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OFFICE OF THE CITY CLERK
OAKLAND

2016 OCT -6 PM 5:27

AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Stephanie Hom
Deputy City Administrator

SUBJECT: 2015-16 Grand Jury Report on
Political Interference

DATE: September 26, 2016

City Administrator Approval

Date:

10/6/16

RECOMMENDATION

Staff Recommends That The City Council Receive The Response Prepared By The Public Ethics Commission To The 2015-2016 Alameda County Grand Jury Final Report Titled "Political Interference With Oakland Townhouse Project" And Authorize The Council President Pro Tempore To Submit A Response On Behalf Of The City Council To The Grand Jury Report.

EXECUTIVE SUMMARY

The 2015-2016 Alameda County Grand Jury Final Report titled "Political Interference With Oakland Townhouse Project" requires responses from the Oakland City Council, Mayor, and Oakland Public Ethics Commission. The report includes five findings and three recommendations from the Grand Jury.

The Public Ethics Commission prepared a formal response to recommendations 16-1 and 16-2 in a communication dated July 5, 2016 addressed to the Honorable Morris D. Jacobson, Presiding Judge of the Alameda County Superior Court. (**Attachment B**).

City Council discussion on this agenda item will inform the response to the Grand Jury Report by Council President Pro Tempore on behalf of the City Council. This response is due on October 31, 2016.

BACKGROUND / LEGISLATIVE HISTORY

The 2015-2016 Alameda County Grand Jury Final Report dated June 1, 2016 was published on June 21, 2016. The report included three matters pertaining directly to the City of Oakland including the following:

1. Political Interference with Oakland Townhouse Project;
2. City of Oakland's Costly Pursuit of Zero Waste Franchise Contracts; and
3. Management Issues Within the City of Oakland's Revenue Division.

Item: _____
City Council
October 18, 2016

On June 21, 2016, the Mayor and City Administrator acknowledged receipt of the report and provided initial comments. Formal responses to each Grand Jury report are due 90 days after the public release of the report and prescribed in California Penal Code section 933.05.

The Alameda Grand Jury granted an extension on the due date for the formal response to the Political Interference with Oakland Townhouse Project matter to October 31, 2016.

ANALYSIS AND POLICY ALTERNATIVES

The 2015-2016 Alameda County Grand Jury Final Report Titled "Political Interference With Oakland Townhouse Project" is provided in **Attachment A**. The report includes five findings and three recommendations shown on page 29 of the report.

Responding parties are instructed to refer to page 125 of the final report for *How To Respond To Findings & Recommendations In This Report*. Page 125 of the 2015-2016 Alameda County Grand Jury Final Report is excerpted and provided in **Attachment C**.

The Alameda Grand Jury granted an extension on the due date for the formal response to the Political Interference with Oakland Townhouse Project matter to October 31, 2016.

FISCAL IMPACT

There are no direct fiscal impacts associated with this report.

PUBLIC OUTREACH / INTEREST

There was no public outreach necessary other than posting on the City's website.

COORDINATION

The Office of the City Attorney was consulted in preparation of this report.

SUSTAINABLE OPPORTUNITIES

Economic: There are no economic opportunities associated with this report.

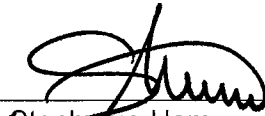
Environmental: The City of Oakland is committed to ensuring that its employees adhere to Al 596-Citywide Code of Conduct for Non-sworn employees.

Social Equity: There are no identifiable social equities associated with this report.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Receive The Response Prepared By The Public Ethics Commission To The 2015-2016 Alameda County Grand Jury Final Report Titled "Political Interference With Oakland Townhouse Project" And Authorize The Council President Pro Tempore To Submit A Response On Behalf Of The City Council To The Grand Jury Report.

Respectfully submitted,



Stephanie Hom
Deputy City Administrator

Prepared by:
Saundra Eve-Fisher
City Administrator Analyst

Attachments (2):

Attachment A: 2015-16 Alameda County Grand Jury Final Report Excerpt (pages 19-30) – Political Interference With Oakland Townhouse Project

Attachment B: Public Ethics Commission Formal Response Dated July 5, 2016 to Recommendations 16-1 and 16-2.

