

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To: Scott C. Stiles

From: Maria Stipe

Dept: City Manager

Dept: City Manager

Subject: CONSIDERATION AND ACTION ON
RESPONSE TO GRAND JURY REPORT,
*JOINT POWERS AUTHORITIES: ISSUES OF
VIABILITY, CONTROL, TRANSPARENCY,
AND SOLVENCY*

Date: September 22, 2015

OBJECTIVE

The purpose of this report is for the City Council to consider and approve the attached response to the 2014-15 Grand Jury Report, *Joint Powers Authorities: Issues of Viability, Control, Transparency, and Solvency* and authorize submittal to the Orange County Grand Jury.

BACKGROUND

On June 29, 2015, the Orange County Grand Jury released its 2014-15 Grand Jury report, *Joint Powers Authorities: Issues of Viability, Control, Transparency, and Solvency* (Attachment 2). In compliance with Penal Code 933.05 (a) and (b), the City is required to provide a response to each of the findings and recommendations directed to the Mayor and City Council. Specifically, responses are required for findings F1 and F3 and recommendations R1 and R2.

DISCUSSION

The Garden Grove City Council serves as the governing body over the Garden Grove Public Financing Authority (GGPFA), an active Joint Powers Authority (JPA) used to facilitate debt financing for the City of Garden Grove and related entities. Additionally, The City of Garden Grove is a member City of the Orange County Regional Airport Authority (OCRAA), which is an inactive JPA. The OCRAA effectively ceased operations in 2004 following the passage of the Orange County Measure W in 2003 which prevents an aviation reuse of the El Toro Station. A small cash balance remains in the account that is managed by the City of Garden Grove. The remaining funds will be applied toward formal dissolution of the JPA by the City during Fiscal Year 2015-16. The attached response pertains to both the GGPFA and the OCRAA.

FINANCIAL IMPACT

None.

CONSIDERATION AND ACTION ON RESPONSE TO GRAND JURY
REPORT, *JOINT POWERS AUTHORITIES: ISSUES OF
VIABILITY, CONTROL, TRANSPARENCY, AND SOLVENCY*
September 22, 2015
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RECOMMENDATION

It is recommended that the City Council:

- Approve the attached response and authorize submittal to the Orange County Grand Jury.



MARIA STIPE
Deputy City Manager

Attachment 1: Response to Grand Jury Report
Attachment 2: Grand Jury Report

Recommended for Approval



Scott C. Stiles
City Manager



CITY OF GARDEN GROVE

(714) 741-5100

September 23, 2015

Honorable Glenda Sanders, Presiding Judge
Orange County Superior Court
700 Civic Center Drive West
Santa Ana, CA 92701

Bao Nguyen
Mayor

Steven R. Jones
Mayor Pro Tem

Christopher V. Phan
Council Member

Phat Bui
Council Member

Kris Beard
Council Member

RE: Response to Orange County Grand Jury Report, *Joint Powers Authorities: Issues of Viability, Control, Transparency, and Solvency*

Dear Judge Sanders:

I have reviewed the Orange County Grand Jury Report, *Joint Powers Authorities: Issues of Viability, Control, Transparency, and Solvency*. On behalf of the City of Garden Grove, I am providing responses to Findings F1 and F3, and Recommendations R1 and R2, as requested by the Grand Jury.

Response to Findings

F1: *Orange County has nine "inactive" Joint Powers Authorities that have no viable activity, revenue, expenditure, assets, or liabilities. The Grand Jury determined that these Joint Powers Authorities serve no benefit to the public or the taxpayers and have the potential for misuse or obfuscation of public funds.*

The City disagrees partially with this finding. The City agrees that the Orange County Regional Airport Authority, which Garden Grove is a member City, does not have viable activity or revenue; however, we disagree that the JPA has potential for misuse or obfuscation of public funds. We additionally agree that this JPA's purpose has been fulfilled and there is no longer a benefit to the taxpayers.

The Garden Grove Public Finance Authority (GGPFA) is a conduit entity used to facilitate debt financing for the City of Garden Grove and related entities. It provides for the financing of public capital improvements for members through the purchase by the Authority of obligations of a member pursuant to bond purchase agreements, and/or the loan of funds to a member. The GGPFA has enabled the issuance of several outstanding bonds with maturity extending through 2030. As a result, the JPA cannot legally be dissolved. The GGPFA will also be used in the future for other public financing activities.

F3: *Orange County has 18 vertical Joint Powers Authorities created by a city along with its redevelopment agency that no longer exists. The Grand Jury determined that these Joint Powers Authorities serve no benefit to the public or the taxpayers and have the potential for misuse or obfuscation of public funds.*

The City disagrees wholly with this finding. The members of the GGPFA are the City of Garden Grove, the Garden Grove Sanitary District, and the former Redevelopment Agency whose rights and obligations were assumed by the Successor Redevelopment Agency. Further, the GGPFA still has outstanding bonds and obligations facilitated by the JPA through a maturity date of December 2030.

Response to Recommendations

R1: *All Orange County Joint Powers Authorities that are "inactive" should submit the official paperwork with the State of California requesting termination of their existence or provide at the next public meeting the justification for continuing the Joint Powers Authority. (F.1.)*

With regard to the Orange County Regional Airport Authority, the recommendation has not yet been implemented, but will be implemented in FY 2015-16 until complete. The Orange County Regional Airport Authority is inactive and the City of Garden Grove will take the lead to terminate the JPA.

With regard to the GGPFA, the recommendation will not be implemented because it is not warranted. The GGPFA is active as indicated in the response to F1 above.

R2: *All Vertical Joint Powers Authorities created by a city along with its redevelopment agency should submit the necessary paperwork with the State of California requesting termination of their existence. (F.3.)*

The recommendation will not be implemented because it is not warranted. The GGPFA is active as indicated in the response to F3 above.

