

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Regular Commission Meeting
Teleconference
Wednesday Aug 10, 2022
6:30 p.m.



PUBLIC ETHICS COMMISSION (PEC or COMMISSION) MEETING

NOTE: Pursuant to California Government Code section 54953(e), Public Ethics Commission members and staff will participate via phone/video conference, and no physical teleconference locations are required. The following options for public viewing and participation are available:

- **Television:** KTOP channel 10 on Xfinity (Comcast) or ATT Channel 99, locate City of Oakland KTOP – Channel 10
- **Livestream online:** Go to the City of Oakland’s KTOP livestream page here: <https://www.oaklandca.gov/services/ktop-tv10-program-schedule> click on “View”
- **Online video teleconference:** Click on the link below to join the webinar: <https://us02web.zoom.us/j/88171471481>
 - To comment by online video conference, click the “Raise Your Hand” button to request to speak when Public Comment is being taken on an eligible agenda item. You will then be unmuted, during your turn, and allowed to participate in public comment. After the allotted time, you will then be re-muted. Instructions on how to “Raise Your Hand” is available at: <https://support.zoom.us/hc/en-us/articles/205566129> - Raise-Hand-In-Webinar.
- **Telephone:** Dial (for higher quality, dial a number based on your current location): US: +1 669 900 6833 or +1 346 248 7799 or +1 253 215 8782 or +1 312 626 6799 or +1 929 205 6099 or +1 301 715 8592

Webinar ID: 881 7147 1481

International numbers available: <https://us02web.zoom.us/j/88171471481>

- To comment by phone, please call on one of the above listed phone numbers. You will be prompted to “Raise Your Hand” by pressing *9 to request to speak when Public Comment is being taken on an eligible agenda item. You will then be unmuted, during your turn, and allowed to make public comments. After the allotted time, you will then be re-muted. Instructions of how to raise your hand by phone are available at: <https://support.zoom.us/hc/en-us/articles/201362663> - Joining-a-meeting-by-phone.

Members of the public may submit written comments to ethicscommission@oaklandca.gov. If you have any questions about how to participate in the meeting, please email ethicscommission@oaklandca.gov before or during the meeting.

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Commissioners: Arvon Perteet (Chair), Charlotte Hill, Ryan Micik, Joseph Tuman and Francis Upton IV.

Commission Staff to attend: Suzanne Doran, Acting Executive Director/Lead Analyst; Kellie Johnson, Enforcement Chief; Ana Lara-Franco, Commission Assistant; Simon Russell, Investigator

City Attorney Staff: Trish Shafie, Deputy City Attorney

PUBLIC ETHICS COMMISSION MEETING AGENDA

- 1. Roll Call and Determination of Quorum.**
- 2. Staff and Commission Announcements.**
- 3. Open Forum.**

PRELIMINARY ACTION ITEMS

- 4. Virtual meetings by the Public Ethics Commission.** The Commission will review and take possible action to renew Resolution 22-01, approved at the January 12, 2022 Regular meeting, establishing certain determinations to justify the ongoing need for virtual meetings following the California State Legislature’s adoption and Governor’s approval of AB 361 on September 16, 2021 (Chapter 165; Statutes of 2021). ([Resolution 22-01](#))
- 5. Cure and Correction.** On June 27, 2022, a Special Commission Meeting was held by teleconference. A portion of the meeting was not recorded due to staff error, during which time the Commission took action to adopt Item 4. Virtual meetings by the Public Ethics Commission by adopting Resolution 22-05. As a result, the PEC is placing the item on this agenda, “for separate determinations of whether to cure and correct the challenged action and, if so, whether to affirm or supersede the challenged action after first taking any new public testimony,” in accordance with Sunshine Ordinance 2.20.270(D). ([Resolution 22-05](#))
- 6. Cure and Correction.** On June 20, 2022, Councilmember Kalb’s staff sent an email to all PEC Commissioners regarding the honorary resolution for outgoing Executive Director Whitney Barazoto. One of the commissioners responded to all on the email, including all PEC Commissioners, in violation of the Brown Act. As a result, the PEC is issuing this cure and correct out of an abundance of caution. The attached email will be available to the public for inspection as part of the PEC’s Correspondence file. ([Email Attachment](#))

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ACTION ITEMS

7. Approval of Commission Meeting Draft Minutes.

- a. June 6, 2022, Special Meeting Minutes ([Meeting Minutes](#))
- b. June 8, 2022, Regular Meeting Minutes ([Meeting Minutes](#))
- c. June 23, 2022, Special Meeting Minutes ([Meeting Minutes](#))
- d. June 27, 2022, Special Meeting Minutes ([Meeting Minutes](#))

8. Election of Vice-Chair of the Commission. Commissioners will have an opportunity to nominate any Commissioner to serve as Vice Chair for the remainder of 2022. If more than one Commissioner is nominated for an office, each nominee may speak regarding their qualifications and interest in serving and may answer questions of Commissioners or the public (Public Ethics Commission Operations Policies, Article IV). The Commission may discuss the nominations and, when the vote is called, each Commissioner may cast a single vote for each office. ([PEC Operations Policies](#))

9. In the Matter of Justin Berton Case No. 18-45. On November 5, 2018, the City of Oakland Public Ethics Commission (PEC) received a formal complaint that alleged the Respondent, Justin Berton, the Director of Communications for Oakland Mayor Libby Schaaf, violated a provision of the Government Ethics Act (GEA), Misuse of City Resources OMC 2.25.060 (a)(1), when he posted four links to newspaper editorials that endorsed the mayor in 2018 to the mayor's official Nextdoor public agencies/elected officials' account. Pursuant to Nextdoor terms of service and policy, public officials or anyone utilizing the platform on their behalf, are prohibited from using the platform for political/campaign purposes. The Respondent was aware of this policy at the time he posted the four editorials that endorsed the mayor's political campaign. After consideration of all the facts and the law, and the reasons explained in the attached Stipulation and Exhibit, Staff recommends that the Commission approve a stipulation that Justin Berton violated the Government Ethics Act and impose a financial penalty in the amount of \$1,000. ([Stipulation and Exhibit Summary](#))

DISCUSSION ITEMS

10. Reports on Subcommittees and Commissioner Assignments. Commissioners may discuss subcommittee assignments, create a new subcommittee, or report on work done in subcommittees since the Commission's last regular meeting. Commissioners may also discuss assignments, efforts, and initiatives they undertake to support the Commission's work.

- a. **Enforcement Subcommittee** (*ad hoc*, created on November 1, 2021) – Arvon Perteeet (Chair), Ryan Micik and Joseph Tuman.
- b. **Fair Elections Act Subcommittee** (*ad hoc*, created on April 13, 2022) – Charlotte Hill

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(Chair), Ryan Micik, and Arvon Perteet.

- c. **Outreach Subcommittee** (*ad hoc*, created on June 8, 2022) – Francis Upton IV (Chair), and Charlotte Hill

INFORMATION ITEMS

- 11. Commissioner Recruitment.** The Commission is recruiting to fill two Commission appointed vacancies that will occur in January 2023. A third vacancy to occur at the same time will be subject to appointment by the Mayor. Attached is the announcement and application that is being distributed widely via the Commission’s website, email distribution lists, social media, and other channels. ([Announcement and Application; Recruitment Flyer](#))
- 12. Limited Public Financing Program** – Commission staff provides an overview of upcoming activities planned to implement the Limited Public Financing Program for the 2022 election. ([Staff Memo](#))
- 13. Disclosure and Engagement.** Lead Analyst Suzanne Doran provides an overview of education, outreach, disclosure, and data illumination activities for this past month. ([Disclosure Report](#))
- 14. Enforcement Program.** Enforcement Chief Kellie Johnson provides a monthly update on the Commission’s enforcement work since the last regular Commission meeting. ([Enforcement Report](#); [Dismissal Letter 22-02](#); [Dismissal Letter 22-03](#); [Dismissal Letter 22-04](#); [Dismissal Letter 22-05](#); [Dismissal Letter 22-06](#))
- 15. Executive Director’s Report.** Acting Executive Director Suzanne Doran reports on overall projects, priorities, and significant activities since the Commission’s last meeting. ([Executive Director’s Report](#); [Grand Jury Report](#))
- 16. Future Meeting Business.** Commissioners and staff may propose topics for action or discussion at future Commission meetings.

The meeting will adjourn upon the completion of the Commission’s business.

A member of the public may speak on any item appearing on the agenda. All speakers will be allotted a maximum of three minutes unless the Chairperson allocates additional time.

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Should you have questions or concerns regarding this agenda, or wish to review any agenda-related materials, please contact the Public Ethics Commission at (510) 238-3593 or visit our webpage at www.oaklandca.gov/pec.

Suzanne Doran

7/29/2022

Approved for Distribution

Date



This meeting location is wheelchair accessible. Do you need an ASL, Cantonese, Mandarin or Spanish interpreter or other assistance to participate? Please email alarafranco@oaklandca.gov or call (510) 238-3593 Or 711 (for Relay Service) five business days in advance.

¿Necesita un intérprete en español, cantonés o mandarín, u otra ayuda para participar? Por favor envíe un correo electrónico a alarafranco@oaklandca.gov o llame al (510) 238-3593 al 711 para servicio de retransmisión (Relay service) por lo menos cinco días antes de la reunión. Gracias.

你需要手語, 西班牙語, 粵語或國語翻譯服務嗎? 請在會議五天前電

郵 alarafranco@oaklandca.gov 或致電 (510) 238-3593 或 711 (電話傳達服務)。

Quý vị cần một thông dịch viên Ngôn ngữ Ký hiệu Mỹ (American Sign Language, ASL), tiếng Quảng Đông, tiếng Quan Thoại hay tiếng Tây Ban Nha hoặc bất kỳ sự hỗ trợ nào khác để tham gia hay không? Xin vui lòng gửi email đến địa chỉ alarafranco@oaklandca.gov hoặc gọi đến số (510) 238-3593 hoặc 711 (với Dịch vụ Tiếp âm) trước đó năm ngày.

CITY OF OAKLAND
Public Ethics Commission

RESOLUTION NO. 22-01
[Proposed renewal 8-10-22]



Resolution Summary:

ADOPT A RESOLUTION DETERMINING THAT CONDUCTING IN-PERSON MEETINGS OF THE PUBLIC ETHICS COMMISSION AND ITS COMMITTEES WOULD PRESENT IMMINENT RISKS TO ATTENDEES' HEALTH, AND ELECTING TO CONTINUE CONDUCTING MEETINGS USING TELECONFERENCING IN ACCORDANCE WITH CALIFORNIA GOVERNMENT CODE SECTION 54953(E), A PROVISION OF AB 361.

By action of the Oakland Public Ethics Commission:

WHEREAS, on March 4, 2020, Governor Gavin Newsom declared a state of emergency related to COVID-19, pursuant to Government Code Section 8625, and such declaration has not been lifted or rescinded. See <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>; and

WHEREAS, on March 9, 2020, the City Administrator in their capacity as the Director of the Emergency Operations Center (EOC), issued a proclamation of local emergency due to the spread of COVID-19 in Oakland, and on March 12, 2020, the City Council passed Resolution No. 88075 C.M.S. ratifying the proclamation of local emergency pursuant to Oakland Municipal Code (O.M.C.) section 8.50.050(C); and

WHEREAS, City Council Resolution No. 88075 remains in full force and effect to date; and

WHEREAS, the Centers for Disease Control (CDC) recommends physical distancing of at least six (6) feet whenever possible, avoiding crowds, and avoiding spaces that do not offer fresh air from the outdoors, particularly for people who are not fully vaccinated or who are at higher risk of getting very sick from COVID-19. See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>; and

WHEREAS, the CDC recommends that people who live with unvaccinated people avoid activities that make physical distancing hard. See <https://www.cdc.gov/coronavirus/2019-ncov/your-health/about-covid-19/caring-for-children/families.html>; and

WHEREAS, the CDC recommends that older adults limit in-person interactions as much as possible, particularly when indoors. See <https://www.cdc.gov/aging/covid19/covid19-older-adults.html>; and

WHEREAS, the CDC, the California Department of Public Health, and the Alameda County Public Health Department all recommend that people experiencing COVID-19 symptoms stay home. See <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/steps-when-sick.html>; and

WHEREAS, persons without symptoms may be able to spread the COVID-19 virus. See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>; and

CITY OF OAKLAND
Public Ethics Commission



RESOLUTION NO. 22-01
[Proposed renewal 8-10-22]

WHEREAS, fully vaccinated persons who become infected with the COVID-19 Delta variant can spread the virus to others. See <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated.html>; and

WHEREAS, the City's public-meeting facilities are indoor facilities that do not ensure circulation of fresh/outdoor air, particularly during periods of cold and/or rainy weather, and were not designed to ensure that attendees can remain six (6) feet apart; and

WHEREAS, holding in-person meetings would encourage community members to come to City facilities to participate in local government, and some of them would be at high risk of getting very sick from COVID-19 and/or would live with someone who is at high risk; and

WHEREAS, in-person meetings would tempt community members who are experiencing COVID-19 symptoms to leave their homes in order to come to City facilities and participate in local government; and

WHEREAS, attendees would use ride-share services and/or public transit to travel to in-person meetings, thereby putting them in close and prolonged contact with additional people outside of their households;

Now therefore be it:

RESOLVED: that the Public Ethics Commission finds and determines that the foregoing recitals are true and correct and hereby adopts and incorporates them into this Resolution; and

RESOLVED: that, based on these determinations and consistent with federal, state and local health guidance, the Public Ethics Commission determines that conducting in-person meetings would pose imminent risks to the health of attendees; and

RESOLVED: that the Public Ethics Commission firmly believes that the community's health and safety and the community's right to participate in local government, are both critically important, and is committed to balancing the two by continuing to use teleconferencing to conduct public meetings, in accordance with California Government Code Section 54953(e), a provision of AB-361; and

RESOLVED: that the Public Ethics Commission and its committees will meet by teleconference this month and will renew these (or similar) findings at least every thirty (30) days in accordance with California Government Code section 54953(e) until the state of emergency related to COVID-19 has been lifted, or the Public Ethics Commission finds that in-person meetings no longer pose imminent risks to the health of attendees, whichever occurs first.

CITY OF OAKLAND
Public Ethics Commission

RESOLUTION NO. 22-01
[Proposed renewal 8-10-22]



CERTIFICATION RE: APPROVAL OF RESOLUTION

The foregoing Resolution was presented for renewal at a duly noticed meeting of the City of Oakland Public Ethics Commission held on August 10, 2022, where a quorum of the membership of the Commission was present. The Commission approved the resolution by a vote of ____ to ____.

I hereby certify that the foregoing is true and correct.

Suzanne Doran, Acting Executive Director
Oakland Public Ethics Commission

Date

CITY OF OAKLAND
Public Ethics Commission



RESOLUTION NO. 22-05
[Proposed 6-27-22]

Resolution Summary:

ADOPT A RESOLUTION DETERMINING THAT CONDUCTING IN-PERSON MEETINGS OF THE PUBLIC ETHICS COMMISSION AND ITS COMMITTEES WOULD PRESENT IMMINENT RISKS TO ATTENDEES' HEALTH, AND ELECTING TO CONTINUE CONDUCTING MEETINGS USING TELECONFERENCING IN ACCORDANCE WITH CALIFORNIA GOVERNMENT CODE SECTION 54953(E), A PROVISION OF AB 361.

By action of the Oakland Public Ethics Commission:

WHEREAS, on March 4, 2020, Governor Gavin Newsom declared a state of emergency related to COVID-19, pursuant to Government Code Section 8625, and such declaration has not been lifted or rescinded. See <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>; and

WHEREAS, on March 9, 2020, the City Administrator in their capacity as the Director of the Emergency Operations Center (EOC), issued a proclamation of local emergency due to the spread of COVID-19 in Oakland, and on March 12, 2020, the City Council passed Resolution No. 88075 C.M.S. ratifying the proclamation of local emergency pursuant to Oakland Municipal Code (O.M.C.) section 8.50.050(C); and

WHEREAS, City Council Resolution No. 88075 remains in full force and effect to date; and

WHEREAS, the Centers for Disease Control (CDC) recommends physical distancing of at least six (6) feet whenever possible, avoiding crowds, and avoiding spaces that do not offer fresh air from the outdoors, particularly for people who are not fully vaccinated or who are at higher risk of getting very sick from COVID-19. See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>; and

WHEREAS, the CDC recommends that people who live with unvaccinated people avoid activities that make physical distancing hard. See <https://www.cdc.gov/coronavirus/2019-ncov/your-health/about-covid-19/caring-for-children/families.html>; and

WHEREAS, the CDC recommends that older adults limit in-person interactions as much as possible, particularly when indoors. See <https://www.cdc.gov/aging/covid19/covid19-older-adults.html>; and

WHEREAS, the CDC, the California Department of Public Health, and the Alameda County Public Health Department all recommend that people experiencing COVID-19 symptoms stay home. See <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/steps-when-sick.html>; and

WHEREAS, persons without symptoms may be able to spread the COVID-19 virus. See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>; and

CITY OF OAKLAND
Public Ethics Commission



RESOLUTION NO. 22-05
[Proposed 6-27-22]

WHEREAS, fully vaccinated persons who become infected with the COVID-19 Delta variant can spread the virus to others. See <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated.html>; and

WHEREAS, the City's public-meeting facilities are indoor facilities that do not ensure circulation of fresh/outdoor air, particularly during periods of cold and/or rainy weather, and were not designed to ensure that attendees can remain six (6) feet apart; and

WHEREAS, holding in-person meetings would encourage community members to come to City facilities to participate in local government, and some of them would be at high risk of getting very sick from COVID-19 and/or would live with someone who is at high risk; and

WHEREAS, in-person meetings would tempt community members who are experiencing COVID-19 symptoms to leave their homes in order to come to City facilities and participate in local government; and

WHEREAS, attendees would use ride-share services and/or public transit to travel to in-person meetings, thereby putting them in close and prolonged contact with additional people outside of their households;

Now therefore be it:

RESOLVED: that the Public Ethics Commission finds and determines that the foregoing recitals are true and correct and hereby adopts and incorporates them into this Resolution; and

RESOLVED: that, based on these determinations and consistent with federal, state and local health guidance, the Public Ethics Commission determines that conducting in-person meetings would pose imminent risks to the health of attendees; and

RESOLVED: that the Public Ethics Commission firmly believes that the community's health and safety and the community's right to participate in local government, are both critically important, and is committed to balancing the two by continuing to use teleconferencing to conduct public meetings, in accordance with California Government Code Section 54953(e), a provision of AB-361; and

RESOLVED: that the Public Ethics Commission and its committees will meet by teleconference this month and will renew these (or similar) findings at least every thirty (30) days in accordance with California Government Code section 54953(e) until the state of emergency related to COVID-19 has been lifted, or the Public Ethics Commission finds that in-person meetings no longer pose imminent risks to the health of attendees, whichever occurs first.

CITY OF OAKLAND
Public Ethics Commission

RESOLUTION NO. 22-05
[Proposed 6-27-22]



CERTIFICATION RE: APPROVAL OF RESOLUTION

The foregoing Resolution was presented for approval at a duly noticed *special* meeting of the City of Oakland Public Ethics Commission held on June 27, 2022, where a quorum of the membership of the Commission was present. The Commission approved the resolution by a vote of ____ to ____.

I hereby certify that the foregoing is true and correct.

Suzanne Doran, Acting Executive Director
Oakland Public Ethics Commission

Date

For August agenda

Item 6 - Email Attachment

Doran, Suzanne <SDoran@oaklandca.gov>

Thu 7/28/2022 12:30 PM

To: Doran, Suzanne <SDoran@oaklandca.gov>

From: Upton, Francis <FUpton@oaklandca.gov>

Sent: Monday, June 20, 2022 2:38 PM

To: ODoherty, Keara <KODoherty@oaklandca.gov>; Hill, Charlotte <CHill@oaklandca.gov>; Micik, Ryan <RMicik@oaklandca.gov>; Ethics Commission <EthicsCommission@oaklandca.gov>; Perteet, Arvon <APerteet@oaklandca.gov>

Subject: Re: Thank You Resolution for Whitney Barazoto

Hi Keara,

Thanks for doing this!

Whitney has been instrumental increasing the scope of the PEC to include leading/collaboration, educating/engaging, and disclosing/illuminating, thereby empowering the people of the government to not only adhere to applicable laws, but greatly increasing the openness and transparency of the government. Her philosophy of improving compliance through empowerment and education has made the Oakland PEC a leading Commission in the state.

Although I'm new in the commission, it was immediately obvious to me that Whitney has assembled a great staff which is remarkably effective in working with the Commission.

Francis

From: ODoherty, Keara <KODoherty@oaklandca.gov>

Sent: Monday, June 20, 2022 1:08 PM

To: Hill, Charlotte <CHill@oaklandca.gov>; Micik, Ryan <RMicik@oaklandca.gov>; Ethics Commission <EthicsCommission@oaklandca.gov>; Upton, Francis <FUpton@oaklandca.gov>; Perteet, Arvon <APerteet@oaklandca.gov>

Subject: Thank You Resolution for Whitney Barazoto

Hi all,

Councilmember Kalb would like to prepare a thank you resolution for Whitney Barazoto's 10 years of service to the City of Oakland. I know it's short notice, but if each of you could send one or two comments about Whitney, her work, or her contributions to the City of Oakland by **tomorrow 7/21 COB**, we can work these into the resolution!

Thank you in advance for your help.

Best,

Keara O'Doherty

Office of District One City Councilmember Dan Kalb
City of Oakland

1 Frank H. Ogawa Plaza, Suite 230, Oakland, CA 94612

Phone: 510-292-9738

Item 7a - Meeting Minutes

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Subcommittee Meeting
Teleconference
Monday June 6, 2022
5:00 p.m.



DRAFT

Subcommittee Members: Charlotte Hill (Chair), Ryan Micik, and Arvon Perteet

Commission Staff: Whitney Barazoto – Executive Director
Suzanne Doran – Lead Analyst

City Attorney Staff: Trish Shafie, Deputy City Attorney

Public Ethics Commission (PEC)
Fair Elections Act Subcommittee Meeting
Meeting Minutes

Commissioners present: Charlotte Hill (Chair), Ryan Micik, Arvon Perteet, and Francis Upton IV

Staff present: Whitney Barazoto, Suzanne Doran, and Trish Shafie

1. Open Forum.

There were two public speakers.

PRELIMINARY ACTION ITEMS

2. Virtual meetings by the Public Ethics Commission.

The subcommittee reviewed and took action to adopt Resolution 22-03, establishing certain determinations to justify the need for a virtual subcommittee meeting following the California State Legislature’s adoption and Governor’s approval of AB 361 on September 16, 2021 (Chapter 165; Statutes of 2021).

There were no public speakers.

Perteet moved, Micik seconded to approve Resolution 22-03.

Ayes: Hill, Perteet, Micik, Upton

Noes: None

Motion passed: 4-0

Item 7a - Meeting Minutes

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Subcommittee Meeting
Teleconference
Monday June 6, 2022
5:00 p.m.



DRAFT

ACTION ITEMS

3. Proposed Oakland Fair Elections Act.

Commission provided an update on the proposed Oakland Fair Elections Act that was presented by the BayPEC Coalition at the PEC's April 13, 2022, regular meeting, including staff-proposed edits and comments to the proposed legislation.

Subcommittee members reviewed and discussed these and other potential amendments to propose to BayPEC and City Councilmembers. Commissioner Upton provided additional suggested amendments to incorporate into the draft.

Commission staff agreed to review and make additional amendments as discussed by the subcommittee and to continue to work with Councilmembers and legal counsel on ongoing amendments.

There were two public speakers.

The meeting adjourned at 7:03 pm.

Item 7b - Meeting Minutes

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DRAFT

Commissioners: Arvon Perteet (Chair), Charlotte Hill, Ryan Micik, Joseph Tuman and Francis Upton IV.

Commission Staff to attend: Whitney Barazoto, Executive Director; Suzanne Doran, Lead Analyst – Civic Technology and Engagement; Kellie Johnson, Enforcement Chief; Ana Lara-Franco, Commission Assistant; Simon Russell, Investigator

City Attorney Staff: Trish Shafie, Deputy City Attorney

PUBLIC ETHICS COMMISSION MEETING MINUTES

1. Roll Call and Determination of Quorum.

The meeting was held via teleconference.

The meeting was called to order at 6:31 p.m.

Members present: Perteet, Hill, Micik, Tuman and Upton

Staff present: Whitney Barazoto, Suzanne Doran, Kellie Johnson, Ana Lara-Franco and Simon Russell.

City Attorney Staff: Tricia Shafie.

2. Staff and Commission Announcements.

Perteet shared that Leavitt and MacDonald have resigned from the Commission, leaving two vacancies.

3. Open Forum.

There were three public speakers

PRELIMINARY ACTION ITEMS

4. Virtual meetings by the Public Ethics Commission.

The Commission renewed Resolution 22-01, approved at the January 12, 2022 Regular meeting, establishing certain determinations to justify the ongoing need for virtual meetings following the California State Legislature's adoption and Governor's approval of AB 361 on September

Item 7b - Meeting Minutes

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DRAFT

16, 2021 (Chapter 165; Statutes of 2021).

There were no public speakers.

Hill moved, and Upton IV seconded to approve the renewal of RESOLUTION NO. 22-01.

Ayes: Perteet, Hill, Micik, Tuman, and Upton

Noes: None

Vote: Passed 5-0

ACTION ITEMS

5. Approval of Commission Meeting Draft Minutes.

a. April 13, 2022, Regular Meeting Minutes

There were no public speakers.

Tuman moved, and Micik seconded to approve the April 13, 2022, Meeting Minutes

Ayes: Perteet, Hill, Micik and Tuman.

Noes: None

Abstain: Upton IV

Vote: Passed 4-0

b. April 21-22, 2022, Special Meeting Minutes

There were no public speakers.

Tuman moved, and Micik seconded to approve the April 21-22, 2022, Meeting Minutes

Ayes: Perteet, Hill, Micik, Tuman, and Upton IV.

Noes: None

Vote: Passed 5-0

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DRAFT

6. In the Matter of Ener Chiu (Case No. 18-16).

Kellie Johnson, Enforcement Chief, recommended that the Commission schedule this matter for an administrative hearing.

There was one public speaker.

Perteet moved, and Upton seconded to approve the staff recommendation to move matter to a hearing officer, specifically a former Public Ethics Commissioner.

Ayes: Perteet, Hill, Micik, Tuman, and Upton IV.

Noes: None

Vote: Passed 5-0

DISCUSSION ITEMS

7. Reports on Subcommittees and Commissioner Assignments.

a. Enforcement Subcommittee (*ad hoc*, created on November 1, 2021) – Arvon Perteet (Chair), Ryan Micik and Joseph Tuman.

Perteet shared that they will continue to discuss next steps.

b. Public Records Performance (*ad hoc*, created on January 12, 2022) – Michael M MacDonald (Chair) and Francis Upton.

Perteet dissolved this *ad hoc* subcommittee

c. Fair Elections Act Subcommittee (*ad hoc*, created on April 13, 2022) – Charlotte Hill (Chair), Ryan Micik, and Arvon Perteet.

Hill shared that they had a meeting on June 6, 2022, and provided several updates to the Fair Elections Act proposal.

Perteet created the Outreach Subcommittee (*ad hoc*). Members are Francis Upton IV (Chair) and Charlotte Hill.

There was one public speaker.

CITY OF OAKLAND
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DRAFT

INFORMATION ITEMS

8. Oakland Campaign Reform Act Contribution Limit and Expenditure Ceiling Annual Adjustment for 2022 – Updated.

Suzanne Doran, Lead Analyst, provided an updated list of Oakland’s campaign contribution limits and expenditure ceiling amounts, adjusted per the increase in the Consumer Price Index as required by the Oakland Campaign Reform Act and readjusted per the new redistricting process completed since then.

There were no public speakers.

9. Disclosure and Engagement.

Ms. Doran provided an overview of education, outreach, disclosure and data illumination activities for this past month.

There were no public speakers.

10. Enforcement Program.

Chief Johnson provided a monthly update on the Commission’s enforcement work since the last regular Commission meeting.

There were no public speakers.

11. Executive Director’s Report.

Whitney Barazoto, Executive Director, reported on overall projects, priorities, and significant activities since the Commission’s last meeting.

There were no public speakers.

12. Future Meeting Business.

Commissioners will vote for a new Vice Chair at the next regular meeting.

Item 7b - Meeting Minutes

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Regular Commission Meeting
Teleconference
Wednesday June 8, 2022
6:30 p.m.



DRAFT

The next meeting scheduled for July 13, 2022, was canceled.

There were no public speakers.

Commissioners went into Closed Session.

CLOSED SESSION

- 13. Personnel.** Pursuant to California Government Code section 54957(b), the Commission met in Closed Session to consider the appointment or employment of the next Executive Director.

There were no public speakers.

Commissioners returned from Closed Session at 9:05 p.m.

The meeting adjourned at 9:07 p.m.

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Special Commission Meeting
Teleconference
Thursday, June 23, 2022
5:00 p.m.



DRAFT

Commissioners: Arvon Perteet (Chair), Charlotte Hill, Ryan Micik, Joseph Tuman and Francis Upton IV.

Commission Staff to attend: Ana Lara-Franco, Commission Assistant

City Attorney Staff: Trish Shafie, Deputy City Attorney

PUBLIC ETHICS COMMISSION SPECIAL MEETING MINUTES

1. Roll Call and Determination of Quorum.

The meeting was held via teleconference.

The meeting was called to order at 5:05 p.m.

Members present: Perteet, Hill, Micik, and Upton

Absent: Tuman

Staff present: Suzanne Doran and Ana Lara-Franco.

City Attorney Staff: Tricia Shafie.

2. Staff and Commission Announcements.

There were no announcements.

3. Open Forum.

There were no public speakers.

PRELIMINARY ACTION ITEMS

4. Virtual meetings by the Public Ethics Commission.

The Commission reviewed and took action to adopt Resolution 22-04, establishing certain determinations to justify the need for a virtual subcommittee meeting following the California State Legislature's adoption and Governor's approval of AB 361 on September 16, 2021 (Chapter 165; Statutes of 2021).

There were no public speakers.

Item 7c - Meeting Minutes

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Special Commission Meeting
Teleconference
Thursday, June 23, 2022
5:00 p.m.



DRAFT

Upton moved, and Hill seconded to approve the RESOLUTION NO. 22-04.

Ayes: Perteet, Hill, Micik and Upton

Absent: Tuman

Noes: None

Vote: Passed 4-0

ACTION ITEMS

CLOSED SESSION

- 5. Personnel.** Pursuant to California Government Code section 54957(b), the Commission will meet in Closed Session to consider the appointment or employment of the next Executive Director.

There were no public speakers.

Commissioners went into Closed Session at 5:08 p.m.

Commissioners returned from Closed Session at 6:51 p.m.

The meeting adjourned at 6:52 p.m.

Item 7d - Meeting Minutes

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Special Commission Meeting
Teleconference
Monday, June 27, 2022
6:00 p.m.



DRAFT

Commissioners: Arvon Perteet (Chair), Charlotte Hill, Ryan Micik, Joseph Tuman and Francis Upton IV.

Commission Staff to attend: Suzanne Doran, Acting Executive Director

City Attorney Staff: Trish Shafie, Deputy City Attorney

PUBLIC ETHICS COMMISSION SPECIAL MEETING MINUTES

1. Roll Call and Determination of Quorum.

The meeting was held via teleconference.

The meeting was called to order at 6:01 p.m.

Members present: Perteet, Hill, Micik, Tuman, and Upton.

Staff present: Suzanne Doran.

City Attorney Staff: Tricia Shafie.

2. Staff and Commission Announcements.

Suzanne Doran, Acting Director, announced the candidate scheduled for interview tonight had informed staff he was withdrawing his application for Executive Director.

Ms. Doran also shared that a resolution to place the Oakland Fair Election Act on the November ballot was placed on the July 5th City Council agenda. Staff will forward the final ordinance to the Fair Elections Act subcommittee for review.

3. Open Forum.

There were no public speakers.

PRELIMINARY ACTION ITEMS

4. Virtual meetings by the Public Ethics Commission.

The Commission reviewed and took action to adopt Resolution 22-05, establishing certain determinations to justify the need for a virtual subcommittee meeting following the California State Legislature's adoption and Governor's approval of AB 361 on September 16, 2021 (Chapter 165; Statutes of 2021).

Item 7d - Meeting Minutes

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Special Commission Meeting
Teleconference
Monday, June 27, 2022
6:00 p.m.



DRAFT

Public comment: One speaker commented on the sale of Mills College to Northeastern University.

Hill moved, and Upton seconded to approve the RESOLUTION NO. 22-05.

Ayes: Perteet, Hill, Micik, Tuman, and Upton.

Noes: None.

Vote: Passed 5-0.

ACTION ITEMS

CLOSED SESSION

- 5. Personnel.** Pursuant to California Government Code section 54957(b), the Commission will meet in Closed Session to consider the appointment or employment of the next Executive Director.

There were no public speakers.

Commissioners went into Closed Session at 6:08 p.m.

Commissioners returned from Closed Session at 7:00 p.m.

Chairman Perteet announced the Commissioners had made a selection from the applicants to forward to the City Administrator.

The meeting adjourned at 7:02 p.m.



CITY OF OAKLAND
PUBLIC ETHICS COMMISSION

OPERATIONS POLICIES
Effective January 1, 2016

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Item 8 - PEC Operations Policies

ARTICLE I - MISSION STATEMENT

The Public Ethics Commission (Commission) ensures compliance with the City of Oakland's government ethics, campaign finance, transparency, and lobbyist registration laws that aim to promote fairness, openness, honesty, and integrity in city government. To fulfill its mission, the Commission conducts the following activities:

- A. **Lead/Collaborate** – Lead by example and facilitate city policy, management, and technological changes to further the Commission's mission.
- B. **Educate/Engage** – Provide education, advice, technical assistance, and formal legal opinions to promote awareness and understanding of the city's campaign finance, ethics, and transparency laws.
- C. **Disclose/Illuminate** – Facilitate accurate, effective, and accessible disclosure of government integrity data, such as campaign finance reporting, conflicts of interest/gifts reports, and lobbyist activities, all of which help the public and PEC staff monitor filings, view information, and detect inconsistencies or noncompliance.
- D. **Detect/Deter** – Conduct investigations and audits to monitor compliance with the laws within the Commission's jurisdiction.
- E. **Prosecute** – Enforce violations of the laws within the Commission's jurisdiction through administrative or civil remedies.

ARTICLE II - JURISDICTION, APPLICABLE LAW

The Commission was created by City Charter in 1996 (Section 202), which was amended in November 2014 (Section 202, 603) to strengthen the Commission's authority, independence and staffing. The Commission oversees compliance with the following laws:

- A. The City of Oakland Government Ethics Act (O.M.C. chapter 2.25);
- B. The City of Oakland Campaign Reform Act (O.M.C. chapter 3.12);
- C. Limited Public Financing Act of the City of Oakland (O.M.C. chapter 3.13);
- D. Oakland Sunshine Ordinance (O.M.C. chapter 2.20);
- E. The City of Oakland Lobbyist Registration Act (O.M.C. chapter 3.20); and
- F. Oakland False Endorsement in Campaign Literature act (O.M.C. chapter 3.14).

The Commission must comply with all applicable laws, including but not limited to:

- A. Oakland City Charter, including but not limited to Sections 202 and 603;
- B. Public Ethics Commission Operations Ordinance (O.M.C. chapter 2.24);
- C. Oakland Sunshine Ordinance, the California Ralph M. Brown Act (Gov. Code sections 54950, *et seq.*) and the California Public Records Act (Gov. Code sections 6250, *et seq.*);
- D. The City of Oakland Government Ethics Act (O.M.C. chapter 2.25); and
- E. These Operations Policies and other policies adopted by the Commission.

Item 8 - PEC Operations Policies

ARTICLE III - COMMISSION STRUCTURE AND SUPPORT

Section 1: Commission

The Public Ethics Commission is a seven-member board of Oakland residents responsible for establishing Commission policies and priorities, promoting government transparency, and serving as a quasi-judicial body that adjudicates enforcement matters brought to the Commission by staff.

Acceptance of the Oath of Public Office constitutes a commissioner's sworn responsibility to the public trust. Commissioners must collectively and individually respect and honor their appointed role and strive to maintain public confidence in the Commission's role in the government of the city of Oakland.

Section 2: Executive Director

The Executive Director reports to the Chair and to the Commission and is responsible for establishing staff priorities in consultation with the Chair and consistent with policy direction provided by the Commission.

The Chair or designee must prepare a periodic, written performance review of the Executive Director subject to the review and approval by the Commission in closed session. At any time, at the request of one or more commissioners, the Chair may call and notice a closed session of the Commission to discuss the performance of the Executive Director.

Section 3: Commission Staff

The Executive Director leads and supervises Commission staff and has the authority to hire and remove employees within constraints set by the Civil Service Commission, the Personnel Department, and the Commission's budget.

Section 4: Legal Advisor

The City Attorney is the Commission's legal advisor. Any commissioner may consult informally with an attorney assigned to the Commission on any matter related to Commission business. However, a request from a commissioner for assistance requiring significant legal research, a substantial amount of time and attention, or a written response must be authorized by the Executive Director, the Chair, or by a majority vote of the Commission or one of its Committees.

Section 5: Commission Spokesperson

The spokesperson for the Commission is the Executive Director or designee, the Chair, or the Vice Chair if the Chair is unavailable.

ARTICLE IV – OFFICERS

Item 8 - PEC Operations Policies

Section 1: Election of Officers

The officers of the Commission are the Chair and Vice Chair. At the first regular meeting of each year, commissioners must elect a Chair and Vice Chair. At the meeting, a commissioner may nominate any commissioner to serve in the office of Chair or Vice Chair. If more than one commissioner is nominated for an office, each nominee may speak regarding their qualifications and willingness to serve and answer questions of commissioners or the public. The Commission may discuss the nominations and, when the vote is called, each commissioner may cast a single vote for each office.

Section 2: Chair

The Chair presides at all meetings of the Commission and is an ex-officio member of all standing committees. The Chair is accountable to the Commission as a whole in setting policy.

Section 3: Vice Chair

The Vice Chair performs the duties and responsibilities that may be delegated by the Chair. In the absence or disability of the Chair, the Vice Chair will perform the duties and responsibilities of the Chair.

ARTICLE V - COMMITTEES

Section 1: Standing and Ad Hoc Committees

It is the policy of the Commission to appoint individual commissioners to perform specific tasks or functions by serving on standing or ad hoc committees. Thus, as necessary, the Chair may create a standing or ad hoc committee, identify its purpose, appoint commissioners as members, and designate a Committee Chair.

Terms of ad hoc committees may not exceed one year. Membership on ad hoc committees may not exceed three commissioners.

Commission staff will post a list of the Commission's current committees and committee membership on the Commission's website.

Section 2: Committee Meetings

Committee meetings may be called by the Chair, the committee's chair, or by majority vote of members of the committee.

Meetings of standing committees follow the same procedures provided under Article VI, sections 3 through 7 of these Operations Policies.

Item 8 - PEC Operations Policies

Section 3: Committee Quorum

A majority of the members of a committee constitutes a quorum.

ARTICLE VI - COMMISSION MEETINGS

Section 1: Meetings: Time, Public Location, Notice

The Commission must hold regular meetings at an established time and place suitable for its purposes, and consistent with the requirements of the Brown Act and Sunshine Ordinance. Generally, regular Commission meetings are held on the first Monday of each month at 6:30 p.m., or as otherwise set forth in the published calendar and posted on the Commission's website with the proper notice. Regular meetings are held in Oakland City Hall, One Frank Ogawa Plaza in the city of Oakland, California.

Meetings scheduled for a time or place other than for regular meetings are designated as special meetings.

Written notice of regular meetings and special meetings must be provided at least 10 days or 72 hours in advance, respectively, in the manner required by Charter section 1205, the Oakland Sunshine Ordinance, and the Brown Act.

Section 2: Quorum

At all meetings of the full Commission, the presence of four (4) commissioners constitutes a quorum. (Charter section 603(d)(4).) No action can be taken on an agenda item unless at least four (4) commissioners are present. If ever during a meeting there is less than a quorum present, a motion to adjourn is appropriate; absent objection, debate can be continued, but no vote taken, except to adjourn. When a quorum exists, official action requires a majority vote of those commissioners present when the vote is called, unless otherwise provided by the Charter (e.g., for certain enforcement matters and for removal of the Executive Director).

Section 3: Public Engagement

The Commission values and encourages public input and, regarding public participation in Commission proceedings, will liberally construe the public's rights under the Brown Act and Sunshine Ordinance. The Commission proactively develops and promotes new channels for public participation in local government beyond the minimum legal requirements, for example, by utilizing new technology and social media tools to facilitate greater public access to government information and proceedings; conducting special meetings and hearings on relevant issues; collaborating with civic groups on issues and projects within the Commission's jurisdiction; and engaging in affirmative public outreach through non-traditional means.

Item 8 - PEC Operations Policies

All interested persons are encouraged to provide input or request information regarding Commission business by contacting Commission staff at (510) 238-3593 or ethicscommission@oaklandnet.com, or view information online at www.oaklandnet.com/pec.

At each regular Commission meeting, all interested persons may express their views regarding a matter within the jurisdiction of the Commission. This opportunity for comment, called “Open Forum,” will appear on each agenda. Ordinarily, each speaker may speak for up to three minutes, but the Chair, in his or her discretion, may limit or extend the time, provided such changes are reasonable in nature and uniformly applied. The Commission may also limit the time for public comment under Open Forum to a total of 15 minutes.

At regular and special Commission or Committee meetings, all interested persons must also be allowed to express their views on any agenda item upon the Commission’s review of the item. Before taking action on any agenda item, the Commission (or Committee) must provide the opportunity for public comment on that item. Each person wishing to speak on an agenda item is permitted to speak once, for a minimum of two minutes; however, the Chair, in his or her discretion, may limit or extend the time, provided such changes are reasonable in nature and uniformly applied.

The Commission urges the public not to make complaints or ask the Commission to investigate alleged legal violations at public meetings since the public disclosure of such complaints or requests may undermine any subsequent investigation undertaken.

Section 4: Public Participation at Meetings

The agenda for each meeting must provide instructions for public participation. To encourage public participation, the Commission will employ the least formal, least restrictive procedures for public comment, so long as order is maintained.

In the event that the complexity of the issues, number of anticipated participants, or other factors suggest that greater formality is required to maintain order or protect the public’s right to participate, the Commission may utilize a more formal process (such as the “speaker card” procedure set forth in City Council Procedures Rule 12). In that case, the agenda will describe the process, including any special requirements, for public participation.

If during the course of a meeting it becomes apparent that the existing procedure for public comment is inadequate or inappropriate, the Chair may exercise his or her discretion to modify the procedure during the meeting. In that case, the Chair must state the reasons justifying the change in procedure, clearly explain how members of the public may provide comment as to each agenda item, and apply the modified process uniformly to all speakers.

Section 5: Chair

The Chair must maintain order in the chamber, has authority to refuse the floor to any person, and may limit or extend the time allocated to any speaker.

Item 8 - PEC Operations Policies

The Chair may rule a public speaker out of order if:

- A. the speaker is speaking beyond the allocated time limit;
- B. the speaker's remarks are not relevant to the agenda item or are repetitious; or,
- C. the manner, tone and content of the speaker's remarks are disruptive (disturb the peace and good order of the meeting), attack the character of individuals or are abusive (vulgar or obscene language).

The public has the right to criticize policies, procedures, programs, or services of the city, the Commission or of any other aspect of the city's or Commission's proposals or activities, or the acts or omissions of the Commission or its staff or other public employees. The Commission will not abridge or prohibit public criticism on the basis that the performance of one or more public employees is implicated. Nothing in this section confers any privilege or protection beyond that which is otherwise provided by law.

Section 6: Meeting Minutes

Commission staff will draft minutes after every regular and special Commission meeting, and every standing committee meeting, subject to approval by majority vote of the Commission or respective committee. The minutes must reflect meeting start and end time, commissioner attendance (including the absence of any commissioner for any votes taken), summary of each item, and vote (if applicable) for each item considered.

Section 7: Closed Sessions

Upon the determination by a legal advisor from the City Attorney's Office that a closed session is both authorized and appropriate under the circumstances, the Commission may call for a closed session. Appropriate notice must be given of all closed sessions.

Section 8: Recess

The Commission recesses for a period of one month each year. During this annual recess, the Chair may convene the Commission for special meetings, and the chair of a standing or ad hoc committee may convene a committee meeting.

ARTICLE VII - AGENDA REQUIREMENTS

Section 1: Agenda Preparation

Commission staff will work with the Commission Chair or standing Committee chair(s) to develop the agenda for all meetings. The agenda must be approved by the appropriate Chair and must contain a meaningful description of each item to be transacted or discussed at the Commission or committee meeting so that a person can reasonably determine if the item may affect his or her interests. The agenda also will provide instructions for public participation.

Item 8 - PEC Operations Policies

Section 2: Consent Calendar

A consent calendar is the portion of the printed agenda that lists routine matters that are expected to be non-controversial and on which there are no scheduled speakers. There will be no separate discussions on a consent calendar item unless, prior to its adoption, a request is made by a commissioner or the public, and accepted by the Commission, to remove the item from consent and consider it as a separate item.

ARTICLE VIII - VOTING

Section 1: Voting, Abstention, and Recusal

Each commissioner present at a Commission or committee meeting must vote on all matters put to a vote, unless the commissioner abstains or recuses him- or herself from a particular matter.

A commissioner wishing to abstain from a vote must state publicly the reason for abstention and move for Commission approval. If the motion passes, the abstaining commissioner must refrain from further discussion of the item and will not vote on the item.

A commissioner who has been advised by the City Attorney to recuse himself or herself from voting on an item due to a conflict of interest must recuse him or herself and leave the dais during discussion and voting on the item. A commissioner who recuses as to a particular item is not present for purposes of determining the existence of a quorum in Article VI, section 2, above.

Section 2: Voting by Proxy

Voting by proxy is prohibited.

ARTICLE IX - TREATMENT OF CONFIDENTIAL INFORMATION

In the course of their duties, commissioners may be exposed to privileged, confidential, or other information protected by law. While commissioners enjoy the full protection of the First Amendment and the public is entitled full access to public information, misuse of confidential information may have significant adverse consequences to the city, the Commission, city employees, or other individuals.

Section 1: Confidential Information

Generally, "Confidential Information," includes the following:

- A. Any information concerning a complaint that is still under preliminary review;
- B. Any communication or information provided to commissioners in preparation for, or during, a duly authorized closed session;

Item 8 - PEC Operations Policies

- C. Any communications by or from the City Attorney or any legal advisor to the Commission that reflect the legal advisor's work on behalf of the Commission, including the advisor's mental impressions, legal strategy, analysis, advice or conclusions;
- D. Non-public materials concerning pending or past litigation to which the Commission is/was a party;
- E. Information concerning Commission personnel matters, including but not limited to those concerning the hiring, performance, counseling, discipline or termination of any member or prospective member of Commission staff; or
- F. Other sensitive personal or financial information of third parties (including respondents to complaints) that would otherwise be protected by law.

Confidential Information does not include information generally available to the public or previously disclosed to members of the public, including at a Commission meeting. Nor does it include information that is required by law to be reported out of closed session.

The fact that Commission staff shares confidential information with another enforcement agency such as a District Attorney's Office, the California Fair Political Practices Commission, or the Federal Bureau of Investigation, does not render the information non-confidential.

Section 2: Prohibitions on Disclosure or Misuse of Confidential Information

Absent express authorization by the Executive Director, Chair, the Commission's legal advisor, or court order, a commissioner is prohibited from disclosing Confidential Information to any person who is not currently serving as a commissioner.

Commissioners are prohibited from using, directly or indirectly, Confidential Information for purposes other than the official business of the Commission.

If a commissioner has any doubt about a person's authorization to access Commission confidential information or is uncertain whether a particular use could constitute "misuse," the commissioner must, before disclosing or using the information, consult the Executive Director.

Section 3: Affirmative Duty to Safeguard Confidential Information

Commissioners must actively protect and safeguard Confidential Information through the use of physical and technical safeguards (e.g., strong passwords for access to electronically stored information) and secure methods of destruction, once materials are no longer needed.

A commissioner who discovers an unauthorized disclosure or misuse (potential or actual) of Commission confidential information must promptly notify the Executive Director. Similarly, a commissioner who receives a request, subpoena, or court order for disclosure of Commission confidential information must immediately notify the Executive Director.

Item 8 - PEC Operations Policies

Section 4: Term of Obligation

A commissioner's obligations pursuant to this Article do not terminate with the end of the commissioner's term of office.

ARTICLE X - PARLIAMENTARY PROCEDURE

Section 1: Robert's Rules of Order (Newly Revised) for Small Boards

The business of the Commission and its standing committees must be conducted, so far as it is practical in accordance with parliamentary rules as contained in Robert's Rules of Order Newly Revised, for Small Boards, except as modified by these rules and in accordance with the Brown Act and the Sunshine Ordinance. The City Attorney, or other person designated by the Chair and approved by the Commission, shall serve as the official parliamentarian for meetings of the Commission.

ARTICLE XI - STANDARDS OF CONDUCT

In addition to complying with the foregoing policies, each commissioner should aspire to:

A. **Actively and diligently support the mission, goals and objectives of the Commission**, for example, by thoroughly preparing for and attending Commission meetings; serving on committees; working cooperatively with Commission staff on officially-sanctioned projects; and attending civic events relevant to the Commission's purpose and jurisdiction.

B. **Preserve public confidence in commissioners' conduct, intentions, and impartiality**, for example, by fairly and objectively enforcing laws and regulations within the Commission's jurisdiction; refraining from conduct or statements that suggest personal bias; avoiding personal involvement in the investigation and prosecution of complaints (absent a recusal); and avoiding inappropriate political activity (endorsing, supporting, opposing, or working on behalf of a candidate or measure in an Oakland election).

C. **Protect the independence and integrity of the Commission**, for example, by working for the public good and not private interest in all matters related to city government; refraining from using their official positions to secure special advantages or benefits for self or others; declining to accept benefits or to participate in activities that might influence or undermine their ability to fairly and objectively discharge their Commission duties; and, if speaking to the press or public about a Commission matter, clearly explaining that the commissioner's statements reflect the personal view of the commissioner and not the view of the Commission.

D. **Set the highest example civil and efficient conduct of city government**, for example, by recommending and adopting rules and procedures that promote transparency and fair process in city government; treating the public, Commission staff, Commission legal advisors, and fellow

Item 8 - PEC Operations Policies

commissioners with dignity and fairness; and conducting the Commission's business in an efficient and timely manner.

ARTICLE XII - OPERATIONS POLICIES AMENDMENTS

As necessary, the Commission will review and amend these Operations Policies as provided by the Operations Ordinance. (O.M.C. section 2.24.070.) In so doing, the Commission must provide notice of any amendments to the City Council as required by the Public Ethics Commission Operations Ordinance.

Item 9 - Stipulation and Exhibit Summary

1 Kellie F. Johnson
2 Enforcement Chief
3 CITY OF OAKLAND PUBLIC ETHICS COMMISSION
4 1 Frank Ogawa Plaza, Rm. 104
5 Oakland, CA 94612
6 Telephone: (510) 238-4976

7 Petitioner

8 BEFORE THE CITY OF OAKLAND
9 PUBLIC ETHICS COMMISSION

10 IN THE MATTER OF) Case No.: 18-45
11)
12) **STIPULATION AND EXHIBIT**
13 JUSTIN BERTON,)
14) **Date:** 02/23/2022
15 Respondent.) **Place:** 1 Ogawa Plaza, Hearing Rm. 1 Oakland, CA
16) 94612
17)

18 **STIPULATION**

19 Petitioner, the Enforcement Unit of the City of Oakland Public Ethics Commission, and Respondent
20 Justin Berton, agree as follows:

- 21 1. This Stipulation will be submitted for consideration by the City of Oakland Public Ethics
22 Commission (Commission) at its next regularly scheduled meeting;
- 23 2. This Stipulation resolves all factual and legal issues raised in this matter and represents the
24 final resolution to this matter without the necessity of holding an administrative hearing to
25 determine the liability of the Respondent;
- 26 3. Respondent knowingly and voluntarily waives all procedural rights under the Oakland City
27 Charter, Oakland Municipal Code, and Public Ethics Commission Complaint Procedures,
28 including, but not limited to, the right to personally appear at an administrative hearing held
in this matter, to be represented by an attorney at his own expense, to confront all witnesses
testifying at the hearing, to subpoena witnesses to testify at the hearing, and to have the
matter judicially reviewed;

Item 9 - Stipulation and Exhibit Summary

- 1 4. This Stipulation is not binding on any other law enforcement agency, and does not preclude
2 the Commission or its staff from referring the matter to, cooperating with, or assisting any
3 other government agency with regard to this matter, or any other matter related to it;
- 4 5. In 2018, Respondent Justin Berton, the Communications Director for the Oakland City Mayor,
5 violated the Government Ethics Act, Misuse of City Resources OMC 2.25.060 (a)(1), when he
6 posted four links to newspaper editorials that endorsed the mayor in 2018, to the mayor's
7 official Nextdoor public agencies/elected officials account, (Count 1).
- 8 6. The attached exhibit (Exhibit) is a true and accurate summary of the facts in this matter and
9 is incorporated by reference into this Stipulation;
- 10 7. The Commission will impose upon Respondent a total administrative penalty in the amount
11 of \$1,000 on Count 1.;
- 12 8. A cashier's check from Respondent, in said amount, made payable to the "City of Oakland,"
13 is submitted with this Stipulation as full payment of the administrative penalty, to be held by
14 the Commission until the Commission issues its decision and order regarding this matter;
- 15 9. In the event the Commission refuses to accept this Stipulation, it shall become null and void,
16 and within fifteen business days after the Commission meeting at which the Stipulation is
17 rejected, all payments tendered by Respondent in connection with this Stipulation will be
18 returned to them; and
- 19 10. In the event the Commission rejects the Stipulation and a full evidentiary hearing before the
20 Commission becomes necessary, neither any member of the Commission, nor the Executive
21 Director, shall be disqualified because of prior consideration of this Stipulation.

21 Dated: _____

Kellie F. Johnson, Enforcement Chief
City of Oakland Public Ethics Commission, Petitioner

23 Dated: _____

Justin Berton
Justin Berton (May 23, 2022 10:51 PDT)

Justin Berton, Respondent

Item 9 - Stipulation and Exhibit Summary

DECISION AND ORDER

The foregoing Stipulation of the parties to “In the Matter of Justin Berton PEC Case No. 18-14, including all attached exhibits, is hereby accepted as the final Decision and Order of the City of Oakland Public Ethics Commission, effective upon execution below by the Chair.

Dated: _____

Arvon Perteet, Chair
City of Oakland Public Ethics Commission

Item 9 - Stipulation and Exhibit Summary

EXHIBIT

In the Matter of Justin Berton PEC 18-45 Case Summary

INTRODUCTION

1 On November 5, 2018, the City of Oakland Public Ethics Commission received a formal complaint that
2 alleged the Respondent, Justin Berton, the Director of Communications for Oakland Mayor Libby
3 Schaaf, violated a provision of the Government Ethics Act (GEA), Misuse of City Resources OMC
4 2.25.060 (a)(1), when he posted four links to newspaper editorials that endorsed the mayor in
5 2018 to the mayor's official Nextdoor public agencies/elected officials account.

