



# THE COUNTY OF FRESNO

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## 2017 ~ 2018 GRAND JURY REPORT



THE COUNTY OF FRESNO



**RAND**  
**JURY**

**2017-2018 FINAL REPORT**

[www.fresnosuperiorcourt.org](http://www.fresnosuperiorcourt.org)

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PRESIDING JUDGE OF THE FRESNO COUNTY SUPERIOR COURT  
HON. KIMBERLY A. GAAB and HON. ALAN M. SIMPSON

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*“Facts are stubborn things;*  
and whatever may be our wishes,  
our inclinations, or the dictates of our passions,  
they can not alter the state of facts and evidence.”

*~ John Adams*

FIRST VICE PRESIDENT  
*and* SECOND PRESIDENT  
*of the* UNITED STATES *of* AMERICA



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**GRAND**  
**JURY**

**PRESIDING JUDGES**  
**2017 - 2018**



**HON.**  
**KIMBERLY A. GAAB**  
**2017**



**HON.**  
**ALAN M. SIMPSON**  
**2018**





## Superior Court of California County of Fresno

1100 VAN NESS AVENUE  
FRESNO, CALIFORNIA 93724-0002  
(559) 457-2010

CHAMBERS OF  
**KIMBERLY A. GAAB**  
Presiding Judge 2017  
**ALAN M. SIMPSON**  
Presiding Judge 2018

**As with each previous Grand Jury, the 2017-2018 Fresno County Grand Jury served with distinction. The members were hardworking throughout the term. And this term, in particular, saw a significant number of alternate jurors serving, as well. The members proved to be both impartial and courageous in their service. They showed calm and considered judgment. This Grand Jury made an important contribution to local government, and the Fresno County Superior Court appreciates and values its service.**

**The 2017-2018 Grand Jury continued in the fine tradition of its predecessors by diligently acting as the public's watchdog through its investigations of and reporting on particular affairs of local government. This Grand Jury issued three reports. The first addressed the County Elections Office, the second addressed the City of Sanger Ordinance No. 1094-Measure S, and the third addressed the Special Districts Non-Compliance – System Failure. Each report was thorough and thoughtful. Each report contained constructive comments related to potential improvements for the agencies identified. The leadership of the foreperson, Al Maroney, and the foreperson pro tem, Michael Petrovich, must be noted, acknowledged and praised. They carried out, with distinction, their responsibilities to ensure that the Grand Jury as a whole, and each of the committees, functioned effectively and efficiently. The forepersons, along with all members, performed a vital public service with minimal monetary compensation for travel and a small per diem allowance.**

**All citizens residing in Fresno County are invited and encouraged to apply for a position as a grand juror and to continue this important function of public service.**

A handwritten signature in blue ink, appearing to read "Kimberly A. Gaab".

**Hon. Kimberly A. Gaab**  
Presiding Judge 2017

A handwritten signature in blue ink, appearing to read "Alan M. Simpson".

**Hon. Alan M. Simpson**  
Presiding Judge 2018



# County of Fresno

## Grand Jury

TO: Honorable Kimberly A. Gaab, Presiding Judge for 2017  
Honorable Alan M. Simpson, Presiding Judge for 2018  
Residents of Fresno County

Time is the most precious and inescapable fact in all our lives. We use it, we lose it, we waste it, and every now and then, we even make it. In our local government it is priceless and a resource that cannot be recaptured.

The Grand Jury process is a way to measure the effectiveness and efficiency of our appointed and elected officials' use of taxpayer dollars during their time in their respective offices. Moreover, just like time, if taxpayer dollars are wasted they cannot be recaptured.

The 2017-2018 Fresno County Grand Jury was tasked with many ideas, complaints, and suggestions that it debated and sometimes argued fervently both for and against. We had to decide how to best invest our time during our one year to meet our mandated activities to expose what we felt were areas of improvement in our local government. We also chose to highlight a particular area where excellence was demonstrated in the use of resources and taxpayer funding.

We met with each County of Fresno department head and sent to City Hall a delegation to a similar gathering of City department managers. We invited a wide variety of local leaders to present to the Grand Jury about their vision for their area of concern. We toured many public facilities to learn about their function and their mission, including the Pleasant Valley State Prison, which we are mandated to inspect and the Fresno County Jail with its history and planned improvements.

We looked at closed buildings owned by Fresno County and the Fresno Police Department's Crime View Center. These experiences give meaning to the efforts our City and County leaders are doing to protect us, to serve us, and to provide services to us that are largely unnoticed until they stop or cannot function.

With that stated, our reports reflect what most citizens would say were things that needed to be improved, things that were being done admirably, and things where taxpayer dollars are not being accounted for. The idea is not to target governmental agencies but to explain how a group of average citizens, who band together for the good of their community, see how our local government can be better.

Our work was made possible by a number of persons in our governmental structure who offered us guidance enabling us to proceed with our mission. Presiding Judge Kimberly A. Gaab was our ultimate leader, we are grateful for her guidance, and wisdom, Court Division Manager Suzanne Abi-Rached with the Superior Court's Juror and Public Services, Principal Administrative Analyst Sonia De La Rosa with the County Administrative Office, and Information Technology Analyst Jessica Montano with the County's Internal Services Department provided immeasurable support. Our in-house technical support, Grand Juror Tim Wilkins, was extraordinary in his efforts to improve the computer capabilities of the entire Grand Jury.



No Grand Jury would function within its mandates without having an excellent legal advisor as we had with Deputy County Counsel Dean Stuckenschmidt of the County Counsel's Office.

Lastly, to each of the grand jurors who gave their time and effort diligently for this year - I cannot say enough to thank you for your service.

Respectfully,

A handwritten signature in blue ink that reads "Al Maroney". The signature is written in a cursive style with a large, stylized "A" and "M".

Al Maroney  
2017-2018 Grand Jury Foreperson



# THE COUNTY OF FRESNO 2017-2018 GRAND JURY



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## MISSION STATEMENT

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The Fresno County Grand Jury serves as the ombudsman for citizens of Fresno County. The primary function of the Grand Jury, and the most important reason for its existence, is the examination of all aspects of county government and special districts assuring honest, efficient government in the best interests of the people.

Their responsibilities include receiving and investigating complaints regarding county government and issuing reports. A Grand Jury Final Report is issued each year. Grand Jurors generally serve for one year although the law provides for holdovers for a second year to assure a smooth transition.

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## NAME OF EACH GRAND JURY MEMBER FOR 2017-2018

<b>GEORGE BAGETAKOS</b>
<b>GARY CHANDLER</b>
<b>TONI COLLINS</b>
<b>JAMES EDMISTON</b>
<b>MARK ETCHERVERRY</b>
<b>SOCORRO FIMBRES</b>
<b>JOHN HILL</b>
<b>DOUGLAS JOHNSON</b>
<b>THOMAS LARSON</b>
<b>HENRY LEE</b>
<b>AL MARONEY</b>
<b>BRENDA PAU</b>
<b>MICHAEL PETROVICH</b>
<b>WILLIAM REGONINI</b>
<b>PIERRE SAINT-FLEUR</b>
<b>RAYMONE SELICK</b>
<b>WILLIAM SMITH</b>
<b>MARY TORRES</b>
<b>TIMOTHY WILKINS</b>

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THE COUNTY OF FRESNO  
**2017-2018 GRAND JURY**



**FRONT ROW** *(Left to Right):*

**Toni Collins, Brenda Pau, Mary Torres and Socorro Fimbres**

**MIDDLE ROW** *(Left to Right):*

**William Regonini, Timothy Wilkins, Thomas Larson, Pierre Saint-Fleur,  
James Edmiston, John Hill and George Bagetakos**

**BACK ROW** *(Left to Right):*

**Raymone Sellick, Michael Petrovich, Douglas Johnson, William Smith,  
Al Maroney, Mark Etcherverry, Henry Lee and Gary Chandler**

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# **THE GRAND JURY PROCESS**

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- ❖ **APPLICATION INFORMATION**
- ❖ **FUNCTIONS**
- ❖ **COMPLAINT PROCEDURE**

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# APPLICATION INFORMATION

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The Fresno County Grand Jury serves as the civil watchdog for the County of Fresno. Their responsibilities include investigating complaints regarding county and city governmental agencies and issuing reports when necessary.

In the early months of each calendar year, the Fresno County Superior Court begins the process for selecting a new grand jury. Those with an interest in serving on the grand jury may contact the Juror Services Manager and ask to be considered as a prospective grand juror. In addition to self referrals, names of prospective grand jurors are suggested by the active and retired judicial officers of the Fresno County Superior Court and the current grand jury members.

The basic qualifications include being a citizen of the United States, being at least 18 years of age and a resident of Fresno County for at least one year prior to selection. Applicants should also be in possession of their natural faculties and have ordinary intelligence, sound judgment and good character. They should be able to speak and write English and have some computer literacy.

Questionnaires are mailed to all prospective grand jurors after the nominations are received. All prospective grand jurors are required to have a background check. All prospective grand jurors must be officially nominated by a sitting Superior Court Judge and may be asked to come in for an interview. The Judges then consider all prospective grand juror nominees. They nominate 30 prospective jurors, who are invited to an impanelment ceremony in mid-June. Names are drawn at random to serve on the nineteen member grand jury. Generally, there are two to four members from the outgoing grand jury who holdover to insure a smooth transition.

Prospective grand jurors should be aware of the responsibilities and time commitment involved. Jurors typically spend a minimum of 40 hours per month on meetings, interviewing, conducting investigations and writing reports. The service period from July 1 to June 30 of the following year.

For additional information or to nominate yourself or someone else, contact the Juror Services Manager at the Fresno County Courthouse, 1100 Van Ness Avenue, Room 102, Fresno, CA 93724-0002 or call 559-457-1605.



# FUNCTIONS

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**History:** In 1635, the Massachusetts Bay Colony impaneled the first grand jury to consider cases of murder, robbery and wife beating. By the end of the colonial period the grand jury had become an indispensable adjunct to the government. The U.S. Constitution's Fifth Amendment and the California Constitution call for the establishment of grand juries. The California Constitution provided for prosecution by either indictment or preliminary hearing.

In 1880, statutes were passed which added duties of the grand jury to investigate county government beyond misconduct of public officials. Only California and Nevada mandate that civil grand juries be impaneled annually to function specifically as a "watchdog" over county government. California mandates formation of grand juries in every county able to examine all aspects of local government adding another level of protection for citizens.

**Functions:** The civil grand jury is a part of the judicial branch of government, an arm of the court. As an arm of the Superior Court, the Fresno County Grand Jury is impaneled every year to conduct civil investigations of county and city government and to hear evidence to decide whether to return an indictment. The civil grand jury in its' role as civil "watchdog" for the County of Fresno has two distinct functions:

- ❖ Investigations of allegations of misconduct against public officials and determine whether to present formal accusations requesting their removal from office under three feasancess: nonfeasance, misfeasance and malfeasance.
- ❖ Civil Investigations and Reporting, the watchdog function, is the PRIMARY duty of a regular Civil Grand Jury. In addition to mandated state functions, the jury may select additional areas to study publishing its' findings and recommendations in a report at the end of the year.

Both the criminal and civil grand juries have the powers to subpoena. The criminal grand jury conducts hearings to determine whether there is sufficient evidence to bring indictment charging a person with a public offense. However, the district attorney usually calls for empanelment of a separate jury drawn from the petit (regular trial) jury pool to bring criminal charges. However, in Fresno County a Superior Court Judge is the determiner of facts relative to holding an individual to answer criminal charges.

**Civil Watchdog Functions:** Considerable time and energy is put into this primary function of the civil grand jury acting as a the public's "watchdog" by investigating and reporting upon the operation, management, and fiscal affairs of local government (eg Penal Code § 919, 925 et seq.) The civil grand jury may examine all aspects of county and city government and agencies/districts to ensure that the best interests of the citizens of Fresno County are being served. The civil grand jury may review and evaluate procedures, methods and systems used by county and city government

to determine whether more efficient and economical programs may be used. The civil grand jury is also mandated to inspect any state prisons located within the county including the conditions of jails and detention facilities.

**Citizen Complaints:** The civil grand jury receives many letters from citizens and prisoners alleging mistreatment by officials, suspicions of misconduct or government inefficiencies. Complaints are acknowledged and investigated for their validity. These complaints are kept confidential.

**Criminal Investigations:** A criminal jury is separate from a civil grand jury and is called for empanelment by the district attorney. A hearing is held to determine whether the evidence presented by the district attorney is sufficient to warrant an individual having to stand trial. Note: This is not the procedure in Fresno County, a Superior Court Judge calls for a criminal jury if a matter continues on in the courts to trial.

The grand jury system as part of our judicial system is an excellent example of our democracy. The grand jury is independent body. Judges of the Superior Court, the district attorney, the county counsel, and the state attorney general may act as advisors but cannot attend jury deliberations nor control the actions of the civil grand jury (Penal Code § Code 934, 939).



## Fresno County Civil Grand Jury

A major function of the Fresno County Civil Grand Jury is to examine Fresno County and city governments, special districts, school districts and any joint powers agency operating within the county to ensure their duties are being carried out lawfully. The Grand Jury does *not* investigate criminal, state, federal or court activities nor personal disputes.

### **The Grand Jury:**

- May review and evaluate procedures used by these entities to determine whether more-efficient and -economical methods can be employed.
- May inspect and audit the books, records and financial expenditures of those entities to ensure that public funds are properly accounted for and legally used.
- May investigate any charges of willful misconduct in office by public officials.
- Shall inquire into the condition and management of state prisons within the county.

To request an investigation, the attached claim form must be filled out in its entirety, and submitted to the Grand Jury either electronically or by mail. All complaints received by the Grand Jury are confidential.

1. Name of complainant and contact information to include address, phone number and email. Anonymous complaints will not be investigated.
2. Complete nature of complaint to include name of person(s) or department(s) against which the claim is being filed.
3. Complaint form must be signed.
4. Written confirmation of complaint will be sent to complainant.

**Email form to:            [info@fresnocograndjury.com](mailto:info@fresnocograndjury.com)**

**or**

**Mail form to:            Fresno County Civil Grand Jury  
P.O. Box 2072  
Fresno, CA 93718**



# Fresno County Civil Grand Jury Complaint Form

## All Complaints Received by the Grand Jury are Confidential

**Complaints will not be processed without a brief summary, contact information and a signature**

Your Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City, State & Zip: \_\_\_\_\_

Preferred Phone Contact Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

**Brief Summary of Complaint** Please include dates of events, names of officials involved, names of people who know about this, public agencies involved and any other pertinent information to help the Grand Jury assess the complaint. You may attach additional information as necessary.


The information contained in this complaint is true, accurate and complete to the best of my knowledge. Anonymous complaints will not be investigated.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

The Grand Jury is grateful for your participation. You will receive acknowledgment of your complaint after it has been reviewed by the Grand Jury. Because of statutory and confidentiality restrictions, the Grand Jury retains all complaints and attachments thereto in accordance with its policies and procedures. The Grand Jury does not discuss the status of complaints nor offer advice on how to pursue a complaint by any other investigatory body.

**Email form to:** [info@fresnocograndjury.com](mailto:info@fresnocograndjury.com)  
**or**  
**Mail form to:** **Fresno County Civil Grand Jury**  
**P.O. Box 2072**  
**Fresno, CA 93718**

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# FRESNO COUNTY GRAND JURY FINAL REPORTS AND RESPONSES 2017-2018

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## REPORT 1

❖ COUNTY ELECTIONS OFFICE

## REPORT 2

❖ CITY OF SANGER  
ORDINANCE NO. 1094 - MEASURE S

## REPORT 3

❖ SPECIAL DISTRICTS NON-COMPLIANCE-  
SYSTEM FAILURE

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# **REPORT & RESPONSES # 1**

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**COUNTY ELECTIONS OFFICE**





# County Elections Office

Fresno County Grand Jury Report No. 1

May 2018

*“Elections remind us not only of the rights but the responsibilities of citizenship in a democracy.”*

-Robert Kennedy

## SUMMARY

The 2017-18 Fresno County Grand Jury received a citizen request to investigate the security of the Fresno County election process. News of attempted voter registration hacks, mounting political partisanship in our country, and tales of cybersecurity breaches have raised insecurities about the U.S. election system. The Grand Jury chose to investigate what measures are being taken in Fresno County to secure the integrity of the electoral process and the accuracy of election results. In addition, California grand juries are mandated to investigate and report on county operations, accounts, and records of one department, function, or officer per year. (Penal Code, sections 925 and 933(a).) The Grand Jury chose to combine its yearly investigation requirements with the request by vetting the Fresno County Elections Office, which is under the direction of the Fresno County Clerk/Registrar of Voters.

