



September 18, 2020

The Honorable Stephanie E. Hulsey
Judge of the Superior Court of California
County of Monterey
240 Church Street
Salinas, CA 93901

**Re: Response to 2019-2020 Monterey County Civil Grand Jury Report –
“Sexual Harassment Prevention #TrainingCompliance”**

Dear Judge Hulsey,

This letter is in response to the Monterey Civil Grand Jury Final Report - “Sexual Harassment Prevention #TrainingCompliance” pursuant to Penal Code sections 933 and 933.05. The responses contained in this correspondence were approved by the City of Monterey City Council at its regular meeting of September 1, 2020.

On behalf of the Monterey City Council, I would like to assure you that the City of Monterey has consistently been ahead of the curve in sexual harassment prevention training. For example, the City of Monterey started to train all employees, not just supervisors, four years before the law required such action. In addition, the City adopted a zero-tolerance standard which is more protective to employees than the state law severe and pervasive standard, and implemented bystander intervention training two years before it was recommended as a best practice by the legislature.

The City’s comments follow in the order that they were presented in the report. The report language is displayed in **bold type**.

FINDINGS

Finding F-24: The city [sic] of Monterey’s personnel tracking system does not include enough data to ascertain whether employees promoted to a supervisory position received AB 1825 training within six months of hire or promotion as a supervisory [sic] and then every two years thereafter.

The City of Monterey partially agrees with this finding. The City’s personnel tracking system could not produce one comprehensive report that met the desires of the Civil Grand Jury to

easily audit the City's training. While the City's tracking system is compliant with state law and regulations, it does require a labor-intensive audit to track training records to a date-specific employee roster. The City is currently not able to pull an automated report that can pull a historical list of employees in supervisory positions on the past date when the City held a sexual harassment training. With the current system, the City was able to produce the list of hundreds of employees who had completed AB 1825 compliant training during the years under review. But to establish a list of supervisors for the Grand Jury to cross-check, individual employees would need to be looked up manually in two different software systems, employment history pulled from their personnel file, and cross referenced one by one with training records. This manual audit was not requested by the Civil Grand Jury, but it could have been done. The City confirms that it cannot run the type of electronic report requested by the Civil Grand Jury.

Finding F-25: Monterey was unable to provide a complete and accurate roster of all of its supervisory employees along with their AB 12825 training dates resulting in the Civil Grand Jury having insufficient information to determine if the city was indeed training all of its supervisors timely and according to AB 1825 mandates.

The City of Monterey disagrees with this finding. While the City's personnel tracking system could not produce one comprehensive electronic report that met the desires of the Civil Grand Jury, the City's tracking system is nonetheless compliant with state law and regulations. A manual audit could have provided the information, however, a manual audit was not requested by the Civil Grand Jury. Moreover, the City is in compliance with the following state regulation regarding training records:

Documentation of Training. To track compliance, an employer shall keep documentation of the training it has provided its employees under this section for a minimum of two years, including but not limited to the names of the supervisory employees trained, the date of training, the sign in sheet, a copy of all certificates of attendance or completion issued, the type of training, a copy of all written or recorded materials that comprise the training, and the name of the training provider. (2 CCR §11024.)

Finding F-26: Monterey's sexual harassment policy titled, Harassment/Discrimination/Retaliation/Abusive Conduct/Bullying Policy, in city code [sic] 25-3.03 accurately reflects the 2 CCR §11023 conduct prohibitions, but it does not include the mandated employee training requirements in 2 CCR §11024.

The City of Monterey disagrees with this finding. State law regulations do not require the City to include the mandated training requirements in the City policy. It is a requirement to *conduct* these trainings, but it is not a requirement to include this information in the policy. Our policy is compliant with the regulatory requirements found in 2 CCR 11023 d, stated below:

"An employer shall develop and distribute to its employees a harassment, discrimination, and retaliation prevention policy that: (1) Is in writing; (2) Lists all current protected categories covered under the Act; (3) Indicates that the law prohibits coworkers and third parties, as well as supervisors and managers, with whom the employee comes into

