OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

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Item Number: TBD

Response to Grand Jury Report "Ethical Political Practices – Enforcement of Campaign and Lobbying Laws"

OVERVIEW

On April 27, 2010 the San Diego County Grand Jury issued a report to the City Council, Mayor, and San Diego County Board of Supervisors entitled "Ethical Political Practices – Enforcement of Campaign and Lobbying Laws."

The Grand Jury Report assessed a number of issues related to the City's Ethics Commission and included eight findings and six recommendations. One of the recommendations (10-06) is addressed to the San Diego County Board of Supervisors thus falling outside of the City's jurisdiction. The City Council is required to provide comments to the Presiding Judge of the San Diego Superior Court on each of the findings and recommendations relating to the City made in the Grand Jury Report by July 26, 2010. The IBA has developed draft responses on behalf of the City Council for each of the findings and recommendations presented in the Grand Jury Report.

In preparing the proposed responses, the IBA has discussed with the City Attorney's Office staff and Ethics Commission staff factual information regarding current regulations which govern the Commission. The proposed responses address the Grand Jury findings and recommendations as directly as possible based on factual information, previous Council or Committee actions, and additional IBA research.

The proposed responses to the Grand Jury findings and recommendations are presented below.

FINDINGS

For each finding in the Grand Jury Report, the City Council shall respond by either agreeing with the finding or disagreeing wholly or partially with the finding. For each finding to which the response is disagree wholly or partially, the response shall specify the portion of the finding that is disputed and include an explanation of the reasons for the disagreement.

Finding #01: *Without the protections afforded by being designated as an independent entity in the City Charter, the San Diego City Ethics Commission is subject to elimination by repeal of the ordinance that established it.*

Proposed Response: *Partially Disagree*

The City Council Partially Disagrees with the Grand Jury's finding because designating the Ethics Commission as an independent agency is not the only protection afforded to the Commission in regards to elimination. The City Council does retain full control of the Commission existence and all of its procedures. In addition, the Council could change the Commission's purposes and repeal the ordinance establishing it. However, what the Grand Jury has not taken into consideration is the nature of the City's Ordinance process which is deliberative and open to the public.

Typically, each ordinance must first be vetted at a City Council Committee hearing, where the City Department, City Attorney, Mayoral staff, the Independent Budget Analyst, and the public have a chance to review and comment. If the Ordinance proceeds to the full City Council, parties are again able to testify and a majority vote of the City Council must be received for it to pass and become effective. This deliberative and open process is a protection in itself. A decision to eliminate the Ethics Commission could not occur without the close scrutiny of the citizens of the City.

Finding #02: *Some officials who have been fined for minor violations have expressed a concern that they may be perceived as unethical.*

Proposed Response: *Agree*

There could be unwarranted implications such as the perception of being "unethical" associated with an "ethics commission fine" levied for a relatively routine violation such as the late filing of a lobbying disclosure report or a Statement of Economic Interests.

Finding #03: *The majority of the activity of the Ethics Commission deals with monitoring compliance with the City's election campaign and lobbying laws and providing training in those laws.*

Proposed Response: *Partially Disagree*

Based on statistics provided by the Ethics Commission on the number of complaints received and the time spent on education related to campaign, lobbying, and ethics laws, the Grand Jury's statement is correct for calendar year 2009. However, as the following tables indicate, the Commission's focus is based on the number of complaints and requests for informal advice received and can vary from year to year.

Complaints Received Concerning Alleged Violations		
Type of Complaint	**2009**	**2008**
Violation of Election Campaign Laws	13%	22%
Violation of Lobbying Laws	50%	6%
Violation of Ethics Laws	30%	67%
Other Complaints (Generally outside the Ethics Commission's Jurisdiction)	7%	5%
Total Complaints related to Election Campaign and Lobbying Laws	63%	28%

Requests Received for Informal Advice (Classified by Ethics Commission staff as Education)		
Type of Complaint	**2009**	**2008**
Election Campaign Laws	21%	28%
Lobbying Laws	25%	31%
Ethics Laws	54%	41%
Total Requests for Informal Advice related to Election Campaign and Lobbying Laws	46%	59%

Finding #4: *A change of the name of the Ethics Commission to something analogous to that of the State's Fair Political Practices Commission would allay the concerns of City officials and more accurately reflect the actual work of the Commission.*

Proposed Response: *Agree*

Ethics Commission staff has stated that the issue of a name change has periodically been discussed during the course of other Commission business. Commissioners have generally expressed their view that a name change would help alleviate some of the unwarranted implications associated with an "ethics commission fine" levied for relatively routing violations such as the late filing of a lobbying disclosure report or a Statement of Economic Interests. Commissioners have also indicated that the payment of a nominal Commission fine should not be construed as an indication that a particular respondent is "unethical". It is possible that a name change could help mitigate this perception problem.

