

# Grand Jury

OFFICE OF MAYOR SUSAN GOLDING

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James F. Kelly, Jr., Foreman

OFFICE OF  
MAYOR SUSAN GOLDING

JUN 25 1998

June 22, 1998

CONFIDENTIAL

Mayor and Councilmembers  
City of San Diego 202 C Street  
San Diego, CA 92101

**RE: San Diego County Grand Jury 1997-1998 Report "Review of the San Diego Chargers Contract"**

Dear Mayor and Councilmembers:

The San Diego County Grand Jury 1997-1998 herewith provides the referenced report for your review and comments to the Presiding Judge of the Superior Court in compliance with the Penal Code of California §933(c). This report was prepared pursuant to §925a of the Penal Code.

In accordance with Penal Code §933.05(e), a copy of this report is being provided to affected agencies two working days prior to its public release and after being approved by the Presiding Judge of the Superior Court. Please note that §933.05(e) specifies that **no officer, agency, department, or governing body of a public agency shall disclose any contents of the report prior to its public release.** This report will be filed with the County Clerk and released to the public prior to June 30, 1998.

Sincerely,

SAN DIEGO COUNTY GRAND JURY 1997-1998

JAMES F. KELLY, JR.  
Foreman

JFK:cjl

encs.

cc: Michael P. Uberuaga, City Manager

# REVIEW OF SAN DIEGO CHARGERS CONTRACT

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## Synopsis

The Grand Jury 1997-1998 found that the debt service on the revenue bonds to renovate Qualcomm Stadium, at the Chargers' request, will not be covered by the Chargers total revenue to the City of San Diego, minus the ticket guarantee.

The Grand Jury found that the Chargers' revenue went from approximately \$20 million in 1996 to \$50 million in 1997 for a 150% increase, while payments to the city went from \$3,237,000 to \$3,698,000 for a 13% increase. Furthermore, the lease agreement with the Chargers is about average, in terms of city revenue, among the eight NFL cities who have recently negotiated leases.

The Grand Jury found that City officials did not adequately inform the public of the city's need to draw upon the general fund whenever revenue from the Chargers is not sufficient to service the revenue bond debt.

Also the Grand Jury found that the terms of the contract raise questions about:

- (a) the NFL waiver granted to the Chargers, which allows them to retain that portion of premium seat revenues which the NFL constitution and bylaws require to be applied to the cost of stadium renovation and upgrading, rather than to be shared with visiting teams
- (b) the legality of allowing the Chargers to increase stadium parking fees at will.

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## Background

Contract negotiations between the City of San Diego and the Chargers football team took place at a time when the Chargers had just completed a very successful season and several NFL teams had moved to other cities. When the Chargers asked to reopen negotiations there was the perception that they might relocate to another city unless the stadium was upgraded with, among other things, additional sky boxes and club seating.

The agreement and renovations were characterized by litigation and public criticism. The litigation and public complaints were covered extensively in the news media and are not the subject of this report.

Following is the sequence of events leading to the signing of the contract between the city and the Chargers and the city's recognition that \$18 million of additional funds were needed:

- July 26, 1994. The city manager entered into renegotiation discussions with the Chargers at their request.
- February 28, 1995. The Mayor commented in closed session that the city was as close to an agreement with the Chargers as it was before the 1995 Super Bowl and that the council should announce the agreement in open session.
- May 15, 1995. The City Council concurred with the City Manager's recommendation to approve the agreement with the Chargers.
- November 21, 1995. The City Council approved the City Manager's recommendation that the Public Facilities Finance Authority (PFFA) issue \$60 million in bonds for expansion of Jack Murphy Stadium (later renamed Qualcomm Stadium).
- March 5, 1996. The Mayor stated in closed session that the city needs \$70 million and that club seating was important to the Chargers.
- January 14, 1997. The City Council, concerned about a pending referendum on the supplemental agreement to approve \$18 million for additional renovations, discussed the problems of the ticket guarantee and the possibility of television blackouts. Some council members felt it was just a public relations problem and they should continue support for the agreement with the Chargers.

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### **investigation**

It is not the 1997-1998 Grand Jury's purpose to second guess the decision to renovate the stadium in order to assure the continued presence of the Chargers, but rather to question certain contract terms and correct some misinformation about the agreement.

The Grand Jury believed that it could best serve the public by concentrating on some of the unusual terms of the contract other than the ticket guarantee. The ticket guarantee was the subject of a prior 1997-1998 Grand Jury report issued January 29, 1998.

