Grand Jury

Contra
Costa
County

725 Court Street
P.O. Box 431
Martinez, CA 94553-0091

RECEIVED
JUN 11 2018
CITY MANAGER/CITY CLERK
City of San Pablo

June 6, 2018

City of San Pablo
13831 San Pablo Avenue
San Pablo, CA 94806

Dear City of San Pablo:

Attached is a copy of Grand Jury Report No. 1808, "Joint Powers Authorities" by the 2017-2018 Contra Costa Grand Jury.

In accordance with California Penal Code Section 933 et seq., we are submitting this report to you as the officer, agency or department responsible for responding to the report. As the responding person or person responding on behalf of an entity, you shall report one of the following actions in respect to each finding:

(1) You agree with the finding.
(2) You disagree with the finding.
(3) You partially disagree with the finding.

(Pen. Code, § 933.05(a).) In the cases of both (2) and (3) above, you shall specify the portion of the finding that is disputed, and shall include an explanation of the reasons thereof.

In addition, Section 933.05(b) requires you to reply to each recommendation by stating one of the following actions:

1. The recommendation has been implemented, with a summary describing the implemented action.

2. The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.

3. The recommendation requires further analysis. This response should explain the scope and parameters of the analysis or study, and a time frame for the matter to be prepared for discussion. This time frame shall not exceed six months from the date of the publication of the Grand Jury Report.

4. The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation thereof.

After reviewing your response to ensure that it includes the above-noted mandated items, please send (1) a hard copy of the response to the Grand Jury at P.O. Box 431, Martinez, CA 94553; and (2) a copy in Word by e-mail to ctadmin@contracosta.courts.ca.gov. Your response must be submitted to the Grand Jury, in the form described by the above-quoted Government Code, no later than **September 11, 2018**.

Finally, please note that this report is being provided to you at least two working days before it is released publicly. Section 933.05 specifies that no officer, agency, department or governing body of a public agency shall disclose any contents of the report prior to its public release.

Please immediately confirm receipt of this letter and the attached report by responding via e-mail to ctadmin@contracosta.courts.ca.gov.

Sincerely,

Mario Gutierrez, Foreperson
2017-2018 Contra Costa County Civil Grand Jury

cc: Matt Rodriguez, City Manager

A REPORT BY
THE 2017-2018 CONTRA COSTA COUNTY GRAND JURY
725 Court Street
Martinez, California 94553

Report 1808

Joint Powers Authorities

Transparency and Accountability

APPROVED BY THE GRAND JURY

Date MAY 31, 2018

MARIO GUTIERREZ
GRAND JURY FOREPERSON

ACCEPTED FOR FILING

Date June 5, 2018

ANITA SANTOS
JUDGE OF THE SUPERIOR COURT

Contact: Mario Gutierrez
Foreperson
925-389-1556

Contra Costa County Grand Jury Report 1808

Joint Powers Authorities

Transparency and Accountability

**TO: Contra Costa County Auditor-Controller;
Local Agency Formation Commission;
City Councils of the following cities: Antioch, Brentwood, Clayton, Concord, Danville, El Cerrito, Hercules, Lafayette, Martinez, Moraga, Oakley, Orinda, Pinole, Pittsburg, Pleasant Hill, Richmond, San Pablo, San Ramon, and Walnut Creek**

SUMMARY

When you review your property tax bill, have you ever questioned why there was a particular assessment? Was this on a ballot? Was there public disclosure? The majority of tax assessments are approved by the voters. However, assessments can also be made without voter approval by cities that are members of Joint Powers Authorities.

Local governments have used Joint Powers Authorities (JPA) as a flexible, easy to form, cost-effective means to carry out specific functions. JPAs have been used to cover a wide range of functions, such as: fire protection, recreational programs, construction projects, and transportation.