contact from engaging in conduct prohibited by the Act; (4) Creates a complaint process to ensure that complaints receive: (A) An employer's designation of confidentiality, to the extent possible; (B) A timely response; (C) Impartial and timely investigations by qualified personnel; (D) Documentation and tracking for reasonable progress; (E) Appropriate options for remedial actions and resolutions; and (F) Timely closures. (5) Provides a complaint mechanism that does not require an employee to complain directly to his or her immediate supervisor, including, but not limited to, the following: (A) Direct communication, either orally or in writing, with a designated company representative, such as a human resources manager, EEO officer, or other supervisor; and/or (B) A complaint hotline; and/or (C) Access to an ombudsperson; and/or (D) Identification of the Department and the U.S. Equal Employment Opportunity Commission (EEOC) as additional avenues for employees to lodge complaints. (6) Instructs supervisors to report any complaints of misconduct to a designated company representative, such as a human resources manager, so the company can try to resolve the claim internally. Employers with 50 or more employees are required to include this as a topic in mandated sexual harassment prevention training, pursuant to section 11024 of these regulations. (7) Indicates that when an employer receives allegations of misconduct, it will conduct a fair, timely, and thorough investigation that provides all parties appropriate due process and reaches reasonable conclusions based on the evidence collected. (8) States that confidentiality will be kept by the employer to the extent possible, but not indicate that the investigation will be completely confidential. (9) Indicates that if at the end of the investigation misconduct is found, appropriate remedial measures shall be taken. (10) Makes clear that employees shall not be exposed to retaliation as a result of lodging a complaint or participating in any workplace investigation."

Recommendation R-14: Monterey should revise personnel tracking system to include all city employees regardless of department, each employee's date of hire as a supervisor or date of promotion to a supervisory position, and date of classification change to a non-supervisory position, in order to accurately determine if AB 1825 training mandates are being met. This recommendation should be completed no later than 12 months after this report is published.

The City of Monterey disagrees with this finding. Our system can track an individual employee's date to their current position, and we can then review the personnel file to track classifications previously held, and then review that employees training records for training compliance. We cannot run a comprehensive report for all supervisors' date of promotion and classification held from our system in a way that can easily cross-reference with our training records. While the Civil Grand Jury did request this type of report for their ease of review, it is not required by law or regulation. Providing this information from past years for all supervisors would involve manual review of hundreds of personnel files or involved the expensive and time-consuming purchase of a new personnel-tracking system. The Civil Grand Jury did not request that the City conduct a manual audit, but one could have been done by individually reviewing hundreds of personnel files. We merely confirmed that we could not run the type of electronic report that the Civil Grand Jury requested.

To confirm, the City is compliant with the actual state regulation requirements for training records. See 2 CCR Section 11024: "Documentation of Training. To track compliance, an employer shall keep documentation of the training it has provided its employees under this section for a minimum of two years, including but not limited to the names of the supervisory employees trained, the date of training, the sign in sheet, a copy of all certificates of attendance or completion issued, the type of training, a copy of all written or recorded materials that comprise the training, and the name of the training provider."

The Human Resources Department has currently assigned AB 1825 training to all employees and volunteers. The Department will take a snapshot of the current supervisor roster should there be a future need to cross reference that roster with the AB 1825 training completion list. This will improve tracking for the purpose of this recommendation. As recruitments, retirements, separations, and promotions continue, however, the snapshot list of supervisors will continually evolve.

Recommendation R-15: The city should review its Harassment/Discrimination/Retaliations/Abusive Conduct/Bullying Policy to include the employee training requirements mandated by 2 CCR §11024. This recommendation should be completed no later than 12 months after this report is published.

The City of Monterey disagrees with this recommendation. There is no law or regulation that requires the City to include the mandated training requirements in our policy. Again, it is a requirement to *conduct* these trainings, it is not a requirement to memorialize that requirement in a policy. The City's policy is compliant with the regulatory requirements found in 2 CCR 11023 d, stated below:

"An employer shall develop and distribute to its employees a harassment, discrimination, and retaliation prevention policy that: (1) Is in writing; (2) Lists all current protected categories covered under the Act; (3) Indicates that the law prohibits coworkers and third parties, as well as supervisors and managers, with whom the employee comes into contact from engaging in conduct prohibited by the Act; (4) Creates a complaint process to ensure that complaints receive: (A) An employer's designation of confidentiality, to the extent possible; (B) A timely response; (C) Impartial and timely investigations by qualified personnel; (D) Documentation and tracking for reasonable progress; (E) Appropriate options for remedial actions and resolutions; and (F) Timely closures. (5) Provides a complaint mechanism that does not require an employee to complain directly to his or her immediate supervisor, including, but not limited to, the following: (A) Direct communication, either orally or in writing, with a designated company representative, such as a human resources manager, EEO officer, or other supervisor; and/or (B) A complaint hotline; and/or (C) Access to an ombudsperson; and/or (D) Identification of the Department and the U.S. Equal Employment Opportunity Commission (EEOC) as additional avenues for employees to lodge complaints. (6) Instructs supervisors to report any complaints of misconduct to a designated company representative, such as a human resources manager, so the company can try to resolve the claim internally. Employers with 50 or more employees are required to include this as a topic in mandated sexual harassment

prevention training, pursuant to section 11024 of these regulations. (7) Indicates that when an employer receives allegations of misconduct, it will conduct a fair, timely, and thorough investigation that provides all parties appropriate due process and reaches reasonable conclusions based on the evidence collected. (8) States that confidentiality will be kept by the employer to the extent possible, but not indicate that the investigation will be completely confidential. (9) Indicates that if at the end of the investigation misconduct is found, appropriate remedial measures shall be taken. (10) Makes clear that employees shall not be exposed to retaliation as a result of lodging a complaint or participating in any workplace investigation.”

