



AGENDA REPORT

TO: Council President Nikki Fortunato-Bas

FROM: Councilmember Kevin Jenkins

SUBJECT: Response to 2023-2024 Alameda County Civil Grand Jury Report on Oakland Billboards

DATE: October 31, 2024

RECOMMENDATION

Authorize The Council President To Submit Responses On Behalf Of The City Council To The 2023-2024 Alameda County Civil Grand Jury Final Report Titled: "Hasty Council Decision On Billboards Costs The City Millions."

SUMMARY

The 2023-2024 Alameda County Civil Grand Jury included a report on the Oakland City Council's decision to approve a relocation agreement for Becker/OFI that created significant community benefits and advanced the public interest.

The Grand Jury report asserts that the Council made a hasty decision that costs the City millions of dollars. However, as the administrative record reflects, the City Council considered the evidence presented to it on the record, both through written and oral testimony, from several interest groups, community activists, and non-profit leaders, city staff and consultants, as well as the billboard companies themselves.

In making legislative decisions, the Council must weigh and consider all the evidence in the record and come to a reasonable conclusion based on substantial evidence in the record. For example, for the Civil Grand Jury to claim that the Council simply "disregarded" certain staff recommendations or evidence that was inconsistent with their ultimate discretionary decision may misstate the facts.

When making all legislative decisions, the role of the City Council is to carefully consider all the evidence, both through written and oral testimony, presented before and during the hearing. The Grand Jury findings assume that the Clear Channel option before the Council was in fact financially or legally feasible and would have less visual impact, issues that were disputed by contrasting testimony by Becker/Outfront Media and members of the public at the Council meeting. Based on the record, an issue of fact before the Council was whether the Clear Channel proposal was feasible, and whether Clear Channel had adequately invested in the City of Oakland through its past deals. The Council was within their discretionary authority to find that Becker/Outfront Media proposed a better deal for the City, regardless of whether the

Mayor's Office, City Administrator, or City Staff agreed with their decision, so long as there was evidence in the record supporting the Council's position.

With this premise in mind, this Report serves as the Oakland City Council's official response to the 2023/2024 Alameda County Grand Jury regarding its approval of the Becker/Outfront Media Billboard proposal.

BACKGROUND

On June 6, 2023, the Oakland City Council unanimously adopted a resolution authorizing a Relocation Agreement for Becker Boards and Outfront Foster Interstate (Becker/OFI) bringing more than \$71,000,000 in community benefits over more than 40 years.

Generally, the City Administration or an individual Councilmember will advance recommendations to the full Council through either a staff or Councilmember report on a particular legislative action requested to be taken. The Council must weigh and consider all the evidence in the record and come to a reasonable conclusion based on substantial evidence in the record. To claim that the Council simply "disregarded" certain recommendations or evidence that was inconsistent with their ultimate discretionary decision appears to misstate, or at least assume, facts that are not in evidence.

When making all legislative decisions, the role of the City Council is to carefully consider all the evidence, both through written and oral testimony, presented before and during the hearing. Similarly, the Report assumes that the Clear Channel option before the Council was in fact feasible and would have less visual impact, issues that were disputed by contrasting testimony by Becker/Outfront Media and members of the public at the hearing. Upon review of the administrative record, an issue of fact before the Council was whether the Clear Channel proposal was feasible, and whether Clear Channel had adequately invested in the City of Oakland through its past deals. The Council was within their discretionary authority to find that Becker/Outfront Media proposed a better deal for the City, even though some, including City Staff and a consultant, may have disagreed with their decision. The point is that there needs to be evidence in the record supporting the Council's position. In this case, the Council did rely on substantial evidence from an enormous amount of written and oral public testimony.

The Council also finds it noteworthy that since the passage of the resolution approving the Becker/Outfront relocation agreements, Clear Channel has failed to provide any actionable path toward the materialization of their own separate offer, or at the very least reasons *why* they have not provided their own separate offer. As such, the City Council has not been able to take any action on any purported offer Clear Channel appeared to be ready to make at the time of Council's decision on the Becker/Outfront proposal.

The Grand Jury required responses to Findings 24-9 through 24-13 and Recommendations 24-7 through 24-11 of its report. This report serves as the City Council response to the Alameda County Civil Grand Jury.

RESPONSE TO FINDINGS

Finding 24-9: The Oakland City Council disregarded expert City staff and an impartial consultant's recommendations to select Becker/OFI over an option that would have paid the City substantially more money with less visual impact.

Response: Disagree wholly.

