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SAN DIEGO
COUNTY GRAND JURY



COUNCIL PRESIDENT SHERRI S. LIGHTNER

CITY OF SAN DIEGO

October 12, 2016

Jeffrey B. Barton
Presiding Judge
San Diego Superior Court
220 West Broadway
San Diego, CA 92101

Re: Grand Jury Report: "Campaign Law Enforcement & Training: City and County of San Diego"

Dear Judge Barton:

Pursuant to California Penal Code Section 933.05(a),(b) and (c), the City of San Diego provides the attached response from the Mayor and City Council to the applicable findings and recommendations included in the above referenced Grand Jury Report.

If you require additional information or have any questions, please do not hesitate to contact Diana Jurado-Sainz, Director of Legislative Affairs, at 619-533-3920.

Sincerely,

A handwritten signature in black ink that reads "Sherri S. Lightner".

Sherri Lightner
Council President
City of San Diego

- Encl: 1) City Response to San Diego County Grand Jury Report Entitled, "Campaign Law Enforcement & Training: City and County of San Diego"
2) City Council Resolution R- 310692



**City Response to
San Diego County Grand Jury Report Entitled
Campaign Law Enforcement & Training:
City and County of San Diego**

Pursuant to California Penal Code section 933(c), the City of San Diego provides the following responses to the findings and recommendations pertaining to the City of San Diego that are included in the above referenced Grand Jury Report:

FINDINGS 01 THROUGH 05

Below are the Mayor and City Council's responses to Findings 01 through 05:

Finding 01: *Changes to the appointment process for SDEC commissioners could promote civic confidence in the SDEC and its effectiveness.*

Response: The Mayor and City Council disagree with the Grand Jury's finding.

The process for choosing individuals to serve on the Ethics Commission is consistent with the appointment process for approximately 40 boards and commissions to the City of San Diego. All individuals nominated to serve as an Ethics Commission member are confirmed at a public meeting of the San Diego City Council, during which members of the public can attend and express their opinions on any matter related to the qualifications of an individual nominated to serve in the capacity of a Commissioner.

The City of San Diego Municipal Code Section 26.0404 specifies background and experience requirements for Commissioners to help ensure a Commission that is qualified and free of bias. At least two Commissioners are to be attorneys in good standing; and at least one Commissioner shall have experience related to an elective governmental office by having held an office, been a candidate for an office, or been a campaign treasurer (or other high level position) for a candidate for office. The Municipal Code also protects against a predominance of Commission members from one political party to ensure an unbiased, de-politicized Commission. Additionally, "the Commission shall reflect the diversity of the City which it serves."

Finding 02: *Revising the City Charter to remove the City Council's authority over the SDEC's existence would preserve SDEC as an independent body.*

Response: The Mayor and City Council agree with the Grand Jury's finding.

Finding 03: *Lengthening the term of commissioners could improve the commission's effectiveness.*

Response: The Mayor and City Council disagree with the Grand Jury's finding.



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We agree with the Grand Jury's opinion that a longer serving Commissioner would improve his or her understanding of complex issues over time. Commissioners must understand and make determinations on activities regulated by complicated state and local governmental laws. Currently, Commissioners can serve two consecutive terms totaling eight years. Under the Grand Jury recommendation, the total time a Commissioner could serve is six years, thereby reducing Ethics Commissioners' potential service-time by two years.

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

Response: The Mayor and City Council agree with the Grand Jury's finding.

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

Response: The Mayor and City Council disagree with the Grand Jury's finding.

Since its establishment in 2001, the San Diego Ethics Commission has a proven track record of monitoring, administering, and enforcing the campaign and governmental ethics laws. The Commission has effectively administered its investigative duties. Furthermore, the degree to which investigations would be shortened by investigative subpoena power is not compelling enough for a change of powers.

RECOMMENDATIONS 16-60 THROUGH 16-64

Below are the Mayor and City Council's responses to Recommendations 16-60 through 16-64:

Recommendation 16-60: *Establish a procedure to appoint SDEC members that is independent of elected city officials.*

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

As described in the response to Finding 01, the process for choosing individuals to serve on the Ethics Commission is consistent with the appointment process for other boards and commissions to the City of San Diego. The City of San Diego Municipal Code Section 26.0404 specifies background and experience requirements for Ethics Commission members to help ensure a Commission that is qualified and free of bias. Also, the confirmation process for Commissioners is a public process, and members of the public



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have the opportunity to comment on the qualifications of individuals nominated to serve as Commissioners at a public hearing before the City Council. Lastly, the current process allows for the public's holding of elected City officials accountable for their choices of Commissioners and nominees, whereas an independent appointment body is not accountable to the City electorate.

