



Contra Costa County
CIVIL GRAND JURY
FINAL REPORT 2023 - 2024

ABOUT THE COVER:

Front cover photo provided by Vien Tran, photographer

Back cover photo Sunset - Bayfront Park - Pinole

Contra Costa County

Civil Grand Jury

Final Report
2023 - 2024

The Contra Costa Civil Grand Jury Roster

Joanne Sarmento, Foreperson (Danville)
Richard Patterson, Foreperson Pro Tempore (El Cerrito)

MEMBERS

Georgia Addison (Discovery Bay)
John Anderson, PhD (Richmond)

Peter Appert (Lafayette)
Elizabeth Berke-Dreyfuss (Moraga)
Michael Davidson (Walnut Creek)
William Faoro (Moraga)
Ronald Irelan (Walnut Creek)
Julee Matt-Hamilton (Concord)

Karen O'Neil (Danville)
Richard Patterson, Foreperson Pro
Tempore (El Cerrito)
Susan Rainey (Walnut Creek)
Christopher Rayner (Alamo)
Joanne Sarmento, Foreperson (Alamo)
Weldon Theobald (Danville)
Maria del Carmen Torralba (Pinole)
Maureen Woelffer (Walnut Creek)

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**SUPERVISING JUDGE OF THE
CONTRA COSTA COUNTY
CIVIL GRAND JURY**



HONORABLE TERRI MOCKLER

Superior Court of California

COUNTY OF CONTRA COSTA
725 COURT STREET
P.O. BOX 911
MARTINEZ, CA 94553-0091



May 31, 2024

Contra Costa County
2023-2024 Civil Grand Jury
725 Court Street
Martinez, CA 94553

Dear Civil Grand Jury Members:

On behalf of the Contra Costa Superior Court and the residents of Contra Costa County, I extend my sincere gratitude for your exceptional service as civil grand jurors for the 2023-2024 term.

The selfless commitment of your time and energy to the concerns of the Contra Costa County community is reflected in each of your thorough investigations and published reports. Under the outstanding leadership of your foreperson, Joanne Sarmento, and your technology expert, Richard Patterson, you have dedicated thousands of hours for the betterment of our county, its governance, and the allocation of public resources. Your many reports reflect the remarkable service you have provided to our community.

I commend all of you on the vital role you have filled as civil grand jurors. I congratulate you on your service and on a job well done. I hope the experience has enriched your lives as much as it has benefitted Contra Costa County. Thank you all.

Sincerely,

A handwritten signature in blue ink that reads "Terri Mockler".

Terri Mockler, Civil Grand Jury Supervising Judge



SUPERIOR COURT OF CALIFORNIA
CONTRA COSTA COUNTY

June 10, 2024

Honorable Terri Mockler
Judge of the Superior Court, Contra Costa County
725 Court Street
Martinez, California 94553

Dear Judge Mockler,

On behalf of the 2023-2024 Contra Costa County Civil Grand Jury, I am honored to present to you and the citizens of Contra Costa County the Grand Jury's final reports. The reports contain our findings and recommendations regarding government agencies within our jurisdiction. We hope these reports will help inform the public and contribute to improved local government.

I would like to express my appreciation for your judicial oversight. I would also like to thank Judge Jill Fannin for her judicial oversight during the first half of our term.

The Jury is grateful for the enthusiastic support of Maria Zarco and Elisa Pantaleon, Court Administration. We are also grateful to Hannah Shafsky and Rebecca Hooley, County Counsel, for their advice, guidance, and constructive feedback throughout the investigative and report-writing processes.

The Jury appreciates the cooperation received from the many public officials who responded to our questions and requests. We respect their dedication and expertise. We are also grateful to those who facilitated tours of their facilities and demonstrated such professionalism and pride in their work.

Lastly, I want to thank the 2023-2024 grand jurors. We had no carryover jurors at the start of our term. We brought our knowledge and experience to the work. As a jury, we worked together to improve our community. I am grateful for the opportunity to serve with these jurors.

Respectfully,

A handwritten signature in blue ink, reading "Joanne Sarmiento", is written over the typed name.

Joanne Sarmiento, Foreperson
2023-2024 Contra Costa County Civil Grand Jury

CIVIL GRAND JURY ROSTER

2023-2024



Back row, left to right side:

Christopher Rayner (Alamo)

John Anderson, PhD (Richmond)

Michael Davidson (Walnut Creek)

William Faoro (Moraga)

Peter Appert (Lafayette)

Richard Patterson, Foreperson Pro Tempore
(El Cerrito)

Ronald Irelan (Walnut Creek)

WeldonTheobald (Danville)

Front row, left to right side:

Maria del Carmen Torralba (Pinole)

Maureen Woelffer (Walnut Creek)

Karen O'Neil (Danville)

Georgia Addison (Discovery Bay)

Hon. Judge Terri Mockler

Joanne Sarmiento, Foreperson (Alamo)

Elizabeth Berke-Dreyfuss (Moraga)

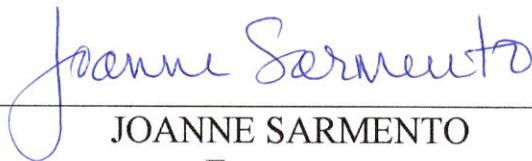
Susan Rainey (Walnut Creek)

Julee Matt-Hamilton (Concord)

The 2023 – 2024 Contra Costa County
Grand Jury

Approved this Final Report

On June 14, 2024



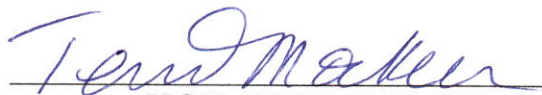
JOANNE SARMENTO

Foreperson

I accept for filing this Final Report of the 2023-2024
Contra Costa County Grand Jury

On

June 14, 2024



HON. TERRI MOCKLER

Supervising Judge of the 2023 – 2024 Grand Jury

2023-2024 Contra Costa County Civil Grand Jury

Activities Report

Summary of General Activities

TOURS / OBSERVATIONAL VISITS

- Martinez Detention Facility
- Richmond Detention Facility
- Juvenile Hall
- Crime Lab
- Coroner's Office
- Emergency Control Center
- Sheriff's Office
- Election Office

PRESENTATIONS GIVEN

- Board of Supervisor's Meeting
- 2024-2025 Jury Applicant Orientation
- 2024-2025 Juror Orientation

TRAINING ATTENDED

- Contra Costa Civil Grand Jury Association (Jurors, Foreperson, & Report Writing)
- CPR

Summary of Committee Activities

<u>Committees</u>	<u>Topics / Complaints</u>	<u>Number Investigated</u>	<u>Reports Published</u>
Continuity	3	3	1
City	10	9	1
County	12	9	1
Health & Human Services	11	10	1
Law & Justice	16	10	1
Special Districts	8	4	0
Totals	60	45	5

The 2023 – 2024 Contra Costa County Civil Grand Jury

725 Court Street
Martinez, California 94553

Compliance and Continuity Report

Report 2401
March 29, 2024



Contact:
Joanne Sarmento
Grand Jury Foreperson
(925) 608-2621

Civil Grand Jury reports are posted at: <https://www.cc-courts.org/civil/grand-jury-reports.aspx>

Compliance and Continuity Report

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Compliance and Continuity Report

BACKGROUND

The mission of the Contra Costa Civil Grand Jury is to identify areas where local government can be improved (findings) and make recommendations for achieving that improvement. One mission of the Compliance and Continuity and Editorial Committee (CCE) is to review agency responses to the recommendations of the previous Grand Jury.

Grand Jury activities are governed by the requirements of California Penal Code sections 925 through 933.6. Full text can be found on the ca.gov website. Pertinent requirements are summarized below:

The grand jury shall investigate and report on the operations, accounts, and records of the county's officers, departments, or functions. (Section 925)

The grand jury may examine the books and records of any incorporated city or joint powers agency located in the county at any time. (Section 925a)

Each grand jury shall submit to the presiding judge of the superior court a final report of its findings and recommendations that pertain to county government matters during the fiscal or calendar year. (Section 933a)

The penal code requires agencies to respond to the findings and recommendations of the grand jury using the specific responses, and within the legal time limits listed below:

Response Timing:

No later than 90 days after the grand jury submits a final report on the operations of any public agency ..., the governing body of the public agency shall comment on the findings and recommendations (Section 933c)

And

Every elected county officer or agency head shall comment within 60 days on the findings and recommendations. (Section 933c)

Response Format for Findings:

Penal code 933.05 lists the following allowable responses. The words in **bold** are used to signify a correct response in the body of this report.

(1) *The respondent **agrees** with the finding.*

(2) *The respondent **disagrees** wholly or partially with the finding in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor (sic).*

Compliance and Continuity Report

Response Format for Recommendations:

Penal code 933.05 lists the following allowable responses. The words in **bold** are used to signify a correct response in the body of this report.

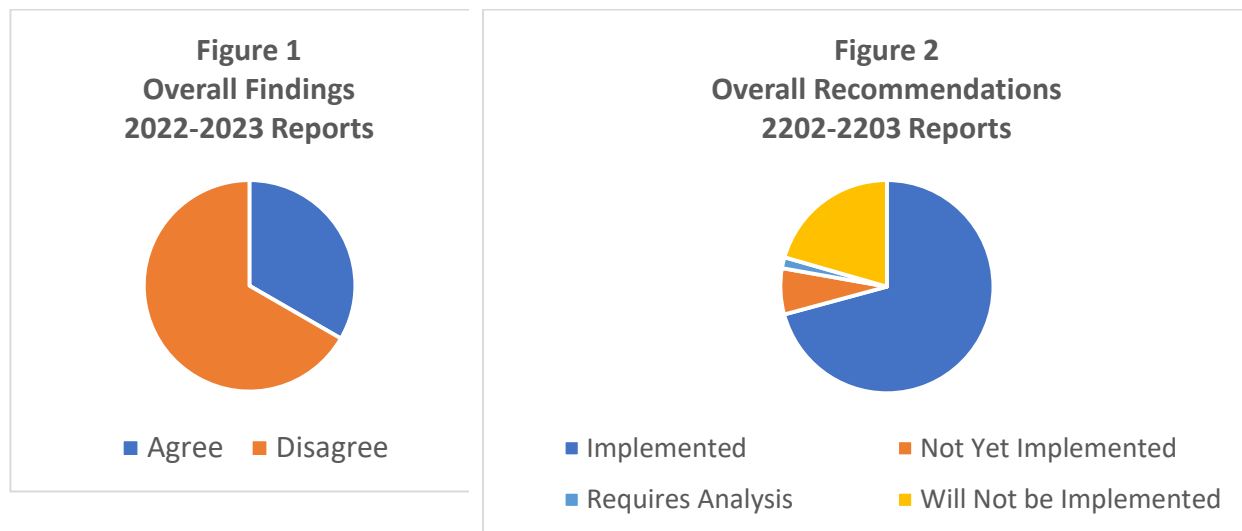
- (1) The recommendation has been **implemented**, with a summary regarding the implemented action.*
- (2) The recommendation has **not yet** been **implemented** but will be implemented in the future, with a timeframe for implementation.*
- (3) The recommendation requires **further analysis**, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion This timeframe shall not exceed six months from the date of publication of the grand jury report.*
- (4) The recommendation will **not** be **implemented** because it is not warranted or is not reasonable, with an explanation therefor (sic).*

Compliance and Continuity Report

SUMMARY

We reviewed responses to 306 findings and 243 recommendations in the 2022-2023 grand jury reports from 25 agencies. All responses were on time. 101 responses, or 33% agreed with the findings while 205, or 67% disagreed, as shown in Figure 1.

Responses to recommendations were reviewed to assess compliance with Penal Code 933.05. 172 recommendations (71%) have been implemented, 50 (21%) will not be implemented, and 17 (7%) have not yet been implemented but will be implemented in the future. Four recommendations (2%) required further analysis as shown in Figure 2.



For further explanation of the responses to the recommendations, refer to the complete responses posted online at <http://www.cc-courts.org/civil/grand-jury-reports.aspx>.

The Grand Jury believes it is important for future Grand Juries to continue to review these responses and to be vigilant in seeing that recommendations that have been accepted are implemented. Special attention should be paid to those responses requiring implementation within specified time frames. In this manner, the commitment and hard work of past and future Grand Juries will result in positive changes for the citizens of Contra Costa County.

The responses to grand jury reports are posted on the Contra Costa County grand jury website in their entirety and can be viewed at [Contra Costa Superior Court: Civil Grand Jury Reports](http://www.cc-courts.org/civil/grand-jury-reports.aspx).

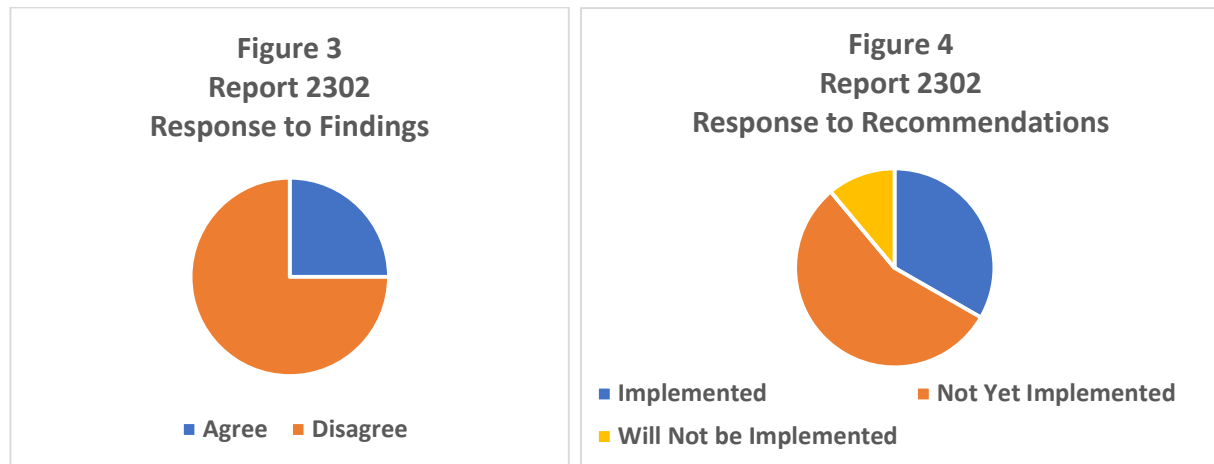
Compliance and Continuity Report

SUMMARIES OF INDIVIDUAL REPORTS

Report # 2302 CCC Department of Conservation & Development. The Long Wait for Agricultural Contract Approval.

This report listed eight findings and made nine recommendations to the Contra Costa Board of Supervisors. Responses **agreed** with two findings and **disagreed** with six as shown in Figure 3.

Three recommendations have been **implemented**, five have **not yet** been **implemented** but will be in the future, and one will **not be implemented** as shown in Figure 4.



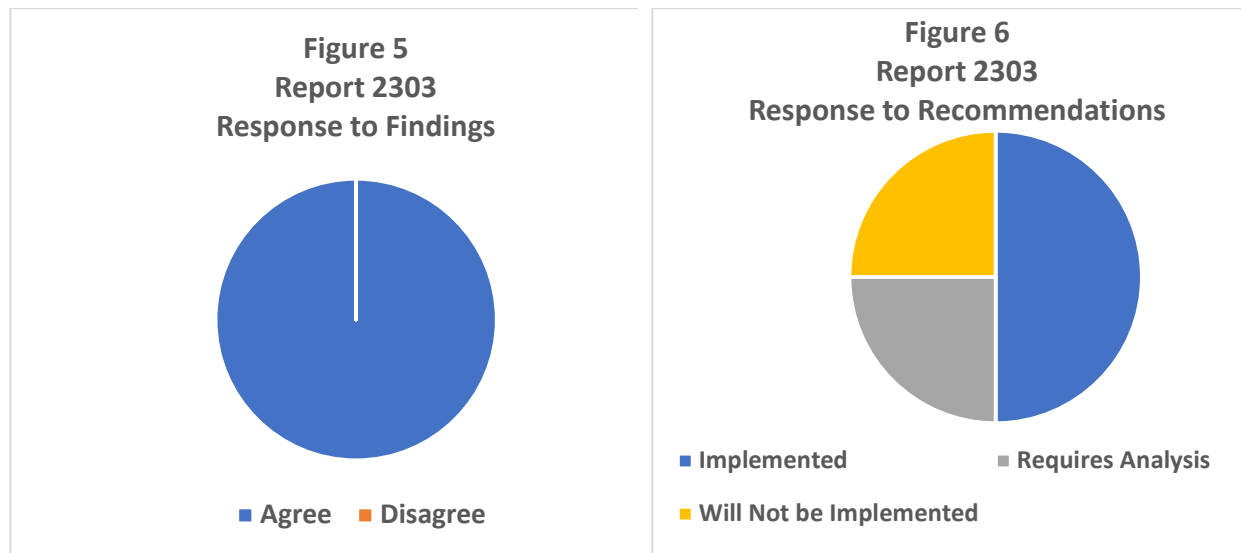
Appendix A, Tables 1 and 2 list the findings and recommendations responses.

Compliance and Continuity Report

Report # 2303 CCC Elections Division Voter Outreach, Voter Guides & Election Security

This report listed eight findings and made four recommendations to the Contra Costa County clerk/recorder. Responses **agreed** with all findings. See Figure 5.

Two recommendations have been **implemented**, one requires **further analysis**, and one will **not be implemented** as shown in Figure 6



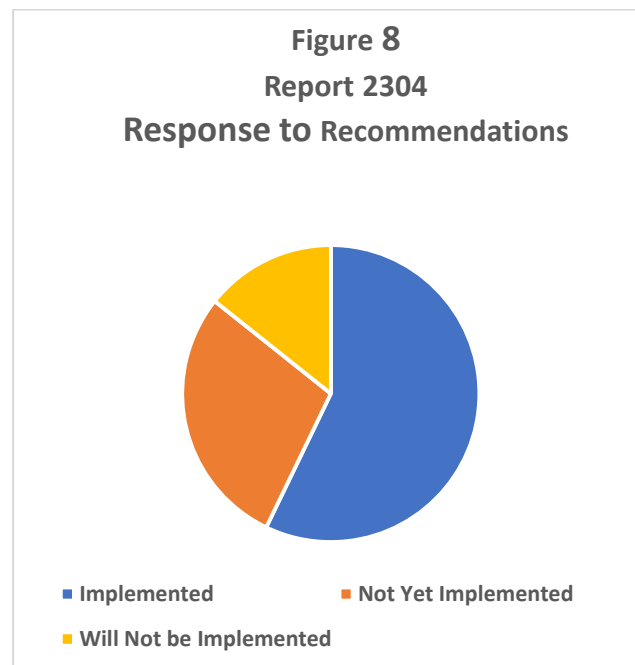
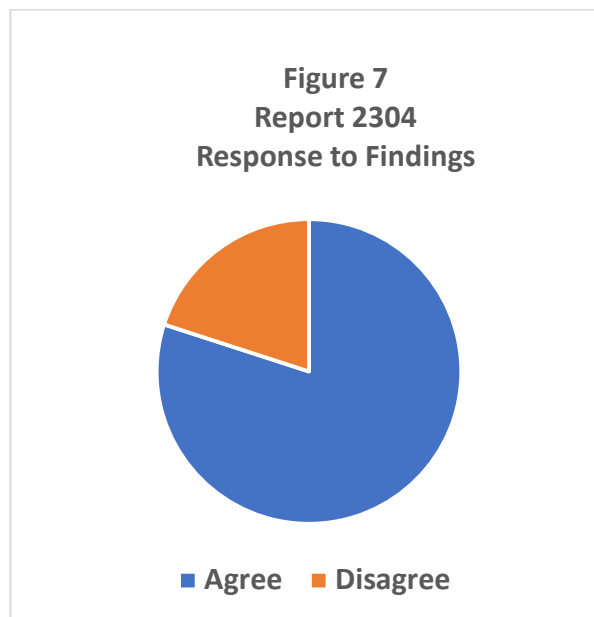
Appendix A, Tables 3 and 4 list the findings and recommendations responses.