Attachment C: 2015-16 Alameda County Grand Jury Final Report Excerpt (page 125) – How To Respond To Findings & Recommendations In This Report

POLITICAL INTERFERENCE WITH OAKLAND TOWNHOUSE PROJECT

EXECUTIVE SUMMARY

The Grand Jury received a complaint that an Oakland city councilmember improperly used her elected position to oppose city approval of a proposed townhouse project next door to her Oakland residence. It was alleged that the councilmember violated state ethics rules and city regulations by inappropriately attempting to influence a city administrative decision, and that the city council and the Oakland Public Ethics Commission (PEC) failed to take action.

The State Political Reform Act and Oakland's Government Ethics Act were established as minimum ethical standards to help ensure that public officials serve as stewards of our public resources. The public expects their elected officials to wield the power of their office with the public's best interests in mind, rather than serving their personal interests.

The Grand Jury conducted a comprehensive investigation and found that the councilmember had a conflict of interest that prohibited her from using her elected position to influence an administrative decision on the townhouse project. The councilmember violated ethics rules by privately contacting a department head and city staff to argue personal objections, resulting in the department head re-evaluating the project. This gave the appearance that the department head was an advocate for the councilmember. City emails also revealed that the councilmember improperly used city resources by having her chief of staff draft a letter for her in opposition to the project for the councilmember. The Grand Jury believes that was a misuse of city resources solely intended to benefit the councilmember personally. Additionally, in violation of city and state rules, during a planning commission hearing, the councilmember inappropriately used her position to question city policy, to challenge staff, and to interrupt proceedings.

The Grand Jury concludes that the failure of the Oakland City Council and the Oakland Public Ethics Commission to recognize and address these breaches of ethical standards is unacceptable.

BACKGROUND

The Grand Jury responded to a citizen complaint citing a news report of a councilmember using city staff for her personal benefit to oppose a development project. The complaint involved an Oakland property owner who proposed to

construct a number of townhouse units on his property next door to a city councilmember's residence. The property owner invested a substantial amount of time and money in amending his building application in response to multiple levels of review within the city's Planning and Zoning Division.

Building applications fall under the purview of the Oakland Planning and Zoning Division that operates within the city's Planning and Building Department. It has the responsibility to process and issue zoning permits for development projects within the city. The director of Planning and Building (planning director), the department head for this umbrella agency, manages 135 employees and reports to the assistant city administrator.

Small building projects, such as the matter the Grand Jury investigated, are approved by the zoning manager within the Planning and Zoning Division. Case planners, supervised by the zoning manager, are assigned to individual projects to ensure proposed designs comply with city zoning and planning codes. Their decisions can be appealed to the Planning Commission by opponents of any project.

INVESTIGATION

During the townhouse project investigation, the Grand Jury heard testimony from several witnesses, including city employees, and reviewed numerous documents, as follows:

- Hundreds of emails pertaining to the townhouse project (obtained from the city);
- The Oakland Government Ethics Act;
- The California Political Reform Act, Government Code section 87100 et seq.;
- The Oakland City Charter Section 218. Non-Interference in Administrative Affairs;
- Oakland's City Council Code of Ethics;
- Oakland's City-wide Code of Conduct - for non-sworn employees, Administrative Instruction 596;
- City of Oakland Planning Commission meetings: staff reports, meeting minutes, and video recordings;
- Oakland's Design Review Committee staff agenda; and
- California Fair Political Practices Commission opinion letters on conflict of interest.

The Grand Jury acknowledges the councilmember's right to contact city staff regarding the townhouse project for the sole purpose of making inquiries. The Grand Jury also acknowledges the right of the councilmember to appeal the staff approval of the project and to publicly testify at planning commission hearings as a private citizen, but not as member of the city council. The Grand Jury did not evaluate the merits of either the property owner's proposed project or the councilmember's objections to the project; rather, the Grand Jury examined the councilmember's use of the power of her elected position to oppose the project.