Sincerely,

BAO NGUYEN
Mayor

C: Orange County Grand Jury

**JOINT POWERS AUTHORITIES:
ISSUES OF VIABILITY, CONTROL,
TRANSPARENCY, AND SOLVENCY**

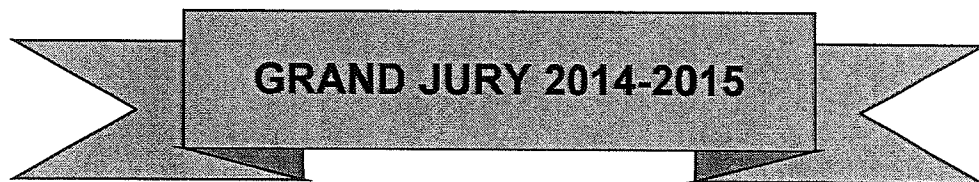


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EXECUTIVE SUMMARY

Joint Powers Authorities (JPAs) (also referred to as Joint Power Agencies) are California organizations set up by California Government Code section 6500. This code section allows for two or more existing public agencies to jointly agree to perform a specific service for each of the member agencies. The intent was to enable that service to be accomplished with a larger economy of scale resulting in financial benefit to the taxpayers. The code also permits this agreement to authorize the creation of a separate legal entity (authority or agency) with the full power of a separate legal entity. Consequently, a JPA has the responsibility to report as a separate legal entity and to provide accountability to its sponsor public agencies and the public through the county auditor-controller and State controller's office.

The Orange County Grand Jury has four concerns with regard to JPAs in Orange County. These concerns are (1) the viability of the JPAs with Redevelopment Agencies (RDAs) as members since RDAs were eliminated in 2012, (2) the use of JPAs by government organizations to be controlled by a single government entity, (3) the lack of true disclosure and transparency of their organization and financial information to taxpayers, and (4) the extreme debt to revenue ratio of some JPAs, which brings into question their solvency. For example, if a city sets up a JPA with another legal entity under its own direct control, such as an RDA, then the JPA has the potential to become just a "shell" organization under the control of the city. This organizational structure has the potential to cloak funds and accountability of those funds (City of Bell-like complexity). It also appears that not all JPAs provide financial information to the State Controller and the Orange County Auditor-Controller as required by law. Furthermore, the Orange County Auditor-Controller does not proactively provide the information it receives in a clear and easily accessible manner for the citizens of the County.

BACKGROUND

Joint Powers Authorities (JPAs) are California organizations set up by California Government Code section 6500. This code section allows two or more existing public agencies to mutually agree, and create an agreement, to perform a specific service for each of the signatory agencies. Essentially, a new organization is created that is completely separate from the member agencies. A JPA is so flexible that it can be applied to nearly any situation that benefits from having public agencies cooperate.

JPAs may be formed between local public entities, e.g., regional water districts, energy agencies, cities, counties, or other entities described in California Government Code section 6500. They can be formed for many different reasons such as, but not limited to, acquisition of land, construction, maintenance, financing, insurance pooling, and operations of facilities. The intention is to save member agencies, and ultimately taxpayers, time and money by sharing resources and combining services. JPAs exist for various reasons such as expanding regional wastewater treatment plants, providing public safety planning, constructing roads, building and setting up emergency dispatch centers, or financing new county jails. By sharing resources and combining services, the member agencies potentially save time, create efficiencies, reduce overlapping services, and reduce costs.

Statutory Authority of Joint Powers Agreements (JPAs)

Government agencies derive their authority from California Government Code sections 6500-6536, also called the Joint Exercise of Powers Act. JPAs can only administer powers that are specific to the individual agencies.

JPAs are different from other forms of government in that they are formed by mutual agreement by the member participants and are not formed by voter initiative or voted on by the electorate. Each JPA is unique. It reflects the agreement among member agencies for a common purpose. As a legally separate public agency, it can sue, be sued, hire staff, obtain financing, assume debt, and manage or lease property. Joint powers agreements usually protect their member agencies from the JPA's debts or other liabilities (Cypher & Grinnell, 2007, p. 12).

JPAs and Debt Approval Loophole

Local governments, such as a city, can issue revenue bonds, but they need majority-voter approval. If the bond measure is approved, then the local government sells revenue bonds to private investors to raise capital in order to build a public facility or for other designated purposes. As the interest and principal on the bonds become due, they are repaid from city tax revenues.

However, a JPA can issue bonds without holding a general election. California state law allows JPAs to issue revenue bonds without voter approval, provided that each of the member agencies adopts a separate local ordinance. Although local voters can force a referendum election on these local ordinances, this rarely occurs (Cypher & Grinnell, 2007, p. 13). As a result, a city could set up a JPA and have the JPA take on the debt, thereby circumventing the mandated public approval process.

Types of JPAs

There are no official categories for the types of JPAs, but their services fall into five broad groups (Cypher & Grinnell, 2007, p. 14):

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

Funding of JPAs

According to "Governments Working Together: A Citizen's Guide to Joint Powers Agreements," by Trish Cypher and Colin Grinnell (Cypher and Grinnell, 2007), there are

two popular funding vehicles for JPAs: (1) create a revenue stream, and (2) raise capital through revenue bonds. While JPAs do not require voter approval to issue bonds, each member agency must pass an ordinance. Voters have a 30-day period to object through a referendum requiring a public vote. If there is no referendum petition filed, the JPA is free to sell bonds and use the proceeds to build, make improvements, or buy equipment.

JPAs that provide funding and issue bonds for multiple agencies may pay for the operations by collecting fees from their member agencies for bond services. Issuing and selling bonds is a complex process, and a joint effort by a JPA has the potential to facilitate the transactions. These JPAs have the potential to provide these services to smaller agencies wanting to issue bonds.

