



**CITY OF LODI
COUNCIL COMMUNICATION**

AGENDA TITLE: Approve Responses to the 2012/2013 Grand Jury Reports Regarding Case Nos. 0312, 0912, and 1112

MEETING DATE: August 7, 2013

PREPARED BY: City Clerk

RECOMMENDED ACTION: Approve responses to the 2012/2013 Grand Jury Reports regarding Case Nos. 0312, 0912, and 1112.

BACKGROUND INFORMATION: The City received three difference Grand Jury reports in May. The first report, dated May 21, 2013 pertained to the San Joaquin County Vector Control District and the Ralph M. Brown Act. The second report, dated May 23, 2013, pertained to AB 109 and Safe Communities. The third report, dated May 30, 2013, pertained to surplus public assets. All three reports required a response from the City within ninety (90) days of the receipt of each report.

Staff has carefully reviewed each report and offers the attached response. Upon City Council approval, the responses will be finalized and submitted to the presiding judge of San Joaquin County Superior Court by August 19, 2013.

FISCAL IMPACT: Not applicable at this time.

FUNDING AVAILABLE: Not applicable at this time.

Randi Johl-Olson
City Clerk

APPROVED:

Konradt Bartlam, City Manager



The Superior Court of California
County of San Joaquin

RECEIVED
MAY 22 2013
CITY CLERK

May 21, 2013

PRIVATE AND CONFIDENTIAL

Mayor Alan Nakanishi
City of Lodi
P. O. Box 3006
Lodi, CA 95240

Dear Mayor Nakanishi:

Enclosed you will find the Grand Jury's report on their review of San Joaquin County Mosquito and Vector Control Board.

Pursuant to Penal Code §933.05(f): "A grand jury shall provide to the affected agency a copy of the portion of the grand jury report relating to that person or entity two working days prior to its public release and after the approval of the presiding judge. No officer, agency department, or governing body of a public agency shall disclose any contents of the report prior to the public release of the final report."

This report is scheduled for release to the public on May 28, 2013. If you have any questions, please do not hesitate to contact me at (209) 468-2959.

Sincerely,

A handwritten signature in cursive script that reads "Trisa Martinez".

Trisa Martinez
Grand Jury Staff Secretary/Judicial Secretary

Enc.

San Joaquin County Grand Jury



District Board Ignores the Peoples' Right to be Informed 2012-2013 Case No. 1112

Summary

In 1953 the California State Legislature recognized the public's right to know what actions legislative bodies were voting on before the actual vote took place. The Legislature enacted the Ralph M. Brown Act (Government Code Section 54950 *et seq.*) which, among other provisions, required legislative bodies to post agendas not less than 72 hours before a meeting with descriptions of all proposed actions in sufficient detail so that the public could understand what was being voted on. This requirement applies to all local governments in the State, including all special districts.

When a legislative body circumvents the requirements of the Brown Act, when actions are taken that are not clearly explained to the public, and when legislative members themselves do not understand what they are voting on, the public's trust of honest governance begins to collapse. By observation, review of documents and sworn testimony the actions of the San Joaquin County Mosquito and Vector Control District (District) and its Board of Trustees (District Board) bring into question its commitment to transparency and compliance with this State law. The 2012-2013 San Joaquin County Grand Jury (Grand Jury) suggests that the San Joaquin County Board of Supervisors (Board of Supervisors) exercise all pertinent authority to impose requirements upon the District to permit the public greater access to the District's meeting agendas and reports. In addition, the appropriate authorizing bodies should consider adopting term limits to ensure that fresh ideas are brought before the District Board. The Grand Jury also has concerns about whether having a separate district with a separate board as the legislative body is the most effective structure for the present and future needs of the County.

Glossary

Brown Act	The Ralph M. Brown Act (Government Code Sections 54950 et seq.) regulating the conduct of public meetings and related public information.
et seq.	To include sections that immediately follow the identified section and pertaining to the same topic.
LAFCO	Local Agency Formation Commission; a county-wide government agency created pursuant to State law for the purpose of reviewing and approving timely changes in local government boundaries and establishing special districts.
Serial Meeting	A series of communications, each of which involves less than a quorum of the legislative body, but which taken as a whole, involve a majority of the body's members, for the purpose of developing a concurrence as to action to be taken. Prohibited under the Brown Act.

Background

All California public entities are required to conduct their business in a transparent manner at meetings open to the general public. These requirements under the Ralph M. Brown Act (Brown Act) have been in existence since 1953. The San Joaquin County Mosquito and Vector Control District (the District) is a public entity subject to the Brown Act. Among the mandates under the Brown Act, governing bodies are required to publish their agenda at least 72 hours before a meeting along with their proposed agenda actions containing sufficient information for the public to understand the topic being considered and the proposed action. It also requires the public to be permitted to speak on any agenda item before action is taken. Such advance notice and clarity were not provided to the District's constituents regarding health insurance benefits for the District Trustees.

The District offers health insurance benefits to its employees, which include medical, dental and vision coverage for the employee, the employee plus one or the employee and family. The District pays for the costs of the monthly insurance premium up to a maximum fixed amount. For 2013, the maximum benefit District payments are:

Medical - \$1,599.36

Dental - \$108.32

Vision - \$21.92

Any cost for health insurance benefits above that dollar amount is paid for by the employee.

On March 19, 2009, the District adopted a policy to permit members of the District's Board of Trustees (Trustees) to participate in the District's health care benefit plans in the same manner as other employees of the District. Currently, six of the 11 Trustees participate in the health insurance plans. Two Trustees participate in only dental and vision coverage at a Trustee plus one rate. The monthly District cost for each is \$82.13 with the Trustee paying \$32.56 out-of-pocket. One Trustee is enrolled in medical, dental and vision coverage for only the Trustee option. The District's monthly cost is \$731.00, with no Trustee out-of-pocket cost. One Trustee participates in medical, dental and vision coverage for the Trustee plus one, with a monthly District cost of \$1,312.41 and \$136.34 paid out-of-pocket. One Trustee has full family coverage for medical, dental and vision with a monthly District cost of \$1,729.60, and out-of-pocket expenses of \$499.52. The sixth Trustee participates in a family medical program with a District cost of \$1,599.36 and no out-of-pocket cost. The total District contribution for all Trustee health insurance benefits is \$5,536.63 a month, or \$66,439.56 per year.

After the public disclosure (in July 2012) regarding the details of the March 2009 action, the Trustees placed an agenda item before them on November 20, 2012, to reaffirm the previous action to permit Trustees to participate in the health benefit plan. The matter was continued at that time to permit a three-member committee composed of a Trustee, the District's general manager and the District's legal counsel to review the proposal and provide options for a future Trustee action. No action was taken at the regular December 18, 2012 meeting due to discussion about the District's budget. On January 15, 2013, the matter appeared on the District's agenda as Item No. 6, "*Review of Current Trustee Health Insurance Plan*" and was adopted by a unanimous vote of the Trustees.

After a review of State laws, the Grand Jury found no evidence that the District Board's action to make health insurance benefits available to Trustees violated any law. However, while investigating the two complaints received, it found other significant issues related to the District Board's legislative actions which warranted further investigation.

Issues

The 2012-2013 Grand Jury received two complaints from a citizen related to the San Joaquin County Mosquito and Vector Control District Board of Trustees. One related to a discrepancy in the Trustee's compensation listed on the District's Fact Sheet provided to the San Joaquin County Board of Supervisors (and made available to the public). The Fact Sheet did not list the health insurance benefits available to the Trustees.

The second complaint alleged there was a possibility that illegal serial meetings took place between Trustees and District management prior to the January 15, 2013 District Board meeting, which would be a violation of the Brown Act. This complaint was based on an allegation, as stated by the complainant, that the Trustee Board Chairman began the discussion on the health insurance agenda item by stating "*he was certain of the Board's consensus on this issue.*"

The March 19, 2009 District Board agenda contained the following item "*District-sponsored Health and Welfare Plan; Resolution 08/09-XX, authorizing eligible trustees to participate in District sponsored health and welfare plans.*" For the January 15, 2013 Board meeting, the agenda item was listed as "*Review of Current Trustee Health Insurance Plan.*" While the 2009 meeting agenda description could loosely be interpreted as meeting the Brown Act requirement for a description, the January 2013 meeting description failed to meet the legal requirements. The action of the Trustees during the meeting was to discuss not the Plan itself, but rather the Trustees' participation in the plan. If the agenda item was described as only for the purpose to review the health insurance plan, the District Board would be prohibited from taking any action on the plan since the description gave no indication that an approval action would occur.

The Brown Act very clearly promotes opportunities for the public to engage in public meetings with the ability to comment on any item on the agenda, and on any other issue within the jurisdiction of the governing body. That opportunity must be free from the perception of fear or intimidation and without restriction. Any requirement for a member of the public to identify themselves must be voluntary. Government Code Section 54953.3 states in part "*...If an attendance list, register, questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held...it shall state clearly that the signing, registering, or completion of the document is voluntary.*" At meetings attended by members of the Grand Jury, members were required to sign in on a form presented by a District employee. There was no indication on the sign-in sheet or on any other printed material or website that providing one's name and affiliation was voluntary.

In order for the public to be informed about the activity of the District and its Board, it must have access to accurate and relevant information. Related agenda material must be available in a timely manner such that the public can form an informed opinion to support meaningful discussion on matters listed on the agenda. Government Code Section 54957.5 states in part "*... agenda of public meetings and any other writings, when distributed to all, or a majority of all, of the members of a legislative body of a local agency by any person in connection with a matter subject to discussion of consideration at a public meeting of the body, are public records under the California Public Records Act.*" No copies of the materials provided to Trustees for their meetings are available for the public's review prior to or at the time of the meeting. At the February 19, 2013 meeting of the District Board, a member of the Grand Jury requested a copy of the agenda materials provided to the Trustees. The member was advised by a District employee that approval had to be obtained from the President of the Board prior to it being available to the member of the public. Access was denied to the public member until after the Board meeting had concluded.

Findings

F1.1 The Board of Trustees failed to comply with the Government Code Section 54954.2(a) (1) by providing an inadequate description of agenda items proposed for discussion and action at a public meeting. Specifically, it violated the Brown Act at its January 15, 2013 District Board meeting by having an inadequate description of Item No. 6 *Review of Current Trustee Health Insurance Plan*, under consideration and the proposed action to be taken by the Board.

F1.2 The District Board violated the requirements of California Government Code Section 54953.3 by failing to have clearly indicated on its sign-in sheet that such a requirement was a voluntary action for the public and that no adverse impact would result from failing to sign.

F1.3 The District Board violated Government Code Section 54957.5 by failing to have the agenda materials provided to Trustees available to the public at the same time as delivered to the Trustees. It also placed restrictions on the public's access to the materials before and during Trustee meetings.

F1.4 At the time this investigation started, the only information on the District's website was the current meeting agenda. Information about prior meeting agendas, agenda background materials and meeting minutes was not accessible on the website. This information has subsequently been added to the District's website.

Recommendations

R1.1.1 As a result of its violation of the Government Code 54954.2(a) (1), the Board of Trustee immediately rescind its action on Item No. 6, *Review of Current Trustee Health Insurance Plan of the January 15, 2013 Board meeting.*

R1.1.2 The District immediately expand the description of all items placed on the District Board's meeting agenda to fully comply with the requirements and intent of the Brown Act.

R1.2 The District revise its District Board meeting sign-in sheet to clearly indicate that adding one's name is a strictly voluntary action.

R1.3.1 The District immediately make available to the public a copy of all agenda materials as soon as it is provided to the Trustees, and that a copy be readily available for the public at the Board's meeting location.

R1.4 No later than November 1, 2013, the District place on its website all agenda materials provided to the Trustees prior to the Board meeting.

2.0 Lack of Understanding About Action Related to Health Insurance Benefits

On March 19, 2009, the District Board adopted a resolution to permit Trustees to participate in the same health insurance program that was offered to the District's employees beginning August 1, 2009. Under the District plan, an employee may choose from different medical plans and select coverage for: (1) the employee, (2) for the employee plus one dependent, or (3) a family plan. Vision and dental insurance coverage is also available with the same three options.

In July 2012, after the San Joaquin Taxpayers Association raised the issue, local newspapers began to report on the District Board's action of March 2009 authorizing Trustees access to health insurance benefits.