As of December 2017, the 19 incorporated cities in Contra Costa County (County) reported to the Contra Costa Civil Grand Jury (Grand Jury) that they were members of at least one of 157 JPAs established in the County. The Grand Jury could not confirm that this was the total number of JPAs established. The Grand Jury also found that the 19 cities in the County have issued bonds, with an estimated cumulative value that exceeds $1.5 billion. (www.standardandpoors.com, Dec 2017)

The Grand Jury investigated the use of JPAs by the cities. Due to the level of debt generated, the Grand Jury focused on financial type JPAs and specifically on their oversight, transparency, and financial accountability.

Based on our findings, the Grand Jury recommends the County Auditor post on their website all documents received from all JPAs associated with Redevelopment Agencies

(RDA) and their Successor Agencies. All cities should confirm their compliance with Gov. Codes 6500, and 33400 et seq. To demonstrate full transparency, cities should consider reporting all JPA financial information separate from their city budgets. The cities should also consider submitting periodic financial reports directly to the County Auditor, and increasing their efforts to provide the public an opportunity to understand and comment on planned debt actions pertaining to JPAs.

METHODOLOGY

In the course of its investigation, the Grand Jury:

- Interviewed Contra Costa Auditor-Controller senior staff
- Interviewed Contra Costa Tax Collector senior staff
- Interviewed Local Area Formation Commission (LAFCO) senior staff
- Interviewed Finance Directors of three representative cities within the County
- Submitted two Requests for Information to the 19 cities in the County
- Researched financial data published by Standard and Poor's

BACKGROUND

The California State Legislature passed the Joint Powers Authority Act in 1921. California Government Code (Gov. Code) statues for JPA laws are set forth in Sections 6500 - 6599. A JPA is formed when two or more public agencies agree on creating a function/service that benefits all JPA members. JPAs are not formed by voter initiative or voted on by the electorate, but by the action of the agencies' governing bodies.

To form a JPA, the organization members post a formal notice, hold a public meeting, and solicit comments from the public and stakeholders. The members formalize the agreement and appoint a Board of Directors. The JPA can then enter into contracts and incur debt to finance projects.

The intent of a JPA is to provide services efficiently, resulting in financial benefit to the taxpayers. By sharing resources and combining services, the member agencies save time, create efficiencies, and reduce overlapping functions and costs. JPAs allow governments to conduct selected public projects without voter approval of financial commitments or key operational decisions. JPAs can be formed for many reasons: acquisition of land, construction and maintenance projects, financing, insurance pooling, and operations of facilities.

When multiple jurisdictions decide a new project is needed, they can form a JPA. Otherwise they would have to take the lengthy approach to get a measure on the ballot, secure majority-voter approval, and sell revenue bonds to private investors to raise capital to fund the project.

Gov. Code, Section 6547 allows JPAs to issue revenue bonds without voter approval provided each of the member agencies adopts a separate local ordinance to issue such bonds. Voters have a 30-day period to call for a referendum election on the local ordinances, but this rarely occurs.

JPAs and Special Districts

JPAs are sometimes confused with Special Districts, which are another legal entity established to provide specific functions. The difference is that a Special District is an independent entity with its own governing body that delivers services to a dedicated community. Special Districts rely on different State laws for their legal authority and are governed by elected boards.

While counties and cities must provide basic services in accordance with federal and state law, Special Districts provide specific services and must be approved by the Local Agency Formation Commission (LAFCO) and the voters. Some examples include fire districts, water districts, and pest abatement. LAFCOs are responsible for "...overseeing the establishment, expansion and organization of cities and special districts and their municipal services in meeting current and future community needs" Gov. Code Section 56000 et seq.

In 2017, SB 1266 created a formal reporting process connecting JPAs and LAFCOs.

