Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

(619) 236-6220

DATE: September 29, 2010

TO: Audit Committee

FROM: City Attorney

SUBJECT: Subcommittee to Review Grand Jury Recommendations

INTRODUCTION

At the meeting on September 13, 2010, Councilmember DeMaio asked whether the Audit Committee of the City of San Diego (Committee) can form a subcommittee comprised of two Committee members and two members of the Past Grand Jurors' Association (PGJA). The subcommittee's sole task would be to review the City of San Diego's (City) implementation of San Diego County Grand Jury (Grand Jury) recommendations.

QUESTION PRESENTED

May the Committee create a subcommittee comprised of two Committee members and two former Grand Jury members for the purpose of reviewing the City's implementation of Grand Jury recommendations?

SHORT ANSWER

We conclude that the Committee may create a subcommittee comprised of one or more Committee members for the purpose of reviewing the City's implementation of Grand Jury recommendations with some limitations. The subcommittee would be:

1) comprised of one or more Committee members and may not include PGJA members as subcommittee members although such members are not prohibited from participating in subcommittee meetings;

2) limited to review of the City's implementation of Grand Jury recommendations that fall within the Committee's purview as described in the San Diego Charter (Charter) and the San Diego Municipal Code (SDMC); and

3) responsible for accomplishing specific tasks within a limited time period.

DISCUSSION

The Committee is governed by the San Diego Charter and the San Diego Municipal Code. San Diego Charter § 39.1; SDMC § 26.1701, et seq. The Committee has "oversight responsibility regarding the City's auditing, internal controls and any other financial or business practices required of this Committee" by the Charter. San Diego Charter § 39.1. It is responsible for reviewing the results of significant investigations, examinations or reviews performed by government and regulatory authorities and any management response thereto." SDMC § 26.1701, subd. (b) (1). Such review could include "significant" reports issued by the Grand Jury that relate to matters within the Committee's purview.

I. COMPOSITION AND PURPOSE OF A SUBCOMMITTEE CREATED BY THE COMMITTEE.

SDMC section 26.1705 restricts the composition and use of a subcommittee created by the Committee. The subcommittee may only include Committee members, although section 26.1705 does not expressly prohibit the subcommittee from eliciting input or participation from non-Committee members such as PGJA members.

The subcommittee's purpose is to "accomplish specific tasks within a limited time period." SDMC § 26.1705. It therefore cannot have continuing jurisdiction over certain subject matter, such as review of the City's implementation of Grand Jury recommendations. Thus, the Committee would need to appoint a subcommittee each time it wished for a review. Alternatively, the Committee could seek to amend the SDMC to empower it to establish a standing committee whose task would be the review of the City's implementation of Grand Jury recommendations that fall within the Committee's purview.

Another consideration is the forum in which subcommittee meetings are held since some advisory committees are subject to the Brown Act and some are not. An advisory committee composed solely of members of the legislative body that are less than a quorum of that body are not subject to the Brown Act[1]. Gov. Code § 54952, subd. (b). A standing committee, on the other hand, is subject to the Brown Act regardless of the composition of the committee if it has continuing subject matter jurisdiction or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body. *Id.*

Finally, a subcommittee created by the Committee has a very limited role once it completes its assigned task. The subcommittee must provide a "written or oral report to the Committee regarding any activities undertaken." SDMC § 26.1705. It is not otherwise authorized to act on behalf of the Committee or the City Council.

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[1] Such committees are commonly referred to as "ad hoc" committees because they are formed to accomplish specific tasks within a limited time period and do not have continuing subject matter jurisdiction.

II. THE SUBCOMMITTEE IS LIMITED TO REVIEWING "SIGNIFICANT" INVESTIGATIONS, EXAMINATIONS OR REVIEWS THAT RELATE TO THE COMMITTEE'S OVERSIGHT RESPONSIBILITIES.