The investigation included a review of precinct worker recruitment and training, maintenance of voter registration rolls, the vote-by-mail procedures, ballot composition, Election Day ballot distribution and chain of custody, election system security and tabulation accuracy, County compliance with the California Voter’s Choice Act, and efforts to increase voter participation. Two county clerk office employees were interviewed. In addition, the Fresno County Clerk/Registrar of Voters and California Secretary of State websites were scrutinized.

The Grand Jury found that election oversight and ballot security measures are well-planned and comprehensive. There is no evidence that any component of the electoral process is susceptible to a potential security system breach. With an eye to the future, the County Elections Office is being proactive in efforts to upgrade its system to comply with the California Voter’s Choice Act.

## GLOSSARY

**Americans with Disabilities Act (ADA)** -The Americans with Disabilities Act (ADA) was signed into law on July 26, 1990, by President George H.W. Bush. The ADA is one of America's most comprehensive pieces of civil rights legislation that prohibits discrimination and guarantees that people with disabilities have the same opportunities as everyone else to participate in the mainstream of American life -- to enjoy employment opportunities, to purchase goods and services, and to participate in State and local government programs and services. Modeled after the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, religion, sex, or national origin – and Section 504 of the Rehabilitation Act of 1973 -- the ADA is an "equal opportunity" law for people with disabilities.

**California Voter's Choice Act** -The California Voter's Choice Act is a law passed in 2016 that will modernize elections in California by allowing counties to conduct elections under a new model, which provides greater flexibility and convenience for voters. This new election model allows voters to choose how, when, and where to cast their ballot by:

- Mailing every voter a ballot
- Expanding in-person early voting
- Allowing voters to cast a ballot at any vote center within their county

**Kamai** - The national language of Cambodia.

**One-percent Manual Tally** - The public process of manually tallying votes in 1% of the precincts randomly selected by the election official, and in one precinct for each race not included in the randomly selected precincts. (Elections Code, sections 336.5 and 15360)

**Provisional Ballot** - A ballot cast by a voter whose qualifications or entitlement to vote cannot be immediately established. The ballot will be isolated and researched by the Election Official to determine the voter's eligibility. [Elections Code, section 14310(a)]

## **BACKGROUND**

News of attempted voter registration hacks, mounting political partisanship in our country, and tales of cybersecurity breaches have raised insecurities about the U.S. election system. Increasingly, voters are calling into question whether the democratic will of the people is being adequately safeguarded. The Grand Jury chose to investigate what measures are being taken in Fresno County to secure the integrity of the electoral process and the accuracy of election results.

## **METHODOLOGY**

Face to face interviews were conducted with employees of the Fresno County Clerk/Registrar of Voters Office familiar with the preparation and implementation processes for countywide elections.

Internet research:

Fresno County Clerk/Registrar of Voters website  
California Secretary of State website

## DISCUSSION

- The Fresno County Clerk/Registrar of Voters Office (Clerk's Office) is currently staffed by 32 permanent employees, many of whom are cross-trained in election preparation and procedures. In addition, for a statewide election, approximately 2,000 part-time employees are hired.
- Efforts to increase voter participation: The Clerk's Office reaches out to all area high schools twice per year to offer voter pre-registration to 16- and 17-year-old students. Upon their eighteenth birthday, pre-registered individuals are automatically registered to vote.

The Clerk's Office offers training to individuals who may be interested in conducting voter registration drives.

A representative of the Clerk's Office attends the naturalization ceremony held each month to offer and collect voter registration cards from newly naturalized citizens.

Officials are mindful to locate polling places along public transportation lines.

- For any given election, over 60% of the electorate vote by mail. This includes 50% of the electorate who are registered as permanent vote by mail voters and several thousand people who choose to vote by mail on an individual election basis. The Clerk's Office focuses on making it as easy as possible for people to vote. This includes a 24/7 ballot drop-off box outside the Clerk's Office as well as the option to drop off the ballot at a polling place if the voter chooses not to mail it in.
- The Clerk's Office is mandated to provide all voting materials in Spanish. In certain precincts, they are also required to provide facsimile ballots in Chinese, Hmong, Korean, Kamai, Punjabi, Tagalog, and Vietnamese. Precinct workers who speak these languages are stationed at polling places.
- For the 2016 primary election, there were 460 different ballots prepared, accounting for precinct variations, party specifics, and language requirements.
- Maintenance of voter registration rolls: In September 2016, the California Secretary of State became the official holder of all voter registration records. This consolidation of records greatly aids the tracking of duplicate registrations. In addition, county election officials routinely receive State Department of Public Health reports of deceased people. Clerk's Office employees also scan local obituaries and process sample ballots returned by family members indicating that a person is deceased. There are very specific instances in which a registration can be cancelled. More often, they are reclassified from active to inactive status.

- Election system security: The voting system is housed in a triple-security level room which may be accessed only by the County Clerk and a limited number of staff. The voting system must be certified by the state of California. The system is totally self contained, i.e. there is no internet access nor other data transmission hardware connected to the system. The County Internal Services Department – Information Technology Division has installed numerous firewalls and constantly monitors the system. The Federal Department of Homeland Security also monitors the data to detect attempted hacks.

The voting equipment that goes to the polls is under the sole control of the County Clerk.

Elaborate logic and accuracy testing is conducted. For instance, in June 2016, in preparation for the state primary, 44,000 test ballots were run. The equipment is delivered to the polling place by an authorized precinct officer. The memory cards in the machines are number sealed so when the machine is returned on election night, it can be verified that the seal has not been broken. Equipment with memory cards are brought back to election headquarters on election night by teams of two election workers. A GPS (Global Positioning System) device tracks the equipment location.

Separately, precinct officers count the number of paper ballots collected, place them in locked containers, and deliver them to 30 designated drop off points. These are staffed by at least four people who check in all the equipment from the precincts. All of these ballots are accounted for on election night. In house, “no ballot is ever left alone,” meaning there are always at least two election workers in possession of a ballot at any given time. In addition, security cameras are in place to monitor activity.

Memory cards from the voting machines are uploaded into the voting system. After the election, state law mandates a canvass procedure. Each precinct’s supplies are counted ensuring that each ballot supplied was returned either voted or unused and the correct number of people signed the voting roster. In addition, a one percent manual tally is required by law to affirm that the voting equipment is tabulating properly.

In instances where the machine is unable to read the ballot, the ballot is checked manually to determine clear voter intent and a duplicate ballot is created by a team of two. The duplicate ballot is then run through the machine to be tabulated. Approximately 15,000 of these are processed every election.

- Observers are allowed to watch any or all of these processes.
- A touch screen electronic system is required to comply with the Americans with Disabilities Act. For most elections, only approximately 50 ballots countywide are requested.

- Currently, all hard copies of election materials are stored in a secured warehouse for six to 22 months, depending on the type of the election. The materials are then destroyed according to state protocol.
- Each polling place has one inspector and three precinct officers. State law mandates that each inspector be trained. Fresno County goes above and beyond this by also training all precinct officers via a two and a half hour training class. The class addresses how to process voters, provisional ballots, and what to do if voters are not on the voting roster. Inspectors are given additional hands-on training on how to set up and operate the voting equipment. On Election Day, there are approximately 50 field supervisors (more experienced precinct workers) to facilitate the election process.
- Compliance with California Voter’s Choice Act: Fresno County plans to begin participation in 2020. A transition team is currently monitoring counties that are preparing to go to a vote center model in 2018. Initial costs will be substantial. The County currently has four million dollars earmarked for implementation. Traditional polling places will be replaced by vote centers. Voters will have the freedom to cast a ballot in-person at any vote center in their county instead of being tied to a single polling location. Vote centers look and feel like polling places, but provide additional modern features to make voting easy and convenient. At any vote center in a participating county, a voter may:
  - Vote in person
  - Drop off their ballot
  - Get a replacement ballot
  - Vote using an accessible voting machine
  - Get help and voting material in multiple languages
  - Register to vote or update their voter registration

Starting ten days before the Election and through the Friday before Election Day, one vote center is required for every 50,000 registered voters. On Election Day and the Saturday, Sunday, and Monday leading up to Election Day, one vote center is required for every 10,000 registered voters.

## **FINDINGS**

F1. Election oversight and ballot security measures are well-planned and comprehensive. There is no evidence that any component of the electoral process is susceptible to a potential security system breach.

F2. The County Clerk/Registrar of Voters Office makes efforts to increase voter registration and offers materials that facilitate the opportunity for Fresno’s multicultural population to make informed voter decisions.

F3. The September 2016 statewide consolidation of voter registration records under the aegis of the California Secretary of State aides in the accuracy, security, and maintenance of voter registration rolls.

F4. Continual and deliberate strides are being made for the County Clerk/Registrar of Voters Office to comply with the California Voter's Choice Act by its target date of 2020.

## **RECOMMENDATIONS**

None.

## **REQUEST FOR RESPONSES**

California Penal Code, section 933(c) requires comments from elected county officers or agency heads within 60 days of submission of the final report:

Brandi L. Orth, Fresno County Clerk/Registrar of Voters acknowledging receipt and accuracy of facts delineated in the Discussion section of this report.

## **BIBLIOGRAPHY**

[www.ada.gov/ada\\_intro.htm](http://www.ada.gov/ada_intro.htm)

[www.sos.ca.gov/elections/voters-choice-act/about-vca/](http://www.sos.ca.gov/elections/voters-choice-act/about-vca/)

<http://www.co.fresno.ca.us/departments/county-clerk-registrar-of-voters>

## **DISCLAIMER**

Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code, section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.



# County of Fresno

COUNTY CLERK/REGISTRAR OF VOTERS  
BRANDI L. ORTH

July 2, 2018

The Honorable Alan M. Simpson, Presiding Judge  
Fresno County Superior Court  
1100 Van Ness Avenue  
Fresno, California 93724-0002

RE: Fresno County Grand Jury's Report No. 1, May 2018  
County Elections Office

Dear Judge Simpson:

The Grand Jury's report reflects findings and recommendations regarding the County Elections office. The Fresno County Clerk/Registrar of Voters thanks the Grand Jury for their diligence and includes the responses to the findings and recommendations below:

**FINDINGS:**

The department agrees with the findings.

**RECOMMENDATIONS:**

There are no recommendations to be implemented.

This concludes the County Clerk/Registrar of Voter's comments on the Findings and Recommendations of the Fresno County Grand Jury Report No. 1, May 2018.

Sincerely yours,

Brandi Orth  
Fresno County Clerk/Registrar of Voters

Cc: Jean Rousseau – County Administrative Officer  
Sonia De La Rosa – CAO's office

# **REPORT & RESPONSES #2**

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**CITY OF SANGER  
ORDINANCE NO. 1094 - MEASURE S**





**City of Sanger Ordinance No. 1094 - Measure S**  
**Fresno County Grand Jury Report No. 2**  
**June 2018**

**SUMMARY**

In 2008, Sanger citizens approved Measure S, a 10-year, ¾-cent sales tax for public safety. The measure was renewed by voters in 2016. The funds were to supplement rather than supplant General Fund expenditures for public safety. A complaint was brought to the Grand Jury by citizens who were concerned that Measure S funds were used inappropriately for pay raises to certain public safety employees, rather than having those monies drawn from the General Fund. Sanger City Ordinance No. 1094 outlines the specific usage of Measure S funds.

**GLOSSARY**

**COC** - Citizen’s Oversight Committee

**Measure S - Sanger City Ordinance No. 1094** - An ordinance of the voters of the City of Sanger adding Article VI to Chapter 66 of the Sanger City Code enacting a special ¾-cent transactions and use tax for public safety (passed in 2008 and renewed in 2016).

**Supplement versus Supplant** - The ordinance provides that its intent is to “supplement” not “supplant” expenditures for public safety, which existed at the time the ordinance was adopted. It expressly provides that the revenues collected cannot be spent on department administrators’ salaries or General Fund operating expenses in effect at the time the ordinance became effective or on projects not part of the Public Safety Measure Police and Fire Expenditure Plan.

**Resolution No. 4122** - “A Resolution of the Sanger City Council adopting the percentage of General Fund revenue and minimum dollar amount that public safety shall be allocated to ensure that revenues collected supplement rather than supplant existing City expenditures for public safety as required under Ordinance No. 1094 (Measure S)”. This resolution was adopted and unanimously approved by the Sanger City Council on January 15, 2009.

**BACKGROUND**

**Administration of the City**

The city council is comprised of five elected members, one of whom is elected as mayor by a vote of the citizens. The mayor shall be a member of the Council and shall have all the powers of a Council Member. The Mayor shall be the presiding officer at all Council meetings and shall have the powers and duties prescribed for the Mayor in the Municipal Code and state law.

Sanger is administered under the city manager form of government. The city manager directs day-to-day operations of city business and prepares the budget. The city council develops policy and approves the budget. The council, operating as a body, considers and votes on formally proposed matters and issues their findings.

### **Ordinance No. 1094**

The following ballot measure was passed by the citizens of Sanger in 2008:

Measure S: "To recruit/hire/train additional police officers, firefighters, paramedics and 9-1-1 emergency dispatch workers; purchase a fire engine, ambulance, and other emergency equipment; maintain special anti-gang/anti-drug police units; increase neighborhood patrols/police presence at schools; shall the City of Sanger impose a ¾ cent sales tax with a citizens' oversight committee, annual independent audits, and require all funds to be used for public safety purposes?"<sup>1</sup>

### **Citizen's Oversight Committee**

Section 66-215 of City Ordinance No. 1094 established a Citizen's Oversight Committee (COC) to monitor the expenditures of special revenue collected pursuant to Chapter 66 only and to report to the City Council. Members of the COC shall be appointed by the Mayor with the advice and consent of the City Council. The COC shall consist of five members. All members must be residents of the City of Sanger. The members shall not be current City of Sanger employees, officials, contractors, or vendors of the City. Past employees, officials, or vendors shall be eligible to serve on the COC, provided that there are no conflicts of interest as determined by the City Attorney. COC members shall be appointed for terms of two years not to exceed three consecutive terms and shall serve at the pleasure of the City Council and may be removed from office in the sole determination, with or without cause, notice, hearing or appeal, by the City Council.

The COC shall review expenditures of special revenue collected pursuant to Chapter 66 only to determine whether such funds are expended for the purposes specified in the then-current Public Safety Measure Police and Fire Expenditure Plan. COC members may also review the annual financial or performance audits performed by an independent auditor. The COC shall confine its oversight specifically to revenues generated under Chapter 66. Revenue generated through other sources shall be outside the jurisdiction of the COC. The COC is not charged with decision-making on spending priorities, schedules, project details, funding source decisions, financing plans, or tax rate assumptions. The COC shall serve in an advisory-only role to the City Council and shall have no jurisdiction other than that delegated to it by the City Council pursuant to Chapter 66.

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<sup>1</sup> Note: This text is quoted verbatim from the original source. Any inconsistencies are attributed to the original source. Ballotpedia website.

## **METHODOLOGY**

Personal interviews with current and past COC members.

Personal interviews with current City of Sanger Council members.

Personal interviews with current and past City of Sanger administrators/department heads.

Personal interviews with City of Sanger concerned citizens.

Review of newspaper articles.

Review of 2017 Agreed-Upon Procedures Report provided by Brown Armstrong Certified Public Accountants.

Attended multiple City of Sanger Council and COC meetings.

Internet research.

## **DISCUSSION**

- Sanger City Ordinance No. 1094 expressly provides that the revenues collected cannot be spent on department administrators' salaries or General Fund operating expenses in effect at the time the ordinance became effective or on projects not part of the Public Safety Measure Police and Fire Expenditure Plan.
- Sanger City Ordinance No. 1094 provides for a COC to monitor the expenditures of the revenues collected under the special tax. The COC is not charged with decision-making on spending priorities, schedules, project details, funding source decisions, financing plans, or tax rate assumptions. The COC shall serve in an advisory-only role to the City Council. The COC shall have no jurisdiction other than that delegated to it by the City Council.
- In June 2016, Sanger citizens voted to extend Measure S for another 10 years to June 30, 2028, and will automatically end on that date unless extended by the voters.
- In an effort to clarify "Supplement versus Supplant", the City Council adopted Resolution No. 4122 on January 15, 2009. This resolution sets minimum General Fund expenditures for public safety, which must be met before Measure S monies can be spent. However, in a January 2018 interview with a current City of Sanger official, it was stated that Resolution No. 4122 had been "lost" sometime following its passage. This resolution was then re-discovered by a City of Sanger staff member in early January 2018. Therefore, from sometime between 2009 and 2018 (no one knows exactly when), subsequent Sanger City Councils and COCs were unaware of Resolution No. 4122 while carrying out their duties regarding spending of Measure S tax receipts.
- Measure S has provided for both equipment and personnel for public safety as the measure was intended, including additional fire and police personnel, drug sniffing dogs, police vehicles, fire trucks, vehicle cameras, graffiti truck, and non-profit drug/gang prevention programs.

