



THE CITY OF SAN DIEGO

OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

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Item Number: 2

Proposed Response to Grand Jury Report “City of San Diego Corporate Partnership Development Program”

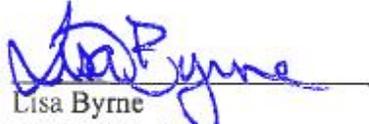
On June 4, 2018 the San Diego County Grand Jury filed a report, titled “City of San Diego Corporate Partnership Development Program.” This report focuses on management practices and administration of the Corporate Partnership Development Program.

The Grand Jury report includes nine findings and three recommendations which are directed to the Mayor and City Council. (Findings range from 01 through 10, but the Grand Jury report does not include a Finding 08). The proposed response – see Attachment 1 – covers these findings and recommendations.

Per the Grand Jury report, the Council is required to provide comments to the Presiding Judge of the San Diego Superior Court on the applicable findings and recommendations within 90 days. However, the Council President’s office requested and received an extension for the response to November 30, 2018.

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 implemented 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 Office of the IBA worked collaboratively with the Mayor's Office and Corporate Partnerships to develop a proposed joint Council/Mayoral response to the Grand Jury report. We request that the Budget & Government Efficiency Committee provide feedback and forward its approved proposed response to the full City Council.


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Fiscal & Policy Analyst


APPROVED: Andrea Tevlin
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Attachments:

1. Proposed City Response to San Diego County Grand Jury Report titled "City of San Diego Corporate Partnership Development Program"
2. San Diego County Grand Jury Report titled "City of San Diego Corporate Partnership Development Program"

**Proposed City Response to
San Diego County Grand Jury Report Titled
“City of San Diego Corporate Partnership Development Program”**

Pursuant to California Penal Code section 933(c), the City of San Diego Mayor and Council (City) provide the following responses to the findings and recommendations pertaining to the City of San Diego which are included in the above referenced Grand Jury Report.

First, the City would like to comment on the associated San Diego County audit (Report No. A18-023) that was done in conjunction with this Grand Jury report. The audit report summary states: “Within the scope of the audit, OAAS [Office of Audits & Advisory Services] concluded that there is not reasonable assurance that CPD [Corporate Partnerships and Development] management practices are proper and adequate. As a result, the City of San Diego is unable to determine the overall success of CPD.” The City disagrees with this overly broad statement.

Specifically, a number of the findings included in the audit report incorporate misinterpretations and amplifications of minor procedural lapses to make far-reaching conclusions. For example, the auditors asserted that “CPD Inaccurately Reported Revenue Generated by the Program.” They cite that revenue reported (which was taken from the CPD website) was based on estimates rather than actual amounts; but they did not show how that was inappropriate or whether they attempted to examine the estimates. A few other examples of disagreement include that “CPD Did Not Adequately Track and Memorialize Sponsorships,” there is “Inadequate Development of Requests for Sponsorships,” and there are “Inadequate Document Retention Policies.”

The City also notes that the County auditors did not provide CPD with a draft of the audit report, even when requested by CPD. Therefore, CPD was unable to provide comments or observations with respect to potential audit findings. An audit of a City program by San Diego County, undertaken at the request of the County Grand Jury, is a unique situation for which the City is unable to find legal authority. However, the City cooperated with the audit and provides the following response to the Grand Jury’s report.

FINDINGS 01 THROUGH 10

Finding 01: *Policy 000-40 does not list all types of sponsorship agreements.*

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

Finding 02: *The audit was unable to determine whether all agreements under the Program had been identified.*

Response: **The Mayor and City Council partially disagree with the Grand Jury’s finding.**

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The San Diego County auditors requested information on agreements that have been developed by CPD; and CPD provided the auditors a comprehensive list of marketing partnership agreements (including those not directly labeled as such). In addition, the auditors were provided a revenue and in-kind tracking report for the last five years, from which they selected agreements to examine.

Finding 03: *CPD does not comply with the MMP requirement to track and report on all marketing partnerships developed by City departments on a quarterly basis.*

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

[The following is the proposed text for the response if the Council Policy has been revised by the time the response to the Grand Jury report has been approved:]

This requirement has been addressed in the revised Marketing Partnership Policy. CPD will be obtaining marketing partnership information from departments for agreements valued at \$25,000 or greater and will be including such information in annual reports.

[OR, if the Council Policy has not been revised by the time the response to the Grand Jury report has been approved:]

This requirement will be addressed in a revised Marketing Partnership Policy within the next six months. CPD will be obtaining marketing partnership information from departments for agreements valued at \$25,000 or greater and will be including such information in annual reports.