JPAs may also sell bonds to refinance their member agencies' debts. The process involves the JPA selling bonds and using the proceeds to "buy down" a member agency's debt. This is a practice used to pay off a member agency's debt, thus allowing that agency to refinance at a lower-interest rate. However, the state no longer allows JPAs to issue bonds for development outside their members' jurisdiction. JPAs cannot levy taxes or assessments; however, individual agencies can levy their own taxes and assessments.

JPA Control and Oversight

JPAs are subject to the Brown Act, the California Public Records Act, the Political Reform Act, and other public interest laws. As a separate legal entity, a JPA must self-monitor its actions and activities for its members since no state agency directly oversees it. County auditors should review the JPA financial reports, and county civil grand juries function as civil watchdogs (Cypher & Grinnell, 2007, p. 28). Several state agencies, including the Secretary of State, State Controller, and the California Debt and Investment Commission, collect reports and data from JPAs.

JPAs that fail to report their financial information to the State or the county violate California Government Code sections that pertain to JPAs. For example, Section 6505 requires "strict accountability of all funds and report of all receipts and disbursements" (Section 6505 (a)), and "an annual audit of the accounts and records of every agency or entity" (Section 6505 (b)). The sections do not specify whether the audit has to be external or internal. However, Section 6005 (c) requires that when an audit of an account and records is made, "a report thereof shall be filed as a public record with each of the contracting parties to the agreement and also with the county auditor of the county where the home office of the joint powers authority is located." In addition, Section 6505 (g) provides that "JPAs shall be exempt from the requirement of an annual audit if the financial statements are audited by the (State) Controller to satisfy federal audit requirements."

JPAs and Special Districts

A JPA is *not* a special district, even though it might provide the same services. A *special district* is a separate local government with its own governing body that delivers services to a dedicated community. Special districts rely on other State laws for their

existence and legal authority, and on elected boards of directors for their governance. Most special districts provide only a single service to a defined area, in contrast to county and city agencies that provide multiple services within their boundaries. While cities and counties must provide mandated services per federal and state law, special districts provide services for which the public is willing to pay. Examples include fire protection districts, water districts, pest abatement districts, etc.

Although a JPA is not a special district, its financial reporting requirements are the same. The State Controller is required by State law in SB 282 (Chapter 288) to make available annually, in a separate report published in an electronic format on the Controller's website, certain financial information about selected districts. This law amends Government Code section 12463.1 for reporting on the financials of "selected districts." It further clarifies the definition of "selected districts" to exclude school districts, but to include all other public entities including special districts, JPAs, and public benefit corporations. The information provided in this report is required to be published no later than June 30 following the end of the annual reporting period. The Controller is required to include in his or her report information that best illustrates the assets, liabilities, and equity of selected districts. Specifically, the Controller is required to include in this report a breakdown of each special district's (1) fund balance, which shall include the reserved and unreserved funds, typical for a nonenterprise district; (2) retained earnings, which shall include the reserved and unreserved funds, typical for enterprise districts; (3) fixed assets; and (4) cash and investments. The Controller may also include separate line items for "total revenues" and "total expenditures." When the report is available, the Controller is required to notify the Legislature, in writing, within one week of its publication. (SB No. 282, Chapter 288, 2001)

JPAs have both advantages and disadvantages over special districts. (Cypher & Grinnell, 2007, p. 22) The stated advantages are that they are flexible, easy to form, encourage synergy and cooperation between members, and allow for financing. However, abuse of this financing advantage is not in the best interest of taxpayers. The stated disadvantages are that they require mutual trust between the members, require management resolve to retain members, may be difficult to dissolve, and may not have clear lines of transparency and accountability.

JPAs with Redevelopment Agencies

Many California cities set up redevelopment agencies (RDAs) to fund their urban renewal efforts. These same cities then set up JPAs between the city and its own RDA. This resulted in each of these three legal entities being controlled by one organization, that is, the city council.

Governor Jerry Brown signed into law two bills that amended California Community Redevelopment Law in order to redress the state's ongoing budget deficit and to curtail abuses by redevelopment agencies that deviated from the original intent of redevelopment law. Assembly Bill x1 26 (ABx1 26) dissolved all California RDAs, effective October 1, 2011. This legislation prevented RDAs from engaging in new activities and outlined a process for winding down the RDA's financial affairs. It also set forth a process for distributing funds from the former RDAs to other local taxing entities.

In response, the California Redevelopment Association, the League of California Cities, and other parties filed petitions with the California Supreme Court challenging the constitutionality of ABx1 26. On December 29, 2011, the California Supreme Court upheld the constitutionality of ABx1 26. Although delayed by litigation, approximately 400 RDAs were dissolved on February 1, 2012, with the assets and liabilities transferred to Successor Agencies and Successor Housing Agencies pursuant to ABx1 26. The bottom line, however, is that even though California RDAs have been dissolved, and they no longer officially exist, in some cases their successor agencies still remain an active member of a JPA!

REASON FOR THE STUDY

Given the large number (71) of JPAs reported in Orange County (OC) and the complexity of JPAs, the Orange County Grand Jury (Grand Jury) anticipated that there could be four concerns with regard to JPAs in Orange County. These concerns are (1) the viability of the JPAs with RDAs as members, since RDAs were eliminated in 2012, (2) the use of JPAs by government organizations to be controlled by a single government entity, (3) the lack of true disclosure and transparency of their organization and financial information to taxpayers, and (4) the extreme debt-to-revenue ratio of some JPAs, which brings into question their solvency. The Grand Jury suspected that nearly one-fourth of the JPAs are no longer relevant, due to the elimination of RDAs, and for other reasons. The question to be answered is: Are the JPAs with RDAs as a member still relevant and viable?