Explanation:

Finding 24-9 demonstrates a fundamental misunderstanding about the scope of the City's action on the Becker/OFI proposal. The Council was not making a choice between competing offers nor does the Council's acceptance of Becker/OFI's proposal preclude the Council from accepting Clear Channel's proposal. The two proposals – each on entirely different parcels of *private property*– were not mutually exclusive. The Council could have accepted (and can still accept) the Clear Channel offer in addition to the Becker/OFI offer subject to location requirements specified in State law.

The Council remains willing to consider an offer from Clear Channel to relocate existing billboards and provide other public benefits in exchange for the right to build new billboards on other privately-owned land within the City. Furthermore, since submitting a non-binding letter in the midst of the Becker/OFI negotiations, Clear Channel has not pursued further discussions, which lends support to Council's suspicion at the time of the decision that Clear Channel's non-binding offer may not have been feasible. Unfortunately, Clear Channel has not submitted any follow-up proposals to relocate billboards for Council consideration. Generally, relocating older billboards in communities of color in favor of more modern billboards close to the freeway are ideal for the City with certain community benefits also provided. The Council encourages Clear Channel to follow up on such proposal and to engage the community in that effort similar to Becker/OFI.

Finding 24-10: Out of public view, the Oakland City Council used a non-competitive process to select a revenue producing billboard provider.

Response: Disagree wholly.

Explanation:

The process of approving a relocation agreement is similar to the process of approving a use permit and legislatively approved development agreement for private development on privately-owned land that also provides community benefits. In such a case, the entitlement requires legislative approval and is evaluated on an individual basis for considerations such as physical impact on the environment, community benefits provided, and overall project viability and benefit to the City.

Finding 24-10 also suggests that the approval of the Becker/OFI Relocation Agreement took place “out of public view.” To the contrary, the process to vet and approve the Becker/OFI proposal was conducted through a fully public process before the City Council with proper noticing. In fact, members of the public submitted both written and oral testimony on versions of the Becker/Outfront proposals at the following seven (7) public meetings.

1. December 15, 2020 (City Council)
2. November 17, 2021 (Planning Commission)
3. October 19, 2022 (Planning Commission)
4. February 15, 2023 (Planning Commission)

5. April 27, 2023 (Rules & Legislation Committee)
6. May 23, 2023 (City Council CED Committee)
7. June 6, 2023 (City Council)
8. June 20, 2023 (Second Reading of the City Council)

While the billboard proposal changed over time, the change was the result of a thorough public process where several public meetings were held, and the item was considered with written and oral public comment at several stages of meetings through the public meeting process.

Finding 24-11: Out of public view, the Oakland City Council used a non-competitive process to select nonprofit organizations to receive billboard revenue and free advertising space.

Response: Disagree wholly.

Explanation:

See Response to Finding 24-10. The Finding about the City's selection of non-profit organizations is based on a misapprehension and misstatement of the facts. The City did not select any of the non-profit organizations. Rather, the developer selected them as part of their relocation agreement proposal. Under a relocation agreement, a city may allow the removal of existing billboards and the installation of new billboards under any terms it believes are in the *public interest*. (See Business and Professions Code section 5412).

The City Council, in its discretion as the City's legislative body, has the ability to approve or deny such applications so long as it is found they meet the public interest. The City Council chose to approve the Becker/OFI proposal after reviewing the administrative record and hearing testimony from the public.

Likewise, as discussed above, the Council remains free to approve an offer to be made by Clear Channel. As noted, the Council has not received a formal proposal from Clear Channel since Clear Channel submitted a letter during the final phase of the Becker/OFI public hearing process, approximately 18 months ago.

Finding 24-12: An Oakland City Council member should have recused themselves from consideration of nonprofit recipients because their spouse has been a board member of one of the organizations and has been a paid consultant to another.

Response: Disagree wholly.

Explanation:

The City's website advises that, under the Government Ethics Act, a Public Servant cannot make, participate in making, or seek to influence government decisions in which they have a financial interest. In such cases, there is a risk of biased decision-making that could sacrifice the public's interest in favor of the official's private financial interests. To avoid actual bias or the appearance of possible improprieties, the public official is prohibited from participating in the decision. (See the City's Conflict of Interest Guidance at the following [hyperlink](#).)

In this case, there were no known conflicts of interest necessitating a recusal. None of the approvals would have brought any family member of any Councilmember any direct financial benefit.

Finding 24-13: The Oakland City Council allowed lobbyists for billboard companies to have undue influence over the process by providing content and language that was inserted verbatim into official council documents.

Response: Disagree wholly.

