralta colleges

O.P.E.B. Spells Financial Security for Peralta Colleges Faculty and Staff

While administrators at many public entities are sitting around hoping that some sort of miracle will enable them to cover the ever-growing cost of providing healthcare coverage, Peralta vice chancellor and CFO Thomas Smith, pictured, not only came up with a plan to make sure Peralta retirees can be assured that their medical benefits are in place—he helped turn that plan into a reality.

“We started working on this problem back in 2001, when we had the first actuarial study done and I saw a very large unfunded liability that was going to start encroaching on the dollars needed in the classroom,” Smith said. With salaries taking up about 85 percent of the district’s budget, according to Bill Withrow, Peralta’s Board of Trustees president, and the cost of health care projected to rise rapidly, the outlook was precarious.

“It doesn’t take a rocket scientist to figure out that if you get up to 6 or 7 percent [of health care costs as a percentage of the total budget] let alone 12 percent, you’re not going to be able to balance the budget,” said Withrow.

It was then that OPEB, or Other Post Retirement Employment Benefits bonds came into play.

With the help of a leading international investment firm, Lehman Brothers (Peralta interviewed six of the biggest firms in the industry before settling on Lehman Brothers) Peralta sold \$153 million in OPEB bonds in December 2005. Then Peralta took the money from the sale and invested it—conservatively, in much the same way that CalPERS, California’s public employees retirement fund

EXHIBIT B (page 1 of 2)
Peralta Community College District

http://www.peralta.cc.ca.us/marketing/1_stories_07/opeb_financial_security.html

does.

In the first year of the fund's existence, it earned 10.81 percent interest (Peralta pays out about five percent interest to the bond holders and 1 percent in fees) and so Peralta's pot of money, in place to pay for the future benefits of Peralta employees, has grown to \$165 million.

"[OPEB] is a very creative solution," said Withrow. "I've very pleased with it. We're doing what we can to cover our commitment."

Key to success at Peralta, says Smith, was getting everyone on board, from the unions to the trustees. Withrow, whose background is in finance, and Peralta Community College District chancellor Elihu Harris, with his experience and leadership ability, were instrumental in making it all come together.

"This is absolutely a win-win for faculty, from the currently employed and for the retired," said Michael Mills, who was president of the Peralta Federation of Teachers when the OPEB bond sale was in the works.

With Peralta employees' medical benefits in place thanks to the OPEB bonds, Smith is something of a celebrity in the world of public institution finance. "I've been going to conferences in San Francisco, Washington, New York, Chicago to talk about this on panels—there's been quite a bit of interest across the country because it's a national problem," Smith said. In Illinois, the *Chicago Tribune* ran a story that included a focus on Peralta's OPEB bonds in January 2006, and the *Los Angeles Times* is working on a piece about Peralta's proactive solution.

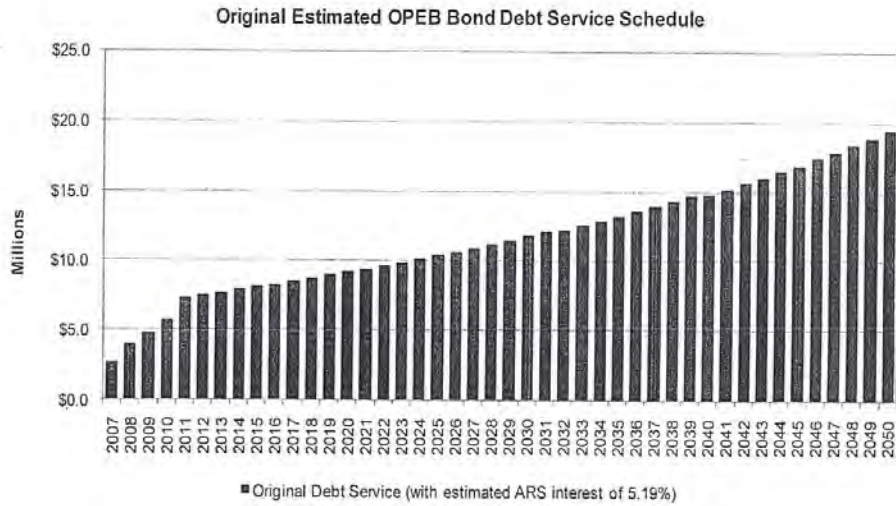
The real bottom line is that, for Peralta employees anyway, there are funds set aside to cover healthcare. "Many of the districts down in Southern California are saying medical benefits are not a vested right and they could cancel the benefits tomorrow," said Smith.

"We took the position that our employees had a right to those benefits they were promised and we've put something in place that is going to protect them."

