

This document is an extract of a larger publication.

civilgrandjury.org is a project of UnGovr.org, a US-based 501(c)(3) nonprofit dedicated to government transparency and public accountability.



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Alameda County
Grand Jury

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June 21, 2019

Hon. Wynne Carvill, Presiding Judge
Alameda County Superior Court
1225 Fallon Street, Department One
Oakland California 94612

Dear Judge Carvill,

As foreperson, I am pleased to present you with the 2018-2019 Grand Jury Final Report. The investigations undertaken by this year's nineteen selected Grand Jurors were complex as well as intricate, resulting in nine reports representing the areas of law and justice, social services, government and education.

The Grand Jury members worked tirelessly, interviewed nearly 100 witnesses, made site visits, reviewed documents, attended board meetings, had many group discussions, and spent hours editing reports. These nineteen members should be commended for coming together over the past twelve months to create a positive impact on the communities in which they live. Their judgment and dedication should be applauded.

As you review this final report you will find narratives regarding the Alameda County foster care system with too many out-of-county foster care placements resulting in decreased effective monitoring and poor interagency effectiveness. In the social service arena, there is the dilemma of poor quality and limited availability of independent living facilities for vulnerable adults, as well as a lack of interagency coordination.

In the area of government, we investigated the Alameda County Board of Supervisors' flawed process resulting in the loss of a \$5 million grant and the loss of the Urban Shield program. We also investigated the impact of crime on BART ridership, and the City of Alameda's debacle that involved the hiring of a department head.

In education, we looked at the Oakland Unified School District's lack of leadership and broken culture leading to its perpetual financial decline.

Hon. Wynne Carvill
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As you are aware, section 919 of the California Penal Code mandates that the Grand Jury inquire into the conditions of any public prisons within the county. This year's Grand Jury inspected Santa Rita Jail's intake, release, and grievance procedures. We also inspected the juvenile facility Camp Wilmont Sweeney and looked into the Camp's policies and procedures, security, education, and healthcare.

New to this year, the Grand Jury reviewed agency compliance and continuity of previous years' Grand Jury recommendations and whether or not those recommendations were implemented throughout the county. While we did not issue a report, we encourage next year's Grand Jury to continue this review process.

Please review all nine reports demonstrating the work of the 2018-2019 Grand Jury. On behalf of this year's Grand Jury, we would like to thank Assistant District Attorney Robert Warren and Senior Program Specialist Cassie Barner for their expertise, advice, hard work and guidance.

As foreperson, it has been a distinct honor for me and my fellow jurors to serve our community these past twelve months. We believe our efforts will help improve Alameda County, making it a better place for all of its citizens.

Sincerely,


Melanie Sweeney Griffith, Foreperson
2018-2019 Alameda County Grand Jury

2018-2019 Alameda County Grand Jury Members

Name	City
Mark Alper	Oakland
Jeffrey V. Baumgartner	Piedmont
Gene R. Block	Pleasanton
Jerome T. Bock	Oakland
Michael J. Boylan	Oakland
Ginnon A. Cunningham**	Alameda
Richard W. Draper	Oakland
Rod J. Gutierrez**	Berkeley
Hollis Harris	Alameda
Duane Profeit	Fremont
David Saenz**	Piedmont
Kulwant Singh	Dublin
Raymond Souza	Oakland
James W. Spencer, Jr.	Oakland
Melanie Sweeney-Griffith**	Oakland
Geoffrey Sylvester	Alameda
Charles V. Weir	Pleasanton
Anne M. Whittington	Alameda
Ann B. Zucker**	Fremont

** Jurors held over for a 2nd term by Presiding Judge Wynne Carvill

2018-2019 Alameda County Grand Jury Officers and Legal Staff



OFFICERS

Foreperson:	Melanie Sweeney-Griffith
Foreperson Pro Tem:	Ginnon A. Cunningham
Secretary:	Ann B. Zucker
Secretary Pro Tem:	Raymond Souza
Sergeant At Arms:	Michael J. Boylan
Sergeant At Arms Pro Tem:	Charles V. Weir

LEGAL STAFF

Robert L. Warren, Assistant District Attorney
Cassie Barner, Senior Program Specialist

2018-2019 Alameda County Grand Jury Committee Assignments

GOVERNMENT

David Saenz – *Chair*
Mark Alper
Gene R. Block – *Secretary Pro Tem*
Jerome T. Bock – *Chair Pro Tem*
Ginnon A. Cunningham – *Secretary*
Richard W. Draper
Charles V. Weir
Anne M. Whittington
Ann B. Zucker

LAW & JUSTICE

Raymond Souza – *Chair*
Mark Alper
Jeffrey V. Baumgartner
Gene R. Block
Michael J. Boylan
Rod J. Gutierrez
Charles V. Weir
Anne M. Whittington
Ann B. Zucker – *Chair Pro Tem*

HEALTH & SOCIAL SERVICES

Geoffrey Sylvester – *Chair*
Jeffrey V. Baumgartner – *Secretary*
Michael J. Boylan
Richard W. Draper – *Chair Pro Tem*
Rod J. Gutierrez
Hollis Harris – *Secretary Pro Tem*
Duane Profeit
Kulwant Singh
James W. Spencer, Jr.

EDUCATION & ADMINISTRATION

Ginnon A. Cunningham – *Chair*
Jerome T. Bock – *Chair Pro Tem*
Hollis Harris
Duane Profeit
David Saenz
Kulwant Singh
Raymond Souza
James W. Spencer, Jr.
Geoffrey Sylvester

RESPONSE COMMITTEE

Ann B. Zucker – *Chair*
Jeffrey V. Baumgartner – *Secretary*
Ginnon A. Cunningham
Rod J. Gutierrez
David Saenz
Melanie Sweeney-Griffith
Geoffrey Sylvester
Anne M. Whittington

EDIT COMMITTEE

Jeffrey V. Baumgartner
Geoffrey Sylvester
Anne M. Whittington



2018-2019 ALAMEDA COUNTY CIVIL GRAND JURY

Standing, left to right:

Ann B. Zucker (*Secretary*), Raymond Souza (*Secretary Pro tem*),
Hollis Harris, Rod J. Gutierrez,
Melanie Sweeney-Griffith (*Foreperson*), Jerome T. Bock,
Kulwant Singh, James W. Spencer Jr.,
Jeffrey V. Baumgartner, Anne M. Whittington,
Ginnon A. Cunningham (*Foreperson Pro Tem*),
Richard W. Draper, David Saenz, Michael J. Boylan
(*Sergeant at Arms*), Charles V. Weir (*Sergeant at Arms Pro Tem*),
Mark Alper

Seated, left to right:

Hon. Wynne S. Carvill (*Presiding Judge*)

Pictured, to the right (absent for group photo):

Geoffrey Sylvester, Gene R. Block, Duane Profeit



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



Honorable Wynne S. Carvill
January 1, 2018 – Present

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ALAMEDA CITY COUNCIL INTERFERENCE

EXECUTIVE SUMMARY

In 2017 the city of Alameda faced a vacancy at the department head level, a common occurrence for most organizations. Few could have predicted the pandemonium that would unfold after Alameda's city manager at the time started a recruitment to replace the retiring fire chief. What should have been an internal, administrative decision by the city manager based on a professional recruitment and interview process turned into a full-scale political battle. Unrelenting pressure by the city's firefighter labor organization in support of its internal candidate resulted in pressure on the city council to inappropriately intervene in the process.

The Alameda City Charter is filled with rules and principles to help ensure the effective and honest administration of government. This document plainly prohibits the city council from interfering in the hiring process or trying to influence the city manager. The prohibition, common in municipal charters throughout the nation, is intended to combat cronyism and corrupt government decisions.

In the case of Alameda, two members of the city council violated the city charter. They took steps at the behest of a labor organization to push for its candidate by privately meeting with the city

The interference in the Alameda fire chief hiring process ultimately cost the city over a million dollars in investigations, legal fees and an employee separation settlement.

manager and pressing the issue. They also appeared to use the city manager's performance review as leverage in the matter. One councilmember went further by making an indirect threat to the city manager's job to a member of the city manager's leadership team. This same councilmember also wrote a letter using city

letterhead openly advocating for the labor-backed candidate. These actions put the city manager in a very awkward position, creating a reasonable belief that her job was on the line if the labor-backed candidate was not selected. As a result, she took steps to publicly protest the inappropriate interference in the process. The city manager also surreptitiously recorded a conversation she had with the two councilmembers out of fear of additional threats.

The interference in the Alameda fire chief hiring process ultimately cost the city over a million dollars in investigations, legal fees and an employee separation settlement. While stability and continuity in leadership are often keys to success of a government, this malfeasance cost Alameda a city manager, a city attorney, and contributed to several other senior staff leaving the city for new opportunities. Finally, this interference damaged public trust in government at a time when such trust is so important.

BACKGROUND

The city of Alameda is an island community of approximately 79,000 residents within Alameda County. Alameda was incorporated in 1854 and became a charter city in 1916 with a council-manager form of government.

Council-Manager Governance

The council-manager form of government is the most popular structure of government in the United States among municipalities with populations over 2500. In California, 97% of cities operate using a council-manager governance system. Under this form, voters of a city elect a governing body (including a chief elected official, such as a mayor) to adopt legislation and set policy. Power is centralized in this body, which is responsible for approving the budget and adopting local laws and regulations. This governing body then hires a city manager, who has broad executive authority to carry out policies and oversee the day-to-day operations. The city manager should be hired based on education, experience, skills and abilities, with little concern for political viewpoints. The elected governing body supervises the manager's performance and has the authority to remove him or her at any time. The council-manager government is similar to the structure used by many corporations.

This form of local governance began to thrive after the good government movement in the 1920's. At that time, corruption and cronyism were rampant throughout the nation. It was common for dishonest elected officials and party bosses to pass out key jobs to family and friends. This structure of government helped to prevent cronyism and political favoritism by giving the responsibility of hiring and firing to a nonpolitical city manager. The movement stressed transparent, responsive and accountable management of administrative affairs.

Alameda Government

The city of Alameda employs approximately 518 full-time employees who serve the city's residents. The city is governed by a city council made up of the mayor and four councilmembers who are elected at large for staggered four-year terms. The city council is responsible for setting policy, adopting a budget and hiring the city manager, city attorney and city clerk. The city manager is responsible for implementing city council policy decisions and overseeing the day-to-day management and operations of the city. By a majority vote, the five members of the city council have the authority to remove the city manager from office, should he or she not be responsive or effective in the role.

The Alameda City Charter - Article VII - City Manager

A municipal charter is the legal document establishing a city or town. It often describes the role and responsibilities of the organization's elected officials along with key managers.

The Alameda City Charter section 7-2 (C) reads as follows:

*The City Manager shall have the power and it shall be his or her duty:
(C) To appoint, discipline and remove all officers and employees of the City under his or her jurisdiction, subject to Civil Service requirements.*

The Alameda City Charter Section 7-3 also reads as follows:

Neither the Council nor any of the members thereof shall interfere with the execution by the City Manager of his or her powers and duties. Except for purposes of inquiry, the Council and its members shall deal with that portion of the administrative service for which the City Manager is responsible solely through him or her. An attempt by a Councilmember to influence the City Manager in the making of any appointment or the purchase of any materials or supplies shall subject such Councilmember to removal from office for malfeasance.

The charter expressly gives the city manager the authority and responsibility to manage the hiring of administrative staff. It also prohibits elected officials from interfering in that process and threatens removal of the elected official from office as a remedy for such inappropriate conduct. While the charter describes the roles, responsibilities and limits on the power of its elected officials, it provides neither a procedure for investigating violations of the charter based on official misconduct nor a method for enforcement of the charter.

Complaint

The Grand Jury received over forty complaints that two Alameda councilmembers had wrongfully interfered with the duties of the city manager in 2017; specifically, that these two councilmembers had inappropriately attempted to influence the city manager to hire their desired candidate for the position of the city's fire chief.

INVESTIGATION

The focus of the Grand Jury's inquiry was to examine the role that elected councilmembers play in Alameda's system of government and, in these specific circumstances, determine whether any councilmembers violated the city charter by interfering and attempting to influence the Alameda city manager during the fire chief hiring process in 2017. If violations of the charter occurred, the Grand Jury was interested in determining if such conduct caused any damage to city

operations. If so, are there any solutions or recommendations for structural change that would help prevent such conduct in the future?

During the investigation, the Grand Jury heard testimony from a number of current and former city of Alameda staff, elected officials and statewide governance experts. The Grand Jury also reviewed city council agendas, minutes and meeting videos. The Jury examined city emails, calendars and other documents related to the fire chief hiring process, including the investigative reports prepared by the legal consultant hired by the city council to independently look into the matter. The Jury also listened to the recorded conversation between the city manager and two councilmembers. Finally, in addition to examining the Alameda City Charter, the Jury examined charters and policies from other California cities and training materials produced by the California League of Cities, Institute for Local Government, International City/County Management Association and documents from other professional organizations that focus on local public agency governance.

Fire Chief Recruitment

In March of 2017 the Alameda fire chief informed the city manager that he would be retiring in September of that year. Per the city's charter, it is the city manager's responsibility to fill the position.

The city manager chose to conduct an open recruitment and hired an outside consulting firm to aid in the process. The consulting firm projected that the recruitment process would start in June and a final selection would be made in early September. The process included advertising, recruitment, resume reviews, initial screening and panel interviews comprised of internal and external experts. A short-list of candidates would move on to interviews with the city manager and finally a new fire chief would be selected by the city manager.

The process leading up to the hire was rocky, rife with uncomfortable and unhealthy interactions between all parties. It culminated in the city manager publicly calling out the conduct of two councilmembers, among others, in a letter addressed to the whole council, accusing them of interfering with the hiring process in violation of the city charter.

The city's firefighters union, a powerhouse in city of Alameda politics, weighed in on both the process and the candidates. In fact, the president of the local firefighters' organization let the city manager know in April that his organization would be backing a specific internal candidate. Their lobbying efforts continued throughout the entire hiring process.

The recruitment process closed in late September of 2017. Forty-two candidates sought the position, three of whom came from inside the fire department. Ultimately, the city manager selected a new fire chief from outside Alameda, contrary to the firefighter union's recommendation. The hiring process was rocky, rife with uncomfortable and unhealthy interactions between all parties. It culminated in the city manager publicly calling out the

conduct of two councilmembers, among others, in a letter addressed to the whole council, accusing them of interfering with the hiring process in violation of the city charter.

In part, the city manager's letter to the council dated October 2, 2017 stated:

"...I have just appointed an exceptional Fire Chief to be the next Fire Chief for the City of Alameda. Attached is his resume and a press release highlighting the extraordinary set of public safety skills and leadership he will bring to our residents and the department...My job as City Manager is to make decisions that I believe are in the best interests of the City of Alameda - both in terms of good governance and mindful of the needs of our community. Hiring decisions, including the selection of key leadership personnel, are part of my job. Over the past 18 months, I have tried to continue my two-decade practice of hiring the best candidates for positions after a fair and open selection process. And, until recently, I have received the unqualified support of the City Council in achieving this objective.

The selection of the next Fire Chief for the City of Alameda is the exception. Over the several months, I have been approached by elected and appointed officials in Alameda and even at the State level, requesting that I put aside the best interests of the City and select the Fire Chief that has been handpicked by the local IAFF union. I have been asked to cast aside the requirement of a fair and transparent process and give no consideration to other candidates who present superior qualifications and experience, the capacity to work collaboratively and respectfully with members of the fire department as well as other City departments, and the ability to provide enhanced public safety service to our residents. I trust that as elected officials you take this last value as what public service is all about: providing the best possible service to all of our residents. The selection of our new Fire Chief should not be driven by unseemly political pressure. This pressure is explicitly prohibited by Alameda's Charter Section 7-3, as ... pointed out by the City Attorney. Our focus should be on the qualifications, interview and test results, and abilities of the candidate to do the best job for the City of Alameda."

The city manager then outlined a number of allegations that she felt damaged the selection process. As stated previously, the Grand Jury chose to focus on the allegations involving the city charter's prohibition of councilmember interference and undue influence.

The Grand Jury's investigation revealed a pattern of conduct by two councilmembers that, taken together, amounted to inappropriate interference in the fire chief hiring process and resulted in lasting damage to the city. Highlighted below are key events leading the Grand Jury to such conclusions.

Alleged Threat to Fire City Manager

Two months into the fire chief recruitment, tensions were high throughout City Hall because the fire labor organization was making a very strong push for its internal candidate. The relationship between the city manager and fire labor leader was strained because of rumors that the city manager was recruiting an outside candidate, and the labor-backed candidate might not be chosen. Union representatives began recruiting current and former city officials to reach out to the city manager in a show of support for its candidate. This put the city manager in a difficult position, and, in her opinion, threatened any chance for a fair and transparent recruitment process for a department head position which controlled a \$33 million annual budget and managed 90 firefighters.

On August 1, 2017 one Alameda councilmember (CM1) accompanied the Alameda police chief to a number of neighborhood gatherings on National Night Out. The nationwide event is intended

CM1 responded by stating that the city manager better “do the right thing” and if not, there were already two councilmembers ready to fire the city manager.

to strengthen community-police partnerships and bring neighborhoods together to make them safer. The police chief and CM1 had worked with each other for years, and it was common for the chief to partner up with someone on the city council for such events. At the end of the night, CM1 brought up with the police chief the issue of the fire chief hiring process.

The conversation led the police chief to acknowledge that the labor candidate had a steep hill to climb, because he lacked a college degree and command experience. CM1 responded that the city manager better “do the right thing”; if not, there were already two councilmembers ready to fire her. The police chief knew the city manager was frustrated with the outside interference but thought her concerns that her job might be in jeopardy were overblown. That was certainly no longer the case after this conversation. Had this statement been made directly to the city manager, it would be difficult to interpret it as anything other than a threat to the city manager’s job and as pressure to select CM1’s candidate, who also happened to be the labor union’s choice. Such pressure would be a direct violation of the city charter’s provision preventing councilmembers from trying to influence the city manager during the hiring process.

It is impractical to have expected the police chief to keep these provocative comments private. The police chief reports directly to the city manager and, just like the fire chief, is hired and could be fired by the city manager. By all accounts, the city manager and police chief had a very positive working relationship and city business oftentimes required them to speak several times a day. Everyone on the council knew this. It would also be in the police chief’s best interests to give his boss a heads up that one councilmember appeared to be lobbying other members of the council to fire her if they did not get their way on the fire chief hire. Ultimately, there is evidence that the police chief did report this conversation to the city manager.

CM1 has repeatedly denied making such statements. After thorough investigation, the Grand Jury does not find these denials credible. The police chief immediately reported the conversation to the city manager and later recounted the same story to a local newspaper. His story was also consistent throughout multiple investigatory interviews. The police chief had no apparent motive to fabricate this story. He had been working for the city for 26 years and had been chief for the last four. It appears the police chief had no interest in supporting any specific fire chief candidate, and that he had no specific problems working with CM1. Considering CM1's strong preference for the labor-backed candidate, close relationship with the Alameda fire labor leader, and the fact that CM1 was supported in reelection efforts by the labor group, the police chief's version of the conversation is more credible.

An elected official operating in a council-manager form of government should not be criticizing his or her city manager about internal governmental operations to one of the manager's subordinates.

If the allegation were true, it is unclear whether CM1 made the statement expecting that it would be passed on to the city manager as a threat or he just did not have the capacity or good judgement to withhold his opinion to someone so close to the city manager. If intended to pressure the city manager in the hiring process, it was unethical. If just a spontaneous declaration of CM1's feelings, it displayed bad judgement and a poor understanding of good governance. An elected official operating in a council-manager form of government should not be criticizing his or her city manager about internal government operations to one of the manager's subordinates. Criticisms should be made directly to the city manager. Relaying a threat to fire the city manager to one of her subordinates is absolutely inexcusable.

Meeting Between Two Councilmembers and City Manager

On August 16th, CM1 and a second councilmember (CM2), who were the closest allies of the fire labor leader, made an appointment and met privately with the city manager. The city manager was already aware of CM1's statement to the police chief claiming the city manager's job was in jeopardy. While not informed about the reason for the meeting, the city manager assumed that the two councilmembers were interested in lobbying for the labor-backed candidate and that they may also directly confront the city manager with CM1's warning. The city manager was so concerned about the ongoing pressure regarding the hiring process and threats to her employment that she decided to covertly record the conversation. The Grand Jury listened to the recording during its investigation.

CM2 had sought advice from a consultant hired by the council to aid in the city manager's performance review about how to provide input to the city manager about the fire chief hiring process. The consultant advised that a city manager would appreciate constructive input during a face-to-face conversation but the city council should avoid interfering in the process and that formalizing their opinions in a letter of recommendation would be inappropriate.

The meeting lasted approximately 55 minutes and focused on the city manager's relationship with the labor leader and why CM1 and CM2 preferred the labor-backed candidate.

During the meeting, the city manager made it clear she felt like there was significant inappropriate interference in the recruiting and hiring process. The city manager stated, "...and I am a little disappointed in we agreed initially that this would be an open and fair process without any pressure. And it's been the opposite. From the fire side, and including this meeting, that's not what we agreed to, with [the fire labor leader] and I." While the councilmembers were careful not to make any direct threats, their message was clear. They supported the labor-

They [CM1 and CM2] appeared to be demanding that the city manager give the labor leader daily access and input into the hiring process.

backed candidate and pressed the city manager on that point. They appeared to be doing the labor leader's bidding although they claimed the meeting was their idea. CM1 parroted the labor leader's claims against the city manager and her staff. Those concerns included: 1) a perception by the labor group that the labor candidate was not being given a fair shot at the job, 2) a comment by a

senior staff person that the city is run by the city manager, not by the fire labor leader, and 3) a rumor that the city manager was actively recruiting a candidate from a fire department outside of Alameda and had lied about that when speaking to the fire labor leader (that candidate did not ultimately even apply for the position). Both CM1 and CM2 pressed the city manager over and over to build a closer relationship with the labor leader even though they acknowledged that the leader was difficult to work with. At one point, CM1 said, "You don't have to do everything he says, but he needs to be able to trust you and at this point he doesn't. And that bothers me. So I want you guys to try to fix that." They appeared to be demanding that the city manager give the labor leader daily access and input into the hiring process.

CM2 stated that the labor-backed candidate understood the budget process, would be good to work with during difficult financial times, and could convince the firefighters to come along on important issues. CM2 felt one other internal candidate would be a total disaster and another internal candidate might be a short timer who was "gonna spike his pension...." When speaking about the poor relationship between the labor leader and the city manager, CM2 stated at one point, "But whatever happened, we need to be on the same page now about what the expectations are, and what's gonna happen and how we're gonna move forward and what the process is gonna look like..." The city manager responded by saying that she hoped the labor candidate did well and that would be the easiest solution. CM1 chimed in, "And if he does and you pick him, I mean, you'll have to be able to tell the folks that think you were pressured that you weren't."

Both councilmembers also acknowledged that they were very close personal friends with the labor leader. In fact, they drove together to the labor leader's wedding the weekend before and apparently discussed how they would approach the city manager at the meeting. The councilmembers again hounded the city manager to be in constant contact with the labor leader

and repair any trust issues. In fact, CM2 suggested that the city manager “build in an automatic email to him that just says there has been no change today, or whatever.”

At the end of the meeting, CM1 stated, “And just to be clear...I know I didn’t tell you who to hire, and I don’t think [CM2] did either, so just to be clear [laughs loudly].” These joking words were intended to erase 55 minutes of pressure to hire the labor candidate and appease the labor leader. It should be noted that the city manager protested several times during the meeting that she did not appreciate the pressure, yet CM1 and CM2 did not even acknowledge these comments in a meaningful way. The city manager felt the meeting and lobbying efforts destroyed the transparency of the hiring process. If the charter section is intended to prevent back room discussions and give the public confidence that the hiring process was fair and open, these discussions seemed to violate that intention.

The Grand Jury concluded that CM1 and CM2’s complaints about the city manager’s handling of the process were either inaccurate or irrelevant. Except for interference by the councilmembers and the firefighter labor organization, Grand Jury witnesses were generally complimentary of the professionalism and thoroughness of the fire chief hiring process. The labor-backed candidate actually advanced to the final round of interviews, in part, because the fire labor leader participated on the interview panel and was the only panel member who ranked him as a first choice. The real issue for CM1 and CM2 appears to be the city manager’s unwillingness to select the labor-backed candidate outright.

CM1 wrote a letter to the city manager offering strong support for the labor-backed candidate. CM1 did so using city letterhead and signed it in an official capacity as a member of the Alameda City Council.

Letter of Recommendation by Councilmember on City Letterhead

On July 31, 2017 CM1 wrote a letter to the city manager offering strong support for the labor candidate. CM1 did so using city letterhead and signed it in an official capacity as a member of the Alameda City Council. It was a clear attempt to influence the city manager in the hiring process. The letter speaks to the candidate’s strengths and qualifications and stressed that the city had historically benefitted when individuals are promoted from within the department to leadership positions. The outside investigator’s report concluded that the letter went beyond a typical character reference.

During the meeting between CM1, CM2 and the city manager, CM1 acknowledged being asked to write the letter in support of the labor-backed candidate and was provided with “talking points” by an executive board member of the firefighter’s labor group.

The letter was one of many and part of an organized effort by some within the fire labor organization to support their candidate. The labor organization was certainly within its right to lobby for its candidate. Part of its lobbying effort included approaching councilmembers,

community leaders and other elected officials to request recommendation letters in support of its candidate. At least two councilmembers (including CM2) refused to do so, in part, because it was not appropriate. CM1's letter was a direct and very public violation of the charter provision prohibiting councilmembers from attempting to influence the city manager in making an appointment.

Performance Review

Amid the tumultuous fire chief hiring process, the council sought to complete performance reviews of their direct reports. In May of 2017 the city council directed the city attorney to hire a governance expert to help the council with performance evaluations of top city management, including the city manager. The consultant had extensive experience serving as a city manager for five California cities and had also served in leadership roles, taught, and published articles for several city management professional organizations. Hiring a consultant to facilitate management evaluations allows for independent collection of information from the governing body with the promise of constructive discussion leading to a consensus by elected officials on the review in a timely manner.

The process started slowly due to scheduling conflicts and disagreements among councilmembers about how to do the evaluations. Once consensus was obtained, the consultant began to move through the evaluation of the city manager by individually interviewing councilmembers and having the manager prepare a self-evaluation. In July the councilmember interviews were completed and summaries along with the city manager's self-evaluation were distributed to all parties. All that was left was a closed session discussion between council and the city manager. During that closed session, the council could follow-up with questions on the self-assessments and presentation of goals and priorities to staff.

During the interviews, it became evident to the consultant that selection of the fire chief was an issue of interest for CM1 and CM2. It was clear that CM1 supported a specific candidate and tried to connect the issue to the city manager's evaluation. CM2 also brought up the fire chief selection process and inquired about how to communicate with the city manager.

While city leaders were still trying to agree on a date when the council could meet to present the finalized performance review and discuss them with the city manager, the issue of the fire chief

It is ironic that CM1 described the city attorney's informative, non-threatening email reminding council about their roles during the hiring process as interference and intimidation while denying that any of his conduct rose to the level of trying to influence the city manager.

hiring process again became an issue. On August 24, 2017 the city attorney sent an email to the entire city council, including the mayor and copying the city manager, the assistant city manager and the performance review consultant. The email reminded the elected leaders about the city manager's role in the hiring process and included the wording of Charter section 7-3 (council may not interfere in the

process). The email made no accusations but merely advised the council of their legal obligations. It was sent, in part, because the performance review consultant expressed his concern that some on the council were particularly interested in the fire chief selection and two councilmembers had already communicated with the city manager about the selection.

It was reported that one councilmember thought the email was helpful and that it was the first time they had even heard about the charter provision. CM1 had a very different reaction. CM1 responded to the city attorney, describing the city attorney's message as "disturbing and inappropriate." Because the consultant was copied on the original memo, CM1 accused the city attorney of participating in interference and intimidation of the council regarding the city manager's review.

It appears CM1 understood that the consultant was uncomfortable with councilmember involvement in the fire chief hiring process. His response struck a tone of outrage and was certainly defensive. CM1 felt strongly that he had a right to bring up what he described as a "legitimate performance-related matter" which included the city manager. In short, it appeared he was openly disregarding the city charter and using the performance review process as leverage.

The consultant saw it as an effort by at least two councilmembers to hold the evaluation over the city manager until the fire chief position was filled. Because of this behavior, the consultant terminated his firm's contract with the city prior to completion of any of the reviews.

Rather than using the evaluation process as a tool to communicate expectations, goals and priorities, it appeared that the process was being hijacked to accomplish individual councilmembers' goals of installing their preferred candidate for fire chief. It is ironic that CM1 described the city attorney's informative, non-threatening email reminding council about their roles during the hiring process as interference and intimidation while denying that any of his conduct rose to the level of trying to influence the city manager.

Consultant's Resignation

After significant consternation and attempts by CM1 to delay scheduling the council's closed session meeting to present the city manager's evaluation, the meeting was finally set for

It is quite telling that an outside consultant with years of city management experience terminated his contract with the city, foregoing full payment for his future services, because he did not want to participate in an unethical misuse of the performance review process.

September 19. While all participants were present and prepared, the meeting did not go as the consultant had planned. The Grand Jury heard testimony that CM1 and CM2 raised issues about the evaluation process prior to the city manager being invited into the closed session meeting even though the procedure had been thoroughly described to the whole council on previous occasions. Disagreements ensued even though it appears the city and consultant followed industry best practices. The Grand

Jury also heard testimony that at least one other elected official was unhappy with the

summaries of the council interviews although no specifics were provided to the Grand Jury. Ultimately, the city manager’s review was put off for ambiguous reasons. The consultant saw it as an effort by at least two councilmembers to hold the evaluation over the city manager until the fire chief position was filled. Because of this behavior, the consultant terminated his firm’s contract with the city prior to completion of any of the reviews.