Finding 04: *The lack of a requirement for disclosure increases the risk that an agreement could create a conflict of interest, or the appearance of one.*

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

[The following is the proposed text for the response if the Council Policy has been revised by the time the response to the Grand Jury report has been approved:]

This requirement has been addressed in the revised Marketing Partnership Policy and updated Request for Sponsorship (RFS) form. RFSs will require disclosure of any conflicts of interest. If a RFS is not issued, marketing partnership agreements will address compliance with required disclosures.

[OR, if the Council Policy has not been revised by the time the response to the Grand Jury report has been approved:]

This requirement will be addressed in a revised Marketing Partnership Policy and updated Request for Sponsorship form within the next six months.

**Proposed City Response to
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Finding 05: *The disposition schedule does not require CPD to maintain project records for at least the life of the agreement.*

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

The CPD disposition schedule requires project records for contracts/agreements not approved by Council to be maintained for five years after the contract/agreement ends. Project records for contracts/agreements approved by Council must be kept permanently.

Finding 06: *CPD files on some agreements are incomplete.*

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

CPD maintains complete documentation for its agreements and does not believe its agreement files are inadequate. There is one exception for the Waxie agreement, for which the San Diego County auditors noted that there was not an executed agreement. This agreement was for a promotional event that occurred in both 2012 and 2013 (for a total City/public benefit of \$4,000). The event that Waxie sponsored in 2012 and 2013 was the culmination of an Environmental Services Department/San Diego County Office of Education collaboration on a children’s contest in which recycled materials were used in artwork. The revenue was tracked in SAP, and related documentation is on file with CPD.

Finding 07: *CPD lacks a process for determining the net benefits of agreements.*

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

CPD does not enter into agreements that do not have an inherent net benefit to the City. Each agreement is unique, and the foundation of each partnership is the value to the City, which is carefully reviewed and negotiated by CPD. Additionally, marketing partnerships agreements are often reviewed and approved by the City Council, which also considers the value to the City.

Partnership agreements include one or more of the following benefits: financial – e.g., Toyota partnership provides Lifeguard vehicles the City would otherwise have to purchase or lease; public benefits – e.g., Discover Bike delivers a public bikesharing program, which provides an option for alternative transportation; efficiencies – e.g., Toro Co. has an exclusive agreement to provide golf course maintenance equipment and provides the City with in-kind values for ongoing equipment needs, tournament support, and irrigation support services; and employee benefits – e.g., Sharp HealthCare provides wellness classes and flu vaccinations for City employees (as well as community wellness workshops for San Diego residents).

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Finding 08: The Grand Jury report does not include a Finding 08.

Finding 09: *Failure to adequately describe the sponsorship opportunity could reduce the number of potential respondents.*

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

Finding 10: *Failure to identify the responsible administrative department can result in lack of accountability in managing an agreement, including lost revenue.*

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

RECOMMENDATIONS 18-34 THROUGH 18-36

Recommendation 18-34: *Update City Council Policy 000-40 to:*

- *Include all the types of agreements considered by the CPD Program.*
- *Require CPD to keep current and accurate records of all agreements, regardless of which department administers them.*
- *Require CPD to document actual revenue collected from each sponsor/partner.*
- *Require CPD’s accounting to distinguish revenue generated from an agreement’s net monetary benefits versus the value of non-revenue items.*
- *Require respondents to RFSs to identify potential conflicts of interest.*
- *Clarify CPD’s reporting requirements on the Program.*

Response: The recommendation has been implemented. *[If the Council Policy has been revised by the time the response to the Grand Jury report has been approved]*

[OR, if the Council Policy has not been revised by the time the response to the Grand Jury report has been approved:] **The recommendation has not yet been implemented but will be implemented in the future.**

[Text below is written for the response “the recommendation has been implemented.” For the response, “the recommendation...will be implemented in the future,” minor adjustments will be made to the following text, to indicate future, rather than past, actions.] Council Policy 000-40 was updated on x date. The definition of marketing partnership agreements was updated in the Council Policy to include all marketing agreements, including sponsorship, licensing, and promotional agreements.

CPD provides assistance to other City departments with respect to the application of the Council Policy. Additionally, other departments will be providing CPD with annual marketing partnership information for agreements valued at \$25,000 or greater, and CPD

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will be including such information in annual reports. The Policy addresses tracking and reporting partnership benefits, including net revenue, in-kind values, and non-monetary benefits over the course of the agreement. Lastly, the Policy includes a requirement for disclosure of conflicts of interest.

The revised Council Policy does not require CPD to retain records on agreements that are not under its purview. In such cases, the appropriate departments should keep current documentation and records of agreements.