- Per interviews with current and past Sanger city officials, as well as current and past Sanger COC members, pay raises were given across-the-board to all public safety employees (police and fire) out of Measure S funds beginning in 2017.
- It is not mandatory that all Measure S monies collected in a year be spent in the same year. Monies can carry-over to the following year(s).
- Measure S funds spent on public safety employee salaries and/or pay increases are limited to only employees hired under Measure S.
- In discussions with past Sanger COC members, past City of Sanger administrators/department heads, and City of Sanger citizens, it was never the intent that monies collected under the Measure S tax be used for across-the-board pay increases for public safety employees. The only exception was to be those public safety employees hired under Measure S.
- Legal recommendations for Measure S have been provided both in writing and/or verbally. This has created confusion between the City Council and the COC. At times, legal counsel's opinions have been made verbally during Council session, and not subsequently shared with the COC.
- During interviews with current and past COC members, current Sanger city officials, and concerned citizens, the COC was not asked to review or render an opinion prior to the City Council's vote regarding the public safety pay increases, which were paid out of Measure S funds beginning in early 2017.
- Section 66-201 of Sanger City Ordinance No. 1094 calls for annual financial or performance audits to be performed by an independent auditor. Following interviews with current and former Sanger city officials, as well as current and former COC members, no records of any outside audits of Measure S revenues could be provided.

## **FINDINGS**

- F1. Public safety has greatly benefitted from Measure S revenues in the City of Sanger.
- F2. Resolution No. 4122 helped define "Supplement versus Supplant" by stating percentages and base dollar amounts that need to be spent out of General Fund before Measure S dollars can be spent.
- F3. The Citizen's Oversight Committee has been bypassed in its review of proposed Measure S spending including 2017's across-the-board pay increases for public safety employees.
- F4. No records of any outside audit of Measure S funds were provided since the Measure's inception in 2008.
- F5. Across-the-board pay increases for public safety employees (police and fire) were funded out of Measure S in 2017, whether or not those public safety employees were hired under Measure S.

- F6. Not all legal opinions regarding use of Measure S funds to the Sanger City Council have been in writing.
- F7. Resolution No. 4122 was somehow “lost” following its’ adoption on January 15, 2009. This same resolution was then somehow “found” in early January of 2018.

## **RECOMMENDATIONS**

- R1. The recently found Resolution No. 4122 (from 01/15/2009) needs to be further clarified to specify whether the percentage or the minimum dollar amount spent for public safety must be provided out of the General Fund, prior to the use of Measure S funds. (F2)
- R2. A procedure or policy be should be established, requiring that before the City Council can vote on a Measure S expenditure request, the request must be reviewed by the Citizen’s Oversight Committee and a recommendation rendered for review by the City Council. (F3)
- R3. A compliance and/or comprehensive audit of Measure S funds by an outside firm should be completed at the conclusion of each fiscal year. (F4)
- R4. Public safety pay increases funded from Measure S should be restricted to Measure S hired personnel. (F5)
- R5. A liaison should be selected by the Sanger City Council to attend all Citizen’s Oversight Committee meetings, in an effort to improve communications. (F3)
- R6. A liaison should be selected by the Citizen’s Oversight Committee to attend all Sanger City Council meetings, in an effort to improve communications. (F3)
- R7. All legal opinions by legal counsel regarding the use of Measure S funds should be provided in writing. (F6)
- R8. A complete review of the City of Sanger’s archival system should be completed by the end of 2018. (F7)

## **REQUEST FOR RESPONSES**

Pursuant to California Penal Code, section 933.05, the Fresno County Grand Jury requests responses to each of the specific findings and recommendations. It is required that responses from elected officials are due within 60 days of the receipt of this report and 90 days for others.

## **RESPONDENTS**

Tim Chapa, Sanger City Manager (F1, F2, F3, F4, F5, F6 and F7) and (R1, R2, R3, R4, R5, R6, R7 and R8)

Mayor Frank Gonzalez, Sanger City Council (F1, F2, F3, F4, F5, F6 and F7) and (R1, R2, R3, R4, R5, R6, R7 and R8)

Sue Simpson, Chairperson of Citizen's Oversight Committee (F1, F2, F3, F4, F5 and F6) and (R1, R2, R3, R4, R5, R6 and R7)

## **DISCLAIMER**

Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code, section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.



# City of Sanger, California

1700 7<sup>th</sup> Street  
Sanger, California 93657  
(559) 876-6300 x1500  
FAX (559) 875-8956

August 2, 2018

The Honorable Alan M. Simpson, Presiding Judge  
Fresno County Superior Court  
1100 Van Ness Avenue  
Fresno, CA 93724-0002

Re: City of Sanger Responses to Fresno County Grand Jury Final Report No. 2: City of Sanger Ordinance No. 1094 – Measure S

Dear Honorable Judge Simpson:

On June 15, 2018, the Fresno County Grand Jury issued a Final Report regarding City of Sanger Ordinance No. 1094 – Measure S. As required by Penal Code Section 933 (c), the City Council of the City of Sanger respectfully submits the following responses to the Findings and Recommendations in the Report. The Report references the Mayor and City Manager as “respondents.” The term “City” is used in the responses to refer collectively to the Mayor, Council, and City Manager. The term “CoC” is used to refer to the Citizens Oversight Committee.

## **FINDINGS**

**Finding 1:** Public safety has greatly benefitted from Measure S revenues in the City of Sanger.

**Response 1:** The City agrees with Finding 1. Public safety in the City has significantly improved and the community has benefitted from the passage of Measure S. Our public safety departments have also benefitted. The Police and Fire Departments are able to provide better public safety services to City residents because of Measure S. A review of Measure S expenditures from its inception through 2017 shows that close to \$13M has been expended for salaries and benefits, supplies, and equipment for the Police Department and Fire Department public safety activities.

In addition to being able to hire six additional officers and four fire personnel because of Measure S, both departments have been able to utilize the Measure S resources for a broad range of expenditures in every facet of operations. Examples of purchases for department-wide benefit include:

- 2 Fire Engines
- 4 Ambulances
- 25 new handheld radios
- 4 new fixed radio communication systems

4 patient gurneys  
4 new cardiac monitor/defibrillators  
20 new self-contained breathing apparatus with new masks  
25 new sets of personal protective equipment (helmets, jackets, hoods, pants and boots)  
25 sets of wildland personal protective equipment (helmets, jackets and pants)  
2 thermal imaging cameras  
27 Mobile Digital Computers for Officers to use in police cars  
1 Drug detection Police K-9 / approved purchase of 2nd.  
2 Police specially equipped K-9 vehicles  
67 Glock handguns to replace the firearms in use by Department Officers.  
26 Tasers for Officers, replacing older version of Tasers in use.  
20 Ford Explorer Police Vehicles and 3 unmarked police cars  
18 more updated MDC computers for police vehicles  
20 ballistic resistant vests for newly hired police officers  
Bulk quantities of ammunition for firearms training for all Officers during the year

It is noted that all public safety employees have benefitted and are benefitting from these expenditures, not just those public safety employees solely hired under Measure S.

**Finding 2:** Resolution No. 4122 helped define “Supplement versus Supplant” by stating percentages and base dollar amounts that need to be spent out of General Fund before Measure S dollars can be spent.

**Response 2:** The City agrees partially with Finding 2. Resolution No. 4122 was duly authorized by City Council action in January of 2009. It provides a methodology for meeting the ordinance’s “supplement” not “supplant” requirement through either a percentage or dollar amount of General Fund expenditures. The existence and application of Resolution No. 4122, however, has not definitively settled the supplement versus supplant issue. Subsequent to being presented with the resolution, the CoC still sought to further clarify the process. In response, the City Council directed staff to engage in a process with the CoC to clarify the matter, including but not limited to amending the ordinance as necessary.

The City Attorney has met three times with the CoC for input on a potential ordinance. Three alternative ordinances have been produced as a result of that process. At the last meeting the CoC determined to focus on the alternative which mirrors Resolution No. 4122. The City Attorney will be presenting the alternative ordinances to the City Council in September 2018.



**Finding 3:** The Citizen's Oversight Committee has been bypassed in its review of proposed Measure S spending including 2017's across-the-board pay increase for public safety employees.

**Response 3:** The City disagrees partially with Finding 3. However, if the Finding is intended to reflect that the CoC is bypassed in general, the City disagrees wholly as such a finding is not correct. It is noted that the partial disagreement is more akin to clarification. Below is an explanation as to the City's position.

In summary, (i) it is correct that the CoC was not consulted as to the City Council's approval of the action prior to March 2, 2017 which included Measure S funding; (ii) it is not correct that the CoC was not consulted as to the March 2, 2017, pay increases; and (iii) with the adoption of Ordinance 2017-02, all expenditure matters regarding Measure S are taken to the CoC prior to Council consideration. Through the course of the City Council's consideration of the wage increases, the City followed standard Meet and Confer processes in its consideration. Questions arose as to the use of Measure S funds and ultimately by City Council direction, the CoC reviewed the wage increases prior to final City Council action on March 2, 2017. In April 2017, the City Council formalized the requirement that all agenda items are to be reviewed by the CoC before City Council consideration.

The foregoing summary is based on the following chronology of events that resulted in "across the board pay increases for public safety increases."

This matter arose as a result of the City being engaged in labor negotiations with the Sanger public safety employee organizations in 2016. These "Meet and Confer" negotiations were duly subject to the Meyers-Milias Brown Act (MMBA). The MMBA, adopted in 1968 as Gov. Code § 3500 *et seq.*, regulates public employer-employee communications over wages, hours and other terms and conditions of employment. It requires public agencies such as the City to meet and confer in good faith over these terms and conditions of employment. It also allows for local rules to govern employment relationship so long as they conform to the MMBA.

As a result of these good faith negotiations with the public safety employee organizations, several items were considered in late 2016 and early 2017 for City Council action:

- August 18, 2016, the City Council approved a one-year (7-1-16 to 6-30-18) Memorandum of Understanding (MOU) with the Police Officers Association. As to pay increases, the MOU provided for a one-year off schedule pay adjustment. The MOU reflects nothing regarding the funding source that the City would use for the pay adjustment.
- October 20, 2016, the City Council approved a one-year (7-1-16 to 6-30-18) Memorandum of Understanding (MOU) with the Firefighters Association. As to pay increases, the MOU provided for a one-year off schedule pay adjustment. The MOU reflects nothing regarding the funding source that the City would use for the pay adjustment.

- January, 5, 2017, the City Council approved a Mid-Year Budget Adjustment by a 5-0 vote, appropriating the Police and Fire increases referenced above. This Mid-Year Budget Adjustment included adjustment to the Measure S Fund including the wage increases resulting from the two MOU's noted immediately above.

In following the MMBA and the meet and confer process, the two MOU's were presented directly to the City Council, as the duly recognized public agency negotiating with its employees. The Mid Year Budget Adjustment was not presented to the CoC.

In November 2016, new negotiations for a new MOU were commenced at the request of both the Sanger Police Officers Association and the Sanger Firefighters Association. Negotiations resulted in MOU's presented to the City Council on December 16, 2016, which included wage increases. This matter was tabled.

Issues were raised at that time regarding the use of Measure S funds for wage increases. It was determined that the CoC should formally review the wage increases matter prior to further City Council consideration. Therefore, the following item was taken to the CoC:

- February 7, 2017, Use of Measure S for Salary Increases.

The CoC reviewed the item and determined to oppose payment of the salary increases from Measure S.

On March 2, 2017, the City Council considered the following:

- MOU Between the City and the Sanger Firefighters for the period of January 1, 2017 through June 30, 2019. This MOU included wage increases. The MOU reflects nothing regarding the funding source that the City would use for the pay adjustment; the staff report noted the funding source.
- MOU Between the City and the Sanger Police Officers Association for the period of January 1, 2017, through June 30, 2019. This MOU included wage increases. The MOU reflects nothing regarding the funding source that the City would use for the pay adjustment; the staff report noted the funding source.

At that meeting CoC members voiced opposition to paying for across the board salary increases with Measure S funds. Some members of the public voiced opposition and others voiced approval. The City Council considered the CoC comments and other public comments, deliberated, and made its decision. The CoC was, therefore, not bypassed in its review of proposed across-the-board pay increase for public safety employees.

Thereafter on April 20, 2017, the City Council adopted Ordinance No. 2017-02 which clarified the process to ensure that the CoC would have an opportunity to review proposed Measure S expenditures.

The ordinance added the following to the Measure S Ordinance:

Sanger City Code Section 66-218 (d)

The city manager or his or her designee shall provide any reasonable administrative or technical assistance required by the committee to fulfill its responsibilities or publicize its findings. The city manager or his or her designee shall ensure that all proposed expenditures to be made from revenues collected under this article are submitted to the committee prior to proposing that the city council approve such expenditures. The committee shall consider proposed expenditures and submit its written recommendations to the city council. City council agenda items relating to expenditures from revenues collected under this article shall include text regarding submission of the proposed expenditures to the committee and the committee's recommendations.

It should be noted that Sanger City Code Section 66-218 (c) states the Committee shall serve in an advisory-only role to the City Council.

As can be seen, through the course of the City Council's consideration of the wage increases, the City followed standard Meet and Confer processes in its consideration. Questions arose as to the use of Measure S funds and ultimately by City Council direction, the CoC reviewed the wage increases prior to final City Council action on March 2, 2017. In April 2017, the City Council formalized the requirement that all agenda items are to be reviewed by the CoC before City Council consideration.

**Finding 4:** No records of any outside audit of Measure S Fund were provided since the Measure's inception in 2008.

**Response 4:** The City agrees partially with Finding 4. Every year the City conducts annual audit reviews of all funds, including Measure S. However, we agree that no specific outside audit of Measure S Funds has been performed since 2008.

It is noted that in response the City Council and CoC requests, a draft compliance audit was presented to CoC in November 2017. This audit attempted to cover the years since inception through fiscal year 2016. The report was not accepted due to the audit not issuing an opinion for a full compliance audit. Staff was directed to have additional services contracted from Brown Armstrong CPAs to obtain an opinion. Subsequently, staff was directed to issue another RFP to contract for a compliance audit with opinion. The recommendation resulting from that RFP process is to be presented at the August CoC meeting and thereafter to the City Council.

**Finding 5:** Across-the-board pay increases for public safety employees (police and fire) were funded out of Measure S in 2017, whether or not those public safety employees were hired under Measure S.

**Response 5:** The City agrees with clarification with Finding 5. Salary increases per collective bargaining agreements (MOU's) with Sanger Police Officers Association (SPOA) and Sanger Fire Association (SFA) were approved by the City Council to be funded from Measure S in FY 2017, 2018, and 2019. We note that per Response to Finding 1, other "across-the-board" expenditures such as vehicles, equipment and supplies have also been funded out of Measure S since its inception, for all public safety employees whether or not those public safety employees were hired under Measure S.

**Finding 6:** Not all legal opinions regarding use of Measure S funds to the Sanger City Council have been in writing.

**Response 6:** The City agrees with clarification with Finding 6. The City Attorney often provides verbal opinions on questions that arise during City Council meetings. For example, at the March 2, 2017, City Council meeting, the City Attorney was asked whether salaries may be paid with Measure S; the City Attorney responded verbally at that time. Subsequently, the City Attorney's comments were transcribed and reduced to writing. A copy of this transcribed opinion was provided to the Grand Jury upon its request.

**Finding 7:** Resolution No. 4122 was somehow "lost" following its adoption on January 15, 2009. This same resolution was then somehow "found" in early January of 2018.

**Response 7:** The City disagrees wholly with clarification with Finding 7. Resolution No. 4122 was duly authorized on January 15, 2009, and recorded as such in the City's archival system. Therefore, it was not "lost."

