RESOLUTION NO. 2007-409

Adopted by the Sacramento City Council

June 12, 2007

A SUPPLEMENTAL RESOLUTION UNANIMOUSLY APPROVING OF CITY'S RESPONSES TO FINDINGS AND RECOMMENDATIONS 2, 4 AND 5 IN THE 2006-2007 GRAND JURY REPORT REGARDING THE SACRAMENTO KINGS.

BACKGROUND

A. On or about March 19, 2007 the 2006-2007 Sacramento County Grand Jury issued a report entitled "The Kings and City and County of Sacramento: Betrayal in the Kingdom?", and included in the report were five findings and recommendations four of which require a response by the City.

B. Pursuant to Penal Code Sections 933 and 933.05, the City has an obligation to respond to the four findings and recommendations within the report.

C. The response letter, as attached to this resolution, was approved in its entirely by City Council resolution adopted by a vote of 7-2, authorizing the response letter's execution and transmittal to the Presiding Judge of the Sacramento Superior Court.

D. The two dissenting Council members requested a supplemental resolution be adopted by the City Council to allow these Council members' to express their agreement with and approval of the response letter, except for the response to finding 3 and recommendation 3. This is that supplemental resolution.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. The City Council unanimously agrees with and approves of the responses to the 2006-2007 Sacramento Grand Jury Report's findings and recommendations 2, 4 and 5 as set forth in the letter attached hereto and incorporated herein as Exhibit A.

Table of Contents:

Exhibit A: Response Letter

Adopted by the City of Sacramento City Council on June 12, 2007 by the following vote:

Ayes: Councilmembers, Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters and Mayor Fargo.

Noes: None.

Abstain: None.

Absent: None.

Mayor Heather Fargo

Attest:

Shirley Concolino, City Clerk

Exhibit A

June 12, 2007

Honorable Roland L. Candee, Presiding Judge
Superior Court of California
County of Sacramento
720 Ninth Street, Department 47
Sacramento, CA 95814

RE: City of Sacramento Response to 2006-2007 Sacramento County Grand Jury Report Concerning the Sacramento Kings

Dear Judge Candee:

In accordance with Penal Code Sections 933 and 933.05, this letter is submitted as the response of the City of Sacramento to the 2006-2007 Sacramento County Grand Jury Report concerning the Sacramento Kings that was delivered on or about March 19, 2007. Pursuant to the request set forth at the end of the Grand Jury Report, this letter addresses Findings and Recommendations 2, 3, 4 and 5. The City Council adopted a resolution on June 12, 2007 authorizing the undersigned to execute and deliver this letter. Copies of the staff report and resolution are attached for your consideration.

Before proceeding to the City's responses to these findings and recommendations, I must state that the City of Sacramento respects and appreciates the role a grand jury plays under California law providing oversight of municipal entities such as the City of Sacramento. The City showed its respect and appreciation for the grand jury through its extraordinary cooperation with the fact-finders of the grand jury. The City Attorney provided office space for the grand jurors for many months, locating and suggesting additional documents for review by the grand jurors. Tens of thousands of documents—all that the grand jury requested and additionally all that the City thought may be relevant or helpful to the grand jury—were freely provided. The City Attorney's office spent many hours explaining complex transactions to the grand jury. The City reiterates its appreciation for the exceptional effort the grand jurors put into this Herculean task of understanding these transactions.

However, the role of the grand jury as civil watchdog over government is undermined when the grand jury allows itself to be used for political purposes. Unfortunately, as reflected in the responses below, the personal and political opinions expressed in the grand jury report stray afar from the grand jury's statutory role of objective investigator and fact-finder.

A. Finding and Recommendation No. 2

Finding No. 2. The City of Sacramento has not been forthright with the citizens of Sacramento. The details of the 1997 loan to the Kings have never been accessible to the public and remain the focus of many rumors.

Recommendation No. 2. The City of Sacramento should make public all the 1997 loan agreement documents with the Kings.

City's Response to Finding No. 2 and Recommendation No. 2

The City strongly disagrees with Finding No. 2, as it is inconsistent with facts and is false. The 1997 transaction was the subject of numerous public meetings, discussed and detailed at great length in public reports submitted to the Council. All final documents associated with the transaction have been public since their inception in 1997.

With regard to Recommendation No. 2, the City implemented this recommendation in 1997. As discussed above, all of the final documents concerning the 1997 transaction have been public records accessible for viewing or copying by the public on request since 1997. Going above and beyond the Public Records Act's1 requirements, the public website for the City Treasurer's Office provides access to a wide range of public financing documents, including more than two hundred pages of the official statement issued in conjunction with the 1997 Lease Revenue Bonds utilized to finance the acquisition of Arco Arena.2 The Grand Jury appears to be faulting the City for failing to place all of the thousands of pages of documents on the website, which is certainly not required by the Public Records Act. Rather the two hundred pages of materials available on the website were selected specifically because they explain the nature of the transaction and list the various agreements and documents that were required to effectuate the transaction.

B. Finding and Recommendation No. 3

Finding No. 3. The judicially determined unlawful withholding of the documents from the public before the election does not build confidence in government.

Recommendation No. 3. Except when not [sic] restricted by law, the City and County of

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1 Cal. Gov't. Code Section 54950 et. seq.

2 The City's public website is located at www.cityofsacramento.org. The City Treasurer's public site is accessible by selecting "Departments and Services" and then selecting the City Treasurer under "Offices." The materials concerning the 1997 lease revenue bonds are found under "Public Finance" on the Treasurer's website.

Sacramento make all information relating to the determination of important public policy available to the citizens of Sacramento.