Recommendation 18-35: *Update the CPD Records Disposition Schedule to require CPD to retain all agreement files for the full term of the agreement, plus five years.*

Response: The recommendation has been implemented.

See response to Finding 05.

Recommendation 18-36: *Ensure that all City employees administering CPD agreements receive adequate training in contract administration.*

Response: The recommendation has been implemented.

CPD has developed training for City personnel who administer partnership agreements and will provide such training for these employees on an as-needed basis.

CITY OF SAN DIEGO CORPORATE PARTNERSHIP DEVELOPMENT PROGRAM

SUMMARY

The 2017/2018 San Diego County Grand Jury (Grand Jury) became interested in the process followed in negotiating and determining the amount of revenue generated by City of San Diego corporate partnerships. At the request of the Grand Jury, the County Office of Audits & Advisory Services (OAAS) completed an audit of the Corporate Partnership & Development (CPD) Program's management processes. The OAAS concluded that there was not reasonable assurance that CPD management practices are proper and adequate. As a result, the City of San Diego is unable to determine the overall success of CPD. Based on the OAAS audit results, the Grand Jury recommends that the San Diego Mayor and City Council update City Council Policy 000-40, "Marketing Partnership Program," to:

- Include all types of agreements considered by the CPD Program.
- Require CPD to keep current and accurate records of all agreements, regardless of which department administers them.
- Require CPD to document actual revenue collected from each sponsor/partner.
- Require CPD's accounting to distinguish between revenue generated from an agreement's net money benefits and non-revenue items.
- Require respondents to Requests for Sponsorship (RFS) to identify potential conflicts of interest.
- Clarify CPD's reporting requirements on the Program.

In addition, the Grand Jury recommends the Mayor and City Council:

- Update the CPD Records Disposition Schedule to have them retain all agreement files for the full term of the agreement, plus five years.
- Ensure that all City employees administering CPD agreements receive adequate training in contract administration.

INTRODUCTION

Based on issues provided by the Grand Jury, the OAAS conducted an audit of the CPD's management processes. OAAS reviewed the origin of CPD, its structure, its roles and responsibilities, its programs and its performance. OAAS conducted interviews with city employees and reviewed records of CAP programs comparing them with applicable City policies and procedures.

DISCUSSION

As a part of its investigations, the Grand Jury became concerned about the procedures followed in negotiating and administering Corporate Partnership agreements. Those concerns included the issues raised by a 2016 report by the City Auditor, which found that decentralized supervision of City agreements led to problems due to inadequate staff training. An investigation of these concerns was beyond the Grand Jury's expertise, so it requested that the OAAS audit the City of San Diego's Corporate Partnership Development Program to determine if it is carrying out its roles and responsibilities and complying with appropriate standards.

The OAAS audit (see Appendix A) evaluated CPD's authority, structure, budget, roles, and responsibilities. The audit analyzed CPD's procedures in place to identify, establish, and manage agreements within the CPD program. OAAS then performed a detailed review of a sample of agreements.

The Marketing Partnership Policy 000-40 (MPP) defines a "Marketing Partnership" as a mutually beneficial business arrangement between the City and a third person, wherein the third person provides cash and/or in-kind services to the City in return for access to the commercial marketing potential associated with the City. The goal of the City is to work with organizations to develop business strategies that produce revenue and deliver non-monetary benefits for San Diegans and/or City employees. An example of a successful Corporate Partnership is the agreement with Toyota Motor Sales. Toyota was granted a variety of benefits including promotional events at City facilities, media exposure and working with the City Lifeguards for Special Events. In return, Toyota provided the San Diego City Lifeguards with 34 reliable and quality vehicles with an option to replace the entire lifeguard fleet upon renewal.

The Marketing Partnership Policy addresses the City's guidelines and responsibilities related to identifying, establishing, and managing corporate partnerships. CPD, which currently has three employees, is responsible for implementing the City-wide program. Additional duties of CPD include coordinating grants, employee discounts, and developing and drafting the City's policies for Naming of City Assets and Donation Acceptance. The Policy requires CPD to report quarterly on all Marketing Partnerships. According to CPD, the program is not under the Purchasing & Contracting Department because the purchasing function involves spending taxpayer funds, while CPD agreements have no purchasing elements. Although CPD agreements are required to contain many of the same legal elements as other City contracts, OAAS found that Policy 000-40 does not require responses to an RFS to disclose potential conflicts of interest.

