

# City of Lake Elsinore

"One City's Got More!"

September 5, 2002

Genie Kelley  
Mayor

Robert Schiffner  
Mayor Pro Tem

Pamela Brinley  
Councilwoman

Thomas Buckley  
Councilman

Daryl Hickman  
Councilman

Richard Watenpaugh  
City Manager

Office of the Grand Jury  
County of Riverside  
P.O. Box 829  
Riverside, CA 92502

Re: Grand Jury Report: City of Lake Elsinore

Foreperson and Members of the Grand Jury:

Enclosed is a copy of the City of Lake Elsinore's response to the 2001-2002 Grand Jury Report regarding the City of Lake Elsinore. The response is provided to you pursuant to Penal Code Section 933 *et seq.*

Respectfully,



Genie Kelley  
Mayor

cc: City Council  
City Manager  
Assistant City Manager

**CITY OF LAKE ELSINORE'S RESPONSE TO  
GRAND JURY FINDINGS AND RECOMMENDATIONS**

1. *Anticipated spin off and economic benefits from the stadium have not occurred.*

RESPONSE: The City agrees with the finding, though the potential for future economic benefits from the Lake Elsinore Diamond Stadium (the "Stadium") and development of the surrounding area remains. In 1988, the booming economy sparked great interest in the Back Basin's potential use as a recreation, housing and commercial area. The proximity to a major freeway, coupled with potential lake view and water front homes, proved very enticing to the development community. During that time, the City entered into a Disposition and Development Agreement with a well-capitalized developer that envisioned such a project, including the development of a multi-use stadium facility.

The Lake Elsinore Diamond Stadium was opened in 1994 at a cost of \$22 million. The Stadium became a significant burden on the City and Redevelopment Agency's finances as a result of cost overruns and a worsening economy. In 1998, the Agency entered into a Stadium Lease Agreement relieving the Agency of stadium operating and maintenance expenses. Two years later, the operator abandoned the Lease and the Stadium again became the financial obligation of the Agency.

Since then, the City and Redevelopment Agency have taken significant steps to reduce the debt service and operating costs associated with the Stadium. The Redevelopment Agency recently secured a new long-term agreement with the Padres Class "A" Minor League baseball team (the Storm), which has used the Stadium continuously since 1994. The current contract runs until 2007 and can be extended until 2012. The Redevelopment Agency has also secured a long-term concession and maintenance sharing agreement with the Storm in order to reduce the Agency's operational costs of the Stadium and substantially increase the Agency's revenues from concession operations.

The City and the Agency have witnessed an increased interest in the Stadium and surrounding development opportunities by private investors. The Agency is engaged in negotiations to settle the litigation resulting from the abandonment of the Stadium Lease and to capitalize on the \$20 million private investment in development related costs to facilitate development of the Back Basin. These efforts together with a continued strong housing market and growth along the I-15 corridor could enable the Stadium and surrounding area to reach its full development potential.

2. *After removal of the concessionaire, the City of Lake Elsinore pledged the Lake Elsinore Recreation Area and Campground as collateral for refinancing of the financial obligation for the Lake Elsinore Diamond Stadium.*

RESPONSE: The City disagrees with this finding. Pursuant to Section 14670.67 of the Government Code, effective May 14, 1992, the California Legislature authorized conveyance of the Lake Elsinore Recreation Area and Campground (the "LERA") to the City. The

conveyance was made upon the express condition that the LERA be used for public park and recreation purposes in perpetuity. To reduce its debt service on the Stadium, the City and Redevelopment Agency refinanced the Stadium debt at an appreciably lower rate through a financing arrangement that allowed the City and Redevelopment Agency to lease the LERA to the Lake Elsinore Recreation Authority. This resulted in the issuance of the Lake Elsinore Recreation Authority Variable Rate Bonds, the proceeds of which were used to pay off a \$10 million loan issued by Sumitomo Bank for construction of the Stadium. In the event of a default of the bonds, bondholders did not have the ability to foreclose on the LERA because such a provision would have been contrary to the State's grant of the LERA. Thus, the LERA did not act as a "pledged" asset which assured repayment of the bonds. Instead, the pledged collateral for repayment of the bonds was primarily from the City's share of Motor Vehicle Licensing Fees received from the State of California.

