



**City Council & City Clerk Response
to
Grand Jury Report entitled
“City of San Diego 2010
Redistricting Commission”**

City Council
October 2, 2012
Item 331

City Council & City Clerk Response to Grand Jury Report



- Grand Jury filed this report with the Mayor, City Council, and City Clerk on June 21, 2012
- Evaluated the selection process for 2010 Redistricting Commission and possible improvements.
- Includes 5 findings and 8 recommendations.
- City Council & City Clerk required to provide responses to all findings and 4 recommendations by August 29, 2012.
- Due to the timing of summer recess, the Council President requested an extension to respond to November 1, 2012.
- Also includes background information and clarification of some facts.

City Council Response to Grand Jury Report



- For each finding:
 - Agree
 - Disagree wholly or partially
- For each recommendation:
 - Has not been implemented
 - Has not yet been implemented, but will be
 - Requires further analysis
 - Will not be implemented

City Council Response to Grand Jury Report



- City Attorney's Office and the City Clerk both had a substantial role in crafting the proposed responses to the Findings and Recommendations on behalf of the Council.

Clarification of Facts



- Provides information on the 30-day nomination period.
- Provides details on when and how the City Clerk advertised the nomination period.
- Clarifies the number of applications received for Redistricting Commission and compares to historical number of applications received for other boards.
- Corrects mischaracterization regarding the panel of judges (Left out key phrase).
- Clarifies the role of City Manager in the Charter under the new form of government.

Finding 01



01: The Number of nominees for Redistricting Commissioner is limited by the short June-July announcement and nominating window.

- **Partially Disagree**

- Based on the number of applications received the number of nominees for the Redistricting Commissioner does not appear to be constrained by the charter and Municipal Code.

- Possible that extending the amount of time to solicit applicants could increase the number, but not certain.

Finding 02



02: Many residents are on vacation in June and July

- **Partially Disagree** and this may be immaterial
- Publicity about the upcoming appointment process began much earlier in the year and the application may be accessed online and filled out earlier.
- The redistricting process is widely publicized, providing ample time to submit materials by the deadline.

Finding 03



03: The Charter is not current as to the structure and ethical constraints of the San Diego Court system and City Government.

- **Agree**, but this may not be of great significance.
- The Charter is not “current” in many of its sections, but the redistricting sections of the Charter provide alternatives.
- While it is correct there is no longer a “Municipal Court,” the Charter provides for alternatives so someone else can perform the same duties.
- The “ethical constraints” cited by Presiding Judges were offered in informal opinions of a sitting judicial ethics committee. Here, too, however, the Charter provides for replacements if a judge declines to serve.

Finding 04



04: The 2010 Redistricting Commission process could have been subject to challenge because only two members of the three-judge panel were available

- **Disagree.**

- The two judges who made the appointments formed a quorum of a three-judge panel.
- Speculative to consider what might lead to a “challenge” and whether the challenge would have merit.

Finding 05



05: The City took no action on the recommendations made by the 2000 Redistricting Commission with regard to office needs and support staff

- **Partially Disagree.**

- The City was aware of the recommendations
- FY 2011 Budget included \$500,000 for the Redistricting Commission.
- The ACOO assigned a Supervising Mgmt Analyst as the City Liaison to the Redistricting Commission.
- The City Attorney's Office also worked for approximately 18 months as a liaison between the Commission and City Departments.

Recommendation 12-50



12-50: Sponsor an amendment to the City of San Diego Charter Article II, Section 5 and Section 5.1 before the 2020 census to expand the nomination period for Redistricting Commissioners to at least 90 days.

- **This recommendation requires further analysis.**
- The City Council agrees that an extended nomination period should be studied.
- In 2010 the City Clerk's outreach regarding the upcoming nomination period for Redistricting Commission began months before the official notice was published, enabling prospective candidates time to prepare to submit an application during the designated period.
- It is also important to note that it is settled law that one legislative body, by its legislative enactments, cannot limit or restrict the power of succeeding boards. Thus, the City Council cannot act to commit a future City Council to place an item on a future ballot.

Recommendation 12-51



12-51: Sponsor an amendment to the City of San Diego Charter Article II, Section 5 and Section 5.1 before the 2020 Census to update the Court's current structure and require the appointing authority be made up of three retired Superior Court Judges drawn at random by the City Chief Operating Officer.