Finding #5: *The power to subpoena witnesses granted to the Ethics Commission by ordinance is provided only for administrative hearings and does not extend to investigations.*

Proposed Response: *Agree*

Finding #06: *The power to subpoena witnesses for formal investigations would streamline the process and could eliminate the need for more costly administrative hearings.*

Proposed Response: *Disagree*

At the October 13, 2008 City Council Hearing and at the September 16, 2009 Rules Committee meeting, the Executive Director and Commissioners of the Ethics Commission spoke to the benefits of issuing subpoenas for testimony during the investigation process. Benefits they discussed include:

- Such a subpoena would add a layer of protection to witnesses as many do not want to appear overly cooperative to superiors by providing the Commission with information. Due to the inability to issue such subpoenas, witnesses have not been as willing to speak with the Commission.

- The ability to issue investigative subpoenas may help eliminate the need for a full administrative hearing, which is held publicly and utilizes more resources of both the Ethics Commission and the individual on trial.

However, in a September 11, 2009 City Attorney's Office Report to the Rules Committee, they cautioned that the expansion of subpoena authority should not be "granted lightly" and that certain protections should be provided to witnesses that are compelled to testify at the investigative stage of Commission proceedings. On September 16, 2009 the Rules Committee discussed expanding the Ethics Commission's subpoena power and no action was taken and since that time no further discussion has occurred on this issue.

Finding #07: *The two vacancies on the seven member Ethics Commission endanger its ability to levy fines and to establish a quorum for its meetings.*

Proposed Response: *Agree*

On April 27, 2010 the City Council confirmed the appointments of John O'Neill and Graydon "Bud" Wetzler and reappointed William Ashley "Lee" Biddle and Clyde Fuller to the Ethics Commission. Since that time, two additional members have left the Commission due to term limits and resignation. The Mayor's Director of Boards and Commissions has requested that the City Council members submit names of candidates to fill these two vacancies.

Finding #08: *The State Fair Political Practices Commission is not equipped to perform regular audits of County elections, does not have sufficient staff to investigate conflict of interest allegations against local officials, and does not enforce City and County lobbying laws.*

Proposed Response: *Agree*

The state's Fair Political Practices Commission [FPPC] educates public officials and candidates on the requirements of the Political Reform Act, and investigates alleged violations of the Act. The FPPC's jurisdiction extends to public officials and candidates throughout the State of California, and to entities that lobby state officials. By comparison, the Ethics Commission operates locally, and its jurisdiction extends to City Officials, candidates for elective City office, and entities that lobby City Officials.

Although the City has incorporated some state law provisions into its Election Campaign Control Ordinance and its Ethics Ordinance, the City has also adopted many laws that are of a purely local nature. The FPPC does not regulate any of these local laws. For example, the Ethics Commission, not the FPPC, has jurisdiction over the City's contribution limits, the 180-day vendor debt rules, and online filing requirements for City candidates. In addition, the FPPC does not have jurisdiction over the City's lobbyists; the lobbying provisions in the Political Reform Act pertain solely to individuals who lobby state officials. By having a uniquely local perspective, the Ethics Commission is able to

provide education and enforcement in a manner particularly suited to local officials, local candidates, and local lobbyists.

RECOMMENDATIONS

For each recommendation in the Grand Jury Report, the City Council shall respond that the recommendation either has been implemented, has not yet been implemented but will be implemented in the future, requires further analysis, or will not be implemented.

Recommendation 10-01: **Place a measure on the ballot to amend the City Charter to ensure the Ethics Commission is established as an independent body.**

Proposed Response: Will not be implemented

If the City Council desired to eliminate or alter the Ethics Commission they would need to amend the Municipal Code through an Ordinance. This process is deliberative and allows the public and stake holders multiple opportunities to comment on the proposed changes. Typically each ordinance must first be vetted thorough a City Council Committee hearing, where the City Department, City Attorney, Mayoral staff, the Independent Budget Analyst, and the public have a chance to review and comment. If the Ordinance proceeds to the full City Council, parties are again able to testify and a majority vote of the City Council must be received for it to pass and become effective. Based on the deliberative and openness of the current process, the City Council does not deem it necessary to put a measure on the ballot to establish the Ethics Commission as an independent body.

