



THE CITY OF SAN DIEGO

OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

Date Issued: September 8, 2014**IBA Report Number:** 14-30REV**City Council Meeting Date:** TBD**Item Number:** TBD

Response to Grand Jury Report

“Say What You’ll Do and Then Do What You Say: Past Grand Jurors Association Implementation Review Committee”

OVERVIEW

On May 21, 2014, the San Diego County Grand Jury filed a report, which was directed to both the Mayor and the San Diego City Council, entitled “Say What You’ll Do and Then Do What You Say: Past Grand Jurors Association Implementation Review Committee.” This Grand Jury report discusses ensuring transparency and accountability with respect to the implementation of Grand Jury recommendations that have been accepted by the City.

The Grand Jury Report included four findings and two recommendations. Only one of the recommendations was directed to the Mayor and City Council (the other recommendation applies to the San Diego County Office of Education); and only one finding applies specifically to the City.

Per the Grand Jury report, the Mayor and Council are required to provide comments to the Presiding Judge of the San Diego Superior Court on each of the findings and recommendations directed to the City within 90 days, on August 19, 2014. However, due to the Council recess in August, the Council President’s office has requested and received an extension for such responses to October 17, 2014.

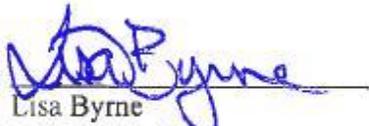
In responding to each Grand Jury finding, the City is required to either (1) agree with the finding or (2) disagree wholly or partially with the finding. Responses to Grand Jury recommendations must indicate that the recommendation (1) has been implemented; (2) has not yet been implemented, but will be 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.

On July 30, 2014 the IBA presented two proposed response alternatives to the Economic Development and Intergovernmental Relations (ED&IR) Committee. Alternative 1 provided for a Council Committee review process to assess the implementation status of accepted recommendations for past Grand Jury reports. Alternative 2 involved a process for direct website posting of implementation status by the appropriate departments (on a newly established webpage), which was suggested to our office by Councilmember Sherman's Office. During the presentation of the proposed responses, our office noted:

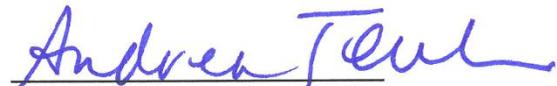
- Both of these approaches would provide more transparency and accountability regarding implementation of Grand Jury recommendations that have been accepted by the City.
- A combination of elements in the two alternatives could also be considered.

At the July 30, 2014 meeting, the ED&IR Committee requested that the two alternatives be combined into one proposed response, and that the item be moved forward to the full City Council with a recommendation for approval. Additionally, the Committee requested that the IBA, Mayor's Office, City Attorney's Office, and Committee Consultant develop a Council Policy regarding the proposed response (pending approval of this item by the full City Council).

In the revised proposed response (see Attachment 1 to report 14-30REV) the IBA combined the most salient aspects of the two original alternatives in order to make the response more cohesive and concise. As requested by the Committee, the revised response specifies that the proposed Committee review process would be accomplished through standing Council Committees based on the subject matter, as is that case with the City Council's original Grand Jury responses. The Mayor's Office made minor changes to our revisions and is amenable to providing a joint response with the City Council, based on the attached proposed response.



Lisa Byrne
Fiscal & Policy Analyst



APPROVED: Andrea Tevlin
Independent Budget Analyst

Attachments:

1. Revised Proposed Response to San Diego County Grand Jury Report Entitled "Say What You'll Do and Then Do What You Say: Past Grand Jurors Association Implementation Review Committee"
2. San Diego County Grand Jury Report entitled "Say What You'll Do and Then Do What You Say: Past Grand Jurors Association Implementation Review Committee"

**Revised Proposed Response to
San Diego County Grand Jury Report Entitled
“Say What You’ll Do And Then Do What You Say:
Past Grand Jurors Association Implementation Review Committee”**

Pursuant to California Penal Code section 933(c), the Mayor and City Council of the City of San Diego provide the following responses to the applicable finding and recommendation included in the above referenced Grand Jury Report:

FINDINGS

Finding 02: *The City of San Diego failed to make the Grand Jury Implementation Review Committee permanent in 2009 despite its success in insuring that Grand Jury recommendations were implemented.*

Response: The City partially disagrees with the finding.

