

REPORT TO CITY COUNCIL

Approved by:

Arnoldo Rodriguez

Arnoldo Rodriguez, City Manager

Council Meeting of: September 4, 2019

Agenda Number: C-5

SUBJECT:

Consideration of a Minute Order Approving the City of Madera Response to Madera County Grand Jury Final Report 1819-04: "The City of Madera Veiled Transparency"

RECOMMENDATION:

It is recommended the City Council (Council) review the proposed Response to the Grand Jury Report (Report) and approve the Response as presented or provide direction on changes to the proposed Response.

SUMMARY:

The Madera County Grand Jury (MCGJ) issued a report on June 25, 2019. The Council has 90 days to submit a written response. Written responses must be prepared and submitted within specified guidelines provided by the California Penal Code.

DISCUSSION:

The MCGJ issued a Report titled "The City of Madera Veiled Transparency" on June 25, 2019. The Council has 90 days to submit a written response to the Report and submit it to the Madera County Superior Court Presiding Judge. Staff has prepared a proposed Response to the Report for Council's consideration, consistent with Penal Code requirements.

Note that Penal Code Section 933.05 includes a specific manner for responding to the Findings and the Recommendations provided in the MCGJ Report. That process is outlined below.

A. Response to Findings.

In response to each grand jury finding in a final report, the responding party is statutorily required to indicate one of the following:

1. The respondent agrees with the finding.

2. The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

B. Response to Recommendations.

In response to each grand jury recommendation in a final report, the responding party is statutorily required to indicate one of the following:

1. The recommendation has been implemented, in which case the responding party must include a summary of the implemented action;
2. The recommendation has not yet been implemented, but the recommendation will be implemented in the future, in which case the responding party must include a timeframe for implementation;
3. The recommendation requires further analysis, in which case the responding party must include an explanation, the scope and parameters of an analysis or study, and a timeframe, not to exceed six months from the date of the final report's publication, for the matter to be prepared for discussion by the applicable agency or department officer, head, or governing body being investigated or reviewed; or
4. The recommendation will not be implemented because it is unwarranted or unreasonable, in which case the responding party must include an explanation therefor.

FINANCIAL IMPACT:

The City's proposed Response includes additional training for staff. This will be provided by either existing resources or the City Attorney. Any work provided by the City Attorney will be at the contracted bill rate.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN:

The requested action is not addressed in the vision or action plans; the requested action is also not in conflict with any of the actions or goals contained in that plan.

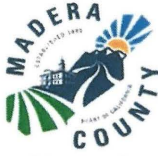
ALTERNATIVES:

The Council has the following options to consider relating to this matter:

- Approve the Response to the Grand Jury as presented.
- Approve the Response with amendments.
- Direct staff to return with additional information at the September 18, 2019 Council meeting.

ATTACHMENTS:

1. Madera County Grand Jury Final Report 1819-04
2. City of Madera Response to Madera County Grand Jury Final Report 1819-04:
"The City of Madera Veiled Transparency"



P.O. Box 534, Madera, CA 93639
Tel. 559-662-0946
Fax 559-662-0848
info@maderagrandjury.org

June 25, 2019

Madera City Council
204 West Fourth Street
Madera, CA 93637

RE: The City of Madera Veiled Transparency Report
Report Date: June 28, 2019

Dear Madera City Council:

Enclosed please find a copy of the above report by the Madera County Grand Jury.

Attached is a copy of excerpts from Penal Code sections 933 and 933.05. Please note that subdivision (f) of Penal Code section 933.05 specifically prohibits any disclosure of the contents of a grand jury report by a public agency or its officers or governing body prior to its release to the public, which will occur two days after the date of this letter.

Penal Code section 933.05 requires that you respond separately to specified Findings and Recommendations contained in the report. Subdivisions (a) and (b) of Penal Code section 933.05 mandate the content and format of responses. Penal Code section 933 mandates the deadline for responses.

You are required to submit your response within [60/90] days as follows:

Hard copy to: Michael Jurkovich
Supervising Judge of the Grand Jury
Madera Superior Court
200 South G Street
Madera, CA 93637

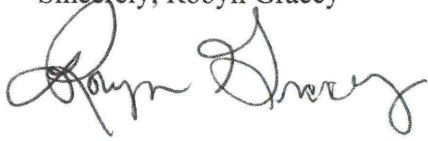
Please also send a hard copy of your response to:

Madera County Grand Jury
PO Box 534
Madera, California 93639

Responses are public records. The clerk must maintain a copy of your response.

Should you have any questions, please contact me at 559-662-0946 or at the above address.

Sincerely, Robyn Gracey

A handwritten signature in black ink, appearing to read "Robyn Gracey". The signature is written in a cursive style with a large initial "R".

Foreperson, Madera County Grand Jury

Enclosures: Penal Code sections 933 and 933.05 (excerpts)

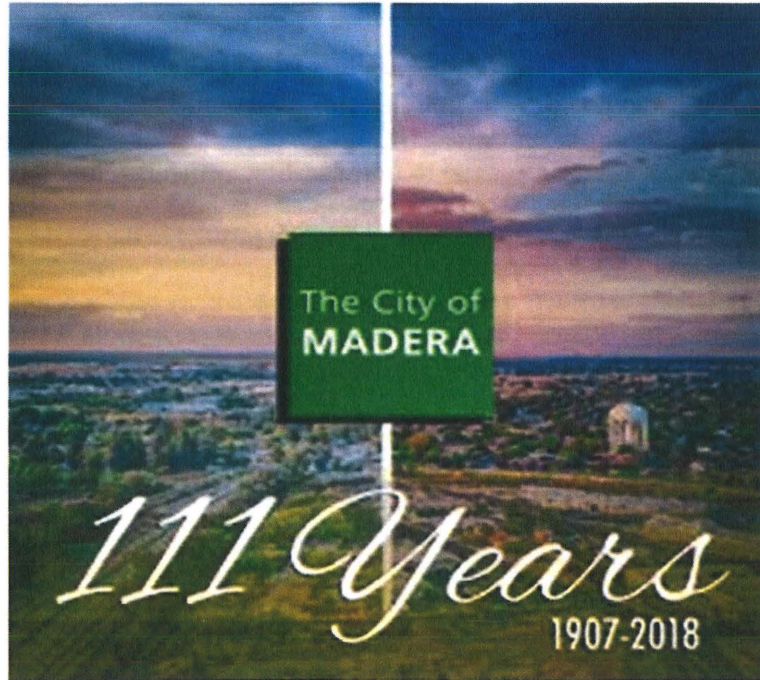
§ 933. Findings and Recommendations (Excerpt)