In addition, it is important to note that the current estimate to put a five page measure on the November ballot is $250,000. Although it would be too late to put a measure on the November 2010 ballot related to the Ethics Commission, this estimate gives a good indication of the expected cost to the City's General Fund if a measure was put on a future ballot.

Recommendation 10-02: **Enact an ordinance changing the name of the Ethics Commission to the San Diego Political Practices Commission, or a substantially similar name, to be more indicative of its mission and activities.**

Proposed Response: Requires further analysis

The Ethics Commission is established by ordinance of the Council and codified in the San Diego Municipal Code. In particular, section 26.0403 states: "There is hereby created

a City of San Diego Ethics Commission consisting of seven (7) members, who shall serve without compensation."

Because the Ethics Commission was established by ordinance, the Office of the City Attorney has advised that the Council can change the name of the Ethics Commission by adopting an ordinance amending the San Diego Municipal Code. However, because Charter sections 40 and 41(d) reference the "Ethics Commission," the City Attorney recommends that the ordinance continue to establish the "Ethics Commission," but that the Commission will be known by another name. For example, the Code could be revised to state: "There is hereby created a City of San Diego Ethics Commission, to be known as the "San Diego Political Practices Commission."

The City Council President has stated that he will docket this item at a Rules Committee meeting for discussion in the fall.

Recommendation 10-03: **Enact an ordinance amending Chapter 2, Article 6, Division 4 of the San Diego Municipal Code to allow the Ethics Commission to issue witness subpoenas during Commission investigation with an affirmative vote of at least four Commission members. Said amendment should contain safeguards to protect the rights of those witnesses.**

Proposed Response: **Will not be implemented**

On September 16, 2009, the Rules Committee discussed expanding the Ethics Commission's subpoena power and no affirmative action was taken.

Recommendation 10-04: **Docket a discussion of proposed changes in the method of appointing Ethics Commissioners at an upcoming meeting of the Rules Committee (Or other appropriate Council Committee).**

Proposed Response: **Will be implemented in the future**

The City Council President has stated that he will docket this item at a Rules Committee meeting for discussion in the fall. It should be noted that in a March 12, 2010 response to Councilmembers Frye and DeMaio regarding reforms to the Appointment Process for the Ethics Commission, the City Attorney's office provided the following information:

> "Charter section 41 states: "[t]he Mayor shall appoint, subject to the confirmation of the Council, members of all commissions established pursuant to this section." As long as you do not infringe upon the Mayor and Council's delineated powers

under section 41, a process could be established to provide advice and recommendations."

Recommendation 10-05: **Appoint or re-appoint Commission members to fill all existing vacancies by the present method of making such appointments.**

Proposed Response: **Has been implemented and will be implemented in the future**

On April 27, 2010 the City Council confirmed the appointments of John O'Neill and Graydon "Bud" Wetzler and reappointed William Ashley "Lee" Biddle and Clyde Fuller to the Ethics Commission. Since that time, two additional members have left the Commission due to term limits and resignation. The Mayor's Director of Boards and Commissions has requested that the City Council members submit names of candidates to fill these two vacancies.

[SIGNED]

Jeffrey Sturak
Deputy Director

[SIGNED]

APPROVED: Andrea Tevlin
Independent Budget Analyst

Attachment

ETHICAL POLITICAL PRACTICES
ENFORCEMENT OF CAMPAIGN AND LOBBYING LAWS

INTRODUCTION

In difficult economic times, it is in the best interest of local government to establish and maintain a mechanism for strong, independent ethical oversight of its leaders which would assure the public that the political process is conducted in keeping with uniform, legal criteria and the necessity for transparency.

The 2009/2010 San Diego County Grand Jury studied the San Diego City Ethics Commission in order to assess continuing the independent existence of the Commission. A 2008/2009 San Diego County Grand Jury report, entitled *City of San Diego Ethics Commission*, was issued with two recommendations that the City of San Diego did not agree to implement:

1. Placing a measure on the ballot amending the City Charter to ensure that the Ethics Commission is annually funded and staffed at a minimal level to conduct the duties of the Ethics Commission and identify a revenue source to fund the Ethics Commission.
2. By ordinance, clarify the powers of the Ethics Commission to allow it to issue subpoenas for testimony during the investigative stage of alleged ethics violations.