6 Pursuant to the allegations in the complaint and enforcement procedures, staff opened an
7 investigation to determine whether the Respondent violated GEA. After close consideration of all of
8 the facts and the law, and the reasons explained in this Exhibit, Staff recommends that the
9 Commission approve a stipulation that Justin Berton violated the Government Ethics Act for a
10 penalty of \$1000.

SUMMARY OF LAW:

11 All statutory references and discussions of law pertain to the referenced statutes and laws as they
12 existed at the time of the violations.

13 **O.M.C. 2.25.060** of the Government Ethics Act prohibits a public servant from using or permitting
14 others to use public resources for a campaign activity or for personal or non-City purposes not
15 authorized by law.¹

FACTUAL SUMMARY AND ANALYSIS:

16 In 2018, Respondent was the mayor's Director of Communications. He had the authority to make
17 posts on various public and social media accounts of the Mayor, including drafting and sending out
18 public-facing communications. The Respondent was not required to seek prior approval from the
19 mayor or her chief of staff to make posts or send emails. He also supervised other staff members
20 who perform the same duties and was the mayor's media liaison.

21 Prior to 2018, Mayor Schaaf's public and political communications were generally delivered by email
22 newsletter, Facebook, Instagram and her Twitter accounts. She also had a previous Nextdoor
23 account that fell out of use by 2018. In August 2018, a representative from Nextdoor contacted the
24 mayor's office to follow-up with the mayor on reviving her Public Agencies/Elected Officials account.
25 Later that month, the representative helped the mayor and her staff re-activate the public agencies
26 account and provided training on how to use the public agency platform, including tips, guidance,
27 demonstrative posts on how the account should be used, and a review of the Nextdoor public
28 agency/elected official policy. The Respondent attended that training along with the mayor's chief of
staff, Shereda Nosakhare.

¹ As prohibited by California Government Code § 8314.

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1 Generally, Nextdoor is akin to an online messaging service where subscribers can communicate by
2 posts and emails to members of certain communities or geographical areas. Nextdoor provides a
3 general public platform for anyone who has access to the internet and meets the basic qualifications
4 to register as a member. Once established as a member, the average Nextdoor user can only access
5 or make posts within a limited geographical area or neighborhood.

6 Nextdoor also operates a separate public agency/elected official platform designated only for public
7 agencies or elected officials to primarily share or discuss policy or program matters with
8 constituents/subscribers of Nextdoor. Unlike the geographical restrictions imposed on the general
9 Nextdoor platform, the public agencies/elected officials account allowed a public official and his or
10 her designated staff to make posts that could be viewed and accessed by any Nextdoor subscriber in
11 a particular jurisdiction, thus reaching a larger audience.

12 According to the Nextdoor policy for public agencies/elected officials all public agencies/elected
13 officials were requested to use their “real name” first and last, title including the department name
14 from the public agency or office of the elected official. Public agencies and elected officials are
15 instructed to upload a profile picture or a picture of the department’s logo, badge or patch.²
16 Pursuant to Nextdoor terms of service and policy, public officials or anyone utilizing the platform on
17 their behalf, are prohibited from using the platform for political/campaign purposes.³

18 In August 2018, the mayor revived her public agencies and elected officials Nextdoor account, and
19 the Respondent along with select members of the mayor’s staff began using the Nextdoor account
20 on a regular basis to make posts concerning matters such as homelessness and bulk waste pickups.
21 The Respondent wrote most of the posts. Berton notified the mayoral staffers in September of 2018,
22 that the mayor’s posts were getting a lot of views, according to numbers compiled by Nextdoor.

23 On Sunday, November 4, 2018, two days before Mayor Schaaf’s re-election on November 6, 2018,
24 Berton posted the following to Nextdoor:

25 (1) Posted at 7:10AM:

26 **Subject: East Bay Express Endorses Libby Schaaf**

27 Honored to earn the sole endorsement of Oakland's alt-weekly. "The city is in better
28 financial health than when she took office and has operated more efficiently and
competently under City Administrator Sabrina Landreth; violent crime has continued

² Nextdoor Account Registration, “How to create and customize your agency profile.”

³ “Elected officials and staff are not permitted to use Nextdoor for Public Agencies for campaigning, campaign fundraising, announcing campaign events, position statements or any business other than official City or County business.” See, Nextdoor for Public Agencies Elected Officials Policy.

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1 to trend downward; police shootings and use of force cases have declined; and the
2 city is finally starting to build much-needed housing.
3 [https://www.eastbayexpress.com/oakland/our-november-2018-endorsement-
4 guide/Content?oid=21443046](https://www.eastbayexpress.com/oakland/our-november-2018-endorsement-guide/Content?oid=21443046)

5 (2) Posted at 7:18AM:

6 **Subject: San Francisco Chronicle Endorses Libby Schaaf**

7 Honored and humbled to receive the sole endorsement of the San Francisco
8 Chronicle. "Schaaf has approached each issue with a blend of tough-mindedness,
9 humanity and perspective. As she put it, her job is to 'not just solve the crisis of the
10 moment' but to pursue long-term solutions. She also has become Oakland's most
11 assertive ambassador and salesperson since her former mayoral boss, Jerry Brown,
12 held the office. [https://www.sfchronicle.com/opinion/editorials/article/Editorial-Re-
13 elect-Oakland-Mayor-Libby-Schaaf-13301310.php](https://www.sfchronicle.com/opinion/editorials/article/Editorial-Re-elect-Oakland-Mayor-Libby-Schaaf-13301310.php)

14 (3) Posted at 7:20AM:

15 **Subject: East Bay Times Endorses Libby Schaaf**

16 Honored + humbled to receive the sole endorsement of our East Bay Times. "Schaaf
17 clearly understands the scale and complexity of the problem - something none of her
18 opponents do." [https://www.mercurynews.com/2018/10/02/editorial-heres-why-to-re-
19 elect-oakland-mayor-libby-schaaf/](https://www.mercurynews.com/2018/10/02/editorial-heres-why-to-re-elect-oakland-mayor-libby-schaaf/)

20 (4) Posted at 7:26AM:

21 **Subject: The Bay Area Reporter Endorses Libby Schaaf**

22 Proud to earn the sole endorsement of The Bay Area Reporter. "Oakland Mayor
23 Libby Schaaf made a courageous decision earlier this year that her nine challengers
24 can't touch: in late February, she tweeted that 'credible sources' told her that an
25 immigration sweep by federal authorities was imminent and said it was her 'duty and
26 moral obligation' to warn families ... President Donald Trump and Attorney General
27 Jeff Sessions called her out, and Sessions said back in March that the Justice
28 Department was looking into obstruction of justice prosecution against her. Schaaf

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1 has stood her ground and told us during a recent editorial board meeting that she
2 would do it again. That took a lot of guts in the age of Trump....”

3 Two days before the City of Oakland November 2018, elections the Respondent wrote and uploaded
4 the posts above from his home, using his own laptop. During the investigation, the Respondent was
5 asked whether he knew his posts were campaign related at the time he made the posts, he admitted
6 that he knew the posts were campaign related rather than policy related, and that the purpose of
7 the posts was to encourage people to vote for Mayor Schaaf in the upcoming election. The
8 Respondent had made four similar posts on Twitter and Facebook that same day and had not
9 distinguished the fact that the Nextdoor account was an agency account whose terms of use were
10 limited to non-political or campaign related posts. The Respondent also reported that the mayor did
11 not ask him to make the posts, he did not coordinate the posts with the mayor’s campaign, nor did
12 he discuss them with the mayor or her chief of staff prior to making the posts.

11 After making the posts to Nextdoor, the Respondent said that he went to watch his child play
12 soccer. About three hours after uploading the posts, at or around 10:00 AM, the respondent received
13 notices on his cellular phone that detailed complaints from subscribers of the Nextdoor community
14 that alleged his campaign endorsement posts were a misuse of the public agency/elected official
15 account and violated policy rules. In response to the complaints, the Respondent decided on his own
16 to delete the posts. The posts were deleted shortly after 10:00 AM. On the same day, at 10:14 AM,
17 the Respondent sent a text to Mayor Schaff and stated the following:

16 Text Message
Sun, Nov 4, 10:14 AM

17 Justin Berton

18 FYI, I posted links to
19 endorsements from Chron
20 etc onto Nextdoor this am.
21 We got some complaints
22 ND Forum isn't intended for
that use so I deleted them
ASAP.

JB

23 The PEC investigator made a request for and obtained email communications from both the City of
24 Oakland’s IT department and the mayor’s office. The email request solicited communications that
25 occurred around November 4, 2018, between the Respondent, and the mayor or her staff. The emails
26 obtained revealed that on November 4, 2018 at 5:09 PM, the Respondent was contacted by a
27 representative of Nextdoor, Alexa Kopelman about the campaign activity posts complaints. Ms.

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1 Kopelman sent a reminder of the public agency policy and arranged to speak with the Respondent or
2 a member of his staff the next day.

3 Following this incident, for an unspecified period, Nextdoor restricted the mayor's account from
4 posting to the public agencies' platform. The mayor also relieved the Respondent from use of the
5 mayor's public agency Nextdoor account and assigned the duty to a different staffer.

6 ANALYSIS:

7 Misuse of City Resources provides that a public servant is prohibited from using or permitting others
8 to use public resources for a campaign activity or for personal or non-City purposes not authorized
9 by law. The Government Ethics Act also provides a public servant includes any elected or appointed
10 office holder of the City of Oakland including any full-time or part-time employee of the City.⁴

11 **Public Servant**

12 The first element to establish a violation of the Misuse of Resources ordinance is whether the
13 Respondent is a public servant within the definition of the City municipal code. Here, the mayor is a
14 public servant because she is an elected City office holder and the Respondent is also a public
15 servant because he is a full-time salaried employee of the City.

16 **Use of City Resource of Value**

17 Secondly, to establish that a violation of the Misuse of City Resources ordinance occurred, there
18 must be sufficient facts to show that the public servant "used" City resources and that the value of
19 the resource was "substantial enough to result in a gain or advantage to the user or a loss to the City
20 for which a monetary value may be estimated."

21 Nextdoor's public agency platform is a City resource because it is a platform of value offered only to
22 a public agency or the elected official. The Nextdoor public agency platform is an asset of value for
23 the City because it provides a social media forum that can reach a large population of Oakland voters
24 and consumers, provide an avenue for rapid response and the sharing of information. Nextdoor also
25 provides a resource for elected officials to communicate directly with potential voters. According to
26 Nextdoor, members/subscribers to its platform are residents of the jurisdiction of an agency account
27 and are automatically subscribed to updates from that agency. Here, Nextdoor estimates that at
28 least 20% of Oakland's households are members/subscribers of the site/platform, which means about
80,000 people are automatically subscribed to receive updates from elected officials in Oakland,
including the mayor.

⁴ O.M.C. 2.25.030 (D) (1) and (2).

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1 According to WebFX, email marketing for the average campaign can cost between \$300 to \$1,200 a
2 month. TopDraw, Inc. an online advertising/marketing company, estimates that the average cost per
3 thousand impressions of \$3-\$10 and an average cost per click of \$1-\$3.

4 There is also a cost associated with procuring email marketing lists. According to
5 ActiveCampaign.com, an email marketing list can cost between \$100 and \$600 CPM (cost per
6 mille/the price for 1,000 email addresses.

7 Here, an estimate is obtainable of how much money the mayor's re-election campaign would have
8 had to spend on researching, drafting and sending blast emails or online advertisement, with the
9 mayor's endorsements, to approximately 80,000 people. The advertising cost would be in addition
10 to the cost associated with purchasing an email marketing list of about 80,000 people in Oakland.
11 Taken together, the cost of advertising (whether emails or online) and the costs of procuring an
12 email marketing list that would include 20% of Oaklanders, is substantial enough to result in a gain or
13 advantage to the mayor.

Campaign Activity/ Personal Purposes

14 Lastly, to establish a violation of the Misuse ordinance, the facts must also show that the City
15 resource was used either for a "campaign activity" or "personal purposes."

16 When interviewed by the PEC investigator, the Respondent asserted that he was not thinking of the
17 public agency policy when he uploaded the campaign endorsements for the mayor to her Nextdoor
18 account. He reports that he was at home that Sunday and thought to himself, "I'm going to share
19 these endorsements to her social media." He did not distinguish the Nextdoor account from her
20 other social media accounts, so he posted the endorsements to Nextdoor, just as he had posted the
21 links to the endorsements to her personal Twitter, Facebook and Instagram pages.

22 The Respondent has acknowledged that the posts he made on the Mayor's Nextdoor Public Agency
23 account were campaign related, and thus that he was not supposed to make those posts on that
24 account. He stated that the purpose of the posts was to encourage people to vote for the mayor.
25 The Respondent told the investigator that he had always understood that the use of City resources
26 was "emphatically" not permitted "at all," and that the prohibition extended to the mayor's official
27 government agency social media accounts. He also told the investigator that he understood at the
28 time he shared the endorsements that he was sharing an editorial endorsing the mayor and that it
would be an act of campaigning. Thus, the Respondent acted with knowledge of the rules, although
he maintains that the posting of campaign-related links was a mistake that he made as he hurried to
get his children to their soccer game on a Sunday morning.

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1 In addition to the Respondent's admissions, the following facts indicate that he had been aware that
2 posting editorials of endorsements for the mayor was campaign material that should not have been
3 posted on the Nextdoor public agency account. In August of 2018, three months before he uploaded
4 the campaign posts, the Respondent was trained on the use of Nextdoor and informed of the public
5 agencies/elected officials' policy that prohibited the use of the platform for campaigning.

6 It can also be inferred that the Respondent knew that the posts were campaign-related because the
7 endorsements for the mayor were obvious and easily identifiable as campaign material. The posts
8 were so readily identifiable as prohibited campaign material that later in the day on November 4,
9 2018, a Nextdoor representative contacted the Respondent and the mayor's staff and informed
10 them that the posts the Respondent made violated the public agency policy and was considered
11 campaign activity. The posts were so easy to identify as prohibited campaign-related material that
12 multiple Oakland Subscribers of Nextdoor, within a few hours of the Respondent posting the
13 endorsements, complained.

14 Alternatively, even if the use of the City resource was not for a "campaign activity," arguably, the
15 Nextdoor account was used for the mayor's or the Respondent's "personal purposes." The Electoral
16 campaign of an elected official is not City related business. Thus, the Respondent's posts, designed
17 for the specific purpose to elicit votes for the mayor, were activities for private gain or advantage, or
18 an outside endeavor not related to City business.

VIOLATION(S):

19 Respondent, Justin Berton, violated the following Oakland Municipal Code(s):

Count 1: Misuse of City Resources

20 On or about November 4, 2018, Respondent, Justin Berton, the Director of Communications for the
21 Mayor of the City of Oakland, violated O.M.C. 2.25.060 of the Oakland Government Ethics Act when
22 he used a Nextdoor public agency/elected officials account (a City resource) reserved for City
23 Officials or designated elected officials to post campaign/political activity or non-City purpose not
24 authorized by law.

PENALTIES:

25 Oakland Government Ethics Act authorizes the Commission to impose maximum administrative
26 penalties of up to \$5,000, or three times the amount unlawfully used/gained (whichever is greater),
27

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1 per violation. The Base level penalty for this type of violation is \$2,000.⁵ Staff recommends that the
2 Commission impose a \$1,000 penalty.

3 The PEC will consider all relevant mitigating and aggravating circumstances surrounding a violation
4 when deciding on a penalty, including, but not limited to, the following factors:

- 5 1. The seriousness of the violation, including, but not limited to, the extent of the public impact
6 or harm;
- 7 2. The presence or absence of any intention to conceal, deceive, or mislead;
- 8 3. Whether the violation was deliberate, negligent, or inadvertent;
- 9 4. Whether the violation was isolated or part of a pattern;
- 10 5. Whether the respondent has a prior record of violations and/or demonstrated knowledge of
11 the rule or requirement at issue;
- 12 6. The extent to which the respondent voluntarily and quickly took the steps necessary to cure
13 the violation (either independently or after contact from the PEC);
- 14 7. The degree to which the respondent cooperated with the PEC's enforcement activity in a
15 timely manner;
- 16 8. The relative experience of the respondent.

17 The PEC has broad discretion in evaluating a violation and determining the appropriate penalty based
18 on the totality of circumstances. This list of factors to consider is not an exhaustive list, but rather a
19 sampling of factors that could be considered. There is no requirement or intention that each factor –
20 or any specific number of factors - be present in an enforcement action when determining a penalty.
21 As such, the ability or inability to prove or disprove any factor or group of factors shall in no way
22 restrict the PEC's power to bring an enforcement action or impose a penalty

Aggravating Factors

23 Here, the circumstances of the Respondent's conduct establish aggravating factors that should
24 increase the severity of the penalty:

- 25 1. The Respondent had demonstrated knowledge of both the City's Misuse of City Resources
26 and the Nextdoor prohibition against campaign-related posts.
- 27 2. The community was harmed by the Respondent's actions.
- 28 3. The Respondent's conduct was negligent.

⁵ Public Ethics Commission Enforcement Penalty Guidelines, Page 4.

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1 **Mitigating Factors**

- 2
- 3 1. Respondent does not have prior Public Ethics Commission violations.
 - 4 2. The Respondent cooperated with the Public Ethics Commission enforcement activity.
 - 5 3. The Respondent was disciplined by the mayor's office and relieved of Nextdoor posting duties.

6 The decision to make a recommendation of \$1,000 was informed by first evaluating the weight of the
7 mitigating factors such as the age of the case, the ability of the Respondent to pay a penalty, his
8 cooperation with the investigation and the discipline the mayor imposed by removing the
9 Respondent's access to Nextdoor. Based on the mitigating factors, a lesser penalty than the baseline
is fair.

10 On-the-other-hand, aggravating factors, including the fact that the Respondent is the
11 Communications Director for an elected official and should have known that he needed to exercise
12 care in posting political endorsements on behalf of the mayor. The facts also establish that
13 Respondent intended to post endorsements for the mayor on her social media sites, and the posts
14 were not made accidentally, even if he contends that their inclusion specifically on the Nextdoor
15 public agency account was. The Respondent's failure was that he did not exercise due diligence or
16 even take steps to confirm that he was posting to the correct account. Lastly, and most important
17 the posts caused significant harm to the Nextdoor subscriber community, resulting in multiple
18 complaints and subscriber concern. Each aggravating factor balanced against the mitigating factors
19 support the imposition of a financial penalty of \$1,000, and not a warning letter, diversion or a lesser
20 penalty amount.

18 **RECOMMENDATION:**

19
20 Based on the analysis above, Staff recommends that the Commission approve a stipulated
21 agreement and impose a financial penalty in the amount of \$1,000.
22
23
24
25
26
27
28

Item 11 - Announcement and Application

CITY OF OAKLAND PUBLIC ETHICS COMMISSION

Arvon Perteet (Chair)
Charlotte Hill
Ryan Micik
Joseph Tuman
Francis Upton



Suzanne Doran, Acting Executive Director

Public Ethics Commission Commissioner Vacancy Announcement August 2022

The City of Oakland Public Ethics Commission (PEC) is now accepting applications to fill two PEC-appointed Commissioner positions, as part of its seven-member volunteer citizen board. Both vacancies will start January 22, 2023, and will expire on January 21, 2026. **Deadline: October 14, 2022.**

Note: All applicants must attest in their application that they have attended (observed in-person via Zoom) a PEC meeting. To observe a PEC meeting for this application process please contact the Public Ethics Commission at ethicscommission@oaklandca.gov.

Background

The Public Ethics Commission is a seven-member board of volunteers dedicated to the City Charter goal of ensuring ***fairness, openness, honesty, and integrity*** in City government. Guided by duties and authority set out by City ordinance, the Commission works to achieve its goals through a three-pronged approach that focuses on prevention, enforcement, and collaboration. Specifically, the following local laws are the foundation of the Commission's responsibilities in three general areas – campaign finance, ethics, and transparency:

- Oakland Government Ethics Act
- Oakland Campaign Reform Act
- Conflict of Interest Code
- Sunshine Ordinance
- Limited Public Financing Act
- Lobbyist Registration Act
- Oakland's False Endorsement in Campaign Literature Act

Commission Members

Each member of the Commission must be an Oakland resident who is registered to vote in Oakland. Three Commissioners are appointed respectively by the Mayor, City Attorney, and City Auditor. The remaining four are appointed by the full Commission on a rotating schedule. Once appointed, a commissioner is expected to participate in monthly meetings and occasional subcommittee meetings to provide guidance to staff in the conduct of the Commission's business, make final decisions on enforcement matters, and serve as an adjudicative body/hearing officer (neutral judge) in cases that require an administrative hearing.

Commissioners are appointed for a term of 3 years, and during his or her tenure a commissioner may not do any of the following:

Item 11 - Announcement and Application

1. Have an employment or contractual relationship with the City during the member's tenure and for one year after the date of separation.
2. Be a registered Oakland lobbyist, or be required to register as an Oakland lobbyist, or be employed by or receive gifts or other compensation from a registered Oakland lobbyist during the member's tenure and for one year after the date of separation.
3. Seek election to any other public office in a jurisdiction that intersects with the geographic boundaries of Oakland or participate in or contribute to an Oakland municipal campaign.
4. Endorse, support, oppose, or work on behalf of any candidate or measure in an Oakland election.

Commissioners receive no compensation and may serve no more than two consecutive three-year terms.

Selection Process

Following the application deadline, a subcommittee of three Commissioners will review applications and conduct oral interviews of candidates. The subcommittee will select the top several candidates who will be introduced and briefly interviewed by the full Commission at the Commission's public meeting.

Desired Skills and Abilities

Commissioners should represent a variety of backgrounds and professions so that the Commission provides a well-rounded perspective on Oakland City government, law, community building and engagement, leadership, program administration, enforcement, and policies related to campaign finance, ethics, and transparency. Specifically, a Commissioner should be able to do the following:

- Read, analyze, and understand written information and make decisions based on the information
- Listen to public input, assess community needs, and make decisions about how to best accomplish the Commission's goals
- Understand the context in which the Commission operates within City government and the broader community
- Communicate orally during a public, televised meeting
- Collaborate effectively with other Commissioners, the public, City officials, and staff
- Interpret rules, laws and policies and objectively apply a rule to a particular set of facts
- Identify personal conflicts of interest or other factors that could lead to actual or perceived improper influence
- Serve with fairness, openness, honesty, and integrity
- Complete a *Form 700 – Statement of Economic Interests* annually, disclosing information such as one's financial interests in investments, property, income, and gifts (to view a copy of a Form 700, contact Commission staff or visit www.fppc.ca.gov)
- Adhere to all Commission-related laws and policies, including but not limited to the Oakland City Charter, Oakland Government Ethics Act, Oakland Sunshine Ordinance, Commission Complaint Procedures, and Commission Operations Policies (by-laws).
- All applicants must attest in their application that they have attended (observed in-person via Zoom) a PEC meeting. To observe a PEC meeting for this application process please contact the Public Ethics Commission at ethicscommission@oaklandca.gov.

Apply online: <https://tinyurl.com/y6eji4gm>

For More PEC Information

For more about the Public Ethics Commission, visit us online at www.oaklandca.gov/pec. We also suggest you attend a City Council meeting in person or watch one on local television (Channel 10). For more information about the Commission or this position, contact Staff at ethicscommission@oaklandca.gov or (510) 238-3593

Item 11 - Announcement and Application

CITY OF OAKLAND PUBLIC ETHICS COMMISSION



Commissioner Application

Name: _____

Mailing Address: _____

Daytime Phone: _____ Evening Phone: _____

Email: _____ City Council District: _____

Are you an Oakland resident? Yes No Years of Residency in Oakland: _____

List any City of Oakland Boards or Commissions (including this Commission) on which you currently or have previously served:

Please answer yes or no to all the following questions:

1. Are you currently employed by the City or have any direct and substantial financial interest in any work, business, or official action by the City? Yes No
2. Are you currently or planning to seek election to any other public office, participate in, or contribute to an Oakland municipal campaign? Yes No
3. Are you currently or planning to endorse, support, oppose, or work on behalf of any candidate or measure in an Oakland election? Yes No
4. Are you an Oakland lobbyist or required to register as a lobbyist, or do you receive gifts or compensation from an Oakland lobbyist? Yes No
5. All applicants must attest in their application that they have attended (observed in-person via Zoom) a PEC meeting. Do you attest that you already have or will attend a PEC meeting before your final interview with the Commission? Yes No When? _____. For meeting dates, please contact the PEC at ethicscommission@oaklandca.gov
6. List any languages other than English that you speak fluently. _____
7. How did you hear about this vacancy? _____

List the names, addresses and telephone numbers of two references:

1. Name: _____
Address: _____
Phone: _____ Email: _____
2. Name: _____
Address: _____
Phone: _____ Email: _____

By signing below, I certify that all the information included in this application and supporting materials is true to the best of my knowledge. I also understand that this application packet is a public record, subject to public inspection, and that if I proceed to the final interview with the Commission, the packet will be distributed publicly as part of the selection process.

Signature: _____ Date: _____

See Supplemental Questions on next page →

Item 11 - Announcement and Application

Supplemental Questions

On a separate page, please answer the following four questions:

1. **Why do you want to serve on the Public Ethics Commission?**
2. **What skills and experience will you bring to the Commission?** (Include any governmental experience, activities with civic and business organizations, neighborhood groups, or any other experience that would contribute to your effectiveness as a Commissioner.)
3. **What issues, projects, or goals would you like to pursue while serving on the Commission?**
4. **What do you think are the City's most pressing ethics, campaign finance, or transparency challenges?**
5. **What else would you like the subcommittee to know as your application is considered?**

Applications must include the following materials:

1. Applicant's signature
2. Answers to the Supplemental Questions
3. Applicant's resume

Applications must be submitted **by COB on October 14, 2022**, by email to PEC staff:

Public Ethics Commission
Attn: Ana Lara-Franco
1 Frank Ogawa Plaza, Room 104
Oakland, CA 94612
ethicscommission@oaklandca.gov

For questions, please call (510) 238-3593.

Web: www.oaklandca.gov/pec

Item 11a - Recruitment Flyer

Deadline: October 14, 2022

Want to help build a more ethical culture at City Hall?

Want to reshape our campaign process to expand equity in community participation?

Apply for a seat on the Oakland Public Ethics Commission.

Read the description at:
Visit: <https://tinyurl.com/pecvacancy>

Apply online: <https://tinyurl.com/y6ejj4gm>

For inquiries, please contact:
(510) 238-3593 or
ethicscommission@oaklandca.gov.





Arvon J. Perteet, Chair
Charlotte Hill
Ryan Micik
Joe Tuman
Francis Upton IV

Suzanne Doran, Acting Executive Director

TO: Public Ethics Commission
FROM: Jelani Killings, Ethics Analyst
Suzanne Doran, Acting Executive Director
DATE: July 26, 2022
RE: 2022 LPF Program Implementation

Summary

The PEC administers the Limited Public Financing (LPF) Act, which provides public funds for City Council district candidates running for office in Oakland. Commission staff is gearing up for program implementation for the 2022 election. This memorandum provides an overview of the LPF program and plan for the 2022 election.

Background

The Limited Public Financing Act was adopted in 1999 to provide limited monetary assistance to candidates for local elective office for the purpose of helping ensure that all individuals have a fair and equal opportunity to participate in the elective and governmental process. The LPF Act was amended in 2010 to set specific parameters around who may participate, how funds may be used, and how the funds may be dispersed. The program now is a reimbursement system for city council district candidates only.

The Commission is responsible for administering the LPF program, including developing procedures, publishing reimbursement application forms, ensuring that candidates meet eligibility criteria, and issuing payments to candidates for qualified expenditures.

The process for applying for public funds begins after the City Clerk certifies the names of all candidates to appear on the ballot, shortly after the close of nominations on August 12, 2022, which is 88 days before the November election. No later than seven days after the City Clerk certifies the names of candidates, the Commission must determine at a public meeting whether the amount of money in the Election Campaign Fund is adequate to provide the maximum amount of funds to potentially eligible candidates, and if not, the Commission will disburse available funds on a pro rata or other equitable basis.

Funds Available

Currently, there is approximately \$177,000 allocated in the Election Campaign Fund for use for the Limited Public Financing Program for the 2022 election.

There are three district seats open in the November 2022 election: District 2, District 4, and District 6. As of the date of this memorandum, there are nine candidates who have filed campaign forms as candidates for office in one of these three districts.

Under the LPF Act, a candidate may receive LPF funds in an amount up to 30 percent of the voluntary expenditure ceiling (spending limit) for that race; however, the amount in the Election Campaign Fund ultimately dictates how much money will be available to each candidate. The Commission will need to determine whether the amount of money in the Election Campaign Fund is adequate to provide the maximum amount of funds to all potentially eligible candidates, and if not, the Commission will disburse available funds on a pro rata or other equitable basis. The legally required meeting for the Commission to make that determination will be scheduled to occur sometime in mid- to late-August, depending on the date the City Clerk announces candidate certifications.

The table below summarizes the potential breakdown of the number of candidates expected to run in the 2022 election, the maximum amount allowable per candidate under the law, and the estimated amount of money that will likely be available for each candidate based on the amount of money in the Fund, assuming all candidates are eligible and opt into the program.

City Council District	Voluntary Expenditure Ceiling	Maximum Potential LPFA Amount for Each Candidate (if fully funded)	Number of Candidates Currently Campaigning	Estimated Amount Available to Each Candidate (if all participate)
2	\$176,000	\$52,800	1	\$19,667
4	\$176,000	\$52,800	3	
6	\$184,000	\$55,200	5	

Below is a projected timeline of events for the LPF program:

Process	Details	Date
Nomination Period Begins	The Nomination Period opens 113 days before an election.	Monday, July 18, 2022
Nomination Period Ends	The Nomination Period closes 88 days before the election.	Friday, August 12, 2022
Nomination Period Extended	If the incumbent does not file for re-election, then the nomination period is extended for five days.	Wednesday, August 17, 2022
City Clerk Certification	The Office of the City Clerk certifies the names of all candidates to appear on the ballot (unless nomination period extended).	Usually within a few days of the end of Nomination Period
Public Ethics Commission Determines Disbursement Plan	The Commission determines whether the Election Campaign Fund will be adequate to provide the maximum amount of funds to potentially eligible candidates, and the Commission decides on a process for disbursement of available funds on a pro rata or other equitable basis.	Not to exceed seven days after City Clerk certification (a special PEC meeting must be set)

Potential Funds Redistribution by the Commission	The Commission may at any time revise the disbursement plan consistent with LPFA.	October 12, 2022, PEC Meeting (if needed)
Election Day	The day before the election is the last day to submit claims for reimbursement to the Commission.	Tuesday, November 8, 2022

This memorandum is for informational purposes in preparation for the Commission’s next step of determining the allocation of campaign funds once the number of candidates is confirmed. That determination will be made at a special meeting, exact date to be determined, in mid-August. No Commission action is needed at this time.

Item 13 - Disclosure Report



Arvon J. Perteet, Chair
Charlotte Hill
Ryan Micik
Joe Tuman
Francis Upton IV

Suzanne Doran, Acting Executive Director

TO: Public Ethics Commission
FROM: Suzanne Doran, Acting Executive Director/Lead Analyst
Jelani Killings, Ethics Analyst
DATE: July 29, 2022
RE: Disclosure and Engagement Monthly Report for the August 10, 2022, Meeting

This memorandum provides a summary of major accomplishments in the Public Ethics Commission's (PEC or Commission) Disclosure and Engagement program activities since the last monthly meeting. Commission staff disclosure activities focus on improving online tools for public access to local campaign finance and other disclosure data, enhancing compliance with disclosure rules, and conducting data analysis for PEC projects and programs as required. Engagement activities include training and resources provided to the regulated community, as well as general outreach to Oakland residents to raise awareness of the Commission's role and services and to provide opportunities for dialogue between the Commission and community members.

Compliance with Disclosure Requirements

Campaign finance disclosure – Mid-July marked the beginning of the nominations process for the eight local positions on Oakland's November 8 ballot. Thirty-four candidates have now submitted statements of intent to run for office, and 20 have registered campaign committees. August 1 marks the campaign finance deadline for all registered committees, 69 in total, with activity between January 1 and June 30. All Oakland-registered committees received deadline notifications, and staff is reaching out to new committees to ensure they are prepared to file their reports electronically.

Campaign statements are available to view and download at the PEC's [Public Portal for Campaign Finance Disclosure](#).

Lobbyist disclosure – The Oakland Lobbyist Registration Act (LRA) requires lobbyists to submit quarterly reports disclosing their lobbying activities to ensure that the public knows who is trying to influence City decisions.

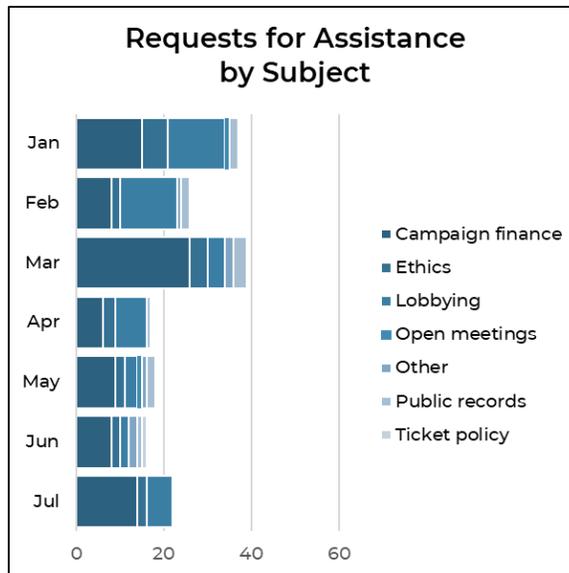
July 30 is the deadline for quarterly lobbyist activity reports covering the period from April 1 through June 30, 2022. An up-to-date list of registered lobbyists and lobbyist activity reports with links to view and download individual reports is available at the PEC's [Lobbyist Dashboard and Data](#) webpage.

Item 13 - Disclosure Report

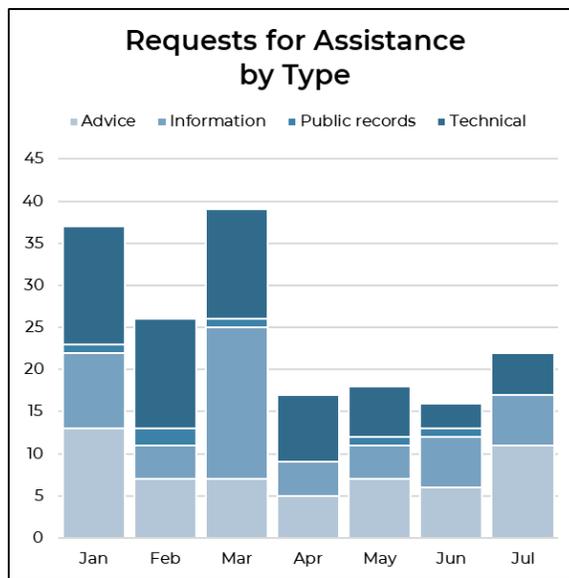
Advice and Engagement

Advice and Technical Assistance – In June and July, Commission staff responded to 38 requests for information, advice or assistance regarding campaign finance, ethics, Sunshine law, or lobbyist issues, for a total of 177 requests in 2022.

Candidates and Campaigns – In June, staff updated the PEC’s candidate and treasurer training page with links to an on-demand recording of the live training and supplemental materials. In addition, campaign treasurers who complete the training and pass a post-training quiz will be posted on the Commission website as a resource for candidates.



The nomination period for candidates seeking to qualify for the November 2022 ballot commenced on July 18 and ends on August 12. Commission staff provided the Office of the City Clerk with materials to include with the candidate nomination packet including our candidate checklist and LPF Program informational flyer.



New Employee Orientation – Staff continues to make presentations at the City’s monthly New Employee Orientation (NEO) providing new employees with an introduction to the PEC and overview of the Government Ethics Act (GEA). In June and July, staff trained over 60 new employees on GEA provisions.

Ticket Distribution Policy – In June, Commission staff met with Council staff and the IT Department to collaborate on modifications to the online Ticket Distribution Report system to conform with the requirements of the new policy and plan for implementation.

In July, Staff sent out an advisory to all elected officials informing them of the new policy and key changes that they need to be aware of. In addition, Staff created a training and offered to meet with City staff in each elected office to go over implementation of the new policy. On July 20, Staff met with and trained City staff in the Mayor’s office about the new ticket distribution rules.

Political Activity Advisory – In July, Staff sent a citywide advisory to employees as a reminder about campaign rules for officeholders and City staff. The advisory covered key provisions

Item 13 - Disclosure Report

including misuse of City resources, mandatory reporting for City officials who solicit campaign contributions, and ballot measure activities. The advisory also included a link to a joint FAQ from the PEC and City Attorney's Office.

Contractors – In July, Commission staff started outreach to raise awareness of the contractor ban on campaign contributions. Staff met with representatives of non-profits that provide services through contracts with the City of Oakland to answer questions about the contractor ban and explore ways to better reach this segment of the regulated community. Staff is developing outreach and training materials for targeted outreach.

Online Engagement

Social Media – Each month Commission staff post social media content to highlight specific PEC policy areas, activities, or client-groups. In June and July, our posts highlighted upcoming campaign finance and lobbyist disclosure deadlines, disclosure data resources, and training resources for candidates and treasurers.

Item 14a - Enforcement Report



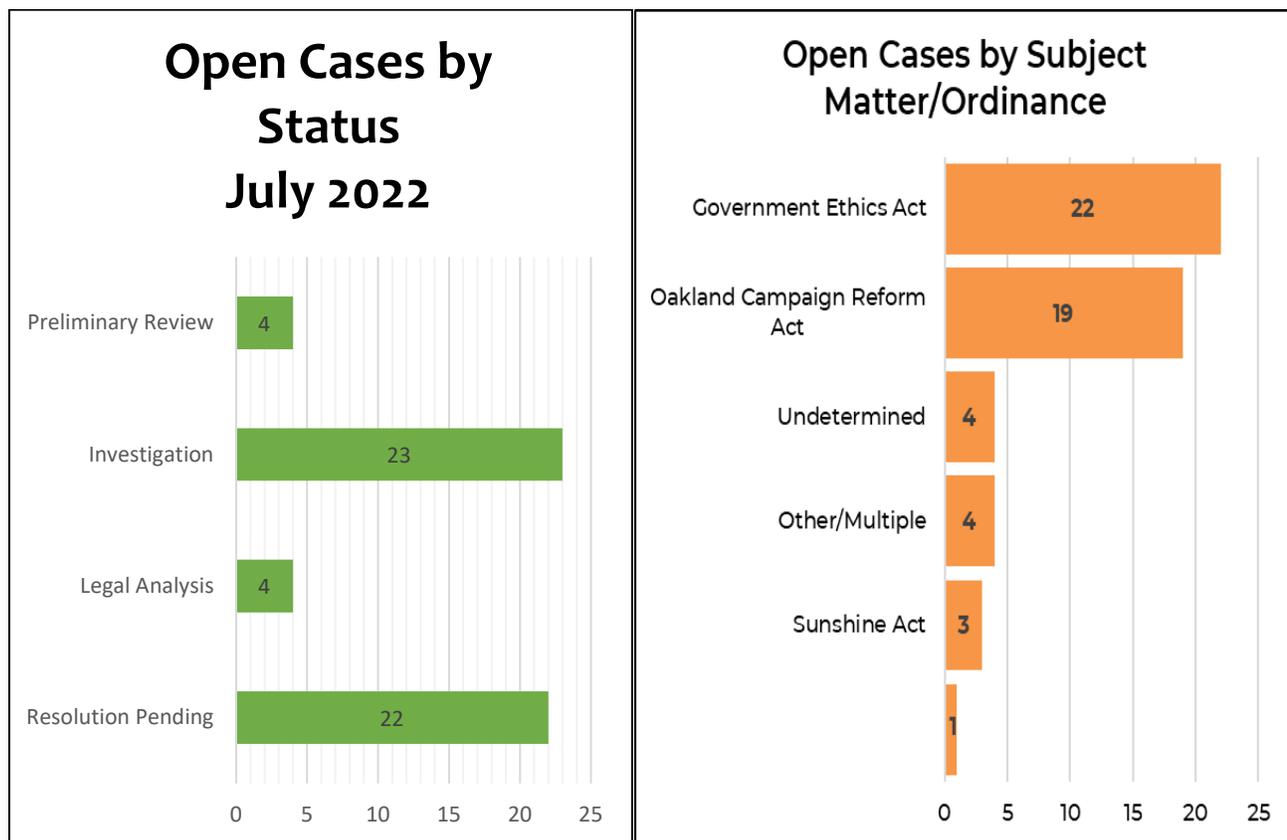
Arvon Perteet, Chair
Charlotte Hill
Ryan Micik
Joseph Tuman
Francis Upton IV

Suzanne Doran, Acting Executive Director

TO: Public Ethics Commission
FROM: Kellie Johnson, Enforcement Chief
DATE: July 27, 2022
RE: Enforcement Program Update for the August 10, 2022, PEC Meeting

Current Enforcement Activities:

Since the last Enforcement Program Update on June 8, 2022, Commission staff received 3 new complaint(s). This brings the total Enforcement caseload to 53 open cases: 16 matters in the intake or preliminary review stage, 23 matters under active investigation, 4 matters under post-investigation analysis, and 22 matters in settlement negotiations or awaiting an administrative hearing.



Since the last Enforcement Program Update in June 2022, the following status change(s) have occurred:

- 1. In the Matter of Justin Berton (Case No. 18-45).** On November 5, 2018, the City of Oakland Public Ethics Commission (PEC) received a formal complaint that alleged the Respondent, Justin Berton, the Director of Communications for Oakland Mayor Libby Schaaf, violated a provision of the Government Ethics Act (GEA), Misuse of City Resources OMC 2.25.060 (a)(1), when he posted four links to newspaper editorials that endorsed the mayor in 2018 to the mayor's official Nextdoor public agencies/elected officials' account. After careful consideration of all the facts and the law, and the reasons explained in the attached memorandum, Staff recommends that the Commission approve a stipulation that Justin Berton violated the Government Ethics Act and impose a financial penalty in the amount of \$1,000. (See Action Item)
- 2. In the Matter of Assistant City Administrator, Gregory Minor (Case No. 22-02).** On January 18, 2022, the City of Oakland Public Ethics Commission (PEC) received a complaint that alleged that Assistant City Administrator and Director of Oakland's Cannabis Program, Gregory Minor violated the Oakland Sunshine Act, Government Ethics Act, California Brown Act and the Public Records Act and specifically, Misuse of City Resources, when he allegedly did the following eight things: 1. Forwarded a "private" email; 2. Failed to disclose public records; 3. Misused city resources; 4. Exercised bias in the selection process; 5. Had improper communication with an applicant; 6. Engaged in cronyism; 7. Violated open meeting laws by awarding a 5th Cannabis permit; and 8. Violated "due process." Staff completed its review of the matter and after careful review of the facts alleged, relevant law and Enforcement Procedures, the Staff found that the allegations failed to establish that a violation of the Oakland Sunshine Act, Government Ethics Act, or any other provision within the jurisdiction of the PEC had occurred. Pursuant to Enforcement Procedures the complaint was dismissed. (See Attachments)
- 3. In the Matter of Planning and Building, and Tim Low (Case No. 22-06).** On or about February 22, 2022, the City of Oakland Public Ethics Commission (PEC) received a complaint which alleged that the Planning and Building Department and Tim Low failed to enforce a City ordinance, O.M.C. 17.103.080 "Conversion of Existing Detached Accessory Structure," that requires, among other things, that any renovations/conversions of an accessory property must be enveloped (fit within) the height of the pre-existing structure. It is further alleged that since the adoption of OMC 17.103.080 in 2020, the City has failed to inspect buildings for or enforce a provision of this ordinance that governs renovations to Existing Detached Accessory Structures (ADU). It is alleged the failure to conduct these inspections, violated the Oakland City Ordinance O.M.C. 2.25.060 (A)(2) Misuse of Position/Authority. Staff completed its review of the matter and after a close review of the facts alleged, relevant law, department regulations and Enforcement Procedures. The Staff found that the alleged facts do not constitute a violation of the Government Ethics Act or any other provision within the jurisdiction of the PEC. Pursuant to Enforcement Procedures the complaint was dismissed. (See Attachments)
- 4. In the Matter of Councilmember Sheng Tao's candidate campaign and Julie Caskey, campaign Treasurer (Case No. 22-04).** On February 7, 2022, the PEC received a complaint that alleged that Councilmember Sheng Thao's campaign committee and its campaign manager Julie Caskey, received/accepted six (6) donations that were over the \$900 limit for individual contributions, in violation of the Oakland Campaign Reform Act. Staff completed its review of the matter and after a close review of the facts alleged, relevant law, department regulations and Enforcement Procedures, the Staff found that the campaign did receive two "overlimit" contributions but promptly returned the contributions to the donors. Thus, the alleged facts do not constitute a violation of the Oakland

Campaign Reform Act or any other provision within the jurisdiction of the PEC. Pursuant to Enforcement Procedures the complaint was dismissed. (See Attachments)

5. **In the Matter of Councilmember Loren Taylor (Case No. 22-05).** On February 10, 2022, the PEC received an email complaint that alleged that City of Oakland Councilmember Loren Taylor violated the Government Ethics Act when he approached an Oakland Redistricting Commissioner at a Saturday Market/Open Air Market and advocated that the Redistricting Commission expand his district to include the Oakland Coliseum. The complaint alleged that the Respondent's advocacy to the Commissioner was a violation of the Government Ethics Act O.M.C. 2.25.060 (A) (2) Misuse of Position and 2.25.070, and 2.25.070 (E) Non-Interference in Administrative Affairs. Staff completed its review of the matter and after review of the facts alleged, relevant law, and Enforcement Procedures. The Staff found that the alleged facts do not constitute a violation of the Government Ethics Act or any other provision within the jurisdiction of the PEC. Pursuant to Enforcement Procedures the complaint was dismissed. (See Attachments)

6. **In the Matter of Vince Sugrue (Case No. 22-03).** On February 1, 2022, the Public Ethics Commission (PEC) received a complaint that alleged that Vince Sugrue a City of Oakland Planning Commissioner, committed three violations of the Oakland Municipal Code. First it is alleged that Sugrue violated the Conflict of Financial Interest provision of the Government Ethics Act (GEA), when on January 19, 2022, he participated in a vote to approve the recommendation for certification of the Environmental Impact Report for Howard Terminal Ballpark project. The complaint also alleged that since his appointment to the City Planning Commission in May 2021, the Respondent failed to file a Statement of Economic Interest for his position on the Planning Commission. Lastly, the complaint further alleged that although he had previously filed a Statement of Economic Interest for his position on the Landmarks Advisory Board, the Respondent failed to disclose that he is a "Political and Public Relations Representative" for the Sheet Metal Local 104 on his Statement of Economic Interest (Form 700). Moreover, the complainant alleged that the Respondent also misrepresented his position at the organization in the text of the 700 forms he had filed for the Landmarks Preservation Board. Staff completed its review of the matter and after review of the facts alleged, relevant law, department regulations and Enforcement Procedures. The Staff found that the alleged facts did not establish a violation of the Government Ethics Act or any other provision within the jurisdiction of the PEC. Pursuant to Enforcement Procedures the complaint was dismissed. (See Attachments)

PEC Case No. 21-06 (disclosure of open investigation). On July 13, 2022, Commission staff became aware of the potential for a conflict of interest under OMC 2.25.040. To avoid a conflict of interest, Chief Johnson recused herself from pending PEC Case 21-06. Safeguard procedures were implemented immediately to avoid a conflict of interest or the appearance of a conflict of interest.

CITY OF OAKLAND



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Public Ethics Commission
Enforcement Unit

(510) 238-5239
FAX (510) 238-3315
TDD (510) 238-3254

July 27, 2022

Cesar Anglobaldo

[REDACTED]
[REDACTED]

Re: PEC Complaint No. 22-02; Dismissal Letter Regarding City of Oakland Marijuana Dispensary, Director/Assistant to the City Administrator.

Dear Mr. Anglobaldo:

On January 18, 2022, the City of Oakland Public Ethics Commission (PEC) received your complaint (Complaint No. 22-02) that Assistant City Administrator and Director of Oakland's Cannabis Program, Greg Minor violated the Oakland Sunshine Act, Government Ethics Act, California Brown Act and the Public Records Act and Misuse of City Resources when he allegedly did the following eight things: 1. Forwarded a private email; 2. Failed to disclose public records; 3. Misused city resources; 4. Exercised bias in the selection process; 5. Had improper communication with an applicant; 6. Engaged in cronyism; 7. Violated open meeting laws by awarding a 5th Cannabis permit and 8. Violated due process. After a close review of your complaint, facts, relevant law and my telephone conversations with you, we found that there are insufficient facts to establish a violation of the Oakland Sunshine Act, Government Ethics Act or any other provision within the jurisdiction of the PEC and we must dismiss your complaint pursuant to our Complaint Procedures.

The complaint alleged that in February 2020 you submitted an application for a dispensary permit to the City of Oakland Cannabis Program. Once received applications were submitted to a committee that scored each application. The application with the best scores were selected as dispensary recipients. On May 19, 2020, the City announced it had selected the eight permit recipients. On May 21, the City posted the scoring results of the applicants. On May 22, 2020, around 12:30 PM, the Respondent emailed all applicants and informed them of the selected applicants and provided details of the scoring process.

Item 14b - Dismissal Letter 22-02

PEC Case No. 22-02: Dismissal Letter

Your application for “Jingletown Enterprises” was not granted a general dispensary permit nor an Equity permit¹.

On May 22, 2020, around 9:20 PM, you emailed the Respondent thanked him for the notice, and told him that that you believed question 12 of your application was scored incorrectly. On May 23, 2020, around 4:30 PM, the Respondent emailed you and acknowledged that there may have been a mistake on scoring question 12 on your application. The Respondent requested one week to determine if there were scoring errors. On June 4, 2020, the Respondent emailed you and reported that a review was conducted over the scores, and it was determined that if there were any discrepancies in the scoring it was minor and did not change the final rankings of applicants. Further, you were informed that your application received the score it did because the application you submitted was not clearly identified an Equity application. Nonetheless, the Respondent informed you that even if the score was changed for question 12 your application would not be one of the top four applicants.

After receiving this information, you eventually filed an appeal, made a complaint to the City auditor and initiated a lawsuit against the Respondent and the Dispensary Program.

Under O.M.C. 2.25.060, Perks of Office and Misuse of resources the Oakland ordinance provides, “a public servant may not use or permit others to use public resources for a campaign activity or for personal or non-City purposes not authorized by law.”

The complaint alleged that The Respondent exhibited a gross mismanagement of his office and asserted that The Respondent’s administrative assistant’s failure to follow supervision or direction regarding the application scoring process was an example of his misuse. To establish a violation of O.M.C. 2.25.060, the ordinance requires proof that a public servant “used” or allowed another to use a “resource” for a campaign activity, personal or non-City purposes.

Under O.M.C. 2.25.060 (A) (ii & iii) “Public Use” is defined as , “any property or asset owned by the City, including but not limited to land, building, facilities, funds, equipment, supplies, telephones, computers, vehicles, travel, and City-compensated time.” “Use” is defined as “use of a public resource which is substantial enough to result in a gain or advantage to the user or a loss to the City for which a monetary value may be estimated.”

Here, there are no facts in the complaint to establish that the Respondent used or allowed another person to use public resources for private gain or advantage, for which a monetary value may be estimated.

The complaint also alleged that the Respondent disclosed confidential information when he

¹ The City of Oakland Dispensary Program only issued eight new Dispensary Permits for 2019-2020 (four permits were reserved for Equity applicants that were chosen through lottery and four General Permits selected by scored applications.

Item 14b - Dismissal Letter 22-02

PEC Case No. 22-02: Dismissal Letter

forwarded an email communication explaining that the ranking would not change and that your application score, even if adjusted, would not rank your application among the top four, to a different applicant in the dispensary permit process that was one of the top four award recipients.

The O.M.C. 2.25.040 (D) Confidential Information, “A public Servant shall not willfully and knowingly disclose for pecuniary gain, personal advantage or private interest, to any other person, confidential information acquired by him or her in the course of his or her official duties.” To establish a violation of O.M.C. 2.25.040 (D) the ordinance requires proof that a public servant willfully and knowingly disclosed “confidential” information for pecuniary gain, personal advantage or private interest to another person. The complaint lacks any facts that establish the Respondent willfully disclosed confidential information for pecuniary gain, personal advantage or private interest of his own or of another. The email communication was not identified as “confidential.” The Respondent never made any representations to you that your communications were “confidential.” Further, all applications or any other agreements the Dispensary Program generated were subject to public disclosure under the Oakland Sunshine Act and provisions of the Public Records Act (subject to redactions or exclusions under the Act). Assuming that the disclosure of the email to other individuals was confidential, the complaint also lacks any facts that establish the Respondent disclosed the email for pecuniary gain, personal advantage or private interest.

As to the remaining allegations in the complaint that allege dissatisfaction with the policies or practices of the Dispensary Program, such as : (1). the Dispensary Program lacked sufficient policies and procedures on selection of applicants; (2). that the Respondent failed to have an established policy regarding communication with applicants; (3). that the selection process lacked due process; (4). that the Respondent did not provide due process or mislead Oakland residents with biased information; (5). that the decision to grant a fifth dispensary permit was in violation of unidentified open meeting laws; (6). that the Respondent appeared bias toward certain candidates; and (7). that the Respondent allegedly engaged in cronyism. The PEC does not generally have authority over department policies. Even if the allegations regarding the policies or practices are all true, the Oakland Municipal Code does not have an ordinance under the Government Ethics Act, or any other provision that authorizes the Public Ethics Commission jurisdiction over complaints that allege such activity.

Because Greg Minor’s alleged conduct does not constitute a violation of the Sunshine Act, Government Ethics Act, Brown Act, or any other provision within the jurisdiction of the PEC, we are dismissing the allegations against the Respondent pursuant to the PEC’s Complaint Procedures. The PEC’s Complaint Procedures document is available on the PEC’s website and enclosed in this letter for your review.

Item 14b - Dismissal Letter 22-02

PEC Case No. 22-02: Dismissal Letter

We are required to inform the Public Ethics Commission of the resolution of this matter at its next public meeting, as part of our regular monthly update on Enforcement actions. That meeting will take place on August 10, 2022, at 6:30 p.m. by teleconference as will be posted on the Commission's website in advance of the meeting. The report will be purely informational, and no action will be taken by the Commission regarding this matter, which is now closed. However, you are welcome to call-in to that meeting to listen and/or give public comment if you wish. You may also submit written comments to us before that meeting, and we will add them to the meeting materials.

Thank you for bringing this matter to our attention. If you have any questions regarding this matter, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Kellie Johnson". The signature is written in a cursive style with a large, looping initial "K".

Kellie Johnson,
Enforcement Chief



CITY OF OAKLAND

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Public Ethics Commission
Enforcement Unit

(510) 238-3593
FAX (510) 238-3315
TDD (510) 238-3254

July 27, 2022

Tom Baker



Re: Dismissal Letter: City of Oakland Planning and Building Department: Case No. 22-03

Dear Mr. Baker:

On February 1, 2022, the Public Ethics Commission (PEC) received a complaint that alleged that Vince Sugrue a City of Oakland Planning Commissioner, committed three violations of the Oakland Municipal Code. First it is alleged that Sugrue violated the Conflict of Financial Interest provision of the Government Ethics Act (GEA), when on January 19, 2022, he participated in a vote to approve the recommendation for certification of the Environmental Impact Report for Howard Terminal Ballpark project. Next, the complaint alleged that since his appointment to the City Planning Commission in May 2021, the Respondent failed to file a Statement of Economic Interest for his position on the Planning Commission.

