AGENDA DESCRIPTION:
Consideration and possible action to approve the City's responses to the Los Angeles County Civil Grand Jury Reports entitled "Chevron - El Segundo" and 2012-2013 "Civil Grand Jury Final Report—El Segundo". Both reports are available in the City Clerk’s office.
(Fiscal Impact: none)

RECOMMENDED COUNCIL ACTION:
1. Approve City’s responses Civil Grand Jury Reports.
2. Alternatively, discuss and take other action related to this item

ATTACHED SUPPORTING DOCUMENTS:
El Segundo Civil Grand Jury Responses
El Segundo Fund Balance Policy and City Council Adoption Minutes
El Segundo –Chevron Civil Grand Jury Responses

FISCAL IMPACT: none

Amount Budgeted: N/A
Additional Appropriation: N/A
Account Number(s): N/A

ORIGINATED BY:  Mark Hensley, City Attorney
Deborah Cullen, Director of Finance

REVIEWED BY:  Greg Carpenter, City Manager

APPROVED BY:  Greg Carpenter, City Manager

BACKGROUND AND DISCUSSION:
The 2012-2013 Los Angeles County Civil Grand Jury (Grand Jury) produced 2 reports this year for the City of El Segundo. One related to revenues collected by the City from the oil and gas refinery owned by Chevron and the second related to the investigation of all 88 incorporated cities in the County of Los Angeles addressing fiscal health, governance, financial management and compensation. Both reports are attached in their entirety as well as the City’s proposed letters in response to the reports.
The following is a summary of the purpose of each of the 2 reports:

1. **City of El Segundo 2012-2013 Civil Grand Jury Final Report- “Chevron- El Segundo”**

The Grand Jury investigated the revenues collected by the City from Chevron prompted by the concern that Chevron received favored tax status which resulted in the City not receiving revenues from the Chevron refinery comparable to other similarly situated cities within California, such as Torrance and Richmond. In addition to projected operating deficits, the Grand Jury investigated the historic and ongoing agreements and negotiations between the City and Chevron addressing a variety of tax revenues.

The report contains no formal findings for the City of El Segundo ("City") to respond to but does contain two recommendations that require a City response. (see attached letter) However, the Civil Grand Jury found the following:

- No evidence of conflicts of interest regarding City officials and their dealings with Chevron and no evidence of improprieties with regard to the City's negotiations with Chevron;
- that the City deserves recognition for being fiscally conservative even though it has faced budget challenges, like most cities, in the last few years; and that the City entering into the agreement with Chevron in April 2013 addresses many of the City's revenues issues and was probably the best decision for the City;
- that the Grand Jury remains somewhat concerned about the City addressing long term fiscal issues and that the Grand Jury cannot entirely dismiss entirely that the City's treatment of Chevron may impose a disproportionate burden on other businesses in the City.

The issue of taxes being fair or disproportionate is a subjective matter upon which reasonable minds can differ. Chevron is the City's single largest tax payer and the April 2013 agreement significantly increases the amount that Chevron will be paying the City over the next fifteen years. Whether taxes should be based upon acreage, number of employees, gross receipts, burden on City services is, again, subjective and virtually every City in California weighs each of these factors differently and uses different factors in determining how to impose taxes. Moreover, with the passage of Proposition 218, it takes voter approval to change/increase taxes and so even if there were an objective standard by which to measure the fairness by and the imposition of taxes, the report recognizes the difficulty associated in getting such voter approval.

With regard to the Grand Jury's Formal Recommendations which do require a response by the City, the City responses are in the attached draft letter to the Presiding Judge of Los Angeles Superior Court.