In November 2012 the District Board proposed to revisit the March 2009 action which concluded in a vote in January 2013 to continue the program. The Grand Jury wanted to clarify whether the Trustees understood the program/s being proposed for approval.

Following sworn testimony from 9 of the 11 Trustees and review of documents provided by the District, the Grand Jury came to the conclusion that almost all of the Trustees did not understand the structure of the health insurance benefit available to them, or who was covered pursuant to their action. Many of the Trustees testified it was their understanding that they were approving coverage only for the Trustee themselves and not for any family coverage. Some said they were not sure what or who the benefit covered but because the District's legal counsel and others said they had a letter saying it was legal, they voted in favor of the continuation.

Other Trustees indicated they voted *yes* because the District had enough money. While some Trustees said they voted for the benefit because other similar districts offered them, none of the Trustees interviewed could tell how many other mosquito districts in the State of California offered health benefits for its trustees. Based on information from the State Controller's files, the Grand Jury discovered that only three of the 68 other mosquito districts in the State offered health insurance benefits for its trustees. Sacramento-Yolo County Mosquito and Vector Control District provides medical, dental and vision insurance for its trustees, while the East Side Mosquito abatement District in Modesto provided dental and vision insurance benefits to its trustees.

Findings

F2.1.1 A majority of the District's Trustees, under sworn testimony, did not know the details of the health insurance program they were voting to grant themselves.

F2.1.2 A number of Trustees, under sworn testimony, indicated that they thought they were voting for health insurance coverage for the Trustee only, and not for family members.

Recommendations

R2.1.1 The District Board immediately rescind its action of January 15, 2013, pertaining to providing health insurance benefits to Trustees. If the topic is reconsidered, a resolution is to be prepared clearly indicating details of the health insurance coverage being provided, for whom coverage is available and the total cost to the District.

3.0 Trustees' Knowledge of District Finance

As the legislative body for the District, the Trustees must have a working knowledge of the District's finances to fulfill their fiduciary responsibilities to the public they serve. The District currently has an operating budget of \$7.7 million and reserve funds in excess of \$9 million. None of the Trustees interviewed could provide the Grand Jury (with any certainty), an explanation regarding the intended use/s of the reserve funds. Only one Trustee interviewed could provide even an approximate estimate of the amount of the District's budget.

Some testified that knowledge of the District budget and finance was left to the Board's budget committee and they only looked at fiscal issues when the budget was being adopted.

The public cannot easily become informed about the District's finances because its website does not provide information on the District budget or its annual independent audit.

Findings

F3.1 A majority of the Trustees lack a working knowledge of District finances.

F3.2 The District website does not include basic financial documents for public review.

Recommendations

R3.1.1 Beginning September 30, 2013, and quarterly thereafter, the District General Manager include an item on the District Board's agenda to provide information on the District's budget, expenditures and reserves.

R3.1.2 Beginning with the Fiscal Year 2014-2015 Budget, an explanation of the District's reserve funds and their intended purpose/s be included as part of the budget document.

R3.2 Prior to October 1, 2013, the District include the adopted annual operating budget and the most current audited financial statements on its website, with access from the website's home page.

4.0 Appointment of Trustees to the District Board

The District Board is comprised of 11 members, each serving a four-year term. There are no statutory qualifications to serve on the District Board. Four District Trustees are appointed by the San Joaquin County Board of Supervisors and each of the seven incorporated cities in the County appoints one Trustee. Currently there are no limits to the number of times an individual can be appointed to the Board. In fact, some Trustees and/or a member of their family, have served on the Board for decades. One Trustee interviewed indicated there was an expectation that the position on the Board was a family right and obligation. Another Trustee indicated that appointment to the Board was a good way to stay in a public forum to support future political aspirations.

Through its investigations and interviews, the Grand Jury found no reason to question the Trustees' commitment to fulfilling the District's Mission Statement to protect the public from mosquito- and vector-carried diseases. The Grand Jury is concerned that the amount of time some members serve on the District Board limits fresh perspectives on how best to serve the public and how to be better guardians of the District's resources. Also, long terms may lead to complacency in accepting proposals from District management without fruitful discussion and independent evaluation.

Findings

F4.1 Membership on the District Board is seen as a family right and obligation passed through generations, or as a pathway for political advancement.

F4.2 Long terms on the District Board may lead to complacency in reviewing District financial conditions and a clear understanding of issues brought before the Board for consideration.

Recommendations

R4.1 No later than November 1, 2013, the County Board of Supervisors and the City Council of each city in the County petition the appropriate agencies and/or the State legislature to establish term limits of two consecutive four-year terms for District Board Trustees.

5.0 The Best Governance Structure of the District Board to Serve the Public

Mosquito abatement districts have been in existence in California since the late 1880s when it became known that mosquitos carried disease. The early districts were created when the State was more rural and had fewer incorporated cities. In San Joaquin County, the first mosquito abatement district was formed in 1945 and was comprised of the City of Lodi and the northern portion of the County. In 1955, the County and the City of Stockton created a mosquito abatement district encompassing the southern part of the County. In 1980, the two districts consolidated to form the current District. In every case, the district was an independent special district.

In light of its investigation and those of prior Grand Juries, the 2012-2013 Grand Jury questioned whether the currently constituted District is the most effective means of providing vector control services to the citizens of the County. The Grand Jury reiterates that it has the respect for the employees of the District in keeping the County safe from mosquito and vector-carried diseases. It does have concerns about whether having a separate district with a separate board as the legislative body is the most effective structure for the present and future needs of the County.

Findings

F5.1 Issues regarding non-transparent functioning and actions of the District Trustees bring into question the need for the District Board as presently appointed by the Cities and the County Board of Supervisors.

Conclusion

When enacting the Ralph M. Brown Act, the State Legislature clearly articulated its intent by stating *"In enacting this chapter, the Legislature finds and declares that the public commissions, boards, and councils and the other public agencies in this State exist to aid in the conduct of the people's business."* It further stated *"The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created."*

It is through this Grand Jury's review of the San Joaquin County Mosquito and Vector Control District Board of Trustees actions, that it determined the current Board of Trustees and their senior management lack the proper awareness of this legislative intent and the associated legal requirements. The lack of awareness by the District Board indicates they have not properly implemented the intent of the legislature by ensuring all of their business activities are open to public review and debate. The Grand Jury believes that through adoption and implementation of the recommendations contained within this report that the public's right to be informed of the activities of their public servants will be better fulfilled. Further, a new look at the Board's composition or even a new organizational structure may better serve the San Joaquin County community.

Disclaimer

Grand Jury reports are based on documentary evidence and the testimony of sworn or admonished witnesses, not on conjecture or opinion. However, the Grand Jury is precluded by law from disclosing such evidence except upon specific approval of the Presiding Judge of the Superior Court, or another judge appointed by the Presiding Judge (Penal Code Sections 911, 924.1(a) and 929). Similarly, the Grand Jury is precluded by law from disclosing the identity of witnesses except upon an order of the court for narrowly defined purposes (Penal Code Sections 924.2 and 929).

Response Requirements

California Penal Code sections 933 and 933.05 require that specific responses to all findings and recommendations contained in this report be submitted to the Presiding Judge of San Joaquin County Superior Court within 90 days.

The San Joaquin County Mosquito and Vector Control Board of Trustees is to respond to the following findings and recommendations:

Findings: F1.1, F1.2, F1.3, F1.4, F2.1.1, F2.1.2, F3.1, F3.2 and F5.1.

Recommendations: R1.1.1, R1.1.2, R1.2, R1.3.1, R1.4, R2.1.1, R3.1.1, R3.1.2, and R3.2.

The San Joaquin County Board of Supervisors is to respond to the following findings and recommendations:

Findings: F4.1, F4.2, and F5.1

Recommendations: R4.1

The Cities of Escalon, Lathrop, Lodi, Manteca, Ripon, Stockton, and Tracey are to respond to the following findings and recommendations:

Findings: F4.1, F4.2, and F5.1

Recommendations: R4.1

Mail or hand-deliver a hard copy of the response to:

Honorable David P. Warner, Presiding Judge
San Joaquin County Superior Court
P. O. Box 201022
Stockton, CA 95201

Also, please email the response to Trisa Martinez, Staff Secretary to the Grand Jury at

grandjury@sjcourts.org.

City of Lodi's Response

Finding No. F4.1

In reviewing the City of Lodi's own process for appointment of a citizen member to serve on the San Joaquin County Mosquito and Vector Control Board, the City disagrees with the finding that the City's appointment to the District Board is viewed as a "...family right, obligation through generations, or as a pathway for political advancement." Upon the expiration of a term, the City Clerk's office obtains authorization from the City Council at a public meeting to post for the vacancy of the position in the local newspaper and on the City's website for a 30-day period. During that time, any registered voter in the City of Lodi can apply for the position. At the close of the application period, the Mayor recommends appointment to the entire City Council who must ratify said appointment by majority vote at a public meeting. For the District Board position, the City traditionally has only received one application during the entire application period. As a result, its current appointee has been serving as Lodi's representative since 1998. There are no other applications on file.

The City of Lodi does not have an opinion on appointments made by other cities in the County or the County itself.

Finding No. F4.2

The City of Lodi does not have an opinion, either objective or subjective, on this finding. The length of service/term limits for members of the District Board is a matter which falls under the purview and jurisdiction of San Joaquin County and/or the San Joaquin County Mosquito and Vector Control Board.

Finding No. F5.1

The City of Lodi does not have an opinion, either objective or subjective, on this finding. The existence, organization and operations of the District Board are matters which fall under the purview and jurisdiction San Joaquin County and/or the San Joaquin County Mosquito and Vector Control Board.

Recommendation No. R4.1

By way of this correspondence, a copy of which was sent to the San Joaquin County Board of Supervisors and the San Joaquin County Mosquito and Vector Control Board of Trustees, the City of Lodi petitions the governing boards of those specific agencies, to consider the establishment of term limits for trustees if they so deem appropriate. Future decisions of those agencies pertaining to the length of service/term limits for the District Board will be adhered to by the City of Lodi in its appointment process.

Sincerely,

Alan Nakanishi
Mayor

C: San Joaquin County Board of Supervisors
San Joaquin County Mosquito and Vector Control Board



The Superior Court of California
County of San Joaquin

May 23, 2013

RECEIVED

MAY 28 2013

CITY CLERK

MEMORANDUM

To: All Public Agencies

From: Hon. George J. Abdallah, Jr., Judge of the Superior Court
Advisor to the San Joaquin County Grand Jury

A handwritten signature in black ink, appearing to be "GJ", is written over the name of the sender.

Re: Amendment to 2012-2013 San Joaquin County Grand Jury Report

Attached please find an amended copy of the San Joaquin County Grand Jury Report #0912, that was filed with Superior Court on May 22, 2013. Please note the amendments are found on Tables 3 and 4.

attach

San Joaquin County Grand Jury



Crime - Budget Cuts + AB 109 ≠ Safe Communities 2012-2013 Case No. 0912 – AMENDED REPORT 5/23/13

Summary

Crime is a serious issue in our local communities. Declining budgets have taken their toll on staffing throughout the law and justice system in San Joaquin County. The 2010-2011 Grand Jury issued a report titled *Budgetary Impact on Administration of Justice in San Joaquin County*, which provided an overview of crime in the County at that time and how budget reductions and staffing shortages negatively impacted public safety. Today, local newspapers continually report violent crimes. People are becoming more and more concerned about their safety. Even though the law and justice system is doing all it possibly can to protect public safety, countless issues are working against their efforts because of staff shortages and diminished resources.

The 2012-2013 San Joaquin Grand Jury (Grand Jury) studied the County's law and justice system in an effort to develop ideas to help reduce crime throughout the County. While the Grand Jury does not have the authority to change the system, it does have the responsibility to investigate, to determine findings, and to develop recommendations that could have a positive impact on the present situation. This report addresses three areas within the law and justice system: law and justice staffing, county jail capacity and law enforcement leadership.

Staffing has been reduced in all areas of the law and justice system. These reductions have negatively affected the level of all services provided. The Grand Jury is recommending the County and Cities adopt policies to increase law enforcement staffing.