The OAAS:

- Reviewed City Council policies related to marketing partnerships, donations acceptance, naming of city assets, and records management and retention.
- Conducted interviews to determine the structure and responsibilities of CPD, and its authority to enter into agreements, including Mayoral and City Council approvals.
- Conducted interviews to identify processes for managing agreements, processes for requesting sponsorships, evaluating interested parties, and tracking sponsorship revenue.
- Inspected documents related to the CPD program, including but not limited to, Requests for Sponsorships (RFS), agreements, leases, agreement administration and financial records, and budget committee updates.
- Conducted a review of revenue generated by CPD to verify funds received since program inception.
- Conducted a review to determine whether RFSs were created in accordance with policy.
- Conducted a review of agreements to evaluate the adequacy of terms and alignment of agreement to the Marketing Partnership Policy.

- Conducted a detailed review on a sample of agreements to ensure the adequacy of administration and invoicing practices, and to determine City and sponsor compliance with terms of agreement.
- Reviewed CPDs document management to determine whether all documents related to an agreement are maintained in the files.

The OAAS audit report (Appendix A) discusses in detail the methods, sources and rationale used in the audit. The Grand Jury has reviewed and agrees with the facts, findings and recommendations of the audit, which are summarized below.

FACTS AND FINDINGS

Marketing Partnership Program Policy:

Fact: City Council Policy 000-40, “Marketing Partnership Program,” governs the types of Corporate Sponsorships and promotional and licensing agreements, and the process for negotiating them.

Fact: Policy 000-40 only defines marketing partnerships.

Finding 01: Policy 000-40 does not list all types of sponsorship agreements.

Fact: The different types of partnerships CPD entered into include marketing partnerships, corporate partnerships, and promotional and licensing agreements.

Fact: CPD did not document and maintain a list of all agreements.

Finding 02: The audit was unable to determine whether all agreements under the Program had been identified.

Fact: The MPP requires CPD to track and report quarterly on all marketing partnerships developed by City departments.

Fact: CPD has not prepared quarterly reports for at least five years.

Finding 03: CPD does not comply with the MMP requirement to track and report on all marketing partnerships developed by City departments on a quarterly basis.

Fact: Policy 000-40 does not require sponsors to disclose potential conflicts of interest.

Finding 04: The lack of a requirement for disclosure increases the risk that an agreement could create a conflict of interest, or the appearance of one.

Records Management:

Fact: City Council Policy 000-25, Records Management Program, requires each department head to establish systems for protecting vital records.

Fact: CPD's Records Disposition Schedule classifies CPD project records, including agreements, as routine administrative working files that should be retained no more than five years.

Fact: Some CPD agreements are for terms longer than five years.

Finding 05: The disposition schedule does not require CPD to maintain project records for at least the life of the agreement.

Finding 06: CPD files on some agreements are incomplete.

Accounting for Revenue:

Fact: CPD reports claim that the Program has generated over \$27 million for the City.

Fact: CPD cannot provide data to verify the amount of revenue generated by the Program.

Fact: CPD estimates the revenue generated by some agreements.

Finding 07: CPD lacks a process for determining the net benefits of agreements.

Terms of CPD Agreements:

Fact: Policy 000-40 specifies topics that must be addressed in Requests for Sponsorship.

Fact: One of eight RFSs reviewed did not describe the benefits of participation.

Fact: Seven of eight RFSs did not describe the open and competitive process.

Finding 09: Failure to adequately describe the sponsorship opportunity could reduce the number of potential respondents.

Fact: Policy 000-40 does not require CPD to identify the City department responsible for administering the agreement.

Fact: Five of 15 agreements examined did not accurately identify the responsible department.

Finding 10: Failure to identify the responsible administrative department can result in lack of accountability in managing an agreement, including lost revenue.

RECOMMENDATIONS:

The San Diego County Grand Jury recommends that the San Diego Mayor and San Diego City Council:

18-34: Update City Council Policy 000-40 to:

- **Include all the types of agreements considered by the CPD Program.**
- **Require CPD to keep current and accurate records of all agreements, regardless of which department administers them.**

- **Require CPD to document actual revenue collected from each sponsor/partner.**
- **Require CPD's accounting to distinguish revenue generated from an agreement's net monetary benefits versus the value of non-revenue items.**
- **Require respondents to RFSs to identify potential conflicts of interest.**
- **Clarify CPD's reporting requirements on the Program.**

18-35: Update the CPD Records Disposition Schedule to require CPD to retain all agreement files for the full term of the agreement, plus five years.

18-36: Ensure that all City employees administering CPD agreements receive adequate training in contract administration.

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>
Mayor, City of San Diego	18-34 through 18-36	9/3/18
San Diego City Council	18-34 through 18-36	9/3/18