



September 11, 2018

Mario Gutierrez, Foreperson
Contra Costa County Civil Grand Jury
725 Court Street
P.O. Box 431
Martinez, CA 94553-0091
Email: ctadmin@contracosta.courts.ca.gov
Via U.S. Mail and Email

RE: Grand Jury Report No. 1808, "Joint Powers Authorities"

Dear Mr. Gutierrez:

On behalf of the City of El Cerrito, this letter serves as a response to Grand Jury Report No. 1808, "Joint Powers Authorities," by the Contra Costa Grand Jury. In accordance with your request and Section 933.05 of the California Government Code, the City is responding as required to Findings 1, 2, 3, and 4 and Recommendations 1, 4, and 5 as outlined in the Grand Jury Report.

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 El Cerrito 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 El Cerrito 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. 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.

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 El Cerrito disagrees with this finding. To the extent that this finding suggests that all JPAs between a city and successor agency are invalid, we direct you to the following provisions of the redevelopment dissolution laws. Health and Safety Code section 34173(g) expressly states that a "successor agency is a separate public entity from the public agency that provides for its governance and the two entities shall not merge." Health and Safety Code section 34178(b)(3) expressly preserved the existence of joint exercise of powers agreements "in which the redevelopment agency is a member



of the joint powers authority” and stated that such agreements “may bind the successor agency” (with some limitations not relevant here). Further, the City also does not know the structure of each agreement referred to in this report and therefore could not provide an opinion on their validity.

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 El Cerrito disagrees with this finding. The City provides, and has provided for years, information on the El Cerrito Public Financing Authority in its biennial budget document and in its Comprehensive Annual Financial Report (CAFR), each of which are presented in a public meeting and are available to the public in both written and online formats. The City does not have information on whether or not other cities provide similar information.

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. The City is a member of several JPAs and does not have the resources to continually monitor each JPA as to its compliance.

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: 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.

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. Again, each JPA is a separate legal entity and the City does not have the responsibility nor the resources available to report on actions taken by every JPA of which it is a member.



Please do not hesitate to let me know if you have any questions or require additional information concerning the above responses. You can reach me directly at (510) 215-4302 or by email at kpinkos@ci.el-cerrito.ca.us.

Sincerely,

Karen E. Pinkos
Assistant City Manager
City of El Cerrito

cc: El Cerrito City Council
Scott Hanin, City Manager