The current average interest rate on the outstanding Recreation Authority bonds is a low 1.6% compared with 9.5% for the original Sumitomo Bank loan. The City has achieved an enviable cost savings from the LERA lease arrangement and the subsequent refinancing.

3. *There was a settlement of \$1,500,000 by the city for a breach of contract with the Lake Elsinore Recreation Area and Campground concessionaire. Insurance covered only one-half of that settlement amount.*

RESPONSE: The City agrees with this finding. Faced with potential coverage issues with its insurance carrier, a mistrial in the first trial on the matter, and the prospects of paying for its own legal defense costs in a second trial, the City agreed to contribute to a global settlement. As a point of clarification, at the behest of the City's insurance carrier, the California Joint Powers Insurance Authority (CJPIA), the City contributed to the complete settlement of numerous state and federal claims by the former concessionaire, not just the breach of contract claim. The settlement agreement specifically provides that the City made no admission of liability.

4. *Large legal fees include a city attorney fee of \$500,000 for 2001-2002 and a projected city attorney fee of \$450,000 for 2002-2003. Those extraordinary legal expenses for the city in 2001 included but were not limited to:*

- *The Camelot Theater Project*
- *Proposed development for the flood channel*
- *The stadium management contract*
- *Litigation associated with drownings*

RESPONSE: The City disagrees with this finding. The City believes that defending itself from meritless claims and pursuing litigation against those that break their contracts with the City constitutes a sound approach and that legal expenses in connection with such actions are not "extraordinary." The City makes great efforts to avoid litigation and find resolution and settlement short of going to trial. As recognized by the Grand Jury, attorneys retained by the

City are engaged in a variety of matters. Many of those matters, including the cases cited in the finding, involve complex legal issues and time-consuming analysis and negotiations.

As a point of clarification, the defense costs for "drownings" litigation are covered by the City's insurance carrier. The City Attorney's involvement has been limited to reviewing updates from the carrier's defense attorney. Accordingly, the City Attorney's fees in this matter are nominal.

5. *A licensing agreement by the City of Lake Elsinore for the City Campground with a private corporation was entered into on December 11, 2001. The agreement required that the corporation conduct an ". . . Aquatic Safety Study within 120 days that shall include recommendations for maintaining and potentially improving the level of aquatic safety."*

RESPONSE: The City agrees with this finding and the City's concessionaire is completing the study.

6. *Lake Elsinore City Council adopted a Code of Ethics with an effective date of October 14, 1986, which has not always been followed.*

RESPONSE: The City agrees with this finding in that there has been one documented violation; thus, the Code has not "always" been followed. As to that single occurrence, that council member was subsequently removed from office pursuant to a judgment handed down by the Superior Court.

### **Recommendations**

1. *The Lake Elsinore City Council submit a request to the Board of Supervisors for the assistance of a Municipal Response Team in accordance with the Board of Supervisors' Policy Number A-54.*

RESPONSE: The recommendation will not be implemented because it is not warranted. Beginning in 1996, the City implemented a comprehensive financial plan commencing with the issuance of the above-referenced Recreation Authority bonds. In the last 6 years, the City has aggressively restructured its debt load to reduce interest payments and overall debt service payments. In doing so, the City has freed up general fund monies and increased the level of public services.

Over the last 6 years, the City has demonstrated its ability to responsibly manage its expenditures and pay all of its financial obligations. The City's most recent budget shows adequate revenues and reserves to cover anticipated expenditures and the City and Redevelopment Agency are not in default on any bond issues.

In summary, the inclusion of another public agency is unnecessary and could undermine economic gains by discouraging those looking to locate businesses in Lake Elsinore or otherwise invest in the community.

2. *The Board of Supervisors respond favorably to a request from the Lake Elsinore City Council for a Municipal Response Team.*

RESPONSE: See response to Recommendation 1 above. Additionally, Supervisor Bob Buster was recently quoted in the Press-Enterprise as stating, "The financial problem Lake Elsinore has is the result of past irresponsible political decisions, not ongoing administrative or financial mistakes or incompetence." (Press-Enterprise, 6/27/02).

