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OAKLAND

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# AGENDA REPORT

**TO:** Honorable Oakland City Council

**FROM:** Sabrina B. Landreth  
City Administrator

**SUBJECT:** Proposed Responses to 2017-18  
Grand Jury Reports

**DATE:** August 21, 2018

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## RECOMMENDATION

**Staff Recommends That The City Council Authorize the Council President To Submit Responses On Behalf Of The City Council To The 2017-2018 Alameda County Grand Jury Final Reports Titled:**

- (1) "Oakland's \$860 Million Crisis: Unfunded Retiree Healthcare",
- (2) "Affordable Housing Oversight in Oakland",
- (3) "Oakland's Aging Sewer System and How It Affects Lake Temescal"; and
- (4) "Workforce Development Funding in Oakland"

## EXECUTIVE SUMMARY

The 2017-2018 Alameda County Grand Jury Final Report included four reports about Oakland that require a response from the City Council and the Mayor to their findings and recommendations. The reports are titled

- (1) "Oakland's \$860 Million Crisis: Unfunded Retiree Healthcare",
- (2) "Affordable Housing Oversight in Oakland",
- (3) "Oakland's Aging Sewer System and How It Affects Lake Temescal" and
- (4) "Workforce Development Funding in Oakland".

The following departments prepared draft responses to the reports for the City Council's consideration: Finance, Housing and Community Development, Public Works and Economic. These draft responses are addressed to the Honorable Wynne Carvill, Presiding Judge of the Alameda County Superior Court and are included as **Attachments B, C, D and E**.

City Council discussion on this agenda item may inform the final responses to the Grand Jury Report by Council President on behalf of the City Council. Formal responses to each Grand Jury report are due 90 days after the public release of the report as prescribed in California Penal Code section 933.05. **The responses are thus due on Wednesday, September 26, 2018.**

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## **BACKGROUND / LEGISLATIVE HISTORY**

The 2017-2018 Alameda County Grand Jury Final Report dated June 1, 2018 was published on June 26, 2018. The report included four matters pertaining directly to the City of Oakland.

## **ANALYSIS AND POLICY ALTERNATIVES**

The portions of the 2017-2018 Alameda County Grand Jury Final Report that are related to the City of Oakland are provided in **Attachment A**. Draft responses to the findings and recommendations in the four Grand Jury Reports, which require a response from the Mayor and Council, are attached as follows:

1. The draft response to the report titled "Oakland's \$860 Million Crisis: Unfunded Retiree Healthcare", is provided in **Attachment B** which includes responses to five findings 18-1 through 18-5, and six recommendations 18-1 through 18-6 shown on page 22 and 23 of the Grand Jury report.
2. The draft response to the report titled "Affordable Housing Oversight in Oakland", is provided in **Attachment C** which includes responses to three findings, 18-27 through 18-29 and five recommendations 18-21 through 18-25, shown on page 79 and 80 in the Grand Jury report.
3. The draft response to "Oakland's Aging Sewer System and How It Affects Lake Temescal" is provided in **Attachment D**, which includes responses to five findings 18-30 through 18-33 and six recommendations 18-26 through 18-31, shown on page 90 and 91 of the Grand Jury report.
4. The draft response to the report on "Workforce Development Funding in Oakland" is provided in **Attachment E** which includes responses to one finding 18-34 and one recommendation 18-32 shown on page 98 of the Grand Jury report.

Responding parties are instructed to refer to page 130 of the final report for *How To Respond To Findings & Recommendations In This Report*. Page 130 of the 2017-2018 Alameda County Grand Jury Final Report is excerpted and provided in **Attachment F**.

## **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.

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### **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 Alameda Countywide Code of Conduct for Non-sworn employees.

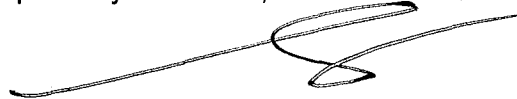
**Social Equity:** There are no identifiable social equities associated with this report.

### **ACTION REQUESTED OF THE CITY COUNCIL**

Staff Recommends That The City Council Authorize the Council President To Submit Responses On Behalf Of The City Council To The 2017-2018 Alameda County Grand Jury Final Reports Titled:

- (1) "Oakland's \$860 Million Crisis: Unfunded Retiree Healthcare",
- (2) "Affordable Housing Oversight in Oakland",
- (3) "Oakland's Aging Sewer System and How It Affects Lake Temescal"; and
- (4) "Workforce Development Funding in Oakland" City Council To The Grand Jury Report.

Respectfully submitted,



Sabrina Landreth, City Administrator

Prepared by:  
Tonya Gilmore  
Assistant to the City Administrator

Attachments (6):

- Attachment A:** 2017-18 Alameda County Grand Jury Final Reports (Oakland Excerpts)  
**Attachment B:** Draft response to Oakland's \$860 Million Crisis: Unfunded Retiree Healthcare  
**Attachment C:** Draft response to Affordable Housing Oversight in Oakland  
**Attachment D:** Draft response to Oakland's Aging Sewer System and How It Affects Lake Temescal  
**Attachment E:** Draft response to Workforce Development Funding in Oakland  
**Attachment F:** 2017-18 Alameda County Grand Jury Final Report Excerpt (page 130) – How To Respond To Findings & Recommendations In This Report

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**OAKLAND'S \$860 MILLION  
CRISIS: UNFUNDED  
RETIREE HEALTHCARE**

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**OAKLAND UNIFIED SCHOOL  
DISTRICT: HARD CHOICES  
NEEDED TO PREVENT  
INSOLVENCY**

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**COLISEUM TICKET BONANZA**

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**AFFORDABLE HOUSING  
OVERSIGHT IN OAKLAND**

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**ALAMEDA HEALTH  
SYSTEM: CONTRACTS,  
COMPENSATION AND CARE**

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# **2017–2018 Alameda County Grand Jury Final Report**

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**OAKLAND'S AGING SEWER  
SYSTEM AND HOW IT  
AFFECTS LAKE TEMESCAL**

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**WORKFORCE DEVELOPMENT  
FUNDING IN OAKLAND**

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**ALAMEDA COUNTY WATER  
DISTRICT'S RATE INCREASES**

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**JAIL INSPECTIONS**

## **OAKLAND'S \$860 MILLION CRISIS: UNFUNDED RETIREE HEALTHCARE**

### **EXECUTIVE SUMMARY**

Years ago, Oakland city leaders made a commitment to provide healthcare benefits to their employees after they retire. Like many other public agencies, Oakland now faces a fiscal crisis because elected officials did not understand the implications, including future costs, of the promises they were making. The cost of retiree healthcare benefits, better known as Other Post Employment Benefits (OPEB), coupled with skyrocketing pension costs, are starting to undermine the fiscal health of the city.

Instead of putting enough money away to fund future healthcare benefits for active employees, Oakland chose to pay only current costs of retiree healthcare as billed. The result is that related debt increases by more than \$40 million annually. As of fiscal year 2016, the city's total liability for future OPEB costs reached a staggering \$860 million. By using this deferred payment process, elected officials are leading the city toward service insolvency.

To address this problem, the city should have paid approximately \$75 million in 2017, yet the city only budgeted \$27 million to pay the benefits it owed that year, along with \$20 million to partially fund future benefits in the 2017-2019 proposed budgets. To put this in perspective, the shortfall of nearly \$40 million each year equals the total budgets for all city libraries along with parks and recreation, or the equivalent of the cost of nearly 200 police officers or firefighters. While the city established a trust in 2004 to begin to pre-fund OPEB, the trust has not been sufficiently funded (3% of total liability) and has failed to address the massive obligation.

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*The Grand Jury is concerned that, without radical changes, the city will never be able to pay for what it promised.*

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The Grand Jury is concerned that, without radical changes, the city will never be able to pay for what it promised. This dilemma is already starting to crowd out essential government services. City revenues are growing at a much slower pace (traditionally, 2% annually) than projected spending. The city has no new revenue source to keep up with the exploding annual costs of healthcare let alone to address the \$860 million unfunded liability already

accumulated. In 2007, the city spent \$10 million to pay healthcare benefits for current retirees. By 2027, the projected annual cost will be more than \$67 million, and the unfunded OPEB liability will likely have increased by another half-billion dollars.

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*Elected officials are leading the city toward service insolvency.*

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Solutions are complicated. Many cities facing similar issues, like Concord and Sausalito, have cut back on these benefits or converted their OPEB into defined contribution programs.

Some like Santa Cruz have asked employees to contribute more to the costs of the programs. Public agencies like BART

and the Alameda County Water District have taken aggressive approaches to prefund healthcare benefits. Finally, in cities like Vallejo, Stockton, and San Bernardino, unfunded OPEB obligations were a significant contributing factor in their bankruptcies.

At this point, Oakland's unfunded liability of nearly one billion dollars is too large to tackle without using a combination of solutions, yet the city currently has no viable plan in place. Without leadership to address the issue, Oakland is adding \$40 million to its liability each year and will shortly face increasing cuts to essential government services. The city must immediately develop a long-term, multifaceted plan to address OPEB, or accept that municipal bankruptcy is an option in the future.

## BACKGROUND

### ***Oakland's City Budget***

The city of Oakland adopts an annual budget that describes how the city will use public dollars to provide services to its residents. The budget identifies two principal types of data: projected revenues and planned expenditures. Revenues are divided into those that can be expended on general city activities and those that are restricted for specific purposes. Expenditures are classified as either restricted, meaning there is no discretion as to whether the city must pay them, or general purpose, those that are not legislatively or contractually mandated. The city council is legally required to submit a balanced budget annually: expenditures must match revenues.

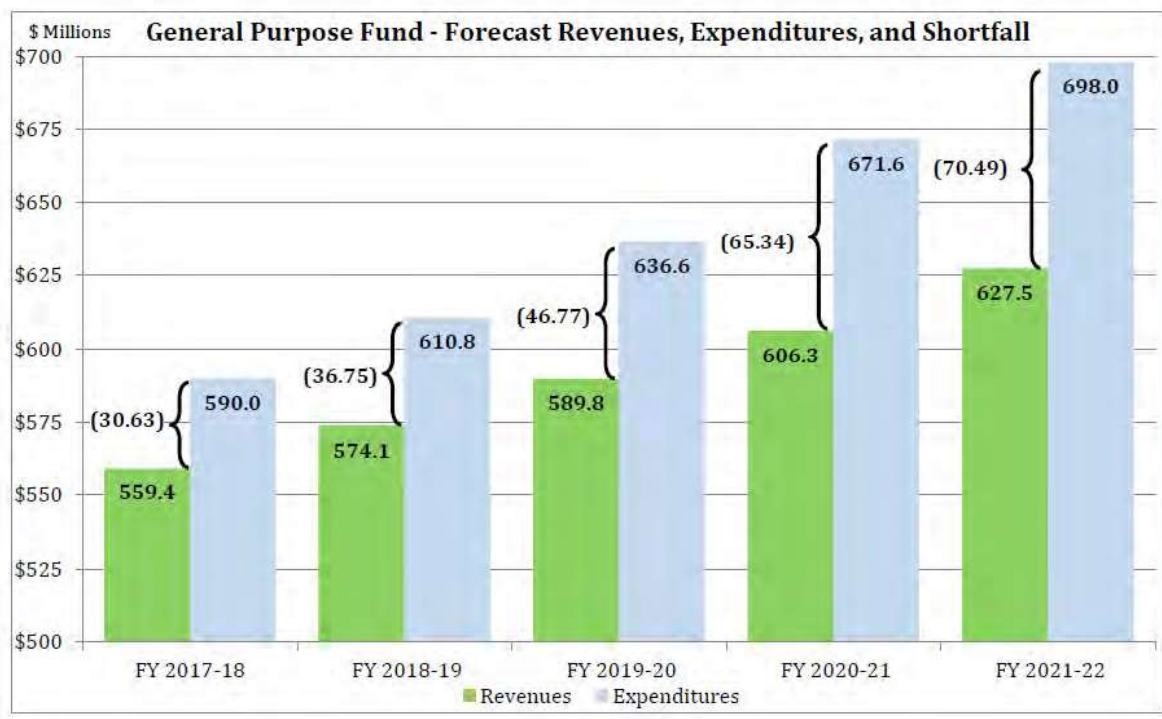
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*Oakland's unfunded liability of nearly one billion dollars is too large to tackle without using a combination of solutions, yet the city currently has no viable plan in place.*

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Historically, general purpose fund revenue has grown at less than 2% annually. Consequently, to achieve a balanced budget, any expenses that grow at a faster annual compounded rate must be paid either from reserves or by reducing other general purpose fund expenses.

The chart below represents the city's five-year financial forecast related to city general purpose fund revenues and expenditures. It shows that city revenues are not keeping up with expenditures. The difference must be made up by either cuts in programs, increased taxes, or borrowing.

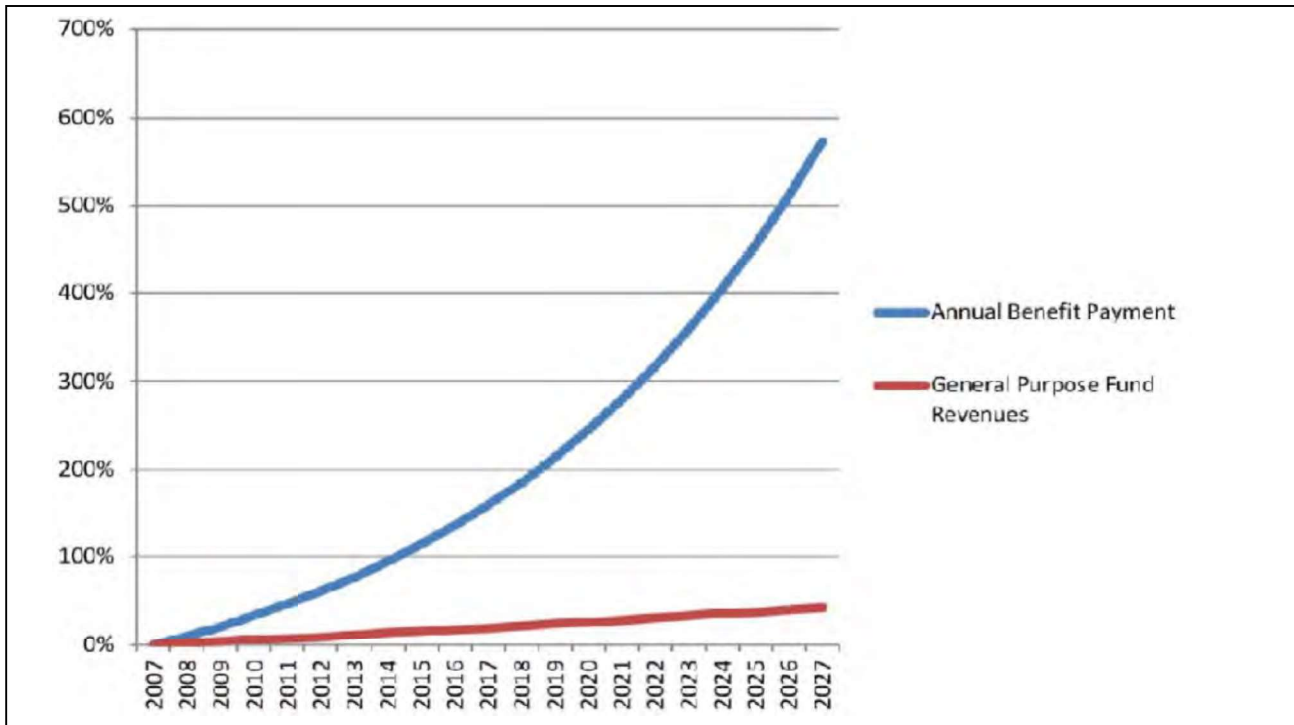


Source: City of Oakland Five-Year Financial Forecast, FY 2017-18 – FY 2021-22

The city of Oakland's five-year forecast has already acknowledged a growing gap in general purpose revenues and expenses. One alarming example of this projected budget shortfall is the disproportionate and rapidly increasing OPEB/retiree healthcare cost.

The city spent \$10 million in FY 2006-2007, \$26 million in FY 2016-2017, and is projected to spend \$67 million in FY 2026-2027 on healthcare benefit payments for those currently retired ("pay-as-you-go"). These costs have been growing at a compounded rate of about 10% per year. This is more than five times the growth of general purpose fund revenues.

The chart below best illustrates this growing gap (shown compounded annually):



There are only two categories of general purpose fund expenses in Oakland's budget that are large enough to cut in order to provide sources for paying the growing OPEB costs: (1) operations and maintenance, representing 17% of 2017-18 budgeted general purposes fund expenses, and (2) salaries, representing 45% of those expenses.

### ***City Employees Entitled to Healthcare Benefits***

For decades, city leaders have been negotiating agreements with labor organizations that promised to pay a portion of the cost of health insurance premiums for most classes of retired city employees. Benefits are based on age, years of service and class of employee. Employees' rights to these benefits are vested after five years of service, but the employee must retire directly from the city of Oakland to be eligible. The city's contribution on behalf of miscellaneous employees (not police or fire) can reach a maximum of approximately \$580 per month. The cost for retired firefighters with a full-family plan can top out at about \$19,968 per year, and at \$18,996 annually for retired police officers.

The city currently has approximately 6,000 participants in the OPEB program. They include active employees who are vested to get OPEB benefits when they retire, and former employees



who are currently receiving the benefit. As of July of 2015, a total of 1,963 retirees, 399 disabled retirees, and 241 spouse survivors of retirees are collecting benefits.

