



THE CITY OF SAN DIEGO

TODD GLORIA

MAYOR

December 30, 2022

Honorable Michael T. Smyth
Presiding Judge of the Superior Court
1100 Union Street, 10th Floor
San Diego, CA 92101

Re: Grand Jury Report: “City of San Diego Leasehold Management Still has Weaknesses”

Dear Judge Smyth:

Pursuant to California Penal Code Section 933.0S(a), (b) and (c), the City of San Diego provides the attached response to the findings and recommendations included in the above-referenced Grand Jury Report.

If you require additional information or have any questions, please do not hesitate to contact Matt Yagyagan, Deputy Director of Policy and Council Affairs, at 619-380-5075.

Sincerely,

TODD GLORIA
Mayor
City of San Diego

Attachments:

1. City of San Diego Response to San Diego County Grand Jury Report Titled “City of San Diego Leasehold Management Still has Weaknesses”

cc: Ed Lopatin, Foreperson, 2022/2023 San Diego County Grand Jury
Honorable Council President Elo-Rivera and Members of the City Council
Honorable City Attorney Mara Elliott
Charles Modica, Independent Budget Analyst
Paola Avila, Chief of Staff, Office of the Mayor
Eric Dargan, Chief Operating Officer
Christiana Gauger, Chief Compliance Officer

**City of San Diego Response to
San Diego County Grand Jury Report Titled
“City of San Diego Leasehold Management Still has Weaknesses”**

Pursuant to California Penal Code Section 933.05(a), (b) and (c), the City of San Diego provides the following response from the Mayor to the applicable findings and recommendations included in the above referenced Grand Jury Report.

RESPONSE TO FINDINGS:

Finding 1: *The City has received multiple notifications that holdover leases are a concern, yet the percentage of leases in holdover status has continued to increase.*

Response: The City of San Diego agrees with the Grand Jury’s finding.

The City has received multiple notifications that holdover leases are a concern and this number has increased. The Department of Real Estate Assets and Airport Management (Department) has current vacancies and is in the process of filling the vacant positions to assist in decreasing the number of holdovers.

Finding 2: *There are processes in place for handling faithful performance deposits for RFPs successfully executed, but no process found for handling deposits for successful RFPs that cannot be executed due to no fault of the proposer, resulting in extended retention of funds.*

Response: The City of San Diego disagrees with the Grand Jury’s finding.

The Department has a standard process for all refunds, including the return of deposits generated through a Request for Proposal (RFP). This process is initiated once the selection process is completed and an award has been made. The property agent submits a Request for Payments/Refund to the Senior Account Clerk, who generates an Accounts Receivables Refund Request Form that is routed for signature approval to the Deputy Director. This form is then sent to the Treasurer for check issuance. When refunding a deposit collected under a RFP, the property agent sends a letter to the unsuccessful proposers notifying them that they were not selected and that their deposit will be refunded.

Finding 3: *The increased insurance requirements in the pending 2022 three-year lease indicated a need for a substantial increase in coverage for the TPG, which could also be a concern for other properties in long-term holdover.*

Response: The City of San Diego agrees with the Grand Jury’s finding.

Insurance requirements are updated at the time a lease is renewed; therefore, keeping a lease on holdover could be a concern for other properties in holdover.

Finding 4: *DREAM does not have a consistent process for inspecting Torrey Pines Gliderport; property report forms do not include detail on resolution of deficiencies noted, nor responsible party.*

Response: The City of San Diego disagrees in part with the Grand Jury’s finding.

It is the Department's policy that inspections are conducted as per the terms of the agreement or no less than every three years. The Department's lease administration system sends property agents reminders to conduct annual inspections. The property agent utilizes an inspection form to record observations; any deficiencies are communicated to the lessee via a letter or email. This communication to the lessee identifies the responsible party. However, in recent years, due to the COVID-19 global pandemic, and staffing levels, the inspections have not occurred.

Finding 5: *DREAM had previously agreed to updating Council Policies 700-10 in 2017; five years later, this has not been done.*

Response: The City of San Diego agrees with the Grand Jury's finding.

