2012 MONTEREY COUNTY CIVIL GRAND JURY

INTERIM FINAL REPORT NO. 2

INTERFERENCE BY MARINA CITY COUNCIL WITH CITY STAFF WORK/MARINA PUBLIC PARK AT RISK

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SUMMARY

The 2012 Monterey County Civil Grand Jury (CGJ) investigated the behavior of individual members of the Marina City Council (MCC) when acting in their official capacity as elected city council members. The CGJ found several confirmed examples where members of the MCC violated their own guidelines and California code involving open meetings. This report includes a series of recommendations that the CGJ feels will benefit the citizens of Marina in the future.

BACKGROUND

The CGJ received several well documented complaints of possible inappropriate behavior by certain MCC members over the past several years, resulting in an atmosphere of distrust and lack of complete transparency in dealing with the business of government in Marina. The CGJ noted a somewhat confrontational atmosphere existing between the MCC and Marina city government staff.

In preparation for this review, we researched the issue of ethical behavior in local government. There are voluminous writings on this subject, but the most simple, consistent description of ethical behavior by city officials is "what one ought to do". It goes beyond the minimum standards of following the written laws.

The Institute for Local Government (ILG) is the research and education Affiliate of the California State Association of Counties and the League of California Cities. The ILG provides well respected perspectives on this issue of ethics in local government. It encourages a formal Code of Ethics to be developed by municipalities as part of the process of effecting the best behavioral practices in government. The ILG offers many examples of implemented ethics codes by California cities. While it is not appropriate to reference all the documents listed, we found it instructive to review many of these written codes.

In the ethics code for the city of Santa Clara, there was language (also viewed in other codes) that caught our particular attention. It states among other things, that city officials should "make independent, impartial decisions with the highest standards of personal and professional conduct free of narrow political interest." It is from this perspective that we conducted our investigation.

INVESTIGATION METHODOLOGY

The CGJ conducted interviews with all members of the MCC. The CGJ interviewed three employees of Marina city government, one former employee, and one longtime contractor to the Marina city government. Additional interviews were held with three citizens of Marina. CGJ members attended, or observed via television, several MCC meetings. Finally, hundreds of pages of official documents, pertinent e-mails and letter correspondence between members of the MCC, Marina city government officials, advisors to the MCC and citizens of Marina were researched by the CGJ. The CGJ concentrated its investigation around three items: (1) the MCC's relationship with city staff, (2) alleged private meetings resulting in non-transparent activity, and (3) the handling of a particular "Ad Hoc" committee.

FACTS RELEVANT TO THE INVESTIGATION

The MCC consists of 5 members, elected by the citizens of Marina. The Mayoral position is one of the five Council members and is elected every 2 years. The other four are at large members elected to four year terms, on a 2 year rotating basis. The Mayor appoints the Mayor Pro-Tem.

The Marina city government employees report ultimately to the Marina City Manager position.

There are clear regulations defining the relationship between the MCC and the Marina city government. The MCC, as a body or individuals, has no administrative authority in the City of Marina. In effect, the MCC makes policy, but the city staff is responsible for carrying out the policy.

Written correspondence exists between the previous City Manager and the City Attorney wherein the City Manager describes his concerns regarding inappropriate interference by a member of the MCC in the activity of the City Staff.

Marina is designated as a Charter City in the State of California.

The City of Marina does not have a specific written Ethics Code.

The MCC is subject to a portion of the California Government Code commonly known as the Brown Act. The basics of this law require that meetings of public bodies must be open and public, actions may not be secret, and action taken in violation of open meetings laws may be voided. Other key principles of the law require timely public notice of all meetings, all minutes available as soon as reasonable to the general public, and ensure the public is allowed to address the issues being discussed at the public meeting.

Ad Hoc committees, as established by the MCC, are subject to the provisions of the Brown Act.

Ad Hoc committees are temporary committees. Numerous websites address the issue of defining Ad Hoc committees and almost every description mentions the fact that they are temporary in

nature. In addition, several members of the MCC agreed with the description of Marina's Ad Hoc Committees being temporary.

The City of Marina has received two letters dated November 26, 2008 and February 4, 2010 from the National Parks Service Western Region office addressing the Marina Equestrian Center (MEC) land. In both letters, there is clear direction that it is the City of Marina's obligation to ensure the property is used primarily as a public park and that has not been accomplished as of this writing.