It is quite telling that an outside consultant with years of city management experience terminated his contract with the city, foregoing full payment for his future services, because he did not want to participate in an unethical misuse of the performance review process.

Fire Chief Selection

By the beginning of October, the city manager had completed interviewing the fire chief finalists, and, resisting the intense pressure, selected a qualified candidate. By all accounts, the new fire chief is performing quite well and has a positive working relationship with council, the current city manager and the fire labor organization.

City Manager letter to Council

In conjunction with the selection of the new fire chief, the city manager chose to report in a letter

The city manager chose to report on the problems she encountered during the process and accused unnamed councilmembers of “intense and unrelenting” pressure to hire the labor supported candidate. The city manager claimed that such conduct directly violated the Alameda City Charter which prohibited councilmembers from attempting “to influence the city manager in the making of any appointment.”

to the Alameda City Council dated October 2, 2017 the problems she encountered during the process and accused unnamed councilmembers of “intense and unrelenting” pressure to hire the labor-backed candidate. The city manager claimed that such conduct directly violated the Alameda City Charter section 7-3, which prohibited councilmembers from attempting “to influence the city manager in the making of any appointment.” Notwithstanding this claim, the city manager looked towards the next department head appointment – the public works

director position had to be filled. The city manager hoped to choose the most experienced and qualified person for the position without going through the same intense scrutiny. The letter outlined a number of events and specific claims, as described in this report. Ultimately, the city manager would not fill the public works position. The interaction with council during the fire chief hiring process and the decision to choose a candidate not supported by the firefighter’s labor leader were attempts to stand on principle. The decision to make the October 2nd letter public raised the stakes even further.

While the letter did not name the councilmembers in question, it described CM1’s letter of recommendation and the meeting between CM1, CM2 and the city manager as inappropriate attempts to influence the hiring process. The local newspaper followed up with an article and

Op-Ed piece identifying both councilmembers by name. Any intention by the city manager for the letter to merely serve as a reminder to avoid such interference in the future was quickly disappearing. During public comment at the next city council meeting, a number of speakers, including the fire labor leader's wife, either attacked the city manager, her job performance both in Alameda and at her prior job in another county or commended CM1 and CM2 for all their good work in the community. The battle intensified.

Department Head Letter in Support of City Manager

Following the attacks on the city manager during the council meeting, many of the department heads who reported to the city manager felt it was important to stand up together in support of the city manager. At the next council meeting, the police chief, with department heads standing behind him, read a letter outlining the accomplishments of the city manager and her team. While they did not attack CM1 or CM2 in any way, CM2 felt it was inappropriate for the management team to defend the city manager and step into the controversy.

Hiring Outside Counsel to Investigate City Manager's Allegations

As a result of the accusations laid out in the city manager's October 2nd letter and the resulting public outcry, the city council hired an outside law firm to provide an independent legal analysis of alleged violations of Alameda City Charter section 7-3. The firm conducted a thorough investigation and asked the council to schedule a closed session meeting to address potential litigation based on the facts and circumstances contained within the report. It was certainly a legitimate concern, and closed session is the normal forum for discussion about potential litigation.

CM1 and CM2, who were the subjects of the investigation, participated in the closed session meetings regarding the independent investigator's report. Not only were they present in the meeting to accept the report, but the councilmembers and city attorney participated in editing facts leading to conclusions. This included clarifications, corrections and even deletions. After the closed session discussions, the independent investigator prepared a second report (13 pages) which told a shortened version of the story for distribution to the public, much shorter than the original 70 page report.

The Grand Jury is concerned that the report's "independence" was damaged after the subjects of the investigation participated with the rest of the council in modifying or editing the final report in closed session. The report was described to the public as an independent investigation to determine whether councilmembers violated the city charter, whether members of the council committed malfeasance and

The Grand Jury is concerned that the report's "independence" was damaged after the subjects of the investigation participated with the rest of the council in modifying or editing the final report in closed session.

finally whether there should be a recommendation that the councilmembers in question should be removed from office. The subjects of the investigation should never have participated in helping to edit the report before it was released to the public. The former city manager certainly did not get to participate in editing the report. “[T]he common law doctrine against conflicts of interest ... prohibits public officials from placing themselves in a position where their private, personal interests may conflict with their official duties.” (64 Ops.Cal.Atty.Gen. 795, 797 (1981); accord, 70 Ops.Cal.Atty.Gen. 45, 47 (1987). Surely, CM1 and CM2’s personal interests were at stake when providing edits to the report and deciding what gets released to the public. Why was a second, much shortened report prepared? Why were both reports ultimately released? Were there efforts to release only the shortened report?

The Grand Jury was provided an explanation by two witnesses who stated that because CM1 and CM2 were not named in the city manager’s letter, the whole council could participate. This argument falls short. It took reporters little to no time to figure out who the city manager was referring to. CM1 was the only councilmember who wrote a letter of recommendation and CM1 and CM2 were the only members of the council who met with the city manager about the process. These were the only council-related complaints in the letter. Further, most of the report that was related to elected officials was focused on CM1 and CM2 and called them out by name.

The Grand Jury also heard testimony that there was direction by some on the council for the independent investigator to prepare the second shorter report, which would be the document released to the public. The second report comes to similar conclusions but appears to be much less critical of the two councilmembers. The Grand Jury also heard testimony that plans to release only the shortened document were leaked to the public. In part, as a result of public outcry, the council ultimately released redacted versions of both reports along with a summary of the changes. The Grand Jury believes that the two councilmembers who were subjects of the accusations should not have participated in the acceptance and editing of the report.

Costs to the City of Alameda

The fallout from the 2017 Alameda Fire Chief hiring process and surrounding events has been significant.

One elected official’s disrespectful treatment toward staff or willingness to side with special interests over the common good of the community can poison the halls of government and damage reputations.

The Grand Jury heard testimony from multiple witnesses that morale within City Hall was already eroding when some councilmembers and staff began to take sides in this matter. There were claims of retaliation. A number of senior staff left the city, some of whom were standing behind the police chief at the council meeting along with their colleagues. Witnesses said that many of the people who left did so at least in part because of the fire chief recruitment incident. Scandals such

as these can discourage talented public servants from taking jobs with a city government in

turmoil. One elected official's disrespectful treatment toward staff or willingness to side with special interests over the common good of the community can poison the halls of government and damage reputations.

Turnover is expensive for the city, both financially and in terms of intellectual property, institutional knowledge, experience, and continuity of projects. In approximately one year, the city lost the following staff:

- City Manager
- Assistant City Manager
- City Attorney
- Assistant City Attorney
- Alameda's Base Reuse and Transportation Planning Director

The city council agreed to separate from the former city manager in May 2018. The former city manager received \$257,400 in severance payments paid over one year, along with health benefits for 18 months. The city paid an additional \$519,709 separation payment in the form of an annuity to be split over two installments in August 2018 and February 2019. Furthermore, the city was responsible for paying the former city manager's \$125,000 attorney's fees. This agreement was approved by the council with a 3-2 vote with CM1 and CM2 dissenting.

The city also paid for outside counsel to investigate these matters and prepare the two reports. In addition, the city hired outside counsel to represent the city's interests after the independent investigator's work was completed. CM1 and CM2 also hired personal attorneys to represent them and have started the process to obtain reimbursement from the city for those fees. They contend their legal counsel was required to defend their actions which took place in the scope of their roles as councilmembers so taxpayers should be responsible for those costs.

All of this may have been prevented if the city provided the council with more training relating to governance and their ethical obligations. New councilmembers are provided a cursory orientation, a copy of the city charter and are usually invited to attend an annual conference hosted by the California League of Cities. They also complete online ethics training every two years as required by California law, although this training does not in a meaningful way cover the topics that Alameda faced during this controversy.

Many municipalities rely on their mayors or presidents of their governing bodies to provide leadership and guidance when other councilmembers overstep their authority. This certainly was not the case in Alameda. Other government agencies adopt a code of conduct or council handbook to document accepted practices and expectations of elected leaders and staff. A unified effort to follow basic principles of good governance often results in an effective government. While a councilmember handbook can help orient new electeds, a strong document outlining roles and responsibilities defined by state law, the organization's charter and municipal codes

can also be an essential resource and training guide to experienced electeds and city staff. Cities like Walnut Creek and Yuba City have developed robust council handbooks that describe rules surrounding conflicts of interest, detail meeting procedures and speak to proper interactions between elected officials and staff. Alameda could benefit from such guidance.

First Amendment vs. Good Governance

Woven through the discussion of the city charter's limits on council interference is the argument that the First Amendment rights of individual councilmembers could supersede the city charter.

Legal counsel representing the elected officials accused of interfering with the fire chief's hiring process cite a whole host of court opinions supporting open and free expression by public officials. Many cases stand for the proposition that the First Amendment provides important protections to legislators ensuring that they may take positions on controversial political issues with minimal limits on their speech and without the fear of being removed from office for being outspoken. Yet, much of the same case law acknowledges that legitimate limits on speech can exist.

Many of these limits on speech and expression were built into the law through legislative action and the initiative process to combat corruption and protect the integrity of governmental process. The Political Reform Act of 1974 was adopted by California voters after the Watergate scandal. Among other things, it regulates campaign finance and conflicts of interest. Elected officials may not participate in certain governmental decisions when they have personal financial interests at stake. The Brown Act also places limits on free and unfettered speech of elected officials. It places strict limits on electeds meeting behind closed doors to discuss the public's business. It helps ensure that deliberations and actions of public bodies are conducted openly and subject to public scrutiny.

The firm hired by the city to investigate the Alameda councilmembers thoroughly and thoughtfully examined these free speech issues within its final report. Ultimately, the report validated the Alameda charter provision limiting council interference in the city manager's hiring authority. The investigator relied on case law which supported the position that speech related to internal power struggles within the workplace is not a public concern. Speech involving the internal workings of a public agency which is not a matter of public concern does not have unlimited constitutional protection. The investigator concluded that "[s]peech by a councilmember that directly interferes with the authority vested in the city manager is well within this category of unprotected expression." The Grand Jury agrees with such reasoning.

Charter provisions which prohibit council interference in the administrative responsibilities of the city manager are quite common. The city of Oakland's charter section 218 makes it a misdemeanor for council to interfere in the administrative affairs of the city administrator. The city of Mountain View's charter also includes a council non-interference section which ultimately

led to a councilmember's removal from office in 2002. Both San Francisco and Hayward also have non-interference policies. This report should serve as an object lesson to all local public agencies within Alameda County to review their charters and codes of conduct.

The ability to run for and hold elective office is a valuable right of citizenship. The voters are given the power to evaluate and choose candidates who meet basic prescribed qualifications. Those officeholders are bestowed with great powers to govern, set community policy and spend public funds. Understandably, removing an elected official from office for misconduct is difficult. Before overruling the will of the voters, the law requires that it is shown that the official has committed willful or corrupt misconduct.

The Grand Jury has the authority to issue a formal Accusation to start the process to remove someone from office. Such authority comes with great responsibility. Ultimately, the Grand Jury would be usurping the will of the voters because a public official has committed such malfeasance in office that they must be removed before voters have a chance to make their judgement at the ballot box. Here, in the Grand Jury's opinion, CM1 committed more significant violations of the charter. We also acknowledge that most of the facts laid out in this report were available to the voters last November when CM1 was on the ballot for reelection. Voters did not reelect CM1 to a new four-year term on the council. However, CM1, as the runner-up, was awarded a term-shortened spot due to another councilmember's election as mayor, which created a vacancy on the council. While the Grand Jury believes that the conduct described in this report did, in fact, violate the city charter, it also believes it does not warrant moving forward with formal Accusation proceedings.

CONCLUSION

This story began with the then-fire chief announcing his retirement in March of 2017. What resulted was a fiasco that cost the city well over a million dollars, the loss of multiple talented and hard to replace senior staff, and a government body with a very damaged reputation.

The Alameda City Charter clearly bestows the power to hire administrative staff on the city manager. At the same time, it makes clear that city councilmembers must not attempt to influence the city manager during this process. While these governing documents are important, a well-functioning municipality relies on the strength and fortitude of its leaders, both elected and appointed, to stand up against external pressures to skirt the tenants of good government.

The external pressure exerted during the fire chief hiring process and the resulting actions by two councilmembers represented the very conduct that good government advocates were trying to eliminate when city charter amendments preventing council interference began to pop up throughout the nation. Cronyism and back room deals are corrosive and can destroy the public's trust in the fair administration of government. While the fire labor organization had every right to lobby for their candidate, it was unethical to lobby councilmembers to intervene and influence

the city manager when the city's governing document expressly prohibited such council interference.

The resulting damage caused by the actions of elected officials and staff that followed is undeniable.

FINDINGS

Finding 19-1:

The city of Alameda's failure to provide councilmembers with adequate training upon first being elected to council as well as annual training on governance helped contribute to inappropriate interference in the fire chief hiring process.

Finding 19-2:

The city of Alameda's charter fails to provide enforcement mechanisms when councilmembers and staff violate provisions of the charter, creating uncertainty when such violations occur.

Finding 19-3:

Councilmembers who were the obvious subjects of the independent investigation were allowed to participate in the editing of the outside investigator's report, damaging the "independence" of the analysis.

Finding 19-4:

In violation of the city's charter they had sworn to uphold, two councilmembers did interfere with the city manager's ability to conduct an open and transparent recruitment for a new fire chief.

RECOMMENDATIONS

Recommendation 19-1:

The Alameda City Council must establish policies mandating initial training and orientation and ongoing annual training for elected officials and senior staff related to ethics and governance.

Recommendation 19-2:

The Alameda City Council must investigate possible charter or municipal code amendments to clarify and strengthen provisions relating to city governance. The charter should delineate the specific types of conduct that constitute a violation of section 7-3, as well as outline an enforcement process.

Recommendation 19-3:

The Alameda City Council should adopt a policy stating that councilmembers who knowingly violate ethical codes of conduct or charter provisions may not seek reimbursement for related legal representation.

Recommendation 19-4:

The Alameda City Council working with the city attorney, city manager and city clerk must develop and implement a code of conduct and councilmember handbook.

RESPONSES REQUIRED

Alameda City Council

Findings 19-1 through 19-4
Recommendations 19-1 through 19-4

REQUEST FOR RESPONSES

Pursuant to California Penal Code sections 933 and 933.05, the Grand Jury requests each entity or individual named below to respond to the enumerated Findings and Recommendations within specific statutory guidelines:

Responses to Findings shall be either:

- Agree
- Disagree Wholly, with an explanation
- Disagree Partially, with an explanation

Responses to Recommendations shall be one the following:

- Has been implemented, with a brief summary of the implementation actions
- Will be implemented, with an implementation schedule
- Requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a completion date that is not more than 6 months after the issuance of this report
- Will not be implemented because it is not warranted or is not reasonable, with an explanation

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THE OAKLAND UNIFIED SCHOOL DISTRICT'S BROKEN ADMINISTRATIVE CULTURE – MILLIONS WASTED EVERY YEAR

EXECUTIVE SUMMARY

For years, the Grand Jury has reported on the Oakland Unified School District's (OUSD) financial woes and academic struggles. Blame has been spread in many directions: declining enrollment, charter schools, inequitable funding and so on.

This year, the Grand Jury received eight complaints from within the walls of OUSD, each challenging the common belief that the school district was struggling because of outside pressures. Together they alleged that abandoned policies and procedures, misguided priorities and poor business practices have greatly contributed to a broken administrative culture that thrives on dysfunction and self-interest.

Outlined in the complaints and confirmed by the testimony of over twenty witnesses, the Grand Jury was presented with example after example supporting the conclusion that the district's poor business practices and broken culture have greatly contributed to its financial instability. For example, within the facilities department, constantly changing priorities left the district without a facilities master plan, contributing to a district full of under-enrolled schools. Poor financial stewardship of the district's nearly billion dollar bond program coupled with unnecessarily costly policies that do not directly benefit students have left OUSD with little to show in the way of completed school projects. District-wide, decentralized procurement with lax competitive bidding practices have led to overspending and waste. Finally, within management ranks, self-interested decisions by midlevel staff and repeated breakdowns in the chain of command without anyone being held accountable has helped perpetuate all of this dysfunction.

All too often, policies and procedures have fallen by the wayside and administrative staff who are frequently undertrained in best practices make decisions that are not in the best interests of the school district.

OUSD certainly has greater financial needs than many surrounding districts, but state data shows that it also receives considerably more money than surrounding districts. OUSD received \$562 million in General Fund revenues in Fiscal Year (FY) 2017-2018 or \$16,154 per student, which ranked sixth among 37 local school districts. Total spending was \$532 million or \$15,269 per student, which ranked seventh. An analysis of spending revealed that OUSD expenses that directly affect students in the classroom (teachers' total compensation, local administrative and support staff, pupil services and books and supplies) were either near or far below the median

of the 37-district sample and state averages. However, spending on activities other than the classroom (central staff and administration, contractors and services) were above or far above the median of the 37-district sample and state averages. OUSD's extra spending per student was \$2,726 over the median spending for the same sample. This translates into total extra spending for OUSD of \$95 million per year.

While the district is large and complicated to run, it is struggling to survive financially, in part, because district leadership has not committed to a long-range, comprehensive strategic plan, implemented using sound financial practices. All too often, policies and procedures have fallen by the wayside and administrative staff who are frequently undertrained in best practices make decisions that are not in the best interests of the school district.

BACKGROUND

OUSD serves 36,000 students at 87 traditional public schools throughout Oakland. Its FY 2018 General Fund expenditures were \$531 million. Each district within the city elects a representative to the seven-member Oakland Unified School District Board of Education (Board). The average tenure among the current board members is six years.

The Board has responsibility for policy direction, budget approval, and hiring and firing the school superintendent. The superintendent has responsibility for implementing board policy and running day-to-day operations of the district, including hiring a core team of senior leaders to manage academic, financial, operations and facilities functions.

While Board membership has been comparatively stable, there have been nine OUSD school superintendents since 2003 – a new one every 18 months on average. This lack of continuity is in many ways connected to the district's long-term financial instability. The previous superintendent left the district's finances in shambles. Before OUSD settled its teacher strike this last spring, the state's school fiscal oversight organization estimated that OUSD faced a \$9 million deficit in FY2018-2019, \$6.4 million next year and \$15.7 million the following year.

The strike settlement will certainly add to the district's financial struggles. The Grand Jury confirmed that teacher raises will cost the district \$65 million over four years. This required the Board to identify \$21.7 million in cuts and revenue enhancements to ensure the district maintains state mandated reserves. The Board promised somewhat similar raises to other staff. The Alameda County Office of Education (ACOE) warned that such a decision would likely threaten the district's financial stability. If a deal is struck similar to that of the teachers, it could cost an additional \$46 million over the same four-year period.

The district's longstanding inability to manage its finances led the state to adopt Assembly Bill 1840 last September. The bill promised to cover a portion of OUSD's deficits if the district met specific financial reform benchmarks by March 1 of this year. Slow to respond, the Board did not meet all requirements by the deadline.

Ultimately, the Alameda County Office of Education, with the OUSD superintendent's support, embedded multiple top-level school finance experts within OUSD's business office. Simultaneously, the district announced it had dismissed its senior business officer and eliminated the position. The county team has already started to provide financial advice and training to the district's revamped fiscal team. They will help district staff transition to a new system for business, human resources and payroll that adds essential financial and staffing controls to all levels of the district.

INVESTIGATION

The Grand Jury interviewed 21 witnesses including members of the Board, OUSD senior leaders, outside experts in school district management, and past and present district employees. Additionally, Grand Jurors attended and watched video broadcasts of board meetings. Hundreds of hours were spent reviewing board agendas and minutes, data on OUSD's website, and other publicly available data sources relevant to finance, school bonds, contracting, district policies, management practices, and decision-making. The results of the Grand Jury's investigation are summarized in six topical areas.

Financial Analysis

To better understand OUSD's relative financial status, the Grand Jury compared the district's FY2017-2018 general fund revenue and expenses (prior to staff raises) to that of 37 local unified school districts and of statewide averages. The comparison is based on FY2017-2018 data collected by the State Department of Education from California's K-12 schools. Unless otherwise noted, all data in this analysis are from Ed-Data.org. More specific details are in Appendix A (page 52).

The median revenue per student for the 37 school district sampled was \$11,869. Thus, OUSD received \$4,285 more revenue per pupil than the median district, placing it in the top five among all samples school districts, and second highest among Alameda County's school districts.

OUSD's revenues were \$16,154 per student based on the district's average daily attendance (ADA) of 34,841 students. The median revenue per student for the 37 school districts sampled was \$11,869. Thus, OUSD received \$4,285 more revenue per pupil than the median district, placing it in the top five among all sampled school districts, and second highest among Alameda County's school districts. Table 1 lists total revenue per student for 14 school districts in Alameda County and six large nearby districts. Each district's rank among the 37 school districts is also indicated.

Table 1 – Revenue per Student in Local School Districts FY2017-2018

District	\$ Revenue	Rank	District	\$ Revenue	Rank
Oakland	16,154	5	Piedmont	15,577	7
Alameda	12,314	16	Pleasanton	10,753	32
Albany	13,124	12	San Leandro	11,869	19
Berkeley	16,774	4	San Lorenzo	12,429	15
Castro Valley	10,828	30	Mt. Diablo	11,604	21
Dublin	10,144	37	Palo Alto	20,508	1
Fremont	10,726	33	San Francisco	15,907	6
Hayward	13,359	9	San Jose	12,109	18
Livermore Valley	11,098	26	Santa Clara	17,764	3
Newark	11,130	22	W. Contra Costa	13,233	11

OUSD’s total General Fund expenses were \$15,269 per ADA or \$3,252 more than the median district, ranking OUSD seventh among the 37 school districts. OUSD oftentimes invokes special education expenses as a major contributor to their financial problems. OUSD spent \$81 million on special education from its general fund. However, that spending per student in the special education program was only 23rd among the 37 districts.

After subtracting special education expenses for all 37 districts, OUSD spending still exceeded the median by \$2,726 per student, which based on the district’s ADA, totals \$95 million in higher spending relative to the median spending of the 37 school districts.

OUSD’s spending for supervisors and administrator salaries was more than six times the statewide average.

OUSD ranked 37th (last) on share of spending for certificated teacher salaries; 36th for pupil services (e.g., guidance counseling, health services, psychological and social workers); and 30th for books and supplies (spending only 74% of the statewide average).

By comparison, OUSD ranked fourth on the share of spending for contractors, consultants, and other outside services and third on the percentage of expenditures for administrative, technical and logistical support of teaching. These are central office expenses that are only indirectly related to classroom instruction.

OUSD spent over \$55.7 million on professional/consulting services and operating expenditures, which was three times the statewide average per student. OUSD’s spending for classified

personnel (non-teachers) was 45% above the statewide average, and spending for supervisors and administrator salaries was more than six times the statewide average. In notable contrast, spending on teachers and credentialed administrators was only 4% above the statewide average.

Additionally, spending on total compensation (salaries plus benefits) for teachers and credentialed administrators was 9% above the statewide average while total compensation for classified personnel (non-teachers) was 51% above statewide averages.

This financial analysis demonstrates that OUSD consistently spends less on students and classroom needs and more (sometimes much more) on central staff, administrative programs, contracting and services.

Contracting Practices and Facilities Management

Many of the complaints received by the Grand Jury were related to OUSD's Facilities Planning and Management Department (Facilities). Facilities is responsible for maintenance and custodial services for the district's 87 school sites and has oversight of the billion dollar school bond-funded construction program. While Facilities operates quasi-independently from the academic side of the district, its failed stewardship of local taxpayer dollars over the past decade provides a clear example of the district's inability to properly prioritize spending and produce results for the children of Oakland. Poor execution of construction projects, failure to take advantage of economies of scale, financially irresponsible policies and inconsistent use of financial controls all contributed to these disappointing results.

While Facilities operates quasi-independently from the academic side of the district, its failed stewardship of local taxpayer dollars over the past decade provides a clear example of the district's inability to properly prioritize spending and produce results for the children of Oakland.

Facilities Master Plan

Facilities should play a key role in the district's strategic planning process by developing and executing a Facilities Master Plan (FMP). A master plan is essential to ensure that the district operates an appropriate number and geographic distribution of schools that are clean and safe spaces for OUSD's students.

An FMP should be the central guiding principle behind spending of the district's generous billion dollar voter-approved school construction bonds. Many schools need comprehensive updating. Many also need to be closed. Because of this, the district is especially in need of a comprehensive road map to direct these construction dollars. Yet the last Board-approved FMP was adopted in 2012. Three attempts to update the plan were either not completed or not adopted by the Board.

The previous superintendent cut the scope of many projects in the middle of planning, wasting critical dollars, and then added \$172 million in new projects. Years of second-guessing coupled

with constantly changing priorities stalled many of the 21 major projects promised in the language of a \$475 million school construction bond approved by voters in 2012 (Measure J).

Years of second-guessing coupled with constantly changing priorities stalled many of the 21 major projects promised in the language of a \$475 million school construction bond approved by voters in 2012 (Measure J).

In August 2018, the Board halted work on nine building projects after being told that the district needed an additional unbudgeted \$160 million to cover cost overruns: Fremont High School was \$51 million over budget, the Central Kitchen project was \$18 million over, Glenview Elementary \$12 million, and the Madison expansion was \$9 million over budget. The overruns, combined with \$18 million for project coordination,

meant that new and renovated science classrooms and labs, playgrounds, security upgrades, and kitchens at many schools would not be built as promised.

Consolidating Contracts and Economies of Scale

OUSD reviews and approves a burdensome number of contracts each month. Financial best practices are essential in the development of those contracts to ensure that scarce dollars are not wasted. A best practice is to consolidate contracts for similar services, which allows for economies of scale and consistent application of construction codes and design guidelines.

The Grand Jury is concerned that the district does not take advantage of consolidated contracts. After examining approved Facilities contracts in 2018, the Grand Jury found nine separate contracts with one firm for fire alarm support, six separate contracts to expand and replace alarm systems at different school sites, and three separate agreements to provide supervision of security installation at three different school sites. There were seven board actions which resulted in one firm being awarded contracts to work on five different projects with two additional amendments for previously awarded work. The practice of negotiating individual contracts for similar services at different school sites appears to be too common.

Lease-Leaseback Construction Procurement

For decades California public contracting laws relied on competitive bidding rules to prevent fraud, corruption and cronyism and to ensure that public agencies were good stewards of public dollars. Yet the lowest responsible bidder is not always the most competent contractor. For this reason, the California Education Code allows an alternative method of project delivery. The lease-leaseback method of funding and building public schools allows districts to hire a design professional to create a basic plan, which is used to select a contractor to build the project for a set price. The contractor then takes possession of the property through a temporary lease agreement and is responsible for refining the plans and completing construction for the agreed-upon price.

This has not turned out so well for OUSD. By releasing projects before the full scope of construction is defined, budgets and schedules inevitably fall victim to frequent change order requests, unscheduled delays, and cost overruns. This lack of management discipline is emblematic of OUSD's broken administrative culture.

Glenview Elementary School is a current lease-leaseback project that has been before the Board eleven times since its inception in 2013. After the project's initial funding, the architect and the general contractor each requested five change orders for additional funds and time to complete the construction. The budget increased from \$26 million to \$37.4 million – a 43.8% increase. Glenview construction completion is scheduled for the end of 2019 with the opening of classrooms delayed until August 2020 – a full seven years after the project began. Compare this to a new middle school in San Francisco that was completed, from start of design to classes, in under three years.

By releasing projects before the full scope of construction is defined, budgets and schedules inevitably fall victim to frequent change order requests, scheduled delays, and cost overruns. The lack of management discipline is emblematic of OUSD's broken administrative culture.

The district's attempt to build the Central Kitchen project is another failure. Its design began in 2013 and the general contractor was selected in August 2014 with an original project budget of \$23.2 million. In May 2016, the project's budget grew to \$41.8 million. Problems with the general contractor led the district to terminate the contract "for convenience" in March 2017, paying a penalty of almost \$5 million. The replacement developer was approved by the Board in January 2018 for the project's new guaranteed maximum price of \$43 million. On top of the construction cost is another \$1 million for three consultants: community outreach, site security, and non-construction project management.

High Cost of Small and Local Business Program

In December 2008 the district implemented a small and local business utilization (LBU) program requiring 20% mandatory local participation on all OUSD construction contracts and professional service agreements related to capital projects. The purpose of the program is to "keep the dollars within Oakland" and enhance opportunities for small businesses within the district. In 2014, based on perceived success of the program, the Board increased the local participation requirement to 50%. While the program goals are commendable, the pool of local contractors who can fulfill large school construction projects is small. This has resulted in larger, non-local firms being awarded contracts but needing to sub-contract portions of the project to smaller, local companies. Ideally, there would be competitive bidding to select sub-contractors but there are often too-few local firms for a legitimate competitive process.

While one proponent of the 50% local participation requirement told the Grand Jury that it saves the district money because the workers are local, the Grand Jury heard testimony from six others who work with OUSD and have construction backgrounds contradicting any claim of savings.

They all agreed the small and local business requirement adds significant costs to construction projects. Their estimates of the additional costs ranged from 10% to 40%. Grand Jury concerns were validated after receiving documentation that Facilities' normal practice is to add a 30% premium for local business utilizations and project labor agreements when developing a project's budget. For example, district cost estimates showed that these programs would add \$990,000 to a \$6 million gym project, and \$320,000 to another \$1.6 million science classroom project. One witness testified that Glenview Elementary School cost OUSD an estimated \$900 per square foot, while constructing the same school in San Francisco would have cost about \$650-700 per square foot (22-28% less) in part because of the LBU requirement.

The Grand Jury learned that the city of Oakland operates a similar program but in contrast to OUSD, the city does not factor in a premium for the small and local business requirement in their project cost estimates. When construction bids come in 3% or more above city estimates, staff will reevaluate the bidding process and consider seeking council approval to waive the requirements.