Compliance and Continuity Report

Report #2304 Investigating Deaths Involving Law Enforcement. Expanding Transparency and Reducing Delays.

This report listed ten findings and made seven recommendations to the Contra Costa County district attorney and sheriff/coroner. Responses **agreed** with eight findings and **disagreed** with two. See Figure 7.

Four recommendations have been **implemented**, two have **not yet** been **implemented** and one will **not** be **implemented**, as shown in Figure 8.



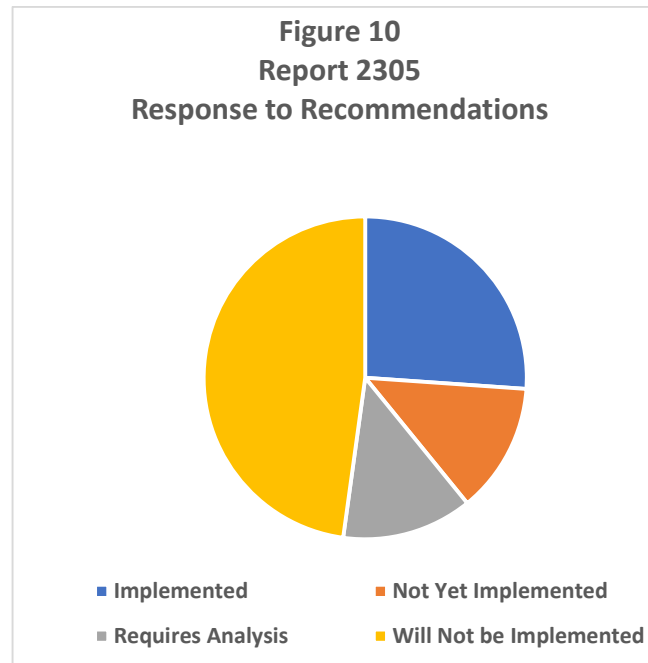
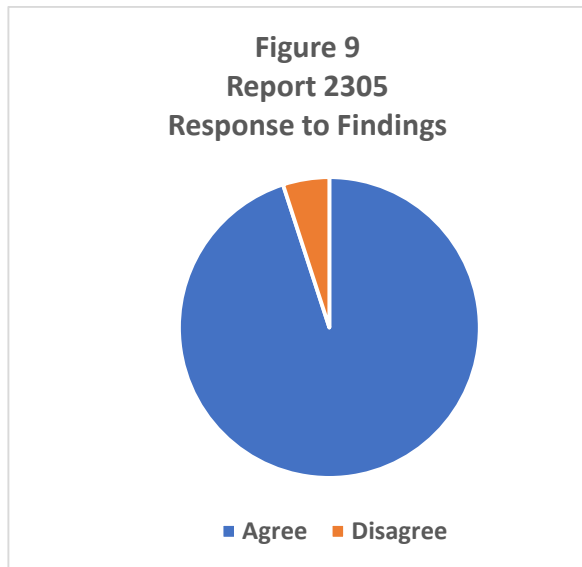
Appendix A, Tables 5 and 6 list the findings and recommendations responses.

Compliance and Continuity Report

Report #2305 Concord Naval Weapons Station, A Promise Unfulfilled

This report listed twenty findings and made twenty-three recommendations to the Concord City Council which also functions as the Land Reuse Agency (LRA) for the Concord Naval Weapons Station. Responses **agreed** with nineteen findings and **disagreed** with one, as shown in Figure 9.

Six recommendations have been **implemented**, three have **not yet** been **implemented**, three require **further analysis** and eleven will **not** be **implemented**, as shown in Figure 10.



Appendix A, Tables 7 and 8 list the findings and recommendations responses.

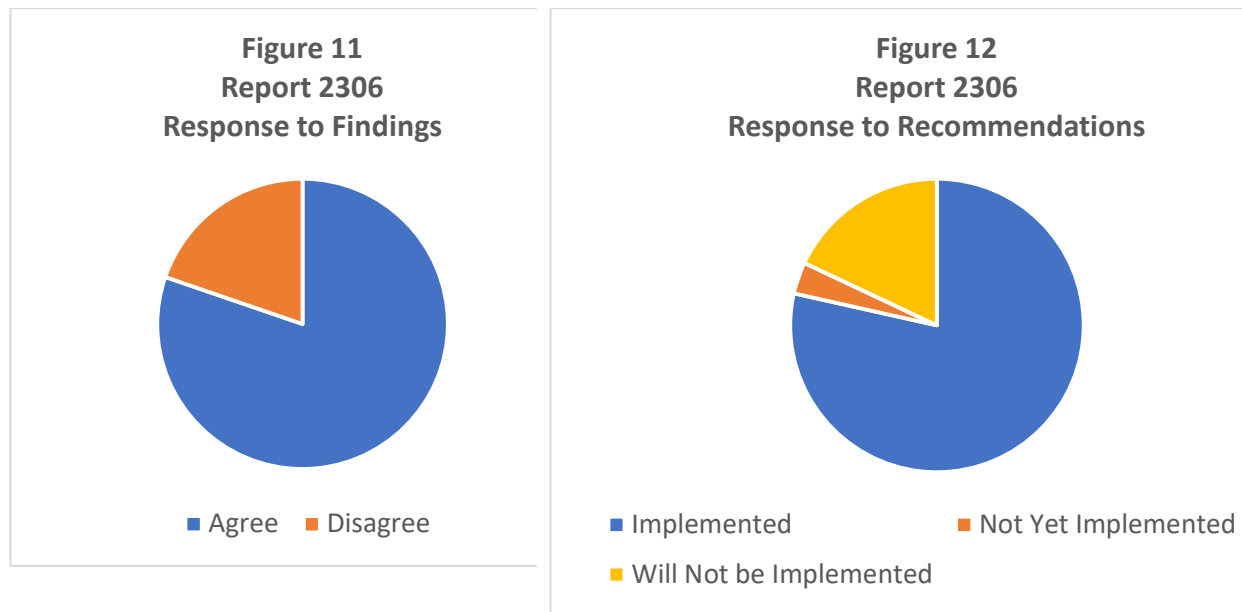
Compliance and Continuity Report

Report #2306

Affordable Housing, A Plan Without a Home

This report listed thirteen findings and made twelve recommendations to the Contra Costa Board of Supervisors and nineteen city councils. A total of 64 responses **agreed** with the findings and 193 wholly or partially **disagreed**, as shown in Figure 11.

Recommendations have been **implemented** in 157 responses, have **not yet** been **implemented** in 7, and will **not** be **implemented** in 36 responses, as shown in Figure 12.



Summarized findings and the county and city responses are tabulated in Appendix A, Table 9.

Summarized recommendations and the county and city responses are tabulated in Appendix A, Table 10.

Compliance and Continuity Report

METHODOLOGY

Compliance

The CC&E Committee reviewed all responses to findings and recommendations to the 2022-2023 report for compliance with penal code 933.05 requirements. The responses to each report were entered into an Excel spreadsheet. The information entered in these spreadsheets was used to prepare the Figures in this report, and an abbreviated version is included in Appendix A, Tables 1 through 10.

Continuity

The CC&E Committee followed up on responses to recommendations that did not meet the penal code 933.05 requirements. A separate Excel spreadsheet was used to list all the recommendations that needed follow-up. The committee sent letters requesting responses compliant with the Penal Code. The date of letters sent out and responses received were logged in the continuity spreadsheet and used to prepare the recommendation figures.

Compliance and Continuity Report

APPENDIX A: TABLES SHOWING FINDINGS, RECOMMENDATIONS, AND RESPONSES

Table 1

Report # 2302 CCC Department of Conservation & Development. The Long Wait for Agricultural Contract Approval.	
Findings	Response
F1. There is no formal procedure for the evaluation and approval of agricultural contracts in Contra Costa County by the DCD.	Disagrees
F2. The current process to review and approve an agricultural contract takes over three years.	Disagrees
F3. An agricultural contract has not been approved since 2018.	Agrees
F4. Delays in approving agricultural contracts require applicants to continue to pay higher property tax payments while awaiting approval.	Disagrees
F5. The DCD ePermit online tool provides an overly broad status on agricultural contracts. As of April 2023, the status of all agricultural contract applications is "hearing prep." This could indicate the application is under an environmental quality review or being prepared for the board of supervisors for approval.	Disagrees
F6. Our interviews found that one planner is trained to work on agricultural contracts and is often compelled to spend a majority of their time on other tasks such as the general plan.	Agrees
F7. Inquiries for status via email and voicemail by agricultural contract applicants to the DCD are often not responded to.	Disagrees
F8. When applicant email inquiries are responded to, they often provide a progress status that fails to materialize and/or is overly optimistic.	Disagrees

Compliance and Continuity Report

Table 2

Report # 2302 CCC Department of Conservation & Development. The Long Wait for Agricultural Contract Approval.

Recommendations	Response
R1. The grand jury recommends that the DCD establish a written and publicized process for agricultural contracts, similar to what our comparison county has implemented, by October 1, 2023.	Not Yet Implemented
R2. We recommend that the DCD establish a well-publicized deadline for all agricultural contract applications (e.g., October 1), process all agricultural contracts together and preschedule a standing item on the planning commission's agenda (if required) and the board of supervisor's agenda in late November or early December, with contract approval on or before December 31 of the same year, striving to approve agricultural contracts within 90 days.	Not Implemented
R3. We recommend that the DCD include an in-person or video teleconference meeting with the applicant to clearly define the required paperwork and the deadline for application submittal.	Not Yet Implemented
R4. We recommend that the DCD agricultural contract process be agreed upon and shared with all involved entities, such as county counsel, the planning commission, public works, adjacent cities, LAFCO, and the assessor's office, to gain agreement on the process by all involved entities. Recommended date of agreement is October 1, 2023.	Not Yet Implemented
R5. We recommend that the DCD update the permit status for agricultural contracts, within 48 hours of a status change, as the application progresses through the involved entities.	Not Yet Implemented
R6. We recommend that the DCD train additional planners to process agricultural contracts in order to eliminate the current backlog by October 1, 2023 and meet the 90 day agricultural contract approval interval target for future applications.	Implemented
R7. We recommend that the DCD review and adhere to their stated goal that calls and emails from applicants be returned within two business days.	Implemented
R8. We recommend that the DCD implement an escalation process for agricultural contracts so that the applicant can request management intervention if key milestones and deadlines are in jeopardy of being missed.	Implemented
R9. The grand jury recommends that DCD management establish procedures to monitor the progress of agricultural contract applications to ensure progress deadlines are met by each involved entity.	Not Yet Implemented

Compliance and Continuity Report

Table 3

Report # 2303 CCC Elections Division Voter Outreach, Voter Guides & Election Security

Findings	Response
F1. The elections division outreach efforts using CBOs in the months before the 2020 general election had a measurable impact on voter participation in those areas where resources were deployed.	Agrees
F2. For those cities targeted by the elections division's CBO outreach program, voter participation was 15% above the overall county increase from 2018 to 2020.	Agrees
F3. The elections division reaches out to the public using online "how to" videos on their website, including videos describing the many ways to cast your vote, how elections are certified, and how you can research candidates and measures.	Agrees
F4. The elections division provides a candidate guide for potential candidates that describes the process of running for an elected office within the county.	Agrees
F5. A candidate is not required to submit a candidate statement for the voter guide.	Agrees
F6. The elections division levies a fee for the candidate statement in the voter guide, to offset printing and distribution costs.	Agrees
F7. The fee for a candidate statement ranges from a few hundred to a few thousand dollars, depending on the number of voter guides printed with that candidate's information.	Agrees
F8. The elections division has implemented safeguards to prevent physical and cyber security breaches as well as unauthorized, fraudulent, and duplicate ballots.	Agrees

Compliance and Continuity Report

Table 4

Report # 2303 CCC Elections Division Voter Outreach, Voter Guides & Election Security	
Recommendations	Response
R1. The grand jury recommends that the elections division continue to seek out and apply for grant funding for voter outreach efforts including mailers, community meetings and telephone outreach.	Implemented
R2. The grand jury recommends that the elections division establish a means to quantify (measure) the impact of outreach efforts on voter registration and participation and make those results available to the public after each major election via its website.	Further Analysis
R3. The grand jury recommends that the fees for providing candidate statements in the voter guide be eliminated to promote candidate transparency.	Not Implemented
R4. The grand jury recommends that the elections division add a video to its website describing the physical and cyber security measures it employs to safeguard facilities, ballots, and election data.	Implemented

Compliance and Continuity Report

Table 5

Report # 2304 Investigating Deaths Involving Law Enforcement. Expanding Transparency and Reducing Delays.

Findings	Response
Finding 1A: Despite policies and internal goals, the DA's office takes too long to make a criminal charge determination in a fatal incident involving law enforcement officers. Criminal charge determinations (LEIFI reports) have been published 21 to 29 months after such incidents. The Protocol requires that its parties strive to complete investigation reports within 30 days of the fatal incident. The DA's office has a 90-day goal to complete criminal charge determination after the completion of the coroner's inquest.	Disagrees Wholly or Partially
Finding 1B: The criminal investigation process has significantly improved since 2018. First, criminal charge determinations are now publicly disclosed (LEIFI report) in all instances in which an officer used deadly force. Second, these reports provide a clear and comprehensive analysis of the criminal charge determination that obviates the need for a coroner's inquest regarding those incidents. Third, the DA's Office has instituted a 90-day goal to make a charging determination after the coroner inquest. Fourth, such reports were not previously made public.	Agrees
Finding 1C: The DA's office waits on average 10 months for the coroner's inquest to be held. We question if this is necessary before making the criminal charge determination. The verdict of the coroner's inquest has no bearing on the criminal responsibility of any person(s) involved in the incident and is not required before deciding whether or not to charge any individual. Furthermore, the Protocol recognizes that a coroner's inquest is not needed when criminal charges are filed.	Agrees
Finding 2A: The coroner's office takes too long to conduct coroner's inquests. For the time period between 2017 and 2022, the coroner's inquests were held ten months after a fatal incident involving law enforcement officers, on average. The policy (LEIFI Protocol) sets a goal of 30 days for the completion of investigation reports and states that this is "essential." The LEIFI Protocol and authoritative internal sources indicate that the investigation of an incident can be completed more expeditiously and within four months after an incident.	Disagrees
Finding 2B: The coroner's inquest provides transparency. Particularly if there is no direct use of force by law enforcement agencies (such as in-custody deaths and vehicle pursuits) and if the DA does not file charges or release a public report the coroner's inquest provides information about the facts of the incident that would not otherwise be known.	Agrees
Finding 2C: The public notification of coroner's inquests and accessibility to inquest hearing transcripts is inadequate. Of the three inquests that the grand jury attended, none provided more than two days advance notice. Only the verdict following the coroner's inquest is published on the sheriff-coroner's website. Other information about the inquest is not posted. Information about the availability of the transcript of the inquest hearing is not posted on the sheriff-coroner's website.	Disagrees
Finding 3A: The Protocol has not been updated since 2014.	Agrees
Finding 3B: Since 2014, there have been changes in state law, including, but not limited to, Government Code sections 7286(b) (requiring that agencies adopt policies that include immediate reporting of excessive force, separate reporting to the Department of Justice, and other procedures) and 7286.5 (transport restrictions), and Penal Code sections 832.5 (retention of certain records), 832.7 (providing that certain factual information is not privileged), and 832.13 (requiring immediate reporting of all uses of force), and new policies in the offices of the DA and sheriff.	Agrees

Compliance and Continuity Report

Table 6

Report # 2304 Investigating Deaths Involving Law Enforcement. Expanding Transparency and Reducing Delays.	
Recommendations	Response
Recommendation 1: For incident in which a member of a law enforcement agency uses deadly force, the district attorney should consider releasing a public report about the incident or filing charges within six months of the incident and without necessarily waiting for the coroner's report.	Implemented
Recommendation 2A: For fatal incidents in which a member of a law enforcement agency is involved, the sheriff-coroner should consider completing the coroner's inquest within four months of the incident but no later than six months.	Will Not Be Implemented
Recommendation 2B: The sheriff-coroner should consider providing advance notice to the public of all upcoming coroner's inquests, including the location, date, and time.	Implemented
Recommendation 2C: The sheriff-coroner should consider posting press releases concerning all upcoming coroner's inquests on the sheriff's website.	Implemented
Recommendation 2D: The sheriff-coroner should consider posting information about prior coroner's inquests, including the verdict and how to obtain a copy of the transcript. This information should remain available on the sheriff-coroner's website and/or other sites known and accessible to the public.	Implemented
Recommendation 3: The parties to the 2014 Protocol should consider updating the Protocol to ensure that it is in compliance with current state law, the procedures identified in the DA's LEIFI Policy, and any applicable changes in the Sheriff's LEIFI Policy. This should include updating the checklists that are part of the Protocol.	Not Yet Implemented

Compliance and Continuity Report

Table 7

Report # 2305 Concord Naval Weapons Station, A Promise Unfulfilled	
Findings	Response
1.a The LRA team allowed master developer applicant CFP to continue to be considered in 2021 master developer selection process even though its SOQ submission dated June 18, 2021, did not include many required financial	Agrees
1.b The LRA allowed applicant CFP to continue to be considered in the 2021 master developer selection process after CFP did not comply with the LRA team follow up request for financial documents made in July 7, 2021, correspondence.	Agrees
1.c The RFQ process adopted by the Concord City Council ad hoc committee did not utilize the LRA staff and consultants to issue a written report with a recommendation for CNWS master developer.	Agrees
1.d The RFQ process used in 2021 master developer selection process did not use practices such as stated weighted criteria and objective scoring.	Agrees
1.e The RFQ process used in 2021 master developer selection process did not include a written, scored evaluation of the SOQ submitted for the CNWS project from LRA staff and consultants.	Agrees
2.a LRA staff and consultant reference checks in the 2021 master developer selection process missed certain points involving prior BRAC experience and litigation history.	Agrees
2.b The PSAs between the City of Concord and ARUP, HRA Advisors, Inc., and ALH Urban & Regional Economics during the period 2020 to 2022 did not have language to restrict hourly rate increases by consultants during one-year PSA terms.	Agrees
3.a The RFQ and SOQ process used in the 2021 CNWS master developer selection prevented LRA staff from providing analysis and recommendations on the three respondents.	Agrees
4.a Concord city staff provided the Concord City Council in February 2020 a report that provided detail on CNWS-related expenses paid from loans the City of Concord has made to the LRA.	Agrees
4.b The annual Program Reports issued by the LRA do not show the actual fundings source. Annual forecasts by vendor show projected funding sources but fiscal year actuals are shown as totals with no indication of the funding source.	Agrees
4.c The City of Concord borrowed \$3.15 million from the city's self-insured workers compensation fund in FY 2017 and FY 2018 to provide funds to the City of Concord's loan to the LRA.	Agrees
4.d The City of Concord's financial reporting does not show that loans made from Concord's workers compensation fund to the LRA have been paid off.	Agrees
5.a CCTA, AAA, and their partner clients have been using the GoMentum test facility on the CNWS site since 2014.	Agrees
5.b There is language in a 2017 LRA document that CCTA would pay 80 percent of Guardian Security costs.	Agrees
5.c In 2020, 2021 and 2022, AAA forwarded to Concord memos listed as Security Guard Coverage for GoMentum Station that stated maximum monthly payments AAA will pay for GoMentum security services. These memos were signed only by AAA and are not signed by Concord city staff.	Agrees
5.d The signed MOU between Concord and CCTA states that CCTA should reimburse Concord for incurred fees/costs associated with providing access and security for the GoMentum facility at CNWS.	Agrees
5.e Since 2016, Concord has paid 33 percent of Guardian Security fees associated with GoMentum and CCTA and AAA have jointly reimbursed Concord for 67 percent of Guardian Security's costs associated with providing security services at	Disagrees
6.a The Jenkins Report presented the findings of an investigation authorized by the Concord City Attorney in 2015.	Agrees
6.b The expense to the LRA for the investigation and report done by Michael Jenkins was \$63,154 and it was paid as a 2016 expense against the city loan to the LRA.	Agrees
6.c The issues investigated in the Jenkins Report were improper lobbying by a council member, removing staff recommendation from final report on the master developer and Brown Act violations. These findings involved real or perceived improper activity by the Concord city staff and the Concord City Council.	Agrees