Types of Joint Powers Authorities

JPAs can be categorized into five broad groups based on the type of services they provide ("Governments Working Together: A Citizens Guide to Joint Powers Agreements," Cypher & Grinnell, 2007):

- Financial services: financing construction of public works such as city halls, bridges, and flood control projects
- Public services: transportation, police and fire protection
- Insurance pooling and purchasing discounts: pooling for lower insurance rates
- Planning Services: addressing and planning for topics of regional importance that go beyond city and county limits
- Regulatory enforcement: ensuring that member agencies adhere to state and federal laws and procedures by conducting educational seminars, formulating enforcement procedures, and maintaining an oversight role

DISCUSSION

The Grand Jury requested a list of all JPAs in Contra Costa County from the County Auditor-Controller and the State Controller's offices. Neither the County nor the State could provide a consolidated list of all the JPAs operating in the County. The State

Controller publishes an annual report on its website combining all relevant financial JPA information with Special Districts. The Grand Jury's attempts to identify JPA-specific data was not possible because the data was mixed in with Special Districts' data.

To secure JPA-specific data, the Grand Jury submitted a Request for Information to each of the 19 incorporated cities in the County to which all responded.

A total of 157 JPAs were reported. Because multiple cities participate in the same JPA (e.g., State Route 4 Bypass Authority), the number of individual JPAs is 66.

JPAs in Contra Costa County

JPAs			
Antioch	8	Oakley	5
Brentwood	10	Orinda	5
Clayton	10	Pinole	8
Concord	9	Pittsburg	9
Danville	10	Pleasant Hill	10
El Cerrito	7	Richmond	11
Hercules	9	San Pablo	5
Lafayette	4	San Ramon	18
Martinez	4	Walnut Creek	8
Moraga	7		
		TOTAL	157

Source: RFI responses from 19 cities

JPA TYPES	
Public	35
Financial	23
Insurance	4
Regulatory	3
Planning	1
TOTAL	66

The Grand Jury determined that due to the number of JPAs in the County and the amount of bonds issued, the investigation would focus on Financial JPAs (see chart above). The investigation addressed three areas of transparency and accountability: organization, reporting, and oversight.

Organization

RDAs were originally formed by California cities to fund their urban renewal programs. The California Community Redevelopment Law and Redevelopment Agencies were dissolved by Assembly Bill (ABx1.26) effective October 1, 2011. This was done to support the state's budget deficit and address issues with RDAs. After losing an appeal, California RDAs were officially dissolved on February 1, 2012. Their assets and liabilities transferred to Successor Agencies and Successor Housing Agencies. The Government Codes addressing RDAs and their Successor Agencies as a result of ABx1.26 are set forth in Gov. Codes Sections 33500, 33600, 34161, and 34170 et seq.

Numerous Successor Agencies now operate under a JPA. The Grand Jury identified 23 financial JPAs: nine with multiple cities, two without RDA, and 12 formed between a city and its RDA, creating the RDA's Successor Agency. Three JPAs that have been labeled

"Defunct" by the respective cities have ongoing financial obligations (such as repayment of bonds). The 12 Financial JPAs with RDA are:

- Antioch Public Finance Authority between the City of Antioch and its RDA
- Antioch Public Facilities Financing between the City of Antioch and its RDA
- Brentwood Infrastructure Finance Authority between the City of Brentwood and its RDA
- Concord Financing Authority between the City of Concord and its RDA
- El Cerrito Public Financing Authority between the City of El Cerrito and its RDA
- Hercules Public Financing Authority between the City of Hercules and its RDA
- Lafayette Public Facilities Financing Authority between the City of Lafayette and its Successor Agency to the RDA (Defunct)
- Pinole Financing Authority between the City of Pinole and its RDA
- Pleasant Hill Financing Authority between the City of Pleasant Hill and its RDA (Defunct)
- Richmond Financing Authority between the City of Richmond and its RDA
- San Pablo Financing Authority between the City of San Pablo and its Successor Agency to the RDA
- San Ramon Public Financing between the City of San Ramon and its Successor Agency to the RDA (Defunct)

The Gov. Codes Sections 34161, and 34170 et seq. required the closing of RDAs and the formation of Successor Agencies. The Successor Agencies were prohibited from taking on new redevelopment or debt and were required to dissolve and pay off their existing debt under a conservator's guidance and State oversight. The Successor Agency was to terminate once the debt is fully paid off.