## INVESTIGATION

The Grand Jury began its examination of this public finance crisis after receiving a complaint that elected officials in Oakland were not taking seriously an unfunded retiree health care liability that is approaching one billion dollars and growing exponentially. The Grand Jury inquiry focused on whether the city can pay for the health care benefits it has promised its retired workers, and, ultimately, whether the city's forecasted long-term revenue can keep up with long-term expected health care expenditures. Unfortunately, like those who have conducted similar investigations in other cities, what we found was of great concern.

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*The retiree healthcare benefits promised to city employees have been chronically underfunded, and the deficit is growing annually.*

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During the investigation, the Grand Jury heard testimony from a number of witnesses, including current and former city of Oakland employees, elected public officials, and statewide experts in municipal finance. The Grand Jury also reviewed the city of Oakland five-year budget forecasts, Oakland's annual budgets, past consolidated annual financial reports, staff reports to Oakland City Council, the city's bi-annual actuarial reports, and studies from the League of California Cities and other public agencies.

### ***Discovering the Unfunded Liability (GASB 45)***

In 2004, the Government Accounting Standards Board (GASB) issued a new rule requiring government agencies to report their future OPEB liabilities every two years. The reporting requirement was a victory for transparency. It began a conversation about the looming debt created when elected leaders made generous contractual promises to pay retirees healthcare benefits without a complete understanding of the costs associated with those promises or whether the benefit packages were sustainable.

Unfortunately, while the new reporting rules required public entities to disclose their long-term unfunded liabilities/debt, those agencies were not required to change the methods used to fund the benefits.

## ***Accounting for OPEB Costs***

In June of 2006, Oakland hired an outside consultant to conduct actuarial studies relating to its OPEB obligation. Findings from the study were presented to the city council in October 2007.

The report dropped a number of fiscal bombshells. First, it let the city council and public know that the city funded OPEB differently than the way it funded its employee pensions. Rather than putting aside money to pay future retiree healthcare benefits as they were accruing, the city used the pay-as-you-go method to defer the costs until after the employees retired.

By contrast, the California Public Employees' Retirement System (CalPERS) requires public agencies to contribute to pensions when they are earned – while the employee is still working –

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*Oakland's failure to take the tough steps necessary to address the problem has pushed its budget to the straining point, even in this period of relative economic prosperity.*

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and Oakland makes its required payments each year. CalPERS holds the money it receives in trust, investing it until the employee retires and begins collecting the pension. The investment income helps pay for the overall cost of the benefit.

The second revelation uncovered by the 2006 actuarial report was that the city had already accrued a massive liability of \$524 million because it had not prefunded OPEB in the past. At that time, the city was paying about \$10 million annually for current retiree health benefits. The actuaries determined that the city would have to contribute an additional \$30 million every year for 20 years to pay down the unfunded portion of the benefits already earned. The extra amount the city would have to pay was nearly equivalent to the amount it was spending on the parks and recreation department and libraries combined.

With 3,640 active employees and 2,410 retirees in 2006, coupled with rapidly increasing costs of healthcare, the actuaries showed that the city's liability would grow exponentially as more retirees enter the pool if the city continued on its pay-as-you-go approach. Ultimately, however, city leaders took no action other than ordering further study of the problem and potential solutions.

The Grand Jury found no evidence that the city ever followed up with the promised study.

In short, the 2006 actuarial report showed that the city was locked into a very expensive long-term benefit for retired city workers that it ultimately could not afford if it continued down the pay-as-you-go path, but the city council chose to “kick the can” down the road rather than figuring out a responsible way to alter those benefits or to fund them sufficiently.

### ***Establishment of Trust Fund: Oakland’s Response***

In 2010, the Finance and Management Agency for the city of Oakland recommended that the city “address its OPEB liabilities by implementing a prefunding mechanism, or dedicated trust, to decrease the required funding.” Heeding that recommendation, Oakland established an irrevocable OPEB trust fund in 2014. City council put \$3.9 million into the account in November 2016, and pledged to add another \$20 million in the 2017-2019 bi-annual budget. As of September of 2017, the trust fund balance was just over \$15 million, representing just 2% of the unfunded liability.

While this was a step in the right direction, it was not nearly enough to make a meaningful dent in the unfunded OPEB liability. Anything less than a \$50 million annual contribution to the trust ends up increasing the total liability rather than amortizing it. Unfortunately, annual contributions in that amount are just not possible. Revenue forecasts indicate that Oakland’s general purpose fund revenue will increase at a far lower rate than its general purpose fund expenses, particularly as CalPERS increases Oakland’s annual required contributions for employee pensions, and increasing health care costs cause huge annual increases to the “pay-as-you-go” amounts. Oakland needs to look at other ways to address the problem.

### ***2016 OPEB Actuarial Study***

In the 2016 actuarial study, it was reported that, as of July 2015 (FY 2015-2016), the city’s unfunded OPEB liability had ballooned to \$860 million. It concluded that, instead of making pay-as-you-go payments (which by then had reached about \$26 million annually), Oakland should have been making annual payments of \$74.1 million.

### ***Moody’s Credit Challenge***

In early 2017, a credit opinion from Moody’s called Oakland’s pension-driven budget pressures “significant.” The report concluded that Oakland’s largely unfunded OPEB liability of

\$860 million constitutes an exceptionally high 238% of covered payroll. These facts could lead to a downgrade of the city's bond ratings, making it more expensive for the city to borrow money.

### ***Oakland's OPEB Funding Structure***

Many public agencies throughout the state, like Orange County, fund their healthcare using cafeteria-style plans, where the amount the employer pays for the employee's health insurance is deducted from the employee's gross income and used exclusively for that purpose. Because Oakland police and fire health plans are not funded through cafeteria plans, state law requires that active and retired health benefit packages be identical. For this reason, OPEB plans for Oakland public safety retirees are more expensive. Many of these employees – those hired before state pension reform in 2013 – can retire as early as age 50, when they may still have young families, requiring the city to make full contributions of \$1,500 to \$1,600 per month until the beneficiary enrolls in Medicare or there is a change in status of dependent or spouse. If the city establishes a cafeteria-style healthcare funding plan for all active employees, there would be no state mandate that the benefits for retirees be identical to those provided to active employees, and this issue would be a subject for negotiation with labor unions.

### ***How Other Cities Are Responding to the Crisis***

The Grand Jury heard that the city of Sausalito, admittedly a much smaller city than Oakland, addressed its OPEB problem by a dual-pronged program. It began by closing its defined benefits plan to newly hired employees and offered them instead a defined contribution plan. "Defined benefits" is where the employer promises to provide equivalent health insurance, e.g., to a basic Kaiser plan, and is obligated to pay the increased cost to purchase that type of plan even as premiums rise. "Defined contribution" is where the employer promises to pay a fixed amount annually toward the retiree's insurance costs, often with a cost-of-living rider.

Sausalito also offered a "buyout" plan to new or newer employees that offered an immediate cash payment of \$1,000 per year for each year of employment in exchange for the employee waiving his or her right to post-employment health insurance. We learned that 50% of the eligible Sausalito employees took the buyout option.

Both of these changes required substantial negotiations with Sausalito's public employee unions. We heard that the city officials needed to lay all their cards on the table during negotiations,

showing with incontrovertible evidence that the current system was not sustainable in the long run, and that Sausalito would be unable to pay its OPEB obligations in the future if changes were not made.

Some public agencies like BART and the Alameda County Water District have begun fully prefunding their OPEB costs. While this required massive investments by the organizations, they now have plans in place to erase their unfunded obligations. But, unlike Oakland, BART and the Water District do not have to go to the voters to raise revenue to pay for these initiatives – their boards can simply vote to increase rider fees and water rates.

In 2008, as a result of Grand Jury scrutiny, the city of Concord established a task force to address OPEB. As a result of the task force's recommendations, the city sat down with its labor organizations to craft a long-term plan that included material sharing by employees (14% at that time) of the cost of the program, and capping the benefits for existing employees. Prior to that, employees did not contribute to the cost. The city also established a trust and began to prefund its OPEB costs.

The city of Danville does not offer a traditional OPEB program and, therefore, has no unfunded OPEB liability. Instead, the city contributes to a health savings account, which in effect amounts to a defined contribution plan.

The city of Alameda appointed a task force in 2012 consisting of city officials, labor representatives and ordinary citizens to review Alameda's pension and OPEB obligations. After months of meetings, the task force submitted several recommendations regarding OPEB, none of which had unanimous support of all members:

- Modify vesting and eligibility rules for new hires beyond those made in 2011 in response to California's Public Employees' Pension Reform Act (PEPRA).
- Establish a 401(a)(h) plan in which all current employees are required to make contributions now for future health care. (New hires were already contributing to such a plan.)
- "Buy out" the benefit with a program giving employees the option to take cash or a tax-advantaged account in exchange for their defined benefit.
- Work with employee bargaining groups to negotiate down the liability.

In a follow-up report on OPEB liability in April 2015, Alameda staff, acknowledging that a multi-pronged approach was necessary and had to be coordinated with the city's bargaining units, discussed additional options to be considered along with those identified by the 2012 task force:

- Create a trust fund to pre-fund benefits.
- Budget more with existing funds to make payments above what is required under pay-as-you-go, with the excess going into the trust.
- Negotiate with labor for employees to contribute toward the cost of OPEB in exchange for the city making contributions toward pre-funding.
- Strengthen the tiered-benefit program that was created in response to PEPRA by making city contributions proportionate to the number of years of employment (so that the benefit would increase the longer the employee's years of service), and by lengthening the period before the benefit fully vested.
- Cap the city's medical contribution rate by changing to a defined contribution plan for new hires.
- Place further limits on spousal benefits. After PEPRA, spouses of employees hired after June 2011 were not eligible for OPEB. Staff suggested that it could modify OPEB benefits for spouses of pre-2011 hires by switching them to a defined contribution plan.

In September 2016, the OPEB Task Force of the League of California Cities issued a detailed report entitled "Retiree Health Care: A Cost Containment How-To Guide." After describing the OPEB problem, the task force discussed strategies California cities might employ to address it, including:

- Creating and funding an OPEB trust fund
- Changing benefits for existing employees
- Changing contributions to fixed amounts
- Limiting the duration of retiree medical benefits
- Closing the benefits to new employees
- Increasing vesting requirements
- Covering only retirees, not dependents
- Making city insurance secondary to other health insurance, such as veterans programs or coverage under a spouse's plan
- Buying down or buying out retiree benefits for current employees

- Changing health care plans
- Auditing retiree medical benefits
- Enrolling otherwise non-eligible retirees in Part A Medicare coverage
- Utilizing the federally subsidized prescription plan for Medicare retirees
- Buying down or buying out benefits for current retirees

## **CONCLUSION**

Oakland's elected and appointed leaders are responsible for the welfare of their residents, for the stewardship of city finances, and for honoring or renegotiating the promises they and their predecessors made to public employees who serve the city.

The retiree health care benefits promised to city employees have been chronically underfunded, and the deficit is growing annually. Continuing the program of pay-as-you-go, without making a dent in the unfunded liability for future benefits, raises the prospect of massive budgetary cutbacks to programs deemed essential to the safety and welfare of its citizens.

These circumstances are not unique to Oakland, or even to the state of California, but Oakland's failure to take the tough steps necessary to address the problem has pushed its budget to the straining point, even in this period of relative economic prosperity. Moreover, other expensive issues, such as affordable housing, homelessness, decaying infrastructure, and more, are looming.

Inaction, or insubstantial action, on this matter is no longer tolerable. An economic downturn following years of growth will only make the problem worse. Failing to take bold action risks further cutbacks to essential and valued services like public safety, parks and libraries, and also risks worsening Oakland's bond ratings, imperiling its borrowing power, thus making Oakland a less desirable place to live and work. An informed community and courageous elected city officials must face this challenge head on to ensure a thriving and safe Oakland.

## **FINDINGS**

- Finding 18-1:* The city of Oakland's current method of funding OPEB benefits underfunds its annual required contribution by at least \$40 million.
- Finding 18-2:* The city of Oakland currently has no meaningful plan to address its \$860 million unfunded OPEB liability, jeopardizing the city's long-term financial viability.
- Finding 18-3:* Rapidly increasing retiree health costs are squeezing city budgets and reducing funding for essential city services.
- Finding 18-4:* The city of Oakland has no revenue stream (anticipated revenue growth, new taxes or new bonds) sufficient to make payments that will amortize its unfunded OPEB liability over the next 20 or 30 years.
- Finding 18-5:* Solving Oakland's OPEB problem will require substantial political will and the cooperation of Oakland's bargaining units to make complex and unpopular structural changes to Oakland's retiree benefits program.

## **RECOMMENDATIONS**

- Recommendation 18-1:* The city of Oakland must develop and implement a long-term comprehensive plan to address its \$860 million unfunded OPEB liability.
- Recommendation 18-2:* Any long-term OPEB plan must include discussion of additional city funding and substantial structural change in benefits that are responsible for these growing liabilities.
- Recommendation 18-3:* The city of Oakland must develop a long-term cost-containment plan for OPEB that gives serious consideration to the options discussed by the League of California Cities and other California cities that have addressed this issue, including but not limited to:
- Capping or reducing premium contributions for current employees.
  - Replacing defined benefits OPEB plans with defined contribution plans.



- Eliminating portions of the benefits, like dental and vision care.
- Limiting the length of medical coverage (e.g., to Medicare age).
- Eliminating or reducing coverage for spouses and children.

*Recommendation 18-4:* The city of Oakland must consider requiring current and future employees to share in paying for the cost of OPEB benefits.

*Recommendation 18-5:* City of Oakland staff must provide elected leaders and the public with clear and understandable reports, including graphs and charts, illustrating the impact of current OPEB funding decisions as well as the cumulative impact of deferred costs of these programs over a 15- to 20-year period.

*Recommendation 18-6:* The city of Oakland must decouple or separate the benefits offered to current public safety employees from those paid to retired police and firefighters, ending the pooling of active employees with retirees for rate setting.

## **RESPONSES REQUIRED**

Oakland City Council

Findings 18-1 through 18-5

Recommendations 18-1 through 18-6

Mayor, City of Oakland

Findings 18-1 through 18-5

Recommendations 18-1 through 18-6

## OAKLAND'S AGING SEWER SYSTEM AND HOW IT AFFECTS LAKE TEMESCAL

### EXECUTIVE SUMMARY

Lake Temescal has long been considered a jewel that sits above the Rockridge and Temescal neighborhoods. Historically, the lake has been a summer go-to spot. Parents, toddlers, teens and couples lie on the sandy beaches, swim in the water, and even enroll in lifeguard camp. But the Grand Jury has found that the lake has had recurring problems about which the public has not been adequately informed.

For the past four years the lake has been closed on and off – even the lifeguard camp has been shuttered. The stated reason has been toxic algae blooms, but the Grand Jury has found that the situation is far more complicated than just algae.

*Sometimes referred to as the East Bay's "hidden gem," Lake Temescal receives approximately 200,000 visitors a year.*

The Grand Jury received citizens' complaints that led it to investigate practices at the Sewer Services Division of the Oakland Public Works Department, East Bay Municipal Utilities District, and the East Bay Regional Park District. During the investigation the Grand Jury found that algae blooms at Lake Temescal were a serious problem. We learned that citizens were not being adequately notified about sewage spills at the lake. We also learned of issues concerning Oakland's use of private sewer contractors and the need for more mandated technical training certification for public works employees working on sewer crews.

Sewer and water systems across the nation are in need of massive repairs, and Oakland's are no different. Because Lake Temescal is an urban watershed – a catch basin for water and sewer run off – it is especially vulnerable to contamination. Fixing the water and sewer problems that affect the lake and Oakland overall will take decades and cost millions. But the Grand Jury has concluded that fixing communications problems that often keep the public in the dark about the true health of the lake would only take recognition of the problem and a coordinated staff plan to address it.

## BACKGROUND

The Sewer Services Division of the Oakland Public Works Department (OPW) is responsible for performing preventive maintenance to over 930 miles of Oakland’s sewer pipes, which range in size from six inches to over 66 inches in diameter. The sewer pipes are an integral part of the city’s waste water collection system, a system that includes 31,000 structures and seven pump stations. Through this system, wastewater from homes and businesses throughout Oakland is conveyed to the East Bay Municipal Utilities District (EBMUD) treatment plant. EBMUD is then responsible for sanitary sewer effluent treatment and disposal.

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*Because Lake Temescal is an urban watershed – a catch basin for water and sewer run-off – it is especially vulnerable to contamination.*

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Property owners are responsible for the sewer laterals, the pipes connecting a home or business to the public sewer system or sewer mains. The city of Oakland is responsible for servicing and maintaining the sewer main pipes that carry waste to the EBMUD treatment plant. EBMUD’s water bills have a sewer service charge to help fund capital repairs and maintenance of the system.

The sewer division’s preventive maintenance consists of cleaning the pipes, periodic inspections by closed circuit television, and performing minor repairs. Sewer division staff make recommendations to city engineers for pipe rehabilitation projects, which may include replacing pipes. The sewer division employees also clear blockages and stop spills, which typically are caused by debris, oils and grease, and tree roots that have penetrated the sewer pipes. Most of the pipes are over 50 years old and made of clay, with some sections of the system over 100 years in age. These pipes are most vulnerable to leaks caused by tree roots.