Adding to the cost of this OUSD program, the district paid a consultant \$334,500 in 2018 to monitor the district's compliance with its own policy. The Grand Jury was told that this consultant uses information provided by district staff to prepare reports for the Board. The consultant does perform some community outreach; however, witnesses testified that the tasks performed by the consultant could be performed by district staff with minimal additional cost. This consultant has received over \$3 million in contracts from the district since 2008. While the Grand Jury is heartened by the district's recent decision to competitively bid out these monitoring contracts, the district should consider performing these tasks in-house.

Competitive Bidding – “The District of Exceptions”

OUSD's policies with respect to competitive bidding are spelled out in Board Policy (BP) and Regulation 3311:

“Consistent with California law, the Governing Board requires competitive bidding for most public contracts. The purposes of competitive bidding are to secure economy in the construction of public works and the expenditures of public funds for materials and supplies, to protect the public from collusive contracts, to exclude favoritism and corruption, and to promote competition among bidders so as to ensure that all public contracts are secured at the lowest cost to District taxpayers.”

With this policy in mind, the Grand Jury reviewed 395 contracts with a total value of nearly \$78 million that were approved by the OUSD Board between January – June 2018. Only 33 of the contracts, with a total value of \$12.5 million, were competitively bid. The Grand Jury sought to understand this apparent anomaly. One witness testified that OUSD has long been called “the district of exceptions.” The contract justification form has a checklist with fifteen different

exceptions to the competitive bidding requirements, and these exceptions are being widely used (sometimes inappropriately) to avoid competitive bidding.

The most frequently used competitive bid exception is for Professional Services Agreements (PSAs) that are less than \$87,800. Over the six-month period, the PSA exception was used to exempt 186 contracts worth \$4 million from competitive bidding. One witness verified this was a well-known exception that staff uses to avoid the competitive bidding requirement. The contract justification forms for 98 contracts the Grand Jury examined simply state, “Price compared with other vendors.” The Grand Jury’s review found 102 contracts or amendments with community-based organizations for \$3.6 million in after-school and summer-learning programs. Each was awarded without being competitively bid even though 84 contracts exceeded the PSA exception limit.

The Grand Jury reviewed 395 contracts with a total value of nearly \$78 million that were approved by the Board between January – June 2018. Only 33 of the contracts, with a total value of \$12.5 million, were competitively bid.

Thirty-three other contracts, worth nearly \$8 million, applied the special services exception. This exception should only be applied to those contracts requiring a high degree of specialized skills defined as financial, economic, accounting, legal, or administrative services. It is difficult to conclude that a two-year \$4,118,572 contract for construction management services for the Measure J bond program and a \$150,000 contract to provide transportation services for special education students, and five other contracts for student enrichment programs properly fit under this exception.

The Grand Jury reviewed documentation supporting numerous complaints that certain vendors are awarded multiple contracts without ever going through competitive bidding. The small business program’s compliance consultant is one example. This consultant received 13 contracts worth a total value of over \$3 million without going through any competitive bidding. The Grand Jury found another instance of a consultant for project labor agreement oversight renewed annually for the last 16 years for a total value of over \$3 million with only two instances of bidding. Best practices would dictate that a formal bidding process be used at least every five years for every longstanding contract to ensure that the district is receiving competitive market pricing.

Bond Money

Voter-approved bond measures often provide for the creation of citizen bond oversight committees (CBOCs). These committees ensure that funds are spent consistent with bond language. In recent elections, independent oversight has been featured prominently in the language of approved OUSD bond measures. Two CBOCs oversee different bonds issued by the district. One of the CBOCs oversees the spending of the bond funds from Measures A, B and J. In its August 2018 annual report, the committee expressed concerns regarding OUSD’s financial

reporting, Facilities' contracting practices, and the use of bond funds to pay rent for the district's central administrative offices at 1000 Broadway.

A little background may be helpful. The district's administration building suffered severe flood damage in January 2014. The administrative functions were initially relocated to several of OUSD's vacant properties. In January 2015, the functions were consolidated in leased office space at 1000 Broadway, a prime downtown location. The central offices are still located there after four years with the rent from bond funds totaling over \$12.5 million to date. The Board has been presented with actionable alternatives but failed to commit to any permanent relocation plan.

The CBOC and the state's Fiscal Crisis and Management Assistance Team (FCMAT), along with the external accountants who conducted the bond program management performance audit, have all questioned the legality of using bond funds to pay rent for the Broadway offices. OUSD's

Poor financial controls, uncontrolled project budgets, and misuse of school construction bond funds exhibit senior management's lack of discipline and damages the public trust.

legal counsel has opined that such use of bond funds is within the scope of the bond measures. The supporting argument for Measure J in the Oakland voters' pamphlet made no mention of using the funds for anything other than school facilities. Language in the bond measure allows the use of bond funds for administrative buildings. However, these funds may only be used to pay rent for "temporary housing" of

administrative functions provided an approved plan is in place for a permanent location. To date, the Board has not approved any such plan, yet the Grand Jury heard testimony from OUSD staff in April that the district planned to continue to use bond funds to pay rent for 1000 Broadway. The district abandoned at least one relocation proposal after spending \$6 million, mostly on architect fees, city of Oakland fees, and some demolition costs.

Poor financial controls, uncontrolled project budgets, and misuse of school construction bond funds exhibit senior management's lack of discipline and damages the public trust.

Summer Internship Program

Until 2017 Facilities sponsored a paid summer internship program, funded by donations from architects and contractors doing business with OUSD, enabling high school students to learn about the workplace. A terrific idea, especially when it helps students with compelling financial needs. However, Facilities was using a funding process that lacked transparency and gave the appearance of "pay-for-play."

The Grand Jury learned that in 2017 the selection panel of the summer program was made up of Facilities employees. They selected eleven high school students for the paid internship positions, three of whom were the children or relatives of the interview panelists, including the child of the OUSD employee managing the program. Such favoritism was troubling.

Adding to concerns, because district policy did not allow Facilities to pay the interns directly, an outside contractor employed and paid the interns, then invoiced the costs of the program (such as wages, hotels, meals, and travel from Washington, DC) back to Facilities, adding a markup for the contractor's administrative services. The Grand Jury was told that the OUSD employee managing the summer internship program signed off to reimburse the outside contractor without having the authority to do so. This was discovered by the program manager's supervisor who accused the employee of making a side deal with the contractor, having a conflict of interest by hiring his child, and attempting to reimburse a vendor without authority. Yet, no disciplinary action was ever taken for these transgressions.

Eleven high school students were selected for the paid internship positions, three of whom were the children or relatives of the interview panelists, including the child of the OUSD employee managing the program.

The Grand Jury could not find clear evidence that senior management understood how the program worked. Some witnesses felt strongly the program was a valuable community asset that should be reinstated if managed correctly. Other witnesses viewed the program as only benefiting family and friends of select Facilities employees and unavailable to most students within the district. Either way, the summer internship program was a small but shining example of the "what's in it for me?" culture that permeates OUSD.

Board Policies and Actions

A key responsibility of the Board is to ensure the fiscal solvency of the district. Grand Jurors attended and watched video broadcasts of board meetings and reviewed board meeting agendas and minutes. There was little sense of urgency expressed concerning the district's current fiscal crisis. Given sustained public criticism, inputs from multiple financial experts, and years of conflicting and unreliable financial reporting, this was astonishing.

The Board meeting of November 14, 2018 provides an excellent illustration of how complicated meeting agendas can cause vital issues to be missed or misunderstood. This board meeting had a 57 page agenda with 17 items discussed in closed session, and 87 items on the consent calendar. Included were a wide range of topics such as staff acknowledgments, contract approvals, change orders, memoranda of understanding, and grant awards. Three items of unfinished business followed regarding charter schools. Finally, it was on to new business. It was here, for the first time in this marathon 6½ hour meeting, that the special committee on fiscal vitality presented their report followed by public comments.

School Based Budgeting

One practice, unique to OUSD, is BP 3150 which grants unusual budgeting and spending autonomy to each school. While school governance teams are supposed to make the budgeting and spending decisions, the task typically falls to the principal at each school who must negotiate and contract for many services and take on the financial management and reporting responsibilities. Financial experts inside and outside the district agree that BP 3150 contributes

significantly to the district's financial instability. Witness testimony estimated that principals spend about 30% of their time on these tasks often without sufficient background and training. Furthermore, the tendency for frequent turnover of principals at some struggling schools has led to consistent overspending with little accountability. Multiple witnesses testified that in addition to the overspending associated with this policy, the burden on the principals (in time and effort) is keeping them from focusing on providing leadership for quality education.

Management Practices and a Broken Culture

The Grand Jury received numerous complaints reporting a systematic breakdown of sound business practices in many areas. As confirmed by witness testimony, there were instances of favoritism, rampant disregard of district policies, disdain for leadership, and a breakdown in the chain of command with staff routinely bypassing their managers to get what they wanted. Many witnesses described a culture of “what’s in it for me” rather than “how can we help students thrive.”

For example, the Grand Jury learned about what one witness termed an annual “dance” within the custodial and grounds department. Under the leadership of a previous Facilities director,

As confirmed by witness testimony, there were instances of favoritism, rampant disregard of district policies, disdain for leadership, and a breakdown in the chain of command with staff routinely bypassing their managers to get what they wanted.

the custodial and grounds department consistently had high overtime costs that exceeded their budget. Rather than right-sizing the annual budget to reflect the true cost of services, the department's manager would routinely over-spend on overtime. The manager's supervisor would call the overtime expenses into question. But year after year these criticisms were simply ignored. When the district's finances worsened, the Facilities director ordered that overtime be limited to emergencies and life-safety purposes. Still, the manager knew he could ignore the order by circumventing the chain of command and going directly to the senior business officer (SBO) for permission to cover the

budget overages each year. Witness testimony confirmed “this was the way we always did things at OUSD,” adding that the SBO always came up with the money.

This is emblematic of so many of the district's problems. Organizations wishing to stay on track must have meaningful budgeting. Ignoring basic budget principles helped put OUSD in its current financial predicament. As reported by FCMAT and confirmed by the Grand Jury investigation, the district routinely covered these poor practices by inappropriately raiding school bond funds, reserves, self-insurance funds, and developer fees.

The Grand Jury received another complaint alleging that the custodial department hired substitute janitors without using a traditional, formal process through which nearly every other district employee is hired. Since substitute janitors usually comprised the pool of candidates when permanent positions came available, this shortcut effectively circumvented the entire hiring process. A more formal process is necessary to eliminate friendships, nepotism and favoritism in hiring decisions.

If ethical norms are ignored year after year and few, if any, are held accountable for questionable conduct, then a broken culture emerges. For example, an employee reported to district leaders that the employee had uncovered questionable expenses on purchasing ledgers. This included a series of charges totaling just over \$600 for car washes. This raised a red flag because the small department had only one vehicle that was never washed. When asked about this discrepancy, the department's leader responded that these spending decisions "could be improved." No disciplinary action was ever taken. While the money involved is trivial, the perception that district funds could be used to wash personal vehicles represents another example of the broken culture.

In January 2016 OUSD staff signed a bussing contract without competitive bidding for \$45,000 (above the bid requirement threshold of \$10,000 for transportation) with a company owned by a then-trustee of the Alameda County Board of Education, which helps fund teacher training programs and support services for districts throughout the county. The contract was not presented to the OUSD Board until it had expired. Again, staff hired the same contractor for the following year without bidding out the work and paid the contractor \$82,000 for services rendered without ever receiving approval from the Board as required by policy. This is another example of poor business practices and perhaps favoritism in contracting.

Leadership establishes direction and a framework to enable employees to make decisions that are consistent with the "tone at the top." Good leadership inspires an organization to excel. Right choices become a habit and expectations clearly understood. Variances by employees bring negative consequences such as lower performance reviews and even loss of employment. If leadership strays from the highest standards of integrity and performance, the organization inevitably follows.

The Grand Jury found this to be true of OUSD. The Grand Jury heard testimony that the frequent changes in leadership have left the staff "running the show" with everyone working in silos with their own plans, leading to a dysfunctional environment of favoritism and mistrust.

In essence, OUSD's organizational culture is broken and must change. We defined culture as the learned values, behaviors and norms practiced in the workplace. A broken culture can be as subtle as ignoring policy in order to expedite paperwork or as blatant as hiring a relative to work under one's supervision. Allowing or encouraging such poor business practices will cause an organization to lose its way. A detached board and instability in senior management provided the perfect environment for this to happen at OUSD, leading to the profound crisis that the district faces today.

CONCLUSION

The culture in OUSD's administrative offices must change in order to provide its students with the quality of education they deserve. OUSD is wasting millions of dollars well in excess of its projected annual deficits. Drastic action is required to "right the ship" and this must begin at the top. OUSD needs to bring comprehensive and modern best business practices into district offices and leadership. Staff need regular training inculcating these throughout the organization. If staff refuses to buy into these plans, they must be held accountable. OUSD can no longer afford to be philosophical. Restoring financial stability requires sacrifices throughout the organization. Stringent controls, adherence to contracting procedures, updated policies, and school consolidations are immediate priorities.

Yet staff cannot be expected to buy into these changes if the elected Board continues to lead by reaction. Failure to put into place a strategic plan and have the courage to carry it out will ensure that the district continues to sputter with under-enrolled schools and shoestring budgets. Over one thousand school districts in the state operate competently with the state's current funding structure. Oakland is not one of them even though it receives significantly more funding than the median district in the region. The Board has "kicked every can down the line" and rarely acted with a sense of urgency on many vital issues. The state of the district today is the inevitable result.

This report has detailed repeated examples of mismanagement, favoritism, disregard for authority and poor controls. Policy and procedures are ignored causing one poor decision after another. Moreover, lack of accountability is rampant. Those who have attempted to instill better methods are ignored or quickly pushed aside. Well-intentioned policies such as individual school autonomy or hiring local businesses cannot continue at a premium in the face of dismal finances. OUSD cannot afford them.

The Board and OUSD's senior management have a monumental task in front of them. Full support from the Board, OUSD's leadership, management, and employees, as well as recently added support from the Alameda County Board of Education is needed to make progress possible.

FINDINGS

Finding 19-5:

The Oakland Unified School District consistently spends near or below the median of the 37-district sample on the needs of students (teachers' salaries, local administration, classroom support, books and materials and pupil services). It spends above and sometimes far above the median on non-classroom administrative, central office staff, contractors and consultants.

Finding 19-6:

The Oakland Unified School District's financial problems result from a combination of spending priorities skewed toward non-classroom staff and activities plus poor enforcement of competitive bidding requirements, expensive contracting policies, poor financial discipline and poor business practices.

Finding 19-7:

The Oakland Unified School District's Facilities Department does not follow best practices in developing and managing its operating budgets.

Finding 19-8:

The Oakland Unified School District's Facilities Department staff frequently ignored direct orders from superiors, often going over their manager's heads.

Finding 19-9:

The Oakland Unified School District's Facilities Department has not provided appropriate leadership in managing the capital program for the district. Approved project costs and schedules have not been controlled, required bidding was often avoided through exceptions, and the district's use of the lease-leaseback method has not demonstrated cost savings or resulted in speedy completion of projects.

Finding 19-10:

The Oakland Unified School District's 50% local business utilization policy adds significant cost to projects.

Finding 19-11:

The Oakland Unified School District has been using Measure J bond funds to pay rent (now over \$12.5 million) for their administration offices at 1000 Broadway. There is no approved plan to relocate the district's central administrative offices to a permanent location, raising serious legal questions about its continued use of bond funds to pay rent at 1000 Broadway.

Finding 19-12:

The Oakland Unified School District's culture is broken. It has been described as a district of exceptions with an attitude of "what's in it for me?" These attitudes harm the district whether it is displayed as favoritism, nepotism, or disregard for board policies. Employees trying to change this culture and move the district forward are sidelined and sometimes forced to leave because the proposed changes "aren't the way it's done at OUSD."

Finding 19-13:

The Oakland Unified School District's Board policies are out-of-date.

Finding 19-14:

The Oakland Unified School District's Board meetings and meeting processes create extraordinary burdens for Board members, the district's management and staff, and the public. Excessively long meetings fail to focus the Board on its priorities and details, which results in a lack of actionable decisions on key issues.

Finding 19-15:

The Oakland Unified School District Board has failed in its responsibilities to serve the students of Oakland. Collectively, the Board has not provided leadership and strategic direction to correct the severe financial problems facing the district.

RECOMMENDATIONS

Recommendation 19-5:

The Oakland Unified School District must realign its current spending priorities to ensure the focus is on the needs of students (certificated teacher salaries, classroom support, books and materials, pupil services including guidance counseling, social workers, and other critical student support services.)

Recommendation 19-6:

The Oakland Unified School District must significantly reduce the number of classified supervisors, administrators and staff and its expenditures for contractors, consultants, and other outside services.

Recommendation 19-7:

The Oakland Unified School District must incorporate best practices for financial management, budgeting and control, and if staff is unwilling to adopt these practices, they must be held accountable.

Recommendation 19-8:

The Oakland Unified School District must provide training to all personnel to clarify roles, responsibilities and accountability.

Recommendation 19-9:

The Oakland Unified School District's Board, Superintendent and Facilities Department must finalize and approve a robust Facilities Master Plan that can be immediately implemented, including proposed school closures, consolidations, and project priorities.

Recommendation 19-10:

The Oakland Unified School District's Facilities Department contracts must be publicly bid and broadly advertised, and follow an open, competitive bidding process. Recommendations within the bond program management performance audit regarding facilities program management and change order control should be immediately and fully implemented.

Recommendation 19-11:

The Oakland Unified School District Board must review, update and enforce its policies and regulations regarding conflicts of interests, bid exceptions, and school autonomy. The 50% local business utilization requirement should be immediately suspended until the district finances can afford it and until the policy is reevaluated.

Recommendation 19-12:

The Oakland Unified School District Board must restructure its board meetings to better align with district priorities, including: move critical topics to the beginning of meetings, aggregate like items for approval, and use the consent calendar to reduce time spent on minor items. Focus needs to be on gaining budget control, financial stability and improving students' access to a great education.

Recommendation 19-13:

The Oakland Unified School District must hire an effectiveness coach with the Alameda County Office of Education's approval for the superintendent and the Board as a whole and for individual members to improve effectiveness and transparency, leading to timely board decisions on identified priority items.

Recommendation 19-14:

The Oakland Unified School District Board must approve a plan to relocate its administrative offices as soon as possible.

RESPONSES REQUIRED

Oakland Unified School District Board of Education Findings 19-5 through 19-15
Recommendations 19-5 through 19-14

REQUEST FOR RESPONSES

Pursuant to California Penal Code sections 933 and 933.05, the Grand Jury requests each entity or individual named below to respond to the enumerated Findings and Recommendations within specific statutory guidelines:

Responses to Findings shall be either:

- Agree
- Disagree Wholly, with an explanation
- Disagree Partially, with an explanation

Responses to Recommendations shall be one the following:

- Has been implemented, with a brief summary of the implementation actions
- Will be implemented, with an implementation schedule
- Requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a completion date that is not more than 6 months after the issuance of this report
- Will not be implemented because it is not warranted or is not reasonable, with an explanation

APPENDIX A

**Oakland Unified School District
General Fund Financial Analysis**

Table A1 compares OUSD’s FY 2018 total General Fund spending in major expense categories against 37 local school districts by activity and object codes. California schools use two methods for accounting their expenditures. Object codes allocate expenses to the type of expense, such as salaries, employee benefits, books and supplies and services. Activity codes organize the same expenses according to the activity using the money, such as education, general administration, and plant services. Both methods of accounting are used in Table A1 to analyze OUSD’s spending.

Table A1 – OUSD Expenses Compared to Local Districts – Per Student, FY 2018

	Spending Per Student - OUSD	Rank ¹	Spending per Student - Median of Local Districts	Difference	Total OUSD Spending Compared with Median District of Same Size
Total Expenses	\$15,269	7	\$12,017	\$3,252	\$113,302,932
BY ACTIVITY CODE					
Education Expenses	\$8,869	6	\$7,497	\$1,372	\$47,801,852
Instruction Expenses	\$2,868	2	\$1,436	\$1,432	\$49,892,312
Pupil Services	\$710	32	\$897	(\$187)	(\$6,515,267)
Ancillary Services	\$364	1	\$93	\$271	\$9,441,911
General Admin	\$768	14	\$702	\$66	\$2,299,506
Plant Services	\$1,408	10	\$1,196	\$212	\$7,386,292
Other Outgo	\$282	Nm			
BY OBJECT CODE					
Certificated Salaries	\$5,591	14	\$5,231	\$360	\$12,542,760
Classified Salaries	\$2,681	4	\$1,804	\$877	\$30,555,557
Employee Benefits	\$3,919	5	\$2,710	\$1,209	\$42,122,769
Books & Supplies	\$403	22	\$458	(\$55)	(\$1,916,255)
Services & Other	\$2,429	3	\$1,429	\$1,000	\$34,841,000
Other Outgo	\$246	Nm			

Nm = Not Meaningful ¹ Rank out of 37 local school districts

OUSD’s General Fund spending of \$15,269 per student ranked 7th among the local school districts. The table also shows for each expense category the difference between OUSD’s spending per student and the median spending per student in the 37 local school districts. For example, OUSD’s spending on education expenses (\$8,869 per student) was \$1,372 higher than

the median spending (\$7,497) in the 37 districts. The number in the far-right column (\$47,801,852) is the difference per student (\$1,372) times OUSD’s ADA (34,841). The far-right column shows how much OUSD’s total spending for each expense category was over or under the median level for the 37 districts (normalized to OUSD’s ADA school population size.)

Examining OUSD’s expenditures as percentages (or shares) of total spending gives a clearer picture of the district’s spending priorities. Table A2 shows OUSD’s percentages of expenses and compares them to the median of the 37 districts. The data show that OUSD’s percentages of total spending on expense categories that directly benefit students in the classroom were low compared to the other 37 districts. Certificated salaries (teachers) was 37th (last), pupil services was 36th, education expense was 32nd, books and supplies was 30th, general administration was 27th (principals and other classroom administrators), and plant services was 23rd. In contrast, expenses for central office administration and programs were high. Instruction expenses (central office “classroom-related” expenses and NOT classroom expenses) was 3rd, classified salaries was 6th, and services and other was 4th. A consistent story emerges that OUSD underspends for teachers, pupil services and classrooms, and overspends on central office administration and staff, “instruction-related” programs, contractors and consultants.

Table A2 – OUSD Expense Allocations Compared to Local Districts

	Share of Expenses – OUSD	Share of Expenses – Median of Local Districts	Rank ¹
BY ACTIVITY CODE			
Education Expenses	59%	63%	32
Instruction Related Expenses	19%	12%	3
Pupil Services	5%	8%	36
Ancillary Services	2%	1%	1
General Administration	5%	6%	27
Plant Services	9%	10%	23
BY OBJECT CODE			
Certificated Salaries	37%	45%	37
Classified Salaries	18%	15%	6
Employee Benefits	26%	23%	6
Books & Supplies	3%	4%	30
Services & Other	16%	12%	4

¹ Rank out of 37 local school districts

Table A3 highlights OUSD’s expenditures in four selected expense categories. Spending on books and supplies were 26% below the statewide average. Classified supervisors and administrative salaries were over six times the statewide average. Professional services and consulting, and other operating expenses were nearly three times the statewide average, and communications expenses were 3.5 times the statewide average.

Table A3 – Selected OUSD Expense Categories Compared to State of California Average, FY 2018

Expense Category	Total OUSD Expense	OUSD \$ per ADA	Statewide Average \$ per ADA	OUSD Variation from State Average
Books and Supplies	\$14,030,706	\$403	\$559	-26%
Classified Supervisors and Admin Salaries	\$31,628,739	\$908	\$146	522%
Professional/Consulting Services and Operating Expenditures	\$55,742,662	\$1,600	\$535	199%
Communications	\$4,390,814	\$126	\$36	251%

COUNTY SUPERVISORS' MISMANAGEMENT LOSES MILLIONS FOR TERRORISM AND DISASTER TRAINING

EXECUTIVE SUMMARY

From 2007 through 2018 the Alameda County Sheriff's Office (ACSO) hosted a regional first responder training program. Funded by the US Department of Homeland Security (DHS), the program was intended to provide training for first responders in regions considered at high risk for terrorist attacks. According to DHS data, the Bay Area is the fifth most likely urban area for a terrorist attack, exceeded only by New York, Washington DC, Chicago, and Los Angeles.

The program culminated each September with a full-scale training exercise known as Urban Shield, where classroom learning and first responder equipment were tested in realistic scenarios. Urban Shield provided a rare opportunity for professionals from law enforcement, public health, emergency management, fire and medicine to work together on dozens of emergency response scenarios based on actual events, such as school shootings, the Las Vegas concert massacre, and the Boston Marathon bombing.

Some community members opposed the Urban Shield exercises, expressing concerns over the intent and practices involved in the training. They claimed that the program encouraged racial profiling, had a potentially negative impact on vulnerable communities, and legitimized the use of assault weapons, armored vehicles, protective helmets and bullet-proof vests by law enforcement officers.

Over the past several years opponents of the program objected to the Alameda County Board of Supervisors' (BOS) annual approval of Urban Shield. ACSO modified Urban Shield exercises over the years in response to community concerns, but opposition continued.

In 2017 the BOS appointed an 18-member Urban Shield Task Force (USTF) in an effort to resolve the differences. The USTF made progress, but the protests continued. To try and solve what seemed to be a stalemate between opponents and supporters of the program, the BOS voted on March 27, 2018 to no longer support Urban Shield as configured, and commissioned a five-member ad hoc committee (AHC) to "...work with the Sheriff's Office..." during the upcoming year on the application and planning for the 2019 training. ACSO received a \$4.9 million DHS grant in 2019 and expected the grant to increase to \$5.6 million for the 2019 training program, of which \$1.7 million would support Urban Shield.

Members of the Grand Jury attended every meeting of the AHC. With millions of dollars of federal funds at stake, it was both surprising and disturbing to watch the proceedings unfold. Flaws in the analytical process made sound decision-making virtually impossible, such as:

- The BOS did not clearly communicate its specific objectives and expected deliverables, nor did it monitor the progress and direction of the AHC.
- The AHC did not follow its charge from the BOS “to work with the Sheriff’s Office.” There was no meaningful partnership in any of the meetings.
- Almost all the appointed AHC members held pre-established and intractable opinions about Urban Shield, making objective analysis difficult to impossible.
- The BOS and the AHC repeatedly disregarded clear warnings that some recommendations in the AHC’s report were not compatible with the DHS requirements and could jeopardize the grant.
- The BOS accepted the AHC recommendations without the benefit of meaningful county staff review and county administrative officer approval.

After meeting for six months, the AHC presented its recommendations to the BOS. The BOS adopted virtually all of them, ignoring the countless warnings that many of the recommendations would put the grant at risk. Two days later, Alameda County did indeed lose the grant following a unanimous vote by the Bay Area Urban Areas Security Initiative’s (BAUASI) administrative authority board of directors - the local agency administering this federal grant on behalf of DHS.

Alameda County thus lost millions in federal funds, critical to the continued training of our first responders in increasingly volatile times. Although the members of the BOS repeatedly stated their strong desire to continue receiving these funds, their mismanagement of both the review and approval processes led to the termination of the nationally-recognized Urban Shield program and additional vital training, impairing the region’s preparedness for disasters.

The Board of Supervisors will be faced with similar complex decisions in the future and must improve its use of advisory committees so that decisions such as this are supported by impartial analysis and made in the interest of all county residents.

BACKGROUND

The Department of Homeland Security identified twenty-nine urban areas in the United States considered at high risk of terrorist attack. It provides Urban Areas Security Initiative (UASI) grants to these regions to assist them in preparing for and minimizing the potential impact of such an incident. In the San Francisco Bay Area, the grants are administered by the Bay Area Urban Areas Security Initiative (BAUASI) Approval Authority. The grants support training of professional first responders in the fields of law enforcement, firefighting, medical support, public health, and emergency management through realistic scenarios such as hostage situations or school shootings. They also support the development of procedures and equipment to ensure

seamless coordination among federal, state, regional, local, community and private sector organizations that would respond to a terrorist attack or natural disaster.

UASI funding is narrowly and specifically targeted and requires a “nexus to terrorism.” However, many exercises designed to prepare for terrorist attacks present the same challenges as a natural disaster – for example, a building collapse due to a bombing would require a similar response to a building collapse from an earthquake. Therefore, although a “nexus to terrorism” is required by the terms of the grant, there is often a very beneficial dual purpose to the training.

In 2007 the Alameda County Board of Supervisors authorized ACSO to apply to BAUASI for funding of a multi-day, multi-disciplinary first responder training exercise. The training exercise, known as Urban Shield, provided an opportunity for professionals from law enforcement, public health, emergency management, fire and medicine to work together on dozens of emergency response scenarios based on actual events, such as school shootings, the Las Vegas concert massacre, and the Boston Marathon bombing. In that first year, the program had 1,400 participants, including volunteers, focused on Special Weapons and Tactics (SWAT) teams and other tactical training.

In 2010, BAUASI issued a request to manage a much broader Regional Training and Exercise Program. ACSO was the only Bay Area agency to submit a proposal. Once it was awarded the grant, it assumed administrative responsibility for providing year-round courses and exercises to the entire twelve-county region, while continuing to manage the Urban Shield training exercise.

Over the past nine years, the regional program progressively matured into a large scale multi-disciplinary activity. Over the past three years it offered almost 450 courses for first responders in twelve disciplines. In 2018, \$4.9 million was available of which \$1.7 million was used for Urban Shield, which had expanded to include over 9,000 participants and volunteers. The remaining \$3.2 million supported other training and exercise programs throughout the Bay Area. This funding was slated to increase to \$5.6 million in 2019.

One key component of Urban Shield was a 48-hour competitive event that included 36 scenarios and 36 eight-person tactical teams from different public agencies. Since there are no full time SWAT teams with any agency in the Bay Area, the 2-day event provided the only real opportunity from members of the same department to work together on realistic emergency situations and interface with hundreds of emergency medical services personnel, fire/hazardous materials/rescue personnel, public works teams, and community emergency response teams from federal, state, and local jurisdictions. The participation of SWAT teams raised the most controversy in the beginning, which did not wane over time.