The City's response to the first recommendation was that the Ethics Commission has been funded in excess of the Municipal Code requirements, treated objectively and fairly and in the same manner as other critical City programs and services. Thus, the City Council believes a ballot measure of this nature is not necessary.

The City's response to the second recommendation was to return the issue of subpoena power to the City Council's Rules Committee for further discussion. There were concerns raised by the City Attorney's Office on procedures to ensure the protection of the rights of subpoenaed witnesses during the investigative stage, and guidance for investigators conducting the interrogations. When the issue was heard at the Rules Committee on September 16, 2009, Councilmembers expressed concerns about due process and the creation of anonymous and frivolous complaints. Even though the City Attorney advised the Committee that the Ethics Commission was requesting expanded subpoena power as an additional investigative tool in order to conduct a thorough investigation, no action was taken to move the item to the full Council for amendment to the ordinance.

This Grand Jury again undertook study of the issue of ethics in San Diego government after receiving the responses to last year's report from the City. In addition, the Grand Jury has concerns, and citizen complaints, that there is no similar local board or commission in place to investigate County officials. The purpose of this report is to

recommend not only strengthening the existing City Ethics Commission, but also to recommend the consideration of creation of a similar Ethics Board that would have jurisdiction over County of San Diego officials and lobbyists.

INVESTIGATION

In researching and investigating this matter, the Grand Jury reviewed the following items:

1. San Diego City Attorney Memoranda
2. City of San Diego Ethics Commission Operating Policies
3. City Ordinances
4. 2008/2009 Grand Jury Report
5. Ethics Commission Annual Report
6. Campaign filings for selected elections
7. Lobbying Laws throughout California
8. Videos of selected full City Council and Council Committee meetings
9. 2009 Videos on Ethics and Lobbying Laws produced by the Council on Governmental Ethics Laws

The Grand Jury also interviewed:

1. City and County officials
2. Representatives of the City Ethics Commission
3. Representatives of the Center for Governmental Studies
4. Representatives of the San Diego Taxpayers Association
5. Representatives of the California State Fair Political Practices Commission by telephone as a public information request

DISCUSSION

Independence

According to the City of San Diego's web site, the Ethics Commission was established by ordinance on August 7, 2001 to:

1. Monitor, administer, and enforce the City's governmental ethics laws and propose new governmental ethics law reforms.
2. Conduct investigations, refer violations to appropriate enforcement agencies, and audit disclosure statements.
3. Advise and educate City officials and the public about governmental ethics laws.

The Ethics Commission consists of seven Commissioners who are appointed by the Mayor from a pool of candidates nominated by the City Council and City Attorney and confirmed by the Council.

At least one of the members shall be a person who has held elective governmental office and at least two of the members of the Commission shall be attorneys in good standing with the California Bar Association. No more than three (3) members of the Commission shall be registered with the same political party. The Ethics Commission is governed by San Diego Municipal Code Chapter II, Article 6, Division 4, Sections 26.0401 to 26.0456, added August 7, 2001, by Ordinance 18945 and subsequent amendments.

The Ethics Commission is incorporated in the City Charter Section 41(d), not as an independent body (as is, for example, the Office of the City Auditor) but as "established by ordinance of the Council". According to a September 11, 2009 memorandum from the San Diego City Attorney's Office, the City Council retains control over the Commission's existence, procedures, duties and responsibilities. Should it be so inclined, the Council could repeal the ordinance establishing the Ethics Commission.

The Mayor asked all City Departments to make cuts in their budgets for both Fiscal Year 2010 and Fiscal Year 2011 due to the current economic crisis. As a result, the City's Fiscal Year 2010 budget shows that the Ethics Commission staff was reduced from eight to seven positions (one investigator position was cut) and its overall budget reduced by $115,000, from $1.06 million to $891,000. The Mayor and Council have both stated this is just the beginning of hard decisions regarding additional cuts to City staff. The City's revenue projections for Fiscal Year 2010 are falling short by $11 million as of March 2010. The Fiscal Year 2011 Annual Required Contribution to the City pension system is about $19 million more than originally projected. Although the City's response to the 2008/2009 Grand Jury Report states it has treated the Ethics Commission objectively and fairly, the economic situation has changed.