Rainwater can leak into sewer pipes, especially during winter storms. Local sewer pipes were not intended to collect storm water, yet they do. During heavy storms, storm water can enter these underground pipes through overflows and cracks in the mostly clay pipes. This “infiltration and inflow” is a common occurrence in older sewer collection systems. Locally, it may even cause occasional releases of partially treated sewage into the Bay.

EBMUD began building large storage systems in the late 1980’s, called wet-weather facilities, to prevent heavy storms from causing raw sewage overflows into the Bay. Simultaneously, Oakland

began repairing leaky sewer pipes to lower the amount of storm water entering the system and reduce the chances of sewage water and rain water mixing.

In 2009, the Environmental Protection Agency filed complaints in federal court against several local cities, including Oakland, and water districts, including EBMUD. These lawsuits alleged that Bay Area wet-weather facilities were no longer able to meet the tougher standards for wastewater treatment, particularly the one precluding discharge of partially treated sewage into San Francisco Bay.

Negotiations among federal and state regulators, the cities and water districts, as well as state and local environmental groups, resulted in a federal consent decree among all parties in June 2014. The settlement gave the cities and districts until 2036 to repair and replace their aging sewer infrastructure, reduce the amount of inflow and infiltration, and reduce discharges into San Francisco Bay during heavy storms.

Witnesses explained that the consent decree is basically a long-term mandate to separate waste water collection from storm drainage. The consent decree specifically requires Oakland to:

- Rehabilitate 13 miles of sewer pipes per year.
- Clean the entire sewer system by 2018 and 140 miles of pipe per year thereafter.
- Inspect 92 miles of sewer pipes per year.
- Treat 50 miles of sewer pipes with root foam (to remove tree roots that grow in sewers and can occasionally cause blockages) per year.
- Renovate all seven sewer pump stations by 2022.
- Eliminate high priority storm water inflow sources within two years wherever found.
- Inspect and clean sewer hot spots annually.
- Require private sewer lateral rehabilitation (initiated in 2012, regional requirement).
- Report defective sewer laterals owned by local, state or federal entities to EPA.
- Rehabilitate identified sewer laterals owned by the city within 10 years.
- Notify owners of private property defective sewer laterals within 90 days.
- Enforce repairs on high priority defective sewer laterals.
- Assist EBMUD in development of a sewer lateral education program.

## INVESTIGATION

### ***Lake Temescal***

Lake Temescal was created in the 1860s by damming Temescal Creek in order to provide drinking water to a growing East Bay population. In 1936, Lake Temescal opened to the public as one of the first three parks established by the East Bay Regional Park District (EBRPD). Its amenities include a beach-like shore for swimming, a well-established hiking trail around the lake, and numerous picnic tables. In addition, the lake is stocked with small game fish for fishing. Sometimes referred to as the East Bay's "hidden gem," Lake Temescal receives approximately 200,000 visitors a year.

What the public may not know is that Lake Temescal is also an "urban watershed" that collects water coming off the ridges of the Caldecott Tunnel, Broadway Terrace, and Thornhill. The lake has many sources of contaminants that have caused multiple closures in recent years. Pollutants such as oil, gas, fertilizers, and pesticides are carried with water run-off and may adversely affect fish, wildlife, plants, and people.

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*A particularly troubling source of contamination is untreated sewage that periodically seeps into the lake's usual water flows.*

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A particularly troubling source of contamination is untreated sewage that periodically seeps into the lake's usual water flows. Sewage overflows can happen anytime of the year, but most frequently occur during and immediately after winter storms. The main cause is the area's aging clay pipes, which may be broken or are simply inadequate in size to manage high volumes of runoff during severe storms. Clay pipes have a reasonable life span of 75-100 years and a significant percentage of Oakland's pipes, both main and lateral lines, have reached this ripe age and need replacing. The old storm drains and sewer pipes alike are simply overloaded, resulting in contaminations.

EBRPD conducts periodic tests of the water quality. In the winter after rainstorms, on-site park managers call EBRPD headquarters to initiate testing if they perceive a problem. From April to early October, the lake's high use period, testing is done weekly at sites where streams flow into the lake and at two locations in the beach area. If the water quality tests poorly, additional and more frequent testing is done. In the absence of algae blooms, the water tests focus on E. coli

bacteria to determine if the concentration exceeds EPA recommendations for waters permitting recreational use.

The Grand Jury examined the most recent cluster of sewage issues at the lake and found numerous shortcomings. During the heavy storms of January 2017, OPW received a communication from the park district of a spike in pollutants. The responding sewer crew could not find the source of the contamination at first. Eventually the problem was tracked to a cross-connection between a storm drain and a waste water drain upslope from Lake Temescal. According to testimony, a “long-term temporary fix” was eventually installed to block the intersection. Meanwhile, substantial amounts of untreated sewage water had flowed into the lake for at least ten days according to the sewer division’s overflow reports, and even longer according to some witnesses.

Since this sewage flowed into Lake Temescal during the off-season, the public was told only that the lake was closed, and was not notified of the reasons, either by EBRPD or OPW. It was not clear from testimony which public agency had the primary responsibility for such communications. The Grand Jury concluded that defined lines of responsibility and a formal process for notifying the public when the lake closes (including an accurate description of the reason for the closure) must be established. Simply informing the public that the lake is closed is insufficient.

The next set of major storms will be a stress test to this “long-term temporary fix.” It was explained to the Grand Jury that an ideal permanent fix would require re-engineering the storm drain system to an entirely new route. This would involve very complex engineering, and would create prolonged inconvenience to the public because of necessary traffic diversion due to the project’s proximity to Highway 13.

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*Fixing communication problems that often keep the public in the dark about the true health of the lake would only take recognition of the problem and a coordinated staff plan to address it.*

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It would also require a thorough feasibility and budget analysis. Even if feasible, the enormous scale of such a project would likely prove cost prohibitive.

During our investigation the Grand Jury learned that communications between EBRPD and OPW could be vastly improved. While OPW was responsive to calls from EBRPD staff, the details of when OPW planned to arrive on-site and when their planned testing and maintenance was

scheduled at various sites was unknown to EBRPD staff. Witnesses told the Grand Jury there was no direct sharing of reports between the two agencies.

The park district relies on its website and the posting of signs at the lake for communicating with the public about all events at Lake Temescal, including issues of contamination. Press releases and other more pro-active messaging to the public are rarely used. Newsletters to the neighborhood and an advertising campaign are ideas that the EBRPD employees would like to implement to keep the public better informed.

Sewage contains nitrogen, phosphorus and ammonia which are suspected of producing ambient water quality conditions conducive to algae growth. Moreover, the lake is constantly becoming shallower due to sediment runoff. Shallower water experiences stronger sun penetration and warmer temperatures which are also suspected of aiding algae growth. Lake Temescal is approximately 20 feet at its deepest point today compared to 80 feet when it first opened to the public in 1936.

Prior to 2014, there were no documented cases of algae blooms in Lake Temescal according to the East Bay Regional Park District. Since 2014, the lake has experienced periodic blue-green

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*Immediate closure of the lake and water testing are critical whenever a blue-green algae bloom occurs because this particular algae may produce harmful toxins.*

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algae blooms triggering closures of the lake with increasing frequency. Immediate closure of the lake and water testing are critical whenever a blue-green algae bloom occurs because this particular algae may produce harmful toxins. Animals can die from drinking the water, and the risk to humans comes from prolonged contact or

from swallowing the water. Symptoms from ingestion can include headaches, nausea, muscular pains, diarrhea and vomiting. Severe cases could include seizures, respiratory problems and liver failure. The severity of the illness is related to the amount of water ingested and the concentrations of the harmful toxins. Paradoxically, not all blue-green algae produce these toxins, making timely and accurate testing even more critical.

Well-informed coordination of corrective actions by the park district and OPW are key factors to a speedy containment of any problem.

### ***Oakland's Use of Private Sewer Contractors***

The Grand Jury learned that the city routinely hires private contractors to do repairs on Oakland's sewer system that are beyond the expertise of the city employees, such as water sampling, lab analysis and occasional emergency work (e.g., during the 2017 Oakland city workers strike). Service contracts are prearranged whenever possible, but monitoring of the work of these private contractors is not done thoroughly. Contractors are simply not responsible for any reporting functions, as they are not "registered users" of the California Integrated Water Quality System (CIWQS) and are not allowed to become registered users on behalf of the city. Therefore, when work is done by a private contractor, it is not well-documented. Without good records for reviewing what has been done, future problems may be hard to troubleshoot. This makes "trust but verify" supervision from OPW even more imperative.

### ***Sanitary Sewer Overflow Volume Estimates***

State law requires that the city provide comprehensive reporting to the California Water Quality Board when sewer overflows occur. OPW described its system for reporting overflows. Information from sanitary sewer overflow reports submitted by sewer division crews is input into a database. Then a legally responsible official must certify the report. OPW currently has three legally responsible officials, usually sewer division crew supervisors. While there are three methods for estimating the volume of a sanitary sewer overflow, volume estimates are very subjective and far from an exact science. First responders take still photos and videos then write field reports with preliminary volume estimates. This data is then passed on to a supervisor who certifies it and enters it into CIWQS.

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*Two overflow estimates by field inspectors of more than 50,000 gallons were reduced below the 50,000-gallon threshold in the final report at the sole discretion of a crew supervisor who was not on the site during the overflow.*

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When 50,000 gallons or more of sewage spills into surface waters, state law requires the following additional measures:

- Water quality sampling must be conducted within 48 hours after initial sewage overflow notification, and results uploaded into CIWQS.
- A technical report must be submitted within 45 calendar days after the end of the spill.



- A water quality monitoring program must be developed and implemented to assess the spill impacts.

OPW acknowledged that, on two occasions in 2017, overflow estimates by field inspectors of more than 50,000 gallons were reduced below the 50,000-gallon threshold in the final report at the sole discretion of a crew supervisor who was not on site during the overflow. As a result, OPW reported there were no sanitary sewer overflows exceeding 50,000 gallons during 2017's rainy season, so that additional state reports and testing were not required.

The Grand Jury finds this somewhat surprising given the record rainfall, the age of the sewer system, and because it is difficult, perhaps impossible, to determine exactly when sewage overflows begin, making underestimates more likely. The lack of mathematical precision in the process leads to significant differences of opinion between onsite and supervisory personnel as to the volume of a given overflow. This, in turn, makes it possible for important sewer system failures to be underreported to the State Water Quality Board. It also makes it impossible for OPW to make consistently sound decisions regarding what remedial priority to assign to a given overflow.

### ***Certifications of Sanitary Sewer Division Employees***

Within OPW's sanitary sewer division, field crews consist of: (1) lead operators, licensed to operate large maintenance equipment and (2) crew workers, who must work with a lead operator. The Grand Jury learned that high employee turnover is a major problem within the agency.

Crew workers are encouraged to get enhanced technical training and certifications to prepare for advancing to lead operator positions. The certificates, however, are not required as a condition of employment, and not many employees take advantage of the additional training. In addition, city policies and tight budgets, union-mandated work conditions and administrative hurdles make hiring difficult and time-consuming. This makes it even more difficult to maintain well-trained teams and knowledgeable candidates for advancement.

The Grand Jury is concerned that the sewer department has not developed appropriate succession planning. If operators leave OPW, or otherwise become unavailable, there are insufficient numbers of trained crew workers capable of jumping into next level roles to ensure

operational continuity and flexibility. Only mandated continuous education programs focusing on the necessary technical skills can make this kind of “bench strength” possible across all sanitary sewer division crews.

## **CONCLUSION**

Lake Temescal was designed in the mid-1880s to collect water that flows off the nearby Oakland hills. Dense urbanization, however, has made the job far more complex by significantly expanding the types of liquids that could flow into the lake. A substantial portion of the area’s sewer and drain pipes were laid during the 1920s when residential neighborhoods were first being developed in the Temescal area. Preserving the integrity of this drainage system is challenging, and natural phenomena such as heavy rains, tree root incursions, and seismic activity can easily push the aging clay pipes beyond their limit.

The Grand Jury believes that these shortcomings can be managed. Doing so, however, requires OPW and EBRPD to focus on organizational fundamentals such as modern communication strategies, inter-agency partnerships, and staff training and development. In addition, these improvements must be supported by improved record-keeping.

Lake Temescal’s popularity with the public and the potential health hazards from contamination make corrective actions absolutely necessary. With the public’s interests in mind, the Grand Jury offers the following findings and recommendations for immediate consideration and action.

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## **FINDINGS**

- Finding 18-30:* The lack of clear lines of responsibility and communication between Oakland Public Works and the East Bay Regional Park District in notifying the public about Lake Temescal closures and the reasons for those closures gives the perception that public agencies are keeping important information from the community.
- Finding 18-31:* Failure to supervise third party contractors repairing Oakland's sewer lines and failure to require them to submit detailed reports of their repairs impede compliance with state reporting requirements and make it difficult to troubleshoot when future problems occurs on the same sewer lines.
- Finding 18-32:* Oakland Public Works' current sewer related training and technical certifications focus on only a few key employees, resulting in its sewer crews lacking broad technical knowledge. This lack of depth limits operational flexibility and succession planning.
- Finding 18-33:* The Grand Jury learned that in two cases during 2017, onsite estimates that sewage overflows exceeded 50,000 gallons were later reduced below 50,000 gallons by a supervisor back at the office, giving the perception that the volume was reduced to avoid additional testing and reporting required by the state.

## **RECOMMENDATIONS**

- Recommendation 18-26:* Oakland Public Works and the East Bay Regional Park District must establish clear lines of responsibility between both agencies, and establish a clear written protocol for communications with the public concerning sewage spills or lake closures, including reasons for the closures.
- Recommendation 18-27:* Both Oakland Public Works and the East Bay Regional Park District must study the feasibility of using push alerts to nearby neighborhoods in the event of a spill or closure, and explore use of the web and social media for emergency communications for implementation in the winter of 2019.

## AFFORDABLE HOUSING OVERSIGHT IN OAKLAND

### EXECUTIVE SUMMARY

Last August, a concerned Oakland resident called the Grand Jury’s attention to a particular sentence in a recent newspaper article. It stated that “Oakland has loaned a total of \$4.1 million to the E.C. Reems Apartments owners and received no repayments. . . .” The Grand Jury was also intrigued by the statement – how do you avoid repaying a loan? The article also described the deplorable conditions of the complex and management’s apparent abandonment of the project. The Grand Jury decided to investigate.

The city of Oakland plays an integral role in fostering local affordable housing projects by administering state and federal loans or grants. Developers receive soft loans that in effect

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*Affordable housing financing is structured as a loan, even when there is no realistic expectation that the “loan” will ever be repaid. This mechanism gives the city the authority and the obligation to exercise legal and financial oversight and governance over the housing projects.*

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become grants in exchange for covenants that keep rents affordable for low-income residents. Currently, the city is a party to regulatory agreements and loans related to over 100 housing projects in Oakland. When the projects

are managed appropriately by the owners of the property, low-income residents benefit greatly. But when management and oversight goes wrong, in situations like the E.C. Reems Apartments, residents live in substandard conditions for years.

The Grand Jury learned through its investigation why affordable housing financing is structured as a loan, even when there is no realistic expectation that the “loan” will ever be repaid. This mechanism gives the city the authority and the obligation to exercise legal and financial oversight and governance over the housing projects.

While the city has legal authority to take some action when property owners in effect abandon management of the projects, the regulatory agreements that supposedly empower the city with oversight authority actually can discourage city intervention because of the complicated web of state and federal financial participation. On top of this, shrinking local resources have resulted in inadequate staffing, poor training, and outdated technology systems that have prevented

effective local oversight of these public investments. This makes it even more important that the city use best practices in selecting qualified affordable housing developers.

Oakland, like most other communities in California, faces a severe affordable housing crisis. It is not enough simply to finance projects. Oakland needs to improve its selection process for developers and its oversight practices for managing properties.

## BACKGROUND

The city of Oakland coordinates efforts to support local affordable housing through its Housing and Community Development Department. While the projects and support for the programs were more robust during the era of redevelopment agencies, the city still invests millions of dollars a year in helping developers, mostly non-profit, rehabilitate and, in some circumstances, construct affordable housing projects. Some of that money has been replaced by a \$100-million bond the city floated to support such programs. Since 1988, the city boasts that it has helped build over 6,000 units of affordable housing. In return for loaning these developers money, the city puts deed restrictions on the properties for the term of the loans.

Loans for rental projects are typically provided at a low interest rate for up to 55 years. In exchange for the city's loan, the property's rents are restricted to remain affordable to lower income households. The agreement is legally described as a loan, but it is more practically treated as a grant. Loan payments are received by the city if the project has sufficient cash flow, although that rarely happens. The city is really providing the funds for restricted rents in return for these "soft loans." Although the property's deed of trust may be designated as security, these soft loans usually are subordinate to other lenders' loans, most often state or federal.

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*Loan payments are received by the city if the project has sufficient cash flow, although that rarely happens. The city is really providing the funds for restricted rents in return for these "soft loans."*

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The regulatory agreements become the city's most significant enforcement tool to ensure that the properties are livable and that the specified percentage of housing units is deemed affordable. To guarantee compliance, best practices require that, at a minimum, each property be inspected annually.