2. **City of El Segundo--2012-2013 Los Angeles County Civil Grand Jury Report on fiscal health, governance, financial management and compensation**

The Grand Jury requested information from all 88 incorporated cities in Los Angeles County to determine the fiscal health of those cities. It also sought to determine if the cities were following the “best practices” for governance and financial management, as established by the Government
Financial Officers Association (GFOA). The report also reported on the issue of employee compensation and recent legislation. The following is the methodology used for the investigation:

2. Developed ratios and criteria to rate the financial health of the cities.
3. Ranked the cities based on the financial ratio and criteria.
4. Identified best practices criteria related to governance and financial management.
5. Developed and administered a questionnaire to each city.
6. Reviewed and analyze each city’s response to the questionnaire.
7. Requested supporting documentation and explanations of responses for each section of the questionnaire.
8. Reviewed responses to the questionnaire, supporting documentation, and explanations and developed findings.
9. Reviewed the reasonableness of the salaries and compensation as obtained from the California State Controller’s Office.

El Segundo scored 20th out of 88 cities based on our response to their survey. The City received 6 reportable findings/recommendations out of a total possible 17. The City has responded to the findings/recommendations in the attached document City of El Segundo-Response to the Los Angeles Civil Grand Jury Report.
September 17, 2013

Presiding Judge
Los Angeles County Superior Court
Clara Shortridge Foltz Criminal Justice Center
210 West Temple Street,
Eleventh Floor, Room 11-506
Los Angeles, CA 90012

Re: City of El Segundo 2012-2013 Civil Grand Jury Final Report - Fiscal Health, Governance, Financial Management, etc.

Honorable Presiding Judge:

The following information is the City of El Segundo’s (“City”) response to the 2012-2013 Los Angeles County Civil Grand Jury (“Grand Jury”) Report (“Report”) on fiscal health, governance, financial management and compensation for cities within Los Angeles County. It appears that the Grand Jury’s Recommendations were based upon its review of each cities practices and that the Recommendations have, in some cases, an implicit finding that the City is not currently in compliance with the Recommendation. This is a different format than the City has seen utilized in the past and does not comport completely with the instructions provided as to how to respond to “Findings” which are different from “Recommendations.” Given that all 88 Los Angeles County cities were the subject of the Report, the City assumes that this unusual format is due to breadth and time involved in compiling the Report.

Fiscal Health

1. **Grand Jury Recommendation:** Cities should adopt financial planning, revenue and expenditure policies to guide city officials to develop sustainable, balanced budgets.

   **City’ Response:** The City already has policies that are designed to achieve the goals set forth in the Recommendation, and, accordingly does not believe further policies are warranted at this time.

   The City has an adopted Fund Balance Policy that guides the development of the annual operating budget. The purpose of this policy is to mitigate current and future risks and to ensure a balanced budget. The Fund Balance Policy establishes a General Fund reserves that provide security against unexpected emergencies and contingencies. Currently the General
Fund Unreserved, Undesignated Fund balance is set at a minimum of 17% of the adopted General Fund Expenditures. Additionally, the City’s policy is that General Fund annually adopted Appropriations must not exceed General Fund annually adopted estimated revenues. See attached.

The City of El Segundo starts the budgeting process at least 6-months prior to yearend. Strategic Planning Sessions are held with City Council. During these meetings staff relays assumptions and planning tools that will be used to develop the operating budget. The Fund Balance Policy is the guide that is used to determine the appropriations for the next fiscal year. During the current economic crisis the City’s General Fund reserves have not fallen below the established 17% Fund Balance Policy.

Therefore the City already has a policy in place that guides the decisions made by the governing body.

2. **Grand Jury Recommendation: Cities should develop a balanced budget and commit to operate within the budget constraints.**

   **City’s Response:** The City of El Segundo agrees with this recommendation as the City is required by law to not expend more funds than it has in any fiscal year. To the extent that this Recommendation implies that the City has not operated within budget constraints or cannot use reserve or one time funds to balance in its budget in some years then the City believes the finding/recommendation is not accurate and is not reasonable.

   The City’s Fund Balance Policy discusses the goal of a balanced budget. Each year the City adopts a balanced budget (revenues to expenditures) and strives to operate within that budget.