Additional criticism of Urban Shield included:

Police Action in Minority Communities: Urban Shield exacerbates tensions in African-American and other minority communities that result from a significant law enforcement presence.

ICE and Immigrant Communities: Similar concerns were voiced by members of several immigrant communities, particularly about Urban Shield activities that might be focused on identifying and detaining undocumented and other members of vulnerable groups. ACSO reported that no U.S. Immigration and Customs Enforcement (ICE) officers participated in Urban Shield.

Community Member as First Responders: Critics contend that Urban Shield funds dedicated to training professional first responders would be better spent supporting community based-organizations (CBO) that could provide training for local residents, care for vulnerable communities, and concentrate on more common natural disasters rather than on infrequent acts of terrorism.

Vendor Exposition: Urban Shield included a vendor exposition for displaying the latest first responder equipment and technology. Concerns were raised about some vendors displaying objectionable items, particularly items considered to be overtly militaristic or racist. ACSO representatives admitted to finding racially insensitive items on display on two occasions in past years and instituted increased scrutiny and oversight of the exhibits. Some opponents have described the event as a “weapons expo,” but members of the Grand Jury who attended the 2018 vendor exposition noted that very few weapons were on display. The exposition focused on technology, protective gear, medical supplies, and rescue tools.

Program Elements: Critics also voiced more general concerns, including:

- Some of the Urban Shield scenarios favored killing the subject rather than de-escalating the situation. However, in testimony before the Grand Jury, supporters cited training scenarios that rewarded de-escalation.
- The competitive nature of the exercises was inappropriate. However, supporters contended that competition and comparative scoring leads to peak performance and clearer identification of skills and techniques.
- The extended duration of exercises leads to a level of fatigue among the first responders that results in mistakes and bad judgement. However, emergency responses often extend over several days (e.g. the Boston Marathon bombing), and supporters contend that practicing under such realistic conditions leads to improved performance during actual and possibly protracted incidents.
- Finally, the clothing and equipment used in the program leads to the appearance of police militarization. Yet, supporters contend that first responders should be properly protected during such emergencies and the protective gear worn during Urban Shield exercises is

consistent with workplace protection for responders facing heavily armed terrorists or other highly dangerous situations.

ACSO demonstrated flexibility by addressing objections raised each year, making numerous modifications and enhancements to the program. In a January 6, 2017 letter to the BOS, ACSO also agreed to follow twelve Principles and Guidelines:

- Expand community involvement and awareness.
- Expand medical profession training.
- Eliminate racist stereotyping.
- Exclude surveillance training.
- Examine new technology and equipment.
- Exclude crowd control training.
- Evaluate existing equipment.
- Exclude vendors displaying derogatory or racist messages.
- Exclude sale or transfer of any assault weapons and firearms.
- Exclude vendors displaying non-law enforcement related tactical uniforms and equipment.
- Maintain finest first responder training possible.
- Exclude teams from countries with documented human rights violations.

INVESTIGATION

Because of the importance of the UASI training and exercise program, and of Urban Shield to the safety of the residents of Alameda County, the Grand Jury investigated the program review process leading to the votes by the Board of Supervisors on February 26 and March 12 to modify the 2019 program and the resulting termination of the program by BAUASI.

Grand Jury Members:

- Reviewed material from BAUASI and Urban Shield websites,
- Attended meetings or reviewed recordings of BOS meetings,
- Attended the September 2018 Urban Shield training program and vendor show,
- Interviewed witnesses from BAUASI, ACSO and the AHC with direct knowledge of the Urban Shield program,
- Interviewed public officials and members of the community expressing both support and opposition to Urban Shield,
- Reviewed the Urban Shield Task Force report dated February 21, 2018,
- Attended all meetings of the AHC and reviewed its final report,
- Read the County Sheriff's responses to the AHC report,
- Reviewed and considered the concerns described in media reports about Urban Shield activities,

- Interviewed senior command staff at multiple law enforcement agencies throughout the greater Bay Area, and
- Attended BAUASI Approval Authority meeting on March 14, 2019.

In the course of its investigation, the Grand Jury identified several aspects of the review process that were poorly handled – from the creation of the Urban Shield Task Force in January 2017 through the Board of Supervisors vote in March 2019.

The Urban Shield Task Force (USTF)

Created by the Board of Supervisors in January 2017 the USTF was charged with assessing Urban Shield and making recommendations to the board. The USTF first met on March 10, 2017 and held six subsequent meetings. The 18 members represented a broad cross-section of views of Urban Shield and included first responders, medical professionals, and community members including representatives from the Stop Urban Shield Coalition.

While able to address several issues, the USTF was unable to reach a consensus concerning the impact of Urban Shield on some county communities, in particular, those with large minority populations and other vulnerable groups.

Some members of the task force blamed its failure to reach a consensus on this topic, in part, on the fact that its membership did not include sufficient representation of members of these communities. The Grand Jury notes, however, that five of the eighteen members of the task force directly represented organizations that focus on these communities: the Arab Resource and Organizing Center, the Ella Baker Center for Human Rights, the American Friends Service Committee, the Stop Urban Shield Coalition, and the Alameda County Health Office.

Some task force members complained that other members who participated in Urban Shield had a material interest in it and thus were incapable of making an impartial judgement of its impact on community-law enforcement relations. The Grand Jury finds it unreasonable to regard participants as having, by nature only of their participation, a material interest in the program since none of them had a direct financial stake in it and none of their jobs depended on it.

Although the Grand Jury did not observe the meetings of the USTF, its members did read the USTF final report. It is apparent from the report's conclusions that a more likely explanation for its failure to reach consensus was that most members had pre-conceived and entrenched views of the Urban Shield program and its impact on the community.

The Grand Jury believes that the USTF was moderately successful. In fact, one supervisor introduced the USTF's report to the BOS by stating in a cover letter:

“The USTF appreciates the opportunity to represent Alameda County's 5 Districts, to assist the Board of Supervisors in gaining a more comprehensive understanding of Urban Shield and our first responders' capabilities, and to shed light on the needs and impacts in communities served by the Urban Shield. It is our hope that the report and recommendations will assist the Board of Supervisors in its deliberations about Urban Shield and in efforts to improve preparedness for large scale emergencies while safeguarding the rights of every resident in Alameda County.”

The Ad Hoc Committee (AHC)

Instead of moving forward, the Board of Supervisors met on March 27, 2018 and took action that resulted in another year of contentious debate among the same proponents and opponents of Urban Shield as described in this Grand Jury report. The room was packed with vocal opponents of the program along with a strong contingent of supporters. After several hours of public comments, the BOS approved funding of the 2018 program stating, however, that it would not fund Urban Shield “as currently constituted” after 2018. To address the issues that the USTF had failed to resolve, the board appointed an ad hoc committee to work with ACSO to develop recommendations for the grant application and planning of the 2019 exercises. Each supervisor was asked to name one person to the AHC, forming a committee of five members.

The Grand Jury identified several significant shortcomings of the AHC and its process:

A Delayed Start

Although the Board of Supervisors created the AHC in March 2018, it was not until late summer that the final member was selected and the first committee meeting was held. This delay resulted in the loss of months of valuable time for the AHC to do its work. With a March 2019 deadline for the next grant approval, this delay left the committee only six months to debate issues and produce its report to the BOS. As a result, the AHC's work was rushed from its first meeting.

Appointment of Members with Known, Entrenched Opinions or Conflicts

Based on the short biography given of each of the AHC members, it was readily apparent to the Grand Jury that the majority of the committee members held deeply entrenched opinions that were very unlikely to be influenced by discussion. One was a member of Stop Urban Shield, a coalition of 19 organizations opposed to Urban Shield and committed to its termination. Another worked closely with Stop Urban Shield and strongly supported its cause. A third was also a known vocal Urban Shield opponent. Finally, another was a police officer strongly committed to the program. This should have been known to the supervisors and avoided.

For example, one member of the AHC stated that many public safety agencies did not participate in Urban Shield implying lack of interest or lack of support. The Grand Jury interviewed officials

of 23 local law enforcement and firefighting agencies that had not participated in Urban Shield and found that their reasons for not participating were largely due to economics and staffing constraints. These officials were unanimously complimentary of the training provided by the program.

Ad hoc committees are often established to examine important issues and make recommendations to policy makers. Their members should be open-minded with no personal stake in the subject, and a willingness to study it carefully and dispassionately before making recommendations. They are also expected to be willing to compromise to reach useful conclusions. The entrenched opinions held by the individuals appointed to the AHC created a serious obstacle to fair and incisive analysis.

The Nature of its Charge

The Grand Jury learned that some AHC members found their charge to be vague and lacking in guidance. Responsibility for this lack of direction falls directly on the BOS, which created the AHC, and on the members of the committee who, apparently, never went back to the BOS to ask for more explicit guidance. The BOS did not establish any mechanism for regular review of the AHC's progress. The AHC did not report to any BOS subcommittee or to the county administrator. In short, the AHC was, in effect, making decisions for the BOS that affected the entire Bay Area.

Failure to Work with the Sheriff's Office

The AHC's objective, as listed on the county's website for the AHC and reflecting the BOS minutes of March 27, 2018, states:

“Limited scope of work. Created to work with the Sheriff's Office during the coming year (2018/2019) on the 2019 UASI application and planning for the 2019 UASI funded preparedness event.”

In the Grand Jury's opinion, the AHC's collaborations with ACSO staff were cursory and dismissive. At the first AHC meeting, representatives of BAUASI described the program and the grant funding process. At the second meeting, an ACSO representative described the formal review of the 2018 program's compliance with the 12 principles and guidelines that ACSO had recommended and agreed to follow. These two presentations, however, represented the only substantive interaction or discussion of the program between the AHC and representatives of ACSO. ACSO management attended every subsequent AHC meeting but were never involved in a discussion other than, on occasion, to respond to specific factual questions. The extent of their additional involvement was limited to the public comment period when they were allowed the customary two minutes. Even then, members of the AHC rarely responded to their comments.

Over the full course of the AHC meetings, it was apparent that there would be no effort to “...work with the Sheriff’s Office....”

This disregard for the directive in their charge is exemplified by the elimination of the phrase “work with the Sheriff’s Office” from the AHC’s description of its charge in its final report:

“On March 27, 2018, the Alameda County Board of Supervisors formed the Ad Hoc Committee on Urban Area Security Initiative Grant Program (Item #33), whose charge was to (1) make recommendations on the proposed UASI exercises for 2019, and (2) recommend a framework for any subsequent UASI applications. The Ad Hoc Committee held 11 public meetings from September 21, 2018 through January 30, 2019.”

No plausible explanation was offered for this failure to adhere to the most significant aspect of its charge, even when concerned members of the BOS explicitly questioned the AHC chair about it. Instead, the chair responded that members of ACSO attended all the meetings. The Grand Jury finds it difficult to imagine any explanation for this failure other than it was the intent of some members of the AHC to dictate changes in Urban Shield to ACSO rather than to work with ACSO to reach mutually acceptable and effective recommendations.

Lack of Transparency

While the AHC did post its agendas online 72 hours before its meetings, the agendas lacked specificity in describing what actions were being considered. In fact, the same agenda, with only the dates changed, was used for the last several meetings.

Another concern of the Grand Jury is that agenda attachments were often not distributed until the start of the meetings and were never posted on the county’s website. This made it very difficult for members of the public to know beforehand what issues were being considered and discussed. This is clearly a disservice to the public. This was the case, for example, at the January 30, 2019 meeting when the AHC planned to vote on the report that was to be submitted to the BOS regarding recommendations for the future of Urban Shield. The draft report was distributed at the meeting, not before. Furthermore, the AHC continued to make changes in the report throughout that meeting and left it to their facilitator to complete the final document which they had already voted to approve.

Lack of Compliance with Grant Requirements

The failure to work with ACSO deprived the BOS of potentially valuable input. More importantly, this failure likely led to BOS approval of recommendations that did not meet BAUASI requirements for funding the grant. Many of the AHC recommendations would redirect BAUASI funds from first responder training to new initiatives funding community based-organizations working to prepare community residents for natural disasters such as earthquakes, wildfires or

floods. However, several recommendations had no “nexus to terrorism” as described in the BAUASI program announcement and thus could not be funded under the terms of the grant from DHS. Their inclusion in the final report and their adoption by the BOS in effect doomed the program.

The AHC members were repeatedly told during their meetings that what they were recommending was inconsistent with grant guidelines, putting the funding at risk. Several of the recommendations, in fact, were approved in the face of explicit reminders by the dissenting member(s) that those recommendations were beyond the scope of the AHC’s charge. A member of either BAUASI or ACSO explained many times during the two minutes allotted during public comment that one or another recommendation being considered was not compliant with the grant requirements. Ignoring these warnings, the AHC voted to approve the recommendations, often with a simple majority of 3-2.

The ad hoc committee members were repeatedly told during their meetings that what they were recommending was inconsistent with grant guidelines, putting the funding at risk.

The chair of the AHC justified ignoring the warnings by stating that the AHC was “advisory only” and it would be the BOS that would make the final determination. It was also stated that members of the AHC knew that some of its recommendations were not in compliance with Federal guidelines. The Board of Supervisors seemed to be under the impression that the AHC took the grant guidelines into consideration in their recommendations. It was obvious that there was a serious miscommunication between the AHC and the BOS about who was ultimately responsible for the recommendations’ compliance with the grant guidelines. The Grand Jury finds this critical misunderstanding of the roles of the AHC and BOS to be yet another example of the failure of the review process.

The failure to work with ACSO deprived the BOS of potentially valuable input. More importantly, this failure likely led to BOS approval of recommendations that did not meet BAUASI requirements for funding the grant.

Also descriptive of the failure of the AHC to act responsibly is the fact that two of the three recommendations that were proposed, but later rejected by the BOS, involved the allocation of an additional \$5 million in county funds to the Health Care Services Agency (HCSA) and Social Services Agency (SSA). These monies were to support staff dedicated to participating in the planning, administration, coordination and

implementation of disaster preparedness exercises. When the head of the HCSA was questioned about this during the BOS meeting, she commented that she never asked for these funds, doesn’t have the expertise in disaster preparedness to use them effectively, and instead relies on the sheriff’s office for that expertise and direction. This was baffling. Obviously the AHC did not contact HCSA prior to making these recommendations to determine if the agency was even capable of handling this additional responsibility.

Furthermore, it appeared surprising to the BOS that the AHC was recommending that they find \$5 million in their already-strained budget to allocate to disaster preparedness training by an agency that did not have the ability or interest in managing it. When BOS members questioned the AHC about what services they should cut to provide this \$5 million, the AHC had no answer. It was as if the AHC felt it could make recommendations without any concern for any difficulties in the actual implementation of those recommendations.

The Board of Supervisors Actions

The AHC chair presented its report with 63 recommendations to the BOS at its meeting on February 26, 2019. A motion passed approving the 29 recommendations that the sheriff agreed he could support under the terms of the grant. The sheriff and the BAUASI representative then stated that they believed many of the remaining recommendations were not in compliance with the grant guidelines as outlined in a letter from the sheriff to the BOS. This lack of compliance, they said, would likely lead to the rejection of the entire grant.

One supervisor questioned the motives of the sheriff in submitting his letter only days before the BOS meeting, thereby not warning about the grant guidelines until it was too late. It was charged that the sheriff had delayed his letter as a last-minute effort to kill the recommendations. The sheriff then pointed out that the AHC report wasn't submitted until February 18 and that his letter, which required significant review and preparation, was dated only four days later, on February 22. It was also noted at the meeting that representatives from UASI and ACSO had spoken of the noncompliance issues numerous times at AHC meetings the past six months. It was no surprise to anyone who had followed the AHC meetings that many of the recommendations were outside the committee's charge and not in compliance with the grant's requirements.

That such an important issue could be voted on amidst such a cloud of uncertainty is deeply troubling.

Despite the warnings from the sheriff and BAUASI, the BOS passed a motion approving all but three of the remaining recommendations. One supervisor stated that the motion to approve the recommendations would not have been offered if it was thought that it would jeopardize the funding. Despite being told repeatedly that it would risk the funding, the motion passed on a 3-2 vote.

Immediately before the vote, one of the supervisors indicated that he did not understand what was being voted on. Board members, in general, appeared to be confused about how the AHC reached its recommendations. Regrettably, it appears that professional staff of relevant county departments were not consulted nor their advice taken. There was no recommendation from the county administrator. That such an important issue could be voted on amidst such a cloud of uncertainty is deeply troubling.

Inexplicably, after approving all but three recommendations, the BOS requested that the AHC confer with ACSO to review and reach agreement on all recommendations that the sheriff had opposed. The meeting for approval of the funds from BAUASI was to be held two weeks later, on March 14, and perhaps the BOS was hoping that the conflicting recommendations could be resolved prior to that meeting.

The AHC met with representatives of ACSO in early March and, after working for 5 hours, reached agreement on some of the problematic recommendations. ACSO held firm on objecting to other recommendations, and many were not even addressed due to lack of time. The results of the meeting were presented to the Board of Supervisors at its March 12, 2019 meeting. The BOS appeared to ignore this effort completely and allowed the approval of the original recommendations to stand.

Action by BAUASI

On March 14, 2019, the BAUASI Approval Authority met to consider the 2019 Regional Training and Exercise Program, which included the Urban Shield exercises. At the meeting, an ACSO commander provided an update on the actions of the AHC and BOS. He also reported that a BAUASI legal counsel opinion stated that many of the AHC/BOS recommendations did not comply with either the memorandum of understanding (MOU) authorizing the expenditure of funds or Federal guidelines. The BAUASI general manager concurred with the legal opinion.

There followed a lengthy discussion by the Approval Authority as well as testimony from

Curiously, representatives from the ad hoc committee as well as the Board of Supervisors spoke in support of continuing the existing program stating that they assumed the memorandum of understanding would prevail over the ad hoc committee recommendations.

attendees. Curiously, representatives from the AHC as well as the BOS spoke in support of continuing the existing program stating that they assumed the MOU would prevail over the AHC recommendations. The Grand Jury finds these statements completely disingenuous. The AHC/BOS actions put the Approval Authority in an untenable position, with no choice but to cancel the 2019 Urban Shield program. The Approval Authority voted unanimously to do just that and more,

defunding the entire training and exercise program administered by Alameda County and withdrawing nearly all of the requested \$5.6 million. Some funds will remain with Alameda County for programs already underway. One of the approved AHC recommendations was to extend the term of the AHC for another year to oversee implementation of recommendations approved by the BOS and make new recommendations. However, as a result of the loss of the grant and termination of the Urban Shield exercises, the AHC effectively ended its own existence.

Additionally, the Grand Jury notes that the efforts of the AHC to redirect BAUASI funds to projects closer to their interests but incompatible with the grant guidelines were, in fact,

counter-productive. Not only did opponents fail to achieve their goals of redirecting the funds, but they sabotaged much that they had accomplished over the past few years. During that time, as noted, opponents of Urban Shield had been successful in convincing ACSO to make numerous changes in the program. By dooming the entire program, the critics created a situation whereby a large fraction of the funding would go to other agencies, some of which may not be as sensitive to these concerns and would not be held to honoring the changes made by Alameda County.

The actions of the BOS throughout this review reflect poorly on its ability to analyze and manage an important and complex matter.

CONCLUSION

Elected officials at all levels have, as one of their most important duties, the continued safety of their constituent residents and the protection of both public and private property. The Grand Jury recognizes that its role is not to critique policy decisions by public officials such as the Board of Supervisors. In this particular case, therefore, it is not commenting on how the BOS decided to best prepare its first responders for recovery after acts of terrorism or natural disasters. Instead it is questioning the contradiction that while almost all members of the BOS explicitly stated that they did not want to terminate the Urban Shield program, their mishandling of the process by which the program was reviewed led inexorably to that termination, and the absence of any replacement program to provide this critical training to first responders.

Representative government is messy. However, the Alameda County Board of Supervisors failed in managing this process. As one supervisor put it, "If we lose this grant, I will have nobody to blame but myself."

For years, the Urban Shield grant approval process had been contentious and controversial. BOS and ad hoc committee meetings were well-attended and boisterous. Representative government is messy. However, the Alameda County Board of Supervisors failed in managing this process. As one supervisor put it, "If we lose this grant, I will have nobody to blame but myself."

Challenged with the annual mandate to approve the continued acceptance of the DHS grant, the Board of Supervisors tossed responsibility to solve the many Urban Shield controversies first to a task force, then to an ad hoc committee. The use of ad hoc committees is a well-accepted practice and functions well so long as objectives and deliverables are clear and well-articulated. In this case, they were not. Selection of committee members was questionable at best. With few exceptions the AHC members confirmed their established biases with intractable opinions and votes. Most telling of all was the committee's disregard of explicitly stated criteria in the DHS grant application. In meeting after meeting the AHC labored over recommendations destined to doom grant approval.

The March 12, 2019 Board of Supervisor's meeting revealed a board confused by the AHC's recommendations. Despite the year-long wrangling, legal counsel testimony, and ACSO input,

the BOS proceeded to adopt recommendations from an ill-conceived committee literally rejecting \$5.6 million in vital preparedness and support money, leaving the county and Bay Area residents less safe. Of perhaps even greater concern is the fact that, in examining a subject as important as public safety, the Board of Supervisors did not rely on expert advice from relevant professional county departments. Instead, it mistakenly relied on unchallenged misstatements of fact and inherently flawed and poorly constituted advisory committees.

FINDINGS

Finding 19-16:

Mismanagement of the review process by the Alameda County Board of Supervisors resulted in the loss of essential regional emergency preparedness training, leaving county residents less safe.

Finding 19-17:

The Board of Supervisors failed to provide clear and complete guidelines to the ad hoc committee, particularly in regard to making recommendations that are consistent with grant guidelines.

Finding 19-18:

The Board of Supervisors failed to ensure that the ad hoc committee worked with the Alameda County Sheriff's Office to assure a successful grant application.

Finding 19-19:

The Board of Supervisors selected members to the ad hoc committee that virtually guaranteed partisan advocacy and predictable intractability.

Finding 19-20:

The Board of Supervisors failed to involve county administrative staff for counsel and oversight, a practice routine for important votes involving grants, liability and expenditures.

Finding 19-21:

The ad hoc committee failed to make available to the public materials under consideration at its meetings in a timely manner.

RECOMMENDATIONS

Recommendation 19-15:

The Alameda County Board of Supervisors must develop a policy requiring that ad hoc committees and task forces be provided with specific instructions regarding scope of work, progress reports, deliverables, and timing.

Recommendation 19-16:

The Alameda County Board of Supervisors must check on the progress and productivity of ad hoc committees and task forces and provide regular oversight.

Recommendation 19-17:

The Alameda County Board of Supervisors must strive to appoint advisory committees whose members are both objective and open minded on the subject matter being studied.

Recommendation 19-18:

The Alameda County Board of Supervisors must assign county professional staff to assist in the review of recommendations from advisory committees.

Recommendation 19-19:

The Alameda County Board of Supervisors must inform the public (via newsletters, social media, etc.) as to the formation and purpose of advisory committees. Such committees must make agendas and supporting materials easily accessible online in advance of meetings.

Acronym Key

ACSO	Alameda County Sheriff's Office
DHS	US Department of Homeland Security
BOS	Alameda County Board of Supervisors
USTF	Urban Shield Task Force
AHC	Ad Hoc Committee
BAUASI	Bay Area Urban Area Security Initiative
UASI	Urban Areas Security Initiative
SWAT	Special Weapons and Tactics
ICE	US Immigration and Customs Enforcement
CBO	Community Based-Organization
HCSA	Alameda County Health Care Services Agency
SSA	Alameda County Social Services Agency

RESPONSES REQUIRED

Alameda County Board of Supervisors

Findings 19-16 through 19-21

Recommendations 19- 15 through 19-19

REQUEST FOR RESPONSES

Pursuant to California Penal Code sections 933 and 933.05, the Grand Jury requests each entity or individual named below to respond to the enumerated Findings and Recommendations within specific statutory guidelines:

Responses to Findings shall be either:

- Agree
- Disagree Wholly, with an explanation
- Disagree Partially, with an explanation

Responses to Recommendations shall be one the following:

- Has been implemented, with a brief summary of the implementation actions
- Will be implemented, with an implementation schedule
- Requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a completion date that is not more than 6 months after the issuance of this report
- Will not be implemented because it is not warranted or is not reasonable, with an explanation

INDEPENDENT LIVING HOMES IN ALAMEDA COUNTY: TAMING THE “WILD WEST”

EXECUTIVE SUMMARY

The Grand Jury received a citizen complaint that a relative was released from a skilled nursing facility to reside in an unlicensed independent living home in Hayward. According to the complaint, the home proved to be unsuitable for this resident who, due to her diminished mental capacity, needed daily care to meet her basic living needs. The resident was exposed to unsanitary conditions and served meals of limited nutritional value. The resident developed head lice, stopped eating, and became incoherent. She was admitted to a local hospital, then was moved to a group living home closer to her relatives outside of Alameda County.

The Adult Protective Services department of the Alameda County Social Services Agency also received the original complaint and opened an investigation into the status of the resident. Staff referred the complainant to additional housing and health resources but offered few solutions for the unsuitable housing situation. The incident brought the subject of unlicensed, independent living facilities to the Grand Jury’s attention. We found that, unlike licensed residential care facilities which are highly regulated by the state of California, there is minimal government oversight of independent living facilities.

Growing demand for independent living facilities and a lack of regulation and oversight have provided the opportunity for predatory operators to take advantage of vulnerable adults in need of safe and secure housing, a scenario described to the Grand Jury as the “wild west” of independent living facilities in Alameda County.

The Grand Jury also found increasing demand for independent living facilities. They fill an important housing niche for vulnerable adults in our community. Growing demand is driven by the high cost of housing, growth of the aging population, and decreasing affordability and availability of licensed residential care facilities.

Growing demand for independent living facilities and a lack of regulation and oversight have provided the opportunity for predatory operators to take advantage of vulnerable adults in need of safe and secure housing, a scenario described to the Grand Jury as the “wild west” of independent living facilities in Alameda County.

Several county departments and county-funded programs, especially the Healthy Homes Department, the Alameda County Independent Living Association, and the Group Living Facilities Working Group, are focused on the issue, but a lack of resources, coordination and focal leadership have limited their effectiveness. To better meet the housing needs of our most

vulnerable residents, county government must implement an effective countywide program that creates a census of independent living facilities, maintains reasonable quality standards for residents, trains and supports operators to maintain high-quality homes, strives to maintain existing stock, and attracts new independent living facilities into the market.

BACKGROUND

Housing Options for Vulnerable Adults

There is rising demand for housing options that meet the needs of vulnerable adults (i.e., individuals living on extremely low income and/or who may have mental or physical disabilities). Historically, group living has been the most widely available housing option. The two primary types of group living are licensed residential care facilities and unlicensed independent living facilities.

Residential care facilities (aka assisted living) are for residents who are unable to live by themselves but who do not need 24-hour medical care. In addition to room, board and housekeeping, residential care facilities provide supervision, storage and distribution of medication, and assistance with basic personal-care activities such as bathing, dressing and eating. Some residential care facilities are large, with tens to hundreds of residents, but the majority are single-family homes with six or fewer residents (commonly known as “board and care” homes).

Vulnerable adults can no longer afford licensed residential care facilities and have become the major clientele of independent living homes.

All residential care facilities, regardless of size, must meet care, safety and staffing standards set by the state and are licensed and inspected by the California Department of Social Services, Community Care Licensing (CCL). The residential care facility rates currently range from about \$4,000 to \$12,000 or more per month, depending on facility size and location, single or double-occupancy, and level of care.

Independent living facilities—the focus of this report—provide a shared housing environment for vulnerable adults who do not need medication oversight and who are able to live independently and function without supervision. They are typically single-family residences for up to six unrelated individuals but also include larger housing complexes. These facilities are commonly referred to as “room and board” or “boarding home” and provide room and board. Because care and supervision are not provided, independent living facilities are not required to be licensed or inspected by the state. They also are not subject to any local/county safety and staffing regulations, standards or inspections but are required to operate under a business license and, under certain circumstances (related to zoning and occupancy), to have a conditional use permit. The cost of an independent living home is typically \$600 to \$750 per month for a shared bedroom, significantly lower than for a residential care facility.

The large majority of residential care and independent living facilities consists of single-family residences accommodating six or fewer unrelated residents. The undeniable and often ignored reality underlying these smaller facilities—referred to herein as “homes”—is that each residence and owner/operator is a business. In order for the home to stay in business and serve its residents, it must make a profit, either through earnings generated from the operation of the business or growth in value of the underlying asset – the house and property. Historically, this business model worked: owner/operators derived income sufficient to justify investment and residents benefited from competition among owner/operators that resulted in a reasonable supply of safe and secure homes in which to live. The demand/supply equation between homes and resident need was such that owner/operators were incentivized to maintain and improve their offerings in order to attract residents.

A New Economic Reality: Diminishing Supply and Increasing Demand

The cost of housing has grown by as much as 100 percent in Alameda County over the past ten years. Rents, in turn, have grown by a similar amount. An average 3-bedroom, two bath house rents for between \$3,500 and \$5,500 per month in Alameda County and accommodates no more than six residents. Given increasing housing and labor costs, a licensed board and care home needs to charge a monthly fee of \$4,000 to \$6,000 per occupant to break-even and generate a modest return to the owner/operator. A well-run independent living home requires at least \$2,000 per occupant to pay the bills and maintain a safe and healthy living environment.

The Grand Jury heard testimony from witnesses within Alameda County government that many, if not most, vulnerable adults are reliant upon Social Security Administration disability benefit payments (e.g., Supplemental Security Income [SSI]) and have an income of \$900 to \$1,100 per month. On that income, vulnerable adults can no longer afford licensed residential care facilities and have become the major clientele of independent living homes.

Despite the slim financial margin and possible corner-cutting, many independent living home operators are well intentioned and do their best to provide a safe and secure living environment for their tenants.

