



September 18, 2018

Mario Gutierrez, Foreperson
2017-2018 Contra Costa County Grand Jury
725 Court Street
P.O. Box 431
Martinez, CA 94553-0091

RE: City of Richmond's Response to Grand Jury Report 1808: "Joint Powers Authorities"

Dear Foreperson Gutierrez:

In accordance with California Penal Code Sections 933.05(a) and 933.05(b), please find below the response of the City of Richmond to the findings and recommendations of the Grand Jury. The City's response is in italics directly below each finding or recommendation.

FINDINGS

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

Response: *The City of Richmond agrees with this finding.*

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

Response: *The City of Richmond disagrees with this finding. 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.*

In the case where the JPA issues lease revenue bonds it does so because it is not subject to the constitutional debt limit. The City enters into a lease with the JPA as part of the transaction. The City is subject to the constitutional debt limit, but the lease with the JPA is not considered a debt because it is subject to abatement. This type of arrangement has been well-litigated and consistently held up by the courts.

A lease financing requires approval by the JPA Board as well as the City Council, both of which are subject to the Brown Act and as such must notice each of their meetings with a detailed agenda. Often, though not always, a lease financing

requires a public hearing and a finding of public benefit (the exceptions to this requirement are statutory). It is also worth noting that a lease financing is not backed by the taxing power of the City.

The “single controlling entity,” even if made up of the same members as a City Council, still serves in a separate legal role. 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 (CAFR), and ongoing disclosure requirements. Moreover, the City of Richmond makes full disclosure to taxpayers and other interested parties.

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

Response: *The City of Richmond disagrees with this finding. The Dissolution Law preserves the existence of joint powers authorities whose members included a former redevelopment agency.*

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

Response: *The City of Richmond disagrees with this finding. The City of Richmond provides financial information regarding Richmond’s Joint Public Financing Authority in the “Combining Statement of Changes in Asset and Liabilities” report in the Comprehensive Annual Financial Report (CAFR). The CAFR is presented to City Council and is available on the City’s website at <http://www.ci.richmond.ca.us/2969/Comprehensive-Annual-Financial-Report-CA>.*

RECOMMENDATIONS

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

Response: *This recommendation will not be implemented. JPAs are separate legal public entities, and compliance is the responsibility of each JPA, not the City.*

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

Response: *The recommendation will be implemented as the City of Richmond will comply with all relevant sections of the State Government Code with respect to JPAs in which the City participates and will confirm compliance with all government agencies or departments that have oversight according to state law.*

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

Response: *This recommendation will not be implemented. JPAs are separate governmental entities and it is the responsibility of the JPA to communicate its debt decisions and audit reports to the public on its website. The City of Richmond provides financial information regarding Richmond’s Joint Public Financing Authority in the Comprehensive Annual Financial Report (CAFR). The CAFR is presented to City Council and is available on the City’s website at <http://www.ci.richmond.ca.us/2969/Comprehensive-Annual-Financial-Report-CA>.*

The Richmond City Council reviewed and approved this response at their meeting of September 18, 2018.

Thank you for the opportunity to respond on this very important issue. Please contact the City Manager’s Office at (510) 620-6512 if you have any additional questions.

Respectfully,

LaShonda White on behalf of

Shasa Curl
Interim City Manager

cc: Tom Butt, Mayor
Bruce Reed Goodmiller, City Attorney