Compliance and Continuity Report

Table 8

Report # 2305 Concord Naval Weapons Station, A Promise Unfulfilled	
Recommendations	Response
R1.a The Concord City Council should consider adding language to the Selection Process and Submittal Requirements section of an RFQ or RFP that incomplete or nonresponsive submissions may lead to disqualification of the applicant.	Not Implemented
R1.b The LRA team should specify that the stated RFQ or RFP response date and time is the final cutoff for submission of materials by any applicant.	Implemented
R1.c The LRA should specify that there will be no extensions or second requests for information that was clearly requested in the RFQ or RFP.	Implemented
R1.d RFQs and RFPs for the CNWS project should be created by designated city staff and outside consultants of the LRA	Implemented
R1.e The Concord City Council should provide input on parameters and scope of a RFQ or RFP, prior to the document being written.	Implemented
R1.f The LRA staff and designated consultants should be the sole evaluators of the RFQ or RFP responses for CNWS project.	Not Implemented
R1.g Scoring criteria for RFQ or RFP evaluations used in the CNWS master development process should be provided on an RFQ or RFP template sent to each potential applicant.	Not Implemented
R1.h A raw score or percentage weight should be assigned for each evaluation criteria used on CNWS master developer RFQs or RFPs. This methodology should be created and documented before the SOQ due date and council review of the	Not Implemented
R1.i The LRA director should issue a report with staff recommendations for the master developers considered for the CNWS project. The report should provide objective detail based on selection criteria on why the master developer candidates were chosen or eliminated.	Not Implemented
R1.j The report on staff recommendations for the master developer should be publicly released immediately following the council meeting in which the Concord City Council selects the	Not Implemented
R2.a To control costs and foster more accurate expense forecasting, City of Concord PSAs for LRA consultants should have specified hourly rates by either position or by individual and the hourly rates should remain fixed across the one-	Not Yet Implemented
R3.a For future RFQs and RFPs used to select a master developer for the CNWS project, there should be a full analysis and report issued by LRA staff.	Implemented
R4.a Concord city staff should provide updates to the February 2020 report to show payments made against Concord's loan to the LRA for CNWS-related expenditures for 2021, 2022 and 2023 and to show details on what funds were deposited and/or refunded from Concord First Partners and future master developers.	Not Yet Implemented
R4.b The City of Concord should produce annual reporting on the city loans to the LRA, showing annual and project to date expenses by vendor in detail as was done in the February 2020 report.	Not Yet Implemented
R4.c The City of Concord should find funding sources other than its self-insured workers compensation fund when making loans to the LRA.	Implemented
R4.d The City of Concord should repay its self-insured workers compensation fund for any loans made to the LRA that are outstanding more than 36 months per state guidelines.	not implemented.
R5.a The agreement for gate security between Concord, AAA, and CCTA should be modified to require that AAA and CCTA reimburse the Concord LRA for 100 percent of CNWS gate security costs as stated in the May 2019 MOU.	Not Implemented
R5.b Notice on updated security reimbursements should be sent to AAA and CCTA within 90 days of this report being received by Concord City Council and the LRA.	Further Analysis
R5.c The change in the CNWS security service rate agreement reimbursement should be effective within 90 days of AAA and CCTA being notified.	further analysis
R5.d The LRA should seek reimbursement from AAA and CCTA on CNWS gate security payments in excess of 20% in 2020 and 2021.	Further Analysis
R6.a The expenses for this investigation should not be charged to the LRA loan and ultimately to the master developer on the CNWS project.	Not Implemented
R6.b The payment for the Jenkins investigation should be reversed as an expense against the city loan to the LRA.	Not Implemented
R6.c The payment for the Jenkins investigation should be paid as an expense from Concord general funds.	Not Implemented

Compliance and Continuity Report

Table 9

Report # 2306 Affordable Housing, A Plan Without a Home																				
Findings (Abbreviated)	CCC BOS	Antioch	Brentwood	Clayton	Concord	Danville	El Cerrito	Hercules	Lafayette	Martinez	Moraga	Oakley	Orinda	Pinole	Pittsburg	Pleasant Hill	Richmond	San Pablo	San Ramon	Walnut Creek
Agrees = 1																				
Disagrees wholly or partially = 2																				
F1. Within existing city or County infrastructure there is no clear owner who is responsible for achieving RHNA permitting targets.	2	2	2	2	1	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2
F2. City and County officials see no direct path to meet state-mandated regional housing (RHNA) targets.	2	2	2	2	1	2	2	2	2	1	2	2	2	2	2	2	2	2	1	2
F3. There are currently no measurable penalties if a city or a County does not achieve RHNA targets in an approved housing element plan.	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2
F4. Data published by ABAG shows that Contra Costa County and most of its cities have missed their current RHNA targets for very low- and low-income housing allocations. The allocation requirements continue to increase (16x for very low-income and 4x for low-income residents).	2	2	2	2	1	2	2	2	2	2	2	2	2	2	1	2	2	2	2	1
F5. Many obstacles hinder the development of AH at the local level, specifically for very low- and low-income housing.	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	1	2
F6. Zoning changes are generally addressed only when a project is presented for development.	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	1	2
F7. Penalties directed at cities and the County (financial, loss of control over local planning) are tied to not meeting state deadlines for Housing Element plan approval.	1	2	2	2	1	1	1	2	1	1	2	2	2	2	1	1	1	2	1	1
F8. Builder’s Remedy and SB35 projects do not address ingrained local obstacles that prevent the completion of approved AH projects.	1	2	2	2	1	2	1	2	2	2	1	2	2	2	1	2	2	2	1	2
F9. When local Redevelopment Agencies (RDA’s) were discontinued by the state in 2012, the County and cities did not address the loss of funding for affordable housing.	2	2	2	2	1	2	2	2	2	2	1	2	2	2	2	2	2	2	2	2
F10. Measure X housing funds are not fully dedicated to building AH for very low- and low-income residents.	1	1	1	1	1	1	1	1	2	1	1	1	1	1	1	1	1	1	1	1
F11. Local funding provided by bonds like Measure X Housing Fund is a critical component of a developer’s overall ability to raise funds for an AH development.	1	2	2	2	1	2	2	2	1	1	2	2	2	2	2	2	2	2	1	2
F12. Cities that proactively engage citizens, address zoning obstacles, make reasonable zoning concessions, work collaboratively with developers, provide local funding support, and are united in addressing NIMBY opposition, have been successful in attracting AH projects.	2	2	2	2	2	2	2	2	2	2	2	2	2	2	1	2	2	2	1	2
F13. The latest RHNA targets for cities and unincorporated Contra Costa County show a significant increase in the number of units that are expected to be permitted for very low- and low-income housing.	1	2	2	2	1	1	2	2	1	2	2	1	2	2	1	1	1	2	1	1

Compliance and Continuity Report

Table 10

Report # 2306 Affordable Housing, A Plan Without a Home															
Recommendations (abbreviated)															
1 = Implemented															
2 = not yet Implemented															
3 = needs further analysis															
4 = will not be implemented															
	CCC BOS	Antioch	Brentwood	Clayton	Concord	Danville	El Cerrito	Hercules	Lafayette	Martinez	Moraga	Oakley	Orinda	Pinole	Pittsburg
															Pleasant Hill
															Richmond
															San Pablo
															San Ramon
															Walnut Creek
R1. Each city and the County should consider assigning a staff position with clear leadership, ownership and accountability to achieve allocated RHNA targets.	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
R2. Each city and the County should report AH progress and lack of progress using data across all four measured income groups.	1	1	1	1	4	1	1	1	1	1	1	1	1	1	1
R3. Each city and the County should consider creating a dedicated AH commission.	1	4	4	4	4	4	4	4	4	4	4	4	4	4	1
R4. Each city and the County should consider reviewing existing processes and identifying changes that would address or resolve the specific obstacles.	1	1	1	1	1	1	1	1	1	1	1	1	1	1	2
R5. Each city and the County should consider developing a public dashboard to report progress against RHNA targets.	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
R6. Each city and the County should consider putting forth land zoned "suitable for residential use."	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
R7. Each city and the County should consider reviewing their zoning policies to identify restrictive zoning policies.	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
R8. Cities should consider adopting an inclusionary housing ordinance.	1	2	1	1	1	1	1	4	4	4	1	4	1	1	1
R9. Each city and the County should consider how to prioritize the implementation of housing projects that promote development of very low- and low-income housing.	1	2	1	1	1	1	1	1	4	1	1	1	1	1	1
R10. Each city and the County should consider prioritizing Measure X funding requests.	1	1	4	4	1	2	4	4	4	4	3	4	4	4	1

A Report of The 2023 – 2024 Contra Costa County Civil Grand Jury

Report 2402

May 31, 2024

The Contra Costa County Community Warning System

Will Everyone Get a Warning in Time?



A Report of The 2023 – 2024 Contra Costa County Civil Grand Jury

Report 2402

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The Contra Costa County Community Warning System

Will Everyone Get a Warning in Time?

APPROVED BY THE GRAND JURY

Joanne Sarmento

JOANNE SARMENTO
GRAND JURY FOREPERSON

6/3/24
Date

APPROVED FOR FILING

Terri Mockler

Hon. TERRI MOCKLER
JUDGE OF THE SUPERIOR COURT

6/3/24
Date

SUMMARY

In major disasters Americans expect their government to quickly notify them of imminent danger and actions they need to take to prevent injury or loss of life. The primary form of alerts and notifications today is through phone calls, texts, email, social media, radio and television. Alerts may advise people to evacuate, to shelter in place, and/or to keep themselves informed by monitoring further public safety warnings. However, events over the past several years in California and elsewhere in the United States have shown that community warning systems can fail to provide adequate notifications. This report addresses the possibility that Contra Costa County's Community Warning System (CWS) could also fail to deliver timely and accurate notifications to people in danger.

Failures in community warning systems in California have contributed to injuries and loss of life, notably the 2018 Camp Fire that devastated the town of Paradise and took 85 lives, and the 2017 Wine Country fires, a series of 250 fires that broke out in Napa, Lake, Sonoma, Mendocino, Butte, and Solano Counties that took 44 lives. Warnings also came too late for residents to flee their homes in the 2017 San Jose floods and hundreds had to be rescued.

These failures occurred for various reasons, including inadequate preparation for disasters, destruction of power and telecom infrastructure, inadequate staff to operate the warning system, inadequate training of warning system operators, inadequate procedures and training in how to word warning messages, failure to use all alerting tools, malfunctions within the warning system, and the public's lack of engagement in preparing for disasters.

Since the CWS became operational in 2001 Contra Costa County (County) has not experienced floods or wildfires of the magnitudes seen in the Camp fire, the Wine Country fires, or the 2017 San Jose flood. As a result the CWS has not been tested under extreme conditions that such major disasters would present.

This investigation concerns the extent to which CWS could experience failures similar to other counties. The Jury found there are risks that may prevent the CWS from providing timely and accurate notices to all people in an area impacted by an emergency. These risks can be reduced by making several changes to the CWS.

First, to reach more residents by phone or email all residents and businesses in the County should be automatically enrolled into the CWS unless they choose to opt out of enrollment. Second, to mitigate the risk that phones are not working or heard, long-range acoustic devices that can broadcast audible messages up to a mile away should be deployed where feasible. Third, to reduce the possibility of delays due to the time required to engage a trained operator of the CWS there should be at least one dispatcher trained to operate the CWS in the Sheriff's dispatch center at all times. Fourth, to address the potential that alerts can be delayed due to inadequate training, the Sheriff's Office should implement a process to ensure that first responders in County agencies who take the CWS training certify that they have reviewed and understood the training materials. Fifth, to bring a greater diversity of ideas and experience to the design and operation of the CWS the County's Chief Administrative Officer should create a CWS advisory body comprised of warning system and County emergency response experts. Last, the County should

commission a third-party expert to conduct a comprehensive risk analysis of the CWS, its processes, procedures, hardware, and software.

METHODOLOGY

The Grand Jury used the following investigative methods:

- Interviews with personnel in various County agencies and industry experts
- Reviews of policies and procedures related to the operation of the CWS
- Reviews of published reports
- Research of community warning systems.

BACKGROUND

The CWS is intended to provide notifications to residents and businesses of potential life-safety hazards, including chemical releases, fires, earthquakes, floods, and law enforcement activities. It is the only warning system in the County that has access to the nation's mass notification tools and databases, giving the CWS the potential to reach all people within the county — residents, businesses, and visitors. When a potentially life- or health-threatening hazard requires the public to take action, the CWS can alert people using phone calls, text messages, emails, the sounding of sirens, the CWS website, social media, radio, and television (TV).

The CWS is designed, maintained, and operated by the County's Office of the Sheriff, Emergency Services Division. The CWS unit has three employees who plan, organize, maintain, and operate the CWS. At all times one of these three is the designated on-call CWS duty officer, who, regardless of where they might be, is responsible for responding to requests to operate the CWS. An additional 3–5 employees within the Sheriff's Office can also operate the CWS.

Operation of the CWS

The CWS has two "modes" of operation. In one mode, the county designates and enables certain large refineries and chemical plants to decide what type of alert to send, and trains personnel in those facilities to initiate alerts from their own CWS computer terminals. When doing so, they must follow procedures established under the County's Health Services Hazardous Materials Programs (HMP) and use pre-determined alert messages for notifications related to their chemical releases. There are three levels of alerts the plants can send:

- A Level One release is not expected to have off-site health consequences, and no alert is sent.
- A Level Two release is expected to go off-site and may have adverse health consequences for sensitive individuals including those with lung or heart disease, the elderly, and the very young. Text messages and emails are sent to all CWS-registered users in the affected area.

- A Level Three release is expected to go off-site and may have adverse health consequences for the general public. Level 3 is the highest danger level and activates all the alerting tools, including sirens that signal people within range to shelter in place and wait for further alerts, information, and notices on their phones, TVs, and radios.

Subsequent to the initial alert sent by one of the refineries or chemical plants, the impacted plant works with HMP and CWS to provide ongoing information about the nature of the release, and in the event of a Level 3 alert, the estimated time when sheltering will no longer be necessary.

In the second mode, applicable in all other emergencies, including chemical releases from other industrial plants that do not have their own CWS terminals, railroad cars, or tanker trucks, the fire and police responders set up a command post with a designated incident commander. The incident commander, in concert with other first responders, assesses the situation and decides if activation of the CWS is warranted. Once the decision is made to send an alert, the incident commander initiates the sequence of steps shown in Table 1. When the incident commander receives a call back from the CWS duty officer (Step 5), they work together to define the impacted area and draft the alert message.

Table 1
CWS Activation Process

Step	Description	
1	Incident commander calls County Sheriff's dispatch on the County radio system and leaves their cell phone callback number	
2	Sheriff's dispatch contacts CWS duty officer and relays the message to call the incident commander	
3	If Sheriff's dispatch cannot reach the CWS duty officer, then Sheriff's dispatch contacts a backup to the CWS duty officer	
4	CWS duty officer or backup connects into the CWS secure network after contact with the incident commander	
5	CWS duty officer works with incident commander to craft message and define the impacted area	
6	CWS duty officer enters information into CWS alert computer	
7	CWS duty officer sends alerts	
8	CWS duty officer informs incident commander that alerts have been sent	

Having identified the impacted area and the alert message, the CWS operator chooses the appropriate alerting tools depending on the situation and any drawbacks of specific tools, as described below, and sends the alert:

1. *Wireless Emergency Alerts:* The CWS can send alerts using the federal Wireless Emergency Alert (WEA) system, known for sending AMBER alerts. Under the Federal Communication Commission's regulations for use of the WEA, this system can only be activated by the CWS operator when there is threat of injury or loss of life to those in the impacted area. This system sends alert messages to all WEA-compatible cell phones (residents, businesses, visitors, travelers) within the area designated by the CWS operator, and it does not require cell phones to be registered in the CWS. The alert is not a call or text: unless the phone is off or on airplane mode, it may vibrate, make a loud sound and display a message on the screen. This tool is designed to cover a larger area than just the specific, targeted area impacted by the emergency. There is an "overshoot" of 0.3 to 10 miles depending on the age and model of cell phone, which can result in alerts being received by people not in the designated area. Because of the overshoot beyond the designated area, there are circumstances when a WEA alert to evacuate an impacted area could result in clogged evacuation routes, and a WEA alert may not be issued as occurred during the Camp fire. Cell phone owners can opt out of WEA alerts by changing their phone settings to not receive them.
2. *Landlines:* The CWS operator can choose to send a recorded message to all landlines (phones connected by wires to the telephone company's wires) located in the impacted area. Landlines need not be registered in the CWS to receive calls. The message will be played to whomever answers the phone, including an answering machine, and there will be repeat calls if there is no answer or a busy signal. There are two issues that render landlines largely ineffective as an alerting tool. First, the increasing use of cell phones and phones that use Voice over Internet Protocol (VoIP) has resulted in only 6.5% of California households having landlines today. And second, it can take a lot of time for the CWS to call all the landlines. In an impacted area with tens of thousands of landlines, it can be hours, or even days, to make all the calls. For example, Sonoma county's warning system is able to initiate approximately 2,500 calls per minute.
3. *Email, Cell, and Voice over Internet Protocol (VoIP) phones:* CWS can: 1) call cell phones and VoIP phones in an impacted area and play a recorded message; 2) send texts to cell phones; and 3) send emails to internet-connected computers. All three of these tools require County residents and businesses to create an account in the CWS and register their VoIP telephones, cell phone numbers, and email address(es) to get alerts using these tools.
4. *Radios and TVs:* The CWS operator can choose to send alerts over the federal Emergency Alert System that broadcasts a message on participating local AM radios and television channels, as well as weather radios. People must have access to a radio and/or television and tune into the specific stations that carry alert messages.
5. *Social Media:* The CWS operator can post alerts to Facebook, X, WhatsApp, LinkedIn, other social media, and the CWS web site.

Generally, in any major disaster, including Level 3 chemical releases, all these tools will be used. However, if the local power grid is damaged or shut off then devices that rely on grid power won't operate. If cell towers are out, cellular devices may not receive alerts. The CWS operator may also choose to limit sending alerts through the WEA, radios, or TVs due to concerns about

causing congestion on evacuation routes or reaching too many people in areas not impacted by the disaster.

DISCUSSION

The Jury determined that the success of any particular warning system is highly dependent on the redundancies built into the system in order to ensure alerts reach as many people as possible. Redundancies for emergency response include having backup radios and radio systems, backup computers, backup personnel, and as many methods, or tools, as feasible by which to send alerts. The CWS and first responders in Contra Costa County have substantial backup for their computer and telecom hardware to initiate and send alerts. However, the Jury found several instances where redundancies in CWS processes can be increased, thereby reducing the risk that CWS alerts may not be timely and/or may not reach all the people in the impacted area.

Reliance on Voluntary Registration in the CWS Creates the Risk That Several Alerting Tools Will Not Work for Up to 70% of County Residents

The CWS can send alerts to all cell phones in an impacted area through the WEA, and/or it can send recorded messages to all landlines within that area, although as discussed, only 6.5% of phones are landlines, and the typical landline phone connects to a base station that does not work if the power is out. Neither of these alerting tools requires people to register their cell phones or landlines in the CWS.

The CWS can also call and text cell phones, call VoIP phones, and send emails to the 30% of County residents and businesses who have registered their contact data in the CWS. However, these additional alerting tools may not work for the 70% of County residents and businesses who have not registered their contact data in the CWS.