The methodology called out by the resolution was to be applied every fiscal year beginning in Fiscal Year 2009 and each year thereafter. Current staff acknowledges that no such action was taken in Fiscal Year 2009 through Fiscal Year 2018. Upon realizing this fact in January of 2018, current staff applied the methodology to the Fiscal Year 2019 as directed by the resolution.

## **RECOMMENDATIONS**

**Recommendation 1:** The recently found Resolution No. 4122 (from 01/15/2009) needs to be further clarified to specify whether the percentage or the minimum dollar amount spent for public safety must be provided out of the General Fund, prior to the use of Measure S funds. (F2)

**Response 1:** This recommendation has not yet been implemented but will be implemented in the future. In fact, this recommendation is in the process of being implemented as noted in City's response to Finding 2 above.

For convenience, we reiterate text from City's response to Finding 2 above. The City Attorney has met three times with the CoC for input on a potential ordinance. Three alternative ordinances have been produced as a result of that process. At the last meeting the CoC determined to

recommend the alternative which mirrors Resolution No. 4122. The City Attorney will be presenting the alternative ordinances to the City Council in September 2018.

**Recommendation 2:** A procedure or policy should be established, requiring that before the City Council can vote on a Measure S expenditure request, the request must be reviewed by the Citizen's Oversight Committee and a recommendation rendered for review by the City Council. (F3)

**Response 2:** This recommendation has been implemented. On April 20, 2017, the City Council adopted Ordinance No. 2017-02 which clarified the process to ensure that the CoC would have an opportunity to review proposed Measure S expenditures. The ordinance added the following to the Measure S Ordinance:

Sanger City Code Section 66-218 (d)

The city manager or his or her designee shall provide any reasonable administrative or technical assistance required by the committee to fulfill its responsibilities or publicize its findings. The city manager or his or her designee shall ensure that all proposed expenditures to be made from revenues collected under this article are submitted to the committee prior to proposing that the city council approve such expenditures. The committee shall consider proposed expenditures and submit its written recommendations to the city council. City council agenda items relating to expenditures from revenues collected under this article shall include text regarding submission of the proposed expenditures to the committee and the committee's recommendations.

**Recommendation 3:** A compliance and/or a comprehensive audit of Measure S funds by an outside firm should be completed at the conclusion of each fiscal year. (F4)

**Response 3:** This recommendation has not yet been implemented but will be implemented in the future. A comprehensive or compliance audit for Measure S Audit will be contracted with a CPA firm.

It is noted that the Grand Jury's timeframe is not realistic for this particular recommendation. The completion of the audit will be within the normal audit cycle which requires the closing of the fiscal year prior to conducting audit procedures. Audits customarily take from six to eight months to complete after the close of the fiscal year. Therefore, the audit will be concluded in the spring of the year following the close of the fiscal year.

**Recommendation 4:** Public safety pay increases funded from Measure S should be restricted to Measure S hired personnel. (F5)

**Response 4:** This recommendation will not be implemented because it is unwarranted or unreasonable.

It appears that the only bases provided in the Report for this recommendation are two bullet points in the Discussion section:

- “Measure S funds spent on public safety employee salaries and/or pay increases are limited to only employees hired under Measure S.”
- “In discussions with past Sanger CoC members, past City administrators/department heads, and City of Sanger Citizens, it was never the intent that monies collected under the Measure S tax be used for across-the-board pay increases for public safety employees. The only exception was to be those public safety employees hired under Measure S.”

First, as to the conclusion that salaries and/or pay increases are to be limited to only employees hired under Measure S, there is no such limitation. Ordinance 1094, Section 66-214 (Use of Tax Proceeds and Expenditure Plan) explicitly provides for the “...paying the salaries and benefits of (police and fire) protection personnel...” It does not limit the salary payments to only those employees hired under Measure S.

In comparison, this Section also provides for the “...obtaining, furnishing, operating, and/or maintaining (police and fire) protection equipment or apparatus...” It does not limit obtaining, furnishing, operating, and/or maintaining equipment to only those employees hired under Measure S. As is noted in respondent’s response to Finding 1, equipment/supplies/capital purchases out of Measure S funds are for the benefit of all public safety personnel, not solely for those positions funded out of Measure S.

The Measure S Ordinance itself provides the City Council with authority to amend the expenditure plan: “...The Public Safety Expenditure Plan may be amended from time to time by a majority vote of the City Council, so long as the funds are utilized for these public safety services...”

It is clear that salaries may be paid with Measure S monies, so long as they were utilized for public safety services. On March 2<sup>nd</sup>, 2017, the City Council reviewed such action and duly authorized the use of Measure S funds by a majority vote for across-the-board salaries for public safety services.

Secondly, the supposition that Measure S funds were never intended for across-the-board raises also disregards the City Council’s authority provided under the Ordinance to amend expenditures from time to time. Specifically, and by example, the establishment of the expenditures for Gang/Drug prevention services was approved by the City Council on July 19<sup>th</sup>, 2012. Resolution No. 4361 created a gang/drug prevention program and authorized such expenditures to be made through Measure S funding. The resolution was passed by a majority of the City Council, including one member who is on the current City Council.

As noted above, the City Council has utilized the amendment process to further clarify the allowed use of Measure S funds for expenditures such as the gang/drug prevention program. In the case of salaries, the City Council’s action of March 2, 2017 in essence followed the expenditure amendment process allowed for provided by the Ordinance.

In sum, the Ordinance allows the City Council to amend Measure S expenditures from time to time so long as it meets the public safety definitions.

**Recommendation 5:** A liaison should be selected by the Sanger City Council to attend all Citizen's Oversight Committee meetings, in an effort to improve communications. (F3)

**Response 5:** This recommendation has been implemented. On February 15th, 2018, the City Council designated one of its members to be the liaison to the CoC and to attend all of the CoC meetings.

**Recommendation 6:** A liaison should be selected by the Citizen's Oversight Committee to attend all Sanger City Council meetings, in an effort to improve communications. (F3)

**Response 6:** This recommendation has not yet been implemented but will be implemented. The recommendation will be transmitted to the CoC so they may officially designate one of its members to attend all City Council meetings.

**Recommendation 7:** All legal opinions by legal counsel regarding the use of Measure S funds should be provided in writing. (F6)

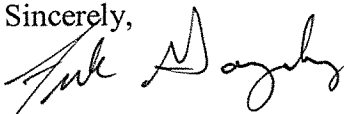
**Response 7:** This recommendation has been implemented as to the last verbal legal opinion.

**Recommendation 8:** A complete review of the City of Sanger's archival system should be completed by the end of 2018. (F7)

**Response 8:** This recommendation has not yet been implemented but will be implemented in the future. Any review of the City's systems is appropriate on a regular basis. Staff will be analyzing the cost of a review of the City's archiving system, and will make appropriate recommendations to the City Council at its mid-year budget process. The timing of such review would be subject to available funding and its approval.

Thank you for your service to the community. Let us know if you need additional information.

Sincerely,



Frank Gonzalez  
Mayor




7404 N. Spalding Avenue, Fresno, California 93720-3370  
Telephone: (559) 431-5600 Fax: (559) 261-9366

MEMORANDUM

By E-Mail: [bhaddix@ci.sanger.ca.us](mailto:bhaddix@ci.sanger.ca.us)  
[dsultan@ci.sangere.ca.us](mailto:dsultan@ci.sangere.ca.us)

**DATE:** May 7, 2013 **CLIENT/MATTER:** 332-32

**TO:** Brian Haddix, City Manager  
Deborah Sultan, Finance Director  
City of Sanger

**FROM:** Jeffrey L. Kuhn, Deputy City Attorney 

**RE:** Use of Measure S Funds for Police Dispatch Contract with the Sheriff's Office

This is a follow up to our recent telephone conversations regarding whether the City may lawfully use Measure S funds to pay part or all of the cost of the City's contract with the Sheriff's Office for police dispatching services.

In my memo to the City Manager dated October 3, 2012 (copy attached), I addressed the history of Measure S and the history of the City's police and fire dispatching services over the past five years or so. As noted in that previous memo, the wording in Measure S has a maintenance of effort requirement, i.e., it requires the City to continue to expend approximately the same amount of general fund revenues toward public safety services as it expended prior to the advent of Measure S. The wording also forbids the use of Measure S funds to pay for department administrators' salaries, general fund operating expenses in effect at the time Measure S became effective, i.e., March 1, 2008, and projects not a part of the public safety measure police and fire expenditure plan.

Thus, the wording in Measure S provides both quantitative and qualitative restrictions on what its funds may be used for. With respect to the City's contract with the Sheriff's Office for police dispatching services, it is the opinion of the City Attorney's Office that payment of that contract is qualitatively different from the "general fund operating expenses in effect at the time Measure S became effective," because at that time the City was providing its own dispatch services and was not relying on a contract with the Sheriff's Office. Thus, the payment of part or all of the cost of that contract with the Sheriff's Office meets the qualitative restrictions of Measure S.



With respect to the quantitative restriction imposed by the maintenance of effort wording, as pointed out in my earlier memo, there are many ways of calculating the minimum amount that would be necessary to meet the general fund maintenance of effort requirement and it is not clear as to which formula or methodology was intended when Measure S was proposed by the Council and adopted by the City's voters. At a minimum, we would need more information as to prior public safety expenditures from the general fund before we could express an opinion as to whether the payment of part or all of the cost of the dispatch contract with the Sheriff's Office would meet the quantitative restrictions of Measure S. You have indicated that you understand this issue and intend to address it with the Council and the Measure S Oversight Committee.

I hope that this supplemental memo meets your needs. Please contact City Attorney Jenell Van Bindsbergen or me if we can be of further assistance with this or other matters. Thank you.

JLK:dcs

attachment – October 3, 2012 Memo to City Manager Brian Haddix regarding Measure S

cc: Jenell Van Bindsbergen, City Attorney

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# LOZANO SMITH

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7404 N. Spalding Avenue, Fresno, California 93720-3370  
Telephone: (559) 431-5600 Fax: (559) 261-9366

**MEMORANDUM**

By E-Mail: bhaddix@ci.sanger.ca.us

**DATE:** October 3, 2012 **CLIENT/MATTER:** 332-32

**TO:** Brian Haddix, City Manager  
City of Sanger

**FROM:** Jeff Kuhn, City Attorney *JK*

**RE:** Use of Measure S Funds for Police Dispatch

This is in response to your request for my opinion on whether, in general, the City can use Measure S funds to pay for the incremental costs of re-establishing the Police Department's local police dispatch function. As we briefly discussed on the telephone, I'm of the opinion that, in general, the City may use Measure S funds to pay for such costs. However, upon further reflection, as explained below there are significant issues about the amount of Measure S funds that can be used to re-establish local dispatching due to the restrictive wording in Measure S.

## ANALYSIS

### *Measure S*

Measure S was submitted to the City's voters by the City Council and approved by the City's voters at the February 5, 2008 election. The Measure imposes an additional ¾ cent tax on all taxable sales and uses within the City for a ten-year period. The Measure approved City Ordinance No. 1094, became effective as of March 1, 2008, and had an "operative date" of July 1, 2008, when the tax began to be collected.

Under Ordinance No. 1094, the Measure S tax proceeds are to be used:

... only for the police, fire, paramedic, 9-1-1 emergency, and gang/drug prevention services set forth in the program guidelines and public safety expenditure plan for the administration and expenditure of the tax proceeds, attached to Ordinance No. 1094 as exhibit 1. The public safety expenditure plan may be amended from time to time by a majority vote of the city council, so long as the funds are utilized for these public safety services. For the purposes of this part, "public safety services" means:

(1) Obtaining, furnishing, operating, and/or maintaining police protection equipment or apparatus, paying the salaries and benefits of police protection personnel, and such other police protection service expenses, including capital expenses, as are deemed necessary by the city council for the benefit of the residents of the city;

(2) Obtaining, furnishing, operating, and/or maintaining fire protection equipment or apparatus, paying the salaries and benefits of fire protection personnel, and such other fire protection service expenses, including capital expenses, as are deemed necessary by the city council for the benefit of the residents of the city.

Ordinance No. 1094 imposes certain restrictions on the use of Measure S funds. Specifically, the ordinance says:

No revenues collected pursuant to the tax levied hereby may be spent on department administrators' salaries, general fund operating expenses in effect at the time this article becomes effective, or projects not a part of the public safety measure police and fire expenditure plan. It is the intent of the people that revenues collected hereunder shall supplement, rather than supplant, existing city expenditures for public safety. (last ¶ of § 66-214; emphasis added.)<sup>1</sup>

As explained more fully below, these restrictions likely will limit the amount of Measure S funds that can be used to re-establish local dispatching, unless Ordinance No. 1094 is amended by the City Council to ease the restrictions.<sup>2</sup>

### *Police Dispatch Services*

Ordinance No. 1094 was adopted by the City Council on January 31, 2008, approved by the voters at the February 5, 2008 election, became effective as of March 1, 2008, and had an "operative date" of July 1, 2008, when the tax began to be collected. As I understand it, the City Police Department then provided dispatch services with its own employees, consisting of 5 dispatchers and 1 dispatch supervisor, at a general fund cost of approximately \$386,000. The Police Department continued to provide dispatch services in this manner until April 2010, when the services were turned over to the Fresno County Sheriff's Office. This apparently was done because the Police Department was then unable to adequately staff its dispatch function.

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<sup>1</sup> The term "existing City expenditures for public safety" is not defined in the ordinance and so is open to interpretation. The term could refer to City public safety expenditures existing as of March 1, 2008, or it could refer to the City's public safety expenditures existing at the time the Council is considering whether a particular expense should be paid with Measure S funds or not. I think the more logical interpretation is that it refers to the City's March 1, 2008 expenditures because this same section of the Ordinance speaks of general operating expenses in effect [as of March 1, 2008]. For purposes of this memo, I will look at the dispatching questions from that perspective.

<sup>2</sup> Section 66-211 of Ordinance No. 1094 allows the City Council to amend or repeal the Ordinance, but not increase or extend the tax rate without voter approval.

Police dispatching continues to be provided by the Sheriff's Office under a contract that runs from July 1, 2010 thru June 30, 2013. The contract allows cancellation without cause on 30 days' written notice. The cost is \$13.10 per Sanger resident (as calculated by the California Department of Finance) per year or approximately \$323,000 for FY 2012-13.

According to a June 30, 2010 staff report on the proposed contract with the Sheriff's Office, contracting with the SO was by far the cheapest alternative for dispatching, compared to the increased costs of staffing up and adding \$50,000 worth of new dispatching communications/technology equipment to the Police Department.

When dispatching was contracted out to the Sheriff's Office, the Police Department added two (2) Records Clerk positions apparently to perform some of the tasks previously performed by the dispatchers. The City's general fund continues to pay for those positions at a cost of approximately \$120,000 per year, and for the cost of the contract with the Sheriff's Office, for a total of approximately \$443,000 for FY 2012-13.

#### *Use of Measure S Funds to re-establish local dispatch services*

Under Ordinance No. 1094, there are three (3) relevant tests for determining whether a particular dispatch expense can be paid for with Measure S funds:

- The first is whether the expense is for "public safety services" as defined above, and is included in the Measure S Public Safety Expenditure Plan approved by the City Council.

Police department dispatch services clearly fit within the definition of "public safety services," so there's no issue there. The City Council would need to amend the Measure S Public Safety Expenditure Plan to allow for any dispatch expenses to be paid from Measure S funds.

- The second test is whether the expense is a "general fund operating expense in effect at the time [Ordinance 1094] became effective," i.e., as of March 1, 2008, and so cannot be paid for with Measure S funds. This test has both qualitative and quantitative aspects. Qualitatively, as of March 1, 2008 the City's general fund paid for personnel costs of 5 dispatchers and 1 dispatch supervisor but not for any new dispatching equipment, services, or other operating expenses. Quantitatively, as of March 1, 2008 the City's general fund operating expense for dispatching was approximately \$386,000.

