



***2013-2014
ALAMEDA COUNTY GRAND JURY
FINAL REPORT***

ALAMEDA COUNTY BOARD OF SUPERVISORS

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Alameda County
Grand Jury

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June 23, 2014

Honorable Winifred Y. Smith
Presiding Judge
Alameda County Superior Court
1225 Fallon Street, Department One
Oakland, California 94612

Dear Judge Smith,

The members of the 2013-2014 Alameda County Civil Grand Jury are pleased to present our final report to the Superior Court and the people of Alameda County.

The State of California authorizes county grand juries and charges them with investigating the workings and efficiencies of county and local governments. As with grand juries seated before, we hope future juries will follow up on the responses to our recommendations to ensure suitable actions are taken by those investigated agencies.

This year's Alameda County Grand Jury assembled a diverse group of the most intelligent, hard-working, principled people with whom it has ever been my honor to serve. Their relentless, diligent and tireless pursuit of truth was inspirational, and I am grateful to each and every one of the members. The people of Alameda County can truly be proud of the work done on their behalf.

The examinations undertaken by this panel were staggering in their complexity and depth. The Grand Jury extends its appreciation to the over 70 witnesses, government officials, and experts who provided us with invaluable orientation, testimony and evidence. We note that two issues appeared repeatedly in our investigations: taxpayer money left on the table through inattention or indifference, and failure of public agencies to manage with transparency.

Although less-than-stellar financial management and cloudy public agency reporting are hardly uncharted territory, our investigations should significantly raise the interest and attention of our taxpaying citizens. For example:

- A public health care district operating without transparency
- A city approving a questionable multi-million dollar financial transaction
- A public protection agency's failure to collect fees and fines at significant loss to the city
- A city's lack of oversight of a vendor's long-term multi-million dollar service contract
- A public utility district failing to fully inform voters regarding a rate hike
- A school district's inability to complete its required annual financial audit

Hon. Winifred Y. Smith
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June 23, 2014

Although some of our findings are troubling, the Grand Jury is pleased to also report the positive and informative outcomes of other investigations. For example:

- A detailed benefits survey of Alameda County public agencies (excluding school districts)
- A county agency appropriately spending funds for travel, training and development
- County jail facilities passing inspections
- A public agency adopting a former Grand Jury recommendation, making sweeping changes to improve transparency and accountability

Additionally, the Grand Jury completed our duty to review Alameda County's process to select a certified public accounting firm to conduct the county's annual audits. We found that due process was followed and that Alameda County is to be commended for its proactive and interactive audit process with the chosen firm.

The Grand Jury is forever indebted to the capable, careful, and continuous support provided to us by Deputy District Attorney Robert Warren and Legal Assistant Cassie Barner. Their encouragement and guidance helped to keep this jury on task and to meet all our deadlines. As one can imagine, it is no small feat to shepherd 19 people through a picnic at a park, much less a year-long legal proceeding steeped in history. We extend out heartfelt appreciation for their exceptional dedication and hard work.

My fellow jurors and I are honored to have served on this year's Grand Jury and we humbly thank the Court for the opportunity to serve the citizens of Alameda County. Our time with the Grand Jury has made us better, more informed citizens and we are deeply grateful for the experience. It is my sincere hope that our dedicated, thorough work will result in positive changes not only by those entities we investigated, but that it will also encourage citizen involvement and better management of all agencies with responsibility to the people of Alameda County.

Sincerely,



KELLY A. MCFARLAND, Foreperson
2013-2014 Alameda County Civil Grand Jury

2013-2014 ALAMEDA COUNTY CIVIL GRAND JURY MEMBER ROSTER



Juror	City
Kaye Amos	San Leandro
Barbara M. Barer*	Piedmont
Lorrana Byrd*	Oakland
Caren C. Dorshkind	Oakland
Duane Merrill Garman ¹	Dublin
Mark Greenside	Alameda
Mary W. Harper	Oakland
Tamra C. Hege	Piedmont
Michael Henn	Piedmont
Andrew Eban Lieberman	Hayward
Kelly A. McFarland	Livermore
Sheila M. Milroy	Alameda
Arthur J. Moniz, Jr.	Pleasanton
Kate Muller	San Leandro
George Phillips ²	Alameda
Michelle L. Pitts ⁵	Alameda
Rolando Porlaris ³	Union City
Elizabeth M. Rochlin*	Alameda
Jerry G. Sheets*	Hayward
Anthony Theophilos ⁴	Piedmont
Gail E. Waiters	Castro Valley

* Jurors held over for a 2nd term by Presiding Judge C. Don Clay
 1 Resigned, July 29, 2013
 2 Assumed Office, July 31, 2013
 3 Resigned, August 21, 2013
 4 Assumed Office, August 22, 2013
 5 Resigned, February 26, 2014

**2013-2014 ALAMEDA COUNTY GRAND JURY
OFFICERS & LEGAL STAFF**

OFFICERS:

FOREPERSON: Kelly A. McFarland

FOREPERSON PRO TEM: Kaye Amos

SECRETARY: Barbara M. Barer

SECRETARY PRO TEM: Tamra C. Hege

SERGEANT AT ARMS: Arthur J. Moniz, Jr.

SERGEANT AT ARMS PRO TEM: Kate Muller



LEGAL ADVISORY STAFF:

Robert L. Warren, Deputy District Attorney

Cassie Barner, Legal Assistant

**2013-2014 ALAMEDA COUNTY CIVIL GRAND JURY
COMMITTEE ASSIGNMENTS**



GOVERNMENT

Gail E. Waiters - *Chair*
Lorrانيا Byrd
Caren C. Dorshkind
Mark Greenside
Tamra C. Hege - *Secretary*
Michael Henn - *Chair Pro Tem*
Kate Muller
George Phillips
Elizabeth M. Rochlin
Jerry G. Sheets
Anthony Theophilos

LAW & JUSTICE

Jerry G. Sheets - *Chair*
Kaye Amos
Mark Greenside
Michael Henn
Andrew Eban Lieberman - *Chair Pro Tem*
Arthur J. Moniz, Jr.
Anthony Theophilos
Gail E. Waiters - *Secretary*

**HEALTH &
SOCIAL SERVICES**

Elizabeth M. Rochlin - *Chair*
Barbara M. Barer
Mary W. Harper - *Secretary*
Andrew Eban Lieberman
Sheila M. Milroy - *Chair Pro Tem*
Arthur J. Moniz, Jr.
Kate Muller
George Phillips
Michelle L. Pitts*

**EDUCATION &
ADMINISTRATION**

Caren C. Dorshkind - *Chair*
Kaye Amos
Barbara M. Barer
Lorrانيا Byrd
Mary W. Harper - *Secretary*
Tamra C. Hege
Sheila M. Milroy - *Chair Pro Tem*
Michelle L. Pitts*

EDIT COMMITTEE

Barbara M. Barer
Mary W. Harper
Elizabeth M. Rochlin
Anthony Theophilos

* Resigned, February 26, 2014



2013-2014 ALAMEDA COUNTY CIVIL GRAND JURY

Standing, left to right:

Gail E. Waiters, Barbara M. Barer (Secretary), Caren C. Dorshkind, Lorrana Byrd, Mary W. Harper, Kelly A. McFarland (Foreperson), Anthony Theophilos, Jerry G. Sheets, Michael Henn, Tamra C. Hege, Arthur J. Moniz Jr. (Sergeant at Arms), Kaye AMOS (Foreperson Pro Tem), Andrew Eban Lieberman, Mark Greenside

Seated, left to right:

Elizabeth M. Rochlin, Presiding Judge Winifred Y. Smith, Sheila M. Milroy

Not Pictured:

Kate Muller, George Phillips, Michelle L. Pitts

**PRESIDING JUDGES OF THE
ALAMEDA COUNTY SUPERIOR COURT**



Honorable C. Don Clay
January 1, 2012 – December 31, 2013



Honorable Winifred Y. Smith
January 1, 2014 – Present

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INTRODUCTION TO THE ALAMEDA COUNTY GRAND JURY

The Alameda County Grand Jury is mandated by Article 1, Section 23 of the California Constitution. It operates under Title 4 of the California Penal Code, Sections 3060-3074 of the California Government Code, and Section 17006 of the California Welfare and Institutions Code. All 58 counties in California are required to have grand juries.

In California, grand juries have several functions:

- 1) to act as the public watchdog by investigating and reporting on the affairs of local government;
- 2) to make an annual examination of the operations, accounts and records of officers, departments or functions of the county, including any special districts;
- 3) to inquire into the condition and management of jails and prisons within the county;
- 4) to weigh allegations of misconduct against public officials and determine whether to present formal accusations requesting their removal from office; and,
- 5) to weigh criminal charges and determine if indictments should be returned.

Additionally, the grand jury has the authority to investigate the following:

- 1) all public records within the county;
- 2) books and records of any incorporated city or joint powers authority located in the county;
- 3) certain redevelopment agencies and housing authorities;
- 4) special purpose assessing or taxing agencies wholly or partly within the county;
- 5) nonprofit corporations established by or operated on behalf of a public entity;
- 6) all aspects of county and city government, including over 100 special districts; and,
- 7) the books, records and financial expenditures of any government agency including cities, schools, boards and commissions.

Many people have trouble distinguishing between the grand jury and a trial (or petit) jury. Trial juries are impaneled for the length of a single case. In California, most *civil* grand juries consist of 19 citizen volunteers who serve for one year, and consider a number of issues. Most people are familiar with *criminal* grand juries, which only hear individual cases and whose mandate is to determine whether there is enough evidence to proceed with a trial.

This report was prepared by a *civil* grand jury whose role is to investigate all aspects of local government and municipalities to ensure government is being run efficiently, and that government monies are being handled appropriately.

While these jurors are nominated by a Superior Court judge based on a review of applications, it is not necessary to know a judge in order to apply. From a pool of 25-30 accepted applications (an even number from each supervisorial district), 19 members are randomly selected to serve.

History of Grand Juries

One of the earliest concepts of a grand jury dates back to ancient Greece where the Athenians used an accusatory body. Others claim the Saxons initiated the grand jury system. By the year 1290, the accusing jury was given authority to inquire into the maintenance of bridges and highways, the defects of jails, and whether the sheriff had kept in jail anyone who should have been brought before the justices.

The Massachusetts Bay Colony impaneled the first American Grand Jury in 1635 to consider cases of murder, robbery and wife beating. Colonial grand juries expressed their independence from the Crown by refusing in 1765 to indict leaders of the Stamp Act or bring libel charges against the editors of the Boston Gazette. The union with other colonies to oppose British taxes was supported by a Philadelphia grand jury in 1770. By the end of the colonial period, the grand jury had become an indispensable adjunct of government.

Grand Jury Duties

The Alameda County Grand Jury is a constituent part of the Superior Court, created for the protection of society and the enforcement of law. It is not a separate political body or an individual entity of government but is a part of the judicial system and, as such, each grand juror is an officer of the court. Much of the grand jury's effectiveness is derived from the fact that the viewpoint of its members is fresh and unencumbered by prior conceptions about government. With respect to the subjects it is authorized to investigate, the grand jury is free to follow its own inclinations in investigating local government affairs.

The grand jury may act only as a whole body. An individual grand juror has no more authority than any private citizen. Duties of the grand jury can generally be set forth, in part, as follows:

1. To inquire into all public offenses committed or triable within the county (Penal Code §917);
2. To inquire into the case of any person imprisoned and not indicted (Penal Code §919(a));
3. To inquire into the willful or corrupt misconduct in office of public officers of every description within the county (Penal Code §919(c));
4. To inquire into sales, transfers, and ownership of lands which might or should revert to the state by operation of law (Penal Code §920);
5. To examine, if it chooses, the books and records of a special purpose, assessing or taxing district located wholly or partly in the county and the methods or systems of performing the duties of such district or commission. (Penal Code §933.5);

6. To submit to the Presiding Judge of the Superior Court a final report of its findings and recommendations that pertain to the county government [Penal Code §933], with a copy transmitted to each member of the Board of Supervisors of the county (Penal Code §928); and,
7. To submit its findings on the operation of any public agency subject to its reviewing authority. The governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body and every elective county officer or agency head for which the grand jury has responsibility (Penal Code section 914.1) and shall comment within 60 days to the Presiding Judge of the Superior Court, with an information copy sent to the Board of Supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. (Penal Code §933(c)).

Secrecy/Confidentiality

Members of the grand jury are sworn to secrecy and all grand jury proceedings are secret. This secrecy guards the public interest and protects the confidentiality of sources. The minutes and records of grand jury meetings cannot be subpoenaed or inspected by anyone.

Each grand juror must keep secret all evidence presented before the grand jury, anything said within the grand jury, or the manner in which any grand juror may have voted on a matter (Penal Code section 924.1). *The grand juror's promise or oath of secrecy is binding for life.* It is a misdemeanor to violate the secrecy of the grand jury room. Successful performance of grand jury duties depends upon the secrecy of all proceedings. A grand juror must not divulge any information concerning the testimony of witnesses or comments made by other grand jurors. The confidentiality of interviewees and complainants is critical.

Legal Advisors

In the performance of its duties, the grand jury may ask the advice (including legal opinions) of the District Attorney, the Presiding Judge of the Superior Court, or the County Counsel. This can be done by telephone, in writing, or the person may be asked to attend a grand jury session. The District Attorney may appear before the grand jury at all times for the purpose of giving information or advice.

Under Penal Code Section 936, the Attorney General of the state of California may also be consulted when the grand jury's usual advisor is disqualified. The grand jury has no inherent investigatory powers beyond those granted by the legislature.

Annual Final Report

At the end of its year of service, a grand jury is required to submit a final report to the Superior Court. This report contains an account of its activities, together with suggestions and recommendations. The final report represents the investigations of the entire grand jury.

Citizen Complaints

As part of its civil function, the grand jury receives complaints from citizens alleging government inefficiencies, suspicion of misconduct or mistreatment by officials, or misuse of taxpayer money. Complaints are acknowledged and may be investigated for their validity. All complaints are confidential. If the situation warrants and corrective action falls within the jurisdiction of the grand jury, appropriate solutions are recommended.

The grand jury receives dozens of complaints each year. With many investigations and the time constraint of only one year, it is necessary for each grand jury to make difficult decisions as to what it wishes to investigate during its term. When the grand jury receives a complaint it must first decide whether or not an investigation is warranted. The grand jury is not required by law to accept or act on every complaint or request.

In order to maintain the confidentiality of complaints and investigations, the Alameda County Grand Jury only accepts complaints in writing. Complaints should include the name of the persons or agency in question, listing specific dates, incidents or violations. The names of any persons or agencies contacted should be included along with any documentation or responses received. Complainants should include their names and addresses in the event the grand jury wishes to contact them for further information. A complaint form has been included in this report, and is also available on the grand jury's website at www.acgov.org/grandjury.

Complaints should be mailed to: *Alameda County Grand Jury, Attention: Foreperson, 1401 Lakeside Drive, Suite 1104, Oakland, CA 94612*, or faxed to (510) 465-9647. An acknowledgment letter is routinely sent within one week of receipt of a complaint.

How to Become a Grand Juror

Citizens who are qualified and able to provide one year of service, and who desire to be nominated for grand jury duty may send a letter with their resume or complete a Civil Grand Jury Questionnaire (contained at the end of this report) and mail it to: *Office of the Jury Commissioner - Alameda County Superior Court, Grand Jury Selection, 1225 Fallon Street, Room 100, Oakland, CA 94612; or by calling (510) 818-7575*. On the basis of supervisory district, six members from each district for a total of 30 nominees are assigned for grand jury selection. After the list of 30 nominees is completed, the selection of 19 jurors who will

actually be impaneled to serve for the year are selected by a random draw. This is done in late June before the jury begins its yearly term on July 1. For more information, please visit the Alameda County Superior Court website at www.alameda.courts.ca.gov and follow the link to “jury” then “grand jury.”

Qualification of Jurors

Prospective grand jurors must possess the following qualifications pursuant to Penal Code section 893: be a citizen of the United States; at least 18 years of age; a resident of Alameda County for at least one year immediately before being selected; possess ordinary intelligence, sound judgment and fair character; and possess sufficient knowledge of the English language. Other desirable qualifications include: an open mind with concern for others’ positions and views; the ability to work well with others in a group; an interest in community affairs; possession of investigative skills and the ability to write reports; and a general knowledge of the functions and responsibilities of county and city government.

A person may not serve on the grand jury if any of the following apply: the person is serving as a trial juror in any court in the state; the person has been discharged as a grand juror in any court of this state within one year; the person has been convicted of malfeasance in office or any felony or other high crime; or the person is serving as an elected public officer.

Commitment

Persons selected for grand jury service must make a commitment to serve a one-year term (July 1 through June 30). Grand jurors should be prepared, on average, to devote two days each week to grand jury meetings. Currently, the grand jury meets every Wednesday and Thursday from 9:00 a.m. to 1:00 p.m., with additional days if needed. Grand jurors are required to complete and file a Statement of Economic Interest as defined by the state’s Fair Political Practices Commission, as well as a Conflict of Interest form.

Grand jurors are paid \$15.00 per day for each day served, as well as a county mileage rate (currently 56 cents per mile) portal to portal, for personal vehicle usage.

Persons selected for grand jury duty are provided with an extensive, month long orientation and training program in July. This training includes tours of county facilities and orientation by elected officials, county and departments heads and others. The orientation and training, as well as the weekly grand jury meetings, take place in Oakland.

An application is contained in this report for interested citizens. Selection for grand jury service is a great honor and one that offers an opportunity to be of value to the community.

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CITY OF OAKLAND TOW CONTRACT OVERSIGHT

EXECUTIVE SUMMARY

The Grand Jury received two formal complaints about the city of Oakland's towing policies and practices. The Grand Jury does not typically investigate individual complaints, but rather determines the effectiveness of applicable government policies and procedures. In this case, the complaints led the Grand Jury to question the adequacy of the oversight and administration of the city of Oakland's current towing contract with a private vendor. The Grand Jury concluded that neither the city of Oakland nor the Oakland Police Department (OPD) is following sound business practices to ensure the city receives the revenue to which it is entitled under the contract. In addition, OPD lacks sufficient oversight and well-defined policies concerning the towing of vehicles and, as a result, the rights of vehicle owners may not be adequately protected.

BACKGROUND

One of the many responsibilities of OPD is to facilitate the removal of abandoned, stolen and blighted vehicles from both public and private property within city limits. OPD also administers the removal of cars with five or more unpaid parking tickets and vehicles related to criminal activity. To accomplish this, they work with B&B Vehicle Processing (B&B), a private vendor that the city contracts with to tow, store and often dispose of the vehicles. Between 2010-2012, OPD estimates that nearly 27,000 vehicles were towed in Oakland, and that the city finance department received approximately \$1.47 million in referral fees and reimbursements from B&B during that time.

The current tow contract with B&B Vehicle Processing (originally known as Oakland Tow Car Association and later changed to A&B Auto Company) was first executed as a five-year contract in 1981. The contract was extended twelve times by city council resolution without competitive bids, usually well before the contract expired. The last extension from the 1981 contract was approved on May 1, 2001 and expired on October 15, 2005.

In September 2004, the city auditor examined the tow contract and issued a report with findings. The city auditor found that the city of Oakland failed to provide sufficient oversight of the contract and recommended that the contract permit the city to audit all accounting records.

Further, it was recommended that the tow company:

- ★ Submit reports regarding lien-sales to the city, containing information about which vehicles were sold and the amount of the proceeds
- ★ Establish a database that can be accessed by the city's parking division
- ★ Not appraise vehicles towed under the contract; rather, an independent third party should be the appraiser

In November 2005, a Request for Proposal (RFP) based on the 2004 audit recommendations was sent to 20 prospective bidders. However, only B&B submitted a bid. The Grand Jury heard testimony that B&B could not reach an agreement with the city on the terms of the contract as specified in the RFP. The city therefore rejected B&B's bid. In 2006, the city of Oakland Finance Management Agency sought direction from the city to either negotiate with B&B or develop a new RFP. The city council took no action and provided no direction. Over the next two years the city convened a task force to negotiate a contract with B&B that in the end satisfied most of the oversight concerns of the auditor's report. In 2008, B&B was awarded a new five-year contract with the possibility of two one-year extensions. The original expectation of revenue for the city was approximately \$859,000 annually with B&B paying the city a \$160,000 up-front fee each year. B&B would also pay the city a \$40 per vehicle referral fee (currently \$44) for most of the cars B&B towed for the city. This five-year contract and the one-year extension for the period of July 1, 2013, through June 30, 2014, and their administration by OPD are the subject of this Grand Jury report.

INVESTIGATION

The Grand Jury interviewed a citizen complainant, current and prior employees of OPD, and a representative of the tow company. The Grand Jury reviewed the California Vehicle Code, the Oakland Municipal Code and the city of Oakland public website focusing on the section captioned, "Vehicle Services."

During our investigation, the Grand Jury requested a number of documents from the Oakland city manager's office including staff reports related to contract extensions, any performance evaluations or financial audits, and copies of all complaints regarding OPD's tow program, as well as the outcome of each complaint. The city manager's office only provided a partial response and failed to follow through after several requests. The Grand Jury eventually went straight to the departments involved to obtain the information.

Contract Administration

Although the latest extension to the tow contract names a person in the records department of OPD as the contract administrator, the actual administration of the contract appears to be divided among several OPD and city departments. The traffic section of OPD has the responsibility for issuing tow notices, arranging for vehicle tows by B&B, and conducting hearings requested by owners of towed vehicles. The records section of OPD oversees the day to day workings of the tow contract by maintaining a log of vehicles towed, keeping copies of towed/stored

vehicle reports, and evaluating some requests for fee and parking violation waivers. The records department also collects a release fee of either \$40 or \$140, depending on the reason for the tow, prior to the owner retrieving their vehicle from B&B. Some tow appeals are also independently handled by city hearing officers.

The city of Oakland’s finance department is also involved in collecting the following revenue from B&B pursuant to the contract:

- ◆ A referral fee (currently \$44 per vehicle),
- ◆ 0.5% of B&B’s annual gross revenue,
- ◆ \$160,000 per year up-front fee (until the 2013-14 one-year extension eliminated this fee), and
- ◆ Outstanding city fees from lien-sold vehicles.

Because the supervision of the contract is fragmented, the Grand Jury had difficulty discovering who (if anyone) asserted supervision over a number of contract provisions.

The Grand Jury discovered a number of issues with the city’s administration of the tow contract. Listed below are examples of the city’s failure to fully exercise its oversight authority. The contract provides that:

☐	Within the first year of the contract, B&B should have provided the city online access to its database of towed vehicles. This feature exists, but the Grand Jury learned that the city does not take full advantage of this database. In addition, it appears that the city does not use the database to audit the program.
☐	B&B should maintain records of each purchaser’s name and address, which should be linked to the vehicle purchase. These records should be available to the city. The Grand Jury learned that the city does not oversee or audit such information.
☐	The city may check customer service response times on a periodic basis and hold B&B to the standards set forth in the contract. The Grand Jury learned that the city does not audit this information.
☐	B&B should establish and maintain a policy and procedures manual which the city may review and suggest changes to, as necessary. The Grand Jury learned that no manual exists, and that the city has not followed up to ensure compliance.
☐	The city may perform a contract compliance audit at any time. The Grand Jury heard testimony that the city has not completed an audit of the contract since 2004, and has completed no audits under the current contract or its extension.
☐	The city should exercise its authority to determine the estimated value of towed vehicles. This has been relinquished in most cases to B&B tow. The appraisal of a towed vehicle is important because it determines how and when the vehicle is sold or dismantled.

The Grand Jury expects the city to use all of its authority the contract grants and collect all of the revenue it is due. The Grand Jury has additional concerns about revenue collection under the contract, as follows:

◎	While B&B must maintain accounts and records and produce such records for the city's audit upon request, the Grand Jury learned that the city has not conducted such audits.
◎	Within 48 hours of the completion of an auction, B&B shall provide a list to OPD and the city of all vehicles sold, including the sale price, B&B's costs and fees collected, and any funds collected over and above their costs and fees. Within 3 business days, the city shall assess the vehicle for outstanding parking fees and notify B&B. B&B shall remit all outstanding fees prior to sending the surplus to the State Department of Motor Vehicles (DMV). The Grand Jury was unable to determine if the city is reconciling the vehicle log to fees owed.
◎	No later than 45 days after the end of each quarter, B&B shall provide OPD and the city auditor with a financial statement prepared in accordance with generally accepted accounting principles. The city could not provide the Grand Jury with any such documents.
◎	Upon request, B&B must provide OPD and the city auditor with payroll tax reports, sales reports, income tax reports, and other reports filed with federal, state and local governments. The Grand Jury learned that the city had not requested any such documents prior to the Grand Jury's request to the city administrator.

The Grand Jury heard testimony that the city has not adequately monitored the contract, nor has the city adequately protected the fiscal interests of the city. The city has not audited B&B's books, sufficiently tracked or reconciled data, including basic data as to how many vehicles B&B towed. The Grand Jury heard testimony that there is a discrepancy between the number of tows that OPD's Records Division has recorded and the number B&B has reported. The Records Division believes this is due, in part, to the fact that they do not track abated vehicles. The Grand Jury heard testimony that a total of 714 vehicles were not fully accounted for from 2010 through 2012.

When the Grand Jury requested an accounting of the monies paid to the city by B&B, we received a city finance printout listing B&B monthly deposits over the past few years. We heard testimony that the city does not do further in-depth reconciliation of the payments. The Grand Jury could not ascertain whether these deposits represented tow referral fees, and if so, if those amounts were reconciled with the number of actual tows. The Grand Jury also questioned whether a percentage of those funds represented reimbursement of parking fees and/or fines paid to the city after lien sales. The Grand Jury found no one in the city who could answer these questions. In the past, the city had one person responsible for overseeing and coordinating the city's entire towing program. The Grand Jury found that there is no single individual with overall responsibility for the tow program at the present time.

Tow Procedures

The statutory authority for the vehicle abatement and towing program originated at the state level with the intent of giving local agencies the power to remove blight from their neighborhoods in the form of abandoned, inoperable, or dismantled vehicles, trailers, and boats that are visible from public areas. State law gives local authorities the right to remove blight from public and private property based on the blight's visibility from a public area.

Both the Oakland Municipal Code and the California Vehicle Code use the terms *abatement* and *abandonment* interchangeably, which can be confusing, especially since the process leading to each of these types of tows is very different. For example, under the code sections dealing with abandoned vehicles and those to be abated, some vehicles may be towed immediately if deemed a threat to public safety, some may be given a 72-hour warning and then towed, while others are towed only after their owners are sent a warning notice by registered mail and given 10 days to respond and request a hearing. The Grand Jury determined that information is available to the public on the city's website, but the information is limited and confusing. Although it is unclear under the written codes as to which procedures apply to which vehicles, the practice of OPD is consistent. By practice, the city determines that all blighted or wrecked vehicles on private property are subject to the city's abatement process, and all such vehicles on public property are treated as abandoned vehicles.