A decade ago, Oakland Community Housing, a major manager of public housing projects, ceased operations and abandoned 25 affordable housing projects with 638 units spread throughout the city. The city had invested \$24 million in those projects, many of which had fallen into severe disrepair with residents living in deplorable conditions. The city was left trying to find new property owners. (*See Grand Jury report of 2011-2012, p. 135.*) In many of the projects, the California Housing Finance Agency, which provided additional funding to Oakland Community Housing, refused to foreclose because it did not want the liabilities associated with receivership – violence, lack of security, lack of maintenance, and responsibility to relocate renters during building repairs. That year, the Grand Jury criticized the city for failing to protect its \$24 million investment by not adequately monitoring the various properties and failing to take action when the properties fell into disrepair.

At the time, the city promised to take steps to train staff and improve the oversight process. In 2012, the city claimed that its employees visited each property in the city’s inventory, and did onsite audits of 15% of the individual housing units at those facilities to ensure the units were in livable condition and that income levels of renters were consistent with regulatory agreements. That commitment has now disappeared.

## **INVESTIGATION**

The Grand Jury reviewed city staff reports and loan documents concerning E.C. Reems Apartments and other affordable housing projects, and heard testimony from current and former Oakland employees involved with affordable housing.

Originally built in 1948 as market-rate housing, a privately-owned apartment complex near Golf Links Road and MacArthur Boulevard in Oakland had devolved by the 1980s and 1990s into a haven for drug traffic and violence. In 1995, the bank that held the mortgage on the property foreclosed on the owners. The city helped a Southern California non-profit, Corporation for Better Housing (CBH), acquire the property and convert it into 126 units of affordable apartments, where it became known as E.C. Reems Apartments (named after a well-known Oakland pastor, whose family acquired a 1% interest in the project).

Oakland loaned CBH \$2 million in 1996 to acquire and renovate the buildings with funds it received from three federal and state affordable housing programs. The Grand Jury learned that the terms of this loan are typical of those made to finance the development of affordable housing

throughout the country. Unless there is an annual positive cash flow (which as a practical matter, is very unlikely), payments of principal and interest are deferred until the earliest of (1) 30 years, (2) the date the property is sold or refinanced, or (3) in the event of a default by CBH that has not been cured.

The loan agreement set forth a variety of requirements specifying what CBH would accomplish during the renovations and what it was required to do regarding occupancy by income-qualified families and management of the property after construction was completed. This financing arrangement is a typical way for public agencies to support this sort of housing.

If a grant was made directly, then the public agency would lose its ongoing ownership position in the lien and thereby lose any power to correct for mismanagement or failure by the developer to be in compliance with its contractual obligation. By maintaining a lender position, the public agency can exercise its right to foreclose and reassign ownership to a more responsible party.

Over the next five years Oakland increased the loan amount three times, resulting in a principal balance of \$2,939,500 as of March 20, 2001. Oakland's loan, however, was subordinate to a multi-million dollar acquisition loan to CBH insured by the Department of Housing and Urban Development (HUD), which complicated and diluted Oakland's ability to enforce the covenants set forth in its loan agreement.

Building conditions quickly deteriorated and crime resumed. There were frequent turnovers in on-site property management. CBH claimed that cash flow problems prevented it from doing both routine and extraordinary maintenance, resulting in multiple complaints by tenants regarding mold, broken stairs, poor lighting, damaged mailboxes, and more. At one point a city crew had to make emergency repairs to the complex in order to stop raw sewage from contaminating a nearby creek. Despite a well-publicized affordable housing crisis in Oakland, a substantial number of the units remained unoccupied. Over the years, Oakland tried to make CBH comply with its obligations by sending many default letters and meeting with CBH and HUD officials multiple times, all with little result.

Eventually, by the spring of 2017, HUD was threatening to foreclose on its senior loan and put the complex on the open market. In order to prevent its secondary lien from being erased and to preserve the property, bad as it was, for occupancy by low-income tenants, Oakland's city council



voted in July 2017 to purchase HUD's mortgage for approximately \$3.6 million. By that time, principal plus accrued interest on the city's loan had reached approximately \$4.2 million.

Thereafter, the city issued a Request for Proposals (RFP) for a new owner/developer/property manager to take over the project from CBH, and to assume the outstanding loans. The city received two responses. The proposals were evaluated by Oakland's Housing and Community Development staff and by a three-person panel consisting of two former employees plus an industry expert. The outside panelists asked the city for financial information regarding the two companies submitting proposals, but it was not provided to them, although it apparently was available for at least one of the two proposers. The panel accordingly made its recommendation without sufficiently evaluating the finances of the two competing bidders.

One of the two proposals was to tear down the existing structures and rebuild; the other was to rehab the apartments within 12 months and operate the complex with new management. According to the staff report presented to city council, the evaluators selected the developer that proposed rehab rather than tear-down. The evaluators touted the developer's willingness to self-finance (although without knowing whether the developer had the financial wherewithal to do so), and its successful renovation of two failed Oakland Community Housing projects in East Oakland (77 units) after obtaining them from the state for \$10,000. The city council approved the loan assignment to the developer on November 21, 2017.

Although the Grand Jury shares the city's hope that the new developer will turn the E.C. Reems Apartments around, we remain concerned that adequate policies, structures and staff are not in place to ensure that the new company complies

with its contractual obligations. We learned that, for the last several years, the city had only one employee with an inadequate housing inspection background to oversee approximately 100

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*Housing and Community Development records are maintained on spreadsheets that only contain a limited amount of information rather than on project-tracking software that allows for complete reporting and monitoring.*

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affordable housing projects on a part-time basis. While the Grand Jury learned that the city recently hired a staff member with building inspection experience, it has been years since the city has been able to complete annual inspections and audits of all of its properties.

Moreover the city has not invested in an appropriate database system for managing its affordable housing inventory. The Grand Jury heard that the department's records are maintained on



spreadsheets that only contain a limited amount of information rather than on project-tracking software that allows for complete reporting and monitoring. If one coordinator leaves, the next may not have an accurate record of the project status if the first was not a good record-keeper.

## **CONCLUSION**

Cities and counties play an essential role in helping to administer and oversee significant public investments in affordable housing. In Oakland, both the voters and city leaders have been committed to providing such investments for decades. Most recently, voters approved \$100 million in bonds for affordable housing construction. The city of Oakland is distributing the funds in the form of loans but it is important for voters to understand that these are loans that most likely will never be repaid. Over the past 25 years, the city has provided private developers, including non-profit organizations, with these soft loans to build or refurbish thousands of rental units in over 100 affordable housing projects. In exchange, the developers were contractually obligated to keep the projects both habitable and available to low-income residents for decades.

Despite some success stories related to building such projects, the city has a poor history of ensuring that failing housing project owners and managers are held accountable when residents are living in substandard conditions. Decades of mismanagement at the E.C. Reems Apartments have exposed the city's failure to invest in proper oversight and enforcement of developer covenants. Lack of proper staffing, failure to inspect and audit each project annually, antiquated record-keeping systems and insufficient vetting of developers can only invite more failures like those that occurred at E.C. Reems and Oakland Community Housing before it. At a time when affordable housing is so essential, the city must make a more serious commitment to both protect this significant public investment and the vulnerable residents that these programs are supposed to support.

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## **FINDINGS**

- Finding 18-22:* Loans from the city of Oakland for affordable housing rental projects are typically provided for a term of up to fifty-five years and, in exchange, rents are restricted for that same period, making the rents affordable to lower-income households. No repayment is expected until the end of the loan period or upon transfer of the property, giving the public the perception that these transactions are grants of public money rather than traditional loans.
- Finding 18-23:* Oakland's Housing and Community Development Department has failed to inspect and audit all of its affordable housing stock annually, putting lower-income households renting at projects like E.C. Reems at risk of living in substandard conditions.
- Finding 18-24:* The Housing and Community Development Department's failure either to provide building inspection training for staff or partner with Oakland's Building Services Department to inspect its affordable-housing stock inhibits the agency's ability to respond to tenant complaints and protect the residents properly.
- Finding 18-25:* The Housing and Community Development Department's use of outdated technology to catalogue and manage data regarding the city of Oakland's affordable-housing stock prevents consistent oversight of those projects, putting public funds at risk.
- Finding 18-26:* Failure to maintain consistent policies related to the selection process for affordable housing developers, especially in the area of financial strength of applicants, invites project management failures like the one that took place at the E.C. Reems Apartments.

## **RECOMMENDATIONS**

- Recommendation 18-18:* The Oakland Housing and Community Development Department must hire and train staff capable of properly inspecting and auditing all of Oakland's affordable-housing stock annually.
- Recommendation 18-19:* The Oakland Housing and Community Development Department must acquire a technology solution to help staff catalogue inspection, audit and other affordable-housing oversight data.

**Recommendation 18-20:** The Oakland Housing and Community Development Department must update policies surrounding the process for selecting affordable-housing developers to ensure that developer applicants provide sufficient information to city decision-makers about their financial capacity to build and manage these projects over the long-term.

## **RESPONSES REQUIRED**

### Oakland City Council

Findings 18-22 through 18-26

Recommendations 18-18 through 18-20

### Mayor, City of Oakland

Findings 18-22 through 18-26

Recommendations 18-18 through 18-20

## WORKFORCE DEVELOPMENT FUNDING IN OAKLAND

### EXECUTIVE SUMMARY

At a time when unemployment rates nationwide are at near historic lows, the city of Oakland continues to struggle to help segments of its population living in high poverty areas to find good-paying jobs. While the dollars are limited to attack these issues, the city has established the Oakland Workforce Development Board to administer, distribute, and oversee approximately \$3.8 million in federally-funded employment and training programs each year, and to ensure that the community-based organizations receiving funding are getting results.

The Grand Jury chose to examine Oakland's efforts to reduce unemployment after reading in a November 2016 newspaper article that the city council handed out over \$500,000 in supplemental job training funds to a few

avored community-based organizations without the advice or even knowledge of the Oakland Workforce Development Board.

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*Organizations receiving the funds were not required to report to the council on their outcomes, nor were they subject to oversight by the Oakland Workforce Development Board.*

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Organizations receiving the funds were not required to report to the council on their outcomes, nor were they subject to oversight by the Oakland Workforce Development Board. The Grand Jury questioned why the city council would give out these funds if the organizations were not proven to be successful, why it would not require accountability and normal oversight required of other grantees, and why it bypassed the Workforce Development Board.

### BACKGROUND

The Oakland Workforce Development Board (OWDB) was created in 2016 as mandated by the federal Workforce Innovation and Opportunity Act of 2014. It operates within the city's Economic and Workforce Development Department. OWDB has a staff of six and an annual budget of approximately \$5 million. OWDB staff members are guided by an appointed board comprised of up to 27 business, community and government leaders with expertise in the employment field.

The OWDB is responsible for managing Workforce Innovation and Opportunity Act funds, which are intended to foster local workforce development by supporting training initiatives, internships, job resource centers, and other programs. The OWDB also bears the responsibility for policy development and oversight of its grant funds. Each year, Oakland provides approximately \$3.8 million from city, state, and federal sources to support community-based organizations (CBOs) and other contractors providing workforce services. After thorough vetting and use of a competitive bidding process, the OWDB selects partner organizations to carry out their goals. The city council ultimately approves these funding grants.

The OWDB goals are:

- *Education:* In its 2017-2020 strategic plan, the OWDB sets forth strategies intended to further develop “the range of short-term, high-quality training programs offering skill development opportunities. . . .” These include efforts to build and support “career pathway programs in Oakland that are being driven by adult education, community colleges, and other education/training partnerships.” The programming goals no longer focus primarily on traditional job placement centers that merely provide soft skills, such as resume preparation and job fairs.
- *Collaboration with broad range of service providers:* The OWDB’s strategic plan recognizes that it has limited funding to effect real change. To help extend its impact, OWDB has established partnerships with a broad range of organizations in the areas of education, health, safety, wealth, and housing. It also coordinates its work with three other East Bay workforce development boards including Alameda County, Contra Costa County, and the city of Richmond.
- *Evaluation (evidence-based accountability):* After identifying partnerships with CBOs and educational programs, the OWDB developed rigorous reporting requirements. The organizations that receive funding are required to identify, track, and report their efforts and outcomes. Traditionally, the city required CBOs to provide little feedback, often limited simply to the number of people served. This provided inadequate information to policy makers. As a result of a movement to measure the outcomes of those getting services, the OWDB now requires CBOs to report how many clients completed training programs, whether they obtained jobs, and how long they have kept these jobs. OWDB

employees perform site visits and prepare monitoring reports similar to an audit. If the service provider is underperforming or misreporting, the OWDB issues an order to correct, and offers assistance to resolve issues. This vital oversight allows the OWDB to focus its efforts and tax-payer dollars on programs that are creating sustainable, well-paying jobs.

## **INVESTIGATION**

During the investigation, the Grand Jury:

- Interviewed Oakland Workforce Development Board staff and Oakland elected officials.
- Visited a job fair held at a “soft skills” center located in a high need area of Oakland.
- Reviewed:
  - CBO program reporting documents.
  - OWDB oversight documents, corrective action reports, and CBO responses.
  - OWDB website.
  - City of Oakland Workforce Development Plan – program years 2017-2020.
  - Federal regulations stating that service providers must close client files after 90 days of inactivity when there are no plans to provide further services.

In early 2016, the OWDB issued a request for proposals for experienced workforce development services to provide for adults and dislocated workers. The contracts were to be rewarded to organizations that would strive to meet the goals set by local and regional strategic planners. The output and success of those receiving grants would be scrutinized with rigorous oversight and reporting to ensure the money was spent effectively.

By mid-year 2016, the city council approved the OWDB budget and approved the contracts with CBOs recommended by the OWDB.

Later that year, the council decided to supplement the workforce development funding by adding \$533,000 to the program. But when it came time to allocate the additional funds, the council bypassed OWDB experts, and gave the money directly to four favored CBOs. Little consideration was given to whether the funding would be used to further the strategic goals, and no accountability requirements were imposed. One of the CBOs, though it had been sharply

criticized by OWDB monitors in the past year, was given funding simply “to keep the doors open” without evaluating whether its programs were effective.

For years, the public and elected officials had questioned the value of workforce development programming. In fact, the predecessor board was disbanded and revamped when the current mayor took office to align with federal

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*When it came time to allocate the additional funds, the council bypassed the Oakland Workforce Development Board experts and gave the money directly to four favored community-based organizations. Little consideration was given to whether the funding would be used to further the strategic goals, and no accountability requirements were imposed.*

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requirements and to maximize impact on those seeking jobs. Although the importance of job training is widely recognized, when public dollars are in short supply it is essential that programs providing that training be held accountable. CBOs that receive public money need to be focused on a regional strategy with input from the 27-member board of experts.

The Grand Jury examined CBO reporting documents and OWDB site visit and monitoring reports for one of the CBOs operating a neighborhood career center. In one report, inspectors discovered that the CBO listed hundreds of clients who were not receiving services and should not have been reported. These people had enrolled in the program more than two years earlier

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*In a particularly egregious case, an Oakland Workforce Development Board analyst discovered notes and a newspaper article in a client's file establishing that the client had died nearly four years earlier, but the service provider was still reporting his case as open and active.*

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and the service provider had not been in contact with them for a significant period of time. In a particularly egregious case, an OWDB analyst discovered notes and a newspaper article in a client's file establishing that the client had died nearly

four years earlier, but the service provider was still reporting his case as open and active. Federal regulations require that clients be removed from reporting documents after 90 days of inactivity (provided that there was no plan for future services). OWDB oversight and expertise in this instance showed that the non-profit was inflating its client numbers, giving the appearance it was more effective than it actually was.

The Grand Jury also attended a job fair at a one-stop career center and was underwhelmed by the small number of job seekers in attendance. We learned that there were at least 25 similar on-site recruitment events during the first quarter of 2017, with only 20 job placements resulting

from all of them. The Grand Jury wonders how this type of programming fits into the overall goals of the OWDB and whether OWDB experts could have spent the money more effectively.

## **CONCLUSION**

The Grand Jury finds that the Oakland City Council's decision to bypass the city's own Workforce Development Board when making funding decisions was shortsighted. The unique skill set and expertise of the OWDB and its staff provide the city with the ability to develop a unified regional approach to attack joblessness and ensure that the CBOs they fund are held accountable.

Ironically, last winter one council member proposed diverting 5% of voter-approved funding for capital improvement projects to job training organizations of that councilmember's choosing, again circumventing the OWDB experts, and again without oversight or independent professional input regarding the long-term value of the programs.

The Grand Jury recognizes and supports the value of job training as a benefit to individuals, the local business community, and society as a whole. It commends the city council for wishing to further support workforce development. But since dollars are scarce, the city council must make targeted, thoughtful decisions. The Grand Jury believes that this can only be done when the city council uses the expertise of its own Workforce Development Board.

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## **FINDING**

*Finding 18-34:* The Oakland City Council bypassed its Workforce Development Board in 2016 by giving public funds directly to favored job programs without accountability standards built into the grants, without sufficient consideration of Workforce Development's strategic goals, and without appropriate evaluation as to whether the programs' efforts were successful.

## **RECOMMENDATION**

*Recommendation 18-32:* The Oakland City Council must cease making grants to community-based organizations engaged in workforce development without advice from the Oakland Workforce Development Board, and without accountability measures written into the contracts.

## **RESPONSES REQUIRED**

Oakland City Council  
Finding 18-34  
Recommendation 18-32

Mayor, City of Oakland  
Finding 18-34  
Recommendation 18-32

## ALAMEDA COUNTY WATER DISTRICT'S RATE INCREASES

### EXECUTIVE SUMMARY

For most people, water comes out when they turn on a tap – they never think about who provides the water or how the amount they pay each month is calculated. Many are dismayed when their water bills are high despite years of conservation during the drought, but they pay their bills without protest.

