



THE CITY OF SAN DIEGO

OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

Date Issued: July 28, 2016

IBA Report Number: 16-19

Rules Committee Meeting Date: August 3, 2016

Item Number: 2

Proposed Response to Grand Jury Report - Campaign Law Enforcement & Training: City and County of San Diego

On June 8, 2016 the San Diego County Grand Jury filed a report, directed to the San Diego Mayor and City Council, entitled “Campaign Law Enforcement & Training: City and County of San Diego.” The relevant part of this report to the City of San Diego touches on issues related to the authority of and appointment process for the City’s Ethics Commission.

The Grand Jury Report includes five findings and five recommendations that were directed to both the Mayor and City Council. One other recommendation was directed to the San Diego County Board of Supervisors, and this recommendation and corresponding finding are not addressed in the proposed response to the Grand Jury.

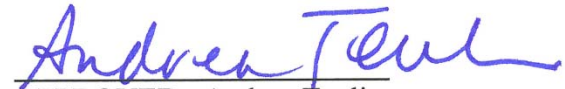
Per the Grand Jury report, the Mayor and Council are required to provide comments to the Presiding Judge of the San Diego Superior Court on the applicable findings and recommendations within 90 days. However, due to the upcoming legislative recess, the Mayor’s and Council President’s offices requested and received extensions for such responses to October 28, 2016.

In responding to each Grand Jury finding, the City is required to either (1) agree with the finding or (2) disagree wholly or partially with the finding. Responses to Grand Jury recommendations must indicate that the recommendation (1) has been implemented; (2) has not yet been implemented, but will be in the future; (3) requires further analysis; or (4) will not be implemented because it is not warranted or is not reasonable. Explanations for responses are requested when applicable.

The IBA’s Office worked collaboratively with the Mayor’s Office to develop a proposed joint Council/Mayoral response to the Grand Jury report – see Attachment 1. The proposed joint

response addresses the five findings and five recommendations. We request the Rules Committee provide feedback and forward this item to the full Council.


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Attachments:

1. Proposed City Response to San Diego County Grand Jury Report entitled “Campaign Law Enforcement & Training: City and County of San Diego”
2. San Diego County Grand Jury Report entitled “Campaign Law Enforcement & Training: City and County of San Diego”

**Proposed City Response to
San Diego County Grand Jury Report Entitled
Campaign Law Enforcement & Training:
City and County of San Diego**

Pursuant to California Penal Code section 933(c), the City of San Diego provides the following responses to the findings and recommendations pertaining to the City of San Diego that are included in the above referenced Grand Jury Report:

FINDINGS 01 THROUGH 05

Finding 01: *Changes to the appointment process for SDEC commissioners could promote civic confidence in the SDEC and its effectiveness.*

Response: The Mayor and City Council disagree with the Grand Jury's finding.

The process for choosing individuals to serve on the Ethics Commission is consistent with the appointment process for approximately 40 boards and commissions to the City of San Diego. All individuals nominated to serve as an Ethics Commission member are confirmed at a public meeting of the San Diego City Council, during which members of the public can attend and express their opinions on any matter related to the qualifications of an individual nominated to serve in the capacity of a Commissioner.

The City of San Diego Municipal Code Section 26.0404 specifies background and experience requirements for Commissioners to help ensure a Commission that is qualified and free of bias. At least two Commissioners are to be attorneys in good standing; and at least one Commissioner shall have experience related to an elective governmental office by having held an office, been a candidate for an office, or been a campaign treasurer (or other high level position) for a candidate for office. The Municipal Code also protects against a predominance of Commission members from one political party to ensure an unbiased, de-politicized Commission. Additionally, "the Commission shall reflect the diversity of the City which it serves."

Finding 02: *Revising the City Charter to remove the City Council's authority over the SDEC's existence would preserve SDEC as an independent body.*

Response: The Mayor and City Council agree with the Grand Jury's finding.