The County Jail is overcrowded. In order to stay within a court-mandated capacity, inmates are regularly released before serving their full sentences. The Grand Jury recommends the County Board of Supervisors approve funding for much needed jail bed capacity, and that the approval include sufficient staffing to supervise the additional capacity.

San Joaquin County has talented people in leadership positions within the various law enforcement entities. However, the limited coordination between the different agencies must be increased. The Grand Jury is recommending that a committee be established to study methods and options to increase efficiencies in county-wide law enforcement.

Glossary

AB 109	California Assembly Bill 109 passed in 2011 provided relief for overcrowding in State prisons; also known as realignment.
AB 109 Inmate	A person serving a sentence in the county jail that would have been in a State prison prior to AB 109.
CBO	Community Based Organization.
CCP	Community Corrections Partnership; the County group tasked with receiving and distributing AB 109 funds.
CDCR	California Department of Corrections and Rehabilitation.
CHP	California Highway Patrol.
Court Cap	The County Jail capacity that was set by the San Joaquin County Superior Court.
DA	San Joaquin County District Attorney.
Defendant	Someone who has been arrested but not tried for a crime; might be held in jail.
FBI	Federal Bureau of Investigation.
GPS Monitor	A device usually worn on the ankle that uses signals from satellites to determine location.
Honor Farm	A component of the San Joaquin County Jail that houses low risk inmates.
ICE	Immigration and Customs Enforcement; a federal agency.
Inmate	Anyone who is detained in a jail or prison; jail inmates include defendants and offenders.

Stockton's Marshall Plan	A plan to address the city's crime issues; with <i>Operation Ceasefire</i> as a major component.
Metropolitan Police	Merger of local police/sheriff's departments into one law enforcement agency which serves a metropolitan area/county.
Non/non/non	A non-serious, non-violent, non-sex crime as identified by AB 109.
Offender	Someone who has been convicted of a crime; often serves time in jail.
Operation Ceasefire	Stockton's partnership-based violence reduction strategy that employs respectful, direct communication with youth and young adults at highest risk of violence; primary goal is to reduce shootings.
Parole	Post-release supervision after serving time in a State prison.
Probation	Supervision of offender not in county jail.

Background

Local news has featured stories about law and justice issues throughout the County. Headlines used have included "S.J. Jail full", "Prosecutors: Man raped, killed grandmother, Suspect freed early from crowded jail days before slaying", "County OKs \$15.2M for realignment", "S.J. expected 82 parole violators, instead got 1,752", and "Bullets fly during lunch-hour shootout".

The 2010-2011 San Joaquin County Grand Jury wrote an informational report titled "*Budgetary Impact on Administration of Justice in San Joaquin County.*" This report provided statistics regarding crime in the County. It also analyzed the impact of reduced budgets on our law and justice system which includes police departments, the Sheriff's Department, courts, the County Jail, Probation, the District Attorney and the Public Defender. That report included no recommendations but it painted a bleak picture regarding the rise in crime.

The Grand Jury toured the Deuel Vocational Institution and the San Joaquin County Jail in September and October of 2012. Members of the Grand Jury also participated in numerous ride-alongs with different law enforcement agencies. During these interactions with law enforcement professionals, AB 109 was frequently mentioned and examples were provided regarding the law's impact to County public safety organizations. As this complex information was being discussed, it became apparent that additional information was required to understand the far-reaching issues associated with AB 109. As a result of the press reports, discussions and tours, this investigation was initiated.

During the investigation, the Grand Jury observed many examples of the community's concern about public safety. On September 27, 2012, Sacramento's Channel 10 News hosted "Stockton, A City in Crisis" at the University of the Pacific (UOP) and drew a standing-room-only crowd.

On November 14, 2012, hundreds of citizens attended a meeting to learn about *Project Ceasefire*, a program instituted by the Stockton Police Department targeting violence. On November 15, 2012, hundreds attended another meeting at UOP to hear a panel of County law and justice leaders discuss the issues they are facing and what citizens could do to help. On February 8, 2013, hundreds attended a meeting to hear about the proposed *Stockton's Marshall Plan*. The large participation, the range of questions asked and the frustration exhibited by those attending these meetings supported the Grand Jury's conviction that it was investigating a topic of wide-spread interest and grave concern to our communities.

Two goals were established for this investigation. First, the Grand Jury wanted to help the County's law and justice agencies during this crisis of crime. At the same time, the Grand Jury wanted to give the public hope that crime could be reduced. The Grand Jury realized that new and creative solutions were needed: Doing more with less was not enough. Comments repeated during interviews such as "*We can't do that...*" and "*...that is the way we have always done it*" were not acceptable. Joint meetings between law enforcement agencies, county-wide task force efforts and some multiagency operations lasting a day or two were typical approaches observed. The Grand Jury used its unique county-wide perspective along with extensive research to determine creative findings and recommendations.

The Grand Jury also determined that this investigation could not include all aspects of the law and justice system. The Grand Jury made a conscious decision to not study many of the programs in the County that dissuade individuals from the life of crime. Three of these areas are: Support provided to our communities by Community Based Organizations (CBOs) to deter people from committing crimes; Programs in jails and prisons for inmates to obtain the education, training, and resources to help them on their reentry into society; and Support provided by CBOs to offenders after their release so they will not reoffend.

San Joaquin County is comprised of seven incorporated cities, one community services district and one large unincorporated area. The San Joaquin County Sheriff's Department (Sheriff's Department) is responsible for the County Jail and court services (bailiffs/prisoner security) at the Superior Courthouses in Stockton, Manteca and Lodi. In addition, the Sheriff's Department is responsible for law enforcement in all of the unincorporated areas and for the Mountain House Community Services District. The City of Lathrop's Police Services consists of a contracted force provided by the Sheriff's Department. Each of the other cities has its own police chief and police department. The Sheriff is an elected position and all police chiefs are appointed.

The County also supports certain aspects of other law enforcement within the justice system: For example, the Probation Department provides supervision of offenders in lieu of incarceration or after their release. This department is also responsible for the operation of the juvenile hall. The Superior Court, and staff necessary for its operation, is under the auspices of the State. To support the courts, the County's District Attorney's office prosecutes cases and the Public Defender's office provides for the defense of the accused. The District Attorney is elected and all other leaders are appointed.

When studying the law and justice system, it becomes obvious that all components are interconnected. Police departments, the Sheriff's Department, courts, the County Jail, Probation, the District Attorney and the Public Defender are all intertwined. A problem in any one component affects all other components.

AB 109

Early in this investigation, the Grand Jury learned about AB 109/Realignment and its impact on public safety. This bill was the State's response to the 2009 ruling by a federal three-judge court which found that crowding in California's prisons was a primary cause of inadequate health care for prisoners. The federal court ordered California to reduce its prison population. The U.S. Supreme Court upheld that order in May 2011.

The provision of AB 109 that most affected the County was that offenders of non-violent, non-serious, non-sex felonies (referred to as *non, non, non-offenses*) would serve their sentences in county jails rather than state prisons. The implementation of AB 109 has caused major operational and budgetary problems for county jails throughout the state, including San Joaquin County Jail. An offender of a *non, non, non-offense* serves his/her sentence in a county jail regardless of whether he/she has been convicted before of any serious felonies; Prior to AB 109, the maximum sentence served in a county jail was one year; AB 109 offenders can be sentenced to as many as nine years at the county jail.

California county jails were not designed for multi-year incarceration of inmates convicted of serious crimes. In addition, rehabilitation programs for county jail inmates were not intended for multi-year sentences.

AB 109 has been very effective in easing the overcrowding in the State prisons, but all too often at the expense of the counties, in terms of financial and public safety costs. Hundreds of AB 109 inmates that would otherwise be in State prisons are now detained in county jails. According to *"Realigning the Revolving Door? An Analysis of California Counties' AB 109 Implementation Plans"* published by the Stanford Criminal Justice Center "AB 109 transferred an unprecedented amount of responsibility to counties."

Another provision of AB 109 has yet to be implemented but will further impact our County. Currently, the California Division of Adult Parole Operations system is responsible for all state prison parolees. Commencing July 1, 2013, most post-release supervision of offenders from the State prison system will be conducted by the County Probation Department. The State will then only supervise parolees who were convicted of a serious or violent offense; were convicted of a third strike offense; are classified as a Mentally Disordered Offender; or are high-risk sex offenders.

Major implications of AB 109 were cited in a study by The Chief Justice Earl Warren Institute on Law and Social Policy at the University of California, Berkeley's School of Law. Their article titled *"Thinking Critically About Realignment in California"* stated in part:

"Transferring individuals from overcrowded state prisons to overcrowded county jails will likely lead to more [inmate] lawsuits." "County jails were not built for long term sentences, but with realignment a greater number of individuals will be staying in county jail for much longer than a year." Studies such as this have validated local concerns about the impact of AB 109.

In February 2013, a woman was murdered in San Joaquin County and an AB 109 offender was charged with the crime. The AB 109 offender had reportedly been in and out of jail on parole violations five times or more in the last year. Over the last eight months, there were at least seven instances where he tried to tamper with his GPS monitor or tried to hide from authorities. On February 20, 2013, he pled guilty to charges of failing to register as a sex offender and was sentenced to serve 30 days in jail. The next day, he was released from jail because the population exceeded the court cap. Six days after his release, his grandmother was raped and murdered. He was apprehended, charged with the murder of his grandmother and sent back to jail.

California's 2009 Senate Bill (SB) 678 created a Community Corrections Partnership (CCP) in each county. The passage of AB 109 expanded the role of the CCPs and established an executive committee for each CCP. This executive committee is comprised of:

The Chief Probation Officer (who chairs the executive committee)

A Chief of police

The Sheriff

The District Attorney

The Public Defender

A presiding judge of the superior court (or his/her designee)

A representative from either the County Department of Social Services, Mental Health or Alcohol and Substance Abuse Programs

Under AB 109, the CCP was tasked with drafting a realignment plan for the County. The 2011-2012 plan received the necessary support of at least four of the five County Supervisors for approval as did the 2012-2013 plan. These plans include the distribution of the State's AB 109 funding that is received by the County.

Staffing

The Sheriff's Department is now dealing with a new type of jail inmate due to AB 109 realignment. At the same time, staff has been reduced at the jail and for patrol. Police departments throughout the County have also been reduced. The Probation Department is facing an expanded role in law enforcement yet this department has also suffered reductions to staff.

The District Attorney's office has lost 25% of its annual budget since 2008. The number of attorneys in this department has been reduced by 30%. The Public Defender's office has suffered similar reductions. Crimes are not being prosecuted/defended to the same extent as before these reductions were made.

The Superior Court's staff has been reduced by about 25%. Tracy's Superior Court was closed in 2011. The Lodi branch of the Superior Court had two courtrooms. The first courtroom closed in 2011 and the second was closed in March 2013. These court closures have caused backlogs in the remaining courtrooms. The Stockton Superior Court Building is outdated, in poor shape, and needs to be replaced. While the State has approved construction of a new courthouse in Stockton, funding has not yet been released.

The Stockton Police Department has suffered as much or more than any other law and justice agency in the County. The City filed for bankruptcy in June 2012. Its police force has been reduced by about 25%. Many officers are leaving Stockton to work in other communities where salaries and benefits are better and there is less risk of being laid off. The police force has been reduced to the extent that officers do not respond to service calls unless the crime is serious or is in progress.

Crime in Stockton

Along with the staffing issues cited above, violent crime in Stockton has increased. The year 2012 saw a record number of murders: 71. The risk of gold chain thefts was a major issue in the summer and fall of 2012. Comparing 2012 to the prior year, auto theft increased 49.3% and burglary was up by 6.8%.

Crime has risen in Stockton to the point that the city can be viewed as the *broken window*. The Broken Windows Theory was first introduced in 1982 by social scientists James Q. Wilson and George L. Kelling. The theory is that once you have a broken window in a building, the next thing you find is more broken windows. Broken windows are followed by more and more decline until the whole building is dilapidated. The theory also says that this decline could have been prevented by addressing the cause of the very first broken window. This syndrome is happening now in San Joaquin County with respect to crime. The *broken window* in our County is the City of Stockton. The violent crime Stockton is facing is also impacting other areas of the County and must be confronted.