City's Response to Finding and Recommendation No. 3

The City believed then, and still believes, that the requested documents were exempt from disclosure under the Public Records Act. The City's belief was grounded on the fact that the document sought was draft number two of a proposed agreement between the Kings, the City and County, and the parties reasonably expected that the final form of the agreement would require at least forty or fifty more drafts. Therefore, draft number two would bear little if any resemblance to the final agreement.

The public interest in seeing such an early draft was curiosity, and provided little to no guidance as to the ultimate agreement that would have been presented to the Council publicly for approval. The deal points of the transaction were made public at the time the County Board of Supervisors voted to place Measures Q and R on the ballot. Therefore the draft agreement provided no additional information to the public on how to vote on Measures Q and R. The City believed the public's interest in non-disclosure – to give the City the advantage of obtaining the best terms and conditions from the Kings—far outweighed the counterbalancing curiosity interest of the public. The court disagreed with that position. Whether that court's decision on the withholding certain documents detracts from confidence in government is a matter of speculation and certainly not fact.

Presumably Recommendation 3 is that the City make all information relating to "the determination of important public policy" available unless prohibited by law. The City certainly supports full disclosure of its policy decisions, along with the reasoning and factual bases for such decisions and believes it has always implemented that recommendation. However, there are times when it is detrimental to the public's interest in efficient, effective government and inappropriate to disclose certain information, for reasons of strategy and negotiation. Depending on the information, it may merely be an issue with the timing of disclosure (e.g., disclosure of appraisal information). The Public Records Act, with its exemptions from disclosure, both absolute and temporal, and the Brown Act, with its closed session exceptions, recognize that there are legitimate reasons for a local jurisdiction not to disclose certain documents or information.

In theory, the City could waive all of the exemptions of the Public Records Act (with the exception of those that protect privacy and confidentiality rights of individuals), and refuse to hold closed sessions and discuss all matters in open and public sessions. To adopt such a policy would be unwise and irresponsible to the public, and the City has no intent to pursue such a course of action.

C. Finding and Recommendation No. 4

Finding No. 4. The City and County of Sacramento keep pandering to the Kings. The Kings are going to make whatever decision they are going to make. If they want to move, they have that option under the terms of the current 1997 loan. The Kings and the Monarchs play only a limited number of games each year. If local government decides to build a new entertainment center, there is no justification for allowing one private group to deprive the City and County of Sacramento of the Revenue generated and control of the development.

Recommendation No. 4. If the City and County of Sacramento want a first class entertainment facility, then build it. Build it with public funds, e.g., redevelopment funds, bonds, etc. and let the City and County of Sacramento derive the revenue stream. Make the facility a truly first class facility that can handle big name entertainment and other events. Let the facility be a draw to Sacramento and surrounding communities on a year round basis. If the private sector wants to participate, then make a deal, such as swapping the current undersize [sic] convention center in return for private participation. Stop worrying about the Kings.

City's Response to Finding and Recommendation No. 4

To the extent that Finding No. 4 constitutes a finding that the grand jury is authorized to make, rather than a personal or political opinion, the City strongly disagrees with the statement "[t]he City [and county] of Sacramento keep pandering to the Kings". From the City's perspective this pejorative, fallacious comment is pure personal or political opinion of the drafter, and inappropriate for inclusion in a grand jury report under the guise of a factual finding.

The statements that the Kings are entitled to leave Sacramento under the terms of the 1997 agreements, and that the Kings and Monarchs play a limited number of games, are correct in part. The Kings are entitled to leave Sacramento under the 1997 agreements only if they satisfy other obligations under the agreements, the most important of which is the obligation to pay off all outstanding bond indebtedness and costs.

The City disagrees with the overbroad finding as stated that there is no justification for the City to grant to a private entity all revenues from and control over a City built entertainment facility. Whether justification exists or not depends entirely upon the terms of the entire transaction.

As for the recommendation that the City and County should build their own facility with public funds, dispose of the "undersized" convention center "in exchange for private participation" or take other specified actions, this suggestion reflects a lack of understanding of the factual history surrounding the arena issue, includes any number of factual inaccuracies and, from the City's perspective, intrudes inappropriately into matters of policy that are the responsibility of the elected members of the Council. As a matter of fact, the possibility of a publicly-financed and publicly-owned and operated facility has been analyzed and considered by the City. For fiscal and policy reasons, the City has chosen not to pursue this option at this time. The City disagrees that the convention center is "undersized" and has no plans to dispose of this valuable facility especially on the terms suggested by the grand jury.

D. Finding and Recommendation No. 5

Finding No. 5. The City of Sacramento has entered into an unknown number of agreements with the developer of the railyard and others related to the development of the railyards.

Recommendation No. 5. The City of Sacramento should make all agreements the city has made with the developer and others related to the development of the railyard available to the public.

City's Response to Finding and Recommendation No. 5

It is unclear whether the grand jury believes there are "secret" agreements or that it just doesn't know how many agreements have been executed. Both are incorrect. There are no "secret" agreements. All agreements between the City and the developer and others related to the development of the downtown railyards were approved at public meetings for which proper notice was given, and are public records that are available upon request. All such agreements are in the hands of the grand jury.

As discussed above, recommendation number 5 has been implemented in that all such railyards agreements are accessible to the public for viewing and copying since their approval.

The City respectfully requests the statements contained in the interim grand jury report that this letter identifies as improper opinions outside the statutory authority of the grand jury or incorrect statements of fact be removed from or corrected in the final grand jury report.

If you have any questions or require additional information, please do not hesitate to contact me at (916) 808-5704.

Very truly yours,