Finding 03: *Lengthening the term of commissioners could improve the commission's effectiveness.*

Response: The Mayor and City Council disagree with the Grand Jury's finding.

We agree with the Grand Jury's opinion that a longer serving Commissioner would improve his or her understanding of complex issues over time. Commissioners must

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understand and make determinations on activities regulated by complicated state and local governmental laws. Currently, Commissioners can serve two consecutive terms totaling eight years. Under the Grand Jury recommendation, the total time a Commissioner could serve is six years, thereby reducing Ethics Commissioners' potential service-time by two years.

Finding 04: *Changing the name would more accurately reflect the commission's duties and responsibilities and avoid ambiguity.*

Response: The Mayor and City Council agree with the Grand Jury's finding.

Finding 05: *Allowing subpoena power would enhance the investigative process and could shorten investigations.*

Response: The Mayor and City Council disagree with the Grand Jury's finding.

Since its establishment in 2001, the San Diego Ethics Commission has a proven track record of monitoring, administering, and enforcing the campaign and governmental ethics laws. The Commission has effectively administered its investigative duties. Furthermore, the degree to which investigations would be shortened by investigative subpoena power is not compelling enough for a change of powers.

RECOMMENDATIONS 16-60 THROUGH 16-64

Recommendation 16-60: *Establish a procedure to appoint SDEC members that is independent of elected city officials.*

Response: The recommendation will not be implemented because it is not warranted.

As described in the response to Finding 01, the process for choosing individuals to serve on the Ethics Commission is consistent with the appointment process for other boards and commissions to the City of San Diego. The City of San Diego Municipal Code Section 26.0404 specifies background and experience requirements for Ethics Commission members to help ensure a Commission that is qualified and free of bias. Also, the confirmation process for Commissioners is a public process, and members of the public have the opportunity to comment on the qualifications of individuals nominated to serve as Commissioners at a public hearing before the City Council. Lastly, the current process allows for the public's holding of elected City officials accountable

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for their choices of Commissioners and nominees, whereas an independent appointment body is not accountable to the City electorate.

Recommendation 16-61: *Establish SDEC as a permanent body through the City Charter.*

Response: The recommendation requires further analysis.

On December 3, 2015 the Charter Review Committee of the San Diego City Council recommended modifying City Charter language to establish the Ethics Commission via the City Charter, rather than by City Council ordinance, as is the current process. Such Charter language is subject to legal review and drafting by the City Attorney's Office, as well as subsequent approval by the City Council as a ballot measure in a citywide election. The next available elections at which such a ballot measure could be considered will be in 2018.

Recommendation 16-62: *Change the current term limit for SDEC commissioners to one six-year term.*

Response: The recommendation will not be implemented because it is not warranted.

As explained in the response to Finding 03, under the Grand Jury recommendation, the total time a Commissioner could serve is six years, thereby reducing Ethics Commissioners' potential service-time by two years. We do not agree with the Grand Jury's speculation that there is an issue with Commissioners being denied reappointment as retaliation for their decisions.

Recommendation 16-63: *Rename the SDEC to accurately reflect its function.*

Response: The recommendation requires further analysis.

On December 3, 2015 the Charter Review Committee recommended renaming the Ethics Commission to the City of San Diego Fair Political Practices Commission. This name would closely track the name of the California Fair Political Practices Commission, which serves a similar function statewide. To effectuate the name change, the City Council can include it in a ballot measure to be put before the City electorate. The next available elections at which such a ballot measure could be considered will be in 2018.

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Recommendation 16-64: *Expand SDEC subpoena powers to include witnesses.*

Response: The recommendation will not be implemented because it is not warranted.

As stated in the response to Finding 05, since its establishment in 2001, the San Diego Ethics Commission has a proven track record of monitoring, administering, and enforcing the campaign and governmental ethics laws. The Commission has effectively administered its investigative duties. Furthermore, the degree to which investigations would be shortened by investigative subpoena power is not compelling enough for a change of powers.