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

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

On December 3, 2015 the Charter Review Committee of the San Diego City Council recommended modifying City Charter language to establish the Ethics Commission via the City Charter, rather than by City Council ordinance, as is the current process. Such Charter language is subject to legal review and drafting by the City Attorney's Office, as well as subsequent approval by the City Council as a ballot measure in a citywide election. The next available elections at which such a ballot measure could be considered will be in 2018.

Recommendation 16-62: *Change the current term limit for SDEC commissioners to one six-year term.*

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

As explained in the response to Finding 03, under the Grand Jury recommendation, the total time a Commissioner could serve is six years, thereby reducing Ethics Commissioners' potential service-time by two years. We do not agree with the Grand Jury's speculation that there is an issue with Commissioners being denied reappointment as retaliation for their decisions.

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

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

On December 3, 2015 the Charter Review Committee recommended renaming the Ethics Commission to the City of San Diego Fair Political Practices Commission. This name would closely track the name of the California Fair Political Practices Commission, which serves a similar function statewide. To effectuate the name change, the City Council can include it in a ballot measure to be put before the City electorate. The next available elections at which such a ballot measure could be considered will be in 2018.



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

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

As stated in the response to Finding 05, since its establishment in 2001, the San Diego Ethics Commission has a proven track record of monitoring, administering, and enforcing the campaign and governmental ethics laws. The Commission has effectively administered its investigative duties. Furthermore, the degree to which investigations would be shortened by investigative subpoena power is not compelling enough for a change of powers.



RESOLUTION NUMBER R- 310692

DATE OF FINAL PASSAGE SEP. 19 2016

APPROVING THE CITY COUNCIL'S RESPONSE TO THE
2015-2016 SAN DIEGO COUNTY GRAND JURY REPORT
TITLED "CAMPAIGN LAW ENFORCEMENT & TRAINING:
CITY & COUNTY OF SAN DIEGO."

WHEREAS, on June 23, 2016, the 2015-2016 San Diego County Grand Jury (Grand Jury) filed a *final* report titled "Campaign Law Enforcement & Training: City & County of San Diego" (Report) that requested a response from the City Council (Council) and Mayor and from the County Board of Supervisors; and

WHEREAS, the Report discusses a number of issues related to the stature and enforcement capabilities of the San Diego Ethics Commission; and

WHEREAS, the Report includes five findings and five recommendations directed to the Council and Mayor, with one other recommendation directed to County Board of Supervisors, which is not addressed in the City's proposed response; and

WHEREAS, under California Penal Code section 933(c), within 90 days after the filing of the report, each public agency which the Grand Jury reviewed, and about which it issued the Report, must comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency; and

WHEREAS, the comments required from the Council and Mayor are due to the Presiding Judge of the Superior Court on October 28, 2016, as the City requested and received an extension of time to respond, due to the Council's legislative recess in August; and

WHEREAS, the Grand Jury requested that the Council and Mayor each respond to the recommendations numbered 16-60 through 16-64 in the Report; and

WHEREAS, the Office of the Independent Budget Analyst has proposed a City Council response to the Report as set forth in IBA Report No. 16-19, dated July 28, 2016, for the Council's consideration; and

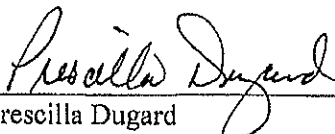
WHEREAS, on August 3, 2016, the Council Committee on Rules forwarded the proposed response to the full City Council for approval; and

WHEREAS, under Charter section 280(a)(1) this resolution is not subject to veto by the Mayor because this matter is exclusively within the purview of the Council and not affecting the administrative service of the City under the control of the Mayor; NOW, THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, that the Council approves and adopts as its own the response to the 2015-2016 San Diego County Grand Jury Report titled "Campaign Law Enforcement & Training: City and County of San Diego," as set forth in IBA Report No. 16-19, dated July 28, 2016.

BE IT FURTHER RESOLVED, that the Council President is authorized and directed, on behalf of the San Diego City Council, to execute and deliver the above-described response to the Presiding Judge of the San Diego County Superior Court no later than October 28, 2016.

APPROVED: JAN I. GOLDSMITH, City Attorney

By 

Prescilla Dugard
Chief Deputy City Attorney

PMD:mt
August 25, 2016
Or.Dept: IBA
Doc. No.: 1339921



Passed by the Council of The City of San Diego on SEP 19 2016, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage SEP 19 2016.

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By *Hy Macy*, Deputy

Office of the City Clerk, San Diego, California
Resolution Number R- <u>310692</u>