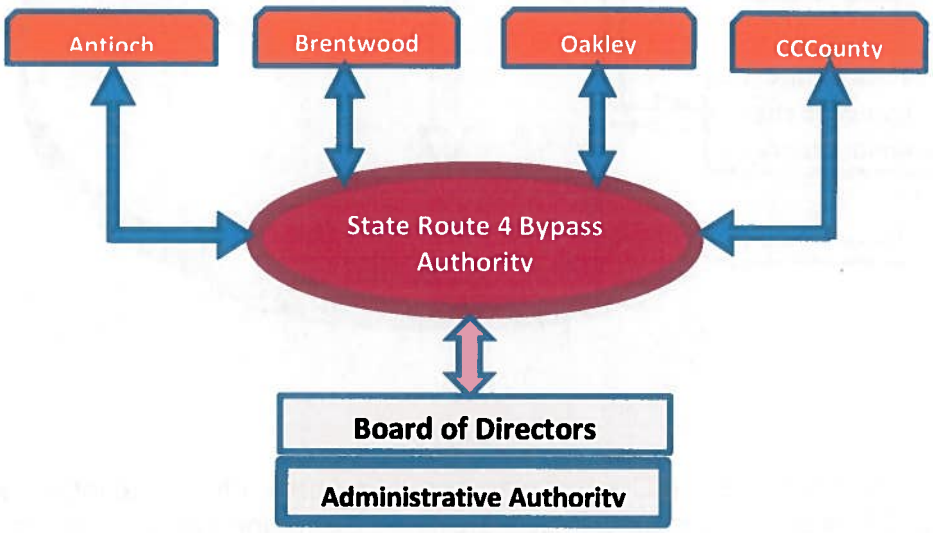
Numerous city councils elected themselves to be the Successor Agency conducting their own oversight. Eleven cities, listed above, formed JPAs consisting of the city council and the Successor Agency. These new JPAs may be invalid if they take on new debt (Gov. Codes Sections 34161, and 34170 et seq.).

The Grand Jury determined that, based on their characteristics, JPAs can be divided into two distinct organizational models: Direct and Circular.

Direct Organizational Model

The Direct model supports shared services: insurance pools, transportation, communications systems, worker's compensation and flood protection. The JPA members are composed of similar entities that share a mutual challenge or opportunity.

Each member delegates a function of their authority to a JPA to either improve the service that is provided or to reduce the cost through a joint effort. If the JPA does not provide positive results or improvements, any member can withdraw from the JPA. This structure has checks and balances and allows for self-correction and accountability. In addition to each member providing inputs, the public has access to the JPA at the City Council member and JPA's Board levels. The majority of JPAs maintain this organizational structure and comply with the intent of the statute (Gov. Codes, Sections 6505, 6547 et seq.). The following is a simplified model of one JPA, The State Route 4 Bypass Authority.



Circular Organizational Model

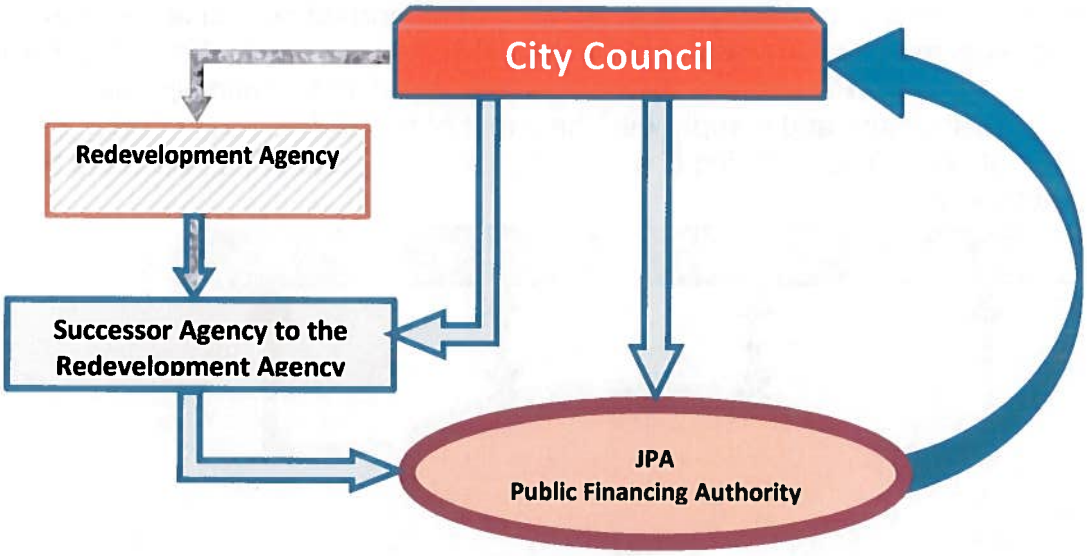
The Circular model is not made up of independent entities like the Direct model but is one entity using internal staff or departments. The members of this JPA are controlled by a single authority, such as the city council. Because JPAs can issue revenue bonds without voter approval, there is no public access or independent party to review financial accountability.