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<thead>
<tr>
<th>Fiscal Year</th>
<th>Revenues</th>
<th>Expenditures</th>
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<tr>
<td>2010-2011</td>
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<td>2011-2012</td>
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<td>2012-2013</td>
<td>$52,192,300</td>
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Due to the nature of our tax structure the City can experience substantial swings in revenues in any given year. Revenue estimates are based on all data and facts at a given time to create the revenue budget. The City’s General Fund tax revenue stream is heavily reliant on the aerospace and business community, with 74% of tax revenues coming from this sector. During the past several years, the economic crisis had a significant impact on many of our revenue sources, causing a dip in key revenues. In addition, one of the City’s major sales tax producers changed the reporting structure for their business, which resulted in a reduction in the City’s tax revenue
of 4% or 2.0 million in the first year alone. This is an example of the significant impact that one business can have on the revenues expected and budgeted to cover ongoing expenses. During this crisis, the City reduced expenditures and did use one-time money, but did not use the undesignated unreserved fund balance to cover the shortfall.

The City follows the Fund Balance Policy and has not reduced the undesignated fund balance to fund ongoing expenses. The City has been proactive in implementing cost-containment strategies and deferring expenditures whenever possible in order to ensure the City operated within budget constraints.

3. **Grand Jury Recommendation:** Cities should commit to not using one-time revenue to fund recurring or ongoing expenses.

**City’s Response:** The City of El Segundo agrees that cities should not rely on one-time revenues on a regular basis to balance their budgets but disagrees with this finding to the extent it states that City’s should never use one-time revenues to their budgets. The City has used one-time revenues in the past and may need to do so in the future. The City strives to balance annual operating expenses to operating revenues by balancing expenditures to revenues through cost containment and reductions in discretionary spending. However, as set forth above, due to economic cycles and potentially unpredictable significant changes in revenue sources it is not reasonable for the City to never use one-time funds to balance its budget.

4. **Grand Jury Recommendation:** Cities should adopt a method and practice of saving into a reserve or “rainy day” fund to supplement operating revenue in years of short fall.

**City’s Response:** The City agrees with this Recommendation and it already has an adopted Fund Balance Policy that is adhered to each fiscal year. (see attached)

The City’s Fund Balance Policy includes a goal of maintaining undesignated unreserved fund balance in an amount equal to at least 17% of the annual General Fund expenditure budget. In setting this policy, the “reserve” adjusts automatically as expenditures naturally rise over the years. For example, in fiscal year 2013-2014, General Fund expenditures increased from the prior year by $7.4 million. As a result, the policy “reserve” has grown by $1.3 million, and is fully funded to that level through the budget. In addition, the City’s Fund Balance Policy states that once the 17% target level is reached, any excess fund balance should be transferred to the City’s Economic Uncertainty Fund. During the economic downturn, the City used the accumulated balances in this Economic Uncertainty to augment the General Fund revenues.

Over the last 5 years, in addition to implementing reductions in spending, the City has had to rely on the Economic Uncertainty fund to balance its General Fund Operating Budget. However, it must be emphasized that the City has not relied on the General Fund “undesignated, unreserved” fund balance to balance the General Fund Operating Budget.
Financial Management

1. **Grand Jury Recommendation:** Cities should formally establish an audit committee making it directly responsible for the work of the independent auditor.

   **City’s Response:** The City disagrees with this recommendation at this time as it appears unwarranted given the City’s current practices.

   The City Council, City Manager, Finance Director are responsible for selecting and providing direction to the City’s auditors. The City Manager, Finance Director and Accounting Manager are responsible for day-to-day oversight of audit process. The independent auditor is recommended by staff but the appointment of the auditor is through Council approval and action.

   The auditor issues an annual Comprehensive Annual Financial Report ("CAFR") that details the City’s financial condition for each fiscal year. The CAFR is a public document and copies are reviewed by the City Council, City Treasurer, City Manager, Finance Director and other City staff members. The auditors are Certified Public Accountants that are required to follow national standards with regard to Generally Accepted Accounting Principles. It seems unwarranted to establish an Audit Committee under these circumstances. However, the City will review and consider the Grand Jury recommendation and determine if an Audit Committee is necessary. This will be accomplished prior to the next annual audit for yearend FY 13-14.

2. **Grand Jury Recommendation:** Cities should undertake a full-scale competitive process every 5 years for the selection of an independent auditor.