The current process to register phones and email addresses in the CWS relies on residents and businesses to proactively create a CWS account and register their physical address, phone, and email data. This process creates the risk that people who are not aware of the CWS, do not know they need to register, do not know how to register, find the registration process too complex or burdensome, or incorrectly think that somehow the government will contact them, will not have their contact data in the CWS. About 30% of County residents have created an account, resulting in a risk that the 70% of residents who have not registered with CWS may not receive any alerts in the event the alerting tools that do not require registration – WEA, landlines, radios, TVs – are not activated. In both the 2018 Camp Fire and the 2017 Wine Country fires, the failure of residents to register their phones and emails with those counties' warning systems contributed to the loss of life:

- At the time of the Camp Fire, less than 40% of the residents in the fire-affected area had registered their phones to receive emergency alerts. Of the 52,000 people who evacuated, 7,000 residents received an emergency alert through Butte County's system.
- In the Wine Country fires, according to an October 2020 CalMatters report, 20% of residents in Sonoma County were signed up for that county's emergency alerts.

The risk that people may not receive phone or email alerts because they have not entered their contact data into CWS can be mitigated by changing the current process by which the CWS incorporates the necessary contact data into its database. Instead of the current “opt-in” process in which County residents and businesses have the option to enter their data into the CWS by creating an account, the process would be changed to automatically bring the data into the CWS and create an account unless the person or business chooses to opt out of automatic registration. Non-residents of the County would still have to register their data in CWS to receive alerts. The necessary data already exists, can be obtained from the various utility, telecom and internet providers, and can be stored in the secure data centers provided by the national companies that provide these services to cities, counties, and states across the nation. Changing from an opt-in to an opt-out process helps to ensure that critical alert information can reach more people relative to the current process.

Changing the CWS to an opt-out system removes the requirement for any County resident or business to create an account in order to receive calls or texts on their cell phones, calls on their VoIP line, or email. Those who don’t want their contact data registered in the CWS would have to request their data not be included. Such residents or businesses could still receive alerts via other mechanisms such as the WEA, radio, TVs, social media, and non-VoIP landlines if those tools are activated.

The annual cost to the County to periodically obtain the contact data of its residents and businesses from the various telecom companies is estimated to be on the order of \$100,000. A one-time cost to educate the public about the change to the system and to provide them information on how and when to opt out would also be incurred by the County and is estimated to be on the order of \$500,000. For the purpose of cost-benefit analyses of government programs the United States FEMA (Federal Emergency Management Agency) estimated the value of a life at \$7.5 million in 2020. The benefit of an opt-out process, in terms of potential value of loss of life, outweighs the estimated cost.

Funding to change the process for collecting people’s contact data could come from Measure X. Measure X is a countywide, 20-year, ½ cent sales tax approved by County voters on November 3, 2020. The ballot measure language stated that the intent of Measure X is “to keep Contra Costa’s regional hospital open and staffed; fund community health centers, emergency response; support crucial safety-net services; invest in early childhood services; protect vulnerable populations; and for other essential county services.” Modification to the CWS fits in the category of emergency response and would be an appropriate use of Measure X funds. For example, Measure X funds are being used to fund a program for residents to use a mobile application from a private vendor that displays evacuation zones on their mobile devices, and allows them to obtain information about emergencies in any zone in the state.

There is a Risk That Telephones and Internet-Connected Devices Will Not Work or Be Heard

Not everyone hears or responds to phone calls, emails, texts, or WEA alerts for any number of reasons, including out of service telecom and power grid infrastructure. Of the 52,000 people who evacuated during the Camp fire, 14% received an emergency alert through Butte County’s warning system.

Another type of warning device, outdoor warning systems that are not dependent on telecom or power grid infrastructure, could increase the redundancy of alerting tools. Outdoor warning systems supplement other warning tools by providing acoustic (voice or siren sounds) to people who are outdoors. These systems use powerful loudspeakers (known as “long-range acoustic devices,” or LRADs) that can broadcast a verbal message or tones up to a mile away. They can operate from batteries that are charged from the grid or solar panels and can also receive signals from either cell towers or satellites. LRADs can broadcast audible instructions to people outdoors when cell phones and other alert receiving devices may not be working or heard. There is some evidence that under certain circumstances, LRADs can be heard indoors.

The City of Berkeley is currently installing 15 LRADs at a cost of \$2 million. Berkeley’s rationale for installing LRADs was the recognition that their existing alerting tools, similar to CWS, would reach some but not all people within the city.

Southern Marin Fire District (SMFD) has installed LRADs in five locations throughout Mill Valley. SMFD’s goal in the installation of the LRAD system was to improve the resiliency and redundancy of their warning system. SMFD plans to install five additional LRADs in other parts of its district, including Sausalito and Tiburon.

For the same reasons SMFD is installing LRADs, the Novato Fire District has taken steps to develop a comprehensive LRAD emergency warning network within its territory. Novato has conducted an acoustical study to determine which areas may be suitable for LRADs, has identified potential sites where LRADs might be located, and is planning to install one test unit. The LRAD system would facilitate disaster notification and evacuation efforts.

Contra Costa County has a diverse topography, with flatlands, hills, valleys, and canyons, that all affect how sound is reflected and absorbed as it travels. There may be areas where LRADs would be an effective alerting tool. However, an acoustical study (called a “sound study”) of the various areas in the County must first be conducted to determine where, if at all, LRADs might be effective. Potential LRAD sites must also be identified for any areas in which LRADs are found to be effective. The Jury could not estimate a cost for a sound study. As discussed in the previous section, Measure X is an appropriate funding source for emergency response activities, such as a sound study.

Reliance Upon An On-Call CWS Operator Creates a Risk of Delay in Sending Alerts

The Jury’s research into disasters in California and elsewhere showed that timely assessment of the situation and sending alerts as soon as possible can make the difference between life or death for people in the impacted area. According to emergency response experts interviewed by the Jury, in the event of disasters such as fast-moving wildfires, alerts must be drafted and sent to the public within 20 minutes of when the incident commander initiates the process. For example, in a 2018 evacuation drill Sonoma County targeted a 10-minute time frame to send a WEA alert.

At all times, and regardless of where they happen to be, one of the three employees in the CWS unit is the designated on-call duty officer who responds to requests for activation of the system. Once the CWS duty officer is contacted by the Sheriff’s dispatch center the CWS duty officer has up to 10 minutes to call the incident commander and connect into the CWS secure network. In the event the CWS duty officer is not reached, the dispatch center attempts to contact a backup

person to the duty officer. That additional time required to contact the backup personnel, have them get to a computer and establish a secure connection into the CWS, is time that people in an impacted area should be using to take action to remove themselves from danger.

The dependence on a single, on-call duty officer introduces a risk of delay in the CWS activation process. There are innumerable ways that an on-call CWS duty officer could be incapacitated, such as an accident or a sudden illness, requiring additional calls until a CWS operator can be found to return the call to the incident commander. But each additional call delays getting the alert out, and in the event of a disaster, such as a fast-moving wildfire, a few minutes additional time to send out alerts can make a difference to people in an impacted area who need to act quickly to get out of danger. In the Camp Fire, of the five staff members trained to operate Butte County's warning system only one was available.

This risk can be mitigated by enabling and training existing employees in the Sheriff's dispatch center to operate the CWS. Doing so creates redundancy in the number of on-duty personnel who can operate the CWS. Such a redundancy is critical if the CWS duty officer cannot be reached, and the incident commander requires an alert to be sent immediately. At least one of the CWS-trained employees would always be on duty in the dispatch center. Additional alerts can be crafted by the CWS on-call duty officer once they are contacted and engaged.

A 2018 survey of Bay Area emergency warning programs by Sonoma County's Fire and Emergency Services Department showed that of the eight Bay Area counties included in the survey (Napa was not included), as well as Monterey County, Contra Costa is the only county to rely exclusively on an on-call duty officer to operate the warning system. With the exception of Sonoma County, each of the other Bay Area counties and Monterey County trains their dispatchers to operate their warning systems so there is always someone in the dispatch center who can operate the warning system. Sonoma County has specially trained operators similar to the CWS on-call duty officers, but also trains officers in its 24/7 dispatch center to use pre-determined templates in the event of an immediate need to send an alert before the warning system duty officer can be engaged. The Jury determined that Napa County also trains their dispatchers to operate their warning system.

Effectiveness of Training Incident Commanders On the Use of the CWS

On November 2, 2023, firefighters from the Moraga-Orinda Fire District (MOFD) responded to a fire in the unincorporated area of Canyon. Once the incident commander determined that an evacuation warning should be sent to the impacted area, it took about 40 minutes for the warning to go out. Residents in the impacted area received the alert after the fire was under control, creating confusion among the residents. The alert was not sent within the 20-minute time frame determined by the Jury as appropriate for sending alerts such as this one. The additional time needed to draft and send the alert was due, in part, to uncertainty around which emergency response agency had authority to issue evacuation warnings or orders. Under California law only law enforcement officers can issue evacuation warnings or orders.

According to the after-action reports for the Wine Country fires and the Camp Fire a cause of delays getting alerts out was inadequate preparation and training of emergency responders in the use of their local warning systems. The US Department of Homeland Security has identified training as one of the ten best practices used to improve warning system operations, saying that

conducting trainings, exercises, and tests of warning systems with stakeholders and partners on a regular basis is needed to maintain proficiencies. Lessons observed from these activities can be evaluated, documented, and incorporated into future operations.

Current training on use of the CWS consists of a 14-minute video with 11 slides that describe the CWS, the alerting tools, and what an incident commander must do to send an alert. CWS staff sends the video annually to the fire and police agencies in the County. CWS staff does not solicit or receive confirmation from the intended recipients of the training that they have reviewed the training materials. Nor do the training materials contain any type of exam to determine how much of the information in the video has been retained or understood. As a result, there is a risk that an incident commander with an inadequate understanding of the process to initiate a CWS alert may require more time to initiate an alert relative to an incident commander with a complete understanding.

Although the CWS participates in evacuation drills organized by fire districts/departments in the County, the CWS does not otherwise conduct drills to test or practice just the CWS initiation process by first responders who may be in the position of incident commander during an emergency. Such drills or practice would be one mechanism to inform CWS staff on the effectiveness of its training on the use of the CWS by first responders.

The Sheriff's Office and CWS staff should implement a process to ensure that first responders in County agencies who take the CWS training certify that they have reviewed and understood the training materials. Such certification could include a brief, e.g., 5 minutes, questionnaire to test their understanding of the CWS alert initiation process.

Why People Do Not Receive Intended Alerts

The after-action reports from the Camp Fire and Wine Country fires describe instances of warnings being sent but not received or received far too late for the intended recipients to take the actions directed by the notifications. Two evacuation drills in the city of Richmond in 2022 and 2023 resulted in half of the drill participants claiming they should have received a drill alert but did not, or received the alert hours later after the drill was completed. No study was conducted to verify or understand these claims.

The CWS has not conducted any tests of its system to determine the extent to which alerts are actually received or received too late for people to take action. As a result, the CWS does not know what corrective actions may be needed to ensure that alerts and notifications are capable of reaching all the intended recipients in time to take action.

Risk Analysis of the CWS

The CWS staff continually evaluates its systems and processes for operational risks. The County has not conducted a comprehensive risk analysis of the CWS by an independent third party since the County took control of the CWS in 2001.

Subsequent to the Camp Fire and the Wine Country fires both Sonoma and Butte counties engaged external parties to evaluate their emergency response processes during those fires. Butte county engaged a firm, Constant Associates, to prepare an after-action report on the Camp

Fire. Sonoma county requested the California State Office of Emergency Services tconduct an independent review of that county’s emergency notification process and response to the October 2017 fires in Sonoma County. The reports for both counties described problems with the warning systems in those counties and made recommendations to remediate those problems.

Contra Costa County should not wait for risks to be identified whenever some part of its warning system fails in an actual emergency. A third party with broad, national and/or international experience in public warning systems and risk analysis should be commissioned to conduct a comprehensive risk analysis of the CWS, its hardware, software, procedures, and processes. Such a risk analysis would also identify potential mitigation measures for the identified risks. Funding for such a risk analysis could be provided under Measure X.

Oversight of the CWS

The current process for improving the design and operation of the CWS for alerts not related to releases of hazardous chemicals resides within the Sheriff’s Office, Emergency Services Division (ESD). ESD interacts with the other emergency response agencies in the County that have an interest in the functioning of the CWS. However, the Jury determined the current process lacks a formal CWS advisory body that could routinely engage emergency response experts from the various fire and police districts/departments in the County who could provide insights and advice to improve the design and operation of the CWS.

The issues discussed about the CWS in this report are the types of issues appropriate for identification and resolution by a CWS advisory body.

A logical place for such an advisory body is within the County’s Emergency Services Policy Board (ESPB). The ESPB is an advisory board to the County’s Chief Administrative Officer that provides assistance and advice on emergency preparedness planning efforts, and the coordination of those planning efforts, throughout the County. The ESPB reviews and makes recommendations on emergency and mutual aid plans and agreements, and on any ordinances, resolutions and regulations that are necessary to implement those plans and agreements. The County Administrator serves as the chair, and the Sheriff serves as the vice-chair of the ESPB. Other members include the following: County Counsel; Director, Public Works; Director, Health Services; Fire Chief, Contra Costa County Fire Protection District; Risk Manager; Director, Department of Conservation and Development, Director, Employment and Human Services; County Superintendent of Schools or designee; Director, Information Technology; and a Representative from the Public Managers' Association.

The ESPB has met once annually from 2015 through 2023 with the exception that no meetings were held in 2020 and 2021 due to the pandemic. A review of the meeting agenda packets shows the CWS was not an agenda item in any of those years.

The ESPB itself is not an appropriate vehicle or process to explore and identify improvements to the CWS. The Jury determined that the telecom technologies, software, and processes used by the CWS change rapidly. A more appropriate vehicle and process is an ad-hoc subcommittee of the ESPB that meets at least quarterly, and that would bring together emergency response experts from around the County to advise on improvements to the CWS.

FINDINGS

- F1. The CWS is used in response to emergencies in the County.
- F2. About 30% of County residents have created a CWS account and entered their contact data.
- F3. The approximately 70% of residents who haven't registered with CWS may not receive any alerts in the event that other alerting tools not reliant on registration in the CWS – WEA, radios, and TVs – are not activated.
- F4. Additional redundancies in the processes and operation of the CWS can increase the potential for more people to receive timely alerts.
- F5. To enable the redundancy of other alerting tools – sending recorded voice messages to cell and VoIP phones, text messages, and emails – the contact data for these devices must be registered in the CWS.
- F6. Phone numbers and associated physical addresses can be loaded into the CWS for all businesses and residents in the County from the various telecom providers that serve the County.
- F7. In an opt-out warning system, County residents and businesses that do not want their phone and/or email data in the CWS can request to have their data removed.
- F8. The reliance of the CWS on voluntary registration creates a risk that too few residents will register their phones and email in CWS.
- F9. An opt-out system would incur annual costs for data subscriptions on the order of \$100,000.
- F10. An opt-out system would incur an initial cost to educate residents and businesses of the CWS system change on the order of \$500,000.
- F11. Outdoor warning systems supplement other warning tools by providing acoustic (voice or siren sounds) to people who are outdoors.
- F12. Long Range Acoustic Devices (LRADs) can broadcast audible instructions to people outdoors when cell phones and other alert-receiving devices may not be working or heard.
- F13. A sound study is needed to evaluate where, if at all, LRADs might be effective in Contra Costa County.
- F14. Sites where LRADs could be located would need to be identified for any areas in which LRADs are found to be effective.
- F15. The County would incur a cost for a sound study on the feasibility to deploy LRADs within the County.

- F16. There is no estimate of the cost for an independent, third party to conduct a feasibility study for the use of LRADs within the County.
- F17. LRADs would be part of the County's emergency response warning tools.
- F18. Costs related to emergency response can be funded from Measure X revenue.
- F19. At all times, one of the three CWS employees is the designated on-call duty officer who responds to requests for activation of the CWS.
- F20. In the event of disasters such as fast-moving wildfires, a reasonable time for alerts to be sent to the public is within 20 minutes of when the incident commander contacts the CWS duty officer.
- F21. Once the CWS duty officer is contacted by the Sheriff's dispatch center the CWS duty officer has up to 10 minutes to call the incident commander.
- F22. In the event the CWS duty officer is not reached after two attempts to contact them, the dispatch center attempts to contact a backup person to the duty officer.
- F23. Additional time is required to contact CWS backup personnel and have them get to a computer and establish a secure connection into the CWS.
- F24. In the event the CWS duty officer is not reached after two attempts by the dispatch center to contact them, the time required to contact backup personnel to the on-call CWS duty officer is uncertain.
- F25. Reliance on a single person to operate the CWS, the on-call CWS duty officer, creates a risk that alerts and notifications could be delayed.
- F26. Two evacuation drills in the city of Richmond in 2022 and 2023 resulted in half of the drill participants claiming they should have received a drill alert but did not, or received the alert hours later after the drill was completed.
- F27. The CWS did not conduct any studies to verify or understand the claims Richmond evacuation drill participants made that they should have received a drill alert but did not, or received the alert hours later after the drill was completed.
- F28. The CWS is not tested to determine the extent to which people actually notice, read, or hear alerts sent by the CWS.
- F29. The CWS staff evaluates its systems and processes for risks.
- F30. The County has not engaged a firm with expertise in risk analysis of community warning systems to conduct a comprehensive risk analysis of the CWS since the County took control of the system in 2001.
- F31. The current process for improving the design and operation of the CWS for alerts not related to releases of hazardous chemicals resides within the Sheriff's Office.

- F32. There is no formal body or process that brings together emergency response experts from emergency response agencies in the County to focus and advise solely on the design and operation of the CWS.
- F33. The functioning and effectiveness of the CWS can be improved, and operational risks reduced, with the implementation of a CWS advisory body.
- F34. The Emergency Services Policy Board (ESPB) can create subcommittees, such as a CWS advisory committee.
- F35. The CWS staff provides training materials to the fire districts/departments, police departments, and dispatch centers in the County on the use of CWS, its tools, types of warnings, activation, and information needed by the CWS duty officer.
- F36. The CWS staff does not have a process to determine if the recipients of the training it provides to the first responders of the fire districts/departments, police departments, and dispatch centers who receive the training materials on CWS have read and understood the training materials.

RECOMMENDATIONS

- R1. By March 31, 2025, the Board of Supervisors should develop a plan to modify the CWS so that it automatically registers all available contact data for all County residents and businesses into its system and provides a mechanism for residents and businesses to opt out of the automatic registration process.
- R2. By December 31, 2025, the Board of Supervisors should complete the implementation of the plan to modify the CWS so that it automatically registers all available contact data for all County residents and businesses into its system and provides a mechanism for residents and businesses to opt out of the automatic registration process.
- R3. By December 31, 2024, the Board of Supervisors should commission a sound study by an independent, third party to determine the feasibility of deploying LRADs in any areas of the County.
- R4. By June 30, 2025, the Office of the Sheriff should train employees in the Sheriff's dispatch center to operate the CWS.
- R5. By March 31, 2025, the Office of the Sheriff should implement a plan to conduct testing of the CWS to determine the causes of the failure of CWS alerts to reach all the intended recipients of test alerts within 10 – 20 minutes of the time the alert is sent.
- R6. By June 30, 2025, the Board of Supervisors should execute a contract with a third-party consulting firm to conduct a comprehensive risk analysis of the CWS, including its processes, procedures, contracts, hardware, and software.

- R7. By March 31, 2025, the Board of Supervisors should direct the County's Chief Administrative Officer to establish a CWS advisory subcommittee of the Emergency Services Policy Board.
- R8. By June 30, 2025, the Office of the Sheriff should implement a process to ensure that first responders in County agencies who take the CWS training certify they have reviewed and understood the training materials.

