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September 20, 2012

Hon. Katherine Feinstein
Presiding Judge
San Francisco Superior Court
400 McAllister Street, Room 008
San Francisco, CA 94102

Re: City Attorney's Office's Response to the August 2, 2012 Civil Grand Jury Report entitled, "DÉJÀ VU ALL OVER AGAIN: San Francisco's City Technology Needs A Culture Shock"

Dear Judge Feinstein:

In accordance with Penal Code Sections 933 and 933.05, the City Attorney's Office submits the following response to the Civil Grand Jury Report entitled, "DÉJÀ VU ALL OVER AGAIN: San Francisco's City Technology Needs A Culture Shock," issued on August 2, 2012. The Civil Grand Jury Report asked the City Attorney's Office to respond to Finding No. 6 and Recommendation No. 4 of the Report, set forth below.

For each finding, the responding person or entity shall either:

1. Agree with the finding; or
2. Disagree with it, wholly or partially, and explain why.

For each recommendation, the responding person or entity shall report one of the following actions:

1. That the recommendation has been implemented, with a summary explanation of how it was implemented;
2. That the recommendation has not been implemented, but will be implemented in the future, with a time frame for the implementation;

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3. That the recommendation requires further analysis, with an explanation of the scope of that analysis and a time frame for the officer or agency head to be prepared to discuss it (less than six months from the release of the report); or
4. That the recommendation will not be implemented because it is not warranted or reasonable, with an explanation of why that is. (California Penal Code sections 933, 933.05)

Finding No. 6:

COIT [the Committee on Information Technology] is not in compliance with the Administrative Code [Section 22A.3(f)] by failing to find and appoint two non-voting, non-City employee members.

City Attorney's Office Response To Finding No. 6:

Partially disagree. Administrative Code Section 22A.3(f) imposes a duty on the voting members of COIT to select the two non-voting, non-City employee members. But the Code does not set a deadline for when they must do so. Thus, it is not possible to determine with certainty at what point COIT would actually be out of compliance with the law.

In a situation such as this—where the law imposes an obligation on a public body but does not set a specific time by which the body must act—a court would likely conclude that the body must act within a reasonable time. (See *Sacks v. City of Oakland* (2011) 190 Cal.App.4th 1070, 1090-91.) The requirement that COIT appoint the two public members was added by Board of Supervisors Ordinance No. 169-10 in August of 2010. There may be reasons why it has not been unreasonable for COIT to take this long to locate and select the public members; this Office is not in a position to make that determination. But our Office will bring the issue to COIT's attention and remind them of this obligation.

Recommendation No. 4:

COIT appoint two non-voting, non-City employee members to sit on COIT without further delay.

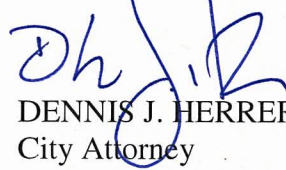
City Attorney's Office Response to Recommendation No. 4:

The recommendation will not be implemented by the Office of the City Attorney, because the City Attorney is not a member of COIT at this time and the Office of the City Attorney has no role in selecting the two non-voting, non-City employee members. But the Office has advised the voting members to make the appointments as soon as reasonably possible, and is ready to provide any advice or assistance to COIT that the Committee requests in connection with this matter

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We hope this information is helpful.

Very truly yours,



DENNIS J. HERRERA
City Attorney

