

August 16, 2023

ITEM TITLE: CONSIDER SAN DIEGO COUNTY GRAND JURY REPORT ON GOVERNANCE OF SAN DIEGO BAY AND ITS TIDAL LANDS AND REGIONS AND AUTHORIZE THE MAYOR TO SIGN A RESPONSE LETTER ON BEHALF OF THE MAYOR AND CITY COUNCIL. (0440-25)

ORIGINATING DEPARTMENT:

City Manager

EXECUTIVE SUMMARY:

On June 7, 2023, the San Diego County Grand Jury (Grand Jury) filed a report on Governance of San Diego Bay and its Tidal Lands and Regions (Grand Jury Report). The Grand Jury Report contained a total of fifteen (15) findings and four (4) recommendations directed to the Mayors and City Councils of the five (5) Port District member cities, including Imperial Beach. Penal Code Sections 933 and 933.05 require that the City submit responses to the applicable findings and recommendations to the Presiding Judge within 90 days of the filing of the Grand Jury Report due by August 28, 2023.

RECOMMENDATION:

Adopt Resolution 2023-71 (Attachment 1) authorizing the Mayor to sign a response letter to the San Diego County Grand Jury Report on behalf of the Mayor and City Council.

OPTIONS:

- Adopt Resolution 2023-71 and associated response letter; or
- Adopt Resolution 2023-71 and response letter with modifications; or
- Do not adopt the Resolution and response letter and provide additional direction to the City Manager.

BACKGROUND/ANALYSIS:

The Grand Jury Report is the product of an investigation by the Grand Jury of the San Diego Unified Port District (the "Port District"), the County of San Diego, and the five (5) Port District member cities of Chula Vista, Imperial Beach, Coronado, San Diego, and National City. The goal of the investigation was to assess how the subject organizations interact around the governance of San Diego Bay tidal lands and resources (Attachment 2).

The Grand Jury Report describes previous Grand Jury reports on the Port District, the Port District's creation, governance, relation to State agencies, and funding. The Grand Jury Report also analyzes equitable representation of residents of the five Port Cities and their governing bodies, as well as the residents of the County of San Diego, and considers the Port District's

planning process and how its proposed projects have affected its member cities and the County of San Diego.

The Grand Jury Report makes the following findings:

- Finding 1: Port Commissioners are only required to represent the perspectives, not the interests of the Port City appointing them to the Board of Port Commissioners.
- Finding 2: The Port District acts as an independent special district without direct oversight from local city or county governments.
- Finding 3: Because the interests of residents of Port Cities and the County of San Diego are subject to the interpretations of the unelected Board of Port Commissioners, their interests may not be heard, prioritized or represented accurately.
- Finding 4: Briefings by Port Commissioners to Port City Councils in noticed public meetings regarding issues affecting their jurisdictions, will increase the level of public participation and knowledge regarding Port District activities, Port Master Plans, Master Plan Updates, Port Master Plan amendments or additions.
- Finding 5: Currently, the Board of Port Commissioners does not have term limits. Considering term limits would foster democratic principles by providing more opportunities for diverse and talented individuals to serve, prevent the accumulation of influence, and uphold the public trust by keeping the Board representative responsive to its community.
- Finding 6: With three of seven port commissioners appointed to the Board of Port Commissioners by the City of San Diego, the potential exists for the City of San Diego to exert dominance over the priorities, resources and decisions of the Port District.
- Finding 7: The Port District is incentivized to maximize revenue to fund its operations, a goal that may create conflict of interest in the priorities, allocation of resources and other decisions made by the Port Commission.
- Finding 8: Success in the development of the Chula Vista Hotel and Convention Center has been obtained because of a close collaboration and alignment of interests between the Port District and the City of Chula Vista.
- Finding 9: The Port Commissioners decision to move short-haul truck staging for local deliveries of Dole Fruit products relocated a source of pollution from the Barrio Logan community to communities in National City.
- Finding 10: The controversy surrounding the Mitsubishi Cement Corporation Project's potential health effects on the Barrio Logan neighborhood and other nearby residents damaged the Port District's community relations with these communities and contributed to the decision to discontinue the project.
- Finding 11: Oversight of the Mitsubishi Cement Corporation project by the City of San Diego or San Diego County governments might have given greater priority to the health concerns of community members and resulted in a more equitable balance between economic and health concerns earlier in the project's evaluation process.
- Finding 12: The Port's decision to approve the Cottages at the Cays development proposal could negatively impact access to San Diego Bay and approving the plan favors those willing or able to pay costly hotel rates typical of the Coronado area.
- Finding 13: Given a preference for informal channels of communication by Port City councils and mayors with their appointed Port District representatives, neither Port Commissioners nor Port City Councils maintain completely open and transparent relationships allowing for public involvement or awareness of Port District activities.
- Finding 14: In its current form, the Port Master Plan and Master Plan Update documents published by the Port District are overly complex, difficult to understand and too broad in scope to foster meaningful comprehension by Port City residents, elected municipal or county officials.