Council Policy 700-10 has not been updated; however, preliminary draft of this and two related policies (700-12 and 700-32) are under internal review and will be brought forward for Council action in 2023.

Finding 6: *Inadequate staffing is the reason for ongoing operational shortcomings, such as continuing large numbers of holdover leases, inconsistent documentation of insurance records, and irregular property inspections.*

Response: The City of San Diego agrees with the Grand Jury's finding.

Inadequate staffing and the ability to attract talent contribute to the Grand Jury's finding.

RESPONSE TO RECOMMENDATIONS:

Recommendation 22-25: *Consider outsourcing or short-term hiring to facilitate the evaluation of all leases on holdover status.*

Response: The recommendation will not be implemented.

The positions required for this facilitation, include but are not limited to, Associate Property Agents, Property Agents and Supervising Property Agents. These positions are represented positions for which work is not outsourced. The Department has current vacancies and is in the process of filling the vacant positions to assist in decreasing the number of holdovers. Since some holdovers date back over 20 years, this is not a problem that will be solved in the short term but will require permanently filled positions to perform longer term work.

Recommendation 22-26: *Consider developing a process for the return of good faith deposits to successful RFP proposers, when the lease resulting from the process is not able to be executed.*

Response: The recommendation has been implemented.

The Department has a standard process for all refunds, including the return of deposits generated through an RFP. This process is initiated once the selection process is completed and an award has been made. The property agent submits a Request for Payments/Refund to the Senior Account Clerk, who generates an Accounts

Receivables Refund Request Form that is routed for signature approval to the Deputy Director. This form is then sent to the Treasurer for check issuance. When refunding a deposit collected under an RFP, the property agent sends a letter to the unsuccessful proposers notifying them that they were not selected and that their deposit will be refunded.

Recommendation 22-27: *Create a process to review insurance requirements on holdover properties to ensure properties are adequately insured to meet current potential for liability and the City is properly indemnified against potential loss.*

Response: The recommendation will not be implemented.

The City of San Diego does not have the right to unilaterally amend the terms of the lease, including those related to insurance requirements. Additionally, it is not a best practice to amend leases in holdover. If the Department had the resources to negotiate an amendment, those resources would be better served negotiating a new lease and removing it from holdover.

Recommendation 22-28: *Create a consistent and thorough process for inspecting leased properties in holdover, including a revised document for documenting the resolution of any property deficiencies that are noted.*

Response: The recommendation has not been implemented but will be implemented in the future.

As per the recent Performance Audit of the Mission Bay and San Diego Regional Park Improvement Funds Fiscal Year 2021 (City Audit 23-002 dated July 2022) , it was found that the City did not have documentation to show routine site visits of leased properties that were occurring, in response to the audit staff agreed to conduct visual inspections of all leased properties as per the terms of the agreement and no less than every three years. The audit also committed to an inspection form that will be filed and a letter will be sent to the lessee if any deficiencies are discovered as a result of the visual inspection. This is and will be the standard across the City's real estate portfolio; however, staff has not been able to keep pace with inspections due to the global COVID-19 pandemic and staffing shortages.

Recommendation 22-29: *Update Council Policy 700-10, to better reflect current market realities and operational needs.*

Response: The recommendation has not been implemented but will be implemented in the future.

The Department is currently in the process of implementing this recommendation and is drafting an amendment to Council Policy 700-10, which is expected to be presented to the City of San Diego's Land Use and Housing Committee and City Council in 2023. A preliminary draft of this and two related policies (700-12 and 700-32) are under internal review and will be brought forward for Council action in 2023.

Recommendation 22-30: *Conduct a comprehensive staffing analysis to ensure a plan and funding is in place to guarantee adequate staffing for long term operational effectiveness.*

Response: The recommendation has been implemented.

The Department implemented this recommendation under agreement with City of San Diego's Performance Audit of the City's Lease Management and Renewal Process (City Audit 22-007 dated February 2022). Additionally, the Department added new positions in Fiscal Year 2023. The Department is currently in the process of creating and recruiting for these positions.