Townhouse Project

The owner of a vacant lot located in west Oakland proposed building a five-unit townhouse project (later downsized to four units) as permitted under city zoning. In November 2013, the property owner began working with a case planner within the planning department to prepare a design that would meet city requirements, including compatibility with neighboring properties. After reaching out to neighbors and implementing city staff recommendations, the owner's architect drafted a plan that appeared to meet the city's requirements. Shortly after submitting the building application on January 23, 2014, the property owner was contacted by the next-door neighbor who stated that his wife was an Oakland city councilmember and further stated that he and his wife would be working to stop the project if the design was not changed to their liking. This raised concerns for the property owner because his architect had already incorporated city staff recommendations into the project plans and approval of the townhouse project appeared imminent.

Soon thereafter, the councilmember contacted the city's Planning and Building Department director (planning director) to voice objections to the townhouse project. As a result, the planning director contacted the zoning manager and the assigned case planner, notifying them that she would be conducting her own design review of the project. After visiting the site, the planning director determined that the project was poorly designed, despite the fact that the project plans had already been evaluated by a group of city planners at a regular staff meeting. Subsequent to conducting an independent review, the planning director then suggested changes to the design plan. The director also suggested that the property owner present the revised plans to the councilmember and interested neighbors so that the final design could be completed and approved by the city.

While the assigned case planner remained involved, the planning director became the city's point of contact for the project. The Grand Jury heard testimony from witnesses that it was highly unusual for the head of the city Planning and Building Department to become directly involved with a project of

this relatively small size. The Grand Jury heard conflicting evidence as to whether this was common practice.

On March 21, 2014, after making revisions requested by the planning director, the property owner resubmitted the project plans. Shortly thereafter, the zoning manager approved the design review after planning staff determined that the proposed project complied with city zoning and other planning codes. Two weeks later, an appeal of the approval was filed on behalf of the councilmember's spouse.

Several months later, the appeal was considered by the Planning Commission at its August 6, 2014 meeting. At this meeting, the commission delayed ruling on the appeal and directed the property owner and appellants to try to find a mutually acceptable solution.

After the property owner completed revisions to the project, the planning director emailed the councilmember asking if the revisions were acceptable. The councilmember responded that the revisions were not acceptable and copied her staff in the email communication.

In November of 2014, the planning director emailed the property owner's architect warning him that, "...without a meeting (with the appellants and neighbors) and consensus, there is a risk that the Planning Commission will not approve the design." As documented in a number of emails, the property owner's architect had tried to meet with the councilmember and her husband, as well as other neighbors; however, the councilmember did not want to meet unless the property owner downsized the plan significantly and met other concerns.

In December, eight months after filing the appeal, the Planning Commission took final action. The property owner's new design reduced the number of units from five to four, and addressed privacy issues by facing some of the units away from the councilmember's home. These units previously had downtown views, but were now facing another neighbor's home and a freeway sound wall. The staff report for the Planning Commission's December 17th meeting noted that the project was consistent with the city's general plan objectives and policies for meeting current and future housing needs, encouraging infill development for vacant sites, and providing affordable housing. Planning Commission video from that meeting showed the councilmember broadly criticizing city policy. Later in the meeting, the councilmember interrupted the commissioners by abruptly speaking after the public comment period ended and indicated among other things that she would obtain advice from the city attorney on the issue. Ultimately, the staff's recommendation that the appeal be denied was approved

by the planning commission with the addition of some design review conditions. This allowed the project to move forward.

The Grand Jury heard testimony that a few days after the December appeals hearing, the planning director contacted the property owner by phone. It was alleged that the planning director urged the property owner to consider alternative project plans proposed by an outside architect with ties to the councilmember. Notwithstanding the denial of the appeal, it was also alleged that the planning director told the property owner that he could be sued unless a resolution was worked out with the neighbors.

In early January 2015, the city's planning staff sent the outside architect's plans to the property owner's architect. In an email to the property owner's architect, the planning director stated, "It would be good if your client would at least *consider* an alternative design that addresses most of the neighbors' concerns...just so you know, the neighbors have the right to appeal the Planning Commission's decision to the Superior Court." The planning director further stated, "If an alternative design could be agreed to by all parties, then such an agreement would prevent further actions that could prolong the review/approval process."

Since the project had already been approved by staff and the planning commission had denied the councilmember's appeal, the property owner decided not to make further major revisions to the design as recommended by the outside architect's plans. Finally, on February 11, 2015, the city's Design Review Committee approved the final plans submitted by the property owner.