At the end of 2007 the City Council established a mechanism for Grand Jury implementation review. City Ordinance 19671 (O-19671), was passed in October 2007, with the following purpose:

It is the purpose and intent of the City Council to establish the City of San Diego Past Grand Jurors Association Implementation Review Board. The Board is established to provide the Mayor and City Council with a pool of experienced citizens, who have served as members of the San Diego County Civil Grand Jury, to promote a policy regarding the implementation and follow-up of accepted recommendations of the County's Civil Grand Juries, and to assist and advise the Mayor and City Council in the process of reviewing the implementation of County Civil Grand Jury accepted recommendations.

The Implementation Review Board was automatically repealed (“sunsetting”) by O-19671 on December 1, 2009. The Grand Jury indicates in this finding that “the City of San Diego failed to make the Grand Jury Implementation Review Committee permanent in 2009 despite its success in insuring that Grand Jury recommendations were implemented.” No additional information is included in the Grand Jury report supporting this statement.

The Implementation Review Board provided a mechanism for reviewing the status of previously accepted Grand Jury recommendations; however, the City believes it would be a better use of resources to utilize standing Council Committees for this purpose. The existing Council Committee structure is more familiar to citizens and would provide greater transparency and openness. Additionally, transparency to the public would be enhanced via a newly created webpage that would include status updates. See response to Recommendation 14-81.

RECOMMENDATIONS

Recommendation 14-81: *Establish an Implementation Review Committee similar to the one established in 2007-2009 and patterned after the current San Diego County Past Grand Jury Implementation Review Committee.*

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

Rather than establish a separate Implementation Review Committee of Past Grand Jurors Association members, the City believes this matter could be addressed in a more efficient, effective and transparent manner. The City plans to develop a new Council Policy regarding the implementation and follow-up of previously accepted Grand Jury recommendations. This Policy will incorporate several components, including the creation of a new *Grand Jury Reports* page on the City's website where original Grand Jury reports, City responses and status updates would be posted. The Policy will include defining parameters for tracking implementation status and review of implementation status by City Council Committees, which provide a public hearing format.

The vetting process for creation of the Council Policy would begin with the Economic Development & Intergovernmental Relations Committee within the next six months. The Policy would identify the following:

- Clearly defined responsibilities for follow-up and tracking of accepted Grand Jury recommendations.
- The timeframe and frequency for providing updates on implementation progress.
- What materials would be posted to the new *Grand Jury Reports* webpage.

The City believes that utilizing the City Council's existing Committee structure to review the implementation status of previously accepted Grand Jury recommendations would be more effective than creating a separate review committee, as suggested by the Grand Jury. This would be consistent with the process for initially responding to the findings and recommendations directed to the City Council, where the appropriate Council Committee reviews proposed responses to applicable Grand Jury reports and forwards them to the full City Council for final review.

Utilizing existing Council Committees would avoid additional support expenses and confusion associated with creation of a separate Committee process. Council Committees are held monthly, are open to the public, and the agendas are widely publicized in advance for the purposes of obtaining citizen input. Council Committees provide a widely known public platform and have authority to direct additional follow-up or actions, which would enhance accountability. Attendance and participation by Past Grand Jurors Association members would be encouraged.

The Council Committee review process would be accomplished through standing Council Committees based on the subject matter, as is the case with the City Council's original Grand Jury responses. Status reports for Committee review would be developed by appropriate departmental staff. These Grand Jury status reports would also be posted on appropriate Council Committee websites (on Committee agendas) along with the original Grand Jury reports.

SAY WHAT YOU'LL DO AND THEN DO WHAT YOU SAY

PAST GRAND JURORS ASSOCIATION IMPLEMENTATION REVIEW COMMITTEE

SUMMARY

“The grand jury reviews and evaluates procedures, methods and systems utilized by government to determine whether they can be made more efficient and effective. It may examine any aspect of county government and city government, including special legislative districts and joint powers agencies, to ensure that the best interests of San Diego County citizens are being served. The grand jury may inquire also into written complaints brought to it by the public.”¹

So states the purpose and charter of the San Diego County Grand Jury. The Grand Jury is in effect a watchdog ensuring transparency in all that is done by government agencies, special legislative districts and joint powers agencies within the county.

The San Diego County Past Grand Jurors Association, in conjunction with the County of San Diego Board of Supervisors, has sponsored the Past Grand Juror’s Association Implementation Review Committee since 1983. San Diego County has an ordinance which authorizes the formation of the committee (comprised of former Grand Jurors) to review and follow-up on the implementation of all recommendations that have been accepted by the targeted county agency.