REQUEST FOR RESPONSES

Pursuant to California Penal Code § 933(b) et seq. and California Penal Code § 933.05, the 2023-2024 Contra Costa County Civil Grand Jury requests responses from the following governing bodies:

Responding Agency	Findings	Recommendations
Board of Supervisors	F1 – F18, F29 - F33	R1 – R3, R6, R7
Office of the Sheriff	F19 – F28, F34 – F36	R4, R5, R8

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

A Report of The 2023 – 2024 Contra Costa County Civil Grand Jury

Report 2403

June 6, 2024

Construction-Related Accessibility Standards and the Department of Conservation and Development



Civil Grand Jury reports are posted at: <https://www.cc-courts.org/civil/grand-Jury-reports.aspx>

**A Report of
The 2023 – 2024 Contra Costa County
Civil Grand Jury**

Report 2403

June 6, 2024

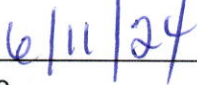
**Construction-Related Accessibility Standards and the
Department of Conservation and Development**

APPROVED BY THE GRAND JURY

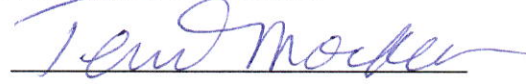

JOANNE SARMENTO

GRAND JURY FOREPERSON

Date



APPROVED FOR FILING



Hon. TERRI MOCKLER

JUDGE OF THE SUPERIOR COURT

Date



SUMMARY

Businesses are required to make their facilities accessible to people with disabilities. The California Construction-Related Accessibility Standards Compliance Act, along with other statutes, helps California businesses comply with state and federal accessibility standards. One requirement of this Act is that “a public agency shall employ or retain at least one building inspector who is a certified access specialist.” A certified access specialist (CAsp) is a person who has met criteria specified by the California Division of the State Architect (DSA) for knowledge of “standard acts governing access to buildings for persons with disabilities.” The CAsp certification process verifies that a CAsp has a detailed knowledge of accessibility standards.

In Contra Costa County, the building department for the unincorporated areas of the county and cities that do not have their own building departments, is part of the Department of Conservation and Development (DCD). Except for a three-month period in 2021, DCD did not employ or retain a CAsp during the ten-year period preceding this Grand Jury investigation.

The building department policy is to follow the California Building Code which includes accessibility requirements. DCD trains building department staff in accessibility. The CAsps that DCD has retained since 1/1/2024 are available for consultation by building department staff.

This report recommends that the Board of Supervisors (BOS) investigate whether DCD is using best practices to enforce accessibility standards in commercial buildings in the areas of the county where it has jurisdiction.

METHODOLOGY

In the course of its investigation, the Grand Jury:

- Interviewed personnel in county agencies, building contractors, certified access experts and a building official in another jurisdiction.
- Reviewed Federal, California, and County law and standards.
- Reviewed policies and procedures and other information from DCD and County Auditor/Controller.

BACKGROUND

Unruh Act and the Americans with Disabilities Act

Facilities that are designed for able-bodied people may not be accessible to people with disabilities. In California, the 1959 Unruh Act prohibits unlawful discrimination based on many factors, including disability. In 1992, the federal Americans with Disabilities Act (ADA) established rules for eliminating barriers for people with disabilities. Both acts were modified later, and interpretations of their requirements have been updated. Construction-related accessibility

requirements are included in Chapter 11B of the California Building Code, Title 24 of the California Code of Regulations.

The Unruh Act says it is illegal to discriminate against disabled people. The ADA addresses what disabled people should be able to access, and the California Building Code identifies the construction-related features required to allow that access.

Public accommodations are businesses, including private entities, that are open to the public or provide goods and services to the public. A place of public accommodation that does not comply with these standards is out of compliance with the ADA and is potentially liable for civil penalties. The purpose of the Unruh Act and the ADA is to make businesses accessible to people with disabilities. Accessibility standards include such details as the number and design of handicapped parking spaces in a parking lot; rules for paths of travel including allowable slopes; rules for opening doors or actuating equipment; dimensions of handicapped toilets and including heights of toilets and paper towel holders. Businesses that are out of compliance with accessibility standards are vulnerable to lawsuits.

The Division of the State Architect

The primary function of the Division of the State Architect (DSA) is to provide design and construction oversight for K-12 schools, community colleges, and various other state-owned facilities. It also administers the CASp program which was designed to meet the public's need for experienced, trained, and tested individuals who can perform inspections for construction-related accessibility to places of public accommodation. This program is implemented through different parts of state law, some of which are summarized below.

- DSA implemented a program for certifying CASps. (Government Code Section 6959.5). Pass rates in the CASp exam are not high. 39% of the candidates taking the February 2014 exam became CASps. There are approximately 900 CASps in California.
- If businesses that have been “inspected by a CASp” are sued for non-compliance they are “qualified defendants” and have legal benefits. (Civil Code Section 55.52 (a) (8).
- Public agencies are required to employ or retain at least one building inspector who is a CASp as of 2010 (Civil Code Section 55.53(d)(1)), and a sufficient number of CASps to conduct permitting and plan check services as of 2014. (Civil Code Section 55.53(d)(2)), see Appendix 1.
- The additional cost of employing or retaining CASps can be recouped from permit fees. (Civil Code Section 55.53(d)(3)), see Appendix 1.
- A percentage of a fee added to business license applications and some building permit applications is deposited in an accessibility compliance fund which can be used for training CASps. (Government Code Section 4467), see Appendix 2.
- An informational notice is required to be given to applicants for new and renewed business licenses about disability access laws, which encourages consultation with a CASp. (Government Code Section 4469), see Appendix 2.

- An informational notice is required to be given to applicants for commercial building permits about disability access laws, which encourages consultation with a CASp before and after construction. Government Code Section 4469.5), see Appendix 2.

DSA also contributed to the California Building Code Section 11B, Accessibility to Public Buildings, Public Accommodations, Commercial Buildings and Public Housing. This Building Code contains the standards California building departments follow to make places of public accommodations accessible to disabled people.

DCD has not employed or retained a CASp, except for one three-month period, between June 2013 and January 2024. On January 1, 2024, DCD retained one CASp to train five DCD staff to become CASps.

DISCUSSION

DCD Compliance with Accessibility Regulations

DCD compliance is summarized in Table 1.

- DCD has not consistently employed or retained a CASp building inspector, or a sufficient number to conduct permitting and plan check services since 2014.
- The Accessibility Compliance Fund, which has been financed with fees collected from business owners, has retained the majority of the money collected, while less than 28% has been used to improve accessibility compliance.
- The informational notice about disability access laws that is to be provided to applicants for building permits for commercial buildings was not being provided as of 12/31/2023.

The Grand Jury investigation determined that:

- Review by a CASp-certified individual is not required for any project permitted by the County.
- DCD staff have been trained in accessibility standards of the Building Code but have not yet been certified.
- The Grand Jury has not been able to independently confirm that this training is adequate as no member of staff has been certified as a CASp by DSA.
- The law requires that DCD employs or retains at least one building inspector who is a CASp, and a sufficient number of CASps to conduct permitting and plan check services.
- Until 2014 DCD has not had CASps consistently available to do inspections or conduct permitting and plan check services so did not have a procedure for involving CASps in building inspections or plan check services.
- The number of CASps that is “sufficient” has not been determined.

Table 1: DCD Compliance with Accessibility Regulations			
Requirement	Code Section	Start Date (End Date)	Compliance
A local agency shall employ or retain at least one building inspector who is a CASp.	CIV 55.53(d) (1)	1/1/2010 (None)	CASps were employed from 7/23/2010 to 6/8/2013 and 6/21/2021 to 9/21/2021. One CASp retained from 1/1/2024 to present.
A local agency shall employ or retain a sufficient number of CASps to conduct permitting and plan check services.	CIV 55.53 (d)(2)	1/1/2014 (None)	No CASps have been employed or retained to conduct permitting and plan check services since 6/8/2013. The CASp employed in 2021 was a building inspector.
A local agency may additionally charge or increase... fees to the extent necessary to offset the costs of complying with this subdivision.	CIV 55.53 (d)(3)	1/1/2010 (None)	Existing DCD Access Compliance Fees are listed in Table 3.
\$1.00 Fee added to new and renewed business licenses.	GOV 4467 (a)(1)	1/1/2013 (1/1/2018)	Unknown
\$4.00 Fee added to new and renewed business licenses.	GOV 4467 (a)(2)	1/1/2018 (None)	See Table 2
85% of additional fee to be added to "Accessibility Compliance Fund." See Table 2.	GOV 4467 (b)(1)	1/1/2013 (None)	The fund is to be used for training and certifying CASps, to facilitate compliance, or financial assistance to small businesses. DCD had used less than 28% of the available funds as of 12/31/2022.
An informational notice to be provided to applicants for new and renewed business licenses and some building permits about disability access laws.	GOV 4469, GOV 4469.5	1/1/2013 (None)	DCD has not been providing the required notices to building permit applicants. The Auditor-Controller-Tax Collector Department provides notices to business license applicants.

- The Grand Jury recognizes the DCD decision to employ or retain at least one building inspector who is a CASp as of 1/1/2024, and notes that DCD is required by law to retain one building inspector who is a CASp until an employee is certified as a CASp.
- The Grand Jury cannot independently verify that DCD staff, working without a CASp, is capable of reviewing building plans for accessibility requirements, or how many CASps would be a sufficient number to conduct permitting and plan check services. The Grand Jury recommends that independent experts be retained to address these questions.

• Table 2 – Accessibility Compliance Funding Reporting by the Auditor/Controller

Year	Total Income	Sent to DSA	Administrative Costs	Training Expenditures	Retained
2018	\$21,652	\$2,165	\$974	\$0	\$18,512
2019	\$21,652	\$2,165	\$974	\$10,149	\$8,363
2020	\$20,460	\$2,046	\$921	\$2,257	\$15,237
2021	\$21,184	\$2,118	\$953	\$4,635	\$13,477
2022	\$19,768	\$1,977	\$890	\$7,585	\$9,317
Total	\$104,716	\$10,472	\$4,712	\$24,626	\$64,906

Informational Notices

The Grand Jury has learned that DCD is now providing the informational notices about accessibility laws that are required by Government Code Section 4469.5.

Funding Considerations

The recommendations in this report are for functional reviews of the DCD organization with little, if any, cost. The accessibility compliance fund or building permit fees are both possible sources of funding if required.

The additional cost of employing or retaining CASps can be recouped from permit fees. (Civil Code Section 55.53(d)(3)), see Appendix 1. The revenue generated from permit fee increases shall be used solely to offset the costs incurred to comply with this sub-division. (Civil Code Section 55.53). A review of the effective use of CASps in the building department is a cost of implementing this code section.

Alternatively, the Accessibility Compliance Fund may be used to facilitate compliance with construction-related accessibility requirements. A review of the effective use CASps in the building department meets this requirement.

FINDINGS

- F1. Civil Code Section 55.53 (d)(1) requires public agencies to employ or retain at least one building inspector who is a CASp.
- F2. Contra Costa County is a public agency covered by this Civil Code Section.
- F3. DCD did not comply with Civil Code Section 55.53 (d)(1) between 6/8/2013 and 6/21/2021 or between 9/21/2021 and 12/31/2023.
- F4. Civil Code Section 55.53 (d)(2) requires public agencies to employ or retain a sufficient number of CASps to conduct permitting and plan check services, effective 1/1/2014.
- F5. CASps currently retained by DCD are available for consultation on accessibility requirements.
- F6. DCD does not have a procedure for any CASps to conduct permitting and plan check services in the building permit approval process.
- F7. Government Code Section 4469.5 requires public agencies to provide an informational notice about accessibility laws to applicants for building permits for additions, alterations, and structural repairs to commercial property, or building permits for new construction of commercial property. This notice encourages business permit applicants to consult CASps.
- F8. DCD was not providing the informational notice required by Government Code Section 4469.5 as of 12/31/2023.
- F9. The law requires that moneys in the Accessibility Compliance Fund shall be used for increased certified access specialist (CASp) training and certification within that local jurisdiction and to facilitate compliance with construction-related accessibility requirements.
- F10. DCD, as of 2022, had used less than 28% of the Accessibility Compliance Fund. The expenditure was used for training.
- F11. The staff being trained for CASp certification are primarily senior staff and may not be involved in most construction-related accessibility reviews.
- F12. The Grand Jury has not been able to independently verify that DCD staff have been adequately trained to review building plans and building inspections for compliance with the accessibility requirements in the Building Code as none have been certified by DSA.
- F13. Building permit fees and the Accessibility Compliance Fund are both allowable sources of funding for review of the effective use of CASps in the building department.

RECOMMENDATIONS

R1. By December 31, 2024, the Board of Supervisors should consider commissioning an independent CASp review of how DCD is ensuring that the building permit process enforces federal and state accessibility requirements.

R2. By December 31, 2024, the Board of Supervisors should consider commissioning an independent CASp review to determine how many CASps is a sufficient number to conduct permitting and plan check services at DCD.

R3. By March 31, 2025, the Board of Supervisors should consider directing DCD to employ or retain the sufficient number of CASps to conduct permitting and plan check services.

R4. By September 30, 2024, the Board of Supervisors should consider directing DCD to report to the County Administrator periodically to confirm the number of CASps employed or retained.

R5. By December 31, 2024, the Board of Supervisors should consider directing DCD to have a procedure in the building permit approval process that identifies those situations where a CASp review is required.

R6. By September 30, 2024. The Board of Supervisors should direct DCD to develop the informational notice required by California Code 4469.5 for current and new commercial building permit applications.

R7. By September 30, 2024. The Board of Supervisors should direct DCD to provide the informational notice required by California Code 4469.5 to current and new commercial building permit applications.

REQUEST FOR RESPONSES

Pursuant to California Penal Code 933(b) et seq/ and California Penal Code 933.05, the 2023-2024 Contra Costa County Civil Grand Jury requests responses from the following governing bodies:

Required Responses

Responding Agency	Findings	Recommendations
Board of Supervisors	F1-F13	R1-R7

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

Appendix 1

Construction-Related Accessibility Standards Compliance Act

Civil Code Section 55.53 (d)

(d) (1) Commencing July 1, 2010, a local agency shall employ or retain at least one building inspector who is a certified access specialist. The certified access specialist shall provide consultation to the local agency, permit applicants, and members of the public on compliance with state construction-related accessibility standards with respect to inspections of a place of public accommodation that relate to permitting, plan checks, or new construction, including, but not limited to, inspections relating to tenant improvements that may impact access. If a local agency employs or retains two or more certified access specialists to comply with this subdivision, at least one half of the certified access specialists shall be building inspectors who are certified access specialists.

(2) Commencing January 1, 2014, a local agency shall employ or retain a sufficient number of building inspectors who are certified access specialists to conduct permitting and plan check services to review for compliance with state construction-related accessibility standards by a place of public accommodation with respect to new construction, including, but not limited to, projects relating to tenant improvements that may impact access. If a local agency employs or retains two or more certified access specialists to comply with this subdivision, at least one-half of the certified access specialists shall be building inspectors who are certified access specialists.

(3) If a permit applicant or member of the public requests consultation from a certified access specialist, the local agency may charge an amount limited to a reasonable hourly rate, an estimate of which shall be provided upon request in advance of the consultation. A local government may additionally charge or increase permitting, plan check, or inspection fees to the extent necessary to offset the costs of complying with this subdivision. Any revenues generated from an hourly or other charge or fee increase under this subdivision shall be used solely to offset the costs incurred to comply with this subdivision. A CASp inspection pursuant to subdivision (a) by a building inspector who is a certified access specialist shall be treated equally for legal and evidentiary purposes as an inspection conducted by a private CASp. Nothing in this subdivision shall preclude permit applicants or any other person with a legal interest in the property from retaining a private CASp at any time.

Appendix 2

Extracts from Government Code Sections 4465-4470

CHAPTER 7.5. Disability Access and Education

Government Code Section 4467

(a) (1) On and after January 1, 2013, through December 31, 2017, inclusive, any applicant for a local business license or equivalent instrument or permit, and from any applicant for the renewal of a business license or equivalent instrument or permit, shall pay an additional fee of one dollar (\$1) for that license, instrument, or permit, which shall be collected by the city, county, or city and county that issued the license, instrument, or permit.

(2) On and after January 1, 2018, the following shall apply:

(A) Any applicant for a local business license or equivalent instrument or permit, and any applicant for the renewal of a business license or equivalent instrument or permit, shall pay an additional fee of four dollars (\$4) for that license, instrument, or permit, which shall be collected by the city, county, or city and county that issued the license, instrument, or permit.

(B) In any city, county, or city and county that does not issue a business license or an equivalent instrument or permit, an applicant for a building permit shall pay an additional fee of four dollars (\$4) for that building permit, which the city, county, or city and county that issued the building permit shall collect.

(b) (1) The city, county, or city and county shall retain 90 percent of the fees collected under this section, of which up to 5 percent of the retained moneys may be used for related administrative costs of this chapter. The city, county, or city and county shall deposit the remaining moneys in a special fund, established by the city, county, or city and county to be known as the "Accessibility Compliance Fund." The moneys in the fund shall be used for increased certified access specialist (CAsp) training and certification within that local jurisdiction and to facilitate compliance with construction-related accessibility requirements, to include providing financial assistance to small businesses for construction of physical accessibility improvements. The highest priority shall be given to the training and retention of certified access specialists to meet the needs of the public in the jurisdiction as provided in Section 55.53 of the Civil Code.

((c) The remaining amount of all fees collected under this section and not retained by the city, county, or city and county pursuant to subdivision (b) shall be transmitted on a quarterly basis to the Division of the State Architect for deposit in the Disability Access and Education Revolving Fund established under Sections 4465 and 4470. The funds shall be transmitted within 15 days of the last day of the fiscal quarter. The Division of the State Architect shall develop and post on its internet website a standard reporting form for use by all local jurisdictions. Up to 75 percent of the collected funds in the Disability Access and Education Revolving Fund shall be used to establish and maintain oversight of the CAsp program and to moderate the expense of CAsp certification and testing.

Government Code Section 4469

(a) On and after January 1, 2013, each city, county, or city and county shall provide to an applicant for a business license or equivalent instrument or permit and to an applicant for the renewal of a business license or equivalent instrument or permit, the following information:

“Under federal and state law, compliance with disability access laws is a serious and significant responsibility that applies to all California building owners and tenants with buildings open to the public. You may obtain information about your legal obligations and how to comply with disability access laws at the following agencies:

The Division of the State Architect at www.dgs.ca.gov/dsa/Home.aspx.

The Department of Rehabilitation at www.rehab.cahwnet.gov.

The California Commission on Disability Access at www.cdda.ca.gov.”

(b) In addition to the information described in subdivision (a), on and after January 1, 2024, each city, county, or city and county, in a separate document at least 8½ inches by 11 inches in size, shall provide to an applicant for a business license or equivalent instrument or permit and to an applicant for the renewal of a business license or equivalent instrument or permit, the following statement, the heading and first paragraph of which shall be written in a 28-point font, and the second of which shall be written in an 18-point font:

“MANDATORY ADA DISCLOSURE

ATTENTION: You may be subject to liability for failure to meet your legal obligation to comply with state and federal disability access laws. The recent issuance or renewal of a business license or equivalent instrument or permit does not mean that your business has been determined to be in compliance with state and federal disability access laws.

Please see the attached materials for more information.

ENSURING EQUAL ACCESS TO YOUR BUSINESS

The State of California wants to ensure that all people have equal access to public and private services. Many people with disabilities do not have equal access to services because many business owners do not take the time to ensure that their businesses are accessible. Some common problems disabled people encounter are:

- (1) The building has architectural barriers that make it difficult or impossible for someone using a wheelchair, walker, or other mobility device to get inside or move around.
- (2) The business uses a website that does not work with screen reading devices and other assistive technology.
- (3) The business does not allow people with disabilities to enter the building with their service animals.
- (4) The staff do not receive ADA training and do not know about the requirements to modify practices or to provide auxiliary aids and services.

As the operator of a business, it is your responsibility to ensure that your business provides equal access to people with disabilities. Refusing to make your business accessible is discrimination under state and federal law. People with disabilities and the government have the right to sue businesses that discriminate.