Lastly, the complaint further alleged that although he had previously filed a Statement of Economic Interest for his position on the Landmarks Advisory Board, the Respondent failed to disclose that he is a “Political and Public Relations Representative” for the Sheet Metal Local 104 on his Statement of Economic Interest (Form 700) Moreover, the complainant alleged that the Respondent also misrepresented his position at the organization in the text of the 700 forms he had filed for the Landmarks Preservation Board. After careful review of the facts, interviews with witnesses, the law, and our telephone discussion on June 6, 2022, the facts alleged do not constitute a violation of law within the Commission’s jurisdiction, and we must dismiss your complaint pursuant to our Complaint Procedures

The O.M.C. 2.25.040 (A) Financial Conflict of Interests, provides that, “ a Public Servant shall not make, participate in making, or seek to influence a decision of the City in which the Public Servant has a financial interest within the meaning of the California Political Reform Act, Government Code Section 87100 et seq. and pursuant to City Charter Section 1200. All provisions of California Government Code Section § 87100 - 87505 and City Charter Section 1200, as they relate to Public Servants, are incorporated by reference into this Act.”

The California Code § 87103, provides that “ A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have

a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family...”

The complaint asserts that the Respondent, a paid Public Relations Representative of the Sheet Metal Workers Local 104, had a financial conflict of interest when he voted on the Howard Terminal Project on January 19, 2022, because his boss/supervisor, the Director of Political and Public Relations for Sheet Metal Workers Local 104 Rob Stoker, also served as the President of the Alameda County Building and Construction Trades Council (ACBCTC) and had engaged in a public information and influencing campaign on various aspects of the Howard Terminal project, including urging the City Council to approve agreements and contracts related to the project. The complainant submits that the supervisory relationship of Stoker to the Respondent creates a financial conflict of interest, because the Respondent would have a financial interest in the outcome of any votes on Howard Terminal project due to his position as a subordinate of Mr. Stoker at Sheet Metal Local 104.

Assuming the allegations of the complaint are true, a violation of this ordinance requires proof that the public official had a financial interest in a decision within the meaning of Section 87100, if it is “reasonably foreseeable” that the decision will have a “material financial effect, distinguishable from its effect on the public generally, on the official, or a member of his or her immediate family” financial interests. The complaint provides no facts to support the allegation that when the Respondent voted on the Certification of the Environmental Impact Report for the Howard Terminal Project that it was reasonably foreseeable that the vote would have a material financial effect on his immediate financial interests. The California Code imputes a conflict to the public official if it is reasonably foreseeable that the decision, he, or she participates in has a material impact on a spouse, dependent child, agent of, business entity of, or trust of the public official. The statute does not include a public official’s “job supervisor.”

The complaint also lacks facts to establish that the ACBCTC had a contract or agreement with the City of any financial value. Even if ACBCTC had a contract of financial value, there are no facts alleged in the complaint the President/Supervisor received compensation or some other financial value from ACBCTC. Even if the President/Supervisor received some compensation from his role as the President of ACBCTC, there are no facts to establish that his financial interests provided a financial benefit to the Respondent or the Sheet Metal workers union that employees the Respondent. Assuming every fact alleged, is true, the relationship between the Respondent and his Supervisor is too remote and attenuated to attribute a reasonably foreseeable financial interest to the Respondent that could have a material effect on the Respondent’s decision making on the Planning Commission in general or specifically regarding his January 19, 2022, vote on the Certification of the Environmental Impact Report for the Howard Terminal Project.

Item 14c - Dismissal Letter 22-03

PEC Dismissal Letter, Case No. 22-03

The O.M.C. 2.25.040 (B) Statement of Economic Interests (Form 700) Disclosure: provides that “The Mayor, City Council Members, City Administrator, City Attorney, City Auditor, any City board or commission member, any candidate for City Office, and any employee or consultant designated in the City Conflict of Interest Code shall file statements of economic interests and shall disclose all required information pursuant to the California Political Reform Act and the City Conflict of Interest Code.”

Here, the respondent failed to timely file his Form 700, however, the PEC’s preliminary investigation determined that when the Respondent was appointed to the Planning Commission, he was not informed that he had to be sworn in, entered into the City’s database/electronic filing system as a new member of the Planning Commission before he could file a Form 700 for the Planning Commission. Once the Respondent received notice that he was required to file a Form 700 for the Planning Commission, he contacted City Staff for assistance, and was subsequently sworn in February 2022, and filed a Form 700 on February 22, 2022, for the Planning Commission.

As to the allegation that the Respondent may have misrepresented his position with the Sheet Metal Local 104 on his Form 700, when he disclosed his title as a “Business Development Representative” for the Sheet Metal Workers Local 104 instead of “Political and Public Relations Representative” on his Form 700 for the Landmarks Preservation Board, the complaint provides no facts upon which we can conclude that the Respondent intentionally misrepresented his title. There are no facts provided in the complaint to conclude that the Respondent is not currently the Political Representative for the local 104 or that the Political Relations Representative is not one in the same as the Business Development Representative or that the position is materially different than the Business Development Representative. Furthermore, the Respondent’s previous and present Form 700 adequately notified the City of the Respondent’s employer and financial interest in the local 104, which is the primary purpose of the Economic Disclosure Form.

Thank you for expressing your concerns about this matter. We understand and take each of the concerns you raised with earnest consideration. For your reference, the PEC Complaint Procedures can be found on our website and a copy is enclosed.

We are required to inform the Public Ethics Commission of the resolution of this matter at its next public meeting, as part of our regular monthly update on Enforcement actions. That meeting will take place on August 10, 2022, at 6:30 p.m. by teleconference as will be posted on the Commission’s website in advance of the meeting. The report will be purely informational, and no action will be taken by the Commission regarding this matter, which is now closed. However, you are welcome to call-in to that meeting to listen and/or give public comment if you wish. You may also submit written comments to us before that meeting, and we will add them to the meeting materials.

Item 14c - Dismissal Letter 22-03

PEC Dismissal Letter, Case No. 22-03

Thank you for bringing this matter to our attention. If you have other questions regarding this matter, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Kellie Johnson". The signature is written in a cursive style with a large, stylized "K" and "J".

Kellie Johnson, Enforcement Chief
City of Oakland, Public Ethics Commission
KJohnson3@oaklandca.gov



CITY OF OAKLAND

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July 27, 2022

Mr. Scott Law

Re: City Councilmember Sheng Tao and Julie Caskey, Campaign Treasurer: Case No. 22-04

Dear Mr. Law:

On February 7, 2022, the PEC received your complaint that alleged that Councilwoman Sheng Thao’s campaign committee and the campaign manager Julie Caskey, received/accepted six (6) donations that were over the \$900 limit for individual donations in violation of the Oakland Campaign Reform Act. In early February 2022, after the PEC conducted a preliminary review of the allegations the PEC determined that the Respondent’s campaign had received two over-limit contributions (see graph below) in the last quarter of 2021, but that the over-limit contributions had been identified and returned to the respected donors in January 2022. After careful review of the facts, interviews with witnesses, the law, and our telephone discussion in July 2022, the facts alleged do not constitute a violation of law within the Commission’s jurisdiction, and we must dismiss your complaint pursuant to our Complaint Procedures.

O.M.C. 3.12.050 provides that, “No person shall make to any candidate and the controlled committee of such a candidate, and no candidate and the candidate’s controlled committee shall receive from any such person, a contribution or contributions totaling more than one hundred dollars (\$900.00), adjusted annually pursuant to Subsection F., for each election except as stated in Subsection B. of this Section.”

The PEC investigation determined that the Treasurer (Respondent Caskey) for Thao’s campaign identified two (2) over limit donations. The following were reported to the PEC Filing Clerk:

Between 11/10-12/31/21	Robert Wasserman	Donated \$1150	On 1/12/22	Refunded \$250
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Item 14d - Dismissal Letter 22-04

PEC Dismissal Letter, 22-04

In late 2021	Julie Caskey	Donated \$900 And a loan to the campaign for \$500	On 1/25/22	Paid loan \$500
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The PEC confirmed that there were only two over-limit contributions that the campaign had promptly returned.

Thank you for expressing your concerns about this matter. We understand and take each of the concerns you raised with earnest consideration. For your reference, the PEC Complaint Procedures can be found on our website and a copy is enclosed.

We are required to inform the Public Ethics Commission of the resolution of this matter at its next public meeting, as part of our regular monthly update on Enforcement actions. That meeting will take place on August 10, 2022, at 6:30 p.m. by teleconference as will be posted on the Commission's website in advance of the meeting. The report will be purely informational, and no action will be taken by the Commission regarding this matter, which is now closed. However, you are welcome to call-in to that meeting to listen and/or give public comment if you wish. You may also submit written comments to us before that meeting, and we will add them to the meeting materials.

Thank you for bringing this matter to our attention. If you have other questions regarding this matter, please feel free to contact me.

Sincerely,



Kellie Johnson, Enforcement Chief
City of Oakland, Public Ethics Commission
KJohnson3@oaklandca.gov



CITY OF OAKLAND

ONE FRANK H. OGAWA PLAZA • CITY HALL • 1ST FLOOR, #104 • OAKLAND • CA 94612

Public Ethics Commission
Enforcement Unit

(510) 238-3593
FAX (510) 238-3315
TDD (510) 238-3254

July 27, 2022

Sheryl Walton
[REDACTED]

Re: City of Oakland Councilmember Loren Taylor, Case No. 22-05

Dear Ms. Walton:

On February 10, 2022, the PEC received an email complaint that alleged that City of Oakland Councilmember, Loren Taylor violated the Government Ethics Act when he approached an Oakland Redistricting Commissioner at a Saturday Market/Open Air Market and advocated that the Redistricting Commission expand his district to include the Oakland Coliseum. The Complainant asserts that the Respondent's advocacy to the Commissioner was a violation of the Government Ethics Act O.M.C. 2.25.060 (A) (2) Misuse of Position and 2.25.070 (E) Non-Interference in Administrative Affairs. After careful consideration of the law, facts, relevant City regulations and our telephone discussion, the facts alleged do not constitute a violation of law within the Commission's jurisdiction, and we must dismiss your complaint pursuant to our Complaint Procedures.

The Oakland Municipal Code O.M.C. 2.25.060 (A)(2), provides that: No Public Servant or candidate for City Office "may use his or her position or prospective position, or the power or authority of his or her office or position, in any manner intended to induce or coerce any person to provide any private advantage, benefit, or economic gain to the City Public Servant or candidate or any other person." To prove that Respondent violated this ordinance would require facts that established that the Respondent used his position/power or authority to induce/persuade or coerce/force any person to provide a private advantage, benefit or economic gain for themselves or another person.

Here, the allegations are that the Respondent unlawfully contacted a member of the Redistricting Commission and misused his position when he either induced or coerced the Commissioner to redraw his district map to include the Coliseum. In December 2021, A Commissioner disclosed to the Redistricting Commission and the public at a Commission

Item 14e - Dismissal Letter 22-05

PEC Complaint Dismissal Letter, Case No. 22-05

meeting that she was at a farmers' market/open air market in the neighborhood and ran into the Respondent who expressed his opinion about re-mapping the Coliseum to be included in his district. They spoke briefly, moved on to another subject and then parted ways. A violation of this ordinance requires proof of "intent." Here, to violate Misuse of Position, the Respondent must have the intent to induce or coerce a person to provide them or another person with an advantage, benefit, or economic gain. There are no facts to establish that the Respondent intended to induce or coerce the Commissioner to provide a personal advantage, benefit or economic gain for himself or another person. Further, there are no facts that the Commissioner even believed that she was being induced or coerced to provide a benefit or advantage to the Respondent.

Assuming the allegations of the complaint are true, a Councilmember is allowed to express his or her opinions on a City decision or matter.

Pursuant to O.M.C. 2.20.170, Public Comment by Members of Local Body," Every member of a local body retains the rights of any citizen to comment publicly on the wisdom or propriety of government actions, including those of the local body of which he or she is a member. Local bodies shall not sanction, reprove or deprive members of their rights as elected or appointed officials to express their judgments or opinions, including those judgments or opinions pertaining to the disclosure or non-disclosure of discussions or actions taken in closed session. The release of specific factual information made confidential by state or federal law, including, but not limited to, privileged attorney-client communications, other than by the procedures set forth under state law or this ordinance, may constitute grounds for censure or for an action for injunctive or declaratory relief by the local body. Nothing in this section shall confer any privilege or protection for expression beyond that which is otherwise provided by law."

Mere sharing of an opinion or judgment, under Oakland ordinance is not a sanctionable action or a violation on OMC 2.25.060 (A) (2).

The complaint also alleged that the Respondent violated O.M.C. 2.25.070 Non-Interference in Administrative Affairs because the Commissioner is a subordinate to the Respondent, an elected official.

O.M.C. 2.25.070 (E) Non-Interference in Administrative Affairs. "As prohibited by City Charter Section 218, except for the purpose of inquiry, the Council and its members shall deal with the administrative service for which the City Administrator, Mayor and other appointed or elected officers are responsible, solely through the City Administrator, Mayor or such other officers. Neither the Council nor any Council member shall give orders to any subordinate of the City under the jurisdiction of the City Administrator or such other officers,

Item 14e - Dismissal Letter 22-05

PEC Complaint Dismissal Letter, Case No. 22-05

either publicly or privately; nor shall they attempt to coerce or influence the City Administrator or such other officers, in respect to any contract, purchase of any supplies or any other administrative action; non in any manner direct or request the appointment of any person to or his removal from office by the City Administrator or any of his subordinates or such other officers, nor in any manner take part in the appointment or removal of officers or employees in the administrative service of the City. In addition to the penalties provided for in Charter Section 218, a member of the Council who violates the provisions of this Subsection E. shall be subject to all other penalties provided in this Act.”

The ordinance, “Non-interference in Administrative Affairs” does not apply to Councilmember’s communications with City Commissions or Commission members. The ordinance prohibits City Councilmembers from giving orders to a subordinate of the City under the jurisdiction of the City Administrator or such other officers. Redistricting Commission members are not officers or employees in the administrative service of the City nor are they subordinate officers or employees of the City Administrator.

Thank you for expressing your concerns about this matter. We understand and take each of the concerns you raised with earnest consideration. For your reference, the PEC Complaint Procedures can be found on our website and a copy is enclosed.

We are required to inform the Public Ethics Commission of the resolution of this matter at its next public meeting, as part of our regular monthly update on Enforcement actions. That meeting will take place on August 10, 2022, at 6:30 p.m. by teleconference as will be posted on the Commission’s website in advance of the meeting. The report will be purely informational, and no action will be taken by the Commission regarding this matter, which is now closed. However, you are welcome to call-in to that meeting to listen and/or give public comment if you wish. You may also submit written comments to us before that meeting, and we will add them to the meeting materials.

Thank you for bringing this matter to our attention. If you have other questions regarding this matter, please feel free to contact me.

Sincerely,



Kellie Johnson, Enforcement Chief
City of Oakland, Public Ethics Commission

Item 14e - Dismissal Letter 22-05

PEC Complaint Dismissal Letter, Case No. 22-05

KJohnson3@oaklandca.gov



CITY OF OAKLAND

ONE FRANK H. OGAWA PLAZA • CITY HALL • 1ST FLOOR, #104 • OAKLAND • CA 94612

Public Ethics Commission
Enforcement Unit

(510) 238-3593
FAX (510) 238-3315
TDD (510) 238-3254

July 27, 2022

Jonathan Gabel



Re: City of Oakland Planning and Building Department: Case No. 22-06

Dear Mr. Gabel:

On or between February 22, 2022, the City of Oakland Public Ethics Commission (PEC) received your complaint which alleged that the Planning and Building Department, and Tim Low failed to enforce a City ordinance O.M.C. 17.103.080 “Conversion of Existing Detached Accessory Structure” that requires, among other things, that any renovations/conversions of an accessory property must be enveloped (fit within) the height of the pre-existing structure. It is further alleged that since the adoption of OMC 17.103.080 in 2020, the City has failed to inspect buildings for or enforce a provision of this ordinance that governs renovations to Existing Detached Accessory Structures (ADU). This conduct, you assert, violated the Oakland City Ordinance O.M.C. 2.25.060 (A)(2) Misuse of Position/Authority. After careful consideration of the law, facts, supplemental information you provided, relevant department regulations and our telephone discussion, the facts alleged do not constitute a violation of law within the Commission’s jurisdiction, and we must dismiss your complaint pursuant to our Complaint Procedures.

The Oakland Municipal Code O.M.C. 2.25.060 (A)(2), provides that: No Public Servant or candidate for City Office “may use his or her position or prospective position, or the power or authority of his or her office or position, in any manner intended to induce or coerce any person to provide any private advantage, benefit, or economic gain to the City Public Servant or candidate or any other person.” To prove that the Planning Department Director, Management staff or Tim Low violated this ordinance would require facts that established that the Respondent’s used their position/power or authority to induce/persuade or coerce/force any person to provide a private advantage, benefit or economic gain for themselves or another person.

Here, the allegations are that the Planning Department has failed to enforce a statute in a manner that you believe is the best practice. The complaint asserts that the Department is not

enforcing the statute because it failed to have an inspector physically inspect a building project to ensure that the building remains within the “envelope” of the original structure. The Department Director informed you that the Department uses a different method to comply with the ordinance, by relying on the representations the builder/designer submits to the City in their project plans and scheme maps. You believe that the Department’s decision to comply with the statute by relying on a builder’s representation on the dimensions of an accessory structure rather than provide a physical inspection is a violation of the City ordinance. Even if the allegations were true, simple non-performance of official duties is not an abuse of power or official position. The O.M.C. 17.103.080 does not provide instructions or directions on how the Department is to conduct compliance with the ordinance. Without a specific requirement or instruction, the Department maintains some discretion on how to enforce or comply with the ordinance.

Assuming the allegations of the complaint are true, a violation of this ordinance requires proof of “intent.” Here, to violate Misuse of Position, the Department Director, Management staff or Tim Low must have the intent to induce or coerce a person to provide them or another person with an advantage, benefit, or economic gain. The complaint provides no facts to support the allegation that either Respondent, by making the decision to enforce O.M.C. 17.103.080 provision in a manner that you believe is below the best practice, intended to induce or coerce a private, benefit, or economic gain to themselves or any other person.

The complaint provides speculation that the decision could possibly provide a benefit or private advantage but does not identify any instance where this has occurred or is alleged to have occurred. Speculation is insufficient to establish that the Department Director, Management staff or Tim Low had the intentional state or mind to induce or coerce a private advantage, benefit, or economic gain, because you have offered no facts to establish the state of mind, we cannot establish any violation of O.M.C. 2.25.060, Misuse of Position.

Thank you for expressing your concerns about this matter. We understand and take each of the concerns you raised with earnest consideration. For your reference, the PEC Complaint Procedures can be found on our website and a copy is enclosed.

We are required to inform the Public Ethics Commission of the resolution of this matter at its next public meeting, as part of our regular monthly update on Enforcement actions. That meeting will take place on August 10, 2022, at 6:30 p.m. by teleconference and will be posted on the Commission’s website in advance of the meeting. The report will be purely informational, and no action will be taken by the Commission regarding this matter, which is now closed. However, you are welcome to call-in to that meeting to listen and/or give public comment if you wish. You may also submit written comments to us before that meeting, and we will add them to the meeting materials.

Item 14f - Dismissal Letter 22-06

PEC Dismissal Letter, 22-06

Page 2

Thank you for bringing this matter to our attention. If you have other questions regarding this matter, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Kellie Johnson". The signature is written in a cursive style with a large initial "K".

Kellie Johnson, Enforcement Chief
City of Oakland, Public Ethics Commission
KJohnson3@oaklandca.gov



Item 15a - Executive Director's Report

Arvon Perteet, Chair
Charlotte Hill
Ryan Micik
Joe Tuman
Francis Upton IV

Suzanne Doran, Acting Executive Director

TO: Public Ethics Commission
FROM: Suzanne Doran, Acting Executive Director
DATE: July 29, 2022
RE: Executive Director's Report for the August 10, 2022, PEC Meeting

This memorandum provides an overview of the Public Ethics Commission's (PEC or Commission) significant activities this past month that are not otherwise covered by other program reports. The attached overview of Commission Programs and Priorities includes the ongoing goals and key projects in 2022 for each program area.

Executive Director Hiring

Interviews of applicants for Executive Director were completed in June and the Commission's recommendation forwarded to the City Administrator. An offer has been made to a candidate, and the hiring is still in progress.

Commissioner Recruitment and Onboarding

The City Attorney appointed Commissioner Ryan Micik to complete the vacant term created by Commissioner Leavitt's early departure. Commissioner Micik's term is effective July 1, 2022, through January 21, 2024.

Oakland Fair Elections Act (Democracy Dollars)

On July 11, Council voted to place the Fair Elections Act on the Oakland ballot. The final legislation was amended to increase contribution limits to \$600 from individuals and \$1,200 from broad-based committees. A new disclosure requirement to provide a copy of independent expenditure content along with the expenditure report (FPPC Form 496) was maintained. The measure will go before the voters on the November 8, 2022, ballot.

"Good Governance" Ballot Measure

On July 11, City Council also approved a "Good Governance Charter Reform" measure for the November ballot. In addition to setting a three-term limit for councilmembers, the measure includes provisions that change the formula for the Public Ethics Commission to set councilmember salaries and adds setting the salaries of the City Auditor and City Attorney to the Commission's duties. The measure will go before the voters on the November 8, 2022, ballot.

Alameda County Grand Jury Report

On June 28, the Alameda County Civil Grand Jury released its 2021-2022 report investigating the operations of various officers, departments, and agencies in Alameda County (attached). One of the investigations evaluated the City of Oakland's Form 700 process (page 33). Improving Form 700 compliance has been an issue of interest to the Commission for some time, and staff advocated moving filing officer duties to the PEC during the last budget process.

The Grand Jury report recommends that the City of Oakland transfer the Form 700 Filing Officer responsibility to the Public Ethics Commission, and has asked that the Commission, in addition to other City agencies and officials, respond to their findings and recommendations. Staff agrees with the findings and recommendation specific to the PEC. Staff is drafting a response, potentially in coordination with the other City agencies involved. The deadline for the response is September 26, 2022.

Attachment: Commission Programs and Priorities, Grand Jury Report.

PUBLIC ETHICS COMMISSION
Programs and Priorities 2022

Program	Goal	Desired Outcome	Key Projects for 2022
Lead/ Collaborate (Policy, Systems, Culture)	PEC facilitates changes in City policies, laws, systems, and technology and leads by example to ensure fairness, openness, honesty, integrity and innovation.	Effective campaign finance, ethics, and transparency policies, procedures, and systems are in place across City agencies	<ol style="list-style-type: none"> 1. City Ticket Policy Ordinance 2. Limited Public Financing Act Amendment 3. Campaign Public Finance Redesign 4. Public Records Performance Tool
Educate/ Advise	Oakland public servants, candidates for office, lobbyists, and City contractors understand and comply with City campaign finance, ethics, and transparency laws.	The PEC is a trusted and frequent source for information and assistance on government ethics, campaign finance, and transparency issues; the PEC fosters and sustains ethical culture throughout City government.	<ol style="list-style-type: none"> 1. Ethics onboarding/exit process improvement 2. Ethics training and advice: a) elected officials, b) City employees (1000), b) board/commission members, and c) consultants 3. Campaign Finance Training 4. Limited Public Financing Act Training and Program Implementation 5. Sunshine training – Open meetings; public records 6. New trainings as needed for diversion
Outreach/ Engage	Citizens and regulated community know about the PEC and know that the PEC is responsive to their complaints/questions about government ethics, campaign finance, or transparency concerns.	The PEC actively engages with clients and citizens demonstrating a collaborative transparency approach that fosters two-way interaction between citizens and government to enhance mutual knowledge, understanding, and trust.	<ol style="list-style-type: none"> 1. Public Records mediations 2. PEC Outreach – Commissioner-led public outreach 3. Communications/outreach to client groups – targeted and training and compliance 4. PEC social media outreach – focused on sharing ethics-related data and PEC services and outcomes 5. Website – PEC dashboards for enforcement cases and mediations
Disclose/ Illuminate	<p>PEC website and disclosure tools are user-friendly, accurate, up-to-date, and commonly used to view government integrity data.</p> <p>Filing tools collect and transmit data in an effective and user-friendly manner.</p>	<p>Citizens can easily access accurate, complete campaign finance and ethics-related data in a user-friendly, understandable format.</p> <p>Filers can easily submit campaign finance, lobbyist, and ethics-related disclosure information.</p>	<ol style="list-style-type: none"> 1. Filing Officer/Compliance – assess, follow-up, and refer 2. Government Integrity E-Data Project – Lobbyist Registration, Form 700, Form 803, Show Me the Money App, Behested Payments 3. Open Disclosure – continue coordination and development 4. Campaign Finance Data – focus on pushing out data using Socrata, City Open Data Portal, and PEC dashboards where possible for the 2022 Election

Item 15a - Executive Director's Report

Detect/ Deter	PEC staff proactively detects potential violations and efficiently investigates complaints of non-compliance with laws within the PEC's jurisdiction.	Public servants, candidates, lobbyists, and City contractors are motivated to comply with the laws within the PEC's jurisdiction.	<ol style="list-style-type: none"> 1. Investigations 2. Collaborate with other government law enforcement agencies
Prosecute	Enforcement is swift, fair, consistent, and effective.	Obtain compliance with campaign finance, ethics, and transparency laws, and provide timely, fair, and consistent enforcement that is proportional to the seriousness of the violation.	<ol style="list-style-type: none"> 1. Conduct legal analyses, assess penalty options, negotiate settlements, make recommendations to PEC 2. Case priority: 1) the extent of Commission authority to issue penalties, 2) the impact of a Commission decision, 3) public interest, timing, and relevancy, and 4) Commission resources. 3. Resolve all 2016 and 2017 cases 4. Enforcement Subcommittee – discussion of process improvements
Administration/ Management	PEC staff collects and uses performance data to guide improvements to program activities, motivate staff, and share progress toward PEC goals.	PEC staff model a culture of accountability, transparency, innovation, and performance management.	<ol style="list-style-type: none"> 1. Annual Report 2. PEC Retreat 3. Budget – new Administrative Analyst position 4. Enforcement database upgrade 5. Review data to adjust activities throughout the year 6. Ongoing: professional development and staff reviews



OAKLAND'S USE OF
FORM 700

ELECTION INTEGRITY
IN ALAMEDA COUNTY

PROBATE
CONSERVATORSHIPS

SANTA RITA JAIL

CAMP SWEENEY
INSPECTION

FREMONT JAIL
INSPECTION

INDEPENDENT
OVERSIGHT OF BART

FIRE INSPECTIONS
IN OAKLAND

OAKLAND'S PLANNING &
BUILDING DEPARTMENT

STUDENT HOMELESSNESS

2021-2022 Alameda County Grand Jury Final Report

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2021-2022 Alameda County Grand Jury Final Report



Rene C. Davidson Courthouse and Lakeside Building/Grand Jury, Oakland

ALAMEDA COUNTY BOARD OF SUPERVISORS

District One	David Haubert
District Two	Richard Valle
District Three	David Brown
District Four	Nate Miley, <i>Vice President</i>
District Five	Keith Carson, <i>President</i>

ALAMEDA COUNTY GRAND JURY

1401 Lakeside Drive, Suite 1104
Oakland, California 94612
(510) 272-6259 | grandjury@acgov.org
www.acgov.org/grandjury



CIVIL GRAND JURY RESOLUTION RECOGNIZING ROB WARREN

WHEREAS, The Alameda County Civil Grand Jury wishes to recognize the life’s work of Rob Warren; and

WHEREAS, Rob Warren was an Alameda County Assistant District Attorney, serving as Advisor to the Grand Jury for much of his career; and

WHEREAS, The Grand Jury believes that Rob Warren demonstrated his passion and commitment to civic engagement to our communities; and

WHEREAS, **The Grand Jury saw firsthand Rob Warren’s deep dedication to the law; and**

WHEREAS, **The Grand Jury experienced Rob Warren’s guidance and mentorship; and**

WHEREAS, Rob Warren demonstrated his humility, great sense of humor, and compassion to the Grand Jury; and

NOW, BE IT RESOLVED that the Alameda County Civil Grand Jury thanks Rob Warren for the many years he guided the Grand Jury; and

BE IT FURTHER RESOLVED **that Rob Warren’s contributions to the Grand Jury, the people of Alameda County and the District Attorney’s Office be commended by all; and**

BE IT FURTHER RESOLVED that the role Rob Warren played as a public servant be celebrated and honored for the talent, compassion, and dedication he demonstrated.

ADOPTED ON THIS DAY: June 6, 2022, by the Alameda County Civil Grand Jury 2021-22

SIGNED: 

FOREPERSON

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*Cover photo and photo on pg. 3 courtesy of juror David Sarber.
 Photos on pgs. 120, 134 & 176 courtesy of juror Jonathan Cohen.
 Photos on pgs. 7, 12 & 148 courtesy of grand jury staff.
 All jail photos taken by the Grand Jury.*



Alameda County
Grand Jury

1401 Lakeside Drive
Suite 1104
Oakland, California 94612

510.272.6259
fax 510.465.9647
www.acgov.org/grandjury

Hon. Charles A. Smiley, Presiding Judge
Alameda County Superior Court
1225 Fallon Street, Department One
Oakland, California 94512

Dear Judge Smiley,

The 2021-2022 Alameda County Civil Grand Jury is pleased to present a final report to the Superior Court and the people of Alameda County.

There was nothing ordinary about this **year's** Grand Jury experience. When we took the oath to serve, we **wouldn't** have anticipated several unprecedented challenges, including the departure of two jurors, the inclusion of an alternate juror, a transition in presiding judges, and working with three legal advisors. In addition, we faced the tragic loss of a colleague and partner, Assistant District Attorney Rob Warren. I can never express the pain I felt when I learned of **Rob's** passing, and his presence was missed throughout our term.

As a full panel, Grand Jury members never had the opportunity to meet in person, yet we continued to fulfill our charter. The Grand Jury investigated the operations of various officers, departments, and agencies in Alameda County. Members also participated in the local Logic and Accuracy Board to view the transparency of the voting process. The Grand Jury interviewed over 150 witnesses, reviewed tens of thousands of documents, and deliberated countless hours, rarely taking a day off. As civic-minded citizens, we worked together for a one-year period focusing on local governmental entities and the conduct of public officials, which resulted in over 65 findings and nearly 100 recommendations for improvements. We conducted 11 investigations and jail inspections that represent a broad range of entities, and their reports provide a glimpse into some of the work we performed.

I am grateful for the opportunity to serve as a change agent who relied on life experiences, dedication, and willingness to devote my time and energy to these matters of importance, and I look forward to hearing feedback from citizens on this final report.

Respectfully,

Randolph E. Pico
Foreperson
2021 – 2022 Alameda County Civil Grand Jury



Rene C. Davidson Superior Court, Oakland, CA

2021-2022 Alameda County Grand Jury
Member Roster

Name	City
Rodger P. Allen	Hayward
Martha C. Benco	Oakland
Subrahmanya Y. Bhat	Union City
Michael R. Bracco	Oakland
Mary Margaret Bush	Oakland
Jonathan W. Cohen	Berkeley
John R. Eichel	Alameda
Diane Lewis^	San Leandro
Thomas E. Lorentzen	Castro Valley
Jo A.S. Loss**	Castro Valley
John A. Mangini	Piedmont
Rhonda Phillips	Oakland
Randolph E. Pico*	Livermore
Carole Salerno*	Pleasanton
David Sarber	Oakland
Paul Schwartz	Oakland
Sandra Smith^^	Oakland
Geoffrey Sylvester	Alameda
Charles L. Yu	Oakland
Mary Louise Zernicke	Berkeley

^ Withdrew October 2021

** Alternate Juror Seated October 2021

* Jurors held over for a 2nd term by Presiding Judge Tara Desautels

^^ Dismissed December 2021

2021-2022 Alameda County Grand Jury
Officers and Legal Staff



OFFICERS

Foreperson:	Randolph E. PicO
Foreperson Pro Tem:	Martha C. Benco
Secretary:	Michael R. Bracco
Secretary Pro Tem:	John R. Eichel
Sergeant at Arms:	Rodger P. Allen
Sergeant at Arms Pro Tem:	John A. Mangini

LEGAL ADVISORS

Alameda County District Attorney's Office
&
Alameda County Counsel's Office

PRESIDING JUDGES OF THE SUPERIOR COURT

Honorable Tara M. Desautels
November 19, 2019 – December 31, 2021

&

Honorable Charles A. Smiley
January 1, 2022 – Present

2021-2022 Alameda County Grand Jury
Committee Assignments

GOVERNMENT

Geoffrey Sylvester - Chair
Subrahmanya Bhat
Michael R. Bracco
Mary Margaret Bush
Jonathan W. Cohen - *Chair Pro Tem*
Jo A.S. Loss
John A. Mangini - *Secretary Pro Tem*
Carole Salerno
David Sarber - *Secretary*

LAW & JUSTICE

Carole Salerno - Chair
Rodger P. Allen - *Secretary Pro Tem*
Martha C. Benco - *Secretary*
Subrahmanya Bhat
Michael R. Bracco
Jo A.S. Loss
John A. Mangini
David Sarber - *Chair Pro Tem*
Geoffrey Sylvester

HEALTH & SOCIAL SERVICES

Thomas E. Lorentzen - Chair
Martha C. Benco
Mary Margaret Bush - *Secretary Pro Tem*
John R. Eichel - *Secretary*
Rhonda Phillips
Paul Schwartz
Charles L. Yu - *Chair Pro Tem*
Mary Louise Zernicke

EDUCATION & ADMINISTRATION

Mary Louise Zernicke - Chair
Rodger P. Allen
Jonathan W. Cohen
John R. Eichel - *Secretary*
Thomas E. Lorentzen - *Chair Pro Tem*
Rhonda Phillips
Paul Schwartz
Charles L. Yu - *Secretary Pro Tem*

AD HOC COMMITTEE

Randolph E. Pico - Chair
Subrahmanya Bhat
Mary Margaret Bush
John A. Mangini
Carole Salerno
Paul Schwartz

EDIT COMMITTEE

John R. Eichel
John A. Mangini

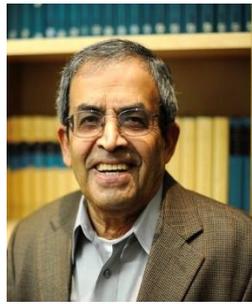
2021-2022 Alameda County Grand Jury Members



Rodger
Allen



Martha
Benco



Subrahmanya
Bhat



Michael
Bracco



Mary Margaret
Bush



Jonathan
Cohen



John
Eichel



Thomas
Lorentzen



Jo A.S.
Loss



John
Mangini



Rhonda
Phillips



Randolph
Pico



Carole
Salerno



David
Sarber



Paul
Schwartz



Geoffrey
Sylvester



Charles
Yu



Mary Louise
Zernicke



Ballena Bay Boat Harbor, Alameda, CA

ALAMEDA COUNTY MENTAL HEALTH SYSTEM TOO COMPLEX TO NAVIGATE

EXECUTIVE SUMMARY

The mental health system is supposed to provide a safety net for the thousands of homeless and near-homeless residents of Alameda County who struggle with serious mental illnesses. The current approach is missing the mark. Alameda County residents witness daily the inadequacies of our mental health system. The Grand Jury investigated the challenges faced by adult homeless and near-homeless people and their families as they try to navigate the mental health system to obtain care. Those in need of assistance complained that the system is fragmented and unresponsive. The Grand Jury found that the system is complex and difficult to navigate.

Alameda **County's** Behavioral Health Care Services department (ACBH) and a dedicated group of agencies and individuals struggle to offer seamless and holistic community care. With a budget of more half a billion dollars annually, ACBH is the center of care for mental health support for low-income residents of Alameda County. Within that budget, California Proposition 63 (Prop. 63), also known as the Mental Health Services Act (MHSA), provides around \$100 million annually to augment and enhance community-based care for the mentally ill through ACBH.

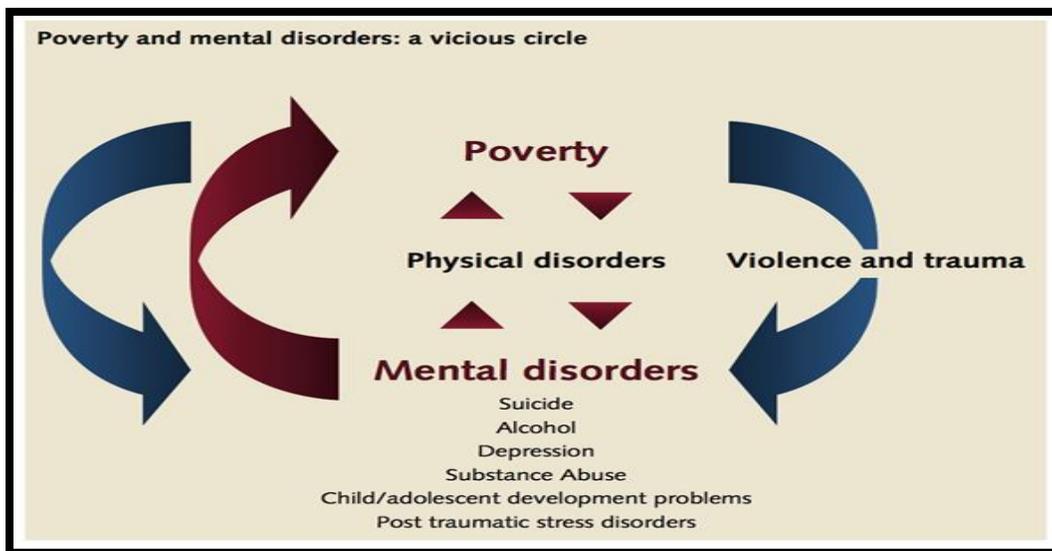
More needs to be done. The Grand Jury found that entry to the system needs to be streamlined, communication between ACBH and service providers must be improved, and technology should be updated to improve mental health services and tracking. Most importantly, the Grand Jury is recommending that ACBH conduct a county-wide needs and gaps in services assessment to ensure that funds are directed to services and service providers in the most beneficial and cost-effective way.



BACKGROUND

The Grand Jury investigated the intersection of two of Alameda **County’s** most serious social problems: 1) mental illness, particularly the stabilization and treatment of adults with severe mental illness (SMI, defined as a mental, behavioral, or emotional disorder resulting in serious functional impairment, which substantially interferes with or limits one or more major life activities) and 2) homelessness and near-homelessness among adults. Tragically, too many homeless adults with SMI, either on the brink of a mental health crisis or in crisis, populate Alameda **County’s** streets and open spaces. Homelessness among adults is frequently the result of SMI, as well as substance abuse. Those health issues, among other key factors, can lead to poverty, a direct cause of homelessness. And homelessness makes finding, stabilizing, and treating adults with SMI much more difficult. **It’s** a vicious cycle.

The Grand Jury focused its investigation more on SMI support, stabilization, and treatment than homelessness, but **it’s** important to acknowledge up front how interrelated the two issues are. The following chart illustrates this relationship, with poverty serving as a proxy for homelessness.



Locating, Stabilizing, and Treating Homeless Adults with Severe Mental Illness in Alameda County

Though homeless individuals with SMI are clearly visible by observation and through witness testimony, the Grand Jury found it difficult to find good data on the scope of the issues of locating, stabilizing, and treating homeless adults with SMI in Alameda County, which is part of the problem in itself. Therefore, the Grand Jury had to rely on broader California data to help illustrate the scope of this issue.

Estimates on the percentage of homeless adults in California who have SMI range from about 30% to over 75%. Many of the homeless with SMI end up cycling in and out of emergency rooms and jails; close to a third of California jail inmates have a documented mental illness. Most researchers agree that the connection between homelessness and SMI is a complicated, two-way relationship. Homelessness can exacerbate an existing mental illness, and individuals with SMI may find themselves homeless, primarily due to lack of income and housing. Rates of contact with the criminal justice system are higher among unhoused SMI, and SMI individuals are more likely to be the victim of a crime. (bbrfoundation.org)

A Brief History of Alameda County's Current Mental Health System

California began to reform its mental health care system starting in the 1950s. But, prior to 1967, Alameda County's mental health system looked very different than it does now. Many more individuals with SMI lived in state hospitals and large facilities, often for long periods of their lives. Then California passed the Lanterman-Petris-Short (LPS) Act. The LPS Act sought to, “**end** the inappropriate, indefinite, and involuntary commitment of persons with mental health **disorders.**” The Act in effect ended all hospital commitments by the judiciary system, except in the case of criminal sentencing, *e.g.*, convicted sexual offenders, and those who were "gravely disabled", defined as unable to obtain food, clothing, or housing. It did not, however, impede the right of voluntary commitments. It expanded the evaluative power of psychiatrists and created provisions and criteria for psychiatric holds (5150s).

Most mental health services are now delivered within the community by what are known as community-based organizations (CBOs).

Since the passage of the Act, there have been major changes in how mental health support has been provided in California, including Alameda County, and currently few people with SMI are involuntarily institutionalized. Most mental health services are now delivered within the community by what are known as community-based organizations (CBOs).

Also, in 1999, the U.S. Supreme Court held in *Olmstead v. L.C.* that unjustified segregation of persons with disabilities constitutes discrimination in violation of Title II of the Americans with Disabilities Act (ADA). The Court held that public entities must provide community-based services to persons with disabilities when 1) such services are appropriate, 2) the affected persons do not oppose community-based treatment, and 3) community-based services can be reasonably accommodated.

Licensed board and cares, including Adult Residential Facilities (ARFs) and Residential Care Facilities for the Elderly (RCFEs), have long served as important housing options for SMI, disabled, and aging populations by providing safe residences when other housing options are

The core continuum of care for mental health includes a variety of services with different levels of intensity that should be available and easily accessible to all individuals. ACBH supports “upstream” behavioral health services—it considers the social, economic, and environmental origins of health problems that manifest at the population level, not just the “downstream” symptoms or end effects that manifest at the individual level.

The core continuum of care includes:

- Prevention and wellness services.
- Outpatient services.
- Peer and recovery services delivered in the community.
- Community supports, including flexible services designed to enable individuals to remain in their homes and participate in their communities, such as supportive housing, case management, supported employment, and supported education.
- Residential treatment provided on a short-term basis to divert individuals from or as a step-down from intensive services.
- Crisis services such as call centers, mobile crisis services, and crisis residential services.
- Intensive treatment services that are provided in structured, facility-based settings to individuals who require 24-hour/7-days-per-week care, including inpatient psychiatric treatment and clinically managed inpatient services.

Acute Crisis Care Evaluation for System-wide Service (ACCESS) - the Designated Entry Point for ACBH Services

ACCESS is the system-wide point of contact for information, screening, and referrals for mental health and substance use services and treatment for Alameda County residents. The ACCESS line (800-491-9099) is a state requirement, dating from when county behavioral health departments became carve-out mental health plans in the 1990s. The intent of ACCESS is a one-stop entry point, with “no wrong door,” that can provide services using a person-centered approach, reducing, in theory, the number of barriers for accessing services. A centralized team is responsible for linking beneficiaries to appropriate, medically necessary services. ACCESS is a portal telephone service staffed during the day by licensed clinical social workers (LCSWs), who determine eligibility for specialty mental health services after screening for symptomology and program qualifications, including verification of health plan eligibility. Referrals are based on clinical need and provider availability.

ACCESS is the system-wide point of contact for information, screening, and referrals for mental health and substance use services and treatment for Alameda County residents. The ACCESS line is 800-491-9099.

The ACCESS line is not staffed by a live person after 5 p.m. on Mondays through Fridays or on weekends. Although there is a phone line answered by a local mental health provider during hours when ACCESS is not staffed, emergency mental health intervention or referral services for low-income seriously mentally ill individuals are not offered 24-7. There is no crisis referral line or alternative to jail or 5150 holds for immediate care for the seriously mentally ill when ACCESS is closed.

The substance abuse line is not staffed by a live person after 9 p.m. There is no place for law enforcement or others to call for mental health referral support during evening hours, so psychiatric emergency services or jail become the only option for law enforcement by default. To obtain care, the client needs to be on the line unless they are experiencing an active psychotic episode. To be called back, a client must have phone access, which can be problematic for someone homeless. ACBH's website is rich in some information but difficult to navigate. After-hours calls are answered by Crisis Support Services of Alameda County, which offers phone support from non-professional crisis counselors. ACCESS is not a crisis line; Alameda **County's** 24-7 crisis line is 800-273-8255. (crisissupport.org)

Mental Health Services Act (MHSA) - Prop. 63

One key area of funding for ACBH is the MHSA, also known as Prop. 63. Prop. 63, passed in 2004, includes a 1% tax on individual incomes over \$1 million. At least 51% of the funds must be spent on community services and support for children and adults with or at risk of developing mental illness.

Services funded by MHSA must be voluntary. None of the funds are to be used for programs with existing fund allocations, unless it is for a new element or expansion in those existing programs.

Prop. 63 income has increased significantly since its passage. Alameda County received \$91 million in fiscal year (FY) 2020-2021, and \$97.6 million in FY 2021-2022; MHSA currently provides approximately 25% of the ACBH budget. In addition, there have been significant carryover funds (exclusive of a \$14.5 million reserve). Alameda County in recent years has left a significant amount of its MHSA funds unspent; excess funds are at risk of being returned to the state if they remain unspent for over three years. To accomplish its objectives, the MHSA applies a specific portion of its funds to each of six system-building components:

1. Community services and supports (CSS) (45%)
2. Prevention and early intervention (20%)
3. Community program planning and administration (10%)
4. Capital (buildings) and information technology (IT) (10%)
5. Education and training (human resources) (10%)
6. Innovation (5%)

A Community Program Planning Process is required every three years whereby the MHSA meaningfully engages its stakeholder community and creates a three year plan, with annual updates.

A Mental Health Advisory Board (MHAB) is mandated by Prop. 63. Roles of the Alameda County MHAB include education and advocacy, as well as review and evaluation of the **county's** mental health system. Three-year plans and annual updates are developed by ACBH with the participation of stakeholders, in accordance with Welfare and Institutions Code Section 5848 and Title 9 of the California Code of Regulations section 3300, Community Planning Process. (ACBH 2020-2023 Highlights)

The Courts, Alameda County, and Alameda County Behavioral Health Care Services

Behavioral Health Court (BHC)

BHC is a collaboration between the Alameda County Superior Court, the District **Attorney's** Office, the Public **Defender's** Office, and ACBH. Its mission is to promote public safety and assist SMI persons who commit non-violent crimes by diverting them away from the criminal justice system. Judges, lawyers, and mental health professionals work in partnership with the **court's** client, aka "**partner,**" to develop a treatment plan for the "**partner,**" who has been charged with a non-violent crime. The program diverts those who qualify for the program out of Santa Rita Jail and into a one to two-year treatment program with an Alameda County-based mental health provider. The "**partner**" is closely monitored by the court, and upon successful completion of their treatment plan, the "**partner's**" pending criminal case and associated arrest record are sealed.

The MHSA funds many of the treatment providers and the clinical team that staffs the BHC program. The lawyers and judges are funded by their respective departments.

Civil Rights Lawsuit

Alameda County has been the subject of a class action civil rights lawsuit, Babu v. Ahern and a Department of Justice inquiry into mental health conditions and services at Santa Rita jail. The parties agreed that Alameda County has violated the civil rights of people with SMI by failing to provide adequate care and allowing them to go into crises, ending up in the county jail, where violations of their rights occurred.

A Mental Health Advisory Board (MHAB) is mandated by Prop. 63. Roles of the Alameda County MHAB include education and advocacy, as well as review and evaluation of the county's mental health system.

The Consent Decree from the Babu lawsuit has been approved and will impact how ACBH will provide services. Among its stipulations are that Alameda County provide evidence-based community-based services in the most integrated setting, implement a comprehensive crisis-response system, implement a sufficient number of full service partnership (FSP, a comprehensive and intensive mental health program for adults with severe and persistent mental illness) teams that can provide sufficiently intensive community services to those who need them, implement a sufficient quantity of scattered-site, permanent supported housing slots, implement peer support services, and implement sufficient community-based services, including case management.

As a result of the lawsuit, the Alameda County Board of Supervisors (BOS) has made a public commitment to a shift in priorities: from incarcerating those with mental illness to providing effective, evidence-based mental health treatment options for SMI individuals who are at risk of incarceration. The BOS adopted a “**Care First, Jails Last**” Resolution in 2021. The “**Care First, Jails Last**” Resolution includes behavioral health and wrap-around services that reduce the number of people with mental illness, substance use, and co-occurring disorders in Santa Rita Jail. The same resolution states there will be no net cost to the county.

INVESTIGATION

The Grand Jury received a complaint that there was inadequate community-based support for the seriously mentally ill in Alameda County and that services were fragmented and siloed. The complaint also stated that families of people with SMI were unable to find appropriate care for their loved ones.

The Grand Jury interviewed staff and board members of numerous local CBOs that provide a variety of mental health services to low-income Alameda County residents. The Grand Jury also interviewed several staff from ACBH, and members of the MHAB. Grand jurors attended MHAB meetings and met with the Alameda County **Sheriff's** Office.

Many reports, written materials, and internet resources, were studied including but not limited to:

- MHSA three-year plans and annual updates,
- 2015 Crisis Report from Resource Development Associates for ACBH,
- MHAB annual reports and background materials,
- MHSA requests for proposal (RFPs),
- ACBH contracts,
- Alameda County annual budgets,
- Strategic Implementation Framework, Justice Involved Mental Health Taskforce,
- FY2021-2022 Medi-Cal Specialty Behavioral Health External Quality Review,

- Rapid Examination of Jail Diversion Strategies and Services 2020, Justice Involved Mental Health Taskforce, and
- Unrecognized and Underutilized Potential: BHC of Alameda County, Urban Strategies Council.

Additional Alameda County reports and background materials, foundations' and cities' mental health reports, and data available from the state were among other materials reviewed.

The Grand Jury acknowledges that the field of mental health services and support is undergoing changes from new state CalAIM requirements and as a result of the Babu case. The Grand Jury also wishes to acknowledge the committed and knowledgeable staff from local non-profits and government it found during the investigation. But the Grand Jury also found common areas of concern from a variety of sources that gave support to the initial complaint that the system of support for SMI people is not functioning well. The Grand Jury focused on areas of improvement over which ACBH has some control and that address the initial complaint.

Community Needs Assessments and Strategic Plans

The MHSA, which represents approximately 25% of total funding to ACBH, mandates the collection of outcome data for the programs it funds, primarily CSS and FSPs. That data includes:

- 7-day and 30-day hospital recidivism
- 7-day and 30-day follow-up care for hospital discharge
- 7-day and 30-day crisis stabilization unit recidivism
- 7-day and 30-day follow-up care for crisis stabilization discharge
- Housing status at admission and discharge
- Primary care utilization
- Reduction in incarceration days

However, there is not a recent broad-based, Alameda County mental health needs/gaps assessment that explores where in the county there are service needs, equity disparities, successful interventions, and that reviews current best practices and gaps in service availability, both inside MHSA and outside MHSA. One witness described funding choices by ACBH as “**shooting in the dark.**” The Grand Jury understands that a large-scale community needs assessment and strategic plan has not been completed since 2015, which was a crisis planning report completed by consultants *Resource Development Associates* for ACBH.

The Grand Jury reviewed many sources of information in addition to the annual MHSA reports, such as the External Quality Review, Alameda County Office of Homeless Care and

Coordination data and plans, various city agencies' reports and plans, Emergency Medical Services statistics, the Rapid Examination of Jail Diversion Strategies and Services Report, MHSA Integration Evaluation 2020-2021, and Santa Rita Jail data.

To summarize, Alameda County does not currently know if it is currently meeting the needs of its residents struggling with SMI.

Absence of Data

The lack of quality data integration and analysis was a concern for almost all witnesses, who came to this issue from a variety of perspectives. The Grand Jury agrees with this concern. The Grand **Jury's** investigation of many aspects of service needs and delivery was impeded by the unavailability of useful and coordinated data. There is no available data that reviews local CBO performance (outside data noted earlier in this report required by MHSA), or that compares success rates by agency, intervention, and diagnosis. There is no data documenting whether callers to ACCESS receive appropriate, or any, care. There is no integration of data from different organizations that follows a single individual and their outcomes. There is no data that explores reasons for failed outcomes for clients. Because waiting lists for services are not kept by all agencies, the actual need for individual interventions is unknown.

The Grand Jury's investigation of many aspects of service needs and delivery was impeded by the unavailability of useful coordinated data.

As an example, Assisted Outpatient Treatment (AOT) is a well-regarded MHSA program. It has a total of 30 slots in Alameda County and is chronically at capacity. Witnesses suggested that demand-based AOT capacity might be closer to 160 slots. It is unclear why this program has a cap of 30 while other MHSA-funded programs remain below capacity.

Isn't AOT a “best practice” that should be rewarded, replicated, and expanded? Better data could help drive the decision.

It is unclear if there is equity in funding and services for AOT or other ACBH services. More information than just the race and gender of recipients is needed. The Grand Jury could not find data that compared services by geographic location. Nor could the Grand Jury find data that showed rates of funding or services compared with rates of disease for various population groups. There are many competing needs for mental health funding support. Better data and better data transparency would greatly clarify those needs for service providers and the community at large.

ACCESS: A Misnomer?

The Grand Jury found that ACCESS as a single point of entry to mental health help can be useful at certain hours, but those hours are limited. The phone number is only staffed by ACBH from 8:30 a.m. to 5 p.m. Monday through Friday; after-hours and weekend calls get referred to Alameda County Crisis Support Services, where nonprofessionals provide telephone support, with a call back from ACBH the next day. This makes ACCESS useless during immediate crises at night, when police report the majority of their need for help, or on weekends. While ACCESS may not have been intended as a crisis line, there is currently no county-wide alternative to jail or 5150s (involuntary holds in a psychiatric institution for up to 72 hours) when psychiatric events require an immediate response. Some cities are trying to create their own models for crisis response, such as the new Mobile Assistance Community Responders of Oakland (MACRO) pilot program.

Also, witnesses explained that the police do not have time to stay on the phone with a client and help complete a referral form—a form that requires clinical information. In addition, since ACCESS is a phone service, calls back the following day require access to a phone at the time of the call. And there is no follow-up with people who interact with this service, beyond the initial callback. Also, although loved ones and friends may call for information, the client must be on the call and participate willingly to initiate a service referral. Also of note, the new state budget includes proposed Medi-Cal eligibility for crisis intervention services and those services will be required to be provided 24-7.

ACCESS can be valuable as an information and assistance service, as it is staffed with LCSWs. But outreach is extremely limited, even to police and mental health providers. Witnesses from ACBH were not aware of any instances of any recent outreach efforts for either professionals or consumers. Of the approximately 2,300 calls that come into ACCESS monthly, fewer than 50 calls come from crisis management teams and law enforcement combined. And only about 10% of calls come from family members. Someone must know enough about the Alameda County mental health system, or be able to type the correct key words into a web search engine, to get to the ACBH or MHSA websites to find the ACCESS phone number.

Nonprofit programs describe a disconnect between ACCESS data and their true capacity. For example, witnesses noted that ACCESS often refers clients to their programs when the programs are already at capacity. Programs sometimes call ACCESS to ask about program availability for their clients but do not get accurate information. There is no current technology linking real time program capacity with ACCESS, although the Grand Jury was told there is a list updated daily to reflect service capacity.

Behavioral Health Court—Underutilized Resource?