The Stockton Police Department and the City of Stockton are taking actions to reduce crime. The City has been developing their Marshall Plan to address how the City will battle crime. One component of this plan is the reinstatement of Operation Ceasefire, a program that targets those individuals who commit the worst violence. This program was used by Stockton for five years beginning in 1998 and is again becoming operational as this report is being published. The Police Department has developed a Homicide Reduction Plan. They utilize social media (*Facebook*) to inform citizens of crime in the community and as a means to provide crime tips that help the department in its crime fighting efforts. The department has also established a non-profit foundation to obtain additional funds to support its' crime fighting efforts.

The Stockton Police Department has also been creative with its Chaplain program. This department has the largest Chaplain program in the nation with over 30 volunteer chaplains. The program has been so successful that the Chaplains are being used in the schools to replace the discontinued School Resource Officer program.

Issues

The Grand Jury has found that there are many challenging issues within the County law and justice system. Most of these issues are directly related to two factors: a multi-year reduction to budgets; and the implementation of AB 109. Given the combined impact of these two adverse realities, this report will focus on the following three issues:

- Law and Justice Staffing
- Overcrowding at the County Jail
- Law Enforcement Leadership

Method of Investigation

The Grand Jury studied various aspects of the law enforcement and justice systems in the County. Interviews and site visits were conducted with representatives of police departments, the Sheriff's Department, Probation, the District Attorney's office and the San Joaquin County Superior Court. There were personal meetings with one or more representatives of every city's police department within the County as well as numerous meetings with officials from the Sheriff's Department. In addition, members of the Grand Jury participated in ride-alongs with each police department and the Sheriff's Department. The Grand Jury toured every detention facility in the County. Interviews were also conducted with management and staff of the Probation Department and the District Attorney's office. Proceedings of the Superior Court were observed and discussions were held with court staff.

The Grand Jury also attended over a dozen meetings during this investigation. A number of community meetings were attended where law enforcement and crime was the main topic. Members attended and/or watched recordings of city council meetings and meetings of the County Board of Supervisors. Numerous meetings of the Community Corrections Partnership were also attended by the Grand Jury.

The Grand Jury also researched crime in San Joaquin County and the law and justice system in general.

A complete listings of documents reviewed, web sites visited, site visits/interviews and meetings attended are included in the attached Appendices.

Discussion, Findings, and Recommendations

1.0 Law and Justice Staffing

Almost all categories of crime are high throughout the County; in some areas, crime is rising. The downturn of the economy decreased the funding for the law and justice system. The subsequent implementation of AB 109 made these problems even worse.

Law enforcement agencies have experienced significant staffing reductions over the last five years. The Manteca Police Department lost 12 officers in 2009, 15% of its total sworn staff. The Tracy Police Department reduced the number of its officers from a high of 95 to its current number of 85, a reduction of more than 10%. Between 2007 and 2011, the Stockton Police Department lost about 100 officers, or 25% of its total sworn staff.

The level of law enforcement staffing is often expressed as the number of officers per thousand residents. The Stockton Police Department currently has approximately 1.1 officers per thousand residents. A 2010 FBI study showed that, on average, there were 2.7 officers for every 1,000 people in U.S. cities of more than 250,000. The 2006 report *Preventing Violent Street Crime in Stockton, California*, by Anthony A. Braga, a Harvard professor of criminal justice, recommended that the Stockton Police Department should have 550 officers requiring the addition of more than 200 officers. It is understandable why almost everyone interviewed supported the need for *more boots on the ground*, the phrase commonly used for adding more officers.

Officer reductions have had a direct impact on services provided. Many locales eliminated programs such as community policing, school resource officers and/or some special/tactical enforcement units.

The Stockton Police Department has experienced its own unique problems. In addition to staffing reductions, the city filed for bankruptcy in June 2012. Salaries and benefits were reduced for all city employees. One of the consequences of these actions was a larger than normal number of officers resigning or retiring. Even though the department is recruiting aggressively, the number of police officers remains approximately 325. If the Stockton Police Department could reach 344 sworn officers, a federal grant would pay for 17 additional officers. Staffing was reduced so much and crime has increased so rapidly that the City requested help from the State. This resulted in the California Highway Patrol (CHP) dedicating 10 officers to assist Stockton policing efforts for at least four months in 2012 and into 2013.

In 2012, Stockton hired 75 officers. However, during the same year, 72 officers resigned or retired resulting in a net increase of only three officers. The overall effect was a major decrease in the average level of experience within the department.

The justice system has experienced its own staff reductions. In the last five years, the District Attorney's department has reduced its personnel by more than 30% resulting in a reduction of attorneys, investigators and clerical staff. The Public Defender's office has experienced similar reductions.

When staffing is reduced, it is common for an agency to consider increasing their efficiency so that fewer people can maintain the same level of service. In many cases, implementation of new technologies can help increase efficiency. These technologies often come with a high initial price but low on-going costs.

Examples of local law enforcement agencies using new and efficient technologies include:

- Escalon and Manteca have installed video cameras in patrol cars. Ripon has installed surveillance cameras at more than 75 locations and provides 24/7 monitoring by their dispatch staff.
- Ripon has installed a license plate reader camera so that the license plate number of every car that drives by the camera location is compared to a data base of license plates. When a stolen vehicle or other wanted vehicle is identified, police are notified and respond.
- Stockton uses texting and social media to communicate with their community and to receive crime tips.
- Stockton is field testing biometric devices that capture unique features (e.g., fingerprints, palm prints, facial images). This allows a technician in the field to gather information, electronically transmit it and within minutes receive data on the individual while still in the field.

Other technologies available for law enforcement that could benefit agencies in the County:

- Predictive analytics software takes information from all crimes committed, analyzes the data and then is able to predict where future crimes may be committed.
- The ShotSpotter™ system is able to identify the location of gunfire and then alert the nearest agency to that location in order to provide a quick response.
- Smart phones with special apps are now available for officers' use in the field and for better communication between the department and the public.

With reduced staffing, law enforcement agencies need help from the public. One of the requests frequently heard by the Grand Jury in meetings and during interviews was to have the public report all crimes. It is believed by law enforcement officials that many property crimes are not being reported. Having complete crime data is critical for current analytical software to effectively target crime.

Findings

F 1.1 The staffing of all law and justice agencies in the County has been reduced increasing the threat to the safety of the citizens and their property.

F 1.2 The Stockton Police Department has maintained an aggressive recruitment program but has not been able to increase its staffing due to the number of officers leaving the department.

F 1.3 Some lower-level crimes are not being prosecuted due to staffing reductions within the District Attorney and Public Defender offices allowing criminals to remain on the streets without consequences for their actions.

F 1.4 Continued and increased use of current technologies would make law enforcement agencies more efficient and offset some of the decreased staffing.

F 1.5 When the public does not report a crime, law enforcement does not have complete statistics that are necessary for predictive policing.

Recommendations

R 1.1.1 The Board of Supervisors, before September 1, 2013, adopt a policy that states it is a priority of the County to increase staffing for law enforcement, including patrol and probation.

R 1.1.2 Each City Council, before September 1, 2013, adopt a policy that states it is a priority of the City to increase law enforcement staffing.

R 1.2 The Stockton City Council, before December 31, 2013, identify provisions that promote the retention of law enforcement staff and approve a plan for the implementation of the retention provisions identified.

R 1.3 The County Board of Supervisors, before December 31, 2013, approve a 2013-14 budget or budget amendment that increases staffing for the Office of the District Attorney and the Public Defender Office to adequately prosecute/defend all individuals arrested for violent crime.

R 1.4 The Sheriff's Department and each city's police department review their current use of crime prevention technologies and develop a plan to implement new technologies that could help increase the efficiency of their agencies.

R 1.5 The Public Information Officer for San Joaquin County, by September 1, 2013, coordinate efforts with local law enforcement agencies to have local print, radio, TV and cable media outlets use Public Service Announcements (PSAs) to inform the public to report all crimes.

2.0 County Jail Capacity

Law enforcement staff often state the ongoing requirement for keeping *one empty bed* available at the jail (so that the next person arrested can be detained). The Grand Jury found the inmate population at the San Joaquin County Jail often exceeds its capacity. Without this *one empty bed*, those arrested are not always being detained; in fact, some detainees are released early. The habitual lack of bed space prevents officers from incarcerating individuals who have warrants for failure to appear in court. This limited bed space problem has created an arrest-incarceration system that borders on *catch-and-release*.

It has also changed the rules for the criminal element; they realize that they usually will not serve full sentences. And they could realistically be released early.

Prisons and jails in California have struggled with overcrowding. As a result of a law suit regarding jail overcrowding, the federal court ruled that jail and prison populations must be reduced. Locally, a Superior Court Consent Decree established what is known as the court cap at the County Jail.

The San Joaquin County Jail (jail) has 1,411 beds between the housing units of the jail and the honor farm. Due to budget reductions in 2010, staffing was reduced by 33 correctional officers. At this time, the jail is staffed to supervise 1,252 inmates. When the inmate population exceeds 1,252 inmates, additional correctional officers must be brought in and paid overtime to staff the jail and supervise inmates assigned to these additional beds.

The jail has been overcrowded for many years. In response to this issue, the Sheriff's Department submitted a proposal in March 2008 requesting funds for the construction of a 1,280 bed expansion of the current jail. In 2008, the State of California awarded San Joaquin County \$80 million in construction funds for the expansion. The County also authorized \$25 million of its own money and \$10.5 million of in-kind matching contributions for a total project budget of \$115.5 million. A design team was created in January 2009 to plan and coordinate the construction of the expansion. To date, approximately \$9 million has been spent for architectural and engineering design work but construction plans have not been produced and construction approvals have not been received.

Even though the County has funds for the construction of the jail expansion, there is no provision for the additional funds necessary to staff the expansion. In April 2012, the County's Chief Administrative Officer (CAO) estimated the annual staffing cost for the completed 1,280 bed expansion to be about \$55 million for the Sheriff's Department plus an additional \$14 million for health care, plant engineering and probation. These amounts do not include a factor for inflation and there is no new revenue to cover these expenses. Quoting from the CAO's report "Should any phase of the expansion occur without new revenue, several departments would have to be totally eliminated and, in effect, render County services unmanageable."

The Grand Jury reviewed an internal study provided by the Sheriff's Department that focused on options for staffing the jail expansion. However, all options studied only shifted inmates and staff from current jail buildings into the proposed expansion with no net increase of beds being used. The Sheriff's Department has not made a presentation on jail expansion to the Board of Supervisors since February 14, 2012. Also, the Board of Supervisors has not publicly addressed the jail expansion since the CAO's cost analysis study was presented on April 24, 2012.

At this time, ground has not been broken for the jail expansion even though funding was reserved five years ago. The Grand Jury was told the jail expansion project will not move forward until the County Board of Supervisors approves a staffing plan for the expansion. Even after receiving Board approval, it will be at least two to three years before construction would be finished and the jail beds could be used.

The Grand Jury reviewed the presentation "Jail Expansion & Infrastructure Construction Project" given by the County Sheriff on February 14, 2012, to the County Board of Supervisors. The Sheriff's Department reported on AB 109's impact on the jail in the early stages of its implementation. There were 549 AB 109 inmates detained at the County Jail from October 2011 through January 2012. As of January 31, 2012, 286 AB 109 inmates were in custody and 263 had been released. Of those released, 128 (48.7%) returned to custody for committing a new crime or parole/probation violation. In other words, almost half of those released had been detained, released, and then returned to jail, all within four months. The reasons for the return to custody, as of January 31, 2012, are shown in Table 1.

REASON	NUMBER	% OF TOTAL REARRESTED	% OF TOTAL RELEASED
Parole Violation	65	50.8	24.7
Probation Violation	36	28.1	13.9
Property Crimes	7	5.5	2.7
Narcotics	4	3.1	1.5
Weapons	3	2.3	1.1
Violence	2	1.6	.08
Other	11	8.6	4.2
TOTAL	128	100.0	48.7

Table 1

When the inmate population exceeds the court cap, inmates must be released early. A Superior Court judge is assigned to monitor jail inmate capacity data and to determine which inmates should be released. The release of defendants is based on the charges they currently face. When considering which offenders should be released, the decision is based on the length of their sentence and what portion has been served. In 2012, over 2,000 offenders were released before the end of their sentences and many defendants (those individuals not yet sentenced but awaiting a court date) were released from the jail while still awaiting a trial.

