



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Heidi A. Quinn, Assistant City Attorney
MEETING DATE: August 1, 2018
SUBJECT: Consider and Approve Response to 2018 Monterey County Civil Grand Jury Final Report
CEQA STATUS: Does not constitute a “Project” under CEQA Guidelines

RECOMMENDATION:

Approve the attached response, authorize the Mayor to sign the cover letter on behalf of the City Council, and direct the City Attorney to forward it to the Presiding Judge of the Superior Court as the City’s response to the Final Report of the 2018 Monterey County Civil Grand Jury.

DISCUSSION:

A citizen complaint was filed with the Monterey County Civil Grand Jury (Grand Jury) regarding the City of Pacific Grove’s (City) handling of Project Bella, which was a proposal to develop a luxury hotel at the privately-owned site of the American Tin Cannery building at 125 Ocean View Boulevard. The Grand Jury investigated this complaint, and on June 7, 2018, issued its [Final Report](#). The Grand Jury determined that the results of the investigation indicate the City Manager did not accept gifts from the developer, and that alleged missing funds were ultimately accounted for. The Grand Jury further determined the City spent more than \$100,000, which was not reimbursed; the City disagrees with this determination.

According to the Penal Code, the City has 90 days from receipt of the [Final Report](#) to respond to each of the Findings and Recommendations. The Mayor appointed a committee of himself, Councilmembers Cynthia Garfield and Ken Cuneo, and Assistant City Attorney Heidi Quinn to prepare responses for consideration by the Council. The Penal Code provides the City shall comment to the Presiding Judge of the Superior Court on the “findings and recommendations pertaining to matters under control of the governing body.”

OPTIONS

Provide alternate direction

FISCAL IMPACT

None.

GOAL ALIGNMENT

Operational Excellence

ATTACHMENTS

1. Cover Letter
2. Draft Response

RESPECTFULLY SUBMITTED:

Heidi A. Quinn

Heidi A. Quinn
Assistant City Attorney



CITY OF PACIFIC GROVE

300 FOREST AVENUE
PACIFIC GROVE, CALIFORNIA 93950
TELEPHONE (831) 648-3187

August 1, 2018

Honorable Stephanie E. Hulsey
Judge of Superior Court
240 Church Street
Salinas, CA 93901

Re: Response to Final Report

Dear Judge Hulsey,

The City Council of the City of Pacific Grove (City) at its meeting of August 1, 2018 reviewed and accepted the City's prepared responses to the findings and recommendations set forth in the 2017-2018 Monterey County Civil Grand Jury Final Report entitled "Project Bella," which has been approved for publication.

A copy of the City's response is enclosed.

Very truly yours,

Bill Kampe, Mayor
CITY OF PACIFIC GROVE

Enclosure: City Response

City of Pacific Grove



Response to Grand Jury Report

Project Bella

July 18, 2018

Foreword

The City of Pacific Grove (City) thanks the Grand Jury for the time and effort invested in its Report on Project Bella. The City Council has reviewed the report closely and is providing here the specific responses to Findings and Recommendations as required. The City is also commenting on selected items asserted as Facts.

The City notes that substantial commentary is included in the narrative portion of the report. As the Grand Jury notes, its powers are limited to governmental entities and governmental employees. The investigation into the conduct of Project Bella was limited only to the role of the City and its employees. No commentary appears in this report about the conduct, capabilities, or actions of Domaine Hospitality, who had a contract with Foursome Development Company, the property owner.

The report implies and comes very close to stating an opinion that the cause for the termination of Project Bella rests with the City. On the contrary, City reviews of the project suggest that the outcome would have been the same regardless of the City's actions.

The City also recognizes there are lessons to learn from every project and will embrace those lessons.

Response to Assertions of Facts

Though the Grand Jury has not required comment on the listed Facts, the City will comment selectively. The City notes that Findings and Recommendations must necessarily rely on the Facts, and it is important to be fully accurate.

(4) The application fee of 11,044.20 due from Domaine was never received by the City of Pacific Grove.

Comment: The City cited the failure to submit the fee as one of the reasons the application was deemed incomplete.