   **City’s Response:** The City agrees with this Recommendation but to the extent that the Grand Jury believes the City has not been complying with this proposed standard, such is not accurate. The City currently is in the 5th year of the existing audit contract. The City issued a Request for Proposal in June 2013 and is currently reviewing the RFP’s and scheduled to select an audit firm before the end of the fiscal year which is September 30th.

Thank you for the Report and the opportunity to respond the Grand Jury’s Recommendations.

   Sincerely,

   Greg Carpenter,
   City Manager

Cc: City Council
Fund Balance Policy

Purpose - To mitigate current and future risks and to ensure a balanced budget.

While our financial reserves provide us security against unexpected emergencies and contingencies, our policies for setting those target levels should be periodically reviewed to balance our community's level of risk tolerance against our operating expenditure needs.

1. Establish target General Fund Unreserved, Undesignated Fund Balance at a minimum of 17% of General Fund Expenditures.

2. Once target level is reached, transfer excess General Fund revenues and other sources over expenditures and other uses or designations to the Economic Uncertainty Fund.

Balanced Operating Budget

The City Council's policy is that General Fund annually adopted Appropriations must not exceed General Fund annually adopted Estimated Revenues.
SPECIAL MEETING OF THE EL SEGUNDO CITY COUNCIL
Wednesday, June 8, 2011
El Segundo Public Library
111 W. Mariposa Avenue, El Segundo, CA 90245
7:30 a.m.

7:30 A.M. SESSION

CALL TO ORDER – Mayor Busch at 7:30 a.m.

ROLL CALL

Mayor Busch - Present
Mayor Pro Tem Fisher - Present
Council Member Brann - Present
Council Member Fuentes - Present
Council Member Jacobson - Present

PUBLIC COMMUNICATIONS – (Related to City Business Only – 5 minute limit per person, 30 minute limit total) Individuals who have received value of $50 or more to communicate to the City Council on behalf of another, and employees speaking on behalf of their employer, must so identify themselves prior to addressing the City Council. Failure to do so shall be a misdemeanor and punishable by a fine of $250. While all comments are welcome, the Brown Act does not allow Council to take action on any item not on the agenda. The Council will respond to comments after Public Communications is closed.

Marsha Hansen, Chamber of Commerce; spoke regarding the Downtown Committee and their plans for inviting guests to explore the downtown area.

Chris Thomason, President El Segundo Firefighters Association, spoke against any reduction in staffing in the Fire Department.

SPECIAL ORDERS OF BUSINESS:

1. Consideration and possible action regarding a strategic planning session which will guide staff in the preparation of the Fiscal Year 2011-2012 Preliminary Budget for all City expenditures and revenues. Staff will present a brief overview of the estimated General Fund Fiscal Year 2010-2011 yearend projections, General Fund Fiscal Year 2011-2012 budget assumptions, projected shortfall and options to balance the FY 2010-2011 and FY 2011-2012 General Fund Budgets.

   Staff will be presenting the following items for preliminary consideration:

   a. Fiscal Year 2010-2011 Yearend projections

   b. Fiscal Year 2011-2012 Preliminary Budget
i. Eliminate the projected structural deficit through:
   1. Staffing Reductions
      a. Permanently eliminate vacant positions
      b. Early retirement options for all employees
   2. Salary and Benefit Reductions
   3. Reduce Other Post Employment Benefits (OPEB) funding through cost sharing

c. Five-Year Forecast

d. Economic Outlook – General Fund Revenues
   i. Business License
   ii. Sales Tax
   iii. Property Tax
   iv. TOT Tax
   v. Utility Tax Revenues
   vi. Investment Interest
   vii. New Development

e. Revenue Growth
   i. Potential increase in Developer Fee Revenue

f. Long-Term Policy Decisions:
   i. Capital Infrastructure Plan
   ii. Reduce General Fund unreserved/undesignated balance to best practice levels
   iii. Tiered benefit plans and employee cost-sharing
   iv. Modify funding levels for Equipment Replacement Fund
      1. Fleet review and overhaul

This planning session will guide staff in the preparation of the FY 2011-12 Preliminary Budget, which will be presented at the August 16, 2011 City Council Meeting. Council may raise other revenue, expenditure, development, policy, capital project and potential budget reduction items for consideration as part of staff’s preparation of the FY 2011-12 Preliminary Budget.