This has led to the following practices in Oakland:

When a police officer or technician determines that a vehicle is a threat to public safety, is missing essential parts to operate, or has five or more unpaid parking tickets, the vehicle may be towed immediately. Those vehicles deemed abandoned but not a threat to public safety may be towed 72 hours after being tagged with an orange notice if the car has not been driven at least one mile within this time period. Abandoned vehicles that are not reclaimed after towing can be sold, dismantled or destroyed by the tow company, depending on their value. Additionally, those abandoned vehicles valued at less than \$500 may be destroyed within 24 hours. There appears to be no statutory right to a hearing to contest the tow of these vehicles, although in practice OPD sometimes allows the owner a hearing.

Vehicles on private property identified for abatement can be towed by order of a police officer or technician if the vehicle is determined to be a blight or public nuisance. This means the vehicle meets the statutory definition of an abandoned, wrecked, dismantled or inoperative vehicle within public view. The identification may come about during the course of an officer's normal duties or it may occur as the result of a complaint called in by a resident, often a neighbor, who sees the vehicle from a public space, even though the vehicle may be parked on private property.

A police officer or technician will observe the vehicle on the private property and determine its status. Every effort to inspect the vehicle is required, including noting its mileage, any signs of missing parts or disrepair, and any visible contents. Upon determining that the vehicle is blight, the technician affixes a green notice to the windshield warning that the vehicle is eligible to be towed in 10 days. The notice includes information on the owner's right to request a hearing.

A registered letter is also sent to the owner of the vehicle and to the property owner at the address where the vehicle is located. The letter includes the reason for abatement, an explanation of the rights of the owner to a hearing, and notice that the costs associated with administration, towing and storage of the vehicle will be assessed to the owner. In addition, the Grand Jury heard testimony that OPD attempts to knock on the door of the residence where the vehicle is located in order to provide additional notice.

Upon request, a hearing on the question of abatement of a vehicle is held. Statute states that these hearings must be requested within 10 days of the date of the mailing of the notice for abated vehicles. The Grand Jury heard testimony that in addition to a hearing officer, the technician or officer who approved the vehicle tow may also participate in the hearing. The Grand Jury requested an accounting of past hearings, but the city was unable to comply. We subsequently learned that the documents do exist but not in a format that can be readily reviewed and tracked. The Grand Jury also learned that practical application of the inspection and notice requirements, as well as staffing issues, prevents the city from towing the vehicle 10 days after initially mailing notice of the violation. It generally takes a minimum of 21 days from the date of the notice until the actual towing and removal of the vehicle. The Grand Jury learned that this longer waiting period of 21 days may offer the added benefit of protecting those car owners that never received notice due to reasons such as sickness or being on vacation.

Additionally, the Grand Jury heard testimony that the process for paying towing fees, release fees, and outstanding ticket fees and fines can be confusing and time consuming, resulting in citizens having to go to multiple locations within the city. We also heard testimony that the city is considering opening a one-stop shop at Eastmont Mall, where people can pay all of their fines and fees at one time and in one place. The Grand Jury supports this effort and encourages the city to look into expanding this practice for the convenience of its citizens.

The Grand Jury requested copies of OPD's written training manual for tow procedures. The Grand Jury learned that OPD has no training manual and that officers receive minimal training (less than one day) regarding towing policies and procedures at the police academy. Additionally, police technicians formerly received training from a veteran civilian trainer, but because that position no longer exists, the only training is provided on the job.

The Grand Jury learned that the OPD traffic division is significantly understaffed, which inhibits the ability of the department to train staff and administer the tow

contract. The Grand Jury heard testimony that the traffic division was once staffed with more than 50 employees, but now has less than one-third of that number.

CONCLUSION

Removing public blight by towing and disposing of abandoned, wrecked and dismantled vehicles can be an important tool to improve the quality of life in large cities such as Oakland. The police department has traditionally been responsible for overseeing Oakland's program under which nearly 10,000 vehicles were towed annually, bringing in over \$1 million to the city coffers. Yet, largely due to staffing cutbacks, there is insufficient and fragmented oversight of the program especially in the area of finance. After the city negotiated a new contract with meaningful oversight provisions over a decade ago, the city has done little to implement any of the improvements and has failed to show that it can even account for the money it is due under the contract. The city's lax record keeping and insufficient employee training, along with its fragmented management of the program, can lead to public frustration. Further, the city's towing practices are inconsistent with existing city policies, adding to public confusion. While the city and the police department continue to face serious financial pressures, a unified approach to management and implementation of Oakland's tow program can only help.

FINDINGS

- Finding 14-1:* The city of Oakland has not exercised its audit right under the tow contract, preventing it from determining whether it is being appropriately paid.
- Finding 14-2:* There are no clear or complete monthly reports that allow the city to track and follow up on each vehicle towed, the reasons for each tow and the disposition of each tow, preventing the city of Oakland from determining if it has been appropriately reimbursed.
- Finding 14-3:* The fragmented division of responsibility among at least three separate city departments makes monitoring the tow contract difficult.
- Finding 14-4:* The city of Oakland is not taking full advantage of B&B's online database of towed cars, preventing OPD from obtaining timely information for themselves and for the public.

- Finding 14-5:* Inconsistent and contradictory language in Municipal Codes and published tow policies, and actual OPD practices invites differing interpretations, potentially causing the public to be treated differently under similar situations.
- Finding 14-6:* Tows are not made in accordance with the 10-day notice policy, but rather are generally made closer to 21 days after notice, which can lead to public confusion and inconsistent application of tow procedures.
- Finding 14-7:* Tow complaints and hearings are not tracked in a manner that can be easily reviewed and monitored, preventing proper oversight by the Oakland Police Department.
- Finding 14-8:* The lack of adequate training and an updated procedure manual creates a danger of inconsistency on the part of police officers and technicians as to how tows are identified and handled.

RECOMMENDATIONS

- Recommendation 14-1:* The city of Oakland must assign a full-time compliance director, who will also serve as the tow coordinator, with responsibilities that include fiscal oversight and vehicle appraisal.
- Recommendation 14-2:* The city of Oakland must adequately oversee its tow contract, including auditing revenue collected by the city and DMV, and reconciling those numbers with the number of vehicles towed, including final disposition of said vehicles. The city must also audit the customer service requirements of the contract.
- Recommendation 14-3:* The city of Oakland must conduct a compliance review of the current tow contract before further contracts or extensions are granted.
- Recommendation 14-4:* The city of Oakland must review staffing needs for OPD's traffic division to ensure that it is capable of adequately implementing and overseeing the tow contract, and provide written training materials for officers and technicians.
- Recommendation 14-5:* The city of Oakland must amend its 10 day notice policy to allow a minimum of 21 days from notice to tow, which is consistent with current practice.

Recommendation 14-6: The city of Oakland must review the Municipal Code sections dealing with towed vehicles and the city’s website to determine if inaccuracies exist, and make them compatible.

Recommendation 14-7: The city of Oakland should consider creating a pamphlet for the public that explains all information pertaining to a towed vehicle, including how to locate, retrieve, and request a hearing on a towed car. This pamphlet should also be available on the city’s website.

Recommendation 14-8: The Oakland Police Department must track the results of tow complaints, hearings and appeals in a manner allowing for effective review and oversight in order to improve service to the public. This might be accomplished by the city developing a standard form for complaints, as well as for hearings and appeals, indicating how and why decisions were made.

RESPONSES REQUIRED

Responding Agencies - Please see page 133 for instructions

Mayor, City of Oakland	Findings 14-1 through 14-8 Recommendations 14-1 through 14-8
Oakland City Council	Findings 14-1 through 14-8 Recommendations 14-1 through 14-8

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WASHINGTON HOSPITAL HEALTH CARE DISTRICT BROWN ACT/CONFLICTS OF INTEREST

EXECUTIVE SUMMARY

For over 50 years the Washington Hospital Healthcare System (the district) has provided valuable, state of the art medical care to the community. Yet there is a perception that the district functions in secrecy, discourages public access and the scrutiny required of public agencies. A series of complaints from the public led to the Grand Jury's investigation. We found instances where the district had not conducted its meetings within the guidelines of the Brown Act and had not adequately complied with the Public Records Act. In addition, the Grand Jury investigated allegations of conflicts of interest. The lack of transparency has invited criticism that the district has strayed from the standards expected of a public agency.

BACKGROUND

Special District Status

In 1945, the State Legislature enacted the Local Health Care District Law as set forth in the Health and Safety Code of the State of California. It allowed communities a means to raise money to build local hospitals through the creation of special districts. It was under this authority that south county voters created the Washington Township Health Care District in 1948. As a public agency, the district has many of the same benefits and restrictions as other public agencies. Among the benefits are a tax-exempt status and the authority to issue public bonds for capital improvement projects. In fact, funding for the original hospital, completed in 1958, was procured through bond measures passed by the voters. Among the restrictions are adherence to the Brown Act, the Public Records Act, and strict ethical guidelines for its officials.

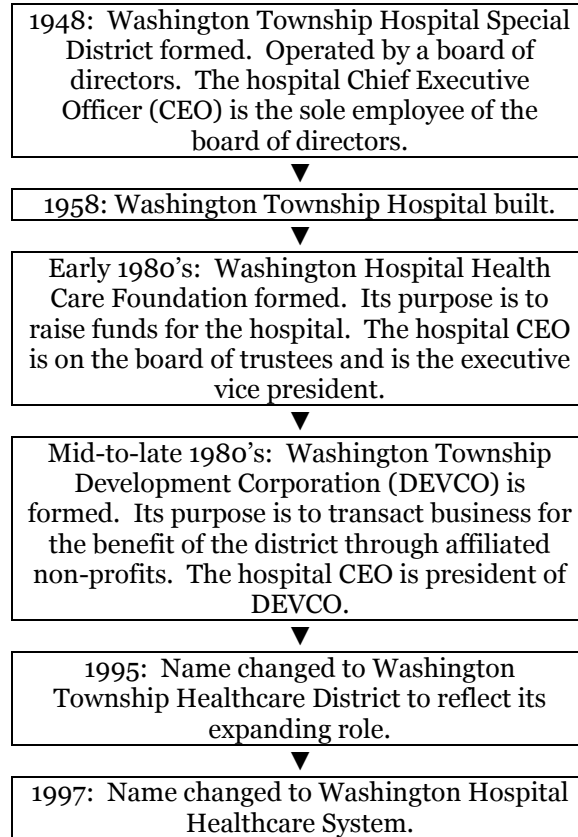
The District and its Related Entities

The Washington Hospital Healthcare System includes Washington Hospital, a 389-bed licensed acute care hospital located in Fremont, California. To accomplish its mission to provide health care to its community, the district operates through several related entities, two of which are the Washington Hospital Development Corporation (DEVCO), and the Washington Hospital Healthcare Foundation (the foundation).

In January 1995, the district's name was changed to Washington Township Healthcare District to reflect that it provided broad health care services in addition to hospital-based services. It is now known as Washington Hospital Healthcare System and serves a population of approximately 320,000 over 124

square miles, which includes residents of Fremont, Newark, Union City, part of south Hayward and unincorporated Sunol.

The chart below provides a summary of the relationships between the district and its related entities:



The District Board of Directors and the CEO

A five-member board of directors governs the district and is charged with the oversight of its overall operations. It functions as a whole with no sub-committees. The Grand Jury learned that four of its five members have served for 12 years or more, and that there are no term limits for the board.

As with many special districts, these board elections are not highly contested. For example, the Grand Jury heard testimony that for years board members who were up for election did not take part in candidate forums to which they were invited, leading citizens to question their commitment and involvement within the community.

The CEO has been with the district since 1984, becoming CEO in 1994. The CEO is the sole employee of the board. The CEO is also the president of DEVCO, as well as a member of the foundation's board of trustees.

Washington Township Hospital Development Corporation

DEVCO was incorporated in the early 1980's in response to California legislation which provided the authority for district hospitals to conduct business for the benefit of the district through affiliated non-profit corporations. This allowed district hospitals to better compete with private hospitals, allowing them to enter into joint ventures with physicians and other private entities. It was originally formed as a non-profit public benefit corporation for medically related purposes: to develop medical treatment programs, perform medical research and development, train medical personnel, and to render medical services to the general public. It operates a radiation oncology center, an outpatient rehabilitation center and a primary care clinic.

DEVCO's articles of incorporation were amended in 1986 to include the following functions: purchase, lease, and operate both hospital and non-hospital related properties, and "to do any and all other acts and things necessary" to support the district. As a result, DEVCO expanded its role to include building, leasing, and managing a commercial retail development with non-hospital related tenants, which provides additional funding for the district.

DEVCO is considered a component unit of the district, and is blended in the district's financial statements. It has a budget that is approved by its board of directors, which meets quarterly. The DEVCO board of directors is appointed by the district's board and is similar to an oversight committee. The district CEO (along with being a member of the foundation's board of trustees) also serves on the DEVCO board as its president and CEO, and reports to the district board of directors. As a non-profit public benefit corporation, DEVCO is tax-exempt. At the time of the writing of this report, its board minutes were not available on the website.

Washington Hospital Healthcare Foundation

Washington Hospital Healthcare Foundation (the foundation) was founded in 1982 and is a California non-profit tax-exempt corporation. It was established to raise funds for the operation, maintenance, and modernization of the facilities of the district, its related corporations, and to sponsor programs which benefit the district. The district CEO serves as executive vice president of the foundation, which is operated by a board of trustees.

INVESTIGATION

The Grand Jury received several citizen complaints alleging that the district and its related entities were operating in violation of the Brown Act, which governs open meeting laws, and failed to make significant decisions with the transparency required of other public agencies.

Allegations of Brown Act violations at district board meetings included:

- No background information on agenda items;
- No board packets available to the public;
- A sign-in requirement;
- Presence of unarmed guards at the public meetings;
- No reporting of matters discussed in closed session; and
- Action items addressed at the end of the meetings.

The citizens' complaints also included allegations that the district or its related entities violated the Public Records Act and conflict of interest laws as follows:

- The district and its related entities lack transparency, especially related to real estate transactions;
- The district and its related entities did not comply with the California Public Records Act in response to a properly submitted request by a member of the public; and
- Conflict of interest laws were violated when the district gave funds to a non-profit organization that employed the CEO's spouse.

During our investigation, the Grand Jury reviewed thousands of pages of documents including corporate and tax documents of the district and its related entities, documents of a contracted organization, and minutes and agendas of the non-profits in question. The Grand Jury also reviewed financial documents and correspondence regarding the allegations, as well as applicable statutes.

In addition, the Grand Jury reviewed the district's website, viewed videos of board of directors meetings, and attended a board of directors meeting. The Grand Jury met with concerned citizens, a witness with an expertise in state ethics laws, a member of the district's board of directors, a member of the contracted non-profit in question, and the CEO of the district.

The Brown Act

The Ralph M. Brown Act was passed in the 1950's. Its purpose is to create transparency by ensuring that meetings of public bodies are open and public. It applies to all state and local agencies, including counties, cities, school and special districts, legislative bodies of each agency, the agency's governing body, covered boards and their standing committees, as well as governing bodies of non-profit corporations formed by a public agency. The district and its related entities are subject to the Brown Act.

The Grand Jury heard testimony that the board and hospital administrators have received mandated AB1234 public ethics training, which includes requirements of the Brown Act and state conflict of interest laws. The Grand Jury also heard testimony that the district has a designated compliance officer to ensure that training and reporting regulations are followed.

The Brown Act requires, in part, that public agencies and their related entities:

- Post a notice of meetings;
- Post an agenda for meetings;
- Make documents distributed to the board for public meetings readily available. Government Code section 54950 specifies that documents be available to the public “without delay” if distributed to all or a majority of members of a board before or at a meeting, unless the documents are exempt under the Public Records Act; and
- Not require a sign-in at public meetings.

Alleged Violations of the Brown Act

It appears the district and its related entities appropriately post notices of meetings and the agendas for the meetings within the time limits prescribed by the Act. However, a member of the Grand Jury, without identifying as a juror, made several requests to obtain board packets for upcoming meetings and reported that staff responded that packets were not normally provided to the public. This appears to be in violation of the Brown Act requirement that non-confidential materials provided to the board be made available to the public before meetings. When the Grand Jury later formally requested copies of board packets, minutes and other documents, the district provided the requested materials without hesitation. The board packets only included agendas, minutes from past meetings, and financials. The packets did not include information relevant to issues to be discussed or voted on at the corresponding meeting, denying the public the ability to prepare or participate.

Members of the Grand Jury attended a board meeting in September 2013 at which they were directed by security and staff to sign in. This is contrary to the plain wording of the Brown Act. The Grand Jury heard testimony that if there was a sign-in requirement, it was for a mailing list.

In the course of our investigation, we learned that the district board has four to five meetings a month, only one of which is videotaped for public review online, while the others are primarily held in closed session. The board’s closed sessions involve strategic planning, staff issues (peer review) and budgeting. The district claims the closed sessions are necessary as to the operations, salaries, and the expenses of running a hospital because of today’s competitive health care industry. The Grand Jury reviewed the minutes for the district’s board of directors’ public videotaped meetings for the period of July 2009 through October 2013. Of those meetings, over 75% had closed sessions, and at least five of those closed sessions were more than a third of the entire meeting.

As to DEVCO, which meets quarterly, the Grand Jury reviewed the minutes for board of directors’ meetings from July 2009 through May 2013. Of those meetings, all but one had a closed session. In addition, at least five of their closed sessions were more than half of the entire meeting. The Grand Jury also reviewed the minutes for the foundation meetings from July of 2009 through July of 2013. There were no closed sessions.

While a main tenet of the Brown Act is that public agencies must operate in an open forum, there are certain topics that must be discussed during closed session, such as labor matters, personnel issues, and real estate negotiations. In addition, California's Health and Safety Code specifically allows district and municipal hospitals to hold closed sessions involving peer reviews or trade secrets. A health care facility trade secret must meet the following criteria: it is necessary to initiate a new district service or program or add a district health care facility which would, if prematurely disclosed, create a substantial probability of depriving the district of a substantial economic benefit. Closed sessions must be noted on the public agenda and list the items to be discussed. In addition, the agency must publicly report on action taken during closed session.

Although the trade secret exception applies to both the district and to DEVCO, it appears that both are conducting a good portion of their meetings behind closed doors, suggesting a lack of transparency. Some public agencies interpret these exceptions to open meeting laws very broadly, helping to foster a culture of secrecy, while others appear to bend over backwards to ensure that their decisions are made with the utmost transparency.

The Grand Jury finds it odd that the district spends so much time meeting in closed session and yet rarely has anything to report. It would benefit the district if they made an effort to educate the public as to why so much of its time is spent in closed session.

While the manner in which meetings have been conducted fosters the perception that the district lacks the transparency expected of public agencies, the Grand Jury is encouraged that the district now posts minutes of the board meetings on line. The earliest minutes posted are dated January 2013.

The Public Records Act

The California Public Records Act was passed in 1968. It requires that public agencies, upon request, give the public access to their records, with certain exceptions. State and local agencies, including any officer, bureau or department of that agency, any board, commission or agency of that agency, and non-profit entities that are legislative bodies of a local agency are subject to the Act. (Government Code section 6252 (a), (b)). Certain records, such as personnel or attorney-client documents are not subject to the Public Records Act.

Alleged Violations of the Brown Act and Lack of Transparency in Connection with Real Estate Matters

A complainant reported to the Grand Jury that in June 2013, they requested the district provide them with the 2012 income and expense documents for retail properties which were believed to be connected to the district. The complainant further advised the Grand Jury that over the course of the next two months, they continued to pursue this request. Once a response was received, it was neither timely nor adequate. As a public agency the district and its related entities have

the obligation to respond to public records requests within ten business days and can, with written notice to the requester, give itself an additional 14 days. If documents are withheld, the agency must provide an explanation.

Below is a scanned copy of a document submitted by the complainant to the Grand Jury. The complainant stated that this was a copy of the only documentation the district provided in response to the complainant's request for 2012 income and expense information for retail properties:

<u>Revenues</u>	
Rental Income	1,424,848
Total Revenues	1,424,848
<u>Expenses</u>	
Purchased Services/Fees	332,951
Utilities	88,367
Depreciation	399,435
Total Expenses	820,753
Net Operating Income	604,095

If this was the only documentation provided in response to the complainant's request, the Grand Jury could understand public frustration about the transparency of the district. The Grand Jury heard testimony that a district-related entity owns the retail properties on which there is a large shopping center with a significant number of commercial/retail and non-hospital related tenants. In our examination of all the documents provided to us by the district, we could not find any mention related to the operation of the retail properties. The public has a right to question how much it cost the district to build and operate these properties, and the income generated for the district. The Grand Jury questions the district's commitment to the Public Records Act and overall transparency as a public agency.

Conflict of Interest Laws

Conflict of interest laws are founded on the notion that no one person may serve two masters at the same time. California has many laws and regulations setting minimum standards of ethical conduct for public officials. Public officials, because of their position of power and influence, are held to high standards. An objective of conflict of interest laws is to remove or to limit the possibility of any personal influence, either direct or non-direct, which may affect the public official's decision. The laws eliminate temptation and help avoid the appearance of divided loyalty. Conflict of interest laws are concerned not only with what happened, but also what may have happened. And, lastly, the laws are concerned with a public official's conduct before the contract is finalized, such as the

planning or preliminary discussions phases, rather than the technicalities of contract formation.

Alleged Conflict of Interest

In the course of the Grand Jury's investigation of the allegation of the conflict of interest regarding the foundation's and the district's donations or grants to a non-profit facility that employed the CEO's spouse, we learned the following:

In March of 2009, after learning of the possible closure of an East Bay non-profit pediatric palliative care facility (facility) due to financial difficulties, the CEO recommended that the foundation consider providing financial assistance to it. Although operating outside of the confines of the district, the facility accepted patients referred from any location.

In April of 2009, the executive committee of the foundation donated \$20,000 to the facility for operating costs; however, the facility was continuing to struggle financially. On July 9, 2009, the district's board of directors approved a \$100,000 grant to the facility, and at the time the CEO's spouse was listed as an unpaid board member for the facility.

At some point the district offered and began handling billing and collections services for the facility at no charge. The district also offered licensing and lobbying support. In February of 2010, after the resignation of the volunteer executive director, the facility began a search for a salaried executive director.

On March 10, 2010, the district's CEO participated in discussions about a second grant of \$250,000 to the facility, informing board members that the grant would be awarded in installments based on agreed upon milestones. The grant was unanimously approved. A few days later, the facility temporarily closed in an attempt to stabilize its financial situation.

On March 24, 2010 the district's CEO notified the board that the CEO's spouse had been approached by the board of the facility to assume the role of executive director. The CEO indicated that should the spouse accept the position, the CEO will "take a step back from my advocacy position for the organization." Furthermore, the CEO stated that the grant should be limited to the unfunded care of children who are residents of the district's area, and finally, that the grant would be administered by the hospital's senior associate administrator. The CEO's spouse accepted a paid position, first as a consultant and then as the director.

In October of 2010 the facility reopened. In addition to donations and grants, the district sponsored tables at fundraising events for the palliative care facility in 2009, 2010, 2011 and 2012 totaling \$20,750.

The Grand Jury heard testimony that neither the foundation nor the district made the CEO's spouse's employment a condition for the donations or the grants.

The Grand Jury learned that the CEO's spouse was let go from the facility in June of 2013; and later that year, the district ended its financial support of the facility. As of the writing of this report, the district is providing billing services to the facility for a fee. The Grand Jury heard testimony that while the events surrounding the appointment of the CEO's spouse looked ugly to an outsider, to the district's participants it looked as if everything was in order.

The letter of the law appears to have been followed – the CEO notified the district's board of directors of a possible conflict and the CEO's intention to step back from an advocacy position before the spouse accepted the position. However, the spirit of the law, which encourages transparency, does not appear to have been sufficiently considered. While the district's CEO became an advocate for the struggling non-profit, this advocacy appeared to become personal at some point, jeopardizing the CEO's undivided loyalty to the district.

CEO Donations and Reimbursements

It was recently reported in the press that over the years the district's CEO made personal donations to a number of local charities and received reimbursement from the district for these donations. The Grand Jury learned that district policy apparently allowed for this benefit, yet was a surprise to at least one board member. In addition, there was no board oversight as to which charities received the donations, indicating that the CEO made the choices. The Grand Jury learned that upon this practice becoming a public matter, it was immediately eliminated. The Grand Jury wonders how such an unusual perq could be allowed without the board or public's full knowledge. This practice was misleading in that it gave the public a perception that the CEO was being philanthropic, when in fact public money was being used to bolster the CEO's public image. The Grand Jury questions why the board not only allowed this to take place, but why the CEO did not recognize this was a misuse of public money.

CONCLUSION

The Washington Hospital Health Care System is a public agency with a publicly elected governing board. The Grand Jury acknowledges that it operates state of the art medical facilities and is an asset to the community. However, despite numerous public complaints over the years concerning the district's lack of openness, it continues to fall short of its obligation to the public to conduct business in an open and transparent manner, as befitting a public agency.

The Grand Jury concludes that the way in which the district and its related entities conduct their meetings and respond to public record requests only adds to the perception that it functions in secrecy and discourages public access. In addition to making required materials available to the public, the Grand Jury believes that it would benefit the district to make an effort to educate the public as to why so much of its meeting time is spent in closed sessions. Openness and transparency are essential to public trust, and use of public money deserves public input.

FINDINGS

- Finding 14-9:* The long tenure of Washington Hospital Healthcare System's board members has led to a perception of complacency.
- Finding 14-10:* Both the Washington Hospital Healthcare System and DEVCO conduct a good portion of their meetings in closed session. Reasons for closed sessions and their results are rarely reported in open session, which discourages public involvement and scrutiny.
- Finding 14-11:* The Washington Hospital Healthcare System and its entities' board packets and non-confidential material are not routinely made available nor are they accessible online, which inhibits public involvement and scrutiny. Minutes of DEVCO and the Foundation are not available online.
- Finding 14-12:* In violation of the Brown Act, a public sign-in was required at a September 2013 board meeting, which discourages public participation.
- Finding 14-13:* Washington Hospital Healthcare System's poor adherence to the requirements of the Public Records Act prevents interested citizens from obtaining information about the management and finances of the district.
- Finding 14-14:* The Washington Hospital Healthcare System's financial support of a community non-profit outside its district boundaries that involved the CEO's spouse led to the perception of conflict of interest.
- Finding 14-15:* The Washington Hospital Healthcare System's practice allowing for the CEO's reimbursement of personal charitable donations led to the appearance of impropriety.