(5) At the commencement of the project, the City failed to follow standard procedure by not requiring a substantial deposit from the developer to cover the City's project expenses.

Comment: The City asks what standard the Grand Jury refers to? There is no documented standard procedure stating such a requirement, and for the vast majority of applications submitted to the City, such a requirement would be inappropriate.

(6) After the City Manager announced his resignation, Mr. Ficker recommended Mr. Harvey to fill the position of City Manager.

Comment: The report does not document how this recommendation might have been made. The City notes that the City Council retained the Firm of Ralph Andersen & Associates to conduct a broad search for the position of City Manager. As the interim City Manager, Mr. Harvey was one of many applicants for the position of City Manager.

(9) January 20, 2016: The City Council approved an agreement for Domaine to reimburse the City for the cost of the special election for a zoning change necessary for Project Bella.

Comment: The City disagrees to the extent it states or implies the City Council approved a specific agreement. According to the minutes of the January 20, 2016 meeting the City Council authorized the City Manager to enter into a reimbursement agreement to cover the costs of conducting a special election for a zone change necessary for the proposed Project Bella. The City notes that the measure was based on citizen petition, rather than being originated by Council. Thus, the City was required to conduct the election, with or without a reimbursement agreement.

(11) The group membership was owned by Jared Ficker, a friend of Mr. Harvey.

Comment: The City notes that the membership was owned by Consilience Partners, not Jared Ficker as an individual.

(19) June 4, 2016: The City and Domaine signed a second reimbursement agreement that was not presented to the City Council for approval.

Comment: The agreement entered into by the City and Domaine on June 14, 2016 was consistent with the direction given to the City staff at the February 17, 2016 meeting to enter into a reimbursement agreement that provided for the costs of preparation and management of work for an Environmental Impact Report and other associated costs.

(20) August 11, 2016: A letter from Jason Letterer, attorney for Domaine, contained Domaine's offer to reimburse the City for a portion of its Local Coastal Plan costs.

Comment: The City notes the offer as true. The report narrative implies that this offer was money due to the City. That is not true. The Local Coastal Plan (LCP) effort had started before Project Bella and continues today after Project Bella, to meet the needs of the City. The early discussions about payment from Domaine centered on accelerating the LCP. It was quickly clear the LCP process would not be accelerated; there was no defined deliverable for a payment; there was no contract for a payment.

(22) February 1, 2017: meeting the City Council voted unanimously to no longer seek additional Reimbursement from Domaine for Local Coastal Plan costs.

Comment: See comment on (20).

(23) The Jackson Lewis law firm was hired by the City in response to public allegations and criticisms of its decisions and performance.

Comment: The City Council retained the Jackson Lewis law firm in response to public allegations of malfeasance; it was not hired to review decisions or performance. The Council had already conducted a public discussion at its regular February 1, 2017 meeting and acknowledged process flaws and noted, in retrospect, other actions that would have been desirable.

(26) The unreimbursed cost of Project Bella to the City has been \$101,402.47.

Comment: The Grand Jury Report shows \$11,044.20 for an application fee. The application was incomplete in part because the fee was never received. Staff effort for the application process is entirely included in the overall estimate of staff time of \$35,000 and the fee is entirely redundant. The Grand Jury includes \$31,574.99 for Jackson Lewis. The City believes that in no way can this be considered a potentially reimbursable cost of the project. Further, the table of expenditures and receipts shows billings from EMC for \$65,488.86. City records show only \$45,313.55 is attributable to Project Bella, less by more than \$20,000. Unfortunately, the Grand Jury report does not provide evidence for its assertion in its report. The City believes that the maximum unreimbursed, yet reimbursable expenses are under \$40,000 and that this level of effort is within reason and appropriate for the scale of the project.

Response to Grand Jury Project Bella Findings

With respect to each finding, the Grand Jury requests the City indicate one of the following:

- 1) The City agrees wholly with the finding; or
- 2) The City disagrees wholly or partially with the finding, in which case the City must specify the portion of the finding that is disputed and shall include in the response an explanation of the reasons for the disagreement.

