



# REPORT TO COUNCIL

## City of Sacramento

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Staff Report  
March 23, 2010

Honorable Mayor and  
Members of the City Council

**Title:** Responses to the Findings and Recommendations of the Sacramento Grand Jury Report 2009-10

**Location/Council District:** All

**Recommendation:** Approve proposed responses to findings and recommendations contained in the 2009-10 Grand Jury Report regarding use of the City's utility enterprise funds and Proposition 218, and direct the City Manager to submit the responses as required on behalf of the Mayor and City Council

**Contact:** Jamille Moens, Business Services Manager, Department of Utilities 808-5988

**Presenters:** Marty Hanneman, Director, Department of Utilities 808-7508

**Department:** Utilities

**Division:** Office of the Director

**Organization No:** 14001011

### Description/Analysis

**Issue:** On January 6, 2010, the Sacramento County Grand Jury issued a Grand Jury Report (entitled "The City of Sacramento and Proposition 218 – *The Law Is the Law*") regarding City practices pertaining to the use of utility enterprise funds that potentially do not comply with Proposition 218. Included in the report are the Grand Jury's findings and recommendations. The California Penal Code requires the Mayor and City Council to respond to these findings and recommendations, and such responses must be submitted to the Presiding Judge of the Sacramento Superior Court by April 6, 2010. Staff recommends approval of the responses in Attachment 1.

On January 26, 2010, staff provided a preliminary report to the City Council. As part of the FY10/11 budget development process, staff will report to City Council regarding the cost of service analysis related to utility services provided to city departments, and recommendations for addressing any potential Proposition 218 issues.

**Policy Considerations:** One of the duties of the Grand Jury is to inquire into, and investigate if necessary, the operations of local government agencies and officials to ensure that activities are valid and services are efficiently and legally provided. Responses to the Grand Jury findings and recommendations are required by law and provide an opportunity for clarification and correction.

**Environmental Considerations:**

**California Environmental Quality Act (CEQA):** Under Section 15378(b)(2) of the CEQA Guidelines, approval of a response to the Grand Jury report is an administrative activity that does not constitute a project for purposes of CEQA and therefore is exempt from CEQA review.

**Sustainability Considerations:** There are no sustainability considerations associated with this report.

**Commission/Committee Action:** None.

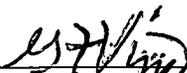
**Rationale for Recommendation:** The recommended responses set forth in Attachment 1 fulfill the City's statutory obligation to respond to the Grand Jury report.

**Financial Considerations:** There are no fiscal impacts in approving the recommended responses, however, budgetary impacts are expected as the Department of Utilities increases charges for certain utility services.

**Emerging Small Business Development (ESBD):** No goods or services are being purchased under this report.

Respectfully Submitted by:   
Marty Hanneman, Director

Recommendation Approved:

  
Gustavo Vind  
Interim City Manager

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2009-10 Sacramento Grand Jury Report  
"The City of Sacramento and Proposition 218 – *The Law Is the Law*"

Findings and Recommendations

***Finding 1.0*** Based on data supplied by city employees, a consultant's draft report estimated that the city's annual cost of potential violations is more than \$5 million. The present worth cost of one-time projects and recurring costs over the last three years is in excess of \$21 million. The mayor and members of city council received copies of this report in July 2008. No action was taken.

**Response:** The City disagrees in part with this finding. The referenced engineering consultant was retained to review cost data associated with various practices identified by City staff, and prepared and submitted a draft report in May of 2008 quantifying the cost associated with these practices. However, the analysis provided in the draft report consisted solely of cost estimating. The draft report expressly stated that it was not intended to provide an opinion regarding compliance with Proposition 218, and for this reason the various cost estimates in the consultant's draft report were not necessarily indicative of any actual violations of Proposition 218. To the extent that this finding suggests otherwise, the City disagrees. In addition, actions were taken after the consultant's draft report was received, as noted in the response to Recommendation 1.2, below.

***Recommendation 1.1*** The city council should disclose the entire consultant's report to the public.

**Response:** The entire consultant's draft report, with minor redactions of privileged and confidential matter, has been publicly disclosed.

***Recommendation 1.2*** The city council should explain why it took no action.

**Response:** In August of 2008, the City Council was advised by the City Manager that staff was working with the City Attorney's Office to review the consultant's draft report and, after this review was complete, staff would follow up with a full report to the Mayor and City Council. A status report was brought to City Council in January 2010. During this time, Department of Utilities' staff (1) reviewed the various practices identified in the consultant's draft report in consultation with the City Attorney's Office, (2) conducted internal audits and reviewed policies and procedures to identify potential Proposition 218 issues, and (3) took action to eliminate or reduce the scope of many potential ongoing Proposition 218 violations, including the following:

- In April 2009, the Department of Utilities and Department of Parks and Recreation agreed to a phased approach to incrementally eliminate the reduced

volumetric water rate charged for water supplied to City parks over a 15 year period.

- In addition, beginning July 1, 2009, the non-volumetric fixed service charges paid for metered water service, including metered water service to City parks, was significantly increased.
- Beginning July 1, 2009, the Department of Utilities: (1) ceased providing any solid waste services for special events without reimbursement for its service costs; (2) ceased further contributions to the economic development capital improvement program used to fund utility infrastructure; and (3) ceased the use of its personnel or equipment to perform work for non-Utility facilities without receiving full cost reimbursement either in funds or through trade of in-kind services.