RECOMMENDATIONS

- Recommendation 14-9:* The Washington Hospital Healthcare System should consider term limits for its board members.
- Recommendation 14-10:* The Washington Hospital Healthcare System must better comply with open meeting laws and educate the public about closed sessions.
- Recommendation 14-11:* The Washington Hospital Healthcare System must make available to the public, board packets and other non-confidential material provided to board members before and at public meetings. The board packet must include all relevant material that will be discussed or considered at board meetings.
- Recommendation 14-12:* The Washington Hospital Healthcare System must eliminate any requirement of public sign-in at its board meetings.
- Recommendation 14-13:* The Washington Hospital Healthcare System must provide conflict of interest training pursuant to the AB1234 requirement for all board members and senior staff.
- Recommendation 14-14:* The Washington Hospital Healthcare System must comply with the Public Records Act when responding to citizen's requests for information.
- Recommendation 14-15:* The Washington Hospital Healthcare System must publish board packets, minutes and related materials for all of its entities online.
- Recommendation 14-16:* The Washington Hospital Healthcare System must publish the CEO's contract on the district's website.

RESPONSES REQUIRED

Responding Agencies - Please see page 133 for instructions

Washington Hospital Healthcare System
Board of Directors

Findings 14-9 through 14-15
Recommendations 14-9 through 14-16

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OAKLAND UNIFIED SCHOOL DISTRICT AUDITS AND FINANCIAL UPDATE

EXECUTIVE SUMMARY

Families wage a daily battle to build and maintain their financial security. They monitor their daily decisions about money and learn that maintaining financial security often has more to do with making wise decisions than making more money. Managing a government budget may be more complicated, but the same principles apply. Fiscal discipline is an essential element of any successful organization. Financial decisions need to be consistently monitored. It is with these financial principles in mind that the Grand Jury is again investigating the management of the Oakland Unified School District (OUSD).

This last year, the Grand Jury was informed that OUSD had insufficient records to successfully complete financial audits as required by the state of California. Such inadequate audits have jeopardized the district's financial status and are indicative of a climate of poor financial practices at OUSD.

While OUSD is taking meaningful strides to catch up on long overdue audits, the district continues to struggle to fill key leadership and finance positions. The historically bad financial decisions of past OUSD school boards have weakened the district's efforts to move forward. This leaves the current administration with an approximately \$60 million outstanding state loan, poor bond ratings costing millions annually, mandated outside audit and administrative costs, and an excessive number of under-enrolled schools. The Grand Jury believes that the financial burdens are monumental.

BACKGROUND

The Grand Jury learned that in June 2002, OUSD's board believed it had a \$17 million surplus. By January 2003, the district found that they were \$100 million in debt and unable to meet their financial obligations. By June of that year, the state of California took control of the district and pursuant to Senate Bill 39, the state authorized an emergency loan of up to \$100 million to OUSD. As a condition of this loan, a state administrator was appointed to run OUSD, leaving the school board and superintendent in advisory roles only. Senate Bill 39 further required that OUSD's annual audit be conducted by the state controller or its designee.

In 2009, the management of the district was returned to OUSD with the exception of financial responsibilities, which a state trustee was appointed to oversee. Under this arrangement, OUSD prepares its own budget, but the trustee has stay-and-rescind power. Eleven years after the district's financial collapse, a trustee remains in place until the state loan is repaid or until the state relinquishes control.

INVESTIGATION

The Grand Jury met with current and former school administrators, the current OUSD trustee, an administrator from the Alameda County Office of Education and a witness from the Fiscal Crisis and Management Assistance Team (FCMAT), an independent state agency with the purpose of helping California's local educational agencies fulfill their financial and management responsibilities. The Grand Jury reviewed school board meeting minutes and videos, the state controller's audit, documents relating to the district's financial status, other education-related materials, and attended a public meeting regarding OUSD.

The Grand Jury found that the lack of correct, comprehensive, and complete financial audits has led to numerous problems with serious consequences. Although the Grand Jury's focus was on examining issues pertaining to audits, we also uncovered additional financial matters of concern.

Financial Issues

All California school districts are required by the Education Code to undergo annual audits. School district audits are unique and require an auditing firm with specialized expertise. Generally, school districts hire a private auditing firm to conduct their audits. However, under the terms of Senate Bill 39, the state controller opted to retain the right to conduct OUSD's required audits. Beginning in 2003, the state controller performed the district's audit, continuing for each succeeding year, except for the fiscal years (FY) 2007-2008 through 2009-2010.

When audits of school districts are performed, different types of evaluations are made. The auditor may give a district a "qualified" evaluation, indicating that the audit showed no significant financial issues, or an "adverse" evaluation, meaning the audit uncovered financial deficiencies.

In each year that the state controller's office conducted a financial audit, they declined to give the district either a qualified or an adverse evaluation. Rather, the state controller's office issued disclaimers for each fiscal year stating it could not properly evaluate OUSD's financial statements because the accounting records were deficient and lacked supporting data. The Grand Jury also learned that OUSD did not provide sufficient or accurate records for these audits. For example, the district informed the Grand Jury that at the time of these audits essential records such as attendance documents were incomplete or had not been consistently collected. Further, the district claimed some records were missing due to district office moves, floods in district offices, and staff turnover.

The audits uncovered numerous mistakes by OUSD that required the district to repay some state funds and grant monies. In addition to the mistakes actually admitted by OUSD, the disclaimed audits have left unresolved a number of other figures reported by the district. The Grand Jury learned that last year, the district

set aside approximately \$1.3 million to deal with unresolved findings. This is money that could have been used for teachers, books, or other student needs.

In addition to record-keeping issues, the past strained relationship between OUSD and the state controller's office has also contributed to unresolved audits. When a private auditing firm conducts audits of a school district, they often assist that district (sometimes year-round) in evaluating their procedures and in retrieving necessary records. The Grand Jury heard testimony that this was not the case with the state controller's office during prior OUSD audits.

Senate Bill 39 requires OUSD to use and pay for the audit service of the state controller's office unless the controller permits otherwise. However, OUSD has been required to pay the state controller's office more for these audits than typically charged by private auditing firms.

Realizing that the disclaimed audit findings come at a great cost, OUSD has attempted to negotiate a solution with the state controller. After a long impasse, the district hired an independent auditing firm, at an additional cost of several hundred thousand dollars, to assist with the state controller's audits and to evaluate the district's record-keeping systems.

In addition to the more expensive audits performed by the state controller, the extra cost for a supplemental private audit, and the \$1.3 million set aside because of unresolved findings, OUSD's credit rating was downgraded. The Grand Jury heard testimony that this downgrade resulted, in part, from the disclaimed audit findings and directly contributed to a \$23.1 million increase in bond costs over the past two years.

Unfortunately, OUSD's financial problems are not limited to a failure to complete audits. This investigation revealed additional issues that the Grand Jury believes compounds the perilous financial status of OUSD.

Alameda County Office of Education

The Alameda County Office of Education (ACOE) has certain responsibilities to oversee the finances of local school districts. While they must issue or approve checks for OUSD and must monitor interim financial statements and annual budgets, in reality the oversight is limited. Some county offices of education either maintain the same databases as individual districts or have direct access to them, giving the county office more oversight over districts' finances. This is not the case in Alameda County. ACOE is currently attempting to pilot a new financial management software program, sharing the system with Hayward Unified School District. This will provide more opportunity for oversight by ACOE. While OUSD could benefit from such oversight, OUSD has decided not to participate in this new system until it is tested and mature.

Average Daily Attendance Issues

Attendance reporting is important for all districts since basic school funding has traditionally been based on average daily attendance (ADA). Proper reporting of ADA begins in the classroom. As noted in the FY2010-2011 audit report reviewed by the Grand Jury, OUSD fell short in this area.

The Grand Jury learned that although there have been procedures in place for correctly reporting ADA, they have not always been followed. The district partially blamed the problem on a lack of staffing. OUSD previously used a site-based funding model that allocated a specific amount of money to each school. Each school then had discretion to spend a portion of that money as it chose, with many choosing to spend it on needs other than an attendance clerk.

OUSD is transitioning from the site-based funding model to a new results-based budgeting model in order that the district, rather than the school site, will directly assume more of the personnel and administrative costs. One result of this new model will be that an ADA reporting clerk will be required at all schools. This position is critical under the Local Control Funding Formula (LCFF), a school funding mechanism recently enacted by the state as a result of Proposition 30. LCFF will provide base-funding for schools and supplemental funding for students who are English language learners, students who are eligible for free or reduced lunch, or students who are foster children. As with attendance reporting, LCFF will require careful and correct reporting of student data. The district stands to financially benefit from this as long as procedures and personnel are in place to correctly report such data.

Key Staff Turnover

FCMAT has listed governance crisis and staff shortage as two of the conditions that indicate a school may require state intervention. Six years ago, the 2007-2008 Alameda County Grand Jury reported that OUSD was hampered by continuous staff turnover, particularly in the area of finance. At the time of the writing of this report, the Grand Jury learned that OUSD was having difficulty filling key positions in the finance office.

This year's Grand Jury also learned that numerous vacancies have existed for an inordinately long time in vital positions, including the chief financial officer, director of budget, and director of human resources. While the Grand Jury learned that the district recently hired a new superintendent and a new chief financial officer, the long vacancies of these permanent positions is of great concern. While the acting superintendent was committed and knowledgeable, he was not in a position to implement long-term changes in the district. Finally, OUSD's problems have been compounded by turnovers in 20 school principal positions last year alone.

Wages, Salaries & Benefits

The Grand Jury learned that teacher wages, salaries, and benefits continue to be an issue, which can directly affect students in many different ways. While pay certainly isn't the only incentive aimed at keeping excellent teachers in a troubled district, it can be important in letting teachers know they are valued. Unfortunately, the Education Data Partnership (Ed-Data) reports that during the 2011-2012 school year, Oakland's teachers were paid an average salary of \$54,669, as compared with the statewide district average of \$68,030. Since those numbers were published, OUSD has reached an agreement with labor groups that included a small raise, yet the average salary has not changed significantly. During the same reporting period, Ed-Data reported that just over 12% of OUSD teachers were new teachers, as opposed to 4% in San Francisco and 3.2% in Fremont unified school districts. Although new teachers are paid less, there is an additional cost for their professional development and mentoring.

Under-Enrolled Schools

In the 1980's, OUSD operated 60 schools with an enrollment of 50,000 students. Today, it has more schools and fewer students, operating 86 schools with 35,000 students. In comparison, San Jose Unified School District currently operates 52 schools with 32,000 students. As indicated by these numbers, OUSD is operating more schools than other school districts with comparable populations. While a small student-teacher ratio may seem beneficial to students, under-enrolled schools in Oakland contribute to higher education costs. Infrastructure costs in schools – principals, teachers, staff, buildings and maintenance – remain constant regardless of the number of students at that school. To better illustrate this point, imagine two districts getting the same money from the state for the same number of students, except one must maintain 20 more schools, 200 more teachers, and 50 more administrators and staff. The student population suffers because money is being diverted away from the classroom.

Similarly, OUSD faces the problem of many under-enrolled classes wherein one teacher may be instructing a classroom with 10-15 empty seats. The district estimates that the students in these under-enrolled classes cost OUSD one-third more to educate.

Charter Schools

OUSD has the highest percentage of charter schools of any district in the state. These numerous charters take a toll on OUSD's finances. The Grand Jury learned that the loss of students to charter schools results in significantly reduced state funding per student to OUSD. Furthermore, the flight of students to charter schools contributes to under-enrollment at regular public schools. Other costs include maintaining school facilities occupied by charters, and the possible limits on the district's ability to sell property since charter schools have a right to use vacant property. These are but a few examples of financial drain upon the district caused by the number of charter schools. This issue merits further inquiry by a future grand jury.

CONCLUSION

School districts statewide are suffering from a lack of funding. OUSD is facing additional daunting issues such as poor record keeping, high staff turnover, and too many under-enrolled schools. The lack of correct, comprehensive and completed financial audits by OUSD has added to the district's woes.

OUSD's inability to reconcile their books has resulted in higher borrowing costs. The district's formerly lax financial policies resulted in the borrowing of \$100 million from the state in 2003, which has yet to be completely repaid. In addition to repaying past obligations, the district will also need to issue bonds to finance future infrastructure projects. The lack of an acceptable audit has damaged the district's credit rating and, hence, its ability to both borrow money and issue bonds at the lowest possible rates.

Procedures for awarding ADA funding, as well as newly-established funding procedures for California schools (utilizing the Local Control Funding Formula), will require accurate student attendance reporting, which has been an issue in past audits. Not only has OUSD's past inability to provide accurate data caused loss of ADA funding, but new LCFF requirements will be even more stringent. OUSD must learn from past audit mistakes and be diligent in providing accurate data.

The lack of successful audits fosters an atmosphere of low expectations in the district. When the management of the district cannot keep its financial house in order, students, parents and employees cannot be expected to fulfill their responsibilities. The district itself has recognized a need for diligence in its five-year strategic plan, which states that implementation starts "...with coordinating, aligning, and leveraging all resources to organize all fiscal, human, and physical assets."

The Grand Jury acknowledges that there are no simple remedies for the financial difficulties of the Oakland Unified School District. Year after year, the district has repeated errors that continue to threaten the education of its students. While progress seems to have been made with the required audits, the students of OUSD will continue to suffer until OUSD gets its financial house in order.

FINDINGS

- Finding 14-16:* Oakland Unified School District's failure to complete audits in the past has harmed the district financially.
- Finding 14-17:* Oakland Unified School District failed to collect, maintain, and submit accurate records for audit purposes.
- Finding 14-18:* Oakland Unified School District's failure to have accurate Average Daily Attendance figures caused the district financial harm.
- Finding 14-19:* Vacancies in key financial management/leadership positions has negatively affected Oakland Unified School District's financial situation.
- Finding 14-20:* Too many under-enrolled schools strain resources.
- Finding 14-21:* The large number of charter schools come at a high financial cost to the Oakland Unified School District.

RECOMMENDATIONS

- Recommendation 14-17:* The Oakland Unified School District must satisfactorily complete its financial audits.
- Recommendation 14-18:* The Oakland Unified School District must improve their financial and reporting systems, including strengthening procedures surrounding the collection and maintenance of records.
- Recommendation 14-19:* The Oakland Unified School District must fill key financial staffing vacancies.
- Recommendation 14-20:* The Oakland Unified School District must take steps to eliminate under-enrolled school situations.

RESPONSES REQUIRED

Responding Agencies - Please see page 133 for instructions

OUSD Board of Trustees

Findings 14-16 through 14-21
Recommendations 14-17 through 14-20

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OAKLAND FIRE DEPARTMENT COMMERCIAL AND VEGETATION INSPECTIONS

EXECUTIVE SUMMARY

The Grand Jury investigated the Oakland Fire Department's (OFD) efforts to conduct fire inspections of commercial buildings and the city of Oakland's vegetation management program, as well as the collection of fees associated with these services. As a result of this investigation, the Grand Jury concluded that there were lax billing and collection practices in both the commercial inspection program and the city's vegetation management program. At a time when the city of Oakland continues to struggle financially, every city department must use best practices to ensure that Oakland receives all the money it is due.

BACKGROUND

The Oakland Fire Department's responsibilities include fire prevention, emergency services, and emergency preparedness. The Fire Prevention Bureau is a branch of OFD that manages inspection programs related to compliance with state and municipal fire codes. It also handles billing, receivables, and the general oversight of inspection programs. The primary purpose of inspection services is to reduce the risk of fire and other emergencies. OFD accomplishes this in part by conducting annual fire inspections and ensuring compliance with laws relating to vegetation management in areas such as the Oakland hills.

Commercial Inspections

As authorized by state law, OFD conducts annual commercial fire inspections of businesses and multi-family residences (six or more units) within the city. The only properties exempt from inspections are single-family dwellings and buildings with five units or less.

In Oakland, commercial inspections are usually conducted on a block-by-block basis and initiated by the fire department. They inspect egress systems, fire sprinklers, fire/smoke alarms, combustible storage, and electrical components. In addition, OFD provides fire and safety education to business owners. Discovery of violations leads to follow up inspections.

Vegetation Management

In addition to its commercial inspections program, OFD has the responsibility to inspect properties in Oakland to identify and address vegetation overgrowth and potential fire hazards. Vegetation management inspections are most often conducted on a block-by-block basis, with the intent of inspecting properties for compliance with the fire code. Notices of violation are delivered by US mail to property owners, and fines may be issued for failure to remedy any violation. If

property owners refuse to cooperate, OFD may hire an independent contractor to clear the property of hazards, and the city will bill the property owner for the cost of the clearing.

As an enhancement to their existing program, OFD also administered the Wildfire Prevention Assessment District (WPAD), which was a special district created by Oakland area voters in 2004 with a ten-year commitment as a response to the 1991 Oakland hills fire. WPAD had the responsibility to inspect the approximately 26,000 properties in the Oakland hills. A \$65 yearly special tax on WPAD property owners raised approximately \$1.7 million annually, which provided funding for services such as vegetation management, goat grazing, additional roving fire patrols on high fire danger days, increased inspections, education, and training.

In November 2013, voters did not re-authorize WPAD. WPAD was terminated and the district's fire prevention responsibilities reverted to OFD. At the time of the writing of this report, the Grand Jury learned that there would be unspent WPAD funds and the city of Oakland was awaiting an opinion from their city attorney as to how these funds could be allocated.

CITIZEN COMPLAINTS

The Grand Jury received a complaint regarding WPAD's free curbside chipping program. A property owner alleged that they had received a mailer that offered a city sponsored chipping service. The property owner called the city for the free chipping and brush removal, as advertised. The property owner claimed there was no response from the city for two weeks, creating considerable ill will in the neighborhood as a result of the city's failure to pick up the property owner's clippings in a timely manner.

The Grand Jury's examination of communications between the city and the property owner revealed that the property owner had been cited by the city three months earlier for overgrowth of weeds and brush. The property owner claimed there were other properties in the neighborhood also out of compliance and further complained that he was being singled out. While the Grand Jury did not find merit relating to the property owner being unfairly targeted, the Grand Jury was interested in learning why the abatement process appeared to move so slowly and about the overall effectiveness of the inspection program.

The Grand Jury's investigation expanded to the fire department's management of Oakland's commercial inspection program after it was learned that small business owners had complained that they were charged \$158 annually for fire inspections that took very little time to complete.

INVESTIGATION

The Grand Jury reviewed Oakland city council meetings and minutes, city financial reports, the Oakland Master Fee Schedule, the city's budget, 2013 audit, and met with a panel of OFD staff representatives. Further, the Grand Jury specifically examined Oakland's compliance with state and local fire codes, as well as the inspection process including fees charged, revenue collected, and enforcement and appeal practices.

Commercial Inspections

Every municipality in the state of California is required by statute to enforce building standards adopted by the state fire marshal pursuant to the California Health and Safety Code. One way this requirement may be satisfied is through annual fire code inspections that the city of Oakland has directed their fire department to conduct. OFD reported that of 8,000 annual inspection attempts, approximately 6,000 facilities are accessed and an additional 4,000 commercial occupancies go un-inspected due to competing OFD priorities.

The Health and Safety Code allows cities to charge a fee sufficient to recover the costs of these inspections. Enforcement includes conducting annual fire inspections and, if necessary, forwarding repeated violations to the fire marshal for further action. Oakland's fee for an initial commercial fire inspection is \$158 per hour (one hour minimum). If deficiencies are found during the inspection, the business owner is required to immediately correct deficiencies and pay subsequent fees upon re-inspection. Inspectors implement enforcement along with penalties, ranging from civil penalties of \$50-\$200 per day depending on the severity of the deficiency, until the deficiency is corrected.

OFD reported that the total cost to administer the commercial inspection program was approximately \$994,000 annually, excluding database management and general overhead. The program is funded through the city's general fund; however, the fees charged to commercial entities being inspected offset the cost of the program. Therefore, the collection of such fees is essential.

Revenue Collection

OFD provided information to the Grand Jury with regard to billing and collection for commercial inspections for the fiscal years (FY) 2011-2012 and 2012-2013 (see Table A, below). The Grand Jury learned that OFD deferred billing for FY2010-2011 to the next fiscal year because they were transitioning to a new database. In FY2011-2012, OFD billed a total of \$1,240,821 (for FY2010-2011 and 2011-2012), but only recovered 43% of the amount billed. In FY2012-2013, OFD billed \$512,748 for commercial fire inspections, and only recovered half of what was owed.

TABLE A
Fire Prevention Support & Services Bureau
Fiscal Report FY 2011-2012 and 2012-2013

Inspection Type	FY 11-12			FY 12-13		
	Billed	Collected	Uncollected	Billed	Collected	Uncollected
Commercial	\$1,240,821*	\$535,279	\$715,542	\$512,748	\$254,748	\$258,000

**Note: the total amount billed for the Commercial Inspection program in FY11-12 reflects high figures (\$1.2M) in comparison to FY12-13 (\$512K) because it includes back-billing for the previous year (FY10-11) which had not been processed due to the new database migration.*

In addition to the problems associated with their new database, OFD explained that as a result of budget cuts, the city department that assisted OFD in collecting fees was unable to continue providing the service. This left OFD on their own to bill and collect fees and fines for services it rendered. The Grand Jury learned that OFD did not have sufficient systems or staff in place to handle these duties. While OFD had a computer program capable of generating initial bills, the program did not track payments or send reminder notices. In addition, OFD did not have staff trained to file liens against delinquent property owners.

Oakland’s municipal code gives the city authority to take action to recover the costs of any fees owed by filing a civil lawsuit or imposing a lien on delinquent property. The Grand Jury learned that, unlike other city departments, OFD is not exercising their statutory authority to place liens on delinquent properties, and has not placed a lien on any property in over four years. In addition, as of December 2013, OFD reported that they were not issuing fines and penalties. OFD attributed this collection failure to a shortage of staff and to the pressure to complete other fire priorities. This is inconsistent with best practices.

In an attempt to better understand if OFD’s practices were out of the norm, the Grand Jury learned from another public agency within Alameda County that it takes very little time and effort for a trained staff person to file a property lien. The Grand Jury also learned that such liens are very effective over the long run to ensure that outstanding fees are paid. The agency representative stressed that their collection rates are close to 100% because they have a strong system in place for fee collection. The agency additionally sends notices to property owners when their tenant has outstanding fines. If the outstanding fee is in some way related to an annual license that must be renewed, the fee is added to the cost of renewal. If unsuccessful after notice to the property owner, a lien is placed on the property. The agency has an ordinance that allows the lien to be placed on the property even if the tenant is the one in violation of the code. The Grand Jury believes that OFD needs to adopt such best practices, either by improving their own billing and collections system or by utilizing other city departments that currently handle collections for the city.

The Grand Jury learned that collection rates relating to two other types of inspections OFD performs are quite high. OFD reported that about 98% of the Certified Unified Program Agency/Hazardous Materials Inspection Services

(CUPA) fees charged to businesses related to proper storage of hazardous materials were collected in FY2011-2012, and 77% of the fire inspection fees related to construction permits were collected during the same period. These higher collection rates don't appear to be a result of OFD's efforts, but rather the result of regulatory leverage. Without the associated permits or approvals, many of the businesses or property owners subject to these other inspections could not operate, obtain insurance, or gain a final occupancy permit unless the fire department signed off.

TABLE B
Fire Prevention Support & Services Bureau
Fiscal Report FY 2011-2012 and 2012-2013

Inspection Type	FY 11-12			FY 12-13		
	Billed	Collected	Uncollected	Billed	Collected	Uncollected
CUPA	\$854,001	\$842,767	\$11,234	\$739,890	\$735,173	\$4,717
Fire Code	\$407,720	\$316,235	\$91,485	\$1,372,741	\$1,172,992	\$199,749

The Grand Jury learned that any person doing business in the city must have a business license, issued on a calendar year basis each January 1 by the revenue division of the city's finance and management agency. One way Oakland may improve collection rates is by making the renewal of a business license contingent upon payment of any fees due to the city, such as the annual commercial fire inspection fee.

Vegetation Management

In November 2013, the city auditor's office independently issued a report on [Oakland's Vegetation Management Program](#), including management and training of fire department staff. The audit concluded that OFD had not recouped a majority of abatement related expenses due to inadequacies in its billing and collection process.

The Grand Jury's investigation confirmed the findings of the auditor. The Grand Jury learned that no property owners had been billed for non-compliance of vegetation management inspections during FY2011-2012. While OFD resumed billing for FY2012-2013, collection practices were nearly non-existent (see Table C, below). Data provided to the Grand Jury showed OFD billed \$130,670 for FY2012-2013, yet collected only 6% of those fees and fines from delinquent property owners.

TABLE C

Fire Prevention Support & Services Bureau
Fiscal Report FY 2011-2012 and 2012-2013

Inspection Type	FY 11-12			FY 12-13		
	Billed	Collected	Uncollected	Billed	Collected	Uncollected
Vegetation	\$0	\$0	\$0	\$130,670	\$7,819	\$122,851

The Grand Jury heard testimony that OFD budgeted approximately \$175,000 annually to abate non-compliant properties. As the city auditor found, when these funds were exhausted, the abatement clearing ceased. The monies recovered by violators were to be used to clear more properties. Poor collections practices led directly to an ineffective abatement program. The auditor reported that 82% of the properties that OFD identified as non-complaint (248 parcels) went unabated primarily due to a lack of funds in 2012.

Other Findings

During the Grand Jury investigation, we examined fire department materials and other information available to the public related to commercial fire inspections. One document available online was entitled, “Self-Inspection Worksheet for Commercial Properties,” a “how-to” document for business owners to use to conduct a self-inspection of their business in lieu of OFD performing the inspection. The Grand Jury questioned OFD about why this information was available on the city website since OFD no longer allowed businesses to self-inspect. OFD responded that they planned to remove the document from the website. They intended to modify the content of the document so that it could assist business owners in identifying problems prior to a fire inspection.

Oakland’s Unmet Goals

Since 2009, OFD has had the same business goals and strategies: to develop and implement a new inspections and billing database; to ensure that buildings are in compliance with the fire code; and to streamline the billing process to ensure cost recovery. These commitments are repeated in the city’s 2013-2015 budget; however, there is no indication of previous implementation or of sufficient improvement.

In Oakland’s 2011-2013 budget message, the city administrator acknowledged that Oakland has several decentralized inspection service departments and suggested the creation of a commercial compliance unit comprised of building code, fire inspection, tax enforcement, and public nuisance staff that would coordinate enforcement activities with the Oakland Police Department, but there is no indication that such unit has been created.

Several divisions within Oakland’s administrative services are responsible for some aspect of revenue collection. The revenue division is responsible for

collecting deposits and recording revenues; the general ledger/accounts receivables division provides centralized billing and collection support; and the controller manages a centralized billing and receivables system that keeps track of all accounts receivable. The 2013-2015 budget message addresses strengthening the city's financial standing by aggressively pursuing money owed to the city through special revenue collection efforts, instituting strong fiscal controls, strengthening financial policies, and proactively collecting revenues and implementing targeted efforts to collect past due funds.

CONCLUSION

During Fiscal Years 2011-2013, OFD's failed billing and collection practices contributed to the city of Oakland losing potentially \$1.4 million in un-recovered fees, fines and abatement costs. This has not only cost taxpayers in lost revenue, but it has also reduced the effectiveness of the fire department's ability to provide fire prevention services.