Explanation:

The Council used its independent judgment as a legislative decision-making body in approving the Relocation Agreement. The Council and CED Committee held public meetings where they listened to and considered public testimony.

In addition, any member of the public may submit proposed language to the City Council at any time during such public processes. The City Council has the ability to accept, amend, refuse, or ignore any portion of any language it receives from any party.

If, as the Finding claims, lobbyists provided content and language that was inserted into official Council documents, then it is the Council's understanding that such practice is rather commonplace in the formulation of State and local government legislation. For example, with recent State Housing legislation, the State legislature often works with pro-housing lobbyists to propose legislation that is favorable to the production of housing at the local level. The Council is not aware of any law prohibiting such practice. In fact, the practice is rather common in the crafting of legislation at the State and local levels.

RESPONSE TO RECOMMENDATIONS

Recommendation 24-7: The Oakland City Council must take into consideration the expert advice of staff and consultants before passing legislation and resolutions. When staff recommendations show large differences in potential revenue from competing proposals, such matters should not be put on the consent calendar. There must be council deliberation and debate on such items.

Response: Recommendation requires further analysis.

Explanation:

As stated above, the Council was not presented with a choice of competing offers, as the offer from Becker/OFI was not mutually exclusive with the Clear Channel offer.

In addition, the Civil Grand Jury is incorrect in asserting that the item simply appeared on the consent calendar. Pursuant to the Oakland Charter, City Council schedules and considers legislation at multiple committees (and in this case, the Planning Commission) before it reaches the full City Council. Generally, items for City Council consideration must first be considered by the City Council's Rules

Committee, which is typically held on a weekly basis unless canceled for some reason, such as lack of a quorum. During Rules Committee meetings, the public provides oral testimony as to the scheduling of any item. After considering this testimony, the Rules Committee will determine how to schedule the item. Whether an item is required to be placed on the agenda as a public hearing or non-consent item falls within the City's discretion unless a public hearing is required under State law or by the Council Rules of Procedure. The Finding does not point to, nor is the Council aware of, a State law requiring the item be heard as a public hearing on the agenda. Nevertheless, as the record shows, members of the public were permitted to submit written comments on the record and participated in a robust hearing on the item, wherein speakers were called and allotted the same amount of time as offered during public hearings to share their perspectives.

Existing practice provides for legislation to be discussed in City Council committees' public meetings as well as, at times, before the full City Council. Nevertheless, within one (1) year of this response, the City Council will consider adding to the Council Rules of Procedure a requirement that certain legislation that meets objective standards be heard as a Non-Consent or Public Hearing item. The challenge would be to develop objective standards so that the Council knows exactly which legislation must not be placed on the consent calendar. However, any policy change that may come out of the Council's consideration is in the discretion of the City Council and does not appear to be required by State law.

Recommendation 24-8: When choosing providers of revenue-generating resources such as billboard advertising rights, the Oakland City Council must use a competitive request for proposal with written criteria for selection, submission requirements, deadlines, and head-to-head comparisons of competing proposals as analyzed by expert staff.

Response: Recommendation requires further analysis.

Explanation:

All private development on privately-owned land in the City of Oakland, including residential, retail, commercial and industrial development, generates revenue for the City. Such development (with some minimal exceptions) requires the approval of the City through the granting of discretionary development rights, such as the legislative approval of a relocation agreement.

The development of billboards on private property is no different than any other kind of private development on private property. The Council is skeptical that recommendation that it should use a "competitive process" to evaluate private billboards is legally permissible or practicable to implement when such development is on privately-owned land. Competitive bidding should be used for evaluating proposed developments on City-owned property, for which the City has existing mechanisms in place.

Given the above, there is precedent within the Oakland Municipal Code (O.M.C.) Section 2.42.170 that dispositions of public land for development must be pursuant to a competitive process unless the City Administrator determines that: (1) disposition through a competitive process is impractical, or (2) disposition through a process other than a competitive process is otherwise in the best interests of the City; and City Council must adopt findings in support of such a

waiver when approving any such transaction. (See O.M.C. Section 2.42.170). Thus, if the billboard proposal involves public land, then this recommendation has already been implemented.

The City Council may elect to adopt a local statutory requirement regarding the development of new billboards on private property; however, further legal evaluation would be needed to determine whether such a requirement would be legally permissible. During Council consideration, the public would have the opportunity to provide written and oral comments at a Council Committee and before the full City Council, just as was done during the Becker/Outfront billboard proposal.