It was also anticipated that there has been extensive public debt generated under these JPAs with limited understanding by the public. The reason for the study was to provide taxpayers with information regarding these organizations and the financial exposure facing the public. This information provided to the public may stimulate further public demands for inquiry on transparency and accountability.

METHODOLOGY

The Grand Jury first attempted to obtain a comprehensive list of all of the JPAs that were in Orange County. Lists were requested from both the County Auditor-Controller's Office and the State Controller's Office. Neither of these lists was determined to be complete. As a result, the Grand Jury proceeded to investigate Special District reports, city financial records, and County financial records and Internet files. The result was that the Grand Jury determined that there are currently 71 JPAs in Orange County. However, it should be noted that due to the lack of a consolidated list by any County or State organization, the actual number of JPAs may be more than 71.

Once the Grand Jury had a list of the known JPAs in Orange County, the Grand Jury sent out a request for information (RFI) letter to each organization. This letter requested confirmation that the entity was a JPA. In addition, information was requested regarding the JPA's organization, charter, financial data, and the disclosure of information by the JPA into the public domain (transparency). The data utilized in this report is primarily that data provided by the JPA itself. If there were issues with regard to

inconsistent or contradictory data that was provided, follow-up calls to confirm or correct information were conducted.

INVESTIGATION AND ANALYSIS

The Grand Jury identified 71 JPAs currently registered in Orange County. There could be more, but the absence of accurate State and County record keeping and reporting makes it practically impossible to confirm the exact number. The Grand Jury investigation's request for information to the OC Auditor-Controller revealed that the Controller knows the JPAs in which the County is a member, but does not have a list of all of the JPAs in OC and cannot confirm compliance of their submittal of required information for public access. In addition, the OC Auditor-Controller does not provide easy-to-use online access to the data submitted by the JPAs.

The investigation revealed some interesting facts about those JPAs that were identified. Nine of those have no debt, revenue, activity, or liabilities. This caused the Grand Jury to question their purpose and viability. Of the remaining 62 JPAs, 29 (or, 47%) have "Financing" as their primary service or activity. Fifteen of the 62 have at least one school district as a member. Eight of the 62 have "Insurance" listed as their primary service. Eighteen (or, 29% of the 62) still have an RDA listed as one of their member participants. The 62 new or currently active JPAs out of the total of 71 have \$1.1 billion in total revenue, \$1.2 billion in expenditures, \$4.3 billion in assets of which \$1.5 billion are in reserve, \$7.1 billion in debt, and over \$600 million in unfunded liability. The Grand Jury concluded that the JPAs in Orange County control a significant amount of public funds with a limited amount of oversight and disclosure to the taxpayers.

Viability

The following nine JPAs in Orange County have no currently reported revenues, expenditures, assets, or liabilities:

1. Buena Park Public Financing Authority
2. Capistrano Unified Public Financing Authority
3. Countywide Public Finance Authority
4. Fullerton Library Building Authority
5. Garden Grove Public Financing Authority
6. Newport-Mesa United School District Public Financing Authority
7. Stanton Public Financing Authority
8. Tustin Public Financing Authority
9. Westminster Public Finance Authority

The Grand Jury questions the rationale and continued expense by the members of these JPAs to keep these legal entities in existence.

The following 18 JPAs in Orange County still have an RDA listed as one of their member participants:

1. Anaheim Public Financing Authority
2. Brea Public Financing Authority

3. Buena Park Public Financing Authority
4. City of Fullerton Public Financing Authority
5. City of San Clemente Public Financing Authority
6. Costa Mesa Public Finance Authority
7. Fountain Valley Financing Authority
8. Garden Grove Public Financing Authority
9. Huntington Beach Public Financing Authority
10. La Habra Civic Improvement Authority
11. Mission Viejo Community Development Financing Authority
12. Rancho Canada Financing Authority
13. Santa Ana Financing Authority
14. Seal Beach Public Financing Authority
15. Stanton Public Financing Authority
16. Tustin Public Financing Authority
17. Westminster Public Financing Authority
18. Yorba Linda Public Financing Authority

JPAs with RDAs have another unique problem associated with them. The passing of the ABx1 26 forced the RDAs to cease to exist and to become successor agencies. These successor agencies were expressly prohibited from taking on additional redevelopment or debt, and were required to wind down and pay off their existing debt under a conservator's guidance and State oversight. Once the debt is fully paid off, the successor agency is to terminate. This is a key issue with regard to JPAs. Since many of the JPAs have RDAs as one of their members, that member is now a successor agency. Since this successor agency can no longer perform its original charter, the purpose of the JPA is no longer valid. The Grand Jury has determined that these legal entities no longer serve any viable purpose or benefit for taxpayers.

