



August 18, 2014

The Honorable Cynthia Ming-mei Lee  
Presiding Judge  
Superior Court of California, County of San Francisco  
400 McAllister Street  
San Francisco, CA 94102

Dear Judge Lee:

Pursuant to Penal Code sections 933 and 933.05, the following is in reply to the 2013-2014 Civil Grand Jury report, *The Port of San Francisco: Caught Between Public Trust and Private Dollars*. We would like to thank the members of the Civil Grand Jury for their interest in the operations and future of the Port of San Francisco.

The Port of San Francisco is the City's "front door." Our waterfront has served gold miners, soldiers, immigrants, and cargoes that established the City as a major port and trading center. Today, the Port supports the City's image as a diverse, cosmopolitan center and international gateway. The Embarcadero, AT&T Park, the Exploratorium, and the Ferry Building are popular destinations for locals and tourists alike.

New investment in the waterfront is amongst my highest priorities. The planned developments at Pier 70 and Mission Rock are opportunities to create vibrant, new neighborhood destinations. I am proud of the Port's ability to rehabilitate maritime facilities and protect open space while at the same time nurturing new residential and commercial uses.

Officially, the Mayor's Office is not required to respond to the first finding and recommendation on decision-makers at the Port. However, the Jury states that "recent activities at the Port have been strongly influenced by the Mayor's office. These included the promotion of the 8 Washington Street project, most aspects of the 34th America's Cup races, a 'legacy project' at Pier 30-32, and an underutilized cruise ship terminal at Pier 27. The Port Commission readily gave approvals with minimal public input."

As stated in the voter approved City Charter, the Mayor is the "chief executive officer" and has responsibility for the "general administration and oversight of all departments and governmental units in the executive branch of the City and County," (San Francisco Charter Article III, Sec. 3.100.) All departments fall under the Mayor's purview, including the administration of the Port of San Francisco. The Charter makes no distinction between Enterprise and General Fund Departments.

Nonetheless, development and new events must be approved by numerous other stakeholders. The Port Commission and the Board of Supervisors are independent bodies. Public input, City process, and media scrutiny ensure that all proposals are thoroughly scrutinized and vetted. The framework proposals for the America's Cup, 8 Washington, and the proposed arena at Piers 30-32 were all eventually approved by the Board of Supervisors after a vigorous public debate.

Recommendation 1 reads: "The Port Commission should be restructured to reflect more public interest. The Jury recommends that the Board of Supervisors seek necessary changes in state law to allow a charter

amendment to be submitted to the public for revision of the current five-member Port Commission appointed by the Mayor to a Port Commission with three mayoral appointees and two by the Board of Supervisors. We recommend that this change be put before the voters in 2015.”

This recommendation is unnecessary and there appears to be no perceivable benefit. First, the Board of Supervisors already approves Mayoral appointments to the Port Commission. If they so choose, a Supervisor has the ability to vote against any Port Commission appointment. Second, state law would need to be revised for voters to even consider this recommendation. Such an effort would be an unproductive use of City lobbying efforts in Sacramento.

**The Mayor’s Office response to the Civil Grand Jury’s findings and recommendations is as follows:**

### **Cruise Ship Terminal**

#### **Finding 6:**

When it becomes operational, the Cruise Ship Terminal at Pier 27 is projected to be severely underutilized. This is because federal law, namely the Passenger Vessel Services Act of 1886, prohibits foreign-flagged passenger ships from calling on two U.S. ports without an intervening foreign port. This Act greatly restricts the use of the newly built Cruise Ship Terminal. The Port estimates that the use of the terminal would increase from the current 50 visits per year to 150 visit if the Passenger Vessel Services Act of 1886 were amended or the Port were granted an exemption for a pilot program. It is also estimated that there is between \$750,000 and \$1 million economic benefit to the City from each docking. This includes ship provisioning, tourism, berthing fees and tugboats.

Response: *Agree in part, disagree in part.*

#### **Recommendation 6:**

The City should immediately begin lobbying for modifications to the Passenger Vessel Services Act of 1886 to allow foreign flagged vessels easier access to the City as a pilot program. This lobbying effort should be in conjunction with other U.S. passenger port destinations including those in Alaska, Hawaii, Oregon, and Washington.

Response: *Recommendation will not be implemented, not warranted.* Senator John McCain’s 1998 legislation to allow foreign oceangoing passenger ships to serve multiple destinations along U.S. coasts was unsuccessful due to opposition from organized labor. Seafaring unions feared that weakening the Passenger Vessel Services Act (PVSA) would harm the nation’s shipbuilding and merchant marine industry.

Rather than lead the charge to modify the PVSA, the Port believes a better strategy is to continue to monitor possible legislative developments for possible exemptions or modification of the PVSA and work through the American Association of Port Authorities (AAPA), the industry’s leading trade association, for any effort to alter current law. AAPA’s members include every cruise port in Canada, Central and South America and the Caribbean. AAPA has supported legislation to permit non-U.S. flag cruise ships to operate where there is no large U.S. flag cruise ship in service.