CAMPAIGN LAW ENFORCEMENT & TRAINING

CITY and COUNTY OF SAN DIEGO

SUMMARY

Ethics oversight of elected officials is essential to maintaining the public's trust. Ethics oversight focuses on campaign activities before and after elections. Elections are governed by a variety of state and local laws and regulations. The training, oversight, and enforcement of California laws fall within the purview of the Fair Political Practices Commission (FPPC). FPPC enforces those laws at all election levels, from state-wide to local.

Local governments have additional campaign laws and regulations pertinent to their jurisdictions. The training and enforcement of those laws are the responsibility of the jurisdiction, not the FPPC. In San Diego County, the only agency with a commission specifically responsible for ethics campaign ethics laws is the City of San Diego Ethics Commission (SDEC). The County of San Diego has no such agency.

The 2015/2016 San Diego County Grand Jury (Grand Jury) makes the following recommendations to improve the stature and enforcement capabilities of the SDEC:

- Restructure the appointment process of commissioners
- Amend the City Charter to establish SDEC as an independent body
- Revise the commissioners' term length
- Change the name of the commission to more accurately reflect its function
- Give SDEC subpoena power for witnesses

The Grand Jury also recommends that San Diego County provide campaign law training and education for elected officials, candidates and lobbyists, either by establishing a commission similar to SDEC or by integrating those duties into an existing department.

INTRODUCTION

The Grand Jury examined the duties and actions of the San Diego Ethics Commission and investigated the need for a similar commission for San Diego County.

PROCEDURE

The Grand Jury reviewed material from FPPC and interviewed current and former SDEC members. It reviewed the San Diego City Charter and ordinances and interviewed representatives from the County and City of San Diego. The interviewees included elected officials and appointed staff.

DISCUSSION

FPPC is a state agency charged with oversight of state election laws affecting political candidates and elected officials. FPPC monitors lobbyists only at the state level. It does

not perform routine auditing of election campaign filings for cities and counties, but audits elections in eight randomly selected counties and cities each year.

The San Diego County Registrar of Voters (ROV) conducts federal, state and local elections. Candidates must file all required documents with the ROV to run for public office. ROV does not have enforcement; it does offer limited training upon request. The District Attorney investigates and prosecutes illegal activities of elected officials and candidates, but is barred from providing training on campaign laws for office holders, candidates, staff or lobbyists.

There are numerous elected boards for school districts and special districts (fire, water, cemetery, hospital) in the county. None of them have an oversight body for training and compliance with local election laws. Recent issues with a San Diego Unified School District board member clearly demonstrate a need for greater oversight and training,¹ as the 2014/2015 Grand Jury reported². Ideally, one agency for the entire county could provide this service. The considerable logistics of establishing such an agency are beyond the scope of this report.

SAN DIEGO ETHICS COMMISSION

The San Diego City Council established the San Diego Ethics Commission in August 2001. SDEC consists of seven members with responsibility to monitor, administer and enforce the city's Governmental Ethics Laws. SDEC has authority to propose reforms, conduct investigations, refer violations to appropriate enforcement agencies, audit disclosure statements and advise and educate city officials, candidates, political committees, and lobbyists and the public.

SDEC members are nominated by the City Council and the City Attorney, appointed by the Mayor, and confirmed by the council. At least one SDEC member must have been a candidate for elective office or held a high level campaign staff position. Two members must be attorneys in good standing with the California Bar Association. No more than three members may be registered with the same political party.

SDEC members serve a four-year term and can be re-appointed once, a maximum of eight years. Interviewed officials suggested commissioners serve one six year term, due to the length of time needed to learn the laws and duties required. Interviewed officials also spoke of the perception that appointments are political, and commissioners fail to be reappointed as retribution for their decisions. One term of service would alleviate this perception.

Establishment of an impartial board for selecting commissioners could also improve the appointment process, which is vulnerable to the appearance of political interference.