No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations. All of these comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury. A copy of all responses to grand jury reports shall be placed on file with the clerk of the public agency and the office of the county clerk, or the mayor when applicable, and shall remain on file in those offices.....

As used in this section "agency" includes a department.

§ 933.05. Responses to Findings (Excerpt)

- (a) For purposes of subdivision (b) of Section 933, as to **each** grand jury **finding**, the responding person or entity shall indicate one of the following:
 - (1) The respondent agrees with the finding.
 - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
- (b) For purposes of subdivision (b) of Section 933, as to **each** grand jury **recommendation**, the responding person or entity shall report one of the following actions:
 - (1) The recommendation has been implemented, with a summary regarding 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 officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.
 - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.
- (c) However, if a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the board of supervisors shall respond if requested by the grand jury, but the response of the board of supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.
- (f) A grand jury shall provide to the affected agency a copy of the portion of the grand jury report relating to that person or entity two working days prior to its public release and after the approval of the presiding judge. No officer, agency, department, or governing body of a public agency shall disclose any contents of the report prior to the public release of the final report.(emphasis added)



**The City of Madera:
Veiled Transparency
2018-2019
Madera County Grand Jury
Final Report 1819-04**

Published on: June 28, 2019

SUMMARY:

The purpose of the Madera County Grand Jury (MCGJ) is to investigate the public entities within the County and City of Madera. During the Grand Jury's initial investigation of the City, the topics of concern included the increase in salaries of several department heads as well as water rate increases. As the investigation progressed, the MCGJ found that the problems were much more complex than the issue regarding salaries and increased water rates. After hearing several complaints from the community on how the City Council conducts its business, the Madera County Grand Jury chose to investigate the City of Madera. Through the investigation, the MCGJ found a significant lack of transparency, code of ethics, lack of ethical practices, access to information, and violation of confidentiality. The Grand Jury found that the public had reasons to be alarmed.

BACKGROUND:

In order to understand the City of Madera's policies, procedures, and management, the MCGJ attempted to engage in a thorough investigation. Early in October 2018, the MCGJ began requesting information related to operations at City Hall. Multiple times the MCGJ's investigation was impeded by a lack of cooperation for access to the documents related to the investigation.

The MCGJ began investigating the City of Madera with special emphasis on finance. As part of this investigation, the MCGJ attended City Council meetings. The arrival of the August 1, 2018, water bills, which came with higher water rates, generated an increase in the attendance at City Council meetings. The higher water rates created a great deal of anger expressed by residents during the public comment section of the meetings. Additionally, a presentation at a City Council meeting highlighted inflated salaries and a budget deficit. This presentation left the public questioning whether water rates were increased to offset salaries. This was followed by a front-page article in the Madera Tribune (August 8, 2018) publicizing these issues. Residents expressed anger over issues of excessive salaries, rising water rates, and the possible correlation between them.

Due to the expressed anger by residents during City Council meetings, the MCGJ elected to broaden the initial investigation. In 2015, salaries of management staff were increased anywhere from 11 to 44 percent. During the same period, 2015-16, water rates increased between 9-10 percent. In 2017, water rates increased an additional 20 percent, followed by the 2018 increase of 10 percent. Currently, in 2019, there has been an additional increase of 3 percent. The public perception is that it took four years to offset the salary increase from 2015 with the increase in water rates through 2018. In early 2019, the City made a concerted effort to lower its expenses by reducing salaries, combining job duties, resignations, and retirements.

Throughout the MCGJ's investigation of the City's management of handling public monies, the City caused a combination of obstacles to the inquiries. The MCGJ found that administrators dodged multiple inquiries by deflecting direct questions, avoided providing documentation in a timely manner, and, at times, stated the requested information did not exist. Furthermore, conflicts of interest within the City were found, even to the point of violating its own mission statement. In general, the City of Madera avoided cooperating with the MCGJ's investigation, violated the MCGJ's confidentiality, and the City of Madera's own stated commitment of transparency.

The MCGJ broadened the investigation.

With the departure of senior staff, failure to provide documentation, and appearance of malfeasance, the MCGJ refocused the direction of the investigation. Through the investigation, the MCGJ found a lack of transparency, code of ethics, ethical practices, access to information, as well as a violation of the MCGJ's confidentiality.

METHODOLOGY:

- Beginning in July 2018, Grand Jury frequently observed the following regular meetings:
 - City Council
 - Planning Commission
 - Successor Agency

- Beginning in August 2018, the Grand Jury interviewed the following:
 - Financial professionals
 - Former City of Madera employees
 - Current City of Madera employees
 - Real Estate investors
 - Business owners
 - Current City Council members
 - Private citizens

- Beginning in October of 2018, the Grand Jury requested, received, and reviewed the following documents:
 - Roberts Rules of Orders
 - City of Madera Policy and Procedure manual
 - Code of Conduct
 - Government Codes
 - Relevant common law
 - 1974 Political Reform Act (PRA)
 - The Brown Act
 - Purchase Order Standard Terms and Conditions for the Purchase of Goods
 - Purchase Order Standard Terms and Conditions for the Purchase of Services
 - Purchasing Policy of the City of Madera
 - Invoices for purchases of \$2,500 or more
 - Cal Credit Card statements selected by City Clerk's office
 - City Council Meeting Agendas
 - City Council Meeting Consent Calendars
 - Board Packet for Consent Calendar Agenda Items
 - Financial Reports from Finance Department
 - Annual Budget from Finance Department
 - Select Purchase Orders from 2016-2018 for amounts between \$2,500-\$7,500
 - Bids selected by the Purchasing Department
 - Organizational Chart

- Documents Requested but not received:

- Code of Ethics for elected officials and senior management
- Cal Credit Card Statements for City Council Members from 2015 to present
- Cal Credit Card Statement for non-elected management staff from 2015 to present
- All Bids from 2013-2018
- City of Madera Audit

DISCUSSION:

The MCGJ began an investigation into the management of City finances. The MCGJ requested audits for the past five years; none were provided.