Witnesses universally spoke highly of BHC. While a state statutory requirement (SB215) requires diversion opportunity for low-level mental health offenders, each county makes its own standards. However, no data is available to the public regarding the success or failures of BHC. For example, graduation rates are available for Collaborative Courts, but **there's** no public data for BHC graduation rates. The only publicly available data is that for the CBOs funded by FSPs through ACBH. Additional data was unavailable to corroborate **witnesses'** perception that BHC is a major asset to Alameda County. However, limited data from 2015-2016 indicates that BHC improves public safety, improves psychiatric outcomes for the participant, and lowers public costs. San Francisco BHC, which has similar rigorous criteria for enrollment, provides public data that indicates BHC reduces incarceration and violent behavior. The Grand Jury could find no available data that assesses why people drop out of BHC or **don't** follow through. There is also no available data that looks at whether the program provides racial and geographic equity.

ACBH needs to provide more flexibility in service delivery rules to ensure treatment and delivery of services work together to support client needs.

Alameda County allows 30 people in BHC at one time and a maximum of 100 people. There is only one BHC site in Alameda County—in Oakland. Witnesses stated that there are waiting lists for referral to BHC. By comparison, San Francisco has a BHC cap of 300 people annually for a population less than half of Alameda County's. Witnesses stated that expansion of BHC necessitates expansion of ACBH staff involvement, but more importantly, there is insufficient community-based treatment infrastructure.

Mental Health Services Act (MHSA)—Good Funding Source, Limited Guidance

ACBH provides information to MHSA CBO stakeholders on a regular basis, but does not extend those stakeholders structured opportunities to offer feedback or participate in a bidirectional communication process with ACBH. Witnesses from local CBOs expressed frustration with some aspects of the MHSA funding and contracting processes, particularly how funding choices are made and the limitations within the contracts, calling them inflexible and the process as opaque compared with other counties. A Grand Jury review of MHSA contracts confirmed that they are exacting in their expectations and that the timeline for new RFPs and contracts is not on a disclosed schedule.

ACBH needs to provide more flexibility in service delivery rules to ensure treatment and delivery of services work together to support client needs. Contracts are currently fee-for-service, where separate services are paid for individually, instead of performance-based, which set targets for measurable performance requirements and quality standards in

developing statements of work. Witnesses also complained that their FSP contracts are capped, and they are not allowed to over-serve. Reimbursement for these contracts is from MHSA and Medi-Cal funding, so additional services are at no cost to the county. County staff noted that agencies can make a request for additional funds if over-service is anticipated.

The Grand Jury also learned that not all MHSA funds are spent down annually. In FY 2021-2022, MHSA had \$64 million in unspent funds from prior years, and anticipated carryover funds of almost \$26 million, excluding the prudent reserve.

Equity of MHSA funding should be made more transparent. MHSA plans highlight groups that are undeserved by the system, but the Grand Jury is not aware of any systematized racial or geographic equity lens regarding funding allocations for services.

MHSA paperwork is a problem—FSP CBO contracts include substantial paperwork. One provider told the Grand Jury it no longer accepts funding for FSPs because the paperwork took 60% of staff time. Another provider called the paperwork “**overwhelming**.” Some of the paperwork is unavoidable due to state and Medicaid requirements, but providers state that the paperwork can be significantly streamlined.

Medical record access is challenging—providers discussed their challenges in providing integrated care without adequate access to medical records. None of the providers who met with the Grand Jury have full interoperability of medical records with other FSP providers, which would allow timely and secure access, integration, and use of electronic health data so that it can be used to optimize health outcomes for individuals and populations. Some service providers are connected to some parts of the overall support system but not others. This contributes to the sense of fragmentation of the system felt by clients and their families. ACBH acknowledged this challenge.

Mental Health Advisory Board (MHAB)—Well-Meaning Watchdog with Limited Bite

MHAB meetings are open to the public and written materials are posted on its website. Part of the **MHAB’s** charge is to advise the BOS on mental health issues. The BOS has a representative at MHAB meetings and ACBH attends the meetings regularly. The MHAB has written thoughtful letters to the BOS over the last several years about relevant issues, such as the Santa Rita Jail issues and the need for more transparent data, but the BOS has not responded to those letters nor invited members to present at a BOS meeting. Thoughtful communication deserves a response. And there are MHAB vacancies to be filled. There are 16 available positions on the MHAB, all appointed by the BOS, and only 10 are currently filled. MHAB members can enrich mental health service delivery and provide outside expertise and perspective.

CONCLUSION

Through its investigation, the Grand Jury found and verified that Alameda **County's** mental health system is very complex and challenging to navigate, particularly for the SMI individuals and their families and friends for whom it should be primarily designed to serve. Based on its findings and through its recommendations, the Grand Jury seeks to help simplify this complex system for those trying to use it, and to help facilitate needed improvements for those attempting to maintain and manage it.

The Grand Jury wants to make clear that the problems it identified through its investigation lie largely with the system itself, not the people working within it. Despite questionable allocations of resources and the high personal and financial costs and stresses of working in the San Francisco Bay Area, the Grand Jury found dedicated groups of individuals committed to serving Alameda **County's** mental health needs. The following findings and recommendations are focused on helping these noble mental health service providers and the people they serve.



FINDINGS

Finding 1:

A county-wide needs/gaps assessment (broader than what the Mental Health Services Act mandates) has not been completed since 2015. A current strategic plan for Alameda County Behavioral Health is missing.

Finding 2:

Alameda County mental health data is not well developed, organized, shared, or distributed by Alameda County Behavioral Health Care Services. Outside of mandatory Mental Health Services Act annual and three-year plans required by the state, integrated data is unavailable to the general public and local advocates. Because of this lack of transparency, Alameda County Behavioral Health outsiders suspect that funds are not properly directed to community service gaps and needs.

Finding 3:

Alameda County Behavioral Health service contracts are inflexible. Alameda County **Behavioral Health's switch to fee-for-service** contracts from performance-based contracts has likely resulted in reduced services available to Alameda County residents.

Finding 4:

The mental health record systems of county mental health service providers cannot connect with each other. Lack of interoperability of medical records for Mental Health Services Act providers limits needed communication and consistent information capacity between service providers.

Finding 5:

Most Alameda County residents have limited knowledge of the ACCESS phone line and its role.

Finding 6:

Although there is a phone line answered by a volunteer from a local mental health provider during hours when ACCESS is not staffed, emergency mental health services for low-income seriously mentally ill individuals are not offered 24-7. There is no crisis referral line or alternative to jail or 5150 for immediate care for the seriously mentally ill when ACCESS is closed.

Finding 7:

Behavioral Health Court works. That's the unanimous verdict of the Grand Jury's witnesses. But it's not adequately supported and funded. Alameda County Behavioral Health and the courts have not provided adequate data to determine that the well-regarded Behavioral Health Court is effective and is racially and geographically equitable so it can attract more funding.

Finding 8:

The Mental Health Advisory Board, which has strong, knowledgeable, and experienced members and generates excellent ideas, is not used effectively by the Board of Supervisors.

RECOMMENDATIONS

Recommendation 1:

Alameda County Behavioral Health should develop a community-wide needs/gaps assessment, beyond the scope of what the Mental Health Services Act requires, to guide funding and ensure equity in service delivery. This can help Alameda County Behavioral Health develop a strategic plan to ensure that **Alameda County's current approach to mental health services and funding is fully in sync with "Care First, Jail Last" and Alameda County's current needs.**

Recommendation 2:

Alameda County Behavioral Health should invest in and improve its data development, organization, sharing, and distribution capabilities. Accurate and complete data-driven analysis and evaluation should direct Alameda County mental health service and funding choices.

Recommendation 3:

Alameda County Behavioral Health should lift contract caps for providers who are over-serving their contracts, or at least provide clear protocols for how and when to lift those caps during contract negotiations with service providers.

Recommendation 4:

Alameda County Behavioral Health must develop technology that allows uniform interoperability between multiple provider agencies for sharing of medical records.

Recommendation 5:

Alameda County Behavioral Health should add outreach in multiple ways, languages, and venues, including directing materials to law enforcement, health care, social services, and to the general public to instruct them appropriately about ACCESS as both a resource line and a referral line.

Recommendation 6:

The ACCESS number should be more widely distributed by Alameda County Behavioral Health to the professional and consumer communities. If the ACCESS line is an information and referral line, there should be corresponding easily accessible resource information about **mental health programs on ACBH's website and outside of the website, available to the public.**

Recommendation 7:

Alameda County Behavioral Health should provide a mental health support/crisis line that is staffed 24-7 as a referral alternative to jail or psychiatric holds.

Recommendation 8:

Alameda County Behavioral Health must develop enough program slots to meet current needs.

Recommendation 9:

Alameda County Behavioral Health must improve/expand upon its coordination between service providers and ACCESS staff regarding available slots for service by developing appropriate technology to assess available program slots in real time.

Recommendation 10:

Alameda County Behavioral Health must provide more transparency in its reporting on Behavioral Health Court and make results of Behavioral Health Court available, including graduation rates, recidivism, and reasons for lack of completion.

Recommendation 11:

Alameda County Behavioral Health, in collaboration with the courts, should increase the capacity of Behavioral Health Court, based on findings above, to support the “**Care First, Jails Last**” Board of Supervisors resolution.

Recommendation 12:

Alameda County Behavioral Health, in collaboration with the courts, needs to provide data that ensures that Behavioral Health Court is racially and geographically equitable.

Recommendation 13:

The Alameda County Board of Supervisors should better utilize the expertise and skills of the Mental Health Advisory Board. Regular, scheduled Advisory Board presentations to the Board of Supervisors would be useful.

Recommendation 14:

The Alameda County Board of Supervisors should fill the vacant Mental Health Advisory Board positions that the Board of Supervisors is supposed to appoint.

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, no later than 90 days from the public release date of this report.

Responses to Findings shall be either:

- The respondent agrees with the finding.
- The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

Responses to Recommendations shall be one of the following:

- The recommendation has been implemented, with a summary regarding the implemented action.
- The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
- The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency where applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.
- The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

RESPONSES REQUIRED

Director, Alameda County Behavioral Health Care	Findings 1 through 7 Recommendations 1 through 12
Alameda County Board of Supervisors	Finding 8 Recommendations 13 & 14

Glossary

- 5150—Involuntary hold in psychiatric institution for up to 72 hours
- ACBH—Alameda County Behavioral Health
- ACCESS—Acute Crisis Care Evaluation for System-wide Service, **ACBH’s primary phone** portal for access to county mental health services
- ACHCSA—Alameda County Health Care Services Agency, where ACBH resides
- ARF—Adult Residential Facility
- BHC—Behavioral Health Court
- BOS—Board of Supervisors
- CalAIM—California Advancing and Innovating Medi-Cal, a long-term commitment by the state to transform and strengthen Medi-Cal, aiming to offer Californians a more equitable, coordinated, and person-centered approach to maximize their health and life trajectory.
- CBO—Community-Based Organization, the primary providers for mental health services in Alameda County
- CSS—Community Services and Support
- FSP—Full-Service Partnership, a comprehensive and intensive mental health program for adults with severe and persistent mental illness
- LCSW—Licensed Clinical Social Worker
- MHAB—Mental Health Advisory Board
- MHSA—Mental Health Services Act, Prop. 63
- Medicaid/Medi-Cal—**Medi-Cal is California’s version of Medicaid, which provides** medical services to low-income people at little or no cost.
- RCFE—Residential Care Facility for the Elderly
- SMI—Seriously mentally ill

WHERE CAN I GO TO GET MENTAL HEALTH SERVICES IF I AM LOW INCOME?

1) **Mild to Moderate Symptoms:** Call your managed care plan for a referral. They will provide in-office services or refer you to an outside mental health specialist if the condition is outside their scope of practice.

Medi-Cal Managed Care Plans

- **Alameda Alliance (Beacon Health Strategies): 855-856-0577**
- **Anthem Blue Cross: 888-831-2246**

2) **Moderate to Severe Symptoms:** Call **ACCESS (1-800-491-9099)** if symptoms seem moderate to severe. The ACCESS mental health clinician will conduct a triage screening to determine the level of severity of your **client's** condition. To meet the “**moderate to severe**” criteria for Specialty Mental Health services, your **client's** condition must be impairing their ability to function individually or in the community. If the clinician determines that your condition **doesn't** meet the specialty mental illness criteria, they will refer you to their PCP or connect you to Beacon Health Strategies.

ACCESS clinicians are available in English, Spanish, Mandarin, Cantonese, Vietnamese, and Cambodian. Additional languages available upon request.

- Asian Health Services for **Asian language speaking individuals: 510-735-3939**
 - La Clinica de La Raza for **Spanish Speaking individuals: 510-535-6200**
- Deaf Community Counseling Services, for **Deaf and Hard of Hearing individuals: 510-225-7013, video phone: 510-984-1654**

3) **Crisis:** Call 911 or the **Alameda County Crisis Response Hotline: 1-800-273-8255** if you or your client is posing a threat to others, themselves (suicidality) or are gravely disabled by their condition, call 911. If a mental health crisis **isn't** showing immediate danger, call the crisis hotline for evaluations, limited crisis intervention and brief treatment with case management following acute care for selected individuals without other resources. Referrals to Crisis Response are also made through ACCESS.

If you are in Berkeley, call **Berkeley Mental Health: (510) 981-5291**

OAKLAND FAILS TO ENFORCE FINANCIAL DISCLOSURE RULES TO PROTECT THE PUBLIC

EXECUTIVE SUMMARY

In 2014, the Oakland Public Ethics Commission (PEC) established a code of ethics to provide guidelines for the filing of Form 700, also known as a Statement of Economic Interests, as required by the California Fair Political Practices Commission (FPPC). A tool to provide transparency and accountability in government, [Form 700](#) enables the public to discover and monitor the personal finances of Oakland government officials, such as their investments, real property, income, loans, business positions, gifts, and travel payments. Form 700 information is a critical part of the vetting process by public partners or persons interested in a transaction with the city.

A person who is required to file a Form 700, called a designated filer, has a conflict of interest in a governmental decision if that decision could have a “**material** and **foreseeable**” financial impact on the designated **filer’s** financial interests. To avoid the risk of biased decision-making or the appearance of improprieties, public officials are prohibited from participating in decisions where they could personally benefit financially. A designated filer must file the Form 700 when assuming a decision-making position, annually while working in that position, and within 30 days of leaving that position.

A tool to provide transparency and accountability in government, Form 700 enables the public to discover and monitor the personal finances of Oakland government officials, such as their investments, real property, income, loans, business positions, gifts, and travel payments.

The Form 700 is a monitoring tool and is only effective if the process of gathering financial information of decision-makers is centralized, publicized, and rigorously enforced. Local government benefits if the Form 700s either reveal or fail to reveal hidden financial conflicts of interest. A Form 700, signed under penalty of perjury, deters fraudulent behavior, since it can be used to prove fault if the required financial information is false or not provided.

Form 700s are essential to the work of **Oakland’s** PEC, whose mandate is to ensure compliance with the ethics laws that require reporting of personal financial information. The PEC serves as a quasi-judicial body that adjudicates enforcement matters. Failure to disclose an economic

interest on a Form 700 is a serious violation of the ethics rules because it deprives both the public and the PEC of valuable information about public **officials'** financial conflicts of interests.

The Grand Jury investigated how the process of administering the Form 700s currently operates and how and why that process should be streamlined and enforced for the benefit of the city of Oakland and its residents.

BACKGROUND

In the wake of the Watergate scandal, California passed broad sweeping ethics rules, including the Political Reform Act (the Act). The stated goal of the Act was to “**put** an end to corruption in **politics.**” Approved by more than 70% of California voters, the new state law required every elected official, employee, and consultant in decision-making positions to file an economic disclosure statement, known as a Form 700.

To avoid the risk of biased decision-making or the appearance of improprieties, public officials are prohibited from participating in decisions where they could personally benefit financially.

The law prohibits all decision-makers at any level of local government from participating in making or influencing a governmental decision in which the decision-maker has a financial interest. These decision-makers must disclose all assets and sources of income so that a governmental agency can monitor compliance with the ethics rules. The process of completing a Form 700 reminds public officials of potential financial conflicts of interest so they can abstain from making decisions. Because the completed Form 700s are available for public scrutiny, the resulting transparency can help monitor the decision-making of public officials.

To support the ethics rules, the Act mandated that all government agencies adopt a financial conflict of interest code. **Oakland's** Conflict of Interest Code incorporated the **state's** entire conflict of interest code and all amendments. Any violation of **Oakland's** Conflict of Interest Code is also a violation of the Act.

The Oakland Conflict of Interest Code lists positions of persons in city government who are required to disclose financial information and the categories of disclosure. The list of designated positions includes all agency positions involved in making decisions that could have a material effect on any financial interest of the decision-maker. The detailed disclosure categories describe the types of financial interest that officials in one or more job classifications must disclose.

According to **Oakland's** Conflict of Interest Code, the City Clerk **office's** Filing Officer has the duty to administer the Form 700 filing process. The Filing Officer must supply a Form 700 to designated persons who have assuming, annual, and leaving office filing obligations, and notify

filers who fail to file or who are required to amend. To determine who is required to file, the Filing Officer reviews and updates the list of designated positions and makes enforcement referrals to the FPPC. Filing officers are required to report apparent violations of the Act to the FPPC. An apparent violation exists if the Filing Officer knows or has reason to believe a Form 700 disclosure contains material inaccuracies or omissions, or when a filer fails to file all or part of a Form 700 after reasonable notice has been provided.

Failure to disclose an economic interest on a Form 700 is a serious violation of the ethics rules.

The following are examples of ethics violations highlighting deficiencies in the Form 700 process which prompted this investigation:

1. A complaint to the 2021-2022 Grand Jury reported a financial conflict of interest investigated by **Oakland's** PEC. In 2019, a consultant working in the **city's** Housing Development Department participated in decisions to grant loans of public funds to a development company operated by the **consultant's** father-in-law. The **PEC's** investigation into this conduct revealed several ethics violations including the failure to file a Form 700 disclosing the relationship. A broader review of the complaint by the PEC suggested a systemic failure of departmental management to monitor conflicts of interest.
2. In September 2021, the PEC took final action against an inspector in the **city's** Planning and Building Department. In 2019 the city employee in this investigation used his position to arrange "**pay to play/quid pro quo**" deals with property owners despite conflicts with his city position and without reporting these interests and income to the city on a Form 700. The PEC assessed a \$309,600 penalty for 47 violations of the Oakland Government Ethics Act.
3. The November 2020 Enforcement Order by the PEC described Form 700 violations in 2015 and 2016 of another city inspector in the Planning and Building Department who worked in tandem with the employee who was the subject of the September 2021 action referenced in number 2 above. This second city inspector failed to report income on a Form 700, in violation of **Oakland's** ethics laws. In January 2021, the PEC assessed a \$55,000 fine.
4. In 2021, the FPPC reported to the PEC that a former City Council member failed to file his 2019 and 2020 Annual Form 700s. The City **Clerk's** office did not report this ethical breach to the PEC.

INVESTIGATION

The Grand Jury heard testimony from several city of Oakland officials, department heads, and the PEC. The Grand Jury reviewed extensive documents regarding the Form 700 process. The investigation involved substantial research and surveys of relevant state and city ethics rules. The Grand Jury used these sources of information to develop facts, findings, and recommendations.

Public Ethics Commission

The Oakland PEC is an independent commission charged with ensuring fairness, openness, honesty, and integrity in city government. The **PEC’s** objective is to ensure that public officials and government decision-making processes operate fairly and in an unbiased manner, to support transparency in Oakland government, and to promote public trust.

The PEC has primary responsibility and power to investigate and enforce violations under the Act. Local law requires that the PEC oversee compliance with the Form 700 filing requirement and enforce the law as it relates to the content reported on the Form as well as conduct related

to any conflicts of interest. The PEC may order administrative fines, non-payment of which is a debt to the city. Oakland may file a civil action or pursue any other legal remedy to collect these debts, including costs and **attorney’s** fees. The PEC urges designated filers to comply with ethics rules to “**avoid** potential criminal, civil or administrative penalties (fines and jail **time**).”

The City Clerk’s office has responsibility for the Form 700 Filing Officer function while the PEC has responsibility for the Form 700 enforcement and training responsibilities. The Grand Jury learned that the City Clerk’s office and the PEC rarely collaborate.

The PEC conducts investigations, holds public hearings, issues subpoenas, and imposes fines and penalties. The Commission also educates, advises, and issues formal opinions to increase public awareness of the **city’s** ethics laws. And it investigates allegations of ethics violation in city government and enforces the ethics laws through administrative prosecution or civil litigation.

The separation of Form 700 responsibilities between the City **Clerk’s** office filing duties and the PEC enforcement and training duties makes the PEC compliance responsibility more challenging. The City **Clerk’s** office has responsibility for the Form 700 Filing Officer function while the PEC has responsibility for the Form 700 enforcement and training responsibilities.

The Grand Jury learned that the City **Clerk’s** office and the PEC rarely collaborate. The City **Clerk’s** office was unaware that the PEC has statutory responsibility for enforcement of the Form 700 filings. In fact, the City **Clerk’s** office wrote to the PEC asking it to cease advising designated-

filers about Form 700 filing, alleging that the PEC was “**confusing**” communications from the City **Clerk’s** office.

The Filing Officer in the City **Clerk’s** office does not refer late or non-filing persons to the PEC and, in violation of the law, has not referred those persons to the FPPC since 2016. Consequently, the PEC typically identifies Form 700 ethics violations as part of a broader investigation of other allegations of ethics violations by city officials, employees, or contractors hired by the city. Because the Filing Officer does not refer non-filers to the FPPC or the PEC, Oakland does not have a means of fully enforcing its Conflict of Interest Code.

In addition to the absence of collaboration, there is a lack of timely or prompt responses by the City **Clerk’s** office. The PEC has encountered delays of weeks and, in some cases, months by the City **Clerk’s** office in response to PEC requests for Form 700s from the City **Clerk’s** office for investigative or compliance checking purposes.

The PEC offers annual ethics training for the city managers, new employees, and consultants. PEC staff provided training in 2021 to 781 participants, including elected officials and their staff, and new employees. Last year 129 persons attended trainings for Form 700 filers through the **city’s** online learning management system and four live trainings conducted by the PEC staff via Zoom. City staff supervisors (100 in total) received additional ethics training. The PEC has a YouTube channel with ethics training, including Form 700 and conflicts of interest.

The PEC offers annual ethics training for the city managers, new employees, and consultants. PEC staff provided training in 2021 to 781 participants, including elected officials and their staff, and new employees.

A Filing Officer has the responsibility to collect, review, and provide public access to ethics-related data. Since 2016, the PEC has had responsibility for the Filing Officer function for campaign finance. In 2018, the PEC also assumed responsibility for the lobbyist Filing Officer function. However, responsibility for the Form 700 Filing Officer function remains with the City **Clerk’s** office. The PEC has requested that the City **Clerk’s** office transfer the Form 700 filing function to the PEC and has sought such a transfer in its budget application, to no avail. Such a shift would allow the PEC to fully implement its mission to ensure compliance with Form 700 filing requirements. As the PEC stated in its recently published 2021 Annual Report, the Form 700 filings “**are** of high interest to the PEC in ensuring compliance with ethics laws that require reporting of personal financial **information.**”

The PEC has six full-time staffers. The fiscal year (FY) 2020-2021 approved PEC budget included a one-time augmentation of \$100,000 for election-related services in lieu of the additional two positions requested for investigations and policy functions. The PEC was able to hire a temporary

part-time investigator for seven months. However, the PEC was not able to hire a full-time investigator after the City Administrator announced in December 2021 a \$62 million shortfall as well as a hiring freezes on vacant positions and a moratorium on temporary employees among other budgetary constraints. The PEC FY 2021-2022 budget of \$1,411,407 included one additional full-time administrative support person for the PEC starting in July 2022.

City and county departments have used grant funding to provide resources for critical staffing needs. The Oakland Fire Department, the County Public Defender, and Legal Services for Seniors, a contractor providing probate conservatorship representation, are examples. This method of funding may be a viable funding source available to the agency providing Form 700 services in Oakland. This possibility would require funding of a grant writer position.

Oakland's City Charter requires that the City Council appropriately fund the PEC to fulfill its functions and duties. PEC staffing, established by the 2014 Charter amendment, was based on 2013 case levels.

Oakland's City Charter requires that the City Council appropriately fund the PEC to fulfill its functions and duties. PEC staffing, established by the 2014 Charter amendment, was based on 2013 case levels. Over the years, the number of public calls to the PEC for advice and assistance regarding ethics, including financial conflicts of interest, has increased dramatically, requiring more staff resources to meet the demand for assistance. Public calls to the PEC for assistance quadrupled from 96 calls in 2016 to 460 calls in 2020. The PEC had a caseload of 74 open cases of alleged ethics violations by the end of 2020, initiated 60 new complaints, and 38 investigations into ethics violations by city officials,

employees, and contractors. In spite of the pandemic and the staff working at home, in 2021 the PEC responded to 260 requests for assistance, almost half of which concerned conflicts of interest rules. By year end 2021, the PEC had 44 open investigations.

City Clerk

The Oakland City **Clerk's** office manages the City **Council's** agenda materials, and oversees the **city's** elections, political filings, administration of records, management services, and the Form 700 process. The City **Clerk's** office maintains records for five separate departments, each of which has grown in the past seven years.

The City **Clerk's** office is chronically understaffed. Based on current staffing, the City **Clerk's** office is not able to fulfill the duties regarding Form 700. One person performs the Form 700 Filing Officer duties on a part-time basis, 35-50% of work hours, depending on whether a time-consuming election conducted by the City **Clerk's** office is occurring at the same time as Form 700 filings are due. Occasionally the City Clerk, who assumed that position in March 2021 and

who manages four other areas of record-keeping while supervising 10 employees, assists the Filing Officer with Form 700 duties.

For the past three years, the Assistant City Clerk position has been filled by inexperienced persons for short periods, but the position has been largely unfilled since 2017. The **city's** list of candidates for the Assistant City Clerk position is three years old and stale because most persons on that list are no longer interested or available for the job. The City **Clerk's** office has encountered a delay in getting a replacement list of candidates from the city's Human Resources department. A hiring freeze was announced in Oakland government late last year. The City Clerk **office's** budget for FY 2021-2022 is \$378,828 and for FY 2022-23 is \$334,847. The two proposed hires for FY 2022-2023 are an Administrative Analyst to respond to increased demands for public records information and a Management Assistant to fill the sole fiscal position in the office. The federal relief funds used to cushion the impact of reduced city funds during the pandemic is due to expire next year. The City **Clerk's** office is also funded by \$260,000 in miscellaneous grants.

The City Clerk's office is chronically understaffed. Based on current staffing the City Clerk's office is not able to fulfill the duties regarding Form 700.

The chronic short staffing means the one part-time person performing City Clerk **office's** Form 700 duties has been stretched thin. Because the City **Clerk's** office has been short-staffed for years, the present Filing Officer has significant responsibilities other than those related to Form 700. These additional duties include the responsibilities of the acting management assistant, assistance with elections, residency verification, sole responsibility for the front desk, domestic partnerships, payroll, passports, accounts receivable, mail, answering emails, recruitment duties, and preparing intake/separation paperwork regarding the City **Clerk's** office for the city.

The City **Clerk's** office is responsible for ensuring that the NetFile account, which serves as the automatic filing system for Form 700 and for the campaign filing system in Oakland, is paid on time. Payments of the Netfile account by the City **Clerk's** office was two quarters in arrears as of July 2017, a quarter in arrears as of December 2018 and again as of February 2019, two quarters in arrears as of January 2020, two quarters in arrears as of July 2021, and three quarters in arrears as of November 2021. NetFile recently proposed billing annually to limit the time **“chasing payments.”**

The City Clerk **office's** training to city employees regarding Form 700 consists of a brief statement at annual trainings conducted by the **city's** payroll/employee relations units identifying designated **filer's** obligations and suggests filers contact the City Clerk with questions. This limited training does not reach the persons required to participate in the Form 700 process.

Form 700 Process

Most persons required to file a Form 700 do so electronically using NetFile. Other filers, primarily but not exclusively seniors and disabled persons, do so by mail or in person at the City **Clerk's** office. The City Clerk Filing Officer receives the original Form 700s from designated filers who do not file electronically.

For in-person filings, the City **Clerk's** Filing Officer reviews the Form 700s to ensure that they are complete and then sorts the forms into piles for notices regarding follow-up amendments if the forms are incomplete or for scanning into the **city's** system, which requires additional handling.

Since 2016, the City Clerk Filing Officer has not reported annually to the FPPC apparent violations of the law including material inaccuracies or omissions, or failure to file the Form 700 after receiving delinquency notices from the Filing Officer.

The FPPC requires that the City Clerk Filing Officer review 20% of all on-time statements filed, half of which are selected on a random basis. The limited review is to determine whether the summary page is complete, the required schedules are attached, and the information is legible. The forms are not reviewed for accuracy of the information provided by the filer. In addition, the FPPC requires that the City Clerk Filing Officer review all the late-filed Form 700s to confirm the Form 700 summary page is accurate and complete, that all applicable schedules are attached and include all required descriptive information for each financial interest. However, the Grand Jury has learned that the City Clerk Filing Officer does not review all the late-filed Form 700s. Since 2016, the City Clerk Filing Officer has not reported annually to the FPPC apparent violations of the law including material inaccuracies or omissions, or failure to file the Form 700 after receiving delinquency notices from the Filing Officer.

The Conflict of Interest Code and the Form 700 are fundamental tools in ensuring that officials act in the **public's** best interest and not their own. It is critical that the Conflict of Interest Code reflects the current structure of each agency and that the city of Oakland correctly identifies all officials and employees who should file a Form 700. According to the FPPC, "**it** is essential and legally required that an **agency's** conflict of interest code remain current and accurate...Each agency must review its Conflict of Interest Code at least every other **year.**" According to FPPC rules, Oakland is required to review its Conflict of Interest Code at least every even-numbered year.

With regard to the mandated review of **Oakland's** Conflict of Interest Code, the FPPC requires that the city review whether there have been any substantial changes in an organizational structure, whether positions have been eliminated or renamed since the current Conflict of Interest Code was adopted, whether any new positions have been added, and whether there have

been any substantial changes in duties or responsibilities for any position. Any affirmative findings by a city review may mean that the Conflict of Interest Code would need to be amended.

The City **Clerk's** office did not produce to the Grand Jury any documents regarding its Conflict of Interest Code for the past four years. The Filing Officer does not maintain the documents necessary to conduct the review stated in the preceding paragraph. Notices to file the Form 700 could not be sent to an updated list of persons and designated positions added or removed since the last completed review of the Conflict of Interest Code. If no updated Conflict of Interest Code exists, the list of positions will be incomplete; as such it could exclude filings of decision-makers who make financial decisions throughout the city as well as include persons who are no longer designated filers.

Once the City **Clerk's** office completes its review of the Conflict of Interest Code and it is approved by the City Administrator, the Filing Officer must communicate with all agencies to confirm which employees and contractors are currently in designated positions. The Filing Officer then gives notice of filing dates for Form 700s to all designated filers. The notice includes information about the **filer's** disclosure categories along with the form or link to a website to complete the form. To satisfy this duty, the Filing Officer must have an accurate list of **employees'** and **consultants'** job status and current and accurate contact information for all designated filers. The primary method of issuing notice to filers by the Filing Officer is automatic emails to persons already registered with NetFile. For persons who are not already registered with NetFile or who have a status change that requires them to file a Form 700, the City Clerk's office is required to send a letter or make a phone call to them.

Accurate and timely city records regarding Form 700s are a key part of ensuring that the public has a useful tool for monitoring government and saving funds from misappropriation.

The FPPC requires that the Form 700 Filing Officer use a Form 804 and Form 805 to track changes in positions of designated filers and disclosure requirements in the Conflict of Interest Code. City departments are required to send Forms 804 and 805 to the Form 700 Filing Officer. The Form 804 includes all of the information for a new Form 700 designated employee position and the Form 805 records information from consultants who are designated filers. The Filing Officer is required to keep these forms for tracking purposes and for use in reviewing filers for the Conflict of Interest list of designated positions and disclosures.

The regulations require that when a person is hired for a position not yet covered under a current Conflict of Interest Code, the person file a Form 700 if the person serves in a position that makes or participates in making governmental decisions, using the broadest disclosure category until the Conflict of Interest Code is amended to include this position.

With few exceptions, the Filing Officer did not receive these forms from city departments and did not enforce the requirements for these forms. This gap in the information flow directly impacts the process of amending **Oakland's** Conflict of Interest Code listing of designated filer positions and disclosure requirements for these positions. The City **Clerk's** Filing Officer is required to review and consider the information on Forms 804 and 805 when the Filing Officer is reviewing Conflict of Interest Code designations for possible amendments of the Conflict of Interest Code. Without these forms, the Filing Officer cannot review the information on them that is required as part of the state-mandated process of updating and amending the Conflict of Interest Code. Keeping current and accurate records of who is required to file a Form 700 is critical for the public to trust that decisions are not made by persons who financially benefit from those decisions.

While NetFile records who has filed a Form 700 electronically, it does not have a record of who should file. The City **Clerk's** office acknowledges it cannot determine which persons file late and which are non-filers. Since 2016, the Filing Officer has not referred non-filers to the FPPC as required by law because the Filing Officer is unable to determine the number of non-filers each year. If the Filing Officer had this required information, followed up with the city departments to confirm changes, and referred persons who failed to file a Form 700 to the FPPC, the city would move toward compliance with its statutory duties.

Oakland has a duty to ensure that Form 700 statements are complete, to send requests to designated filers for amendments, to assess or waive late fees, and to refer non-filers to the FPPC. Accurate and timely city records regarding Form 700s are a key part of ensuring that the public has a useful tool for monitoring government and saving funds from misappropriation.

The City Clerk's Filing Officer is required to keep originals of Form 700 statements for seven years, maintain a tracking log, and make the forms available on request. Instead, the Filing Officer uses a spreadsheet to keep track of Form 700s. The spreadsheet cannot be compared with the original Form 700 statements to ensure accuracy.

For Form 700 filers who use NetFile, the Filing Officer is responsible for keeping all filer information current, including information about assuming and leaving office and when Form 700s are due. The Filing Officer must receive from city departments changes in the employment status of mandated designated filers shortly after the change happens because these persons must file a Form 700 within 30 days of a status change. Information about departing, promoted, or new employees is required for the Filing Officer to trigger notices to all designated filers. However, the Filing Officer frequently receives this information from city departments after the Form 700 filing deadline has passed.

Oakland Code of Regulations section 18115 states that city departments are required:

- to send completed Form 700s to the Filing Officer within prescribed times and keep a copy of those statements;

- notify the Filing Officer of a vacancy in an office and any other event affecting filing obligations;
- notify the Filing Officer of the names and positions of every person whose statements must be forwarded to the Filing Officer; and
- maintain a current list of all statements forwarded to the Filing Officer.

This law is not enforced. In the current Form 700 system in Oakland, the Filing Officer must conduct considerable follow-up attempts to try to obtain this information from individual city departments, with limited success.

This system, which was intended to ensure complete information for the City **Clerk's** Filing Officer, must be enforced to be effective. City departments do not routinely comply with their responsibilities to provide the essential information on at least a monthly basis. The Filing Officer struggles with intermittent information from departments that an official, employee, or consultant has been hired or has left a position, only receiving infrequent information by telephone, email, or written notices from persons in the agencies. City departments also frequently provide the Filing Officer some information well past the Form 700 filing date. If the Filing Officer does not learn of a change in status as soon as the person is hired or leaves a designated filer position, the Filing Officer does not have current information for sending the required filing notices. If a designated filer leaves a city position and the **filer's** city email is no longer available for communication, the Filing Officer must locate the departed person by other time-consuming methods. This results in late notices, late filing, and extended follow-up.

There is no enforcement of the requirement that agencies notify the Filing Officer of personnel changes. There is no automated notification to the Filing Officer from agencies regarding either change of required filing status or hiring or separation of designated persons. Different departments may not have a designated person responsible for sending the required information to the Filing Officer, the designated person may fail to send timely information to the Filing Officer, or the designated person may leave the department and is not replaced in a timely manner. The Filing Officer occasionally solicits the information from some departments. If the information provided is incorrect or incomplete, the process begins again.

The Grand Jury learned that Oakland uses a shared electronic Human Resources platform and that upon hiring or promotion, Human Resources maintains a checklist of forms and activities that must be completed by the new employee. The city does not take advantage of this shared Human Resource platform or the new employee checklist to assist with the reporting of Form 700 related information to the Filing Officer.

The Filing Officer does not maintain a database of who is required to file by title or position. The Filing Officer does not know whether a person is still an employee but is no longer in a required filer position. Because the Filing Officer does not routinely receive notices of promotion or demotion, the Filing Officer does not know how to contact those persons after discovering the

status change. When a position goes from a filer to non-filer status, the Filing Officer must pull the **person's** account out of the NetFile system and deactivate it. The NeFile information may be incorrect due to human error or lack of communication. Netfile does not provide information of e-files on its system to the Filing Officer; the Filing Officer must log onto NetFile and do a search to discover the information. NetFile tracks reminders it sends to filers; it does not track communications the Filing Officer makes to filers.

The Payroll Department periodically sends the Filing Officer a list of new hires and terminations (but not promotions or demotions) and the Filing Officer has to manually review the list to determine the designated filers. The new Employee Orientation Department sends a list of Form 700 filers to the City **Clerk's** Office, but the list is not always timely or complete.

With regard to supervision of the Form 700 process, prior to June 2021 the Filing Officer had not provided the City Clerk with periodic information regarding non-filers so that the City Clerk could share this information with the City Administrator supervising the City Clerk department.

CONCLUSION

All of the designated filers are persons in positions of power with respect to governmental decisions in Oakland. Supporting the Form 700 process by accurately reporting financial facts regarding designated filers helps protect the public from self-serving financial decisions by public officials, creates trust, and provides a factual basis for recovering misappropriated funds.

FINDINGS

Finding 9:

The Oakland City **Clerk's** office is not meeting the minimum requirements of the Filing Officer under the Political Reform Act. The issues of non-compliance with the rules regarding Form 700s are long-standing and structural, resulting from inadequate funding, an inefficient system of communication of critical information to the Filing Officer, and limited staffing.

Finding 10:

A transfer of the Form 700 filing duties from the Oakland City **Clerk's** office to the Public Ethics Commission would require hiring an additional employee; an amendment of the City Ethics Act to identify the Public Ethics Commission as the Filing Officer for Form 700s; and the transfer of the function and payment of the **City's** contract with the online filing provider, NetFile, from the City **Clerk's** office to the Public Ethics Commission.

Finding 11:

Grant funding has been used to fund staffing to support critical services in the City of Oakland.

Finding 12:

The city of **Oakland's** shared electronic Human Resources platform is not used in the Form 700 process but could be customized to assist in the sharing of information between departments.

Finding 13:

The city of Oakland's new employee checklist does not include Form 700 filing requirements to the employee.

Finding 14:

The Grand Jury commends the hard work of those individuals within the Oakland City **Clerk's** office who are responsible for the Form 700 process. The problems with the Form 700 process are the result of structural limitations, limited staffing, and inadequate interdepartmental communication.

RECOMMENDATIONS

Recommendation 15:

The city of Oakland should transfer the Form 700 Filing Officer responsibility to the Public Ethics Commission.

Recommendation 16:

The city of Oakland should hire an experienced grant writer with knowledge of state and local funding streams to secure funding for Form 700 services.

Recommendation 17:

On its shared electronic Human Resources platform, the city of Oakland should add a field to the employee information section that indicates whether the employee is a required Form 700 filer and require that the field be updated upon hiring, promotion, demotion, or separation.

Recommendation 18:

The City of Oakland should ensure that the Filing Officer is able to access a current list of Form 700 designated employees through the shared electronic Human Resources platform.

Recommendation 19:

The City of Oakland should add the notification of Form 700 status on the new employee checklist.

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, no later than 90 days from the public release date of this report.

Responses to Findings shall be either:

- The respondent agrees with the finding.
- The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

Responses to Recommendations shall be one of the following:

- The recommendation has been implemented, with a summary regarding the implemented action.
- The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
- The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency where applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.
- The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

RESPONSES REQUIRED

Mayor, City of Oakland	Findings 10 through 14 Recommendations 15 through 19
Oakland City Council	Finding 10 Recommendation 15
City Clerk, City of Oakland	Findings 9, 10, 12, 13 & 14 Recommendations 15, 17, 18 & 19
Public Ethics Commission	Finding 10 Recommendation 15

ALAMEDA COUNTY VOTERS CAN COUNT ON ELECTION INTEGRITY

EXECUTIVE SUMMARY

November 2020 represented the confluence of two historic events: the worst world-wide pandemic in over 100 years, at a time when COVID-19 vaccines weren't yet widely available, and a tightly contested U.S. national/presidential election held in a deeply divided and highly charged political atmosphere.

Either event by itself would have presented significant challenges for local election managers and processes. Distancing requirements and COVID-19 fears limited in-person voting and made it less attractive to voters. Therefore, absentee voting soared, and local governments enacted COVID-19-related regulations and restrictions, forcing local election officials to adapt and change plans rapidly to meet COVID-19 safety requirements. Meanwhile, voter interest, engagement, and turnout were high. And, after a presidential election that produced results that are still being challenged in certain circles, there were widespread allegations of election fraud in the U.S.

Serving in the wake of these events, with pandemic waves and election doubts still washing over the U.S., the Grand Jury investigated the election processes and procedures of its local election management agency, the Alameda County Registrar of Voters (ROV).

The Grand Jury focused on two key questions:

1. **Did the ROV maintain the integrity of Alameda County's election procedures and processes in the face of these historic challenges?**
2. **Can voters in Alameda County count on the ROV to carry out its basic mandates—to ensure every registered voter within the county counts, and all votes cast by the county's registered voters are properly counted?**

The management and implementation of the 2020 General Election in Alameda County (as well as statewide and nationally) confronted election officials with unprecedented challenges. Foremost was that it was held in the midst of a global pandemic, which created new needs and issues for voters and election workers alike.

The Grand Jury found **sufficient evidence to answer “yes” to both questions. And the Grand Jury wishes to share those answers with the people of Alameda County, to provide reassurance that the county’s election processes and procedures are functioning properly at a time when many are casting doubt on the proficiency and integrity of election processes and officials.**

BACKGROUND

Voting for government officials and/or laws, through the election process, is one of the cornerstones of democracy. It provides citizens with the power to determine who represents them and what laws govern them. Therefore, maintaining the integrity of the election process—including voter registration, ballot accessibility, polling place accessibility, and vote counting—is essential to facilitating government representation by and for the people.

Voting Management at the County and State Levels

At the county level in California, election processes and procedures are primarily managed by the county office of the registrar of voters. All services provided by the ROV are mandated by the California Elections Code, the California Government Code, and the California Constitution. These mandated services include voter registration, voter outreach, candidate services, and vote-by-mail services.

The ROV’s full responsibilities are detailed on its [website](#). Highlights and other key points include the following:

ROV’s Mission Statement

To seek better ways to provide services to encourage all eligible residents to exercise their right to vote; conduct elections in a fair, accurate and efficient manner; maintain a continuous professional level of service to the public; and develop new techniques to improve outreach services which acknowledge the diversity of Alameda County.

ROV’s Reporting Relationships with County and State Government

The ROV reports to the Alameda County Administrator, who in turn reports to the County Board of Supervisors. Though the ROV has significant control and oversight of all elections conducted within the county, particularly county and other local elections, it shares its **oversight role with the California Secretary of State’s Elections Division (State Elections Division)** for federal and state elections and is accountable to the State Elections Division on election matters.

The State Elections Division manages and coordinates election responsibilities on a statewide **basis with the ROVs in all of the state’s 58 counties. It also manages voter registration** statewide and tests and approves all voting equipment for security, accuracy, reliability, and accessibility to ensure that every vote is counted as it was cast. More information about the **State Elections Division’s roles and responsibilities are detailed on its [website](#).**

The 2020 General Election

The management and implementation of the 2020 General Election in Alameda County (as well as statewide and nationally) confronted election officials with unprecedented challenges. Foremost was that it was held in the midst of a global pandemic, which created new needs and issues for voters and election workers alike. Public health guidelines changed rapidly as new information and data were released about the evolving pandemic. Accordingly, the ROV had to respond to new needs with tight deadlines. Compounding these conditions was that it was a presidential election year, which resulted in record voter registrations and turnout.

Adding to the election year challenges were increased mail voting levels and new mandates for increased locations for mailed ballots to be deposited (if they were not mailed). New state laws and regulations required the number of drop box locations to be greatly expanded. The prior election required the ROV to have 28 drop box locations. Because of a new state law, Senate Bill 423, passed just three months prior to the November 2020 election (August 6, 2020), the number of required drop box locations more than doubled to 66 (per Section 2 of SB 423). Because of the dramatic increase in demand, there was a short supply of drop boxes that could be purchased and that met state law requirements. At the same time, these drop box locations had to be secure and strategically placed to meet new state requirements.

*The Grand Jury determined that it was a matter of public interest to assess and report the performance of the ROV during this “**crisis management**” situation. An added factor was concerns that were raised nationally about the management and integrity of the 2020 election.*

INVESTIGATION

Because of the aforementioned background factors, the Grand Jury determined that it was important to assess and determine if the ROV managed the implementation of the 2020 General Election in a manner that met all federal, state, and local legal requirements. In addition, the Grand Jury determined that it was a matter of public interest to assess and **report the performance of the ROV during this “crisis management” situation. An added factor was concerns that were raised nationally about the management and integrity of the**

2020 election. Because of these factors, the Grand Jury concluded that the citizens of Alameda County deserved to have an unbiased assessment performed on their behalf.

In conducting the investigation, the Grand Jury interviewed ROV staff and submitted written questions to and received written answers from the ROV. In addition, the Grand Jury submitted written questions to and received written responses from the State Elections Division. The Grand Jury consulted with the State Elections Division to obtain a broader statewide regulatory perspective and **an additional “check and balance” on the work performed by the ROV and the Grand Jury.**

During the course of its investigation, the Grand Jury asked the following questions and compiled evidence that produced the following corresponding mostly affirmative answers:

Q1: Did the ROV comply with all federal, state, and local laws governing the election process?

A1: Yes, the ROV complied with all legal requirements from local, state, and federal election laws. There were no complaints filed with the ROV or the State Elections Division that indicated otherwise.

Q2: Did the ROV take appropriate steps to prepare for the November 2020 election?

A2: Yes, the ROV took appropriate steps to prepare for the November 2020 election. These steps included conducting required and appropriate training for election workers. In preparation for the November 2020 election, the ROV conducted 133 in-person training classes held at eight separate locations within the county. In addition, each training location provided one-on-one training at its labs before and after class hours for election workers. A total of 2,349 election workers were trained on voting technology and procedures with hands-on, **in-person learning experiences, and “online” training. Topics covered included all aspects** of the voting process, touchscreen voting, on-demand printers, E-Poll books (roster book), curbside voting, COVID-19 precautions and protocols, and new procedures based upon recently passed legislation prior to the election.

Q3: Did the ROV take appropriate actions to comply with emergency conditions caused by the COVID-19 pandemic?

A3: Yes, the ROV took appropriate steps to respond to emergency conditions caused by the COVID-19 pandemic. The ROV took appropriate steps to comply with COVID-19-related election laws and regulations issued in the immediate months before the election. When problems emerged, the ROV responded quickly to resolve them in a time-sensitive manner **to protect the successful implementation of the election process. The ROV offered a “help desk” for the public to call as well as for election workers to use for problem-solving purposes.**

Q4: Did the ROV conduct training for election workers, both full-time and temporary?

A4: Yes, the ROV, under challenging conditions, conducted training for all election workers in preparation for the November 2020 election. This included both full-time employees and temporary workers hired for the election. This included testing procedures to confirm the knowledge and capability of workers to the areas of responsibility where they were assigned. If a worker did not pass the test they were transferred to an area where their skills were compatible. The ROV also conducted extensive cross-training for election workers, seeking to have workers possess a full understanding of the entire election process. For permanent employees, there was an orientation for the program area within the ROV where they were hired. They were also cross-trained in other areas to maximize their knowledge and capabilities. Similar training was provided to temporary workers, which is updated after each election.

Q5: Did the ROV meet mandated requirements for providing alternative language ballots for voters upon request? If a problem emerged, was it quickly addressed to ensure that as many alternate language voters as possible could vote, and that their votes were counted?

A5: Yes, the ROV provided ballots (some on demand) in 14 different languages. The main five **languages, based on the county's population, were English, Chinese, Spanish, Vietnamese, and Tagalog.** These voters had printed bilingual voter guides and ballots available for them. Voters in the other nine languages could vote with facsimile/reference ballots in their language at 100 locations. The ROV posted notices at all voting locations in all 14 languages informing voters that they could request a facsimile/reference ballot on demand in any of these languages. Every election site had the capability of producing these ballots upon request. If a problem occurred at a voting location, there were established methods resolve the problem.

Q6: Did the ROV meet mandated requirements for the placement of election drop boxes for the November 2020 election? If not, were they corrected on a timely basis? Did the ROV meet all requirements at on-site "Accessible Voting Locations?"

A6: Prevailing conditions made this a difficult mandate to fulfill. New requirements were placed on the ROV (and other county ROVs across the state) as a result of legislation that was passed by the State Legislature and became effective August 6, 2020. A brief time frame of two months was provided to obtain and place the required number of drop boxes in strategically determined locations. In the preceding election, the ROV had 28 drop boxes in place. The new law required a total of 66 to be obtained, prepared, and established within two months. The ROV ordered 38 new drop boxes from its vendor on July 22, 2020 – two weeks before the new requirement became effective. The vendor and supplier had issues satisfying the sudden increase in demand because multiple counties needed them at the same time. Because there are limited vendors that can make these drop boxes to meet legal

requirements, the sudden demand made it impossible for the vendors to satisfy the demand before the deadlines. The ROV took immediate steps to address this shortage as soon as possible. The ROV also dedicated resources to working with city managers and city clerks to identify strategic locations to place the required drop boxes in the communities where they were needed. During this time frame, the ROV also communicated with community-based organizations, faith-based organizations, the League of Women Voters, local school districts, and the State Elections Division to prioritize placement of these boxes. The ROV decided that it was best to proceed with the deployment of these boxes as they came into their possession from the vendor rather than seek a waiver from the State Elections Division. This was done to maximize the number of boxes in designated locations to maximize their availability to voters as soon as possible.

Q7: Did the ROV demonstrate its ability to resolve problems if/when they occur?

A7: Yes. For example, when a problem emerged at the Mills College voting site in Oakland, it was resolved. It involved confusion about proper ballot filing after voting, which resulted in some voters taking their ballots home instead of placing them in the proper trolley to be counted. Upon learning of the problem, the ROV took immediate steps to resolve the mistake. The ROV reached out by phone, email, and regular mail to every Mills College voter who might have been affected. This action enabled the ROV to collect 34 ballots from these voters. The ROV also obtained a court order allowing it to count any touchscreen ballots received from these voters. This incident was an isolated one and is not reflective of any systemic problem. To prevent a reoccurrence the ROV has increased the size of the header on the ballot **that states “THIS IS A BALLOT.”** The Grand Jury believes the ROV handled this problem in a rapid and correct manner and has taken proper steps to prevent a reoccurrence.

FINDING

Based on its investigation, the Grand Jury finds that the ROV, in 2020 and 2021, maintained **the integrity of Alameda County’s election procedures and processes in the face of historic challenges.** There was no evidence of unresolved problems in the election processes under **the ROV’s jurisdiction. And when particular problems emerged at specific sites, the ROV** moved quickly to address them in a manner that ensured all votes cast were counted.

Voters in Alameda County can count on the ROV’s dedication and effort to fulfill its basic mandates—to ensure every registered voter within the county counts, and all votes cast by the county’s registered voters are properly counted.

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

PROBATE CONSERVATORSHIP CRIES OUT FOR REFORM

EXECUTIVE SUMMARY

Alameda County provides legal services for people who cannot take care of their basic personal and financial needs and cannot afford a private attorney. These individuals, depending on the degree of impairment, may be placed in a conservatorship, a legal proceeding in which the court **appoints a person or agency to take care of the individual's needs and make decisions on their behalf**. The legal services provided by two agencies, the Public Defender and Legal Assistance for Seniors (LAS), are the primary safeguard against a person being placed in a conservatorship that is unjustified or unnecessarily restrictive.

The Grand Jury investigated the performance of the Alameda County agencies that are intended to protect impaired adults from harm: the Public Defender, which represents individuals in conservatorships, and the Public Guardian, which is appointed by the court as conservator when no one else is willing and able. (*See the Glossary in Appendix A for definitions of key terms used in this report*).

To understand the scope and purpose of conservatorship legal services, the Grand Jury focused on the performance and practices of the three service providers, the funding supporting these **services, and the checks and balances that are in place to protect Alameda County's most vulnerable residents** and make the entire process more responsive and transparent. The findings of this investigation provide a solid basis for recommendations for substantive and practical modifications of the conservatorship process that would provide more safeguards, define best practices, and reduce chronic underfunding and understaffing.

BACKGROUND

How Conservatorship Works

A conservatorship is established through a legal process, supervised by a court, in which a conservator is appointed as a decision maker on behalf of an impaired adult. An interested party, such as a friend, family member, or governmental agency, may petition the court for appointment of a conservator to protect an adult who needs help managing their personal or financial affairs. **Depending on the evidence of the adult's inability to take care of their own needs, the court may transfer some or all of the adult's decision-making powers**, known as the seven powers of conservatorship, to the conservator.

These rights include:

1. choosing where to live,
2. entering into contracts,
3. accessing confidential records,
4. making medical decisions,
5. making educational decisions,
6. choosing who to have social and sexual relationships with, and
7. marrying.

The court will order the transfer of these powers if there is convincing evidence that there is no less-restrictive alternative available to protect the adult from harm.