3. *The Lake Elsinore City Council engages an outside firm to perform a complete and in-depth audit of city finances and practices.*

RESPONSE: The recommendation will not be implemented because it is not warranted and, given current public auditing requirements, is redundant. The City retains an independent third party to audit the City's financial records every year. The City's current independent auditor is a well respected Certified Public Accounting firm, Teaman, Ramirez & Smith which specializes in auditing municipalities. The audit is conducted in accordance with auditing standards applicable to financial audits contained in the Government Auditing Standards issued by the Comptroller General of the United States. The audit is designed to assure that the City's financial statements are free of material misstatements. The audit includes examinations of evidence supporting the amounts and disclosures in the City's financial statements. The audit also includes assessing the accounting principles used and significant estimates made by the City. The City's audited financial records are public records and available for inspection by the Grand Jury and any member of the public upon request. In addition, the City recently entered into a professional services agreement with Hayhurst & Associates to conduct a process audit and parity study.

4. *The Lake Elsinore City Council require the immediate completion of the Aquatic Safety Study and, once completed, develop policies and procedures for ensuring that all provisions of the study are met.*

RESPONSE: The recommendation is being implemented.

5. *The Lake Elsinore City Council review and make a commitment to conduct all city business according to their Code of Ethics.*

RESPONSE:

The recommendation has been implemented. The City is not aware of any current member of the Council or City staff in violation of the Code of Ethics. However, in deference to the Grand Jury's recommendation, and by formally adopting this response, the City reaffirms its commitment to conduct City business in accordance with the City's Code of Ethics. In addition to the Code of Ethics, the City complies with all provisions of the Political Reform Act. The City has adopted the standard Conflict of Interest Code promulgated by the Fair Political Practices Commission. The City Council and designated employees annually file

statements of economic interests. The Conflict of Interest Code and the annual statements are on file with the City Clerk.

**FILE**

September 17, 2002

Office of the Grand Jury  
County of Riverside  
P.O. Box 829  
Riverside, CA 92502

Dear Grand Jury:

This letter is in response to the Riverside County Office of the Grand Jury's report on Lake Elsinore dated June 24, 2002.

I assume that the Grand Jury has already received the city's official response, approved by the council on a 3-2 vote, to its findings. However, I, as a dissenting vote and an individual councilmember, wish to expand and expound upon the city's response of September 5, 2002.

While I offered this letter to the rest of the council for review prior to its mailing, I would stress again that I am writing this "minority report," if you will, as an individual councilmember only.

Please include this letter in any city-related file that you may keep.

First, there is the issue of tone. I personally believe that the wording, style, etc. of the city's official response makes it clear that the city simply did not take the Grand Jury's findings and recommendations seriously enough. The inclusion of the quote from Supervisor Bob Buster that Lake Elsinore's problems are the result of "past irresponsible political decisions" is only one indicator of a dismissive stance in regards to the Grand Jury's criticisms and an unwillingness to seriously consider significant reform.

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I will now address each of the Grand Jury's findings and recommendations.

**Finding 1**

At an initial cost of \$22 million, instead of the originally planned \$8-9 million, and with an annual operating deficit in the \$500,000 range, the stadium has clearly been a significant financial burden to the taxpayers of the City of Lake Elsinore.

But just as clearly, the stadium has been a boon to the residents of the city, providing affordable entertainment and raising the general profile of the city.

The question now is what to do with the facility. The city has been approached concerning selling the facility to a private firm in conjunction with further recreational development. Such a scenario could foster the, to this point purely theoretical, financial "spin-off" benefits the stadium was supposed to cause. Since the decision to sell or keep the facility has yet to be made, any further comment on the Grand Jury's finding would be premature.

**Finding 2**

As I am not a bond expert and since certain comments I might make on this issue may breach a trust, I do not feel I am able to further elucidate on the city's official response.

**Finding 3**

The "potential coverage issues" the city so obliquely refers to in the matter of the LERA lawsuit cry out for further explanation. The "issues," to be blunt, were that the CJPIA may not have covered the potential city

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loss due to intentional nature of the "breach of contract" complaint, and that the city, based upon its performance in the first trial, would most likely have lost a second trial.