The Grand Jury reiterates that now is the time to amend the City Charter and establish the Ethics Commission as an independent body. This can be accomplished by deleting the phrase "established by ordinance of the Council" from Charter Section 41(d). The Commission should not depend solely on the people it oversees and regulates for its existence. The Ethics Commission serves an important purpose as a deterrent to unlawful campaigns. The Ethics Commission was originally established by the City Council to oversee election campaign and lobbying laws through trainings, consultations, investigations, administrative hearings, and penalties. The Council acknowledged the need for such a Commission to exist on June 5, 2001, to assure that ethical practices were employed and accountability was assured. However, due to the instability of the City's finances, the Grand Jury will not recommend that any specific staffing level or budget be incorporated in the Charter.

On January 21, 2010 the United States Supreme Court issued a landmark ruling that reversed decades of precedent on campaign finance reform, in the case of *Citizens United v. the Federal Election Commission.* The court argued that corporate spending on federal political campaigns constituted free speech and therefore was constitutionally protected. Under the Court's recent ruling, corporations, labor unions and non-profit organizations can now use funds out of their general treasuries to contribute towards federal political campaigns, unfettered by the limitations of a Political Action Committee or election cycle time frames. Campaign finance laws in a number of states will most likely be repealed.

The impact of the *Citizens United* decision on local election campaign laws is yet to be determined. However, the decision underscores the necessity of having a truly

independent Ethics Commission. More so than ever, the public will need to know exactly who gave how much to whom.

Name Change

In the course of our investigation, many witnesses commented that the Ethics Commission has levied fines for technical violations that seemed relatively minor. The fact and amount of the fine was reported as being less important than the public perception of the fined parties as being tainted by accusations of "unethical" behavior. In fact, it appeared that many of these violations were not deliberate, but resulted from lack of knowledge of some finer points of the election law. Since the Ethics Commission's Annual Report for 2009 indicates that the vast majority of its activities concerned election campaign laws and lobbying laws, the Grand Jury is proposing that the Ethics Commission be renamed to something analogous to the State Fair Political Practices Commission. As an example, we offer "City of San Diego Political Practices Commission." This name change can be accomplished by ordinance and/or by incorporation in the Charter amendment discussed in a preceding paragraph.

Subpoena Power

In March of 2002, the voters approved Proposition B, an initiative that granted subpoena power to the Ethics Commission. Proposition B added the following language to the City Charter, at section 41(d):

> "For so long as an Ethics Commission remains established by ordinance of the Council, the Executive Director of the Commission shall be appointed by the Commission, subject to confirmation by the Council, and shall thereafter serve at the direction and pleasure of the Commission. The Commission may, in accordance with complaint and investigation procedures approved by ordinance of the Council, subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of any books, papers, records, or other items material to the performance of the Commission's duties or exercise of its powers."

In the published ballot argument in favor of Proposition B, the following language appears: "The Ethics Commission now needs the power to do the work it was created to do." It needs power to require witnesses to testify under oath and to produce documents that are needed to investigate alleged violations. The Los Angeles Ethics Commission, San Francisco Ethics Commission, and the California State Fair Political Practices Commission have the ability to subpoena witnesses during investigations as well as for administrative hearings. The San Diego Ethics Commission has that ability only for administrative hearings, per Municipal Code Sections 26.0435 (e) and 26.0445 (c). The Municipal Code Section governing formal investigations, Section 26.0424 (c) (2), authorizes the Commission to subpoena documents (*subpoena duces tecum*) but not witnesses during the investigation phase. Subpoena power for investigations would add a layer of protection to witnesses, as many are reluctant to provide the Commission with information harmful to their superiors without being compelled to do so. Due to the inability to issue such subpoenas, some potential witnesses have not been willing to speak with the Commission. The ability to issue investigative subpoenas may help eliminate the

need for a full administrative hearing, which is held publicly and utilizes more resources of both the Ethics Commission and the individual being charged.

The City Council has the capacity to renew consideration of the amendment to the Ethics Ordinance and grant the additional subpoena powers to the Ethics Commission, especially since the item was rejected by the Rules Committee and was never considered by the full Council. The City Council has the power to word the amendment as it sees fit. The City Attorney's memo to the Rules Committee dated September 9, 2009, recommends that the proposed amendment incorporate language to safeguard the rights of witnesses. Among these are notice of the specific area of inquiry and advice of the right to be accompanied by legal counsel; those protections should be incorporated. Councilmembers also expressed concerns about the wording regarding the Ethics Commission's Executive Director's discretion in Section 26.0445 of the Municipal Code that states:

> "Requests for an investigatory subpoena or *subpoena duces tecum* shall be made only after Commission staff has made reasonable efforts to obtain information on a voluntary basis except that the Executive Director may exercise his or her discretion to forego this requirement so long as he or she notifies the Commission at the time of the request that voluntary efforts were not pursued."