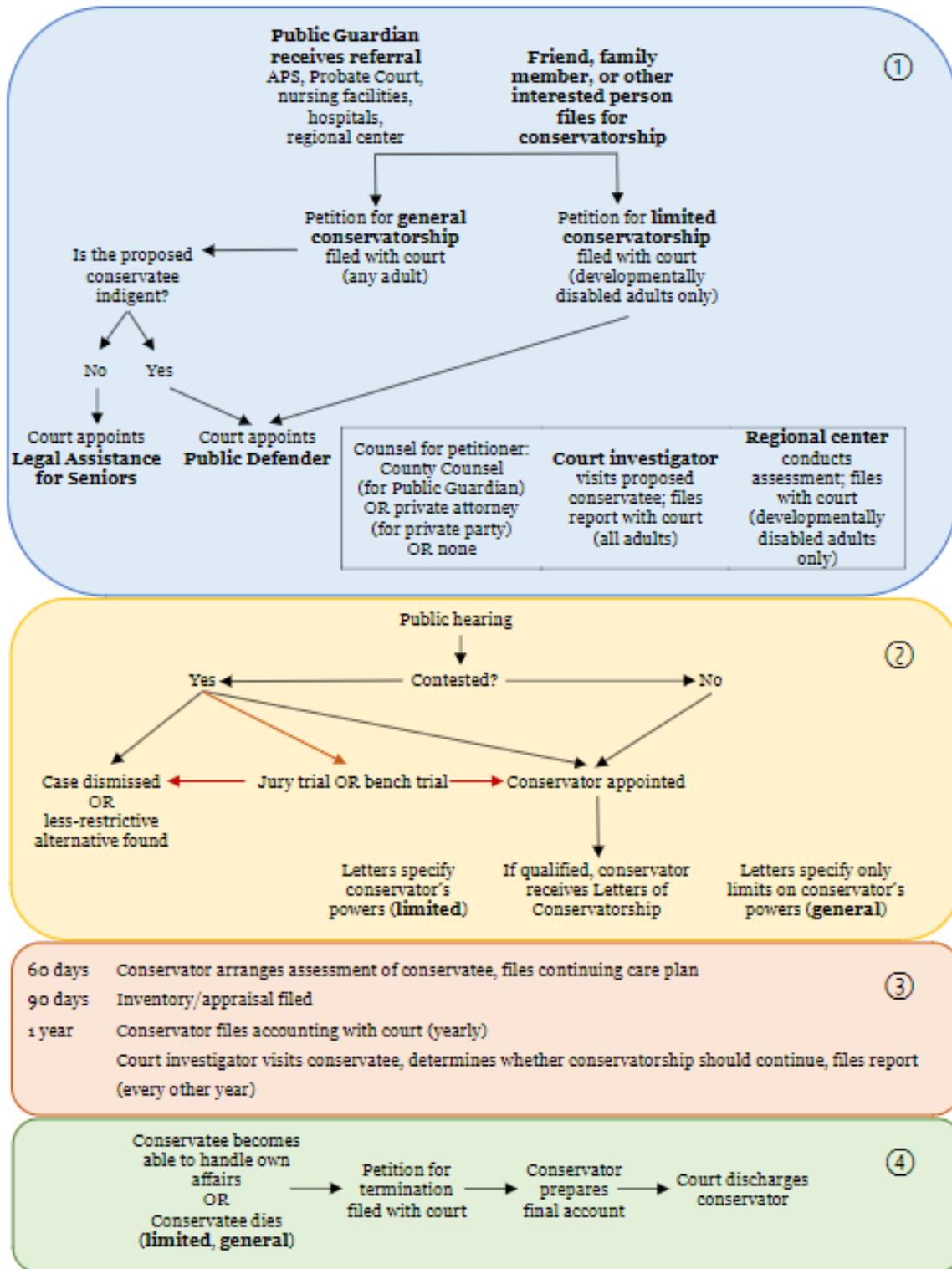
Types of Conservatorships

Several types of conservatorships exist. The two main categories are probate conservatorships, so named because they are handled in probate court, and LPS (or mental health) conservatorships, the most restrictive type, which aim to rehabilitate adults with severe mental illness and can be initiated only by a governmental agency; they expire after a year but can be renewed. Probate conservatorships, which are the focus of this report, can be divided into two subtypes, general and limited. General conservatorships are for any impaired adult, though most general conservatees are elderly and may have physical or cognitive disabilities (such as dementia). Limited conservatorships are only for developmentally disabled adults (of any age). Both general and limited conservatorships can last a lifetime.

A conservatorship is established through a legal process, supervised by a court, in which a conservator is appointed as a decision maker on behalf of an impaired adult. An interested party, such as a friend, family member, or governmental agency, may petition the court for appointment of a conservator to protect an adult who needs help managing their personal or financial affairs.

Conservatorship Process Summary

Here's a summary of the conservatorship process (see the figure on the following page): (1) Initiation of conservatorship proceedings. (2) The hearing and possible outcomes. The red arrows indicate options that have rarely (bench trials) or never (jury trials) been pursued in Alameda County within the past decade. (3) Court oversight of the conservatorship consists of annual accountings filed by the conservator and biannual reports filed by the court investigator. (4) Termination of the conservatorship. A conservatorship formally ends either when the conservatee successfully petitions the court to recognize that they are able to handle their own affairs or upon judicial **recognition of the conservatee's death. The timeline data in part (3) are from the [California Handbook for Conservators](#).**



In response to a petition to the court for a conservatorship, the proposed conservatee has a right to an attorney to present evidence on their behalf, to contest the proceeding, and to demand a jury trial. State statutes require counties to appoint attorneys in probate conservatorship proceedings and to provide or fund indigent legal defense services. According to [Local Rule of Court 7.820](#), the court will appoint a free Public Defender for all developmentally disabled and indigent adults, and it will appoint LAS for all other adults. Conservatees may also hire private attorneys, who must be approved by the court. State law requires the attorneys who perform these services to be licensed and to abide by the Rules of Professional Conduct.

The evidence presented at the hearing will determine whether the petition for conservatorship is approved. If so, the conservatee may lose the right to control where they live, to make decisions about their health care and medications, and to choose who to associate with, among other rights. For these reasons, a robust defense is essential. The attorney is obligated to protect a proposed **conservatee's constitutional rights by carefully examining the client's** capacity, cross-examining witnesses, considering the **conservatee's placement and the extent of their powers, and** determining who would best serve as a conservator.

State statutes require counties to appoint attorneys in probate conservatorship proceedings and to provide or fund indigent legal defense services.

Conservators and Their Role

If the petition is approved, the court appoints a conservator. For adults in both general and limited conservatorships, the court may appoint a conservator of the person, who is responsible for taking care **of the conservatee's personal** matters (such as food, shelter, and medical care), and/or a conservator of the estate, who is responsible for managing the **conservatee's financial matters. These roles can be assigned** to the same person or different ones.

A conservator may be a friend or family member of the impaired adult, a private fiduciary, or the Public Guardian. The Public Guardian is known as the conservator of last resort because it is appointed only when no other person is qualified or willing to act as conservator, or when the **appointment of someone who is able and willing would not be in the conservatee's best interest** (for instance, when a neutral party is needed because of a dispute among family members). In 2020, the Public Guardian acted as conservator in 17% of cases.

After a conservator is appointed, a court investigator **conducts regular checks on the conservatee's living conditions and the conservator's actions**, and reports its findings to the court. The conservatorship lasts until the conservatee dies or the court decides that the conservatorship is no longer necessary. When a petition for termination is filed, the conservator files a final accounting, and the court discharges the conservator.

Statewide Reforms: Adopted but Unfunded

In 2005, a series of articles by the *Los Angeles Times* exposed abusive treatment of conserved adults by for-profit conservators. Deficiencies in court oversight of these conservators prompted the California Legislature to pass the 2006 Omnibus Conservatorship and Guardianship Reform Act, which imposed licensing requirements on professional conservators and increased financial protections for conservatees.

At the same time, the California Supreme Court convened a task force to study how the probate conservatorship process could be improved. Its goals included the following:

- ensure that the conservatorship is the least restrictive alternative for the conservatee;
- ensure adequate access to information for all of the interested participants;
- make increased and better use of short- and long-term care plans;
- ensure that there is a system to prevent fraud and improper handling of **conservatees'** assets;
- ensure that the conservatee is being taken care of properly through personal visitation.

The final report of the Probate Conservatorship Task Force, published in 2007, called for systemic change. Its 85 recommendations covered aspects of the process ranging from attorney training to family relationship support to fraud detection. To help implement these reforms, the California Legislature approved a one-time payment to courts in fiscal year 2008-2009. In the wake of the 2008 financial crisis, however, the legislature eliminated funding for conservatorship reform from the state budget. It was never restored.

The Zealous Advocacy Law

The most important recent change in state law regarding representation of conservatees is the passage of AB 1194, known as the zealous advocacy law, in 2021. This law strengthens an **individual's** right to legal counsel in conservatorship proceedings and requires counsel to act as a zealous advocate, meaning that the attorney must advocate for what the client wants, rather than what the attorney (or anyone else) thinks is in the **client's** best interest. Among other reforms, it also requires professional conservators to be fully transparent about their fees and imposes heavy fines for misconduct.

*The zealous advocacy law strengthens an **individual's** right to legal counsel in conservatorship proceedings and requires counsel to act as a zealous advocate, meaning that the attorney must advocate for what the client wants, rather than what the attorney (or anyone else) thinks is in the **client's** best interest.*

As zealous advocates, attorneys are required to do everything reasonably within their means to help the client achieve the goals they articulate to their attorney at any point during the

proceeding. For people in involuntary conservatorship proceedings, the legal process is adversarial because their personal freedoms are at risk. The only hope for avoiding an unnecessary or too-restrictive conservatorship is a good defense attorney.

Public activists have advocated for years on behalf of vulnerable persons kept in conservatorships in which they are unable to make their own life decisions and/or are subject to potential abuse. The widely publicized Britney Spears case and two films, the 2018 documentary *The Guardians* and the 2020 feature *I Care A Lot*, led to a new wave of public interest and induced media outlets to take a critical look at conservatorships. These developments drew the attention of the Alameda County Board of Supervisors, which in 2021 conducted hearings on the subject of conservatorship.

The 2021–2022 Alameda County Civil Grand Jury received two requests to investigate probate conservatorship generally. These complaints, combined with the groundswell of public concern over alleged abuses of vulnerable people, prompted the jury to undertake this investigation.

INVESTIGATION

During its investigation, the Grand Jury conducted 10 witness interviews and received answers to emailed questions. Persons interviewed include employees of LAS, the Public Defender, the Division of Aging and Adult Protection, and the County Counsel Department. The Grand Jury also reviewed numerous documents, including reports by county and state agencies, manuals and standards of practice, conservatee asset records and case statistics, correspondence between county agencies, and the text of state laws and local rules of court.

Hundreds of new petitions for conservatorships are filed in Alameda County each year.

Conservatorship Defense Providers

Hundreds of new petitions for conservatorships are filed in Alameda County each year. The Public Defender represents approximately three-quarters of all (proposed) conservatees in Alameda County, and LAS represents most of the rest. **LAS's** clients are primarily elderly adults in general conservatorships, whereas 80% of the Public **Defender's** clients are developmentally disabled adults in limited conservatorships.

Despite being collectively responsible for representing several hundred conservatees per year, neither the Public Defender nor LAS has a written contract for services with Alameda County. As a result, there are no uniform guidelines or expectations for attorney training and evaluation, caseload, the scope of representation, or what constitutes zealous advocacy. The lack of guidelines means that the level of service clients receive is not consistent across these two agencies, but rather depends on the **agency's** level of funding and staffing (see the table below for a summary).

This section of the report examines the conservatorship defense services provided by the Public Defender and LAS, with a focus on how they differ.

Summary of the Differences in Conservatorship Defense Services Provided by the Public Defender and Legal Assistance for Seniors

Aspect of Service	Public Defender	Legal Assistance for Seniors
Number of attorneys	1 full time	1.5 to 2 full-time equivalent
Support staff	1 shared legal secretary 1 shared clerical specialist	1 full-time equivalent
Caseload per attorney	Up to 362	Up to 50
Typical number of meetings with client	1	2 to 3
Training	2 weeks on-the-job training with outgoing attorney Self-directed continuing education	Work on conservatorship cases under supervision Conferences on elder abuse Community group trainings Ongoing continuing education
Track case outcomes?	No	Yes
Formal grievance procedure for clients?	No	Yes
Claim to practice zealous advocacy?	Yes	Yes

Training and Education

While the Public Defender employs more than 100 attorneys and 40 support staff across numerous practice areas, its probate conservatorship unit consists of a single attorney, with no dedicated support staff. For a newly hired attorney in this unit, training consists of one or two weeks of shadowing the departing attorney. There is no training checklist or manual.

After the initial training period, the attorney is responsible for self-educating to stay up to date on changes in the law and best practices. Continuing education consists of in-person seminars and recorded videos.

LAS was founded in 1976 and incorporated as a nonprofit organization in 1984. It is a much smaller agency than the Public Defender, with 35 employees providing legal, educational, and advocacy services in areas including elder abuse, minor guardianship, and conservatorship. A new conservatorship attorney at LAS is required to have experience working with older adults and to have worked a specified number of conservatorship cases, under supervision, from start to end. In addition to participating in continuing education seminars run by external agencies,

LAS conducts an annual conference on elder abuse as well as educational events within the community. A new hire at LAS has more thorough training, as well as more structured continuing education, than a new attorney at the Public Defender.

Caseload

The three attorneys at LAS who work on conservatorship part-time manage 40-50 cases each, not all of which are active. By contrast, between April and November 2021, the caseload of the Public **Defender's** probate conservatorship attorney ranged between 273 and 362 active cases, requiring significant evening and weekend work.

While the Public Defender employs more than 100 attorneys and 40 support staff across numerous practice areas, its probate conservatorship unit consists of a single attorney, with no dedicated support staff.

A heavy active caseload raises questions as to whether an attorney, regardless of skill or diligence, is able to act as a zealous advocate for each client. To mitigate this issue, the State Bar of **California's** [Guidelines on Indigent Services Delivery Systems](#), published in 2006, recommend that attorneys practicing indigent defense prioritize their cases through “**case weighting**,” which involves determining “**the amount of work (in time) that is required to bring a case to a conclusion**” (p. 27). To do so, attorneys should consider the complexity and specialized nature of the probate conservatorship process, their experience and training, reasonable preparation and study time for the task including the duty to research and investigate, and whether to consult with another professional in a related field. Despite this

recommendation, the Public **Defender's** probate conservatorship unit does not employ case weighting.

The *Guidelines* advise attorneys against taking on too many cases and caution that supervisors of overloaded attorneys are responsible for gaps in the legal services provided to conservatees. Specifically, the *Guidelines* cite an opinion by the American Council of Chief Defenders stating that:

*When confronted with a prospective overloading of **cases...** the chief executive of a public defense agency is ethically required to refuse appointment to any and all such excess cases.*

Refusing an increase in caseload is not an option for the Public Defender, as cases are assigned by the court and there is only one attorney to shoulder the workload. The consequence of chronic overloading of attorneys is insufficient legal services for conservatees.

Zealous Advocacy

In the absence of a contract between Alameda County and its conservatorship defense providers, the scope of attorney representation is unclear. Most importantly, according to [California Probate Code § 1800.3\(b\)](#), the court will not grant a conservatorship if a less-restrictive option is available, but the actions an attorney should take to pursue such options are not clearly defined.

The Grand Jury aimed to answer the following questions:

- How often do conservatorship defense attorneys meet with their clients?
- Do attorneys routinely arrange for clients to be evaluated by medical professionals and/or social workers? Should they?
- What role, if any, do attorneys have in communicating with a developmentally disabled **client's** regional center (described on page 62)?
- How often do conservatorship proceedings go to trial?
- After a conservatorship is established, does the attorney continue to monitor the case? If so, for how long?

As with attorney training, education, and caseload, in these areas the Grand Jury found significant differences between conservatorship defense providers.

Client Meetings

Most of the proposed conservatees represented by the Public Defender agree to the conservatorship. The Public Defender usually has one meeting with these clients (during the COVID-19 pandemic, this meeting often took place via video). For the small proportion of clients who object to the conservatorship, meetings are more frequent. LAS attorneys, by contrast, typically meet with their clients a minimum of two or three times, though in some complex cases there may be dozens of meetings over several years.

For the Public Defender, simple cases take three to five hours of attorney time. More complex cases, in which a client either objects to the proceeding or has a disability that impedes communication, can take up to 30 hours. If the client is unable to communicate their wishes, the Public Defender investigates their living situation and interviews their caretakers to determine what would be in the **client's** best interest.

Medical Evaluations

Whether a conservatorship defense provider should arrange for medical evaluations of proposed conservatees is subject to debate. The Grand Jury learned that there are conflicting opinions

about whether doing so should be considered part of the **attorney's** job, whether it should be delegated to support staff, or whether it should happen at all.

Neither the Public Defender nor LAS routinely arranges medical exams for clients. The rationale is that an exam might show that a client is more impaired than previously believed, which would not help their case. The Grand Jury acknowledges this concern but also notes that, in cases where the extent of a **client's** impairment is not clear, a thorough medical examination could help establish capacity, determine whether a treatable medical condition or a problem with medication or dosage is responsible for the impairment, or even bring to light a misdiagnosis.

Social Worker Evaluations

The Public Defender does not request evaluations by social workers, even though it employs five of them. A meeting with a trained social worker would provide valuable input and the ability to share observations. If feasible, such a meeting without the proposed conservator or family members present would provide an opportunity for the client to voice concerns about the proceedings, if so inclined and able.

Regional Center Involvement

Adults with developmental disabilities are frequently clients of regional centers, which are nonprofit agencies that offer assessments, access to services, and assistance with meeting educational and life goals. Regional centers play an important role in developing a **client's** individualized program plan (IPP), a document in which a client, in collaboration with their support system, sets forth their personal goals and how to achieve them. Depending on the client, an IPP can offer a blueprint for a less-restrictive alternative to conservatorship, such as supported decision-making, in which a client creates their own support network to help manage their personal and financial affairs. Such a document, assembled by a client with the help of people who know them and their capabilities well, would seem to be an invaluable resource for a conservatorship defense attorney.

Again, the Grand Jury heard conflicting testimony regarding whether (and to what extent) an attorney should communicate with a **client's** regional center, and whether doing so constitutes zealous advocacy or is outside the scope of representation. Most of **LAS's** clients are elderly adults in general conservatorships, so it has little contact with regional centers. Most of the **Public Defender's**, in contrast, are developmentally disabled adults in limited conservatorships who are regional center clients. The Public Defender routinely requests the most recent copy of a **client's** IPP from the **client's** family, but if none is provided, it does not follow up. IPPs are required by law to be updated at least every three years, but the Public Defender does not participate in this process and, therefore, does not receive or provide input.

By not participating in the IPP process, the Public Defender is forgoing an opportunity to assess changes in **clients'** capacity over time—changes that could result in a less-restrictive conservatorship or even termination. The Grand Jury learned that a developmentally disabled adult may be able to retain some of the seven powers of conservatorship and that capacity in each area can be assessed separately. For example, a person may be unable to make medical decisions or enter into contracts but may be capable of choosing where they would like to live or who to be friends with. Also, a **conservatee's** skills and abilities may develop to the extent that continuing the conservatorship is no longer necessary.

Trials

[California Probate Code § 1827](#) grants conservatees the right to a bench trial or jury trial. In practice, however, bench trials in Alameda County are relatively rare and jury trials are nonexistent. Court records show that an average of 12 bench trials occurred each fiscal year from 2009-2010 to 2018-2019 and that there were zero jury trials in the same period. Notably, LAS was counsel for the proposed conservatee in the vast majority of the bench trials, despite representing fewer than half of all proposed conservatees in the county.

The Grand Jury learned that there are several explanations for the lack of jury trials, including their expense (for clients with the means to pay) and the unwillingness of many clients to air family disputes in open court. A jury trial is also very time-consuming, and an attorney with a high caseload would be hard pressed to see a trial through to completion.

Affirmative Outreach

Another aspect of zealous advocacy with no objective standard is whether (or for how long) an attorney should conduct affirmative outreach, or actively monitor a case, after conservatorship is established. The Public Defender usually withdraws as counsel after the petition for conservatorship is granted. If it becomes aware of a problem in an established conservatorship, it gets reappointed.

Follow-up generally consists of checking that the conservator is filing the required paperwork and that the court investigator is conducting a thorough review every two years, as required by law. If a case is scheduled for a status hearing and no problems have been reported, the Public Defender asks for the hearing to be taken off calendar to reduce caseload.

The court investigator plays an important role in conservatorship cases. The seven investigators employed by the Superior Court of Alameda County all work on conservatorship cases, and one is assigned to review accountings and fee requests. Aside from the biannual court investigator review, there is no other independent check on the **conservator's** performance throughout the life of the conservatorship. For this reason, it is crucial that the conservatorship defense provider conduct affirmative outreach to monitor the **conservator's** actions and ensure the **conservatee's**

well-being. In an effort to improve long-term follow-up, the Public Defender recently launched an affirmative outreach program that tasks interns with telephoning clients in long-established conservatorships to check on their status.

LAS conducts regular affirmative outreach for an average of a year after a conservatorship is established, but it withdraws as attorney of record by two years post-conservatorship. If LAS learns of a problem in an established conservatorship, it gets reappointed as counsel.

Quality Control

The Public Defender does not maintain an electronic database of its probate conservatorship cases. It does not track client demographics, case outcomes, or the rate at which conservatorships are terminated. In contrast, LAS maintains an electronic database of its conservatorship cases, allowing it to run reports on client demographics and case outcomes.

The Public Defender has no written complaint procedure to address the concerns of clients and their families. No audits of the Public Defender have occurred to determine compliance with probate rules designed to verify inventories and appraisals or accountings.

In the absence of an external assessment, a mechanism for analyzing case data, or a formal system for collecting client feedback, other quality control mechanisms are needed. The *Guidelines on Indigent Services Delivery Systems* emphasize the importance of attorney supervision and performance review, specifically:

*a continuous, interactive system whereby mentors, supervisors and managers provide assessment, feedback, documentation, remediation and other functions to ensure that the quality of service being provided is assured... In general, newer employees ordinarily require considerable supervision as well as training to confirm quality assurance. However, the work product of more experienced employees should also be regularly or periodically **assessed**... To the maximum extent possible the performance measurements and standards should be in writing.*

Contrary to these guidelines, the Public Defender does not have written performance standards for conservatorship proceedings, and no formal performance evaluations occur after the **attorney's** initial training period ends. Instead, supervision consists of weekly observation in court and informal discussions between the conservatorship attorney and their supervisor.

LAS does not represent indigent clients, so the *Guidelines* quoted above do not apply to it. Nevertheless, its procedures for attorney evaluation and client complaints are in line with zealous advocacy. To monitor attorney performance, LAS uses weekly case review meetings, regular

review by a supervising attorney, and client evaluation forms. If a client has a complaint, a written grievance procedure provides for two levels of review: a meeting with the legal director and, if the client is dissatisfied with that **person's** response, a meeting with the executive director. Clients who wish to “**appeal**” the executive **director's** decision are advised to bring their complaint to the Alameda County Area Agency on Aging, and a form for that purpose is available on the LAS website.

Funding and Fees

Fees charged to clients

In conservatorship proceedings, all requests for attorney fees are subject to court approval, and every party to a case (as well as any member of the public attending the court hearing) has an opportunity to object to a fee request. The court-approved hourly rate charged to clients by LAS is substantially lower than the county average. The Public Defender charges no hourly fees at all. Instead, it can claim a flat fee or a percentage of the estate of a conservatee whose assets have been liquidated. The percentage varies according to the value of the estate. The Public Defender requests fees only in general conservatorship cases, and only when the Public Guardian files a request for fees.

The court may deny any request for fees or reduce the amount to be paid. If a client of LAS cannot pay the fees, the county may be required to pay them instead.

How the agencies are funded

The Board of Supervisors approves **each year's funding for the** Public Defender, and the Chief Public Defender is responsible for allocating funds among the various service areas. **The office's** resources are devoted primarily to criminal defense; probate proceedings are not a priority for resources. There is no line item **in the Public Defender's budget for legal services in probate** conservatorship proceedings.

By all accounts, the Public Defender is severely underfunded, and this problem is especially acute in the probate department. Of the numerous requests for funding submitted by the Public Defender to the County Administrator between 2018 and 2021, only one item (funds to support yearly probate training) relates to conservatorship defense. Despite the competing priorities for funds, the Grand Jury confirmed an urgent need for at least one additional attorney in the probate conservatorship unit.

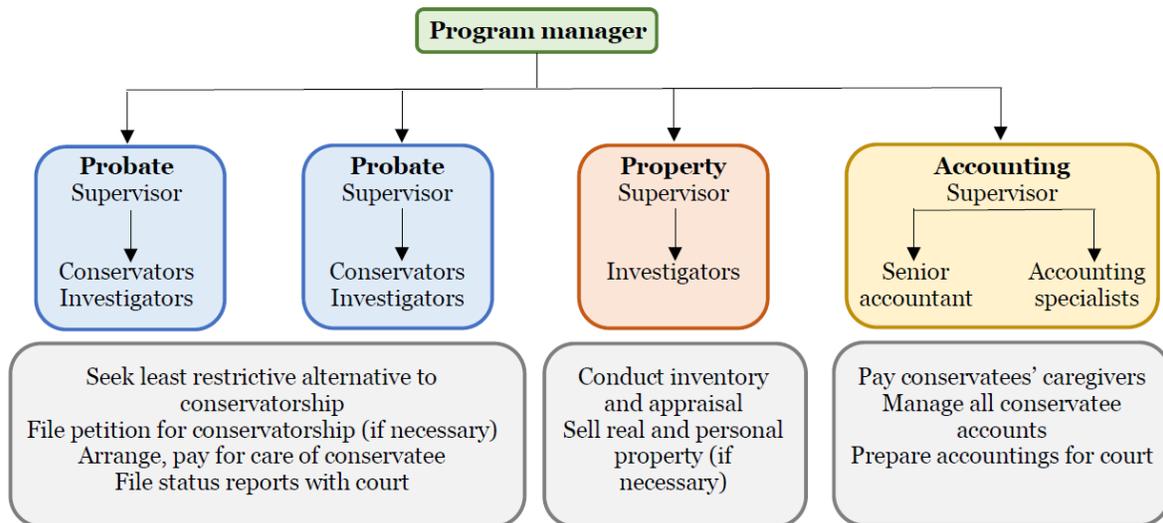
By all accounts, the Public Defender is severely underfunded, and this problem is especially acute in the probate department. Of the numerous requests for funding submitted by the Public Defender to the County Administrator between 2018 and 2021, only one item (funds to support yearly probate training) relates to conservatorship defense.

In contrast to the Public Defender, LAS receives no funds from the Board of Supervisors. With a **budget of \$2.5 million**, LAS's operations are not self-sustaining, so it raises money through grants and individual donors. Most of its clients are low income. As a result, LAS charges clients on a sliding scale and sometimes writes off fees entirely if paying them would pose a hardship to the client.

Public Guardian

The Public Guardian-Conservator (Public Guardian) is a unit of the Department of Adult and Aging Services within the Alameda County Social Services Agency. The Public Guardian comprises conservators, investigators (not to be confused with court investigators), and accountants, along with support staff (see the below figure for a summary). It can be court-appointed as conservator in both LPS and probate conservatorships. In the latter, it can act as both conservator of the person and of the estate. County Counsel advises the Public Guardian and is responsible for drafting and reviewing all of its court filings.

Summary of the Staff and Duties of the Public Guardian in Probate Conservatorship Proceedings



The Public **Guardian's** involvement in a conservatorship proceeding usually begins with a referral or an order by the court to initiate an investigation. Referrals may come from a hospital or nursing facility, Adult Protective Services, or a friend or relative of an impaired adult. Within five days of receiving a referral, a conservator meets with the proposed conservatee to learn about their needs, and an investigator begins researching whether a less-restrictive alternative is available.

In approximately two-thirds of cases, the investigation does not result in a petition for conservatorship (see the table below). If the Public Guardian does determine that conservatorship is necessary and appropriate, it will submit a petition to the court, usually within 20 days.

Sometimes, the court appoints the Public Guardian as conservator in a case it did not petition for. Such appointments are made when family members cannot agree on who should be conservator and it becomes necessary for a neutral party to arrange for the **conservatee's** care and protect their assets.

Outcomes of Referrals for Probate Conservatorship Received by the Public Guardian for the Years 2018–2020 (as of November 2021)

Year	Referrals received	Conservatorships established (of person and of estate)	Cases pending	Terminated or deceased	Investigations closed/withdrawn or petition rejected
2018	86	24 (28%)	3 (3%)	2 (2%)	57 (66%)
2019	76	26 (34%)	1 (1%)	1 (1%)	48 (63%)
2020	89	17 (19%)	8 (9%)	2 (2%)	62 (70%)
Total	251	67 (27%)	12 (5%)	5 (2%)	167 (67%)

Data provided by the Public Guardian

Training and Education

The minimum qualifications for a probate conservator are a **bachelor's** degree and previous experience with investigation or estate management. Probate conservators must also complete a four-year, 40-unit certification program by the California Association of Public Administrators, Public Guardians, and Public Conservators (CAPAPCPG); program participation is monitored by supervisors.

The Public Guardian has a detailed training manual and a guide to its case management software. In addition to the in-house and CAPAPCPG training, employees receive confidentiality and estate/trust management training from County Counsel as well as training in ethics, mental health, and aging.

Caseload

Ten probate conservators manage approximately 30 cases each, as conservators both of the estate and of the person. Witnesses stated that the unit is adequately staffed.

Quality Control and Oversight

Case management software allows the Public Guardian to track filing dates and task deadlines, as well as to analyze conservatee demographics, assets, and case outcomes. The Public Guardian pulls monthly reports to assess whether tasks are being completed in a timely fashion.

The Public Guardian's work is subject to several layers of review. Its accountings and status reports on conservatees are reviewed by County Counsel and the court investigator prior to approval by a judge. An external agency handles conservatees' tax returns, acting as a check on the Public Guardian's management of their estates.

A conservator of the estate can sell a **conservatee's** real or personal property to pay for ongoing care. If the Public Guardian determines that such a sale is necessary, it petitions the court for approval. Through their attorney, the conservatee can object to the sale.

Funding and Fees

The Public **Guardian's** funding comes from the **county's** general fund. Like the Public Defender, it can claim a flat fee or a variable percentage of the estate of a conservatee whose assets have been liquidated. However, if these funds are needed to pay for ongoing care, the Public Guardian does not request fees.

Optics and Liability

Appointing an attorney is a necessary accommodation under Title II of the Americans with Disabilities Act (ADA) to enable proposed conservatees to participate in a case. To ensure effective assistance of counsel, both the court and the county are obligated to adopt ADA compliance performance standards, require training of attorneys, and create methods to monitor **attorneys'** actual performance. Because there are no contracts between the probate conservatorship service providers and the county, ADA standards are not a part of any agreement to provide legal services.

The 2021 zealous advocacy law expands the risk of litigation by, or on behalf of, conservatees who are dissatisfied with the attorneys assigned by the county to represent their personal and financial legal interests. Alameda **County's** exposure to legal risk regarding probate conservatorships arises from the fact that the county does not keep track of how many and what type of probate cases are in the system; does not record what the outcomes actually are and what they should be; and does not audit the probate conservatorship system to examine its effectiveness, challenges, rate of improvement, and enforcement of probate conservatorship laws.

The significant understaffing and underfunding of the Public Defender likely contribute to the absence of jury trials and the rarity of court trials in conservatorship matters. With few trial

results for an appeals court to consider, there are virtually no appeals in which the appellate court could evaluate the procedures in probate conservatorships. Unlike constituencies with political power, adults in conservatorship proceedings are largely unable to lobby or influence the elected Board of Supervisors, the body responsible for funding decisions.

A Path Forward?

Alameda **County's** conservatorship defense providers rely on either funding from the Board of Supervisors, for which competition is fierce, or grants from foundations and individuals, which may not be reliable. However, other, more sustainable funding models exist. One such program, located outside California, has achieved good results for its clients and is financially self-sustaining.

The Legal Aid Center of Southern Nevada (located in Clark County) funds conservatorship defense through a fee appended to each document filed in the county **recorder's** office; its services are free to conservatees. Attorneys work with advocates and support staff to explore less-restrictive alternatives to conservatorship and to conduct affirmative outreach, which consists of twice-yearly, in-person visits with the conservatee to inspect their living conditions and assess their capacity. As a result of these efforts, in 2020 the Legal Aid Center closed almost as many conservatorship cases as it opened. In approximately 12% of its cases, either the petition for conservatorship was rejected or the existing conservatorship was terminated for cause. In other words, nearly one in eight conserved adults had their decision-making powers restored and their conservatorship proceedings dismissed.

Conservatorship defense providers in Alameda County would benefit from having a steady source of funding, employing advocates and legal assistants to monitor ongoing conservatorships, and having affirmative outreach built into the budget. Both conservatees and proposed conservatees would benefit from the proceedings being treated as a public service, with no fees or costs charged to their estates.

Under the current system, conservatees' estates can be quickly drained, despite court oversight. The main reasons are the costs of long-term care and fees paid to conservators and attorneys representing other parties (say, family members) whose hourly rates are not set by the court. The county is aware of this issue. In 2019, the Alameda County District Attorney investigated allegations that, among other things, probate court staff committed financial abuse and failed to **protect conservatees' assets. The investigation found no evidence of criminal acts by probate**

*Conservatorship defense providers in Alameda County would benefit from having a steady source of funding, employing advocates and legal assistants to monitor ongoing conservatorships, and having affirmative outreach built into the budget. Under the current system, **conservatees' estates can be quickly drained, despite court oversight.***

court staff. It did, however, find that involuntary conservatorship proceedings are often very expensive for conservatees, especially those who are removed from their homes and placed in care facilities. The investigators offered the following recommendation to reduce or eliminate such costs for conservatees:

*In situations where family members petitioned the court to be appointed **conservator**... and the Court finds conservatorship is not appropriate and eventually dismisses such petitions, the proposed conservatee should not be held accountable to pay for the costs of the legal process initiated by another **person**... [A]n analysis should be completed to identify alternate funding sources available through government agencies, including a voter approved initiative (tax) that can fund such expenses under limited and restricted circumstances.*

The funding model used by the Legal Aid Center of Southern Nevada is one solution to this problem.

CONCLUSION

Through its investigation of conservatorship, the Grand Jury learned that there are numerous pitfalls in the system. The four findings and eight recommendations on the following pages aim to help conservatorship defense providers address these issues.

The Grand Jury recognizes that each case is unique and that attorneys have discretion in pursuing **their clients' goals. The aim of this report is not to require attorneys to conform to a single, rigid standard but rather to clarify both the county's expectations of conservatorship defense providers and the duties of a zealous advocate.** In the 2007 report conveying its recommendations to the Judicial Council, long before the funding intended to implement them was eliminated from the state budget, the Probate Conservatorship Task Force struck a hopeful note:

[M]any of the recommendations would require additional funding from outside sources and some recommendations would necessitate a substantial change in the culture and practice of superior courts and their justice partners. The task force did not want these factors to dictate whether a recommendation would be forwarded to the council; rather, the task force saw its charge as being one to make recommendations for the best possible system within which conservatees would have the greatest level of protection, resulting in a system that would warrant a high level of public trust and confidence.

The Grand Jury echoes these sentiments, with the hope that its findings and recommendations will lead to meaningful change for conserved adults in Alameda County. They have waited long enough.

FINDINGS

Finding 15:

The Public **Defender's** probate conservatorship unit is severely understaffed and overworked, meaning that proposed conservatees with means receive a far higher level of service than the indigent.

Finding 16:

The failure of the Public Defender to gather data on conservatorship case outcomes, implement formal training procedures, and establish a formal grievance process for clients, in addition to its reliance on paper files, hampers its ability to identify trends, stay up to date on best practices, and learn from past experience.

Finding 17:

The lack of a contract between Alameda County and its conservatorship defense providers that outlines the expected scope of representation means that not all proposed conservatees receive the same level of service and raises the risk of litigation against the county.

Finding 18:

Involuntary conservatorship proceedings can quickly drain proposed **conservatees'** estates, which would not occur under a **recorder's** fee- or grant-funded model.

RECOMMENDATIONS

Recommendation 20:

The Alameda County Board of Supervisors must transfer responsibility for conservatorship defense from the Alameda County Public Defender's Office to a separate agency.

Recommendation 21:

The Alameda County Board of Supervisors must establish a written contract with its conservatorship defense provider(s) outlining the standards to be met in order to receive county funding, as set forth in Recommendation 22.

Recommendation 22:

The Alameda County Board of Supervisors must include the following provisions in the written contract(s) named in Recommendation 21:

- a. actions required to establish zealous advocacy, including

- i. arranging an evaluation of proposed conservatees by a licensed medical professional and/or a social worker,
 - ii. working with regional centers to review individualized program plans (IPPs) for (proposed) conservatees who are regional center clients, to determine whether a less-restrictive alternative is available, and
 - iii. implementing a procedure to follow up with court investigators to ensure thorough and timely investigations,
- b. the length of time an attorney or support staff must perform affirmative outreach after letters of conservatorship are issued,
- c. requirements that the conservatorship defense provider
- i. establish written attorney training procedures,
 - ii. establish annual attorney performance evaluation procedures,
 - iii. **review each case after the conservatorship ends and conduct an “exit interview”** or survey with interested parties, and
 - iv. maintain a database of case outcomes.

Recommendation 23:

The Alameda County Board of Supervisors must select a neutral third party to conduct an annual audit of a random sample of conservatorship defense cases to assess attorney performance and determine compliance with probate rules.

Recommendation 24:

Unless and until there has been a determination as to a new funding model, the Alameda County Board of Supervisors must approve funding for one experienced full-time attorney to be assigned exclusively to the Alameda County **Public Defender’s probate conservatorship unit**.

If the Alameda County Board of Supervisors finds it unmanageable to follow Recommendation 20, then it must ensure that the existing conservatorship defense providers meet the standards named in Recommendation 22 by implementing Recommendations 25, 26, and 27:

Recommendation 25:

The Alameda County Board of Supervisors must direct the Alameda County Public Defender to subscribe to an attorney training service upon hire and for continuing education in the area of probate conservatorship.

Recommendation 26:

The Alameda County Board of Supervisors must direct the Alameda County Public Defender to establish annual performance evaluation procedures for conservatorship attorneys.

Recommendation 27:

The Alameda County Board of Supervisors must direct the Alameda County Public Defender and Legal Assistance for Seniors to arrange for each client to be evaluated by a licensed medical professional and/or a social worker.

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, no later than 90 days from the public release date of this report.

Responses to Findings shall be either:

- The respondent agrees with the finding.
- The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

Responses to Recommendations shall be one of the following:

- The recommendation has been implemented, with a summary regarding the implemented action.
- The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
- The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency where applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.
- The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

RESPONSES REQUIRED

Alameda County Board of Supervisors	Findings 15, 17 & 18 Recommendations 20 through 27
Alameda County Public Defender	Findings 15, 16 & 18 Recommendations 24, 25 & 26

APPENDIX A: GLOSSARY

Affirmative outreach: when an attorney proactively checks on a **conservatee's** well-being after conservatorship has been established, as opposed to taking no action unless a problem has been reported.

Capacity: a **person's** ability to perform a task (also referred to as competence).

Conservatee: an adult whom a court has determined is unable to manage their own personal and financial affairs because of physical illness, developmental disability, or conditions of old age.

Conservator: a person or organization approved by the court to manage and protect a **conservatee's** finances and assets (conservator of the estate); arrange for the **conservatee's** food, shelter, and/or medical care (conservator of the person); or both.

Court investigator: a person employed by the court who advises conservatees of their legal rights and visits them in person, assesses their living conditions, and reports back to the court on whether the conservatorship should continue. Court investigators are required to conduct a visit and file a report one year after a conservatorship is established and every two years thereafter.

General conservatorship: applies to any impaired adult, particularly those who cannot care for themselves or manage their finances, usually because of conditions associated with old age.

Indigent: refers to a person with few or no assets who is eligible for legal representation by the Public Defender.

Individualized program plan (IPP): a document assembled by a regional center client, in collaboration with their family, a regional center representative, and others, that describes the **adult's** personal goals and how to achieve them.

Limited conservatorship: applies only to adults with developmental disabilities. The conservator has limited authority, specified by the court, and the conservatee retains all other rights not specifically assigned to the conservator (see Seven powers of conservatorship).

LPS conservatorship (also known as mental health conservatorship): named for the Lanterman–Petris–Short Act of 1967, this type of conservatorship is the most restrictive, with the aim of rehabilitating adults with severe mental illness. Unlike a probate conservatorship, an LPS conservatorship must be initiated by a governmental agency. It is not the same as a 5150 hold, which lasts up 72 hours and does not involve a conservator.

Probate conservatorship: includes both limited and general conservatorships, which are administered in probate court (excludes LPS conservatorships). Probate conservatorships are the focus of this report.

Proposed conservatee: an individual for whom a petition for conservatorship has been filed but who has not yet been conserved by a court.

Regional center: a nonprofit agency that offers assessments, access to services, and case management for persons with disabilities.

Scope of representation: the legal services an attorney provides for a client.

Seven powers of conservatorship: the rights that a court can transfer from an impaired adult to a conservator (i.e., the rights to choose their place of residence, to access confidential records, to marry, to make medical decisions, to enter into contracts, to make educational decisions, and to choose who to have social and sexual relationships with).

Supported decision-making: a less-restrictive alternative to conservatorship in which developmentally disabled adults create their own support networks to help manage their personal and financial affairs.

Zealous advocacy: the requirement that attorneys advocate for what their clients want, rather than what they think is in their **clients'** best interest.

APPENDIX B: REFERENCES

Americans with Disabilities Act of 1990 (*ADA*), Title II, Subpart A, U.S.C. §§ 12131–12134

Cal. Prob. Code § 1800.3(b)

Cal. Prob. Code § 1827

Cal. R. Ct. Rule 7.820

Conservatorship, Stat. 2021, ch. 417 (AB 1194)

Judicial Council of California, *California Handbook for Conservators: 2016 Revised Edition*, 2016, <https://www.courts.ca.gov/documents/handbook.pdf>

Judicial Council of California, *Recommended Practices for Improving the Administration of Justice in Probate Conservatorship Cases: Final Report of the Probate Conservatorship Task Force*, September 2007, <https://www.courts.ca.gov/4039.htm>

Legal Aid Center of Southern Nevada, *2020 Report: Adult Guardianship Advocacy Program and Minor Guardianship Advocacy Program*, January 2021, <https://www.lacsn.org/images/2020-Guardianship-Advocacy-Program-mini-annual-report.pdf>

Omnibus Conservatorship and Guardianship Reform Act of 2006, Stat. 2006, ch. 493 (AB 1363)

State Bar of California, *Guidelines on Indigent Defense Service Delivery Systems*, December 2005, https://www.calbar.ca.gov/Portals/0/documents/ethics/Indigent_Defense_Guidelines_2006.pdf

WIDE-RANGING SAFETY AND HEALTH CARE ISSUES AT SANTA RITA JAIL

EXECUTIVE SUMMARY

Santa Rita Jail is the primary adult detention facility in Alameda County. Built in 1989 on a 113-acre site in Dublin, Santa Rita was designed to hold 3,489 individuals, ranking it among the largest jails and prisons in the country. Eighteen separate housing units provide for minimum- to maximum-security incarceration of both male and female detainees. Santa Rita staff include approximately 1,200 county and contracted employees who support operations 24 hours per day, every day of the year.

Given the context of seven in-custody deaths during 2021, a multiple-year pattern of lawsuits concerning conditions at Santa Rita, and reported high levels of COVID-19 infection among inmates and staff, the Grand Jury conducted an extensive inspection of the facility and investigation of operations to provide the residents of Alameda County with a transparent, independent, and fact-based assessment of the facility.

Through four on-site inspections, analysis of more than 1,300 detainee grievances, interviews with senior leadership, and a targeted review of jail records, the Grand Jury completed a holistic assessment of Santa Rita. The findings and recommendations presented in this report involve issues of facility safety, detainment conditions, COVID-19 management, health care, and the process for grievance submission and investigation.

The Grand Jury acknowledges that Santa Rita represents a challenging environment to manage, especially in the context of a global pandemic, and that employees strive to meet rigorous expectations amid competing demands and limited resources. Nonetheless, the concerns identified in this report represent material health, safety, and financial risks and as such warrant urgent attention.

Through four on-site inspections, analysis of more than 1,300 detainee grievances, interviews with senior leadership, and a targeted review of jail records, the Grand Jury completed a holistic assessment of Santa Rita.

BACKGROUND

Santa Rita Jail, located in Dublin, is Alameda County's primary adult detention facility. Operated by the Alameda County Sheriff's Office (ACSO), the jail opened in 1989 with a design capacity for 3,489 detainees. As of February 12, 2022, Santa Rita was at 65% of capacity, with 2,263 detainees.

Conditions at Santa Rita are the frequent subject of critical news reports and litigation, which have cited deficiencies in health care, unsanitary living conditions, an ineffective response to the COVID-19 pandemic (COVID-19), poor-quality food, and a culture of disrespect and abuse directed toward detainees. These claims have persisted despite a robust independent inspection regime that includes annual reviews by the Alameda County Health Inspector, biennial reviews by the Board of State and Community Corrections (BSCC), and on-demand inspections by the Alameda County Civil Grand Jury. The most recent Grand Jury inspections of Santa Rita were conducted by the 2016–2017 and 2018–2019 juries and documented few areas of concern.

In contrast to the generally positive conclusions to recent periodic inspections, in April 2021 the U.S. Department of Justice provided the Alameda County Board of Supervisors with notice of:

...alleged conditions that we have reasonable cause to believe violate the Constitution and federal law... After carefully reviewing the evidence, we conclude that there is reasonable cause to believe that Alameda County and the Alameda County Sheriff's Office... engage in a pattern or practice of constitutional violations in the conditions at the Santa Rita Jail [emphasis added].

Similarly, in the February 7, 2022 resolution of a class action lawsuit filed against ACSO, a federal judge approved a consent decree that places Santa Rita under court supervision for a minimum of six years. In his comments on the testimony from 37 detainees who participated in a public hearing, U.S. Magistrate Nathanael Cousins stated:

Many spoke about inhumane conditions at the jail, citing minimal out-of-cell time, lack of access to mental health resources, an unresponsive grievance process, and unchecked uses of force... The Court agrees that these conditions are unconstitutional, and they demonstrate the need for the reforms mandated in the Consent Decree.

The widely divergent narratives on conditions at Santa Rita encouraged this Grand Jury to undertake an integrated inspection and investigation of jail operations.

The findings and recommendations contained in this report were developed following a comprehensive review of Santa Rita operations that took place between October 2021 and February 2022. Through this investigation, seven members of the Grand Jury participated in four on-site inspections and reviewed thousands of pages of records, including detainee grievances, contraband logs, violent incident reports, COVID-19 vaccination and testing records, outdoor access logs, the **jail's** written policies and procedures, minutes of county Board of Supervisors meetings, contracts with major vendors, and material published on the ACSO website. In addition, jurors interacted with both staff and detainees during on-site inspections and conducted formal witness interviews.

The detainee population at Santa Rita includes individuals who have been arrested but not yet arraigned, individuals who have been arraigned on charges and are awaiting trial, and individuals who have been convicted of a misdemeanor or felony and are serving their sentence in county jail. While convicted prisoners represent a sizable fraction of the **jail's** population, more than two-thirds of the detainees are not serving an imposed sentence but instead are being detained while awaiting adjudication of their case. The Grand Jury respects the principle that all individuals are entitled to a presumption of innocence until adjudicated guilty. In support of this presumption, the Grand Jury intentionally uses the term *detainee* throughout this report to describe the full range of individuals housed at Santa Rita.

The findings and recommendations contained in this report were developed following a comprehensive review of Santa Rita operations that took place between October 2021 and February 2022. Through this investigation, seven members of the Grand Jury participated in four on-site inspections and reviewed thousands of pages of records...

The Grand Jury recognizes that all detainees at Santa Rita are entitled to full protection of their safety, preservation of their health, and respectful treatment throughout detention. Consideration of these **detainees'** rights, alongside the rights of Santa Rita staff to a safe and healthy workplace, served as the central frame of reference for this investigation.

INVESTIGATION

Facility Safety

Safety Code Violations

Santa Rita was designed to support the daily activities of more than 4,000 people, and has been in continuous operation for almost 33 years. With a 24 × 7 × 365 operations schedule and a critical public safety mission, an effective maintenance and repair program is essential

to ensure a smoothly functioning facility and the well-being of detainees and staff. While the facility is owned by Alameda County, its day-to-day operations are the responsibility of ACSO, which is led by the elected sheriff. Alameda County provides comprehensive property management support for Santa Rita through the General Services Agency (GSA). The GSA is responsible for preventive maintenance, repairs, and management of most capital projects within the facility.

The GSA has dedicated on-site staff and management to provide facility support. GSA employees skilled in the construction trades provide the first line of support for the infrastructure, and contracted providers are engaged for projects that are large in scope or require specialized skills. GSA and ACSO staff jointly access an online property management system that allows users to schedule preventive maintenance tasks and manage the submission and tracking of service requests related to the facility.

The Grand Jury visited Santa Rita on four separate dates. During these visits, members of the Grand Jury focused their inspection on the secured portions of the facility, including detainee housing units, security control rooms, the intake/transfer and release center, medical facilities, the kitchen, and the motor pool.

On each visit, the Grand Jury observed the facility to be fully operational and without significant disruption related to infrastructure. However, members of the Grand Jury identified aspects of building infrastructure and operating practices that appeared to be out of compliance with governing codes and presented material safety risks to both detainees and staff.

Items of concern observed by the Grand Jury include but are not limited to the following:

- High-voltage wiring within housing units supporting ovens and tablet-charging stations not installed in accordance with the governing electrical code.
- Unlabeled emergency-stop buttons on industrial equipment.
- Visibly damaged 110-volt outlets throughout the facility.
- **Malfunctioning fire alarm sensor that continually reported a “triggered” status.**
- Obstructed access to emergency eyewash station within the kitchen.
- Emergency eyewash station in the kitchen with out-of-date testing and maintenance.
- Inconsistent signage on hazardous waste disposal containers.
- Instances of missing temperature-monitoring data for food storage refrigerators.
- Damaged flooring in housing units that presented a tripping hazard.



Damaged electrical outlet in housing unit

Through a joint walk-through with on-site GSA management, the Grand Jury confirmed the presence of multiple violations of the California Building Standards Code and learned that, with a single exception, the issues identified by the Grand Jury had not previously been reported or entered into the facility management service request system. The Grand Jury believes that the issues observed and the absence of prior identification of these issues represent evidence of a material gap in the policy and procedures for ensuring that the facility is in compliance with safety

regulations.

The Grand Jury learned that jail maintenance relies on a combination of scheduled preventive maintenance activities and a reactive model for addressing emergent needs. In this environment, ACSO staff working within the facility have access to an online system for reporting any building-related issues. Similarly, GSA staff working in the facility can log support requests for issues they observe that need further attention. Support requests are routed to GSA supervisors and addressed with GSA or contracted resources, as appropriate. Facility issues identified by detainees may be relayed to jail staff for submission to GSA or submitted through the **jail's** formal grievance process. Issues submitted through the grievance process are reviewed first by Grievance Unit staff, who submit a work request to GSA when they believe a repair is needed.

GSA reported that the current model is generally effective in ensuring that repair and maintenance issues are addressed in a timely manner, noting that most requests are handled within one week of submission and that there is no significant backlog of outstanding support requests.

The Grand Jury believes the current model of service request–driven maintenance works well to identify and address problems that are disrupting operations. For example, a burned-out light or a nonfunctioning security door is likely to be noticed, reported, and addressed in a timely manner. However, as evidenced by the number of code violations identified during the Grand **Jury's** inspections, this model is less effective in identifying emergent issues, including those that present safety risks but have yet to result in a physical injury. An eyewash station with blocked access, unlabeled emergency-stop buttons on equipment, and noncompliant

Despite the GSA's critical role in ensuring Santa Rita's safety and functionality, GSA representatives do not directly participate in periodic facility inspections conducted by the BSCC and the Alameda County Health Inspector.

routing of high-voltage electrical wires are all examples of deficiencies that are likely to go unreported and unaddressed in the current model, with potentially serious consequences.

As a supplement to the current request-driven maintenance model, the Grand Jury believes there is a role for periodic, proactive reviews of facility conditions. Such reviews should be a joint exercise to include ACSO leadership, GSA management, and an expert on the health and safety codes that apply to the jail. Issues identified during these reviews would be recorded in the existing facility management system for prioritization and tracking.

The Grand Jury learned that, despite the **GSA's** critical role in ensuring Santa **Rita's** safety and functionality, GSA representatives do not directly participate in periodic facility inspections conducted by the BSCC and the Alameda County Health Inspector. The Grand Jury believes this lack of direct engagement results in a missed opportunity for valuable exchange between expert facility inspectors and the county staff most directly responsible for maintaining the facility.

Access and Contraband Control

The Grand Jury learned that Santa Rita staff view the entry of contraband, especially illicit drugs, as perhaps the most serious and persistent challenge faced by the jail.

In mid-2020, the Alameda County District Attorney announced the arrest of a member of Santa Rita staff on 10 felony counts related to smuggling methamphetamines and a cellphone into the jail. The arresting **officers'** sworn declarations stated that the staff member was found in possession of drugs and confessed to the charges, which were alleged to have occurred over a six-month period. At the time of the arrest, the employee had been under investigation for two months, indicating that the illegal activity had begun at least four months before the investigation was initiated.

Over the course of the Grand **Jury's** four inspections of Santa Rita Jail, the seven jurors who participated in on-site inspections physically entered the facility a total of 13 times. During these entries, jurors crossed the secure perimeter, spent time in detainee housing units, and spoke directly with detainees. Santa Rita policy requires all jail visitors to present government-issued photo identification prior to entry to the facility. Notwithstanding this policy, across the 13 entries, with only a single exception, jurors were permitted to enter the jail through doors restricted to staff and administrative visitors without being requested to present their Grand Jury credentials or any other form of government-issued identification.

Santa **Rita's** internal reports confirm that the entry of drugs and weapons into the facility is a persistent problem and that this contraband has resulted in harm to both staff and detainees. Despite this risk, the Grand Jury noted a near absence of controls to protect against the entry of contraband by staff or administrative visitors. The controls experienced by the Grand Jury were limited to a verbal inquiry during the initial visit. At no point were jurors requested to pass through a metal detector, have their bags X-rayed, or undergo a physical search.

In addition to their direct experience, over the course of the investigation jurors observed dozens of jail staff enter the facility from outside and cross the secure perimeter. None of the jurors observed the deployment of controls that would protect against the introduction of contraband by members of jail staff. The Grand Jury confirmed that current policies and procedures permit jail staff to enter the facility with personal items, including electronics and bags, and that these personal effects are not subject to routine examination by X-ray, metal detectors, or direct search.

The Grand Jury learned that some members of the Santa Rita staff have concerns about the possibility that employees and contractors can enter the secure perimeter with unscreened personal items. A proposed set of changes was developed to address these concerns, but to date ACSO has not adopted any changes in policies or procedures to mitigate this risk.

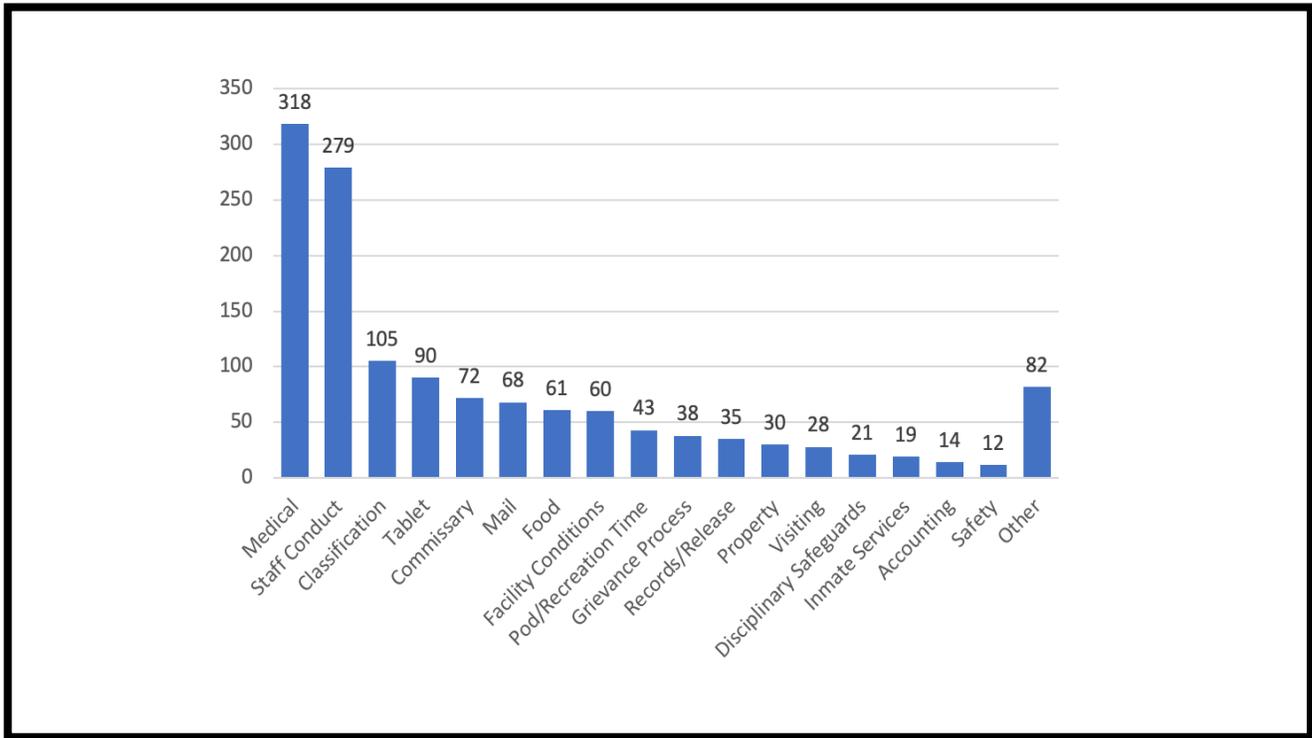
The Grand Jury confirmed that current policies and procedures permit jail staff to enter the facility with personal items, including electronics and bags, and that these personal effects are not subject to routine examination by X-ray, metal detectors, or direct search.

