

# Proposed Response to Grand Jury Report:

## Campaign Law Enforcement & Training: City and County of SD

IBA Report 16-19

City Council, Item 151  
September 19, 2016



Independent Budget Analyst



## This Grand Jury report discusses issues related to the authority of and appointment process for the City's Ethics Commission.

- The Grand Jury filed this report in June 2016.
- The report includes 5 findings & 5 recommendations directed to the Mayor and City Council for response.
- The IBA's Office worked collaboratively with the Mayor's Office to develop a proposed joint Council/Mayoral response.
- Due to the nearing legislative recess, an extension for submission of the response was requested/granted.
  - The response is now required to be provided to the Superior Court Presiding Judge by October 28, 2016.

# Prescribed Grand Jury Responses

- For each Finding:
  - Agree
  - Disagree wholly or partially
- For each Recommendation:
  - Has been implemented
  - Has not yet been implemented, but will be
  - Requires further analysis
  - Will not be implemented because it is not warranted or is not reasonable

## Highlights of Finding 01

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

### Proposed Response: **Disagree**

- Appointment process is consistent with that of approximately 40 City boards and commissions.
- Confirmations are at a public City Council meeting.
  - Members of the public can attend and speak to the qualifications of individual nominees.

# Highlights of Finding 01

## Proposed Response (continued)

- Municipal Code requirements help ensure a Commission that is qualified:
  - At least 2 attorneys in good standing;
  - At least 1 member shall have certain experience types related to an elective governmental office.
- Municipal Code also considers other factors:
  - protects against a predominance of Commission members from one political party;
  - requires that the Commission reflect the diversity of the City.

## Highlights of Recommendation 16-60

*Establish a procedure to appoint SDEC members that is independent of elected city officials.*

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

- The response text refers to the same reasons that are cited in Finding 01.
- It also notes that the current process allows the public to hold elected City officials accountable for their choices.
  - Whereas an independent appointment body is not accountable to the City electorate.

## Highlights of Finding 02 & Recommendation 16-61

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.*

- Proposed Response: **Agree**

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

- Proposed Response: **The recommendation requires further analysis.**

# Highlights of Recommendation 16-61

## Proposed Response (continued)

- On Dec. 3, 2015, the Charter Review Committee recommended establishing the Ethics Commission via City Charter, rather than via ordinance, as is the current process.
- Establishing such Charter language entails:
  - Legal review and drafting by the City Attorney's Office;
  - Subsequent approval by the City Council to place the language on a citywide ballot;
  - Next available elections will be in 2018.



## Highlights of Finding 03

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

### Proposed Response: **Disagree**

- Agree that a longer serving Commissioner would improve his or her understanding of complex issues over time.
- Under the Grand Jury recommendation, the total time a Commissioner could serve is six years, reducing Ethics Commissioners' current potential service-time (of eight years) by two years.

## Highlights of Recommendation 16-62

*Change the current term limit for SDEC commissioners to one six-year term.*

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

- The response text refers to the same reasons that are cited in Finding 03.
- It also notes disagreement with the Grand Jury that there is an issue with Commissioners being denied reappointment as retaliation for their decisions.

## Highlights of Finding 04 & Recommendation 16-63

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

- Proposed Response: **Agree**

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

- Proposed Response: **The recommendation requires further analysis.**

# Highlights of Recommendation 16-63

## Proposed Response (continued)

- On Dec. 3, 2015, the Charter Review Committee recommended renaming the Ethics Commission to the City of San Diego Fair Political Practices Commission.
  - Similar name to California body which serves a similar function statewide
- Establishing such Charter language entails:
  - Approval by the City Council to place the language on a citywide ballot;
  - Next available elections will be in 2018.

## Highlights of Finding 05 & Recommendation 16-64

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

- Proposed Response: ***Disagree***

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

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

# Highlights of Finding 05 & Recommendation 16-64

## Proposed Response (continued)

- The Ethics Commission has a proven track record of monitoring, administering, and enforcing the campaign and governmental ethics laws & effectively administering investigations.
- Furthermore, the degree to which investigations would be shortened by investigative subpoena power is not compelling enough for a change of powers.

## Previous Action & Next Steps

- On August 3 the Rules Committee heard the proposed response (IBA report 16-19), and forwarded it to the full City Council.
- We request that Council approve the proposed response and authorize the Council President to deliver it to the Presiding Judge no later than October 28, 2016.