¹ <http://www.sandiegouniontribune.com/news/2016/feb/02/foster-resigns-court-hearing/>

² "San Diego Unified School District Trustees' Overreach: Abuse of Power?"

Interviewed officials supported a new selection process, perhaps by a group of retired judges.

SDEC is established by city ordinance. §41(d) of the City Charter states: “for so long as an Ethics Commission remains established by ordinance of the Council”. This provision does not guarantee the ongoing existence of the commission should the Council decide to disband it.

The name ethics, defined as “rules of behavior based on ideas about what is morally good and bad”³ may imply that SDEC investigates many areas of unethical behavior. Several interviewed officials voiced the concern that the current name does not accurately reflect the commission’s specific focus and suggested renaming it. Changing the name to the City of San Diego Fair Political Practices Commission is an option worth considering.

The Ethics Commissions of the cities of San Francisco and Los Angeles, and FPPC, have the ability to subpoena witnesses during investigations. SDEC is authorized to subpoena witnesses only for administrative hearings. Municipal Code §26.0424(c) (2) authorizes SDEC to subpoena documents but not witnesses during the investigation process. If subpoena power were expanded to include the ability to subpoena witnesses during an investigation, it could alleviate the need for a full administrative hearing. Subpoena power would also help protect witnesses who might fear retaliation from their superiors if they are forced to divulge private information in a public hearing.

An example of SDEC’s enforcement authority is a recent case against a company that illegally channeled campaign contributions to the 2012 mayoral race. The company was assessed a \$128,000 fine by SDEC, the commission's largest penalty ever, for campaign finance violations. The ethics investigation revealed the owner of the towing company orchestrated a series of straw-donor employee contributions to the mayoral campaign and then hid the funding source.⁴ A summary of SDEC’s investigative history follows.

³ <http://www.merriam-webster.com/dictionary/ethic>

⁴ <http://www.sandiegouniontribune.com/news/2016/apr/15/tow-fine/>

San Diego Ethics Commission Summary of Enforcement 2002-2014

Year (Case opened)	# of Cases	Dismissals	Stipulations /Orders
2002	70	63	7
2003	69	68	1
2004	70	50	20
2005	98	82	16
2006	78	55	23
2007	93	82	11
2008	81	61	20
2009	102	66	36
2010	106	88	18
2011	81	67	14
2012	64	40	24
2013	49	33	16
2014	56	45	11
TOTAL	1017	800	217
Percent of all cases		79%	21%

County of San Diego

There is no local commission or agency that oversees, trains, educates, or enforces county campaign laws. Interviewed county officials stated FPPC provides adequate enforcement capabilities, so the county does not need an ethics commission. A comparison chart provided by SDEC (see appendix) details categories of enforcement SDEC handles as compared to FPPC. The county has local campaign laws not monitored or enforced by FPPC; an analogous county chart would show similar gaps in training and enforcement for county elected officials, lobbyists and candidates.

Interviewees told jurors that many mistakes made during political campaigns result from a lack of knowledge of campaign laws rather than intentional noncompliance. Recent issues involving County Supervisors^{5, 6} show the need for training for candidates and officials. Incorporating campaign law training and education activities into the functions of the County Office of Ethics and Compliance is an option worth considering. Another option is to increase the education and training provided by ROV and require attendance by officials, candidates, and lobbyists.

⁵ <http://www.kpbs.org/news/2015/jun/12/allegations-leave-san-diego-supervisor-roberts/>

⁶ <http://www.voiceofsandiego.org/topics/land-use/state-watchdog-tells-horn-again-not-to-vote-on-lilac-hills-ranch-project/>

FACTS AND FINDINGS

SDEC

Fact: SDEC members are nominated by the City Council and the City Attorney, appointed by the Mayor, and confirmed by the council.

Fact: SDEC may enforce actions against the people who appointed the commissioners.

Fact: Appointment and re-appointment of the SDEC commissioners has led to an appearance of political interference.