The MCGJ requested the City's Code of Ethics. The MCGJ was informed, at present, the City does not have a written Code of Ethics for upper management or City Council members. However, newly elected City Council members are required to attend an annual mandated ethics training. Due to the lack of documentation provided, the MCGJ was unable to verify completion of ethics training by any elected officials.

Residents have expressed a lack of understanding of the methods and procedures of City Council meetings. They do not know how to access supporting documentation for the items of the Consent Calendar or the complete Agenda, nor does the public know when or how they have the right to challenge the City Council. Additionally, the public is not aware of how to put items on the City Council Agenda, nor are they made aware they can ask questions regarding the Agenda items. Citizens are not made aware they can ask questions on each item of the Agenda before the Council votes on the items. This includes items within the Consent Calendar.

Roberts Rules of Order states, a Consent Calendar is a tool used in public meetings which groups routine agenda items into a single agenda item, allowing the grouped items to be approved in one action, rather than through the filing of multiple motions. However, for the public who attend such meetings, the Consent Calendar appears to be purposely vague. Items on the Consent Calendar are written using legal terminology with references to obscure codes and contract numbers. Consent Calendar items are not written with enough information for the general public to understand.

City Council requires anyone addressing the Council to step up to the podium, state their name, address, and topic or question of concern. They may not speak for more than three minutes. Since Council meetings are public, anyone in the public should be able to comment without fear of reprisal or providing personal information. The requirement of stating a personal address (publicly) is intimidating.

Throughout the investigation, the MCGJ's request for documents from the City of Madera's administration were hindered, delayed, and, at times, blocked. The MCGJ was stymied by the lack of response from City administrators. Upon requesting specific documents from the City administration, the administration frequently asked the MCGJ for more detailed information about the documentation.

For example, the MCGJ requested documentation of financial records covering expenses of City Council members and senior staff from 2013 to present. The administration's response was that they were not sure what expenses the MCGJ was referring to, and the request was too broad. After many attempts by the MCGJ to clarify and narrow the request, over many weeks--far beyond the required ten days, the MCGJ was delivered a large number of documents. The

documents received were in disarray; documents were in no apparent order, documents did not appear to be complete, and there were obvious omissions. After much delay and receipt of documentation in its disorderly state, the MCGJ concluded that the City of Madera lacked respect for the authority of the MCGJ, which was nonfeasance and thus created suspicion of malfeasance by City officials.

During the process of attempting to acquire the requested documents, the City violated the Grand Jury's Admonition through email (Exhibit A). Records of email exchanges between City administration, staff, and members of the MCGJ showed multiple and direct violations of the Grand Jury's admonition of secrecy. The MCGJ sent a cease and desist order to interviewees who were not following the admonition oath. This event further supported the MCGJ's concern for the lack of respect for the authority of the Grand Jury, and the laws governing Grand Jury procedures.

Some elected officials are doing business with the City as private citizens, which raises the question of a conflict of interest. The MCGJ referred to the statutory and common law to understand the circumstances surrounding the City's management.

California Government Code section 1090 states in part:

City officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members.

Meaning, the City Council is prohibited from entering into any contract with a business or vendor, which is owned by a sitting elected official. Furthermore, the City Council should not enter into a contract with a business or vendor owned by an elected official even if the elected official has abstained from a vote. Any renewal or modification of an existing contract, which predates an elected official's election, would likely violate section 1090.

Moreover, the California Government Code § 18702 (b) states in part:

No public servant shall make, participate in making, or in any way attempt to use his or her position to influence a governmental decision if he or she knows or has reason to know that he or she has a financial interest in the decision.

Additionally, there is also what is known as "common law conflict of interest." Common law implies that a public officer or employee is:

"...bound to exercise the powers conferred on him with disinterested skill... primarily for the benefit of the public..." (Noble v. City of Palo Alto (1928) 89 Cal. App. 47, 51).

Furthermore,

Dealings between a public officer and himself as a private citizen which bring him into collision with other citizens equally interested with himself in the integrity and impartiality of the officer are against public policy (Goodyear v. Brown, 155 Pa. 514 [Am. ST. Rep. 903, 20 L.R.A. 838, 26 A. 664]).

Finally,

Public policy and sound morals alike forbid that a public officer should demand or receive for services performed by him in the discharge of official duty any other or

further remuneration than that prescribed and allowed by law (Somerset Bank v. Edmund, 76 Ohio St. 396 [10 Ann. Cas. 726, 11 L.R.A. (N.S.) 1170, 81 N.E. 641]).

Upon further investigation, the MCGJ examined the regulations covering the City of Madera's Purchasing-Central Supply Mission Statement, which states:

Purchasing - Central Supply is committed to obtaining the most desirable goods and services to meet the City's operational needs, at the lowest possible cost, delivered in a timely manner, and in compliance with all City policies and applicable laws.

It is further stated in the City of Madera's Purchasing Policy:

Conflicts of interest occur when a conflict exists between the public interest and the private monetary interest of a public official or employee. Conflicts of interest can also occur with regards to individuals who have left government employment, when former public officials are able to exert undue influence over the purchasing process because of their past personal connections inside government.