The 12 Financial JPAs with RDA use this Circular model. The city council now has authority over the city, its RDA, and the financing JPA. The reporting structure is circular as shown in the diagram below. The Grand Jury reviewed several Financial JPAs' charters and noted that the City Manager and City Clerk were signatories for both the city and the RDA. In one case, the same individual signed for both the city and its RDA. Since all its members are from a single entity, the Circular model does not have the same checks and balances and accountability as the Direct JPAs.

The circular model presents a potential risk to the public due to the absence of checks and balances resulting in a loss of transparency and accountability to its citizens.

In the event that a JPA falls short of its ability to repay debt, a member could utilize its General Fund or other internal sources to avoid the risk of defaulting on the bond. JPA protocols allow such actions by the city council without voters' approval. If the debt

increase is unchecked, a negative outcome can be damaging to the reputation of the city and its credit rating, and may result in higher costs to taxpayers.



Reporting

State Law SB 282 requires the State Controller to annually publish financial information of Special Districts, JPAs and public benefit corporations, excluding school districts. The Grand Jury was not able to accurately document JPA finances because the State Controller's report did not separate JPA data from Special District data. The Grand Jury also requested JPA information from the County Auditor-Controller's Office. They provided information only on JPAs with which the County was directly involved.

Health and Safety Code Sections 34182-34188.8 requires the Auditor-Controller to review JPAs' compliance with ABx1.26 (dissolution of redevelopment agencies and the designation of Successor Agencies) to determine any violation.

In 2017, SB1266 was amended to require JPAs to send a copy of their agreement to LAFCO. LAFCO was designated only to be a repository of filings with no authority over JPAs, they focus on municipal ground services and not JPAs formed for the purpose of financing.

Without a consolidated and useful way to track JPA financial reporting, there is a loss of transparency and accountability to the public.

Oversight

No State or County agency directly oversees the use and operation of JPAs in Contra Costa County. The Secretary of State, State Controller, the California Debt and Investment Commission and LAFCO serve only as a repository of JPA reports.

JPAs that fail to report their financial information to the State or county violate Gov. Codes Section 6505(a), which requires that "...an annual audit of the accounts and records of every agency or entity." Gov. Codes Section 6505(c) requires that when an audit is made, "...a report thereof shall be filed as public record with each of the contracting parties to the agreement and also with the county auditor of the county where the home office of the joint powers is located."

Because JPAs are easy to create, they facilitate the sharing of services and financing. If they are mismanaged, JPAs may present a burden for taxpayers. The estimated $1.5 billion bonds issued by cities in the County may provide needed services and financial benefit to the taxpayers. However, the latitude allowed by State statutes creates the potential for JPAs to acquire debt that exceeds the ceiling imposed on government entities.

JPA's provide a legal process that gives cities the ability to remain compliant with California Constitution Article XVI, Section 18 "Debt." Article XVI prohibits cities, counties and school districts form borrowing an amount that exceeds the income and revenue for each year, unless approval is obtained from at least two-thirds of the voters. Since JPAs are separate legal entities formed by two members, such as the City Council and a Successor JPA, they are not bound by this prohibition on city, county and school debt. Gov. Codes Sections 6547 et seq, does not require voter approval on a JPA ordinance to issue revenue bonds, unless voters initiate a referendum to contest the action during the 30-day referendum period. If there is no referendum, the JPA can then issue revenue bonds that can exceed a cities' annual debt limit imposed by Article XVI, Section 18.