F1. Inspired by the prospect of significant revenue for the City, the project was pursued without due diligence.

City disagrees wholly with the finding.

City does not agree its efforts to review or respond to Project Bella-related matters lacked due diligence. The Grand Jury fails to cite any facts, or any policy, procedure or code in support of its conclusion.

F2. Committing City funds without having done an investigation of the developer, without adequate deposits and without a firm contract for reimbursement, exposed the City to a potential liability of several hundred thousand dollars.

City disagrees wholly with the finding.

City does not agree it has an obligation to independently investigate any project proponent or applicant, or to investigate any firm or individual who deposits money with the City. City does not agree it is required to obtain a deposit from a proponent or applicant before it undertakes any City action. The Grand Jury fails to cite any policy, procedure or code in support of its findings. City disagrees its actions related to Project Bella exposed the City to potential liability in any amount.

F3. A lack of transparency contributed to the public criticisms and allegations of financial malfeasance.

City disagrees wholly with the finding.

The City does not agree its actions related to Project Bella lacked transparency. The City acted in full compliance with the Brown Act and the Public Records Act. The Grand Jury fails to cite any facts, or any policy, procedure or code in support of its findings.

F4. The lack of clearly defined systems and procedures that were consistently followed contributed to public criticism of the City administration.

City agrees partially with the finding.

City agrees its systems and procedures may be improved; nonetheless, City does not agree its systems or procedures lack clarity, or that they were inconsistently followed. The Grand Jury fails to cite any policy, procedure or code in support of its findings. City has no information from this report as to the basis for assertion.

F5. The allegation that \$50,000 of City funds had been misappropriated resulted from the City's failure to correctly record a check for that amount that was paid for Project Bella by David Armanasco. This allegation was shown to be incorrect.

City agrees wholly with this finding.

The allegation was incorrect.

F6. The City lacked adequate procedures to account for employee time by project.

City disagrees partially with the finding. Large projects that require time tracking have historically been rare in Pacific Grove.

F7. The City lacked adequate procedures to track documents.

City disagrees partially with the finding.

The City recognizes the need to follow protocols for the creation and editing of documents. Most Council agenda documents are well tracked and archived. In this instance, there was an error in the application of the protocol.

F8. A lack of appropriate controls on the part of the City administration contributed to unreimbursed costs of more than \$101,402.47 to the City.

The City disagrees partially with the finding.

Please see the comment on Fact (26). The City believes that unreimbursed expenses are under \$40,000.

F9. In the Jury's opinion, it appears that Mr. Harvey had an advantage in competing for the position of City Manager.

City disagrees wholly with the finding.

City has no basis to respond to the Jury's opinion and is not aware of any evidence or facts to support its conclusions related to Mr. Harvey's application for City employment. See Comment on Fact 6.

F10. In the Jury's opinion, the City Manager, Mr. Harvey, displayed a lack of sensitivity to the appearance of a conflict of interest created by joining Jared Ficker's group membership in Surf Air.

The City disagrees partially with the finding.

The City acknowledges the Grand Jury opinion. The City has no basis to respond to the Jury's opinion and does not share any conclusion expressed by the Jury related to Mr. Harvey's sensitivity to the appearance of any conflict of interest. The Grand Jury fails to cite any factual basis to determine Mr. Harvey's sensitivity to the appearance of a conflict of interest.

F11. Mr. Harvey's relationship with members of the Domaine organization resulted in an allegation that he was receiving gifts from Domaine.

City disagrees wholly with the finding.

City has no information as to the basis for any allegations that Mr. Harvey may have received gifts. The City investigated the allegations, and they were determined to be unfounded.

F12. Mr. Harvey did not receive the membership in Surf Air from Domaine, as was alleged in a citizen complaint.

City agrees with the finding.

City agrees the allegation referenced in Finding 12 has been shown to be incorrect.

F13. Mr. Harvey did not pay for Surf Air for two separate three-month periods.

City agrees with the finding.

City agrees Mr. Harvey did not pay for Surf Air for two separate three-month periods; however, the City does not agree this fact was improper or should support any allegation of impropriety.