Recommendation R-16: The city should diligently assess whether the AB 1825 training programs it uses, such as those offered by the federal EEOC, meet the training curriculum mandates outlined in AB 1825 and its amendments. This recommendation should be completed no later than 12 months after this report is published.

The City of Monterey disagrees with this finding. The City already did this assessment before providing the U.S. Equal Employment Opportunity Commission (EEOC) training to employees. The EEOC is responsible for enforcing federal laws protecting employees from harassment. This EEOC course was the direct result of a the EEOC 2016 task force that reviewed harassment preventions trainings in an effort to create the most impactful harassment and discrimination prevention training. In 2016, the EEOC published findings from this select task force. One of the EEOC findings included:

Training should be conducted by qualified, live, and interactive trainers. Live trainers who are dynamic, engaging, and have full command of the subject matter are the most likely to deliver effective training. Since one of the goals of compliance training is to provide employees information about the type of conduct the employer finds unacceptable in the workplace, it is important for a trainer to provide examples of such conduct, or have individuals portray scenarios of such conduct, and then be able to answer questions. In addition, compliance training teaches supervisors and managers how to respond to a report or observance of harassment. These can be difficult situations and a live trainer is most suited to work through questions with the participants.

See https://www.eeoc.gov/select-task-force-study-harassment-workplace#_Toc453686310

The California Department of Fair Employment and Housing is responsible for enforcing state laws protecting employees from harassment and AB 1825 compliance. EEOC received confirmation from the DFEH that the EEOC training is AB 1825 compliant. This information was included with the materials provided to the Civil Grand Jury.

The City provided this 2018 EEOC training to all employees, not just supervisors. This was more than what was required at the time by AB 1825. The EEOC training was meant to not just focus on victim versus perpetrator, but also focus on the behaviors that prevent harassment from occurring in the first place. This is why the focus was on a respectful workplace. Further, the training included a focus on bystander intervention, which provides an opportunity for everyone to understand their role in creating a workplace environment free from harassment,

and does not just focus on the victim and perpetrator. For 2020, the California legislature is now encouraging employers to include this type of bystander intervention component to harassment prevention training.

Given this recommendation, Human Resources Director Allyson Hauck did reach out to the EEOC trainer Linda Li to communicate the Civil Grand Jury's review of materials and questions about AB 1825 compliance. Ms. Li communicated, "In early 2018, I and other EEOC colleagues met with DFEH's executive director and deputy director to discuss EEOC's Respectful Workplaces training and ensure compliance with AB 1825 and CA standards for harassment training." Ms. Li reassured Ms. Hauck that the training was not only AB 1825 compliant but also incorporated the 2016 task force findings.

In addition to the findings and recommendations, the Civil Grand Jury made the following statements that require a response.

Civil Grand Jury Report Statement: *Copies of the training materials, entitled "Workplace Harassment and Bullying Prevention Training," were reviewed. The State Laws section is missing any specific reference to AB 1825 regulation governing 2-year and 6-month training requirements for supervisory employees.*

Response:

The 2017 "Workplace Harassment and Bullying Prevention Training" training included all of the required training components, as established by the Department of Fair Employment and Housing in 2 CCR Section 11024. This regulation provides many requirements that employers must meet when providing training. There is no requirement that the training materials make specific reference that supervisors must be training every two years or within 6 months of hire. This is simply a requirement, not a learning objective. Therefore, this information is not "missing" from the materials.

Civil Grand Jury Statement: Because training timeliness cannot be verified, the Civil Grand Jury determined that Monterey's compliance with AB 1825 supervisory employee training requirements was 0% for supervisory employee retraining and 0% for new and promoted supervisor training."

Response:

This statement is grossly inaccurate for the reasons mentioned in the above responses. Further, staff provided pages of sign-in sheets from all trainings with lists of hundreds of employees who had completed the online target solutions training between 2016-2019 and the 2017 and 2018 in person training. Staff also provided sworn testimony regarding the City of Monterey's compliance. The City would need to conduct a manual audit to assure 100% compliance during the years in question. The determination that Monterey's compliance with training requirements is 0% is outrageously false and offensive to the efforts of staff, who have complied with and have exceeded state law requirements.

We hope that this information addresses the Civil Grand Jury's findings and recommendations. Please contact Human Resources Director Allyson Hauck at hauck@monterey.org if you have any questions or require additional information.

Respectfully,

A handwritten signature in black ink, appearing to read "C. Roberson". The signature is fluid and cursive, with the first letter of each word being capitalized and prominent.

Clyde Roberson
Mayor