With respect to the City's use of Drainage Funds to partially fund the purchase of the "Natomas Auto Mall" property referenced in the Grand Jury report, in 2005 the City exchanged this property for vacant real property located southeast of the intersection of Interstate 80 and Truxel Road. The property currently owned by the City is and will continue to be held as an asset of the Drainage Fund, and if the property is sold in the future, the sale proceeds will be used to reimburse the Drainage Fund.

***Recommendation 1.3*** *The city council should acquire outside legal counsel and technical experts to advise the city council on the legality of the uses of utility revenues for each of the practices listed in the consultant's report.*

**Response:** City staff has reviewed the various practices identified in the consultant's draft report in consultation with the City Attorney's Office, and those practices deemed to present potential ongoing Proposition 218 violations have either been eliminated or City staff is recommending a plan to eliminate them. This option is therefore unnecessary and will not be implemented at this time.

***Finding 2.0*** *Once the city manager and the assistant city manager over the Department of Utilities (DOU) learned that there were potential and substantial Proposition 218 violations, they had a duty to pursue the issue and determine the existence and extent of any actual violations. They failed their duty.*

**Response:** The City disagrees with this finding. As noted in the response to Recommendation 1.2, above, City staff took a number of actions to either eliminate or reduce the scope of potential ongoing Proposition 218 violations after the consultant's draft report was received.

***Recommendation 2.1*** *The city council should admonish the city manager and the responsible assistant city manager for this failure.*

**Response:** During the City Council's January 26, 2010, public meeting, City staff presented a written report to the City Council concerning the Grand Jury report and Proposition 218 issues, as well as verbal presentations by the City Manager and the Director of Utilities. At this meeting, City Councilmembers publicly admonished staff and directed them to move forward to address these issues.

**Finding 3.0** *For years DOU has supplied water to city parks at a reduced rate of only 15 % of the usual rate of providing water to other metered users. The grand jury is of the opinion that this is a violation of Proposition 218, which limits fees or charges to ratepayers for property related services. Providing water at reduced rates to the Department of Parks and Recreation (DPR) is not a property related service to ratepayers. The April 2009 agreement between DOU and DPR provides for this violation to be corrected over a 15 year period. The grand jury finds this timeline to be too lengthy.*

**Response:** The City disagrees in part with this finding. City staff undertook this phased approach to lessen the significant general fund impact of increasing the Department of Parks and Recreation's annual water costs, and as of July 1, 2009, the annual amount paid for water by the Department of Parks and Recreation has already been significantly increased. Given these circumstances and the City's ongoing and significant general fund deficits, the City does not find this timeline to be too lengthy.

**Recommendation 3.1** *The city council should modify this agreement and direct that DPR begin paying the comparable full metered rate in FY 2012.*

**Response:** See response to Finding 3, above.

**Finding 4.0** *The city has shifted the cost of providing city services from the general fund to the enterprise funds of DOU. The city improperly uses DOU labor and equipment, without reimbursement, to provide services to other city departments, sports facilities and city buildings.*

**Response:** The City agrees with this finding, with the clarification that beginning July 1, 2009, the Department of Utilities ceased the use of its personnel or equipment to perform work for non-Utility facilities without receiving full cost reimbursement either in funds or through trade of in-kind services.

**Recommendation 4.1** *If the advice of outside counsel confirms these violations, the city council should direct that DOU enterprise funds be reimbursed for future services from non-ratepayer funds.*

**Response:** As noted in the response to Finding 4.0, above, beginning July 1, 2009, the Department of Utilities ceased the use of its personnel or equipment to perform work for non-Utility facilities without receiving full cost reimbursement either in funds or through trade of in-kind services.

***Finding 5.0*** For the last several years DOU was directed to allocate \$1 million to pay for capital improvements related to private economic development projects. The city dropped the allocation from the FY 2010 budget.

**Response:** The City agrees with this finding, with three clarifications: (1) the funding was used for public utility infrastructure, (2) the referenced allocation of \$1 million was not necessarily an annual contribution of this amount, because in any given fiscal year if allocations for specified utility infrastructure projects were not fully expended or encumbered, the unspent/unencumbered balances were returned to the applicable Utilities funds; and (3) the funding was discontinued beginning July 1, 2009 due to budgetary considerations.

***Recommendation 5.1*** The city council should get an outside legal opinion concerning this practice.

**Response:** As noted in the response to Finding 5.0, above, for budgetary purposes the Department of Utilities has discontinued its contributions to the economic development capital improvement program used to fund utility infrastructure. Therefore, an outside legal opinion is unnecessary.

***Finding 6.0*** The grand jury found a lack of accountability, absence of transparency and failure of responsibility by individuals who hold positions of public trust in Sacramento City government.

**Response:** The City disagrees with this finding. City staff has been working to resolve the issues identified in the Grand Jury report as noted in the response to Recommendation 1.2, above, and will continue to do so. The City Council has directed staff to provide regular updates to ensure greater transparency in the future. To the extent this finding is based on what the report describes as "severe memory lapses" by several City witnesses when testifying before the Grand Jury, the City takes issue with this statement. Contrary to procedures followed in prior Grand Jury investigations, the Grand Jury in this case refused to provide any information whatsoever about the subject or nature of the investigation to the witnesses prior to their testimony. Therefore, the witnesses were wholly unable to prepare for their testimony in any meaningful fashion, and their inability to remember the details of events, decisions and communications that had often occurred more than a year prior to providing their testimony was a foreseeable result, given the Grand Jury's decision to withhold any information regarding the nature of the investigation prior to the witnesses' testimony.

***Recommendation 6.1*** The city council should clarify, in writing, its expectations regarding compliance with all laws and convey this policy statement to city staff and to the public.

**Response:** The City Council expects the City and City staff to comply with all laws. This written response makes that clear to City staff and the public.