The property was then listed for sale and as of the writing of this report, the project has not been built. The property owner is concerned that further battles with the city may occur while attempting to obtain permits and constructing the townhouse project. Witnesses to the Grand Jury testified that developers are reluctant to purchase the property due to the councilmember's interference. The Grand Jury heard testimony that real estate laws require the owner to disclose opposition to the project to any potential purchasers of the property.

Applicable City and State Ethics Rules

Conflicts of Interests for Personal Gain

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 and pursuant to the Oakland Government Ethics Act.

As a public servant, elected officials are precluded from seeking to influence a decision in which they have a financial interest. A public official has a "financial interest" in a government decision if it is reasonably foreseeable that the decision will have a material financial effect on the public official's interests. The financial effect is material whenever the governmental decision affects real property located within 500 feet of the official's property unless there would be no reasonably foreseeable measurable impact on the property. In this case, the councilmember has a material financial interest because the location of the townhouse project is next door to the councilmember's primary residence.

The financial effect is also material if the decision would substantially alter things such as traffic levels, view, privacy, and noise levels, among other factors. Since the councilmember's complaints included many of these factors, there is little question that the councilmember had a "financial interest" in the decisions pertaining to the townhouse project.

Accordingly, the councilmember had a material financial interest in governmental decisions based on the proximity of the townhouse project to her residence and the likelihood that her privacy would be adversely impacted.

As a result, the Grand Jury concludes that the councilmember had a conflict of interest and should have taken steps to ensure that she did not use her official position to influence the decision regarding the townhouse project. While there is an exception permitting a public official to appear as a member of the general public during a public meeting, the exception is narrowly interpreted, requiring the councilmember to limit comments to the specific project in question. An elected official may not speak to general policies or in any official capacity on matters in which the official has a conflict of interest. Additionally, a public official may not directly contact city staff behind the scenes to influence a government decision.

Here, the councilmember privately contacted a department head three levels above the staff person handling the project to register discontent with the project. This conduct directly violated ethics rules and alienated staff. The councilmember's interference turned the department head into an intermediary (or even an advocate) for the elected official, giving the appearance that the public official was receiving special treatment.

Finally, when the councilmember spoke to the planning commission at the December meeting, she did not identify herself as speaking as a private citizen; rather, the councilmember spoke broadly, criticizing city policy. The Grand Jury heard testimony that the councilmember interrupted the speakers several times during the meeting and rose after public comment had closed, summarizing her position and stating she would seek the city attorney's advice. This gave the

appearance that she had special access to city resources. State ethics rules are intended to prevent such conduct that disrespects public process, city staff, and the community.

Misuse of City Resources or Position for Private Gain

City ethics rules state that no public servant may use his or her 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 any other person. Use of public resources includes city compensated time.

During this investigation, the Grand Jury learned that the councilmember's chief of staff researched and prepared a letter using city resources for the councilmember in his capacity as a city employee stating opposition to the townhouse project. The chief of staff sent this letter, which was to be signed by the councilmember, from his city email account to the councilmember's city email address. The councilmember responded by thanking him. He, in turn, suggested that the correspondence be sent from the councilmember's home email address. This opposition letter was then sent the next day to the case planner from the councilmember's husband's email address. This was a direct misuse of city resources for the councilmember's private benefit.

The Grand Jury also learned that the councilmember's chief of staff prepared talking points or notes using city time and resources for the councilmember's opposition of the project in his capacity as chief of staff. He also had multiple conversations with staff, including the department head, about the councilmember's opposition to the project. The Grand Jury learned that he never met or spoke with any other neighbors but relied on the councilmember's representations regarding neighborhood sentiment.

It is common for the chief of staff to inquire with city staff about pending development projects or to publicly comment in writing as a staff member. It is also common to organize neighborhood meetings to notify the community about such projects and the city's approval process. However, the Grand Jury believes that the chief of staff's conduct in this instance went beyond normal constituent services and thus the councilmember misused city resources to benefit herself personally.

Non-Interference in Administrative Affairs

As prohibited by City Charter Section 218, except for the purpose of inquiry, neither the council nor any councilmember shall give orders to any subordinate of the City under the jurisdiction of the City Administrator or such other officers,

either publicly or privately; nor shall they attempt to coerce or influence the City Administrator or such other officers, in respect to any administrative action.