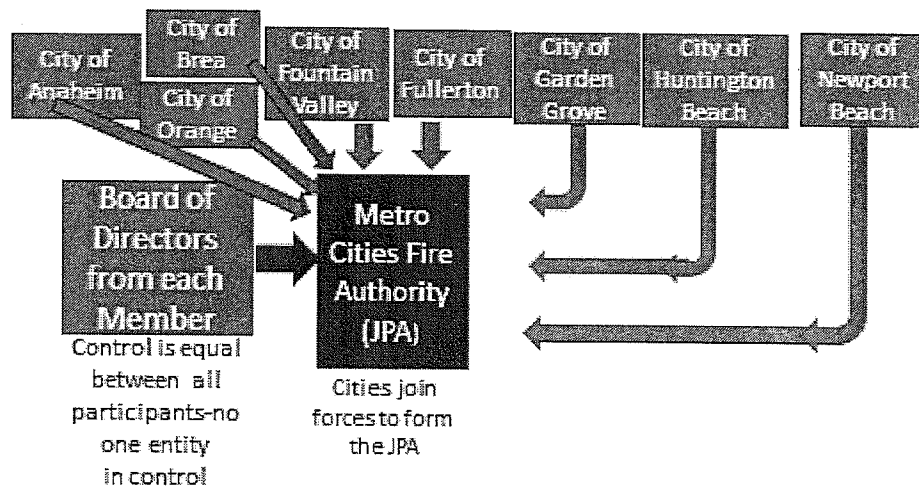
Control and Financial Loopholes

The Grand Jury determined that many different types of JPAs exist in Orange County. As a result, generalizations regarding their use or effectiveness cannot be easily made. State statutes authorize legal entities, such as cities, counties, school districts, or special districts to set up JPAs. These statutes give significant authority and latitude to these entities. As a result, many of these legal entities appear to set up JPAs which comply with the spirit of the law to provide financial benefit to the taxpayers. However, other JPAs may provide a legal means to avoid voter approval of debt decisions and to potentially mask financial accountability. This latter case is of significant concern since it is not in the best interest of taxpayers and does not provide for full transparency.

In its analysis, the Grand Jury has determined that "horizontal" JPAs appear to comply with the spirit of the law. These JPAs provide shared services such as insurance pools, training, area transportation, communication systems, workers compensation, area flood protection, and water supply to the community. JPAs were determined to be horizontal if their members were composed of similar entities that shared a common problem or opportunity. That is, each of the members was looking to delegate a function

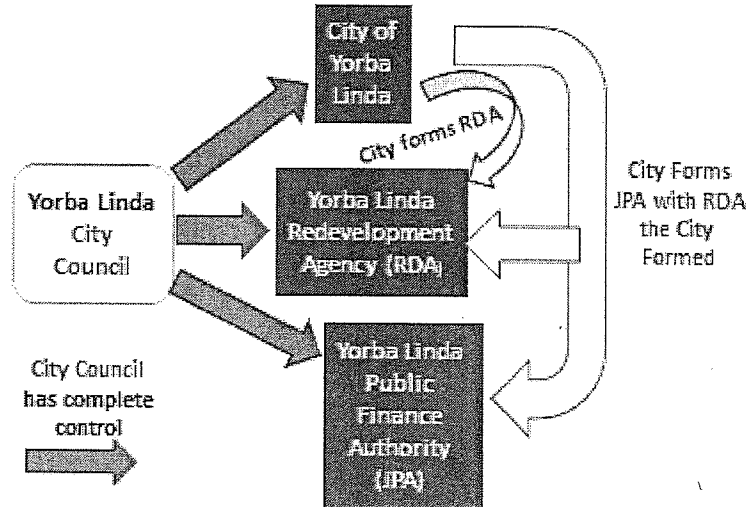
of their authority to a JPA in order to either improve the service that is provided or to reduce the cost through economies of scale. Each member in the JPA is motivated to have the JPA perform better than the individual member could do it alone. A JPA member is motivated to be looking out for their entity's best interest. As a result, if the JPA is not providing the desired results or improvements, then the member can withdraw from the JPA and go it alone. As a result, there are organizational checks and balances that tend to allow for self-correction and accountability. Many of these horizontal JPAs also tend to provide a real service to the community.

"Horizontal" JPA Structural Organization



However, the Grand Jury has determined that "vertical" JPAs do not appear to comply with the spirit of the law. These JPAs were determined to be vertical if their members were not similar entities but rather the same entity with a different organizational structure. That is, all of the members of the JPA were controlled by a single authority. The most common type of these JPAs is a finance JPA with a single city and the same city's RDA as its members. Under this structure, the city sets up its own city's RDA then "jointly" agrees to set up the financing JPA. As a result, the city council has authority over the city, the city's RDA, and the city's financing JPA. One entity is now controlling all three entities; hence, the name "vertical." As a result, there are not the same checks and balances of membership or control as with a horizontal JPA.

“Vertical” JPA Structural Organization



The Grand Jury initially did not understand the benefit of having a vertical JPA since, in this model, the city council had control over all three entities. Clearly the city could perform these functions on its own behalf. Upon further investigation, the reasons became clearer, but the potential risk to the public also became clear and engendered concern. This understanding came from the lessons learned from the City of Bell fiasco.

The City of Bell was not able to borrow any more money to pay for the salaries that the officials had granted themselves due to Article XVI, Section 18 of the California Constitution, which prohibits cities, counties, and school districts from borrowing an amount in a given year that exceeds "...the income and revenue provided for such year" unless approval is obtained from at least 2/3 of the voters (California Constitution, Art. XVI, Sec.18). So, the City of Bell created a vertical JPA under its city council's control. The JPA now had the authority to issue debt without the approval of the voters. Since the JPA is a separate legal entity, the city is not responsible for its debt. As a result, the JPA did not have collateral to obtain a loan. So the city transferred an asset from the city to the JPA to be the collateral for the loan. Consequently, a loan was given to the JPA since the risk to the bond holders was secured. The money obtained from this loan was then transferred back to the city to pay for general obligations. This answers the question of how the City of Bell was able to borrow so much money without the ability to ever pay it back. In this case, the city taxpayers were not given their legal right to vote on the city adding additional debt upon itself. The taxpayers were also paying for the asset the city gave to the JPA twice. It was already a city asset paid by tax money and now it was being paid off again through the JPA loan.

Another example of potential abuse using a JPA is through a vertical financial JPA that involves contract leases in lieu of asset procurement. This technique has the city sign a long term lease agreement to their own JPA, with the JPA as the lessor. The

JPA then buys a building or builds a building. The JPA can obtain debt financing since it is holding a long term lease from the city as its collateral. This approach does not require voter approval of the debt or voter approval on the capital investment for the city. Since the city council has total control over this vertical JPA, they can direct the process and the decisions.