Detainment Conditions

When a detainee enters custody at Santa Rita, Alameda County assumes responsibility for that **detainee's** health and well-being. That responsibility is a legal duty and persists regardless of the emotional or mental state of the detainee, the offense with which they are charged, budget pressures within the county, or even the presence of a global pandemic.

The Grand **Jury's** investigation of detainment conditions was conducted in response to complaints of unacceptable detainment conditions reported in the media and allegations raised in civil lawsuits filed against ACSO. The investigation was conducted by reviewing more than 1,300 grievances filed by detainees, physically inspecting jail conditions during the on-site visits, and discussing focused areas of interest with staff and detainees.

Breakdown of Santa Rita Detainee Grievances Filed
(August through October 2021)



Analysis of grievances by category (August through October 2021). Concerns about medical care and staff conduct each represent more than 20% of filed grievances.

Among the 1,375 grievances filed by detainees during the three-month period between August 1, 2021 and October 31, 2021, medical services and staff conduct were the most frequent categories of concern, with each representing more than 20% of filed grievances. Concerns around housing classification, jail-issued tablets, the commissary, and mail were the next most common, each being responsible for 5% or more of filed grievances.

Many of the complaints about detainment conditions reported by the media and alleged in lawsuits were not substantiated during this investigation. The jury did, however, identify concerns regarding medical services, outdoor access, sanitation of temporary holding cells, and cleanliness of common spaces within the housing units. Each is documented below.

Medical Services

While **detainees'** concerns about medical services varied widely, delayed access to care and challenges with ensuring continuity of medication were recurring themes.

Health care at Santa Rita is provided under contract by Wellpath, a for-profit medical services provider. The Grand Jury inspected the primary medical facility at Santa Rita and found it clean, well-supplied, and active with patient care. The medical staff on duty presented as

professional and knowledgeable and appeared to be practicing appropriate COVID-19 prevention protocols.

The Grand Jury confirmed that demand for medical services exceeded available capacity, often causing long wait times for appointments. The Grand Jury also learned that appointment delays and cancellations (for instance, to attend a court hearing) contributed to issues with continuity of medication for some patients. The Grand Jury was unable to confirm the root cause of this imbalance between supply and demand and concludes that it warrants a coordinated review by Wellpath and Santa Rita leadership.

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Santa Rita recently initiated monthly, independent quality assessments of health care provided to detainees. The Grand Jury reviewed the resulting Monthly Quality Dashboard delivered in March 2022 and noted that it found examples of incomplete and inaccurate information in medical records as well as operational procedures that interfered with care delivery.

Although reported quality levels were far below established standards, the Grand Jury was impressed with the rigor of the audit, the quality of the recommendations, and the jail **commander's** personal participation in the monthly review meeting. Obtaining accurate information on the scope and nature of operational issues is a critical first step in addressing the problem, and the Grand Jury believes that the introduction of this process will be useful in monitoring not only access to care but also the quality of care.

The contract between Wellpath and ACSO includes requirements that Wellpath ensure minimum staffing by job function and maintain a low error rate across quality audits. The contract provides for monetary penalties for each understaffed shift and each occurrence of below-goal quality delivery. The Grand Jury understands that historically no penalties have been levied against Wellpath for understaffing or inadequate levels of quality. The Grand Jury believes these monetary penalties are an important tool to ensure that Wellpath delivers on its contractual obligations. The Grand Jury also encourages ACSO to actively pursue these penalties in each instance when contract requirements are not met.

In reviewing the history of the Wellpath-Santa Rita relationship, the Grand Jury learned that the former medical director for the jail, a Wellpath employee who worked at Santa Rita for five years, had her employment terminated in August 2020 for improper use of jail prescription pads to self-prescribe medication. At the time of the termination, Wellpath submitted a complaint to the Medical Board of California that documented concerns about self-prescription activity and that the physician had been practicing medicine while impaired.

On August 18, 2021, the Medical Board of California ordered a two-year suspension of the former Wellpath **employee's** license to practice.

The Grand Jury learned that Santa Rita Jail officials were first notified of the planned termination of the medical director less than 24 hours before it occurred. Santa Rita management did not materially engage around the personnel change, and prior to the Grand **Jury's** inquiry, Santa Rita leadership was unaware that Wellpath had observed performance issues and had been concerned about the physician practicing medicine while impaired.

The contract between ACSO and Wellpath includes the requirement for a drug-free workplace and prohibits the unlawful manufacture, distribution, possession, or use of controlled substances at any county facility. The contract also requires Wellpath to notify ACSO within five days of any instance of employee conviction or no-contest plea to a criminal drug statute violation occurring at a county facility. Failure to notify is deemed a material breach of the agreement. The circumstances involving the former medical director do not appear to have been covered by this notification clause, as the issue was addressed through the state medical review board rather than a criminal prosecution.

In reviewing the major vendor contracts for Santa Rita, the Grand Jury observed that while the health care provider and food service provider contracts shared common language regarding the core responsibilities of the contractor, the agreement for food service included a set of additional provisions specific to Santa Rita. These provisions addressed contraband, compliance, safety, and security and provided that key personnel could not be changed without the consent of ACSO. These requirements are notably absent from the Wellpath agreement.

Despite the extended time frame of the substance abuse by a senior medical provider at the jail, the use of jail resources to obtain fraudulent prescriptions, and **Wellpath's** concerns that its employee had been practicing medicine while impaired, a timely and transparent communication between Wellpath and Santa Rita on this issue did not take place. The lack of effective communication between Wellpath and ACSO on such an important topic is concerning to the Grand Jury, as is **ACSO's** failure to independently detect a period of on-the-job, illicit drug use by a senior member of the Santa Rita medical care team. Also of concern is that, once learning of the issue, ACSO failed to investigate and to assess **Wellpath's** response to this situation as part of its management oversight of Wellpath.

Outdoor Access

Santa **Rita's** primary structure is a two-story concrete building with 980,000 square feet of interior space containing 18 independent housing units, a medical facility, and supporting functions. The sprawling facility was designed with several large outdoor yards in the spaces

between housing units as well as multiple secure outdoor “mini-yards” directly adjacent to the maximum-security sections of the jail.

Despite its extensive outdoor space, the Grand Jury observed almost no use of either the large yards or the mini-yards by detainees. This observation was particularly surprising given COVID-19 mitigation recommendations that encourage social distancing and increased access to fresh air and sunlight.

On inquiry, jail staff reported to the Grand Jury that detainees were offered the opportunity of one hour of outdoor access per day. This assertion was countered by **detainees’** reports of being offered a one-hour opportunity per week, subject to the weather and conditional on the detainee not being otherwise scheduled for court, medical, or other appointments.

The Grand Jury investigated the level of outdoor access permitted to detainees by requesting and reviewing the handwritten housing unit logs maintained by the deputies on duty. These logs supported the **detainees’** reports of outdoor access being offered, on average, once per week for a single one-hour block of time. Despite the clear documentary evidence, several jail staff continued to assert that detainees were provided daily outdoor access which the Grand Jury did not find to be accurate.

The Grand Jury believes that regular access to fresh air and sunlight is crucial to the health and well-being of detainees and that that the current limit on this access to a single hour per week is inconsistent with the **county’s** responsibility for the detainees in its custody.



Aerial View of Santa Rita Jail by Jesstess87

(CC BY 4.0; <https://creativecommons.org/licenses/by-sa/4.0/deed.en>).

Source: https://commons.wikimedia.org/wiki/File:Aerial_view_of_Santa_Rita_Jail.jpg.

Sanitation of Temporary Occupancy Cells

Santa Rita contains several areas where detainees may be held in cells designed for temporary occupancy. Examples include:

- Safety cells, unfurnished and padded rooms with a floor drain; most frequently used for detainees who are considered at risk of self-harm.
- Sobering cells, rooms within the intake/transfer and release center occupied by incoming detainees who are found to be under the influence of alcohol or drugs.

The Grand Jury inspected several temporary holding cells during its four inspection tours. On multiple occasions, jurors noted foul odors and/or evidence of feces in these rooms. On inquiry, jail staff confirmed that the rooms being examined were considered available for immediate use. The presence of feces smeared on walls and foul odors in several cells described as being available for immediate occupancy suggests to the Grand Jury a systemic issue with the quality of cleaning and sanitation of temporary occupancy cells.

Cleanliness of Housing Unit Common Space

During its inspections, the Grand Jury observed varying levels of cleanliness in the facility. While most areas of the jail appeared freshly cleaned and well kept, the level of cleanliness in housing units and attached mini-yards was less consistent. Most housing units were maintained in a manner similar to the common areas of the jail and presented as clean, odor-free, and with all garbage disposed of in the provided trash cans. Several housing units were observed in a different state. In these units, jurors observed a combination of debris, dirty floors, and in one instance, a clogged commode.

Detainees reported to the Grand Jury seeing and hearing mice in their housing pods at night and being bitten by insects while sleeping. Rodent and insect traps were visible in several areas; however, the Grand Jury did not directly observe vermin during its visits.

Santa Rita policy places the responsibility for maintaining the cleanliness and sanitation of housing unit common spaces on the detainees who have access to that space. Detainees are provided access to cleaning supplies and determine their own cleaning schedule.

The Grand Jury understands and supports the intention underlying the delegation of cleaning responsibilities to the primary users of the space; however, in some instances this model fails to result in a clean living environment. In those situations, jail **staff's** failure to ensure the timely remediation of unacceptable conditions risks impairing the health and well-being of those who reside in the housing unit.

COVID-19 Management

On March 11, 2020, the World Health Organization declared the COVID-19 outbreak a global pandemic. Just five days later, the Alameda County Health Officer issued its first shelter-in-place order, prohibiting all nonessential gatherings and travel within the county. During the past two years, the Health Officer has regularly updated COVID-19-related orders and guidance to help ensure the health and well-being of all people in the county.

Correctional facilities like Santa Rita face unique challenges in managing the risk of contagious disease, given the communal living conditions, the difficulty of social distancing, and an ever-changing population of detainees housed at the facility. ACSO has taken its responsibility for managing the risk of COVID-19 infection to detainees and staff seriously, implementing a broad spectrum of policy and procedure changes to reduce COVID-19 risk and adjusting those policies and procedures as the understanding of that risk evolved. According to ACSO data, since the beginning of the pandemic only two detainees have been hospitalized with COVID-19, and none has died.

Correctional facilities like Santa Rita face unique challenges in managing the risk of contagious disease, given the communal living conditions, the difficulty of social distancing, and an ever-changing population of detainees housed at the facility.

In response to complaints by detainees, attorneys, and activists about ACSO's alleged failure to adhere to Alameda County's COVID-19 protocols for testing, physical distancing, and disinfection/cleaning, Sabot Consulting was engaged to perform an independent COVID-19-focused inspection of Santa Rita. Sabot's report on the inspection, published in mid-2020, concluded that while there were no systemic problems that materially undermined the efforts to manage the spread of COVID-19, there were *“a number of opportunities for process improvements that should be **addressed.**”* Sabot also stated that *“**there** must be a process in place going forward to detect and correct these problems, so they do not become **systemic.**”* In a follow-up to the report, Sabot praised ACSO's efforts to manage COVID-19 risk by complying with the majority of the **report's** recommendations but noted that two other recommendations had not been implemented. The inspector cautioned that he had observed *“a few lapses in enforcement that could very well result in an outbreak of the virus within the secure perimeter and result in serious illness and/or death of staff and inmates if allowed to **continue.**”*



Presentation of data published by ACSO (source: covidincustody.org).

During 2021–2022, COVID-19 infections among detainees at Santa Rita spiked to unprecedented levels, with 20% of detainees testing positive for COVID-19 at the peak of a January 2022 outbreak. Using the Sabot **report’s** findings as a reference, the Grand Jury sought to answer the following questions:

- Do staff consistently adhere to **ACSO’s** and Alameda **County’s** COVID-19 policies?
- Do staff clearly and effectively communicate the policies and procedures to detainees?
- Has Santa **Rita’s** COVID-19 policy led to a sustained reduction in the number of infections among staff and detainees?

Entry Screening

On arrival at Santa Rita, detainees undergo COVID-19 screening, consisting of a temperature check and symptom questionnaire, prior to entering the jail for intake processing. The Grand Jury was informed that all detainees are offered a COVID-19 test within 48 hours of their booking and again on the fifth day of their detention.

Detainees who are symptomatic or who test positive for COVID-19 during intake are placed in an isolation room to complete their intake processing, then transferred to the medical unit. Detainees who are symptom-free are placed in temporary housing for a 14-day quarantine period. During this time, detainees who enter the jail on the same date are co-housed and monitored for symptoms while remaining isolated from other populations in the jail. If a

detainee becomes symptomatic after being placed in their housing, they are moved to an isolation cell and visited by a nurse, who assesses the **detainee's** symptoms and offers a COVID-19 test. The nurse relays the **detainee's** symptoms to the medical unit for follow-up, and the quarantine status of the previous housing unit is updated to reflect the potential virus contact.

Santa **Rita's** COVID-19 protocol requires visitors to undergo a temperature and symptom check outdoors before entering the facility. The outdoor COVID-19 screening center for visitors is staffed by a sworn deputy rather than a medical professional. The Grand Jury observed that while temperature checks were universal for visitors, the checkpoint attendant did not seek information on potential COVID-19 symptoms or exposures, as required by ACSO policy. Consistent with the screening observed for jail visitors, jurors participating in facility inspections underwent a temperature check but no symptom or exposure review, nor were jurors asked to provide documentation of vaccine or testing status prior to entry.



Medical supplies and symptom questionnaires at the COVID-19 screening area

Following screening, visitors are provided a sticker to wear that serves as a visual confirmation that they had been successfully cleared at the COVID-19 screening checkpoint.

The Grand Jury notes that a May 2021 Alameda County Public Health Department guidance states:

The Centers for Disease Control and Prevention (CDC) recommends asking both COVID-19 screening questions and measuring temperatures upon arrival for... personnel, visitors, and persons confined to correctional/detention facilities. [emphasis in original].

As reported by Sabot Consulting in 2020, ACSO constructed a dedicated staff screening kiosk outside the main staff entrance. Activity at this kiosk is designed to mirror the visitor screening checkpoint, with each staff member having their temperature checked and answering COVID-19 symptom questions prior to entry. Jurors did not directly observe operation of this checkpoint but were informed by jail staff that it operated in a manner consistent with the visitor screening checkpoint.

The Grand Jury notes that ACSO has made a meaningful investment in infrastructure and processes to create exterior COVID-19 screening checkpoints for detainees, staff, and visitors.

However, lapses in the execution of established screening procedures, specifically the absence of verbal questioning about symptoms and potential exposures, degrade the value of this investment. Furthermore, the Alameda County Public Health Department guidance issued in May 2021, and reiterated in CDC guidance for congregate facilities issued in February 2022, makes it clear that symptom screening should be considered a supporting rather than a primary control for preventing outbreaks:

Screening for COVID-19 symptoms (including temperature checks) and asking about recent exposure can help identify staff members or visitors who should be excluded from a facility before entry... Symptom screening alone will not prevent all transmission, since it is largely based on voluntary self-report and will not identify people with asymptomatic infection.

Detainees and COVID-19 Prevention

The Grand Jury was informed that each new detainee receives soap and sanitizing wipes on arrival and that these supplies are resupplied upon request. Jurors observed that sanitation supplies and surgical masks were available within the intake/transfer and release center and the inspected housing units. While masks were readily available to detainees, most of the detainees observed by jurors were not wearing masks or were wearing a mask that did not fully cover the nose and mouth. The level of detainee mask use is concerning, given the low level of COVID-19 vaccination within the detainee population.



A fact sheet about COVID-19 symptoms; a CDC flier about handwashing (in English and Spanish); and vaccine information posted in a housing pod.

Information about COVID-19 symptoms and the availability of vaccines is conspicuously posted throughout the facility, including in each housing unit. Information on Santa Rita's COVID-19 prevention policies is also available to detainees electronically via jail-issued tablet. The Grand Jury confirmed with multiple detainees that they believe that information on the jail's COVID-19 policies and on the availability of testing and vaccinations is easily accessible.

Housing units are color-coded according to their current level of COVID-19 risk and exposure. Housing units and isolation rooms within the medical unit are conspicuously labeled with colored sheets of paper indicating the status of the detainees housed, and staff

take care not to let the color-coded groups interact. As a result of this mitigation step, outdoor yard access is limited to a single color-coded unit at a time and transit vehicles are restricted from transporting detainees from different color-coded units together.

Transport vehicles, both large and small, have been modified to accommodate fewer detainees with greater physical distancing and are operating at approximately one-third capacity. Staff reported to the Grand Jury that transit vehicles are thoroughly cleaned after each trip using a bleach solution and an electrostatic spraying machine similar to the type used to sanitize aircraft. The Grand Jury noted, however, that motor pool staff were unable to locate the sanitizing sprayer when requested.

Detainees have been assigned the responsibility of cleaning their cells and housing unit common areas. Cleaning supplies, personal protective equipment (PPE), and refills of hygiene products are, by policy, available on request. The Grand Jury observed soap and sanitizer in the bathrooms and sink areas of most of the housing units inspected, and when a juror pointed out a lack of soap and sanitizer, a staff member was able to immediately retrieve some from a storage closet.

Staff Use of Face Coverings

The Grand Jury observed a high but not universal level of face covering by jail staff. All employees who accompanied the Grand Jury on its inspection wore masks at all times. However, workers in housing unit observation rooms did not wear masks, even though multiple employees occupy these enclosed workspaces throughout the day. The Grand Jury also observed several administrative staff members working together in low-partition cubicles outside the **jail's** secure perimeter with their masks pulled down. Given the close proximity of the staff to one another and the open concept nature of the workspace, this behavior appeared to the Grand Jury to be out of compliance with then-current Alameda County and ACSO masking policies. Importantly, this lack of compliance was observed in an area adjacent to offices occupied by senior leadership, raising questions about whether leadership provides sufficient oversight of masking requirements.

Testing and Vaccination

Staff

As of February 2022, the only group of Santa Rita employees or contractors who are subject to a vaccination mandate is the medical staff, all of whom were reported to the Grand Jury as being fully vaccinated by October 8, 2021.

The vaccination rate among Santa **Rita's** nonmedical staff is much lower: Only 62% of custodial staff were documented as being fully vaccinated as of January 13, 2022. This level

compares unfavorably to that of the surrounding community; 81% of eligible individuals in Alameda County were fully vaccinated as of the same date.

ACSO's website presents weekly summaries of detainee vaccination rates and COVID-19 testing results for staff and detainees, among other COVID-19-related data, but information on the vaccination rate among jail staff is notably absent from this public reporting. Given the importance of vaccination in preventing the spread of COVID-19 and the real risk of transmission posed by asymptomatic individuals, the Grand Jury believes that the community deserves accurate and timely information concerning the aggregate vaccination level of Santa Rita staff.

ACSO's website presents weekly summaries of detainee vaccination rates and COVID-19 testing results for staff and detainees, among other COVID-19-related data, but information on the vaccination rate among jail staff is notably absent from this public reporting.

Santa Rita's Human Resources Department keeps track of documentation on staff vaccinations and shares this information with the Compliance Department to support its execution of COVID-19 policies. Santa Rita employees who are not fully vaccinated are required to undergo weekly testing that confirms their COVID-19-negative status to work at the facility. Consequences for delays in testing are modest, and the Grand Jury learned that they have not been uniformly enforced. The Grand Jury was informed that as of October 30, 2021, eight employees were out of compliance with the testing requirement while working at the facility.

According to current CDC guidance, a robust testing program, including both diagnostic and screening testing, is a critical component of an effective COVID-19 protection program for a corrections facility. The guidance further states that diagnostic testing should be performed for *“anyone who shows signs or symptoms of COVID-19 and for anyone who has been potentially exposed or identified as a close contact of someone with COVID-19, regardless of COVID-19 vaccination and booster status.”*

The number of COVID-19 tests completed among staff dropped significantly between August 2021 and February 2022 despite a significant surge in COVID-19 cases both within the jail and in the broader community. According to ACSO data, in the week ending August 21, 2021, 958 staff tests were performed; in the week ending November 27, 2021, the number was 369; and in the week ending February 5, 2022, it was 229. The Grand Jury understands these counts to include both screening and diagnostic tests for staff. This level of weekly testing appears to be insufficient to include weekly testing of all unvaccinated staff and the level of recommended diagnostic screening for staff who have had close contact with someone who has contracted COVID-19.

Detainees

Since May 2021, the vaccination rate among detainees has ranged between 25% and 30%. In the context of such low vaccine penetration, ubiquitous use of alternative prevention measures, including masks, social distancing, and sanitizing, is essential to prevent widespread illness. While prevention measures are critical, increasing the vaccination rate for detainees offers the best opportunity to protect the health of both detainees and staff. ACSO recognizes the challenge presented by the low vaccination rate among detainees and actively encourages vaccination through posted flyers throughout the facility. Despite the availability of vaccination appointments and the efforts at education, the vaccination rate has remained essentially unchanged over the past year as in-custody vaccinations are offset by inflows of new detainees with lower vaccination levels.

In the week ending February 5, 2022, 10% of Santa **Rita's** detainee population was tested for COVID-19, which suggests that approximately two-thirds of detainees were both unvaccinated and untested that week. Despite the January 2022 wave of infections within Santa Rita, testing rates have not exceeded 20% since mid-January, while the test positivity rate has fluctuated widely in the range of 9% to 100%. The Grand Jury recognizes that Santa Rita staff cannot compel detainees to be tested or vaccinated; nevertheless, the low rates of both metrics are concerning, and the Grand Jury encourages ACSO to redouble its efforts to raise the testing and vaccination levels of detainees.

The Grand Jury commends ACSO for the following elements of its COVID-19 response:

- The development and maintenance of a comprehensive COVID-19 response plan, which was most recently updated on February 3, 2022.
- Regular meetings and consultations with representatives of the Alameda County Public Health Department.
- Availability and promotion of on-site COVID-19 tests and vaccinations.
- Availability of PPE and sanitation supplies.
- Publication of daily updates on COVID-19 quarantines, testing results, and detainee vaccinations through the ACSO website.

While there are many positive elements to note about Santa **Rita's** COVID-19 response, the Grand Jury also observed issues that likely compromise its overall effectiveness. In an intentional echo of the conclusions of the Sabot report, the Grand Jury notes that gaps in the program and lapses in execution risk contributing to further outbreaks.

Detainee Grievances

In accordance with California Penal Code § 6030 and California Code of Regulations, Title 15, § 1073, Santa Rita is required to maintain policies and procedures that enable detainees to

submit grievances relating to any condition of detainment. Procedures are required to include:

- a grievance form or instructions for registering a grievance,
- resolution of the grievance at the lowest appropriate staff level,
- appeal to the next level of review,
- written reasons for the denial of grievance at each level of review that acts on the grievance,
- a provision for response within a reasonable time limit, and
- a provision for resolving questions of jurisdiction within the facility.

Public statements by detainees and lawsuits filed against ACSO, as well as detainee reports to the Grand Jury, have claimed that the grievance process at Santa Rita is ineffective. Specific complaints include a slow average response time, a high rate of grievance denials, inadequate investigation of complaints, and retaliation by jail staff.

The Grand Jury investigation of the grievance process included an analysis of all grievances submitted in August, September, and October of 2021, a review of the complete Grievance Unit investigation files for a subset of those grievances, discussions with detainees about their experiences with the grievance process, and witness testimony by jail staff.

Filing

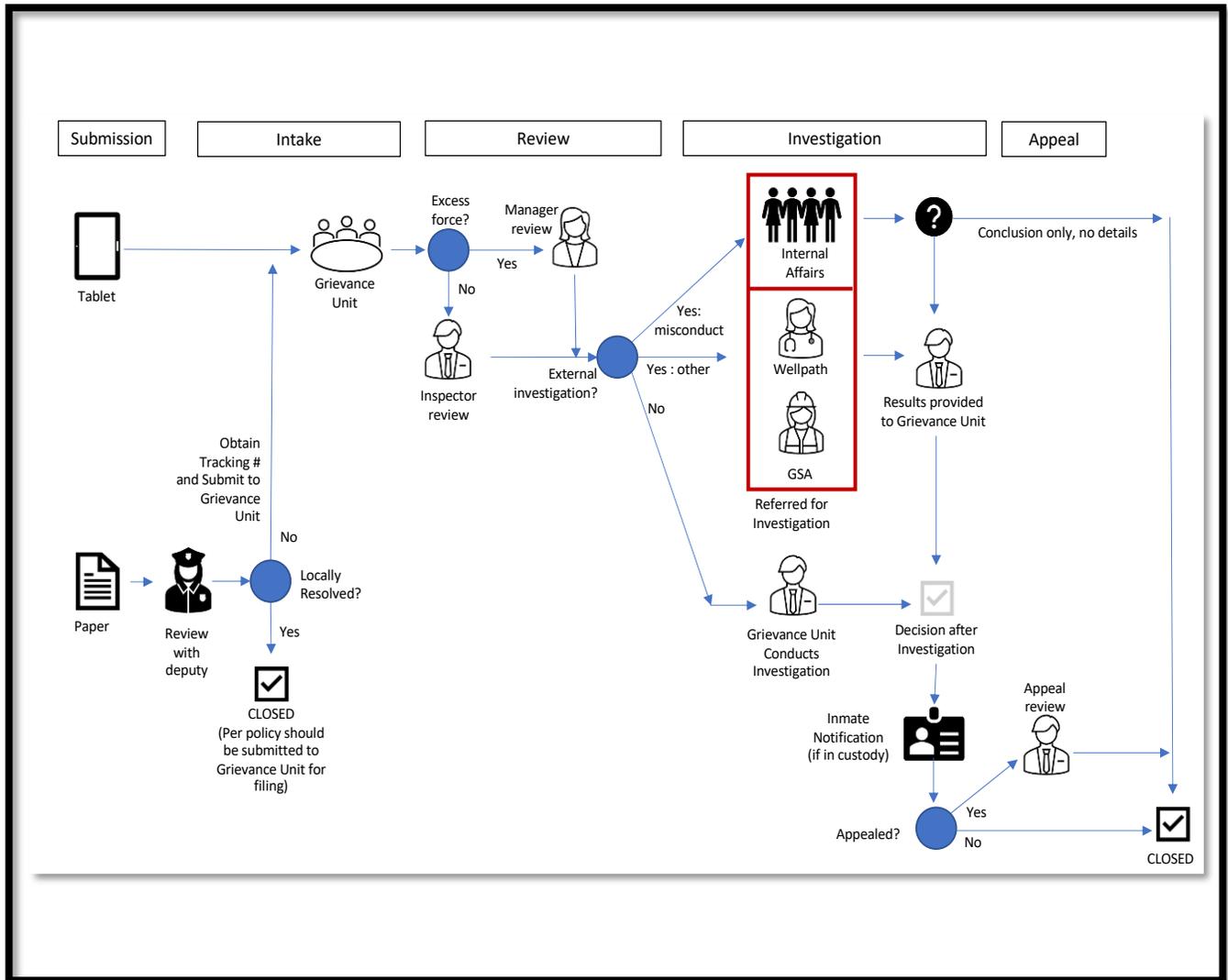
At intake, all detainees receive a copy of Santa Rita's grievance procedures, which form part of the Inmate Rules and Information Handbook. Two types of grievances exist:

1. Standard grievances, used to report problems in detainment conditions.
2. Emergency grievances, used to report harassment or sexual assault in accordance with the Prison Rape Elimination Act of 2003 (PREA).

Standard grievances may be submitted either on paper or electronically via jail-issued tablet. When filing on paper, detainees must request an official grievance form and a grievance tracking number from a deputy. While there is no limit on the number of paper grievances a detainee may file, electronic grievances are limited to four per detainee per month.

In an effort to streamline the grievance process and provide detainees with a way to submit grievances without needing to engage with a deputy who may be the subject of a grievance, Santa Rita introduced the electronic submission option in 2019. Although many detainees successfully submit electronic grievances, others reported that filing electronically is confusing and does not work as intended. Staff appeared unaware of the problems detainees were experiencing with tablet-based submissions.

Overview of the Grievance Filing and Investigation Process



One critical issue highlighted by detainees involves the continued need to engage with a deputy to obtain a grievance tracking number for electronic submissions. While staff had informed the Grand Jury that this was not a required step for tablet submissions, detainees demonstrated to **the Grand Jury that the tablet submission form shows the tracking number field as “required,”** warns users about consequences for submissions with inaccurate information and displays an error message on attempts to submit grievances with the field unfilled. **The Grievance Unit’s** response to these observations was that the requirement for including an accurate grievance tracking number had previously been eliminated and detainees could insert any number into that field to enable a submission. The detainees with whom the Grand Jury spoke were unaware of this authorized bypass and, given the limited number of submissions permitted per month and the warnings about consequences for inaccurate submissions, were understandably reluctant to follow the suggested work-around.

Further complicating the use of placeholder tracking numbers is that detainees who used this approach reported inconsistency in receiving confirmation that their grievance was successfully submitted and delays in being notified of the actual tracking number once assigned.

The Grand Jury believes that the implementation of a tablet-based option for grievance submissions improved the mechanism through which detainees can draw attention to concerns about detainment conditions. However, the flawed software implementation and inconsistent communication with detainees significantly reduce the value of this tool.

A blank electronic grievance form. The field labeled “Enter the grievance number provided by the deputy” is marked as mandatory by a red asterisk. The default text states: “If the grievance number does not match our records, the grievance will be denied.”

Emergency Grievances

Emergency grievances are intended primarily for reporting sexual assault or harassment, in accordance with PREA requirements. Given the nature of these issues, the jail provides each housing unit with a lockbox to allow confidential and third-party submissions. By policy, lockboxes are checked daily, and the Grievance Unit assigns emergency grievances a high priority. The Grand Jury observed the presence of a lockbox in each housing unit visited and confirmed that, consistent with policy, the on-duty deputy did not have the ability to unlock the box.



An emergency grievance box in a minimum/medium-security housing unit.

Grievance Investigations

The first attempt to resolve a standard grievance occurs before it is formally submitted. By policy, when a detainee approaches a deputy to request a tracking number, the deputy attempts to resolve the issue directly. If the complaint is not resolved on the spot, the deputy obtains a **tracking number from Grievance Unit staff, adds that information to the detainee's completed form, gives the detainee a copy, and submits the original to the Grievance Unit through internal mail.**

The Grievance Unit is staffed by three deputies and three non-sworn technicians who are responsible for the initial investigation of all grievances. On receipt, paper grievances are scanned **and converted into an electronic record, as all the Grievance Unit's work is managed through an online case management system. Each day, a technician reviews that day's newly filed grievances and assigns them to the investigators.**

Investigations typically involve interviewing staff members named in the grievance, reviewing jail policies, and viewing bodycam footage as appropriate. The Grand Jury learned that detainees are not routinely contacted as part of the investigation of their grievance, and several reported receiving no update on the status for weeks after submission.

The Grievance Unit refers and transfers investigation responsibility for several categories of grievances to other departments or contracted service providers. These include medical grievances, which are forwarded to Wellpath; facility issues, which are forwarded to GSA; and investigations of certain excessive use of force claims, which are forwarded to Internal Affairs (IA). These referrals are deemed necessary because the Grievance Unit has no access to detainee medical records, does not have the expertise required to address facility issues, and is prohibited from investigating the conduct of jail staff.

Grievances alleging excessive use of force by a deputy are initially reviewed by the Grievance Unit manager to determine whether a full investigation is warranted by IA. If the manager does not **believe the grievance warrants IA review, it is typically concluded with a finding of “Denied.”**

When a grievance has been referred to another department within the jail for investigation, the Grievance Unit suspends its tracking of investigation activities, as these steps are now being performed by a different department. As a result, some investigation steps conducted by other departments are not routinely captured in the case management system, and the Grievance Unit effectively cedes responsibility for the timely investigation of the grievance to the other department.

The Grand Jury learned that once a grievance is referred to another department, the Grievance Unit awaits direction from that department before taking further action. There does not appear to be a consistent process within the Grievance Unit for checking the status of referred grievances that remain open for an extended period of time, nor is there regular reporting on open grievance investigations that have exceeded target turnaround times. The Grand Jury noted that many detainee complaints about the grievance process involved extended timelines for investigations and that referred investigations take, on average, longer to reach determination than those handled entirely within the Grievance Unit.

Findings of Grievance Investigations

When an investigation is concluded, the detainee receives an explanation of the determination. The Grand Jury confirmed detainee complaints that, at times, the determination communication was limited to a statement that the grievance was Resolved or Denied, lacking any detail on why that determination had been reached or how it had been addressed.

Detainees are requested to acknowledge the findings of the investigation in writing. The acknowledgement paperwork notifies the detainee of a right to appeal, and the Grievance Unit reported that cases in which a detainee refuses to sign the acknowledgment are automatically appealed.

The Grievance Unit prepares monthly reports on trends in the volume of grievance submissions. It does not, however, analyze data within the case management system to identify common

themes, emerging patterns, or jail staff most frequently named in grievances. The Grievance Unit also does not take advantage of the available data to track operational metrics around the time required to complete investigations, the distribution of resolution status, or the percentage of initial findings that result in appeal.

Grievance Data Analysis

The Grand Jury reviewed a report of all grievances filed between August 1, 2021, and October 31, 2021, and analyzed these data to assess operations of the Grievance Unit. During the grievance review period, the jail population fluctuated daily as detainees were booked and released from the facility. Over these three months, a total of 2,900 individuals were detained and 1,375 grievances were submitted by those detainees.

The Grand Jury determined that only a minority of detainees used the grievance process, as under 20% of the population (474) submitted a grievance and 80% of those detainees submitted just a single grievance. While there were a few prolific grievance submitters, only 5% of filers submitted grievances at a rate of more than one per week. The combination of the low overall utilization rate of the grievance process and the high rate of single grievance submissions for those who did participate supports the view that most detainees are using the process in a measured manner to address concerns about their detainment conditions.

The Grand Jury's analysis identified medical services and staff conduct as the most frequent subjects of grievances. Each accounted for more than 20% of the total number of grievances. **The Grand Jury's analysis also found that 55 of the staff**-conduct grievances involved concerns about the behavior of individual deputies, and that three specific deputies, each mentioned in four or more grievances, accounted for 31% of that total.

The Grand Jury believes that thoughtful analysis of aggregate grievance data would provide information helpful for the management of jail operations and could serve as an early warning indicator of areas that present future material risks. The concentration of grievances pertaining to the behavior of three specific deputies is one such example of a data analytics finding that warrants attention by senior leadership.

Investigation Turnaround Time

The Grand Jury found that completion of a grievance investigation took on average a full month from submission to detainee notification of the investigation results. While this metric varied somewhat by the category of grievance, in no case was the average less than 19 days, and most high-volume categories were in the range of 30 to 35 days.

Grievances that were open and resolved over the three-month window took on average 31 days to resolve, with specific topics ranging from 19 to 40 days

Days to Resolve for Completed Grievances

<u>Subject</u>	<u>Avg Days</u>	<u>Subject</u>	<u>Avg Days</u>
Telephone	19	Television	31
Sexual Abuse/Harassment	23	Professional Staff	32
Accounting	25	Pod/Recreation Time	32
Other	25	Search Process	32
Tablet	25	Psychiatric	32
Safety	26	Medical Services	33
Records/Release	26	Medical Staff Conduct	33
Sergeant's Abuse	27	Sworn Staff Conduct	34
Disciplinary Safeguards	27	Facility Conditions	34
Visiting	27	Food	37
Inmate Services	28	Dental	37
Pro-Per	28	Sanitation	37
Title 15	29	Mail	37
Grievance Process	30	Hygiene	39
Property	30	Laundry	40
Commissary	30		
<u>Classification</u>	<u>30</u>	<u>All Resolved</u>	<u>31</u>

Time to disposition of grievances. Data from August through October 2021.

Appeals

After investigation, approximately 25% of grievances are reported as having been addressed, and the remaining 75% are reported as Denied. Following the return of these results to the detainees, 78% of the decisions were appealed. This high appeal rate suggests that detainees are generally dissatisfied with the investigation results and that many of the grievances considered resolved by the Grievance Unit were not considered resolved by the submitter.

On appeal, fewer than 2% of grievances were “Affirmed” in support of the detainee’s position, suggesting little difference between findings in the initial investigation and appeal stages.

Investigation File Review

The Grand Jury reviewed the full investigation files of a random sampling of grievances. While the sample size prevented the jury from drawing statistically significant conclusions about the investigative process, it did highlight several areas of concern that merit additional review by jail leadership. Specific concerns include the following:

- **Examples of disqualifying a grievance and returning a “Denied” finding in the absence of any investigative action.** The Grand Jury identified this outcome in the context of a staff-conduct grievance about actions directed against a detainee who was not

the submitter. The Grievance Unit disqualified the grievance, stating that only actions directly affecting the submitter were eligible. The Grand Jury believes this position ignores the potential impact that witnessing abusive behavior by a staff member has on the well-being of all who observe this behavior.

- Examples of denying grievances after examining only evidence provided by the staff member named in the grievance. The Grand Jury identified this outcome in the context of a grievance concerning retaliatory behavior where the only documented investigative step was interviewing the named deputy, who denied the allegation. The investigative file documented no steps taken to confirm the accuracy of the alternative **narrative and cited the deputy's denial as the sole reason for closing and denying the detainee's grievance.**

CONCLUSION

The 2021–2022 Alameda County Civil Grand Jury conducted a broad-based inspection and **investigation into the operations of the Alameda County's Santa Rita Jail. This investigation** resulted in the identification of 22 findings and 28 recommendations encompassing four domains:

1. facility infrastructure,
2. detainment conditions,
3. COVID-19 management, and
4. the grievance process.

The Grand Jury concludes that many of these findings present continuing risks to the health and safety of the staff and detainees who occupy the facility as well as a financial risk to Alameda County, which is ultimately responsible for the damages that may arise from conditions at the jail.

The Grand Jury gratefully acknowledges the support and assistance of the many Santa Rita staff members who accompanied jurors on their inspections, located documents and data, and explained processes and procedures. While not all personnel interactions were positive, the few instances in which staff engaged in a manner that the Grand Jury experienced as adversarial or unprofessional were addressed during the investigation and did not impair the completeness or accuracy of this report.

FINDINGS

Facility Safety

Finding 19:

High-risk safety code violations exist within the Santa Rita Jail. These include:

- High-voltage electrical wiring not installed in accordance with code.
- Obstruction of access to emergency safety equipment.
- Emergency safety equipment for which testing and maintenance are out of date.
- Unlabeled emergency-stop controls on industrial equipment.
- Inconsistent signage on hazardous waste disposal containers.
- Instances of missing temperature-monitoring data for food storage refrigerators.

Finding 20:

The absence of periodic, proactive reviews of the Santa Rita Jail **facility's condition increases the** risk that critical issues will be undetected and unaddressed until they result in an injury or operational disruption.

Finding 21:

Inspections of the Santa Rita Jail facility conducted by the Board of State and Community Corrections do not include participation of Alameda County General Services Agency staff responsible for the condition and maintenance of the jail facility, resulting in a missed opportunity for valuable exchange between inspectors and county staff and potentially unnecessary delays in addressing issues identified during inspections.

Finding 22:

Controls to protect against weapons, drugs, and other contraband being brought into Santa Rita Jail by staff and administrative visitors are weak, placing staff and detainees at risk.

Detainment Conditions

Finding 23:

Access to the outdoors for detainees at Santa Rita Jail is severely limited, with most inmates having a single one-hour opportunity per week, weather permitting, for access to fresh air and sunlight.

Finding 24:

Safety and sobering cells at Santa Rita Jail are not universally cleaned and sanitized after each use, indicating a systemic issue with maintaining cleanliness standards.

Finding 25:

The level of cleanliness in common areas and recreation yards at Santa Rita Jail is highly variable across housing units, with jail staff disavowing responsibility for ensuring a minimal standard of hygiene in areas cleaned by inmates.

Finding 26:

The level of engagement and oversight by **the Alameda County Sheriff's Office of Wellpath's** operational activities is insufficient to ensure that health care is being delivered in a timely manner with high quality.

COVID-19 Management

Finding 27:

COVID-19 screening procedures at points of entry at Santa Rita Jail are inconsistent with both stated **Alameda County Sheriff's Office** policy and current recommended best practices.

Finding 28:

The Alameda County Sheriff's Office has failed to follow local and national recommendations that all staff working at correctional facilities be vaccinated for COVID-19, posing an unnecessary hazard to detainees.

Finding 29:

The rate of COVID-19 vaccination among Santa Rita Jail staff is materially below the community average.

Finding 30:

The consequences for **Alameda County Sheriff's Office** staff who are not in compliance with COVID-19 test mandates are insufficient to ensure that up-to-date testing is performed.

Finding 31:

The Alameda County Sheriff's Office fails to provide full transparency by including weekly staff COVID-19 vaccination statistics on its website alongside detainee vaccination data and staff/detainee testing data.

Finding 32:

The Alameda County Sheriff's Office does not ensure that Santa Rita staff consistently adhere to **Alameda County's indoor mask mandate, placing both staff and detainees at greater risk of COVID-19 infection.**

Finding 33:

The Alameda County Sheriff's Office's efforts to promote detainee COVID-19 vaccination have been unsuccessful in materially improving the rate of vaccination in the detainee population.

Grievance Process

Finding 34:

The Santa Rita Jail Grievance Unit has failed to provide an electronic grievance submission system that eliminates the need for detainees to engage with the local housing unit deputy.

Finding 35:

Medical issues raised by detainees at Santa Rita Jail through the grievance process are not investigated and resolved in a timely manner.

Finding 36:

The current grievance process at Santa Rita Jail inadequately tracks and follows up on the status of investigations transferred to other departments, leaving grievances open for extended time periods and forgoing the opportunity to learn from patterns and trends.

Finding 37:

The Santa Rita Jail Grievance Unit fails to take advantage of the opportunity to analyze grievance submission data to identify trends in complaints, root causes, and resolutions.

Finding 38:

The current grievance process at Santa Rita Jail is a suboptimal mechanism for addressing facility safety and maintenance issues identified by detainees.

Finding 39:

The grievance process at Santa Rita Jail inappropriately disqualifies and denies grievances in which a third-party observes and is impacted by the treatment of another detainee.

Finding 40:

The current grievance investigation process at Santa Rita Jail fails to adequately engage the grievance submitter in the investigative process.

RECOMMENDATIONS

Facility Safety

Recommendation 28:

The Alameda County Sheriff's Office must remediate the following issues and verify full compliance with applicable codes:

- Electrical connection to ovens and tablet-charging stations within housing units.
- Provide permanent floor marking to demarcate area that must be kept clear around eyewash station in kitchen.

- Bring current the testing and maintenance for eyewash station in kitchen and incorporate the necessary periodic reviews into preventive maintenance scheduling system.
- Ensure presence and readability of all emergency-stop controls in kitchen.
- Attach signage for PPE/hazardous waste disposal to disposal containers.

Recommendation 29:

The Alameda County Sheriff's Office must conduct a facility-wide audit for health and safety code issues to be led by a subject matter expert and review results with the jail commander and the Alameda County General Services Agency (GSA) manager on completion.

Recommendation 30:

The **Alameda County Sheriff's Office must** incorporate into the Santa Rita Jail facility operation procedures a requirement for a semiannual facility-wide safety inspection to include the jail commander, the GSA facility manager, and a facility health and safety code expert. Document **these results in a written report and add any issues identified to the facility's maintenance issue tracking system.**

Recommendation 31:

The Alameda County Sheriff's Office must inform GSA of all Santa Rita Jail inspections by the Board of State and Community Corrections or any other third-party entities.

Recommendation 32:

The Alameda County General Services Agency must require a GSA facility manager be present during all Board of State and Community Corrections and other Santa Rita Jail facility inspections.

Recommendation 33:

The Alameda County Sheriff's Office must ensure that all entrants into the secure portion of the Santa Rita Jail facility are positively identified via government-issued identification in advance of entry.

Recommendation 34:

The Alameda County Sheriff's Office must implement access control procedures to reduce the risk of contraband being introduced into Santa Rita Jail by staff and administrative visitors. Controls should, at a minimum, place limits on the nature and number of personal effects that may be brought into the secure perimeter and establish protocols for screening those permitted personal effects for contraband.

Detainment Conditions

Recommendation 35:

The Alameda County Sheriff's Office must establish policies and procedures to ensure that each Santa Rita Jail detainee is provided an opportunity for access to outdoor space on at least three days per week for at least one hour per opportunity.

Recommendation 36:

The Alameda County Sheriff's Office must establish policies and procedures to ensure that each temporary access cell at Santa Rita Jail is removed from service until it is cleaned and sanitized.

Recommendation 37:

The Alameda County Sheriff's Office must establish policies and procedures that codify both the minimum acceptable levels of cleanliness at Santa Rita Jail in areas designated as being the cleaning responsibility of detainees and the responsibility of jail staff when those minimum levels are not maintained.

Recommendation 38:

The Alameda County Sheriff's Office must augment existing quality reviews to incorporate assessment of the timeliness of health care delivery at Santa Rita Jail.

Recommendation 39:

The Alameda County Sheriff's Office must institute monthly senior-level meetings of Santa Rita leadership, the on-site medical director, and Wellpath's service delivery leadership to review quality assessment reporting and any emerging operational issues related to health care delivery at Santa Rita Jail.

Recommendation 40:

During the next amendment to the Wellpath contract, **the Alameda County Sheriff's Office** must negotiate for the addition of jail-specific provisions requiring that **the Sheriff's Office** be allowed to explicitly consent to personnel changes in key roles proposed by Wellpath.

COVID-19 Management

Recommendation 41:

The Alameda **County sheriff's Office must** implement a visitor screening procedure for Santa Rita Jail that is consistent with current Alameda County Public Health Department and the Centers for Disease Control (CDC) guidance for congregate settings.

Recommendation 42:

The Alameda County Sheriff's Office must adopt a requirement that all Santa Rita employees be fully up to date with state and CDC-recommended COVID-19 vaccinations within congregate settings.

Recommendation 43:

The Alameda County **Sheriff's Office must** implement a procedure for discipline, up to and including removal, for employees who do not fully comply with Alameda County's COVID-19 protocols for county employees.

Recommendation 44:

The Alameda County Sheriff's Office must provide and maintain accurate weekly reporting of staff COVID-19 vaccination statistics on the **Sheriff's Office** website.

Recommendation 45:

The Alameda County Sheriff's Office must direct all Santa Rita staff (both **Sheriff's Office** employees and contractors) to fully comply with Alameda County's indoor masking recommendations.

Recommendation 46:

The Alameda County Sheriff's Office must develop a program that supplements COVID-19 education with targeted and compelling incentives for Santa Rita Jail detainees to become vaccinated.

Grievance Process

Recommendation 47:

The Alameda County Sheriff's Office must inform Santa Rita Jail detainees, in writing, that electronic grievances may be submitted by using a placeholder tracking number.

Recommendation 48:

The Alameda County Sheriff's Office must update the electronic grievance submission system at Santa Rita Jail to make clear to all users that there is no requirement for deputy involvement in a grievance submission.

Recommendation 49:

The Alameda County Sheriff's Office must modify procedures for the review, referral, and management of medical-related grievances at Santa Rita Jail to achieve a target of 100% engagement with medical grievance submitters within 72 hours, and resolution of 95% of medical-related grievance within seven days of submission.

Recommendation 50:

The Alameda County Sheriff's Office must implement policy and procedure changes necessary to ensure that the Santa Rita Jail Grievance Unit actively tracks the status of grievances referred to all external departments and contracted service providers, and that these changes include a mechanism for follow-up and escalation should a grievance not be resolved within a predefined period of time.

Recommendations 51:

The Alameda County Sheriff's Office must complete an analytical review of grievances received over the preceding 12 months that name individual Santa Rita Jail deputies.

Recommendation 52:

The Alameda County Sheriff's Office must adopt procedures that result in the delivery of a holistic analysis of grievance submission data on a quarterly schedule to the Santa Rita Jail commander.

Recommendation 53:

The Alameda County Sheriff's Office must adopt a mechanism for Santa Rita Jail detainees to alert jail administration to building safety and maintenance issues in a manner that is distinct from the filing of personal grievances.

Recommendation 54:

The Alameda County Sheriff's Office must adopt policies to acknowledge that the observation or knowledge of abuse or mistreatment of other detainees at Santa Rita Jail represents a potential grievance-qualifying harm requiring investigation.

Recommendation 55:

The Alameda County Sheriff's Office must modify Grievance Unit policies at Santa Rita Jail to acknowledge the value of seeking clarifications and direct testimony from submitters as an integral step in the investigative process.

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, no later than 90 days from the public release date of this report.

Responses to Findings shall be either:

- The respondent agrees with the finding.
- The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

Responses to Recommendations shall be one of the following:

- The recommendation has been implemented, with a summary regarding the implemented action.
- The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
- The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency where applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.
- The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

RESPONSES REQUIRED

Sheriff, Alameda County Sheriff's Office	Findings 19 through 40 Recommendations 28 through 55
Director, Alameda County General Services Agency	Findings 19, 20, & 21 Recommendations 28 through 32

APPENDIX A: REFERENCES

Alameda County Public Health Department, *COVID-19 Screening Guidance for Businesses and Organizations*, May 2021, <https://covid-19.acgov.org/covid19-assets/docs/recovery/screening-guidance-for-businesses-and-organizations-eng-2021.05.07.pdf>

Alameda County Public Health Department, *Order of the Health Officer of the County of Alameda Directing All Individuals Living in the County to Shelter at Their Place of Residence*, March 2020, <https://www.acgov.org/documents/Final-Order-to-Shelter-In-Place.pdf>

Babu v. Ahern, No. 18-cv-07677-NC (N.D. Cal. Feb. 22, 2022)

Cal. Code Regs., tit. 15, § 1073 (1998)

Cal. Code Regs., tit. 24 (2019)

Cal. Penal Code § 6030 (2017)

Centers for Disease Control and Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, February 2022, <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>

Sabot Consulting, *Covid19 Inspection of the Santa Rita Jail Facility by the Joint Neutral Monitor*, June 2020, <https://www.alamedacountysheriff.org/home/showpublisheddocument/24/637520274653100000>

CAMP WILMONT SWEENEY INSPECTION

On October 5, 2021, members of the Grand Jury inspected Camp Wilmont Sweeney (Camp Sweeney), a compulsory minimum-security residential program for incarcerated young men ranging in age from 15 to 19. Camp Sweeney uses a rehabilitative approach with goals to educate and foster personal, social, and professional development through a variety of programs, services, and activities, as well as family reunification. Detainees are referred to Camp Sweeney by the Juvenile Court and the Alameda County Probation Department (ACPD). On average, youth serve a seven-month term intended to prepare them for reentry into the community. At the time of the **Grand Jury's** inspection, there were only nine youth residents, but the facility can hold up to 60.

The Grand Jury inspected all areas of the camp and met with members of the ACPD and a program manager from the Alameda County Public Library. There are 29 probation department employees assigned to Camp Sweeney, including administrators, probation officers, and support staff who provide oversight and services 24 hours a day.

Youth admitted into Camp Sweeney undergo a comprehensive assessment to determine a myriad of needs, including but not limited to physical and mental health screenings and social and academic success factors. Youth are evaluated by a physician to determine if there are immediate health needs or mental health conditions that may require further assessment and accommodation. Youth are also evaluated for high-risk behaviors (e.g., undesirable actions resulting in serious consequence and poor decision-making) that may have resulted in their incarceration. Alcohol or drug use and abuse, family dynamics, and social influences are assessed and discussed. Where there are opportunities for positive change, a program plan is designed with the tools and resources needed for a successful transition and reentry into the community.

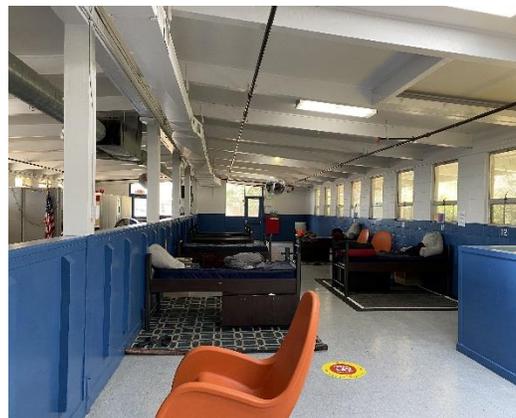
At the time of the Grand Jury's inspection, there were only nine youth residents, but the facility can hold up to 60.

Facilities

Camp Sweeney is managed by the ACPD, set on a 10-acre site in the San Leandro foothills and adjacent to the Juvenile Justice Center (JJC). The buildings at Camp Sweeney were built in the 1950s, and while the exteriors are dated and worn, the interiors are well maintained and, in some cases, include modern amenities. In general, the grounds are void of landscaping and in need of regular maintenance (e.g., clearing the overgrown foliage and weeds, filling the cement cracks, and repairing the asphalt). In particular, the Grand Jury noted several areas of uneven, cracked,

or missing pieces of cement and asphalt. There are no ramps at building entrances, and some areas can be traversed only by stairs. These circumstances would pose a particular challenge for anyone using a wheelchair or other ambulatory assistance device. **It's** possible that they could not be safely or reasonably accommodated.

Youth are housed in a dormitory-style setting, a large, open environment divided into four wings. Due to the low occupancy, one of the four dormitory sections was converted to a leisure area where youth have access to board games, a small library, television, and movies. Youth are issued individual lockers where they can store their camp-issued clothing, personal hygiene products, coursework and related materials, and some personal effects. Effective March 2020, religious services are live streamed to the youth, who also are offered telephonic access to one-on-one (noncontact) religious counseling.



Camp Sweeney Dormitory

The dormitory also includes showers and toilet facilities, and a laundry area. Required bedding and camp clothing are provided to the youth, with support staff furnishing laundry services. At the time of the inspection, the dormitory, showers, toilets, and laundry area were in a clean and orderly condition and the Grand Jury noted no deficiencies.



Camp Sweeney Dining Hall

Camp Sweeney has a dining hall with a large commercial-sized kitchen. Youth receive three meals a day and can purchase snacks from a small on-site commissary. Those requiring special diets are also accommodated. The meals and snacks are prepared by a third-party vendor who services both Camp Sweeney and neighboring JJC. Every Sunday, the staff host a barbecue and cook for both staff and youth residents. At the time of the inspection, the dining hall and the kitchen were in a clean and orderly condition and the Grand Jury noted no deficiencies.