No member of the Council or of any board and no officer or employee of the City shall be or become interested in any contract for which bids are or may be required for the furnishing of labor or materials to or for the City, nor shall any of them receive any gratuity or advantage from any contract or from the contractor furnishing any labor or material under any contract, the cost or consideration of which is payable from the City treasury. Any such contract with the City in which any such officer or employee is or becomes interested shall be declared void by the Council.

In conclusion, the role of the MCGJ is to act as a public "watchdog." Documentation, or the lack there of, has persuaded the Grand Jury of malfeasance within the City of Madera. The MCGJ has found malfeasance valid based upon the lack of ability and transparency in acquiring documentation from the City, conflicting statements from City administration, interviewees and documentation (invoices, purchases orders, and paid warrants) from other businesses, and public responses. The documents and evidence acquired by the MCGJ establishes laws may have been broken.

FINDINGS:

- F1.** The City of Madera does not have a written code of ethics for senior officials or elected members.
- F2.** The senior officials and elected members do not have adequate follow-up training on ethics.
- F3.** The general public does not know how to access the City Council meeting agenda and comment on agenda items including the consent calendar.
- F4.** Speakers during Public Comment at City Council meetings are intimidated by the requirement to provide their personal address.
- F5.** The Agendas for the City Council Meetings are difficult for the general public to understand.

- F6.** The City Council of Madera did not provide the MCGJ with requested documentation in a timely and orderly manner.
- F7.** City administration violated the MCGJ's admonition of secrecy.
- F8.** The City of Madera does not follow its Purchasing-Central Supply Mission Statement regarding conflicts of interest.
- F9.** City administrators and elected officials are doing personal business with the City as private individuals.
- F10.** The City of Madera shows a lack of transparency towards residents of the City of Madera and the Madera County Grand Jury.

RECOMMENDATIONS

- R1.** By September 30, 2019, the MCGJ recommends that the City of Madera create and follow a code of ethics for all senior officials and elected members, and display the code of ethics in a public place.
- R2.** By September 30, 2019, the MCGJ recommends that the City of Madera create and contract for follow-up ethical training for senior officials and elected members to attend annually.
- R3.** By September 30, 2019, the MCGJ recommends that City Council make clarifications regarding the access to Agenda and Consent Calendar for the public.
- R4.** By September 30, 2019, the MCGJ recommends that those addressing the City Council during Public Comment not be required to provide their street address.
- R5.** By September 30, 2019, the MCGJ recommends that City Council make clarifications which enable the public's understanding of all Agenda items.
- R6.** By September 30, 2019, the MCGJ recommends the City of Madera officials implement training for their department heads and employees on how to respond in a timely and orderly manner, within ten days, to inquiries made by the MCGJ.
- R7.** The MCGJ recommends the City of Madera officials immediately take steps to understand the importance and necessity of the MCGJ's admonition of secrecy.
- R8.** The MCGJ recommends the Madera City Council and the Madera City officials immediately review and follow its Purchasing-Central Supply Mission Statement regarding Conflicts of Interest.
- R9.** The MCGJ recommends that City administrators and elected officials immediately cease doing personal business with the City of Madera.

- R10.** The MCGJ recommends that the City of Madera immediately take steps to restore the trust of the citizens by being more forthcoming and transparent in their cooperation and communication with residents of Madera.

REQUIRED RESPONSES

Pursuant to Penal Code sections 933 and 933.05, the grand jury requests responses as follows:

City of Madera
City Manager
204 West Fourth Street
Madera, CA 93637

Madera City Council
204 West Fourth Street
Madera, CA 93637

INVITED RESPONSES

Madera County Board of Supervisors
200 West Fourth Street
Fourth Floor
Madera, CA 93637

Madera County District Attorney
209 West Yosemite
Madera, CA 93637

Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.

EXHIBIT A

Madera County Grand Jury Admonition

All Madera County Grand Jury proceedings are conducted in secret session. You and each of the grand jurors participating in today's session have the obligation to observe this rule of secrecy.

You are admonished not to reveal to any person, except as directed by the court, which questions were asked or what responses were given today.

You are further admonished not to reveal any matters concerning the nature or subject of the Grand Jury's investigation that you learn during your interview today.

A violation of this admonition is punishable as contempt of court.

My signature below indicates that I understand this admonition.

Document Retention

Documents provided to the Grand Jury become the property of the Grand Jury and shall be destroyed.

My signature below indicates my understanding of the document retention statement.

Signature

Printed Name

Date

September __, 2019

The Honorable Michael Jurkovich, Presiding Judge
Supervising Judges of the Grand Jury
Madera County Superior Court
200 South G Street
Madera, California 93637

Re: City of Madera Response to Madera County Grand Jury
Final Report 1819-04: "The City of Madera Veiled Transparency"

Dear Honorable Judge Jurkovich:

On June 25, 2019, the Madera County Grand Jury issued a Final Report regarding City of Madera entitled "Veiled Transparency 2018-2019" (hereafter "Report"). As required by Penal Code Section 933 (c), the City Council of the City of Madera respectfully submits the following responses to the Findings and Recommendations in the Report in the form required by the Penal Code. The Report references the City Council and City Manager as "respondents." The term "City" is used in this response to refer collectively to the City Council and the City Manager.

FINDINGS

Finding 1: The City of Madera does not have a written code of ethics for senior officials or elected members.

Response 1: The City disagrees partially with Finding 1. The City of Madera has an adopted Code of Ethical Conduct within the Purchasing Policy. In addition, each at-will employment agreement with any department head or Council direct-report position includes language pertaining to conflicts of interest. These agreements state in relevant part: "[E]mployees shall also comply with the conflict of interest provisions of the California Government Code and any conflict of interest code applicable to the [Job Title]'s employment."

The City Manager and City Attorney are preparing a Code of Conduct applicable to senior officials and the City Council for the City Council's consideration and adoption at a City Council meeting in September.