The Grand Jury identified emails to city staff documenting the councilmember's objections to the project. Specifically, the councilmember sent the planning director an email stating, "This process raises a series of serious concerns for your department including how well you track and enforce the city's procedures." The Grand Jury concludes that these communications gave the appearance that the councilmember was speaking not as a private citizen, but rather, inappropriately wielding her power as a councilmember to influence an administrative decision.

The councilmember also stated in her email, "What is revealed here is troublesome...I would hope that staff is sending a clear signal that the applicant [property owner] needs to return with the appellants to demonstrate that both parties have followed the process we agreed to at the hearing [August 6th Planning Commission Meeting]...What is happening here indicates the same level of disregard and disrespect that has characterized his [property owner] interactions with this community prior to the appeal. This has citywide implications. I'd like to meet with you to discuss a better process for all applicants and appellants. Let's include time for this in our next District conversation." This is a councilmember using her status as a public official to improperly influence senior staff for her own personal benefit.

Oakland Administrative Code for Employee Conduct

The city of Oakland Administrative Instruction AI 596 sets forth guidelines for professional and courteous conduct by all non-sworn city employees while conducting city business. Proper behavior includes impartial treatment of the public. This guideline also reaffirms the City Charter section 218 prohibition against employees taking direction from members of the council. If a councilmember does give direction to an employee or attempts to coerce or influence an employee regarding a contract, project, personnel matter or other administrative action, *the employee shall report the violation.*

The planning director became the city's primary point of contact for the project corresponding on numerous occasions with the property owner's architect and the councilmember. These emails had a pattern of advocating the councilmember's interest while at the same time placing a burden on the property owner to develop a mutually acceptable solution.

While the Grand Jury received information that the planning director may have informed the city administrator about this project, there was no indication that the director reported the councilmember's conflict of interest or inappropriate

interference with staff. Instead, the planning director continued to advocate for a conclusion that satisfied the councilmember. This advocacy gave the appearance that backroom conversations were taking place outside of the property owner's participation placing him at a disadvantage.

Remedies

The Oakland Public Ethics Commission and the city council both have the authority and responsibility to address ethical violations.

Oakland Public Ethics Commission

The Oakland Public Ethics Commission (PEC) is a seven-member board of Oakland residents. The PEC's responsibilities include overseeing compliance with the Oakland Government Ethics Act. Specific responsibilities include educating city staff on ethics-related issues and ensuring policies are in place and are being followed. The PEC is also authorized to conduct investigations and impose fines and penalties as part of its compliance responsibilities.

The PEC was originally created by city charter amendment in 1996. While the amendment appeared to set up a body of citizens with the goal of ensuring "fairness, openness, honesty and integrity" in city government, the PEC had very little enforcement authority and insufficient resources to carry out its mission. In response to ethical violations by local elected officials in the last decade, the citizens of Oakland took action by prioritizing the importance of integrity and high ethical standards for their public officials.

In 2014, voters amended the city charter to strengthen their PEC, giving the agency more authority and resources to educate and hold city leaders accountable for their actions. The PEC now has expanded structure, staffing, independence, and more importantly, authority to take action. As a result, the PEC now has the authority, the capacity to investigate, and the ability to enforce all of the ethical standards discussed earlier in this report.

City Council Censure

The city of Oakland also has a code of ethics that applies to councilmembers. In part, it states that councilmembers must adhere to the American ideals of government, the rule of law, the principles of public administration, and high ethical conduct in the performance of public duties. The same code requires councilmembers to represent and work for the common good of the city and not for any private interest. Council members must also maintain the highest standard of public conduct by refusing to condone breaches of public trust or improper attempts to influence legislation, and must be willing to censure any

member who willfully violates the rules of conduct contained in the code of ethics. Relevant portions of the city rules go further to mirror many of the state rules governing conflicts of interests.

The power to censure allows the city council to publicly condemn a fellow councilmember. Censure is a formal legislative resolution reprimanding someone for specific conduct. The elected official who is the focus of the censure has the right to be notified of the action and must be able to respond. While the act of censuring a councilmember carries no penalty other than the verbal reprimand itself, it is a sign that the political body is self-policing its own members and making a statement that the conduct is unacceptable.