- **This recommendation will not be implemented.**
- The City Attorney has interpreted section 5.1 to provide for successor courts to handle this procedure.
- It is also important to note that every other calendar year the City Council's Rules Committee reviews proposed ballot measures submitted by citizens.
- As they review the proposed charter amendments submitted by citizens, the Rules Committee weighs the impacts of the proposed ballot measures against the cost of putting a measure on the ballot and the City's overall financial condition.

Recommendation 12-51 (Cont.)



- Due to the City's recent financial condition, it has been very rare for the Rules Committee to recommend putting a measure on the ballot.
- The Rules Committee has expressed interest in exploring a number of charter changes proposed by citizens, City Boards, and Departments, and possibly integrating these into a comprehensive "clean up" of language throughout the charter.
- The Grand Jury's proposed charter changes could be considered by a future Council in the context of an overall "clean up" of the charter but this would be dependent on the City's financial condition and also weighed against other budget priorities.

Recommendation 12-52



12-52: Modify the San Diego Municipal Code chapter 2, article 7, division 14, Section 27.1401 et seq. to be consistent with the Charter and current Court and City government structure.

- **This recommendation requires further analysis.**
- The Council agrees that the Municipal Code should be updated to be consistent with the charter and will analyze and consider amendments to reflect the changes in the Court and City government structures.

Recommendation 12-53



12-53: Modify the San Diego Municipal Code chapter 2, article 7, division 14, Section 27.1405 to require an alternate be named to the appointing authority if one of the three judges is unable to participate in the Redistricting Commissioner selection process.

- **This recommendation will not be implemented.**
- The City does not have any boards or commissions that use alternates.
- It is often difficult to find volunteers, so requiring a fourth retired judge to be available and informed to step in on short notice could be difficult.
- Further, the circumstance resulting in the unavailability of the retired judge for the selection of the 2010 Commissioners was highly unusual.
- As with other public boards and commissions, a quorum of the panel that is present may conduct business.
- The Council may consider an amendment to the Municipal Code to recommend the three-judge panel reschedule any meeting if necessary to ensure all three members can be present unless rescheduling would result in missing Charter deadlines.

City Clerk Responses to Recommendations



- Per the City Attorney’s Report to the Audit Committee dated June 11, 2010, California Penal Code Section 993 (c) requires that the “governing body of the agency comment on matters “under control of the governing body”.
- The “governing body” of the City of San Diego is the City Council.
- The City Clerk does not have the authority under California Penal Code section 993 (c) to respond directly and independently to the Grand Jury on the City’s behalf.

Recommendation 12-54 (City Clerk)



12-54: Establish a process in anticipation of the 2020 Redistricting Commission that would begin recruitment of a candidate pool for the Redistricting Commission Chief of Staff 90 days prior to selection of the appointing authority.

- **This Recommendation requires further analysis** by a future Redistricting Commission, consistent with the San Diego City Charter section 5.1 which states, “The Commission shall elect a chair and a vice chair and shall employ a chief of staff, who shall serve at the Commission’s pleasure, exempt from Civil Service, and shall contract for needed staff, technical consultants and services, using existing City staff to the extent possible.”
- Decisions about a chief of staff are to be made solely by the Commission, and not by other City officials.

Recommendation 12-55 (City Clerk)



12-55: Establish a process in anticipation of the 2020 Redistricting Commission that would ensure an appropriately equipped office suite and staff are available at the time of the 2020 Redistricting Commissioner selection.

- **This recommendation requires further analysis** of office space and staff resources by a future administration.

Recommendation 12-56 (City Clerk)



12-56: *Establish a process in anticipation of the 2020 Redistricting Commission that would ensure a candidate pool of outside consultants is available for selection by the Redistricting Commission.*

- **This Recommendation requires further analysis** by a future Redistricting Commission, consistent with the San Diego City Charter section 5.1 which states, “The Commission shall elect a chair and a vice chair and shall employ a chief of staff, who shall serve at the Commission’s pleasure, exempt from Civil Service, and shall contract for needed staff, technical consultants and services, using existing City staff to the extent possible.”
- Decisions about technical consultants are to be made solely by the Commission, and not by other City officials.

Recommendation 12-57 (City Clerk)



12-57: Assign the Redistricting Commission Chief of Staff as liaison between the City staff and services and the Redistricting Commission.

•This recommendation requires further analysis by a future administration in collaboration with a future Redistricting Commission.

Requested Actions



1. Approve and adopt the City Council's and City Clerk's responses to the Grand Jury Report entitled "City of San Diego 2010 Redistricting Commission."
2. Authorize and directing the City Council President, on behalf of the City Council, to execute and deliver the Council's responses to the Presiding Judge of the Superior Court by no later than November 1, 2012.



Questions?