- Finding 15: Ratification of Port Master Plans, Master Plan Updates or Master Plan Amendments would allow residents of Port City Planning districts and San Diego County to acknowledge and confirm their understanding of Port District development plans and projects within their municipal and county boundaries and provide reliable documents for communities to plan for the future.

The Grand Jury Report provides the following recommendations for the City Councils of the cities of San Diego, Chula Vista, Coronado, Imperial Beach, and National City:

- Recommendation 23-90: Enact ordinances or policies placing a two-term limit on the number of terms that a Port Commissioner can serve (as already enacted for the City of Coronado).
- Recommendation 23-91: Institute ordinances or formal policies requiring the appointed Commissioners from each city be required to give at a minimum, quarterly updates to the City Councils at officially scheduled city council meetings open to the public.
- Recommendation 23-92: Institute ordinances or formal policies that require ratification of the Port Master Plans, proposed Port Master Plan Updates or amendments to the Port Master Plan for Port District planning districts within each city's boundaries.
- Recommendation 23-93: In consultation with the San Diego County Board of Supervisors, explore and implement an alternate form of governance for the Port District allowing for participation in, and oversight of Port District activities and decision by the San Diego County Board of Supervisors and the elected city councils of the five Port Cities.

California Penal Code §933(c) and 933.05 require that any public agency which the Grand Jury has reviewed, and about which it has issued a final report, provide comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court). The Grand Jury Report was filed on June 7, 2023 and a response is due by August 28, 2023.

Staff has reviewed the Grand Jury Report and is preparing a response letter to the honorable Michael T. Smyth, Presiding Judge of the San Diego County Superior Court, that would address the applicable findings and recommendations of the Grand Jury Report. The response letter will be made available prior to the City Council meeting.

For each Grand Jury finding, the responding entity must indicate that it 1) agrees with the finding, or that it 2) disagrees wholly or partially with the finding, in which case the response must specify the portion of the finding that is disputed and include an explanation for their disagreement with the finding. The proposed response letter addresses all findings pertaining to matters under the control of the City of Imperial Beach.

For each Grand Jury recommendation, the responding entity must indicate that 1) the entity has implemented the recommendation; 2) the entity has not yet implemented the recommendation, but will do so in the future, with a time frame for implementation; 3) the recommendation requires further analysis, with a time frame for completing such analysis, not to exceed 6 months from the date of the publication of the Grand Jury report; or 4) the recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation. The proposed response letter provides such response to each recommendation made to the Imperial Beach.

It is requested that the City Council consider the Grand Jury Report and the prepared response letter and authorize the Mayor to sign the letter as a completed response from the City of Imperial Beach, inclusive of any proposed modifications deemed necessary by the City Council.

ENVIRONMENTAL DETERMINATION:

The proposed activity may be determined to not be a "Project" as defined under Section 15378 of the State CEQA Guidelines because it would not result in a physical change in the environment; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines, the activity would not be subject to CEQA.

FISCAL IMPACT:

No fiscal impact.

ATTACHMENTS:

ATT 1 – Resolution 2023-71

ATT 2 – Grand Jury Report – Governance of San Diego Bay and its Tidal Lands and Regions

ATT 3 – City of Imperial Beach Grand Jury Response (Forthcoming)