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*The Alameda County Water District has not been completely transparent with the public about the role employee compensation has played in rate increase decisions: regular increases to the salaries and benefits paid under generous labor contracts have made ACWD employees the highest paid within county water districts in California.*

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Last year, however, ratepayers in the Alameda County Water District (ACWD) were so upset by years of rate increases that they were driven to action: their average water bills had increased at an annualized rate of 6.1% since 2003, even in years when consumption decreased significantly with conservation. As a result, the Grand Jury chose to examine the district's practices to better

understand what drove rate decisions and the role the public can play in the process.

The Grand Jury's investigation showed that, while water rates at ACWD are fairly comparable to those in other districts, ACWD has not been completely transparent with the public about the role employee compensation has played in rate increase decisions: regular increases to the salaries and benefits paid under generous labor contracts have made ACWD employees the highest paid within county water districts in California.

Transparency in this instance is especially important because ACWD, like most other water districts in California, operates as a functional monopoly. It is simply too expensive and too inconvenient for individual consumers to get their water any other way, so they are forced to take what is available. While consumers are offered an opportunity to protest rate increases they believe are unfair, as a practical matter ACWD has the ability to impose rates sufficient to cover whatever costs its board decides are reasonable. The Grand Jury believes the residents of southern Alameda County deserve to know more than they are currently being told regarding why their water bills rise each year.

## **BACKGROUND**

ACWD began its operation as an independent water board on December 30, 1913. Today, it serves 81,000 customers in the southern part of Alameda County including the cities of Newark, Fremont and Union City, representing a population over 350,000. The district's fiscal year 2016-2017 budget for operations and capital expenditures was \$119.6 million, and water sales for that year amounted to \$86.3 million.

ACWD is governed by a five-member board of directors elected to staggered four-year terms. It employs 230 full-time employees. The district has an AAA Standard & Poor's credit rating and an Aa2 Moody's credit rating, both of which are excellent.

After property tax revenue was limited by the passage of Proposition 13 in 1978, local governments began to use special taxes, user fees and benefit-based assessments to raise additional funds for public services like water. In reaction to the increasing property tax bills that resulted, which was what Prop 13 was supposed to fix, Proposition 218, the "Right to Vote on Taxes Act," passed in 1996. Prop 218 requires two-thirds voter approval of local taxes, and property-related assessments, and gives voters the right to repeal or reduce certain local charges by initiative. Agencies – like ACWD – that provide essential public services – like water – are exempt from most Prop 218 restrictions, such as voter approval of increases, but are subject to provisions regulating how ratepayers can protest increases.

As a result, despite the restrictions of both propositions, ACWD and other water agencies can increase rates with a simple vote of their boards. Prior to a vote, they must provide written notice by mail 45 days prior to a public hearing with the following information:

- The amount of the fee or charge proposed to be imposed
- The basis upon which the fees or charges were calculated
- A statement regarding the reason for the new or increased fees
- The date, time and location of the public hearing regarding the fees

Prop 218 provides that a proposed water rate increase may not be imposed if a majority of the owners of identified parcels within the district submit written objections. Of the 81,000 ACWD customers, a majority means that 40,500 must submit written protest letters for a fee increase

to be denied. There is very little probability that such a number would ever be reached, thereby making inevitable any increase the board decides to impose.

## **INVESTIGATION**

In its investigation, the Grand Jury reviewed state reports and websites, newspaper articles, videos of ACWD board meetings, and detailed material provided by ACWD. These documents dealt with governance, finance and budget, comparative practices, current challenges facing water districts in California, transparency of deliberations, decision-making and performance. In addition, the Grand Jury spoke with ACWD board and management representatives.

The central issues of the citizen complaints were:

- Salaries and benefits for the 230 full time ACWD employees are generous, with cost of living adjustments (COLA) and increases given even during years of recession.
- Rates have increased significantly over the past 10+ years, with a lack of transparency as to why.
- Customers do not understand why they are paying higher water bills while using less water, as required in a drought.
- The protocols to object to a rate increase under Prop 218 are difficult, effectively removing any possibility of a successful protest.

The Grand Jury learned that ACWD customers turned out in record numbers at an ACWD board meeting on February 9, 2017, to protest a proposed rate increase. Many ratepayers objected to the district's lack of clarity regarding the reasons behind the rate increase.

### ***Salaries and Benefits of ACWD Employees***

As in any business, employee salaries and benefits are a significant expense. The Grand Jury learned that regular and substantial increases to ACWD employee compensation and the district's decision to prefund generous retirement benefits are significant drivers behind annual water rate increases in the district.

According to a 2016 State Controller's Office report on more than 500 water enterprises in California, ACWD employees have the highest average wages of \$116,623 (the next highest average being \$111,697). Of the 3,063 special districts in the state, ACWD employees have the 12th highest average wages. ACWD justifies the higher compensation because of its proximity to

Silicon Valley. The Grand Jury heard testimony from one district representative who was proud that ACWD employees have never gone on strike or protested with any work stoppages.

The average cost of benefits per employee at ACWD is \$55,688 per year. The average cost of benefits per year for an ACWD retiree is \$24,000 (primarily healthcare), which is about three times more than

*Regular and substantial increases to ACWD employee compensation and the district's decision to prefund generous retirement benefits are significant drivers behind annual water rate increases in the district.*

what the County of Alameda pays for its retiree benefits. Until July 1, 2014, ACWD paid 100% of medical, dental and vision premiums/coverage for employees and their dependents. Employees currently pay 1% of their salaries for health insurance, with dental and vision still fully paid by the district. Employees are also eligible to receive \$5,000 per year in tuition reimbursement for taking courses related to their employment outside of normal working hours. Union employees currently contribute 8% of their salaries toward their pensions, while management/confidential/professional employees contribute 5.5%.

ACWD cost of living adjustments (COLAs) have been very generous. The following chart compares the ACWD COLAs to those given to social security recipients in the same year; ACWD workers received nearly twice as much over the ten-year period:

Year	ACWD COLA	Social Security COLA	Year	ACWD COLA	Social Security COLA
2008	4.0%	5.8%	2013	2.0%	1.5%
2009	4.0%	0.0%	2014	2.35%	1.7%
2010	4.0%	0.0%	2015	2.5%	0.0%
2011	4.0%	3.6%	2016	3.0%	0.3%
2012	4.0%	1.7%	2017	3.0%	2.0%

District customers complained that these COLAs were unreasonable, especially those awarded during recession years when many ratepayers' salaries as well as those of other public agencies stagnated. ACWD explained that the high COLAs after 2007 were set as part of a long-term contract with the union, signed before the recession. Nevertheless, the Grand Jury understands

the public’s frustration with the lack of “shared sacrifice” on the part of ACWD employees and management during times of financial hardship.

The Grand Jury also investigated ACWD’s management compensation. ACWD’s “minimum” management salaries range from \$149,000 to \$190,000. The “maximum” management salaries for ACWD ranges from \$188,000 to \$236,000.

In summary, ACWD employee compensation is some of the most generous offered in the state. The Grand Jury is concerned that the practice of annually granting relatively substantial increases will mandate annual rate increases for customers, regardless of the other many factors that should affect rates.

***Transparency and Clarity of ACWD in its Communications with the Public about Rates***

ACWD has raised rates in every year but one for two decades. The average water bill has increased 143% over 15 years (from \$49.41 in July 2003 to \$120.31 in July 2018), including during times of significant conservation by consumers. The table below, derived from ACWD finance department data, describes what the average ACWD customer has been charged each year from 2008 through 2017:

Effective Date	2/1/08	2/1/09	2/1/10	3/1/11	2/1/12	2/1/13	2/1/14	7/21/14	5/1/15	3/1/17
Bi-Monthly Commodity Charge	\$54.92	\$58.21	\$63.34	\$68.40	\$72.50	\$72.50	\$77.58	\$77.58	\$77.58	\$93.08
Bi-Monthly Service Charge	\$10.08	\$10.68	\$11.62	\$12.55	\$14.93	\$29.86	\$31.95	\$31.95	\$41.54	\$49.84
Drought Surcharge	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$10.26	\$10.36	\$0.00
<b>TOTAL</b>	<b>\$65.00</b>	<b>\$68.89</b>	<b>\$74.96</b>	<b>\$80.95</b>	<b>\$87.43</b>	<b>\$102.36</b>	<b>\$109.53</b>	<b>\$119.89</b>	<b>\$129.48</b>	<b>\$142.92</b>
% Increase From Prev. Year	4.5%	6.0%	8.8%	8.0%	8.0%	17.1%	7.0%	8.0%	8.0%	10.4%

Many factors affect water rates, such as increasing capital costs from aging infrastructure and seismic improvements, environmental regulations, sharply reduced revenues from the drought combined with increased costs of purchasing water, electricity and chemicals used to treat water.

The Grand Jury, however, learned that a key factor behind ACWD rate increases in recent years is increased operating expenses caused by growing labor costs.

The Grand Jury acknowledges that ACWD has significantly increased its public outreach, and has been awarded a Certificate of Transparency from the Special District Leadership Foundation since 2015, which recognizes “its outstanding efforts to promote transparency in its operations and governance to the public and other stakeholders.” In 2016, the ACWD hosted a series of seven well-publicized public workshops to discuss district finances, along with their mailing of Proposition 218 notices to the public, their Aqueduct newsletter and general information included with standard water bills. A concerted effort by ACWD was made to engage the public in the financial and operational status of the water district.

Nevertheless, the Grand Jury remains concerned that the district is far from candid in its communications to customers about why rate increases are needed. In its most recent communications regarding the rate increase, ACWD said that the drought-related water shortage and declining utilization were the principal reasons for the increase. It has regularly told the public that rising “water supply costs” explain why the district’s expenses have increased, but did not make it clear that labor costs are embedded in the water supply figure.

The Grand Jury learned from ACWD records that the two most recent rate increases (20% in March 2017 and 5% in March 2018) will generate approximately \$24 million. Labor-related expenses (salaries and benefits for current employees, post-employment medical benefits for former employees, and pre-funding for future pension and retiree health care benefits) will consume approximately \$11.5 million or about 48% of this additional revenue. Similarly, approximately 40% of the additional revenue generated by rate increases in fiscal year 2014-2015 was used for labor and other employee costs.

If labor costs are addressed at all, the discussion is indirect: the Aqueduct Winter 2015 newsletter from ACWD spoke about “the high cost of doing business in the Bay Area”; the district’s “Notice of Proposed Increase in Water Rates” to residents in late 2016 advanced seven reasons why rates were rising, but only one of its bullet points touched on labor costs by identifying “fund retiree benefits obligations.”

Mostly, however, labor costs are not mentioned. On the rate protest page on its website, the district’s two-page fact sheet does not discuss labor costs; and the message from ACWD’s general



manager in the Aqueduct Winter 2017 newsletter said that rate increases were necessary because of the drought, rising water treatment costs, and aging infrastructure – again, no mention of labor costs.

The Grand Jury acknowledges that, unlike most governmental bodies in California, ACWD has budgeted for advanced funding of pension and retiree healthcare liabilities in an effort to fund these over the next 20 years. Making these payments over a 20-year period instead of 30 will save ACWD's ratepayers approximately \$58 million in total payments. Once fully funded, the district can limit its annual contributions to these funds to the value of benefits earned during the current year only. We commend ACWD for doing what other California entities have been unable to do; funding these liabilities should reduce pressure on water rates in the long run.

Nevertheless, with such a significant portion of the revenue generated from the recent rate increases allocated to employee compensation and benefits, the Grand Jury concludes that ACWD should have provided this information in a more transparent and easily understood manner than was provided in the numerous recent outreach events, newsletters and notifications of rate increases.

### ***Paying Higher Bills While Using Less Water***

It is understandably frustrating for customers to be consuming less of a commodity and paying more for it. It is helpful to have an explanation of why this happens with water use.

Simply put, using less water reduces revenue to the water district by a greater degree than it reduces the expenses of the water district. This has to do with a fee structure that is heavily

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*It is understandably frustrating for customers to be consuming less of a commodity and paying more for it.*

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weighted to the rate of consumption that can be highly volatile and expenses that are heavily weighted to the fixed costs of operation. Fixed costs (plant, equipment, labor, debt) are about 70-80% of the

ACWD budget. However, the fixed service charge portion of customer water bills is approximately 30-35%, with the balance dependent on the amount of water used.

This produces the phenomenon that, when consumption is reduced significantly, as it was during the drought, ACWD still has to pay significant fixed costs, while receiving substantially less revenue from customers. Therefore, the per-unit cost of water has to go up to balance the



budget. This fact, though understandable, is nonetheless perplexing to ratepayers who are using less water and paying more for it.

Some members of the ACWD Board are considering ways to better align its revenues with actual costs, not overall expenses. There are two downsides to this approach. First the fixed costs – facilities, equipment, etc. – would be covered by higher hook-up fees, developer fees and perhaps even general tax revenue. This is likely to be seen or experienced as a more regressive form of tax or fee collection. Second, variable costs and their corresponding portion of the total fees paid would actually go down, as these costs (including the cost to purchase water and chemicals) are low when compared to the fixed costs. This change would result in a lower cost for additional water consumption, which might discourage much-needed water conservation. One controversial alternative would be to balance this by a sustainable increase in hook-up, developer's fees and general tax revenue to reflect more closely, but not actually capture all of the fixed costs. Another alternative is to tier rates or maintain the portion of the fees that are driven by use, up to a certain level of modest consumption, and increase the fees for excessive use as a way of discouraging wastefulness.

The Grand Jury appreciates this effort on the part of the district and encourages it to pursue this change in an open and transparent manner with the citizens it serves.

### ***Protest Method***

Proposition 218, passed by state voters in 1996, established the rules for stopping a rate increase. A majority (50%+1) of property owners or tenants who pay a water bill directly within the service district must submit written protests in order to prevent the provider from raising rates as proposed. Although ACWD received a record number of 6,598 protests this year, it is virtually impossible for the 40,500 threshold to be achieved. By comparison, the total voter turnout in the closely contested 2016 Fremont mayoral election was only 42,000. This threshold, though not created by ACWD, makes customers feel as if the protest method is “rigged,” giving unlimited power to the five-member ACWD board to set rates for all customers.

The Grand Jury commends the ACWD for allowing customers to file a protest electronically via email or by filling out a form on their website. This option is not required by law, but ACWD acknowledged that the online process was more convenient for its customers.

## CONCLUSION

When rates need to rise to support higher labor costs, ACWD should make the case on its merits rather than embed these costs under the water supply categorization. ACWD must explain to the public the need to retain quality employees for safety and continuity of care with the district's precious water supply.

The Grand Jury appreciates that ACWD continues to provide a reliable supply of high quality drinking water to its customers, and thanks the district for its cooperation with this investigation. We acknowledge that the business of running a public utility requires specialized knowledge that is not always easily communicated to ratepayers.

Nevertheless, board members are elected to be stewards of this process and stewards of the finances involved. They have a duty to ensure that citizens are paying a fair and equitable price for their water. When rates can be raised through a simple vote of a five-member board, the decision can appear to be out of the public's control. The public deserves assurances from the board that their hard-earned money is being spent as efficiently as possible. While the 230 ACWD employees are entitled to competitive salaries with good benefits, the public deserves assurance that the board is sensitive to the impact of employee costs on rates, and that it negotiates labor contracts in good faith on behalf of the ratepayers who have limited powers to protest a rate increase.

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## FINDINGS

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|------------------------------|--|
| <i><u>Finding 18-35:</u></i> | The Alameda County Water District is not sufficiently transparent with its customers about the costs of current employee compensation and retiree benefits, and how these impact rate increases. |
| <i><u>Finding 18-36:</u></i> | Droughts can significantly reduce the revenue of the Alameda County Water District, while the fixed costs of providing quality water remain high.  |
| <i><u>Finding 18-37:</u></i> | The Alameda County Water District has provided overly generous salaries and benefits to its employees over the years, even in times of economic downturns.                                       |

## **RECOMMENDATIONS**

- Recommendation 18-33:* In all future rate increases, the Alameda County Water District must clearly indicate the percentage of the rate increase revenues attributable to labor and benefit expenses.
- Recommendation 18-34:* The Alameda County Water District must educate the public about the impact of droughts on ACWD revenues and the agency's ability to provide quality water and service.
- Recommendation 18-35:* The Alameda County Water District must educate the public on the true nature of the fixed and variable costs, the impact of water conservation on rates, and the components of the water bill received by each household.
- Recommendation 18-36:* When negotiating future compensation for employees, the Alameda County Water District must justify its negotiating position based on salary and benefit data from other Bay Area government agencies, including cities and counties, and should not look exclusively to compensation paid by other water districts.

## **RESPONSES REQUIRED**

Board of Directors, Alameda County Water District  
Findings 18-35 through 18-37  
Recommendations 18-33 through 18-36



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## INTER OFFICE MEMORANDUM

**TO:** Sabrina B. Landreth  
City Administrator

**FROM:** Adam Benson  
Budget Administrator

**SUBJECT:** City's Response to the 2017-18 Alameda  
County Grand Jury report on Unfunded  
Retiree Healthcare

**DATE:** August 15, 2018

Below is the City's response to the Findings and Recommendations included in the Alameda County Grand Jury's report titled, "Oakland's \$860 Million Crisis: Unfunded Retiree Healthcare" for FY 2017-18. Staff appreciates the Grand Jury's detailed analysis of this complex, multifaceted issue. Staff would like to assure the Alameda County Grand Jury, city employees, investors, and Oakland residents alike that the Administration takes the unfunded OPEB liabilities seriously and is actively working on a comprehensive plan to address this matter.