This test suggests that any dispatch expenses to be paid for with Measure S funds would need to be different in kind from the personnel costs of 5 dispatchers and 1 dispatch supervisor, and for expenses over and above a general fund contribution base of \$386,000.<sup>3</sup>

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<sup>3</sup> Another way to look at the general fund contribution base for dispatching would be to calculate it as a percentage of the total police department general fund operating budget in effect in March 2008 (or the total City general fund op-

- The third test is whether the expense supplements rather than supplants existing city expenditures for public safety. This test also has qualitative and quantitative aspects. Qualitatively, if we look just at dispatching costs, as of March 1, 2008 the City's general fund paid for personnel costs of 5 dispatchers and 1 dispatch supervisor but not for any new dispatching equipment, services, or other operating expenses; as of the FY 2012-13 City budget, the general fund is paying only for 2 records clerks and the dispatching contract with the Sheriff's Office. Quantitatively, as of March 1, 2008 the City's general fund operating expense for dispatching was approximately \$386,000, while in the FY 2012-13 City budget, the general fund is paying approximately \$443,000 toward dispatch functions. Again this calculation could also be made by calculating the percentage of the total police department general fund budget or total City general fund budget devoted to dispatching, and then comparing the percentages from March 1, 2008, to the FY 2012-13 budget percentages.<sup>4</sup>

In governmental terms, the "supplement, not supplant" restriction calls for comparative tests to determine whether an agency, for example, is using restricted grant funds to add, or add to, the intended programs or services, or simply substituting the grant funds for non-grant funds the agency had been spending or otherwise would have spent to add, or add to, those programs or services.

One of these recognized tests is essentially a maintenance-of-effort test: will the City be spending less of its non-Measure S funds for dispatch services after the use of Measure S funds for dispatching? This test suggests that any dispatch expenses to be paid for with Measure S funds would need to be over and above a general fund contribution base of \$386,000.<sup>5</sup>

Other tests for passing a "supplement, not supplant" restriction are to (1) demonstrate that the program or activity would not have been provided if the restricted funds were not available; or (2) demonstrate that the funds that had been paying for this program or activity in years past are no longer available. I assume the City could not pass the first test, but might be able to pass the second, in whole or part.

#### **Conclusion**

In general, the City may use Measure S funds to pay for the incremental costs of re-establishing the Police Department's local police dispatch function. However, as explained above, there are

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erating budget in effect in March 2008) and then compare that to the percentage of the total police department general fund operating budget or total City general fund operating budget devoted to dispatching in the FY 2012-13 budget.

<sup>4</sup> Yet another way to look at the comparisons would be to total all of the City's expenditures for "public safety," i.e., all police department, fire department, and ambulance services, plus anything spent for gang/drug prevention services. Given the vague wording of Ordinance No. 1094, any of the methods I've mentioned can be justified.

<sup>5</sup> Again, this could be looked at by calculating the base as a percentage of the total police department or total City general fund operating budget, or total police department, fire department, and ambulance services budgets as of March 1, 2008 and comparing to the percentages for the adopted FY 2012-13 budgets.

significant issues about the amount of Measure S funds that can be used to re-establish local dispatching due to the restrictive wording in Measure S. The restrictive wording is open to interpretation and various budgetary comparisons can be used to show whether any particular expenditure proposal complies with the restrictions. You may wish to ask the Finance Director to prepare a variety of comparison calculations for your consideration. Another point to remember is that the City Council is empowered to modify or eliminate the restrictive wording in its discretion.

I hope this memorandum is helpful. Please let me know if you have comments, questions, or need anything else on this. Thank you.

cc: Debby Sultan, Finance Director  
Jenell Van Bindsbergen, Assistant City Attorney

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Martha Sue Simpson  
Chairperson  
Measure S Citizens Oversight Committee  
City of Sanger, California 93657

August 31, 2018

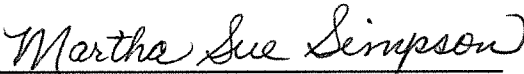
The Honorable Alan M. Simpson, Presiding Judge  
Fresno County Superior Court  
1100 Van Ness Avenue  
Fresno, CA 93724-0002

Re: Citizens Oversight Committee (COC) Chair Responses to Fresno County Grand Jury Final Report  
No. 2: City of Sanger Ordinance No. 1094 – Measure S

Dear Honorable Judge Simpson:

On June 15, 2018, the Fresno County Grand Jury issued a Final Report regarding City of Sanger Ordinance No. 1094 – Measure S. The Citizens Oversight Committee Chair respectfully submits responses to the Findings and Recommendations in the Report. My COC term expired June 30, 2018.

**The Citizens Oversight Committee agrees with the Grand Jury Findings and Recommendations.**

  
\_\_\_\_\_  
Martha Sue Simpson  
Citizens Oversight Committee Chair

## FINDINGS

**Finding 1:** *Public safety has greatly benefitted from Measure S revenues in the City of Sanger.*

**Response 1:** The COC agrees with Finding 1. Safety statistics indicate public safety has improved.

**Finding 2:** *Resolution No. 4122 helped define “Supplement versus Supplant” by stating percentages and base dollar amounts that need to be spent out of General Fund before Measure S dollars can be spent.*

**Response 2:** The COC agrees with Finding 2. Resolution No. 4122 of 2009 states: “The following table hereby establishes the percentage and base dollar amounts of general fund revenue that shall be appropriated for the public safety departments beginning in fiscal year 2008-09 and shall apply to all successive years.” This ordinance attempted to define the “supplement” not “supplant” requirement. Our current city manager held a different city employee position in 2009 when Resolution No. 4122 was passed.

Prior to the Measure S renewal, the city council wanted the city manager to clarify Measure S. The city manager stated at the city council meeting that there was not enough time to clarify Measure S language on the ballot. He indicated the Measure S language would be clarified after the election.

Subsequently, about eighteen months later at three COC meetings the city attorney presented three draft ordinances to clarify the current ordinance language quantifying the use of Measure S revenues. Alternative A provides a baseline dollar amount and revenues collected may be used only after the baseline dollar amount level is met with general funds revenue. Alternative B establishes a percentage of the general fund as a baseline percent. Alternative C mirrors Resolution No 4122. A, B, and C include ambulance services and gang/drug prevention in the definitions of fire and public safety. Some COC members think Alternatives A and B would reduce the required public safety expenditures by the city. So, the COC recommended Alternative C which mirrors Resolution No 4122. The city council will consider and approve Alternatives A, B, or C; the city manager determines the timeline.

**Finding 3:** *The Citizen’s Oversight Committee has been bypassed in its review of proposed Measure S spending including 2017’s across-the-board pay increase for public safety employees.*

**Response 3:** The COC agrees with Finding 3. Jeanne Adams was Chair during this time; Sue Simpson was Vice Chair.

- In the Fall of 2016, the city’s interpretation of our advisory capacity changed. We were told that Measure S items already specified in the city budget would no longer be heard by COC because items listed in the budget had already been approved by the City Council. This bypasses oversight promised to voters.
- On December 15, 2016, the City Council tabled the Memo of Understanding (MOU) with both the Police and Fire Departments. The MOU’s stated: “The Measure “S” 10-year expenditure plan will be amended to budget the salary increases for current and future fiscal years.” No mention of Measure S funds usage was made prior to this date. The COC was not consulted. This is proof that the intent was known after closed-door negotiations and that the COC was deliberately kept in the dark.



- At the January 3, 2017 COC meeting, the usage of Measure S funds for raises was not mentioned at the COC meeting. This was a chance for the city to inform the COC about the usage of Measure S funds for the raises. The city chose not to inform or get approval from the COC.
- At the January 5, 2017 meeting, city council approved pay increases for all safety employees out of Measure S funds in the mid-year budget amendment. The COC had no prior knowledge of this action. This is the first time the Ten-Year Expenditure Plan was used for non-itemized expenditures. In the past, Measure S only paid for ten individual safety personnel with their benefits and supplies; department equipment and supplies were also listed on the 10-Year Plan. The current city manager revised the 10-Year Plan that the previous and current city councils adopted. Then, his new plan included pay increases for all safety employees from Measure S funds. Only with this transfer of Measure S funds, would the city budget be balanced.
- At the February 2017 COC meeting the city manager asked if we thought pay increases for all public safety employees could be taken out of Measure S funds. We explained that the Supplement vs. Supplant clause would not allow us to do so.
- At the March 2, 2017 city council meeting, the council was asked to provide funds from Measure S for across-the-board salary and benefits increases for three years for all public safety employees. Pay increases totaled 13% (5% starting 1/1/17 + 4% from 7/1/17 + 4% from 7/1/18) plus benefits in the city budget. The COC recommendations were overridden; the city council approved the motion.

**Finding 4:** *No records of any outside audit of Measure S funds were provided since the Measure's inception in 2008.*

**Response 4:** The COC agrees with Finding 4. In December 2016 the COC requested a compliance audit. To date the city has stalled a compliance audit:

- On March 16, 2017, the city council directed the current city manager to send RFP's for a compliance audit to a list of COC recommended CPA firms. On May 2, 2017 the COC approved a list of four CPA firms submitted by James Miser, CPA, for inclusion in the RFP. The city then selected a team to read RFP's from other firms not suggested by the COC; they chose the Brown Armstrong CPA firm.
- This prompted a COC member to contact all four COC recommended firms; they did not recall receiving an RFP from Sanger for a compliance audit. From the original list of CPA firms, one firm definitely wanted to bid for this work but never received an RFP. The city insists that the firms were contacted.
- At the July 5, 2017 meeting COC requested to meet directly with Brown Armstrong CPA. A special COC meeting was scheduled for July 27, 2017, At the special COC meeting, the city manager announced that Brown Armstrong CPAs were not available to attend. He reported

information about CPA qualifications and operations. The city manager said the compliance audit would be handled through the Brown Armstrong CPA Bakersfield office. In an effort to work with the city manager, the COC voted 3/2 to recommend the city council award the Measure S Compliance Audit to Brown Armstrong CPAs.

- On August 21, 2017, the city and Brown, Armstrong CPAs entered into an agreement for a “Agreed Upon Procedures Report.” In the agreement, Brown Armstrong wrote: “Because the agreed-upon procedures listed in the attached schedule do not constitute an examination or review, we will not express an opinion or conclusion on the city’s compliance with Measure S City Ordinance No. 1094 and related subsequent city resolutions and city attorney opinions.
- On October 2, 2017 at a city council meeting the city manager requested approval to destroy documents more than two years old; that includes eight years of Measure S related records. The request was during an ongoing Brown Armstrong CPA Measure S Funds records review. The city council did not approve the city manager’s request.
- On November 7, 2017 a Brown Armstrong CPA representative attended the COC meeting to answer questions. He stated the firm was not asked to attend the special COC meeting or they would have attended. Their final report represents the information agreed upon and provided by the city. The CPA advised keeping files for seven years.
- At the November 7, 2017 meeting the city manager and finance director finally presented “An Agreed Upon Procedures Report” which the city manager and finance director continue to erroneously call a “compliance audit.” This audit attempted to cover the years from Measure S inception through fiscal year 2016; some city documents were missing. This “Agreed Upon Procedures Report” clearly states that it is not a compliance audit. This report does not meet the city council mandate for a compliance audit. This report includes a financial review of Measure S revenue collection, amounts sent to the city, and city spending for public safety. No compliance audit was done.
- The COC did not accept the report as it was not a full compliance audit, and the last two years of COC compliance concerns were not addressed.
- The city manager continues to refer to the “Agreed Upon Procedures Report” as a compliance audit. The COC consider the \$23,000 spent from the restricted public fund on “An Agreed Upon Procedures Report” as an attempt to avoid a compliance audit.
- Finally, on March 6, 2018, the COC recommended to the city council to contract with Brown Armstrong CPAs to perform additional procedures to render an opinion for a compliance audit. As of August 2018, no completed compliance audit has been published.
- Almost 18 months later, the city council ordered compliance audit is not completed. When will the city council ensure compliance with their March 16, 2017 order?

**Finding 5:** *Across-the-board pay increases for public safety employees (police and fire) were funded out of Measure S in 2017, whether or not those public safety employees were hired under Measure S.*

**Response 5:** The COC agrees with Finding 5. City staff justifies the benefits and raises for all safety personnel with the following: because all safety personnel use equipment and supplies funded by Measure S, then all raises for safety personnel can also be funded by Measure S. The COC thinks this logic violates the supplement versus supplant concept and two legal opinions attached.

That the city council approved the expenditures does not make them legal. Prior to the current city manager, the ten-year expenditure plans listed salaries for specific Measure S funded personnel only. City attorney opinions in 2012 and 2013 could be interpreted to mean that past city funding out of Measure S may violate the supplement versus supplant requirements.

**Finding 6:** *Not all legal opinions regarding use of Measure S funds to the Sanger City Council have been in writing.*

**Response 6:** The COC agrees with Finding 6. Critical information from City Council meetings and COC meetings were not included in meeting minutes. No copies of verbal legal opinions to the City Council were given to the COC. This potentially allowed the COC to act out of compliance.

**Finding 7:** *Resolution No. 4122 was somehow “lost” following its adoption on January 15, 2009. This same resolution was then somehow “found” in early January of 2018.*

**Response 7:** The COC agrees with Finding 7. Resolution No. 4122 was duly authorized on January 15, 2009. <sup>[1]</sup><sub>SEP</sub> The resolution was to be used every fiscal year beginning in fiscal year 2009 to 2018.

## RECOMMENDATIONS

**Recommendation 1:** *The recently found Resolution No. 4122 (from 01/15/2009) needs to be further clarified to specify whether the percentage or the minimum dollar amount spent for public safety must be provided out of the General Fund, prior to the use of Measure S funds. (F2)*

**Response 1:** The recommendation has not been implemented, but the recommendation will be implemented in the future. The city manager controls the timeframe. The city lawyer has presented the COC with three optional rewrites for clarification. The COC recommended to the city council Option C with minor wording changes/ additions. The City Attorney Opinions from 2012 and 2013 merged with Resolution No. 4122 would clarify meanings.

**Recommendation 2:** *A procedure or policy should be established, requiring that before the City Council can vote on a Measure S expenditure request, the request must be reviewed by the Citizen's Oversight Committee and a recommendation rendered for review by the City Council. (F3)*

**Response 2:** The recommendation has been implemented. On April 20, 2017, the Council adopted Ordinance No. 2017-02 to clarify the process to ensure the COC has an opportunity to review proposed Measure S expenditures. The ordinance added the following to the Measure S Ordinance:

- Sanger City Code Section 66-218 (d); The city manager or his or her designee shall provide any reasonable administrative or technical assistance required by the committee to fulfill its responsibilities or publicize its findings. The city manager or his or her designee shall ensure that all proposed expenditures to be made from revenues collected under this article are submitted to the committee prior to proposing that the city council approve such expenditures. The committee shall consider proposed expenditures and submit its written recommendations to the city council. City council agenda items relating to expenditures from revenues collected under this article shall include text regarding submission of the proposed expenditures to the committee and the committee's recommendations after the fact.

The COC believes our input and expertise is minimized and discounted by the city. Some agenda items seem written with bias; or, they are too limiting in scope. The COC wants relevant details included in meeting minutes.

**Recommendation 3:** *A compliance and/or a comprehensive audit of Measure S funds by an outside firm should be completed at the conclusion of each fiscal year. (F4)*

**Response 3:** The recommendation has not been implemented, but the city assures that the recommendation will be implemented in the future. The city manager and the finance director determine timeframes and successful implementation.

**Recommendation 4:** *Public safety pay increases funded from Measure S should be restricted to Measure S hired personnel. (F5)*

**Response 4:** The recommendation will most likely not be implemented until the city council changes. COC recommendations were ignored. Previously approved Ten-Year Spending Plans used Measure S revenues for ten additional salaries/positions and no other personnel costs. The COC believes city council budget approvals do not amend city council resolutions. Formal changes to resolutions need to be made before a budget is approved or else the budget is not in compliance. The Grand Jury Report states as follows:

“Measure S funds spent on public safety employee salaries and/or pay increases are limited to only employees hired under Measure S.”

“In discussions with past Sanger COC members, past City administrators/department heads, and City of Sanger Citizens, it was never the intent that monies collected under the Measure S tax be used for across-the-board pay increases for public safety employees. The only exception was to be those public safety employees hired under Measure S.”

**Recommendation 5:** *A liaison should be selected by the Sanger City Council to attend all Citizen’s Oversight Committee meetings, in an effort to improve communications. (F3)*

**Response 5:** The recommendation has been implemented. On February 15th, 2018, the city council designated one member as the COC liaison who attends COC meetings. So, how can important information and recommendations be shared in a timely and unbiased manner with the entire city council? In the past, critical information missing in the minutes rendered COC recommendations useless. Lack of verbal communication also contributes to miscommunication. The city manager and city council will determine successful implementation.