Recommendation 24-9: When selecting nonprofit entities to receive City resources, the Oakland City Council must use an open and transparent process that is accessible to all Oakland nonprofits. Selection criteria, submission requirements, deadlines, and head-to-head comparisons of competing proposals must be made public.

Response: Recommendation requires further analysis.

Explanation:

The City of Oakland does have a competitive request for proposals process for Direct Community Grants as well as grants from the Department of Violence Prevention and Oakland Fund for Children and Youth. However, the non-profits identified under the Relocation Agreement in the Becker/OFI offer will not receive City resources through the proposal. The developer will be providing benefits to them directly from privately sourced funding on private property. The City Council did not choose the non-profit organizations and is not providing these non-profits with funding. Within one (1) year of this response, the Council will consider the adoption of a legislative change to create a non-profit selection process for billboard relocation agreements.

Recommendation 24-10: Oakland City Council members must disclose conflicts of interest, including close family connections, prior to awarding contracts, exclusive negotiating rights, or relocation agreements.

Response: Recommendation requires further analysis.

Explanation:

There are existing local laws in place that regulate conflicts of interest, namely Oakland Municipal Code (“O.M.C.”) section 2.25.040. Further, the City of Oakland already provides specific Conflict of Interest guidance to City officials. For example, the City’s website advises that, under the Government Ethics Act, a Public Servant cannot make, participate in making, or seek to influence government decisions in which they have a financial interest. In such cases, there is a risk of biased decision-making that could sacrifice the public’s interest in favor of the official’s private financial interests. To avoid actual bias or the appearance of possible improprieties, the public official is prohibited from participating in the decision. (See the City’s Conflict of Interest Guidance at the following [hyperlink](#).)

In addition, the Council Rules of Procedure contain a Code of Conduct which includes the following: Represent and work for the common good of the City and not for any private interest and Refrain from accepting gifts or favors or promises for future benefits which might compromise or tend to impair independence of judgment or action. There were no known conflicts of interest necessitating a recusal. None of the approvals would have brought any family member of any council member any direct financial benefit.

The City Council is not aware of any legal requirement that a Public Servant disclose “close family connections,” but it may be reasonable for the City Council to pass a resolution or other guidance, including an amendment to the Council Rules, requiring a Public Servant to consult with either the PEC and/or the City Attorney’s Office if the Public Servant becomes aware that a “close family connection” is involved with a party affected by the Public Servant’s decision. Within one (1) year of the date of this response, the Council will consider whether such a requirement is in the best interests of the City and whether there is a feasible way to codify the requirement, such as by defining what is meant by “close family member.”

Recommendation 24-11: In an effort to maintain transparency, the Oakland City Council must disclose when lobbyists with an interest in pending legislation provide specific content or language for official reports, memos, resolutions, or other documents.

Response: Recommendation requires further analysis.

Explanation:

All lobbyists are registered in the City of Oakland lobbyist registry, and their activity is logged in the City system.

Further, all correspondence between any member of the public, including lobbyists, and the City Council are a matter of public record, and any content provided to City Officials, for any purpose, are always open to the public.

Within one (1) year of this response, the Council will work with the City Administration to consider legislative proposals, including but not limited to an Oakland Municipal Code (O.M.C.) amendment or an amendment to the Council Rules of Procedure, requiring that a Councilmember disclose when lobbyists with an interest in pending legislation provide specific content or language for official reports, memos, resolutions or other documents.

In formulating recommendations for Council consideration, the City Council may need additional time to consult with the PEC and/or City Attorney’s Office to ensure whether this proposal would be: (1) legally permissible; (2) appropriate to be proposed through an ordinance or resolution, and (3) the most appropriate location for such requirement (e.g., the O.M.C., Council Rules of Procedure). Ultimately, the City Council would need to approve the additional requirement after consideration, since such policy change would be within the purview of the City Council.

FISCAL IMPACT

This report does not have a direct impact or cost.

SUSTAINABLE OPPORTUNITIES

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

Environmental Impact: There are no environmental opportunities associated with this report.

Social Equity: There are no Social Equity opportunities associated with this report.

DISABILITY AND SENIOR CITIZEN ACCESS

Approval of these responses to the Alameda County Civil Grand Jury will have no direct impact on disabled and senior citizens.

ACTION REQUESTED OF THE CITY COUNCIL

To Accept This Report As The Oakland City Council Response To The 2023/2024 Alameda County Grand Jury Findings 24-9 Through 24-13 And Recommendations 24-7 Through 24-11 on Oakland Billboards

Respectfully submitted,

Kevin Jenkins

Councilmember Kevin Jenkins