FINDINGS

Finding 14-22: Poor billing and collections practices by the city of Oakland's commercial inspection program and vegetation management program has resulted in reducing the overall effectiveness of the city's fire prevention programs and services.

Finding 14-23: The city of Oakland has not made public their decision outlining the use of remaining WPAD funds, leaving WPAD residents questioning the allocation of the remaining funds.

Finding 14-24: The city of Oakland's website states that the commercial inspection program mandates annual inspections of all commercial facilities. This provides the public with the false impression that all commercial businesses are inspected annually. The Grand Jury learned that approximately 4,000 (out of approximately 11,000) go un-inspected each year.

RECOMMENDATIONS

Recommendation 14-21: The city of Oakland must staff and equip a city department to pursue the collection of fire inspection fees.

Recommendation 14-22: The city of Oakland must record liens against properties that fail to pay fire inspection fines.

Recommendation 14-23: The city of Oakland must consider declining the renewal of annual business licenses unless all city fees and fines have been paid, including fire inspection fees and abatement costs.

Recommendation 14-24: The city of Oakland must issue a final report outlining how the unspent WPAD funds will be used.

Recommendation 14-25: The city of Oakland must provide accurate information to the public (on its website and in documents) about the frequency of inspections and number of commercial fire inspections completed.

RESPONSES REQUIRED

Responding Agencies - Please see page 133 for instructions

Mayor, City of Oakland

Findings 14-22 through 14-24
Recommendations 14-21 through 14-25

Oakland City Council

Findings 14-22 through 14-24
Recommendations 14-21 through 14-25

COUNTYWIDE PUBLIC EMPLOYEES’ BENEFITS SURVEY

EXECUTIVE SUMMARY

Due to recent public attention relating to public employee pensions and health benefits, the 2013-2014 Grand Jury surveyed local agencies in Alameda County in an effort to educate the community about how public employees are compensated beyond their paychecks.

The Grand Jury asked these public employers not only about what benefits are offered to current employees, but also what is promised to their retirees. As one might imagine, some agency responses were quite voluminous. In an effort to make our report of these responses readable, it was necessary to summarize much of the data. In addition, we decided to publish the agency responses with little jury interpretation even if the jury felt some answers might have been confusing, incomplete or even misleading.

The Governor’s Pension Reform Act

The California Public Employees’ Pension Reform Act (PEPRA), passed by the State Legislature and signed into law by the governor, went into effect on January 1, 2013. It mandated significant changes to pension benefits offered to nearly all newly hired California public employees. Of the agencies the Grand Jury surveyed, with the exception of BART and AC Transit, most employees hired after January 1, 2013 (“new employees”) will have modified benefit packages that offer lower benefits than those of employees hired before that date (“classic employees”).

The most significant change affected by PEPRA is a new defined pension formula for those hired after January 1, 2013. It also increases the retirement age of new employees. New non-safety (non-police/fire) employees with at least five years of service can retire upon reaching age 52 with a benefit equal to their years of service multiplied by a specific percentage of their final compensation. The maximum multipliers that the agencies can offer these new employees are 1% at age 52, 2% at age 62, and 2.5% at age 67. This means that a 62-year-old public employee with 30 years of service could retire with a pension amounting to 60% of their final compensation annually for the rest of their lives. This is a smaller pension benefit than nearly all employees who were hired pre-PEPRA will receive.

Public agencies affected by PEPRA now also have three maximum pension formula options for newly hired safety (police and fire) employees:

	Normal Retirement Age	Maximum Benefit Factor
Basic Formula	1.426% at age 50	2% at age 57 and older
Option 1 Plan	2% at age 50	2.5% at age 57 and older
Option 2 Plan	2% at age 50	2.7% at age 57 and older

Source: CalPERS website

Additionally, PEPRAs placed caps on the annual salary that is used to calculate final compensation for new employees, excluding judges, at about \$113,000 for those participating in Social Security, and \$136,440 for those not participating in Social Security (to be adjusted by changes in the Consumer Price Index).

BART's represented employees and all AC Transit employees, along with those in all other state transportation agencies receiving federal funding, were statutorily exempted from PEPRAs until at least January 2015. This was a result of the federal government indicating that it might withhold federal transportation funds unless pension reforms were specifically negotiated with labor organizations. Therefore, with the exception of BART's unrepresented employees, PEPRAs reforms do not currently affect these organizations or their employees. This exemption is very costly to AC Transit's bottom line. AC Transit hired consultants to determine the cost savings over time if PEPRAs were to apply to their agency. The conclusion was that if PEPRAs applied to AC Transit, it could potentially save \$8 million annually starting in 2014, rising to \$15 million annually to 2030, and saving \$22.4 million annually by 2042.

It appears that some agencies have taken significant steps to address future unfunded liabilities relating to benefits. Others have set different priorities, which are likely to lead to dire consequences in the future. It is clear that the cost of benefits, such as health care and pension, are skyrocketing. For example, the County of Alameda reported in its most recent Comprehensive Financial Statement that total retirement benefit payments for 2012 were \$324.5 million, which represented a \$24.3 million (or 8%) increase over the prior year. Fortunately for the county, these sharp annual increases appear to have been taken into account when making past annual pension contributions.

The city of Oakland is also feeling the pressure of increased employee costs. In its most recent Comprehensive Annual Financial Statement, the city estimates that by FY2017-2018, it will have a general-purpose fund revenue shortfall of \$170 million, mainly due to unfunded/deferred costs and escalating benefits liabilities.

The Grand Jury hopes this survey will help to educate the public about benefits available to public employees in Alameda County.

**FINDINGS & RECOMMENDATIONS
RESPONSES REQUIRED**

None
None

COUNTYWIDE PUBLIC EMPLOYEES' BENEFITS SURVEY



The Grand Jury surveyed the cities of Alameda, Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Newark, Oakland, Piedmont, Pleasanton, San Leandro, and Union City. We also surveyed the County of Alameda, and the following districts:

- Alameda-Contra Costa Transit District (AC Transit)
- Alameda County Water District (AC Water District)
- Bay Area Rapid Transit District (BART)
- Castro Valley Sanitary District (CV Sanitary)
- Dublin-San Ramon Services District (Dublin-SR Services)
- East Bay Municipal Utility District (EBMUD)
- East Bay Regional Park District (EBRPD)
- Eden Township Health Care District (Eden Township Health Care)
- Hayward Area Recreation & Park District (HARD)
- Livermore Area Recreation & Park District (LARPD)
- Oro Loma Sanitary District (Oro Loma)
- Port of Oakland
- StopWaste.org (StopWaste)
- Union Sanitary District (Union Sanitary)
- Washington Hospital Health Care District (Washington Hospital)

1. Have you awarded cost of living (COLA) increases since September 2008? If yes, please list the percentage for each year.

The percentages indicated in the following chart are a total of the COLAs provided by the agency from 2008-2013. Most agencies did not give COLAs each and every year, with the exception of AC Water District, Oro Loma, and Union Sanitary, which did give COLAs every year. The highest COLAs were provided by the AC Water District and AC Transit, which gave its employees 4% each year from 2008-2012 for a total of 20%, and Union Sanitary which gave 18.5% to its classified employees. No other agencies in Alameda County gave such a high aggregate COLA. It should be noted that the city of Piedmont – although giving no COLAs in 2011, 2012 or 2013 – gave some increases as high as 7.10% in 2009 and 6.50% in 2010.

AGENCY Range of COLAs given per year to employees listed in column two	2008-2013 Total COLAs given for all years combined from 2008-2013. These percentages are only for employees who received COLAs. Many employees did not receive annual COLAs.	COMMENTS
ALAMEDA COUNTY 2008 - .396-5.48% 2009 - .74-8.92% 2010 - 0% 2011 - 0% 2012 - 2.65-2.76% 2013 - 2.0-2.76%	<u>Only the following groups received COLAs:</u> 9.98% (ACMEA probation managers) 0.74-8.92%/5.3% (Zone 7 water district) 6.52% (probation officers) 6.0% (SEIU clerical-professionals) 5.0% (physicians/dentists & managers/unrepresented civil engineers/unrepresented) 3.98% (PPOA) 3.0% (represented civil engineers) 2.0% (welfare investigators) 0.396% (DSA)	No COLAs reported for 2010 & 2011
ALAMEDA 2008 - 3.8% 2009 - 0% 2010 - 0% 2011 - 0% 2012 - 3-5% 2013 - 2-2.73%	10.73% (IBEW misc.) 5.8% (PANS misc.)	
ALBANY 2008 - 2% 2009 - 2.25% 2010 - 2.5 - 5% 2011 - 2.5% 2012 - 0% 2013 - 2.4%	14% (fire employees) 9% (police employees) 2.4% (misc. & management employees - 2013 only; No COLAs 2008-2012)	No COLAs in 2012
BERKELEY 2008 - 2-5% 2009 - 2-4% 2010 - 0-4% 2011 - 0-4% 2012 - 0% 2013 - 0%	13.5% (SEIU community services unit) 12.5% (IBEW 1245, SEIU maintenance & clerical, unrepresented) 12% (police association) 11.75% (Local One union) 6.83% (fire association)	No COLAs in 2012 or 2013
DUBLIN 2008 - 0% 2009 - 0% 2010 - 0% 2011 - 1.75% 2012 - 3.5% 2013 - 2.4%	1.75% (2011) 3.5% (2012) 2.4% (2013)	No COLAs in 2008, 2009 or 2010; ½% COLA was in 2012 & 2013 was shared with city (50/50) to pay employer portion of CalPERS retirement benefits
EMERYVILLE 2008 - 2-3.5% 2009 - 1.75-2.5% 2010 - 1.75-5% 2011 - 0% 2012 - 0% 2013 - 3.5%	10.5% (miscellaneous) 12% (police)	No COLAs in 2011 or 2012

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AGENCY Range of COLAs given per year to employees listed in column 2	2008-2013 Total COLAs given for all years combined from 2008-2013. These percentages are only for employees who received COLAs. Many employees did not receive annual COLAs.	COMMENTS
FREMONT 2008 – 0% 2009 – 0% 2010 – 0% 2011 – 0% 2012 – 0% 2013 – 0%	No COLAs since 2008	No COLAs since 2008
HAYWARD 2008 – (no data) 2009 – 4% 2010 – 4-6% 2011 – 0% 2012 – 0% 2013 – (no data)	8% (SEIU, Local 21, HAME) 6% (HPOA, police management) 4% (unrepresented)	Fire, fire officers, fire chiefs, mayor & city council did not receive increases during the time period reported
LIVERMORE 2008 – 4.7% 2009 – 3.2-4% 2010 – 2% 2011 – 0% 2012 – 0% 2013 – (no data)	6.7% (management) 4.7% (executive management) 4% (ALE) 3.2% (POA) <u>Additional increases (negotiated):</u> 2% (management, police management, POA) 1.5% (ALE)	An additional 1.5-2% was given to certain employees in 2009 & 2013 in return for certain contract concessions
NEWARK 2008 – 0% 2009 – 0% 2010 – 0% 2011 – 0% 2012 – 3% 2013 – 0%	1% (2009) & 2% (2010) Deferred until 2012 for police association	No COLAs given since 2008 for management, miscellaneous & confidential employees
OAKLAND 2008 – 0% 2009 – 0% 2010 – 0% 2011 – 0% 2012 – 0% 2013 – 2%	2% COLA in 2013 only	No COLAs from 2008-2012
PIEDMONT 2008 – (no data) 2009 – 2.50-7.10% 2010 – 4.0-6.50% 2011 – 0% 2012 – 0% 2013 – 0%	<u>Combined COLAs given in 2009 & 2010:</u> 13% (dispatcher) 12.1% (payroll HR technician & fiscal services Technician) 12% (administrative assistant) 11.5% (accountant, station manager KCOM), & administrative services technician II) 8% (animal control officer) 6.25% (fire captain, lieutenant, firefighter, police captain, sergeant and officers) 3% (maintenance worker, assistant planner, recreation supervisor, public works supervisor) 2.5% (childcare program coordinator & assistant coordinator)	No salary increases in 2011, 2012 or 2013

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AGENCY Range of COLAs given per year to employees listed in column 2	2008-2013 Total COLAs given for all years combined from 2008-2013. These percentages are only for employees who received COLAs. Many employees did not receive annual COLAs.	COMMENTS
PLEASANTON 2008 – 4% 2009 – 0- 4% 2010 – 0- 4% 2011 – 0% 2012 – 0-2% 2013 – 0-4%	12% (PPOA & PCEA) 10% (IAFF) 8% (confidential) 6% (management)	No COLAs given in 2011
SAN LEANDRO 2008 – 2012: see comments column 2013 – 2.5-4%	<u>COLAs only given in 2013:</u> 4% (POA) 3.5% (CEA) 3% (police management unit) 2.5% (management organization) 2.5% (unrepresented confidential employees)	Most employees did not receive any COLAs between September 2008 to December 2012
UNION CITY 2008 – (no data) 2009 – (no data) 2010 – (no data) 2011 – (no data) 2012 – (no data) 2013 – 1.1-9%	9% (police sworn) 6.5% (police management) 3.6% (professionals & management) 2.2% (department heads & city manager) 1.1% (SEIU, police non-sworn)	City did not provide COLA information for 2008-2012
AC TRANSIT 2008 – 4% 2009 – 4% 2010 – 4% 2011 – 4% 2012 – 4% 2013 – (no data)	20% total combined COLA from 2008-2012	2013 COLA not reported <i>**Among the highest of all cities and agencies in Alameda County</i>
AC WATER DISTRICT 2008 – 4% 2009 – 4% 2010 – 4% 2011 – 4% 2012 – 4% 2013 – (no data)	20% total combined COLAs from 2008-2012	2013 COLA not reported <i>** Among the highest of all cities and agencies in Alameda County</i>
BART 2008 – 0% 2009 – 0.381% 2010 – 0% 2011 – 0% 2012 – 0% 2013 – 0.144%	0.525% total combined COLA from 2008-2013	

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AGENCY	2008-2013	COMMENTS
Range of COLAs given per year to employees listed in column 2	Total COLAs given for all years combined from 2008-2013. These percentages are only for employees who received COLAs. Many employees did not receive annual COLAs.	
CV SANITARY 2008 – (no data) 2009 – 3% 2010 – 0% 2011 – 0% 2012 – 0% 2013 – 1%	4% total combined COLAs since 2009	No COLAs in 2010, 2011 or 2012
DUBLIN-SR SERVICES 2008 – (no data) 2009 – 0 - 3.78% 2010 – 0.23-2.0% 2011 – 1.19% 2012 – 3.57% 2013 – 1.83-3.66%	14.2% (general & confidential) 12.43% (mid-management & professionals) 8.65% (senior managers) 1.83% (general manager, 2013 only)	No COLA for general manager from 2008-2012
EBMUD 2008 – (no data) 2009 – 2% 2010 – 2.5% 2011 – 0 2012 – 0 2013 – (no data)	4.5% total combined COLA since 2008 (2013 COLAs were under negotiation at the time of this report.)	No COLAs in 2011 or 2012, but employees received a one-time lump payment of \$500 on 7-20-12, not included in employees' compensation for retirement
EBRPD 2008 – (no data) 2009 – 0.9% 2010 – 1% 2011 – 0% 2012 – 1% 2013 – 2%	4.9% total combined COLA since 2009	No COLA in 2011
EDEN TOWNSHIP HEALTH CARE 2008 – 0% 2009 – 0% 2010 – 0% 2011 – 0% 2012 – 2% 2013 – 2%	4% (executive assistant) 2% (accounting manager)	
HARD 2008 – 0% 2009 – 2% 2010 – 0% 2011 – 0% 2012 – 4% 2013 – 2%	8% total combined COLAs from 2008-2013	No COLAs in 2008, 2010 or 2011

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AGENCY Range of COLAs given per year to employees listed in column 2	2008-2013 Total COLAs given for all years combined from 2008-2013. These percentages are only for employees who received COLAs. Many employees did not receive annual COLAs.	COMMENTS
LARPD 2008 – 0% 2009 – 0% 2010 – 0% 2011 – 0% 2012 – 0% 2013 – 3%	3% in 2013 but district required full time employees to pay an additional 1% of salary toward pension costs.	No COLAs from 2008-2012
ORO LOMA 2008 – (no data) 2009 – 2.0% 2010 – 2.4% 2011 – 3.5% 2012 – 2.2% 2013 – (no data)	10.1% total combined COLA from 2009-2013	Fiscal Year COLAs
PORT OF OAKLAND 2008 – 4% 2009 – 3% 2010 – 2% 2011 – 3% 2012 – 0% 2013 – 0%	12% total combined COLA for all years	
STOPWASTE 2008 – (no data) 2009 – 0% 2010 – 0% 2011 – 0% 2012 – 0% 2013 – 0%	0%	No COLAs since September 2008
UNION SANITARY 2008 – 3% 2009 – 3% 2010 – 3% 2011 – 3% 2012 – 3% 2013 – 3.5%	18.5% (classified employees) <i>**Among the highest of all cities and agencies in Alameda County</i>	The district has no COLA for unclassified salaries
WASHINGTON HOSPITAL 2008 – 0% 2009 – 0% 2010 – 0% 2011 – 0% 2012 – 0% 2013 – 0%	0%	No COLAs since 2008

2. What is your pension formula for newly hired safety and non-safety employees?

Under the Governor’s 2013 Public Employees’ Pension Reform Act (PEPRA), most pension formulas depend on whether an employee is considered to be a classic employee (hired before January 1, 2013) or a new employee (hired after that date). For some agencies, an employee can retire at a younger age with a lower percentage of retirement pay based on years of service. Answers are listed directly as provided by the agency.

Nearly all agencies had consistent safety retirement formulas both prior to and after PEPRA. Prior to pension reform, nearly every agency offered 3.0% @ 50 to safety, with a few exceptions which offered 3.0% @ 55. After PEPRA, most agencies reported that they offered their safety employees a maximum of 2.7% @ 57.

Washington Hospital reported there are two retirement formulas. The annuity amount is the higher benefit of a or b: a) Career Average Pay (CAP) formula – benefit calculated using the CAP formula which is the employee’s career average compensation multiplied by 1.5% and multiplied by their accrual service years; and b) \$15.00 multiplied by employee’s accrual service years. The Grand Jury attempted to clarify the answer of \$15.00 through email and phone calls to Washington Hospital. We received no response.

AGENCY	PENSION FORMULA: NON-SAFETY/MISC.	AGENCY	PENSION FORMULA: NON-SAFETY/MISC.
ALAMEDA COUNTY	2.5% @ 67 (classic)	AC TRANSIT	2.0% @ 55 or 2.5% @ 65
ALAMEDA	2.0% @ 62 (new) 2.0% @ 55 (classic)	AC WATER DISTRICT	2.0% @ 62
ALBANY	2.0% @ 62 (new) 2.0% @ 60 (classic)	BART	2.0% @ 55 (All represented & classic unrepresented) 2.0% @ 62 (new unrepresented)
BERKELEY	2.0% @ 62 (new)	CV SANITARY	2.0% @ 62
DUBLIN	2.0% @ 62 to a maximum benefit of 2.5% @ 67 (new) 2.7% @ 55 (classic)	DUBLIN-SR SERVICES	2.0% @ 62 (new) 2.7% @ 55 (classic)
EMERYVILLE	2.0% @ 62	EBMUD	2.55 @ 67 (PEPRA) 2.6% @ 62 (reciprocal plan)
FREMONT	2.0% @ 62 (new) 2.0% @ 60 (classic)	EBRPD	2.0% @ 62 (new)
HAYWARD	2.0% @ 62 (new) 2.5% @ 55 (classic)	EDEN TOWNSHIP HEALTH CARE	N/A

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AGENCY	PENSION FORMULA: NON-SAFETY/MISC.	AGENCY	PENSION FORMULA: NON-SAFETY/MISC.
LIVERMORE	2.0% @ 62 (new) 2.0% @ 60 (classic)	HARD	2.0% @ 62 (new)
NEWARK	2.0% @ 62 (new)	LARPD	1.0% @ 52 up to 2.5% @ 67 (PEPRA/ACERA)
OAKLAND	2.0% @ 62 (new)	ORO LOMA	2.0% @ 62 (new)
PIEDMONT	2.0% @ 62 (new) 2.0% @ 60 (classic)	PORT OF OAKLAND	2.7% @ 55 (if hired before 6/2012) 2.5% @ 55 (if hired after 6/2012) 2.0% @ 62 (new but may be eligible for 2.5% with other CalPERS service)
PLEASANTON	2.0% @ 62 (new) 2.7% @ 55 (classic)	STOPWASTE	2.0% @ 62
SAN LEANDRO	2.0% @ 62 (new)	UNION SANITARY	2.0% @ 62 (new) 2.5% @ 55 (classic)
UNION CITY	2.0% @ 62 (new) 2.0% @ 60 (classic)	WASHINGTON HOSPITAL	See answer, above.

3. What is your COLA formula for retirees?

Two-thirds of the responses received indicate the maximum COLAs retirees can receive annually is the CalPERS maximum of 2%. Alameda County and LAPRD have COLAs for retirees determined by ACERA. EBMUD specified that their COLA was not to exceed 5% per year (not over 3% if the pension is funded below 85%). The AC Water District and certain city of Oakland employees are capped at 3%. The city of Fremont reported a 2-3% COLA for miscellaneous employees depending on the hire date or retirement plan. AC Transit and Washington Hospital have no COLAs for retirees. Eden Township Health Care provides no pension benefits because it offers a deferred contribution plan.

4. What percentage of total pay do employees contribute to retirement? What percentage does your agency contribute?

The amount public employees contribute towards their retirement has traditionally varied significantly among different labor bargaining groups. Over the years, some employee groups have traded away salary increases in return for the public agency paying a portion of the employee retirement contribution. PEPRA changed this for new employees/new members of the public retirement systems. These new members must now either contribute at least half of the normal cost of the benefit or pay the current contribution rate of similarly situated employees (BART and AC Transit excluded as explained earlier). This generally amounts to about 6.75% of an employee's base pay for non-safety employees. In addition, employers cannot negotiate to pay a portion of the new

member's contribution after current MOUs expire. Beginning in 2018, most public agencies can impose these rules on classic employees as well.

When BART initially responded to this survey, their non-safety employee contribution was 7% of salary but BART reimbursed employees for that amount. Their most recent labor agreement calls for employees picking up part of the cost by contributing 4% of their base pay annually, phased in over four years. BART, in turn, agreed to provide pay raises to cover most of the added employee costs. AC Transit reported that most employees make no contributions to their pension plans. This is not expected to change until legal challenges relating to PEPRA are clarified. The city of Berkeley reported that their classic non-safety employees also currently make no contribution towards their pension costs. Additionally, some Piedmont classic employees make no contribution.

For classic employees, *employer* contributions, in general, are a much larger share of the total pension costs. Agency costs for classic non-safety employees average about 20-25% of payroll, while agencies with a large number of safety employees contribute significantly more. For instance, Alameda County reported that it is contributing over 50% of pay for classic safety employees with safety employees contributing more than non-safety colleagues. Also, many agencies reported that their costs are currently higher because they are paying down unfunded pension liabilities.

5. What is the vesting period for an employee to become eligible to receive pension benefits?

Pension vesting is the time when an employee is eligible to receive a pension. The amount of benefits received will vary depending on years of service.

All agencies reported a time period of five years, with some specifying the age of retirement. Classic employees are vested at age 50 with five years of service.

Notably different was Washington Hospital with five years at age 65. The city of Fremont and StopWaste both reported five years and age 52 for new employees. AC Transit indicated five years for all employees except eight years for transit union workers. Oro Loma reported five years at age 55 for Tier 1, age 60 for Tier 2 and age 62 for Tier 3 employees.

The city of Oakland reported five years at age 50 for classic safety employees and five years at age 55 for classic miscellaneous employees, but for non-classic employees the vesting period is five years and age 57, and for non-classic miscellaneous employees Oakland reports the vesting period is five years and age 62.

6. Is final retirement pay based on the last highest year’s earning, or a combination of years (e.g., last three)? Please explain.

Nearly every agency reported final retirement pay is based on the salary of either the highest one-year/12 consecutive months worked (for classic employees), and the highest three years/36 consecutive months worked (for new employees). Washington Hospital and Eden Township Health Care: N/A.

7. Is your agency’s pension plan fully funded as of July 1, 2013? If not, at what percentage is it funded?

While some agencies provided both the actuarial¹ and market value² of their pension funds, others provided only one number. Because it is unclear which value was reported, and because each value can vary, we have listed the responses below as received from each agency.

AGENCY	DATE OF VALUATION	PERCENTAGE FUNDED	OTHER INFORMATION
ALAMEDA COUNTY	No date provided	73.9%	
ALAMEDA	6/30/11 (misc.) 6/30/12 (safety)	88.5% (misc.) 73.2% (safety)	CalPERS for both funds
ALBANY	6/30/11	74.4% (misc.) 74.4% (municipal JPA) 80.3% (police) 80.3% (fire)	In a risk pool ³ CalPERS
BERKELEY	10/2012	82% (non-safety) 70% (police) 85% (fire)	CalPERS
DUBLIN	7/1/13	85.2%	
EMERYVILLE	No date provided	Yes	CalPERS
FREMONT	6/30/11	69.2% (misc.) 68.0% (safety)	CalPERS
HAYWARD	No date provided	69.4% (misc. & fire) 68% (police)	Market values (not actuarial)
LIVERMORE	2010	80.8% (misc.) 83.3% (safety)	CalPERS
NEWARK	6/30/11	68.5% (misc.) 71.5% (safety)	In a risk pool CalPERS
OAKLAND	7/1/12 (OMERS) 6/30/12 (PFRS) 6/30/11 (PERS)	122.5% (OMERS non-PERS non-safety) 68.2% (PFRS police & fire) 79.8% (PERS misc.) 75.4% (safety)	PFRS includes a \$210 deposit by the city
PIEDMONT	No date provided	69.7% (misc.) 76.7% safety)	In a risk pool for agencies with less than 100 employees. CalPERS

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AGENCY	DATE OF VALUATION	PERCENTAGE FUNDED	OTHER INFORMATION
PLEASANTON	6/30/11	Market Values: 88.3% (misc.) 70.2% (police) 75.3% (fire) Actuarial Values: 78.9% (misc.) 62.8% (police) 66.9% (fire)	
SAN LEANDRO	6/30/11	74.3%	CalPERS
UNION CITY	7/1/12	84% (misc.) 93.3% (safety)	
AC TRANSIT	1/1/12	62.8%	Based on latest actuarial valuation
AC WATER DISTRICT	No date provided	76.3%	
BART	No date provided	76.2% (misc.) 61.9% (safety)	
CV SANITARY	No date provided	Yes	
DUBLIN-SR SERVICES	6/30/11	79.7%	CalPERS
EBMUD	6/30/12	65.6%	Actuarial
EBRPD	No date provided	72.7% (non-safety) 88.3% (safety)	
EDEN TOWNSHIP HEALTH CARE	No date provided	N/A	
HARD	No date provided	2013 information not available yet from CalPERS	CalPERS
LARPD	12/31/12	74%	Actuarial ACERA
ORO LOMA	6/30/11	85.5%	In a risk pool CalPERS
PORT OF OAKLAND	6/30/11	79.8% (actuarial) 70.8% (market value)	CalPERS
STOPWASTE	12/2012	85.5% (actuarial) 76.5% (market value)	CalPERS
UNION SANITARY	10/2012	82.5% (actuarial) 73.3% (market value)	CalPERS
WASHINGTON HOSPITAL	7/1/13	85.3%	

- 1 Actuarial:** The adjusted market value of investment assets (adjusted upwards or downwards to account for market volatility) taking into consideration the future income of pension contributors, using probability tables and risk adjustments.
- 2 Market Value:** The straight value of the investment assets if they were sold today at market rate.
- 3 What is risk pooling?** Risk pooling is the combining of assets and liabilities across employers of the same risk pool to produce large groups that share the impact of a catastrophic demographic event. (calpers.ca.gov)

8. Is your agency taking steps to ensure that your pension plan is fully funded? If so, please explain.

Each of the public agencies that participate in CalPERS responded that they are making their Annual Required Contribution (ARC) as calculated by CalPERS. Some agencies further explained that they are making additional contributions to pay down their Unfunded Actuarial Accrued Liabilities (UAAL), amortizing those amounts over a period of years: EBRPD (15 years), LARPD (20 years), and city of Berkeley (30 years). Alameda County responded that they have adopted the annual rates determined by ACERA's actuary. These rates include additional amounts to fully fund unfunded liability over the next 20 years. The city of Oakland responded that they are proposing to set aside a reserve for unfunded pension and OPEB liabilities in the FY2015-2017 budget.