Continue the monetary support to the School District with the condition that the funds are used to support the Joint Use Agreement.

Personnel Costs: Majority consensus to reduce costs as proposed by staff. Council Member Brann prefers using the reserves to bridge the gap until the election in April 2012.

General Fund unreserved/undesignated balance to best practice levels: Council majority agreed to set the best practice level at 17%, Council Member Jacobson prefers to maintain a goal of 20% with the understanding that occasionally it may go below that mark; Council Member Brann prefers to reduce it to 15%. Consensus to review all fund balances and if the logic is there for a different balance, Council would like to review that also.
Capital Infrastructure Plan: Modify funding levels for Equipment Replacement Fund; Determine projects and actual costs; Present cost estimates and how the projects can be funded for Council consideration.

ADJOURNMENT at 9:15 a.m.

[Signature]
Cindy Moresen, City Clerk
September 17, 2013

Presiding Judge
Los Angeles County Superior Court
Clara Shortridge Foltz Criminal Justice Center
210 West Temple Street,
Eleventh Floor, Room 11-506
Los Angeles, CA 90012

Re: City of El Segundo 2012-2013 Civil Grand Jury Final Report - "Chevron - El Segundo"

Honorable Presiding Judge:

Thank you for the above-referenced Civil Grand Jury Report ("Report") and the opportunity to respond thereto. The report contains no formal findings for the City of El Segundo ("City") to respond to but does contain two recommendations that require a City response.

While the Report contains no formal findings, it does state: that the Civil Grand Jury ("Grand Jury") found no evidence of conflicts of interest regarding City officials and their dealings with Chevron and no evidence of improprieties with regard to the City’s negotiations with Chevron; that the City deserves recognition for being fiscally conservative even though it has faced budget challenges, like most cities, in the last few years; and that the City entering into the agreement with Chevron in April 2013 addresses many of the City's revenues issues and was probably the best decision for the City; and that the Grand Jury remains somewhat concerned about the City addressing long term fiscal issues and that the Grand Jury cannot entirely dismiss entirely that the City's treatment of Chevron may impose a disproportionate burden on other businesses in the City.

The issue of taxes and was is fair and disproportionate is a subjective matter upon which reasonable minds can differ. Chevron is the City’s single largest tax payer and the April 2013 agreement significantly increases the amount that Chevron will be paying the City over the next fifteen years. Whether taxes should be based upon acreage, number of employees, gross receipts, burden on City services is, again, subjective and virtually every City in California weighs each of these factors differently and uses different factors in determining how to impose taxes. Moreover, with the passage of Proposition 218, it takes voter approval to change/increase taxes and so even if there were an objective standard by which to measure the fairness by and the imposition of taxes, your report recognizes the difficulty associated in getting such voter approval.

Your report also states that citizen participation in the budget process is minimal based upon the public attendance that the Grand Jury observed at the budget hearings which it attended in 2012. Based upon this observation the Grand Jury states that it believes the City should make more of an effort to increase the public’s participation in the budget process. The City recognizes that there were not many members of the public in attendance at the budget meetings that the Grand Jury attended. However, the City
wants to make sure that the Grand Jury is aware that prior to the public hearings that were attended by the Grand Jury that the City conducted two special Council Meetings which were Strategic Planning Budget Workshops. These Workshops did have a much higher level of attendance than the public hearings. These Workshops, which the City holds annually (this year the City held three budget workshops), generally last about three hours each and include a very detailed presentation by City staff regarding the City’s budget. Members of the public are provided the opportunity to provide input at these meetings. Perhaps the in depth nature of these Workshops provides many members of the public with the information they are seeking which results in reduced attendance at the public hearings where the budget is finalized and formally adopted.

