



CITY MANAGER

September 11, 2018

Honorable Anita Santos, Judge of the Superior Court
Mario Gutierrez, Foreperson, 2017-2018 Contra Costa County Civil Grand Jury
Contra Costa County Civil Grand Jury
725 Court Street
P.O. Box 431
Martinez, CA 94553
Also via email to ctadmin@contracosta.courts.ca.gov

RE: City of Hercules' Response to Report No. 1808 "Joint Powers Authorities"

Dear Judge Santos and Foreperson Gutierrez:

In June 2018, the Contra Costa County Civil Grand Jury issued Report No. 1809 entitled "Joint Powers Authorities." This response was approved by the Hercules City Council on September 11, 2018.

First, we would like to clarify some information set forth in the Report in regard to Hercules. The report states that Hercules is a member of nine (9) JPA's. Hercules is a member ten (10) Joint Powers Authorities:

1. Association of Bay Area Governments
2. ABAG Power
3. Contra Costa Congestion Management Agency
4. California Statewide Communities Development Authority
5. East Bay Regional Communications Authority
6. Hercules Public Financing Authority
7. Municipal Pooling Authority
8. West Contra Costa Transit Authority
9. West Contra Costa Transportation Advisory Committee
10. West Contra Costa Integrated Waste Management Authority

The City also provides services through two (2) Joint Exercise of Power Agreements with other governmental entities, which are not separate legal bodies:

1. Hercules/Pinole/Rodeo Sanitary District Joint Exercise of Powers Agreement
2. Pinole/Hercules Waste Water Joint Exercise of Powers Agreement

It appears that the Grand Jury report does not differentiate between these two types of agreements, the first creates a separate legal entity, and the second is merely a cooperative agreement between existing entities.

Below find the City of Hercules' responses to the report's findings and recommendations.

FINDINGS

Finding 1. In the Direct JPA model, each member delegates to the JPA a function that each member has the legal authority to provide. This shared approach results in cost savings and better efficiency on behalf of taxpayers.

City Response: Agree.

Finding 2. The Circular JPAs with a single controlling entity, such as a city council, have the potential to avoid legal debt limits and provide limited disclosures to taxpayer.

City Response: Partially disagree. A Joint Powers Authority (JPA) is a separate legal public entity as defined by the Government Code. As such, JPAs have the ability to incur their own debt separate from the municipality. A city may employ the lease exception to State constitutional debt limit through a partnership with any type of joint powers authority (JPA) or another partner organization, not just a "circular JPA."

The "single controlling entity", even if made up of the same members as a City Council, still serves in a separate legal role. All meetings of JPAs are publicly noticed and comply with the Brown Act, and disclosures and audits of JPAs are made in accordance with state law. In addition, a city that assumes debt as part of a JPA would disclose that debt and associated payments through a number of channels, including its budget, comprehensive annual financial report, and ongoing disclosure requirements.

Finding 3. In Contra Costa County, there are 12 Circular JPAs created by cities with RDAs that no longer exist. These JPAs may no longer be valid because each is a member of another Financial JPA which may take on new debt without the prohibition (Gov. Codes Sections 6505 3416/34170 et seq.) placed on Successor Agencies.

City Response: Disagree. While the Dissolution Law voided most agreements between former redevelopment agencies and their host cities, the Dissolution Law preserves the existence of joint powers authorities whose members included a former redevelopment agency. See Health & Safety Code section 34178(b). The City of Hercules has already verified with its Special Counsel that the Hercules Public Financing Authority is still validly constituted.

Finding 4. Cities that have created the 12 Financial JPAs do not provide JPA-specific financial information in their budget document. As a result, the public may have difficulty evaluating JPA's financial performance.

City Response: Disagree. As noted above, a city that assumes debt as part of a JPA would disclose that debt and associated payments through a number of channels, including its budget, comprehensive annual financial report, and ongoing disclosure requirements.

RECOMMENDATIONS

Recommendation 1. All cities with JPAs in the County should confirm their compliance with Gov. Codes Sections 6505 by submitting the required audit report to the County Auditor by December 31, 2018.

City Response: The recommendation will not be implemented except as to wholly controlled JPA's. It is the responsibility of the JPA, not its member agencies (some but not all who may be cities), to submit any required audit reports with the County Auditor. Under State law, JPAs are distinctly separate government entities. The City of Hercules is a member of ten JPAs, all but one of which is a separate legal entity, some which cross not only multiple county jurisdictions but are also statewide in some instances, having their own full-time staff, and include in at least one instance hundreds of member agencies. It is infeasible and unreasonable for member agencies to fulfill the duties of other government agencies, including JPAs.

Recommendation 4. The 11 cities that are members of a JPA associated with an RDA or their Successor Agencies should consider confirming their compliance with the provisions of Abx1 .26 (Gov. Codes Sections 34177 et seq.) and report their findings and any corrective actions to the Auditor-Controller's office by December 31, 2018.

City Response: This recommendation will not be implemented. The Auditor-Controller does not have jurisdiction over a JPA for this purpose. The City complies with state law with respect to the responsibilities of its Successor Agency.

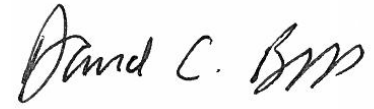
Recommendation 5. All cities with JPAs should consider making special efforts, such as special mailings to taxpayers, website postings and announcements in local media, to communicate JPA debt decisions and audit reports to the public beyond simple notifications by December 31, 2018.

City Response: The recommendation will not be implemented except as to wholly controlled JPA's. As stated earlier, JPAs are distinctly separate governmental entities. It is the responsibility of the JPA and not its member agencies to communicate its debt decisions and audit reports to the public on its website. As the Civil Grand Jury's Finding No. 1 states, "each member delegates to the JPA a function that each member has the legal authority to provide." Having cities with JPAs communicate JPA debt decisions and audit reports on their websites, when the information should be available on the JPAs' websites, is counter to cost savings and efficiency on behalf of taxpayers.

We appreciate the Grand Jury's efforts on behalf of our communities and the residents of Contra Costa County.

Please feel free to contact me for additional information regarding the City's response at (510) 799-8216.

Sincerely,

A handwritten signature in black ink that reads "David C. Biggs". The signature is written in a cursive style with a large, looped 'D' and 'B'.

David Biggs
City Manager