We also refer the Grand Jury to the response to Finding 2 regarding Assembly Bill 1234 training for senior officials and members of the City Council that training covers ethics.

We must note that the City of Madera does have a Conflict of Interest Code which is updated periodically as required by the California Political Reform Act under Government Code Section 87200. The City's most recent Conflict of Interest Code was adopted on August 15, 2018, per Resolution No. 18-153 attached as Attachment A. The Conflict of Interest Code designates elected and other City positions that are required to file Statements of Economic Interest with the Fair Political Practices Commission (FPPC) and the required disclosure categories.

Finding 2: The senior officials and elected members do not have adequate follow-up training on ethics.

Response 2: The City disagrees partially with Finding 2. The City, similar to all cities, counties, and special districts in California, has required that senior officials and members of the City Council take ethics training as required by Assembly Bill 1234 for local officials. Per Government Code Section 53234 (d):

(d) "Ethics laws" include, but are not limited to, the following:

(1) Laws relating to personal financial gain by public servants, including, but not limited to, laws prohibiting bribery and conflict-of-interest laws.

(2) Laws relating to claiming prerequisites of office, including, but not limited to, gift and travel restrictions, prohibitions against the use of public resources for personal or political purposes, prohibitions against gifts of public funds, mass mailing restrictions, and prohibitions against acceptance of free or discounted transportation by transportation companies.

(3) Government transparency laws, including, but not limited to, financial interest disclosure requirements and open government laws.

(4) Laws relating to fair processes, including, but not limited to, common law bias prohibitions, due process requirements, incompatible offices, competitive bidding requirements for public

contracts, and disqualification from participating in decisions affecting family members.

This training must be taken every two years and records of completion of this training must be maintained for at least five years after the official receives training. The curriculum covered must be that sanctioned by the FPPC and Attorney General. The two areas required to be covered include general ethic principles and an overview of laws pertaining to conflicts of interest and transparency.

To fulfill said obligation, the City provides opportunities to meet the AB 1234 training requirements through in-person and online training resources. These resources include the League of California Cities, the law firm of Liebert Cassidy Whitmore, as well as the in2vate online training platform provided through the City's membership in the Employment Risk Management Authority. The City will continue to offer regular training through the identified platforms on ethics. Additionally, the City Attorney has offered to provide AB 1234 training at no cost to the City.

Finding 3: The general public does not know how to access the City Council meeting agenda and comment on agenda items including the consent calendar.

Response 3: Given that Finding 3 is a two-part statement, responses are bifurcated.

Accessing of City Council Meeting Agendas: The City disagrees partially with the part of Finding 3 regarding accessing of agendas. City Council meeting agendas are posted at least 72 hours in advance of regular meetings as required by the California Open Meeting Law (Brown Act, Government Code Sections 54950 to 54963). The agendas are posted as follows:

- On the City's webpage, inclusive of all staff reports
- Two locations at City Hall conspicuously located so that the public may view them during business and non-business hours
- Via regular reminder posts on official City social media channels which provide direct links to agendas and related staff reports of upcoming meetings

Hard copies are also made available to the public during Council meetings and scrolling notice is provided to viewers following the online livestream which identify how agendas may be accessed.

Special Meeting agendas are posted at least 24 hours in advance as required by the Brown Act and are posted in the same manner as regular meeting agendas.

Worth noting is that the City's webpage is continuously updated to ensure that it provides up to date information, is user friendly, easy to navigate, and accessible to the public. This includes a link on top of the City's homepage titled "Meetings and Agendas" which provides a running list of meeting agendas. The running list provides:

- Agendas commencing on June 2, 2015 to present
- Meeting minutes commencing on June 2, 2015 to present
- Agenda reports commencing on December 16, 2016 to present
- Videos of Council meetings commencing May 17, 2017 to present

Commenting on Agenda Items: The City disagrees partially with the part of Finding 3 regarding commenting on Agenda Items. We understand that it may be difficult sometimes for members of the public to know when or how to comment at City Council meetings.

The Agenda provides three opportunities for members of the public to speak as follows:

- (i) Public Comment: this is generally for matters not on the agenda;
- (ii) Consent Calendar: this is for items on the consent calendar; and
- (iii) Action Items: As each agenda item is called.

For items listed on the Consent Calendar, the City added the following language beginning on July 3, 2019:

Matters listed under the Consent Calendar are considered routine and will be enacted by one motion and one vote. There will be no separate discussion of these items. If discussion is desired, a member of the public or a member of the Council may request an item be removed from the Consent Calendar and it will be considered separately.

Finding 4: Speakers during Public Comment at City Council meetings are intimidated by the requirement to provide their personal address.

Response 4: The City disagrees partially with Finding 4. While the finding is accurate that addresses have been requested, to conclude that the public was intimidated may be speculative. Certainly, that has not been the City's intent. Moreover, Madera

Municipal Code Sections 2-108 and 2-109 dating back to 1961 require speakers provide their name and address.

In addition, it is often helpful to know addresses to provide context for follow-up with residents; however, the City understands that it may not require that addresses be provided. For this reason, the City added the following language to its agenda beginning on July 3, 2019 noting that speakers are not required to identify themselves.

Speakers will be asked, but are not required, to identify themselves and state the subject of their comments.

To avoid confusion and ensure the City's requirements are consistent with the Brown Act, an ordinance repealing MMC Sections 2-108 and 2-109 will be recommended to the City Council.

Finding 5: The Agendas for the City Council Meetings are difficult for the general public to understand.

Response 5: The City disagrees partially with Finding 5. In an effort to identify best practices, the City conducted a review of numerous agendas from other communities. This review revealed that the City's agendas are comparable, albeit not identical. Moreover, it is challenging to ascertain what is too difficult. Nonetheless, in the spirit of continuous improvement, staff is always seeking opportunities to improve agendas. While many Council items are technical in nature, the City acknowledges that it is staff's responsibility to ensure that agendas and accompanying reports are easy to understand for someone who may not be familiar with a specific item. Beginning in January 2019, the City has focused on improvement of Council reports with an emphasis on:

- Consistency in terms of format and use of language
- Clarity
- Conciseness
- Greater detailed descriptions of items

The City is open to continued constructive feedback to ensure that agendas are clear.