### **America’s Cup**

#### **Finding 8:**

The 34th America’s Cup was a major monetary loss to the City’s taxpayers to the tune of about \$6 million and a major loss to the Port of about \$5.5 million in unreimbursed Port expenditures. The City and the Port

subsidized the America's Cup at taxpayers' expense. The City received no direct revenue from the 34th America's Cup event in the form of revenue sharing or venue rent. In negotiating event and/or development agreements at the waterfront, the City and Port does not seek to make a profit from the deal but is simply looking to recover its costs and break even.

Response: *Agree* in that the event operated at a net loss when tax revenue and fundraising did not meet expenses.

The Host and Venue Agreement approved unanimously by the Port Commission and the Board of Supervisors set forth a financial structure whereby the City and Port costs would be paid through a combination of event-related tax revenues and philanthropic fundraising carried out by the San Francisco America's Cup Organizing Committee, a private nonprofit organization. The funding that the approving bodies expected to receive from these sources was intended to satisfy the revenue sharing and venue rent obligations from more typical waterfront events.

While these sources did not satisfy the full range of costs incurred, they did reduce the loss to the City. The combined expenditures from the City and the Port spurred over \$500 million of economic activity in the City, which was a key objective when the City pursued the host bid in 2010 (a time when the economy was still recovering from the recent recession).

*Disagree in part* to the assertion that the City and the Port only seeks to recover costs and break even when negotiating event and development agreements.

**Recommendation 8a:**

All major events at the Port, like the America's Cup, must be approved by the Port Commission and the Board of Supervisors.

Response: *Recommendation already implemented.* The Port Commission held hearings to publicly review, comment, and vote on the activities of the 34th America's Cup that took place on or affected Port property. From March 2009 through September 2013, the Port Commission heard 39 separate items regarding activities of the 34th America's Cup, including 16 informational presentations and 23 approval requests submitted for Port Commission consideration and action.

Similarly, the Board of Supervisors also held hearings to publicly review, comment and vote on activities of the 34th America's Cup. From April 2010 through October 2013, the Board of Supervisors held 31 hearings regarding activities of the 34th America's Cup including, but not limited to, (1) the Host and Venue Agreement, (2) Final Environmental Impact Report and Mitigation Monitoring and Reporting Program, (3) Memorandum of Understanding with the Port, (4) America's Cup Workforce Development Plan, (5) budget appropriation ordinances, and (6) Lease Disposition Agreement. Of these 31 hearings, 16 were hearings before the full Board of Supervisors and 15 were committee hearings including 12 before the Budget and Finance Committee and subject to review and report by the Budget Analyst to the Board of Supervisors.

Finally, the Board of Supervisors voted unanimously to approve the entire transaction three separate times: once in approving the Host and Venue Agreement in December 2010, once to approve the project after the completion of CEQA in March 2012, and again in September 2012 when the security arrangements that were first approved had to be restructured.

**Recommendation 8b:**

Prior to approval, the City should require a validated cost proposal using fair market rental rates, revenue sharing with the Port, marquee billing for the City, full post-event accounting, and posting of all event financials on the Port website within one month after completion of the event. Said report shall include an itemization of:

- The amount and source of all revenue generated by the event.
- The amount, payor, and payee of each cost incurred for the event.
- The name of each event cancelled, if any, as a result of the approval of the event and the amount of revenue lost as a result of the cancellation.

Response: *Recommendation already implemented in part.* When responding to future unique waterfront opportunities the Port Commission, Board of Supervisors, and members of the public should expect a thorough analysis of the opportunity and the expected impact on public use and enjoyment of the waterfront as well as operating and capital costs.

During the initial approval of America's Cup agreements, the Board of Supervisors was provided a detailed quantitative and qualitative analysis of the prospective regatta as was known at the time by City staff. The America's Cup Organizing Committee engaged an outside economics firm to validate assumptions related to event-related tax revenues. Port staff briefed the Port Commission on an ongoing basis as more facts of the regatta and the projected outcomes were known.

Furthermore, the Board of Supervisors Budget and Legislative Analyst performed a detailed analysis of the event costs before the approvals in 2010 and 2012. Both of these estimates proved to be well in excess of the costs that were actually incurred.

San Francisco received "marquee billing" while hosting the America's Cup. The host agreement specifically noted the City's desire for San Francisco exposure. The official logo included the words "San Francisco." Most dramatically, the television broadcast of the event spectacularly showcased the City's waterfront venue to an international audience.

When all America's Cup costs were accounted for after the event, City staff provided another detailed presentation to the Board of Supervisors and the Budget and Legislative Analyst issued another report.

The recommendation to post online all event financials one month after the event *will not be implemented*. For example, one month after the America's Cup was not enough time to complete "event financials" as the permits for the event required a number of post-event remediations and improvements

Thank you again for the opportunity to comment on this Civil Grand Jury report.

Sincerely,



Edwin M. Lee  
Mayor