

City of
SACRAMENTO
Office of the City Clerk

May 27, 2014

Honorable Russell L. Hom
Sacramento Superior Court
720 9th Street, Room 611
Sacramento CA 95814

Re: City of Sacramento Second Response to Sacramento County Grand Jury Report
FY 2013-14

Dear Judge Hom:

Enclosed is a copy of the City of Sacramento second response to the 2014 recommendations contained in the 2013-2014 Grand Jury Report. The City Council, in the first response, stated a need for additional time for further analysis of Recommendations 1 and 3. The Sacramento City Council at their meeting of May 20, 2014 approved this report as submitted.

If you have any questions, please contact my office at 808-7200.

Sincerely,



Shirley Concolino MMC
City Clerk

C: Becky Castaneda, Grand Jury Coordinator

Meeting Date: 5/20/2014

Report Type: Consent

Report ID: 2014-00308

Title: Second Response to the Findings and Recommendations of the Sacramento Grand Jury Report - Ballot Arguments - November 2012 Elections

Location: Citywide

Recommendation: Pass a Motion 1) approving the City Council's second responses to the findings and recommendations contained in the 2012-13 Sacramento County Grand Jury Report regarding the Ballot Arguments-November 2012 Elections, 2) directing the City Attorney to amend City Code Section 1.16.070, bypass Law and Legislation Committee, and return the Ordinance to City Council for adoption; and 3) directing the City Clerk to submit the initial and second responses on behalf of the Mayor and City Council.

Contact: Shirley Concolino, City Clerk (916) 808-5442, Office of the City Clerk; James Sanchez, City Attorney, (916) 808-5346

Presenter: None

Department: City Clerk / City Attorney

Division: City Clerk

Dept ID: 04001011

Attachments:

1-Description/Analysis

2-Second Responses to the Findings and Recommendations of the Sacramento Grand Jury Report - Ballot Arguments - November 2012 Elections

3-First Responses to the Findings and Recommendations of the Sacramento Grand Jury Report - Ballot Arguments - November 2012 Elections 09242013

City Attorney Review

Approved as to Form
Sandra Talbott
5/8/2014 11:04:51 AM

Approvals/Acknowledgements

Department Director or Designee: Shirley Concolino - 4/14/2014 5:23:04 PM

Description/Analysis

Issue Detail: On, June 28, 2013, the Sacramento County Grand Jury issued a Grand Jury Report entitled "Investigation: Ballot Arguments – November 2012 Elections" regarding Measures M, T and U, respectively, pertaining to the formation of a charter commission, yard refuse pickup, and a local sales tax increase. Included in that report are the Grand Jury's findings and recommendations. California Penal Code section 933.05 required a response by the Mayor and City Council due on September 28, 2013 as noticed by the Sacramento Grand Jury.

On August 20, 2013 the Mayor appointed Councilmembers McCarty, Fong and Hansen to a City Council ad hoc committee to develop responses on behalf of the Council to the Grand Jury findings and recommendations. Councilmembers McCarty and Fong declined to serve on the ad hoc committee. Given the lack of an ad hoc committee, the responses recommended in the first report were developed with the assistance of the City Attorney, City Clerk and the Mayor's Office in order to meet the timeline on submitting the response to the Grand Jury. On September 24, 2013, the council approved the initial response to the Grand Jury. On September 24, 2013, the City Council, by minute order, approved the initial response to the findings and recommendations contained in the 2012-13 Sacramento County Grand response to the Grand Jury and indicated that the Mayor and Council needed more time to adequately address the concerns and a subsequent report to them would be forthcoming.

On November 26, 2014 the Mayor appointed Councilmembers Ashby, Cohn and Hansen to a second City Council ad hoc committee to develop responses to the Grand Jury findings and recommendations on behalf of the Council. The ad hoc met on February 11, 2014 and those recommendations are contained in this report.

The ad hoc committee recommends amending the city code (Section 1.16.070) to (1) require only one signature from an authorized member to sign the written argument in favor or against and (2) add a section to the city code to allow Charter Officers and Department Directors to have the same priority in argument selection as bona fide associations, thus clarifying the current practice of the Police and Fire Chief signing ballot arguments.