9. Does your agency offer vested retiree health benefits to its retired employees? What is the vesting period? Please explain.

AGENCY	Retiree Health Benefits Offered? Vesting period? Explanation?
ALAMEDA COUNTY	The county does not offer health benefits to retirees. ACERA offers health benefits but they are not vested.
ALAMEDA	Employees who retire with a CalPERS pension may enroll in health benefits through CalPERS, with no additional vesting period.
ALBANY	Retiree health benefits are offered through CalPERS.
BERKELEY	Yes, through CalPERS. Requires at least 8 years of service with the city and be at least age 55. The city contributes a percentage based on years of service: 30% @ 8 years up to 100% @ 20 years. Maximum contribution \$166.26 (single) to \$332.52 (two party).
DUBLIN	Yes. To qualify for a 50% city contribution, an employee must have worked for the city for 10 years.
EMERYVILLE	Yes. The vesting period is 11 years of service.
FREMONT	Yes. The vesting period is 5 years of service and requires employees to retire from CalPERS. The amount of the retiree health benefit varies. (For example, 0-5 years service = \$0/month; 6-10 years service = \$200/month; 25 years of service = \$500/month).
HAYWARD	All employees who are eligible to retire through CalPERS (5 years vesting requirement) are eligible to enroll in retiree health benefits.
LIVERMORE	The city provides a retiree health benefit to retirees hired before 2006. 5 years service and at least 10 years CalPERS service credit and retiree is eligible to receive the minimum level of benefits.
NEWARK	City contracts with CalPERS for retiree medical benefits. City provides the minimum benefit allowed by CalPERS. Employees are vested after 5 years.

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AGENCY	Retiree Health Benefits Offered? Vesting period? Explanation?
OAKLAND	Yes. Vested after 5 years/age 50-55 depending on classification. All employees are eligible to purchase retiree insurance through the city. Reimbursements vary. For example, an employee with 10 years service may be eligible for a maximum \$425.42/month reimbursement.
PIEDMONT	Yes, 5 years with a CalPERS agency.
PLEASANTON	Yes. The city offers 4% towards medical premiums for each year of service. For example, after 15 years service, the employee receives 60% towards medical premiums or actual reimbursement, whichever is less.
SAN LEANDRO	Yes, the city offers retiree health benefits. For employees hired after January 2005, they must render 5 years of continuous service to receive medical benefits; for safety employees, they must render 15 years as a police officer.
UNION CITY	Offered only to members of the police officer's union upon retirement. Contributions vary depending on vesting schedule: 15 years of service = 50% of the single Kaiser plan cost (\$500/month maximum) up to 100% after 25 years of service (\$1,000/month maximum).
AC TRANSIT	Yes. Vesting depends on age and years of service and bargaining unit. For example, age 55 with 8 years, or age 50 with 5 years service.
AC WATER DISTRICT	Yes. The vesting period depends on the employee's hire date. Minimum 5 years working at the district.
BART	Yes, 5 years of service.
CV SANITARY	Yes. CalPERS plans offered. For example, employees hired after 2007 with 10 years of service can receive 50% coverage; while employees with 20 years can receive 100% coverage.
DUBLIN-SR SERVICES	Yes. Vesting depends upon age and years of service. Employees are 50% vested at 10 years up to 100% vested at 20 years.
EBMUD	Health plans are a vested right and are offered, but not paid for by the agency. Instead, retirees are paid a monthly stipend towards the cost. For example, if hired after 1996, retiree receives 25% for each 5 years of service, with the maximum of \$450/month (single) or \$550/month (2 party).
EBRPD	Yes. The vesting period varies depending on age and years of service. For example, AARP or CalPERS plans offered. Employees can receive \$100-\$350/month Depending on age/years of service/employee classification.
EDEN TOWNSHIP HEALTH CARE	No.
HARD	If hired before July 2007, lifetime medical benefits for employee and spouse after 20 years of service. If hired after 2007, contribution of 1.5% of employee's salary towards a post employment health plan.
LARPD	No. Health benefits are non-vested and the responsibility of ACERA.
ORO LOMA	Yes. Vesting period depends on date of hire. For example, employee hired before 2006 is vested after 10 years of service at a minimum age of 55. New employees vest after 15 years at age 60.

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AGENCY	Retiree Health Benefits Offered? Vesting period? Explanation?
PORT OF OAKLAND	Yes. Vested after 5-10 years depending on bargaining unit. Port pays 50% (at 10 years) to 100% of costs of retiree medical based on years of service.
STOPWASTE	Yes. Depending upon years of service, contribution rates are based on a graduated scale and require 20 years of service with CalPERS to receive 100%. At 10 years the employer contribution becomes 50%.
UNION SANITARY	Yes. Agency offers a retiree medical reimbursement. Amounts vary depending on age and years of service. For example, 10 years = \$350/month up to 20 years = \$550/month (Based on CalPERS).
WASHINGTON HOSPITAL	Yes. A 15-year employee pays 65% with sliding scale, ending with 30-year employee paying zero.

10. Are these retiree health benefits extended to an employee’s spouse, domestic partner or dependants?

Twenty-one agencies reported that they extend health benefits or pay (with restrictions) for retiree health benefits for the retiree’s spouse, domestic partner, or dependants; while three agencies reported that they offer health benefits to the retiree only (Alameda County (through ACERA), CV Sanitary, and Washington Hospital). Five agencies reported health benefits are offered to the retiree’s spouse, domestic partner or dependants, but the retiree pays 100% of the costs through CalPERS. Eden Township Health Care offers no retirement health benefits.

11. If health care benefits are offered to retired employees, please explain who pays for the benefits. If there is a shared cost, please explain. What is the maximum dollar contribution your agency makes for each retiree’s health care benefit annually?

Many agencies explained that they obtain retiree health benefits through CalPERS. To participate in the program, the minimum agency contribution is approximately \$1,308 annually with the retiree paying the remaining share of the premium. Albany, Union City, Newark, and Alameda (non-safety) make the minimum agency contribution with the employees paying for most of the cost. San Leandro reported the same for most employees, although some bargaining groups negotiated for the city to reimburse for additional contributions.

Most of the agencies share the cost of the premiums based on a sliding scale determined by the number of years the retiree has worked for the agency. For example, Pleasanton pays 4% of the medical premium for each year of service (25 year employee has 100% of the premium paid by the city). The city of Piedmont reported that it pays 80% of Kaiser single-party rate, 64% for retiree +1, or 54% of the premium for a family plan. Alameda County does not offer a vested retiree health benefit but its retirement system (ACERA) currently

provides a stipend for health insurance that is indirectly funded by the county. Currently, ACERA contributes up to \$522 per month for retirees with over 20 years of county service.

AC Water District reported that the district pays the full cost of enrollment for the highest HMO family plan. CV Sanitary and the Port of Oakland also reported they pay the entire premium for a retiree, and BART reported that retirees pay \$92 per month towards their health care benefits. Many agencies reported they reduce or eliminate their contributions once the retiree turns age 65 and is eligible for Medicare.

AGENCY	MAXIMUM DOLLAR AMOUNT CONTRIBUTED TO EACH RETIREE FOR HEALTH CARE BENEFITS
ALAMEDA COUNTY	No direct county contribution. Benefit not vested. ACERA currently provides \$6,264 per year for this benefit.
ALAMEDA	\$1,428 (non-safety); \$784.63 (safety hired after 7/2012); \$1,526 (safety hired before June 2011)
ALBANY	\$1,308 per year
BERKELEY	\$3,984 per year
DUBLIN	\$17,112 per year (\$18,708 for annuitants)
EMERYVILLE	\$5,012.88 per year
FREMONT	\$16,047 per year (hired before 1/2012); \$7,200 per year (hired after 1/2012)
HAYWARD	\$3,296 (non-safety); \$8,024 (safety) – varies depending on bargaining unit
LIVERMORE	\$21,136 per year (for employees hired before 2006)
NEWARK	\$1,308 per year (2013); \$1,428 per year (2014)
OAKLAND	\$6,480 per year (non-safety); \$12,996-\$13,968 per year (safety)
PIEDMONT	\$11,367 per year; \$5,537 per year (Medicare supplement for retiree +1)
PLEASANTON	\$16,512 per year (Tier 1); \$8,256 per year (Tier 2/newer employees). City contributions terminate when retiree is age 65.
SAN LEANDRO	\$4,320 per year (non-safety); \$5,520 per year (safety hired before 1/2007). City contributions terminate when retiree is age 65.
UNION CITY	\$12,000 per year for police only
AC TRANSIT	\$8,292 per year, reduced to \$4,020 per year after age 65 (represented); \$11,369 per year (unrepresented)
AC WATER DISTRICT	\$24,480 per year
BART	\$23,373.60 per year
CV SANITARY	\$11,484 per year, reduced once retiree is age 65
DUBLIN-SR SERVICES	\$18,420 per year
EBMUD	\$6,600 per year
EBRPD	\$3,600 per year (managers/confidential); \$2,428 per year (represented); \$1,380 per year (safety)
EDEN TOWNSHIP HEALTH CARE	No retiree health care benefits
HARD	\$14,494 per year
LARPD	No agency contributions

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AGENCY	MAXIMUM DOLLAR AMOUNT CONTRIBUTED TO EACH RETIREE FOR HEALTH CARE BENEFITS
ORO LOMA	\$1,380 per year. New employees, once fully vested, are reimbursed the cost of a Kaiser one-party plan
PORT OF OAKLAND	\$23,172 per year
STOPWASTE	\$25,995 per year
UNION SANITARY	\$6,600 per year
WASHINGTON HOSPITAL	\$26,628 per year (estimated costs based on COBRA rates)

12. Are your Other Post-Employment Benefits (OPEB) fully funded? What steps are you taking to ensure that your OPEB responsibilities are fully funded?

AGENCY	RESPONSE
ALAMEDA COUNTY	N/A
ALAMEDA	No. Increasing amounts are set-aside in the annual operating budget; city established an OPEB trust; negotiated with bargaining groups to lower future OPEB costs.
ALBANY	Payments are made on a pay-as-you-go basis.
BERKELEY	No, however the city council receives staff reports on funded status and makes fiscal decisions accordingly.
DUBLIN	No. City has set up an OPEB trust and is making annual ARC contributions. Designated reserves at year-end to fund unfunded liabilities.
EMERYVILLE	Not fully funded. An actuarial study in 2011 determined the city should fund at \$400,000 annually; the city funds \$500,000 annually.
FREMONT	No. The pre-funding OPEB plan was suspended in 2008 due to the financial recession. Resumed ARC in 2013-14.
HAYWARD	No. The city is not yet making the full ARC towards its OPEB plan. City has authorized phased-in funding.
LIVERMORE	Not fully funded. City contributes to an irrevocable trust for the purpose of funding OPEB and is working with bargaining units to modify benefits and fully fund ARC.
NEWARK	No. City is on a pay-as-you-go plan. The only OPEB offered is the PEMHCA minimum at \$115 per month.
OAKLAND	Not fully funded and is on a pay-as-you-go basis.
PIEDMONT	The city funds the current retiree cost out of the general fund plus an additional \$312,000 into the city's OPEB trust. The city contributed an extra \$200,000 in FY2013.
PLEASANTON	Not fully funded. City has set up a trust fund at CalPERS. Fully funded ARC for last 5 years.
SAN LEANDRO	The city reports it is meeting current obligations, but OPEB is not fully funded for future obligations. Budgeting future funds to reduce liability.
UNION CITY	Currently sets aside ARC. OPEB is 50% funded.

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AGENCY	RESPONSE
AC TRANSIT	AC Transit has two plans – neither is fully funded. One is a pay-as-you-go plan.
AC WATER DISTRICT	Paying ARC into a CERBT trust.
BART	Yes.
CV SANITARY	OPEB is not fully funded. CV Sanitary pays the ARC (or close to the ARC) to a CERBT fund.
DUBLIN-SR SERVICES	As of June 30, 2013 the district is fully funded.
EBMUD	Not fully funded but making 100% contributions to pre-fund monthly subsidy amounts and amortizing the unfunded actuarial accrued liability over 19 years.
EBRPD	No. It is 46% funded. However, the district’s OPEB obligation is fully funded on an actuarial basis with additional payments made toward the UAAL.
EDEN TOWNSHIP HEALTH CARE	N/A
HARD	The district is making its annual ARC payments.
LARPD	The district has no liability for OPEB.
ORO LOMA	Yes.
PORT OF OAKLAND	No. OPEB is 22.5% funded. The Port contributes 100% of the ARC.
STOPWASTE	No, but the agency makes the required payments to a trust (managed by PERS) for the normal cost of the benefit & towards its UALL.
UNION SANITARY	48% funded as of June 2013, based on actuarial value of assets from OPEB statements. Making full actuarial required contributions.
WASHINGTON HOSPITAL	All OPEB are not funded, but are paid as needed.

13. What is your vacation accrual policy? For example, the number of vacation days earned per year, based on the years of service.

All agencies answered vacation time is earned based on years of service. The average vacation accrual for full time employees for all agencies combined ranged from 11-26 days per year, with the following exceptions:

- AC Transit, Berkeley and Oakland: 10-30 days per year
- Newark: 10-33 days per year
- Fremont: 12-33 days per year
- BART: 15-30 days per year
- Dublin-SR Services: 10-40 days per year

14. What is the maximum amount of vacation that can be accrued by an employee?

While BART and AC Water District have no vacation accrual limits, Washington Hospital is the highest – reporting 640 hours maximum.

AGENCY	RESPONSE	AGENCY	RESPONSE
ALAMEDA COUNTY	2 times the annual accrual rate	AC TRANSIT	6 weeks for ATU; 240 hours for others
ALAMEDA	2 weeks – 320 hours	AC WATER	The district does not have a maximum allowance
ALBANY	250-300 hours; 408 hours for fire	BART	No maximum
BERKELEY	320 hours	CV SANITARY	2½ times the annual accrual rate or 430 hours
DUBLIN	360 hours	DUBLIN-SR SERVICES	2 times the accrual rate
EMERYVILLE	2 times the accrual rate	EBMUD	400 hours
FREMONT	226-504 hours; 590 hours for firefighters	EBRPD	Not more than the preceding calendar year earned + 12 days
HAYWARD	2 times the annual cap (+40 hours for certain classifications)	EDEN TOWNSHIP HEALTH CARE	40 days
LIVERMORE	300-480 hours	HARD	400 hours
NEWARK	160-462 hours; No maximum for employees of the police association	LARPD	192-384 hours
OAKLAND	2 times the annual accrual rate (No maximum for police)	ORO LOMA	25 days per year or 2½ times the annual accrual rate
PIEDMONT	2 years (except city administrator who has no maximum)	PORT OF OAKLAND	25 days per year
PLEASANTON	200-288 hours	STOPWASTE	400 hours
SAN LEANDRO	2 to 4 years depending on classification	UNION SANITARY	200-360 hours
UNION CITY	2 times the annual accrual rate. Police management 560 hours maximum; Department heads, management & city manager – no maximum	WASHINGTON HOSPITAL	640 hours

15. Can vacation days be carried over to subsequent years? If yes, what is the maximum number that can be carried over?

All agencies allow vacation days to be carried over with restrictions that range from a limited number of days/hours to limits based on the employee's yearly vacation accrual or maximum accrual. Only CV Sanitary and the city of Emeryville reported that they have no limit to the number of vacation days that can be carried over.

16. Are employees allowed to sell back vacation time? If so, how much can they sell back and over what time period?

The following eight agencies report that employees are not allowed to sell back vacation time: AC Transit, Eden Township Health Care, LARPD, StopWaste, and the cities of Berkeley, Dublin, Emeryville, and Hayward.

Sixteen agencies report that while vacation time is allowed to be sold, there are limits to the number of days that can be sold annually. For example, EBMUD reports up to 80 hours maximum can be sold, while EBRPD allows sell back only with approval. AC Water District does not allow sell back, but an employee must take a cash payout if accrued balances are in excess of the allowed limit. BART employees can buy back up to 60 hours vacation if they have a balance of 4 weeks or more, and the Port of Oakland reports that employees can sell back 100% of vacation at any time.

17. Does vacation sell back increase an employee's total compensation when calculating retirement benefits?

All but three agencies responded no. It is worth noting that agencies generally indicated that CalPERS excludes all vacation cashed out from being reported as compensation. Washington Hospital responded yes, while Alameda County replied yes for employees hired before 2013. The city of Albany indicated that fire personnel could sell back up to three shifts.

18. Do you have a comp time policy for employees? How is comp time accrued? Please explain.

Three agencies, AC Transit, Eden Township Health Care and Washington Hospital, responded that they do not have a comp time policy.

Of the agencies that do offer comp time, nearly every agency responded that comp time is earned at a rate of 1½ hours for every hour worked in excess of the work week. For employees, the maximum accrual limits varied from 40-240 hours per year, with the overall countywide average of 120 hours per year. Police and fire typically are allowed to accrue more comp time hours, ranging from 80-480 hours per year, with safety employees of San Leandro and Fremont, and fire employees of Hayward having the maximum accrual limit of 480 hours.

19. Do you offer other leave time for employees, such as personal days, floating holidays, or management leave? Please describe the total days provided to employees for each category offered. Can any of these days be sold back?

Floating holidays are offered by all but five agencies, and most offer one to four days per year, with the exception of Alameda County which offers up to seven days of management leave per year for certain classifications. Some agencies allow sell back or conversion of floating holidays to sick or vacation leave if not used by the end of the year. Of the agencies that offer no floating holidays, they do offer management or personal leave.

Nearly every agency offers management or administrative leave to certain employees, ranging from 30-160 hours per year. Most agencies report this leave can be sold back with certain limitations.

Some agencies offer personal time in lieu of floating holidays, ranging from 8-80 hours per year, with the average being 40 hours per year. These agencies reported that this leave cannot be sold back, with the exception of the city of Piedmont, which allows three days to be converted to cash for certain positions. The city of Newark also allows the conversion of one sick day to one personal leave day.

The Port of Oakland offers one floating holiday (which can be converted to cash), 12 holidays, two half days (on Christmas Eve and New Year's Eve), 75 hours of management leave depending on classification, and sick leave can be converted to a maximum of four days of personal leave, and up to 10 days of family illness leave. In addition, effective January 2013, some Port employees are eligible to take 12 additional leave days, which cannot be cashed out, and expire in 2015.

20. What is your agency's sick time accrual policy?

The majority of cities and agencies offer full time employees eight hours of sick leave per month (or four hours per pay period). The cities of Piedmont and Emeryville offer 15 days per year. Eden Township Health Care offers two hours per pay period after three days PTO (personal time off) is used. The city of Dublin offers time in lieu of traditional sick or vacation leave, at rates varying from 22-31 days per year depending on seniority and classification. The city of Albany did not specify how sick leave is accrued, but has a 1,440 hour accrual cap annually.

21. Can an employee sell or trade sick time for any type of paid leave? If yes, please explain.

Nineteen agencies reported that they do not allow the sale or trade of sick time. Ten agencies reported as follows:

AGENCY	RESPONSE
BERKELEY	Upon retirement, employees can use a portion of sick leave to obtain additional service credit with CalPERS.
FREMONT	The city has a sick leave incentive plan that is available to certain employees. The plan, which has restrictions, allows for payment of some accumulated but unused sick leave at the end of each fiscal year. For certain classifications, if sick leave balances are high or not used, 24 hours of personal use time is offered to the employee. Personal time not used will be paid to the employee.
HAYWARD	Employees can receive sick leave payout upon separation or retirement after 20 years of service, based on a formula.
OAKLAND	Sick leave portions may be sold back or converted to vacation, depending on bargaining unit. For safety employees, once 480 hours of sick leave is reached, 50% of the excess is converted to vacation hours.
SAN LEANDRO	Upon separation or retirement, employees can apply their sick leave balances towards retirement service credit or partial payout. Payout for unused sick time is granted to employees with at least 15 years of service at retirement or resignation, based on a specified formula.
UNION CITY	Sick leave can be exchanged for personal leave on an annual basis.
AC WATER DISTRICT	The employee upon retirement from CalPERS can convert unused sick time into service credits.
BART	Yes, cash buy back.
EBMUD	Employees who have not used more than 18 hours of sick leave in a 6-month period are eligible to convert up to 16 hours into vacation or cash payment.
STOPWASTE	Any sick time in excess of 192 hours may be converted to vacation time. Upon retirement, employees can cash out one-half their sick leave hours.

22. Is there a limit to the number of total sick days an employee may carry? After the limit is reached, what happens to the excess sick days? For example, are days converted to other types of leave or into vacation days?

The cities of Emeryville and Piedmont, as well as Dublin-SR Services, AC Water District and LARPD have no limit on the number of sick days an employee may carry, and did not report any restrictions. The city of Albany has no limit on the number of sick days that police or fire may carry.

Eden Township Health Care: N/A.

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The remaining agencies responded as follows:

AGENCY	NUMBER OF SICK DAYS/HOURS AN EMPLOYEE MAY CARRY	EXPLANATION
ALAMEDA COUNTY	No limit or up to 125 sick days, depending on the employees' group	Once the maximum is reached, five days of sick time is converted to one day of vacation time
ALAMEDA	No limit	Sick days may not be converted
ALBANY	No limit for police and fire 1,440 hours for non-safety employees	If cap is reached, no more accrual
BERKELEY	1,800 to 2,376 hours for sick leave for fire working a 56 hour week, and depending on the years of service 1,200 to 1,584 hours for sick leave for fire working a 40 hour week, and depending on the years of service 1,200 to 3,100 hours for sick leave for police 200 sick days for non-safety employees	The sick days can be sold back, based on a formula. [Unclear if this is for all employees or only non-safety]
DUBLIN	Employee sick leave bank is an overflow of general leave accrual up to 360 hours; when both general leave and sick leave banks reach 360 hours each, accrual stops	
FREMONT	No limit for those bargaining units which have a sick leave bank	
HAYWARD	No limit	Sick days may not be converted
LIVERMORE	No limit	Sick leave is not paid out upon separation. The city has contracted for the sick leave option with CalPERS
NEWARK	960 hours sick time (pro-rated for part-time employees)	Anything over the limit is placed in a retirement service credit bank. This is done on a quarterly basis.

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AGENCY	NUMBER OF SICK DAYS/HOURS AN EMPLOYEE MAY CARRY	EXPLANATION
OAKLAND	<p>2,338 hours of sick leave for safety-fire (sick days cannot be converted)</p> <p>480 hours of sick leave for safety-police (after the limit is reached, 50% of the excess hours are converted to vacation time)</p> <p>150 sick days for miscellaneous employees (employees can elect to sell back or convert the excess hours to additional days of vacation)</p>	
PLEASANTON	No limit	Sick time accumulated after 180 days (1,440 hours) may only be used towards additional years of retirement service credit in the CalPERS pension program.
SAN LEANDRO	<p>2,400 hours sick leave for safety employees</p> <p>2,000 hours sick leave for non-safety employees</p>	Accrual will stop when maximum is reached, for both miscellaneous and safety employees.
UNION CITY	No Limit	Upon retirement, sick days are reported to CalPERS for conversion to service credit.
AC TRANSIT	No limit	Upon retirement, an employee may cash out sick leave, transfer it to their 457 deferred contribution plan, or transfer it to a medical pre-tax plan to pay for retiree premiums for up to one year.
BART	<p>2,000 hours for non-represented employees</p> <p>250 working days for SEIU and ATU members.</p> <p>2,500 hours for BPMA, AFSCME, and BPOA members</p>	After the limit is reached, sick time no longer accrues.
CV SANITARY	No limit	Payment for accumulated sick leave upon retirement is governed by the CV Sanitary policies & procedures manual.
EBMUD	1,040 hours of sick leave	Excess sick time is applied to a service extension credit account that is used to supplement an employee's length of service.

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AGENCY	NUMBER OF SICK DAYS/HOURS AN EMPLOYEE MAY CARRY	EXPLANATION
EBRPD	No limit	Employees with over 10 years of service, can, depending on employment type, cash out sick days at the end of their employment at various rates.
HARD	No limit	Upon retirement, any remaining sick time gets converted to service credit in retirement plan with CalPERS.
ORO LOMA	No limit	Sick days may not be converted into any other type of leave.
PORT OF OAKLAND	150 sick days for IBEW & SEIU members 60 sick days for other employees No limits for IFPTE & WCE	Sick days can be converted to vacation days or cash at a 3 to 1 ratio, with a maximum of 4 vacation days or 4 days converted to cash.
STOPWASTE	No limit	Conversion is sometimes permitted. Sick time in excess of 192 hours may be converted to vacation time. Upon retirement, employees can cash out one-half of their sick time hours.
UNION SANITARY	No Limit on sick days in the Catastrophic Sick Leave Bank	Sick days cannot be converted, but can be exchanged upon retirement for service credit with CalPERS.
WASHINGTON HOSPITAL	480 hours of sick leave for a CNA nurse	After the limit is reached, up to 4 hours of vacation time can be accrued for each pay period in which the sick leave balance is 480 hours.

23. Does your agency offer health insurance or other types of health care benefit?

All 30 agencies offer health insurance or health care benefits, ranging from Kaiser to HMOs and PPOs.

24. What percentage of total pay do employees contribute to health plan costs (insurance plans)? What percentage does your agency contribute?