Last year alone, the 2012-2013 Grand Jury issued several reports regarding issues discovered within the City of San Diego and also within the 42 school districts and 5 community college districts within the county. Many of these recommendations were accepted as viable for implementation, yet the County Implementation Review Committee could not investigate these as to whether these accepted recommendations in fact were, or are ever to be, implemented.

The 2013-2014 Grand Jury believes, to ensure transparency, that all agencies (county departments, school districts and municipalities) within the county of San Diego should be held accountable for implementing those Grand Jury recommendations which they have agreed to implement.

PROCEDURE

In our investigation, the Grand Jury interviewed key administrative personnel in San Diego County. The Grand Jury also reviewed the Penal Code governing the Grand Jury and the County Ordinance, charter and procedures for the operation of the County’s Grand Jury Implementation Review Committee. The Grand Jury investigated the history of the now defunct City of San Diego Implementation Review Committee. This report builds on the recommendations made in the report published by the 2007-2008 Grand Jury.

¹ County of San Diego, Purpose of the Grand Jury, <http://www.sdcounty.ca.gov/grandjury/about/purpose.html>

DISCUSSION

Kevin Faulconer and David Alvarez promised a more transparent San Diego City Hall when they ran for mayor. Upon becoming mayor, Mr. Faulconer called for a “new era of open government in San Diego.” City Councilman David Alvarez and Councilwoman Marti Emerald also proposed expanding some open-government measures.

However, as David Alvarez pointed out: “Last November, in partnership with Californians Aware, an open government advocacy non-profit, I proposed amendments to the San Diego City Charter that would have made San Diego a leader in open government. It would have allowed the voting public, not the government or its agencies, to decide how open their government should be. This ballot measure would have:

- Restored public trust because the City would have been required to provide a reason to the public, based on facts and evidence, if access were denied
- Provided the public with the opportunity to participate in a review of City policies and regulations that restrict public access
- Ensured that the public right of access did not change based on who is in office
- Established the City’s commitment to providing online, machine-readable open data

“Unfortunately, despite a unanimous vote of a City Council committee to support the measure moving forward, the proposal was docketed at City Council as an “information only item” and referred back to the committee.”²

Apparently transparency is an elusive commodity.

In 2007, the Past Grand Juror’s Association, San Diego (PGJA) proposed that the City of San Diego create its own Implementation Review Committee. At that time, then City Attorney Michael Aguirre went on record saying, “The Association’s proposal that the City establish a review board to assist the City in implementing these recommendations is well founded.”³

On October 18, 2007, the City Council of San Diego approved an ordinance establishing a Past Grand Jurors Implementation Review Board (PGJIRB) for the City of San Diego. However, this ordinance contained a “sunset clause” that would end the board in two years if not extended by city council. Despite the success of this board, in 2009 the San Diego City Council failed to extend the sunset clause and the board was dissolved.

Again in 2010 a San Diego City Councilmembers proposed that the city reestablish a “committee” for the purpose of reviewing the City’s implementation of Grand Jury recommendations. This proposal fell on deaf ears and was never acted upon.

² “Opinion: San Diegans Have a Right to Transparency in Government,” March 20, 2014, San Diego City Councilman David Alvarez <http://www.publicceo.com/2014/03/opinion-san-diegans-have-a-right-to-transparency-in-government/>

³ “Report to the City Council – Establishment of Past Grand Jurors Association Implementation Review Board,” Michael J. Aguirre, City Attorney, May 30, 2007, <http://docs.sandiego.gov/cityattorneyreports/RC-2007-8.pdf>

Despite the failure of the City of San Diego's effort to create and perpetuate an Implementation Review Committee to hold city officials accountable, the County of San Diego has had this structure of transparency since 1983 and it works well.

Grand Juries are faced with the same continuity problem when making recommendations to school districts and community college districts within the county. There is currently no "Implementations Review Committee" investigating and overseeing whether the districts actually implement any recommendation they agree is effective and efficient. This failure of not having a "check and balance" in place nullifies the excellent work performed by each year's Grand Jury and negates transparency within these agencies.

Background - California Grand Jury System

The Grand Jury is empowered to "investigate and report on" local government and to weigh allegations of misconduct by public officials. The Grand Jury operates in secret during its investigations and deliberations. Further, the Grand Jury has subpoena power. At the end of its term, the Grand Jury issues a final report to the Presiding Judge of the Superior Court. This final report is a compilation of the individual investigative reports issued by the Grand Jury for that year.