In response to the Grand Jury's recommendation to discontinue the practice of authorizing both sides of a ballot argument, the majority of the ad hoc committee recommends allowing the City Council to author arguments both pro and con as state law allows this practice. A citizen may still submit an argument in favor or against a measure even when the City Council or councilmember(s) have been authorized to submit arguments both pro and con. The City Clerk will post these response opportunities to the web, and provide other outreach to the community to invite submittals, so in the event the authored member does not submit an argument, the community has had an opportunity to participate. Any arguments submitted will be published in the priority established under state law.

Policy Considerations: One of the duties of the Grand Jury is to inquire into, and investigate if necessary, the operations of local government agencies and officials to ensure that activities are valid and services are efficiently and legally provided. Responses to the Grand Jury findings and recommendations are required by law and provide an opportunity for clarification and correction.

Economic Impacts: None

Environmental Considerations:

California Environmental Quality Act (CEQA): Approval of a response to a Grand Jury report is considered an administrative activity by a governmental agency and does not constitute a “project” pursuant to Section 15378(b)(2) of the CEQA Guidelines and therefore is exempt from CEQA review.

Sustainability: There are no sustainability considerations associated with this report.

Commission/Committee Action: None

Rationale for Recommendation: The City Council and the City Clerk reviewed the findings of the Grand Jury and developed the responses contained within this report that fulfill the City’s statutory (Penal Code Section 933.05) obligation to respond to the Grand Jury report.

Financial Considerations: There are no financial considerations associated with this report.

Local Business Enterprise (LBE): Not applicable.

2012-13 Sacramento County Grand Jury Report Ballot Arguments-November 2012 Elections

City of Sacramento Responses to Findings and Recommendations

Finding 1

The Grand Jury finds that the council members authorized by the City Council to author arguments in favor of Measures M, T, and U did not author those arguments submitted to the City Clerk, and did not publicly disclose their intention not to author the arguments before submitting the arguments to the City Clerk. The council members' failure to author the arguments deprived the City Council of statutory priority for its arguments in the event other arguments in favor of each measure had been submitted to the City Clerk. The council members' failure to author the arguments and to disclose their intention not to author the arguments was contrary to the City Council's intent in authorizing the members; contrary to the California Elections Code, City Code, and City Elections Guidelines provisions for obtaining priority; and contrary to the best practices for transparent election procedures.

Finding 1 Response

Election Code, City Code and the City's election procedures were followed.

Recommendation 1

The Grand Jury recommends that the City Clerk promulgate, and the City Council approve, election guidelines that ensure that council members authorized by the City Council to author an argument respecting a measure, will do so.

Recommendation 1 – Initial Response

This recommendation requires further analysis. The City Council will work with the City Clerk and City Attorney over the next three months to review current election processes and identify opportunities for improvement.

Recommendation 1 – Second Response

The City Council has reviewed city election codes and guidelines and recommends the following changes to promote clarity in the administration of the Sacramento City Election Code: (1) amend city code section 1.16.070 to reflect that if the city council, or any council member(s) authorized by the city council, submit a written argument in favor or against a measure, only one authorized member is required to sign the written argument in order to afford the legislative body priority in argument selection; (2) amend city code section 1.16.070 to allow Charter Officers and Department Directors the same priority in argument selection as bona fide associations thus clarifying the current practice of the Police and Fire Chief in signing ballot arguments.

Finding 2

The Grand Jury finds that the Mayor failed to timely file a ballot argument in opposition to Measure U because his assistants who were assigned to prepare and submit the argument to the City Clerk misunderstood the filing requirements. This failure to timely file the argument was negligent, not intentional.

Finding 2 Response

The Measure U ballot argument was not filed before the specified deadline and was not accepted by the Office of the City Clerk.

Recommendation 2

The Grand Jury recommends that the City Clerk develop and provide formal training for the City Council and staff, as well as the general voting public, regarding the filing requirements for ballot measures and arguments.