The Grand Jury heard from officials that an expansion of 1,280 beds is not the only option. Table 2 lists the options known to the Grand Jury for additional bed space and for alternatives to incarceration. It is recognized that many of the alternatives to incarceration do not directly decrease the need for jail space. The final solution to reach the goal of always having *one empty bed* could be a combination of some or all of these options.

OPTIONS		DESCRIPTION	ISSUES
INCARCERATION	Jail expansion	1,280 bed expansion adjacent to current jail; could be downsized by not building all 10 housing units	Funding for staff has not been approved; 1,280 beds may be more than necessary if alternatives to incarceration are used
	Community Corrections Center	Inmates are held in a non-secure facility; provides skills and resources to help reentry into society	Study of this option has just begun; would require funding to build/modify a facility as well as for staffing
	Honor Farm Conversion	Portions of the Honor Farm are not being used; requires extensive modifications to increase security	Honor Farm facility was designed for minimum security housing; conversion would require significant funding
	Send inmates to other jails that have capacity	Other counties/states have jails with excess capacity; inmates can be sent to these jails and the county would pay for the custody	Cost of other facilities may be greater than the County's cost; may be difficult to meet restrictive conditions and follow extensive procedures
ALTERNATIVES to INCARCERATION	Pretrial assessment	Use validated tool based on criminal history, prior failures to appear, alcohol use, and other criteria to determine whether to release or incarcerate	County is just starting to explore this option; funding is needed for staffing and operations
	Home Detention	Monitor is worn on leg; allows defendant/offender to live at home	GPS device can be removed or rendered ineffective by defendant/offender
	Day Reporting Center	Offender lives at home and periodically checks in with probation staff; may include substance abuse testing	Must have staff to seek out those who fail to report

Table 2

Findings

F2.1 The savings from eliminating 33 correctional officer positions have been partially negated by overtime paid to officers when there are more than 1,252 inmates and therefore does not provide the intended savings.

F2.2 County jail inmates who are being released due to jail overcrowding are then able to commit crimes when they otherwise would have been incarcerated, which is increasing the crime problem in the County.

Recommendations

R2.1 The County Board of Supervisors, before November 1, 2013, approve an increase to the staffing level of correctional officers to fully staff the County Jail including the Honor Farm.

R2.2 The San Joaquin County Board of Supervisors, by December 31, 2013, approve an increase of jail beds (whether at the county jail, a new Community Corrections Center or other options) as well as the necessary associated staffing.

3.0 Law Enforcement Leadership

After extensive study and interviews, the Grand Jury discovered law enforcement agencies within the County typically work independently. Examples of interagency task forces for specific issues and some cooperative efforts were found but these were the exceptions. It is the norm that law enforcement agencies focus their efforts within their jurisdiction.

The law enforcement leaders of the County attend periodic meetings where common issues are discussed. The CCP meetings provide a chance for those interested in law and justice to share and discuss a wide range of topics. There is also a monthly meeting hosted by the Sheriff where city police chiefs from throughout the county are invited to attend. This meeting allows the law enforcement leaders to interact within a group that is much smaller and more focused than the CCP.

The Grand Jury observed examples of law enforcement agencies working together. Multiagency events which focus on a particular crime issue are conducted periodically. Representatives of the Grand Jury observed Operation Safe Holidays that focused on parole/probation searches and saturation/surveillance operations. This two-day event in December 2012, was coordinated by the Sheriff's Department and included representatives from city police departments, probation, CDCR, ICE, CHP and other agencies.

There are also a number of multiagency task forces in San Joaquin County. These groups are ongoing and target a specific law enforcement issue. The County and each City decide whether they assign one or more officers to each task force.

The Grand Jury contacted each agency to determine which multiagency task forces they supported with staff. Table 3 shows the results of this survey. The CCP Task Force is a new effort to deal with AB 109 offenders.

AGENCY	MULTIAGENCY TASK FORCE			
	Gangs	Narcotics	Auto Theft	CCP Task Force
Escalon	None*			
Lathrop	Services provided by Sheriff's Department			
Lodi	√		√	√
Manteca	√		√	√
Ripon	None*			
Sheriff	√	√	√	
Stockton	√	√	√	√
Tracy				√

Table 3 * Escalon and Ripon police forces are so small that it is difficult to commit staff.

The Grand Jury also surveyed law enforcement agencies to identify the special unit categories within each agency. Table 4 shows the results of this survey.

AGENCY	SPECIAL UNITS							
	Crisis Negotiations	Explosive Ordnance Disposal	Gangs	Mobile Command Post	Narcotics	Riot	Special Enforcement Group *	SWAT
Escalon	None							
Lathrop	Services provided by Sheriff's Department							
Lodi	√	√	√	√	√	√	√	√
Manteca	√	√	√		√		√	√
Ripon			√	√	√			√
Sheriff	√	√		√		√	√	√
Stockton	√	√	√	√		√	√	√
Tracy	√			√	√		√	√

Table 4

* Patrol groups who focus on high crime areas.

After studying Table 3 and Table 4, the Grand Jury found areas of duplication of services. The most noticeable examples are:

Four cities have their own gang unit and there is a multiagency task force with representatives from the same four cities.

Four cities have their own narcotics unit and there is a multiagency task force with representatives from only Stockton and the Sheriff's Department.

Six agencies have their own SWAT teams, units that are used infrequently; each agency must provide extensive training for its SWAT team which takes the officers away from their other duties and often require overtime pay.

Four cities and the Sheriff's Department each have special enforcement groups; while there may be some communication between the groups, they largely function independently even though they are addressing common problems.

Similar issues can be found with the explosives units, mobile command posts and riot units. The duplication of services and the specialized training of officers for these services create higher costs to serve the residents and businesses of the County.

In addition to the special units, there are similar concerns for other common functions of each law enforcement agency. Each law enforcement agency has its own property room. Each agency (except for Escalon) has its own dispatch center. Each agency has its own investigation technicians (or staff trained to conduct crime scene investigations). Most agencies have their own detective group. It could be more efficient if some or all of these functions were coordinated throughout the County.

The number, differences and variety of equipment used can also cause inefficiencies. This is most noticeable in computer systems. Different agencies use different software programs. These computer programs do not easily share information. Each agency operates its own computer network creating additional inefficiencies. Therefore, when a police officer enters data into his/her agency's program, the same data may need to be re-entered into the County's system when the defendant is booked into the jail.

The artificial boundaries separating the cities from the County also create inefficiencies. The Sheriff's Department serves the unincorporated areas of the County. Within their service area, the seven cities in the County have their own police departments. As the Sheriff Deputies patrol their area, they sometimes travel through a city jurisdiction to reach unincorporated areas. The Sheriff's Department serves pockets of unincorporated areas within the Stockton city limits. Therefore, Stockton officers often drive through unincorporated areas during their regular patrols and the Sheriff Deputies drive through Stockton to reach the unincorporated pockets. Service would be more efficient if these pockets were eliminated.

These jurisdictional boundaries mean nothing to those who commit crimes. A prime example of this is the fact that three of the four murders in Tracy in 2012 were committed by gang members from Stockton. Since crime is a county-wide issue, county-wide efforts are needed. At this time, there is no mechanism to coordinate county-wide law enforcement to best meet the specific needs of a community.

Examples of multiagency cooperation and integration exist in the region and throughout the nation. A small scale example of cooperation is Ripon hosting dispatch services for Escalon. On a larger scale, the Sheriff's Department has contracts to provide law enforcement for the City of Lathrop and the Mountain House Community Services District. *The Manteca Bulletin* reported on February 4, 2013, that Manteca and Lathrop are in discussions to form a single, joint law enforcement agency.

Large scale examples of cooperative efforts can be found in northern California. The Stanislaus County Sheriff's Department has contracts to provide policing in five of its nine cities, reducing by half the number of law enforcement agencies in the county. In San Mateo County, the Sheriff's Department provides law enforcement for the Cities of San Carlos and Millbrae. It has been reported that this joint effort is saving the cities millions of dollars each year.

A sheriff's office can merge with all the city police departments within the county to form what is known as a *metro police agency*. The city of Las Vegas and Clark County, Nevada, union is a well-known example. In 1973, the Las Vegas Metropolitan Police Department was formed by merging the Las Vegas Police Department with the Clark County Sheriff's Department. A 1999 audit by an outside firm commended the department for having fewer managers and supervisors than are typically found in large police agencies.

Findings

F3.1 The duplication of special units, specialized training and police functions (e.g., property room, dispatch, investigation technicians) cause inefficient use of limited resources.

F3.2 There are examples of cooperation between different agencies in the County but each agency still operates autonomously most of the time.

Recommendations

R3 The Board of Supervisors and the City Councils of Escalon, Lathrop, Lodi, Manteca, Ripon, Stockton and Tracy, before September 1, 2013, each appoint two representatives, one to represent law enforcement and one to represent the governing body or management, to form an *ad hoc* committee. The committee's purpose is to conduct a study on how to increase countywide efficiency of law enforcement agencies by taking a regional approach to some or all of their services. A preliminary report is to be released before December 31, 2013, of actions already taken to increase efficiency and additional actions that will be taken between January 2014 and June 2015.

Conclusion

Crime in San Joaquin County has put our collective backs against the wall. It is the ever present cancer in our public body and threatens our community's health. Crime works against recovery from the challenges of the economic downturn, adversely impacts Stockton's bankruptcy, creates negative perceptions and diminishes scarce public resources. The Grand Jury tackled this high priority, complex, multi-faceted and difficult issue as an investigation in an effort to showcase the challenges and contribute in a meaningful way to the community dialogue.

Investment in law enforcement staffing, expanded jail capacity and inter-agency cooperation are those areas which make up but three of many key and interrelated pieces of the puzzle for a comprehensive solution. The recommendations are put forward with the intention of supporting an immediate change as well as creating a foundation for long-term improvements. In addition, there are many good ideas and programs already under consideration including Stockton's Marshall Plan and the Community Corrections Partnership's study of community corrections centers. No recommendation the Grand Jury puts forth should be construed as replacing, contradicting or opposing either of these or any other initiative under development. Instead, they are conceived to be complementary and offered as potential ideas to integrate with other approaches to address the crime issue. Finally, the economic health of our communities requires a balance of insuring a safe environment for our residents, while at the same time being fiscally responsible. The responsibility of our public officials, elected and appointed alike, is to manage that balance for both our personal and economic wellbeing.

Those working in the law and justice system must continue to work for solutions. Most important of all, the citizens of our County must stay concerned and work with our leaders to make the streets safe for everyone. The Grand Jury's recommendations, if properly interpreted and effectively implemented, will help to support the restoration of our hope for San Joaquin County to become a safe and secure place to live, now and into the future.

Disclaimer

Grand Jury reports are based on documentary evidence and the testimony of sworn or admonished witnesses, not on conjecture or opinion. However, the Grand Jury is precluded by law from disclosing such evidence except upon specific approval of the Presiding Judge of the Superior Court, or another judge appointed by the Presiding Judge (Penal Code Section 911, 924.1 (a) and 929). Similarly, the Grand Jury is precluded by law from disclosing the identity of witnesses except upon an order of the court for narrowly defined purposes (Penal Code Sections 924.2 and 929).

Acknowledgement

The Grand Jury wishes to express its appreciation for the professional efforts made by the many individuals working in the law and justice system. As the Grand Jury rode along with officers during their patrols, toured the County Jail, and talked with our law and justice leaders, the Grand Jury was impressed by the work they were accomplishing.

Response Requirements

California Penal Code Sections 933 and 933.05 require that specific responses to all findings and recommendations contained in this report be submitted to the Presiding Judge of the San Joaquin County Superior Court. The San Joaquin County Board of Supervisors and the various City Councils, where applicable, shall report to the Presiding Judge of the San Joaquin County Superior Court within 90 days. The San Joaquin County Sheriff, where applicable, shall report to the Presiding Judge of the San Joaquin County Superior Court within 60 days.