The Grand Jury:

1. Reviewed City Council minutes of closed and open sessions on the subject of Charger contract negotiations.
2. Studied contracts between the City and the Chargers, Service America, Ace Parking and Qualcomm

3. Interviewed the Mayor and seven of the eight City Council members. It also interviewed the former City Manager, the former Assistant City Attorney who conducted negotiations with the Chargers and the current Assistant City Attorney.
  4. Interviewed the City's Financial and Technical Services Manager and staff and reviewed their financial analysis of the stadium's revenue.
  5. Interviewed members of the Stadium Authority.
  6. Studied the Seton Hall Journal of Sport Law (vol. 5, p 599) legal analysis of the National Football League's premium seat revenue waiver provisions and Section 19.1 (A) (3) of the National Football League's (NFL) constitution and bylaws.
  7. Reviewed the official description of Proposition 218 (which defines taxing authority) and interviewed the author of the proposition.
  8. Reviewed both the City Financial and Technical Services' and the San Diego City Taxpayers Association's financial analyses of the Charger contract.
  9. Reviewed the Deloitte and Touche NFL Stadium Lease Analysis which compared the San Diego Chargers agreement with seven other NFL team leases.
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### **Findings**

1. The Grand Jury found that city officials told members of the media and the public that no general funds would be necessary to service the revenue bond debt.
2. The principal feature of revenue bonds is that they are secured only by a pledge of specific revenue. Revenues are most frequently derived from rents or fees related to the operation of a facility such as the stadium.
3. The Grand Jury found that city officials told members of the Stadium Authority in a closed session that the \$60 million in Qualcomm Stadium bonds would be secured by a pledge of general fund revenues.
4. The \$5,056,000 revenue from the 1997 Chargers rent, minus the \$1,358,000 ticket guarantee, will not cover the \$5,561,000 servicing of the bond debt. This shortage will be repeated in future years if attendance at Chargers games continues to be inadequate. The deficit will be paid from the Stadium Reserve Fund. If and when that fund is depleted, the general fund will be tapped. In fact, the stadium expenses are now, have been and will continue to be supplemented by about \$2 million annually from the general fund.

5. The Grand Jury found that the National Football League's constitution and by-laws require a home team to share gross receipts with visiting teams on club seating premiums unless they can justify that if they retain premium seating revenue, they will contribute that revenue to refurbishment and upgrading of their stadium. The resulting reduced revenue for visiting teams is justified because stadium upgrading should increase future revenue for all teams.
6. The Grand Jury found that the City's contract with the Chargers was subject to and conditioned upon the NFL's unconditional approval of the Chargers' application for a "premium waiver" (described above). This waiver allows the Chargers to retain \$1,200,000 per season that under NFL by-laws could have been used for upgrading of the stadium.
7. In 1996, the Chargers paid \$3,237,000 in rent or about eleven per cent of their revenue of approximately \$20 million, compared to 1997 when they paid \$3,698,000 or only 7.4 percent of their \$50 million in revenue to the city.
8. The Grand Jury found that their contract gives the Chargers control over the raising of stadium parking fees whenever they desire.
9. The Grand Jury found that proposition 218 prohibits the raising of property related assessments and fees, and that a legitimate argument can be made that a parking fee is paid in exchange for a temporary property right.
10. The Grand Jury disagrees with several of Deloitte and Touche's key assumptions regarding the \$18 million for "naming rights," the City Box lost revenues, Service America's contribution to stadium renovations, and the assumption that some of the advertising revenue that goes to the Padres and the city should be considered as a cost to the Chargers. When these assumptions are removed and the full value of the ticket guarantee is added to these so-called lost opportunity costs, the Deloitte and Touche ranking position of the Chargers lease is about average among eight teams who have recently negotiated leases. It is not, as reported by Deloitte and Touche and repeated in the media, the second most expensive stadium lease among the eight teams.

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### **Recommendations**

- 98-56:** The City Council and staff, in all public presentations, should be absolutely clear if general revenue funds may be necessary, and in what amounts, to supplement debt service costs for proposed revenue bonds.
- 98-57: The City Attorney should examine the effects of the NFL premium seating waivers granted to the Chargers to determine what effect the waivers have upon revenue to the City and whether or not the Chargers or NFL might consider eliminating the waiver.

**98-58:** The City. Attorney should explore the relevance of Proposition 218 to the Chargers' ability to increase stadium parking fees and report findings to the City Council and the public.

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**Requirements and Instructions**

The Penal Code of California section 933 (c) requires comment on findings and recommendations in this report no later than 90 days from the date of filing. Comment to the Presiding Judge of the Superior Court in compliance with the Penal Code section 933.05 is required from the:

**San Diego City Council**

**Recommendation 98-56**

**San Diego City Attorney**

**Recommendations 98-57, 98-58**