The Council could simply remove the last portion of the section. Requests for subpoena should be approved by an affirmative vote of at least four members of the Commission. Amending the ordinance would better serve the citizens of San Diego by:

- Shortening the investigative process
- Providing protection for people who provide information to the investigator
- Eliminating the need for a Commission hearing when the information provided has disproved the allegation

Selection Process for Commissioners

The Grand Jury investigation reveals that the Ethics Commission puts great effort into perfecting its operating policies and procedures to ensure due process for all persons investigated. Improvement in its relationship with City officials could result from less focus on very minor violations and more focus on education, training, investigation and enforcement of significant violations. City officials have commented that they would like to see a more streamlined Commission with a defined structure, less emphasis on technical compliance, and more emphasis on voluntary compliance.

Some officials feel a new selection process for Commissioners should be implemented; for example, it is been suggested that a panel of retired judges should be involved in an independent selection process. The Ethics Commissioners in Los Angeles and San Francisco are individually appointed, some by the Mayor, some by City Council and some by other elected officials as specified in the respective City Charters. However, the City of San Diego Ethics Commission, as of March 2010, has two vacancies and three other Commissioners whose terms expired on June 30, 2009. One of the latter is not eligible to be re-appointed, having served the maximum eight years (two terms).

Differences among Councilmembers about the selection process prevented the confirmation of the nominees at the July 27, 2009 City Council meeting. These vacancies must be filled and re-appointments made immediately under the existing process to insure that the Ethics Commission has the ability to levy fines (five affirmative votes are currently required) and have a quorum of four Commissioners at its meetings. Any new process under consideration can be thoroughly vetted at the Rules Committee and the full City Council after these appointments have been made. The Grand Jury expresses no opinion on the subject of appointing the Commissioners, other than to note that compelling arguments can be made for and against the proposed options and that they merit a full and open discussion.

County Ethics Board

In the course of the Grand Jury's investigation, a concern was raised over the lack of a local commission or board that oversees San Diego County officials. There is no local board monitoring, administering and enforcing the County's political ethics laws; proposing new governmental ethics law reforms; conducting investigations; auditing campaign and disclosure statements; monitoring lobbyists; and, advising and educating County officials and the public about government ethics laws.

The investigation revealed that some County officials felt the State Fair Political Practices Commission (FPPC) provides adequate regulation. This Commission is based in Sacramento, has limited resources and staffing and initiates most of its investigations in response to complaints. Complaints involving State officials and elections generally have priority over complaints against local officials since the FPPC has only five investigators for the entire State. The FPPC monitors lobbyists only at the State level. Also, it does not perform routine auditing of election campaign filings for cities and counties; it audits elections in only eight randomly selected counties and eight randomly selected cities per year. Given a two year election cycle, the odds of San Diego County elections being audited in a given cycle are more than seven to one. A search of the Commission's web site indicates that only 83 of the over 1,400 enforcement actions taken by the Commission in its thirty-five year history involved officials, campaign donors or lobbyists in San Diego County. The majority of those enforcement actions were fines against major donors and campaign committees for incomplete, incorrect or late filing of required disclosure statements of campaign contributors.

The investigation also revealed that the County's Office of Internal Affairs has referred no cases to the Fair Political Practices Commission. Its mission is focused on responding to complaints of discrimination and sexual harassment in the work place. According to the Fiscal Year 2009 annual report of the Office of Internal Affairs, forty of the forty-four formal complaints the Office investigated were on discrimination, harassment and related issues.

The Grand Jury is proposing that the Board of Supervisors docket as a discussion item at an upcoming meeting the creation of a County Political Practices Commission or Board with authority in the following three areas:

- Ethical conduct of campaigns for County elective office

- Monitoring of lobbyist activities at the County level
- Investigating allegations of conflict of interest (California Government Code 1090)

The anticipated fallout from the U. S. Supreme Court decision on the *Citizens United* case only intensifies the necessity to establish such a Board on the County level.