The individual investigative reports are submitted to the responsible officers, agencies, or departments, including the County Board of Supervisors for review and comment. If the report concerns the operations of any public agency, the agency has ninety days to respond. Every elected official, however, must respond to Grand Jury reports within sixty days.

A responding person or agency must comply with the requirements of section 933.05 of the California Penal Code. The respondent must agree or disagree with each finding and recommendation. In the case of disagreement, the reason must be explained.

The law does not require implementation of those recommendations, but only a response. As such there are also specific requirements regarding implementation of recommendations. If a recommendation is accepted, there should be a time frame for implementation. Historically, many Grand Jury recommendations are accepted by agencies yet the responses do not provide an objective, verifiable timetable for implementation.

Lack of implementation of Grand Jury recommendations is explained by a number of factors. First, once the Grand Jury files its final report, officials do not respond until one or two months after the Grand Jury has been dismissed. The new Grand Jury, with its own work ahead of it, has little time to pay to those responses. At least for the County, accepted recommendations thus would die if not for the Past Grand Jury Implementation Review Committee. The committee's follow-up of "accepted" recommendations serves as a positive and effective way to hold County officials and agencies accountable to do what they say they will do.

It's for this reason that the PGJA along with the San Diego County Board of Supervisors created the separate Implementation Review Committee.⁴

⁴ Past Grand Jurors Association of San Diego Bylaws, <http://pgjasd.com/resources/PGJA+Bylaws.pdf>

By charter, the San Diego County Past Grand Jurors Implementation Review Committee is limited to reviewing only those Grand Jury recommendations made directly to departments under the County of San Diego organizational structure. Thus their scope does not include verification of implementation of recommendations made to any municipality within the County, any of the 42 school districts, 5 community college districts or any other governmental or non-governmental agency.

This short-sightedness of the law severely limits the effectiveness of the Grand Jury. However, the County PGJA Implementation Review Committee performs a valuable service to the citizens of San Diego County filling the gap between Grand Jury recommendations and actual agency acceptance and implementation of these recommendations.

In the interest of transparency, and for the Grand Jury system to be fully effective per California Penal Code, the Implementation Review Committee structure needs to be expanded to ensure that recommendations accepted by other than county departments are verified for their timely implementation.

Without holding all county agencies and municipalities accountable to keep their promises to the public, transparency can never truly be achieved.

FACTS/FINDINGS

Fact: The County of San Diego has had a Past Grand Jury Implementation Review Committee since 1983.

Finding 01: The County of San Diego Past Grand Jury Implementation Review Committee has provided transparency of the County's implementation of Grand Jury recommendations.

Fact: The City of San Diego implemented a Grand Jury Implementation Review Committee in 2007.

Fact: The City of San Diego allowed the Grand Jury Implementation Review Committee to disband in 2009 due to a sunset clause.

Finding 02: The City of San Diego failed to make the Grand Jury Implementation Review Committee permanent in 2009 despite its success in insuring that Grand Jury recommendations were implemented.

Fact: The San Diego County Office of Education does not currently have a Grand Jury Implementation Review Committee.

Fact: Every year the Grand Jury makes numerous recommendations that affect all, or part, of the 42 independent school districts and 5 community college districts within the County.

Finding 03: Every year many of the 42 school districts and 5 community college districts within the County of San Diego agree that Grand Jury recommendations will be implemented all or in part.

Finding 04: Other than as a peripheral function of the sitting Grand Jury, there is currently no means for verification that any of the 42 school districts or 5 community college districts actually implement any of the Grand Jury recommendations that they agree to implement.

RECOMMENDATIONS

The 2013/2014 San Diego County Grand Jury recommends that the San Diego County Office of Education:

14-80: Establish an Implementation Review Committee patterned after the current San Diego County Past Grand Jury Implementation Review Committee.

The 2013/2014 San Diego County Grand Jury recommends that the Mayor and City Council of the City of San Diego:

14-81: Establish an Implementation Review Committee similar to the one established in 2007-2009 and patterned after the current San Diego County Past Grand Jury Implementation Review Committee.

REQUIREMENT 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 Penal Code §933.05 are required from:

<u>Responding Agency</u>	<u>Recommendations</u>	<u>Due Date</u>
San Diego County Office of Education	14-80	08/19/14
Mayor, City of San Diego	14-81	08/19/14
City Council, City of San Diego	14-81	08/19/14