In addition to being unaffordable, there are now significantly fewer licensed residential care facilities in Alameda County. The Grand Jury was told that the number of licensed board and care homes in Alameda County has declined by more than half in the past 15 years, and that the rate of decline increased significantly in the past five years. The precipitous decline came in the aftermath of a well-publicized state shutdown of a licensed residential care facility in Castro Valley in 2013. The state subsequently passed legislation that called for increased oversight and frequency of inspections of licensed care facilities by Community Care Licensing. The stronger oversight increased the costs of licensing and inspection for the owner/operators, making it cost prohibitive for many smaller licensed board and care homes to continue operating. This had the unintended consequences of forcing many board and care homes out of business or to operate without a license, further increasing the demand for independent living homes.

Despite the higher demand, the economics for independent living homes remains essentially the same. For an independent living home with six residents each paying \$750 per month, the total monthly rental income of \$4,500 often won't cover the home's capital and operating costs. Independent living homes on the margin of viability may cut corners to make ends meet. They may defer facility maintenance, risking violation of health and safety codes. Or, in violation of occupancy rules, they may take in more than six residents—the Grand Jury was told that many independent living homes house up to ten residents—to make ends meet. However, the Grand Jury heard testimony from several sources that, despite the slim financial margin and possible corner-cutting, many independent living home operators are well intentioned and do their best to provide a safe and secure living environment for their tenants. This is especially true of operators who own rather than lease their houses. Owner-operators tend to have more experience and a higher level of skill and tolerance, and encourage family oversight of residents.

Lack of Oversight of Independent Living Homes Increases the Risk to Residents

On the contrary, the subject complaint as well as similar stories told to the Grand Jury indicate that there are enough operators with less-than-good intentions to raise significant concern. Unfortunately, the growing demand for independent living homes and the lack of regulation and oversight have provided the opportunity for predatory operators to take advantage of vulnerable adults in need of safe and secure housing. There are operators who systematically underspend on facility maintenance, housekeeping and food, putting the health and safety of the residents at risk for the sake of higher profits, not just to make ends meet. Predatory operators often lease multiple houses from absentee owners and operate a network of independent living homes. If one of their homes is cited for code violations, they may shut it down and look for another house to lease and operate. This situation was characterized to the Grand Jury as a constantly shifting “whack-a-mole” environment, the “wild west” of unlicensed independent living.

There are operators who systematically underspend on facility maintenance, housekeeping and food, putting the health and safety of the residents at risk for the sake of higher profits, not just to make ends meet.

In its investigation, the Grand Jury wanted to better understand how Alameda County interacts with independent living homes and what the county can do to ensure there is a sufficient supply of high-quality independent living homes to meet the growing demand.

INVESTIGATION

During the course of its investigation the Grand Jury interviewed numerous witnesses including current and former staff in Alameda County's Community Development Agency, Health Care Services Agency, and Social Services Agency, staff in a county supervisor's office, an owner/operator of several licensed and unlicensed group living homes in Alameda County, and

an employee of Community Health Improvement Partners. Several of the witnesses also provided written responses and supplemental information. In addition, the Grand Jury reviewed the Health Care Services Agency contract with Community Health Improvement Partners and related materials presented to the Board of Supervisors.

Proactive Engagement of Agencies with Independent Living Homes

The Grand Jury identified multiple county agencies and departments that interact with independent living homes or their residents (Figure 1). For some, independent living homes are not a focus, but just one among a broad set of clients that an agency may interact with in the course of regular business. For example, the tax collector may issue a business license. In response to a complaint, the Public Works Department may enforce health and safety codes and the Building Inspection Division may enforce occupancy rules. Likewise, first responders (e.g., fire, police, EMT) and social workers from the Social Services Agency or the Health Care Services Agency may place and otherwise interact with a resident in an independent living home. Although they may observe and report on the condition of the facility, their primary focus is on the status of the resident.

The Grand Jury identified four county or county-funded programs that proactively engage with independent living facilities. These are the Group Living Facilities Working Group, the Group Living Strike Team, the Healthy Homes Department, and the Alameda County Independent Living Association. We also identified the Alameda County Care Connect Initiative as a primary coordinator and funder of this work.

Group Living Facilities Working Group

In December 2013, following the aforementioned shutdown of a licensed residential care facility in Castro Valley, the Alameda County supervisor representing District 4 convened the Group Living Facilities Working Group (GLFWG). The GLFWG, building on a partnership approach established by the District 4 supervisor's Eden Area Livability Initiative, brings together a core group of representatives from relevant county agencies (Adult Protective Services, Code Enforcement, Planning Department, and Healthy Homes Department, among others) to collectively identify and respond to group living issues in unincorporated Alameda County. Initially meeting monthly, the group now meets quarterly and has expanded participation to include state health officials and representatives from the county fire department, the sheriff's office and the tax collector's office. The GLFWG is viewed as an important venue for agencies to discuss and coordinate on group living issues.

Group Living Strike Team

Out of the Group Living Facilities Working Group and at the urging of Community Care Licensing came a Group Living Strike Team to respond quickly to serious incidents at group

living facilities in unincorporated Alameda County. This team includes members of the sheriff, fire, code enforcement, building inspection, public health and social services departments. Rapid response is necessary when officials learn of potentially serious violations or harm to residents at a licensed or unlicensed group living facility. The Grand Jury was told the intention of the Strike Team is to quickly identify and help the operator address code violations and other issues and avoid, if possible, the need to shut down a facility. If a facility does have to be shut down, the Strike Team works to ensure new placement of residents.

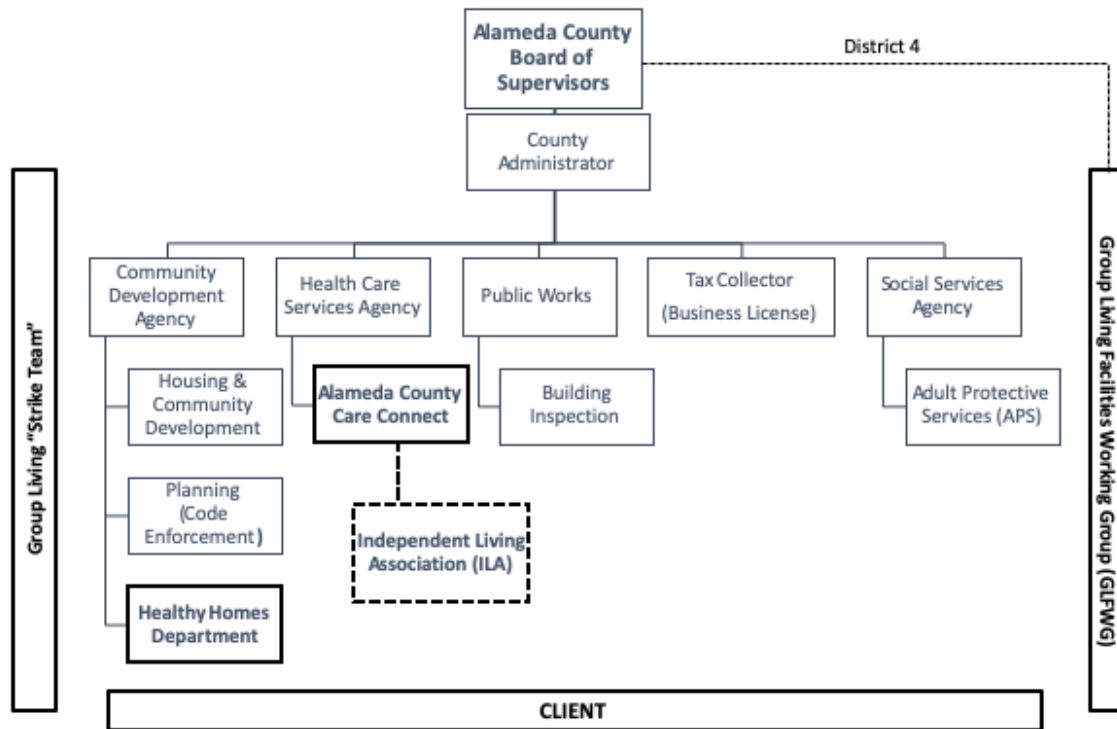


Figure 1. Some of the key Alameda County agencies and departments that interact with independent living home operators and/or residents. The highlighted departments or groups are the focus of this report.

Alameda County Care Connect

Alameda County Care Connect (AC Care Connect) is described on its website as “an initiative of the Alameda County Health Care Services Agency to improve care for Medi-Cal eligible residents who face the most difficult combination of physical health, mental health, and housing challenges. This five-year (2016-2020) Whole Person Care pilot is funded by a \$140 million demonstration contract from the California Department of Health Care Services ... The initiative allows the use of Medi-Cal funding for services not usually thought of as healthcare, in particular, housing services.”

AC Care Connect recognizes independent living facilities as an important housing option for vulnerable adults. One of its overall program goals is to engage independent living operators to

be part of a professional association that supports meeting quality standards and connects operators to available resources. In support of this goal, AC Care Connect is an important partner and funder of two of the county’s independent living-focused programs. In particular, it has directly funded and helped secure Measure A funding for the Healthy Homes Department’s three-year Independent Living Facility Pilot Project. AC Care Connect also recently contracted with Community Health Improvement Partners to establish the Alameda County Independent Living Association.

Healthy Homes Department

The current Healthy Homes Department (Healthy Homes) is an outgrowth of the childhood Lead Poisoning Prevention Program established in 1991 by the Alameda County Community Development Agency. The program expanded in 2002 to include other home health hazards. According to the department website, its focus is “to eliminate environmental lead contamination, prevent childhood lead poisoning and improve health outcomes by addressing housing problems. The Program provides case management of lead poisoned children, community outreach and education, training, lead hazard reduction services, healthy homes interventions, and consultations.”

Many operators would like additional tools and resources to address structural and code issues but are reluctant to be subject to government inspection and possible punitive action.

Healthy Homes has participated in the Group Living Facilities Working Group since March 2015. In November 2016, Healthy Homes initiated a three-year Independent Living Facility Pilot Project to assess independent living facilities throughout Alameda County and to provide needed assistance to help operators stay in business and meet health and safety standards. The long-term goal, if the project becomes a permanent program with secure funding, is to improve the quality and standard of independent living homes and retain (and increase) the independent living housing inventory in Alameda County.

Healthy Homes maintains a list of *known* independent living homes in Alameda County. The current list includes 192 entries, of which Healthy Homes has visited 132. The list by nature is dynamic and ever-changing; it’s been as high as 212 entries and as low as 162. Currently, the identification of independent living homes is through complaints as well as business license registrations. But complaints are unpredictable, and a plethora of business license categories makes pinpointing independent living businesses challenging. And, the Grand Jury was told that only about 75% of known independent living homes in unincorporated Alameda County have a business license.

Cooperation of operators with Healthy Homes is voluntary. Many operators would like additional tools and resources to address structural and code issues but are reluctant to be subject to government inspection and possible punitive action. To address this concern, Healthy Homes employs what they call the “Cooperative Compliance Model.” This model calls for the agency to establish good communication with operators, educate the operators about health and safety standards, and provide needed assistance to operators to address any violations. The Grand Jury was told that in the first year of the pilot project, 30 independent living homes in

The Grand Jury is encouraged that witnesses described a common framework to address the growing independent living crisis. Unfortunately, a lack of resources, coordination and focal leadership have limited the effectiveness of ongoing efforts.

unincorporated Alameda County were contacted and only one refused to cooperate. In the second year, countywide (including Oakland and Hayward), the refusal rate was about 30%. Ultimately, Healthy Homes envisions a proactive rental inspection program to systematically identify, evaluate, and assist independent living facilities.

The Healthy Homes facility assessment focuses on structural issues and health and safety code violations (e.g., plumbing and electrical, tripping hazards, deferred maintenance, vermin and cleanliness), not on operational issues. Healthy Homes has no code enforcement authority and therefore must work collaboratively with county and city building departments. Given the area’s housing shortage, Healthy Homes’ primary goal is to prevent the loss of housing for any resident. Any significant operational issues observed during a structural assessment are reported to the Group Living Facilities Working Group and/or Adult Protective Services.

Alameda County Independent Living Association

In December 2017 AC Care Connect entered a 2.5-year, \$1.2 million contract with Community Health Improvement Partners (CHIP, a San Diego-based nonprofit organization) to create a sustainable independent living facility quality improvement program in Alameda County. CHIP was the sole qualified bidder of two RFP respondents. This effort has worthy goals:

- Create a system of oversight, support, coordination, and ongoing quality improvement for independent living facilities.
- Improve the quality of life for independent living facility residents by improving quality standards and preserving and improving the quality of homes.
- Increase the available housing stock for vulnerable adults living in Alameda County.

The key service under the contract is for CHIP to develop and implement an Independent Living Association (ILA) in Alameda County. The ILA is envisioned to be a professional association comprised of independent living operators who complete training in operating high-quality homes and who demonstrate they meet a set of quality standards through on-site home assessments. Membership in the association is voluntary and free. The underlying assumption

is that ILA membership or “accreditation” will make member homes more attractive to potential clients—the “Better Business Bureau” model.

The basic structural framework of the ILA is modeled on the more-established San Diego ILA and closely parallels Healthy Homes’ Independent Living Facility approach:

1. A web-based and searchable database of member homes.
2. Education and training customized for operators, residents, and the community.
3. A “Cooperative Compliance and Accountability Team” to conduct annual inspections of member homes to ensure standards are upheld and provide coaching and other support.
4. A policy agenda to educate and inform county and municipalities about issues with independent living facilities.

CHIP announced the establishment of the Alameda County ILA in March 2018. Although still in its formative phase, its performance has been disappointing. The ILA currently has only six member operators representing eight independent living facilities and 73 beds total. For comparison, the San Diego ILA, established by CHIP in 2012, has 80 members with approximately 700 beds. The membership process can be completed in as little as two weeks, provided the operator has all of the proper paperwork (e.g. leases) in order. The Grand Jury was told that as of February 2019 approximately 60 operators and guests had taken the ILA introductory class in Alameda County—the first step toward membership. Of approximately 12 facilities that had been inspected at that time, only four met ILA standards and were ready for ILA membership. Many operators who take the introductory class decide not to pursue membership because they are loath to submit to inspection or make operational changes. Also, the growing demand for independent living facilities reduces the incentive for operators to meet ILA standards.

A Comprehensive Approach Was Articulated But Not Effectively Implemented

The Grand Jury is encouraged that witnesses from Health Care Services Agency, Healthy Homes Department and Alameda County ILA described a common framework to address the growing independent living crisis. They consistently described a holistic approach that encompasses, but is not limited to, their collective ongoing efforts. The components of this approach include oversight and standards, a central database registry, a small-business investment resource, and a public agency strike team. Unfortunately, as described below, a lack of resources, coordination and focal leadership have limited the effectiveness of ongoing efforts.

Oversight and Quality Standards

The Grand Jury acknowledges the similar approaches that Healthy Homes and the ILA have envisioned to improve the quality and availability of independent living facilities in Alameda County. They both seek to provide oversight, support, coordination, and ongoing quality

improvement for independent living facilities and operators—Healthy Homes in order to resolve health and safety issues and ILA to meet voluntary quality standards. We also recognize the role of Health Care Services Agency, an important partner and funder, to provide vision and encourage Healthy Homes and ILA collaboration.

The Grand Jury is not impressed with progress of these programs to date, or with their likely sustainability. We recognize the current limitations Healthy Homes faces with identifying independent living homes through complaints and uncoordinated city and county business license registries. We strongly encourage the implementation of an on-going proactive rental inspection program that would systematically identify and evaluate independent living homes across Alameda County. Proactive rental inspections combined with the Cooperative Compliance Model for helping operators address deficiencies has great potential. Given that the three-year Healthy Homes Independent Living Facilities pilot project is in its final year, the county must provide secure and ongoing support to the initiative in order for its potential to be realized.

The two-and-a-half-year CHIP contract to establish the ILA is in its second year. While the ILA has worthy goals, a compelling framework and great potential, its performance to date is disappointing. Key performance measures have not been met. Furthermore, some key performance measures listed in the Board of Supervisors approval request letter from the interim director of the Health Care Services Agency are at odds with those in the contract.

For example:

- With regard to ILA membership, key performance measures under the contract are “*By June 30, 2018, have at least 12 ILA members and housing sites*”, and “*By June 30, 2020, have at least 40 ILA members and housing sites.*” The Board of Supervisors approval request letter states 40 member homes by June 30, 2018. As of April 2019 there are six member operators representing eight facilities listed on the ILA website; this is unsatisfactory progress by any measure.
- With regard to ILA assessments of independent living facilities, the Board approval request letter and the contract again are at odds. The letter states “*By June 30, 2018, [ILA] will have assessed a minimum of 175 Independent Living Facilities....*” The contract specifies “*[ILA] conducts at least 2 assessments per month starting in February 2018.*” The Grand Jury heard witness testimony that as of February 2019 fewer than 15 homes had been inspected—again, sub-par performance by either measure.

The Grand Jury questions whether the time allocations and responsibilities of CHIP staff assigned to the Alameda County ILA project are adequate to achieve the desired outcomes. The contract specifies five CHIP positions totaling 2.63 FTE be assigned to the project. At least four of the five are budgeted as part-time on this project, two as low as 0.22 FTE; only one full-time

position is budgeted. The Grand Jury did not verify actual staffing assignments, but according to the ILA website, at least four, and perhaps all five, positions are based in San Diego. It is counterintuitive that this important project relies on part-time, San Diego-based staff.

Alameda County must take needed action to boost the performance and effectiveness of the ILA and ensure its sustainability beyond the end of the CHIP contract in June 2020.

Central Database Registry

Both the county of Alameda and the cities within need a central countywide database containing comprehensive information about the location and quality of independent living facilities to assist social workers and investigators to systematically document complaints and make appropriate placements.

While Healthy Homes, ILA and the Group Living Facilities Working Group are each attempting to develop listings of independent living facilities in Alameda County, the Grand Jury has been unable to confirm the accuracy and completeness of any such listing. For example, the Healthy Homes list currently has 192 known group-living facilities, but some witnesses have questioned the reliability of the list.

A central countywide database containing comprehensive information about the location and quality of independent living facilities is needed.

The Healthy Homes list is not currently public, and Healthy Homes is working with county counsel to determine what information can be made publicly available. The ILA list is publicly available on the ILA website but has only eight entries—the eight association member homes that currently meet ILA standards. The Grand Jury was told the Group Living Facilities Working Group is creating a database that includes licensed care homes and unlicensed independent living homes only in unincorporated Alameda County. However, most homes are in incorporated areas. The Social Services Agency annually publishes its Senior Housing Guide including a non-comprehensive listing of subsidized senior housing facilities of all types, from nursing and care facilities to independent living facilities. All of the Social Services listings are large facilities accommodating tens to hundreds of residents; the list does not include group “homes.”

The disparate independent living lists should be merged into a searchable database that covers the entire county. The County needs to centralize database management and maintenance in the Healthy Homes Department. Agencies that inspect, assess or otherwise oversee independent living facilities should provide data for, and have access to, appropriate parts of the database. So should agencies and other institutions that may place or advocate for clients in independent living facilities. The Social Services Agency’s Senior Housing Guide should reference this database resource.

Small Business Investment Resources

As small businesses with marginal economics, independent living homes would benefit from dedicated investment resources that they could access to help fund facility maintenance, repairs and other needed services. The resources could be administered through either a government-operated “business resource center” or a private small-business development corporation. The program would:

- Offer tax credits to reduce the ownership expense to the holder of title.
- Provide grants or low-cost loans to improve and maintain the facilities to the agency’s standards.
- Develop a “master net lease” program for owners that motivates them to negotiate long-term leases to non-owner operators at market or below market rates. The lease would be guaranteed by a government body and would ensure an operator/lessor of a stable rent over a period long enough to assure a reasonable return on investment.
- Combine the “master net lease” program with subsidies to assure the non-owner operator has sufficient income to maintain a successful business after payment of rent.

Countywide Group Living Facilities Working Group and Formalized Strike Team

The value of the Group Living Facilities Working Group as an ongoing venue for county agencies to coordinate and respond to systemic group living issues is unquestioned, as is the public agency Strike Team’s coordinated rapid response to group living emergencies. However, both the GLFWG and the Strike Team operate only in unincorporated Alameda County, not in cities like Oakland and Hayward where the majority of independent living homes are located. Furthermore, the existing Strike Team is ad hoc and dependent on interpersonal relationships between individual agency staff and their willingness to participate.

To increase their effectiveness, both the GLFWG and the Strike Team need to expand their service areas to include the entire county, not just unincorporated areas. Representatives from relevant city agencies within the county should be invited and encouraged to participate on the GLFWG and the Strike Team. The Strike Team needs to be formalized under the expanded GLFWG, including a recognized leader with the authority and responsibility for effective interagency response. Team members should have clear roles and responsibilities.

CONCLUSION

The imbalance of supply and demand for safe and secure independent living homes for vulnerable adults can only be corrected through a fundamental change in the business model. Because profits are so low in this industry, the money needed for repairs, capital investments and suitable client services often do not exist. At the same time, demand for group living is so great that there is a need for these businesses to grow and prosper. Thus, proactive attention to identification and inspection of rental units, education of operators, subsidies for home maintenance and repairs, and peer reviews must be elements for better housing of vulnerable adults.

County government is well aware of the growing independent living crisis. The Healthy Homes Department's Independent Living Facilities pilot project and the nascent Alameda County Independent Living Association, both with the support of the Health Care Services Agency, are well-intentioned attempts to identify and evaluate independent living homes and educate and train operators. Likewise, the ad hoc county Strike Team has responded to some group home emergencies. Although these projects have worthy goals, a compelling framework, and great potential, their effectiveness has been limited by lack of resources, coordination and focal leadership.

Proactive attention to identification and inspection of rental units, education of operators, and subsidies for home maintenance and repairs, and peer reviews must be elements for better housing of vulnerable adults.

To better meet the housing needs of our most vulnerable citizens, county government must implement an effective countywide program that creates a census of independent living facilities, maintains reasonable quality standards for residents, trains and supports operators to maintain high-quality homes, strives to maintain existing inventory, and attracts new independent living facilities into the market.

FINDINGS

Finding 19-22:

Although most independent living home operators are well intentioned and do their best to provide a safe and secure living environment for their tenants, profits are so low in this industry that the money needed for repairs, capital investments and suitable client services often does not exist.

Finding 19-23:

Existing programs – Healthy Homes Department, Independent Living Association, Group Living Facilities Working Group – have laid the groundwork for a comprehensive approach to addressing independent living issues, but a lack of resources, coordination and focal leadership has limited their effectiveness.

Finding 19-24:

There is a need for a searchable web-based database containing information about the location and quality of independent living homes in Alameda County. The database would allow investigators to systematically document complaints and conditions and would assist social workers and consumers to make appropriate placements.

Finding 19-25:

The service area of the Group Living Facilities Working Group and the Group Living Strike Team is limited in geographic scope to unincorporated areas of Alameda County. Furthermore, the Strike Team is ad hoc and dependent on interpersonal relationships between individual agency staff.

RECOMMENDATIONS

Recommendation 19 – 20:

Alameda County must provide ongoing support for the Healthy Homes Department’s Independent Living Initiative and implement a proactive rental inspection program that will identify and evaluate independent living homes throughout Alameda County, including incorporated areas.

Recommendation 19 – 21:

Alameda County must critically evaluate the lack of performance by the ILA and its seeming inability to meet contractual milestones and take needed action to boost performance and ensure sustainability of the ILA beyond the end of the CHIP contract in June 2020.

Recommendation 19 – 22:

Alameda County must ensure the separate lists of independent living homes are merged into one web-based searchable database of independent living homes. Database management and maintenance should be centralized in the Healthy Homes Department. Agencies that inspect, assess or otherwise oversee independent living homes should provide data for, and have access to, appropriate parts of the database, as should agencies and other institutions that may place or advocate for clients in independent living homes. The Social Services Agency’s Senior Housing Guide should reference this database resource.

Recommendation 19- 23:

Alameda County must establish a small business investment program that can provide resources to support independent living homes as small businesses. The resources could be administered through either a government-operated “business resource center” or a private small-business development corporation.

Recommendation 19-24:

Alameda County must establish a countywide, interagency Group Living Facilities Working Group as an ongoing venue for county agencies to coordinate and respond to systemic group living issues in incorporated and unincorporated Alameda County. Representatives from relevant city agencies within the county should be invited and encouraged to participate.

Recommendation 19-25:

Alameda County must formalize the Group Living Strike Team under the expanded Group Living Facilities Working Group, including a recognized leader with the authority and responsibility for effective interagency emergency response. Team members should have clear roles and responsibilities. The Strike Team also should coordinate with cities to ensure team effectiveness in incorporated as well as unincorporated areas of the county.

RESPONSES REQUIRED

Alameda County Board of Supervisors

Findings 19-22 through 19-25

Recommendations 19-20 through 19-25

REQUEST FOR RESPONSES

Pursuant to California Penal Code sections 933 and 933.05, the Grand Jury requests each entity or individual named below to respond to the enumerated Findings and Recommendations within specific statutory guidelines:

Responses to Findings shall be either:

- Agree
- Disagree Wholly, with an explanation
- Disagree Partially, with an explanation

Responses to Recommendations shall be one the following:

- Has been implemented, with a brief summary of the implementation actions
- Will be implemented, with an implementation schedule
- Requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a completion date that is not more than 6 months after the issuance of this report
- Will not be implemented because it is not warranted or is not reasonable, with an explanation

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ALAMEDA COUNTY FOSTER CARE SYSTEM: SOME POSITIVE TRENDS, BUT TOO MANY CHILDREN SENT OUT OF THE COUNTY

EXECUTIVE SUMMARY

The Grand Jury received a complaint calling for an investigation of the 2015 death of an Alameda County child while she was living in an out-of-county foster home. Reportedly, the child died just days after her third birthday after she twice ingested methamphetamines that were present in the foster home. Because of pending litigation related to that tragedy, the Grand Jury was precluded from looking into the circumstances of the child's death and how, if at all, the foster care system failed her. Unable to pursue that specific and eminently worthy subject of investigation, the Grand Jury decided instead to examine more generally how well Alameda County's child welfare agency is taking care of foster children who face troubled home environments and who may need to live apart from their immediate families.

We found that Alameda County has made substantial progress in reducing the number of children living in traditional foster care settings. Alameda also has done very well, relative to many other California counties, on critical performance measures concerning incidents of abuse and neglect of foster children. These results reflect positively on the dedicated efforts of the child welfare workers in the Alameda County Social Services Agency's Department of Children and Family Services (DCFS).¹ However, we also found that there is more that should be done to move closer to the goal of placing all foster children in safe and caring homes, preferably right here in Alameda County. Specifically, the Grand Jury identified a number of significant concerns that require the county's attention:

- An insufficient supply of approved foster homes in Alameda County, a problem that has not been effectively addressed by recruitment and retention efforts to date,
- An excessive number of out-of-county foster care placements,
- An overreliance on Foster Family Agencies (FFAs) to arrange and supervise foster care placements,
- Excessive child welfare social worker caseloads, and
- Undue DCFS delay in implementing the state-mandated Child and Family Team (CFT) approach to making and overseeing foster care placements.

¹ For ease of reference, a list of the acronyms used herein appears at the end of this report.

BACKGROUND

Foster Care in California – State and County Roles

The basic structure of the foster care system in California is that the state establishes a common platform of regulations that all 58 counties must implement and administer. The responsible agency of state government is the California Department of Social Services (CDSS). The responsible agency of Alameda County government is the Social Services Agency (SSA). Within SSA, which is one of the largest county agencies in terms of both personnel and budget, primary responsibility for child welfare matters, including foster care, falls to the Department of Children and Family Services (DCFS).

Trend Away from Traditional Foster Care Placements

The stated mission of DCFS is: “[t]o ensure that all children receive the support and security that family, an extended family, or an alternative family can provide.” Embedded in that mission statement is a principle widely accepted by child welfare experts: that it is most often in a child’s best long-term interests if he or she can live with his or her family. That is why DCFS programs, like those of many child welfare agencies across California and the nation, have evolved to stress

The emphasis on family preservation and reunification in recent years has produced desirable results. Across California, total foster placements declined more than 48% from 2000 to 2017. The decline in the number of children in all types of foster placements has been even steeper in Alameda County: from approximately 3,500 in 2010 to 1,222 as of year-end 2018, a 65% decrease.

family preservation or reunification as the best solutions for most difficult home situations. When preservation of, or reunification with, immediate family is not feasible, placing a child with an extended family member or a non-relative with whom the child has an existing, close relationship (“kin caregiving” or “kincare”) is the next best outcome. Placement in foster homes (which shall be referred to here as “traditional foster care” to distinguish such placements from kin caregiving placements) is the chosen outcome only when, and

for so long as, the preferred options of family preservation/reunification and kin care are not available. That order of preference does not stem from a view that the traditional foster parent community is in any way deficient. To the contrary, experts in the field told the Grand Jury that the vast majority of foster parents perform a genuine community service by providing safe, loving homes for the children entrusted to their care. Nevertheless, the prevailing expert view is that children usually fare best when they live with immediate or extended family.

The emphasis on family preservation and reunification in recent years has produced desirable results. Across California total foster placements (including traditional foster care and kin care) declined more than 48% from 2000 to 2017 (101,241 to 53,095).² The decline in the number of

² Child Welfare Services and Adult Protective Services Realignment Report (“Realignment Report”), June, 2018 (p. 3).

children in all types of foster placements has been even steeper in Alameda County: from approximately 3,500 in 2010 to 1,222 as of year-end 2018, a 65% decrease.³

Decrease in Substantiated Cases of Foster Child Maltreatment

The Grand Jury learned that the reported frequency of substantiated instances of maltreatment of foster children in California is below the “national standard” (7.57 per 100,000 foster care days in California versus the national standard of 8.50). While no amount of foster child abuse and neglect can ever be deemed acceptable, the statistics for Alameda County are significantly better. For the one-year period ending September 30, 2018, the Alameda County “maltreatment in foster care” rate was 2.89 per 100,000 foster care days. In nine of the ten previous years, the Alameda County maltreatment rate decreased (from an above national standard rate of 11.28 as of 2008 to 2.89 in 2018).⁴

Out-of-County Placements

Many California counties, particularly in high cost-of-living parts of the state, struggle to maintain an adequate inventory of approved foster homes. Alameda is one such county. The inadequate supply of approved foster homes (or, to use more up-to-date terminology: “resource families”) results in many Alameda County children being sent to live elsewhere. The Grand Jury has learned that out-of-county placements (unless made to secure a kinship opportunity or to address the special needs of a given child) are disfavored by child welfare professionals, for a number of reasons:

Too many of the county’s children have been, and continue to be, placed in out-of-county foster homes, despite substantial evidence that such placements are generally not in the best interests of the children.