Finding 6: The City Council of Madera did not provide the MCGJ with requested documentation in a timely and orderly manner.

Response 6: The City disagrees partially with Finding 6. Given the MCGJ's admonition of secrecy, current staff does not have adequate information to ascertain what was requested of the City, nor what was produced to the MCGJ for review. The finding, as written, provides insufficient information to either agree or disagree. However, we are noting that the City "disagrees partially" because of the mandated method for response. To demonstrate the City's good faith, the City is committed to providing staff training to more judiciously and expeditiously provide documentation.

Finding 7: City administration violated the MCGJ's admonition of secrecy.

Response 7: The City disagrees partially with Finding 7. The finding, as written, provides insufficient information to either agree or disagree. However, we are noting that the City "disagrees partially" because of the mandated method for response. The Admonition attached to the report indicates that the in-person interview is confidential/secret; however, the Report references email requests for information that were allegedly circulated amongst unknown City staff in an attempt to gather information for the Grand Jury. While the City acknowledges that greater staff training is advisable so that staff will know what safeguards may be necessary for retrieval of information to properly respond to email requests from the Grand Jury, without conducting an in-depth investigation, it is difficult to discern what and with whom information may have been shared.

Finding 8: The City of Madera does not follow its Purchasing-Central Supply Mission Statement regarding conflicts of interest.

Response 8: The City disagrees partially with Finding 7. No supporting facts were provided in the Report to be able to respond meaningfully to the Finding. The Report cites both the Government Code and the City's policy; however, it does not cite any specific information that supports the Government Code or City Policy were violated. If the Finding relates to Finding 9, the Grand Jury's attention is directed to Response 9 to Finding 9.

Finding 9: City administrators and elected officials are doing personal business with the City as private individuals.

Response 9: The City disagrees partially with Finding 9. The City agrees that it has purchased goods from a local business that is owned by an elected official. The City's review of purchases reflects that the City made purchases with this business since at least 1998. However, the City is unaware of any "City administrators" doing

personal business with the City and cannot speculate on what is being referenced by the Report. The City also acknowledges that it has conducted business with a City staff person for catering events and embroidery services.

In an abundance of caution, the City Manager has directed staff that no City purchases be conducted with elected officials. The City Attorney will be forwarding the matter regarding past purchases from an elected official to the Fair Political Practices Commission for their consideration.

Finding 10: The City of Madera shows a lack of transparency towards residents of the City of Madera and the Madera County Grand Jury.

Response 10: The City disagrees partially with Finding 10. We are noting that the City “disagrees partially” because of the mandated method for response. The finding, as written, provides insufficient information to either agree or disagree. The City would have benefitted from having information to support this Finding. With such information the City would have been able to address any deficiencies.

The City aims to be transparent in governance and management of the City. The following are examples of transparency towards residents of the City:

- The City responds to a plethora of Public Records Act requests and strives to provide excellent customer service.
- City Council agendas and reports are made available to the public both online and at City Hall.
- City Council meetings are livestreamed and recorded meetings are available online.
- Members of the public are afforded an opportunity to address the City Council as set forth in Response 3 above.
- Staff is available during normal business hours to meet and discuss items and/or projects with the public.
- Local ordinances are available online and at the City Clerk’s Office.
- The City publishes notices of public hearings as required by law and/or sends notices as required by law for certain actions of the Planning Commission and City Council.
- The City retained a consultant to review its budgeting processes, water rate history, development impact fee program, and employee compensation and has implemented or is in the process of implementing recommendations from said consultants.
- All City Council business is conducted in noticed and open meetings. Limited closed sessions are held in strict conformance with the Brown Act.

RECOMMENDATIONS

R1: By September 30, 2019, the MCGJ recommends that the City of Madera create and follow a code of ethics for all senior officials and elected members and display the code of ethics in a public place.

Response 1: This recommendation will be implemented. As noted in the Response to Finding 1, a Code of Conduct will be submitted to the City Council for consideration at a meeting in September 2019. Once adopted, it will be made available on the City's website.

R2: By September 30, 2019, the MCGJ recommends that the City of Madera create and contract for follow-up ethical training for senior officials and elected members to attend annually.

Response 2: This recommendation will not be implemented as the City does not believe that annual training is warranted given that State statute mandates training every two years. It would be burdensome for the City to contract for additional annual training. AB 1234 compliant ethics training is available on a regular basis to all elected officials and specified staff members per the City's response to Finding 2 of the Report. Having said that, the City will be more diligent in ensuring compliance with AB 1234 training requirements.

R3: By September 30, 2019, the MCGJ recommends that City Council make clarifications regarding the access to Agenda and Consent Calendar for the public.

Response 3: This recommendation has been implemented. All City Council meetings are conducted openly in compliance with the Brown Act and its records maintained publicly pursuant to the Public Records Act. Moreover, language has been incorporated to the agenda format that clarifies that speakers are not required to state their name or address and the following has been incorporated pertaining to the Consent Calendar:

Matters listed under the Consent Calendar are considered routine and will be enacted by one motion and one vote. There will be no separate discussion of these items. If discussion is desired, a member of the public or a member of the Council may request an item be removed from the Consent Calendar and it will be considered separately.

In the spirit of continuous improvement, the City will continue to update, streamline, and clarify the agenda as needed.

R4: By September 30, 2019, the MCGJ recommends that those addressing the City Council during Public Comment not be required to provide their street address.

Response 4: This recommendation has been implemented. The City added the following language beginning on July 3, 2019 noting that speakers are not required to identify themselves.

Speakers will be asked, but are not required, to identify themselves and state the subject of their comments.