Security

Camp Sweeney is a minimum-security facility with chain-link fences around the perimeter. The perimeter fencing serves as a barrier but is not practical for keeping youth from leaving the property unsupervised or from keeping uninvited visitors from entering without permission. Twenty-four-hour video surveillance cameras are present at the entrance and at

various locations throughout the camp with large signs to indicate their presence. Through an internet-based system, authorized personnel can monitor the site from anywhere at any time. The lack of a video surveillance system was highlighted in the 2014-2015 Grand Jury Final Report, resulting in the current system being put into place. At the time of the inspection, the surveillance system appeared to be in working order and the Grand Jury noted no deficiencies.

Health Care and COVID-19 Protocols

Within the Administration Building is a designated room for medical care and evaluations where a nurse is on-site during regular hours, Monday to Friday, to administer care. If a youth becomes ill, immediate medical attention is provided by the Camp Sweeney nurse or at the JJC, depending on the time, day, and or/seriousness of the illness. Additional health care (i.e., medical, dental, prescription drugs) is available and can be performed by the JJC through its partnership with UCSF Benioff **Children's Hospital in Oakland**.

Guided by the Alameda County Public Health Department and the Centers for Disease Control, Camp Sweeney follows COVID-19 precautions and protocols. Anyone entering Camp Sweeney, including the Grand Jury, must have their body temperature taken and complete a symptom checker via a series of COVID-19 related questions. Posters with reminders and instructions to wear masks, wash hands, and be physically distant are visible throughout the campus. The Grand Jury noted that hand sanitizer is readily available at building entries and exits and in several other locations throughout the campus. The Grand Jury observed staff and youth wearing masks and maintaining appropriate physical distancing and noted that other COVID-19 precautions and protocols are satisfactorily administered and followed.

Guided by the Alameda County Public Health Department and the Centers for Disease Control, Camp Sweeney follows COVID-19 precautions and protocols ... COVID-19 precautions and protocols are satisfactorily administered and followed.

Policies and Procedures

Staff, youth, and a parent or guardian are provided with written policies and procedures, which include, but are not limited to:

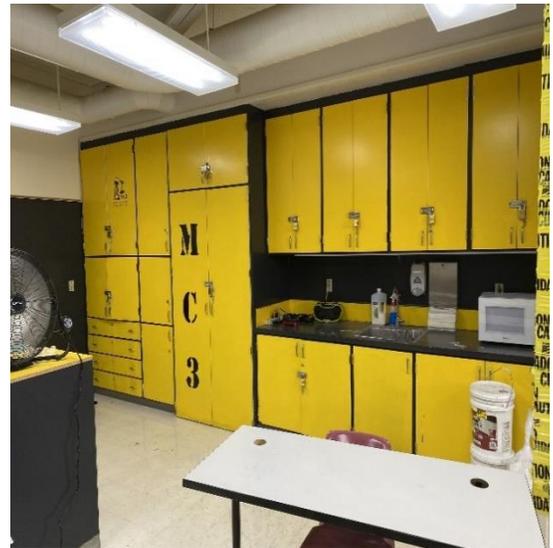
1. *Alameda County Camp Wilmont Sweeney Success Handbook*. Issued to incoming youth, it provides detailed information about the facility, programs offered, disciplinary requirements, recognition and rewards systems, and conduct expectations, to name a few topics.

2. *Alameda County Probation Department, Camp Wilmont Sweeney, Parent Handbook.* Each parent or guardian is issued a copy of this handbook, which details the programming the youth will engage in and parent/guardian participation, contributions, and responsibilities to support the success of the youth.
3. *Camp Sweeney Program Guide for Staff.* The Program Guide details the program goals and objectives, and the procedures, operations, and resources for program administration and oversight.

Education and Rehabilitation

Camp Sweeney offers a number of resources to assist youth while in custody that are designed to provide structure for the transition from incarceration back to the community.

Multi-Craft Core Curriculum (MC3) is a comprehensive construction pre-apprenticeship vocational training program that aims to prepare youth for employment in the construction trades. Led by three staff members, youth receive training and instruction including training in job site mechanics and math, and they can receive OSHA 10, First Aid, and CPR certifications. Weekly, each youth can complete a personal MC3-related project for up to eight hours. Another vocational training program offered at the camp is food preparation. Participants learn the basics of cooking and baking, including meal preparation and cleaning, proper food storage, and food safety. Upon successful completion of the program, a Food Handler Certificate is issued.



MC3 Classroom

Camp Sweeney offers a number of resources to assist youth while in custody that are designed to provide structure for the transition from incarceration back to the community.

The Alameda County Office of Education oversees the Sweeney Academic Center, which provides instruction, teachers and tutors, and special education services. A primary goal for youth is to earn a high school diploma if they do not already have one. Classes are conducted Monday to Friday, with most instruction on-site, but some off-site college classes, usually held at Chabot Community College, are also available. Camp Sweeney also offers opportunities within the community to gain on-the-job experience and training.

A literacy specialist employed full time by the Alameda County Public Library is on-site Monday through Thursday and tutors each youth individually. The literacy specialist oversees the Write to Read educational program, which provides opportunities to improve literacy skills and build confidence in reading and writing. In this transformative approach aimed at creating positive change and encouraging self-expression, youth are encouraged to examine personal, social, economic, and political topics through reading and writing. Some of the writing assignments are published for future reading, and also presented to peers, staff, and family members and friends.



Camp Sweeney Library

In addition to the programs already mentioned, the Grand Jury received information about several other programs and services offered at Camp Sweeney, as noted below:

1. *Restorative Justice Program.* Group discussions, personal reflection, and coursework intended to study restorative practices, social justice, civic engagement, and increase awareness of personal and community safety.
2. *Parent education and support groups.* An integrated approach that includes a parent or guardian for the **youth's treatment program.** It promotes counseling and open communication, including regular visitation, phone calls, and writing. An extension of the integrated approach is the Temporary Releases/Home Visits program. Youth earn the privilege to temporarily leave the Camp Sweeney premises, return to their communities, and stay with family. The program focuses on developing positive relationships between youth and their families, other support resources, and their communities, which can lead to higher success once permanently released.
3. *Drug and alcohol treatment and education programs.* These substance use and abuse programs focus on changing behaviors and making better choices through intensive counseling and by providing information and education about the effects of drugs and alcohol.

A literacy specialist employed full time by the Alameda County Public Library is on-site Monday through Thursday and tutors each youth individually.

4. *Off-grounds activities.* Youth are offered supervised educational activities including excursions to museums and aquariums.

Recreation and Social Activities

There are several recreational opportunities for youth both on and off campus.

There is a gym with new, clean, and well-maintained equipment including cardio machines and free weights. A small recreation room in the administration building has video games and a telephone. Youth are provided a minimum of four free telephone calls per week, excluding calls to attorneys. Long-distance calls are paid for by the receiving party. A recording studio where youth can listen to or record their own music and learn from a sound engineer who teaches sound technology and sound recording is one of the more favored activities.

Visits from family members are encouraged and such visits are individually approved by a deputy probation officer (DPO). Visitor passes are issued to children under the age of 18, who must be accompanied by an adult in possession of a valid picture identification and a valid visiting pass. Visitation with more than three people must be prearranged **with the youth's assigned** DPO. During COVID-19, increased video visitation is being offered through Microsoft Teams. An assigned DPO is required to approve all guests using video visitation.



Camp Sweeney Classroom

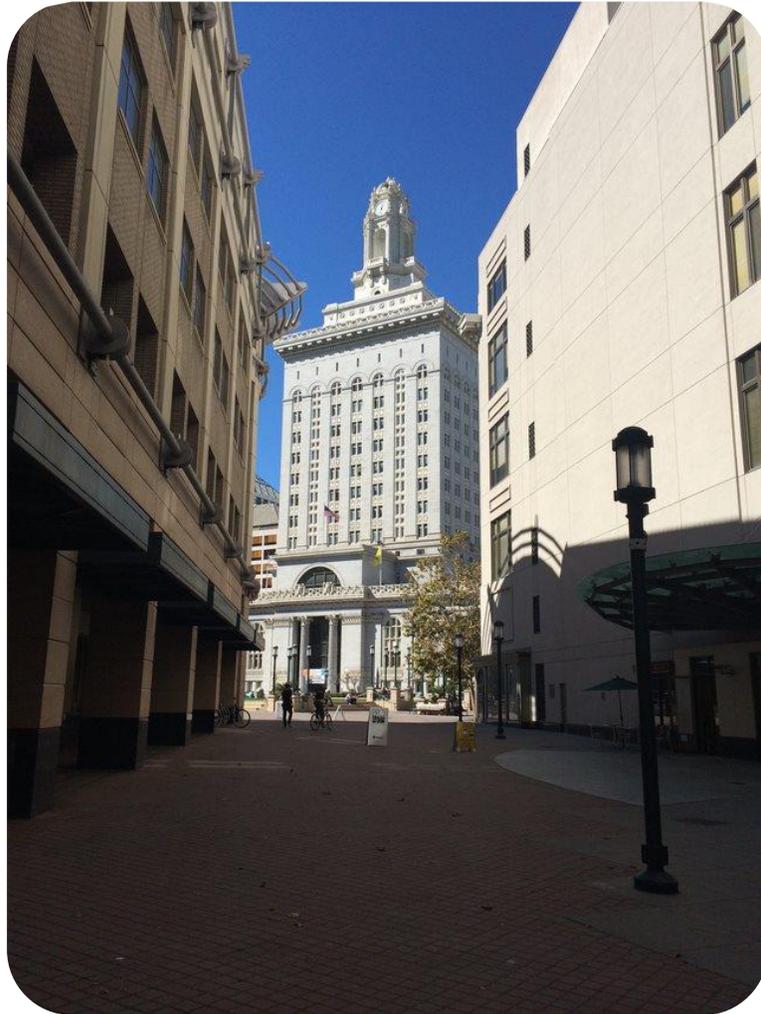
Outdoors, the youth have a number of on-site and off-site options. The facility is equipped with a large field that can be used for a variety of sports such as soccer and baseball. The youth created some of their own leisure undertakings through the construction of a small car racetrack, a well-designed golf putting green, and a vegetable garden. Supervised off-site activities such as golf and hiking are also available.

CONCLUSION

The interiors of Camp Sweeney were clean, orderly, and well maintained and, in some cases, include modern features and conveniences. However, the buildings are outdated, and the grounds are void of landscaping and in need of regular maintenance. Moreover, the condition of the grounds (e.g., uneven, cracked or missing cement and asphalt, access by stairs only, and no

ramps at building entrances) poses challenges for anyone utilizing a wheelchair or other ambulatory assistance device. Those individuals cannot be safely or reasonably accommodated. In addition, perimeter fencing should be more secure and restrictive. The fencing presents ample opportunity for youth to leave the premises without supervision and uninvited visitors to enter without permission. Plans to build a new Camp Sweeney were scheduled for completion in 2020. However due to the low occupancy and construction costs, the county changed direction and now has no plans to build a new campus in the near future.

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



Oakland City Hall, Oakland, CA

FREMONT POLICE DEPARTMENT DETENTION FACILITY INSPECTION

On October 19, 2021, members of the Grand Jury inspected the Fremont Police Department Detention Facility (Fremont Jail). The inspection focused on the condition of the facility, whether policies and procedures were in place and correctly implemented, and COVID-19 protocols. The Grand Jury also reviewed services available to detainees while in custody. Significant changes have been made that affect many facets of the **facility's** current operations. Effective July 1, 2021, the Fremont Jail ceased operations as a Type I facility. With the Type I classification, the jail was used for detention after booking, and arrestees were housed for not more than 96 hours (excluding holidays).

Effective July 1, 2021, the Fremont Police Department Detention Facility ceased operating as a Type I facility. Currently, [it] operates as a temporary holding facility.

Currently the Fremont Jail operates as a temporary holding facility in accordance with California Code of Regulations Title 15, § 1010(d) Applicable Standards, and California Code of Regulations Title 24, §13-102 Minimum Standards for the Design and Construction of Local Detention Facilities. The definition of a local detention facility is one that was “**constructed** after January 1, 1978, and is used for the confinement of adult detainees for 24 hours or less, pending their release, transfer to another facility, or appearance in **court.**”

Introduction



Fremont Jail Housing Unit and Cells

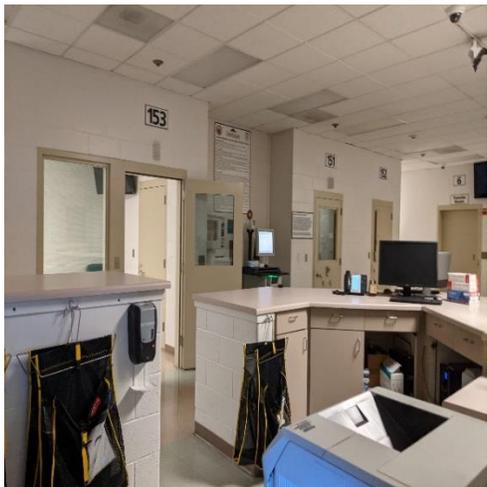
The Fremont Jail has four holding cells, three detoxification cells, and one safety cell. The detoxification cells have no telephone, bench, or bed, requiring the detainee to sit and sleep on the floor. It does have a functioning toilet and sink. The safety cell is identical to the detoxification cell but holds a detainee who is uncooperative or could be harmful to others.

At the time of the Grand Jury’s inspection, no detainees were in custody at the facility. COVID-19 restrictions have resulted in a limited number of arrestees being housed daily. The average number of detainees was 10 per day when the jail was classified as a Type I facility. Currently

the average is two per day, with a maximum of 10 on any day in 2021.

The facility is open 20 hours per day and closed from 2:00 a.m. to 6:00 a.m. Arrests during this time are booked at Santa Rita Jail in Dublin. Arrestees at the Fremont Jail are detained in the temporary intake areas only. The Type I housing units are no longer utilized and are being used for storage. The storage areas were observed to be clean and well maintained.

The facility currently provides detention services for the city of Fremont only. Previously, when it was a Type I facility, other local agencies could utilize its services, but they now take their arrestees to Santa Rita Jail. As a temporary holding facility, the Fremont Jail continues to meet and maintain the requirements of Type I status. If modifications are needed in the future, a requalifying process would be needed to reacquire Type I status. Such a process would require a petition to, and review and approval by, the California Board of State and Community Corrections.



Fremont Jail Booking/Intake Area

Three Fremont police employees (one sworn officer and two non-sworn officers) were present during the Grand Jury's inspection. Janitorial staff from a third-party vendor was also present. Sixteen employees are needed to cover staffing seven days a week, 20 hours per day, with four current vacancies that are on hold for hiring due to staffing needs that have diminished since the change from a Type I facility. Should an emergency arise, additional personnel from the adjacent Fremont Police Department can respond immediately.

When the facility is open, a technician monitors holding cells, and other areas inside and outside the facility from an in-site video center. One screen displays the images from all interior cameras, and one displays the exterior cameras.

COVID-19 Protocols

The Fremont Jail follows the COVID-19 protocols outlined by Governor **Newsom's** Executive Order, the Alameda County Public Health Department, the city of Fremont, and the Centers for Disease Control and Prevention. Prior to entering the jail, staff is screened for body temperature and completes a symptom screening questionnaire. Hand sanitizer and face masks were readily available at the facility and utilized appropriately by staff. All jail personnel are required to be fully COVID-19 vaccinated.

Facility Procedures

All detainees are screened by staff for basic health care needs prior to entrance. Staff are trained in basic first aid and cardiopulmonary resuscitation. First aid kits and automated external defibrillators are readily available. A detainee requiring immediate medical care is transported by ambulance to Washington Hospital in Fremont or John George Psychiatric Pavilion in San Leandro. No health care providers are on-site. Interpreter services are available by telephone and on demand and some staff members speak Spanish.

As part of the booking process, a **detainee's** personal items are inventoried in the presence of the detainee, and they are provided with a written receipt. The **detainee's** items are stored in a secured location for the length of their stay. The booking process includes the utilization of a “**transfer room**” that contains a metal detector.

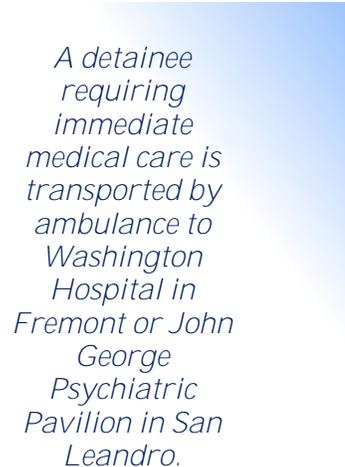
There are three types of rooms at the **facility's** entry point, known as the booking area:

1. an interview room, which contains a table and chairs,
2. a room equipped with a breath-analyzer machine used by officers when conducting breathalyzer tests on arrestees (Union City and Newark police officers utilize this room at their own **agencies'** cost), and
3. temporary holding rooms that are available for detainees.

Each detainee is offered a clean change of clothes upon entry to the facility, and staff launders **detainee's** clothing upon request. Detainees do not often take advantage of this offer, or of the shower facility.

In addition to the detoxification and safety cells, the facility has four holding cells. These cells are located away from the intake area in a separate space behind an individual closed door. Each holding cell has a toilet, washbasin, drinking fountain, television, and an emergency call button. Enclosed showers are available in an area outside the holding cells. Due to construction at a nearby building, water was shut off at the time of the Grand Jury's inspection. Therefore, the Grand Jury was unable to determine if all plumbing was functional.

Visitation booths are available and are equipped with a handset and a glass partition to separate the detainees from visitors. Phones are placed in accessible areas, including holding cells. Up to 15 minutes of local calls are free for detainees. The receiving person is responsible for the cost of longer local or any long- distance calls.



A detainee requiring immediate medical care is transported by ambulance to Washington Hospital in Fremont or John George Psychiatric Pavilion in San Leandro.

A service company delivers prepared meals for detainees that are stored on-site and served upon a **detainee's** request. A small commercial kitchen contains a range, ovens, and a refrigerator for food preparation and storage. The Grand Jury noted cereal on a shelf in the kitchen past its expiration date, and staff stated that it would be disposed of. The kitchen area was clean and neat.

Only indoor recreation is available for the detainees, and the area was clean and well maintained. Books are available for reading.

A complaint process is in place, starting with a complaint form. The complaint form is delivered to the detention facility manager, who determines whether an investigation is needed. Any investigations are conducted by the Internal Affairs Division of the Fremont Police Department. No complaints from detainees were received in 2021.

CONCLUSION

The transition of the Fremont Jail from a Type I facility to a temporary holding facility has resulted in unused space, a reduction in the number of detainees, and a change in operational requirements. The Grand Jury learned that assessments are currently underway to determine whether the facility remains viable or if the site could be better utilized. The Grand Jury found the Fremont Jail to be professionally managed and clean.

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

BART IS ON THE WRONG TRACK WITH INDEPENDENT OVERSIGHT

EXECUTIVE SUMMARY

BART, the San Francisco Bay Area's largest and geographically broadest rapid transit system, is governed by an elected board of directors whose members serve four-year terms and are drawn from nine districts representing portions of the area served. A board-appointed general manager is the chief executive officer.

A successful 2018 regional ballot measure in nine Bay Area counties activated [Senate Bill 595](#) which dedicated \$1 billion in bridge toll revenue to BART capital projects. It also created an independent Office of the Inspector General (OIG) to provide oversight and accountability of **BART's** operations and finances. The first and current Inspector General (IG) was selected by California Governor Gavin Newsom in 2019 from three candidates put forward by **BART's** board.

The Grand Jury found that from the beginning, both **BART's** board and management impeded the **IG's** efforts to conduct independent oversight. In addition, board members and management supported union efforts to limit OIG access to their members, which stymied OIG independence and the confidentiality of investigations.

At a time when ridership is down due to the lingering effects of the pandemic, and BART is more dependent than ever on public funding, independent oversight should be strengthened, not sidelined. This public agency, with a \$2.4 billion annual budget, lacks proper financial structures and oversight. It has a treasurer/controller, an internal auditor, a general counsel, and an external auditor, but none of these are independent of **BART's** board or management.

This public agency, with a \$2.4 billion annual budget, lacks proper financial structures and oversight.

When compared with other urban transit agencies, **BART's** OIG is significantly underfunded and unable to fulfill its mission of uncovering waste, fraud, and abuse. At its current level of funding, the OIG has a backlog of urgent investigations that it does not have the resources to undertake. As one BART director stated at a recent public hearing, “**Without** this oversight, we **don't** know what we **don't** know.” Despite this, some BART directors have publicly refused to support efforts to find funding to adequately support the OIG.

A textbook example of the need for independent oversight was revealed in April 2022 when the OIG found an apparent conflict of interest between a senior BART manager and a construction management firm now working on a \$40 million BART contract. The BART manager, who helped

write the contract, did not disclose that the construction firm employs the **manager's** spouse and sibling. On its face, this is an apparent violation of state and federal guidelines that eluded **BART's** internal controls for two years. With \$1.5 billion in annual capital expenditures, most of it contracted to private companies, how is the public to know how many other such conflicts have gone undiscovered?

BACKGROUND

In 2018, nine Bay area counties, including four not served by BART, were willing to raise their bridge tolls to help fund BART with the expectation of improving transportation and reducing congestion throughout the region. Once this ballot measure passed, the enabling legislation, California Public Utility Code sections 28840-28845 went into effect, providing initial seed money of \$1 million per year from tolls collected by the Bay Area Toll Authority (BATA) with the provision that the budget could be adjusted annually.

In March 2020, **BART's** ridership suddenly plunged 94% due to COVID-19. As of the writing of this report (April 2022), it was still below 50% of pre-pandemic levels. An agency that had previously been funded mostly from the farebox now needed substantially more public money. To supplement lost income while avoiding layoffs, BART received \$328 million in Federal CARES Act funding and \$57 million in Federal Coronavirus Response and Relief funds. Now that the system relies primarily on public funding it has more responsibility than ever to be accountable.

What Is an Inspector General?

Nationally, the Inspector General Act of 1978 (IG Act) created OIGs to be independent and objective units that conduct audits and investigations to promote economy, efficiency, and effectiveness of their **agencies'** programs and operations. Their purpose is to prevent and detect waste, fraud, and abuse. OIGs are operationally independent from their agencies. Supervision of the IGs themselves is strictly limited and there are safeguards against their removal. The IG Act guarantees OIG independence to ensure the objectivity of their work.

It is the norm nationally for publicly supported urban transit agencies to have OIGs. Across the country, these watchdogs have uncovered fraud and saved their transit systems millions of dollars.

It is the norm nationally for publicly supported urban transit agencies to have OIGs. Across the country, these watchdogs have uncovered fraud and saved their transit systems millions of dollars. As the chart on page 129 shows, peer transit agency OIGs are far better funded than **BART's** OIG.

Typically, IGs report only to their agency heads, in this case, **BART's** elected board. Employees, even chief executives, do not direct the activities of IGs. This independence limits the potential for conflicts of interest that could exist if an IG were supervised by an official whose programs were being reviewed.

Specifically, the California Public Utility Code legislation states:

There is hereby created in the district an independent (emphasis added) Office of the BART Inspector General to ensure that the district makes effective use of bridge toll revenue and other revenue and operates efficiently, effectively, and in compliance with applicable federal and state laws.

The legislation goes on to define the duties and responsibilities of the BART OIG to include, among other things, examining the operating practices of the district to identify fraud, waste, and opportunities for efficiencies in the administration of programs and operations.

California [Government Code Section 1236](#) requires special district personnel that conduct audits to adhere to “**standards** prescribed by the Institute of Internal Auditors, or the Government Auditing Standards issued by the Comptroller General of the United **States,**” and moreover, that “**Auditors** should be independent of the activities they **audit.**”

INVESTIGATION

The Grand Jury interviewed members of **BART’s** elected board and senior BART officials. The Grand Jury reviewed the **board’s** public meeting agendas, minutes, and meeting videos as well as applicable laws, internal emails, budget documents, national auditing standards, and news reports.

A Pattern of Obstruction

From the beginning, the Grand Jury learned that **BART’s** board, management, and unions demonstrated an unwillingness to support an independent OIG and erected roadblocks to its function. Instances of attempted interference include the following:

- Unlike comparable transit agencies across the country, BART had never had an IG. The enabling legislation offered little guidance, so a charter was needed to clarify roles and insure sufficient independence between the OIG and **BART’s** management. The IG presented such a charter at a January 2020 board meeting. At the meeting, the board directed the IG to consult with **BART’s** unions before the board would consider adopting the charter. Subsequently, a heavily modified version of the charter was produced by union attorneys. The modified charter would have required the IG to provide 48 hours' notice of any interview with a represented employee, no matter what the subject. Since the vast majority of BART employees are union-represented, it is necessary for the OIG to hear about issues directly from employees. While employees are entitled to union representation in disciplinary matters ([Weingarten rights](#)), such a provision applicable to non-disciplinary matters where employees are merely witnesses and not themselves the subject of an inquiry would needlessly destroy the confidentiality of investigations. IGs

should have direct access to all employees, whether **they're** union or not, and employees should be able to bypass management or union representatives to talk directly with IGs on whistleblowing matters if employees so choose.

- One of the core responsibilities of an OIG is to conduct a risk assessment. A risk assessment is the ranked identification of risks that could negatively impact a complex organization's ability to conduct its mission. It identifies areas most vulnerable to waste, fraud, and abuse and looks for opportunities to improve programs, operations, and service delivery. As such it is a roadmap and work plan for the OIG. But the BART Audit Committee directed the OIG not to move forward with the risk assessment until concerns expressed by **BART's** general manager were resolved.

BART management went so far as to instruct staff not to cooperate with the OIG until the scope of the risk assessment was altered to management's satisfaction.

In the summer of 2020, the OIG produced an outline of the proposed risk assessment for BART. In a series of emails during August and September 2020, **BART's** management sought to insert itself into the process by identifying areas of risk assessment that it wanted to be off limits to the OIG. BART management sought to restrict the OIG from investigating such areas as potential cost savings and controls, revenues, performance metrics for project and program activities, maintenance and engineering, environmental sustainability and equipment delivery—all seemingly vital areas to

the operation of a transit agency. BART management went so far as to instruct staff not to cooperate with the OIG until the scope of the risk assessment was altered to **management's** satisfaction. Ultimately, the risk assessment was carried out by an independent consultant.

- In a July 30, 2020, letter to **BART's** general counsel, the IG identified examples of obstruction:
 - Physical evidence was withheld because a BART employee did not understand the **OIG's** right to access all information.
 - Management made misleading responses to investigations.
 - Management withheld documentary evidence to quantify the cost of a decision to terminate a contract.
 - Management did not respond to an OIG investigation pertaining to a vendor credit for an overcharge.
 - IG described instances of employees fearing retaliation for contact with the OIG.
 - BART general manager insisted on being the conduit through which all communication between the OIG and employees is filtered.

An Underfunded Watchdog

The enabling legislation set an initial OIG budget of \$1 million for the first year, from an allocation of bridge toll revenue from BATA. It states:

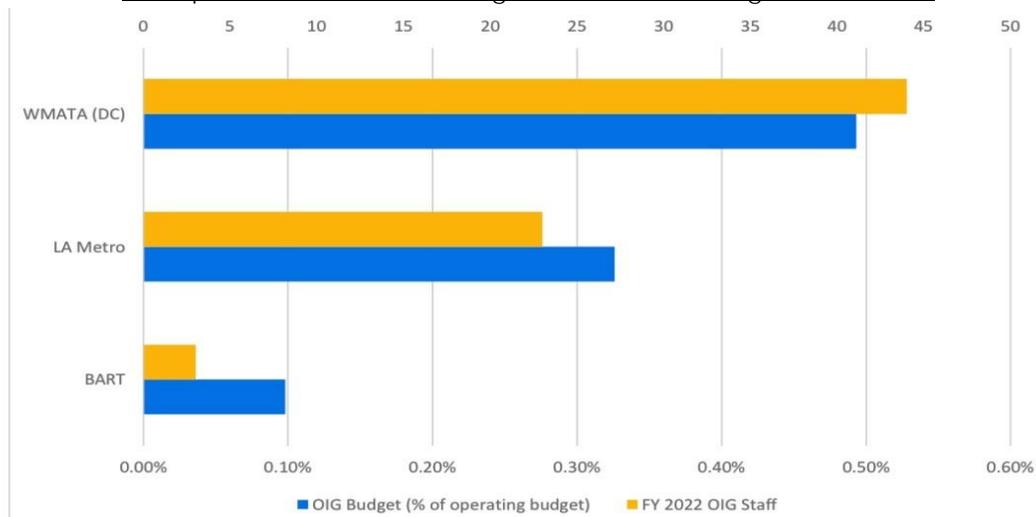
*“In the second and subsequent years of operation of the office, the authority may increase the amount of funding allocated for this purpose to the extent funds are requested and justified by the office and can be accommodated in the **authority’s budget.**”*

*When compared to other urban transit agencies, **BART’s** OIG is significantly underfunded and unable to fulfill its mission of uncovering waste, fraud, and abuse.*

No second or subsequent requests for additional funding have been made by **BART’s** board. In March 2020, **BART’s** general manager and **BATA’s** executive director entered into a funding agreement for the BART OIG. With regard to annual adjustments to the OIG budget as provided for in the law, the agreement states that any increase in the OIG budget is subject to “**BATA’s** sole reasonable **discretion.**” Further, it stipulates that the OIG will be charged for overhead. Overhead, not mentioned in the legislation, is not defined but can be as much as 50% of direct labor expenses. Such a charge reduces the **OIG’s** already paltry budget by as much as 25%. The Grand Jury found no evidence that this agreement was ever discussed or voted on by **BART’s** board.

In a December 2021 letter from the IG to the executive director of BATA, a supplementary budget request pursuant to the enabling legislation was made. It proposed an annual budget of approximately \$2.7 million to hire staff and pay for independent legal advice and experts to conduct complex and time-consuming audits. This letter was never answered. After prompting from BART directors, the IG was asked to present this budget request to **BART’s** Audit Committee and ultimately to **BART’s** full board in January 2022. At that meeting, some BART directors refused to even consider looking for additional funding for the OIG.

Comparison of Transit Agencies’ OIG Budget and Staff



In February 2022, California [Senate Bill 1488](#) was introduced – an amendment that would update and expand the lean text of the original legislation approved by Bay Area voters in 2018. It would spell out the relationship between the OIG and BART staff in a way that that the defeated charter sought to do. However, **BART’s** general manager recommended that the board oppose the bill. On April 14, 2022, the BART board voted 6-3 to “**oppose** the bill unless **amended.**”

The bill, if enacted, would, among other things:

1. Authorize the OIG to engage in fraud prevention as well as detection.
2. Stipulate that the OIG has the independence necessary to conduct audits and investigations in conformance with national standards.
3. Give the OIG the authority to examine all records and documents.
4. Give the OIG the authority to confidentially interview employees.
5. Give the OIG subpoena power.
6. Require the general manager to respond to all OIG findings and recommendation within 10 days.

Unearthing a Conflict of Interest

On April 8, 2022, the OIG reported an apparent conflict of interest between a BART senior manager and a construction management firm, under contract with BART for a \$40 million project, that employs the BART **manager’s** spouse and sibling. The report alleges that neither the firm nor the BART manager met its responsibilities to disclose the potential conflict of interest in compliance with **BART’s** Codes of Conduct, or California Government Code Section 1090 that prohibits government employees from having a role in making contracts in which they have a financial interest. The report also alleges noncompliance with the even more stringent requirements of the Federal Transit Administration (the construction project is partially funded by the federal government).

Public records say that the BART manager in question stated that the family relationships were common knowledge and that “**everyone knew.**” Regardless of whether the BART employee gained financially from the contract, the fact remains that well-established BART rules as well as state and federal guidelines were alleged to have been ignored. The OIG recommended that the contract be voided to protect BART from possibly more damaging financial and legal consequences going forward. Some of the nine recommended actions were implemented, and at an April 14, 2022, joint meeting with its Audit Committee, **BART’s** board discussed the need for independent counsel to advise whether or not the contract should be voided.

CONCLUSION

Four years after the voters spoke, some members of **BART’s** board and management continue to resist the independence of the OIG mandated by voters and the legislature. There is still no charter that enshrines this independence or spells out roles and relationships within BART.

Recent allegations of a previously unreported conflict-of-interest involving a \$40 million construction contract demonstrates that BART **management's** own internal controls **aren't** performing well and makes the case for an independent OIG to review and report on **BART's** financial operations. Now largely funded by the public, BART needs to step up its accountability.

The **OIG's** existing, arbitrary \$1 million per year budget is inadequate. BART must work together with other government entities to fully fund the OIG, at least to the level of \$2.7 million per year required to execute the planned audits and investigations for 2022 and 2023.

FINDINGS

Finding 41:

BART's board and management interfered with the Office of the Inspector General's performance of its duties.

Finding 42:

BART's board and general manager hampered the approval and implementation of a charter for the Office of the Inspector General, resulting in a lack of understanding within the organization that the Inspector General is independent.

Finding 43:

BART's board and management supported the labor unions representing BART employees to try to limit the independence of the Office of the Inspector General investigations by setting unreasonable conditions for engagement of employee witnesses or complainants.

Finding 44:

BART's Office of the Inspector General does not have access to independent counsel, administrative staff, and records storage systems as is considered best practice nationally.

Finding 45:

BART's Office of the Inspector General's budget, set at an initial \$1 million per year in 2018 by PUC Section 28842, is much lower than the budgets of comparable transit **agencies'** Office of Inspector Generals adjusted for size. A mechanism for increasing the budget annually in the enabling legislation has not been used.

Finding 46:

A potential serious conflict of interest exists between a BART senior manager and a construction management firm now under contract that employs the **manager's** spouse and sibling.

RECOMMENDATIONS

Recommendation 56:

BART's Board of Directors must adopt written policies that acknowledge California Government Code 1236 and require compliance with standards prescribed by the Institute of Internal Auditors or the Government Auditing Standards issued by the Comptroller General of the United States (known as the "**Yellow Book.**").

Recommendation 57:

BART's Board of Directors must adopt an Office of the Inspector General charter that expands on the spare language of PUC 28840 – 28845 such that the independence of the Inspector General is clearly acknowledged, and the roles and relationships are clearly defined between the Inspector General and senior BART staff such as general manager, general counsel, treasurer/controller, and internal auditor.

Recommendation 58:

BART's Board of Directors must give the Office of the Inspector General unencumbered and confidential access to all of **BART's** resources, information, and employees, while respecting the "Weingarten" right of employees to representation during an investigatory interview if requested by the employee.

Recommendation 59:

BART's Board of Directors must provide the Office of the Inspector General independent access to counsel, administrative staff, and records storage systems.

Recommendation 60:

BART's Board of Directors must increase funding for the Office of the Inspector General to the level of peer transit agencies such as LA Metro and WMATA, expressed as a percentage of overall operating budget.

Recommendation 61:

BART's Board of Directors must update **BART's** Code of Conduct, last revised in 2013, to make reporting of potential conflicts of interest more internally consistent and aligned with federal and state regulations.

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, no later than 90 days from the public release date of this report.

Responses to Findings shall be either:

- The respondent agrees with the finding.
- The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

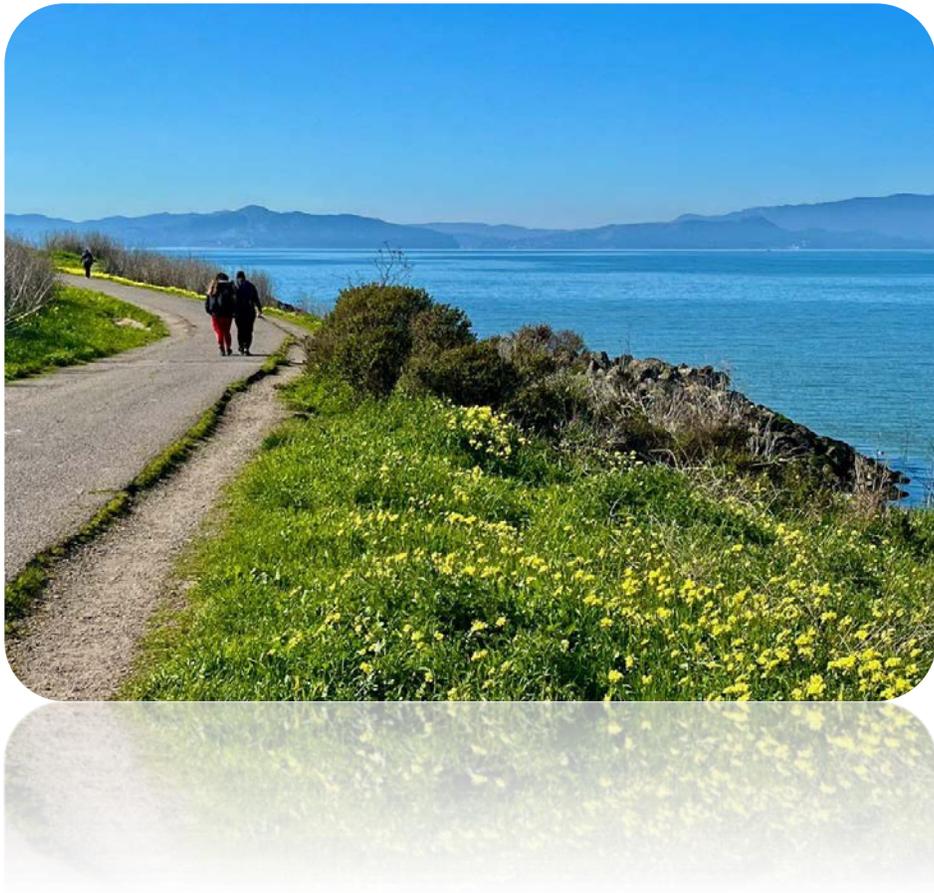
Responses to Recommendations shall be one of the following:

- The recommendation has been implemented, with a summary regarding the implemented action.
- The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
- The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency where applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.
- The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

RESPONSES REQUIRED

BART Board of Directors

Findings 41 through 46
Recommendations 56 through 61



McLaughlin Eastshore State Park, Berkeley, CA

LACK OF FIRE INSPECTIONS IN OAKLAND CREATES UNNECESSARY RISKS

EXECUTIVE SUMMARY

Uncontrolled fires can be devastating for communities, the environment, buildings, and homes; not only to the structures they destroy but also to the mental and physical well-being of people. Most of us take common-sense actions every day to minimize and prevent fires: we turn off the stove, do not leave candles burning unattended, or store flammable liquids in hot places. Just as individuals can take action to minimize fire risk, California requires owners of apartment buildings, high-rise dwellings, schools, and meeting places to meet fire safety codes, laws, and regulations. Local fire departments are mandated to inspect these spaces, yet the city of Oakland has not met its requirement. The Oakland Fire Department (OFD) and the **city's** leaders bear responsibility for unsafe environments for citizens by failing to complete state-mandated fire inspections. The lack of completed fire inspections is the focus of this report.

Since 2018, California Health and Safety Code sections 13146.2 and 13146.3 require every fire department in the state to annually inspect all buildings used as a public or private school, a hotel or motel, a lodging house, or an apartment house. Oakland has suffered a continuously low rate of completing these inspections. Data shows that the Fire Prevention Bureau (FPB) of the OFD inspected, on average over the last six years, only 25% of the buildings requiring state-mandated fire safety inspections.

The Health and Safety Code requires every fire department to annually report to its administering authority (in this case, **Oakland's** mayor and city council) its compliance with the annual inspection requirement. The code also requires the mayor and city council to formally acknowledge receipt of the fire **department's** compliance report. This part of the code helps to hold policy makers accountable for progress on fire prevention resources and funding.

State-mandated inspections are vital to the safety of the Oakland community and should be a high priority for every resident. The barriers and hurdles to completing state-mandated inspections must be removed and fire prevention and life safety should become a priority for all.



State-mandated inspections are vital to the safety of the Oakland community and should be a high priority for every resident.

BACKGROUND

In the recent past, Oakland has suffered deadly fires resulting in demands for improved fire inspections. There have been incidents where people were unable to safely exit a building, where fire sprinkler systems did not work, where smoke alarms were not present, or where fire extinguishers were not readily available or in working order. These dangers exist for any inhabited structure but are more dangerous in densely populated buildings such as schools, assembly halls, high-rise buildings, hotels, and apartment buildings.

In November 2017, **Oakland's** mayor and then-city administrator announced changes to **OFD's** FPB, including hiring six additional fire inspectors. Following the **mayor's** executive order, a Fire Safety Task Force was formed with four subcommittees:

1. data,
2. fire budget and staffing,
3. inspection and displacement protocols, and
4. zoning and building changes.

This task force was charged with improving safety.

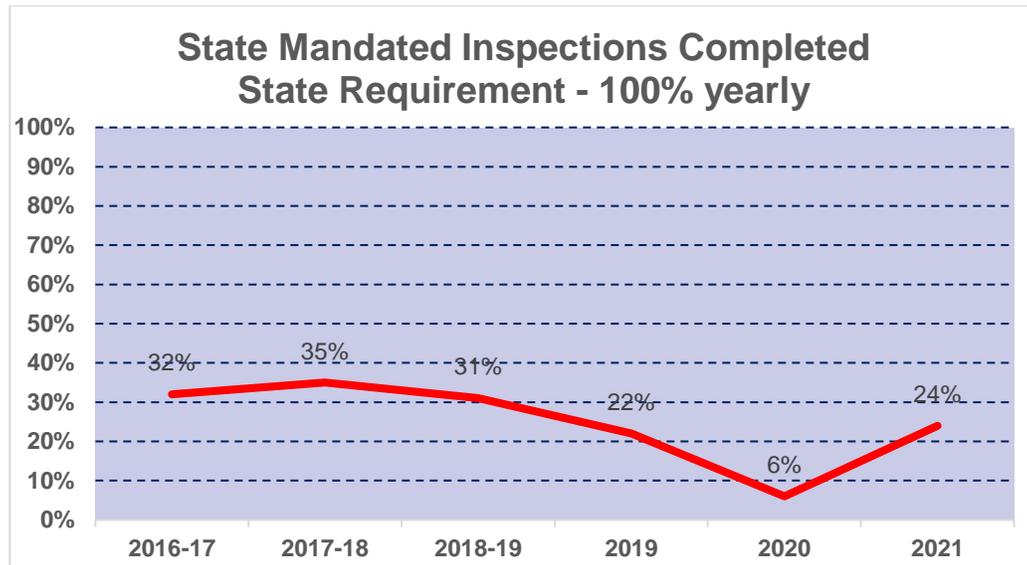
Three years later, in 2020, Oakland's city auditor issued a report entitled, "**Performance** Audit of Oakland Fire **Department's** Fire Prevention Bureau." The report found that the FPB is not meeting its state-mandated inspection requirements. Thirty recommendations were issued to improve the performance of the FPB. The report noted, "**After** three years, a great deal of work remains for the city to accomplish the reforms outlined by the **Mayor's** Task Force following the Ghost Ship **Fire.**"

The FPB is solely responsible for conducting state-mandated inspections and as of March 2022, had six fire inspectors and one supervisor dedicated to this work.

OFD has over 530 employees organized into six major divisions. The current fire chief has held this leadership position only since April 2021. Most of **Oakland's** fire department personnel and resources reside in the fire-suppression divisions of the Field Operations Bureau and Support Services. These divisions include firefighters, emergency medical services, firefighting equipment, and communications.

The FPB is much smaller than the fire-suppression divisions. Fire protection engineers and fire code inspectors are assigned to this division. The FPB is responsible for fire safety education, inspection of high hazard occupancies, fire code enforcement, and vegetation management. The FPB is solely responsible for conducting state-mandated inspections and as of March 2022, had six fire inspectors and one supervisor dedicated to this work. There is currently an acting fire marshal who has led the division since January 2022. A national search is underway for a permanent fire marshal.

Fire inspections fall into several different categories. There are specialized inspections for flammable vegetation (such as in the East Bay hills), the cannabis industry, and buildings with hazardous materials. The Grand Jury focused on state-mandated inspections, which include mixed occupancy buildings, high-rises, multi-unit residential buildings, as well as assembly, educational, and institutional buildings. The FPB completed a high of 35% of state-mandated inspections in 2017-2018, to a low of 6% in 2020. Based on current data from January to March of 2022, the inspection rate, annualized, is still only 50%. The Grand Jury learned the current fire chief is aware of this issue and has improved performance in the first quarter of 2022, with a goal of meeting the state-mandated inspection requirements with 100% compliance by the end of 2022.



Historical State-Mandated Oakland Fire Inspection Data
by year and building type

Facility Type	Number to be Inspected+	2016-2017+	2017-2018+	2018-2019+	2019*	2020*	2021*	6-year Average
Assembly	1,202	120	149	173	178	71	142	
Educational	283	26	119	107	94	32	147	
Institutional	85	16	15	22	27	7	8	
Multi-Unit Residential	2,505	1,148	1,167	941	679	105	669	
High-Rise	121	31	34	39	32	56	107	
Total Inspected		1,341	1,484	1,282	1,010	271	1,073	
Total Buildings	4,196	4,196	4,196	4,196	4,559	4,559	4,559	
Percentage		32%	35%	31%	22%	6%	24%	25%

+ Data received from the Oakland Fire Department. The Performance Audit by the Oakland City Auditor published inspection data that reflected a lower rate of inspections. (September 30, 2020).

* Data received from the Oakland Fire Department February 23, 2022.

INVESTIGATION

The Grand Jury determined that to reach 100% compliance for state-mandated inspections, the following are needed:

- Accurate Inventory: Complete inventory of the buildings to be inspected—where are they, what are they used for, and who owns them. For example, the **OFD’s** inventory listed the Ghost Ship building as a nonresidential warehouse and therefore not requiring a state-mandated inspection.
- Trained Inspectors: Inspectors must be cross-trained in multiple inspection categories to maximize their efficiency. For example, high-rise buildings have different requirements than schools because fire codes differ depending on building use. The fire code manual also spans over 500 pages, and the job of fire inspector requires interpersonal skills and subject-matter expertise necessary to educate and work with building owners who are not always happy to be inspected or initially able to invest in fire safety.
- Staffing: Oakland needs a sufficient number of inspectors, supervisors, and resources to inspect the over 4,000 buildings requiring annual inspections. The Grand Jury was informed that at least 11 fire inspectors are needed to fully staff the FPB. The FPB currently has a number of staff on leave and has not been fully staffed for several years. The Grand Jury has learned that the FPB is in the process of onboarding six additional fire inspectors.
- Standardized Procedures and Processes: The inspection process must be standardized to track inspections, efficiently record needed corrective action, and take advantage of available automation. Expectations for inspector workload and productivity should also be established and monitored.

The 2020 Performance Audit noted that OFD does not have a complete inventory of buildings requiring fire inspections in Oakland.

- Enforcement Coordination: There must be consequences for building owners who do not comply with fire safety regulations. For example, a building owner stalled installation of a required fire alarm system for four years by ignoring re-inspection notices of noncompliance without repercussion.

City-wide Building Inventory

The 2020 Performance Audit noted that OFD does not have a complete inventory of buildings requiring fire inspections in Oakland. This is consistent with the message the Grand Jury received while interviewing witnesses. Such an inventory needs to be a current block-by-block, address-by-address, picture of the city that includes changes in use, new construction, and demolitions. The lack of an accurate

database of buildings impacts the ability to complete inspections because there is no way to gauge which buildings require inspections. For example, the Grand Jury learned it is not unusual for a building to be a church one year, and changed to a multifamily home the next, or become vacant entirely. These changes in use subsequently change the fire inspection requirements.

The data on completed state-mandated inspections per year compiled by OFD reflects the known number of facilities requiring inspections. The actual compliance rate cannot be known until there exists a reliable inventory of buildings. If an improved inventory existed, it would identify more buildings needing inspection, and consequently the actual inspection rates would be lower than currently published.

Historically, there appears to be too little interdepartmental coordination between OFD and other city agencies necessary to create and maintain an accurate building inventory. When buildings change use through the permit process, tax assessment, or building/planning changes, OFD must be notified of the change in building status. Implementation and use of a city-wide database has been sluggish and incomplete.

Accela is the cloud-based software solution that Oakland has adopted to accomplish both interdepartmental coordination, the creation and updating of building use inventory, and to automate the fire inspection process. This includes the use of handheld tablets and automated templates by fire inspectors to document inspection results and follow-up.

Accela offers fire inspectors standardized check-off templates suited for various building inspections, which, when completed, automatically create and upload completed inspection reports. Accela also notifies inspectors when re-inspections are needed and tracks the citation progress or other enforcement actions.

Accela and the use of tablets has previously been slow to implement within the FPB. Its adoption has also been sporadic throughout city departments, where its use is voluntary. Only one battalion of three in OFD was using Accela as of March 2022. The Grand Jury was pleased to learn that the OFD chief has succeeded in implementing Accela across the department as of May 1, 2022.

Accela currently has the ability to identify buildings requiring inspections by FPB. While OFD is making use of this, at this time, there has not been the inter-departmental coordination necessary for OFD to be able to take full advantage of the efficiencies provided by Accela.

The Grand Jury learned that there is a citywide Accela implantation task force that resides within **Oakland's** Department of Planning and Building. OFD has not been able to maximize the value and expertise of resources available from the task force. The task force exists to aid city departments in the transition to new software. To maximize the utility and value of Accela, OFD must provide:

- Subject matter expertise.

- Constant assessment and reassessment of how well new Accela programming fits the needs of OFD.
- Practical training for fire personnel on the use of Accela.
- A clear timeline for change.
- Support from executive management within OFD.

Importantly, there remains a disconnect between the Accela Solutions team and OFD on administrative access to Accela. OFD does not have administrative access to Accela, which slows **OFD's** ability to make immediate changes to the interface and functionality of the system that would streamline its workflow. This appears to be an additional barrier to full Accela implementation for the OFD.

Fire Inspector Training

The Grand Jury learned that historically, training offered to fire safety inspectors was haphazard, generally internal, and mainly consisted of on-the-job mentoring by experienced inspectors. External training was difficult to get approved and expensive to obtain. Some inspectors chose to use their own money to attend training classes rather than wait for the department to offer or authorize needed training.

Because training has been sporadic and uneven within the FPB, not all inspectors are certified to inspect all types of facilities. In recent years, this problem caused serious inefficiencies within the ranks of inspectors while hundreds of needed inspections went undone because the available inspectors lacked the skills to conduct the types of inspections needed.

The Grand Jury learned that the current chief is aware of these challenges, recognizes their seriousness, and has begun to address them in 2022. The Grand **Jury's** investigation has confirmed the **chief's** commitment to improving inspector training, and the Grand Jury has also learned that the current chief has put in place necessary changes to improve department-wide training.

Additionally, it is the responsibility of the leadership of OFD to build a culture that values and respects inspectors as equal partners with sworn firefighters. The Grand Jury learned that a perception may exist that uneven priority is given to these equally important vocations. Higher compensation or expanded training will assist with retention of fire inspectors, but until fire inspectors see a clear career path and feel they can earn higher status within OFD, it will be difficult to retain the best and most skilled inspectors. The current chief is aware of this issue and is working to address this perception within the department.

Insufficient Staff

New fire inspector applicants must be recruited for applicable skills and experience. The staff within the FPB needs to be highly qualified with a wide range of inspection certifications. The critical nature of their performance impacts the residents of Oakland as a whole. These positions should be filled as soon as possible for the overall safety of Oakland. Current city civil service procedures do not facilitate this process. The Grand Jury learned of numerous situations where the city's human resources procedures did not address the urgent needs of the OFD and its FPB.

The Grand Jury learned of repeated complaints about delays in hiring and the hiring of inspectors with little or no background in fire science. Delays in making an employment offer to qualified candidates is a very serious problem. Experienced candidates have employment options. They accept positions outside of Oakland because of delays in hiring. The Grand Jury understands that civil service requirements and labor contracts impact the hiring process. It is critical to expedite the hiring process by seeking to negotiate new terms in the existing labor contracts that would allow for a faster hiring process to fill these vital positions.

Oakland describes preferred candidates for fire inspectors in the official description of the position as follows:

The ideal candidate is a highly motivated, organized and detail-oriented person, who has experience in inspecting buildings, fire protection systems and/or fire code enforcement...

The Grand Jury believes that the OFD has hired some candidates without fire code experience, who require more time and money to train than equally qualified applicants with a background in fire science, as a consequence of delays in the hiring process. The Grand Jury urges **Oakland's** leaders to correct these issues within the hiring process.

Another staffing challenge is compensation and working conditions. High turnover has hampered efforts to complete inspections. As a large city, Oakland includes a complex array of buildings which presents challenging work for fire inspectors. Smaller surrounding cities offer competitive pay and, for some, more attractive working conditions. Therefore, inspectors often leave, especially once they have a year or two of training and experience. The unfortunate combination of significant recruiting delays, inexperienced hires, compensation that often does not make up for the more challenging and more complex work compared with other nearby communities, high turnover, and unequal status within OFD make it difficult for OFD leadership to staff a quality team of fire inspectors to protect Oakland citizens.

Internal Processes

Many of the recommendations from the 2020 Performance Audit focused on the need for the FPB to adopt standard operating procedures. The Grand Jury did not find evidence that this has been completed. All inspections, including state-mandated, were hampered by inconsistent use of devices, handwritten notes on inspection reports, and a troublesome database conversion from the prior software system One Step to the new Accela system. As of May 2022, One Step has been retired and its data is being migrated into the new Accela system, which is a large step in the right direction.

The lack of communication between departments also adds to a number of re-inspections, some of which result in a building inspected 5-6 times for the same violations. These re-inspections draw staff time away from first-time inspections of other structures.

The Grand Jury understands that the current fire chief has indicated that there will not be repeated re-inspections in 2022. The Grand Jury supports the fire **chief's** focus on inspecting more buildings rather than using resources for duplicate inspections. It is important to be transparent with the public about the number of buildings inspected each year and the number of buildings that fail inspections, as well as the number that eventually pass inspections once violations are corrected. This fire safety data should be easily available to city leaders and to the public on the OFD website.

Enforcement

The Grand Jury is concerned about the lack of legal action designed to ensure fire safety. The Grand Jury inquired about the number of legal actions taken by the Oakland City **Attorney's** Office against owners cited for fire safety violations. This inquiry revealed that the city attorney is not the primary initiator of these actions, and instead acts as legal support for the OFD for citations that have already been issued.

Existing Oakland Fire Code (Chapter 15.12) reads in part:

*Failure to comply with any of the provisions of this Code, including failure to provide, obtain or maintain valid permits, certifications, tests, ...**remove**, ...**unsafe** materials, appliances, fixtures, equipment or other property; or failure to ...**correct**, unsafe or hazardous for egress or fire ...shall be and is declared to be prima facie evidence of an existing and continuing hazard to life or limb, property or public welfare.*

Fire inspectors have the legal authority to cite owners for fire code violations. Generally, the FPB follows a policy of working with owners prior to citing, issuing a notice to repair and then allowing them time and flexibility to make the needed repairs or installations. Barring extraordinary circumstances an owner usually has 15 to 30 days to make corrections. One re-inspection is then

required. Owners who fail to make the necessary corrections can be issued a citation and/or fined, which can ultimately lead to a lien being placed on the building and a referral to the city attorney.

The Grand Jury found that citations are rarely issued for failure to meet inspection criteria. Many witnesses had trouble remembering the last time a citation or referral to the city attorney occurred, and the Grand Jury found one instance of confusion as to whether inspectors had the ability to issue citations. It is the responsibility of the fire chief and the fire marshal to

ensure that inspectors utilize all means, including citations, to achieve compliance with the fire code, and that OFD staff fully understands the enforcement options that are available.

The Grand Jury learned that the fire chief recognizes the need to support inspectors as they issue citations. The fire **chief's** expectation that citations are appropriate, within the authority of the fire inspectors, and will be used, has been shared with the FPB.