**Recommendation 6:** *A liaison should be selected by the Citizen’s Oversight Committee to attend all Sanger City Council meetings, in an effort to improve communications. (F3)*

**Response 6:** The recommendation has been implemented as of the August 14, 2018 COC meeting. This recommendation enhances communication. A COC agenda informational item could precede agenda items requiring recommendations to the city council. Otherwise, the opportunity to share information, “Matters Initiated by Committee Members,” comes too late at the end of COC meetings. The city manager and city council will determine successful implementation.

**Recommendation 7:** *All legal opinions by legal counsel regarding the use of Measure S funds should be provided in writing. (F6)*

**Response 7:** The recommendation has been implemented according to the city. New COC members need all attorney opinions. The city manager and city council determine successful implementation.

**Recommendation 8:** *A complete review of the City of Sanger's archival system should be completed by the end of 2018. (F7)*

**Response 8:** The recommendation has not been implemented, but surely the recommendation will be implemented in the future. The city manager controls the implementation timeframe, success and completion. The COC believes this recommendation needs monitoring. At the same time the COC requested a compliance audit, the city manager requested permission from the city council to shred all documents older than two years. In contrast, CPA testimony to the COC recommended saving documents relating to Measure S funds for seven years.

New city council and committee members need to know about all current city codes, resolutions, city attorney opinions and other relevant documents. The COC thinks the city council needs all of the information about Measure S.

Easy access to these archives would help citizens become informed about local government. The COC thinks city council and COC meeting minutes and audio recordings, as well as current contact information for city personnel, needs to be posted on the city website in a timely manner.

# **REPORT & RESPONSES #3**

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## **SPECIAL DISTRICTS NON-COMPLIANCE- SYSTEM FAILURE**



# Special Districts Non-Compliance - System Failure

## Fresno County Grand Jury Report No. 3

### June 2018

#### SUMMARY

The 2017-18 Fresno County Grand Jury reviewed the published reports of the previous year's grand jury, as is customary, for continuity. In addition, California grand juries are mandated to investigate, review, and report on county and city operations through the Fresno County Grand Jury complaint process. The 2017-18 Fresno County Grand Jury's review of the Kingsburg Tri-County Health Care District - A Financial Review, Report No. 3, determined there were inconsistencies in some Fresno County special districts' financial audit reporting.

Special districts by their design are tax based to benefit the citizens of the area defined as the special district. This can and does involve significant amounts of taxpayer monies ranging from several thousands to millions of dollars.

The investigative process included interviews with personnel from the Fresno County Board of Supervisors Audit Committee, Fresno County Auditor-Controller/Treasurer-Tax Collector's Office, Fresno County Local Agency Formation Commission, and various special districts personnel. Also reviewed were state and county websites that pertain to the formation and maintenance of special districts.<sup>1</sup>

In analyzing the specific districts who were noncompliant in their submission of state mandated annual audits, per California Government Code, section (§) 26909, it was determined there is a systematic failure by the Fresno County Audit Committee<sup>2</sup> and the Fresno County Auditor-Controller/Treasurer-Tax Collector's Office to support special districts' understanding and completion of their financial audit requirements after the special districts initial formation process.

#### GLOSSARY

**Local Agency Formation Commission (LAFCo)** - "The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH Act) (Government Code, §56000 et seq.) requires all Local Agency Formation Commissions (LAFCOs), including Fresno County LAFCo, to conduct municipal service reviews (MSR) prior to updating the spheres of influence (SOI) or area of responsibility of the various cities and special districts in the county, excluding community facility districts and school districts (Government Code, §56430). The fundamental role of a LAFCo is to implement the CKH Act, providing

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<sup>1</sup> Websites:

- Fresno County Board of Supervisors: <http://www.co.fresno.ca.us/departments/board-of-supervisors>
- Fresno County LAFCo: <http://www.fresnolaftco.org/>
- State of California Law Section:  
[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=26909.&lawCode=GOV#](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=26909.&lawCode=GOV#)
- California State Association of Counties: <http://www.counties.org/>

<sup>2</sup> See Appendix A – "Bylaws of the Fresno County Audit Committee", May 29, 2015



for the logical, efficient, and most appropriate formation of local municipalities, service areas and special districts”.

**Municipal Service Review (MSR)** - The Municipal Service Review (MSR) and Sphere of Influence Update (SOI Update) process is a comprehensive assessment prepared by LAFCo to assess the ability of government agencies to effectively and efficiently provide services to residents and users. The form and content of the MSR/SOI Update is governed by requirements of the CKH Act and the State of California LAFCo MSR Guidelines published in August 2003.

**Little Hoover Commission** - A bipartisan board composed of five public members appointed by the governor, four public members appointed by the legislature, two senators, and two assembly members. In creating the Commission in 1962, the Legislature declared its purpose<sup>3</sup> is to secure assistance for the Governor and itself in promoting economy, efficiency and improved services in the transaction of the public business in the various departments, agencies and instrumentalities of the executive branch of the state government, and in making the operation of all state departments, agencies and instrumentalities and all expenditure of public funds, more directly responsive to the wishes of the people as expressed by the elected representatives.<sup>4</sup>

## **BACKGROUND**

There are many types of special districts (water, sanitation, mosquito, etc.). Fresno County has approximately 168 special districts. These districts deal with funds ranging from a few thousands to millions of dollars. The majority of these special districts are in compliance with the state financial audit requirements. The Fresno County Grand Jury was initially made aware of 10 special districts that were financial audit noncompliant. Further information provided by the Fresno County Auditor-Controller/Treasurer-Tax Collector’s Office showed that there are at least 28 special districts noncompliant with financial auditing requirements.

## **METHODOLOGY**

The 2017-18 Fresno County Grand Jury began its year by reviewing the previous year’s jury reports. Representatives from the Fresno County Auditor-Controller/Treasurer-Tax Collector’s Office, LAFCo, Fresno County Audit Committee, and several special districts were interviewed during the current grand jury term. State and county websites were utilized for investigative purposes as well.

## **DISCUSSION**

- The 2017-18 Fresno County Grand Jury reviewed the Kingsburg Tri-County Health Care District - A Financial Review, Report No. 3, from the previous year, which revealed there were inconsistencies in several Fresno County Special Districts’ audit reporting. In analyzing the specific districts who were noncompliant with financial auditing requirements, it was determined

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<sup>3</sup> California Little Hoover Commission: <http://www.lhc.ca.gov/about/history>

<sup>4</sup> California Little Hoover Commission: <http://www.lhc.ca.gov/report/special-districts-improving-oversight-transparency>

there is a systematic failure by the county entity responsible for audit compliance in the follow-up of the special districts' financial audit reporting. Special districts are formed through the application process with LAFCo and are created through the LAFCo review process to operate within specifically defined areas and in response to public demand. Special districts mostly provide a single service such as education, cemeteries, transportation, and fire protection, and are usually used for ongoing service.<sup>5</sup> Government Code, § 26909 (a)(1) (text included below) requires that special districts provide a financial audit, in most cases, annually.

*26909. (a) (1) The county auditor shall either make or contract with a certified public accountant or public accountant to make an annual audit of the accounts and records of every special district within the county for which an audit by a certified public accountant or public accountant is not otherwise provided. In each case, the minimum requirements of the audit shall be prescribed by the Controller and shall conform to generally accepted auditing standards.*

*(2) (A) If an audit of a special district's accounts and records is made by a certified public accountant or public accountant, the minimum requirements of the audit shall be prescribed by the Controller and shall conform to generally accepted auditing standards.*

*(B) A report of the audit required pursuant to subparagraph (A) shall be filed within 12 months of the end of the fiscal year or years under examination as follows:*

*(i) For a special district defined in paragraph (2) of subdivision (d) of Section 12463, with the Controller.*

*(ii) For a special district defined in Section 56036, with the Controller and with the local agency formation commission of the county in which the special district is located, unless the special district is located in two or more counties, then with each local agency formation commission within each county in which the district is located.*

*(3) Any costs incurred by the county auditor, including contracts with, or employment of, certified public accountants or public accountants, in making an audit of every special district pursuant to this section shall be borne by the special district and shall be a charge against any unencumbered funds of the district available for the purpose.*

*(4) For a special district that is located in two or more counties, this subdivision shall apply to the auditor of the county in which the treasury is located.*

*(5) The county controller, or ex officio county controller, shall effect this section in those counties having a county controller or ex officio county controller.*

*(b) A special district may, by unanimous request of the governing board of the special district and with unanimous approval of the board of supervisors, replace the annual audit required by this section with one of the following, performed in accordance with professional standards, as determined by the county auditor:*

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<sup>5</sup> LAFCo website: <http://www.fresnolafco.org/>

*(1) A biennial audit covering a two-year period.*

*(2) An audit covering a five-year period if the special district's annual revenues do not exceed an amount specified by the board of supervisors.*

*(3) An audit conducted at specific intervals, as recommended by the county auditor, that shall be completed at least once every five years.*

*(c) (1) A special district may, by unanimous request of the governing board of the special district and with unanimous approval of the board of supervisors, replace the annual audit required by this section with a financial review, in accordance with the appropriate professional standards, as determined by the county auditor, if the following conditions are met:*

*(A) All of the special district's revenues and expenditures are transacted through the county's financial system.*

*(B) The special district's annual revenues do not exceed one hundred fifty thousand dollars (\$150,000).*

*(2) If the board of supervisors is the governing board of the special district, it may, upon unanimous approval, replace the annual audit of the special district required by this section with a financial review in accordance with the appropriate professional standards, as determined by the county auditor, if the special district satisfies the requirements of subparagraphs (A) and (B) of paragraph (1).*

*(d) Notwithstanding this section, a special district shall be exempt from the requirement of an annual audit if the financial statements are audited by the Controller to satisfy federal audit requirements.*

*(e) This section shall become operative on January 1, 2027.*

*(Amended (as added by Stats. 2016, Ch. 164, Sec. 2) by Stats. 2017, Ch. 334, Sec. 3. (SB 448) Effective January 1, 2018. Section operative January 1, 2027, by its own provisions. )*

- Special criteria, if met, allows a special district to produce a financial report in a different time frame or format. If a special district fails to submit audits or financial statements, Government Code §26909, effective January 1, 2018, requires the county auditor's office to perform an audit of the special district and charge the respective district for the cost of the audit.
- The Little Hoover Commission has reviewed special districts, their creation, maintenance, and dissolution procedures and has come up with a series of recommendations.<sup>6</sup>

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<sup>6</sup> California Little Hoover Commission Report #239, "Special Districts: Improving Oversight & Transparency", August 2017, <http://www.lhc.ca.gov/sites/lhc.ca.gov/files/Reports/239/Report239.pdf>, see Appendix B – "Recommendations".

The report includes Recommendation Nos. 2 regarding one-time grant funding; 3 dealing with the identification and dissolution of inactive districts [Senate Bill 448 (Wieckowski) Statutes of 2017, Chapter 334]; and, 6 for the creation of an advisory committee, which cover specific areas of the Fresno County Grand Jury's concerns.<sup>7</sup>

- The Fresno County Grand Jury found that the Fresno County Audit Committee and the Fresno County Auditor-Controller/Treasurer-Tax Collector's Office must focus aggressively on how special districts operate and how special district monies are being spent. The Grand Jury has found the Fresno County Auditor-Controller/Treasurer-Tax Collector's Office and the Fresno County Audit Committee continued low prioritization of special districts audit review. Recently the Panoche Water District<sup>8</sup> was charged with using public monies for personal items, which should have raised an alert for the Fresno County Audit Committee and the Fresno County Auditor-Controller/Treasurer-Tax Collector's Office.
- According to the Fresno County Audit Committee Bylaws, the committee appears to have the authority to monitor the Fresno County Auditor-Controller/Treasurer-Tax Collector Office's compliance with Government Code, §26909's requirement to perform an audit of special districts when a special district fails to arrange their own audit. ("To oversee and monitor County compliance with pertinent laws and regulations, applicable ethical standards, and conflicts of interest and fraud policies through the review of the results of the Internal Audit Division."<sup>9</sup> (Underline added for emphasis).
- During the interview process, it was found that the Fresno County Auditor-Controller/Treasurer-Tax Collector's Office simply checks off special district audits and does not review them for financial accuracy.
- It was also stated that the Office has experienced a 40% turnover rate for the last few years. Since that interview, the only certified auditor has left the special districts section.
- The Fresno County Auditor-Controller/Treasurer-Tax Collector's Office cannot supply the financial information on the 28 identified noncompliant special districts because they have not submitted financial audits.
- The interview process with the Fresno County Auditor-Controller/Treasurer-Tax Collector's Office indicated that special district audits are a low priority for the Office.
- Through the Grand Jury interview process it was found that, LAFCo is utilizing the MSR process to aid and educate special districts in the proper methodology to operate the special district.

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<sup>7</sup> California Little Hoover Commission Report #239, "Special Districts: Improving Oversight & Transparency", August 2017, <http://www.lhc.ca.gov/sites/lhc.ca.gov/files/Reports/239/Report239.pdf>

<sup>8</sup> California Attorney General's Office: <https://oag.ca.gov/news/press-releases/attorney-general-becerra-announces-embezzlement-charges-against-former-panoche>

<sup>9</sup> See Appendix A – "Bylaws of the Fresno County Audit Committee", May 29, 2015, Section 1 Article VI

## FINDINGS

- F1. Ten districts were initially identified as having not submitted the required annual financial audits. However, in its investigation, the Fresno County Grand Jury has determined that there are 28 or more special districts that are noncompliant.
- F2. Audits, when received by the Fresno County Auditor-Controller/Treasurer-Tax Collector's Office, are not reviewed for financial accuracy nor content, but only checked off as submitted.
- F3. It appears that the Fresno County Auditor-Controller/Treasurer-Tax Collector's Office is currently understaffed. The only staff member certified in audits has recently left to another position. The remaining staff is new to the Office and to managing special district financial audits requirements. In recent years, the Fresno County Auditor-Controller/Treasurer-Tax Collector's Office has experienced an annual turnover of approximately 40%.
- F4. The Fresno County Auditor-Controller/Treasurer-Tax Collector's Office believes it has the responsibility but not the authority for securing special district audits. California Government Code, §26909 was amended effective January 1, 2018, and requires the county auditor's office to either perform or contract with a certified public accountant or public accountant to perform an audit of the special districts and charge the respective districts for the cost of the audit.
- F5. Through the municipal service review process, the Fresno County Local Agency Formation Commission is aiding and educating the special districts in the proper methodology in the operation of the special district, subject to available resources.
- F6. Per the Fresno County Auditor-Controller/Treasurer-Tax Collector's Office, current and accurate financial information was unavailable on the noncompliant special districts.
- F7. In August 2017, the California Little Hoover Commission produced Report #239: "Special Districts: Improving Oversight & Transparency"<sup>10</sup>, offering recommendations for improving oversight and transparency of California special districts.
- F8. The Fresno County Auditor-Controller/Treasurer-Tax Collector's Office places special districts audits as a low priority.
- F9. Per the Fresno County Audit Committee's Bylaws it appears the committee, although advisory in nature, can oversee and monitor the Fresno County Auditor-Controller/Treasurer-Tax Collector's Office with regards to special district financial audit requirements, but has failed to provide oversight and monitoring.

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<sup>10</sup> California Little Hoover Commission Report #239, "Special Districts: Improving Oversight & Transparency", August 2017, <http://www.lhc.ca.gov/sites/lhc.ca.gov/files/Reports/239/Report239.pdf>

## RECOMMENDATIONS

- R1. The Fresno County Auditor-Controller/Treasurer-Tax Collector's Office should review all special districts for audit compliance and work with those noncompliant districts to bring them into compliance. It should prioritize them based on current cash balances, largest to smallest. (F1) (F9)
- R2. The Fresno County Auditor-Controller/Treasurer-Tax Collector's Office should, for purposes of accuracy, review special district financial audits annually as they are submitted and received by the office. (F2) (F9)
- R3. Those special districts that are found noncompliant with their state-mandated financial audit requirements, but have no cash on hand or are no longer functional, should be referred by the Fresno County Local Agency Formation Commission (or by the entity itself) to the State to be dissolved by the State of California. (F1)
- R4. Per California Government Code, section 26909 as amended, the Fresno County Auditor-Controller/Treasurer-Tax Collector's Office should either perform financial audits on special districts or contract with a certified public accountant or public accountant to have the missing audits completed. (F4)
- R5. The Fresno County Local Agency Formation Commission should continue to utilize and expand the municipal service review process to aid and educate all special districts. (F5)
- R6. Fresno County Local Agency Formation Commission and the Fresno County Auditor-Controller/Treasurer-Tax Collector's Office should encourage and support the recommendations of the California Little Hoover Commission "Special Districts: Improving Oversight & Transparency", Report #239, August 2017. (F7)

## REQUEST FOR RESPONSES

Pursuant to Penal Code section 933.05, the Fresno County Grand Jury requests responses to each of the specific findings and recommendations. It is required that responses from elected officials are due within 60 days of the receipt of this report and 90 days for others.