- 1) An out-of-county placement can interfere with on-site visitations and create other logistical hurdles for an already overburdened social worker assigned to monitor a foster child’s progress;
- 2) Despite published guidance from CDSS on interactions between child welfare officials of the home county and the host county, multiple witnesses reported that out-of-county placements can be negatively impacted by miscommunication between the home and host counties, and confusion about their respective roles and responsibilities;⁵
- 3) An out-of-county placement can make it impractical for a foster child to attend and participate in juvenile court proceedings in his or her home county;
- 4) An out-of-county placement can impede parental and other family visits with the foster child;

³ DCFS data submission to Grand Jury (02/28/2019)

⁴ California Child Welfare Indicators Project, http://cssr.berkeley.edu/ucb_childwelfare/

⁵ See *Statewide Intercounty Protocol for Resource Family Approval and Emergency Placements* (04/05/2017) (available on CDSS website).

- 5) Behavioral health counseling and other needed services can be difficult to arrange if a child is placed outside of his or her home county; and
- 6) An out-of-county placement is often arranged and supervised by a Foster Family Agency (FFA), rather than directly by the home county child welfare agency that is ultimately responsible for the foster child's well-being.

Social Worker Caseloads

Child welfare experts agree that social worker caseloads must be kept at reasonable levels. As caseloads rise, the ability of social workers to make sure that the physical, mental and emotional needs of the children they serve, diminishes. The opportunity for foster children “to grow into self-sufficient, successful adults” suffers.⁶

The state does not prescribe specific child welfare social worker caseload limits, but the Child Welfare Services Workload Study commissioned by CDSS pursuant to Senate Bill 2030 (SB 2030 Study) identified minimum and optimum caseload standards for child welfare social workers.⁷ Nearly two decades later, the SB 2030 Study remains the principal benchmarking tool for social worker caseloads in California.⁸

Continuum of Care Reform

In 2015, the California legislature passed, and Governor Jerry Brown signed into law, Assembly Bill 403, which is known as the Continuum of Care Reform (CCR) bill. CCR made sweeping changes to the state's child welfare system, with those changes taking effect in stages through and including 2021.⁹ CDSS issued detailed Resource Family Approval Written Directives¹⁰ and a series of All County Information Notices to guide counties in implementing the CCR.

A key tenet of the CCR is that a Child and Family Team (CFT) should be established for each child who enters the foster care system. According to the CDSS: “There is an increasing body of evidence showing that services for children and families are most effective when delivered in the context of a single, integrated team that includes the child or youth, his or her family, natural and community supports, and professionals. In California, the Child and Family Team (CFT) process is key to the success of the Continuum of Care Reform efforts and the well-being of children”¹¹

⁶ Realignment Report, p. 18.

⁷ https://www.cwda.org/sites/main/files/file-attachments/cws_sb2030study.pdf

⁸ DCFS answers to supplemental Grand Jury questions.

⁹ Welfare and Institutions Code, Section 16000, et seq.

¹⁰ Available on the CDSS website. Version 5 of the Written Directives (111 pages) was issued with an effective date of 02/06/2018.

¹¹ CDSS website

INVESTIGATION

In this investigation, the Grand Jury heard testimony from DCFS management, a child welfare legal specialist, a court-appointed child welfare advocate, and several child welfare social workers. Documents that the Grand Jury reviewed included: California child welfare statutes and regulations, CDSS reports and directives to county child welfare agencies, DCFS reports and procedural materials, a child welfare database maintained by UC Berkeley, and published reports from the Child Welfare League of America (CWLA) and other organizations.

Based upon the foregoing, the Grand Jury has identified the following areas of concern:

1. An insufficient supply of approved foster homes in Alameda County, a problem that was not effectively addressed by recruitment and retention efforts to date

DCFS management informed the Grand Jury that there are currently about 220 approved foster homes in Alameda County, down from a supply of some 400 homes a few years ago. Despite the decreased size of the county's foster child population, the steep decline in the number of approved in-county foster homes results in more children being sent out-of-county.

To explain the shortage of approved in-county foster homes, DCFS management points to: 1) the high cost of living in Alameda County makes it financially difficult for otherwise willing county residents to serve as resource families; and 2) the lackluster results of traditional recruitment activities such as distributing foster parenting information at the county fair and other public events. The Grand Jury understands and accepts that the high cost of living in Alameda County makes foster parent recruitment here difficult. But, we also find evidence that there may be recruitment strategies available that would generate a larger pool of foster parent applicants. For example, in 2017 the Human Services Agency in San Francisco (a very high cost of living area) experienced a 300% increase in foster parent applications after it engaged a tech sector firm to create a mobile-friendly online application process and a user-friendly recruiting website.

The DCFS needs to devote priority attention to identifying and implementing innovative recruitment strategies to increase the supply of approved in-county foster homes. Accordingly, the Grand Jury was pleased to learn that DCFS recently contracted with the same firm that helped San Francisco achieve an impressive boost in foster parent applications.

2. An excessive number of out-of-county placements

The reasons why out-of-county placements are disfavored by child welfare experts are outlined earlier in this report. Available data demonstrate that Alameda County sends a significantly

higher percentage of its foster children to out-of-county placements than do most other heavily-populated and/or high cost of living counties:¹²

	Placements	Out-of-County %
Statewide	59,223	22.3%
Alameda	1,407 ¹³	50.9%
Contra Costa	1,076	28.6%
Los Angeles	20,859	17.3%
Orange	2,480	22.3%
Sacramento	2,364	20.4%
San Diego	2,385	8.9%
San Francisco	760	63.2%
Santa Clara	1,117	26.2%

Available data demonstrate that Alameda County sends a significantly higher percentage of its foster children to out-of-county placements than do most other heavily-populated and/or high cost of living counties.

Alameda County’s high percentage of out-of-county placements (50.9%), a figure exceeded in the above sampling only by San Francisco, is not driven by kin caregiver placements. To the contrary, the out-of-county placement percentage increases (to 56.7%) if kincare placements are excluded and only traditional foster home (including FFA) placements are considered.

DCFS must reduce the frequency of out-of-county traditional foster care placements by increasing the supply of approved in-county foster homes. To that end, the need for new recruitment strategies has been discussed above. A second possible remedy is to alter the mix of placement types by aggressively seeking more kincare placements. The percentage of out-of-county placements becomes less of a concern as the placement mix shifts in favor of kincare placements. DCFS management reported that it has three staff members working full-time on the task of locating potential kin caregivers. Dedicating staff resources to this function seems wise. The Grand Jury encourages DCFS to assess whether the current allocation of staff resources is sufficient. A potentially useful point of comparison is the Upfront Family Finding (UFF) pilot program launched by the Los Angeles County Department of Children and Family Services in 2016. The LA pilot involved assigning specialized workers who are dedicated to the task of

DCFS must reduce the frequency of out-of-county traditional foster care placements by increasing the supply of approved in-county foster homes.

¹² As of July 1, 2018, California Child Welfare Indicators Project (“CCWIP”) (cssr.berkeley.edu/ucb_childwelfare/)
¹³ Information received from DCFS shows a total 2,009 placements (new placements and placement changes of all types) in 2018. Of that total, 56.8% (1,246) were out-of-county placements. We note that the 50.9% figure referenced in the above table is based on a snapshot of placements as of a specific date (07/01/2018)

“family finding” when children are first removed from their homes. According to a published report, LA County’s “UFF pilot program met its goal of increasing relative placements and engaging more relatives to provide support to children.”¹⁴

3. An excessive use of Foster Family Agencies to arrange and supervise foster care placements

A Foster Family Agency (FFA) is a state-licensed organization, generally a non-profit that engages in: 1) recruiting, certifying and training resource families; and/or 2) finding homes where foster children can be placed. The Grand Jury received information indicating that about 25% of Alameda County’s foster care placements are made through FFAs.

The county does not enter into contracts with the FFAs it utilizes. The county pays each FFA a flat rate per child that is somewhat higher than the rate that a resource family typically receives. The higher amount is intended to cover the FFA’s overhead and the cost of services provided to foster children and resource families.

The Grand Jury learned that a preponderance of the foster placements that FFAs arrange for Alameda County are in out-of-county homes: 81.1% as of December 31, 2018.¹⁵

Multiple witnesses, including social workers, a child welfare advocate and a child welfare legal specialist, told the Grand Jury that the quality of FFAs varies widely and that there is little or no county oversight of FFAs. This last point was borne out by the testimony of, and documents received from, DCFS management, which painted a disturbing picture of the county’s hands-off relationship with its FFAs. The county does not vet FFAs beyond verifying that they have been licensed by California Community Care Licensing. The FFAs recruit, train and select foster parents without county involvement. Foster home inspections are considered the responsibility of the FFAs, not the DCFS.

The Grand Jury was told that many FFAs do an excellent job of protecting the interests of the foster children referred to them. However, we also received, and find credible, testimony concerning the “sketchy” competence of some FFAs. That concern is magnified for the Grand Jury by the disproportionate rate at which FFA placements are made out-of-county and by the absence of any meaningful County oversight of FFA operations. DCFS action, as recommended herein by the Grand Jury, to reduce the frequency of out-of-county placements of Alameda County foster children should also have the salutary effect of reducing the County’s dependence on the services of FFAs. Beyond that, and recognizing that some meaningful percentage of foster placements will continue to be made through FFAs, we encourage DCFS to develop and

¹⁴ <https://www.childtrends.org/publications/evaluation-of-los-angeles-countys-upfront-family-finding-pilot>

¹⁵ According to the California Child Welfare Indicators Project, the percentage of Alameda County’s FFA placements that were out-of-county as of a slightly earlier date (July 2018) was 71.6%. The considerable differential between that figure (which is, as we understand it, based on county-reported information) and the figure cited in the text above (81.1%) may be attributable to differing reporting protocols. But, if the FFA out-of-county percentage really jumped nearly 10 percentage points in the span of just six months, we trust that DCFS will look into the reason(s) for that disturbing development.

implement a robust plan of action for vetting and periodically reassessing those FFAs to which it entrusts the care of Alameda County children.

4. Alameda County child welfare social worker caseloads are too high, particularly when viewed in light of the significant percentage of out-of-county placements

The seemingly unanimous view of child welfare experts is that the interests of foster children are directly and negatively impacted if social worker caseloads are not kept at a reasonable level. A child welfare legal specialist told the Grand Jury that the appropriate caseload range for child

Child welfare social worker caseloads are too high, despite clear evidence that excessive caseloads interfere with the delivery of high quality child welfare services.

welfare social workers is 12 – 15. Other sources agree. For example, the Child Welfare League of America (CWLA) “recommends that foster care caseworkers have caseloads of 12 – 15 children.”¹⁶ In a 2003 report, the US General Accounting

Office referenced the CWLA’s recommended “caseload ratio of 12 to 15 children per social worker” and found that observed caseloads in some jurisdictions of 24 to 31 were interfering with the recruitment and retention of child welfare workers and undercutting the delivery of effective child welfare services.¹⁷

DCFS informed the Grand Jury that the SB 2030 Study conducted in 2000 remains the only study of child welfare social worker caseloads in California. The SB 2030 Project Team of expert consultants worked with an advisory group of caseworkers and administrators to identify both “minimum”¹⁸ and “optimum” caseload standards for each of four categories of child welfare social workers: Emergency Response; Family Maintenance; Family Reunification; and Permanency Placing.

The major takeaway here is that Alameda County, like most of the other counties reported on in the Realignment Report, should reduce social worker caseloads. Doing so would improve the delivery of child welfare services.

¹⁶ California’s Children 2017, www.cwla.org

¹⁷ www.gao.gov/ggi-bin/getrpt?GAO-03-357

¹⁸ The caseload figures identified in the 2030 Study as “minimum” standards are, we believe, more reasonably understood as recommended maximum caseloads.

The CDSS’s 2018 Realignment Report included data illustrating how social worker caseloads in each of seven counties, including Alameda, compared with the SB 2030 minimum and optimum standards¹⁹:

	Emergency Response	Family Maintenance	Family Reunification	Permanency Placing
SB 2030 Minimum Std	13.03	14.17	15.58	23.67
SB 2030 Optimum Std	9.88	10.15	11.94	16.42
Alameda	24.99	16.79	11.87	21.74
Los Angeles	9.40	18.95	19.04	19.23
Sacramento	16.28	17.65	12.72	30.80
San Francisco	6.37	9.86	10.29	14.38
San Diego	16.75	16.46	13.74	12.56
Santa Clara	7.83	14.96	10.68	15.93
Sonoma	29.99	23.54	15.85	19.03

With respect to two of the four social worker categories (family reunification and permanency planning), the county-specific information provided in the Realignment Report supports DCFS management’s testimony to the Grand Jury that average caseloads for its social workers are generally below the 2030 Study. For the other two categories (emergency response and family maintenance), however, the Alameda County figures are considerably higher than the 2030 “minimum” and nowhere near “optimum.” Viewed from another perspective, the reported Alameda County caseloads fall within the CWLA recommended range of 12 – 15 in only one of four categories (family reunification). Exceeding the recommended caseload range strikes the Grand Jury as a particular problem in a county, such as Alameda, where a high percentage of a social worker’s assigned cases are apt to involve out-of-county placements.

The major takeaway here is that Alameda County, like most of the other counties reported on in the Realignment Report,²⁰ should reduce social worker caseloads. Doing so would improve the delivery of child welfare services.

¹⁹ Drawn from Realignment Report, p. 36

²⁰ The notable exceptions are San Francisco, where caseloads are better than the SB 2030 “optimum” standards in all categories, and Santa Clara, where caseloads are better than “optimum” in three of four categories.

5. Undue DCFS delay in implementing the state-mandated Child and Family Team process for making and monitoring foster care placements

The Child and Family Team (CFT) is a centerpiece of California’s Continuum of Care Reform (CCR) legislative overhaul of the foster care system. CCR, which was signed into law in 2015,

DCFS has dragged its feet in implementing the Child and Family Team construct mandated in California’s 2015 legislative overhaul of the foster care system, despite compelling evidence that embracing CFT would serve the best interests of our children.

included a mandate that all of the state’s counties establish a CFT for all new foster placements on and after January 1, 2017. More than two years after that date, witnesses informed the Grand Jury that Alameda County DCFS had not yet fully implemented the CFT process. Rather, witnesses testified that DCFS was still using an approach to foster care

placement known as Team Decision Making (TDM). DCFS management acknowledged that as of February 2019 the agency was still in the process of “converting” from TDM to CFT. DCFS anticipates completing this conversion in mid-2019.

TDM and CFT are not two peas in a pod. It is beyond the scope of the Grand Jury to identify precisely how they differ, but the essential learning we have gained is that TDM is a process heavily focused on foster child placement, whereas CFT has a much wider scope. CFT involves assembling and periodically reconstituting a team that is charged with assessing and developing plans to support the full range of a child’s needs and interests (including medical, emotional, social and educational) from initial placement throughout his or her time in the foster care system. Consistent with this wide scope of responsibility, a typical CFT might be comprised of a child welfare social worker, a court-appointed special advocate, the foster child, the child’s family, the resource family, medical professionals, teachers and/or school administrators, and possibly others who play a meaningful role in the child’s life.

Nearly four years ago, all county child welfare agencies were directed to adopt the CFT process for all new foster placements on and after January 1, 2017. It is well past time for full implementation of the CFT model in Alameda County.

Protecting the interests and well-being of children who enter Alameda County’s foster care system is a daunting responsibility. Our investigation disclosed a generally encouraging picture of how well the Social Services Agency’s Department of Children and Family Services has carried out that responsibility, while also revealing some significant opportunities for improvement.

CONCLUSION

Protecting the interests and well-being of children who enter Alameda County’s foster care system is a daunting responsibility. Our investigation disclosed a generally encouraging picture of how well the Social Services Agency’s Department of Children and Family Services has carried out that responsibility, while also revealing some significant opportunities for improvement.

On the plus side, the Grand Jury commends DCFS’s dedicated management and staff for pursuing sound family preservation and reunification initiatives, for making steady and substantial progress in drawing down the number of Alameda County children living in traditional foster care settings, and for overseeing a foster care system that in recent years has incurred relatively few substantiated cases of foster child abuse and neglect.

On the less flattering side of the ledger, the Grand Jury concludes that:

- Too many of the county’s children have been, and continue to be, placed in out-of-county foster homes, despite substantial evidence that such placements are generally not in the best interests of the children,
- Child welfare social worker caseloads are too high, despite clear evidence that excessive caseloads interfere with the delivery of high quality child welfare services, and
- DCFS has dragged its feet in implementing the Child and Family Team approach mandated in California’s 2015 legislative overhaul of the foster care system, despite compelling evidence that embracing CFT would serve the best interests of our children.

The problems identified in this investigation do not look to be intractable. The Grand Jury believes that DCFS can and will make good progress on all fronts.

Acronyms

CCR	Continuum of Care Reform
CCWIP	California Child Welfare Indicators Project
CDSS	California Department of Social Services
CFT	Child and Family Team
CWDA	County Welfare Directors Association
CWLA	Child Welfare League of America
DCFS	Department of Children and Family Services
FFA	Foster Family Agency
SSA	Alameda County Social Services Agency
TDM	Team Decision Making
UFF	Upfront Family Finding

FINDINGS

Finding 19-26:

The Department of Children and Family Services has not recruited and retained an adequate number of approved foster homes within Alameda County.

Finding 19-27:

An excessive percentage (more than half) of Alameda County's foster care placements are made to homes located outside of Alameda County, despite evidence that out-of-county placements are generally not in the best interests of foster children.

Finding 19-28:

Average caseloads for Department of Family and Child Services emergency response and family maintenance child welfare social workers are too high, which is not conducive to the delivery of high-quality services to Alameda County's foster children.

Finding 19-29:

The Department of Children and Family Services has not been timely in its implementation of the Child and Family Team concept that is a central element of California's Continuum of Care Reform legislation.

RECOMMENDATIONS

Recommendation 19-26:

The Department of Children and Family Services must address the shortage of in-county foster homes by implementing more effective resource family recruitment strategies and techniques. Aggressively moving forward with plans the agency has formulated for revamping and revitalizing foster parent recruitment activity is strongly recommended.

Recommendation 19-27:

The Department of Children and Family Services must develop and implement a strategy for significantly reducing the percentage of out-of-county foster home placements. Any strategy to achieve that goal should include measures to reduce Alameda County's utilization of foster family agencies.

Recommendation 19-28:

The Department of Children and Family Services must reduce social worker caseloads to levels that meet expert recommendations.

Recommendation 19-29:

The Department of Children and Family Services must devote priority attention to completing its conversion from Team Decision Making to the Child and Family Team approach called for in the Continuum of Care Reform bill.

RESPONSES REQUIRED

Alameda County Board of Supervisors

Findings 19-26 through 19-29

Recommendations 19-26 through 19-29

REQUEST FOR RESPONSES

Pursuant to California Penal Code sections 933 and 933.05, the Grand Jury requests each entity or individual named below to respond to the enumerated Findings and Recommendations within specific statutory guidelines:

Responses to Findings shall be either:

- Agree
- Disagree Wholly, with an explanation
- Disagree Partially, with an explanation

Responses to Recommendations shall be one the following:

- Has been implemented, with a brief summary of the implementation actions
- Will be implemented, with an implementation schedule
- Requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a completion date that is not more than 6 months after the issuance of this report
- Will not be implemented because it is not warranted or is not reasonable, with an explanation

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COUNTY OVERSIGHT OF COMMUNITY-BASED ORGANIZATION CONTRACTS

EXECUTIVE SUMMARY

Each year Alameda County spends over \$550 million contracting with over 300 community-based organizations (CBOs) to provide direct human services to residents. County agencies have the monumental task of ensuring these public funds are spent appropriately, have the intended impact, and positively affect the lives of our needy population. The 2011-2012 Grand Jury Report criticized Alameda County for a lack of proper oversight in the contracting process with CBOs. The Grand Jury recommended the county use results-based accountability (RBA), a tool used in contract oversight which attempts to measure program outcomes, successes and improvements.

Four years later the 2015-2016 Grand Jury criticized Alameda County once again. Although the county accepted the earlier recommendations and began implementing RBA, only 60% of contracts in 2016 included RBA performance measures.

The Alameda County Health Care Services Agency (HCSA), Social Services Agency (SSA) and the Probation Department (Probation) account for the vast majority of contracts with CBOs in Alameda County. Today all three departments have dedicated staff to managing and monitoring CBO contracts. Each follows the Alameda County General Services Agency (GSA) contract administrative guidelines and manual, and sometimes works in concert with GSA on contract development. GSA standards for the entire county require the inclusion of RBAs in contracts.

Each of the three departments investigated described an ongoing process to review and evaluate CBO performance using RBA performance measures. Site visits and audits are performed and there are standard procedures in place to deal with sub-par and non-performance issues. Also, there is currently an incentive program being tested in the Health Care Services Agency (HCSA) to target areas of improvement.

The Grand Jury acknowledges the progress each of these departments has made in using RBA to improve the management and oversight of CBO contracts.

INVESTIGATION

Following up on their progress since 2016, this year's Grand Jury heard testimony from representatives of the Alameda County Health Care Services Agency, Social Services Agency and the Probation Department.

Results-based accountability (RBA) is a tool used in contract oversight which attempts to measure program outcomes, successes and improvements. A primary purpose of RBA in Alameda County contracts is to help CBOs improve services. RBA also helps county staff and the Alameda County Board of Supervisors (BOS) determine how public dollars should be spent in the future. Although RBA has yet to be incorporated into every contract, it is now the standard for new contracts and renewals in three major county departments. All three departments now use the same basic RBA performance measures:

- Outcomes - How much did we do?
- Successes - How well did we do?
- Improvements - Is anyone better off?

Alameda County Health Care Services Agency

In the approved HCSA FY2018-2019 budget, a total of \$423 million (approximately half of HCSA's annual appropriation of \$883 million) funds 324 CBO contracts; approximately 60% of the CBO funding supports mental health services. To support the high number of CBO contracts, management and administrative staff account for 604 of 1,606 total FTEs in HCSA. HCSA contracts with CBOs extensively because CBO staff are closer to county residents in terms of language, relationships and location. CBOs also are less costly and can operate with more flexibility than county-staffed programs (i.e., labor and union agreements reduce the flexibility in scheduling county staff by time and day for client services). However, county staff are essential for contract management, oversight and ensuring accountability.

Based on previous Grand Jury recommendations, the agency reported that CBO contracts presented to the BOS for renewal now report on RBA performance measures in addition to the number of clients served, although the reporting is not as robust as seen in other counties.

HCSA includes four different program areas: office of the agency director (including indigent health services), behavioral health, public health, and environmental health. Environmental health has no CBO contracts and therefore was not included in the Grand Jury's investigation. Each of the other three departments has a different focus for contracting based on the services they provide and adheres to different contract requirements based on the rules of their specific federal, state and county funding sources. Therefore, establishing RBA performance measures on top of required regulatory metrics in CBO contracts has not been a trivial process.

Generally, CBO contracts are managed by HCSA staff across functional areas: program staff develop the scope of work, administrative staff handle contract approval and invoicing, and finance staff track the budget. Most contracts are invoiced and paid quarterly, after the CBO's quarterly report is reviewed and approved.

Office of the Agency Director

The office of the agency director at HCSA, which includes finance and administration, has about 20 administrative staff. RBA has been introduced in some of the contracts (indigent health services, Measure A funded programs) but not all. Measure A is a locally funded half-cent sales tax for essential health care services. In 2014, the payment structure for the Health Program of Alameda County (HealthPAC) contracts changed to half block grant and half incentive payment.

This department takes the following steps to ensure information reported by contractors is accurate:

1. Uses the Medically Indigent Care Reporting System (MICRS) to confirm services provided by the contractor for eligible patients.
2. Regularly reviews enrollment and utilization data to identify any trends over time.
3. Conducts as-needed chart audits to verify system improvement activities (e.g., hepatitis C screening and treatment, and opioid dependence treatment data).
4. Conducts site visits twice a year with contractor to review data and reports submitted.

Behavioral Health

Behavioral Health is by far the largest HCSA department (FY2018-2019 budget of \$483 million) and has approximately 150 administrative staff with 45 dedicated to contract management. Behavioral Health serves about 30,000 clients in the county, many of whom have severe and persistent mental health issues and drug addiction. Behavioral Health contracts are funded through the state Medi-Cal program and must comply with complicated federal and state reporting regulations. RFPs are used to select contractors, then the department meets with contractors to communicate the requirements of state and federal regulations. This has limited the application of RBA because too many requirements can frustrate the contractors, most of which are medium-sized (range of \$20-30 million annual budget) and mature (established) CBOs. The county is just beginning to introduce incentives through the full-service partnership program, a small pilot program with nine of the 90 CBO providers, and an incentive budget of \$1.2 million. FY 2019 is the first year for incentive payments which are on top of base payments. Participating companies include some of the largest contractors, such as Seneca and Telecare. Incentives are linked to improvement in identified shortcomings. The purpose is to move clients to wellness more rapidly and to make room for new clients instead of seeing the same clients return for services repeatedly. This is a “toe in the water towards values-based care.”

Behavioral Health Care is by far the largest HCSA department (FY2018-2019 budget of \$483 million) and has approximately 150 administrative staff with 45 dedicated to contract management.

Behavioral Health generally audits a sample of records to verify that the information received from providers is accurate. Examples of audits include:

- Chart reviews and service verification for mental health and substance use treatment programs that bill to Medi-Cal,
- Review of sign-in sheets, curricula and fliers during annual site visits for substance use prevention programs, and
- Onsite visits of mental health prevention programs that include service verification.

Public Health Department

The Public Health department (FY2018-2019 budget of \$111 million) is smaller than Behavioral Health but faces the same contracting issues that inhibit implementation of RBA: contracts are funded through federal and state grants and must comply with complex federal and state reporting rules. RBA is used in all Measure A funded contracts as well as some within the family health services division. Unlike Behavioral Health, Public Health contracts do not include incentive payments. In order to ensure that reported data are accurate, the Public Health contract monitors conduct site visits. During these CBO site visits, data systems, client files, charts and other materials are reviewed. Additionally, back-up documentation is requested to validate services as needed.

Results-based accountability is used in all Measure A funded contracts as well as some within the family health services division.

Alameda County Social Services Agency

The Social Services Agency (SSA) manages 219 CBO contracts with 111 different community-based organizations totaling approximately \$82 million annually. Currently 192 contracts (87.7%) include RBA performance measures with an agency goal to reach 100% by 2020. SSA has a staff of eight program financial specialists with two support staff.

Approximately 66% of SSA contracts with CBOs are greater than \$100,000, and originally went through the formal procurement process. Witnesses estimated that approximately 22% of all SSA contracts with CBOs can be renewed without another RFP/RFQ, most of which are considered sole source contracts.

Currently, 192 contracts (87.7%) include RBA performance measures with an agency goal to reach 100% by 2020.

CBOs are required to submit data to SSA detailing service deliverables. These data can include counts of services delivered, client counts, sign-in sheets, program narrative reports and/or progress toward program performance goals. Prior to payment of invoices from CBOs, documentation is reviewed and validated by the associated program staff. The documentation is also analyzed to identify program trends, make policy and funding decisions, and for ongoing program development.

SSA is in the process of introducing a new database that will allow vendors to directly enter RBA data and enable SSA to more easily monitor vendor performance. In addition to reporting requirements, SSA also conducts regular site visits to CBOs, as a means to monitor performance. The CBO sites are visited in the first and third years of their contracts. During a site visit, SSA contract oversight staff reviews the following:

1. Supporting documents for invoices
2. Performance metrics
3. Physical condition of the facility
4. Number of staff
5. Articles of incorporation

Alameda County Probation Department

The Probation Department is projected to spend just over \$40 million in public protection dollars in FY2018-2019 on contracts with CBOs. While this represents significantly fewer CBO contracts compared to the other two agencies reviewed, the Probation Department was able to report nearly 100% of their contracts now contain performance measures.

Over half of the budgeted CBO spending, 60 contracts, relates to AB109 state prison realignment programming. Because much of this state funding was new, the Probation Department sought out contracting assistance from GSA. GSA staff is now embedded in the Probation Department.

One example of this collaboration took place last year when GSA aided probation staff in seeking bids for a three-year \$11 million contract for delinquency prevention network services. Ultimately, after competitive bidding, the department selected 11 different vendors including four cities to provide these services. The Probation Department expects to contract with seven additional CBOs and vendors next year. The Grand Jury examined many of the final contracts which included comprehensive performance measures intended to focus on whether clients were better off as a result of the services provided.

While the Probation Department does not have its own formalized policies regarding contract oversight, staff uses the county GSA contract administrative guide and manual for guidance. In addition, like many contracts within HCSA, most federal funding that flows through the Probation Department comes with very stringent oversight regulations that guide the county's program managers. Many of the contracts require monthly reporting by the contractor before they can be reimbursed for their services. Staff also perform site visits periodically with an opportunity to compare individual case files with the monthly reports provided to the county, and to review any other service logs to verify that reported services were actually provided. In addition, many of the contracts require both financial and programmatic audits.