For agencies that pay the equivalent of the Kaiser rate, if an employee chooses a more expensive health plan, the employee pays the difference. For agencies that pay a set maximum monthly amount, if the employee chooses a less expensive plan, the employee does not get the difference in cost reimbursed. The answers listed below reflect the amount each agency pays, whether a set monthly amount or the Kaiser equivalent.

response continued on next page

AGENCY	RESPONSE
ALAMEDA COUNTY	The county contributes 90% of the total monthly premium of an HMO plan or 90% of the lowest cost HMO toward the total monthly premium of the PPO at the corresponding level of coverage.
ALAMEDA	The amount the city contributes varies by bargaining unit & plan selected, ranging from \$230-\$2,040.
ALBANY	The city contributes up to the cost of Kaiser level coverage (single, 2-party or family plans).
BERKELEY	The city pays 100% of the premium for employees enrolled in Kaiser. (2014 Kaiser rates are: \$560/month single; \$1,121/month 2-party; \$1,491/month family.)
DUBLIN	Contributions vary depending on plan chosen. The city contributes from 66-83% and the employee contributes 17-34%.
EMERYVILLE	Employee pays 11% and city pays 89%.
FREMONT	A fixed dollar amount if offered depending on bargaining unit and plan chosen, on average \$1,578/month.
HAYWARD	The city pays 100% of the cost of most health plans; 90% for unrepresented employees; and 80% for the mayor & council.
LIVERMORE	Varies depending on bargaining unit and plan chosen. The least an employee could contribute is \$0 per year, while the most would be \$19,638 per year.
NEWARK	City only pays CalPERS required minimum. The 2013 minimum was \$115 per month per employee (\$119 for 2014). Employee is responsible for all remaining costs.
OAKLAND	The city contributes 100% of the Kaiser rate for full-time employees; 65% for part-time employees.
PIEDMONT	The employer pays 100% of the Kaiser rate. (The city in its new contracts will require equal cost sharing for any medical increases above the Kaiser rates.)
PLEASANTON	The city pays up to a maximum of \$1,830 per month for full-time employees.
SAN LEANDRO	The city pays approx. 8.4% towards total health costs. The city contributes a fixed amount based on plan chosen, ranging from \$610 for single to \$1,587 or a family plan
UNION CITY	Varies by bargaining group, but all bargaining groups have cafeteria plans. Caps are either \$1,336 or \$1,447 per month. Employee pays on average 19.82% and the city pays on average 80.18%.
AC TRANSIT	Recent labor agreement has employees paying \$120 per month for medical premiums. (Source: final contract, adopted January 2014)
AC WATER DISTRICT	100% employer paid. Employees pay 0%.
BART	Employee maximum monthly share is \$128.12 plus any amount that exceeds employer share of \$10,302 annually for single; \$19,717 annually for 2-party; and \$25,367 for family plan.
CV SANITARY	Employees may participate in the CalPERS health plan up to the Kaiser employee +2 cost. Beginning 3/2012, all employees pay 50% of any premium increases based on the 2011 Kaiser rates.

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AGENCY	RESPONSE
DUBLIN-SR SERVICES	Varies depending on plan chosen. On average, for 2013, district pays 88.1% and employees' pay 11.9%. There is a cost sharing formula of 60/40 wherein the district and employees share the increased costs over the 2007 rates. (For 2013: Employee only – district paid \$591 and employee paid \$76 per month; Family plan – district paid \$1,535 and employee paid \$199 per month).
EBMUD	Varies depending on plan chosen: Kaiser: employee pays 0%, district pays 100%; HealthNet & Anthem – employee pays 0-15% and district pays 85-100% depending on single or family plan.
EBRPD	For non-POA, the district pays 100% of the Kaiser plan for each level (single, 2-party, family). For POA, the district pays the benefit average rate.
EDEN TOWNSHIP HEALTH CARE	Employee contribution is 5%, agency contribution is 95% up to a maximum of \$1,200 per month.
HARD	The District pays 100% of the lowest cost health care insurance for employees and their family.
LARPD	Employee contributes 17.6%, while LARPD contributes 82.4%.
ORO LOMA	The district pays the CalPERS PEMHCA minimum employer contribution, or 6.6-17.2% of the health premiums. The employee pays 82.8-93.4% of the health premiums through a flexible benefits plan.
PORT OF OAKLAND	Employees contribute 0% (unless they choose a family plan more expensive than the Kaiser equivalent plan). The Port contributes 100% up to the Kaiser family plan rate.
STOPWASTE	StopWaste pays 100% of the premium for employees hired before 1/1/07; HMO rate for employees hired after.
UNION SANITARY	Average employee contribution: 0.44% of total pay; Average district contribution: 15.96% of total pay.
WASHINGTON HOSPITAL	Health plans are offered at no cost to employees.

25. Are employees of your agency offered vision benefits?

Yes, all but one city (Albany) offers its employees vision benefits, while the city of Berkeley offers vision benefits to only 16 employees in one union. While some agencies offer the benefit and others require that the employee pay 100% of the premium, three agencies offer a maximum yearly reimbursement (CV Sanitary - \$350 per year maximum reimbursement; HARD - \$375 per year maximum; and LARPD - \$500 per year maximum.)

26. Are employees of your agency offered dental benefits?

Yes, all cities and agencies offer dental benefits through a group plan. Some require that the employee pay the full premium.

27. What is the maximum dollar contribution your agency makes for each employee's health care coverage annually? Please include the different costs of coverage for health, dental, vision and prescription drug plans.

All agencies offer health care benefits* with employer contributions ranging from the city of Newark contributing a maximum of \$1,428 annually per employee, to StopWaste which provides up to \$39,471 annually (for employees hired before 2007). Washington Hospital reported that it is self-insured, but estimated family coverage per employee costs approximately \$26,629 annually. Alameda County reported that family coverage costs \$28,488 annually per employee, while EBRPD and the city of Hayward spend about \$27,000. AC Water District, Union Sanitary and BART spend approximately \$25,000 annually for similar coverage.

**The Grand Jury is reporting the highest amounts paid per agency for a family health, dental and vision plan.*

28. Are dependants, spouses, or domestic partners offered or included in health plans? Please define.

Yes – every agency reported they offer health coverage to an employee's spouse, domestic partner and dependants. These plans include coverage for children up to the age of 26. Some limitations apply; for example, LARPD, as well as the cities of Pleasanton, Union City and Livermore, reported that coverage is paid for by the employee if the rate exceeds the maximum agency contribution.

29. Will the Affordable Health Care Act affect the cost of health care benefits in your agency? If yes, please explain.

While six agencies reported that they expect no affect from the Affordable Health Care Act, twelve were unsure what the future affect would be. Twelve agencies reported that the expected affect would be increased premium costs (some reporting a range from 1%-7%) either paid by the city or passed along to employees.

30. Does your agency offer a medical reimbursement, prescription drug reimbursement, cafeteria, or flex spending account to employees? Please describe.

All but three agencies, CV Sanitary, Eden Township Health Care and HARD, offer a flex spending account or a cafeteria plan. Seven agencies specified their accounts were voluntary only and fully paid by the employee.

31. Are employees eligible to receive vehicle stipends or commuter benefits? If yes, please describe your policy.

Twenty-four agencies offer various benefits, such as vehicle allowances or stipends to upper management (city managers, general managers and department heads); company vehicles for official use; or allowances or reimbursements for personal vehicles used for official business. BART offers free rides on BART to its employees and their families. A number of agencies allow employees to use pre-tax dollars for commuter benefits.

32. Does your agency offer an employer sponsored deferred compensation plan for employees? If yes, does your agency make any contributions to such accounts?

All agencies reported they offer employer sponsored deferred compensation plans in which employees may voluntarily invest pre-tax dollars similar to a 401K plan. Twelve agencies make no employer contributions. Five agencies match contributions made by employees with set limits (CV Sanitary, StopWaste, Union Sanitary, Oro Loma and Washington Hospital). Eight agencies (the cities of Alameda, Dublin, Fremont, Livermore, Newark, AC Water District, Dublin-SR Services, and Alameda County) contribute toward upper management deferred compensation plans; noteworthy are Alameda County's contributions:

- Alameda County contributes \$8,000 annually to members of the board of supervisors, \$17,000 annually to appointed department heads, and \$22,500 annually to elected department heads.

Five agencies make the following contributions:

- Within the city of Albany, if an employee can show proof of independent health insurance coverage in lieu of the city's plan, the city will contribute an amount equal to the Kaiser one-party premium to a deferred compensation account in the employee's name.
- The city of Oakland contributes to part-time employees in lieu of paying social security.
- The city of Union City contributes \$100 per month in lieu of health plan options, and contributes \$100 per month to the city manager and management employees.
- AC Transit contributes \$600-\$800 per year.
- Eden Township Health Care matches dollar for dollar up to 5% of employee compensation.

33. Are there special benefits available to management employees that are not available to non-management employees? If yes, please describe.

The cities of Alameda, Berkeley, and Dublin, as well as Eden Township Health Care and LARPD responded that there are no special benefits available to management employees that are not available to non-management employees. The remaining agencies responded as follows:

	SPECIAL BENEFITS AVAILABLE TO MANAGEMENT ONLY
ALAMEDA COUNTY	Elected and appointed department heads receive a contribution to the IRC 401(a) plan – a defined contribution plan.
ALAMEDA	Miscellaneous and management employees are offered 24 hours of floating holidays annually. Select department heads receive \$200 a month for auto allowance.
EMERYVILLE	Administrative leave of up to two weeks annually. Management employees are eligible for automobile allowance.
FREMONT	Employees in FAME, FPMA and unrepresented Fremont officials receive non-accruable leave, based on bargaining unit and length of service, ranging from 10 days to 14.5 days, based on an eight hour day, each fiscal year. The city contributes to between 2% to 3.4% of base wage to the 401(a) accounts of certain management employees or city officials, and between \$4,000 to \$17,500 to the 457 accounts of other management employees. The city manager receives an additional \$11,344 annually.
HAYWARD	If applicable, executive employees may receive a cell phone allowance of up to \$1999.90 in lieu of a city issued phone.
LIVERMORE	Management employees are eligible to be reimbursed up to \$75 for a health club membership. Executive management employees are eligible to be reimbursed up to \$100 for a health club membership.
NEWARK	Employees in the confidential group, city officials, management, supervisory and the professional groups receive \$100 per month which is put into their retirement health savings plan. City officials and department heads receive an auto allowance of \$400 per month.
OAKLAND	Executive vacation leave for new hires only and two weeks of management leave in lieu of overtime.
PIEDMONT	Management receives a vehicle stipend. City administration and department heads also receive cell phones.
PLEASANTON	If any benefits are available to only management employees, they are explained as part of the response to each question.
SAN LEANDRO	Management employees receive incentive pay at the rate of 80 hours per year and department heads receive incentive pay at the rate of 120 hours per year. Management employees receive \$750 a year for personal development, which includes, but is not limited to, career development courses, computer/software purchases, and health club membership. Management employees are eligible for tuition reimbursement.
UNION CITY	Management employees receive administrative leave and a monthly contribution of \$100 to a 401(a) plan.
AC TRANSIT	Contributions to a 457 deferred compensation plan. 40 hours of management leave annually. Parking on the property.

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AGENCY	SPECIAL BENEFITS AVAILABLE TO MANAGEMENT ONLY
AC WATER DISTRICT	Management leave of 72 hours annually for confidential and professional staff and 88 hours annually for supervisors, managers, and board appointed staff. \$500 annually for professional development related materials. Management is eligible for reimbursement up to 50% for internet service and 100% reimbursement for pre-approved job related software.
BART	Yes, depending on their individual employment contract.
CV SANITARY	The general manager receives \$4,800 matching deferred compensation annually.
DUBLIN-SR SERVICES	No, but as explained in other responses, the level of certain benefits provided to management are different.
EBMUD	Managers and supervisors who are exempt receive 7 paid administrative leave days per payroll calendar year, which are forfeited if not taken by the end of the last pay period of the year.
EBRPD	Management employees may elect to participate in a voluntary 401 (a) deferred compensation plan. There are no employer contributions.
HARD	Administrative leave hours. Auto allowance.
ORO LOMA	Management and confidential employees are eligible for the defined contribution plan described in response to question 36. Management and confidential employees are entitled for reimbursement to a maximum of \$1,000 annually, for expenses related to health and fitness.
PORT OF OAKLAND	Auto allowance, ranging from \$100 to \$675, depending on the employee's job classification.
STOPWASTE	Administrative leave for exempt employees (non-exempt receive overtime). The executive director is vested for post-retirement medical benefits, but subject to the payment limits on medical benefits consistent with other employees hired after 2007.
UNION SANITARY	Coaches and managers receive a \$310 monthly car allowance. Unclassified employees, coaches, and managers receive a district contribution/ match to their deferred compensation accounts, no greater than \$3,050 to \$4,200 annually. Unclassified exempt non-managers, coaches and managers receive 40 hours of administrative leave as well as a longevity benefits program. Managers receive 40 hours of holiday of employee's choice as well as an additional 40 hours of management administrative leave paid, not taken – for managers hired before December 31, 2012.
WASHINGTON HOSPITAL	Auto allowance is provided for members of the executive staff who use their cars for hospital business.

34. Does your agency offer free meals to employees? If yes, under what circumstances?

Fifteen agencies – Alameda County, AC Transit, AC Water District, BART, EBRPD, HARD, Eden Township Health Care, and the cities of Albany, Berkeley, Fremont, Livermore, Newark, Oakland, Union City and San Leandro responded that they do not offer free meals to their employees.

response continued on next page

The remaining 15 agencies responded as follows:

AGENCY	SUMMARY OF RESPONSE
ALAMEDA	A meal allowance may be provided in certain overtime situations, depending on bargaining unit, and ranges from \$19 to \$24, as well as a meal at an average restaurant with no luxury items.
DUBLIN	No. The city business travel policy complies with AB1234 for meal allowances while on city business.
EMERYVILLE	Meals are offered at appreciation/recognition events and as part of travel expenses.
HAYWARD	No. However, some employees may be granted a meal allowance if they are required to attend an evening meeting or if they work 2 hours of overtime.
PIEDMONT	No. However, if an employee is required to attend a city meeting during non-business hours, a meal may be provided.
PLEASANTON	In accordance with policy regarding attendance at conferences and meetings, meals are provided. Non-management and non-public safety employees receive a meal allowance when required to work 12 consecutive hours.
CV SANITARY	Meals are rarely provided. Occasionally food will be provided at meetings.
DUBLIN-SR SERVICES	No. However a meal allowance of \$10 is provided to Local 39 employees on days on which they work 4 or more hours of overtime.
EBMUD	A meal allowance of \$18 is provided when employees are required to work overtime for more than two hours without advanced notice.
LARPD	No. The only free meals are food provided during training sessions.
ORO LOMA	The district provides meals at certain events, such as employee recognition meetings, 4 to 5 times a year.
PORT OF OAKLAND	No. However, certain employees working overtime, as provided in the memorandum of understanding, can receive an \$18 meal allowance.
STOPWASTE	Meals are provided in connection with recognition and training events.
UNION SANITARY	Meals are provided in connection with continuing work and employee recognition events. The cost of the meals is subject to taxes.
WASHINGTON HOSPITAL	Only in certain rare circumstances.

35. Does your agency allow employees to telecommute? If yes, please describe.

Eighteen agencies – AC Water District, CV Sanitary, EBRPD, Eden Township Health Care, HARD, Oro Loma, Port of Oakland, Union Sanitary, Washington Hospital, and the cities of Alameda, Berkeley, Dublin, Emeryville, Livermore, Newark, Oakland, Piedmont and San Leandro responded that they do not allow employees to telecommute and did not report any exceptions.

response continued on next page

The remaining 12 agencies responded as follows:

AGENCY	SUMMARY OF RESPONSE
ALAMEDA COUNTY	Telecommuting is only allowed on an exceptional basis.
ALBANY	No. However, occasionally some exempt management employees may telecommute.
FREMONT	Yes, according to a telework policy. Only 3 to 4 employees out of about 840 employees participate in the program.
HAYWARD	No formal policy or program. However, at the discretion of the city manager or his designee, some employees may occasionally be allowed to telecommute.
PLEASANTON	No formal telecommute policy. However, on a case by case basis, and with the department director's authorization the city allows employees to telecommute.
UNION CITY	Yes, but on an exception only basis.
AC TRANSIT	Yes, under certain circumstance and must be approved by the employee's supervisor or manager.
BART	A pilot program is being offered to AFSCME union members only.
DUBLIN-SR SERVICES	No, however, exempt employees are occasionally allowed to work from home in limited amounts with their supervisor's approval.
EBMUD	Employees whose job duties are appropriate for telecommuting may apply for the District's Telecommuting Program, based on compliance of program guidelines.
LARPD	No. However, in special circumstances, it is allowed.
STOPWASTE	Yes, subject to the needs of the agency.

36. Does your agency offer other benefits or perks to employees, such as, but not limited to: free parking, free or subsidized public transit, free gym membership, childcare subsidies, housing assistance, or tuition assistance? If yes, please list all benefits.

Of the 30 agencies surveyed, the following other benefits were reported:

- ◆ 26 offer some form of tuition assistance
- ◆ 13 offer free parking
- ◆ 7 offer free gym memberships
- ◆ 7 offer share-the-cost public transportation, carpooling, or free transportation
- ◆ 3 offer some type of childcare reimbursement
- ◆ 4 have free Employee Assistance Programs
- ◆ 3 offer management development or education incentives to managers
- ◆ 2 offer uniform allowances.

Additionally, the Port of Oakland offers a cell phone allowance; Dublin-SR Services offers computer loans for its employees; AC Transit has a wellness program that provides gift cards as incentives to its employees, as well as cost offsets for childcare, summer camps and SAT prep courses; and BART offers a physical fitness incentive program and various discounts for services from local retailers.

37. Does your agency offer life, death or disability insurance to employees? Please describe.

Every agency surveyed offered life, death or disability insurance with the exception of Eden Township Health Care which reported they participate in long and short term disability plans, but did not specify that life insurance was offered. The chart below indicates the amounts of life insurance offered by each agency. The amounts of life insurance varied greatly depending upon job classification (management vs. non-management).

AGENCY	AMOUNT OF LIFE INSURANCE OFFERED	AGENCY	AMOUNT OF LIFE INSURANCE OFFERED
ALAMEDA COUNTY	\$9,000-\$15,000 unrepresented employees depending on bargaining unit; \$12,000 for deputy sheriff's association; \$25,000 for managers	AC TRANSIT	\$30,000 for IBEW employees; 2x annual salary for AFSME & unrepresented employees
ALAMEDA	\$50,000-\$100,000 depending on bargaining unit	AC WATER DISTRICT	1.5x the annual salary up to \$250,000 for management, confidential & professional staff; 1x annual salary up to \$150,000 for OE3 employees
ALBANY	\$20,000 for miscellaneous & police; \$50,000 for management and fire	BART	Basic life insurance offered (unspecified amount)
BERKELEY	\$25,000 for SEIU & unrepresented employees; \$50,000 for Local One, IBEW, police & fire employees, assistant fire and battalion chiefs	CV SANITARY	\$50,000
DUBLIN	\$50,000	DUBLIN-SR SERVICES	Annual salary with \$50,000 maximum for Local 39; 2x the annual salary for management and professional staff; 2x annual salary for the general manager
EMERYVILLE	\$50,000 or twice the income of the employee	EBMUD	1.5x the annual salary up to \$750,000 maximum

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AGENCY	AMOUNT OF LIFE INSURANCE OFFERED	AGENCY	AMOUNT OF LIFE INSURANCE OFFERED
FREMONT	\$50,000 non-management; \$100,000 managers; \$250,000 city manager & city attorney	EBRPD	Life insurance offered (unspecified amount)
HAYWARD	\$25,000-\$50,000 for SEIU & Local 21; 1x annual salary for unrepresented, police management, fire officers & chief, mayor & city council	EDEN TOWNSHIP HEALTH CARE	(No response regarding life insurance)
LIVERMORE	Basic term life (unspecified amount)	HARD	\$40,000 for full time employees
NEWARK	\$20,000	LAPRD	\$50,000 for full time employees; \$20,000 for part time employees
OAKLAND	Life insurance offered (unspecified amount)	ORO LOMA	\$20,000
PIEDMONT	\$0.16 per \$1,000 of salary	PORT OF OAKLAND	1x annual salary (up to a maximum amount depending on job title)
PLEASANTON	\$35,000 for PCEA; \$50,000 for public safety; \$100,000 for management & confidential (the cost to employees for life insurance ranges from \$4.52-\$12.90/month)	STOPWASTE	Life insurance employer paid (unspecified amount)
SAN LEANDRO	\$20,000 non-management; \$50,000 management. Safety employees are not covered.	UNION SANITARY	Classified: \$25,000 for employees; \$5,000 for dependant child, spouse, domestic partner; unclassified: \$5,000 to \$160,000 maximum; \$5,000 for dependant child, spouse, domestic partner
UNION CITY	\$25,000, \$50,000 or \$100,000 depending on bargaining unit	WASHINGTON HOSPITAL	\$10,000 for union, hourly, part time employees; 1x salary plus \$10,000 for full time exempt employees

ACRONYMS USED IN THIS REPORT

AARP	American Association of Retired Persons
AC	Alameda County
AC Transit	Alameda Contra Costa Transit District
AC Water	Alameda County Water District
ACERA	Alameda County Employees' Retirement Association
ACMEA	Alameda County Management Employees' Association
AFSCME	American Federation of State, County and Municipal Employees, AFL-CIO
ALE	Association of Livermore Employees
ARC	Annual Required Contribution or Actuarial Required Contribution
ATU	Amalgamated Transit Union
BART	Bay Area Rapid Transit District
BPMA	BART Police Management Association
BPOA	BART Police Officers' Association
CalPERS	California Public Employees' Retirement System
CAP	Career Average Pay
CEA	City Employees' Association (city of San Leandro)
CERBT	California Employer's Retiree Benefit Trust
Classic Employee	Hired before 1-1-2013 (prior to PEPR)
CNA	California Nurses Association
COBRA	Consolidated Omnibus Budget Reconciliation Act – continuation of health coverage for a limited time period
COLA	Cost of Living Adjustment
CV Sanitary	Castro Valley Sanitary District
DSA	Deputy Sheriffs' Association
Dublin-SR Services	Dublin San Ramon Services District
EBMUD	East Bay Municipal Utility District
EBRPD	East Bay Regional Park District
Eden Township Health Care	Eden Township Health Care District
FAME	Fremont Association of Management Employees
FPMA	Fremont Police Managers' Association
FT	Full Time Employees
FY	Fiscal Year
HAME	Hayward Association of Management Employees
HARD	Hayward Area Recreation District
HMO	Health Maintenance Organization
HPOA	Hayward Police Officers Association
HR	Human Resources
IAFF	International Association of Fire Fighters (AFL-CIO)
IFPTE	International Federation of Professional & Technical Engineers (Port of Oakland)
IBEW	International Brotherhood of Electrical Workers
IRC 401(a)	Internal Revenue Code Retirement Plan
JPA	Joint Powers Authority (city of Albany)
LARPD	Livermore Area Recreation & Park District
MISC	Miscellaneous (employee)
MOU	Memorandum of Understanding

ACRONYMS USED IN THIS REPORT, continued

NEW EMPLOYEE	Hired after 1-1-2013 (after PEPRA)
OE3	Operating Engineers Local Union No. 3
OMERS	Oakland Municipal Employees' Retirement System
OPEB	Other Post Employment Benefits
Oro Loma	Oro Loma Sanitary District
PANS	(Alameda) Police Officers Association Non Sworn
PCEA	Pleasanton City Employees' Association
PEMHCA	Public Employees' Medical and Hospital Care Act
PEPRA	(California) Public Employees' Pension Reform Act
PERS	(See CalPERS)
PFRS	Police and Firemen's Retirement System
POA	Police Officers' Association
PPO	Preferred Provider Organization
PPOA	Probation Peace Officers' Association or Pleasanton Police Officers' Association
PT	Part Time Employees
Safety Employee	Classification that includes sworn peace officers and firefighters
SEIU	Service Employees' International Union
StopWaste	StopWaste.org
UAAL	Unfunded Actuarial Accrued Liability
Union Sanitary	Union Sanitary District
Washington Hospital	Washington Hospital Health Care System (District)
WCE	Western Council of Engineers (Port of Oakland)

CITY OF EMERYVILLE REDEVELOPMENT LOAN

EXECUTIVE SUMMARY

The Grand Jury received a complaint from a resident of Emeryville regarding a decision of the Emeryville City Council to allow a private shopping center developer to prepay in full the then \$18.3 million outstanding principal balance of a 25-year promissory note. The note had a fixed interest rate (i.e., the interest rate does not change, or “float,” over the term of the loan) payable to the city of Emeryville for \$12 million, an approximately 30% discount from what was owed. The developer suggested (and the city council agreed to) an unorthodox method for calculating the prepayment amount. According to accepted financial practices, the prepayment of a loan with a fixed interest rate is calculated so that if the prepayment is invested by the lender at current interest rates for the remaining term of the note, the full outstanding balance of the note will have been repaid by the original maturity date. The developer’s suggested approach would not have resulted in the total principal balance being repaid. The city council agreed to the prepayment as proposed by the developer. However, the law required prior approval by the city of Emeryville oversight board. Notwithstanding the recommendation of the city attorney supporting the prepayment, the oversight board relied on a memo from its outside legal counsel and did not approve the prepayment.

The Grand Jury heard testimony and concluded that the city did not perform adequate due diligence, did not retain experts for assistance and admittedly lacked the expertise to determine if the developer’s proposal was fair to the city. However, the oversight board, in performing its legislated duty to review the decisions of the city council, did not approve the proposed prepayment.

BACKGROUND

On September 23, 1999, the Emeryville Redevelopment Agency entered into a purchase and sale agreement to sell to a developer certain real property owned by the agency on which a shopping center was to be developed. Subsequently, on June 11, 2001, pursuant to the purchase and sale agreement, the developer acquired the subject property for \$25.5 million, of which \$1.8 million was paid in cash and the remaining \$23.7 million balance was to be repaid pursuant to a promissory note payable to the city over 25 years. In addition to fixed interest payments, the promissory note contained a contingent interest component pursuant to which the city would also be paid an agreed percentage of the shopping center’s net operating income in excess of a certain annual dollar benchmark.

Effective January 1, 2012, Assembly Bill 26 required the dissolution of all redevelopment agencies in California, and the transfer of their respective assets

to a “successor agency” selected by the city council of each municipality. To comply with the new law, the Emeryville City Council on January 17, 2012, selected the city of Emeryville (i.e., itself) to serve as the successor agency for the recently abolished Emeryville Redevelopment Agency. In addition, the new law established an oversight board for each municipality to review the winding down of each redevelopment agency by the successor agency.