Fresno County Auditor-Controller/Treasurer-Tax Collector (F1, F2, F3, F4, F6, F7, F8, and F9)  
and (R1, R2, R4, and R6)

Fresno County Audit Committee Chairperson (F9)

Fresno County Local Agency Formation Commission Executive Officer (F5, F6, and F7) and (R5  
and R6)

**DISCLAIMER**

Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code, section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.

## **APPENDIX A**

### **BYLAWS OF THE FRESNO COUNTY AUDIT COMMITTEE**

May 29, 2015

#### **ARTICLE I. GENERAL PROVISIONS**

Section 1: The rules contained in these Bylaws shall govern the Fresno County Audit Committee (hereinafter referred to as “Committee”). This Committee has been established as an advisory committee to the Board of Supervisors (hereinafter referred to as “Board”).

#### **ARTICLE II. MEMBERSHIP, RIGHTS AND DUTIES**

Section 1: The membership of the Committee shall consist of the following: two (2) members of the Board, the County Administrative Officer (CAO), the County’s Counsel, one (1) Department Head appointed by the CAO, and two (2) members from the public appointed by the Board. At least one (1) of the public members should have work history in the field of business, finance, auditing and/or accounting. The County Auditor-Controller/Treasurer-Tax Collector will serve as staff to the Committee.

Section 2: Public members shall be County residents and shall be appointed for staggered, two-year terms. If a public member misses two consecutive meetings they will be removed from the Committee and a new public member will be appointed.

Section 3: All Committee members will have an equal voice in the decision-making process. Due to the scope of the Committee’s assignment, consistent attendance by all members is expected; however, for County members with the approval of the Chairman, a substitute may attend the meeting with the member’s proxy. Public members must be present to vote.

Section 4: In the event that a member chooses to resign from the Committee, such member should notify the Chairman in writing. The Chairman will then immediately notify the Board and the Committee of any such resignations. Upon notification, the Board will begin the appointment process for a replacement until the vacancy is filled.

#### **ARTICLE III. APPOINTMENTS, POWERS, AND DUTIES OF THE CHAIRMAN**

Section 1: The Chairman and Vice-Chairman shall initially be elected for a two-year term, which may be extended for one additional year by a favorable vote of a majority of the Committee members.

Section 2: The Chairman’s duties including presiding over all Committee meetings, establishing subcommittees, responding to members’ requests for information, signing communications on behalf of the Committee, and representing the Committee before the Board and other governmental bodies, subject to the approval of a majority of the other Committee members.



Section 3: In the absence or inability of the Chairman to preside over the meetings, the Vice-Chairman will perform such duties. If neither the Chairman nor the Vice-Chairman is able to preside, the Committee shall select one of the members to act as Chairman pro-tem. The Chairman pro-tem shall have all the powers and duties of the Chairman during the absence of the Chairman.

Section 4: The Chairman shall preserve order and decorum. The presence of a quorum will be necessary to conduct a meeting. A quorum shall be defined as a majority of Committee members. The Chairman shall decide all questions of order (unless overridden by a majority of the Committee members present).

#### ARTICLE IV. ORDER AND SCHEDULING OF MEETINGS

Section 1: At a minimum, the Committee will meet on a quarterly basis. All meetings will be subject to the Ralph M. Brown Act. Whenever possible, quarterly meetings will be pre-scheduled at the beginning of each year. The Committee shall approve the annual meeting calendar at the first meeting of the calendar year.

Section 2: County staff will keep minutes of each meeting and offer them for Committee approval on the subsequent meeting agenda.

#### ARTICLE V. PUBLIC PARTICIPATION

Section 1: Every person addressing the Committee shall be limited in their remarks to three minutes, unless an extension is granted by the Chairman.

#### ARTICLE VI. SCOPE OF COMMITTEE'S AUTHORITY AND OBJECTIVES

Section 1: The general authority of the Committee is summarized as follows:

To oversee the establishment and maintenance of the County's internal control structure primarily through oversight of the activities of the Internal Audit Division.

To oversee the quality of financial reporting activities which portray the County's financial condition, results of operations, and plans and long-term commitments, primarily through oversight of the public accounting firm providing the external audit coverage of the County's consolidated financial statements. In addition, the Committee shall review audit results of County programs for which the Board has responsibility.

To oversee and monitor County compliance with pertinent laws and regulations, applicable ethical standards, and conflicts of interest and fraud policies through the review of the results of the Internal Audit Division.

To ensure that an external quality control review of the Internal Audit Division be conducted every five years by an organization not affiliated with the County in accordance with standards promulgated by the Institute of Internal Auditors.

To immediately notify the Board in writing should the Committee determine any significant or material irregularity exists in County operations.

To present a summary of Committee activities and significant audit results to the Board through the distribution of the quarterly meeting material. If the minutes were corrected or amended upon the regular order of business, the minutes of each Committee meeting will be sent to the Board members once approved by the Committee.

Such other duties as prescribed by the Board.

#### ARTICLE VII. MISCELLANEOUS PROVISIONS

Section 1: These bylaws are subject to change by the Committee, with subsequent approval by the Board. Changes to the bylaws can be made by a majority vote of Committee members.

## APPENDIX B

### Little Hoover Commission Recommendations:

#### Recommendations 1-4 (Report pages 29-30)

**Recommendation 1: The Legislature and the Governor should curtail a growing practice of enacting bills to override LAFCO deliberative processes and decide local issues regarding special district boundaries and operations.**

The Legislature and Governor have reason to be frustrated with slow and deliberative LAFCO processes. But these are local institutions of city, county and special district members, often better attuned to local politics, than those in the State Capitol. Exemptions where the Legislature gets involved should be few, and in special cases where the local governing elites are so intransigent or negligent – or so beholden to entrenched power structures – that some higher form of political authority is necessary.

**Recommendation 2: The Legislature should provide one-time grant funding to pay for specified LAFCO activities, to incentivize LAFCOs or smaller special districts to develop and implement dissolution or consolidation plans with timelines for expected outcomes. Funding should be tied to process completion and results, including enforcement authority for corrective action and consolidation.**

The Commission rarely recommends additional funding as a solution. However, a small one-time infusion of \$1 million to \$3 million in grant funding potentially could save California taxpayers additional money if it leads to streamlined local government and improved efficiency in service delivery. This funding could provide an incentive for LAFCOs or smaller districts to start a dissolution or consolidation process. Participants in the Commission’s public process suggested the Strategic Growth Council or Department of Conservation could administer this one-time funding.

**Recommendation 3: The Legislature should enact and the Governor should sign SB 448 (Wieckowski) which would provide LAFCOs the statutory authority to conduct reviews of inactive districts and to dissolve them without the action being subject to protest and a costly election process.**

There has been no formal review to determine the number of inactive special districts – those that hold no meetings and conduct no public business. Rough estimates gauge the number to be in the dozens. Simplifying the LAFCOs’ legal dissolution process would represent a significant step toward trimming district rolls in California. The Commission supports SB 448 and encourages the Legislature to enact the measure and for the Governor to sign the bill.

**Recommendation 4: The Governor should sign AB 979 (Lackey), co-sponsored by the California Special Districts Association and the California Association of Local Agency**

**Formation Commissions. The bill would strengthen LAFCOs by easing a process to add special district representatives to the 28 county LAFCOs where districts have no voice.**

The Cortese-Knox-Hertzberg Reorganization Act of 2000 (AB 2838, Hertzberg) provided the option to add two special district members to county LAFCOs to broaden local governing perspectives. Nearly two decades later, 30 counties have special district representatives on their LAFCOs alongside city council members and county supervisors. This change provides LAFCOs a more diverse decision-making foundation and stronger finances. But 28 counties, mostly in rural California have not added special district representatives to their LAFCO governing boards, citing scarce resources. Presently, a majority of a county's special districts must pass individual resolutions within one year supporting a change. This has repeatedly proved itself a formidable obstacle to broadening the outlook of local LAFCOs. AB 979 (Lackey) would allow a simple one-time election process where districts could easily – and simultaneously – decide the question.

**Recommendations 5-8 (Report page 30)**

**Recommendation 5: The Legislature should adopt legislation to give LAFCO members fixed terms, to ease political pressures in controversial votes and enhance the independence of LAFCOs.**

The California Association of Local Agency Formation Commissions (CALAFCO) testified on August 25, 2016, that individual LAFCO members are expected to exercise their independent judgment on LAFCO issues rather than simply represent the interests of their appointing authority. But this is easier said than done when representatives serve on an at-will basis. The CALAFCO hearing witness said unpopular votes have resulted in LAFCO board members being removed from their positions. Fixed terms would allow voting members to more freely exercise the appropriate independence in decision-making.

**Recommendation 6: The Legislature should convene an advisory committee to review the protest process for consolidations and dissolutions of special districts and to develop legislation to simplify and create consistency in the process.**

Complicated and inconsistent processes potentially impact a LAFCO's ability to initiate a dissolution or consolidation of a district. If 10 percent of district constituents protest a LAFCO's proposed special district consolidation, a public vote is required. If a special district initiates the consolidation, then a public vote is required if 25 percent of the affected constituents protest. Additionally, the LAFCO must pay for all costs for studies and elections if it initiates a consolidation proposal, whereas the district pays these costs if it proposes or requests the consolidation. Various participants in the Commission's public process cautioned against setting yet another arbitrary threshold and advised the issue warranted further study before proposing legislative changes. They called for more consistency in the process.

**Recommendation 7: The Legislature should require every special district to have a published policy for reserve funds, including the size and purpose of reserves and how they are invested.**

The Commission heard a great deal about the need for adequate reserves, particularly from special districts with large infrastructure investments. The Commission also heard concerns that reserves were too large. To better articulate the need for and the size of reserves, special districts should adopt policies for reserve funds and make these policies easily available to the public.

**Recommendation 8: The State Controller's Office should standardize definitions of special district financial reserves for state reporting purposes.**

Presently, it is difficult to assess actual reserve levels held by districts that define their numbers one way and the State Controller's Office which defines them another way. The State Controller's Office is working to standardize numbers following a year-long consultation with a task force of cities, counties and special districts. To improve transparency on reserves, a subject that still eludes effective public scrutiny, they should push this project to the finish line as a high priority.

#### **Recommendations 9-11 (Report pages 38-39)**

**Recommendation 9: The Legislature should require that every special district have a website. Key components should include:**

- **Name, location, contact information**
- **Services provided**
- **Governance structure of the district, including election information and the process for constituents to run for board positions**
- **Compensation details - total staff compensation, including salary, pensions and benefits, or a link to this information on the State Controller's website**
- **Budget - including annual revenues and the sources of such revenues, including without limitation, fees, property taxes and other assessments, bond debt, expenditures and reserve amounts**
- **Reserve fund policy**
- **Geographic area served**
- **Most recent Municipal Service Review**

- **Most recent annual financial report provided to the State Controller’s Office, or a link to this information on the State Controller’s website**
- **Link to the Local Agency Formation Commission and any state agency providing oversight**

Exemptions should be considered for districts that fall under a determined size based on revenue and/or number of employees. For districts in geographic locations without reliable Internet access, this same information should be available at the local library or other public building open and accessible to the public, until reliable Internet access becomes available statewide. Building on this recommendation, every LAFCO should have a website that includes a list and links to all of the public agencies within each county service area and a copy of all of the most current Municipal Service Reviews. Many LAFCOs currently provide this information and some go further by providing data on revenues from property taxes and user fees, debt service and fund balance changes for all the local governments within the service area. At a minimum, a link to each agency would enable the public to better understand the local oversight authority of LAFCOs and who to contact when a problem arises.

**Recommendation 10: The State Controller’s Office should disaggregate information provided by independent special districts from dependent districts, nonprofits and joint powers authorities.**

Over the course of this study, the Commission utilized data available on the State Controller’s website to attempt to draw general conclusions about independent special districts, such as overall revenues, number of employees and employee compensation. Presently, it is difficult to do this without assistance as information for independent districts is mixed with various other entities.

**Recommendation 11: The California Special Districts Association, working with experts in public outreach and engagement, should develop best practices for independent special district outreach to the public on opportunities to serve on boards.**

The Commission heard anecdotally that the public does not understand special district governance, does not often participate or attend special district board meetings and often does not know enough about candidates running to fill board positions. Often, the public fails to cast a vote for down-ballot races. Two county registrars provided the Commission information that showed in many instances those who voted for federal or statewide offices did not vote for local government officials at the same rate, whether they were city council positions, special district positions or local school or community college district positions.



# County of Fresno

BOARD OF SUPERVISORS  
SUPERVISOR NATHAN MAGSIG – DISTRICT FIVE

July 27, 2018

The Honorable Alan M. Simpson, Presiding Judge  
Fresno County Superior Court  
1100 Van Ness Avenue  
Fresno, CA 93724-0002

RE: Fresno County Audit Committee Chair Response to 2017-18 Fresno County Grand Jury Report No. 3 on Audits of Special Districts by Fresno County Auditor Controller Treasurer Tax Collector

Dear Judge Simpson:

As Chair of the Fresno County Audit Committee, I have been requested to provide a response to Finding 9 in the 2017-18 Fresno County Grand Jury Report No. 3 entitled "Special Districts Non-Compliance – System Failure." The Grand Jury's Finding No. 9 reads as follows:

"F9. Per the Fresno County Audit Committee's Bylaws it appears the committee, although advisory in nature, can oversee and monitor the Fresno County Auditor-Controller/Treasurer-Tax Collector's Office with regards to special district financial audit requirements, but has failed to provide oversight and monitoring."

Response: Respectfully, and for the reasons set forth in this response, I must disagree with Finding No. 9 of the Grand Jury.

## Discussion

I want to first begin by saying the County is very appreciative of the Grand Jury's concerns over the functioning and audit compliance of the many special districts within the County of Fresno. The County also wishes to inform the Grand Jury that both the Auditor Controller Treasurer Tax Collector and the County Counsel are working on initiatives and possible additional training that will help address the problem with special district audit compliance the Grand Jury identified in its report. As the Grand Jury was made aware during its investigation, the County has a great number of special districts, many of which are relatively small or have very limited function. Special districts in most counties in the state struggle to meet the compliance standards contained in Government Code §26909 and there are very limited staffing and financial resources available to auditor controllers throughout the state to assist with the districts' compliance. This is particularly true in Fresno County which contains a larger number of special districts with restricted finances. Still, many of the findings and recommendations contained in the Grand Jury's report are useful, and the County will be looking for opportunities to engage underfunded or poorly functioning special districts to encourage any consolidations or dissolutions that might be warranted.

The function of the Fresno County Audit Committee, however, does not encompass audits of third party governmental entities such as the special districts, nor oversight of the Auditor Controller Treasurer Tax Collector, an independent elected County official in performance of any actions pursuant to Government Code §26909. The Grand Jury reads the Audit Committee bylaw provisions too broadly and out of context. Audit committees in general are established as a best practice among government and large corporate entities to provide a somewhat more independent review of the internal audit functions of that entity. The Fresno County Audit Committee bylaws referenced by the Grand Jury are "Appendix A" to the County of Fresno Internal Audit Charter adopted by the Board of Supervisors. That Charter lists the mission of the Fresno County Internal Audit Division as providing "independent and proactive auditing and consulting services to the administration and departmental management of the County." (Emphasis added). The entire focus of the Charter and the establishment of an Audit Committee is on the internal functioning and fiduciary financial responsibilities of the specific entity, in this case the County of Fresno. Nothing in statute or practice gives the Fresno County Audit Committee the obligation, authority or ability to direct independent governmental entities with respect to their audit obligations, nor to direct the Auditor Controller Treasurer Tax Collector with respect to any effort under Government Code §26909.