Staff admitted that it is uncommon to fire contractors for nonperformance, but it has happened. More commonly, oversight staff prepare corrective action plans for the contractors and works with them on improvement measures. A shortcoming is that, like the other departments, there is minimal information about performance and outcomes included in the contract renewal request letter presented to the Board of Supervisors. Consequently, it is very difficult for the public or another county agency to understand how a specific contractor is performing.

The current probation chief is a strong supporter of data-driven decisions and results-based accountability. The chief receives monthly updates on accountability measures although currently much of the data are managed through simple spreadsheets. The department is in the process of launching CaseloadPRO, a comprehensive probation specific case management system. While the system is currently client focused, there is potential to build it out to aid in contract oversight.

CONCLUSION

The Grand Jury commends these three departments for the progress they have made in using results-based accountability and performance metrics to improve the management and oversight of CBO contracts. The Grand Jury encourages county staff to keep up the effort of using these RBAs for evaluating contract performance.

FINDINGS	<i>None</i>
RECOMMENDATIONS	<i>None</i>
RESPONSES REQUIRED	<i>None</i>

SANTA RITA JAIL: INTAKE, RELEASE AND GRIEVANCE PROCEDURES

INTRODUCTION

On December 11, 2018, the Alameda County Grand Jury visited Santa Rita Jail located at 5325 Broder Boulevard, Dublin, CA. The Alameda County Sheriff's Office operates the jail as a short- and long-term secure detention facility for adults. Santa Rita Jail can hold 3,489 inmates; on the day of inspection, 2,115 inmates were being held. In 2018, on an average day, 89% of inmates were male and 11% were female. The jail's projected budget for FY 2019 is \$128.7 million, funded by \$8.8 million in revenue and the remainder from Alameda County. Authorized staffing at the jail is 502, with 63% sworn officers. Santa Rita is one of the largest jails in the United States, and is the only California jail accredited by the American Correctional Association.

In 2018, the press reported some troubling incidents regarding Santa Rita inmates:

- An released inmate died at the nearby Dublin/Pleasanton BART station within a few hours of her late-night exit from Santa Rita in July 2018; and
- A pregnant inmate gave birth alone in an isolation cell in July 2017.

Given these situations, instead of conducting a traditional facility-wide inspection, the Grand Jury chose to review and document the current inmate intake, release and grievance procedures at Santa Rita Jail.

The Grand Jury met with the jail's senior management and medical teams, then inspected the intake and release areas. Jail staff provided the statistical information in this report; the Grand Jury was not able to verify the data independently.

Staffing and Training

The Intake, Transfer and Release (ITR) department operates 24 hours a day, 7 days a week. On average, 35 sworn employees (mostly deputy sheriffs) and 25 non-sworn employees staff the ITR. About 34% of the sworn and 20% of non-sworn ITR positions on an average day are filled through mandatory overtime. This reflects Santa Rita's reliance throughout the jail on overtime to cover absences due to leaves, staff on loan, and vacant positions. As of December 2018, only 78% of all sworn officer positions were filled and on-site, compared to 90% of non-sworn staff positions.

*The jail's projected budget for
FY 2019 is \$128.7 million. On the
day of the Grand Jury's
inspection 2,115 inmates
were being held.*

New ITR employees are matched with a training officer to learn about booking and jail policies and procedures, which are outlined in the ITR Manual. Some positions, such as records

specialists, receive on-the-job training for specialty services. The ITR Manual is reviewed and updated annually and is available to staff online.

Sworn officers must meet the Peace Officers Standards and Training minimum requirements for continuing professional training. This consists of 24 hours of Standards and Training for Corrections over a 2-year cycle. Deputies must also undergo training in areas such as racial profiling, domestic violence prevention and others.

Nursing staff is available 24/7 at the jail, with three registered nurses available in the ITR department at all times. Physicians are on site from 8 am to 5 pm every day except Sunday and are on-call at all other times.

Intake Procedures

Police transport arrestees to Santa Rita Jail and take them to the jail's ITR department. On average the department books about 60 to 100 persons per day. About 35% of arrestees are then admitted as inmates and taken to a housing area. The remaining 65% of arrestees are cited and released without being admitted to the jail. Examples of the latter are arrests for misdemeanors without violence and arrests involving driving under the influence, although the latter are not released until they are sober. Persons who would normally be cited and released in the field but whose identity cannot be verified are also taken to the jail for citation.

The booking lobby appeared clean and well-maintained. An inmate work crew is assigned nearly 24 hours per day to clean the booking area, with holding cells cleaned at least once every 2 hours. A total of 60 employees staff the booking area and work 12-hour shifts. Interpreter services for non-English speakers are provided by staff certified in specific languages or by the AT&T Language Line.

The typical intake or booking procedure consists of:

- The arresting officer hands over paperwork at the counter.
- The intake staff asks a series of questions regarding health to screen for obvious medical, psychiatric, and alcohol/drug impairment. Medical or mental health staff speak to the arrestee if there are any concerns.
- The arrestee is patted down for contraband.
- The arrestee is photographed against a wall in the lobby and given an armband with his or her name and photograph.
- The arrestee turns over all belongings or cash, which are inventoried and documented with a signed Automated Justice Information System form for return upon release. An inmate may authorize release of possessions to someone on the outside of the jail.
- Jail staff then classify the arrestee according to risks and threats, such as gang membership, to assist in safe placement within jail housing.

- A deputy sheriff takes the arrestee through a security scanner and another contraband search is performed in a secure area. Arrestees are then fingerprinted. Next, the arrestee changes into jail garments in a private room, and their clothing is bagged, documented and secured for return upon release, unless retained as evidence.
- Medical staff then individually screen the arrestee. See “Medical Assessments” below for more details. Impaired arrestees are placed in one of four sobering cells to recover.
- While in the booking area, arrestees are allowed to make a total of three telephone calls to their own or a court-appointed attorney, a public defender, a bail bondsman, a relative, or other person. Two additional calls may be placed by custodial parents to arrange child care.

Staff provide each admitted inmate with a copy of the “Inmate Rules and Information” handbook in English or Spanish. This document includes a description of Santa Rita’s grievance procedures. Admitted inmates are provided with clothing, linens, and a kit containing a toothbrush, toothpaste, comb, shaving cream, shampoo and body wash.

The entire intake process usually takes between 6 and 8 hours, depending on the inmate’s condition, cooperation, health needs, etc. Arrestees are provided bag lunch meals during the intake process as needed. Medication is administered during intake if an existing prescription can be verified.

Medical Assessments

Staff pre-screen all arrestees for physical and mental health, including whether the arrestee uses prescription or other drugs and whether he or she is experiencing suicidal feelings. This initial medical assessment takes approximately 20 to 30 minutes if there are no medical or mental health issues. A more extensive history and physical screening is provided within two weeks for inmates who are accepted into custody. In 2016, Alameda County signed a \$135 million three year contract with California Forensic Medical Group to provide medical services at Santa Rita Jail and at Glenn E. Dyer Detention Facility in Oakland.

Physical Health

Staff ask arrestees about chronic conditions, intoxication, recent trauma or accidents, pregnancy, high blood pressure and high blood sugar levels. Staff verify prescriptions reported by inmates with local pharmacies before administering medication. Health records for inmates who have previously been in the facility within the last three years are available electronically.

Persons who are suspected of having tuberculosis or who refuse a tuberculosis test are placed in a respiratory isolation room with negative airflow to prevent possible infection contagion of the

jail population and staff. Inmates who arrive with lice are medically isolated for the duration of treatment.

Behavioral Health

The behavioral health unit is staffed from 7 am to 11 pm, with specialists on-call during the night. Every morning, staff is given a printout of the previous day's bookings. Behavioral health staff

Behavioral health staff consult with about 50% of the jail population. Sometimes, this is the first time an inmate receives mental health services.

consult with about 50% of the jail population. Sometimes this is the first time an inmate receives mental health services. Behavioral health inmates are housed throughout the facility but separate housing exists for inmates with severe mental health issues.

Drug Use

Medical staff screen newly admitted inmates for drug use and for risk of withdrawal from drugs. The jail provides a nationally accredited drug treatment program, including methadone maintenance.

Pregnancy

According to staff, inmates who identify themselves as pregnant are prioritized for booking; no pregnancy test is required. Pregnant inmates are provided with prenatal vitamins and with a special diet containing about 600 additional calories per day. They are also offered a denim jacket and sleeping accommodations in a lower bunk and bottom tier. Many pregnancies among inmates are considered high-risk. Women may choose to wear an orange armband to clearly identify them as pregnant. All new pregnant inmates are scheduled to see an obstetrical provider

Deputies are required to defer to medical providers regarding pregnant inmates and are never supposed to downgrade medical decisions.

within 24 to 72 hours. The provider determines the frequency of appointments thereafter. Certain tests, like ultrasounds, are referred to outside providers. Pregnant inmates who are opioid users are initially housed in the outpatient housing unit for monitoring and clearance prior to their discharge to the general

population. High risk pregnant inmates requiring frequent blood sugar or blood pressure monitoring are also housed in the outpatient housing unit.

Deputies are required to defer to medical providers regarding pregnant inmates and are never supposed to downgrade medical decisions. The deputies are trained to alert medical staff when inmates complain of potential pregnancy-related complications such as cramping. Jail staff maintained that they were unable to comment on the circumstances of the inmate who gave birth in an isolation cell in 2017 due to pending litigation.

The OB/GYN clinic at Santa Rita Jail was one of the first built at a jail when Santa Rita was constructed in 1989. The current medical contract with California Forensic Medical Group calls for specialty services for pregnant inmates. For example, doula (birth coach) services are offered through a memorandum of agreement with Highland Hospital in Oakland.

Suicide Prevention

The jail medical intake assessment includes mental health and suicide risk, with further classification as active (likely to attempt suicide) or passive risk (hopeless/helpless). Suicidal inmates may be provided with medication or behavioral treatments, or both. Suicide prevention services are provided by the Alameda County Behavioral Health Department.

Suicidal inmates are subject to enhanced observation every 15 minutes, documented in a log book. High risk items and clothing are temporarily removed from their possession. A deputy can initiate placement of an acutely suicidal inmate in a padded safety cell and a safety garment for no more than 72 hours. If an arrestee or inmate is determined to be a danger to self or others, authorized staff may transfer the person to the John George Pavilion psychiatric facility for up to 72 hours for assessment, evaluation, and crisis intervention.

Medical Records

Medical screening forms, checklists and guidelines are saved on the inmate's electronic medical record. Sometimes assessments are written on paper then scanned into the patient's record within 48 hours. The electronic record system was introduced approximately three years ago; paper records of inmates who were in the jail prior to that time are returned from storage and scanned.

Procedures

As part of its inspection the Grand Jury inquired as to release procedures for a variety of situations including: release on bail, release at completion of sentence, release on parole, release of women, and release by court order after court appearance that day. Following are key elements of release procedures. The release procedures for each of type of release are generally the same:

- Prior to release, staff completes a warrant check to ensure that there are no outstanding warrants or other issues on the individual prior to release.
- The ITR sergeant reviews and approves the inmate's file, which is then passed to the staff conducting the physical release of the inmate.
- The inmate is escorted to the ITR area, if not already there, and provided with his or her personal clothing to change into. Clothing will be supplied if necessary.

- The person's identity is confirmed by the release deputy through both thumbprint verification and responses to several qualifying questions asked by the releasing staff member.
- The individual is then released from custody and proceeds out of the ITR area.
- Personal property and money are then returned to and signed for by the inmate in conjunction with the AJIS form signed upon intake. If property is missing or damaged, an inmate can file a property claim.
- Indigent inmates are provided with a bus pass or BART ticket and given directions to local transit if a friend or relative is not available to pick them up.
- The person then exits through the public lobby.

If the individual is being transferred to another facility or jurisdiction, proper legal documentation requesting custody must be completed. The same procedures are conducted as with a release, after which the individual is transferred to the custody of the requesting agency.

At the time of release, medications ordered by medical staff are provided to the inmate by medical staff or a prescription is provided for use at their own pharmacy.

There is no formal policy for notifying relatives, legal counsel, parole officers, or others, that an individual is scheduled for release. However, release dates are public information and can be obtained via the inmate locator website. Victim Information and Notification Everyday (VINE) is a method that allows the public to sign up for notifications upon an inmate's release. While the VINE system could be used by other agencies such as Immigration and Customs Enforcement (ICE), the Alameda County Sheriff's Office does not provide information directly to ICE.

Based on recent incidents, including the drug overdose death of one person who was released in the early morning hours, the Grand Jury inquired about policies related to time of release. In general, there is no predetermined time frame for those being released. Those who have completed their sentence and have a scheduled release date are generally released after 8:00 a.m. on said release date. However, they have the right to be released as soon as possible on their release date, which could be soon after midnight.

Detainees have the right to be released as soon as possible on their release date, which could be soon after midnight.

All inmates to be released as a result of bail, case dismissal, or similar issues may leave upon completion of the release process and approval by the ITR sergeant, regardless of time of day. The process generally takes four to six hours to complete depending on the daily workload and volume in ITR. Inmates who are released too late to make transit connections are allowed to stay in the lobby overnight if they do not have a ride. At the East Dublin/Pleasanton BART station, which is two miles away, the last BART train leaves at 12:44 a.m., and the earliest at 4:58 a.m. (6:00 a.m. on Saturdays and 7:55 a.m. on Sundays).

The Alameda County Probation Department is currently developing a “Ride to Reentry” program to provide on-demand transportation home for inmates 24 hours/day and 7 days a week from Bay Area jails and to/from probation appointments. A request for proposals for those services was released, and should be awarded by mid-2019. In addition, the county’s behavioral health department is planning to place an RV/trailer on or next to jail property to provide immediate behavioral health services and referrals for recently released inmates.

The Alameda County Probation Department is currently developing a “Ride to Reentry” program to provide on-demand transportation home for inmates 24 hours/day and 7 days a week.

Grievance Procedures

Grievance procedures were discussed with jail command staff prior to and during the December 11, 2018 Grand Jury visit. During 2018, a total of 2,445 grievances were filed. In the course of the same year, 127 grievances were affirmed, 1,532 denied, 669 withdrawn/resolved, and 519 are still in process. Note that some of these grievances were filed in a prior year. The Grand Jury also examined the specific nature and types of grievances and their outcomes for the month of November 2018.

In recent years inmates have filed approximately 250 grievances each month, resulting in about 3,000 grievances that are active at some time during each year. Grievances cover a variety of topics but are limited to conditions of confinement or to any incident of sexual assault or harassment, or the threat thereof. Conditions of confinement include medical care, food, mail, staff conduct, classification, and commissary, Americans with Disabilities Act issues, and similar areas of complaint, including Title 15 issues. Title 15 is the section of the California Code of Regulations that addresses crime prevention and corrections and includes minimum standards for local detention facilities such as Santa Rita Jail.

Different grievance procedures apply to incidents of sexual assault or harassment, or the threat thereof, and could lead to criminal charges. The Prison Rape Elimination Act of 2003 led to 2012 standards that govern how allegations of sexual misconduct must be handled. Signage throughout the facility encourages inmates to immediately notify any staff member if there is sexual harassment or assault.

Written Grievance Procedures

A written grievance procedure for inmates at Santa Rita Jail and Glenn E. Dyer Detention Facility is included as section 16.03 in the Sheriff’s Detention and Corrections Policy and Procedures Manual. The policy was last reviewed and updated in November 2018. The complete policy is not provided to inmates, but the grievance filing procedure is explained in the Inmate Rules and Information handbook. Inmates will usually submit general complaints through the

grievance process, but sometimes submit message requests or ask to speak with a sergeant or watch commander in person. In addition to grievances, inmates may submit other types of complaints, just like any citizen could, per Section 148.6 of the California Penal Code.

As noted above, somewhat different procedures apply to standard grievances (pertaining to conditions of confinement) and to emergency grievances (sexual assault or harassment).

Generally, if the allegation is against a deputy and is non-criminal, it will be investigated by a sergeant and forwarded to internal affairs unless the investigator determines that it is unfounded. If the allegation is against an inmate and is non-criminal, it will be immediately investigated by a deputy. If the allegation is criminal in nature, it will be investigated as a crime and documented in a sheriff's office report.

Filing a Grievance

To file a grievance, an inmate requests an inmate grievance form ML-51 from any deputy. After the inmate fills out the form describing the grievance, he or she can turn it in to any deputy. Deputies try to resolve the grievance informally prior to entering it into the system. Examples of grievances that are quickly addressed include an inmate sleeping through a meal or missing their medication. If the deputy cannot resolve the issue immediately with the inmate, the deputy assigns a tracking number, provides the inmate with a copy and turns in the form to the grievance unit.

Once the grievance unit receives the grievance, it is entered into the Wide Area Information, Transfer and Essential Reporting system, which records the inmate's name, personal file number, grievance number, duty station, deputy, date received, and type of grievance.

Investigation of Grievances

The grievance is then assigned to an investigating grievance deputy. The investigation includes obtaining statements from involved parties such as deputies, food service employees and medical staff, and reviewing written records and logs as related to the grievance. Grievance unit deputies are required to acknowledge receipt of the grievance within three days and provide a written response within 21 working days, but that time may be extended upon written notification to the inmate. If a deputy is named in a grievance, that person will not be assigned to investigate the grievance.

Grievance Outcome

Once a decision is reached, the inmate will receive a copy of the final disposition and any relevant paperwork. An inmate may appeal the finding of the grievance unit. A watch commander who

was not involved in the original review acts as the appeals officer. Each grievance is reviewed by the contracts and litigation lieutenant. For emergency grievances (sexual assault or harassment) or criminal matters, the process may be different depending on the circumstances.

Disciplinary action may be taken against an offending deputy. If the grievance is found to be justified (i.e., affirmed) corrective action for deputies consists of positive discipline, such as verbal counseling, training or a record of discussion. However, if the matter is referred to the sheriff's internal affairs department or to a criminal investigation and is found to be true, staff could suffer discipline up to and including termination. Termination of a deputy happens occasionally.

Deputies' increased usage of body-worn cameras during interactions with inmates can help in grievance investigations at the jail.

If the grievance is against another inmate, the offending inmate could receive a disciplinary report, be reclassified, or have a criminal complaint submitted against them. Mediators will often look at grievances.

Procedures are in place to prevent reprisals by offending deputies and inmates. If the affirmed grievance involves sexual harassment, retaliation is prohibited according to the sheriff's policies and the Prison Rape Elimination Act. Affirmed standard grievances would not necessarily trigger the relocation or monitoring of offending deputies or inmates, but it could be part of the response.

Some inmates file numerous frivolous grievances. In those cases, following an internal investigation, an inmate can be placed on grievance restriction.

Deputies' increased usage of body-worn cameras during interactions with inmates can help in grievance investigations at the jail. A major construction project is underway that will install additional security cameras throughout the facility.

On a related issue, the Grand Jury received a complaint alleging assault by one or more deputies at Santa Rita Jail. The complainant stated that body camera footage documented the assault. Command staff confirmed the existence of the body camera footage as described in an incident report. The use of force was reviewed by a supervisor, found to be justified and reasonable, and was forwarded up the chain of command per the sheriff's office practice. Three related grievances were filed by the complainant. The first was denied based on all available information. The two subsequent grievances were referred to the original denied grievance, as they contained the same complaint. The Grand Jury reviewed the body camera footage and did not identify any wrongdoing by the deputy in question or any other deputy. The Grand Jury determined that the deputy was trying to keep the inmate from swallowing what appeared to be a drug package, which could have made the inmate seriously ill or caused death.

CONCLUSION

Overall, the Grand Jury found the established intake, release and grievance procedures at Santa Rita Jail to be thorough, with an emphasis on the safety of inmates and staff. No significant issues were identified, and policies and procedures appeared to be properly followed.

FINDINGS *None*

RECOMMENDATIONS *None*

RESPONSES REQUIRED *None*

CAMP WILMONT SWEENEY INSPECTION

INTRODUCTION

On January 22, 2019 members of the Grand Jury inspected Camp Wilmont Sweeney, a 24-hour unlocked minimum security facility run by the Alameda County Probation Department, located at 2600 Fairmont Drive in San Leandro, CA. Camp Sweeney is a residential facility that houses male youth ages 15 to 19 who have been found to have committed criminal acts and in the juvenile court's opinion cannot be returned to home. Youth are referred to the camp by the Juvenile Court with input from the Probation Department.

The facility has a capacity of 60 beds, but only 15 youth were living at the facility at the time of the Grand Jury's inspection. Camp Sweeney's comprehensive program focuses on reconnecting youth with their communities, and the average length of stay is about six months. The Grand Jury inspected all areas of the camp, and during the inspection the jury met with members of the Probation Department who managed the camp and its programs.

Camp Sweeney's comprehensive program focuses on reconnecting youth with their communities.

There are 26 Probation Department employees assigned to the facility, including administrators, probation officers, and support staff. In addition, there are teachers employed by the Alameda County Office of Education, counselors, and a nurse working at the camp. During the work week (Monday – Friday regular hours) there are approximately twelve staff members on site. Swing shift includes five or six staff members and graveyard shift is staffed by two or three staff members. There is adequate staff to meet the needs of the youth in residence at the facility, although proper operation requires some overtime on the part of staff.

Facility

Camp Sweeney hosted two independent inspections in 2018, one conducted by the Alameda County Department of Environmental Health (ACDEH) and the second by the California Board of State and Community Corrections (BSCC). The Grand Jury reviewed each of these inspection reports prior to visiting the facility. Each inspection found Camp Sweeney to be in compliance with all applicable requirements, but did call for minor corrective actions. The Grand Jury was informed that the recommended actions were completed within 90 days of the respective inspections.

An on-site inspection by the members of the Grand Jury corroborated the findings of the ACDEH and the BSCC reports, and noted no compliance issues.

Health Care

On July 18, 2018, an inspection of Camp Sweeney by the BSCC covered a number of areas and included an in-depth medical and mental health evaluation. No deficiencies or non-compliance issues were found during the state's evaluation.

During the Grand Jury's inspection visit, rather than duplicate the state's inspection, additional questions not covered by the BSCC's evaluation were asked of staff. The Grand Jury was told that all youth are medically cleared at Juvenile Hall to ensure that medical, behavioral and mental health issues would be appropriately addressed while at Camp Sweeney. At Camp Sweeney, a licensed vocational nurse (LVN) is available on-site 8 hours per day, 5 days per week, to dispense medication and handle minor sick calls and first aid issues. Additionally, the Grand Jury found that Camp Sweeney has facilities for disposal of hazardous and medical waste, and there are appropriate containers and gloves in first aid kits in various locations throughout the facility. Shower and restroom facilities were clean, operational and appeared to meet the needs of the youth in residence.

If a medical issue develops that the LVN cannot handle (or is not available when the issue arises), the juvenile at the camp is evaluated and treated by medical staff at the neighboring Alameda County Juvenile Hall. Registered nurses are available 24 hours per day, 7 days per week at Juvenile Hall. If anyone on the staff suspects that a juvenile may be suffering from a disorder which has not previously been diagnosed, appropriate medical tests are performed. Should a problem be diagnosed, a plan is then developed to ensure the juvenile can be properly treated. If medication is required, it is provided without cost to the juvenile or his family through Camp Sweeney's contract with UCSF Benioff Children's Hospital in Oakland.

In response to a question concerning the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Grand Jury was assured by staff that all privacy provisions of HIPAA are observed.

Policies and Procedures

Adequate camp policies and procedures appeared to be in place and accessible to all staff. The Grand Jury was told that the current policies are undergoing significant revisions to bring them current with recent Title 15 changes. Title 15 of the California Code of Regulations governs crime prevention and corrections. Specific changes were not discussed but some examples include inspections, surveillance, and release procedures at holding facilities.

Grievance forms are available and are managed by Camp supervisors. They are tracked and reviewed by probation department management as well. There were four grievances filed by juveniles at the facility in 2018. Three complaints involved being written up by staff for misconduct. After all three learned they hadn't actually been written up, the grievances were withdrawn. The fourth grievance was against another camper.

Education and Activities

The youth at Camp Sweeney either attend on-site high school/GED classes or off-site college classes (usually at Chabot Community College), or work at jobs within the community. The youth who study or go to college are allowed to wear their own clothing off-site to fit in better with peers. Staff provides transportation to and from jobs and school. Several staff members are bilingual and can assist youth who do not speak English as their primary language.

Aside from school or work, daytime activities include occasional camping trips, tending to a camp garden, and sports. A sports field, basketball court, and weight room are available. Pay telephones are available to the youth in the dormitory and at the activity center. The youth are also provided up to three free phone calls a day to family members. These calls are screened by probation staff.

There are programs to help strengthen family bonds such as monthly engagement nights to encourage connections with family, and community and parenting groups to improve family relationships.

Camp officials manage programs with the goal of transitioning youth successfully from the controlled environment of the camp back to their families and into the community. Family visits are encouraged and scheduled twice weekly; however, since strengthening family bonds is a key component of this program, the staff try to be flexible. There are also programs to help strengthen family bonds such as monthly engagement nights to encourage connections with family, and community and parenting groups to improve family relationships.

The Probation Department staff is investigating the possibility of setting up a program where youth can continue contact with their camp probation officer after release in order to ease the transition back into the community.

Security

When the 2014-2015 Grand Jury inspected Camp Sweeney, that Grand Jury took note of the lack of audio or video monitoring equipment anywhere on the camp grounds, with the sole exception of video surveillance in the dormitory building. The 2014-2015 Grand Jury also noted that no funds were available to pay for additional surveillance measures, but recommended that exterior cameras be installed as soon as possible at camp entrances and parking lots to bolster overall facility security and to help address issues with contraband entering the camp premises. At the

time of this year's inspection, the current Grand Jury was informed that video surveillance cameras are in the process of being installed at the camp entrance and at various other locations on the grounds. Staff advised that the Probation Department, after protracted consideration as to whether or not the cost of the camera installation project (\$230,000) was justified (given the county's plan to replace the current Camp Sweeney with a new facility at another location), had opted to proceed with the camera installation as previously recommended by the 2014-2015 Grand Jury. The decision to proceed was deemed prudent in light of continuing uncertainty about when the replacement facility will be built and ready for occupancy. During the Grand Jury's inspection of the facility, staff pointed out several locations where cameras have been or are being installed. The Grand Jury was informed that the new video surveillance equipment is expected to be operational in 2019. Staff will have the ability to review surveillance video footage 24/7.

When questions were asked by the Grand Jury about any contraband entering the camp, staff responded that most of the contraband consisted of items such as candy and potato chips. Staff explained to the Grand Jury that they have not had significant problems with drugs being brought into the facility.

The Grand Jury asked whether any of the camp buildings were equipped with emergency call buttons. Staff explained that staff members, who are in the rooms with the youth 24/7, carry radios that have emergency call capability, and staff are always present in the facility.

Staff indicated that there is an area in the administration building where youth may store personal items. By way of example, staff advised that youth who have jobs or go to school off-grounds use this area to change into appropriate street clothes. Renovation work that is currently underway (with an anticipated completion in the next few months) will expand this capability and give the youth greater access to lockers.

Regarding camp uniforms, staff indicated the youths are issued t-shirts that are color coded to indicate how far along each youth is in the camp program. The color-coding is not based on any form of risk assessment.

Because the camp is designed as an open facility without secure fences, the Grand Jury was told that it is not uncommon for homesick or anxious youth residents to walk off the campus without permission. In 2017, 26 youth left the campus without the approval of camp staff. Most juveniles were returned within 30 days. The Grand Jury learned that one of the 26 is still at large. In 2018, 23 of the youth residents left camp without permission, all of whom have been returned to the facility and had to face the juvenile court for reevaluation of their placements at the camp.

Food Service

Breakfast, lunch and dinner are prepared and delivered by Revolution Foods, who also provide meals for nearby Juvenile Hall. All regular meals are served in the camp dining hall. Upon inspection by the Grand Jury, the dining hall, adjacent kitchen, and food storage space were found to be neat and clean.

Breakfast and lunch meals meet the nutritional standards of the National School Lunch Program, and therefore, the cost is reimbursed by the state Department of Education. The camp supplements the three regular meals with morning, afternoon, and bedtime healthy snacks. Snacks consist of fruits, nuts, nut butter, and bread (e.g., residents can make PB&J sandwiches). Supplemental snack foods are ordered from Sysco and US Foods.

Because youth are transferred to Camp Sweeney from Juvenile Hall, staff at Revolution Foods is familiar with those who have special dietary needs. Special diet meals are delivered with regular meals. A special diet notebook for staff is kept in the dining hall kitchen and contains information and meal/snack requirements for any youth on a special diet. If staff know a youth is away from camp and going to miss a meal, they usually save a meal in a kitchen warmer. If a youth unexpectedly misses a meal, they typically are allowed to make a snack.

CONCLUSION

Although the Camp Wilmont Sweeney facilities are outdated, the camp is well maintained and well managed. Plans are in the works for the construction of a new facility nearby.

FINDINGS	<i>None</i>
RECOMMENDATIONS	<i>None</i>
RESPONSES REQUIRED	<i>None</i>

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CRIME AND QUALITY OF LIFE: IMPACT ON BART RIDERSHIP

EXECUTIVE SUMMARY

The last few years have been challenging for the Bay Area Rapid Transit (BART) system. The public was shocked by the news of a young woman's murder at the MacArthur BART station in July 2018, the same week that two men were killed by attackers in other BART stations. These tragedies drew attention to crime, safety and quality of life concerns by riders.

Violent crime on BART, including robberies and aggravated assaults, increased by 115% over the last five years. Perhaps not coincidentally, BART lost 8% of its ridership since its 2016 peak, even as the Bay Area population grew and several new stations were added to the system.

Violent crime on BART, including robberies and aggravated assaults, increased by 115% over the last five years.

The Grand Jury identified four interrelated quality of life issues that appear to discourage residents of Alameda County and the greater Bay Area from riding BART. These are not new issues, but have increasingly touched a nerve in current and former riders:

- (A) Homelessness
- (B) Cleanliness of the trains and stations
- (C) Fare evasion
- (D) Security and perception of safety.

The media is aware of these problems; local TV stations and newspapers routinely broadcast or publish reports on BART's problems.