CONCLUSION

Political interference from elected officials can erode public confidence and trust in government, thus damaging its effectiveness. Although the city of Oakland has regulations in place to prevent interference from a city councilmember, these regulations did not deter city officials from interfering with the approval process for the townhouse project. The councilmember used her position and office to advocate for private gain, and not for the common good of the city. The planning director, in effect, became a collaborator with the councilmember by advocating for design changes favorable to the councilmember while giving the impression that the revised design needed the councilmember's concurrence.

Recent legislative changes to strengthen the Public Ethics Commission were intended to combat such political interference. Now that the PEC is better staffed, concrete steps can be taken to provide training and enforce these rules. The PEC, which was created to ensure "fairness, openness, honesty and integrity" in city government, needs to take action to enforce these rules. The city council must also take action to ensure this conduct is acknowledged and addressed. City employees, especially senior staff, need to report improper conduct. Without proper checks and balances, residents and those investing in the community will lose faith in the integrity of the political process. Backroom dealing cannot be the standard by which the city of Oakland is governed.

FINDINGS

Finding 16-1:

The councilmember had a conflict of interest with the townhouse project and interfered with the project's approval process.

Finding 16-2:

The councilmember's use of her city staff on the townhouse project was a misuse of city resources for her personal benefit.

Finding 16-3:

The councilmember privately contacted senior city staff, attempting to improperly influence decisions, which subverted the public process.

Finding 16-4:

The planning director's attempt to pacify the councilmember gave the appearance that she was collaborating with the councilmember to obstruct the property owner.

Finding 16-5:

The planning director's failure to report to the city administrator's office or stop the councilmember's ethical violations undermined city staff and the fair treatment of those doing business with the city.

RECOMMENDATIONS

Recommendation 16-1:

The city of Oakland Public Ethics Commission must conduct its own investigation of facts surrounding the townhouse project and take appropriate enforcement actions.

Recommendation 16-2:

The city of Oakland Public Ethics Commission must reinforce its ethics training for elected officials and city employees regarding conflicts of interest, misuse of city resources or position, and professional conduct, including reporting council interference.

Recommendation 16-3:

The Oakland City Council must follow its Code of Ethics, including its mandate to "be willing to censure any member who willfully violates the rules of conduct contained in the Code of Ethics."

RESPONSES REQUIRED

Responding Agencies - Please see page 125 for instructions

Oakland City Council:

Findings 16-1 through 16-5

Recommendation 16-3

Mayor, City of Oakland:

Findings 16-1 through 16-5

Recommendations 16-3

City of Oakland Public Ethics Commission:

Recommendations 16-1 and 16-2

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CITY OF OAKLAND

2016 OCT -6 PM 5:31

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Public Ethics Commission

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

July 5, 2016

Honorable Morris D. Jacobson, Presiding Judge
Alameda County Superior Court
1225 Fallon Street, Department One
Oakland, CA 94612

Dear Judge Jacobson,

Thank you for the opportunity to respond to the 2015-2016 Alameda County Grand Jury Final Report, released on June 21, 2016, which includes a review regarding Political Interference with Oakland Townhouse Project. We appreciate the Grand Jury's review of the actions of an Oakland City councilmember and City staff and its recommendations 16-1 and 16-2, relating to the Public Ethics Commission, which are as follows:

Recommendation 16-1: The city of Oakland Public Ethics Commission must conduct its own investigation of the facts surrounding the townhouse project and take appropriate enforcement actions.

Recommendation 16-2: The city of Oakland Public Ethics Commission must reinforce its ethics training for elected officials and city employees regarding conflicts of interest, misuse of city resources or position, and professional conduct, including reporting council interference.

The Public Ethics Commission is currently implementing both recommendations as detailed below.

Recommendation 16-1

As we informed the Grand Jury staff prior to issuance of the Grand Jury report, Commission staff initiated a pro-active investigation last year to review the allegations that are described in the report. That investigation was opened by staff on February 18, 2015. The Commission later received two additional complaints – one from City Councilmember Noel Gallo and another from a citizen. As we also indicated, Commission staff opened this investigation two months after the Commission acquired its new enforcement authority over ethics laws pursuant to the Government Ethics Act, which was drafted by the Commission and passed by City Council in December 2014.