Finding 01: Changes to the appointment process for SDEC commissioners could promote civic confidence in the SDEC and its effectiveness.

Fact: SDEC, though legally enshrined in the City Charter, can be dissolved by vote of the City Council.

Finding 02: Revising the City Charter to remove the City Council's authority over the SDEC's existence would preserve SDEC as an independent body.

Fact: SDEC commissioners serve a four-year term with the opportunity for re-appointment to a second term.

Fact: Becoming familiar with campaign laws requires a significant investment of time and energy.

Finding 03: Lengthening the term of commissioners could improve the commission's effectiveness.

Fact: The name San Diego Ethics Commission, which can imply a person is being investigated for unspecified unethical behavior, does not properly reflect the limited scope of the commission's work.

Finding 04: Changing the name would more accurately reflect the commission's duties and responsibilities and avoid ambiguity.

Fact: SDEC subpoena power is limited to administrative hearings.

Fact: The City Council has the capability to grant additional subpoena powers to SDEC.

Fact: Witnesses have no protection from retaliation under Charter §26.0445.

Finding 05: Allowing subpoena power would enhance the investigative process and could shorten investigations.

County of San Diego

Fact: There is no commission dedicated to the training and enforcement of county campaign laws.

Finding 06: Elected county officials, lobbyists and candidates would benefit from additional training and enforcement of campaign laws.

RECOMMENDATIONS

The 2015/2016 Grand Jury recommends that the City Council of San Diego:

- 16-60:** **Establish a procedure to appoint SDEC members that is independent of elected city officials.**
- 16-61:** **Establish SDEC as a permanent body through the City Charter.**
- 16-62:** **Change the current term limit for SDEC commissioners to one six-year term.**
- 16-63:** **Rename the SDEC to accurately reflect its function.**
- 16-64:** **Expand SDEC subpoena powers to include witnesses.**

The 2015/2016 Grand Jury recommends that the San Diego County Board of Supervisors:

- 16-65:** **Provide campaign law training and education for elected officials, candidates and lobbyists for the County of San Diego, possibly by adding these training and education duties to an existing county department.**

REQUIREMENTS AND INSTRUCTIONS

The California Penal Code §933(c) requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code §933.05(a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

- (a) As to each grand jury finding, the responding person or entity shall indicate one of the following:
 - (1) The respondent agrees with the finding
 - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
- (b) As to each grand jury recommendation, the responding person or entity shall report one of the following actions:
 - (1) The recommendation has been implemented, with a summary regarding the implemented action.
 - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
 - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
 - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.
- (c) If a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the grand jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with the Penal Code §933.05 are required from the:

<u>Responding Agency</u>	<u>Recommendations</u>	<u>Date</u>
San Diego City Council	16-60 through 16-64	8/29/16
Mayor, City of San Diego	16-60 through 16-64	8/29/16
San Diego County Board of Supervisors	16-65	8/29/16

Filed: June 8, 2016

Appendix

COMPARISON OF DUTIES
Ethics Commission & the Fair Political Practices Commission

Provides Advice & Enforcement Regarding Local Campaign Matters	ETHICS COMMISSION	FPPC
Recordkeeping Requirements	X	X
Filing Campaign Statements	X	X
Contribution Limits for Individuals	X	
Contribution Limits for Political Parties	X	
Restrictions on Time Period of Contribution	X	
Transfers and Carryovers	X	
Loan Limits & Interest Prohibition	X	
Cash Contributions	X	X (in part)
Filing Third Pre-Election Report	X	
Election Designations (Primary, General, etc)	X	
Reporting Cumulative Contributions on Campaign Statement	X	
Online Filing	X	
Pre-Primary Contributions for General Elections	X	X (in part)
\$200 Cumulative Limit on Anonymous Contributions	X	
Use of Campaign Funds	X	X
Notification Regarding Contribution Solicitations	X	
Solicitation of Campaign Contribution from City Employees	X	
Prohibition on Contributions from Organizations & Organization Bank Accounts	X	
Contribution Limits for Recall Elections	X	
Obligation to Return Contributions	X	X (in part)
Return of Contributions—Mistaken Identity	X	
180 Day Vendor Debt Rules	X	
Legal Defense Funds	X	X (in part)
Mass Campaign Literature	X	X (in part)
Telephone Communications	X	X (in part)
Billboard Advertising	X	X (in part)
Disclosure of \$10,000 contributors on candidate advertisements	X	X (\$50,000)
Disclosure of \$10,000 contributors on ballot measure advertisements	X	X (\$50,000)