It is noted that Madera Municipal Code Sections 2-108 and 2-109 dating back to 1961 requires speakers to give their name and address. An ordinance repealing that language will be recommended to the City Council to avoid confusion and ensure the City's requirements are consistent with the Brown Act.

R5: By September 30, 2019, the MCGJ recommends that City Council make clarifications which enable the public's understanding of all Agenda items.

Response 5: This recommendation has been implemented. Beginning in January 2019, the City made a concentrated effort to provide clear, concise agendas and pertinent items to add further transparency to the legislative process.

R6: By September 30, 2019, the MCGJ recommends the City of Madera officials implement training for their department heads and employees on how to respond in a timely and orderly manner, within ten days, to inquiries made by the MCGJ.

Response 6: This recommendation has not yet been implemented but will be implemented in the near future. As noted above in Response 2 to Finding 2, the City Attorney will be conducting training on AB 1234. That training requires that the Public Records Act be covered. Additionally, detailed Public Records Act training will be provided to staff responsible for responding to Public Records Act requests. It is noted that the Grand Jury's identified schedule may be challenging to meet; however, the City will work diligently to provide said training to employees well before any future MCGJ request.

R7: The MCGJ recommends the City of Madera officials immediately take steps to understand the importance and necessity of the MCGJ's admonition of secrecy.

Response 7: The recommendation has not yet been implemented but will be implemented in the near future. The City Attorney will provide guidance to staff in the next 90 days regarding Grand Jury admonitions.

R8: The MCGJ recommends the Madera City Council and the Madera City officials immediately review and follow its Purchasing-Central Supply Mission Statement regarding Conflicts of Interest.

Response 8: This recommendation has been implemented.

R9: The MCGJ recommends that City administrators and elected officials immediately cease doing personal business with the City of Madera.

Response 9: This recommendation has been implemented. The City will continue to comply with its Purchasing Policy, the Political Reform Act, and California Government Code Section 1090. We must note again as in the above response to Finding 9, the City's review does not reflect any business between the City and City administrators. Government Code Section 1090 has different rules for elected officials and staff. In an abundance of caution, the City Manager has directed staff that no business be conducted with City-elected officials or City staff.

R10: The MCGJ recommends that the City of Madera immediately take steps to restore the trust of the citizens by being more forthcoming and transparent in their cooperation and communication with residents of Madera.

Response 10: This recommendation has been implemented and will be on-going. The City has been working diligently to ensure that all meetings are open, agenda documents and reports are concise yet thorough, that all information be made available on the City's website, and that interaction with members of the public be positive. We reiterate from the response to Finding 10 above:

The City aims to be transparent in governance and management of the City. The following are examples of transparency towards residents of the City:

- The City responds to a plethora of Public Records Act requests and strives to provide excellent customer service.
- City Council agendas and reports are made available to the public both online and at City Hall.

- City Council meetings are livestreamed, and recorded meetings are available online.
- Members of the public are afforded an opportunity to address the City Council as set forth in Response 3 to Finding 3 above.
- Staff is available during normal business hours to meet and discuss items and/or projects with the public.
- Local ordinances are available online and at the City Clerk's Office.
- The City publishes notices of public hearings as required by law and/or sends notices as required by law for certain actions of the Planning Commission and City Council.
- The City retained a consultant to review its budgeting processes, water rate history, development impact fee program, and employee compensation and has implemented or is in the process of implementing recommendations from said consultants.
- All City Council business is conducted in noticed and open meetings. Limited closed sessions are held in strict conformance with the Brown Act.

Thank you for your service to the community. Please let us know if you need additional information.

Sincerely,

Arnoldo Rodriguez
City Manager
City of Madera

Attachment: Resolution No. 18-153

RES. NO. 18-153

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
MADERA, CALIFORNIA ADOPTING THE CITY OF MADERA
CONFLICT OF INTEREST CODE, AND REPEALING RESOLUTION
NO. 16-136 AND ALL RESOLUTIONS IN CONFLICT HEREWITH

WHEREAS, the Political Reform Act (Government Code Section 87300, et. seq.) requires state and local government agencies to adopt and promulgate conflict of interest codes; and

WHEREAS, the Political Reform Act requires certain officials, specified in section 87200 of the California Government Code, to file a Statement of Economic Interest Form 700 and abstain from making or participating in making governmental decisions which have a reasonably foreseeable material effect on an economic interest; and

WHEREAS, the Political Reform Act also requires the City to adopt a local conflict of interest code that enumerates specific City positions other than those specified in Government Code §87200 which involve making or participating in making decisions which have a reasonable foreseeable material effect on an economic interest, interests in real property and sources of income which are reportable based on the scope of the decision-making authority of the position; and

WHEREAS, the Fair Political Practices Commission has adopted regulations (2 Ca. Code of Regulations Section 18730), which contains the terms of the standard conflict of interest code; and

WHEREAS, the City Council desires to repeal the City of Madera's Conflict of Interest Code and adopt a new Conflict of Interest Code incorporating new provisions of Government Code Section 87300, et. seq., and reflecting changes to the designated positions; and

WHEREAS, the terms of 2 Ca. Code of Regulations Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference.

NOW, THEREFORE, the City Council of the City of Madera hereby finds, orders, and resolves:

1. The above recitals are true and correct.
2. The City Council hereby repeals Resolution No. 16-136 and all resolutions in conflict herewith.
3. The terms of 2 California Code of Regulations Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference.

4. The City Council of the City of Madera hereby adopts the City of Madera Conflict of Interest Code attached as Exhibit A.
5. Persons holding positions listed as designated positions in the Conflict of Interest Code shall file a Statement of Economic Interest Form 700 and report the categories listed therein.
6. This resolution is effective immediately upon adoption.