The investigation is still pending, due in part to the Commission's backlog of cases as well as the lack of an investigator until March 28, 2016. Commission staff estimates completion of this investigation by the end of 2016.

Recommendation 16-2

Regarding *Recommendation 16-2*, the Commission has already instituted a number of ethics training activities and is in the midst of creating additional comprehensive ethics training tools as follows:

1. **Ethics Introduction Video** – Following the passage of the new Government Ethics Act in 2014, the Commission created a short introductory video that was distributed to all City staff and made available online in September 2015. This video covers the main provisions of the Government Ethics Act, including sections on conflicts of interest, misuse of public funds, and City Councilmember non-interference in City Administrative affairs (City Charter Section 218). The video also will be distributed Citywide through the City's online training platform in July 2016.
2. **New Employee Orientation** – As of March 2016, the Ethics Introduction Video and an introduction to the role of the Public Ethics Commission have been incorporated into every new employee orientation, which occurs during each new hire's first month of City employment.
3. **AB 1234 Ethics Training** – Commission staff has continued to ensure that AB 1234 Ethics Training has been completed by all of Oakland's elected officials every two years as required by state law. This state-provided online training covers laws and regulations regarding state ethics laws, including conflicts of interest and misuse of public funds that are now codified locally in our new ordinance. All Oakland elected officials are currently in compliance with this biennial training requirement.
4. **Council Interference Education and Policy** – Prior to acquiring enforcement authority for City Charter Section 218 (City Council Non-Interference in Administrative Affairs), Commission staff assisted the City Administrator in 2013 and 2014 in conducting training for Executive Staff (City department heads and City Administrative executives) and drafting the City's Administrative Instruction 597, which provides the implementing policy for how staff and officials should adhere to City Charter Section 218 and how and where to report instances of Councilmember interference. The Administrative Instruction was initially developed by City Administrator Deanna Santana and was signed and issued by Interim City Administrator Henry Gardner on July 14, 2014. Training on Section 218 has been incorporated into all Government Ethics Act education materials to ensure that public servants are aware of this provision.
5. **Comprehensive Citywide Ethics Training** – Commission staff are currently working to create a comprehensive online ethics training to cover the entire Government Ethics Act in detail, as well as additional state and local ethics-related provisions, with a target completion date of November 2016.

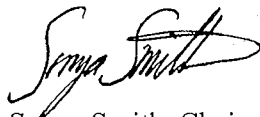
As these actions demonstrate, the Public Ethics Commission has pro-actively initiated and significantly augmented education activities to improve City staff and officials' awareness of and

compliance with ethics laws and policies in recent years. In addition, the Commission has prioritized the establishment of ongoing and sustainable ethics education programs and materials by hiring a full-time Ethics Analyst/Educator as of February 2016.

The Commission strongly advocated for the expanded enforcement authority it obtained by City Charter amendment, effective January 2015, as well as the additional resources that followed in July 2015. The Commission's growth is historically significant and has taken time to implement fully amid the broad range of Commission responsibilities; we continue to hire employees, establish a new office, and solidify operations, while implementing our new legal authority, expanding education programs, building better tools to enhance disclosure of ethics-related data, and imposing more frequent and higher fines for ethics violations. The infrastructure we have been building will enable us to respond more quickly on enforcement cases such as these, with the goal of investigating and resolving all Commission cases in a timely manner.

Again, we thank the Alameda County Grand Jury for its review and recommendations for the Public Ethics Commission and the City of Oakland. We appreciate the work of the Grand Jury and its staff, as well as its continued support of the Commission's efforts to expand its capacity, enforcement, and education on government ethics in the City of Oakland.

Sincerely,



Sohya Smith, Chair
Public Ethics Commission

On behalf of the Commission

(This letter was approved by the Public Ethics Commission at its meeting on July 5, 2016.)

c:

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

**HOW TO RESPOND TO FINDINGS & RECOMMENDATIONS
IN THIS REPORT**

Pursuant to the California Penal Code section 933.05, the person or entity responding to each grand jury finding shall indicate one of the following:

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

The person or entity responding to each grand jury recommendation shall report one of the following actions:

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

SEND ALL RESPONSES TO:

Presiding Judge Morris D. Jacobson
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 2015-2016 Grand Jury Final Report must be submitted no later than 90 days after the public release of the report.