The structure of a vertical JPA with a single entity having control over all of the members is a legal organization in the State of California. However, the Grand Jury has concluded that this vertical JPA could be used by the single governing entity to bypass other legal constraints on that same entity. This structure breeds the temptation to acquire more debt without a ceiling limit like that imposed on city governments. This type of JPA can be used to circumvent the California Constitution which prohibits cities, counties, and school districts from borrowing an amount in a given year that exceeds "...the income and revenue provided for such year" unless approval is obtained from at least 2/3 of the voters (California Constitution, Article XVI, Section 18, "Debt"). The JPAs are not bound by this prohibition and do not need voter approval unless contested during the 30-day referendum period. Transparency is limited in this type of transaction because most taxpayers are unaware that a notice has been posted and there is no requirement to give it wide public dissemination. In addition, the opaque, layered structure gives the government the ability to obfuscate financial transactions within the parent organization and hence from the taxpayers. This is the equivalent of a "shell company" in business. The Grand Jury has concluded that the use of a JPA to legally by-pass the voting rights of the taxpayers or obfuscates the financial transaction's real cost is an unacceptable situation for its citizens.

Transparency

The Grand Jury originally believed that they would be able to obtain information regarding the finances of JPAs from both the County or State government organizations since there is a statutory reporting requirement. However, this was not the case. The County did not have a list of JPAs in the County other than those JPAs of which the County is a member. In addition, the State records regarding JPAs were also found to be incomplete. There appears to be confusion by many of the JPAs regarding their responsibility to report to the State under SB 282 Chapter 288. This is further complicated because the State Controller's report lists them under a "Special Districts" heading. In addition, the State Controller's report provides a disclaimer that the State is not responsible for the content. In addition, the Orange County Auditor-Controller's Office does not provide any review or easy access to the JPA financial reports that are sent to them. Any assumption by the public that either the State or the County is providing a value-added review of the audited information, or lack thereof, would be incorrect.

As a result, the Grand Jury has concluded that there is extensive non-compliance with the disclosure requirements contained in the Government Code Section 6500 and SB 282. This results in a significant loss of transparency to the public and taxpayers. There are ten JPAs in OC that do not report their financial information to either the State or the County. In addition, there are 32 JPAs in OC that do not report their financial information to the State.

Solvency

While some JPAs have relatively modest levels of debt, others have very significant debt. The Foothill Transportation Corridor Agency and the San Joaquin Transportation Corridor Agency have a joint debt level of over \$4.5 billion, which is about 63% of the total debt reported by all the JPAs in Orange County. This level of public debt on the citizens of Orange County is very significant. These two transportation agencies only have an income level of \$292 million per year. With this extreme debt burden, the Grand Jury questions their ability to pay off the principal and interest, based on their current revenue level.

The Orange County Fire Authority is a JPA with annual revenue of \$331 million and a modest reported debt level of about \$10 million. However, the Orange County Fire Authority has an off-the-books unfunded debt liability of over \$577 million. This debt liability is the result of pension commitments made to employees which encumber future tax revenues that are not actuarially held in reserve. This has the potential to become a financial debacle, for the JPA and the taxpayers.

The Anaheim Public Financing Authority which is a JPA between the City of Anaheim and the Anaheim Redevelopment Agency, has an income of \$154 million and a debt exposure of \$1.2 billion. The debt level of this JPA is extremely high compared to its income level. In addition, with the elimination of the Anaheim Redevelopment Agency, its successor agency can continue to be a member of the JPA. However, neither the JPA nor the successor agency can exist for any other purpose besides paying off remaining debt or bonds. As a result, the Grand Jury questions both the viability and the solvency of this JPA based on the information provided.

FINDINGS

In accordance with California Penal Code sections 933 and 933.05, the 2014-2015 Grand Jury requires (or, as noted, requests) responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation titled "Joint Powers Authorities in Orange County," the 2014-2015 Orange County Grand Jury has arrived at ten principal findings, as follows:

- F.1.** Orange County has nine "inactive" Joint Powers Authorities that have no viable activity, revenue, expenditure, assets, or liabilities. The Grand Jury determined that these Joint Powers Authorities serve no benefit to the public or the taxpayers and have the potential for misuse or obfuscation of public funds.
- F.2.** Horizontal Joint Powers Authorities among peer organizations appear to meet the intent of State laws to delegate a common service for a city or other legal entity for the purpose of reducing cost on behalf of the taxpayers.
- F.3.** Orange County has 18 vertical Joint Powers Authorities created by a city along with its redevelopment agency that no longer exists. The Grand Jury determined

that these Joint Powers Authorities serve no benefit to the public or the taxpayers and have the potential for misuse or obfuscation of public funds.

- F.4. Vertical Joint Powers Authorities with a single controlling entity, such as a city council, have the potential to use this organizational structure as a shell company to avoid other legal constraints on the controlling entity and to obfuscate taxpayer visibility.
- F.5. Vertical Joint Powers Authorities in which the controlling entity transfers assets from itself to a Joint Powers Authority for the purpose of obtaining additional funding, or signs a long-term lease to a Joint Powers Authority to obtain assets, are avoiding transparency and are not acting in the best financial interest of the taxpayers.
- F.6. 32 of the Joint Powers Authorities identified in Orange County are not complying with the California State reporting requirements in code Section 6500 and SB 282 according to the latest information available from the year 2013.
- F.7. The Orange County Auditor-Controller knows of the Joint Powers Authorities in which the County is a member, but does not have a list of all of the Joint Powers Authorities in Orange County and cannot confirm compliance of their submittal for public access. The Orange County Auditor-Controller does not provide easy-to-use online access to the data submitted to it by the Joint Powers Authorities that are compliant with the requirement to submit.
- F.8. The Foothill Transportation Corridor Agency and the San Joaquin Transportation Corridor Agency have a joint debt level of over \$4.5 billion. The Grand Jury has determined that this debt level is excessive based on their revenues, and it threatens to render them insolvent.
- F.9. The Orange County Fire Authority has an off-the-books unfunded debt liability of \$577 million which the Grand Jury has determined to be of concern since it is a real liability on the County taxpayers.
- F.10. The Anaheim Public Financing Authority has a debt exposure of \$1.2 billion which the Grand Jury has determined to be excessive in light of the fact that it was incurred without voter approval.