Agency/Elected Official:	Required to Respond to the Following:	
	Findings	Recommendations
Escalon City Council	F1.1, F1.4 F3.1, F3.2	R1.1.2, R1.4 R3
Lathrop City Council	F1.1, F1.4 F3.1, F3.2	R1.1.2, R1.4 R3
Lodi City Council	F1.1, F1.4 F3.1, F3.2	R1.1.2, R1.4 R3
Manteca City Council	F1.1, F1.4 F3.1, F3.2	R1.1.2, R1.4 R3
Ripon City Council	F1.1, F1.4 F3.1, F3.2	R1.1.2, R1.4 R3
San Joaquin County Board of Supervisors	F1.1, F1.3, F1.5 F2.1, F2.2 F3.1, F3.2	R1.1.1, R1.3, R1.5 R2.1, R2.2 R3
San Joaquin County Sheriff-Coroner-Public Administrator	F1.4 F2.1, F2.2	R1.4
Stockton City Council	F1.1, F1.2, F1.4 F3.1, F3.2	R1.1.2, R1.2, R1.4 R3
Tracy City Council	F1.1, F1.4 F3.1, F3.2	R1.1.2, R1.4 R3

Mail or hand-deliver a hard copy of the response to:

Honorable David P. Warner, Presiding Judge
San Joaquin County Superior Court
222 East Weber Ave., Room 605
Stockton, CA 95202

Also please email the response to Trisa Martinez, Staff Secretary to the Grand Jury at grandjury@sjcourts.org

Appendices

- A. Web Sites Visited
- B. Site Visits/Interviews
- C. Community Meetings Attended

Appendix A

Web Sites Visited

Bureau of Alcohol, Tobacco, Firearms, and Explosives (Federal). <http://www.atf.gov>.

Department of Corrections and Rehabilitation (California). <http://www.cdcr.ca.gov>.

Department of Homeland Security (Federal). <http://www.dhs.gov>.

Escalon Police Department. <http://cityofescalon.org/departments/police>.

Federal Bureau of Investigation. <http://www.fbi.gov>.

Highway Patrol (California). <http://www.chp.ca.gov>.

Lathrop Police Department. <http://www.ci.lathrop.ca.us/lpd>.

Lodi Police Department. <http://www.lohi.gov/police>.

Manteca Police Department. <http://www.ci.manteca.ca.us/police>.

National Institute of Justice. <http://www.nij.gov/welcome>.

Ripon Police Department. <http://www.riponpd.org>.

Stockton Police Department. <http://www.stocktongov.com/government/departments/police>.

Tracy Police Department. <http://www.ci.tracy.ca.us>.

San Joaquin County Sheriff Department. <http://www.co.san-joaquin.ca.us/sheriff>.

San Joaquin County District Attorney. <http://www.sigov.org/da>.

San Joaquin County Probation Department. <http://www.sigov.org/probation>.

San Joaquin County Superior Court. <http://www.stocktoncourt.org>.

San Joaquin County Board of Supervisors. <http://www.sigov.org/board>.

San Joaquin County Public Defender's Office. <http://www.sigov.org/pubdefender>.

U.S. Marshals Service. <http://www.justice.gov/marshals>.

Appendix B

Site Visits/Interviews

Deuel Vocational Institution, CDCR. Tracy, CA

Escalon Police Department

Lodi Police Department

Manteca Police Department

Northern California Youth Center, California Department of Juvenile Justice. Stockton, CA

Ripon Police Department

San Joaquin County Jail. French Camp, CA

San Joaquin County Juvenile Probation. French Camp, CA

San Joaquin County District Attorney's Offices. Stockton, CA

San Joaquin County Sheriff Office. French Camp, CA

San Joaquin Superior Court. Manteca, CA

San Joaquin Superior Court. Stockton, CA

Stockton Police Department

Tracy Police Department

Appendix C

Community Meetings Attended

Anti-crime Event. Held at Victory Park, Stockton, CA. (September 27, 2012)

City of Stockton Marshal Plan Symposium. Held at Stockton Progressive Church, Stockton, CA. (February 8, 2013)

City of Stockton Operation Ceasefire Presentation, held at Stockton Progressive Church, Stockton, CA. (November 14, 2012)

Community Corrections Partnership. Held in Stockton, CA. (Various Dates)

San Joaquin County Board of Supervisors. Held in Stockton, CA. (Various Dates)

Stockton City Council. Held in Stockton, CA. (Various Dates)

Stockton in Crisis: Searching for Solutions. Held at University of the Pacific, Stockton, CA. (September 27, 2012)

Town Hall Forum Addressing Violence in Our Community, held at University of the Pacific, Stockton, CA. (November 15, 2012)

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Bennett, David. (February 8, 2013). *Stockton Violence Reduction Plan*.

Braga, Anthony A. Ph.D. (July 7, 2006). *Preventing Violent Street Crime in Stockton, California*. California Partnership for Safe Communities. (April 2012). *Sacramento Safe Community Partnership (Ceasefire): an Initial Progress Report*.

Community Corrections Partnership Executive Committee. (August 30, 2011). *San Joaquin County Public Safety Realignment 2011 Implementation Plan*.

Community Corrections Partnership Executive Committee. (September 25, 2012). *San Joaquin County Public Safety Realignment Phase 2 Implementation Plan*.

Council of State Government Justice Center. (2013). *The Impact of Probation and Parole Populations on Arrests in Four California Cities*.

Deis, Bob. (January 31, 2012). *Marshall Plan on Public Safety*. Stockton, CA.

National Institute of Justice, U.S. Department of Justice. (September 2001). *Reducing Gun Violence - The Boston Gun Project's Operation Ceasefire*. Washington, DC.

San Joaquin Civil County Grand Jury. (2011). *Budgetary Impact on Administration of Justice in San Joaquin County*. Stockton, CA.

San Joaquin Community Data Co-Op. (2012). *AB109: Public Safety Realignment in San Joaquin County - A Preliminary Evaluation Report: The Situation, Response, and Impact*. Stockton, CA.

Stanford Law School. (January 2012). *Realigning the Revolving Door? An Analysis of California Counties' AB 109 Implementation Plans*. Palo Alto, CA: McCray, A., McCann Newhall, K., & Greenlick Snyder.

efficiency for individual communities and in the aggregate. Generally speaking, however, the consolidation of several critical functions like property rooms and investigation technicians is not immediately practical for a myriad of reasons, including geography between cities, logistics, and accountability.

F 3.2 There are examples of cooperation between different agencies in the County but each agency still operates autonomously most of the time.

The City of Lodi agrees with this finding. We also recognize that the communities of San Joaquin County are vastly different from one another, so retaining autonomy should be viewed as positive.

Recommendations

R 1.1.2 Each City Council, before September 1, 2013, adopt a policy that states it is a priority of the City to increase law enforcement staffing.

Law enforcement staffing is a priority in Lodi, and the City Council intends to bolster police staffing as economic conditions improve. The Lodi City Council, however, does not believe such a resolution is necessary.

R 1.4 The Sheriff's Department and each city's police department review their current use of crime prevention technologies and develop a plan to implement new technologies that could help increase the efficiency of their agencies.

The City of Lodi recognizes that prevention measures are an essential component of reducing crime and expects that technological solutions will enhance those measures in the future. Crime prevention is also a priority of the Lodi Police Department, which hopes to bolster its prevention efforts as economic conditions improve. In addition, members of the Lodi Police Department continually survey allied agencies for new ideas, innovative programs, and best practices that may effectively address crime in our community using existing resources.

R3 The Board of Supervisors and the City Councils of Escalon, Lathrop, Lodi, Manteca, Ripon, Stockton, and Tracy, before September 1, 2013, each appoint two representatives, one to represent law enforcement and one to represent the governing body or management, to form an *ad hoc* committee. The committee's purpose is to conduct a study on how to increase countywide efficiency of law enforcement agencies by taking a regional approach to some or all of their services. A preliminary report is to be released before December 31, 2013, of actions already taken to increase efficiency and additional actions that will be taken between January 2014 and June 2015.

The City of Lodi disagrees with this recommendation. As proposed, an *ad hoc* committee is not necessary because it would essentially be a duplication of effort. Elected officials, City Managers, and law enforcement executives regularly meet with their neighboring counterparts to discuss problems and solutions affecting local and regional government.

Sincerely,

Alan Nakanishi
Mayor



The Superior Court of California
County of San Joaquin

RECEIVED
JUN - 3 2013
CITY CLERK

May 30, 2013

PRIVATE AND CONFIDENTIAL

Mayor Alan Nakanishi
City of Lodi
P. O. Box 3006
Lodi, CA 95240

Dear Mayor Nakanishi:

Enclosed you will find the 2012-2013 Grand Jury's review of Improving Disposal of City and County Surplus Public Assets.

Pursuant to Penal Code §933.05(f): "A grand jury shall provide to the affected agency a copy of the portion of the grand jury report relating to that person or entity two working days prior to its public release and after the approval of the presiding judge. No officer, agency department, or governing body of a public agency shall disclose any contents of the report prior to the public release of the final report."

This report is scheduled for release to the public on June 6, 2013. If you have any questions, please do not hesitate to contact me at (209) 468-2959.

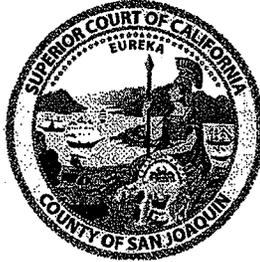
Sincerely,

A handwritten signature in cursive script that reads "Trisa Martinez".

Trisa Martinez
Grand Jury Staff Secretary/Judicial Secretary

Enc.

San Joaquin County Grand Jury



Getting Rid of Stuff - Improving Disposal of City and County Surplus Public Assets 2012-2013 Case No. 0312

Summary

Cities and counties are authorized to purchase capital assets such as land, vehicles and equipment in order to function efficiently. When public land, buildings, vehicles or equipment are no longer needed by the local government, the governing bodies are responsible for being good stewards of the public's capital assets and getting the best possible return of public funds. Within the cities of Escalon, Lathrop, Lodi, Manteca, Ripon, Stockton and Tracy and San Joaquin County there are different degrees of control over the disposition of their assets, as well as the extent to which the process is made known to the public. Some public entities are very conscientious, others less so. In an effort to promote public transparency and consistency while disposing of the capital assets, the 2012-2013 San Joaquin County Grand Jury (Grand Jury) recommends procedures be adopted by the local governments that are clear, consistent and provide to the public relevant information on the disposal process and results.

Glossary

Brown Act	The Ralph M. Brown Act (Government Code Sections 54950 <i>et seq.</i>) regulating the conduct of public meetings and related public information.
Capital Asset	Land, buildings, vehicles and major equipment (e.g., generators, pumps) having a multi-year useful life.
<i>et seq.</i>	To include sections that immediately follow the identified section and pertaining to the same topic.

Fiscal Year (FY)	Local government budget year beginning on July 1 and ending on the following June 30.
California Government Code Section 37350	Authorizes a city to dispose of real and personal property for the common benefit.
California Government Code Section 54222	Requires local governments to contact parks departments, affordable housing developers, school districts and other agencies about available surplus land that could be used for housing or recreation purposes prior to sale of the land.
California Government Code Section 65402	Requires proof of compliance with a local government's General Plan and approval by the local planning agency before disposal of land, unless previously exempted by the legislative body.
General Plan	A land-use document describing the proposed overall development for a city or county.
Indemnification	A legal protection by one party against a loss or liability that might be suffered by another party.
Negotiated Sale	Direct discussions between a government and a private entity about the terms and conditions of sale of a capital asset, including price.
Personal Property	Assets that are not real property, including office equipment, furnishings, etc.
Real Property	Land and buildings.
Surplus Property	<i>Capital assets</i> that are no longer needed or useable.

Background

Local governments (cities and counties) are authorized under State law to acquire real property, vehicles, equipment and other assets through various means including direct purchase, negotiations with the seller, dedication from an individual or entity, and receipt as a gift. Once in possession by the government agency, they become public property held for the common good of the community. These items are referred to by different names by the different local governments. They can be referred to as personal property, fixed assets, capital assets, personal property or commodities. For the purpose of the Grand Jury's investigation, the term used to include all these items is *capital assets*.