### RESPONSE TO FINDINGS

***Finding 18-1:*** The city of Oakland's current method of funding OPEB benefits underfunds its annual required contribution by at least \$40 million.

**RESPONSE:** The City agrees with this finding.

**EXPLANATION:** The City's July 1, 2017, Other Post-Employment Benefit ("OPEB" or "Retiree Medical") Actuarial Valuation Report – which was finalized after the Grand Jury's report was released – shows that the City's OPEB contribution as of June 30, 2018, was \$37.22 million against an Annual Required Contribution ("ARC") of \$72.48 million, approximately \$35.26 million less than the ARC.<sup>1</sup>

***Finding 18-2:*** The city of Oakland currently has no meaningful plan to address its \$860 million unfunded OPEB liability, jeopardizing the city's long-term financial viability.

**RESPONSE:** The City agrees that the magnitude of the unfunded OPEB liability poses a risk to the City's long-term financial health.

**EXPLANATION:** The City has however taken steps to begin addressing these liabilities, even if incremental. These steps include:

- The City Council authorized a \$20 million contribution to the OPEB trust fund (\$10 million per year) in the FY 2017-19 Adopted Budget on a one-time basis (this is an amount that is contributed above the implicit and explicit benefit payments);

<sup>1</sup> City of Oakland, GASB 43/45 Actuarial Valuation Report as of July 1, 2017, June 2018. The City's total retiree medical contribution includes both implicit and explicit benefit payments as well as a \$10 million annual contribution to the OPEB trust fund authorized by the City Council in the FY 2017-19 Adopted Budget.

- The City Council authorized \$150,000 in the FY 2018-19 Midcycle Budget for the City to develop an OPEB funding policy using experts in municipal finance, medical benefits, and actuarial sciences. This report is due back to the City Council in January 2019; and,
- The City is currently engaged in negotiations/arbitration with the International Association of Fire Fighters, Local 55 ("IAFF" or "Local 55") which represents sworn Fire Fighters. Retiree medical reform is a major City proposal that is under consideration by an outside Arbitrator.<sup>2</sup> The City's Memoranda of Understanding ("MOU") with other labor unions do not expire until June 30, 2019.

The Grand Jury correctly notes that the City's OPEB funding challenges are many years in the making. Any solution will require a multi-year commitment, that takes into consideration the impacts on active and retired employees and their families as well as the financial health of the City and burdens on taxpayers.

***Finding 18-3: Rapidly increasing retiree health costs are squeezing city budgets and reducing funding for essential city services.***

RESPONSE: The City agrees with this finding.

EXPLANATION: Absent corrective action, the City is projecting total retiree medical benefit payments to increase by 85% over the next 10-years, rising from \$27.2 million in FY 2017-19 to more than \$50.26 million by FY 2026-27.<sup>3</sup> Any growth in expenditures that exceeds the growth in revenues will reduce the availability of funding for other essential city services.

***Finding 18-4: The City of Oakland has no revenue stream (anticipated revenue growth, new taxes or new bonds) sufficient to make payments that will amortize its unfunded OPEB liability over the next 20 or 30 years.***

RESPONSE: The City agrees with this finding.

EXPLANATION: The City needs to contribute an additional \$35.26 million per the most recent actuarial valuation to fully fund the ARC. Even under the most robust growth scenarios, the City cannot rely upon revenues alone to achieve this recommended funding level. Strategic management of the City's limited resources is necessary to fully fund the ARC and paydown the OPEB unfunded liability over a reasonable period. Any approach to achieving this funding objective will require an evaluation of the current benefit levels as well as potential new revenue sources.

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<sup>2</sup> Oakland City Charter (Article IX, Section 910) provides binding arbitration for uniformed members of the Police and Fire Departments. After bargaining in good faith and upon the declaration of impasse, contract negotiations are referred to an impartial, non-City arbitrator for settlement. The arbitrator's award is final and binding on all parties.

<sup>3</sup> City of Oakland, GASB 43/45 Actuarial Valuation Report as of July 1, 2017, June 2018.

**To: Sabrina B. Landreth, City Administrator**

**Subject:** City's Response to the 2017-18 Alameda County Grand Jury report on Unfunded Retiree Healthcare

**Date:** August 15, 2018

Page 3

***Finding 18-5:*** Solving Oakland's OPEB problem will require substantial political will and the cooperation of Oakland's bargaining units to make complex and unpopular structural changes to Oakland's retiree benefits program.

**RESPONSE:** The City agrees with this finding.

**EXPLANATION:** The City cannot solve its OPEB funding challenges through additional contributions alone, particularly when limited resources are needed to: fund other fixed benefit cost increases (e.g., pensions and active employee medical costs) and meet the high demand for additional services throughout the City (e.g., illegal dumping, affordable housing, homelessness, etc.). Solving this challenge will require tough decisions and a multi-year commitment from policymakers. As stated previously, because the City has binding arbitration with public safety employees, any structural benefit reforms with sworn public safety employees could also require an award from an impartial, outside arbitrator.

## **RESPONSE TO RECOMMENDATIONS**

***Recommendation 18-1:*** The city of Oakland must develop and implement a long-term comprehensive plan to address its \$860 million unfunded OPEB liability.

**RESPONSE:** See the discussion on Finding 18-2 above. The City agrees with this recommendation.

**EXPLANATION:** In addition to authorizing one-time contributions to the City's OPEB trust fund (\$20 million in the FY 2017-19 Adopted Budget), the City Council authorized funding for staff to engage outside experts to assist in the development of an OPEB funding policy, including benefit reform strategies. This report is due back to City Council in January 2019.

***Recommendation 18-2:*** Any long-term OPEB plan must include discussion of additional city funding and substantial structural change in benefits that are responsible for these growing liabilities.

**RESPONSE:** See the discussion on Finding 18-2 through Finding 18-5 above. The City agrees with this recommendation.

**EXPLANATION:** It must be noted that there is no quick fix to the OPEB funding challenge. Furthermore, the City does not unilaterally control the timeframe for developing and implementing retiree benefit reforms, as it is a mandatory subject of bargaining. Any plan to address the City's OPEB funding liabilities will require careful financial and actuarial analysis, and is subject to the bargaining process under the Meyers-Milias Brown Act ("MMBA") and binding arbitration for sworn public safety employees pursuant to the City Charter.

***Recommendation 18-3:*** The city of Oakland must develop a long-term cost-containment plan for OPEB that gives serious consideration to the options discussed by the League of California Cities and other California cities that have addressed this issue, including but not limited to:

- Capping or reducing premium contributions for current employees.

- *Replacing defined benefits OPEB plans with defined contribution plans.*
- *Eliminating portions of the benefits, like dental and vision care.*
- *Limiting the length of medical coverage (e.g., to Medicare age).*
- *Eliminating or reducing coverage for spouses and children.*

RESPONSE: The City partially agrees with this recommendation.

EXPLANATION: As discussed in Finding 18-2 above, the City is currently engaged in negotiations with IAFF, Local 55, in which some of these recommendations are under consideration by an impartial arbitrator. Other MOUs with the City's labor unions do not expire until June 30, 2019, the earliest point at which any retiree medical benefit reforms could be contemplated.

Capping the City's contribution toward monthly medical premiums for retirees (or eliminating or reducing coverage for spouses and children) could have a significant impact on the future growth in the City's unfunded OPEB liabilities, but, as stated previously, are subject to bargaining with labor unions.

The City provides its active and retiree medical benefits through the California Public Employees' Retirement System ("CalPERS") under the Public Employees' Medical and Hospital Care Act ("PEMHCA"). There are certain minimum requirements under California code that must be met so long as the City participates in this statewide benefit program. Thus, the City is not permitted to limit the length of medical coverage to Medicare age and must provide some minimum level of defined benefit coverage to retirees (known as the "PEMHCA minimum").<sup>4</sup>

The City does not provide retirees with dental or vision benefits. As such, modification to these benefit programs will not address the City's unfunded OPEB liability.

***Recommendation 18-4:*** *The city of Oakland must consider requiring current and future employees to share in paying for the cost of OPEB benefits.*

RESPONSE: The City agrees with this recommendation.

EXPLANATION: It should be noted that retirees currently share in monthly medical premiums. The level of employee contribution, however, varies significantly by employee group (Miscellaneous, Fire, and Police). An equally important consideration to requiring employees to contribute toward their benefit is capping the City's future contribution.

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<sup>4</sup> See California Government Code §22750-22948.

The table below shows the 2018 pre-Medicare eligible monthly premium cost sharing by employee group for the Kaiser Bay Area HMO plan at the family coverage level. As shown in the table, the City's contributions for Miscellaneous employees is capped, while the City's contribution for Police and Fire is subject to formulaic increases.<sup>5</sup>

**Table 1. Employee and Employer Monthly Contribution Toward Retiree Healthcare**  
Monthly Premiums – Kaiser Bay Area (Family Coverage)

Employee Category	Employee Monthly Contribution	City Monthly Contribution	Total Monthly Premium	Is the City's Contribution Capped?
Miscellaneous	\$1,469	\$558	\$2,028	Yes
Fire (Sworn)	\$364	\$1,664	\$2,028	No
Police (Sworn)	\$444	\$1,584	\$2,028	No

**Recommendation 18-5:** *City of Oakland staff must provide elected leaders and the public with clear and understandable reports, including graphs and charts, illustrating the impact of current OPEB funding decisions as well as the cumulative impact of deferred costs of these programs over a 15- to 20-year period.*

RESPONSE: The City agrees with this recommendation.

EXPLANATION: Staff will continue to keep the Mayor and City Council informed of unfunded retirement liabilities through periodic staff reports, the City's biannual OPEB actuarial valuations, the five-year financial forecast, and the regular budget process.

**Recommendation 18-6:** *The city of Oakland must decouple or separate the benefits offered to current public safety employees from those paid to retired police and firefighters, ending the pooling of active employees with retirees for rate setting.*

RESPONSE: The City partially agrees with this recommendation.

EXPLANATION: The City agrees that structural reform of the existing retiree healthcare benefit requires the "decoupling" of active and retiree benefits, which can be achieved through a Section 125 cafeteria plan. However, as a participating agency in the CalPERS health system, the City does not have direct control over rate setting or the pooling of active and retired employees for rate setting purposes.

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<sup>5</sup> California Government Code §22892(c) states that, "A contracting agency may, notwithstanding the equal contribution requirement of subdivision (b), establish a lesser monthly employer contribution for annuitants than for employees, provided that the monthly contribution for annuitants is annually increased to equal an amount not less than the number of years that the contracting agency has been subject to this subdivision multiplied by 5 percent of the current monthly employer contribution for employees, until the time that the employer contribution for annuitants equals the employer contribution paid for employees. This annual adjustment to the minimum monthly employer contribution for an annuitant as authorized by this subdivision shall not exceed one hundred dollars (\$100)." For Miscellaneous employees the City contributes \$425 per month plus the PEMHCA minimum (\$133 per month in 2018).



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For questions please contact Adam Benson, Budget Administrator, (510) 238-2026.

Respectfully submitted,

*//s//*

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ADAM BENSON  
Budget Administrator



FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2018 SEP -6 PM 4:41  
**INTER OFFICE MEMORANDUM**

**TO:** Sabrina B. Landreth  
City Administrator

**FROM:** Michele Byrd, Director  
Housing & Community  
Development

**SUBJECT:** City's Response to the 2017-18  
Alameda County Grand Jury report  
on Affordable Housing Oversight in  
Oakland

**DATE:** August 15, 2018

Below is the City's response to the Findings and Recommendations included in the Alameda County Grand Jury's report titled, "Affordable Housing Oversight in Oakland" for FY 2017-18. Staff appreciates the Grand Jury's interest in the critical issue of affordable housing in Oakland and the need to ensure that public funds are appropriately invested in the development of affordable housing and that the resulting dwelling units properly maintained. The City of Oakland is deeply committed to the development and maintenance of affordable housing and appreciates the opportunity to respond to the Grand Jury's Findings and Recommendations.

**RESPONSE TO FINDINGS**

***Finding 18-22:*** *Loans from the City of Oakland for affordable housing rental projects are typically provided for a term of up to fifty-five years and, in exchange, rents are restricted for that same period, making the rents affordable to lower-income households. No repayment is expected until the end of the loan period or upon transfer of the property, giving the public the perception that these transactions are grants of public money rather than traditional loans.*

**RESPONSE:** The Respondent disagrees partially with this finding.

**EXPLANATION:** Affordable Housing Loan Terms – Rental Projects

Affordable Housing Rental Project loans are explained in detail in the City of Oakland's two-year budget cycle Notice of Funding Availability (NOFA) under General Loan Terms. The loan structure is as follows:

Loans for rental projects are typically provided at a simple interest rate of three percent (3%) per annum, for a term of fifty-five (55) years. Payments of interest and principal will be due from excess cash flow from operations after payment of operating costs, senior debt, reserves, and deferred developer fee. To the extent payments cannot be made, they will be deferred for the term of the loan. All loans are due on sale, refinancing, transfer (except to a related entity, such as a limited partnership, subject to City approval) or at the end of the fifty-five (55) year term. City loans are evidenced by a promissory note secured by a deed of trust on the project. A loan agreement will specify all development obligations. Post-occupancy use restrictions will be enforced through a regulatory agreement recorded against the project-including both the land and the improvements. The minimum term for affordability restrictions is 55 years. Structuring the City's financial assistance as a surplus cash flow loan is standard in the affordable housing industry. Most development assistance to affordable housing projects from local, state, and federal agencies is provided in the same way. These loans are not like a typical, conventional 30-year home mortgages, thus it is understandable that the public could

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perceive these loans as more like grants of public money because of the complexity of affordable housing subsidy layering requirements. Hopefully the Grand Jury report and these responses will assist in highlighting the distinctions of this type of funding for the public.

***Finding 18-23:*** *Oakland's Housing and Community Development Department has failed to inspect and audit all its affordable housing stock annually, putting lower-income households renting at projects like E.C. Reems at risk of living in substandard conditions.*

**RESPONSE:** The Respondent disagrees wholly with this finding.

**EXPLANATION:** As stated above, post-occupancy restrictions, including ongoing maintenance obligations, are enforced through a recorded regulatory agreement against the project for a minimum term of affordability of 55 years.

Under the regulatory agreement, the City reserves the right to monitor and inspect the project.

There are two components to post-occupancy compliance monitoring: (1) annual reports; and (2) physical inspection

**Annual reports.** The owner must submit an annual report to the City, on a form provided by the City, which, at a minimum, states for each assisted unit the rental rate (including any rental assistance received on behalf of the tenant household) and the income, household size, race and ethnicity of the occupants. The income information required under this report is determined in accordance with the provisions of Exhibit B to the regulatory agreement (see Attachment A).

In addition, the owner must submit an annual audited financial report for the property to the City, in a form satisfactory to the City, which includes an accounting of all revenue (including rental revenue, rental assistance payments and miscellaneous revenue), operating expenses, debt service payments, deposits to reserves and distributions to the owner or other parties. The report must include certification of the required deposits to, withdrawals from and balances of the replacement and operating reserves.

Every year, the City sends out an annual compliance letter to project owners requesting the following financial reporting documentation:

- The checklist of annual program monitoring report forms
- Annual compliance report & certification
- Annual rent and tenant income report
- Current property and liability insurance certificates
- Budget
- Operating cost and cash flow reports
- Proof of segregated account balance (security deposit)
- Copies of the most recent audits

**Physical Inspection.** In addition to the annual reporting documentation, project owners are required to permit representatives of the City to enter and inspect the property for compliance with obligations under the regulatory agreement upon 24 hours' notice of such visit to the owner or owner's management agent, as permitted under applicable law.

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A total of 15% of the restricted units (randomly selected) in each affordable housing project funded with City funds are inspected every one to three years depending on monitoring results, to ensure the owner's performance of its obligations to operate the property under the terms of the regulatory agreement.

In the case of E.C. Reems Gardens, the City's Housing and Community Development Department conducted numerous site visits and physical inspections of the property, by itself and in concert with HUD. A chronology of City inspections is attached.

It is important to note that the E.C. Reems Gardens project failed physical property inspections required by HUD's Real Estate Assessment Center (REAC). The REAC inspection reports cite repeated and serious deficiencies for items such as, missing/damaged/expired fire extinguishers; missing/damaged/inoperable range/stove/refrigerator; missing/damaged mailboxes; and broken/missing hand rails on walkways/step. In February 2014, HUD approved a disbursement from the Reserve Fund for Replacements in the amount of \$230,226 for the sole purpose of curing the physical deficiencies cited under the REAC. However, based on HUD's FYE 2014 Audited Financial Statement, approximately \$219,000 of the \$230,226 was inappropriately used by the owner to pay for related services by BLH Construction, an affiliate of Corporation for Better Housing, for work completed in FY 2010 or earlier and was not used to cure the physical deficiencies identified by the REAC inspections. This usage of the Reserve Fund was deemed ineligible by HUD.