In addition to the Budget Workshops and prior to the two public hearings the Council conducts at its Regular Council Meetings, the Council places an item on its agenda announcing the dates of the two public hearings regarding the budget. Accordingly, while the City welcomes and agrees with the Grand Jury that the budget process would be enhanced by more public participation, it is noteworthy that the City agendized the budget for discussion five times for fiscal year 2012/2013 and six times for fiscal year 2013/2014.

With regard to the Grand Jury’s Formal Recommendations which do require a response by the City, the City responds as follows:

**Grand Jury Recommendation 11.1:** The City should form a citizen's committee of residents to recommend to the City manager long term financial planning that insures continued fiscal stability. Given the fifteen year term of the proposed agreement with Chevron and the resulting apparent fiscal health of the City, waiting until the end of the current Chevron agreement to plan for future budget stability would not best serve the City.

**City's Response:** The City agrees that it should not wait fifteen years, the end of the Chevron agreement, to plan for future budget stability. The City held an extra budget workshop to address this specific issue and to begin planning for potential budget issues in fiscal years 2014/2015 and beyond. The City is currently exploring potential tax increases and is scheduled to continue this discussion at its September 25, 2013, meeting and is committed to continuing to explore long term fiscal stability over the coming months. The City’s next opportunity to place tax increases before the voters is at the City’s April 2014 general municipal election. The City’s only opportunity to place general taxes on an election, unless the Council declares that a fiscal emergency exists by a unanimous vote of the Council, is on its general municipal elections which only occur every two years (See, California Constitution Article XIIIC).

The City is not going to implement a citizens committee at this time but is open to reconsidering the recommendation in the future. Given that the Council is proactively addressing this issue and there is a limited time frame for the Council to take action to consider placing general taxes on the April 2014 election, it does not seem prudent or reasonable at this time to form such a committee as it will take time to educate such a committee and for the committee to develop recommendations. The discussion and action that needs to be taken by the Council needs to commence immediately and be concluded over the next sixty to ninety days to allow for the preparation and potential adoption of the various documents that are needed to place a tax measure on the ballot. Depending on the Council’s decision regarding placing a tax measure on the election and, if it does, the voters’ action on a proposed tax measure, the Council will further consider the advisability of forming a citizen’s committee.
**Grand Jury Recommendation 11.2:** The City of El Segundo should conduct an annual audit of Chevron's utility use in order to better pursue revenues at the conclusion of the current agreement. This audit should be part of the public record as opposed to the confidential audit performed by a contractor prior to the negotiation of the current Chevron agreement.

**City's Response:** As the City previously communicated to the Grand Jury, it is unlawful and constitutes a criminal act for the City to release tax information to the public (See, California Civil Code Section 3426.1(d); Revenue and Taxation Code Sections 7284.6, 7284.7 and 21002; Business and Professions Code Section 11612; Public Utilities Code Section 394.4, and El Segundo's Municipal Code Section 4-1.34). It is not reasonable for City to implement this recommendation.

The City also declines to conduct an annual audit of Chevron's utility usage as such is not warranted or reasonable. The Chevron agreement is structured such that the additional payment made by Chevron is based upon deducting the taxes Chevron pays the City from the agreed upon total payment amount. Given that the additional payment by Chevron greatly exceeds the amount of taxes paid by Chevron and it is not projected that such will change for a number of years it is not warranted that the City audit Chevron utility usage every year. After a few or more years have passed it would seem more reasonable to undertake audits, although not necessarily annually, of Chevron's utility usage. The City conducts audits of its businesses from time to time, but not on an annual basis. It does not seem reasonable that Chevron should be subject to annual audits when no other business is subject to annual audits. It does seem reasonable that given that Chevron is the largest taxpayer in the City that audits might be conducted more frequently, as the City might also conduct with respect to other significant taxpayers, than it conducts audits on other taxpayers.

Again, the City would like to express its appreciation to the Grand Jury and its efforts in reviewing the City's budget and tax issues and the opportunity to respond to the Grand Jury. Please contact me if I can be of further assistance.

Sincerely,

Greg Carpenter,
City Manager

Cc: City Council