In the first half of April 2013, the developer submitted to the Emeryville city manager a proposed Letter of Intent to prepay the \$18.3 million then-outstanding principal balance of the promissory note for a total of \$11 million. On April 16, 2013, the city council adopted a resolution authorizing the city manager to sign the Letter of Intent pursuant to which the promissory note would be prepaid for \$1 million more than offered by the developer (for a total of \$12 million). A revised Letter of Intent dated April 16, 2013 was signed by the city manager and the developer to prepay the promissory note for \$12 million.

On May 21, 2013, the city’s Economic and Housing Department wrote a memo to the city attorney recommending that, in accordance with the Letter of Intent, the city enter into a Note Prepayment Agreement with the developer to prepay the promissory note for \$12 million (which was approximately \$6 million less than the outstanding principal balance). On the same date, the city attorney wrote a similar memo to the interim city manager making the same recommendation. The Economic and Housing Department also wrote a memo dated July 2, 2013, that was substantively identical to its May 21 memo to the city attorney. On the same date, the Emeryville City Council adopted a resolution authorizing the Note Prepayment Agreement. One week later, the Grand Jury received the citizen complaint.

Once the city signed the Note Prepayment Agreement, the city attorney wrote a memo to the oversight board recommending approval. However, in a memo dated the same day, outside legal counsel for the oversight board recommended disapproval. Notwithstanding the recommendation of the city attorney to approve the Note Purchase Agreement, the Grand Jury heard testimony that the oversight board agreed with its outside legal counsel and did not approve it.

INVESTIGATION

The Grand Jury’s investigation was comprised of the following:

- Two witnesses were interviewed, one from the Economic and Housing Department and one associated with the oversight board;
- The Grand Jury viewed videos (available on the city’s website) of city council and oversight board meetings in which the prepayment was discussed;
- The Grand Jury reviewed publicly available memos from the director of Economic and Housing Department, the city attorney, and the outside legal counsel of the oversight board;

- The Grand Jury reviewed the various letters of intent that were submitted by the developer;
- The Grand Jury reviewed the Note Prepayment Agreement; and
- The Grand Jury conducted its own research to determine the proper methodology for calculating an appropriate prepayment amount.

The Grand Jury heard expert testimony that prepayments are typically calculated so that, if the prepayment sum is invested at current interest rates until the original maturity date, the lender would receive the entire principal balance due (i.e., the prepayment sum plus interest earned at the then-current rate over the remaining term of the note will equal the total owed to the lender). However, as discussed below, the method used by the developer would not have made the city whole.

Specifically, the developer proposed calculating the prepayment sum by discounting the outstanding balance of the note by 6%, which was the “capitalization rate” used to value shopping centers for investment or purchase. The capitalization rate is the net operating income of a property divided by its purchase price. The resulting percentage is then compared to the capitalization rate for other similar properties. The developer supported its position by providing an opinion from a real estate advisory firm who confirmed that most shopping centers were being sold at the time at a 6% “cap” rate. However, the developer only asked the real estate advisory firm for the shopping center cap rate, not for the usually accepted method for calculating a prepayment.

The Grand Jury learned that city staff involved in the transaction did not have a background in finance and were unfamiliar with the methods for calculating a prepayment. Similarly, the Grand Jury heard testimony that city staff had not previously used a cap rate to calculate a prepayment. Further, the city did not retain its own expert, but relied instead on an unpaid advisor who confirmed that 6% was indeed the current cap rate for shopping centers. Additionally, in the memos to the city council, the director of the Economic and Housing Department and the city attorney concluded that the contingent interest portion of the note (pursuant to which the city would also be paid an agreed percentage of the shopping center’s net operating income in excess of a certain annual dollar benchmark) had no value over the remaining 11-year term based on their conclusion that the shopping center had not performed as originally projected. However, the Grand Jury learned that the city only took into account the previous operating history of the shopping center (which included the worst real estate devaluation in decades) and it appears the city did not sufficiently take into account the likelihood that the economy would improve and the shopping center’s net operating income would grow over the remaining term of the note. In addition, it is unclear whether city staff ever reviewed the developer’s financial statements to establish the previous years’ poor performance, or merely relied on unsubstantiated figures provided by the developer.

The Grand Jury learned from an expert witness and the outside legal counsel's memo to the oversight board that using a cap rate was not the customary approach for such calculation. The Grand Jury heard testimony from an expert in the area of valuing such transactions. When asked if the expert had ever seen a prepayment calculated using a cap rate, the expert responded emphatically, "Never."

CONCLUSION

The Grand Jury concludes that the city of Emeryville failed to conduct appropriate due diligence to determine if the method suggested by the developer for calculating the prepayment of a fixed interest rate loan was the proper method. Furthermore, the Grand Jury also concludes that city staff lacked the expertise to make such a recommendation on their own. Fortunately, the oversight board chose not to approve the Note Prepayment Agreement for the reasons outlined in this report. Although the review of the city's actions by the oversight board clearly worked in this case, it is troubling to the Grand Jury that the city would commit to such a significant financial decision based upon insufficient research into best practices and accepted industry standards. In determining their options, decision-makers were seemingly blinded by the opportunity to generate immediate cash.

In the future, the Grand Jury would hope that decision-makers would recognize when more data and expert advice is required to fulfill their fiduciary duty to the citizenry. Although the Grand Jury is critical of Emeryville's failure to conduct the proper due diligence, it is apparent that the statutory framework requiring review by the oversight board functioned as intended.

**FINDINGS & RECOMMENDATIONS
RESPONSES REQUIRED**

None
None

EAST BAY MUNICIPAL UTILITY DISTRICT RATE INCREASES

EXECUTIVE SUMMARY

The Grand Jury investigated the East Bay Municipal Utility District (EBMUD) after learning that there had been a succession of rate increases for many years. At the June 11, 2013 EBMUD board meeting, a compounded water rate increase of more than 20% over two budget years was granted. Many public objections were raised at the meeting which are summarized as follows: the two increases taken together and compounded produced a more than 20% increase which was not consistent with the increases of other government agencies; the rate increase would create an unfair burden on low-income people; it was unfair that people who conserve should be penalized; it was unfair to single-family homeowners; EBMUD provided scant information in its budget documents to support the proposed rate increase; the district did not provide proof that it was needed and it was inflationary.

The Grand Jury in its investigation of EBMUD finds that the district is a well-run, well-compensated agency, and delivers high quality water and wastewater treatment services in a professional manner. However, the Grand Jury has concerns regarding the transparency of reports to the public with regard to rate increases.

BACKGROUND

While reviewing EBMUD's rates in the context of also reviewing other Alameda County public agencies including the county, its cities and special districts, the Grand Jury became aware of a general issue regarding water and sewer agencies and their ability to raise rates. Other branches of local government, including school districts, cities and counties, have been struggling for more than a decade with serious belt-tightening and budget cuts. Because of that, there have been major layoffs of police and fire personnel, court and justice employees, health and welfare employees and teachers. However, water and sewer agencies have had no comparable problem. If a city, county, school district or special district want to raise taxes or rates, they must take the increase to the voters, and in most cases need to receive a two-thirds majority vote. Water and sewer agencies (as well as refuse collection) are exempt from the same rate setting requirements that affect other local governments. They can raise rates with a simple vote of their board, subject to public notification and the protest process described below. If the public grows dissatisfied, their only practical option is to vote the board members out of office. However, with the myriad number of special districts to consider, the public rarely pays sufficient attention to water and sewer district board races. Incumbents routinely get re-elected, often without opposition.

This unusual situation grew out of Proposition 218, passed by state voters in 1996. After Proposition 13's passage in 1978, any tax increase required a vote of the affected citizens. Prop 218 also required a vote for rate increases, but made an exception for water and sewer agencies. Such agencies were exempted from a public vote as they were seen as essential public services. The public's only recourse to a rate increase is for more than 50% of the affected residents to submit protest letters. These letters must be submitted prior to the board's vote on the rate increase. EBMUD has 384,000 ratepayers. There is no reasonable probability that 192,000 people would be motivated to submit such protest votes. Furthermore, there is no oversight body, such as the state Public Utilities Commission, which oversees gas and electric services. Organized citizens' groups such as Toward Utility Rate Normalization (TURN) do not track water and sewer rates. Consequently, it appears that water and sewer rates have risen dramatically without any meaningful check other than what is deemed necessary by the elected board. As an example, EBMUD's residential water rates increased from \$1.42 per 100 cubic feet (748 gallons) in 2003 to \$2.90 per 100 cubic feet by fiscal year (FY) 2014-15, which is a 104% increase to its customers.

As previously stated, the Grand Jury does not find that EBMUD has managed its affairs in a manner less capably than its peers. With regard to the specific elements that make up the bulk of the EBMUD budget, the Grand Jury does not have the professional expertise to second-guess the district's decision-making on when and how to replace aging infrastructure, or how to manage water delivery systems or sewage treatment plants. If a new service or salary increase is desired, the EBMUD board routinely acquires the necessary funding through annual Prop 218-exempt rate increases. Rate increases have occurred every year since 1995.

The Alameda County Grand Jury cannot change existing state law, nor does it necessarily recommend that such an action occur. However, it is the Grand Jury's purpose in raising the Proposition 218 exception to highlight the burden placed on ratepayers and the extent to which water and sewer agencies escape the fiscal constraints placed on other branches of local government. Perhaps watchdog organizations and the press will pay more attention to the rate increases and their justifications. The Grand Jury believes that there should be more balanced and transparent information provided to the public and more public outreach in general.

INVESTIGATION AND FINDINGS

During our investigation, the Grand Jury reviewed hundreds of pages of documents including staff reports, the adopted two-year budget, the certified annual financial report, minutes, letters and news reports, and the prevailing wage study used by EBMUD in its 2013-2014 labor negotiations. We also interviewed management personnel from EBMUD and a member of the board of directors. Additionally, the Grand Jury conducted its own benefits survey sent to almost all local governmental agencies in Alameda County (*see pages 57-94*).

Transparency Concerns with Public Pronouncements

The Grand Jury believes that government agencies have an obligation to be fair as well as transparent. The Grand Jury found that EBMUD's public reports, presentations and press releases connected to the June 11, 2013 rate increase suffered from a lack of balance in providing information. For example, the increased cost of the rate increase to the consumer was not clearly presented. Savings reported by the district appear to have been overstated. Any financial burden caused by the need to make up for the past under funding of employee retirement and health benefits was not mentioned. There was no mention of the fact that there had been rate increases in each of the last 19 years, already having raised rates at least three times faster than the rate of inflation since 1995. The Grand Jury learned that the district bond rating was at risk, yet this risk was not disclosed in the public reports made during the rate increase presentation.

The Cost of the Rate Increase to EBMUD Consumers

The June 11, 2013 rate increase presentation stated that, "for the typical water SFR EBMUD customer averaging 246 gallons daily, the increase will be \$3.96 more monthly in FY 2014 and \$4.19 more monthly the following year." However, the Grand Jury found considerable confusion from various sources as to whether 246 gallons per day (gpd) is an accurate figure for most single-family residential (SFR) users. It's not clear that 246 gpd is the typical water usage of customers residing in single-family detached dwellings. To the public, the term "single family residential" means a single house on its own lot, with a yard, etc., as compared to attached or "multi-family dwellings." Information provided to the Grand Jury by the district said the 246 gpd was derived by averaging the usage of 340,000 "single families" in the district. However, since page 21 of the [rate increase presentation](#) states that there are only 384,481 affected parcel owners and tenants in the district including commercial and industrial customers, it appears that the low 246 gpd usage cited would have been derived from a broad, district-wide residential average that includes more dwelling types than what is normally considered to be single-family residences.

While master-metered apartment houses are a separate category, the EBMUD response appears to include townhouses, condominiums, and other attached multiple-family dwelling types as well as single-family residences, but labeling them all as SFRs. For example, according to the Oakland Housing Element, there are 78,409 multi-family dwelling units in Oakland alone, served by EBMUD. Given the presence of attached housing throughout the entire district, it would be highly unlikely that there would be 340,000 EBMUD customers who are occupants of single-family detached residences. The importance of this distinction is that single-family homes, with yards, use considerably more water on average than attached units. Thus, by EBMUD including other residential types, the average cost of the rate increase would appear to be lower.

The EBMUD 2014-2015 biennial budget states on page 54 that the “estimated average water consumption” is 280 gpd for the area west of the Oakland-Berkeley hills, 360 gpd for the next sector to the east, and 580 gpd for the inland parts of the district. These usage amounts, which are significantly higher than the 246 gpd identified by EBMUD on June 11, 2013, would produce a much higher dollar-per-household rate increase than what the public was told. Additionally, the tiered water-rate structure, which is based on consumption, combined with the elevation charges previously adopted by EBMUD, would further increase the costs for those whose use falls within the higher tiers. Since the second tier starts at 172 gpd, even the alleged 246 gpd “typical” user would have higher rates from partially falling into the second tier.

An additional source of usage confusion comes from a Bay Area News Group article dated March 21, 2013 on the need for water conservation (“Being Water Wise”). The article cites EBMUD experts, stating that the average EBMUD water consumption is 135 gpd per person. When that consumption rate is multiplied by the two-county average of 2.735 persons per dwelling unit (source: 2010 US Census), it yields an average of 369.2 gpd, roughly 50% greater than the 246 gpd used by EBMUD in its rate increase literature. Put simply, it appears that the district’s public pronouncements, made to support the board’s rate increase vote on June 11, 2013, downplayed the future cost of the rate increase for a wide variety of customers. The Grand Jury believes that the board should have asked staff for more accurate and complete information on how the proposed rate increases would have affected a range of water users, such as the 25th percentile of residential users, the median user, and the 75th percentile of users, after factoring in the tiered rate structure, elevation fees, seismic surcharges and all other special and on-going charges.

Unfunded Pension Liability for the EBMUD Retirement Program

As is common with most public agencies, there has been a dramatic increase in unfunded liability to pay for current and future retirees. This can be attributed to a long-standing practice of granting new retirement benefit increases, made retroactive to cover existing employees, without providing sufficient funding to cover the costs. Compounding the problem, the economic downturn prevented the retirement funds from achieving their anticipated rates of return. The Grand Jury’s survey (*see pages 57-94*) of all the public agencies in Alameda County included a question on what was the degree of funding of retirement liability. Of the responding agencies, EBMUD’s percentage funding of its retirement liability was 65.6% which was the second lowest of the 30 agencies in the survey. The unfunded liability had grown from \$57 million in 2001, to \$535 million by June of 2012. The majority of the 940% increase in liability occurred before the 2008-2009 economic downturn, so the problem cannot be principally attributed to a worsening economy. The extent of EBMUD’s unfunded pension liability is problematic. The Grand Jury has not found hard evidence or specific detail in the budget documents reviewed as to the precise role of EBMUD’s need to reimburse its pension fund as a contributing factor in the recent rate increases. Replies to questions asked of the district were answered by statements that the unfunded

liability is being handled by an actuarially acceptable methodology, but it is unclear how much of the rate increase can be attributed to the unfunded liability problem.

Overstated Past Savings

In an effort to support the rate increase and in an apparent effort to show past frugality, the June 11, 2013 rate increase presentation states that the district has cut staff by 10% since 2003 as part of a cost-containment effort. It is our understanding that while EBMUD had a hiring freeze, the workforce reduction was solely the result of attrition. The Grand Jury learned that there was a more than 50% cut in the capital improvement program budget from the mid-2000s to 2013, and also that there has been a more than 75% reduction in new water and sewer connections since 2006-2007.

Public Outreach

In general, the Grand Jury finds that special districts operate without the degree of public interest or input characteristic of attention given to cities or school districts. Few know who their special district board members are, and incumbents are frequently re-elected without opposition. Such relative anonymity allows rate increases to occur with little public input. This seems to be no less true of EBMUD than of other special districts. The Grand Jury has long thought that special districts should provide greater outreach to the public, particularly concerning rate increases. EBMUD holds its non-televised board meetings in downtown Oakland during the daytime, yet the district extends as far as San Ramon. An EBMUD witness stated that the district once tried holding night meetings and found no apparent increase in public interest. However, it may take a longer period of time for public interest to evolve. Rate increases that are significantly expensive to the public, such as that which occurred on June 11, 2013, should generate more public concern.

For water alone, the EBMUD budget estimates that there was a \$49 million increased cost to the public due to the rate increase. The minutes show there were only 17 speakers, 15 of whom were opposed to the rate increase, as well as 206 letters received in opposition to the rate increase. The Grand Jury believes that prior to any future rate increase, there could be additional public meetings held, including night meetings, at appropriate outlying locations such as San Leandro, Walnut Creek, San Ramon and western Contra Costa County. Furthermore, the Grand Jury sees no reason why EBMUD could not provide live streaming of board meetings or televise them on public access channels, and have video recordings of past meetings available on the website, like many other government agencies.

CONCLUSION

In requesting future rate increases, EBMUD should provide impartial and objective analyses regarding the history of past rate increases for at least 10 years, and a concise description of all the factors that drive the rate increase request, including water usage or conservation, new service connections, and infrastructure costs, as well as employee compensation, unfunded liabilities, and bond rating issues. The analysis should describe the total cost of the proposed rate increase on the water or sewer consumer at the 25th percentile point, the 50th percentile point and the 75th percentile point, while factoring in all other applicable costs such as tiered pricing, elevation charges, seismic charges and any other surcharges and special charges.

The Grand Jury finds that the East Bay Municipal Utility District appears to be a well-managed and professional organization that provides excellent water and wastewater treatment services. It is not the fault of EBMUD that their organization is exempt from the rate and tax increase constraints to which most other types of local government agencies are subject. It is not surprising that this category of agencies including water, sewer and refuse collection has experienced revenue increases from the public proportionately greater than counties, cities, school districts and other special districts. Nevertheless, the Grand Jury has found that EBMUD has not been sufficiently transparent in its efforts to justify the recent rate increase to the public. EBMUD should provide greater outreach to the public.

FINDINGS

Finding 14-25: EBMUD failed to sufficiently explain to the public the underlying reasons for the June 11, 2013 rate increase.

Finding 14-26: EBMUD's daytime meetings and single meeting location, as well as its failure to record or to provide live broadcasts of its board meetings, has resulted in limited public participation.

RECOMMENDATIONS

- Recommendation 14-26:* EBMUD should provide the public with a complete and objective analysis in connection with future rate increases, including all factors that drive the recommended increases. The analysis should contain the financial impact of the proposed rate increase on a broader range of water or sewer consumers (for example, the 25th percentile point, the 50th percentile point and the 75th percentile point) as opposed to just a district-wide average. The analysis should also include a history of prior rate increases.
- Recommendation 14-27:* EBMUD must provide live streaming of board meetings, televise on public access channels, and have online access of past meetings available on the EBMUD website.
- Recommendation 14-28:* EBMUD must make it more convenient for the public to attend its meetings, which may include holding meetings in the evening and at other locations throughout the district.

RESPONSES REQUIRED

Responding Agencies - Please see page 133 for instructions

EBMUD Board of Directors

Findings 14-25 through 14-26
Recommendations 14-26 through 14-28

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HAYWARD UNIFIED SCHOOL DISTRICT MEASURE I BOND SPENDING

EXECUTIVE SUMMARY

The Grand Jury received a complaint that the Hayward Unified School District (HUSD) Board of Education inappropriately approved the expenditure of approximately \$20 million in funds from Measure I general obligation bonds. The complaint asserted that new schools constructed with Measure I funds were completed without being fully compliant with the requirements of the Americans with Disabilities Act (ADA). It was alleged that an added expense was approved at the end of the contract to bring the Measure I projects into ADA compliance, and that this was an unnecessary additional cost for work that should have been included in earlier construction phases.

In 2008, the electorate of HUSD approved \$205 million in Measure I general obligation bonds to be used for reconstruction and modernization of school facilities. The Grand Jury found that the expenditure of approximately \$20 million was always included in the Measure I budget and that the work covered by these funds was appropriately scheduled to be undertaken following the first phase of construction.

BACKGROUND

Measure I, the School Safety and Construction Bond for HUSD, was presented on the June 2008 ballot. The text of the ballot measure read as follows: “To improve safety and learning by construction, furnishing, and equipping school facilities; reconstruction, rehabilitating, or replacing deteriorating schools; providing security systems, new or modernized permanent classrooms, land for construction, wireless technology, access for individuals with disability, and to qualify for state matching funds, shall the HUSD issue \$205 million in bonds not to exceed maximum legal interest, with independent citizen oversight, annual audits, and no money for administrators’ salaries.”

The bond passed with a 72.18% voter approval.

HUSD’s board developed the following bond project list for the Measure I bond funds:

Phase 1

- ◇ School facility and new construction at the East Avenue, Fairview, Martin Luther King Jr., Schafer Park and Tyrrell schools, including rehabilitation or replacement of facilities, with necessary furnishings, equipment and technology upgrades and improvements, installation of site infrastructures, and land acquisition as needed for construction.

Phase 2

- ◇ District-wide safety improvements, including security equipment and/or surveillance cameras, disability access in compliance with state and federal law, including the Americans with Disabilities Act, site access, traffic flow and parking improvements, including parent parking, energy and restroom upgrades, and repairs related to installation and use of the safety improvements.

All of the funds were to be used for specific school projects in HUSD. The question of how funds were used for ADA compliance is the focus of this investigation.

INVESTIGATION

During our investigation, the Grand Jury met with members of the current administration of HUSD, and reviewed the following:

- ◇ The language of the original Measure I bond measure;
- ◇ The Measure I independent audit reports (both financial and performance) for 2011 and 2012 and the independent audit performance reports for 2009 and 2010;
- ◇ Annual reports of the oversight committee;
- ◇ The HUSD website which closely followed the progress of the various individual school projects;
- ◇ The second amendment to an agreement for services contracted between HUSD and the construction company, dated September 11, 2013; and
- ◇ Material presented to the HUSD board of trustees in September 2013.

Measure I established an oversight body which served for the life of the bond with representatives from taxpayer organizations, the PTA, a senior citizen organization, business organizations, and parents. Public information was made available on the HUSD website regarding all aspects of the project, including reports from the oversight committee and the Measure I independent auditor.

As early as 2009, the project schedule, as outlined in the Measure I oversight committee's first annual report, indicated two distinct phases of construction. In 2010, this Measure I oversight committee reported on costs of the bond projects and listed an amount of \$20.9 million as waiting expenditures for Phase 2, which included ADA compliance, technology upgrades, safety and security for all Hayward school sites. More recently, the Grand Jury learned that \$761,000 has been set aside by the district to bring the five new Measure I schools into ADA compliance. The district has also reported that they plan to spend approximately \$5 million of the remaining \$20.9 million in bond funds to perform ADA upgrades on 15 other sites within the district. HUSD hired a private ADA expert to inspect and approve all ADA work.

The Grand Jury was informed that ADA compliance rules are subject to frequent changes, and it is common to have ongoing construction upgraded and brought to current ADA code to assure that the most recent regulations are met. When a building permit is issued at the beginning of a project, it contains state and federal ADA compliance rules that are in effect at that time. The Grand Jury heard testimony that the Measure I projects were designed, approved, and built to 2007 building codes and regulations. As with similar school construction projects, the state architect approved the initial plans for construction of the new schools, including the ADA improvements added by the district. The Grand Jury learned that before a newly constructed school could open, any ADA compliance rules that are in effect at that time must be met. The Grand Jury learned that ADA rules changed from the time the original plans were approved and the date when the schools were opened. The district was required to make the ADA improvements prior to occupancy, and Phase 2 funds were available for this specific purpose.

On August 21, 2013, HUSD entered into an amended contract with the original construction company -- in the amount of approximately \$23 million -- to perform the work as described in Phase 2. This amended contract was the subject of the citizen complaint. The Grand Jury learned that the work covered by this amendment was always anticipated as a separate project and not included in the original contract. Furthermore, the Grand Jury learned that the board of education approved every step of the project, up to and including the amendment to the construction contract. Additionally, Measure I progress and procedures were formally reviewed at bond oversight committee meetings, Project Stabilization Agreement (PSA) joint administrative committee meetings, and board of education meetings. The oversight committee's fourth annual report to the community concluded that all projects were completed on time and on budget.

CONCLUSION

Following witness testimony and an extensive review of documentation, the Grand Jury determined that Phase 2 funds were appropriately allocated to bring HUSD's school sites into ADA compliance. The Grand Jury found no validity to the complaint.

Further, the Grand Jury commends HUSD for its website, which was found to be very informative and fully transparent with regard to Measure I expenditures.

FINDINGS & RECOMMENDATIONS RESPONSES REQUIRED

None
None

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JAIL INSPECTIONS IN ALAMEDA COUNTY & 2013 URBAN SHIELD

The Grand Jury is required by California Penal Code section 919(b) to inspect jails and holding facilities within Alameda County. To determine which facilities to inspect, the Grand Jury chose jails that had not been inspected within a three-year period, or required re-inspection due to report deficiencies. During fiscal year 2013-2014, the Alameda County Grand Jury inspected the Berkeley, Newark, Livermore, San Leandro and Union City jails, and observed the Alameda County Sheriff's Office 2013 Urban Shield event.

Prior to conducting inspections, the Grand Jury reviewed inspection reports from previous grand juries, the California Board of Corrections (BOC) and the Alameda County Department of Public Health (DPH). The BOC conducts biennial inspections of jails in Alameda County and requires a corrective response to be filed by each agency whenever a deficiency is found. The DPH conducts yearly inspections of all jails and also requires the jails to address any health inspection deficiencies.

Among the issues the Grand Jury looks for when inspecting a facility are cleanliness, record keeping, adherence to department policies and procedures, booking and medical care of prisoners, special accommodations, and meal serving policies. Additionally, the Grand Jury reviews any corrective responses by the BOC and DPH and follows up on changes that still need to be made. Inspections were conducted by three or four members of the Grand Jury. The Grand Jury provided twenty-four hour notice to each facility to ensure staff was available to accompany the inspection team.

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BERKELEY CITY JAIL

On October 1, 2013, the Grand Jury inspected the Berkeley City Jail, located within the Ronald T. Tsukamoto Public Safety Building at 2100 Martin Luther King Jr. Way. A lieutenant and a community services supervisor accompanied the jurors on the inspection.

The Berkeley Jail has twenty-four cells and can hold a maximum of forty detainees who are held between arrest and arraignment. Detainees can be held up to a maximum of 96 hours. There are sixteen cells for men, four for women, two detoxification cells and two safety cells. The jail's average daily population is ten detainees, and on the day of the Grand Jury's inspection, five detainees were being held at the facility.

The Grand Jury was provided with a copy of the jail regulations that outline policies and procedures to follow in the event of emergencies, as well as various security measures for jail operations. We were also provided with copies of forms used when booking and the jail's detainee health questionnaire. Police weapons are secured in lockers prior to entry into the jail facility, as per Jail Regulation 23. Additionally, the jail maintains a complaint log for jail issues.

The cells and shower facilities at the Berkeley Jail appeared clean and well maintained. Each cell has an emergency button and staff conducts regular safety checks of detainees every 15 minutes. First aid kits and fire extinguishers were also inspected by the jury, and found to be in compliance. The Grand Jury was informed that staff is routinely trained in first aid and CPR, as well as certified to operate Automatic External Defibrillators.