* * * * *

PASSED AND ADOPTED by the City Council of the City of Madera this 15th day of August, 2018 by the following vote:

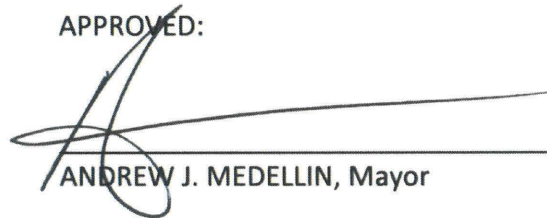
AYES: Mayor Medellin, Council Members Rodriguez, Foley Gallegos, Oliver, Robinson, Rigby, Holley.

NOES: None.

ABSTENTIONS: None.

ABSENT: None.

APPROVED:



ANDREW J. MEDELLIN, Mayor

ATTEST:



SONIA ALVAREZ, City Clerk

APPROVED AS TO LEGAL FORM:



BRENT RICHARDSON, City Attorney

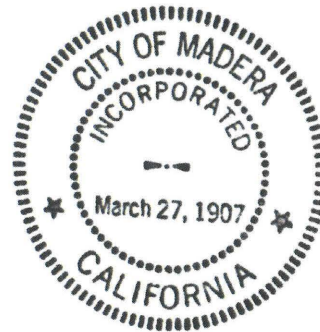


EXHIBIT A

CITY OF MADERA CONFLICT OF INTEREST CODE

A. The terms of 2 California Code of Regulations Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference.

B. The positions listed below are public officials designated by statute and are required to file with the Fair Political Practices Commission (FPPC) a Statement of Economic Interests pursuant to Government Code Section 87200.

- Mayor
- City Council
- City Administrator
- City Attorney
- City Treasurer
- Planning Commissioners

C. Persons holding positions listed as designated positions under Section D shall file with the City Clerk a Statement of Economic Interests Form 700 upon assuming office, annually thereafter, and upon leaving office. Statement of Economic Interests Form 700 are a public record and available for public inspection and reproduction.

D. Designated Positions and Disclosure Category

<u>Designated Positions</u>	<u>Disclosure Category</u>
<u>ADMINISTRATION</u>	
City Manager	I
Communications Manager	I
Director of Administrative Services	I
<u>AIRPORT</u>	
Airport Operations Manager	I
<u>BUILDING</u>	
Chief Building Official	I
Plans Examiner	III
<u>CITY CLERK</u>	
City Clerk	I
Deputy City Clerk	I
<u>CITY ATTORNEY</u>	
City Attorney	I
Deputy City Attorney	I

Legal Assistant I
Paralegal Office Administrator I

COMMUNITY DEVELOPMENT

Director of Community Development I

ENGINEERING

Administrative Analyst III
Assistant Engineer II
Associate Civil Engineer I
City Engineer I
Deputy City Engineer I
Engineering Project Manager I
Engineering Technician III I
Project Development Coordinator – Licensed II
Senior Engineer I
Special Transportation Projects Director I

FINANCE

Administrative Analyst III
Director of Financial Services I
Financial Services Manager I
Utility Billing Supervisor II, III

FIRE

Battalion Chief I
Fire Chief I
Division Chief I

FLEET

Fleet Operations Manager II

GRANTS

Grant Administrator I
Program Manager Grants I

HUMAN RESOURCES

Administrative Analyst III
Director of Human Resources I

INFORMATION SERVICES

Computer Technician II
Information Services Manager I
Network Administrator II
Tyler Munis Implementation Project Manager I

NEIGHBORHOOD REVITALIZATION

Neighborhood Preservation Supervisor I

PARKS AND COMMUNITY SERVICES

Business Manager I

Director of Parks and Community Services I

Parks Planning Manager I

Parks Supervisor II, III

Recreation and Community Programs Manager I

Recreation and Community Programs Supervisor I

PLANNING

Assistant Planner III

Associate Planner III

Planning Manager I

Senior Planner I

POLICE

Chief of Police I

Police Auxiliary Services Supervisor II, III

Police Commander I

Police Lieutenant II, III

Police Office Supervisor II, III

Police Sergeant III

PUBLIC WORKS

Administrative Analyst I

Electrical and Facilities Operations Manager II, III

Public Works Operations Director I

Streets and Storm Drainage Operations Manager II, III

Streets and Storm Drainage Operations Supervisor II, III

Wastewater Collection System Supervisor II, III

Wastewater Treatment Plant Manager II, III

Water and Sewer Operations Manager II, III

Water Meter Conservation Supervisor II, III

Water System Supervisor

PURCHASING

Procurement Services Manager I

SUCCESSOR AGENCY TO THE FORMER MADERA REDEVELOPMENT AGENCY AND SUCCESSOR HOUSING AGENCY

Executive Director I

Redevelopment Agency Secretary II, III

BOARDS AND COMMISSIONS

Civil Service Commission I

Madera Public Financing Authority Board	I
City Council as the Successor Agency to the Former Madera Redevelopment Agency	I
City Council as the Successor Housing Agency	I

CONSULTANTS

Consultants	I
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E. Disclosure Categories

- I. All investments, business positions, and sources of income located in or doing business in the City of Madera, including gifts, loans and travel payments, and all interests in real property located in the City of Madera including property located within a two-mile radius of the City of Madera or any property owned or used by the City of Madera.

Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category (Category I) in the Conflict of Interest Code subject to the following limitation.

The City Administrator or his/her designee may determine in writing that a particular consultant, although a “designated position” is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written determination shall include a description of the consultant’s duties and, based upon that description, a statement of the extent of disclosure requirements. The City Administrator’s or his/her designee’s determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code.

- II. All investments, business positions in, and sources of income located in or doing business in the City of Madera, including gifts, loans and travel payments, of the type which provide goods, services, supplies, materials, vehicles, machinery or equipment of the type utilized by the City of Madera.
- III. All investments, business positions in, and sources of income located in or doing business in the City of Madera, including gifts, loans and travel payments, which are subject to the regulatory, permit or licensing authority of, or have an application for a license or permit pending before, the City of Madera.