EXHIBIT B (page 2 of 2)
Peralta Community College District

http://www.peralta.cc.ca.us/marketing/1_stories_07/opeb_financial_security.html

Original 2005 OPEB Bond Structure



Current OPEB Bond Structure

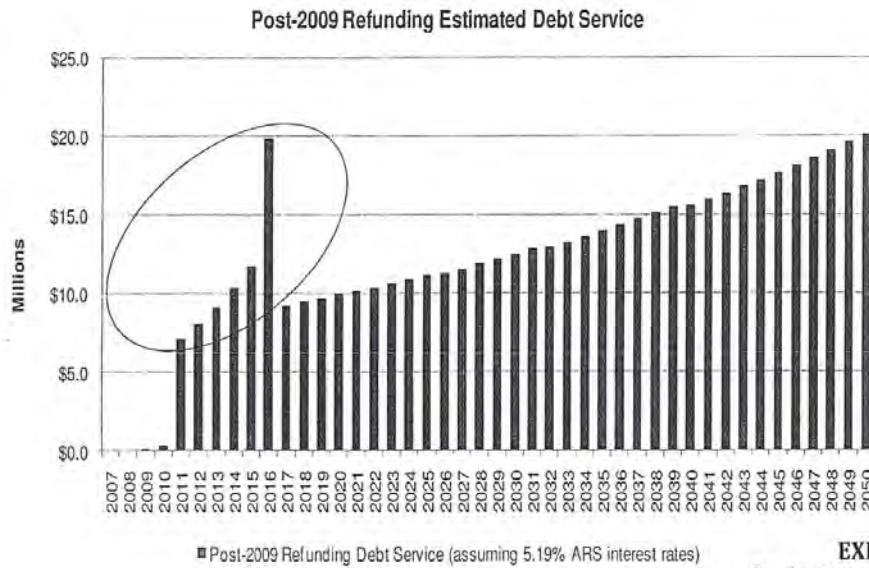


EXHIBIT C
Peralta Community College District

HAYWARD UNIFIED SCHOOL DISTRICT

The Hayward Unified School District (HUSD) is a large, urban school district with 21 elementary schools, five middle schools, three high schools, an alternative school, and adult education center and a child care center for pre-school children. HUSD serves over 20,000 students in grades K-12 in a district diverse in cultures, heritages, languages and economic conditions. The district's student population is 57% Latino, 16% African American, 8% White, 7% Filipino, 4% Pacific Islander and 1% Native American.

Investigation

The 2010-2011 Grand Jury received several complaints regarding HUSD. Initial complaints concerned board conduct at public meetings and the process of selecting a superintendent. Additional complaints and investigation by the Grand Jury revealed serious concerns about the board's role in allowing the district's finances to deteriorate to create the current fiscal crisis.

The Grand Jury reviewed hundreds of pages of documents including all board minutes for the past two years; all recommendations by fiscal advisors made during the past year to the board of education; and copies of background information and documentation pertaining to the selection process for the new superintendent. The Grand Jury also reviewed documents relating to the district's fiscal and budgetary considerations.

Members of the Grand Jury attended district board meetings, special board workshops and meetings of the school district's Fiscal Integrity and Transparency Advisory Group (FITAG). FITAG meetings are intended to educate various beneficiary stakeholders and obtain buy-in regarding the need for cost cutting; however these meetings are poorly attended. We also viewed videos of board meetings and heard from board and staff witnesses.

HUSD along with the other 1,038 public school districts in California has been struggling for a number of years due to the state's on-going fiscal crisis. During 2010 HUSD became one of approximately 15 public school districts in the state to have mandated, outside fiscal advisors appointed to give the district financial direction. HUSD was in negative certification because of concerns over its financial situation. In such cases, fiscal advisors are authorized by statute and have stay and rescind powers over all financial decisions made within the district. If fiscal advisors cannot remedy the situation, the next fiscal oversight step available could be state takeover of the district.

California's education code requires the local district to consider findings of an external reviewer when three or more of 15 predictors of possible fiscal distress exist. Should three predictors be present, the Alameda County Office of Education (ACOE) shall investigate the financial condition of the school district and determine if the district is unable to meet its financial obligations for three years. If studies, reports, evaluations or audits of the school district reveal evidence of fiscal distress, to the point that the school district may not be able to meet its financial obligations, the school district will receive a certification of "qualified." If, on the other hand, the evidence reveals an inability to meet these obligations, they shall receive a "negative" certification and will be required to make significant budgetary adjustments to balance their budget in order to avoid state takeover and loss of local control.

HUSD was in negative certification from ACOE from 2003 to 2006, and was assigned fiscal advisors during that time. The fiscal advisors made several recommendations in 2006, which helped the district build its cash reserves. However, once the ACOE fiscal advisors left, the district made some changes to its operations, but failed to institute sufficient structural change to avert the budget issues it faces today; for instance, the district was slow to conduct key training at school sites to strictly enforce the use of position controls to prevent unauthorized hiring.

The district again found itself in negative certification in December 2009 and was subsequently assigned a fiscal advisor by ACOE. The ACOE action came about after the December 2009 meeting. At that time, the district's assistant superintendent presented the board with a historical look at the district's spending over the previous three years, along with the proposed first interim financial update they were required to send to ACOE.