Documents and correspondence regarding the transfer of the MEC property to Marina, clearly state the Federal Government can take this land back if Marina fails to meet its commitment to the concept of a public park.

FINDINGS

F1. The CGJ found several instances where at least one member of the MCC acted in an administrative capacity with the general public on issues that should be in the purview of the City staff, thus causing confusion between the public and city officials. We reviewed specific written complaints from the general public complaining of MCC member interfering in the negotiations for the development of business opportunities between themselves and the appropriate city official.

F2. The MCC did not follow one of the key guidelines for the use of an "AD HOC" committee, namely, they are temporary committees. The MCC established the MEC Ad Hoc Committee on August 19, 2008 after officially suggesting its formation as of February, 2008. While members have changed over time and the City staff was removed from working with the Ad Hoc committee, the committee is still operating--more than four years later. The CGJ observed little progress in completing the intended purpose of the MEC Ad Hoc Committee. By eliminating the staff support for the committee (essentially the source of professional help to this important project) the MCC reduced its expenditures on labor during part of this 4 year plus period. However, the MCC has recently authorized $33,500 to hire outside consultants to move the project along.

F3. Of the four members on the MEC Ad Hoc committee, 2 are members of the MCC. There were at least 2 violations of the Brown Act during the past year with regard to this committee. The minutes of the meetings were not made readily available to the public and only became available when a member of the public made an official request with City staff. Second, a member of the committee was denied access to portions of the official report of the committee that was to be presented to the MCC.

F4. The handling of the MEC Ad Hoc Committee has put the MEC site at possible risk of loss to the City of Marina. The City of Marina was given the property by the Federal Government in 1993, with the proviso that it must implement a plan to ensure it is used as a public park. Public access to the property is a significant component of meeting the Federal guidelines. Eighteen (18) years later, the City of Marina has not only failed to complete such a plan, but has not even provided a contemporary plan that meets the demands of the Federal Government. The Federal Government has suggested that this valuable asset could be at risk if the city of Marina does not comply with the covenants of the land transfer.

RECOMMENDATIONS

R1. The MCC should review the violations of the Brown Act by the MEC Ad Hoc committee with special emphasis on whether the violations call for specific cures to be adopted.

R2. The MCC should develop and enact an ethical code of conduct for all City of Marina officials.

R3. The MCC should coordinate and fully participate in training emphasizing the specific boundaries between the work of the MCC and the City Staff and ensure that no members of the MCC "cross the line" and interfere with City staff work

R4. The MCC should encourage the City Attorney to take a more pre-emptive role in helping the MCC conduct its meetings. If procedural errors are identified and corrected immediately, the public will gain greater confidence in the operation of the MCC. The City Attorney has the experience to be helpful in this effort.

R5. The MCC should assign City staff to develop a satisfactory plan to protect the MEC property for the citizens of Marina. There are professional personnel on staff that can provide much needed expertise to the process. The professional staff should be used in this regard.

RESPONSE REQUIRED

Marina City Council (MCC)

Findings: F1., F2., F3., F4.

Recommendations: R1., R2., R3., R4., R5.

APPENDIX A: DOCUMENTS REVIEWED BY THE GRAND JURY

MARINA CITY GOVERNMENT:

City code for Marina

Description of relationship between City Staff and MCC.

Document designating Marina as a Charter City under California Code.

MARINA CITY COUNCIL MEETINGS:

Tapes, transcripts and direct attendance at council meetings.

Review of correspondence from and to City Attorney regarding procedural activities at numerous council meetings.

AD HOC COMMITTEE MEETINGS:

Quitclaim Deed giving the City of Marina the MES property in 1993. This document delineates the condition on which Marina is allowed to keep the property.

City Council documents establishing the MEC Ad Hoc committee and updating documents revising committee members.

Brown Act provisions relative to the conduct of these meetings.

Correspondence between the City of Marina and the National Park Service regional office regarding the proper use of the MEC property. Letters are a period between 2008 and the present.

Review of MEC Ad Hoc committee report to the Council and subsequent documents created by the MCC.

DOCUMENTS RELATED TO CONFLICTS BETWEEN ROLE OF CITY STAFF AND MCC MEMBERS.

Numerous letters, e-mails and City council minutes delineating violations of the role of the MCC members relative to the responsibility of the City Staff.

GENERAL ARTICLES:

Various internet sites related to ethics in local government.

The Institute for Local Government website.

Various internet sites on the proper conduct and direction of Ad Hoc Committees in local government.