While the city made no official admission of responsibility, one would assume that the city would not have used \$750,000 in scarce general fund dollars to settle a completely baseless claim.

However, one must give credit to the city for convincing its insurer to pay the other half of the settlement. I suppose that "saved" the city money, though clearly the city would have saved even more money (from the settlement to the operating losses the city suffered while it managed the campground) if it had not ended the concessionaire's contract in the first place.

I must also note that the refinancing of the stadium debt referred to in Finding 2 did not occur until after the concessionaire's contract had been ended.

#### **Finding 4**

The city spends too much money on attorneys fees. Period.

I do not, however, feel that the city's contract attorney are "padding" the bill or engaged in any other problematic practices. The amount spent is a function of two factors: egregious past decisions and overuse of the city attorney's office; i.e., involving the attorney's office in land-use negotiations too early in the process.

A city must protect its rights and must defend itself from lawsuits. That is a given I heartily agree with.

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However, a city should also avoid the temptation of attempting to over-assert its rights and should, when sued, look at the merits of each case with a clear and unbiased eye to see if there is any merit to the claim.

Like an individual, a city must be strong enough and honest enough with itself to admit responsibility when it has acted improperly and pursue every opportunity to avoid litigation and/or secure a quick settlement if there is merit to the claim.

While we must at all times strive to protect the city and its residents and taxpayers, the city must also consider the moral dimension of its actions. We must strive to take actions, set policies, and make decisions that are not merely “legally defensible.” If a city conducts itself at such a low level – simply defensible as opposed to morally right and proper – a city ends up doing exactly that time and time again – defending itself.

I would stress that my comments above must not be taken as an admission of responsibility in any of the current cases facing the city.

#### **Finding 5**

The new campground concessionaire is reportedly completing the aquatic safety at this time. I would also add that the city, with the aid of the concessionaire, has applied for a state grant to upgrade the campground waterfront and boat ramp area where the drownings occurred.

#### **Finding 6**

Since joining the council in November, 2001, I have not personally witnessed any councilmember violate the city’s Code of Ethics. Purely for informational purposes and not to imply in any way, shape, or form that I agree with the allegations, a civil suit has recently been filed (unsealed by the court after the city drafted its official response) against a

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current councilmember alleging improper use of city funds. I also understand that a separate claim/lawsuit has recently been filed against a former city manager.

I am also not aware of any specific violations by councilmembers in the recent past, save for the **two** former councilmembers (not one, as stated in the city's official response) fined by the state's Fair Political Practices Commission.

That being said, the city does have a reputation for, in the past, playing rather close to the ethical line. While I believe that the city council has largely put those issues behind it, there can be no question that an elected official, especially in Lake Elsinore, must do everything he or she can to avoid even the appearance of impropriety.

I also believe that the same ethical standards should apply to senior city management.

Though the tone of the city's official response is, again, dismissive, I would add that the current council is expected to conduct a special study session on city policies and ethical standards.

I will now turn to the responses to the Grand Jury's recommendations.

### **Recommendation 1**

In this matter, I generally agree with the city's official response – a county municipal response team is not necessary.

I also agree that the city has made a number of positive financial moves in recent in regards to reducing the interest rates on its myriad of bonds.

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There is one point I would like to clarify, however. The city's official response states that the "most recent budget shows adequate revenues and reserves to cover anticipated expenditures..."

Technically, that is correct. However, it may be considered as disingenuous because it fails to mention that the city has run annual general fund operating deficits of up to nearly \$1 million for the past few years and expects to run an operating deficit in the current fiscal year.

To say the city (and its redevelopment agency) is paying its bills and meeting its debt obligations is, again, technically correct. However, considering the annual deficits (which are draining the city's reserves) and the redevelopment agency's approximately \$15 million in unsecured debt to both the city's general fund and its own low-and-moderate income housing set-aside program, I fear that the official response does not paint a truly accurate picture of the city's financial situation.

Be that as it may, I agree that a county team is not necessary. However, I do support a complete and thorough forensic accountant audit, process audit, and management study. (Further explained below)

### **Recommendation 2**

As the Board of Supervisors decided against offering the city a municipal response team, I have no comment on this recommendation.