BART's current riders are aware of these problems; public opinion as measured by customer satisfaction studies and letters to the editor consistently mention these quality of life issues and their negative impacts on rider satisfaction.

Most importantly, BART is aware of, and is trying to do something about these problems. Through its investigation, the Grand Jury sought to determine whether BART responded to these issues as quickly as it could, and whether there are other emerging customer satisfaction issues that BART should address. With the retirement of two top leaders – the general manager and the BART police chief – BART's Board of Directors (board) must ensure continuity of leadership on these issues, particularly crime and perception of safety.

BACKGROUND

BART is a public agency that provides rapid transit rail service for the San Francisco Bay Area, with 48 stations and 121 miles of track. All five BART lines run in part through Alameda County, and serve county residents. BART is governed by a nine-member elected board of directors, with a general manager to oversee day-to-day operations. Funding for the transit system's \$768 million operating expense budget²¹ in FY2019 comes from passenger fares (63%), parking (5%), other revenue (5%), and sales tax, property tax and other financial assistance (27%).

BART first opened nearly 50 years ago and the system now requires extensive and expensive infrastructure investments to maintain its services. At the same time, it is extending lines to new parts of the Bay Area (Warm Springs in 2017 and Antioch in 2018, with an extension to San Jose scheduled to open in late 2019 and a later extension to Santa Clara.)

Fewer passengers means less revenue for BART, which is counting on about 60% of its operating expenses to be covered by fares in FY 2020, compared to 74% five years ago.

BART's average weekday ridership has steadily declined from its Fiscal Year (FY) 2016 peak of 433,400 riders to 407,600 in FY 2019 (Table 1). This is a loss of 25,800 daily riders, or 6% fewer passengers each weekday than three years ago. Weekend ridership tells

a similar but more extreme story, with a peak in average weekend ridership in FY 2015, dropping by 23% since then, with 82,500 fewer passengers now riding BART on a typical weekend.

Forecasted ridership for FY 2020 is even lower, especially on weekends. This downward trend in ridership is occurring despite a 2% increase in the Bay Area's population from 2016 to 2018 and despite the new service line extensions.

Fewer passengers means less revenue for BART, which is counting on about 60% of its operating expenses to be covered by fares in FY 2020, compared to 74% five years ago. Between lower fare revenue and expected increases in operating expenses, BART anticipates facing an operating budget deficit this year and over the next few years.

²¹ Excluding bond debt service and allocations. The total budget including those costs is \$922 million.

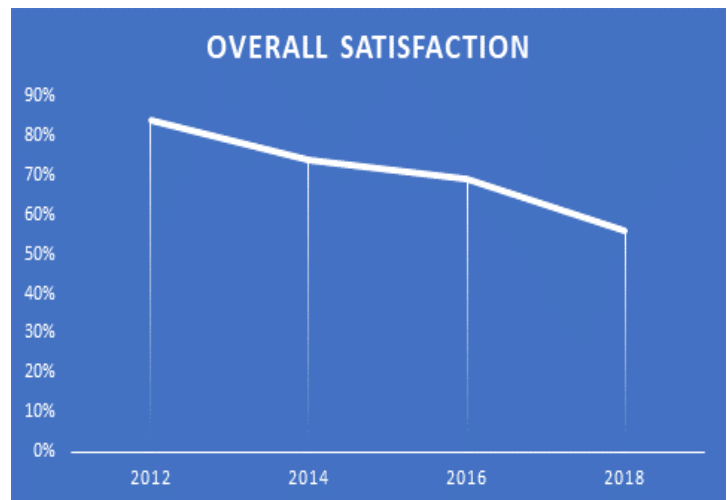
Table 1. BART Ridership, FY 2014 to FY 2020

Fiscal Year	Total Annual Ridership (millions)	% Change	Average Weekly Ridership	% Change	Average Weekend Ridership	% Change
2014	117	--	410,000	--	353,900	--
2015	126	7.6	423,100	3.2	359,100	1.5
2016	129	2.0	433,400	2.4	345,200	-3.9
2017	124	-3.4	423,400	-2.3	321,700	-6.8
2018	121	-2.9	414,200	-2.2	303,200	-5.8
2019 (projected)	118	-1.8	407,600	-1.6	276,600	-8.8
2020 (forecast)	116	-2.0	404,900	-0.7	256,500	-7.3

Note: Average weekend ridership is the sum of Saturday and Sunday riders.

BART management knows the major reasons for the recent decline in ridership:

- Rider satisfaction with BART fell from a high of 84% in 2012 to a low of 56% in 2018, as measured by the 2018 Customer Satisfaction Study (2018 Study), presented to the BART board on January 24, 2019. Respondents clearly identified homelessness, cleanliness, fare evasion, and security and perception of safety as the critical areas that needed improvement. Interestingly, BART’s core function as a transportation system received generally high ratings, with the Clipper Card especially appreciated.
- Ride sharing services like Uber and Lyft cut sharply into ridership, especially on weekends and off-peak hours when traffic congestion is less of an issue so automobile travel is faster. Ride sharing services also capture many short trips during peak hours. BART still remains the quickest way to travel long distances during peak commute hours.



The Grand Jury was particularly interested in investigating the reasons for the public’s dissatisfaction with BART that are within BART’s ability to control, and how quickly BART responded to those problems, recognizing that some causes are beyond BART’s control.

INVESTIGATION

The Grand Jury examined BART public documents, including consultant reports, attended or viewed BART Board meetings and agendas, toured the BART Operations Center in Oakland and interviewed BART senior executives. The difficulty of finding relevant documents on the BART website hampered our investigation. Many board-related documents are saved as images, so the public cannot search for terms within written reports such as agendas, attachments, presentations, and minutes.

As part of its investigation, the Grand Jury looked at how BART's board and management addressed quality of life issues with budget initiatives from FY 2014 to the present. Generally, the budget initiatives proposed in each annual Fiscal Year Preliminary Budget Memo reveal the board's and management's priority projects for each year, with a description and roadmap for funding in the upcoming budget cycle. Once an initiative is approved, funding is usually renewed in subsequent years. Although not all new initiatives are ultimately implemented, these proposals are windows into BART's priorities.

A Customer Satisfaction Study that BART conducts every two years informs many of these priorities. Trends in responses are important indicators for management of which areas need improvement, and help set priorities to improve customer satisfaction. Proposed initiatives should align with customer concerns, especially regarding quality of life issues.

The Grand Jury reviewed customer responses to BART's Customer Satisfaction Study for 2012, 2014, 2016 and 2018 to see which aspects of the BART ridership experience were rated lowest. Each survey uses the same questions and methodology to ensure that results from different years are comparable. BART identifies targeted areas for improvement based on low customer rating of performance and high "derived" importance²² to customers. Table 2 presents the lowest-ranked performance issues from surveys between 2012 and 2018, along with a summary of riders' most frequent written comments on quality of life issues.

Some issues of lesser concern to customers in the earlier years, as measured by low ratings, grew in importance. For example, on a scale where 1 is poor performance by BART and 7 is excellent, the public's rating of fare evasion enforcement steadily declined from 4.65 in 2012 to 4.47 (2014), 4.19 (2016), and 3.36 (2018).

Following are discussions of the major quality of life issues reported in the customer satisfaction studies, along with actions BART took in response to these problems in recent years.

²² The importance measure is statistically derived from a correlation of an issue with overall satisfaction with BART's performance.

Year	Overall satisfaction	Areas needing improvement (by importance)	Written comments (by frequency)
2012	84%	<ul style="list-style-type: none"> • Cleanliness of facilities (train seats/floor/ interior, stations, restrooms, elevators) • Availability of space (luggage, bikes, etc.) • Police presence (train/station/parking lot) 	<ul style="list-style-type: none"> • Police/security • Carpets/musty/doors • Seats on trains/crowding • Parking
2014	74%	<ul style="list-style-type: none"> • Cleanliness of facilities • Availability of seats/space • Police presence • Parking • Fare evasion enforcement 	<ul style="list-style-type: none"> • Seats on trains/crowding • Police/security • Parking • Homeless/panhandling
2016	69%	<ul style="list-style-type: none"> • Police presence, personal security • Cleanliness of facilities • Availability of seats/space • Fare evasion enforcement • Parking 	<ul style="list-style-type: none"> • Seats on trains/crowding • Police/security • Homeless/panhandling • Parking
2018	56%	<ul style="list-style-type: none"> • Addressing homelessness • Cleanliness of facilities • Police presence and personal security • Availability of seats/standing room/space • Fare evasion enforcement • Parking 	Comments not yet available (4/12/2019)

Homelessness

The growing problem of homelessness is not unique to the Bay Area. Poverty, untreated mental health conditions and substance abuse are complex public issues, and have contributed to a nationwide increase in homelessness. Some people ride BART to stay warm and safe and to sleep on trains. However, passengers often do not feel safe sitting next to someone who is unkempt, using drugs or alcohol, or behaving erratically. Of the three homicides on the BART system in 2018, all three perpetrators were homeless, as was one of the victims.

Members of the BART Police Department are often called on to work with homeless and impaired people in the transit system. As with police departments elsewhere, this became increasingly difficult as the number of homeless with mental health and medical problems increased. BART’s efforts have included:

- In 2014, BART Police hired a full-time Crisis Intervention Training Coordinator to coordinate homeless programs and partnerships with social service agencies throughout BART's service area, including Alameda County.
- In 2017 BART first partnered with the San Francisco Municipal Transportation Agency and Department of Homelessness and Supportive Services in creating a Homeless Outreach Team dedicated to the Powell and Civic Center BART stations. The team expanded to Montgomery and Embarcadero stations in 2018, and will add the 16th St. and 24th St. stations in 2019. Staff contact homeless people on BART property to offer housing, social, and health services that may benefit them. A similar outreach team began working overnight at Contra Costa County BART stations in January 2019 in partnership with the county's Coordinated Outreach, Referral, & Engagement program. BART is proposing to establish homeless outreach teams for Alameda and San Mateo Counties in FY 2020.

The Grand Jury is well aware that BART is not set up to provide social services, although BART perhaps could have introduced these measures sooner to help relieve the effect of this crisis on its patrons and on the homeless themselves. The outreach teams are a compassionate step in the right direction, but BART could and should advocate even more strongly for a regional solution.

Cleanliness of Trains and Stations

Riders are increasingly dissatisfied with the cleanliness of train interiors, stations, elevators, and restrooms. The 2018 Study included quotes from some riders who linked the dirty environment to the increase in homeless riders. However, since at least 2012, cleanliness has been a top concern for riders who responded to the survey. Eating and drinking on trains, while prohibited, nonetheless occur and contribute to the problems. As the system ages, cleanliness becomes more of a problem.

BART budget initiatives during the years we reviewed included measures to hire more cleaners and equipment as ridership grew. Over the last couple of years, as ridership declined and problems associated with the homeless increased, BART implemented several programs targeting cleaning and sanitation:

- Since FY 2017 BART has contributed to San Francisco Public Works' Pit Stop program, which provides attended restrooms for the homeless in San Francisco, including at the 16th St./Mission, Powell St., Civic Center and Embarcadero Stations.
- In April 2018 BART began funding elevator attendants at the Powell Street and Civic Center stations as part of a pilot program with the San Francisco Municipal Transportation Agency (Muni). As a result, the elevators are cleaner and passengers who ride them feel safer, according to a survey of riders at the Civic Center.
- In June 2018 BART created several rapid response cleaning teams to respond to biohazard and other complaints. Now, when customers report problems, a team is

dispatched to clean up the area as soon as possible, rather than leaving the problem for clean up at the end of the line, or possibly not until the end of the day.

- BART introduced a new staffing structure and an improved training program for car and station cleaners.

A bright spot for riders this year was the introduction into service of the first of 775 clean new cars to replace the existing ones, many of which have been in use since BART's 1972 opening. As many as 1,200 cars in total may be purchased, depending on demand and funding.

Fare Evasion

Recent news reports about fare evasion at BART showed or described people pushing through emergency gates, jumping over fare gates and fences, or riding street level elevators directly into the station – all without paying their fares. Violators include people in a hurry to get to work, students who want to save money, and others who for personal or financial reasons decide not to pay their fare.

Some residents are of the opinion that fare evasion is not a priority, but customer survey data would say otherwise. Commuters and others who pay for their rides are frustrated by the unfairness of this behavior. Riders gave “enforcement against fare evasion” the largest service rating decline in the 2018 Study, compared to the earlier surveys. Furthermore, fare evasion contributes to a perception of lawlessness, and fear for personal safety. There are major financial consequences of lax enforcement as well; BART estimates that it loses \$25 million each year from fare evaders, representing 5% of passenger fare revenue²³.

The Grand Jury learned from BART senior management that an estimated 15% of riders do not pay their fares, which means that approximately 17.7 million passengers annually are not paying, out of the 118 million total passengers. The comparable rate of fare evaders on similar transit systems is much lower (about 8%) according to the same source.

In response to this problem, BART adopted a two-pronged approach: cite fare evaders, and modify (“harden”) infrastructure to make fare evasion more difficult. Measures that BART recently initiated include:

- The Board adopted a proof of payment requirement, effective January 1, 2018. Not paying the proper BART fare now subjects the violator to a civil citation fine of \$75 for adults and \$55 for minors. Community service options are available instead of cash payments for those who cannot afford the fine or who prefer that option. An adult with a third violation in a 12-month period is issued a criminal citation, with a fine up to \$250 and/or community service. BART may pursue collection of unpaid fines from an individual's California personal income tax refund, through the CA Franchise Tax Board's Interagency Intercept Collection Program. However, that option does not yet appear to have been implemented.

²³ Since fares are based on distance, the percentage loss of revenue is not necessarily equal to the percentage of riders not paying fares.

- Although BART police do issue fare evasion citations when they find a violator, BART hired six dedicated fare inspectors in 2018, and in September 2018 approved hiring ten more to conduct targeted night and weekend inspections. Four more inspectors are proposed for FY 2020. The cost of the fare inspectors is close to \$125,000 each, so the total complement of inspectors will cost approximately \$2.5 million annually.
- After two months of issuing warnings to persons who could not provide proof of fare payment, the fare inspectors began issuing citations to violators in March 2018. Results for the first six months were discouraging:
 - 3,813 citations were issued (90% to adults)
 - 89% of recipients ignored their citation
 - 9% of recipients paid the fine
 - 2% of recipients performed community service
 - Only \$29,000 was collected in fines.

These dismal results mean that only 0.04% of violators were caught during that first six months, according to BART’s statistics; for every violator cited, 2,300 got away with not paying²⁴. BART recognizes that some passengers can’t afford the full fare, so currently offers Clipper Cards with a 50% discount on fares for youths age 5 to 18 and a 62.5% discount for seniors 65 and over and persons who are disabled. The board is also looking into participating in a pilot program to provide a 20% discount for low income persons.

Only 0.04% of violators were caught during the first six months ... for every violator cited, 2,300 got away with not paying.

- As a more permanent solution to fare evasion, BART undertook station hardening projects in FY 2018 and FY 2019 to make fare evasion more difficult, including raising railing heights in stations, installing alarms on swing gates and emergency doors, moving elevators into paid areas, upgrading the security camera network, and retrofitting fare gates by increasing air pressure to make them more difficult to force open. These and similar station hardening measures will continue in 2020 and beyond. BART is currently studying the costs and feasibility of replacing fare gates to prevent people from pushing through or jumping over them. In FY 2018, \$2 million was budgeted for these efforts, with an additional \$1.2 million in FY 2019.

While it is encouraging that BART is serious about responding to fare evasion, one step of enforcement – collecting fines from violators – is seriously lagging, as noted above. If violators face no real consequences for ignoring citations, then the estimated \$2.5 million annual investment in fare inspectors may not be a good use of the public’s money, unless BART can demonstrate that the presence of inspectors deters fare evasion and other crimes. It appears that

²⁴ For calendar year 2018, BART reported that 6,799 civil citations and 2,668 criminal citations (given to adult repeat offenders) were issued for fare evasion after 10 months, which is a slight improvement: 0.06% of violators were cited.

investment in station hardening and improved fare gates is a better permanent solution to the problem, perhaps in conjunction with fare inspectors.

Security and Perception of Safety

While perception of security and actual passenger safety are different, riders closely link the two. Respondents to the 2018 Study cite “personal security in BART system” as the second largest service rating decline from the prior survey, just after fare evasion. Lack of visible police presence on trains and in stations has long been a concern of riders, according to the surveys. News reports of the three homicides in July 2018 and video in October 2018 of a man swinging two chainsaws while riding BART reinforced worries among Bay Area residents about their safety on BART.

BART police officers are the first responders to crime on BART property and trains. In 2018 BART police staffing was authorized for 228 sworn officer positions, of which 150 were patrol officers. The BART Police Department is still very much aware of its damaged relationship with residents throughout the Bay Area, particularly African-Americans, in the wake of the death of Oscar Grant, an unarmed man who was shot and killed by a BART police officer on January 1, 2009, at the Fruitvale BART station.

Violent crimes increased by 115% from 2014 to 2018, with robberies and aggravated assaults accounting for nearly all of those crimes.

Table 3 describes crime on BART from 2014 to 2018, derived from FBI Uniform Crime Reporting data. Violent crimes increased by 115% over that period, with robberies and aggravated assaults accounting for nearly all of those crimes. According to the BART website, “Much of the violent crime increase has been driven by snatch-and-run cellphone thefts that are considered robberies because they involve the use of force or fear.”

Non-violent property crime dropped slightly over the same period, with larcenies now accounting for 87% of this category. Larcenies include thefts without the use of force, of phones, computers, wallets, bicycles, etc. from distracted patrons on trains and in the stations.

In 2014, BART introduced its phone app “BART Watch” for riders to report and document crime as it happens so police are able to reach the scene faster.

Table 3 – BART 5-Year Crime Data, Calendar Years 2014 to 2018

CRIMES	2014	2015	2016	2017	2018	Change 2014-18
Homicide	0	1	1	0	3	(a)
Rape	2	3	4	8	3	(a)
Robbery	153	161	232	290	349	+128%
Aggravated assault	71	73	93	121	130	+83%
Subtotal – Violent Crimes	226	238	330	419	485	+115%
Burglary	7	4	12	15	18	(a)
Larceny	2,597	2,325	2,217	2,593	2,590	+0%
Auto theft	522	480	480	420	354	-32%
Arson	0	0	1	4	4	(a)
Subtotal – Property Crimes	3,126	2,809	2,710	3,032	2,966	-5%

(a) Values are too small to compare over different years.

To address crime, BART has taken the following steps in recent years:

- In 2014, BART introduced its phone app “BART Watch” for riders to report and document crime as it happens so police are able to reach the scene faster.
- BART implemented a Safety and Security Action Plan in August 2018 partly in response to the three homicides. While it is not clear that BART could have prevented any of the deaths, BART police worked extensive mandatory overtime in the three weeks after the homicides to reassure riders with a greater police presence. The plan calls for improved surveillance cameras, police callboxes on station platforms, public safety awareness, and related measures, including fare evasion prevention.
- To determine whether there are enough police to patrol the system, BART commissioned a five-year strategic patrol staffing plan in 2017. The consultant²⁵ recommended adding 94 new patrol officers over the next 5 years – 18 or 19 each year – to reach the optimal patrol coverage for the BART system. BART management is requesting that the board authorize an additional 19 police officer positions in the FY 2020 budget to meet this recommendation.
- BART is taking steps to attract more police officer candidates, offering a hiring bonus (now \$15,000) for new officers and lateral transfers from other law enforcement agencies. The latest police union contract includes a 16% pay raise over the next four years, and a provision that allows BART to hire outside contractors to help with background checks

²⁵ Professor Eric Fritsch, Professor and former Chair of the Department of Criminal Justice at the University of North Texas presented the report to the BART Board on September 27, 2018.

for officer candidates, which should shorten the time to hire new officers after retirements and departures.

The Grand Jury believes that BART needs to accelerate its hiring of patrol officers to reduce crime, make riders feel safer, and restore their confidence in BART.

Budget Initiatives in Response to Rider Concerns

Generally, BART has paid attention to rider concerns expressed in the customer satisfaction studies. In the earlier years of the period we examined (FY 2014 to FY 2020), most quality of life budget initiatives supported more funding to clean BART stations and cars. This agreed with the survey responses from riders. Policing and security were important issues as well, both in survey responses and comments, but only recently did BART begin to fund additional officers and security infrastructure.

Although there were no questions on the customer satisfaction study about homeless issues until 2018, many patrons wrote in comments on the 2014 and 2016 surveys. BART prioritized some staffing to coordinate with other agencies on homeless issues. However, it wasn't until FY 2017 that funding to conduct homeless outreach was first requested (\$50,000). The following year, BART funded additional homeless outreach and staffing to report and control illicit activities at downtown SF stations (\$1.2 million).

Riders flagged fare evasion enforcement as an issue starting in 2014, but it wasn't until FY 2018 that specific initiatives to combat fare evasion (enforcement teams, \$0.8 million; station "hardening"/barriers, \$1.9 million) were first introduced. Previously, only BART police were responsible for issuing citations, in addition to their other duties. BART continues to identify fare evasion as a priority initiative, in part because of the revenue lost from people who do not pay.

As noted above, policing and security continue to be priority issues of concern to riders. Without additional officers, BART Police were limited in what they could do, especially as the violent crime rate grew in recent years. Their 2018 strategic patrol staffing plan laid out a blueprint for additional officers and assignments to provide effective coverage for the transit system, and BART is proposing to hire 19 officers next year pursuant to the recommendations.

For FY 2019 BART chose "Quality of Life on BART" as the main strategic focus of its budget, with a suite of projects to combat fare evasion (new inspectors, \$0.2 million; station hardening and fare gates \$2.2 million), improve security (\$11 million), and assist homeless-related projects (attended elevators and restrooms in downtown SF, outreach teams, and increased security to reduce encampments on BART property, \$1.6 million). While removing homeless encampments is not likely to directly affect ridership unless the camps are around station entrances, camps located near tracks and electrical infrastructure can be dangerous for occupants. BART's FY 2020 Preliminary Budget Memo continues to prioritize selected quality of life issues,

proposing funds for more station hardening projects, fare inspectors, additional patrol officers, and security infrastructure.

The Grand Jury is concerned that BART, with its responsibilities as a transportation provider and its emphasis on specific quality of life issues, may not be looking forward to emerging quality of life issues on the horizon, or to longstanding irritations that could affect ridership. For example, parking and seat availability, even with declines in ridership, are consistent concerns of riders, based on ratings and comments. However, news reports state that BART is considering removing parking at certain stations to allow for transit-oriented development. Similarly, BART removed seats on cars in 2017 to allow more room for standing passengers and for bicycles. The new BART trains do not increase the number of seats per car. The Grand Jury recommends that BART add a section on emerging concerns to the customer satisfaction study report, drawing on passenger comments to document their concerns.

Ridership on BART may continue to decline for reasons outside BART's control. However, the agency should aggressively design and fund strategies to make sure that riders don't leave because of their negative experiences on BART that are indeed within BART's control.

CONCLUSION

BART is at the center of the Bay Area's transportation upheaval. A growing and far-flung urban population in need of transport to work, home, shopping and socializing has many modes from which to choose. Rising dissatisfaction with crime on BART, fare evasion, and the perception of dirty train cars and stations threatens to marginalize the agency amid the other choices available to riders. The Grand Jury notes that BART's Board of Directors, senior management and police have undertaken measures to address these issues, but the board has been slow to react to many problems. To win riders back, the board must convince the public that BART is once again clean and safe to ride and that a rigorous effort to stop crime, including fare evasion, is in progress. Furthermore, BART must do this while facing serious competition from industry disrupters like Uber and Lyft.

The seriousness of the issues facing BART was recently enhanced with the announced retirements of two key leaders. Extra diligence and resolve will be necessary to complete plans underway in an increasingly complex and competitive environment.

FINDINGS

Finding 19-30:

BART's police department staffing has been insufficient to meet crime levels, as reported by an outside expert, who recommended substantially more patrol officers and revamped patrol assignments.

Finding 19-31:

Although overall crime on BART is up only slightly from 2014 to 2018, the incidence of violent crime more than doubled during that time. All crime is serious, but the potential for violent crime is particularly frightening to riders. The high volume of lesser offenses, especially thefts of items like phones, computers, wallets, etc., dramatically affects riders' perceptions of safety and well-being on the BART system.

Finding 19-32:

Public concern about fare evasion has been one of the top issues on every customer satisfaction study since 2014. The lack of enforcement erodes confidence in BART and costs upwards of \$25 million, or 5% of passenger revenue.

Finding 19-33:

Cleanliness of BART trains and stations was the concern most cited in the Customer Satisfaction Study from 2012 through 2018. BART introduced several initiatives to target cleaning resources where most needed and to prevent messes in the first place (e.g., elevator attendants, Pit Stop program). However, continuing dissatisfaction with cleanliness was repeatedly cited in the most recent survey, in large part due to an increase in the homeless population using BART facilities.

Finding 19-34:

Board-related documents are difficult to find on the BART website because some, especially those related to the board, are not searchable.

RECOMMENDATIONS

Recommendation 19-30:

BART must increase police patrol officer staffing over the next five years to make the entire BART system safer, in accordance with the expert study it commissioned and received in 2018.

Recommendation 19-31:

BART must better educate the public on crime prevention to reduce opportunities for robberies and thefts on the transit system.

Recommendation 19-32:

BART should continue the enforcement crackdown on fare evaders and improve its overall process for handling the collection of fare evasion fines.

Recommendation 19-33:

BART must continue and expand its initiatives to keep trains and stations clean and to respond more quickly to bio-hazard complaints.

Recommendation 19-34:

BART should continue to partner with social service agencies that serve the homeless, while strongly advocating for a comprehensive regional, rather than county by county, program to aid the homeless, especially those with mental health conditions.

Recommendation 19-35:

BART must establish a method to track and report on emerging concerns within the *Customer Satisfaction Study* report, initially drawing on passenger comments that document new and persistent concerns of riders.

Recommendation 19-36:

BART must increase the transparency of BART policies, decisions, and operations by making all Board-related documents and staff reports searchable, so information may be more easily found by the public using the BART website's search feature.

RESPONSES REQUIRED

BART Board of Directors

Findings 19-30 through 19-34
Recommendations 19-30 through 19-36

REQUEST FOR RESPONSES

Pursuant to California Penal Code sections 933 and 933.05, the Grand Jury requests each entity or individual named below to respond to the enumerated Findings and Recommendations within specific statutory guidelines:

Responses to Findings shall be either:

- Agree
- Disagree Wholly, with an explanation
- Disagree Partially, with an explanation

Responses to Recommendations shall be one the following:

- Has been implemented, with a brief summary of the implementation actions
- Will be implemented, with an implementation schedule
- Requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a completion date that is not more than 6 months after the issuance of this report
- Will not be implemented because it is not warranted or is not reasonable, with an explanation

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ABOUT 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 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 §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 §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 California Attorney General 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 findings 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 can be obtained from the Grand Jury's website at: <http://grandjury.acgov.org/complaints.page>. Complaints are accepted electronically via the website, by email (grandjury@acgov.org), or by US Mail.

Mail complaints to:
Alameda County Grand Jury
1401 Lakeside Drive, Suite 1104
Oakland, CA 94612

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 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 drawing. This is done in late June before the jury begins its yearly term on July 1. To obtain an application, please visit: www.acgov.org/grandjury.

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 judgement 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 58 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 department 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.

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.

A complaint form can be obtained from the Grand Jury's website at:

<http://grandjury.acgov.org/complaints.page>.

Complaints are accepted via the website, by email, or US Mail.

HOW TO RESPOND TO FINDINGS & RECOMMENDATIONS IN THIS REPORT

Pursuant to the California Penal Code sections 933 and 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.

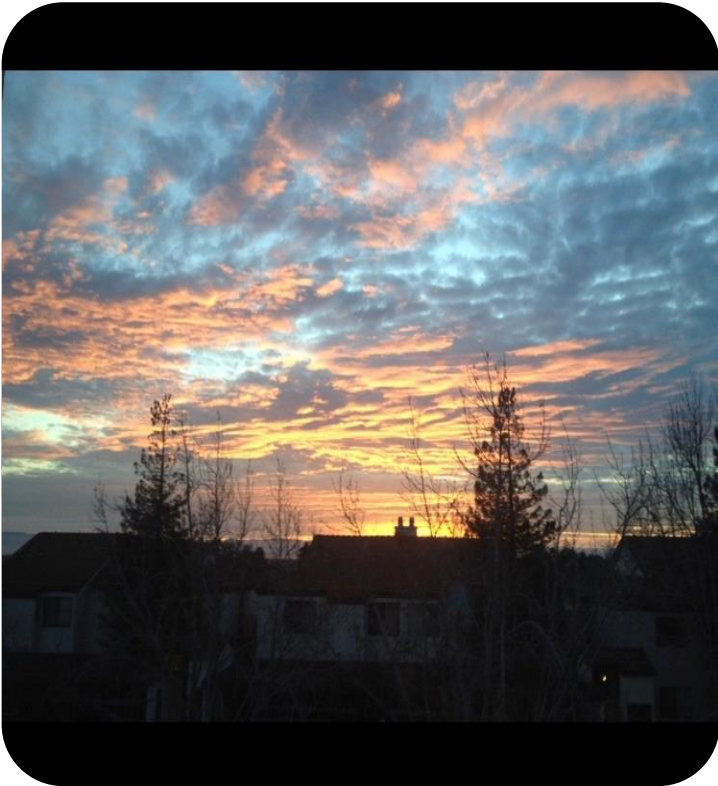
SEND ALL RESPONSES TO:

Presiding Judge Wynne Carvill
Alameda County Superior Court
1225 Fallon Street, Department One
Oakland, California 94612

A COPY MUST ALSO BE SENT TO:

Cassie Barner
c/o Alameda County Grand Jury
1401 Lakeside Drive, Suite 1104
Oakland, California 94612

All responses for the 2018-2019 Grand Jury Final Report must be submitted no later than 90 days after the public release of the report.



Sunset over Western Alameda County - fall 2018