F14. The cost of Mr. Harvey's flights to Southern California on Surf Air was substantially greater than the average cost would have been for commercial flights.

City disagrees wholly with the finding.

City has no basis to compare the cost of Surf Air transportation to commercial transportation and does not agree with an implication that this Finding, if true, has any relevance. Mr. Harvey was provided a monthly allowance from the City for transportation and housing, in a not-to-exceed amount. This amount was part of his compensation, and available for him to use at in his discretion – for travel and housing. Any spending more than the allowance would be a personal expense and not a cost to the City.

F15. The April 19, 2016 re-zoning allows for hotel use at the American Tin Cannery site in the future.

City agrees with the finding.

City affirms present zoning for the American Tin Cannery site will allow future hotel use.

Response to Grand Jury Project Bella Recommendations

With respect to each recommendation, the Grand Jury requests the City report one of the following actions:

- 1) The recommendation has been implemented, with a summary of the implemented action;
- 2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation,
- 3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the City (this timeframe not to exceed six months from the date of publication), or
- 4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

R1. The City of Pacific Grove should hold "lessons learned" sessions with a facilitator skilled in municipal operations, to critique the Project Bella experience to avoid making the same mistakes in future developments.

The recommendation will not be implemented because it is not warranted. The City has already conducted a "lessons learned" session at an open council meeting. It is time to put energy into future application. As to all feedback from its citizens, the City takes the feedback seriously and works to improve service. The City has diligently reviewed the report of its retained investigator and the report of the Jury.

R2. The City Council should review and revise Mr. Harvey's employment contract to clearly spell out the limits of his travel allowance.

The recommendation has been implemented, in part: City reviewed Mr. Harvey's employment contract and will continue to review it on an annual basis as is the City's standard practice. The remaining recommendation will not be implemented because it is not warranted or is not reasonable. Further limits on his travel allowance are not needed. The City notes that Mr. Harvey's total compensation includes both a salary component and a clearly specified limit on his personal travel and housing allowance. The Council has set the total compensation at a level, that in the opinion of the Council, is appropriate in comparison to peers.

R3. There should be a sunset date for the reimbursement for Mr. Harvey's personal travel to Southern California.

The recommendation will not be implemented because it is not warranted or is not reasonable. Mr. Harvey's employment contract provides for a personal travel allowance as part of his total compensation. See also the response to R2.

R4. Travel of City of Pacific Grove employees should be reimbursed at the lowest practical cost.

The recommendation will not be implemented because it is not warranted or is not reasonable.

This recommendation implies a broader requirement for all employees of the city. The City believes that travel is judiciously used by employees who apply for travel reimbursement as a business expense.

R5. The City of Pacific Grove should develop procedures that would enable document tracking.

The recommendation requires further analysis. The City already has instituted a disciplined process for all documents that are included as Council agenda items. The City will investigate the use of systems that would further improve this process. The assessment will begin within the next six months.

R6. The City of Pacific Grove should develop procedures that would track employee time by project.

The City notes that by far the largest number of Community Development projects in our City do not require the overhead of time tracking, as the time cost of employees is already included in standard fees for project applications. The City has obtained software for employee time tracking and will deploy that capability for appropriate projects and departments by January 1, 2019.

R7. The City of Pacific Grove should develop a comprehensive policies and procedures manual that clearly describes the duties of all employees.

The recommendation will not be implemented because it is not warranted or is not reasonable.

The duties of all employees are set forth in detailed job descriptions, the City's Municipal Code and Charter, the Administrative Policies and Procedures Manual and the Employee Handbook. The Jury has not suggested any specific additional policies or procedures, except time tracking and document tracking, addressed elsewhere.

R8. The City of Pacific Grove should develop a policy to improve the transparency of its communication with its citizens.

The recommendation will not be implemented because it is not warranted or is not reasonable

The City strives to conduct its business in public and abide by the Brown Act and Public Records Acts. The City has responded promptly and in good faith to requests for information from the public. The Grand Jury has not provided any evidence to the contrary.