### **Recommendation 3**

As noted in my response to Recommendation 1, I agree with the Grand Jury's recommendation that the city "engage an outside firm to perform a complete and in-depth audit of city finances and practices."

In fact, the city council recently took a step towards doing just that when it engaged a firm to complete a salary survey and "process audit."

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The salary survey and process audit should be completed by February, 2003 and I am hopeful that its findings will provide the city with a roadmap to improving its internal operations in the future.

As for the financial audit, I understand the city is audited annually by an outside firm and I find no fault with their work. However, I believe the Grand Jury was looking for something more in-depth than a typical annual audit and, as stated above, I would support such a "forensic" look at all of the city's finances and financial practices.

#### **Recommendations 4 and 5**

Please see my response to Findings 5 and 6, respectively, for my comments on the final two recommendations.

I hope the above comments have been helpful and/or illustrative.

I would also again like to point out that the above comments are the feelings and opinions of a single councilmember and should be taken simply as such.

But I do believe the city must do a better job in two key areas, areas not specifically raised by the Grand Jury but areas which relate to almost all of the Grand Jury's concerns: Communication and public trust.

We as a city must do a better job making our residents feel empowered and more in control of the city. Too often, city hall has appeared as a "blank wall" to our residents, offering little help or hope. Once we involve more of our citizens and communicate better inside and outside city hall, we can then begin to build a new base of public trust and rebuild the city's image.

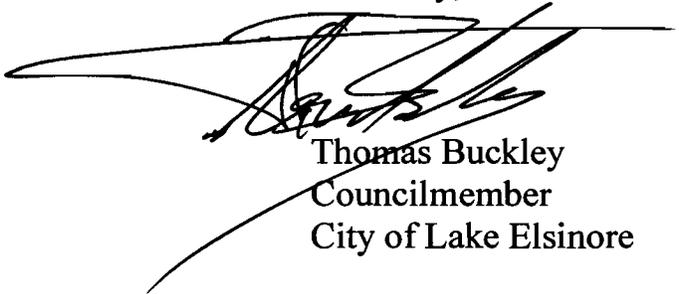
While this letter has been admittedly rather negative, I must say that a lot of good work is being done in city hall and by the city council. I also believe that, in general, the city, through the work of the most recent

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councils, is beginning to turn the corner and will, hopefully, very soon become a model of civic responsibility and probity.

I thank you for taking the time to read this letter and hope it has been of some use.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tom Buckley', is written over a horizontal line. The signature is stylized and somewhat cursive.

Thomas Buckley  
Councilmember  
City of Lake Elsinore

SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

920



15

FROM: EXECUTIVE OFFICE

SUBMITTAL DATE: July 2, 2002

SUBJECT: Grand Jury Report: City Of Lake Elsinore

RECOMMENDED MOTION: Receive and file.

BACKGROUND: The attached report has been issued by the Grand Jury.

The City of Lake Elsinore is an independently elected, general law city with its own governing council, and has no reporting relationship, with regard to the Grand Jury reports, to the Riverside County Board of Supervisors. This report is filed for purposes of providing general information to the public regarding the Grand Jury's findings.

Attachment

TONY CARSTENS  
Deputy County Executive Officer

FINANCIAL DATA: N/A  
CURRENT YEAR COST  
NET COUNTY COST

ANNUAL COST:  
IN CURRENT YEAR BUDGET: Yes/ No/  
BUDGET ADJUSTMENT FY: Yes/ No/

SOURCE OF FUNDS:

C.E.O. RECOMMENDATION: APPROVE.

  
County Executive Officer Signature

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Mullen, seconded by Supervisor Buster and duly carried by unanimous vote, IT WAS ORDERED that the above report is received and filed as recommended.

Ayes: Buster, Venable, Wilson and Mullen  
Noes: None  
Absent: Tavaglione  
Date: July 9, 2002  
xc: E.O., Grand Jury, COB

Nancy Romero  
Clerk to the Board  
By:   
Deputy

3.2

Department Recommendation:  Consent  Pc  Policy  
Per Executive Office:  Consent  Policy