The best way to protect yourself from a lawsuit is to make your business accessible. Here are some important steps you should take:

(1) Schedule an inspection with a Certified Access Specialist. A Certified Access Specialist (CASP) is a person who the State of California recognizes as having specialized knowledge of accessibility standards. They can inspect your business and tell you what changes you need to make for your business to be accessible to disabled people. Getting a CASp inspection has important benefits, like giving you extra protection in a lawsuit.

To find a CASp in your area, contact the CASp Program at the Division of the State Architect. You can also visit www.apps2.dgs.ca.gov/DSA/casp/casp_certified_list.aspx. Additionally, you should contact your local government and ask what resources it has to help businesses comply with disability access laws. The State of California makes money available to local governments to create programs that help business owners comply with disability access laws.

(2) Learn about accessibility laws from reliable sources. There is a lot of misinformation about accessibility laws. Get information about your rights and responsibilities as a business owner from reliable, trustworthy sources. California has several agencies that provide fact sheets, trainings, and other educational materials about accessibility. In fact, one of these agencies, the California Commission on Disability Access, was created by the Legislature for the purpose of helping businesses comply with accessibility laws. You should contact the following agencies and ask for information on how to comply with accessibility laws:

The California Commission on Disability Access: www.cdda.ca.gov.

The Division of the State Architect: www.dgs.ca.gov.

The Department of Rehabilitation: www.dor.ca.gov.

(3) Making your business accessible is good for everyone. It makes your business available to more customers. It also promotes fair and equal access. We thank you for doing your part to help make California a great place for everyone!"

(Amended by Stats. 2023, Ch. 76, Sec. 1. (SB 748) Effective January 1, 2024.)

Government Code Section 4469.5.

(a) In addition to the information required by Section 4469, each city, county, or city and county that issues business licenses, building permits for additions, alterations, and structural repairs to commercial property, or building permits for new construction of commercial property, shall make readily available, and, upon submission to the city, county, or city and county of an application for a business license or building permit, shall provide to the applicant, an informational notice to the applicant containing all of the following:

(1) General information about the compliance requirements pursuant to the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.) and the state's disability access laws.

(2) An advisory to the applicant for a building permit that strongly encourages the applicant to do both of the following:

(A) Obtain a consultation by a Certified Access Specialist (CAsp) before alteration or construction in order for the property to be in compliance with disability access laws after the work is completed, so that the applicant can benefit from the advantages of compliance.

(B) Obtain an inspection by a Certified Access Specialist (CAsp) after alteration or construction in order to benefit from the legal protections afforded business and property owners under the Construction-Related Accessibility Compliance Act (Part 2.52 (commencing with Section 55.51) of Division 1 of the Civil Code).

(3) An advisory to the applicant for a business license that strongly encourages the applicant to do both of the following:

(A) Obtain a consultation by a Certified Access Specialist (CAsp) before engaging in business on the premises in order for the property to be in compliance with disability access laws, so that the applicant can benefit from the advantages of compliance.

(B) Obtain an inspection by a Certified Access Specialist (CAsp) after beginning to engage in business on the premises in order to benefit from the legal protections afforded business and property owners under the Construction-Related Accessibility Compliance Act (Part 2.52 (commencing with Section 55.51) of Division 1 of the Civil Code).

(4) Information about how to locate CAsp inspectors, including a link to the Internet Web site of the State Architect where CAsp inspectors are listed, pursuant to Section 4459.8, by geographic area in which they provide or intend to provide services and information about how to obtain CAsp services.

(5) A notice of the federal and state programs that are available to assist small businesses with disability compliance and access expenditures, including, but not limited to, Section 44 of the Internal Revenue Code (disabled access credit for eligible small businesses); Section 190 of the Internal Revenue Code (deduction for expenditures to remove architectural and transportation barriers); the California Capital Access Program Americans with Disabilities Act Financing Program (CalCAP/ADA); and the Disabled Access Credit for Eligible Small Businesses specified in Sections 17053.42 and 23642 of the Revenue and Taxation Code.

(6) A link to the homepage and the resource page of the California Commission on Disability Access.

(b) The informational notice specified in subdivision (a) shall be translated and made available in all of the languages specified in paragraph (3) of subdivision (a) of Section 1632 of the Civil Code and shall be provided to the applicant in whichever format the building permit or business license application is required to be submitted.

(c) For purposes of this section, the term “commercial property” means property that is operating, or is intended to be operated, as a “place of public accommodation” as defined in Section 202 of Title 24 of the California Code of Regulations, or as a facility to which the general public is invited at those premises.

(d) (1) The Division of the State Architect shall develop a model notice that local agencies can use to comply with the requirements of this section.

(2) The Division of the State Architect shall post the model notice on the publicly available portion of the division’s Internet Web site.

(Added by Stats. 2018, Ch. 680, Sec. 2. (AB 3002) Effective January 1, 2019.)

A Report of The 2023 – 2024 Contra Costa County Civil Grand Jury

**Report 2404
June 10, 2024**

County Petroleum Refineries And Hazardous Material Releases

Improving The Hazmat Response



A Report of The 2023 – 2024 Contra Costa County Civil Grand Jury

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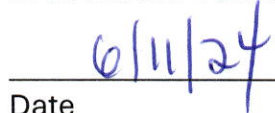
County Petroleum Refineries And Hazardous Material Releases

Improving The HazMat Response

APPROVED BY THE GRAND JURY



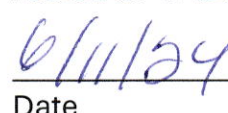
JOANNE SARMENTO
GRAND JURY FOREPERSON


Date

APPROVED FOR FILING



Hon. TERRI MOCKLER
JUDGE OF THE SUPERIOR COURT


Date

SUMMARY

Contra Costa County is home to four petroleum refineries. Petroleum refineries store and utilize hazardous materials that pose a potential health risk to the surrounding community. To "promote prompt and accurate reporting of releases or threatened releases of hazardous materials that may result in injury or damage to the community and/or the environment" the Contra Costa Health Services Hazardous Materials Program (HazMat) administers the Hazardous Materials Incident Notification Policy (HMINP), approved by the Board of Supervisors in 1991.¹ As part of HMINP, HazMat can activate the Community Warning System (CWS) to alert surrounding communities to the release of hazardous materials. CWS is a web-based alert and notifications system that is designed to be activated by the petroleum refinery, preferably using a computer terminal at its facility connected to a similar computer terminal at HazMat.² HMINP includes specific guidelines to be used by the petroleum refinery to advise HazMat whether a particular release or threatened release poses a health hazard to the community, and to assess and report to Hazmat the severity of the risk created by that particular release.

As noted in HMINP Attachment A-1, the Community Warning System does not provide any direct notification to the public of any hazardous materials release that is not expected to have off-site health consequences, defined in HMINP as Level One releases. Our investigation confirms that CWS could be modified to provide direct notification to the public through phone calls, text messages and emails even for Level One releases, and we have concluded that this change to HMINP should be considered by the Board of Supervisors.

Currently, CWS is an "opt-in" system. Residents must register their cell phones to receive notifications on those phones of reported releases or threatened releases of hazardous materials. We recommend that the county continue to acquire all available cell phone contact data for county residents, and that the Board of Supervisors develop a plan to provide for a system in which all cell phone numbers of county residents are automatically added to CWS to include an option for the resident to "opt-out" of the system should they choose to do so.

As a separate matter, the current staffing structure used by HazMat to respond to hazardous material releases is, according to HazMat, not as effective as it should be, and to address this deficiency three new supervisory positions should be added to the staff. In addition, HazMat should place a toxicologist on retainer. This may reduce the current delay in the public's understanding of the health impacts of a hazardous release incident. These four positions can be added at no additional cost to the county and these staff changes should be considered by the Board of Supervisors.

¹ Relevant portions of the Hazardous Materials Incident Notification Policy can be found at: <https://www.cchealth.org/home/showpublisheddocument/719/638240012037070000>

² The refineries, Marathon Petroleum, Martinez Renewable Fuels, the Chevron Richmond Refinery, Martinez Refining (PBF Energy), the Phillips 66 Refinery in Rodeo, and four other industrial plants in the county that use hazardous chemicals (Chemtrade Logistics, Richmond, EcoServices, Inc. Martinez, Corteva Agrisciences, LLC, Pittsburg and K2Pure Solutions, Pittsburg) have and can use the computer terminal at their facility, which is the preferred method, or use an emergency response pager or telephone to notify HazMat.

BACKGROUND

Contra Costa County is home to at least nine industrial chemical processing facilities; four of Northern California's five petroleum refineries are located in the county. The petroleum refineries have released potentially dangerous compounds into the air and ground, endangering county residents' health. It is the responsibility of HazMat to monitor the compliance of the petroleum refineries and other responsible businesses³ with existing safety regulations regarding their use of hazardous materials, to respond to hazardous materials release incidents, and to report and provide warnings to the public regarding releases of hazardous materials.

The HMINP Notification System for CWS

HMINP authorizes notices to be provided by phone calls to landline telephones, and to cell phones with text messages and emails to individuals who have registered their cell phones with CWS, as well as for postings to social media such as Facebook and X (formerly known as Twitter), and information banners posted on the website maintained by HazMat. Landline phone numbers are automatically available to CWS using the reverse 911 directory.

HMINP defines releases or threatened releases as follows:

- A Level One release is not expected to have off-site health consequences.
- A Level Two release is expected to go off-site and may have adverse health consequences for sensitive individuals including those with lung or heart disease, the elderly, and the very young.
- A Level Three release is expected to go off-site and may have adverse health consequences for the general public.

For a reported Level Two or Level Three release, HMINP provides notifications for members of the public who have registered their cell phones to receive messages from the system.⁴

CWS is used by the county to provide notifications to residents for all potential life-safety hazards, not just hazardous materials releases, but also for fires, earthquakes, floods, and law enforcement activities. CWS is maintained and operated within the county's Office of the

³ Defined in HMINP, Section III, as "facilities and other entities that have custody of the hazardous material at the time it is accidentally released or the facility where the release occurs."

⁴ Until May 2023, HMINP did not require text messages and emails be sent to registered cellphones for a Level Two release. As with Level One, only postings on social media and on the HazMat website were provided to the public. That policy was amended to provide for direct notifications for a Level Two release, and HazMat is to be commended for adding this important modification to HMINP.

Sheriff's Emergency Services Division. Residents must affirmatively register their cell phones with CWS directly to receive notifications on those devices.⁵

Every responsible business in the county, including the petroleum refineries, is legally required to immediately notify HazMat of any release of hazardous materials. This requires that the business set the initial classification level of the release. The county relies on the responsible businesses to comply with this HMINP policy so HazMat can provide accurate notifications to the affected communities.

Releases reported to HazMat occur frequently. As shown in Appendix One, in the thirteen months following November 2022, the four petroleum refineries in the county notified HazMat of 247 releases. These included flares, fires, and spills. This report focuses specifically on the petroleum refineries, but the findings can apply to all regulated responsible businesses in the county.

Development of an Opt-Out Registration for CWS

About 30% of county residents have registered with CWS with the result that the 70% of residents who have not registered may not receive any alerts or notifications. With an opt-out system, additional residents' cell phones would automatically be added to CWS to be used for any emergency or informational notification, and more residents would likely receive notices concerning hazardous material releases. The resident would then have the option to remove the cell phone number from the system. CWS is permitted by state law to obtain the necessary information from cell phone providers to compile the necessary data.⁶

When an incident occurs HazMat must be notified by the refinery, preferably from the remote computer terminal maintained at the refinery facility, or by emergency response pager or telephone. HazMat then consults with the refinery and may send 5 or 6 staff technicians to investigate and assess the incident on site. A refinery may categorize a hazardous release as only a Level One when it should have a higher classification. HMINP allows HazMat to change a Level One notification to a Level Two or Level Three, and this authority was used for a sulfur release from Martinez Refining Company (MRC) on December 15, 2023, due to noxious odors emitted from the facility as reported by the public.⁷ However, if an incident is not reported by a petroleum refinery to HazMat, it can be too late to activate CWS. The recent example is the unreported Thanksgiving 2022 release from MRC of an estimated 20 tons of spent catalyst used in their refining process. The release began on November 24 and continued into the early hours of November 25. HazMat learned of the release only from media accounts two days after it had

⁵ Notices can in very specific circumstances be automatically sent to unregistered cell phones directly from cell towers to phones within range of a tower or towers under the federal Wireless Emergency Alert System.

⁶ Government Code Section 8593.4 provides in relevant part: "(a) A local government may enter into an agreement to access the contact information of resident accountholders through the records of a public utility for the sole purpose of enrolling residents of that local government in a city-operated, county-operated, or city- and county-operated public emergency warning system."

⁷ <https://www.eastbaytimes.com/2023/12/15/health-advisory-goes-out-to-martinez-residents-after-suspected-flaring-at-refinery>

begun. Spent catalyst ash was found in the neighborhood surrounding MRC on cars and other outside surfaces. When HazMat learned of the release, the substance was no longer airborne and CWS was not activated. As analyzed by county and state investigators, including technicians from HazMat, and confirmed by lab reports, the release contained aluminum, barium, chromium, nickel, vanadium, and zinc. HazMat ultimately designated this release as a Level Two or higher. In January and March of 2023, HazMat advised residents on its website and through press releases not to eat produce from home gardens due to the release. A toxicology report was not commenced until May and not completed until June 8, 2023, approximately 6 months after the release. HazMat then issued an “all clear” notice for the home gardens. The release incident was classified under Section H. 3 of HMINP as a Major Chemical Accident or Release (MCAR), which accordingly authorized the establishment of an ad hoc Oversight Committee to provide an independent root cause analysis, incident investigation, and community exposure/risk assessment of this release by MRC.⁸

Notifications for Level One Incidents

There is recent evidence that members of the public who have registered their cell phones want more information from CWS regarding hazardous material releases than is currently provided. A survey was conducted by Contra Costa Health Services from December 15, 2023 to January 19, 2024 that received 560 responses from 61 zip codes, primarily in Martinez, Pittsburg, and Richmond. Approximately 87% of the survey respondents indicated they would like to receive direct information regarding CWS Level One incidents.⁹

On May 30, 2024, Contra Costa Health Services proposed to the ISO/CWS committee a modification to HMINP to provide for community awareness messaging for Level One incidents that include odor, audible impact, flaring lasting longer than 20 minutes or visible plumes off site. The proposal is currently under further review by HazMat as well as by the Office of the Sheriff's Emergency Services Division. HazMat is also to be commended for this initiative.¹⁰

Improvement of Staffing at HazMat

Concerning staffing, we have confirmed from public records that the Contra Costa Health agency which operates HazMat is approved by the Board of Supervisors to assess annual permit fees to

⁸ On January 5, 2023, HazMat asked the Contra Costa County District Attorney to take legal action against MRC for this unreported incident. On or about November 16, 2023, the District Attorney announced the commencement of a Joint Civil Enforcement Action against MRC. The conduct of MRC from November 2022 to December 2023, as listed in Appendix One, is not further addressed in this report which focuses on the resources and response capabilities of HazMat, HMINP, and CWS.

⁹ A Summary of Survey Results is attached as Appendix Two.

¹⁰ The proposal includes a new Level Zero notification policy posted solely on the Contra Costa Health Services website for hazardous material releases with no off-site impact of any kind.

the responsible businesses pursuant to the Contra Costa County Certified Unified Program Agency (CUPA) to cover the costs of administering the HazMat program, including HMINP.¹¹

CUPA fees have not been modified since 2012 and Contra Costa Health Services has hired an outside contractor to perform a CUPA fee study which is in draft status and currently not available for inclusion in this report. We have learned that the purpose of the new CUPA fee study is to support the request from Contra Costa Health Services for a change in its organizational structure to establish the job classification of Supervising Hazardous Materials Specialist and add three such positions to report directly to the Assistant Director of HazMat.

On February 22, Contra Costa Health Services made a detailed report to the Industrial Safety Ordinance/Community Warning System (ISO/CWS) committee of the Board of Supervisors describing the proposed new organizational structure. Contra Costa Health Services has provided the ISO/CWS committee with its assessment of the improvements the proposed new organizational structure and new staff positions would provide.

METHODOLOGY

We have reviewed documents provided by Contra Costa Health Services, materials posted on the websites maintained by HazMat, the Martinez City Council, the Board of Supervisors, and comments from the public made at open meetings of government officials. We have reviewed HMINP and interviewed both personnel from various county departments and an outside industry expert.

DISCUSSION

Development of an Opt-Out Registration System for CWS

Currently CWS is an opt-in system in which residents must affirmatively register their cell phones to receive notifications on those devices of reported releases or threatened releases of hazardous materials, a system that presently includes only about 30% of county residents. We have concluded that an opt-out system in which all cell phone numbers of county residents are automatically added to CWS can be implemented by acquiring from public and private agencies, as permitted by state law, cell phone contact data for county residents, and that the Board of Supervisors should use this data to develop a plan to provide for a system in which all cell phone numbers of county residents are automatically added to CWS. The plan would include an option for residents to opt out of the system should they choose to do so.

Notification of Level One Releases

In addition, and whether or not an opt-out system is adopted, the survey evidence now available supports a finding that members of the public who have already registered their cell phones want to receive information from CWS on Level One releases. Residents should be given the option to receive this additional information.

¹¹ HazMat also administers under CUPA, the California Accidental Release Prevention Program, the Underground Storage Tank Program, and the Aboveground Petroleum Storage Act Program pursuant to Health and Safety Code Section 25404.

Improvement of Staffing for HazMat

As reported to the ad hoc ISO/CWS committee of the Board of Supervisors, Contra Costa Health Services proposes adding three new Supervising Hazardous Materials Specialists. Under the current structure just one Supervisor, the Assistant Director of HazMat, oversees twenty (20) staff-level Hazard Materialist Specialists, making oversight difficult and hampering field operations if more than once incident occurs at the same time.

The proposed Supervising Hazardous Materials Specialists would respond and supervise 5 staff-level Hazardous Materials Specialists from among the 20 who are assigned to respond to a specific hazardous materials incident. The Supervising Hazardous Materials Specialists would have the authority to make binding decisions on what action to take in the field in response to a particular incident. The proposed specialists would report to the Assistant Director of HazMat, providing that Assistant Director with increased capacity to complete administrative tasks such as reviewing contracts for engaging third party services, such as a retained toxicologist, in lieu of supervising responses to hazardous materials incidents in the field.

Putting a Toxicologist on Retainer

Had a toxicologist been on retainer to HazMat, the impact of the Thanksgiving MRC release on home garden produce could have been resolved sooner. The estimate from HazMat is that having a toxicologist on retainer would have saved as much as three weeks' time to complete a report assessment of the health consequences to home garden produce as compared to the current system which includes no retained toxicologist.

Funding

Funding to change the process for collecting residents' contact data, the cost to modify HMINP, the cost to implement an opt-out registration system, and the retention of a toxicologist could be included in the new CUPA fee structure and/or be funded from Measure X revenue. Measure X is the countywide, 20-year, ½ cent sales tax approved by voters on November 3, 2020. The ballot measure language stated that the intent of Measure X is “to keep Contra Costa’s regional hospital open and staffed; fund community health centers, **emergency response**; support crucial safety-net services; invest in early childhood services; protect vulnerable populations; and for other essential county services.” (Bold added.) Modification to the CWS registrations system, HMINP, and retaining a toxicologist, would accordingly be an appropriate use of Measure X funds.

FINDINGS

- F1. An opt-out rather than an opt-in system for all cell phone numbers of county residents should increase the percentage of residents receiving accurate and timely information regarding hazardous material releases.
- F2. A Level One incident that may include flaring, fire/smoke/plume, odors, or other conditions that can be observed or sensed by the public off site is not presently reported by CWS to landline telephones or registered cell phones, and the system can be modified to do so.
- F3. Contra Costa Health Services has hired an outside contractor to perform a CUPA fee study which is in draft status and currently not available for inclusion in this report.
- F4. One purpose of the new CUPA fee study is to support the request from Contra Costa Health Services for a change in its organizational structure to establish the job classification of Supervising Hazardous Materials Specialist.
- F5. Contra Costa Health Services is in the process of receiving approval from the Board of Supervisors to add three Supervising Hazardous Materials Specialists to its staff.
- F6. Placing a toxicologist on retainer would enable Contra Costa Health Services to obtain a toxicology report needed for some hazardous material release incidents without the delay of the current procedure.