Recommendation 2 - Initial Response

The recommendation has already been implemented. Established practice includes time line reminders for those responsible for ballot measure submittals consistent with election law. The City Clerk publishes an online guide regarding ballot procedures.

Recommendation 2 – Second Response

No additional discussion or recommendations on this finding.

Finding 3

The Grand Jury finds that the City Council authorized council members to author arguments both in favor of and in opposition to measures it approved for placement on the ballot. Given the statutory preference accorded arguments authorized by the City Council, the Council's authorization of arguments both in favor of and in opposition to a measure it has approved for placement on the ballot can preclude the filing of other opposition arguments to a measure or, at minimum, may discourage the submission of other opposition arguments, creating the possibility that the City Council could effectively limit legitimate opposition to a measure, either by submitting a token opposition argument or failing to submit an opposition argument.

Finding 3 Response

Election Code, City Code and the City's election procedures were followed.

Recommendation 3

In the absence of state law barring such a practice, the Grand Jury recommends that the City Council adopt guidelines precluding authorizing council members to author arguments both in favor of and in opposition to a measure that the City Council approves for placement on the ballot.

Recommendation 3 – Initial Response

This recommendation requires further analysis. There is nothing in state law that disallows this practice. The City Council will work with the City Clerk and City Attorney over the next three months to review current election processes and identify opportunities for improvement.

Recommendation 3 – Second Response

The City Council recommends that the council continue to author arguments both pro and con as state law allows this practice. A citizen may still submit an argument in favor or against a measure even when the City Council or councilmember(s) have been authorized to submit arguments both pro and con. The City Clerk will post these response opportunities to the web, and provide other outreach to the community to invite submittals, so in the event the authored member does not submit an argument, the community has had an opportunity to participate. Any arguments submitted will be published in the priority established under state law.

Finding 4

The Grand Jury finds that the City Clerk's Office staff advised a council member authorized to author arguments in favor of measures placed on the ballot by the City Council, to delay submitting the arguments to the City Clerk's Office until just before the filing deadline and until after the opposition argument had been submitted (informing the council member of the date and time a measure opponent was scheduled to submit its opposition), in order to prevent the media and measure opponents from reviewing the argument in advance of the opposition's submission. In response to the staff's advice, the council member delayed submitting arguments to the City Clerk's Office until just before the filing deadline and after the measure opponent had submitted its argument. The staff's communication with the council member was inconsistent with the non-partisan role of the City Clerk's Office with respect to municipal elections.

Finding 4 Response

City staff is clear that non-partisan neutrality is essential in providing transparent services to our customers both internally and externally. The staff's response was not in keeping with normal practice in the City Clerk's office. That matter has been appropriately addressed internally.

Recommendation 4

The Grand Jury recommends that the City Clerk provide training to its staff regarding the Elections Office's non-partisan role with respect to municipal elections.

Recommendation 4 – Initial Response

This recommendation has already been implemented. The City Clerk takes the Election process very seriously and continuously emphasizes to staff the importance of neutrality and impartiality, particularly with the Election process, and will continue to do so.

Recommendation 4 – Second Response

No additional discussion or recommendations on this finding.

2012-13 Sacramento County Grand Jury Report Ballot Arguments-November 2012 Elections

City of Sacramento Responses to Findings and Recommendations

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Finding 1 Response

Election Code, City Code and the City's election procedures were followed.

Recommendation 1

The Grand Jury recommends that the City Clerk promulgate, and the City Council approve, election guidelines that ensure that council members authorized by the City Council to author an argument respecting a measure, will do so.

Recommendation 1 Response

This recommendation requires further analysis. The City Council will work with the City Clerk and City Attorney over the next three months to review current election processes and identify opportunities for improvement.

Finding 2

The Grand Jury finds that the Mayor failed to timely file a ballot argument in opposition to Measure U because his assistants who were assigned to prepare and submit the argument to the City Clerk misunderstood the filing requirements. This failure to timely file the argument was negligent, not intentional.

Finding 2 Response

The Measure U ballot argument was not filed before the specified deadline and was not accepted by the Office of the City Clerk.

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Election Code, City Code and the City's election procedures were followed.

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