RECOMMENDATIONS

In accordance with California Penal Code sections 933 and 933.05, the 2014-2015 Grand Jury requires (or, as noted, requests) responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation titled "Joint Powers Authorities in Orange County," the 2014-2015 Orange County Grand Jury makes the following eight recommendations:

- R.1. All Orange County Joint Powers Authorities that are "inactive" should submit the official paperwork with the State of California requesting termination of their

- existence or provide at the next public meeting the justification for continuing the Joint Powers Authority. (F.1.)
- R.2.** All Vertical Joint Powers Authorities created by a city along with its redevelopment agency should submit the necessary paperwork with the State of California requesting termination of their existence. (F.3.)
- R.3.** All Joint Powers Authorities should take the following actions to insure transparency to the taxpayers: (1) have an annual outside audit, (2) post the complete audit on their city website as a separate Joint Powers Authority entity, (3) send the audit to the County Controller and the State Auditor, and (4) ensure the required reports are filed annually to the County and the State. (F.4., F.5.)
- R.4.** The 32 Joint Powers Authorities that are not complying with the California State Law requiring annual reporting should become compliant by submitting their 2014 report by December 31, 2015, and submitting the required reports annually thereafter. (F.6.)
- R.5.** The Orange County Auditor-Controller should maintain a current list of all of the Joint Powers Authorities in Orange County, confirm that reports have been submitted annually, and post the completed reports with all the details on an easy-to-use Internet public access website. (F.7.)
- R.6.** The Foothill Transportation Corridor Agency and the San Joaquin Transportation Corridor Agency should address their solvency by an aggressive plan to reduce their public debt. (F.8.)
- R.7.** The Orange County Fire Authority should address their lack of transparency by providing public disclosure of their off-the-books unfunded public liability in their financial statements and address their solvency by an aggressive plan to reduce their unfunded liabilities. (F.9.)
- R.8.** The City of Anaheim City Council should redress the debt incurred by the Anaheim Public Financing Authority under its direction by an aggressive plan to reduce their public debt. (F.10.)

REQUIRED RESPONSES

The California Penal Code section 933 requires the governing body of any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court). Additionally, in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such elected official shall comment on the findings and recommendations pertaining to the matters under that elected official's control within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code section 933.05, subdivisions (a), (b), and (c), provides as follows, the manner in which such comment(s) are to be made:

(a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:

(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 therefore.

(b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

(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 time frame for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame 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 therefore.

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section 933.05 and Penal Code 933(c) are required from the respondents listed in the following two Response Matrices (one for cities and County and one for Joint Powers Authorities):

Matrix 1 REQUIRED RESPONDENTS (Cities & County)

	Required Respondents	Findings										Recommendations							
		F 1	F 2	F 3	F 4	F 5	F 6	F 7	F 8	F 9	F 10	R 1	R 2	R 3	R 4	R 5	R 6	R 7	R 8
1	City of Anaheim Mayor & City Council			X							X		X						X
2	City of Brea Mayor & City Council			X									X						
3	City of Buena Park Mayor & City Council	X		X								X	X						
4	City of Costa Mesa Mayor & City Council			X									X						
5	City of Fullerton Mayor & City Council	X		X								X	X						
6	City of Fountain Valley Mayor & City Council			X									X						
7	City of Garden Grove Mayor & City Council	X		X								X	X						
8	City of Huntington Beach Mayor & City Council			X									X						
9	City of La Habra Mayor & City Council			X									X						
10	City of Lake Forest Mayor & City Council			X									X						
11	City of Mission Viejo Mayor & City Council			X									X						
12	City of San Clemente Mayor & City Council			X									X						
13	City of San Juan Capistrano Mayor & City Council	X										X							
14	City of Santa Ana Mayor & City Council			X									X						
15	City of Seal Beach Mayor & City Council			X									X						
16	City of Stanton Mayor & City Council	X		X								X	X						
17	City of Tustin Mayor & City Council	X		X								X	X						

Joint Powers Authorities: Issues of Viability, Control, Transparency, and Solvency

	Required Respondents	Findings										Recommendations								
		F 1	F 2	F 3	F 4	F 5	F 6	F 7	F 8	F 9	F 10	R 1	R 2	R 3	R 4	R 5	R 6	R 7	R 8	
18	City of Westminster Mayor & City Council	X		X									X	X						
19	City of Yorba Linda Mayor & City Council			X										X						
20	Orange County Auditor-Controller							X									X			

Matrix 2 REQUIRED RESPONDENTS (Joint Powers Authorities)

	Required Respondents	Findings										Recommendations								
		F 1	F 2	F 3	F 4	F 5	F 6	F 7	F 8	F 9	F 10	R 1	R 2	R 3	R 4	R 5	R 6	R 7	R 8	
1	Anaheim Community Center Authority				X	X									X					
2	Anaheim Housing and Public Improve. Auth.				X	X									X					
3	Anaheim Public Financing Authority			X	X	X					X			X	X					X
4	Big Independent Cities Excess Pool				X	X									X					
5	Bonita Canyon Public Facilities Fin. Auth.				X	X									X					
6	Brea Community Benefits Financing Auth.				X	X									X					
7	Brea Public Financing Authority			X	X	X								X	X					
8	Buena Park Public Financing Authority	X		X	X	X							X	X	X					
9	California Insurance Pool Authority				X	X									X					
10	Capistrano Unified Public Financing Auth.	X			X	X	X						X		X	X				
11	Central Net Operations Authority				X	X	X								X	X				
12	City of Brea Midbury Assessment Auth.				X	X	X							X	X	X				
13	City of Fullerton Public Financing Auth.			X	X	X	X							X	X	X				
14	City of San Clemente Public Fin. Auth.			X	X	X	X							X	X	X				
15	Coastal Animal Services Authority				X	X	X								X	X				