RECOMMENDATIONS

- R1. By March 31, 2025, the Board of Supervisors should develop a plan to modify CWS so that it automatically registers all available contact data for all county residents and businesses into CWS and provides a mechanism for residents and businesses to opt out of the automatic registration process.
- R2. By December 31, 2025, the Board of Supervisors should complete the implementation of the plan to modify CWS so that it automatically registers all available contact data for all county residents and businesses into CWS and provides a mechanism for residents and businesses to opt out of the automatic registration process.
- R3. By December 31, 2024, the Board of Supervisors should approve a modification to HMINP giving residents the option to receive awareness messaging from CWS for Level One incidents that can be observed or sensed by the public off site.
- R4. By December 31, 2024, the Board of Supervisors should consider approval of the request from Contra Costa Health Services to establish the job classification of Supervising Hazardous Materials Specialist.
- R5. By December 31, 2024, the Board of Supervisors should consider approval of the request from Contra Costa Health Services to add three Supervising Hazardous Materials Specialists to the staff at HazMat.
- R6. By December 31, 2024, the Board of Supervisor should consider approval of the retention on retainer of a toxicologist by Contra Costa Health Services.

R7. By December 31, 2024, the Board of Supervisor should consider approval of the new CUPA permit fee schedule proposed by Contra Costa Health Services

REQUEST FOR RESPONSES

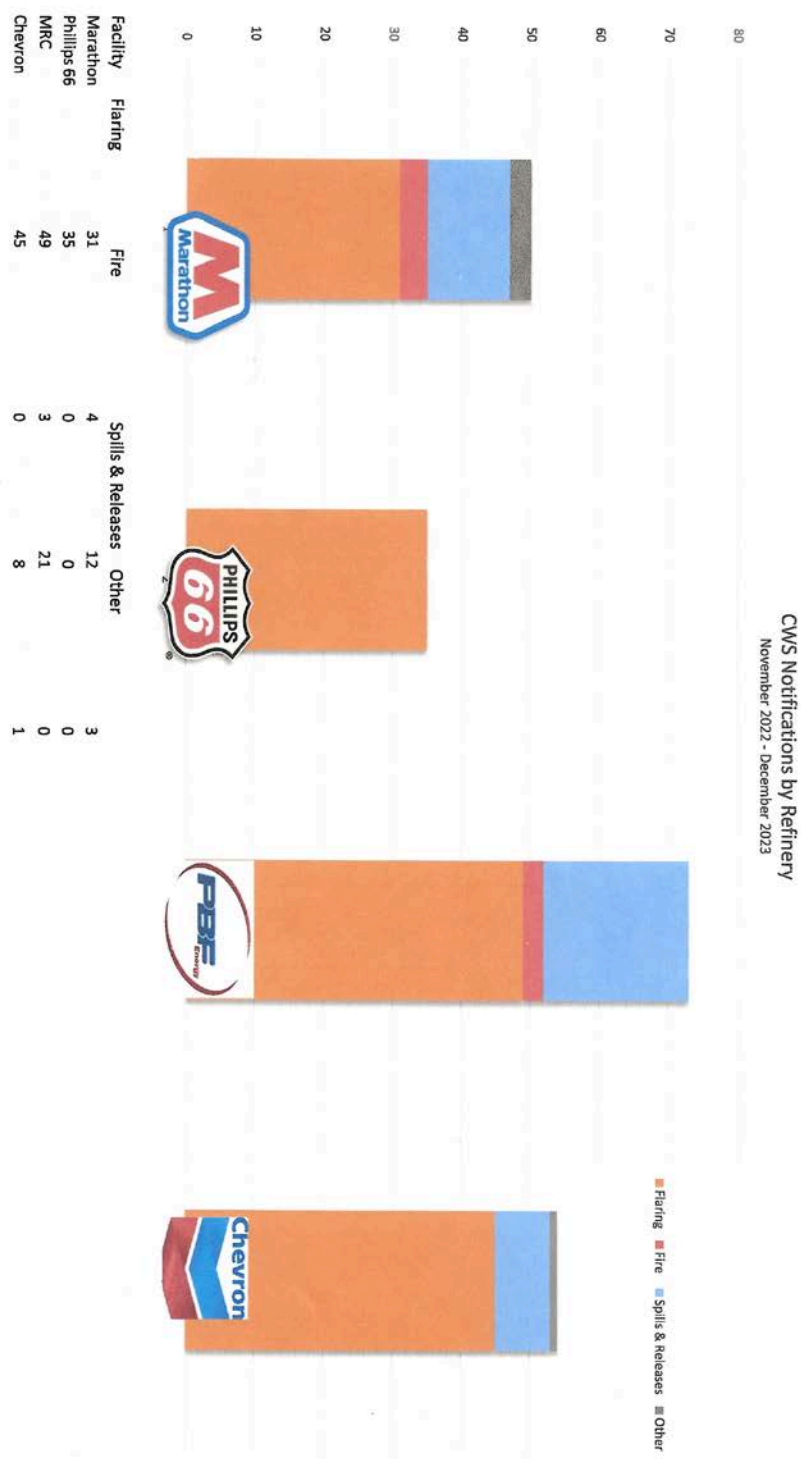
Pursuant to California Penal Code § 933(b) et seq. and California Penal Code § 933.05, the 2023-2024 Contra Costa County Civil Grand Jury requests responses from the following governing bodies:

Responding Agency	Findings	Recommendations
Board of Supervisors	F3, F4, F5, F6	R3, R4, R5, R6
Office of the Sheriff	F1, F2	R1, R2

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

APPENDIX ONE



APPENDIX TWO



Summary of Survey Results

- 86.7% of respondents indicated they would like to receive information regarding CWS Level 1 incidents – Question 8.
- 72.5% of respondent would be interested in receiving text messages; 33.9% would be interested in receiving emails – Question 9.
- 79.5% of respondents indicated they would like the ability to select how they are notified for each type of incidents (e.g., fires, chemical spills, smoke, leaks, odors, and flaring) – Question 10.
- 75.1% of respondents indicated they would like the ability to select how they are notified for each level of incident – Question 11.
- Opportunities exist for increasing public awareness and education as it pertains to the CWS.

A Report of The 2023 – 2024 Contra Costa County Civil Grand Jury

Report 2405
6/12/2024

Challenges Facing the City of Antioch

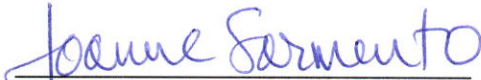


**A Report of
The 2023 – 2024 Contra Costa County
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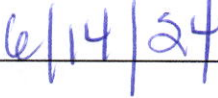
APPROVED BY THE GRAND JURY



JOANNE SARMENTO


GRAND JURY FOREPERSON

Date



6/14/24

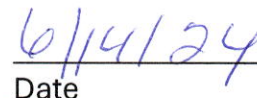
ACCEPTED FOR FILING



Hon. TERRI MOCKLER

JUDGE OF THE SUPERIOR COURT

Date



6/14/24

SUMMARY

Antioch is a dynamic and diverse city that faces a number of challenges. Among these challenges are:

1. Turnover in city leadership (six permanent or acting City Managers since 2013) which has resulted in an average tenure for Antioch City Managers that is less than half the state average (less than two years vs. 4.5-year average).
2. A city employee vacancy rate that is 4-times the national average (21.6% vs. 5.3%).
3. Possible Brown Act violations by the Mayor and certain City Council members, as outlined in a letter to Antioch's Acting City Manager from the Contra Costa District Attorney (see Appendix A).

An important first step in addressing the challenges facing Antioch will be stabilizing leadership by hiring an experienced and qualified City Manager. The city has hired a Human Resources consulting firm and is in the process of recruiting a City Manager. A new City Manager's success will depend, in part, on the Mayor and City Council creating an environment that while maintaining the oversight required by city ordinances, enables the City Manager to operate with independence, as also mandated by city ordinances. The Mayor and City Council should also perform their functions in compliance with the Brown Act.

This report details the Grand Jury's research and findings related to the challenges facing Antioch. We conclude with our recommendations to help address these challenges.

BACKGROUND

Why This Report?

Controversy regarding the Antioch Police Department was receiving wide press attention at the time the Grand Jury was considering topics to investigate during its 2023-2024 term. We concluded that the police force was receiving adequate attention from other investigative bodies, including the Federal Bureau of Investigation and the Contra Costa County District Attorney's Office. However, the Grand Jury learned that the issues surrounding the police force are related to other issues of oversight and management within city government. In particular, we noted the average tenure for Antioch City Managers has been less than half the California state average over the last decade (average City Manager tenure of less than 2 years in Antioch vs. 4.5 years for the state).

Accordingly, the Grand Jury decided to examine the issue of turnover in city leadership. In pursuing this investigation, the Grand Jury learned that in addition to a high level of turnover in the City Manager position, Antioch has a city employee vacancy rate in excess of 20% (the national average for government agencies is 5.3%). Seven of the eleven most senior positions in Antioch city government are currently filled with acting (not permanent) or part-time personnel.

Our investigation also raised concerns regarding the Mayor and City Council's involvement in operating issues that are the responsibility of the City Manager. All of these issues are interrelated as is discussed later in this report.

Our investigation revealed evidence that one or more violations of the Brown Act, the California law requiring open and public meetings, may have occurred. We also learned that the Contra Costa County District Attorney's Office investigated potential Brown Act violations. The District Attorney's findings are discussed later in this report and in Appendix A.

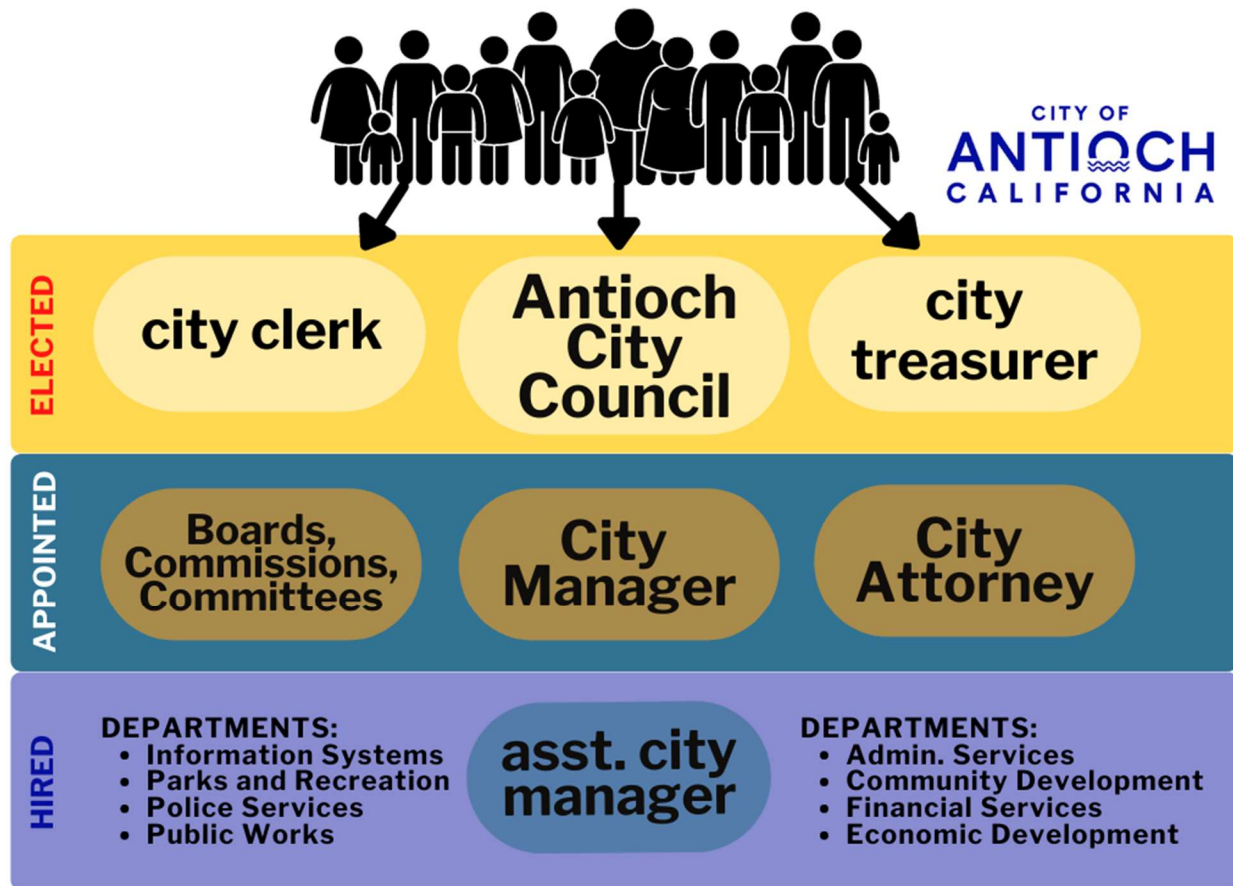
Antioch Government Structure

In examining the issue of turnover in Antioch city leadership it is helpful to first understand the structure of Antioch's local government. Like many California cities, Antioch is a general law city, operating under the Council-Manager form of government. Policymaking and legislative authority are vested in a five-member city council, which consists of a mayor and four council members. The four council members are elected by district, with the mayor elected city-wide. All serve four-year staggered terms. Under city ordinances the mayor and council hire and supervise the City Manager and City Attorney. The City Manager is responsible for day-to-day operations of the city, including supervision of all city employees (Antioch City Code § 2-2.06).

Under its Council-Manager structure, and as specified in city ordinances, the Antioch City Council has the responsibility of appointing the City Manager and City Attorney (Antioch City Code § 2-2.02). The City Manager serves as the chief administrative officer of the city, with responsibility for day-to-day operations of the city and the hiring and supervision of the Assistant City Manager as well as nine department heads. The department heads, in turn, hire and supervise departmental employees. See Exhibit 1. Under city ordinances the City Council, including the Mayor, have no direct authority to direct, supervise, hire, or fire any city employees, other than the City Manager and City Attorney (Ordinance 246-A).

Given the City Manager's role as chief administrative officer of Antioch, this position is critical to the City's successful operation. A vacancy in this position creates a void in city leadership and prevents the appointment of new permanent department heads when there is turnover. Antioch's policy is to defer the appointment of new department heads until a permanent City Manager is in place. This policy allows the permanent City Manager to appoint their own staff. Because the city has not had a permanent City Manager since March 2023, no new permanent department heads have been appointed since that time. As a result, the city now has acting heads in five of its nine most senior staff positions (three department heads, the City Manager, and the Assistant City Manager).

EXHIBIT 1



Source: City of Antioch website

A Bit About Antioch

Antioch is the second largest city in Contra Costa County, with a population of approximately 115,000. It is also among the county's most racially diverse cities (see Table 1, Antioch At-A-Glance for details).

Affordable housing relative to other parts of the county has contributed to meaningful population growth in Antioch in recent decades. Improving transportation infrastructure, including a BART extension, has also made Antioch a more desirable community for commuters. As the city's population has grown it has experienced significant demographic shifts, which are highlighted in Table 1.

TABLE 1

Antioch At-A-Glance

	<u>Antioch</u>		<u>Contra Costa County</u>	
	2010	2022	2010	2022
Population	102,372	115,264	1,049,025	1,156,966
Population Growth		12.6%		10.3%
Land Area (square miles)		28.4		715.9
Housing Units	32,252	36,639	400,203	430,081
Homeownership Rate	NA	61.5%	67.1%	67.2%
Racial Mix				
White (a)	35.6%	25.4%	47.8%	39.8%
Hispanic/Latino	31.7%	35.5%	24.4%	27.0%
Asian	10.5%	13.7%	14.2%	20.2%
Black/African American	17.3%	19.5%	8.9%	9.5%
Other	4.9%	5.9%	4.8%	3.5%
Household Income (median)	\$62,088	\$90,709	\$73,678	\$120,020
HH Income as % of County Average	84%	76%		
Poverty Rate	9.2%	12.1%	9.0%	8.7%
High School Graduates (b)		85.6%		89.7%
Bachelor's Degree (b)		23.0%		44.5%

(a) Not Hispanic or Latino

(b) Among adults 25 or older

Source: US Census Bureau

METHODOLOGY

- We interviewed government officials in Antioch and experts in city government practices and regulation.
- We reviewed press reports and other documents related to Antioch's city government operations and performance.
- We reviewed recordings and transcripts of city council meetings.
- We reviewed city budgets for the past 20 years.
- We also reviewed documents related to city government best practices.

DISCUSSION

Excessive City Manager Turnover is a Negative for Antioch

Over the past ten years, Antioch has had six permanent or acting city managers, with an average tenure of less than two years (see Table 2). At least two of the city's last three permanent city managers were terminated by the Mayor and City Council or resigned under threat of termination.

While turnover among city managers can be healthy, bringing new approaches and fresh views to city government, excessive turnover in leadership in any organization will be disruptive to that organization. According to data from the California City Managers Foundation, the average tenure of a City Manager in California is slightly over 4.5 years. This compares to the average in Antioch of less than 2 years.

The level of turnover for City Managers in Antioch has impacted the city in several ways. First and perhaps most importantly, it is disruptive to city operations. The City Manager is responsible for hiring and directly supervising all department heads. As highlighted in Exhibit 1, in Antioch this includes Community Development, Economic Development, Financial Services, Human Resources, Information Systems, Recreation, Police Services, Public Safety, and Public Works, as well as Assistant City Manager. As previously noted, as a result of having no permanent City Manager for over a year, the city has delayed appointing permanent department heads who supervise day-to-day operations in such critical departments as Public Works, Community Development and the Police Department. In addition, the Directors of the Economic Development and Recreation Departments are currently serving as Acting City Manager and Acting Assistant City Manager, respectively. Accordingly, these departments do not have full-time Directors. As a result, more than half of the city departments are headed by acting or part-time directors.

TABLE 2

Antioch City Managers

Name	Title	Begin Date	End Date	Tenure (months) (a)
Kwame Reed	Acting City Manager	6/23/2023		12 months
Forest Ebbs	Acting City Manager	3/17/2023	7/14/2023	4 months
Ana Cortez	Acting City Manager	3/15/2023	3/17/2023	< 1 month
Cornelius (Con) Johnson	City Manager Interim City Manager	22-Oct 21-Nov	7/14/23 - Resigned 3/2023 - On administrative leave	16 months (until on leave)
Ron Bernal	City Manager	17-Mar	12/2021 - Retired	57 months (4.5 years)
Steve Duran	City Manager	13-Dec	4/2017 - Terminated 3/2017 - On administrative leave	39 months (until on leave)

Average Tenure: 21 months

Notes:

(a) There can be overlap in manager's tenure reflecting timing of hiring and departure

Source: City of Antioch press releases, media reports

Turnover in the City Manager position also imposes incremental costs on the city. These costs include duplicative salaries when City Manager tenures overlap. This was the case when former City Managers Steve Duran and Cornelius Johnson were placed on administrative leave before being replaced. Other costs include recruiting, training, and severance expenses. Mr. Duran received one year of severance pay (\$230,000) following his termination.

The Antioch City Manager has broad responsibilities including oversight of a roughly \$100 million general fund budget and responsibility for an authorized staff of over 400 full-time personnel. High turnover means more time on the learning curve for each new City Manager.