Provides Advice & Enforcement Regarding Local Campaign Matters	ETHICS COMMISSION	FPPC
Disclosure of Electioneering Communications	X	
Slate Mailers		X
Surplus Funds Rules	X	X
Provides Advice & Enforcement Regarding the Lobbying of City Officials	ETHICS COMMISSION	FPPC
Registration of Contract Lobbyists	X	
Registration of In-House Lobbyists	X	
Disclosures from Expenditure Lobbyists	X	
Quarterly Reports for Lobbying Entities	X	
Contribution Disclosures by Lobbyists	X	
Fundraising Disclosures by Lobbyists	X	
Campaign Contract Disclosures by Lobbyists	X	
City Contract Disclosures by Lobbyists	X	
Limits on Gifts From Lobbyists	X	
Laws Regarding Misrepresentation and Deception	X	
Provides Advice & Enforcement Regarding Gifts, Loans, Disclosures, Conflicts, etc.	ETHICS COMMISSION	FPPC
Gifts	X	X
Travel Payments	X	X
Loans	X	X
Honoraria	X	X
Annual Disclosure of Economic Interests	X	X
Semi-annual gift reporting	X	
Disqualification based on Economic Interest	X	X
Financial Interest in Contract (§1090)	X	
Disqualification of City Officials in Municipal Decisions Involving Benefactors (Conflict of Interest)	X	
Solicitation of Campaign Contributions from City Employees	X	
Future Employment	X	X
Lobbying Activities of Former Officials	X	X (elected officials only)
Unlawful Use of City Resources	X	
Provides Advice & Enforcement Regarding Gifts, Loans, Disclosures, Conflicts, etc.	ETHICS COMMISSION	FPPC
Unlawful Use of City Position, Badge, Uniform	X	
Use of Position to Induce Person to Provide Economic Benefit or Gain	X	

Use of City Resources, Facilities to Support Candidacy	X	
Provides Advice & Enforcement Regarding Gifts, Loans, Disclosures, Conflicts, etc. (continued)	ETHICS COMMISSION	FPPC
Engaging in Outside Employment While on City Time	X	
Disclosure of Confidential Information	X	
Other Matters	ETHICS COMMISSION	FPPC
Audits City Campaign Statements	X	low priority if City is selected in drawing
Audits City Lobbying Statements	X	
Provides Live Trainings for City Officials	X	
Provides Online Trainings for City Officials	X	State law only—limited to few officials
Provides Live Trainings for Candidates & Treasurers	X	
Tracks 1,300+ City Officials for Compliance with Biennial Training Requirement	X	
Prepares Fact Sheets & FAQs specific to City's Laws	X	
Prepares & Updates Candidate Manual and Committee Manual specific to City's Campaign laws	X	
Monitors & Reports on Effectiveness of Lobbying and Campaign Laws	X	
Provides Formal Written Advice	1-2 weeks	State law only; typically takes longer
Provides Informal Telephonic Advice	X	State law only
Provides Informal Advice Through E-mail	X	State law only
Monitors State and Federal Statutes, Regulations, and Court Cases for Impact on Local Campaign Laws, Lobbying Law, and other Ethics Laws	X	
Proposes Amendments to Local Campaign Laws, Lobbying Laws, and other Ethics Laws	X	