Joint Powers Authorities: Issues of Viability, Control, Transparency, and Solvency

	Required Respondents	Findings										Recommendations							
		F 1	F 2	F 3	F 4	F 5	F 6	F 7	F 8	F 9	F 10	R 1	R 2	R 3	R 4	R 5	R 6	R 7	R 8
16	Coastal District Financing Authority				X	X								X					
17	Co-Op- Org. Develop. Employee Selec.Proced.				X	X								X					
18	Costa Mesa Public Finance Authority			X	X	X							X	X					
19	Countywide Public Finance Authority	X			X	X	X						X	X	X	X			
20	Fountain Valley Financing Authority			X	X	X	X						X	X	X				
21	Fullerton Arboretum Authority				X	X								X					
22	Fullerton Library Building Authority	X			X	X	X						X	X	X				
23	Fullerton School District Financing Auth.				X	X	X							X	X				
24	Garden Grove Public Financing Authority	X		X	X	X	X						X	X	X	X			
25	Huntington Beach Public Financing Auth.			X	X	X							X	X					
26	Independent Cities Risk Management Auth.				X	X	X							X	X				
27	Integrated Law and Justice Agency for OC				X	X	X							X	X				
28	Irvine Child Care Project				X	X	X							X	X				
29	Irvine Unified School District Financing Auth.				X	X								X					
30	Joint Powers Employee Benefit Authority				X	X								X					
31	La Habra Civic Improvement Authority			X	X	X	X						X	X	X				
32	Metro Cities Fire Authority				X	X	X							X	X				
33	Mission Viejo Commu. Devel. Fin. Auth.			X	X	X	X						X	X	X				
34	National Water Research Institute				X	X	X							X	X				
35	Newport-Mesa United School Fin. Auth.	X			X	X	X						X	X	X				
36	North Net Joint Powers Training Agree.				X	X	X							X	X				

Joint Powers Authorities: Issues of Viability, Control, Transparency, and Solvency

	Required Respondents	Findings										Recommendations							
		F 1	F 2	F 3	F 4	F 5	F 6	F 7	F 8	F 9	F 10	R 1	R 2	R 3	R 4	R 5	R 6	R 7	R 8
37	Northern OC Self-Funded Workers Comp. Auth.				X	X								X					
38	Northern OC Lia. & Property Self-Insu. Auth.				X	X								X					
39	Orange County Cities Airport Authority				X	X								X					
40	Orange County Civic Center Authority				X	X	X							X	X				
41	Orange County Council of Governments				X	X	X							X	X				
42	Orange County Fire Authority				X	X				X				X				X	
43	Orange County Fringe Benefits Agreement				X	X								X					
44	Orange County Public Financing Authority				X	X								X					
45	Orange County-City Hazardous Matl. Auth.				X	X								X					
46	Orange Uni. School Distr. Public Fin. Auth.				X	X	X							X	X				
47	Public Cable Television Authority				X	X								X					
48	Rancho Canada Financing Authority			X	X	X								X	X				
49	Rancho Santa Margarita Public Fin. Auth				X	X	X							X	X				
50	Saddleback Valley Unified Sch. Fin. Auth.				X	X								X					
51	San Joaquin Trans. Corridor Agency				X	X			X					X			X		
52	San Juan Basin Authority				X	X								X					
53	Santa Ana Financing Authority			X	X	X	X							X	X	X			
54	Santa Ana River Flood Protection Agency				X	X								X					
55	Santa Margarita-Dana Point Authority				X	X								X					
56	Santiago Aqueduct Commission				X	X								X					
57	School Employers Association of California				X	X								X					
58	Seal Beach Public Financing Authority			X	X	X	X							X	X	X			
59	South Coast Water District Financing Auth.				X	X								X					
60	South Orange County Public Financing Auth.				X	X								X					

Joint Powers Authorities: Issues of Viability, Control, Transparency, and Solvency

	Required Respondents	Findings										Recommendations								
		F 1	F 2	F 3	F 4	F 5	F 6	F 7	F 8	F 9	F 10	R 1	R 2	R 3	R 4	R 5	R 6	R 7	R 8	
61	South Orange County Wastewater Auth.				X	X														
62	Southern Orange County Prop/Lia. Self Insu.				X	X														
63	Stanton Public Financing Authority	X		X	X	X	X							X	X	X	X			
64	The Foothill Trans. Corridor Agency				X	X			X								X			
65	Trabuco Canyon Public Financing Authority				X	X										X				
66	Tustin Public Financing Authority	X		X	X	X	X							X	X	X	X			
67	Tustin Unified School District Fin. Auth.				X	X	X									X	X			
68	West Cities Commun. Cntr. Joint Powers Auth.				X	X	X									X	X			
69	Western Orange County Self-Funded Comp				X	X										X				
70	Westminster Public Finance Authority	X		X	X	X	X							X	X	X	X			
71	Yorba Linda Public Finance Authority			X	X	X	X								X	X	X			

REFERENCES

Cypher, T. & Grinnell, C. (2007). *Governments Working Together: A Citizen's Guide to Joint Powers Agreements*. California State Legislature, Senate Local Government Committee Report.

State of California Constitution. *Article XVI. Section 18. "Debt"*.

State of California Government Code Section 6500. *Joint Exercise of Powers Act*

State of California Senate Bill No. 282. (2001). *Chapter 288, Amended Section 12463.1 [Government Code]*.