FACTS

Fact: The City Charter allows the Ethics Commission to exist for as long as it is established by Ordinance of the City Council.

Fact: The 2008/2009 San Diego County Grand Jury recommended that the City place a measure on the ballot to amend the City Charter to ensure the Ethics Commission is established as an independent entity and funded and staffed at a sufficient level to conduct its duties, as defined by the Charter.

Fact: The City disagreed with the 2008/2009 Grand Jury's recommendation and it was not implemented.

Fact: Some of the fines levied by the Ethics Commission have been for technical violations of campaign laws relating to mailers and other printed material.

Fact: The 2008/2009 Grand Jury recommended that the City by ordinance clarify the powers of the Ethics Commission to allow it to issue subpoenas for testimony during the investigative process of an alleged ethics violation.

Fact: In March 2002, the voters approved Proposition B, an initiative that granted subpoena power to the Ethics Commission.

Fact: As of March 2010, there are two vacancies and three holdover Commissioners on the Ethics Commission.

Fact: The State Fair Political Practices Commission has made enforcement findings on eighty-three complaints within the County of San Diego since its inception in 1976.

Fact: There is no local board or commission in place to monitor and investigate County officials; candidates for County Office and their staff; election campaign donors and committees; employees of the County who are required to file economic interest disclosure forms pursuant to a conflict of interest code; members of County boards and commissions who are required to file economic interest disclosure forms; persons required to register as lobbyists; and, consultants to the County who are required to file economic interest disclosures.

FINDINGS

***Finding # 01*:** Without the protections afforded by being designated as an independent entity in the City Charter, the San Diego City Ethics Commission is subject to elimination by repeal of the ordinance that established it.

***Finding # 02*:** Some officials who have been fined for minor violations have expressed a concern that they may be perceived as unethical.

***Finding # 03*:** The majority of the activity of the Ethics Commission deals with monitoring compliance with the City's election campaign and lobbying laws and providing training in those laws.

***Finding # 04*:** A change of the name of the Ethics Commission to something analogous to that of the State's Fair Political Practices Commission would allay the concerns of City officials and more accurately reflect the actual work of the Commission.

***Finding # 05*:** The power to subpoena witnesses granted to the Ethics Commission by ordinance is provided only for administrative hearings and does not extend to investigations.

***Finding # 06*:** The power to subpoena witnesses for formal investigations would streamline the process and could eliminate the need for more costly administrative hearings.

***Finding # 07*:** The two vacancies on the seven member Ethics Commission endanger its ability to levy fines and to establish a quorum for its meetings.

***Finding # 08*:** The State Fair Political Practices Commission is not equipped to perform regular audits of County elections, does not have sufficient staff to investigate conflict of interest allegations against local officials, and does not enforce City and County lobbying laws.

RECOMMENDATIONS

The 2009/2010 San Diego County Grand Jury recommends that the San Diego City Council:

10-01: **Place a measure on the ballot to amend the City Charter to ensure the Ethics Commission is established as an independent body.**

10-02: **Enact an ordinance changing the name of the Ethics Commission to the San Diego Political Practices Commission, or a substantially similar name, to be more indicative of its mission and activities.**

10-03: **Enact an ordinance amending Chapter 2, Article 6, Division 4 of the San Diego Municipal Code to allow the Ethics Commission to issue witness subpoenas during a Commission investigation with an**

affirmative vote of at least four Commission members. Said amendment should contain safeguards to protect the rights of those witnesses.

10-04: **Docket a discussion of proposed changes in the method of appointing Ethics Commissioners at an upcoming meeting of the Rules Committee (or other appropriate Council Committee).**

The 2009/2010 San Diego County Grand Jury recommends that the Mayor of the City of San Diego and the San Diego City Council:

10-05: **Appoint or re-appoint Commission members to fill all existing vacancies by the present method of making such appointments.**

The 2009/2010 San Diego County Grand Jury recommends that the San Diego County Board of Supervisors:

10-06: **Consider the establishment of a County Fair Political Practices Board to monitor and enforce at the local level the County's Election Campaign, Lobbying and Governmental Ethics Laws.**

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 *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:

Responding Agency	Recommendations	Date
Mayor, City of San Diego	**10-05**	**07/26/10**
City Council, City of San Diego	**10-01 through 10-05**	**07/26/10**
San Diego County Board of Supervisors	**10-06**	**07/26/10**