After a period of time the vehicles and equipment become obsolete, are no longer able to operate, or are just no longer needed by the local government. State law, under Government Code Section 37350, authorizes the local government to dispose of real and personal property when it is in the common good. The law does not state how the disposal of surplus property is to take place, leaving it to the local jurisdiction to make a determination. Among the methods most commonly used by local governments in California include sales at auctions by public or sealed bids, conducted either by the local government or under contract with a private auction firm, trade-ins or sale as scrap metal. Increasingly, the use of private on-line sale agencies or sales on eBay is becoming an acceptable practice. The underlying principle has been to ensure local governments receive the highest value for the surplus assets.

The sale of land is covered under separate sections of State law, including Government Code Section 54220 *et seq.* and Section 65402. Section 54222 establishes the State policy whereby any public land no longer needed by a city or county first be offered for use as: Recreational facilities, school facilities, affordable housing development or for enterprise zone projects. An offer to sell or lease the land must be made in writing to park or recreation agencies, school districts, affordable housing developers, and nonprofit neighborhood enterprise associations. The entities have 40 days in which to provide a written response to the city or county accepting or rejecting the offer. Government Code Section 65402 requires local governments to determine that the potential use of surplus land conforms to the jurisdiction's General Plan before disposal occurs. While not separately designated in State law, the sale of buildings is generally handled in the same manner as land since sales of buildings almost always include the land under the building.

Beyond the general requirements in the Government Code, each local government is allowed to establish specific disposition procedures. Requiring an independent appraisal of the land and buildings before sale, negotiating a sale or conducting a sealed bid sale, trading land or donating land are all decisions to be made by the local legislative body. Some procedures bring more public disclosure and transparency than others. Sealed bids bring assurance that all potential buyers are treated equally, and the best possible value is received for the property. Negotiated sales, depending on the information released, may lead to questions of whether the full public benefit has been received for the land. The Brown Act does permit negotiations for the sale of surplus land to be conducted by the legislative body in closed session with only the final action occurring in public. The amount of information disclosed to the public depends on the legislative body.

Issues

This investigation into the disposition of local government's surplus public assets was initiated by the Grand Jury. The State Legislature's recent disbanding of redevelopment agencies in the State and the accompanying requirement that all capital assets of the redevelopment agencies be disposed of raised the question regarding how local governments were handling such disposals and whether clear, formal, and identifiable procedures were being used. To provide a broader review of surplus property disposal procedures, the scope of the investigation was expanded to include the County government and all cities within the County.

Method of Investigation

The Grand Jury requested information through a survey from San Joaquin County and the cities of Escalon, Lathrop, Lodi, Manteca, Ripon, Stockton and Tracy regarding their procedures for disposing of land, buildings, vehicles and major equipment. Specific information on the number of sales of land, buildings, vehicles and equipment completed from 2007 to 2012 was also requested. After the initial responses were received from all of the local governments, additional information was requested with a questionnaire regarding the most recent sales. This was to obtain more details on the actions taken to determine if sales were in the public interest, transparent, and void of any appearance of conflict or favoritism. The Grand Jury also reviewed State laws, local ordinances and policy/procedure manuals related to disposal of assets. One interview with a city official was also conducted.

Discussion, Findings and Recommendations

City of Escalon

The City of Escalon indicates that it relies on Government Code Sections 35370 and 54220 *et seq.* as its authority for disposal of major capital assets. There are no specific sections in its Municipal Code or any policy or procedures manuals outlining who has authority to dispose of the assets or the methods to be used. Response to the Grand Jury's survey indicated that from 2007 to 2012 the city disposed of one parcel of surplus land through a negotiated sale, three disposals of vehicles and one disposal of equipment through a contract with a public auction firm. The City Council did take a public action to declare the vehicles as surplus and authorized their disposal.

Findings

F1.1 The City of Escalon has no adopted Municipal Code provision, policy or procedure related to the disposal of major capital assets stating who has authority, the methods to follow or the reporting requirements.

F1.2 The contractual agreement with the private auction firm hired by the City was a form provided by the company containing very limited information such as protection for the City and fees to be paid.

F1.3 The disposal of land was by negotiated sale, with all discussions held in closed session. Only the minimum information required by the Brown Act was disclosed on the Agenda.

F1.4 No information on the details of the land sale was provided to the public prior to the City Council's public action.

Recommendations

R1.1 Prior to December 2013 the City Council adopt either an ordinance or a policy detailing procedures to be used for the disposal of surplus capital assets, including who is responsible for the disposal, when City Council approval is required, notification requirements, what information is made available to the public and how such information it is to be presented.

R1.2 No later than September 30, 2013, the City adopt a contract document to be used for all sales of surplus vehicles and equipment that provides a clear indication of the fee to be paid the selling firm, protections for the City against claims resulting from the auction, liabilities and responsibilities of all parties and other legal protections of the City's interests.

R1.3 After each sale of vehicles or equipment the City manager is to provide a summary of the sale through a public document.

R1.4 No later than September 30, 2013, the City adopt a policy for disposition of surplus land and buildings to include when appraisals are to be conducted, the procedures for compliance with Government Code Section 54220 *et seq.*, and a prior public disclosure of the proposed sale.

R1.5 Before any future disposal of land or buildings is finalized, a report is provided to the City Council in open session that includes the purpose of the sale; evidence of compliance with applicable State laws; the full identity of the purchaser; the total sale price; and, if the sale price is less than the appraised value, the reason for the difference.

City of Lathrop

The City of Lathrop's Municipal Code Section 2.36.040 designates a Purchasing Officer, who is the city manager or designee, to dispose of city property designated as surplus. Council Resolution 02-1231 establishes a policy for the disposition of surplus property including value levels at which the purchasing officer is authorized to sell the property and when council action is required. A request for council action must be included in a staff report to council listing the property to be designated as surplus and sold at an approved auction. A council resolution is required for the approval.

Response to the Grand Jury's survey indicated that from 2007 to 2012 the City had no disposal of surplus land or buildings and that there was one sale of surplus vehicles. The City has a detailed *Agreement to provide Surplus Inventory Auction Services to the City of Lathrop* detailing obligations for the auction of surplus inventory, including fees, declarations, services to be provided, and other legal requirements. The Grand Jury also noted that the City has a financial trail which records revenues from the sale of surplus property to appropriate City accounts.

Findings

F2.1 The surplus property policy has no reference to compliance with Government Code Sections 54220 *et seq.*

Recommendations

R2.1 No later than September 30, 2013 the City adopt a policy for disposition of surplus land and buildings to include when appraisals are to be conducted, required compliance with Government Code Section 54220 *et seq.*, and a prior public disclosure of the proposed sale.

R2.2 Before any future disposal of land or buildings is finalized a report is provided to the City Council in open session that includes the purpose of the sale; evidence of compliance with applicable State laws; the full identity of the purchaser; the total sale price; and, if the sale price is less than the appraised value, the reason for the difference.

City of Lodi

The City of Lodi addresses the disposal of surplus capital assets in its Municipal Code. Section 2.12.120 authorizes the City manager, after a recommendation from the City's purchasing officer, to sell personal property with a value of less than \$2,000 by advertised bid or by auction. A report to the City Council is required within 30 days of these sales. Section 3.20.030 grants the purchasing officer the authority to transfer surplus supplies and equipment between departments or to recommend their sale. Section 3.20.110 authorizes the sale of personal property with an estimated value of less than \$20,000 to be made in the open market without observing formal contract procedures. Section 3.20.130 exempts the disposition of fleet vehicles and other specific equipment from the formal contracting procedures. In response to the Grand Jury's survey the City also identified a series of Government Code sections that are related to disposal of capital assets and are followed in the City's procedures. The City also noted that capital assets purchased with grant funds may be subject to restrictions or special requirements of the grant when it is sold.

Response to the survey indicated that between 2007 and 2012 the City of Lodi had two sales of land, both by negotiated sale; 21 sales of surplus vehicles by private auction firms, traded for new vehicles, or sold as junk; and, 20 sales of major equipment by negotiated sale or private auction sale. The *Auction Agreement* between the City and the auction firm, which is approved by the City manager as specified by the City Council, contains indemnifications, security interests and other provisions giving the City liability protection. The Auction Agreement also requires the contracted auction firm to advertise the sale details and the property to be sold. A quarterly report is provided to the City Council explaining the disposition of any surplus vehicle and equipment sales that have occurred.

The reported sales of surplus land and buildings had been by negotiated sale. Selection of firms to conduct appraisals is exempt from the City's formal bidding requirements. The most recent

reported land sale was a part of an overall Purchase and Development Agreement with an affordable housing developer. The appraisal and other terms of the sale were a part of the agreement document and not included in the staff report to the City Council.

Findings

F3.1 The staff report for land sale to the housing developer provided very little information. The public must read through an attached long and comprehensive agreement containing many legal requirements in order to obtain basic information on land sale, such as sale price versus appraisal value.

Recommendations

R3.1 Before any future disposal of land or buildings is finalized a report is provided to the City Council in open session that includes the purpose of the sale; evidence of compliance with applicable State laws; the full identity of the purchaser; the total sale price; and, if the sale price is less than the appraised value, the reason for the difference.

City of Manteca

The Grand Jury received information and documentation from the City of Manteca in response to its survey and questionnaire. The Grand Jury determined there was not sufficient information provided so a thorough review could not be completed within the Grand Jury's time constraints. Therefore, the Grand Jury makes no findings regarding the City of Manteca's disposition of major capital assets and suggests that a future County Grand Jury conduct a thorough review of the information provided.

City of Ripon

The City of Ripon identifies sections of its Municipal Code for its authority and procedures for disposition of capital assets. Section 3.20.020 identifies a Purchasing Officer appointed by the City administrator responsible for administering the sale of all supplies and capital assets that cannot be used by other City departments. Section 3.20.070 of the Code requires a formal bidding process for sales of personal property, and Section 3.20.100 describes the formal bidding procedures for articles to be sold.

Section 3.20.110 allows the purchasing officer to sell surplus personal property with an estimated value of less than \$25,000 without first seeking sealed bids and following the formal bidding procedures.

Response to the Grand Jury's survey indicated that between 2007 and 2012 the City of Ripon had no sales of surplus land; 15 dispositions of buildings through negotiated sales; six vehicles sold through a public auction; and, one sale of major equipment through a public auction. No specific agreement with the private auction firm which conducted a vehicle sale of the City was provided.

However, City Council approval of the sale with a list of vehicles to be sold was provided. Information related to the most recent property sale during the survey period included an independent appraisal and various buyer agreements. Minutes of redevelopment agency approval of the sale were also provided.

Findings

F5.1 Ordinance No. 110 establishing provisions for purchasing and disposal of personal property and capital assets by the City of Ripon was adopted in 1958. Procedures related to the disposal are vague and do not clearly address either an adopted policy or procedure. Requirements for the sale of land and buildings are not addressed in a manner that can be easily understood by the public, nor are there clearly defined procedures.

F5.2 Staff reports at the time real property is sold do not contain sufficient information to inform the public about the proposed transaction.

Recommendations

R5.1 No later than December 1, 2013, the Municipal Code be reviewed and amended to clarify the distinction between purchase and sale of City property, and to update disposition procedures, clarifying the process for disposal of surplus vehicles and equipment.

R5.2 No later than September 30, 2013, the City adopt a contract document to be used for all sale of surplus vehicles and equipment that provides a clear indication of the fee to be paid the selling firm, protections for the City against claims resulting from the auction, liabilities and responsibilities of all parties, and other legal protections of the City's interests.

R5.3 No later than September 30, 2013, the City adopt a policy for disposition of surplus land and buildings to include when appraisals are to be conducted, required compliance with Government Code Section 54220 *et seq.*, and a prior public disclosure of the proposed sale.

R5.4 Before any future disposal of land or buildings is finalized a report is provided to the City Council in open session that includes the purpose of the sale; evidence of compliance with applicable State laws; the full identity of the purchaser; the total sale price; and, if the sale price is less than the appraised value, the reason for the difference.

City of Stockton

The City of Stockton has well established procedures that are, compared to some of the other cities investigated, very comprehensive. Section 510 of the Stockton Municipal Code details the procedures to be followed for the sale or lease of real property. Section 3.60.010 of the Municipal Code describes the procedures for the sale of personal property. If the estimated sale value is over \$20,000, City Council action is required, if the values is less than \$20,000, the City manager is

authorized to undertake the sale with a report to be provided to the City Council. The City's Administrative Directive HRD-02, last reviewed in 2006, addresses the details for selling surplus real property. It includes the requirement for an independent appraisal to be conducted; the posting of a for sale sign on the property; minimum bid amounts if the property is to be sold to adjoining property owners; applicable Comprehensive Environmental Quality Act (CEQA) reviews be conducted; requirements in Government Code Section 54220 *et seq.* be adhered to; that sealed bids are required; and City Council approval is required.