Appointing a qualified and effective permanent City Manager is an important first step for Antioch in addressing current challenges, including filling key department head vacancies, reducing the employee vacancy rate, and managing a large and complex organization. For the new City Manager to succeed, the Mayor and City Council must create an environment that enables the City Manager to operate with the authority vested in the position and without interference, as outlined in city ordinances (Antioch City Code § 2-2.06 and § 2-2.10) as well as in the position's job description¹. In particular, city ordinances specify that "Except for the purpose of inquiry, the Council and its members shall deal with the administrative service solely through the City Manager, and neither the Council, nor any member thereof, shall give orders to any of the subordinates of the City Manager" (Antioch City Code § 2-2.10).

The job description Antioch posted in its recruiting process calls out the need for the new City Manager to work effectively with staff while providing "appropriate buffering between the City Council and the Department Directors." In addition, the City Manager is tasked with "refereeing elected official involvement" in city operations and ensuring compliance with the Brown Act. These are critical and difficult tasks.

¹ The Antioch City Manager's job description can be found here: https://www.antiochca.gov/fc/human-resources/document-warehouse/IEDA223_CITY%20MANAGER.pdf

High Employee Vacancy Rates Negatively Impact City Services

In addition to turnover in city leadership, Antioch currently experiences a level of vacancies in city staff that is roughly four-times the national average. These issues are related. In the absence of a permanent City Manager, three department head positions have not been filled permanently. The Community Development and Public Works Departments have not had permanent Directors for over a year (see Table 3). This has delayed the hiring process for staff members within these departments. Multiple interviewees noted that turnover at senior levels of city management has negatively impacted recruitment efforts because job candidates are often reticent to accept a position when the permanent supervisor is not in place. Table 4 provides data on the vacancy rates for the three departments currently without permanent department heads.

TABLE 3

Antioch Department Heads

Department	Director	Status	Tenure (a)
City Manager	Kwame Reed	Acting	12 months
Assistant City Manager	Bradley Helfenberger	Acting	10 months
Community Development	Kevin Scudero	Acting	13 months
Economic Development	Kwame Reed	Part-time	
Financial Services	Dawn Merchant	Permanent	
Human Resources	Ana Cortez	Permanent	
Information Systems	Alan Barton	Permanent	
Recreation	Bradley Helfenberger	Part-time	
Police Services	Brian Addington	Acting	3 months (b)
Public Safety/Comm. Resources	Tasha Johnson	Permanent	
Public Works	Scott Buenting	Acting	16 months

(a) Number of months person has served as Acting Director

(b) Acting Chief Addington replaced Acting Chief Joe Vigil, who served in the role for 6 months

Source: City of Antioch, media reports

Figure 1 tracks the employee vacancy rate in Antioch since 2012. Vacancy rate refers to the percentage of authorized and funded positions in the city that are currently unfilled. Between 2012 and 2023 the vacancy rate in Antioch city government positions has averaged roughly 12% each year. This has spiked to over 21% in the past two years, with a vacancy rate of 21.6% as of February 2024. For comparison purposes according to the U.S. Bureau of Labor Statistics, the employee vacancy rate for all U.S. employers as of February 2024 was 5.3%. The vacancy rate for state and local governments (excluding education) was also 5.3%.²

Staff turnover in Antioch contributes to the city's vacancy rate. Since July 1, 2022, the city has hired 102 new employees (out of a total authorized staff of approximately 409). Over the same period, 98 employees have departed. Recurring reasons cited by employees for leaving their jobs included: (1) overwork in the context of understaffing and (2) dysfunction within and lack of support from the City Council.

Job vacancies in Antioch's city government are broad-based, covering most departments. The police department has engaged in proactive recruiting efforts (including a current \$30,000 recruitment bonus and other incentives for Police Officer positions) which has helped reduce the vacancy rate in that department. Nevertheless, the department still has approximately 30 open positions. The vacancy rates in the Community Development and Public Works departments, the other two departments without permanent heads, exceed the city-wide average vacancy rate.

Table 4

Department Vacancy Rates

	Filled Positions	Funded Positions	Vacancy Rate
Community Development	20	31	35%
Police Services	128	157	18%
Public Works (a)	87	117	26%
TOTAL City	315	409	23%

(a) includes water and sewer departments

Data reflects full time equivalent positions, excluding seasonal and temporary staff

Source: Fiscal 2023-2025 Antioch City Budget

Vacancy rates for government agencies tend to be higher in the San Francisco Bay Area than the nation overall³. This is a function of a tight local labor market and high local cost of living, among other factors. For example, the vacancy rate (as of 2023, the most recently available data) for San Francisco was 14%, Concord 11%, Richmond 19%, and Oakland 12% (excluding unfunded and frozen positions). While all these cities have rates well above the national average, Antioch's 21% rate stands out at nearly four-times the national average.

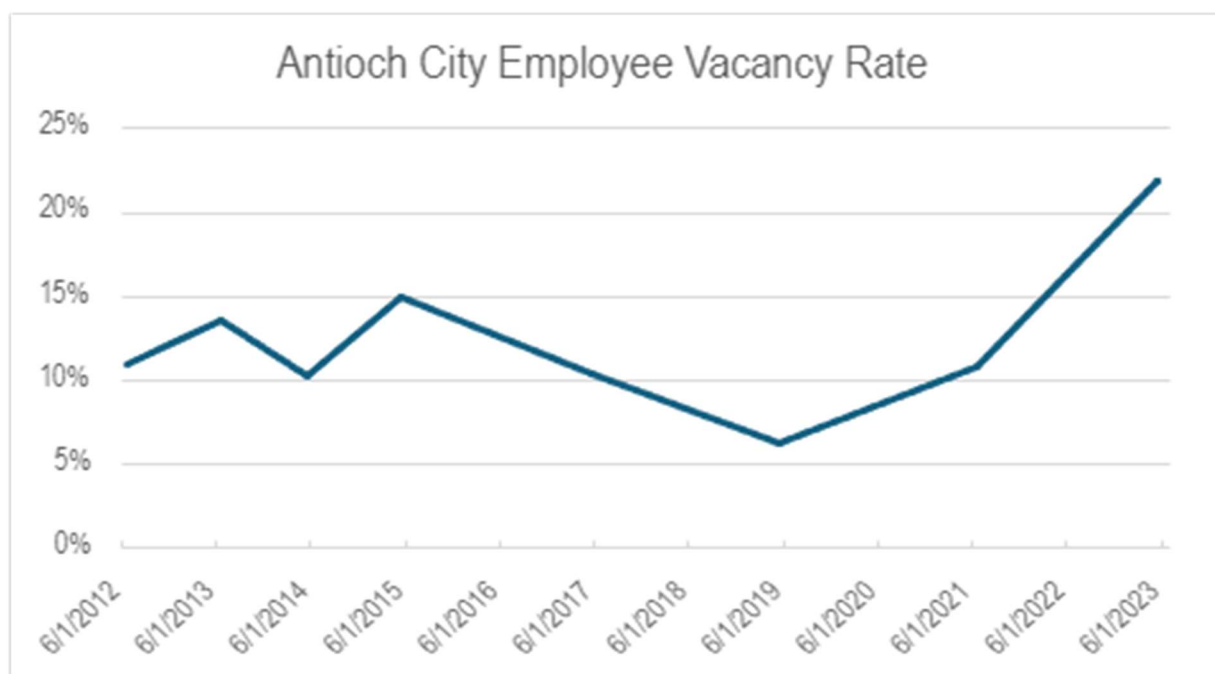
² U.S. Bureau of Labor Statistics, Economic News Release, 4/2/24.

³ "Civil Service Vacancies in California: 2022-2023", UC Berkeley Labor Center, December 12, 2023.

Antioch's employee vacancy rate has negative implications for several reasons. Most importantly, services to citizens have been negatively impacted by a lack of staff. For example, limited staffing has caused delays in certain capital projects. This includes traffic signal installations; road improvements and park renovations have been delayed due to staffing issues in the Public Works Department. Longer response times for police services have resulted from staffing shortages in the Police Department. The Mayor and Council Members have cited police staffing shortages and associated slower police response times as contributors to the higher crime rate the city has experienced in the past three years. Total Group A offenses in Antioch (the most serious crimes) have increased from 5,733 in 2021, to 6,130 in 2022, to 7,257 in 2023, with a further 24% increase year-to-date through April in 2024.

In addition to the negative impact on services to citizens, staff shortages impose an additional work burden on existing staff. This negatively impacts staff morale, contributing to the city's high employee turnover rate. Finally, staff shortages lead to increased overtime expenses and the need to outsource services.

FIGURE – 1



In the course of numerous interviews, the Grand Jury learned that turnover in the City Manager position and high employee vacancy rates are both related to a failure, at times, by the Mayor and City Council to respect the City Manager's operating authority. As previously noted, Antioch's government structure calls for the City Manager to make hiring decisions (with the exception of City Attorney) and oversee day-to-day operations of the city. However, Antioch's Mayor and City Council have on occasion overstepped their authority in seeking to implement personnel and other changes that are the responsibility of the City Manager.

Examples over the last three years include efforts by certain Council Members to direct the City Manager to fire then Public Works Director John Samuelson in December 2022. Mr. Samuelson was terminated, but subsequently received a settlement and severance totaling \$244,000. Other examples include pressure to hire Gregory Rolen as a consulting attorney in November 2022. Mr. Rolen was hired without prior approval of his contract, as required by Antioch Resolution #2021/26 (adopted 2/26/21). Mr. Rolen's contract was subsequently terminated after payment of a \$39,000 fee. Finally, the Grand Jury learned of instances of Council Members setting up meetings with City Staff without the approval or involvement of the City Manager, as required by city ordinance (Antioch City Code § 2-2.10). The Grand Jury found evidence that Council interference with City Manager responsibilities contributed to the departures of some of the recent City Managers. In turn, the City Managers' departures contributed to subsequent increases in employee vacancy rates due in part to extended vacancies in key department head positions.

Brown Act Compliance

The Ralph M. Brown Act (California Code § 54590, et. seq.) is a California law that specifies, among other things, that government business must be conducted in open and public meetings, with limited exceptions. In particular, elected government officials cannot meet as a group in private, unannounced, and/or secret sessions to discuss government business⁴.

A meeting is defined as a "congregation of a majority of the members of a legislative body" (§ 54952.2a). In the case of the city of Antioch, this would be 3 out of 5 Council Members. Under the Brown Act, a meeting and the agenda must be noticed and posted at least 72 hours in advance of the meeting. It must be held in a place accessible to the public. A legislative body may not take action on any item not on the agenda, except to seek information on the topic. The exception is a "closed meeting" to discuss labor negotiations, real estate transactions, personnel issues, and lawsuits. For these, an agenda of closed session items is posted, and any reportable actions taken in closed session are subsequently announced in open session.

A violation of the Brown Act occurs when a majority of members of a governing body are together in an unnoticed meeting, in a place not accessible to the public, and discuss business about their jurisdiction (or disclose privileged information from closed meetings). Violations of the Brown Act are a misdemeanor, with penalties including fines of up to \$1,000, imprisonment in state prison, and/or permanent disqualification from holding any office in California.

In the course of our investigation, the Grand Jury discovered evidence that one or more Brown Act violations may have occurred involving members of the Antioch City Council. The Grand Jury learned that the hiring of former City Manager Cornelius Johnson may have been discussed at a private meeting in October 2021 with Mayor Hernandez-Thorpe and Council members Monica Wilson and Tamisha Torres-Walker. This meeting was held without public notice and

⁴ The full text of the Brown Act can be found at:

https://leginfo.ca.gov/faces/codes_displayText.xhtml?division=2.&chapter=9.&part=1.&lawCode=GOV&title=5.

without the participation of the full Council. Mr. Johnson was subsequently hired as Acting City Manager in a 3-2 council vote on November 9, 2021, with Mayor Hernandez-Thorpe and Council members Wilson and Torres-Walker voting yes, and Council members Michael Barbanica and Lori Ogorchock voting no.

The Contra Costa District Attorney's Office conducted an investigation into alleged violations of the Brown Act by Mayor Hernandez-Thorpe and Council members Wilson and Torres-Walker (see Appendix A for details on the District Attorney's findings). The District Attorney's investigation focused on meetings held at Mayor Hernandez-Thorpe's home in 2022 that may have involved discussions regarding restructuring the Public Works Department, hiring a City Engineer and redistricting the city's electoral map.

The Grand Jury found evidence that the meetings cited by the District Attorney took place at the dates and locations specified in the District Attorney's letter (Appendix A). The Grand Jury was unable to independently confirm the content of those meetings.

In concluding its investigation into potential Brown Act violations in Antioch, the District Attorney noted that there was insufficient evidence to prove beyond a reasonable doubt that intentional violations occurred. The District Attorney's Office nevertheless noted that it "has serious concerns that noncompliance with the Brown Act may have occurred" and indicated that "any similar meeting on matters concerning the city could subject Council members to criminal liability." (See Appendix A).

The Grand Jury found that the city of Antioch has not historically provided formal training on Brown Act compliance to Council members. Following the District Attorney's investigation, a formal session on the Brown Act and Brown Act compliance was held at the City Council meeting on February 13, 2024. Given the importance of Brown Act compliance, we encourage the Council to consider conducting similar training events on an ongoing basis.

FINDINGS

- F1.** Antioch's City Manager has broad responsibility to ensure the efficient operation of the city, including supervision of an approximately \$100 million general fund budget and an authorized staff of over 400 employees.
- F2.** The city began the process of recruiting a new permanent City Manager in January 2024. As of June 10, 2024, no hiring decision has been announced.
- F3.** As outlined in both the City Manager job description and in city recruitment materials, the City Manager position requires a qualified and experienced individual.
- F4.** There has been a lack of continuity in City Managers in Antioch, with six City Managers or Acting City Managers since December 2013.

- F5.** Under city ordinances the City Council, including the Mayor, has no direct authority to direct, supervise, hire, or fire any city employees, other than the City Manager and City Attorney (Ordinance 246-A).
- F6.** The Mayor and City Council members have on occasion overstepped their authority in seeking to make personnel decisions, including terminating the then Public Works Director in December 2022, in ways not permitted by city ordinance (Antioch City Code § 2-2.06 and § 2-2.10).
- F7.** The Mayor and City Council members have on occasion sought to conduct meetings with City Staff without the approval or involvement of the City Manager, as required by city ordinance (Antioch City Code § 2-2.10).
- F8.** Antioch's city government had a 21.6% employee vacancy rate as of February 2024, roughly four-times the national average for government agencies.
- F9.** In the absence of a permanent City Manager since March 2023, the city has deferred hiring new department heads when openings occur.
- F10.** The Police, Public Works and Community Development departments currently are without permanent department heads.
- F11.** Seven of the eleven most senior positions in Antioch city government are currently held by acting or part-time personnel, including City Manager, Assistant City Manager, Directors of Community Development, Police Services, and Public Works (all acting) and the Directors of Economic Development and Recreation (both part-time).
- F12.** The employee vacancy rate is above the city-wide average in the Public Works Department (26% vacancy rate) and Community Development Department (35% vacancy rate), both of which currently do not have permanent directors.
- F13.** Recruitment and retention of staff has been impacted by the absence of a permanent City Manager and the lack of permanent department heads in multiple city departments.
- F14.** The Contra Costa County District Attorney's Office conducted an investigation into alleged Brown Act violations by Mayor Lamar Hernandez-Thorpe and Council Members Tamisha Torres-Walker and Monica Wilson, which was forwarded to the Grand Jury.
- F15.** The District Attorney's Office noted serious concerns that noncompliance with the Brown Act may have occurred, however, there was insufficient evidence to prove beyond a reasonable doubt intentional violations of the statute occurred.

RECOMMENDATIONS

- R1.** The Mayor and City Council should follow through on the ongoing process of hiring an experienced and qualified City Manager.
- R2.** The Mayor and City Council should abide by city regulations (Antioch City Code § 2-2.06 and § 2-2.10) that preclude the Mayor and City Council from having any direct authority to direct, supervise, hire or fire any city employee, other than the City Manager and City Attorney.
- R3.** The new City Manager should, within 6 months of their appointment to the position of City Manager, recruit and appoint permanent department heads to fill current department head vacancies.
- R4.** By 1/1/2025 the City Council should direct the City Manager to undertake a study to determine the factors leading to the city's high employee turnover and vacancy rates.
- R5.** By 1/1/2025 the Mayor and City Council should consider directing the City Manager and City Attorney to organize an annual training session focused on Brown Act requirements and compliance for the Mayor, City Council members, relevant city employees and members of city boards and commissions.

REQUEST FOR RESPONSES

Pursuant to California Penal Code § 933(b) et seq. and California Penal Code § 933.05, the 2023-2024 Contra Costa County Civil Grand Jury requests responses from the following governing bodies:

Responding Agency	Findings	Recommendations
Antioch City Council	F1 – F16	R1 – R5

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

APPENDIX A

NOTE: The letter from the Contra Costa County District Attorney's Office is incorrectly dated January 4, 2023. The Grand Jury has confirmed with the District Attorney's Office that the correct date is January 4, 2024.



OFFICE OF THE DISTRICT ATTORNEY
CONTRA COSTA COUNTY

Diana Becton
DISTRICT ATTORNEY

January 4, 2023

Kwame Reed
Acting City Manager
City of Antioch
200 H Street
Antioch, CA 94509

RE: Alleged violations of the Brown Act by Antioch City Council members

Dear Mr. Reed:

The Contra Costa County District Attorney's Office was contacted earlier this year regarding alleged violations of the Brown Act by Antioch Mayor Thorpe, Antioch Councilmember Torres-Walker and Antioch Councilmember Wilson. Specifically, we were told that those three council members met in private to discuss matters within the council's jurisdiction regarding the Public Works Department and the hiring of the City Engineer. Our investigation also led to an allegation that those three city officials met in private to discuss the redistricting of the city's electoral map. The District Attorney's Office reviewed these allegations and the applicable law and then interviewed potential witnesses to determine whether any Brown Act violations occurred.

As you are aware, the Brown Act is set forth in California Government Code sections 54950, et seq. Our analysis here is specifically guided by Government Code section 54952.2. That section prohibits a majority of the members of a legislative body to develop a collective concurrence as to action to be taken on any item within the subject matter jurisdiction of the legislative body unless such a meeting is open and public.

In this matter, there is evidence that Mayor Thorpe and Councilmembers Torres-Walker and Wilson met at Mayor Thorpe's home in 2022 and held discussions. Furthermore, it appears that the discussions may have included an agreement to take action on matters within the subject matter jurisdiction of the council. As defined by Government Code section 54952.6, "action taken" means a collective decision, or even a commitment or promise to make a decision, on a matter concerning the city. Our investigation leads us to believe that Mayor Thorpe and Councilmembers Torres-Walker and Wilson did meet and may have developed a collective occurrence absent a public forum.

District Attorney Administration
900 Ward Street, Fourth Floor
Martinez, California 94553

(925) 957-8604
Fax (925) 646-4683

Government Code sections 54959 through 54960.5 set forth the actions that may be taken by the District Attorney's Office to enforce and prevent Brown Act violations. Following our review of the underlying facts and the applicable laws that are relevant to this matter, the District Attorney's Office has serious concerns that non-compliance with the Brown Act may have occurred, however, there is insufficient evidence to prove beyond a reasonable doubt intentional violations of the statute at this time.

We have decided to bring our concerns to your attention in order for you to impress upon the council the importance of the Brown Act and the requirements of the statute. Any similar meeting on matters concerning the city could subject council members to criminal liability. Further, we are referring this letter to the Contra Costa County Grand Jury to provide that body the opportunity to take any action it may deem appropriate.

Thank you for your serious consideration of this matter. As the Brown Act makes clear, the deliberations and actions of our governmental representatives must occur openly and be subject to public scrutiny. If you have any questions or concerns regarding this matter, please feel free to contact me.

Sincerely,

DIANA BECTON
District Attorney

Steven Bolen
Deputy District Attorney
Contra Costa County

cc: Thomas L. Smith, City Attorney, City of Antioch

Contra Costa County Grand Jury



ABOUT THE COVER:

Front cover photo provided by Vien Tran, photographer
Back cover photo Sunset - Bayfront Park - Pinole