JPAs have no direct State or County oversight and minimal reporting requirements. As a result, Some JPAs, such as those defined as circular, are a mechanism whereby cities may take on debt that is not independently monitored.

FINDINGS

F1. In the Direct JPA model, each member delegates to the JPA a function that each member has the legal authority to provide. This shared approach results in cost savings and better efficiency on behalf of taxpayers.

F2. The Circular JPAs with a single controlling entity, such as a city council, have the potential to avoid legal debt limits and provide limited disclosures to taxpayer.

F3. In Contra Costa County, there are 12 Circular JPAs created by cities with RDAs that no longer exist. These JPAs may no longer be valid because each is a member of another Financial JPA which may take on new debt without the prohibition (Gov. Codes Sections 6505 3416/34170 et seq,) placed on Successor Agencies.

F4. Cities that have created the 12 Financial JPAs do not provide JPA-specific financial information in their budget document. As a result, the public may have difficulty evaluating JPA's financial performance.

F5. The Contra Costa Auditor-Controller's office maintains information only on JPAs of which the County is a member. The County Auditor could not verify that all JPAs in the County have filed an audit in accordance with Gov. Codes Sections 6505 et seq.

F6. LAFCO has no JPA oversight and acts as a repository only for municipal services JPAs that choose to voluntarily file. This limits LAFCO's ability to review Financial JPAs.

RECOMMENDATIONS

R1. All cities with JPAs in the County should confirm their compliance with Gov. Codes Sections 6505 by submitting the required audit report to the County Auditor by December 31, 2018.

R2. The Auditor-Controller under Health and Safety Code Sections 34182-34188.8, should consider a review of JPAs under ABx1.26 (dissolution of redevelopment agencies and the designation of Successor Agencies) by June 30, 2019 to determine any violation of the prohibition on taking on new redevelopment or debt.

R3. The Auditor-Controller should consider posting on its website all financial and organizational data received from JPAs associated with an RDA or their Successor Agency in a manner readily available to the public by September 30, 2018.

R4. The 11 cities that are members of a JPA associated with an RDA or their Successor Agencies should consider confirming their compliance with the provisions of Abx1.26 (Gov. Codes Sections 34177 et seq.) and report their findings and any corrective actions to the Auditor-Controller's office by December 31, 2018.

R5. All cities with JPAs should consider making special efforts, such as special mailings to taxpayers, website postings and announcements in local media, to communicate JPA debt decisions and audit reports to the public beyond simple notifications by December 31, 2018.

R6. Contra Costa County LAFCO should consider seeking funds to expand their focus to include County Financial JPAs by September 1, 2019.

REQUIRED RESPONSES

	Findings	Recommendations
Cities of Antioch, Brentwood, Clayton, Concord, Town of Danville, El Cerrito, Hercules, Lafayette, Martinez, Town of Moraga, Oakley, Orinda, Pinole, Pittsburg, Pleasant Hill, Richmond, San Pablo, San Ramon, Walnut Creek	F1	R1, R5
Contra Costa County Auditor-Controller	F2, F3, F4, and F5	R2 and R3
Cities of Antioch, Brentwood, Concord, El Cerrito, Hercules, Lafayette, Pinole, Pleasant Hill, Richmond, San Pablo, San Ramon	F2, F3, and F4	R4
Local Agency Formation Commission (LAFCO)	F6	R6

These responses must be provided in the format and by the date set forth in the cover letter that accompanies this report. An electronic copy of these responses in the form of a Word document should be sent by e-mail to ctadmin@contracosta.courts.ca.gov and a hard (paper) copy should be sent to:

Civil Grand Jury – Foreperson
725 Court Street
P.O. Box 431
Martinez, CA 94553-0091