Paragraph V of the Internal Audit Charter defines the function of the Audit Committee:

"The Audit Committee is an advisory committee to the Board of Supervisors and provides oversight to the County's Internal Audit Division and external audit coverage. The Committee assists the Board of Supervisors in ensuring the independence of the internal audit function and ensuring that appropriate action is taken on audit findings. The Committee helps to promote and enhance effective internal controls for County operations, and serves as an important communication link between external auditors, internal auditors, and operating management. The Committee establishes its own bylaws to govern the makeup and responsibilities of its members. "

It is possible that the Grand Jury's misapprehension of the purpose and scope of authority of the Audit Committee arises from two sources. The first is the general perception of the citizenry that because the County of Fresno is the governmental entity with full geographic coverage of the county, and because the County is seemingly situated in a governmental hierarchy between the State of California and smaller municipalities and districts within the County that the County government has some plenary authority over other local agencies within the geographic boundaries of the County such as special districts. This is incorrect. All cities, and with few exceptions, most districts function completely independently of the County and are separate legal entities. The second misperception may be caused by references to "external" auditors in Paragraph V of the Charter (quoted above), or to "external quality control review" in the Bylaws themselves. These terms refer to the use of external auditors to audit the records of or review the audit procedures of the County itself, and not to any responsibility of the Audit Committee to assure that other governmental entities within the County are complying with their own audit requirements.

I wish to conclude by repeating that, although the County respectfully disagrees with the Grand Jury's Finding No. 9, the County takes very seriously the issues raised overall by the Grand Jury's report. As resources are available, the County will look for opportunities to assist the special districts in the County reach compliance with audit requirements or, in the alternative to encourage consolidation or dissolution of special districts when appropriate.



Hon. Alan M. Simpson  
July 27, 2018  
Page 3

Respectfully submitted,

**NATHAN MAGSIG**  
Supervisor, District 5  
Fresno County Board of Supervisors  
Chair, Fresno County Audit Committee

A handwritten signature in black ink, appearing to read 'Nathan Magsig', is written over a horizontal line. The signature is stylized and cursive.

cc: Oscar J. Garcia, Fresno County Auditor-Controller/Treasurer-Tax Collector  
Members of the Fresno County Board of Supervisors



## County of Fresno

Oscar J. Garcia, CPA

Auditor-Controller/Treasurer-Tax Collector

August 14, 2018

The Honorable Alan Simpson, Presiding Judge  
Fresno County Superior Court  
1100 Van Ness Ave  
Fresno, CA 93724-0002

**Reference: Response to Fresno County Grand Jury Final Report No. 3 Titled,  
“Special Districts Non-Compliance – System Failure”**

Dear Judge Simpson:

The County of Fresno Auditor-Controller/Treasurer-Tax Collector (Auditor’s Office) is providing its response to the above-referenced Grand Jury Report (Report). The Auditor’s Office agrees that providing transparent financial information to special districts’ constituents is valuable and important. The Auditor’s Office is working to implement two of the Grand Jury’s recommendations.

As directed by the Grand Jury, the responses below are provided in accordance with Section 933.05, subdivisions (a) and (b), of the California Penal Code.

**Findings:**

**F1:** Ten districts were initially identified as having not submitted the required annual financial audits. However, in its investigation, the Fresno County Grand Jury has determined that there are 28 or more special districts that are noncompliant.

F1: The Auditor’s Office disagrees partially with this finding. As of the date that the grand jury report was released, there were 13 noncompliant districts, not 28.

On December 18, 2017, the Auditor’s Office sent an email to a member of the Grand Jury with a list of 25 noncompliant special districts (districts that have not provided audited financial statements for one or more years to the Auditor’s Office) as an Excel file. At the request of the Grand Jury member who was having difficulty printing the list, on December 19, 2017, the Auditor’s Office sent another email with a PDF list of the same 25 noncompliant Special Districts.

August 14, 2018  
The Honorable Alan Simpson, Presiding Judge  
Fresno County Superior Court  
Grand Jury Final Report No. 3

On March 1, 2018, the Grand Jury member sent the following email to the Auditor's Office:

"The grand jury is still interested in the noncompliant special districts; however, it is presently narrowing its interest to those districts with annual budgets of \$100,000 and up. Please send your most recent update on the following:

1. A complete list of all noncompliant special districts.
2. A complete list of noncompliant special districts with annual budgets of \$100,000 and up.
3. Name and phone number of contact person or president of the board for the districts in #2.

Thank you for your cooperation."

As a result of this email request, on March 2, 2018, the Auditor's Office sent an Excel list to the Grand Jury member with two tabs of noncompliant districts: one tab had the names of nine special district with greater than \$100,000 budgets, and another tab had the names of a total of 24 noncompliant special districts. The Auditor's Office sent the same list again to the Grand Jury member on March 5, 2018, because the grand jury member said via a phone conversation that they did not receive the first email.

**F2:** Audits, when received by the Fresno County Auditor-Controller/Treasurer-Tax Collector's Office, are not reviewed for financial accuracy nor content, but only checked off as submitted.

F2: The Auditor's Office agrees with this finding.

The audited financial statements received by the Auditor's Office have already been audited by qualified certified public accountant (CPA) firms who have peer reviews and their credentials are approved and monitored by the California Board of Accountancy. Therefore, the accuracy of the audits is the responsibility of those firms. As stated in the California Board of Accountancy (CBA) License Renewal Handbook, "Beginning January 1, 2014, section 45 of CBA Regulations requires all licensees to report peer review information at the time of license renewal. A peer review is a systematic review of your firm's accounting and auditing services performed by a peer reviewer who is unaffiliated with your firm to ensure work performed conforms to professional standards."

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**F3:** It appears that the Fresno County Auditor-Controller/Treasurer-Tax Collector's Office is currently understaffed. The only staff member certified in audits has recently left to another position. The remaining staff is new to the Office and to managing special district financial audits requirements. In recent years, the Fresno County Auditor-Controller/Treasurer-Tax Collector's Office has experienced an annual turnover of approximately 40%.

F3: The Auditor's Office disagrees partially with this finding. The Auditor's Office has more expertise than indicated in the finding and, while annual turnover rates have been high, they have never reached 40%.

I was appointed by the Fresno County of Fresno Board of Supervisors as Auditor-Controller/Treasurer-Tax Collector in October 2016 to finish the previous Auditor's term ending January 2019 because she retired. The Auditor's Office's last Quality Assurance Review was completed and a report was issued May 24, 2011, for the three-year period ending June 30, 2009. One of the findings was that the last peer review was completed eight years prior and that a peer review was required at least once every three years. As a response to the finding, the previous Auditor-Controller stated, "We concur with your findings and recommendation. As a member of California State Association of County Auditors, the County of Fresno is a member of a reciprocal process to receive a quality assurance review to comply with auditing standards. The County of Fresno is scheduled to receive a quality assurance review once every three years."

To date there has been no additional Quality Assurance Review completed. As a result of this and other issues, the Chief of Financial Reporting and Audits has been reassigned, and with the retirement of the Deputy Auditor-Controller September of 2017, I discovered the noncompliance. I am in the process of scheduling a Quality Assurance Review for the three-year period ended June 30, 2016. Therefore, for the 15 year time from July 1, 2001 through June 30, 2016, this Office has had one peer review completed and has been out of compliance and should not have been issuing audit reports. I hired a Deputy Auditor-Controller and Chief of Financial Reporting and Audits in October 2017 and January 2018, respectively, and both are helping with the audit engagements.

I am a Certified Public Accountant with attest engagement experience and I have conducted several Special District audits and prepared their financial statements. I am in the process of training audit staff and ensuring the auditing function is in compliance with auditing standards. In addition, I have assigned a manager with auditing experience to oversee the audit area.

Though the Auditor's Office does not complete special district audits anymore due to the 2013 revision of the Generally Accepted Government Auditing Standards' (GAGAS, also known as the "Yellow Book") implementation of a stricter definition of auditor independence which precludes us from performing such audits, we have plenty of staff with financial statement experience who prepare the County's complex Comprehensive Annual Financial report (CAFR). Once the Quality Assurance Review is completed for the three-year period ended June 30, 2016, we will be on a five-year cycle as stated in the Institute of Internal Auditors' guidance. The next Quality Assurance Review will be due for the five-year period ending June 30, 2021.

The Auditor's Office turnover for calendar years 2014 through August 2018 was as follows:

2014	15.31%
2015	36.92%
2016	24.74%
2017	17.11%
2018 (partial year)	20.81%

Since I was appointed, turnover in the Auditor's Office has decreased since 2015 and 2016. Turnover in the Auditor's Office will continue to be around 15-24% yearly because of: parking costs; the surrounding market looking for staff with government experience; the City of Fresno not participating in Social Security, thus allowing for more money in staffs' pockets; my expectation of staff being that they work at a satisfactory level while employed in the Auditor's Office; and staff finding higher pay for similar work in the surrounding employment market.

**F4:** The Fresno County Auditor-Controller/Treasurer-Tax Collector's Office believes it has the responsibility but not the authority for securing special district audits. California Government Code, §26909 was amended effective January 1, 2018, and requires the county auditor's office to either perform or contract with a certified public accountant or public accountant to perform an audit of the special districts and charge the respective districts for the cost of the audit.

F4: The Auditor's Office disagrees partially with this finding. In some instances, the Auditor's Office does have the authority to cause an audit of a special district if one has not been provided, and to charge those costs to the district. We are researching whether the Auditor's Office can collect such charges for audit costs directly from the funds of Special Districts.

**F6:** Per the Fresno County Auditor-Controller/Treasurer-Tax Collector's Office, current and accurate financial information was unavailable on the noncompliant special districts.

F6: The Auditor's Office agrees with this finding.

**F7:** In August 2017, the California Little Hoover Commission produced Report #239: "Special Districts: Improving Oversight & Transparency" offering recommendations for improving oversight and transparency of California special districts.

F7: The Auditor's Office agrees with this finding.

**F8:** The Fresno County Auditor-Controller/Treasurer-Tax Collector's Office places special districts audits as a low priority.

F8: The Auditor's Office disagrees with this finding. A portion of one staff and their supervisor's time are budgeted toward this effort in addition to their other tasks, due to the special districts filing their reports primarily on an annual basis versus throughout the year. Staff receives, files, and prepares delinquency letters on an annual basis while their supervisor reviews their work, prior to the delinquency letters being sent to the special districts.

When I was appointed in October 2016, there were 25 special districts which had not provided audited financial statements to the Auditor's Office. I have since sent out several letters to the noncompliant districts and now as a result 10 had their audit completed and submitted their audited financial statements to the Auditor's Office. As a result of the letters, there are currently 13 special districts that are noncompliant. Of the 13 districts, four of the districts are noncompliant for the 2016 year only, one of the districts has been noncompliant since 2014, one of the districts has been noncompliant since 2013, one of the districts has been noncompliant since 2012, one of the districts has been noncompliant since 2011, and five of the districts have been noncompliant since 2010. In addition, one of the five districts which have been noncompliant since 2010 has provided their 2013-2014 audited financial statements and have informed me via email that they are working on their 2015-2016 audited financial statements which would place them as compliant.

**Recommendations:**

**R1:** The Fresno County Auditor-Controller/Treasurer-Tax Collector's Office should review all special districts for audit compliance and work with those noncompliant districts to bring them into compliance. It should prioritize them based on current cash balances, largest to smallest. (F1) (F9)

R1: The Auditor's Office has not yet implemented this recommendation, but will implement it within six months from the date of publication of the grand jury report. We will continue to send letters to districts to encourage them to have audited financial statements prepared and sent to us. In addition, the Auditor's Office will provide a yearly training in collaboration with County Counsel to district board members on their responsibility as board members. The Auditor's Office will also go to the Board of Supervisors asking for budget to send a request for proposal to CPA firms to cause an audit of the non-compliant districts.

**R2:** The Fresno County Auditor-Controller/Treasurer-Tax Collector's Office should, for purposes of accuracy, review special district financial audits annually as they are submitted and received by the office. (F2) (F9)

R2: The Auditor's Office will not implement this recommendation because it is not reasonable. Those documents are kept with the districts, and the CPA firms conducting the audits have already looked at the documentation and issued their opinion on the financial statements. Each of those CPA firms is responsible for having a Quality Assurance Review at least every three years. A Quality Assurance Review is a program monitored by the California Board of Accountancy where an independent reviewer checks the quality of the audit work the firm prepares and issues a report and findings if any. Therefore, the CPA firms are being monitored to ensure they are performing audits in accordance with auditing standards.

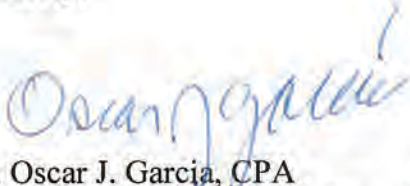
**R4:** Per California Government Code, section 26909 as amended, the Fresno County Auditor-Controller/Treasurer-Tax Collector's Office should either perform financial audits on special districts or contract with a certified public accountant or public accountant to have the missing audits completed. (F4)

R4: The Auditor's Office has not yet implemented this recommendation, but will implement it within six months from the date of publication of the Grand Jury report. We are researching whether we can collect charges for audit costs directly from the funds of special districts. If we cannot collect audit costs directly from the funds of special districts, we will need to ask the Board of Supervisors to budget money for special district audit costs and then issue a request for proposal to contract with a private CPA firm for audits of noncompliant special districts.

August 14, 2018  
The Honorable Alan Simpson, Presiding Judge  
Fresno County Superior Court  
Grand Jury Final Report No. 3

This concludes the Fresno County Auditor-Controller/Treasurer-Tax Collector's responses to the findings and recommendations of the 2017-18 Grand Jury Report No. 3.

Sincerely,

A handwritten signature in blue ink that reads "Oscar J. Garcia". The signature is written in a cursive style.

Mr. Oscar J. Garcia, CPA  
Auditor-Controller/Treasurer-Tax Collector

cc: Sonia M. De La Rosa, Principal Administrative Analyst, County Administrative Office





# Fresno Local Agency Formation Commission

August 8, 2018

The Honorable Alan M. Simpson, Presiding Judge  
Fresno County Superior Court  
1100 Van Ness Avenue  
Fresno, CA 93724-0002

RECEIVED

AUG 19 2018

ADMINISTRATIVE OFFICE

Sir,

On behalf of the Fresno Local Agency Formation Commission (LAFCo), we are in receipt of Grand Jury Report No. 3. Pursuant to the correspondence we received June 19, 2018, this letter constitutes LAFCo's response pursuant to California Penal Code (PC) section 933.05(f).

## Responses to findings

*Finding F5. Through the municipal service review process, the Fresno County Local Agency Formation Commission is aiding and educating the special districts in the proper methodology in the operation of the special district, subject to available resources.*

Response to finding F5: We agree with the finding.

Please note that Fresno LAFCo is an independent governmental agency authorized by the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH) and should be referred to as the "Fresno Local Agency Formation Commission."

*Finding F6. Per the Fresno County Auditor-Controller/Treasurer-Tax Collector's Office, current and accurate financial information was unavailable on the noncompliant special districts.*

Response to finding F6: We agree with the finding.

LAFCo staff appreciates the timely and professional assistance given by AC/TTC staff during the MSR process. AC/TTC staff provides data that assists LAFCo to determine the extent to which special districts comply with government code requirements for financial reporting. LAFCo's experience is that many special districts do not comply with the requirement under GC sec. 26909 to provide the AC/TTC with financial information.

*Finding F7. In August 2017, the California Little Hoover Commission produced Report #239: "Special Districts: Improving Oversight & Transparency", offering recommendations for improving oversight and transparency of California special districts.*

Response to finding F7: We agree with the finding.

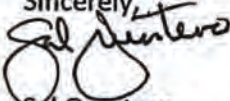
Responses to recommendations

*Recommendation R5. The Fresno County Local Agency Formation Commission should continue to utilize and expand the municipal service review process to aid and educate all special districts. (F5)*

Response to recommendation R5: We agree with the recommendation.

*Recommendation R6. Fresno County Local Agency Formation Commission and the Fresno County Auditor-Controller/Treasurer-Tax Collector's Office should encourage and support the recommendations of the California Little Hoover Commission "Special Districts: Improving Oversight & Transparency", Report #239, August 2017. (F7)*

Response to recommendation R6: We agree with the recommendation.

Sincerely,  
  
Sal Quintero  
Chair

- c: Fresno LAFCo Commissioners and alternates
- Ken Price, LAFCo Counsel
- Sonia De La Rosa, Principal Administrative Analyst, CAO

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