Because the board had refused to make necessary cuts recommended by the staff, the board was told that they were running an \$11 million deficit for the 2009-2010 budget year. Their reserves also fell well below the state mandated 3% limit. Finally, because it was the third year in a row that the district was deficit spending, the district had completely depleted \$25 million in reserves that it had built up from prior years. The assistant superintendent indicated that HUSD learned in late July of 2009 that the state was reducing its per pupil contribution causing \$5.1 million of their 2009-10 shortfall but the board refused to make the necessary program cuts to address the loss of those funds. Rather, the board supported additional expenditures of almost \$1.2 million for increased staffing.

As a result of the board's decisions, the assistant superintendent noted that the financial update presented to the ACOE would describe their fiscal situation as being negatively certified, meaning that the district was not expected to meet its financial obligations. In fact, at their pace, the board was told that they might not have the cash available to meet payroll by the following spring.

The board's response to the news was baffling. After discussion, the board agreed unanimously to change the cover of the financial document that would be sent to ACOE. They would report their financial situation as "qualified," meaning that the district was in a better financial situation than the numbers supported.

As a result of this board meeting and the board's financial policies, ACOE was forced to appoint independent fiscal advisors in order to shepherd HUSD

through these difficult fiscal times. These advisors would be paid for, in part, using HUSD general fund dollars, further exacerbating their financial situation.

Upon arrival at the district, the fiscal advisors immediately recommended a spending freeze. They confirmed each of the concerns of the HUSD fiscal staff concluding that the district would run out of cash to make payroll by June of 2010. The advisors recommended cutting \$18 million dollars from the budget as soon as possible.

Approximately \$11 million was subsequently cut from administration and programming, and fiscal advisors helped to develop a new review process for all spending. The district was hoping to cut an additional \$6 million as a result of labor concessions with certificated staff. Those attempts were unsuccessful. After a very long battle, both sides agreed on concessions that would save the district \$2.8 million over two years. This savings would be achieved in part by elimination of school site based decision-making teams and by reducing staff development workdays from five to three each year.

Ultimately, the district was able to make up the remaining shortfall with one-time funds including federal stimulus money. Their structural deficit remains, meaning that deficit spending will continue.

The board continues to avoid difficult decisions. As an example of this, the board in July 2010 adopted a 2010-2011 school calendar with teachers being paid for 186 days even though the ACOE fiscal advisor prescribed a reduction to 180 days. Similarly the board delayed issuing a number of layoff notices that were recommended by their own fiscal staff, beyond the March 15, 2011 deadline date. Thus, they lost the flexibility of either laying off or reinstating staff as needed. At the March 9, 2011 meeting, the board overrode staff recommendations to eliminate five positions of employees still on probation. Instead, the board micromanaged by choosing to keep two of the employees. The Grand Jury also learned that teachers' contracts include an expensive preparation time policy, far

in excess of other districts. This policy causes the district to hire a large number of substitute teachers to cover preparation time.

HUSD's budget continues to be unrealistic. As recently as March 2011 the district relied on the governor's proposed state tax extensions to avoid a negative certification. While the county allowed districts to use these numbers, realistic budgeting would involve having feasible contingency plans. Without these tax extensions, the district will again become negatively certified. The proposed tax extensions have yet to qualify for the ballot.

Superintendent Search

The Grand Jury investigated a complaint regarding interference by the then-interim superintendent with the board-authorized search for a new superintendent. The Grand Jury found that the search and the appointment of the district's new superintendent was a board action and was not improper. Furthermore, the Grand Jury considers the reappointment of a former and interim superintendent in 2010 to be logical and beneficial to continuity.

Board Behavior

The Grand Jury witnessed the lack of civility among board members during public meetings. During the period of late 2009 and into 2010, the board gained notoriety for open bickering during meetings when instead they should have worked together to address their crumbling fiscal situation. This damaged the board and district's reputation and credibility with its constituency and the broader educational community. It also damaged morale within the district and could only diminish prospects to lure competent talent to fill key district positions.

The board decided to provide board training so that meetings could be more productive and civil. Witnesses testified that the board participated in nearly a dozen training sessions, with more sessions scheduled for the future. The board's

behavior appears to have improved with the training and with the election of two new board members.

Conclusion

The Grand Jury reached several conclusions:

- The appointment of the new superintendent appears to have been handled properly.
- HUSD failed to follow some of the critical recommendations from the ACOE-appointed fiscal advisor in 2003-2006 and again in 2010.
- The contentious behavior of the board, which had a detrimental effect on the school district, appears to have diminished.

Through a failure to address its budget issues, HUSD is facing a possible state takeover resulting in a loss of local control. It is incumbent upon the elected board of education to accurately project their budget needs including best-case and worst-case scenarios. State takeovers are extremely costly for the community and highly disruptive to the educational process.

RECOMMENDATIONS

Recommendation 11-53:

The Hayward Unified School District Board of Education must implement the fiscal advice they are receiving in order to prevent relapse into financial insolvency.

Recommendation 11-54:

The Hayward Unified School District Board of Education must prepare an array of budget scenarios and adopt a realistic balanced budget, including required financial reserves.

RESPONSES REQUIRED

Hayward Unified School District Board of Education

Recommendations 11-53 and 11-54