***Finding 18-24:*** *The Housing and Community Development Department's failure either to provide building inspection training for staff or partner with Oakland's Building Services Department to inspect its affordable housing stock inhibits the agency's ability to respond to tenant complaints and protect the residents properly.*

**RESPONSE:** The Respondent disagrees wholly with this finding.

**EXPLANATION:** HCD recruits and hires rehabilitation advisors that possess the required education and training necessary to inspect residential and commercial projects, such as E.C. Reems Gardens Apartments, applying the Oakland Building Maintenance Code, Chapter 15.08 of the Oakland Municipal Code. The finding that HCD failed to partner with Oakland's Building Services Department is incorrect, both generally and specifically as it relates to E. C. Reems Gardens Apartments. As noted in response to Finding 18-23, the City conducted numerous site visits and physical inspections of the property.

On July 29 and July 30, 2014, the City of Oakland Housing Development staff and specialty Combination Inspectors (Code Enforcement inspectors) conducted a monitoring visit to address health and safety concerns of the tenants at E.C. Reems Gardens.

In July 2016, HCD engaged and paid for EMG Consultants to conduct a Physical Needs Assessment of 100% of the units at the project.

For this project, as well as all City funded affordable housing projects, the City's number one concern is the ongoing health and safety of the residents, as well as, ensuring the financial health of the project.

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**Finding 18-25:** *The Housing and Community Development Department's use of outdated technology to catalogue and manage data regarding the city of Oakland's affordable-housing stock prevents consistent oversight of those projects, putting public funds at risk.*

RESPONSE: The Respondent disagrees partially with this finding.

EXPLANATION: The City, in conjunction with its IT Department, regularly schedules technology upgrades tied to the City's budget, for example, computer upgrades, program development and software upgrades cycle.

HCD is working with the IT Department to develop a software program that will accommodate the needs of the housing unit, as well as all units in the department. Due to budget constraints and staffing issues, this process has been going slower than expected. Nevertheless, HCD maintains data using its legacy systems and continues to collect and record inspection data into those systems.

**Finding 18-26:** *Failure to maintain consistent policies related to the selection process for affordable housing developers, especially in financial strength of applicants, invites project management failures like the one that took place at the E.C. Reems Apartments.*

RESPONSE: The Respondent disagrees wholly with this finding.

EXPLANATION: The City provides financial assistance to developers of low and moderate income housing, administered by the Housing unit in HCD, through a formal Notice of Funding Availability (NOFA) competitive process.

The NOFA sets forth in voluminous detail the City's process, policies and criteria for selecting projects for funding. Applications received in response to the NOFA are first reviewed for completeness and eligibility by City staff and then evaluated and ranked per specified criteria for presentation to the City Council for final approval.

Qualifying applications are reviewed for compliance with relevant City policies and for overall feasibility. Projects are then ranked based on, but not limited to, criteria, such as organizational capacity and the project's financial feasibility.

Financial feasibility is determined through analysis of financial statements to evaluate the project's net assets, debt equity ratio, current assets and liabilities ratio, cash flow, payment and receivables cycles, growth, operating expense compared to revenue, vacancy loss, bad debt, adequacy of reserves and on-time payment of property taxes and other factors. NOFA funds are awarded to affordable housing developers that are fiscally responsible and can provide evidence that the funds will only be used for the long-term financial health of the overall project.

In addition to feasibility review, projects are evaluated based on the proven technical capacity and experience of the applicant either through staff or contracted services to plan and implement the proposed capital improvements and experience of the management company in managing affordable housing developments.

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## **RESPONSE TO RECOMMENDATIONS**

**Recommendation 18-18:** *The Oakland Housing and Community Development Department must hire and train staff capable of properly inspecting and auditing all of Oakland's affordable-housing stock annually.*

**RESPONSE:** The Respondent agrees partially with this finding. The recommendation has been implemented.

**EXPLANATION:** Prior to the release of the Grand Jury report, HCD hired an additional Residential Rehabilitation Advisor to assist the housing unit with on-going physical inspections. The rehabilitation advisors are knowledgeable and have experience enforcing compliance with the Oakland Building Maintenance Code (Chapter 15.08 of the Oakland Municipal Code). However, staffing issues between 2014 and 2017 affected the program.

In year's past, the Housing Asset Monitor, was responsible for both the financial and physical review of the project. The monitor was not a licensed contractor, architect and/or engineer and relied on the Oakland Housing Authority's Housing Quality Standards (HQS), such as ensuring running hot/cold water, a working stove, heat, lighting, ventilation, and basic wear and tear visible to the naked eye.

In 2012, HCD hired construction monitors to conduct thorough physical needs assessments for poor performing projects, including E.C. Reems Gardens. (See attached report) It became apparent that the asset monitor would benefit from the assistance of a dedicated staff person to assist with the physical monitoring. In 2014, HCD dedicated a rehabilitation advisor to the program for monitoring purposes. Unfortunately, in September 2014, the rehabilitation advisor suffered injuries that prevented him from returning to work at the City.

During the Spring of 2015, the department assigned the rehabilitation supervisor to fill in for the injured rehabilitation advisor on a limited basis. Nevertheless, from the spring of 2015 until October 2016, projects were regularly monitored, including EC Reems Gardens. In October 2016, the assigned asset monitor went on leave and did not resume her duties until June 2017. During the 9 months of her absence, regular monitoring was put on hold. Only those projects with health and safety concerns and/or major warranty of habitability issues, were monitored during those months.

As of today's date, HCD's Housing unit has two full-time housing development coordinators and two full-time residential rehabilitation advisors dedicated to asset monitoring.

**Recommendation 18-19:** *The Oakland Housing and Community Development Department must acquire a technology solution to help staff catalogue inspection, audit and other affordable-housing oversight data.*

**RESPONSE:** The Respondent agrees with this finding. The recommendation has not yet been implemented, but will be implemented in the future.

**EXPLANATION:** HCD is working internally to purchase a data-base system that is compatible with the existing IT System in place that will support the independent needs of each unit.

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Due to budget constraints, the dedicated staff person responsible for this task retired from the City in 2012, and the position has yet to be filled with a permanent employee. Currently, the individual responsible for this task has many competing assignments that take precedence over database development.

In the meantime, HCD has been working continuously with the IT Department to expand the capacity of the existing system to better support department functions, while simultaneously working on purchasing a new system.

HCD is looking at expanding the current system to include tracking for asset monitoring, including, but not limited to, outstanding physical and financial monitoring schedules. The timeline for expanding will depend on available funds to cover the costs through the City's budget.

**Recommendation 18-20:** *The Oakland Housing and Community Development Department must update policies surrounding the process for selecting affordable-housing developers to ensure that developer applicants provide sufficient information to city decision-makers about their financial capacity to build and manage these projects over the long-term.*

RESPONSE: The Respondent disagrees wholly with this finding. The recommendation will not be implemented because it is not warranted or is not reasonable.

EXPLANATION: Please review the response to Finding 18-26.

As stated in response to Finding 18-26, for over twenty years, the City has released NOFAs for new construction of affordable rental and ownership housing, and for the preservation and rehabilitation of existing affordable rental housing.

Each NOFA requires evidence that threshold eligibility requirements have been satisfied at the time of application to be considered for evaluation and ranking. The most recent NOFA is attached and includes the eligibility requirements referenced above.

For questions, please contact Michele Byrd, Director, Housing and Community Development at 510-238-3714.

Respectfully submitted,

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MICHELE BYRD,  
Director, Housing and Community Development

ALVINGROOM COURT (EC REEMS)  
ASSET MONITORING INSPECTION CHRONOLOGY

Date of Inspection	Action Requested	Results due to City
March 28, 2007 – Inspected 19 units	<p>Life Safety Concerns:</p> <ol style="list-style-type: none"> <li>1. Mgmt did not have working keys for several units. This is a reqmt.</li> <li>2. Broken stair tiles-trip hazard</li> <li>3. Mildew around Bathtubs</li> <li>4. Non-working heaters (using stove as heater)</li> <li>5. Non-working Smoke Detectors</li> <li>6. Peeling paint</li> <li>7. Inoperable kitchen exhaust fans</li> <li>8. Broken kitchen and bathroom cabinets</li> <li>9. Major housekeeping and hoarding concerns</li> </ol> <p>Tenant Files:</p> <ol style="list-style-type: none"> <li>1. Discrepancies bwt Annual Rent Income and Tenant Income Report and City's Exhibit</li> <li>2. No move-in inspections</li> <li>3. No annual re-certs</li> </ol>	<p>August 17 – Proof that Mgmt has master key for all units</p> <p>August 31 – Proof that all other items have been resolved.</p> <p><b>Beacon Property Management – Response letter dated August 23, 2007 documenting all the repairs</b></p>
May 7, 2008 –Inspected 19 units	<p>Life Safety Concerns:</p> <ol style="list-style-type: none"> <li>1. Broken stair tiles-trip hazard</li> <li>2. Soiled carpets</li> <li>3. Bathroom leaks</li> <li>4. Tenant installed Washer/Dryer w/out asking</li> <li>5. Light covers broken</li> <li>6. Tenant installed deadbolt w/out mgmt approval (against rules)</li> <li>7. Non-working heaters</li> <li>8 Major housekeeping and hoarding concerns</li> </ol> <p>Tenant Files:</p> <ol style="list-style-type: none"> <li>1. Certification of Income - discrepancies between what is reported and actual income verified</li> <li>2. No move-in inspections</li> <li>3. Inappropriate household size for unit (ex. 1 person in a 3 bedroom)</li> </ol>	<p>August 27, 2008</p> <p><b>Beacon Property Management- No response letter found in the file</b></p>
June 16, 2009 – 19 units	Life Safety Concerns:	July 20, 2009



ALVINGROOM COURT (EC REEMS)  
ASSET MONITORING INSPECTION CHRONOLOGY

	<ul style="list-style-type: none"> <li>1. Smoke detectors need batteries</li> <li>2. Peeling paint</li> <li>3. Soiled carpets</li> <li>4. Holes in the walls (various rooms)</li> <li>5. Broken living room window pane</li> <li>6. Telephone wire is hanging from street phone poll- extreme hazard to anyone using the stairs</li> </ul> <p>Tenant Files: *Nothing noted in Results letter</p>	<p><b>Beacon Property Management</b> – <b>Response letter dated July 14, 2009 documenting all the repairs</b></p>
June 15, 2010 – 18 units	<p>Life Safety Concerns:</p> <ul style="list-style-type: none"> <li>1. Toilets not flushing</li> <li>2. Soiled carpets</li> <li>3. No backyard lighting</li> <li>4. Holes/cracks in doors and walls</li> <li>5. Inoperable smoke detectors</li> <li>6. Light plate switch covers missing</li> <li>7. Aluminum foil under stove hood – needs to be removed</li> </ul> <p>Tenant Files: 1. Files are missing Tenant Income Certification form</p>	<p>July 16, 2010</p> <p><b>Beacon Property Management</b> – <b>Response letter dated July 15, 2010 documenting all of the repairs</b></p>
August 3, 2011 – 19 units	<p>Life Safety Concerns:</p> <ul style="list-style-type: none"> <li>1. Bathroom drain clogged</li> <li>2. Shower head not working</li> <li>3. Toilet not bolted to floor</li> <li>4. Toilet chain not working</li> <li>5. Missing smoke detectors</li> <li>6. Carbon monoxide detector missing</li> <li>7. Major housekeeping concerns</li> </ul> <p>Tenant Files: 1. Missing financial documentation (budgets, bank</p>	<p>September 16, 2011</p> <p><b>Alton Management Group-No Response found in the file</b></p>

ALVINGROOM COURT (EC REEMS)  
ASSET MONITORING INSPECTION CHRONOLOGY

	statements and audited financials to complete review).	
<p>August 7, 2012 – 19 units</p> <p>*At the request of the City and Enhanced Physical Condition Survey of the property was conducted by Alton Jefferson of the Alley Group</p>	<p>Life Safety Concerns:</p> <ol style="list-style-type: none"> <li>1. Bathrooms need rehab (caulking btw bathtub/floor/shower/fixtures, grout is stained, finishes are broken and inoperable, sink cabinets are broken, leaks above bathroom ceiling, broken vanities and visible signs of mold and mildew)</li> <li>2. Smoke detectors need new batteries</li> <li>3. Blistering paint</li> <li>4. Pilot light on stove not working</li> <li>5. Vacant units left unfinished</li> <li>6. Burned out light bulbs above stove</li> <li>7. Kitchen counter tops are worn</li> <li>8. Damaged interior doors</li> </ol> <p>Tenant Files:</p> <ol style="list-style-type: none"> <li>1. Missing Tenant Income Certs</li> <li>2. Missing Income documentation</li> <li>3. Missing audited financial stmt and budgets</li> </ol>	<p>(Result letter was issued on April 18, 2013 –sent to Alton Management Corp) May 20, 2013</p> <p><b>Alton Management Group-No Response found in file</b></p>
<p>September 20, 2013 – 19 units</p>	<p>Life Safety Concerns:</p> <ol style="list-style-type: none"> <li>1. Many fixtures are past their useful life and some of the issues noted in the previous year's site inspections remain unaddressed.</li> <li>2. Kitchen Items ( stove heavy soiled, burners inoperable, grease filters need replacement, light bulb in range hood need</li> </ol>	<p>(Results letter was issued on March 7, 2014 – sent to CBH Property Management. The Change of Property Manager's was done w/out the approval or knowledge of the City per Reg Agmt) April 8, 2014</p>

ALVINGROOM COURT (EC REEMS)  
ASSET MONITORING INSPECTION CHRONOLOGY

	<p>replacement, refrig handles missing, burns and knife marks in counter tops)</p> <p>3. Bathroom Items (door handles loose, bathtub finish peeling, bathroom windows do not open properly, damaged screens, slow drains, cabinet doors broken, counter tops visibly worn, shower stall is discolored and moldy and bathroom hardware is missing)</p> <p>4. Tenant installed Washer/Dryer where refrig is supposed to be installed.</p> <p>5. Smoke Detectors making noises</p> <p>Tenant Files:</p> <p>1. Missing Income documentation</p> <p>2. Income calculation done improperly</p> <p>3. Annual re-certs are overdue</p> <p>4. Requested plan to address the 2011 Auditor's Report completed in June 2013.</p> <p>5. Requested the completion of 2012 and 2013 audited financial statements and quarterly financial statements until the property has addressed the issues in Auditor's Report.</p> <p>6. Submit the annual reporting documents</p>	<p><b>CBH Property Management – No Response found in file</b></p>
March 24, 2014 – 4 units	<p>Life Safety Concerns: Inspection was performed due to a tenant complaining about mold</p> <p>1. Mold was found in units</p>	<p>Staff directed Jordan Meyer, Property Manager to forward photos of the mold repairs ASAP!</p>
July 17, 2014 – Email Notification to Inspect	<p>Email to Lori Koester, Director of Operations for CBH to inform them of the City's intent to inspect w/the City's Building Department on July 29 and July 30, 2014</p>	

ALVINGROOM COURT (EC REEMS)  
ASSET MONITORING INSPECTION CHRONOLOGY

July 29 & 30 – 2014 – 37 units (6) vacant and (2) denied access	Notice of Breach of and Default under the City of Oakland Regulatory Agreement	Letter sent out August 13, 2014. Response requested by City w/in 30 days of receipt of letter
October 16, 2014 – Letter from CBH Property Management	Letter of Project Management Plan to Cure Non-Compliant Issues Per Reg Agreement	Addressed each default item and provided a timeframe
October 21, 2014 - Meeting w/City and CBH	City met w/Lori Koester from CBH and went over each default item that needed to be addressed	Lori K promised a <b>REVISED</b> written work plan to address each of the default items outlined in the October 16, 2014 letter
October 24, 2014– <b>Revised</b> Letter from CBH	City Received <b>REVISED</b> Project Management Plan to Cure Non-Compliant Issues Per Reg Agreement	<b>CBH Property Management – Response letter with estimated completion dates of November 2014 and December 2014</b>
October 30, 2014 – email from Lori Koester	Email briefly updated some of the activities at the site. The email promised a weekly updated of specific goals and tasks w/completion dates	These updates were never provided
February 18, 2015 – Letter sent from the City	The letter addressed the failure of CBH to follow through w/the action plan set out in their letter dated October 24, 2014	Action Plan items due to the City by February 27, 2015
March 2, 2015-Email from the City to Lori Koester, CBH	The email addressed the fact that CBH failed to provide the City w/documents listed in their Management Plan letter of October 24, 2014	Action to respond to email by close of business on March 2, 2015
March 2, 2015- Email from Lori Koester, CBH to the City	Lori Koester acknowledged receiving the City's letter on February 25, 2015. Lori indicated that she spoke w/staff and they communicated that much progress has been made and has been communicated to the City.	Lori promised a response by Thursday, or earlier
March 3, 2015-Email from Joanna Ascencio – CBH Prop Mgmt	Joanna Ascencio sent a property update to all open items	<b>CBH Property Management-Response via email.</b>  <b>There were many outstanding default items that had not been addressed, especially regarding the files and security issues. The City was not satisfied with CHB's response.</b>

ALVINGROOM COURT (EC REEMS)  
ASSET MONITORING INSPECTION CHRONOLOGY

March 18, 2015-Tenant File Review	Tenant Files: 1. Missing Income documentation 2. Income calculation done improperly 3. Annual re-certs are overdue 4. Missing lease 5. Missing credit reports 6. Missing criminal background checks 7. Missing rental history verification	Letter went out April 7, 2015 requesting items to be addressed in 30 business days  <b>CBH Property Management - Unresponsive</b>
April 27, 2015 – Proposal to the City from John Stewart to take over property management		The City was ready to request funds to change management. However, HUD decided to move forward with their default.
May 29, 2015 – Tenant File Review	Tenant Files: Some progress was made but the same issues were outstanding.	Draft letter dated June 8, 2015 (letter never went out).
July 6-8, 2016 – City engaged EMG Consultants to conduct Physical Needs Assessment	103 of the 126 units were inspected (82%) 18 of the 103 units were vacant 23 units were not inspected due to either lack of key or refusal of entry by tenant	Comprehensive Report was prepared with a list of the physical conditions and cost summary

\*No further City of Oakland asset monitoring visits took place between May 29, 2015 and July 6, 2016, due to HUD filing their non-monetary default in September of 2015.