The enforcement process has not been used on educational facilities that fail inspections. The Grand Jury learned that 97% of Oakland schools failed compliance with state-mandated inspections one year, 90% the next year, and corrections have just begun after intervention by the current fire chief. These statistics for public schools have been supplied to the mayor, the city administrator, and the superintendent of the Oakland Unified School District. This is a troubling statistic concerning the safety of **Oakland's** students.

CONCLUSION

The Grand Jury concludes that, historically, the OFD and city leaders, by not-setting fire prevention as a priority, risked endangering the life and safety of Oakland citizens. The lack of attention to life-saving inspections and barriers to enforcement of fire code regulations falls on the **city's** leaders. This signified a lack of due diligence in performing their duties to the residents, workers, and visitors of Oakland.

The Grand Jury found that the current fire chief has instituted significant reforms and personnel changes that are moving OFD in a positive direction toward meeting its inspection requirements. The Grand Jury commends the fire chief and urges the department to continue its work to institute change that will increase fire safety in Oakland.

Oakland's leaders and agencies must explicitly state and demonstrate their commitment to focus on fire prevention by developing a plan to complete 100% of the annual required state-mandated fire inspections within the next 24 months. They must ensure that the effect is sustained year

The Grand Jury found that the current fire chief has instituted significant reforms and personnel changes that are moving OFD in a positive direction toward meeting its inspection requirements.

after year by annually approving the resources needed for the OFD's FPB to complete its responsibility for state-mandated inspections.

FINDINGS

Finding 47:

The Oakland City Council has no written plan or timetable for holding Oakland Fire Department accountable to annually complete all state-mandated fire inspections.

Finding 48:

The Oakland Fire Department does not have an up-to-date inventory of buildings that require state-mandated inspections.

Finding 49:

The slow, uncoordinated, and incomplete implementation of Accela, throughout **Oakland's** city departments including, but not limited to the Oakland Fire Department, has greatly reduced the ability of the Fire Prevention Bureau to complete state-mandated fire inspections.

Finding 50:

Historically, the Oakland Fire Department has not provided sufficient training for fire inspectors.

Finding 51:

The city of Oakland presents a uniquely challenging environment for inspections which has resulted in high turnover of inspectors.

Finding 52:

The city of **Oakland's** slow and inefficient recruitment process results in hiring delays and fails to hire candidates with relevant experience.

Finding 53:

The Oakland Fire Department has not used the citation process for fire safety violations in a manner that results in immediate and substantive improvements to fire safety.

Finding 54:

The Oakland Fire Department does not have sufficient administrative staff support for fire inspectors to aid in the citation process.

Finding 55:

The city of Oakland does not have fire inspection information readily available on its website for public review.

RECOMMENDATIONS

Recommendation 62:

The Oakland Fire Department shall report the status of state-mandated fire inspections to the Oakland City **Council's** Public Safety Committee quarterly for review and evaluation.

Recommendation 63:

Oakland's mayor must meet monthly with the Oakland Fire Department chief focusing on progress toward the goal of 100% compliance with state-mandated fire inspections.

Recommendation 64:

The city of Oakland must develop a dependable, cross-agency, up-to-date inventory of buildings needing state-mandated fire inspections.

Recommendation 65:

The Oakland Fire Department, in partnership with the Accela Task Force, must evaluate the Oakland Fire Department team and the work plan for the Oakland Fire **Department's** Accela implementation, including the possible addition of administrative permission for the Oakland Fire Department to allow the Oakland Fire Department Accela liaison to make direct changes to the Accela interface.

Recommendation 66:

The Oakland Fire Department executive staff must meet regularly with the Oakland Fire Department Accela liaison to evaluate the status of Accela implementation within the department, including the status of **Accela's** performance in aiding inspections.

Recommendation 67:

The Oakland Fire Chief must evaluate personnel assignments to ensure the appropriate liaison with systems and operational knowledge is in place for the critical implementation of Accela.

Recommendation 68:

The Oakland Fire Chief must evaluate the implementation of Accela support and training available for state-mandated inspectors.

Recommendation 69:

The Oakland Fire Department must assess its Accela working group to ensure that the fire **department's** automated needs in the Accela program are being met. This should include an automated online system for documenting all state-mandated inspections, the ability to document all follow-up inspections, and the ability to access data for statistical analysis of inspection results.

Recommendation 70:

The Oakland Fire Department must ensure that all fire inspection training meets or exceeds the standards provided by the California Office of the Fire Marshal, and that a sufficient number of staff are cross-trained to ensure that fire inspections are completed.

Recommendation 71:

The Oakland Fire Department must create a clear career path for professional advancement of fire inspectors.

Recommendation 72:

Oakland Fire Department leadership must work to raise the status of the Fire Prevention Bureau, so it is on par with the status and esteem afforded firefighters within the department.

Recommendation 73:

The Oakland Fire Department must establish clear expectations for the number of completed inspections on a daily/weekly basis to reach the 100% inspection goal.

Recommendation 74:

The Oakland Fire Chief must authorize a salary and job study to determine the placement of Fire Prevention Bureau personnel in comparison to other large cities. Results should be shared with the mayor, city council, and **Oakland's** human resources department.

Recommendation 75:

The city of Oakland must reform its hiring process to allow for more rapid filling of open positions in order to hire more experienced fire inspectors.

Recommendation 76:

The Oakland Fire Chief and Fire Prevention Bureau Fire Marshal must provide all inspectors with sufficient training that includes clear guidelines on how and when to cite violators. This must include a written policy that outlines specific actions and **inspectors'** authority when citing.

Recommendation 77:

The Oakland Fire Department must provide the Fire Prevention Bureau with administrative staff to support the fire inspectors to process noncompliance citations and prepare for court appearances if necessary.

Recommendation 78:

State-mandated fire inspection data should be easily accessible on the city of **Oakland's** public information web page.

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, no later than 90 days from the public release date of this report.

Responses to Findings shall be either:

- The respondent agrees with the finding.
- The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

Responses to Recommendations shall be one of the following:

- The recommendation has been implemented, with a summary regarding the implemented action.
- The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
- The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency where applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.
- The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

RESPONSES REQUIRED

Mayor, City of Oakland	Findings 47, 49, 52 & 55 Recommendations 62 through 65, 74, 75 & 78
Oakland City Council	Findings 47, 49, 52 & 55 Recommendations 62, 65 & 78
Chief, Oakland Fire Department	Findings 48 through 51, 53, 54 & 55 Recommendations 62 through 78



Sunset Over Western Alameda County

MANAGEMENT FAILURES AT PLANNING AND BUILDING DEPARTMENT COST OAKLAND MILLIONS

EXECUTIVE SUMMARY

The city of **Oakland's** Planning and Building Department (PBD) has a long-standing practice of allowing building permit applicants to expedite their plan reviews by paying additional fees for reviews outside of normal business hours. Nearly 20 years ago, the 2002-2003 Alameda County Civil Grand Jury investigated PBD and the expedited plan checking service over concerns related to excessive overtime payments to plan check engineers. Their report concluded there was:

- *No evidence that hours reported are observed or verified.*
- *Little evidence to show that time sheets are actually checked.*
- *Perception of possible collusion or favoritism between the applicant and the plan checker.*

The 2002-2003 Grand Jury's report recommended eight changes to address these issues. Only three of these recommendations have been implemented.

Over the intervening years, complaints about delays in completing plan checks have persisted, and on multiple occasions media reports have identified a PBD plan checker as one of **Oakland's** highest-paid employees, who earned multiples of their salary in overtime compensation. These factors led the 2021-2022 Grand Jury to conduct a renewed investigation of **PBD's** plan check process, with a focus on the oversight of expedited plan checks and the overtime compensation it generates.

The current Grand **Jury's** investigation found that nearly all of the practices identified as problematic in 2003 continue to this day and that there has been an absence of management oversight around the expedited plan check process. These factors created an environment where unusually high levels of overtime compensation have been paid to PBD staff while the community members dependent on PBD to provide an efficient and transparent process for approving new construction and renovations have been underserved. Perhaps most troubling, **management's** failure to adequately oversee the process enabled a systemic under-billing of large project developers that persisted over many years, costing Oakland millions of dollars in uncollected revenues.

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In addition to reviewing operational management practices, the 2021-2022 Grand Jury investigated the financial management model and reasonableness of fees associated with the expedited service for plan checking. Proposition 26 requires that fees like those covered by this investigation are:

*... not more than necessary to cover the reasonable costs of governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the **payor's** burdens on, or benefits received from the governmental activity.*

The PBD oversees regulation of the city's growth and development. Through reviewing project plans, enforcing local ordinances, developing neighborhood plans, and responding to public concerns, its purpose is to create an environment that supports the health, safety, and economic vitality of Oakland.

The Grand **Jury's** investigation produced evidence that the current expedited service fees fail to meet this standard as they appear to be set at a level of three to five times the actual cost to provide the service. Of note, while the fees for expedited service are set in the **city's** master fee schedule and are supposed to apply equally to all projects, the Grand Jury found residential and small commercial projects were required to pay the full amount of these fees, while larger projects were often charged as little as 25% of the fees due to the city. This practice of differentiated fees for expedited service work is also inconsistent with Proposition 26.

The Grand Jury further found that the combination of an expedited service fee set materially above actual costs along with the segregated fund accounting model in place for PBD creates financial incentives for PBD management that are not fully aligned with the **department's** explicit goals and are not in the best interests of Oakland residents.

The Grand **Jury's** investigation resulted in six findings and 11 recommendations related to **PBD's** plan check function.

BACKGROUND

Planning and Building Department Function and Funding

The PBD oversees regulation of the city's growth and development. Through reviewing project plans, enforcing local ordinances, developing neighborhood plans, and responding to public concerns, its purpose is to create an environment that supports the health, safety, and economic vitality of Oakland.

As part of the adopted 2021-2023 policy budget, PBD described goals which include:

- Enhance customer service experience throughout the Planning and Building process by reducing wait time for responses.
- Strengthen the permit processing and coordination function in the Building Bureau to assist applicants in obtaining building permits.

Effective fiscal year (FY) 2006-2007, Oakland made a significant change to the funding mechanism for PBD by removing the organization from the general city budget and establishing the segregated *Development Services Fund* (2415) for managing the **department’s** revenues and expenses.

	Source of Funds	Use of Funds
2415 Development Service Fund	Licenses, fees, and permits from housing and commercial planning and construction-related activities	Planning and zoning services; construction inspections, construction permit approvals; building code enforcement; plan checks, engineering services

This segregated fund is intended to be self-supporting, and any revenues collected that exceed expenses must remain within the fund for future approved uses. Building permit fees and expedited plan checking service fees are two of the many revenue sources for the Development Services Fund. This **fund’s** revenues have exceeded expenses in recent years and Oakland forecasts that the fund will end FY 2021-2022 with an uncommitted balance of \$61.6 million. This level of surplus represents over 75% of the annual operating budget for the fund.

The Building Bureau is a component of PBD and is the sub-department responsible for conducting plan checks for all construction and renovation activity in the city. For FY 2021-2022, the bureau has an authorized staff of 97 employees and a budget of \$19 million. The PBD executive responsible for overseeing the Building Bureau is the chief building official. The chief building official position has been vacant since 2020, and the previous incumbent was in the role for just a single year prior to this vacancy.

The chief building official position has been vacant since 2020, and the previous incumbent was in the role for just a single year prior to this vacancy.

Permit and Plan Check Fees

The cost for applicants to obtain a building permit is determined by a fee schedule that has been reviewed and adopted by the city council. A **project’s** permit fee is determined by the size and nature of the project, with the value of the construction or renovation the primary factor used in calculating the fee. This basic building permit fee covers a broad range of services provided by PBD to applicants, including completing plan checks for the project.

Plan checks are generally assigned to staff and completed on a first-in, first-out basis. When demand exceeds capacity, a backlog results and applicants wait in a queue to receive service. Within the Building Bureau, plan check capacity has chronically been insufficient to meet demand and waits of up to two months are common to have a plan check engineer assigned to a project. The plan check assignment delays are a frequent source of complaints directed to PBD. In a

February 2021 memo to the public and the city council, Oakland's vice mayor highlighted the negative impact that result from delays in permitting:

Many members of the public and stakeholders have complained about difficulty and slowness accessing our city's permit process, which is impeding the building of housing, and the opening of businesses. This also reduces revenue available to fund vital services.

In December 2021, the plan check team had an authorized staff of 17 full-time equivalent positions. Only 11 of the 17 positions were filled, and the six remaining were open for recruitment. Staff available to assist with plan checks in December 2021 was down from October 2020 levels, when 14 of 16 authorized positions were filled.

As an alternative to accepting the typical weeks-long delay for assignment of a plan checker, PBD offers applicants the opportunity to request expedited service at an additional cost. Expedited requests are intended to be worked on after normal business hours by staff working overtime.

As an alternative to accepting the typical weeks-long delay for assignment of a plan checker, PBD offers applicants the opportunity to request expedited service at an additional cost. Selecting this option moves the request out of the normal queue for checker assignment and places it in a separate queue of expedited requests. Expedited requests are intended to be worked on after normal business hours by staff working overtime. While no commitments are made about turnaround time for expedited service, the expedited queue is intended to shorten wait times.

To request expedited service, the applicant must agree to pay the city an additional fee of \$465 for every hour of staff time spent on the plan check. This fee is neither capped nor estimated in advance. The hourly charge of \$465 is included in the city's master fee schedule and is set at 1.5 times the city's estimate for its cost to provide plan check services during normal business hours. The city has estimated that the cost to provide plan check services during normal business hours is \$310 per hour. This cost is intended to include all related expenses, including both employee specific and department level overhead. The actual direct labor cost of the plan checkers is a small fraction of this amount as they typically earn a salary based on an hourly rate of \$60-\$80. It is important to note that the \$310 per hour cost estimate for plan checks completed during normal hours is never directly charged to applicants as these services are covered in the basic permit fee an applicant pays for a project.

The plan check engineers within the Building Bureau have the option to volunteer for overtime work and to receive assignments from the expedited service queue. Those who work overtime are compensated at 1.5 times their normal hourly wage. The plan check engineers working on expedited service projects are directed to track and report all of their hours working on that

project, not just those incurred outside of business hours. These total hours, as reported by the plan check engineer, are then billed to the applicant at the \$465 per hour rate.

The amount of overtime hours worked in support of expedited service varies widely across the PBD plan checkers. Many plan checkers do not regularly work any overtime, while one plan checker regularly reported working 15 hours per day and often working overtime seven days a week. This latter individual received overtime compensation that ranged up to 275% of their base pay in recent years and was employed by the department and earning significant overtime at the time of the time of the 2002-2003 Grand **Jury's** investigation of the department. This dynamic of high levels of overtime work and compensation is not limited to a single individual, as several other engineers have also received a multiple of their base pay in overtime compensation across a full year.

The work of plan check engineers is typically done by an individual, working alone with only minimal manager supervision. Once assigned to a project, engineers engage directly with the applicant to provide written comments on submitted plans, and the engineers have discretion to determine when the plan review is complete and when additional revisions by the applicant are required. Typically, an approval process will involve several cycles of comments, corrections, and resubmissions before the plans are fully approved. For plan checks which have requested expedited service, all time spent in these review cycles is intended to be billed to the applicant at the expedited service hourly rate.

Plan check engineers submit bi-weekly timecards as part of the **city's** standard payroll process. These timecards report hours of regular and overtime hours worked, as well as time off from work. Following submission of an **engineer's** timecard, it is forwarded electronically to their direct manager for review and approval and subsequently sent to the payroll department for processing. Given the solitary nature of the plan check work and the physical layout of the facility, managers are not typically positioned to directly observe the work of their team members.

The overtime reporting process for payroll and the process for recording hours to be billed to applicants for expedited service are not integrated, and there is no formal reconciliation process to ensure that overtime hours reported to payroll were authorized in advance and match the expedited service hours billed to applicants.

Long Term Case Study of Overtime Compensation and Oversight

When plan check overtime irregularities were investigated by the 2002-2003 Grand Jury, its report found that the

...plan checker who earned the most money reported working overtime every week during fiscal year 2001-2002 without exception. In the same time period, the city of Oakland reported one other plan checker had also worked a large amount of overtime. That employee reported 2,227.5 regular hours and 2,080.0 overtime hours for a fifteen-

month period. These two plan checkers accounted for nearly 75% of all overtime hours worked in the department.

In assessing the processes and controls related to overtime work the 2002-2003 Grand Jury concluded:

There is little evidence to show that timecards are actually checked. In reviewing the entire years' timecards which were pre-approved, there was not a single instance of correction based on reported hours worked.

The 2002-2003 Grand **Jury's** final report included the following eight recommendations:

1. Plan check supervisors must verify time sheets for accuracy.
2. Plan check supervisors must verify that overtime has actually been worked and accurately documented.
3. Plan checker overtime must be pre-approved. Post-approval must be limited and include documented reasons for such approval.
4. Hire additional plan checkers to reduce the amount of overtime.
5. The practice of allowing day-at-a-time vacation when combined with overtime must be discontinued.
6. Management must evaluate and plan for future staff requirements to eliminate the need for excessive overtime.
7. Eliminate the automobile allowance for employees who do not use automobiles as an integral part of their job.
8. Permanently change the plan check application form so that applicants can no longer designate a specific plan checker.

Media reports on high levels of compensation for workers within **PBD's** plan check function have appeared regularly in recent years. These reports were often timed around the public release of data on government employee compensation in California. An example of one of these reports, verified by the Grand Jury, is a May 14, 2017 article in the *San Francisco Chronicle* on **Oakland's** highest paid employee, which reported:

*One plan **checker's** time cards show he worked all 366 days of the leap year, at times putting in 90-plus-hour workweeks. He worked so much that he quadrupled his salary. His regular compensation and overtime pay — including benefits, \$485,275 — made him the **city's** highest-paid worker and the fourth-highest overtime earner of California's 550,000 public employees in 2016.*

The Grand **Jury's** review of public records show that the engineer who was the subject of these media reports received over \$2 million in overtime compensation between 2011 and 2020. Compensation from overtime was approximately double his base salary, and this plan checker alone accounted for more than half of all overtime paid to Oakland plan check engineers during this time frame.

The Grand Jury learned that this same plan checker throughout their career submitted internal reports of time worked for billing applicants that did not match the time records submitted for their own compensation. The time records submitted for billing of expedited service on larger projects were intentionally understated to average between just 25%-33% of the hours claimed for overtime compensation. The Grand Jury estimates that PBD **management's** failure to detect and address this **individual's** inaccurate reporting cost Oakland \$2 million to \$6 million in lost revenue over the past decade.

In December, 2020, after more than three decades of employment by the PBD, the plan check engineer who was routinely one of the highest-paid employees in Oakland retired from the department. The Grand Jury verified the individual received overtime compensation up through October 2020.

INVESTIGATION

In conducting its investigation, the Grand Jury interviewed seven witnesses and reviewed hundreds of documents, reports, and emails. Among other activities, the Grand Jury analyzed multi-year patterns of compensation within PBD and completed an independent assessment of the cost study used by Oakland in setting the fee level for expedited service on plan checks. Through this investigation, the Grand Jury is confident that it had access to adequate quantity and quality of data to develop an informed perspective on **PBD's** expedited service offering and to prepare meaningful recommendations to PBD.

Non-Expedited Plan Checks

In reviewing PBD processes, the Grand Jury learned that the department has established internal targets for turnaround time on plan checks that have not requested expedited servicing. The Grand Jury also learned that while these targets exist, the objective is not commonly understood within PBD, is not reported in internal management reports and does not appear to have been consistently achieved in recent history. In practice, while a service commitment level may exist, the reality for applicants is they have little reason for confidence that a non-expedited plan check will be processed on a predictable and reasonable time frame.

It is the Grand **Jury's** opinion that this failure to deliver a predictable and reasonable service level for plan checks is a primary driver of the demand for expedited service. Were the department to adequately staff and manage the plan check function in a manner that delivers on the established service goal, many of the requests for expedited service would be eliminated.

The Grand Jury believes that reducing the demand for expedited services by improving the service on non-expedited plans is both consistent with the stated goal of the department to reduce wait times and an obligation the department has to applicants that are already paying for this function in their project permit fees.

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Expedited Service Process and Procedures

In reviewing processes and procedures associated with the expedited service for plan checks, the Grand Jury observed that five of the recommendations prepared by the 2002-2003 Grand Jury have not been adopted by PBD. They were recommendations that:

1. Staffing is adequate to support normal demand.
2. Supervisors verify time sheets for accuracy.
3. Overtime is pre-approved.
4. Supervisors verify that overtime has actually been worked and accurately documented.
5. Managers plan future staff requirements to eliminate the need for excessive overtime.

This Grand Jury believes these outstanding recommendations remain essential for effective management of the expedited service.

In addition to the outstanding recommendations, the Grand Jury identified five additional concerns with the expedited service process and procedures:

1. Overtime authorizations are routed to payroll without supervisor approval.
2. Overtime authorizations are not kept in a retrievable format and cannot be checked against timecards.
3. There is no process for comparing overtime hours authorized to overtime hours reported.
4. There is no systemic reconciliation of hours reported for expedited service billing and hours reported for expedited service overtime compensation.
5. There is no limit to the amount of overtime an individual can work by day, week, or year.

Investigation of an Irregularity

In 2019, a plan check manager within the Building Bureau noticed a material discrepancy between the overtime hours reported by an engineer to payroll and that same **engineer's** report of hours worked on expedited services that were billed to applicants. The net impact of this discrepancy was that many fewer hours were billed to applicants than were paid to the engineer in their overtime compensation. The Grand Jury learned the manager failed to take immediate steps to investigate, waiting at least several months before asking the engineer for an explanation and nearly a year before escalating to their supervisor.

As of April 2022, the internal investigation into this discrepancy has been underway for over two years and the Grand Jury understands that the investigation remains open. Despite a written acknowledgement by the engineer of intentionally misreporting hours worked for an extended period, the Grand Jury was unable to find any evidence that disciplinary actions were taken or that efforts were made to recover funds that might have been owed to the city from applicants for work performed that went unbilled or for overtime compensation that might have been paid but not earned.

It is the Grand Jury's understanding that despite this recent example of a control gap which could result in applicants receiving expedited service without paying the mandated fees and/or engineers receiving overtime compensation for hours not actually worked, PBD has not yet implemented a control to ensure matching entries in the compensation and applicant billing systems.

Management and Senior Leadership Engagement

Through its investigation, the Grand Jury learned there was an absence of a common understanding among PBD staff of the policies and procedures for providing the expedited service for plan checks. The Grand Jury further learned that there was limited visibility of the economics and operational dynamics of this service outside of the Building Bureau.

The Grand Jury observed that management expressed little concern about the extended time frame required to complete plan checks as well as a lack of engagement on the underlying dynamics that were leading to a plan check engineer being frequently one of the city's highest paid employees.

The Grand Jury noted a lack of urgency and accountability in PBD management's investigation into the discrepancy between overtime hours paid and the hours billed to applicants for expedited service that was described earlier in this report.

The Grand Jury learned that several management positions within PBD have been vacant or filled on an acting basis for extended periods, and acting managers are often tasked with performing multiple jobs during their acting role period, which may limit their ability to be effective at either job. In particular, the Grand Jury is concerned that the role of chief building official, who serves as the primary interface between PBD senior leadership and the Building Bureau, has remained vacant since the end of 2020.

The Grand Jury believes that the combination of inadequate process controls and insufficient management engagement have contributed to creating an environment around plan checks where poor service levels are accepted as the norm and identified financial risks go unaddressed.

Through its investigation, the Grand Jury learned there was an absence of a common understanding among PBD staff of the policies and procedures for providing the expedited service for plan checks.

The Grand Jury views stronger leadership around these issues by senior executives within the Building Bureau and PBD as essential for improving the current situation.

Reasonableness of Fees

Local governments in California are empowered to establish and collect fees for certain services subject to the requirements of California Proposition 26 which states:

*the local government bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the amount is not more than necessary to cover the reasonable costs of governmental activity, and that the manner in which those costs **are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from the governmental activity.***

A common method for meeting this burden is through the commission of an independent analysis **to estimate the government's cost to provide services. The study used in setting Oakland's current** fee for expedited service processing was completed in 2015. **This study's** recommendations were documented in a 69-page report that addressed a broad range of services provided by PBD. The **city council adopted the study's proposed** recommendations for fee levels and incorporated them into the city's **Master Fee Schedule.**

Applicants requesting expedited plan checks at the time of this report are charged a fee of \$465 per hour of plan checker time engaged on their project. This hourly cost represents the fee of \$375 per hour recommended in the 2015 Cost Study with periodic increases for inflation and 14.75% in additional charges to support records management and technology enhancements.

The Grand **Jury's** analysis of the study used to set the fee for expedited service on plan checks identified several areas of analytical concern that when considered together represent strong evidence, in the Grand **Jury's** opinion, that the fee is likely not fully compliant with the requirements of Proposition 26. Specifically, the Grand Jury notes:

1. The study estimated the cost for plan checker activity during normal business hour was \$250 per hour. This amount was 3-4 times the direct compensation for plan checkers at the time of the study and is reflective of the fact that the \$250 per hour estimate was intended to be a fully loaded cost, inclusive of direct costs of the checker as well departmental overhead.
2. The cost study recommended that three services, including expedited plan checks, be charged on a per hour worked basis. For each of these services, the cost estimate for work completed outside of normal business hours was set at exactly 1.5 times the cost estimate

for work performed during normal working hours. In the case of expedited plan checks, this outside of normal hours fee was estimated to be \$375 per hour.

The Grand Jury notes that applying a 1.5 multiple to the fully loaded cost of performing a service during normal business to estimate the cost of performing that same service outside of working hours will inevitably overstate the actual cost. This is because a majority of costs included in this \$250 per hour amount are fixed or overhead expenses unimpacted by overtime work.

3. As previously covered in this report, applicants are not charged separately for plan checks that are not expedited. This is because the cost for completing plan checks during normal business hours is one of the core services that the applicant pays for through the basic building permit fee charged to all projects. When an applicant requests expedited review, the city is entitled to additional fees that reasonably align with the actual additional cost of providing the expedited service. In the case of work that is transferred from being conducted without overtime to being conducted with overtime, the incremental expense is properly calculated as the cost to conduct that activity during overtime less the cost it would have cost to conduct that activity during normal time.

By charging an applicant that requests expedited plan check services 1.5 times the hourly cost estimate for work on plan checks during working hours, the city fails to recognize that the cost for the service during working hours has already been paid by the applicant and that at most they should be charging the incremental amount of one half of the normal working hours rate, which was \$125 per hour at the time of the study.

Considered in aggregate, these three points of analytical concern with the 2015 cost study led the Grand Jury to conclude that the current hourly rate charged to applicants for expedited plan reviews is estimated to be three-to-five times the actual incremental cost to Oakland of providing the expedited service and hence out of compliance with Proposition 26.

FINDINGS

Finding 56:

The system in place for authorizing, assigning, checking, and verifying reported overtime for expedited plan checks in **Oakland's** Department of Planning and Building is ineffective.

Finding 57:

The extended vacancy of the deputy director/chief building official position in **Oakland's** Department of Planning and Building contributes to the undermanagement of the expedited plan check service.

Finding 58:

The fees currently charged by Oakland for expedited service of plan checks are likely inconsistent with the requirements of Proposition 26.

Finding 59:

The plan check function in **Oakland's** Department of Planning and Building does not actively monitor productivity within the plan check team and currently does not collect data on hours worked by project to enable this analysis.

Finding 60:

Supply of plan checking resources in **Oakland's** Department of Planning and building is not aligned with demand for those resources in part because there is no attempt to forecast anticipated supply and demand and provide decision makers with the information with sufficient lead time to address anticipated gaps.

Finding 61:

Exclusive reliance on internal resources for providing plan check services in **Oakland's** Department of Planning and Building limits the ability of the Planning and Building Department to ensure service commitments to applicants are consistently achieved.

RECOMMENDATIONS

Recommendation 79:

Oakland's Planning and Building Department shall integrate a comprehensive set of process controls to protect against the risk of fraud in the reporting of overtime.

Recommendation 80:

Oakland's Planning and Building Department shall establish and enforce a limit on the maximum annual number of hours of overtime for that can be worked by each plan checker.

Recommendation 81:

Oakland's Planning and Building Department shall establish a process for regularly reconciling Authorized Overtime, Paid Overtime, and Expediting Fees charged to applicants.

Recommendation 82:

Oakland's Planning and Building Department shall fill the currently vacant post of Deputy Director/Chief Building Official.

Recommendation 83:

Once the chief building official is hired, the director of **Oakland's** Planning and Building Department shall direct the chief building official to provide updates to Planning and Building Department senior leadership on the state of the plan check function and progress on implementing these recommendations on a quarterly basis during their first year in the role.

Recommendation 84:

In the next update to the Planning and Building Department cost study, **Oakland's** Planning and Building Department shall direct the independent consultants to address or respond to the cost estimate methodological issues identified in this report.

Recommendation 85:

With the next amendment to **Oakland's** Master Fee Schedule, the city council shall ensure the cost estimate methodological issues and the Proposition 26 compliance issues identified in this report have been addressed in fees set for expedited plan checks.

Recommendation 86:

Oakland's Planning and Building Department shall extend the practice of tracking plan checker activity to all projects not just those for which expedited Service has been requested.

Recommendation 87:

Oakland's Planning and Building Department shall establish and maintain forecasting models for plan checker supply and demand.

Recommendation 88:

Oakland's Planning and Building Department shall make use of forecast models of plan checker supply and demand in resource planning.

Recommendation 89:

Oakland's Planning and Building Department shall establish contracts with on-demand resources, such as third-party plan checkers, that can be utilized during periods in which internal resources are inadequate to meet applicant demand.

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, no later than 90 days from the public release date of this report.

Responses to Findings shall be either:

- The respondent agrees with the finding.
- The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

Responses to Recommendations shall be one of the following:

- The recommendation has been implemented, with a summary regarding the implemented action.
- The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
- The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency where applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.
- The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

RESPONSES REQUIRED

Director, City of Oakland Panning and Building Department

Findings 56 through 61

Recommendations 79 through 89

Mayor, City of Oakland

Finding 58

Recommendation 85

Oakland City Council

Finding 58

Recommendation 85

HOMELESS STUDENTS NEED MORE HELP

EXECUTIVE SUMMARY

Homelessness is an issue of crucial importance to the residents of Alameda County. In the educational context, it presents complicated issues for schools and districts to identify and assist students (and their families) who lack stable housing. All children need a safe and stable home to flourish; homeless students have unique challenges that often interfere with their ability to fully participate in their education. It is vital that our educational institutions effectively support homeless students for a brighter future.

Thousands of Alameda County students are homeless. The true number of homeless students in the county is masked by inconsistent policies toward outreach and the inherent challenges of overcoming the social stigma of being identified as homeless. Homelessness results in a wide variety of negative outcomes in the educational realm. Before these outcomes can be addressed, homeless students must first be identified. But merely identifying homeless students does not end the challenge. Providing ongoing support for this vulnerable community is difficult. The persons charged with implementing the various school **districts'** outreach towards homeless students are designated as McKenney-Vento (MKV) liaisons (named after the federal legislation that outlines the rights afforded to homeless students throughout the U.S.). The Grand Jury found MKV liaisons are typically dedicated, hard-working staff members, yet they are often constrained in their ability to meet the needs of homeless students. This is because they are often buried in district organizational hierarchies and have other job duties that limit their focus on homeless students. Allowing MKV liaisons greater latitude to focus on issues related to student homelessness and increasing MKV visibility within educational organizations will greatly enhance the support systems for homeless students.

Thousands of Alameda County students are homeless. The true number of homeless students in the county is masked by inconsistent policies toward outreach and the inherent challenges of overcoming the social stigma of being identified as homeless.

Additionally, greater emphasis can be placed on offering wrap-around services in the same geographic location, in facilities such as family resource centers, where students and families can address other unmet needs, including housing, mental health support, food, and public assistance. Such resource centers are especially effective when students and families can obtain a variety of services in a single location. There are far too few of these family resource

centers in Alameda County, and more emphasis should be placed on the approach involving consolidated wrap-around services.

Greater emphasis can also be placed on assisting schools and/or districts to connect with Community-Based Organizations (CBOs). These organizations can provide a critical link with services needed by homeless students and their families. There is not a common approach to connecting school districts to CBOs. Under-resourced educators are left to identify and seek out potential partnerships. More assistance is needed to assist schools and districts with CBOs who can help homeless students and their families.

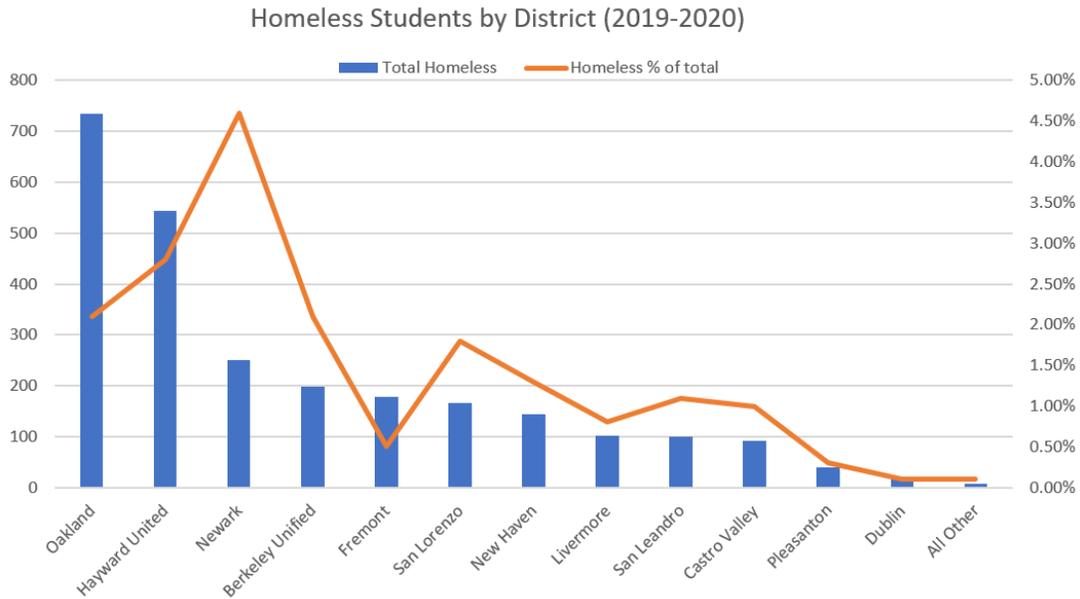
BACKGROUND

The McKinney-Vento Homeless Assistance Act of 1987 (MKV Act) defines a student experiencing homelessness as one who lacks fixed, regular, and adequate nighttime residence. This includes circumstances where students are:

MKV- Qualifying Homeless Circumstances
Sharing housing with others due to loss of housing, economic hardship or a similar reason
Staying in hotels, motels, trailer parks, or camping grounds due to a lack of alternative adequate housing
Staying in emergency or transitional shelters
Abandoned in hospitals
Staying in public or private places not designed for humans to live
Staying in cars, parks, bus or train stations, abandoned buildings, or substandard housing

The definition also includes migratory students who meet any of the homeless definition criteria. While the list of circumstances described in the MKV Act is not exhaustive, it helps educators determine which students are eligible for services.

In the 2019-2020 school year, the last school year for which data is available, 1.3 million students throughout America experienced homelessness. This represents 2.5% of all students enrolled in public schools. Seventy-eight percent were in doubled-up living situations, 11% were at shelters, and 4% were in fully unsheltered situations. Alameda County school districts reported 3,421 homeless students during the 2020-2021 school year. This amounts to 1.4% of the students enrolled in the county. Black/Latinx students make up only 45% of the overall enrollment of Alameda County students but more than 80% of the homeless students.



None of the witnesses interviewed by the Grand Jury believed that the reported numbers accurately represented the extent of student homelessness. As detailed in the next section, homeless students are chronically undercounted, meaning the true number of homelessness students far exceeds those currently estimated.

The numbers are likely to grow exponentially in the future. The county has enacted an eviction moratorium due to the COVID-19 pandemic that forbids any landlord from evicting a tenant who cannot pay rent because of pandemic-related financial difficulties. Once this moratorium expires, the number of homeless students is expected to proliferate.

Effects of Homelessness on Student Performance

Homelessness has devastating effects on students. Homeless students perform qualitatively worse in almost every metric compared with their stably housed peers. Homeless students tend to be chronically absent, as something that many families take for granted, merely getting children to school, is exponentially more difficult for homeless families. Homeless students are more likely to perform below grade level and are more likely to repeat a grade than housed students. As a result, homeless students graduate a far lower rate than their housed classmates. Moreover, unhoused students are disciplined at twice the rate as their peers. Homeless students are also at greater risk for victimization, trafficking, rape, assault, suicide, substance abuse, hunger, and bullying, among other risks.

Homeless students are also at a greater risk for victimization, trafficking, rape, assault, suicide, substance abuse, hunger, and bullying, among other risks.

Education plays a critical role in breaking the cycle of homelessness for these students. The most significant factor for young adults becoming homeless is the lack of a high school diploma or GED. Young adults are more than 300% more likely to become homeless if they do not graduate from high school, highlighting the critical importance education plays in providing a meaningful future for students.

Funding For Homeless Student Services

The MKV Act allocates federal money to the state, which in turn makes subgrants to school districts to provide services to students experiencing homelessness. The MKV Act requires public school districts to appoint an MKV liaison to ensure the identification of students experiencing homelessness in coordination with other school personnel and community agencies. MKV liaisons broadly reported that MKV funds were primarily used for homeless student transportation costs.

The most significant factor for young adults becoming homeless is the lack of a high school diploma or GED. Young adults are more than 300% more likely to become homeless if they do not graduate from high school.

The American Rescue Plan Act of 2021 specifically included \$800 million for the purposes of identifying students experiencing homelessness as well as for providing wrap-around services and assistance needed to enable students experiencing homelessness to attend school and participate fully in school activities. Students experiencing homelessness served by these funds will be reported mainly in briefs for school year (SY) 2021-22 through SY 2024-25.

School districts also receive funding for homeless student services through Title I, Part A of the Elementary and Secondary Education Act (ESEA). Under this program, Local Education Agencies (LEAs) receive allocated funds to hire MKV liaisons and for transportation costs for getting homeless students (and their families) to schools.

Additional funding is available to school districts via **California's** Local Control Funding Formula (LCFF). This program provides differentiated assistance funding to school districts to improve educational outcomes for indigent students, foster youth, and English learners. Homeless students are automatically eligible to receive services through the LCFF as indigent students.

Other sources of funding often referenced by Alameda County district personnel supporting homeless students are private grants and partnerships with CBOs. These sources are piecemeal, meaning schools and/or districts must seek out local CBOs and grant providers who provide assistance in the area. There is no platform within the county to identify and build CBO partnerships.

Services Provided for Identified Homeless Students

Once students meet the MKV **Act's** definition of homelessness, they are afforded specific rights related to their education. These rights are conferred to ensure that homeless students have the same “**equal** access to the same free, appropriate public education,” as their stably housed classmates.

Homeless students have the right to remain in their school of origin or enroll in the local school where they are temporarily staying, based on what is in the **students'** best interests. They are entitled to receive subsidized transportation to their school of origin. They should receive free school meals, as well as educational and related support. School supplies, academic support, and subsidized participation in after-school programs should also be provided to homeless students. Students and their families are also referred to outside agencies and CBOs for other forms of assistance, such as food, clothing, and medical care.

The best way to address student homelessness is to find stable housing for students and their families. MKV students and their families are eligible to receive vouchers for short-term housing assistance. A program in Oakland connects families with a volunteer and a local CBO to assist with securing housing. The program is helpful to those who actually qualify and receive housing, yet the need far exceeds the support. Only 25% of those who applied through the Oakland program received housing, a common theme among those looking for housing assistance in Alameda County.

*Homeless students have the right to remain in their school of origin or enroll in the local school where they are temporarily staying, based on what is in the **students'** best interests.*

Homeless students can be assigned a social worker who can assist students with the myriad of issues that face homeless students. Sometimes this work is done by dedicated school personnel who are not licensed or credentialed. The work is crucial to identifying and addressing student needs.

INVESTIGATION

McKenney-Vento Liaisons

MKV liaisons are the backbone of outreach efforts to assist homeless students in the county. MKV liaisons train district personnel as to how to identify homeless students and then assist them once identified. This includes ensuring that there is wide understanding the MKV **Act's** definition of homeless as well as the clues as to what might demonstrate that a student and/or their family is homeless. While on-site school personnel may be the eyes and ears of outreach efforts, those eyes

and ears depend heavily on training from MKV liaisons. The Alameda County Office of Education (ACOE) assists MKV liaisons through its Division of Student Programs and Services, meeting with MKV liaisons regularly and offering suggestions for best practices and other ways of providing service-provision.

MKV liaisons are also crucial service providers to the homeless students and families in each district. Once students are identified as homeless (or potentially homeless), MKV liaisons, working with on-site Family Service Support Specialists (FSSs) or Coordinated Service Teams (COSTs), assist families by helping them to register for classes, discussing particular needs for the students, and checking in regularly to see how students are performing at school, as well as anything else the families might need to respond better to the challenges of being homeless.

MKV liaisons have for the most part diligently and passionately tried to fulfill their responsibilities to homeless students. Their work, like that of so many in the education field, is tireless and their devotion to homeless students and their families is admirable.

MKV liaisons have for the most part diligently and passionately tried to fulfill their responsibilities to homeless students. Their work, like that of so many in the education field, is tireless, and their devotion to homeless students and their families is admirable. Predictably, their jobs have been made exponentially more difficult by the COVID-19 pandemic. As many government buildings were closed to the public, MKV liaisons reported meeting parents in parking lots to provide supplies and discuss school issues. Relationships between MKV liaisons and families have been further stifled as lack of access to vaccines, illness, and worsening economic conditions have kept families from meeting regularly with MKV support structures.

Even though MKV liaisons play such a critical role in serving the needs of homeless students, not all MKV liaisons are able to focus exclusively on those needs. MKV liaisons often “wear many **hats**” and have many other job duties that require attention such as tracking student attendance and other student welfare indicators. While some MKV liaisons in the county are 100% focused on homeless students, others have significant other job responsibilities. Some MKV liaisons reported only being able to spend 25% to 33% of their time on homelessness students and one MKV liaison reported only being able to spend 4-5 hours per week on homeless student issues. The constraints placed on MKV liaisons necessarily interfere with responsibilities to support homeless students and their families.

Another issue facing MKV liaisons is their visibility within their own organizations, the school districts. Often MKV liaisons report to individuals within a chain of command several layers below district decision-makers. This often results in a disconnect between those making decisions for school districts and those who are most intimately familiar with the difficulties associated with homeless student populations. This can lead to situations where district decision-makers do not understand their own MKV programs or how school policies can negatively impact homeless students. As an example, one district enacted a disciplinary policy automatically assigning any

student absent for three days in a given school week to Saturday school. This policy disproportionately impacted homeless students, as chronic absenteeism is one of the most common attributes of homeless students. While ACOE worked with the district to understand this unfair impact, such intervention may not have been necessary had decision-makers received regular feedback from MKV liaisons.

Identification Issues

Identifying students who are-or may be-homeless is a critical aspect of outreach efforts. The rights afforded to homeless students under the MKV Act necessarily require schools and districts to first identify students meeting the MKV **Act's** definition of homelessness. Efforts to identify students are most focused during class registration at the beginning of the school year, but school personnel also have an ongoing responsibility to identify homeless students during the school term through on-site engagement.

Identifying homeless students is challenging because many families do not want to be identified as homeless. Many parents fear negative consequences from self-identifying as homeless, worrying that government entities might take their children away from them. There is also stigma to being homeless, and many parents and/or children carry a sense of shame. Witnesses reported that overcoming this stigma is central to the proper identification of homeless students and this usually requires a strong sense of trust between the students, families and their first point of contact at the school. School personnel can begin to overcome this stigma when they can demonstrate to students and their families how they can benefit from being designated under the MKV Act.

Identifying homeless students who are-or may be-homeless is a critical aspect to outreach efforts.

This presents a challenge, as witnesses shared the difficulties of identifying homeless students. MKV liaisons are responsible for training school personnel on how to identify students that are or might be homeless. MKV liaisons typically reported training on-site personnel, such as **schools'** front desk workers, administrators, and student service directors, such as FSSs and COST members, as to signals that might indicate that a given student is homeless. There is also a training module for teachers that informs teachers how to identify students that are homeless to help the students receive the services they need. This training module is currently available but not required.

This training, however, is done in patchwork fashion throughout the county. Each school district in the county has a different system in place to train personnel on how to identify homeless students. These unaligned approaches lead to varying degrees of efficacy. Some schools and school districts are better than others at identifying homeless students. Whether

due to a district or **school's** lack of urgency to identify these children or relying on ineffective systems to train school personnel in that identification, opportunities exist to improve training for those best situated to identify homeless students.

This has led to situations where school personnel were often not well-trained in identifying homeless students. Particularly, school personnel often did not identify students in shared housing situations as homeless. Shared housing is often temporary in nature and difficult to spot, even more so during the pandemic, where remote learning environments restrict school access to students and their lives.

There is a training module for teachers that informs teachers how to identify students that are homeless to help the students receive the services they need.

ACOE has established quarterly meetings between all the MKV liaisons in the county to identify best practices and assist underperforming districts with bettering their response to homeless students. This includes process-mapping for each district to standardize practices as much as possible and data analysis to understand the success of any given approach. As well-intentioned as this is, this support is relational, in that it requires that districts share their struggles with ACOE administrators and accept suggestions for improvement. These two-way relationships **don't** always exist.

The Grand Jury is mindful that efforts to identify homeless students are further hampered by chronic absenteeism by school and district personnel. The pandemic has created a revolving door of those responsible for the **county's** MKV response teams. Teachers, school staff and FSS/COST members have all had attendance challenges given COVID-19-related illnesses, making training extraordinarily difficult and outreach even harder. And this **doesn't** even take into account the impact on the students themselves; homeless students who already have issues with chronic absenteeism have even greater challenges attending school in the COVID-19 era.

As a result, witnesses unanimously shared the belief that homeless students are significantly undercounted across the county. While the precise extent is unknown, there could be thousands of schoolchildren who are eligible to receive additional services but cannot do so because schools and the district have not yet identified them. Services provided under the MKV Act are dedicated for and essential to combatting the challenges homeless students face; adequately identifying affected students is the first step in this process.

Fragmentation of Services for Homeless Students and Their Families

Systems for addressing the needs for homeless students work best when they tightly integrate a wide array of services together. **"One stop shopping"** service centers, such as the Union City

Family Center, allow parents to access a wide array of programs to help address the multiple issues connected to homelessness. In an integrated service center, a family registering for school can immediately meet with an MKV liaison who can assist in filling out the proper paperwork. They can also meet with case managers/social workers who can assist with the challenges faced by the family. The family can also connect with food assistance programs to help with food scarcity, or technical support for technology-related issues. The more services offered at a geographical location, the more the needs for homeless students and their families can be met.

These wrap-around services more effectively and efficiently allow families to access the services they need by giving families all the help they need in one place. Time and/or transportation barriers may affect a **family's** ability to get the help they need, forcing prioritization as to what is most important, such as having to get food assistance at the expense of mental health treatment or tutoring for a student. Unfortunately, service centers are not widespread throughout the county, but their impact is being recognized. Union City Family Center reports that some 10 other LEAs have visited the center recently with aims to replicate the success found there. The Grand Jury is encouraged to learn that other educational jurisdictions are interested in creating family resource centers.

“One stop shopping” service centers, such as the Union City Family Center, allow parents to access a wide array of programs to help address the multiple issues connected to homelessness.

Other jurisdictions within the county certainly do not have the budget nor a geographical location where such wrap-around service providers is feasible. Yet, the effectiveness and importance of these types of service centers suggest that additional focus is warranted to see how wrap-around services might be provided in similar fashion outside of the family resource center setting. After all, such programs could not only offer assistance to MKV families, but to other families as well, like socio-economically disadvantaged families or those struggling with mental illness.

Support from Community-Based Organizations

Outreach to homeless students is largely a resource issue, and current funding is inadequate to address the challenges faced by homeless students. Schools and districts are already drastically underfunded. Budgets are stretched thin, and even with the influx of COVID-19-related monies from federal and state government, witnesses reported that adding more homeless services would likely trigger cuts in other service areas. And yet, other options exist for funding more extensive programs for homeless students. School districts across the county work with CBOs for a wide variety of projects. Additional effort could be made to work with CBOs to ensure further support for homeless students. The Union City Family Center is

an example of the successful partnerships with CBOs; the costs associated with building and staffing the center were largely covered by federal grant money.

Currently, each school district is left to its own devices to hunt down opportunities, each with its own unique geographical and program requirements. As it stands, some districts do this better than others, and it is ultimately the students who suffer in districts that do not find support from CBOs. This is often related to a **district's** base-level capacity, and the ability to dedicate staff for CBO relationships. This is particularly true in the area of student homelessness. Persons responsible for responding to student homelessness are often tasked with numerous other responsibilities.

It should be a goal of all school districts in Alameda County to work collaboratively with other agencies and CBOs to identify and help homeless students. ACOE can help districts identify and pursue partnerships with CBOs that would enhance services for homeless students.

FINDINGS

Finding 62:

McKenney-Vento liaisons face significant time restraints fulfilling their duty to assist homeless students in Alameda County.

Finding 63:

McKenney-Vento liaisons lack visibility within their organizations to effectively impact school **districts'** service for homeless students.

Finding 64:

Teachers in Alameda County are not required to be trained or certified to identify homeless students.

Finding 65:

Efforts to identify homeless students throughout Alameda County are inconsistent from district to district, including differences as to which school district employees receive training on identifying homeless students and how they are trained.

Finding 66:

Wrap-around services provided at a single geographical location, such as those provided at the Union City Family Center, offer tremendous value to homeless students and their families and are a critical component in assisting with the difficulties associated with homelessness.

Finding 67:

Partnerships with Community-Based Organizations are an effective way for school districts and schools to overcome funding deficiencies for the provision of services for homeless students.

RECOMMENDATIONS

Recommendation 90:

The Alameda County Office of Education should identify strategies for reducing the workloads for McKenney-Vento liaisons in Alameda County to provide greater focus on homeless student service provision.

Recommendation 91:

The Alameda County Office of Education should work with school districts to increase visibility for McKenney-Vento liaisons within their organizations, including making MKV liaisons cabinet-level positions for district superintendents.

Recommendation 92:

The Alameda County Office of Education should require, to the extent possible, that Alameda County teachers be certified that they have completed training on identifying homeless students.

Recommendation 93:

The Alameda County Office of Education should develop standards to identify which district/school personnel should complete training related to homeless students, as well as how that training should be conducted.

Recommendation 94:

The Alameda County Office of Education should assist districts within the county as to possibilities for wrap-around service centers and which services could be offered at such centers.

Recommendation 95:

The Alameda County Office of Education should create a clearinghouse to identify potential partnerships for districts in the county with appropriate Community-Based Organizations as well as assist districts in how to establish these partnerships.

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, no later than 90 days from the public release date of this report.

Responses to Findings shall be either:

- The respondent agrees with the finding.
- The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

Responses to Recommendations shall be one of the following:

- The recommendation has been implemented, with a summary regarding the implemented action.
- The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
- The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency where applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.
- The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

RESPONSES REQUIRED

Alameda County Office of Education

Findings 62 through 67
Recommendations 90 through 95

INVITED RESPONSES

Superintendent, Alameda Unified School District
Superintendent, Albany Unified School District
Superintendent, Berkeley Unified School District
Superintendent, Castro Valley Unified School District
Superintendent, Dublin Unified School District
Superintendent, Emery Unified School District
Superintendent, Fremont Unified School District
Superintendent, Hayward Unified School District
Superintendent, Livermore Valley Joint Unified School District
Superintendent, New Haven Unified School District
Superintendent, Newark Unified School District
Superintendent, Oakland Unified School District
Superintendent, Piedmont Unified School District
Superintendent, Pleasanton Unified School District
Superintendent, San Leandro Unified School District
Superintendent, San Lorenzo Unified School District
Superintendent, Sunol Glen Unified School District

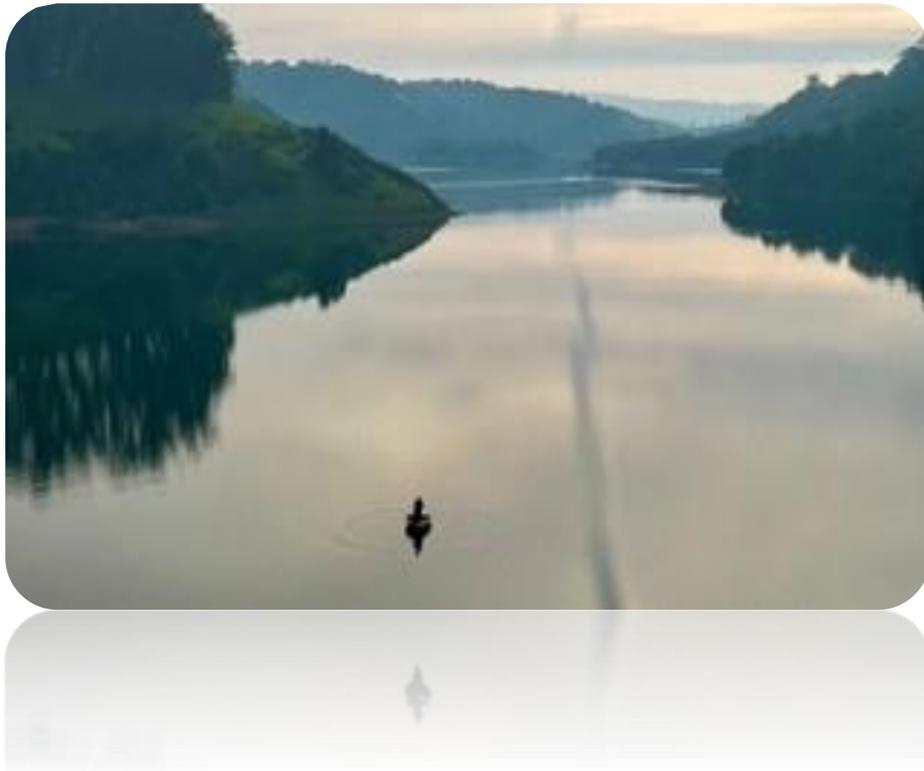
GLOSSARY

ACOE: Alameda County Office of Education

LEA: Local Education Agency. A public board of education or other public authority that maintains administrative control of public elementary or secondary schools in a city, county, township, school district

MKV: McKinney-Vento Homeless Assistance Act of 1987 is a federal law that provides federal money for homeless students

CBO: Community-Based Organization, typically a 501c3 organization



Lake Chabot, Castro Valley, CA

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](#). 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 complete a Grand Jury application found on the Grand Jury website. Based on supervisorial districts, approximately 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 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 complete an online application, please visit: [Join us!](#)

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 approximately 20-30 hours each week to Grand Jury work. 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. Selection for Grand Jury service is a great honor and one that offers an opportunity to be of value to the community.

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:

- The respondent agrees with the finding.
- The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

The person or entity responding to each Grand Jury recommendation shall report one of the following actions:

- The recommendation has been implemented, with a summary regarding the implemented action.
- The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
- The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency where applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.
- The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

SEND ALL RESPONSES TO:

Presiding Judge Charles A. Smiley
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 2021-2022 Grand Jury Final Report must be submitted no later than 90 days after the public release of the report.