The Committee oversees "the City's auditing, internal controls or any other financial and business practices required of this Committee by this Charter." San Diego Charter § 39.1. It is also responsible for reviewing the "results of significant investigations, examinations or reviews performed by government and regulatory authorities and any management response thereto." SDMC § 26.1701, subd. (b) (1). This would include Grand Jury reports.

The scope of a Grand Jury investigation of incorporated cities such as the City of San Diego is described in California Penal Code section 925a. It states, in pertinent part, as follows:

> The Grand Jury may at any time examine the books and records of any incorporated city or joint powers agency located in the county. In addition to any other investigatory powers granted by this chapter, the grand jury may investigate and report upon the operations, accounts, and records of the officers, departments, functions, and the method or system of performing the duties of any such city or joint powers agency and make such recommendations as it may deem proper and fit.

Accordingly, both the Committee and the Grand Jury may review the operations, accounts, and records of the City, although the Committee's role is limited to those areas described in the Charter and SDMC. In order to ensure that the Committee does not exceed its authority, it should establish a process for determining which Grand Jury recommendations fall within its purview. Further, it would need to determine whether the Grand Jury recommendation is "significant," since the Committee's review is limited to "significant investigations, examinations or reviews performed by government and regulatory authorities." The term "significant" is not defined in the SDMC. The Committee may address this omission by proposing amendments to the SDMC. Alternatively, when taking formal action to establish a subcommittee, it could provide that subcommittee with a working definition of "significant."

III. THE SUBCOMMITTEE'S ROLE ONCE ITS' REVIEW OF THE CITY'S IMPLEMENTATION OF A GRAND JURY RECOMMENDATION IS COMPLETE.

SDMC section 26.1705 requires the subcommittee to provide a written or oral report to the Committee regarding any activities undertaken once the specific tasks assigned to it are complete. The subcommittee would cease to exist after the Committee receives the report since its purpose and term are limited to this function under the SDMC. Further, neither the Committee nor the City Auditor are authorized to respond directly and independently to the Grand Jury on behalf of the City. Cal. Pen. Code § 933, subd. (c)[2]. Rather, the City Council responds to the Grand Jury on behalf of the City.

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[2] See "Report to the Audit Committee" dated June 11, 2010, concerning the "Audit Committee's Response to Reports of the San Diego County Grand Jury."

Given this limited role, we anticipate that the subcommittee would present a written or oral report to the Committee, and that the Committee would receive and file the report, or forward it to a Council Committee or to the full City Council for action.

CONCLUSION

We conclude that the Committee may create an ad hoc subcommittee comprised of one or more Committee members for the purpose of reviewing the City's implementation of Grand Jury recommendations. The Grand Jury recommendations assigned to the subcommittee for review must fall within the Committee's purview and be "significant." Further, the subcommittee must cease to act once its report is received by the Committee.

For purposes of discussion, below are some issues that the Committee may wish to consider in determining whether to form a subcommittee charged with reviewing the City's implementation of Grand Jury recommendations:

1. Does the Committee want an ad hoc or a standing committee? If a standing committee is desired, then the Committee should recommend to the City Council that the SDMC be amended.

2. Which recommendations are "significant" and worthy of subcommittee review? The Committee may request that the City Council amend the SDMC to include a working definition of the term "significant."

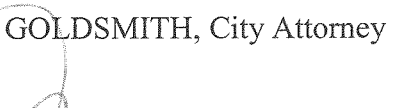
3. What process will be used in determining which Grand Jury recommendations fall within the Committee's purview?

4. How often should the City's implementation of Grand Jury recommendations be reviewed? Quarterly? Bi-annually? Annually? Or as issues of concern arise?

5. Once received, how will the Committee address the subcommittee report? Will the Committee forward the report to the City Council for action? File the report?

We look forward to a discussion on this matter at the upcoming Audit Committee meeting.

JAN I. GOLDSMITH, City Attorney

By 
Mara W. Elliott
Deputy City Attorney

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