HUD's REAL ESTATE ASSESSMENT CENTER

HUD's Real Estate Assessment Center is responsible for conducting physical property inspections of projects that are owned, insured or subsidized by HUD. A passing REAC score is considered 60 points or above (out of a possible 100 points). From Years 1999-2003, the project consistently received passing REAC scores. However, starting in 2005, the projects physical inspection record began to fall below the standard of care for HUD housing that is decent, safe and sanitary.

**Table 1** below shows the history of the Project's low REAC inspection scores over the last ten years.

ALVINGROOM COURT (EC REEMS)  
ASSET MONITORING INSPECTION CHRONOLOGY

Inspection Date	Inspection Score
4/29/2005	46c
9/28/2005	51c
9/26/2007	52c
9/9/2008	57c
10/25/2011	52c
8/28/2013	54c
2/4/2014	29c
11/13/2014	40c



FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2018 SEP 6 PM 4:41  
**INTER-OFFICE MEMORANDUM**

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**TO:** Sabrina B. Landreth  
City Administrator

**FROM:** Jason Mitchell, Director  
Public Works

**SUBJECT:** City's Response to the 2017-18  
Alameda County Grand Jury report  
On Oakland's Aging Sewer System  
And How It Affects Lake Temescal

**DATE:** August 22, 2018

In June 2018, the Alameda County Civil Grand Jury published the 2017-2018 Alameda County Grand Jury Final Report, which included a section entitled *Oakland's Aging Sewer System And How It Affects Lake Temescal*. Pursuant to the California Penal Code section 933.05, the Oakland Public Works Department has prepared the following formal response to the recommendations of the Grand Jury.

**RESPONSE TO FINDINGS**

***Finding 18-30:*** *The lack of clear lines of responsibility and communication between Oakland Public Works and the East Bay Regional Park District in notifying the public about Lake Temescal closures and the reasons for those closures gives the perception that public agencies are keeping important information from the community.*

**RESPONSE:** The City of Oakland agrees with this finding.

**EXPLANATION:** The City recently developed a Sanitary Sewer Overflow Notification Protocol for Lake Temescal with the East Bay Regional Park District. The jointly developed Notification Protocol, which addresses each of the specific issues identified by the Grand Jury report, was ratified on July 12, 2018. The newly established protocol identifies the following:

- Responsible party for notification(s);
- Critical timing for corrective action;
- Chain of communication between agencies;
- Signage placement responsibilities; and
- Emergency response activity.

The newly established protocol intends to ensure public health and safety, and effective communication between Oakland Public Works and East Bay Regional Park District.

***Finding 18-31:*** *Failure to supervise third party contractors repairing Oakland's sewer lines and failure to require them to submit detailed reports of their repairs impede compliance with state reporting requirements and make it difficult to troubleshoot.*

**RESPONSE:** The City of Oakland agrees with this finding.

**EXPLANATION:** Currently, the Project Delivery Division in Oakland Public Works Department manages sewer system repair work by third-party contractors. The Resident Engineer (1)

oversees the contractor and make sure that all City's contract requirements are met and (2) is responsible for record-keeping and project reporting daily. The reporting and record-keeping issues that the Grand Jury report refers to arose during the time that the City was experiencing a City-wide labor strike by the City's unions. During the labor strike, an event occurred at Lake Temescal that needed repair.

Unfortunately, the City does not have a written protocol to oversee and verify all work by a third-party contractor when the Resident Engineer is unavailable due to a work stoppage or labor strike. The City is reviewing best practices as to how to establish a Standard Operating Procedure (SOP) for work performed by a third-party sewer contractor during a work stoppage. Additionally, please note that there is no existing SOP(s) from California agencies that we have contacted, but the City is committed to developing a plan. The City recently engaged an industry-recognized expert/consultant who is evaluating the City's entire Sewers Division, including management and operation of the entire wastewater collection system. As part of this evaluation project, the expert/consultant will make recommendations for improvements and for the City adopting state-of-the-art practices where needed.

***Finding 18-32: Oakland Public Works' current sewer related training and technical certifications focus on only a few key employees, resulting in its sewer crews lacking broad technical knowledge. This lack of depth limits operational flexibility and succession planning.***

**RESPONSE:** The City of Oakland agrees with this finding.

**EXPLANATION:** The City has an existing mandatory training program which is currently being evaluated. Establishment of additional mandatory training and education requirements is subject to negotiation with the City's organized labor partners. Alternately, the City of Oakland has recently expanded a premium-pay program to incentivize voluntary industry-specific certification of sewer crew workers. Since enactment in April 2018, five Sewers Division staff have qualified for this program by earning technical certifications from the California Water Environment Association. Also, the City will continue to fund and sponsor individual memberships to professional organizations that offer specialized training, workshops, and continuing education. This continuing education benefit is offered to all classifications of sewer workers.

***Finding 18-33: The Grand Jury learned that in two cases during 2017, onsite estimates that sewage overflows exceeded 50,000 gallons were later reduced below 50,000 gallons by a supervisor back at the office, giving the perception that the volume was reduced to avoid additional testing and reporting required by the state.***

**RESPONSE:** The City of Oakland disagrees with this finding.

**EXPLANATION:** In late January 2017, the City was engaged in several wet-weather related overflow events that resulted in sewer overflows that affected Lake Temescal. Both short-term containment, and long-term temporary mitigative measures were taken once the source of the issue was identified. Two separate overflow events affecting Lake Temescal were reported during this time. The volume estimates made by City staff were based on documented estimated flow rates and time duration(s) of overflows that were assumed to have reached the lake through the cross-connection. None of the reported volume estimates from these events exceeded 50,000 gallons. Furthermore, no revisions were ever made to the initial volume



**To: Sabrina B. Landreth, City Administrator**

**Subject: City's Response to the 2017-18 Alameda County Grand Jury Report On Oakland's Aging Sewer System And How It Affects Lake Temescal**

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estimates reported by on-site field personnel. The spill volumes were certified and published via the State's water quality monitory and reporting database (CIWQS).

The City of Oakland does agree, however, that two (2) sewer overflow onsite estimates were revised during wet-weather events that occurred in 2017, that were not associated with Lake Temescal. The City recently engaged with an industry-recognized expert/consultant who is evaluating the management and operation of the entire Sewers Division, including documentation and reporting of sewer overflows. The City will revise its processes and practices to address the perception that the overflow volumes are reduced to avoid additional testing and reporting required by the State.

### **RESPONSE TO RECOMMENDATION**

***Recommendation 18-26:*** *Oakland Public Works and the East Bay Regional Park District must establish clear lines of responsibility between both agencies, and establish a clear written protocol for communications with the public concerning sewage spills or lake closures, including reasons for the closures.*

**RESPONSE:** The City of Oakland agrees with this recommendation.

**EXPLANATION:** The City recently developed a Sanitary Sewer Overflow Notification Protocol for Lake Temescal with the East Bay Regional Park District. The jointly developed Notification Protocol, which addresses each of the specific issues identified by the Grand Jury report, was ratified on July 12, 2018. The newly established protocol identifies the following:

- Responsible party for notification(s);
- Critical timing for corrective action;
- Chain of communication between agencies;
- Signage placement responsibilities; and
- Emergency response activity.

The newly established protocol intends to ensure public health and safety, and effective communication between Oakland Public Works and East Bay Regional Park District.

***Recommendation 18-27:*** *Both Oakland Public Works and the East Bay Regional Park District must study the feasibility of using push alerts to nearby neighborhoods in the event of a spill or closure, and explore use of the web and social media for emergency communications for implementation in the winter of 2019.*

**RESPONSE:** The City of Oakland agrees with this recommendation.

**EXPLANATION:** The OPW Public Information Officer (PIO) is tasked with distributing information about right-of-away emergencies to affected residents and neighborhoods through several notification tools, including Nixle, AC Alert, and NextDoor. OPW will review protocol with the PIO and sewer staff to ensure that these tools and practices are used to distribute information about sanitary sewer overflows.

**To: Sabrina B. Landreth, City Administrator**

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***Recommendation 18-28: Oakland Public Works must improve its reporting requirements and record-keeping systems for sewer system repairs by third-party contractors, and must fully supervise all contractors working on city sewer lines.***

**RESPONSE:** The City of Oakland agrees with this recommendation.

**EXPLANATION:** Currently, the Project Delivery Division in Oakland Public Works Department manages sewer system repair work by third-party contractors. The Resident Engineer (1) oversees the contractor and make sure that all City's contract requirements are met and (2) is responsible for record-keeping and project reporting daily. The reporting and record-keeping issues that the Grand Jury report refers to arose during the time that the City was experiencing a City-wide labor strike by the City's unions. During the labor strike, an event occurred at Lake Temescal that needed repair. Unfortunately, the City does not have a written protocol to oversee and verify all work by a third-party contractor when the Resident Engineer is unavailable due to a work stoppage or labor strike. The City is reviewing best practices as to how to establish a Standard Operating Procedure (SOP) for work performed by a third-party sewer contractor during a work stoppage.

Additionally, please note that there is no existing SOP(s) from California agencies that we have contacted, but the City is committed to developing a plan. The City recently engaged an industry-recognized expert/consultant who is evaluating the City's entire Sewers Division, including management and operation of the entire wastewater collection system. As part of this evaluation project, the expert/consultant will make recommendations for improvements and for the City adopting state-of-the-art practices where needed.

***Recommendation 18-29: Oakland Public Works must establish a system of mandatory continuous training and education for all its sewer crew workers.***

**RESPONSE:** The City of Oakland agrees with this recommendation.

**EXPLANATION:** The City has an existing mandatory training program which is currently being evaluated. Establishment of additional mandatory training and education requirements is subject to negotiation with the City's organized labor partners. Alternately, the City of Oakland has recently expanded a premium-pay program to incentivize voluntary industry-specific certification of sewer crew workers. Since enactment in April 2018, five Sewers Division staff have qualified for this program by earning technical certifications from the California Water Environment Association. Also, the City will continue to fund and sponsor individual memberships to professional organizations that offer specialized training, workshops, and continuing education. This continuing education benefit is offered to all classifications of sewer workers.

***Recommendation 18-30: Oakland Public Works must provide comprehensive training for all field crews regarding techniques for estimating sewer overflows.***

**RESPONSE:** The City of Oakland agrees with this recommendation.

**EXPLANATION:** The City along with the recently engaged expert/consultant is currently evaluating the overflow emergency response plan. A revised plan is anticipated to include expanded training for overflow volume estimation, field documentation, and reporting for sewer

**To: Sabrina B. Landreth, City Administrator**

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overflow events. As part of this evaluation project, the consultant will provide enhanced sewer overflow estimating training for all staff.

***Recommendation 18-31:*** *Oakland Public Works must improve its overall process for handling sewage overflow reports that exceed 50,000 gallons. A second-level manager independent of Oakland Public Works' sewer crews must review such reports to ensure accuracy, and to ensure that operational expediency never interferes with protecting the environment from large sewage overflows.*

**RESPONSE:** The City of Oakland agrees with this recommendation.

**EXPLANATION:** In addition to providing sewer overflow estimation training, the City's expert/consultant will make recommendations for improvements of sewer overflow reporting and documentation procedures, and the adoption of state-of-the-art practices, where needed. The City is also in the process of developing a job classification for a Sewers Compliance Officer position which will oversee reporting and records management requirements for sewer operations. The Sewer Compliance Officer position was authorized by the City Council on July 1, 2018.

For questions, please contact Jason Mitchell, Public Works Director, at 510-238-4470.

Respectfully submitted,

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JASON MITCHELL

Director, Oakland Public Works Department



## INTER OFFICE MEMORANDUM

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**TO:** Sabrina B. Landreth  
City Administrator

**FROM:** Mark Sawicki, Director  
Economic & Workforce  
Development

**SUBJECT:** City's Response to the 2017-18  
Alameda County Grand Jury report  
Workforce Development Funding  
in Oakland

**DATE:** August 22, 2018

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In June 2018, the Alameda County Civil Grand Jury published the 2017-2018 Alameda County Grand Jury Final Report, which included a section entitled "Workforce Development Funding in Oakland." The Economic and Workforce Development Department has prepared the following response to the findings and recommendations of the Grand Jury.

### RESPONSE TO FINDING

***Finding 18-34:*** *The Oakland City Council bypassed its Workforce Development Board in 2016 by giving public funds directly to favored job programs without accountability standards built into the grants, without sufficient consideration of Workforce Development's strategic goals, and without appropriate evaluation as to whether the programs' efforts were successful.*

**RESPONSE:** The City of Oakland partially agrees with this finding.

**EXPLANATION:** The City of Oakland (the "**City**") acknowledges that on June 21, 2016, the Oakland City Council (the "**Council**") awarded \$533,000 (the "**Awarded Funds**") in one-time General Fund dollars to directly support activities and/or organizations providing workforce development services in the City.

However, of the four (4) line items funded under the Council's award, three (3) of the line items were to organizations that had successfully prevailed in the Oakland Workforce Development Board's ("**OWDB**") 2016-2019 Request for Proposals (**RFP**) process. The fourth line item in the Council's award was in furtherance of the City's investment in additional summer youth jobs. This portion of the Awarded Funds was passed through to the OWDB and ultimately awarded to community-based organizations that had been previously approved by the OWDB or that had competed and were selected by the OWDB to be placed on a list of eligible service providers for youth summer jobs. Some of the related OWDB strategies and goals from the then current strategic plan that was in place at the time of these awards included: 1) providing job seekers with education and training needed to achieve self-sufficiency; 2) creating job opportunities for youth and young adults and advancement opportunities for the underemployed. The awards provided by the Council were aligned with existing and/or new investments from the OWDB, as they were targeted to organizations with capacity and expertise in these areas, organizations that had in fact recently submitted successful proposals to do work consistent with these goals and strategies. Thus, the City disagrees that the awards were made to favored job programs

without sufficient consideration of Workforce Development Strategies, as noted in Finding 18-24.

While some of investments of the Awarded Funds were made without coordination with the OWDB, each of the grant agreements awarding the Awarded Funds contained accountability and/or performance measures. For instance, the grant agreements awarding funding for summer jobs required that the implementing organizations recruit, enroll, prepare, and place specific numbers of Oakland youth into paid, subsidized work experience. In addition, selected awardees were required to provide career advancing services such as job training and placement services of adult and/or youth job seekers and workers as a condition of the award. Failure to comply with grant agreement provisions constituted a default under the Agreements. In addition, grant agreements for which both Workforce Innovation and Opportunity Act (WIOA) funds and City general funds were awarded required awardees to comply with quarterly reporting requirements to allow City staff to gauge the success of the awardee's use of the Awarded Funds. Therefore, the City partially disagrees that the awards were made without accountability standards built into the grants and without appropriate evaluation as to whether the programs' efforts were successful, as noted in Finding 18-24.

### **RESPONSE TO RECOMMENDATION**

***Recommendation 18-32:*** *The Oakland City Council must cease making grants to community-based organizations engaged in workforce development without advice from the Oakland Workforce Development Board, and without accountability measures written into the contracts.*

**RESPONSE:** The City agrees with this recommendation. The recommendation has not yet been implemented, but will be implemented in the future.

**EXPLANATION:** The above recommendation has not yet been implemented and will be implemented in the future, pending further analysis. At its meeting on June 19, 2018, the Council approved an investment of \$100,000 to fund a comprehensive analysis of investments in Oakland's workforce development networks, programs, and services, including its public, private, and non-profit partners. This analysis will be getting underway in Fall 2018 and will encompass several elements, and it is anticipated that it will enable the City to sufficiently address the elements outlined in Recommendation 18-32 by the Alameda County Grand Jury. Among other things, this analysis is expected to include an assessment of the manner and mechanisms by which the City awards grant funds related to workforce development, including not only investments under the purview of the OWDB, but also other advisory bodies and/or city departments that oversee activities and services with related elements, such as investments in health, violence prevention, and youth development. This analysis will be completed by late spring/early summer of 2019, slightly beyond the specified six-month timeframe.

**To: Sabrina B. Landreth, City Administrator**

**Subject: City's Response to the 2017-18 Alameda County Grand Jury Report Workforce Development Funding in Oakland**

**Date: August 22, 2018**

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For questions, please contact Mark Sawicki, Director of Economic & Workforce Development, at 510-238-2992.

Respectfully submitted,

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Mark Sawicki, Director  
Economic & Workforce Development

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## HOW TO RESPOND TO FINDINGS AND 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 Wynne Carvill  
Alameda County Superior Court  
1225 Fallon Street, Department One  
Oakland, California 94612

### A COPY MUST ALSO BE SENT TO:

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

All responses to the 2017-2018 Grand Jury Final Report must be submitted no later than  
**Wednesday, September 26, 2018.**