Upon entry to the jail, staff medically screens detainees. If a detainee arrives with a manageable health issue – such as a simple basic first aid need (per Jail Regulation 37(a)) or a detainee arrives with his or her own prescription medication (Jail Regulation 37(h)(2)), the detainee is admitted to the facility. However, detainees with more significant health needs (non-life threatening) are transferred immediately to Santa Rita Jail in Dublin, which has full-time medical staff, or to the John George Psychiatric Pavilion in San Leandro.

Detainees at the Berkeley City Jail are served three meals a day. Meals are purchased and stored in an on-site kitchen area. The Grand Jury noted that the kitchen contained a refrigerator, freezer, microwave and sink, and the area appeared clean and well maintained. The Grand Jury observed sign-off sheets verifying the temperature control on the freezer, which were up-to-date. While there is no dietician on staff, both standard meals and special diets are approved annually by a registered dietician. Inmates eat their meals in their cells.

While inspecting the jail, the Grand Jury noticed signs posted throughout the facility written in English. When the Grand Jury asked about the availability of information in other languages, we were advised that police department staff is available to interpret when necessary. The Grand Jury is concerned that staff members may not always be readily available to interpret for detainees. We suggest the Berkeley City Jail look into providing written procedures/instructions for detainees who do not speak English. This may help alleviate any immediate concerns or questions the detainee may have while waiting for a staff member to become available to interpret.

The Grand Jury was also informed there were several vacant staff positions at the jail and the city was making attempts to fill those positions. We were further advised that employees were working overtime to cover the vacancies. We encourage the city to maintain its recruitment efforts to achieve appropriate staffing levels.

We found the Berkeley Jail facility to be clean and in good condition. Staff was accommodating and professional and we found no health or welfare violations during our inspection.

**FINDINGS & RECOMMENDATIONS
RESPONSES REQUIRED**

None
None

NEWARK POLICE DEPARTMENT JAIL

On September 17, 2013, the Grand Jury inspected the Newark City Jail. The jurors were escorted by a sergeant of the police department. The Newark City Jail serves the Newark Police Department as a temporary holding facility. The jail has three cells for adult detainees. Juveniles are not held in these cells, but rather are held under constant observation by officers until transferred to the Alameda County Juvenile Justice Center in San Leandro.

Prisoners are held for two to four hours before being transferred to Fremont City Jail or to Santa Rita Jail in Dublin. The jail utilizes fire department paramedics for emergency medical evaluation of detainees, if necessary. Prisoners needing medical care are immediately transferred to a medical facility.

The Grand Jury observed functioning cameras throughout the facility with video observation in the booking area. The Grand Jury was advised that staff is trained and has access to maintained first aid kits and Automated External Defibrillators.

The staff secures their firearms before entering the facility. The department uses pepper spray or batons, if necessary, for disciplinary control. At the time of the Grand Jury's inspection, the department was in the process of training staff in the use of Tasers.

The Grand Jury found the Newark City Jail clean and it appeared to be well managed.

**FINDINGS & RECOMMENDATIONS
RESPONSES REQUIRED**

None
None

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LIVERMORE POLICE DEPARTMENT JAIL

On October 22, 2013, the Grand Jury inspected the Livermore Police Department Jail and met with the police department's facilities and equipment manager. The Livermore Jail serves the Livermore Police Department as a temporary holding facility. Detainees are held less than six hours before being transferred to Santa Rita Jail in Dublin for booking.

The Livermore Jail consists of four cells: three detainee cells, and one cell for attorney visits. There is also a juvenile holding room located in the center of an office area, surrounded with windows that allow constant observation. Juveniles are held for a limited time prior to being transferred to the Alameda County Juvenile Justice Center. The Grand Jury observed functioning cameras throughout the facility, which were monitored from a staffed video control room.

The Grand Jury reviewed the policy and procedure manuals, which were accessible and appeared to be current. The Grand Jury was informed that staff is trained in the use of first aid kits and Automated External Defibrillators, which were readily accessible. The Grand Jury inspected these kits and found them to be recently certified and sufficiently stocked. The jail also has an on site supply of earthquake supplies and other emergency equipment. In cases of emergency medical situations, the local fire department is called.

The Grand Jury found the Livermore Police Department Jail to be clean, well run and efficient.

**FINDINGS & RECOMMENDATIONS
RESPONSES REQUIRED**

None

None

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SAN LEANDRO POLICE DEPARTMENT JAIL

On November 5, 2013, the Grand Jury inspected the San Leandro City Jail. The Grand Jury was accompanied on the inspection by a police captain and the police support services division manager. Staff was well prepared and responsive to all Grand Jury questions.

The San Leandro Jail serves the San Leandro Police Department as a temporary booking facility and is staffed by civilian employees. The average stay at the San Leandro Jail is less than twenty-four hours. The booking process includes photographing and fingerprinting each arrestee. The Grand Jury was advised that juveniles are held at this facility for less than six hours in the squad room, under constant surveillance by two officers, before the juvenile is transferred to the Alameda County Juvenile Justice Center in San Leandro. The arrestee is also screened for health issues upon entry into the facility. Arrestees are not held long-term at this facility. The arrestees who remain in custody are transferred to Santa Rita Jail in Dublin, or to the Glen Dyer Jail in Oakland.

The San Leandro Jail has twelve holding cells: eight for male prisoners and four for female prisoners. Two of these cells are designated for detoxification or protective segregation. There are working cameras throughout the facility. The Board of Corrections and the Alameda County Health Department conduct annual inspections.

All staff is trained in basic first aid and has access to first aid kits and Automated External Defibrillators. In addition, the policy and procedures manuals are up to date and staff has these manuals on their personal electronic devices while on duty in the jail.

The Grand Jury found no deficiencies with the San Leandro City Jail. It appeared safe, clean, and well organized.

**FINDINGS & RECOMMENDATIONS
RESPONSES REQUIRED**

None
None

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UNION CITY POLICE DEPARTMENT JAIL

On September 17, 2013, the Grand Jury inspected the Union City Jail. This facility temporarily holds adult detainees waiting to be transferred to the custody of the Alameda County Sheriff at Santa Rita jail in Dublin. Juveniles taken into custody are transferred to the Alameda County Juvenile Justice Center (JJC) in San Leandro.

The Grand Jury inspected and reviewed policies and procedures for the facility, and met with jail staff while conducting the inspection. The Union City Jail has three holding cells and can accommodate a maximum of ten adult male and five adult female prisoners. There is also one juvenile holding area that can be used when juveniles are awaiting transfer to the JJC.

Detainees are screened upon intake to the jail for health and dietary issues, and those with any health issues exceeding the capabilities of the Union City Police Department are transferred to the appropriate facility. Health emergencies are handled by jail staff calling for fire department response, and the Grand Jury was advised that staff is regularly trained in first aid and Automated External Defibrillator use. Food for detainees is purchased locally and although there is no regular meal service schedule, food is provided if transfer to another facility does not immediately occur.

The cells inspected by the Grand Jury appeared to be clean with operating toilets. However, the sinks in each of the three cells had insufficient water pressure and appeared to be in general disrepair. The jail manager assured the Grand Jury that repair of these sinks was underway, and that inoperability was a temporary problem. As of January 2014, Union City reported that two of the three sinks had been repaired and one was awaiting repair. Meanwhile, bottled water is provided to detainees.

The jurors noted that Union City Police Department's secured vehicle entry and prisoner transport structure, known as a sally port, was being used for storage, and observed large duffle bags, boxes and equipment that appeared to clutter the area. Jurors were told by a member of the police department that persons in custody are regularly brought into the department's intake area through this sally port. Furthermore, jurors observed in this sally port what appeared to be rounds of small arm ammunition unsecured on the top of seven-foot tall officer lockers. Although not readily accessible, the apparent rounds were in plain view in uncovered ammunition trays. The jurors asked and were advised that the ammunition was live and this storage was not uncommon. In response to a letter sent to the department from the Grand Jury requesting ammunition storage clarification, the Union City Police Department responded that the department does not store live ammunition in their sally port, and that what they believe the jurors observed were expended casings due to a recent rifle cleaning that took place in the sally port. The letter also acknowledged that the sally port is used for

other storage and is a temporary situation. The department has plans to remodel the sally port in the near future and the area will become office space.

After receiving the letter, the Grand Jury reviewed the Union City Police Department firearms policy #312, and found that paragraph 312.2.4 regarding ammunition does not include specific language with regard to the safe and accountable stowing of ammunition and expended casings.

The Grand Jury found the Union City Jail holding cells to be clean and generally well maintained. However, the Grand Jury believes the Union City Police Department should update its policies and procedures regarding ammunition storage with specific language as to where and how spent and unspent ammunition is stored. The Grand Jury believes ammunition, live or not, should not be left unsecured in an area where detainees are present. The Grand Jury recommends that next year's Grand Jury re-visit the Union City Jail to ensure that corrective action has taken place.

**FINDINGS & RECOMMENDATIONS
RESPONSES REQUIRED**

None
None

2013 URBAN SHIELD ALAMEDA COUNTY SHERIFF'S OFFICE

In 2007, the first Urban Shield exercise was held in the San Francisco Bay Area, created and hosted by the Alameda County Sheriff's Office. Urban Shield tests and assesses regional emergency responses in high-threat, high-density urban areas, such as in the city of Boston after the tragic 2013 marathon bombings. The Urban Shield exercise evaluates existing levels of preparedness and capabilities, identifying not only what is done well, but also what needs improvement. Urban Shield is a continuous 48-hour exercise consisting of many different types of scenarios (hostage situations, terrorist attacks, earthquakes, etc.). Teams participate from throughout the United States and from other countries. The teams are tested on tactical skills, role-playing, and preparedness, and the event covers over 900 square miles throughout the Bay Area. An after-action report is prepared following the event that aids law enforcement by providing an in-depth analysis and evaluation of strengths and weaknesses highlighted during the exercise, and identifies specific areas for improvement. This process enables Urban Shield to continue to be a valuable event for cutting edge ideas in technology and tactics.

On October 26, 2013, several members of the Grand Jury attended the Urban Shield event in Alameda County. The Grand Jury met with members of the Urban Shield staff and the chief of the Dublin Police Department. We were provided with a well-prepared, in-depth description of the event, and observed a number of different scenarios on video monitors. We were also present at a dignitary protection exercise (held at a local high school campus) that was designed to test participating teams' abilities to quickly integrate with the US Secret Service Dignitary Detail (one of the teams participating in the event). This exercise involved a mock assassination attempt on a dignitary and tested the effectiveness of the agencies to collaborate and respond. The exercise involved training in all aspects of an attack, from medical and police response to treatment of the injured. The event was enlightening, showcasing the efficiency of several well-trained police agencies working as one within a matter of minutes. Immediately following this exercise, the Grand Jury witnessed the post-event debriefing between members of Urban Shield and the participating teams.

The Grand Jury finds Urban Shield to be exemplary in its design and execution. A multitude of agencies participated in one of the most elite, comprehensive emergency response exercises in the country. The Grand Jury commends the Alameda County Sheriff's Office for its annual efforts in organizing and hosting this international event.

**FINDINGS & RECOMMENDATIONS
RESPONSES REQUIRED**

None
None

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PORT OF OAKLAND AUDIT RESULTS

EXECUTIVE SUMMARY

In December of 2012, the Port of Oakland released a report and an independent audit recognizing the discovery of significant misuse of port-issued credit cards. The audit revealed thousands of dollars in questionable expenditures and falsified reports surrounding the use of these credit cards that, at the time, were issued to at least 82 employees throughout the organization. The report included an action plan developed by the port to ensure that internal controls and port culture would be changed to prevent future abuses. The Grand Jury was asked to review the port's progress to determine if effective changes had been made.

The Port of Oakland has done a thorough job of revising its policies involving the use of port credit cards. They have included a separate policy covering the use of entertainment and gifts directed toward existing and potential clients and emphasized ethical values and public responsibility in all their documents. In addition, the port has introduced mandatory ethics training for all employees and commissioners. The number of credit cards issued has been reduced from 82 to 45. The Grand Jury requested an analysis of the credit card usage and the process used to reduce the number of credit cards. In a letter from the port dated September 25, 2013, it was noted that the port did not have such an evaluation.

BACKGROUND

The Port of Oakland reports on its website that it is a unique combination of public and private endeavors. It encompasses a world-class container port, a thriving airport, an array of retail and commercial buildings, and acres of recreational and open space.

Governed by a board of commissioners, nominated by the mayor of Oakland and appointed pursuant to a vote of the city council, the Port of Oakland occupies an important place in the local and regional economy. The port employs 465 people and generates additional jobs for local residents and businesses. The Port of Oakland, through its policies and its tenants' activities, supports approximately 50,000 jobs throughout Northern California and impacts about 827,000 jobs nationwide.

The port funds its own operations. It reports that it receives no tax money from the city, and supports businesses that provide millions in tax revenue to the city of Oakland and the state of California.

INVESTIGATION

As a public entity the port is somewhat unique in that it also operates in a very large, competitive environment, vying for business with other maritime and

airports on the west coast. Much of their business requires staff to travel around the world to seek potential clients, and often involves business-related entertainment. In order to prevent misuse, it is imperative that the Port of Oakland remain vigilant and maintain policies and procedures that will monitor the use of public money for travel and business development, as well as provide consequences for any abuses that may occur.

After the misuse and false reporting of port-issued credit cards came to light in 2012, the port released a statement that admitted to a lack of oversight and to having insufficient guidelines regarding the use of company credit cards, especially as they applied to travel and entertainment. They also issued a planning document entitled, "[Matrix for Responsible Expense Practices.](#)"

This document included a timeline and a comprehensive set of tasks designed to accomplish a complete review of port policies and procedures as they relate to problem areas. The guidelines are intended to raise the awareness of port personnel and commissioners as to their ethical responsibilities while representing a public agency.

At the Grand Jury's request, the port provided complete copies of the revised policies and procedures relating to credit card use, travel authorization and reimbursement, and a new document pertaining to hosting and entertainment. They also provided copies of the policies and procedures that were in place prior to the revisions. In addition, the Grand Jury was given the schedule and the list of attendees for the port's mandatory ethics training, their leadership team's annual travel expense summary, and the most recent quarterly report on credit card usage.

CONCLUSION

The Grand Jury was able to conduct a comprehensive comparison between the old and new policies and procedures and found that the port has significantly tightened and strengthened their procedures (*see links, below*) to ensure that there is now improved oversight. They have also reinforced the ethical responsibility required of all port employees when spending public money. The on-going mandatory ethics training for all employees and commissioners is an important part of this process.

The Port of Oakland is to be commended for taking quick, strong, and appropriate action to prevent future misuse of public assets.

http://www.portoakland.com/pdf/about/trans_hosting_policy_130927.pdf
http://www.portoakland.com/pdf/about/trans_purchasing_card_130329.pdf
http://www.portoakland.com/pdf/about/trans_travel_policy_130927.pdf

**FINDINGS & RECOMMENDATIONS
RESPONSES REQUIRED**

None
None

ALAMEDA COUNTY LIBRARY TRAVEL AND TRAINING

INTRODUCTION

The Grand Jury received an inquiry about travel and training expenses for the Alameda County Library district (county library). Specifically, the concern cited excessive staff travel costs at a time of significant revenue loss due to the elimination of library funding from the state budget.

The county library is classified, under California law, as a dependent special district that is an administrative extension of cities or counties. Such districts are formed to fill local service gaps throughout the state, as requested by local voters. They are an integral part of local government and are directly accountable to the public.

The county library serves all unincorporated cities in Alameda County as well as Albany, Dublin, Fremont, Newark and Union City.



Branches of the Alameda County Library

The county library is also on-site at the Alameda County Juvenile Justice Center, as well as having an E-library and an active bookmobile. The county library offers a variety of programs such as early literacy and life-long learning, art projects, and book clubs. In addition, it works with a variety of county and community programs to provide intern opportunities to Alameda County residents.

The library's active locations served a population of nearly 547,000 Alameda County residents during fiscal year 2012-13, with an annual circulation of library materials in excess of 6.7 million, an annual attendance program of 234,491, and over 2.4 million visitors to their website with its more than 70 million web pages.

Seventeen languages are spoken in the county library system, with over 100 different languages spoken within the whole service area. In response to community needs for more locations and more hours, the goal of the library is to expand further into the community.

In the narrative of the county library's 2012 budget, the library identified a number of fiscal challenges, specifically: branches were open 30% fewer hours, materials were 50% less than needed, technology was outmoded, and revenue was lost because of the removal of all library funding from the state budget.

INVESTIGATION

The Grand Jury heard testimony from the county librarian, studied a presentation of the library's \$31 million 2012-13 budget, and reviewed a number of county library documents. These included:

- ◆ Authorization forms for employee development;
- ◆ Training/travel instructions and application forms;
- ◆ Training/conference procedures within California;
- ◆ Out-of-state travel authorization documents; and
- ◆ Outline of major library services and community partners.

The Grand Jury learned that the county library places a high priority on training and development for its 278 employees, of which 214 are full time. The 2012-2013 training and development budget was \$50,000, of which approximately \$21,880 was spent for out-of-state travel costs. Travel expenses are reviewed by the finance officer, the deputy county librarian, and the county librarian, and go through the county audit process. The Grand Jury learned that the library follows the county's travel reimbursement policies. When monies budgeted for training funds are left over at the end of a fiscal year, the remaining funds revert to the library's available fund balance for the next fiscal year. This is similar to fiscal management rewards, which is a county policy, similar to a rainy day savings account, for budgeted funds unused during the fiscal year.

In reviewing the authorization forms for employee development, it is clearly noted that a major factor in considering a request's approval is a statement of intent, as well as whether or not an applicant has attended a conference within the past three years. A log is kept of trainings attended. Staff may initiate a request for training, or at times the library presents a training opportunity that would be appropriate for staff.

The application for travel includes a statement of the currently held position, committee membership, responsibilities related to the request, and documentation. Further a written statement is required to address the following: "This will directly benefit my current job, or will better equip me to handle changes in my job because...."

The investment in sending staff members to conferences is not limited to enhancing an employee's current job or to help with career advancement, but to bring back information to share with other staff. For example, the Grand Jury heard testimony that six attendees went to a meeting of the American Library Association, each attending a different session. Some of the subjects covered were advancing literacy, children's programs, and community advocacy. A major rationale for sending library employees to conference seminars is for participants to come back and make presentations at in-house training sessions. Further, the Grand Jury learned that California library system is no longer a model for libraries nationwide, thus necessitating out-of-state travel for employees to gain access to state-of-the-art practices.

CONCLUSION

The Grand Jury concludes that Alameda County Library places a high priority on training and development and has an extensive program in place for this purpose. In fact, two new staff positions were approved in July 2013 to be dedicated to employee training and development. The county library has begun restoring hours, services and staff that were cut during previous difficult fiscal times. The Grand Jury also found that staff turnover for the library is exceptionally low at 4.6%, which could reflect job satisfaction. Finally, the Grand Jury investigation found that the Alameda County Library has made judicious use of travel funds.

**FINDINGS & RECOMMENDATIONS
RESPONSES REQUIRED**

None
None

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Appendix

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HOW TO RESPOND TO FINDINGS & RECOMMENDATIONS IN THIS REPORT

Pursuant to the California Penal Code section 933.05, the person or entity responding to each grand jury finding 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 therefore.

The person or entity responding to each grand jury recommendation 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 timeframe for implementation.
3. The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe 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 where applicable. This timeframe 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 therefore.

SEND ALL RESPONSES TO:

Presiding Judge Winifred Y. Smith
Alameda County Superior Court
1225 Fallon Street, Department One
Oakland, California 94612

A copy must also be sent to:

Alameda County Grand Jury
1401 Lakeside Drive, Suite 1104
Oakland, California 94612

All responses for the 2013-2014 Grand Jury Final Report must be submitted no later than 90 days after the public release of the report.

CITIZEN COMPLAINT GUIDELINES

The Alameda County Grand Jury welcomes communication from the public as it can provide valuable information regarding matters for investigation. Receipt of all complaints will be acknowledged. The information provided will be carefully reviewed to assist the Grand Jury in deciding what action, if any, to take. If the Grand Jury determines that a matter is within the legally permissible scope of its investigative powers and would warrant further inquiry, additional information may be requested. If the matter is determined not to be within the Grand Jury's authority to investigate (e.g., a matter involving federal or state agencies or institutions, courts or court decisions, or a private dispute), there will be no further contact by the Grand Jury.

By law, the Grand Jury is precluded from communicating the results of its investigation, except in one of its formal public reports. All communications are considered, but may not result in any action or report by the Grand Jury.

The jurisdiction of the Alameda County Grand Jury includes the following:

- Consideration of evidence of misconduct by officials within Alameda County.
- Investigation and reports on operations, accounts, and records of the officers, departments or functions of the county and cities, including special districts and joint powers agencies.
- Inquiry into the condition and management of jails within the county.

Annual reports and additional information about the Grand Jury can be found at: <http://acgov.org/grandjury>

CITIZEN COMPLAINT FORM

Alameda County Grand Jury
1401 Lakeside Drive, Suite 1104
Oakland, California 94612
Voice: 510-272-6259 Fax: 510-465-9647

Date _____

Complainant's Name _____ Phone _____

Address _____

Email address _____

Your complaint is confidential. Disclosure of your complaint by the Grand Jury is a misdemeanor. A complaint should only be submitted to the Grand Jury after all attempts to correct the situation have been fully explored. This may include, but is not limited to appealing to a supervisor or department head and requesting intervention by the District Attorney or Board of Supervisors.

What agency, city, district or county department are you complaining about?

Is the complaint regarding a specific official or local government employee of a city, district or county department?

Official or Employee Name

Please explain the nature of your complaint providing as many details as you can, including dates, times, and places where the events you are complaining about took place. Describe specific instances instead of broad statements. Include any available photographs, correspondence or documentation supporting this complaint. Please attach additional sheets of paper if necessary.

Please list other persons or agencies you have contacted about this complaint and the result.

What do you believe should be the proper outcome of the Grand Jury involvement in this complaint?

Provide names and telephone numbers of others who can substantiate your allegations or provide more information, including citizens and agency employees.

Attach additional sheets if necessary. All communications to the Grand Jury are confidential.

Signature _____

Please mail your complaint to:

**Alameda County Grand Jury
Attention: Foreperson
1401 Lakeside Drive, Suite 1104
Oakland, California 94612**

Or you can fax your complaint to 510-465-9647

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA
Office of the Jury Commissioner
1225 Fallon Street, Room 100
Oakland, CA 94612
(510) 510-818-7575

CIVIL GRAND JURY QUESTIONNAIRE
(Please print or type)

Name: _____
(First) (Middle) (Last)

Address: _____
(Street) (City) (State) (Zip)

Contact Information: _____
(Home Phone) (Work Phone) (Cell Phone)

Driver's License No.: _____ E-mail _____

LEGAL QUALIFICATIONS

- | | | | | | |
|------------------------------|-----------------------------|--|------------------------------|-----------------------------|---|
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | I am a US Citizen and at least 18 years old. | <input type="checkbox"/> Yes | <input type="checkbox"/> No | I am presently serving on a trial jury. |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | I will have been a resident of Alameda County for at least 1 year by next July 1. | <input type="checkbox"/> Yes | <input type="checkbox"/> No | I have been discharged as a grand juror within the past year. |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | I am in possession of my natural faculties, of ordinary intelligence, of sound judgment, and fair character. | <input type="checkbox"/> Yes | <input type="checkbox"/> No | I have been convicted of malfeasance in office or a felony. |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | I understand the spoken and written English language. | <input type="checkbox"/> Yes | <input type="checkbox"/> No | I am presently serving as an elected public officer. |

Education:

Highest Grade Completed (high school, college, advanced degree, etc.): _____

List any degrees or certifications you hold: _____

Employment History:

Employer: _____

Occupation: _____

If retired, please list employer, occupation and date you retired: _____

Have you held public office or been employed by a public agency? Yes No

(If "yes", please list all positions held)

Do you currently have plans to be absent from Alameda County for longer than three continuous weeks from July 1, 2014 to June 30, 2015? Yes No

(If "yes", please give details)

Are you able to commit to the meeting schedule of the Grand Jury? (Meetings are typically each week on Wednesday & Thursday from 9:00 a.m. until 1:00 p.m. throughout the year, with extra meeting days in July for orientation. There will also be extra meeting days in the Spring.) Yes No

Do you have the ability or any experience in writing/ editing reports, or taking minutes of meetings? Yes No

Are you aware the Grand Jury is required to publish a final report of issues they have investigated? Yes No

Are you aware of the requirement to assist in writing the Grand Jury's annual report? (Previous reports can be viewed at www.acgov.org/grandjury) Yes No

If you are employed, does your employer understand this jury service is voluntary and will he/she permit your participation as a juror, for the period that the jury shall be in session? Yes No

Grand Jurors are required to file "Statements of Economic Interests" (FPPC Form 700) which are intended to disclose financial interests that may create conflicts of interests. These are not confidential. Are you willing to submit such a statement? Yes No

If selected as a Grand Juror, you will be required to swear to or affirm an oath, including an oath to secrecy. Have you any objections to taking such an oath or affirmation? Yes No

How did you hear about the Grand Jury?

What can we do to assist you if you have any physical disability that might restrict your service as a Grand Juror? _____

Briefly state your reasons for wishing to serve as a Grand Juror:

List any areas of expertise you possess that may be helpful to the Grand Jury service (i.e., accounting, education, budgets, writing, researching, etc.):

Pursuant to Penal Code Section 903.2, I understand an investigation that will include a criminal record check will be conducted to help determine my eligibility to serve as a Grand Juror. I further understand that if my name is drawn as a Grand Juror or as an alternate, I may be required to attend grand jury training; if I am seated as a Grand Juror, I will be available to attend grand jury meetings and devote the required time to complete grand jury work for one year, from July through June. I further understand that if my name is drawn as an alternate, I will remain available for one year to serve as a member of the grand jury if called upon.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: _____
(Please insert date signed)

Signature: _____
(Please sign your name here)

For questions about Grand Jury service, please call Cassie Barner at (510) 208-9855.

For statistical records, please mark appropriate boxes.

Age Range; specifically: 18-25 26-34 35-44 45-54 55-64 65-74 75 and over

Gender: Male Female

Race or Ethnicity: American Indian or Alaskan Native
 Asian Black or African American
 Hispanic/Latino Native Hawaiian or other Pacific Islander
 White (Anglo) Other Race or Ethnicity (Please state _____)
 Decline to Answer

Place of Residence by Supervisorial District:

District 1 District 2 District 3 District 4 District 5

FOR COURT USE ONLY

Qualified under PC893 and PC896?

Yes No

Schedule interview with jury commissioner?

Yes No

Dated: _____

Signature: _____
(Jury Commissioner)



*Rene C. Davidson Courthouse, 1225 Fallon Street, Oakland, California
Photograph courtesy of Seth Gaines, Germantown, Maryland
[Used with permission.]*