Response to the Grand Jury's survey indicated that between 2007 and 2012, the City had five disposals of land, one a dedication to the State for the courthouse and four by negotiated sale; one disposal of a building by negotiated sale; 31 occasions of vehicles being sold by a private auction firm; and five sales of major equipment by a private auction firm. Documents provided by the City indicate that a comprehensive contract for the sale of vehicles through private firms was used. The contract was developed by the California Department of Justice for use by state agencies, and made available for cities to use in conducting their own sales. After the auction the private firm provided the City detailed information on the sale price of each vehicle and piece of equipment, the costs incurred by the auction firm and other relevant information about the condition of the vehicle or the sale.

The disposition of real property is handled under Administrative Directive HRD-02. The Grand Jury was informed that proposed sales of abandoned rights-of-way are noticed in a local newspaper before presented for City Council action by a resolution. A separate *Agreement for Purchase and Sale of Real Property* is written by staff and presented for council approval. The Agreement includes the sale price, obligations of both the City and the buyer, and legal protections for the City. A staff report gives the public an easily understandable summary of the requirements included in the Administrative Directive.

Findings

F6.1 Correspondence between the City and the State Department of Justice in October 2011 indicated that the State's contract agreement with private auction firms might be terminated because of state budget cuts. There was no indication if the matter has been resolved. Since the state agreement is comprehensive and benefits the City, an alternative agreement should be available for the City's use.

F6.2 Stockton Code Section 3.60.010 requires the City manager to present the City Council a report on personal property sales valued under \$20,000. There is no indication whether the report is to be a public document. A written response from the City indicated that in the past the information was included in a weekly newsletter provided to the City Council. No surplus property sales took place between 2008 and 2010; however, a sale that occurred in 2011 was not reported as required by Municipal Code. The City indicated they were in the process of updating their surplus property sale procedures.

Recommendations

R6.1 The City Council direct the City Attorney to prepare no later than November 1, 2013, a comprehensive auction agreement for use by the City.

R6.2 Effective immediately the City Manager's report on surplus personal property sales pursuant to Municipal Code Sec. 3.60.010 be prepared as a public document presented at a regular City Council meeting.

City of Tracy

The City of Tracy identified Municipal Code Section 2.20.300 (*Disposition of Real Property*) and Section 2.20.310 (*Surplus Commodities and Equipment*) as its authorization for and the process to dispose of surplus property. For disposition of real property the City Council has exempted land that remains from a larger parcel when a part of the parcel was used for street purposes, abandonments for street widening, or alignment projects when only minor amounts of land are being disposed as permitted under Government Code Section 65402(a). This section of the Municipal Code also requires disposition of real property be conducted by competitive methods unless the City Council, by resolution, determines other procedures are in the City's best interest. The City manager may approve disposal of commodities and equipment if the values is less than \$2,000; City Council approval is required if the value is more than \$2,000.

Response to the Grand Jury's survey indicated that between 2007 and 2012 the City had one sale of surplus land by direct sale to San Joaquin County; 15 sales of surplus vehicles by contract with a private auction firm; and, six sales of equipment by a private auction firm or on e-Bay. The vehicle and equipment were designated as surplus by city council action prior to sale. The sale agreement was a form prepared by a private auction firm. The land sale to the County was documented with evidence of compliance with Government Code Section 54220 *et seq.*, results of an independent appraisal; the fiscal impact of the sale; and, the purchase and sale agreement for the property. The final council action was during an open public meeting.

Findings

F7.1 The City of Tracy has no procedures manual or clearly defined procedures for the disposition of surplus vehicles and equipment. While no indications of any questionable actions were identified, the lack of clear and transparent procedures could raise concerns about the public's interest being protected.

F7.2 The agreement with the private auction firm contained limited protection for the City against claims or other possible legal actions resulting from the auction.

Recommendations

R7.1 That prior to December 1, 2013, the City adopt procedures related to the disposition of vehicles and equipment, including who is responsible for the disposal, when council approval is required, notification requirements and information made available to the public.

R7.2 That the City Council direct the City Attorney to review the current agreement used for sale of surplus vehicles and equipment to ascertain its protection of City interests, or prepare a new sale agreement to be used by the City. The City Attorney's report to and action by the City Council is to occur prior to November 1, 2013.

San Joaquin County

San Joaquin County has established its general authority for disposition of capital assets in the County's Administrative Manual Section 2700 *et seq.* Section 2711.1 of the Manual gives the County Purchasing Agent the authority in disposing of surplus personal property to use "*...such methods and procedures as in his/her judgment will return the greatest value to the County.*" The Manual stipulates that only the Board of Supervisors and/or the Purchasing Agent may authorize the disposal of surplus personal property, and that surplus computer equipment must be disposed in a manner consistent with specific procedures last adopted in June 1997. The Purchasing Agent deposits with the County Treasurer the sale proceeds and submits a complete accounting of all transactions to the County Auditor-Controller.

Response to the Grand Jury's survey indicated that from 2007 to 2012 the County had four disposals of land, two by sealed bid and two given to the Lockeford Community Services District; three buildings were disposed of, two by sealed bid and one given to the Lockeford Community Services District; 665 vehicles were disposed of by sealed bid, negotiated sale, contract with a private auction firm, trade-in or sold as junk; and, 134 pieces of major equipment were disposed of by sealed bid, negotiated sale, contract with a private auction firm, trade-in or sold as junk.

The contracts with two private firms hired to auction the vehicles contained comprehensive details about the parties' responsibilities, liabilities and limitations, fee schedules and other protections for the County. Evidence was provided that the County reviewed the proceeds from the auction sale when the County required a private auction firm to refund monies to the County because the firm applied higher fees than permitted under contract.

In response to the Grand Jury's request for additional information the County reported on the sale of property located on N. San Joaquin Street in 2010. The Board of Supervisors first adopted Resolution R-10-440 indicating the County's intent to sell the real property giving the time and location for opening sealed bids for the property. Documents verified that Government Code 54220 *et seq.* was complied with. Notices of the intended sale were posted at the property location and in newspapers. Bids were received and opened during public session of the Board of Supervisors with interested parties being able to submit bids during the Board meeting. A separate

Board resolution was required to approve the sale. Throughout the process staff reports adequately describe what actions have occurred and what are proposed.

Findings

F8.1 There was no indication from the County materials received that a public disclosure of the results of sales of surplus vehicles and equipment was made. Unless the Board of Supervisors was the authorizing agent for the sale pursuant to the County Administrative Manual, the process is handled completely at an administrative level.

F8.2 The County indicated that it does not have a policy requiring independent appraisals of real property it sells because there is no requirement for an appraisal under the Government Code. This lack of information makes it difficult for the public to determine if the sale was in the public interest.

Recommendations

R8.1 Beginning September 30, 2013 the County Administrative Officer provide a quarterly public report to the Board of Supervisors summarizing the disposals of vehicles and equipment during the preceding quarter. The report should include the amount of revenues derived from the sales.

R8.2 No later than December 1, 2013 the County Board of Supervisors amend the County's Administrative Manual regarding procedures for disposal of surplus land and buildings to include a policy for when an appraisal of the property/building shall be required.

Conclusion

The cities and the county investigated by the Grand Jury in general provide an open and transparent process for the disposal of the public's surplus major capital assets. Most have clear policies or procedures for the public to determine if an objective process is used or favoritism is occurring. The degree of detail in these procedures varies. To help assure that the public interest is foremost in the government's actions, that transparency and disclosure will be maintained throughout the disposal of assets process, and that applicable laws are complied with, the Grand Jury has recommended actions for each jurisdiction to consider. The Grand Jury expects local governments will keep their stewardship of the public's assets at the forefront of their decisions and actions.

Disclaimer

Grand Jury reports are based on documentary evidence and the testimony of sworn or admonished witnesses, not on conjecture or opinion. However, the Grand Jury is precluded by law from disclosing such evidence except upon specific approval of the Presiding Judge of the Superior Court, or another judge appointed by the Presiding Judge (Penal Code Sections 911, 924.1(a) and 929). Similarly, the Grand Jury is precluded by law from disclosing the identity of witnesses except upon an order of the court for narrowly defined purposes (Penal Code Sections 924.2 and 929).

Response Requirements

California Penal Code sections 933 and 933.05 require that specific responses to all findings and recommendations contained in this report be submitted to the Presiding Judge of San Joaquin County Superior Court within 90 days.

Specific Response Requirements:

The Escalon City Council is to respond to Findings F1.1, F1.2, F1.3 and F1.4; and Recommendations R1.1, R1.2, R1.3, R1.4 and R1.5

The Lathrop City Council is to respond to Finding F2.1 and Recommendations R2.1 and R2.2.

The Lodi City Council is to respond to Finding F3.1 and Recommendation R3.1.

The Ripon City Council is to respond to Findings F5.1 and F5.2; and Recommendations R5.1, R5.2, R5.3 and R5.4.

The Stockton City Council is to respond to Findings F6.1 and F6.2; and Recommendations R6.1 and R6.2.

Tracy City Council is to respond to Findings F7.1 and F7.2; and Recommendations R7.1 and R7.2.

The San Joaquin County Board of Supervisors is to respond to Findings F8.1 and F8.2; and Recommendations R8.1 and R8.2.

Mail or hand-deliver a hard copy of the response to:

Honorable David P. Warner, Presiding Judge
San Joaquin County Superior Court
P. O. Box 201022
Stockton, CA 95201

Also, please email the response to Trisa Martinez, Staff Secretary to the Grand Jury at

grandjury@sjcourts.org

CITY COUNCIL

ALAN NAKANISHI, Mayor
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Mayor Pro Tempore
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KONRADT BARTLAM
City Manager
RANDI JOHL, City Clerk
D. STEPHEN SCHWABAUER
City Attorney

August 7, 2013

Honorable David Warner
Presiding Judge of the San Joaquin County Superior Court
222 E. Weber Avenue, Room 303
Stockton, CA 95202

Re: San Joaquin County Grand Jury Final Report (Case No. 0312)
Getting Rid of Stuff-Improving Disposal of City and County Surplus Public Assets

Dear Judge Warner:

The City of Lodi has reviewed the San Joaquin County Grand Jury Case No. 0312 regarding surplus property disposal for the Cities and San Joaquin County, issued on May 30, 2013. The Council has seriously considered the findings and recommendations of the Grand Jury applicable to the City of Lodi, discussed the same with its professional staff and pursuant to Penal Code section 933.05, submits its comments as set forth below. As required by Penal Code section 933(c), the Council's comments were approved at the Council's regularly scheduled meeting of August 7, 2013.

The finding and recommendation were as follows:

"Finding F3.1 The staff report for the land sale to the housing developer provided very little information. The public must read through an attached long and comprehensive agreement containing many legal requirements in order to obtain basic information on the land sale, such as sale price versus appraisal value.

Recommendation R3.1 Before any future disposal of land or buildings is finalized, a report is provided to the City Council in open session that included the purpose of the sale, evidence of compliance with applicable State laws; the full identity of the purchaser, the total sale price and if the sale price is less than the appraised value, the reason for the difference. "

In reviewing the staff report for the Tienda Affordable Housing Project sale, the City Council agrees that the property sale information could have been more fully addressed. The sale was a small part of a much larger transaction whereby the City granted money to a non-profit housing developer to use toward the purchase and construction of an affordable housing project on City land. The discussion regarding the land sale portion of the project did indeed take up only a very small end portion of a complicated staff report. Although the sale had been discussed at prior Council meetings in more detail and with more prominence (see attached

staff reports), Council agrees that the final staff report could have included greater detail on the sale portion of the transaction. Two of the recommendations by the Grand Jury are in fact required by state law: That the property buyer be identified and that the sale price be identified. Those two requirements were met by the staff reports. Council also agrees that the remaining grand jury recommendations represent good practices to ensure public transparency when public real property is sold and directs staff to implement them in future land sale staff reports.

Sincerely,

ALAN NAKANISHI
Mayor