

September 14, 2015

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The Honorable Marie Sovey Silveira
Presiding Judge
Superior Court – Stanislaus County
P.O. Box 3488
Modesto, CA 95353

Re: Response to the Stanislaus County Civil Grand Jury Report

Dear Judge Silveira:

Please accept this letter as the City of Patterson City Council, the City Manager and the City Mayor's (collectively, the "City" or "Respondent") response to the 2014-2015 Stanislaus County Civil Grand Jury report on Case #15-01GJ ("Report").

The City thanks the Stanislaus County Civil Grand Jury ("Grand Jury") for the time and effort it dedicated to investigating and reporting on these issues. While the City does not agree with every finding and recommendation made by the Grand Jury, it understands that the Grand Jury serves an important purpose in ensuring that local governments within Stanislaus County are operating in an open, fair and efficient manner. The City appreciates this opportunity to respond and welcome any additional questions that could help to clarify these matters. Please find the City's responses to the individual findings and recommendations of the Report below. It should first be noted that Councilmembers Farinha and Novelli did not participate in this matter.

I. Finding F1 and Recommendation R1.

A. Finding.

F1 - The City of Patterson City Council is in violation of the Brown Act.

B. Recommendation.

R1 - The City of Patterson needs to consistently follow the Brown Act in order to ensure transparency to the public and remain compliant with the law.

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Civil Grand Jury

*read by
J. Silveira*

C. Response to Finding.

The City disagrees wholly with this finding. The City consistently follows the Brown Act and therefore was not in violation thereof. The City Council of the City of Patterson (the "City Council") substantially complied with all requirements for property negotiations under the Brown Act. A legislative body may meet in closed session with its negotiator to discuss the purchase, sale, exchange, or lease of real property by or for the local agency (Ca Gov't Code § 54956.8). Prior to the closed session, or on the agenda, the legislative body must identify its negotiator, the real property that the negotiations may concern and the names of the persons with whom its negotiator may negotiate (Ca Gov't Code § 54956.8). For the May 1, 2012 Regular meeting, the City Council provided notice of the closed session discussion of property purchase negotiations for the 21/25 S. Del Puerto Avenue property owned by John Ramos, and that the previous City Manager would be the negotiator. This satisfied the Brown Act notice requirements.

Further, Government Code section 54957.1 requires that after real estate negotiations are concluded, the approval and substance of the agreement must be reported. The reporting depends on when the actions is final, if the legislative body's own approval makes the agreement final, the body must report in open session at the public meeting during which the closed session is held. (*Id.*) If final approval rests with another party, the local agency must report the approval as soon as informed of it. Once final, the substance of the agreement must be disclosed to anyone who inquires. (*Id.*) Here, it was not until the May 1, 2012 Meeting that the City Council took any final action. At that time, the City Council directed the City Manager to enter into the purchase and the action was then reported out of closed session. Even though entry into the purchase was authorized, the final purchase terms were still not complete until the negotiator entered and met again with the property owner.

The City Council has substantially complied with all provisions of the Brown Act. Closed session topics were properly noticed prior to each meeting, they were properly announced to the public prior to adjourning the meeting to closed session, and the approval of all final action decided by the City Council was reported publicly after the session ended. The City Council does recognize that the specific vote of each member was not included in the minutes of the report from closed session. However, the report did state "the City Council gave direction to the City Manager to enter into a purchase agreement to buy the properties (from John Ramos) for \$650,000" (see City Council Regular Meeting May 1, 2012 Minutes at pg. 2.) which indicates that the City Council approved the direction by a majority vote. Following the closed session report, there was opportunity for public discussion items during open session. Additionally to this point, one resident did make a comment about the price of the property during the

public comment period which shows that this was a valid opportunity to voice concerns. Thus, the City Council substantially complied with the Brown Act requirement to publicly report any closed session action and gave the public proper notice.

D. Implementation of Recommendation.

The City will continue to maintain compliance with the Brown Act. The City is committed to ensuring that all meetings are transparent for the public and that all meeting procedures comply with the law.

II. Finding F1 (a) and Recommendation R1 (a).

A. Finding.

F1 (a) - The City Council did not properly notify the public as to closed session meeting content.

B. Recommendation.

R1(a) - Agendas for closed session meetings must be included in the open session meeting agendas and announced verbally in open session prior to adjourning to closed session. Closed session items discussed must be limited to Brown Act requirements.

C. Response to Finding.

The Respondent disagrees wholly with this finding. As discussed above, at the May 1, 2012 City Council Meeting, the closed session items were properly noticed in the meeting agenda. The Mayor then publicly announced the closed session items prior to adjourning the meeting to closed session and provided an opportunity for public comment where no concerns were raised. Finally, after closed session was complete, the report from closed session notified the public of all action taken and there was an additional opportunity for public comment during open session. Thus, the City Council complied with all notice requirements regarding the closed session meeting content.

D. Implementation of Recommendation.

The City will continue its current practices which satisfy the implementation of Recommendation R1 (a).

III. Finding F1 (b) and Recommendation R1 (b).

A. Finding.

F1 (b) - In regard to closed sessions, the City Council did not consistently report actions taken nor record individual votes of councilmembers concerning this property acquisition.

B. Recommendation.

R1 (b) - Pursuant to California Government Code Section 54957.1 (a), (element of the Brown Act), the City Council is required to publicly report any action taken in closed session and the vote or abstention on that action of every member present.

C. Response to Finding.

The Respondent disagrees partially with this finding. The City agrees that Government Code section 54957.1 requires the City Council to publicly report any action taken in closed session and the vote or abstention on that action of every member present. However, as discussed above, the City substantially complied with the Brown Act closed session reporting requirements. Closed session topics were properly noticed prior to each meeting, they were properly announced to the public, and the approval of all final action taken by the City Council was reported after the closed session. While the actual vote of each councilmember was not listed, the report did notify the public that the City Council directed the City Manager to enter the purchase agreement and gave the public multiple opportunities to respond and voice any issues or concerns with the purchase.

Further, there is no legal requirement regarding when and how City Council minutes must be published or approved. Therefore, the finding that "the City Council did not consistently report actions taken" is unsupported. The City Clerk is only required to "keep a correct record of its proceedings." (Government Code § 36914.) While Roberts Rules of Order is not binding upon the City, it can be a good resource for determining traditional meeting procedures. With regards to approving minutes, Roberts Rules of Order simply states, that, if minutes are not normally approved at the next meeting, the secretary should note the date that the minutes were approved at the end of the minutes. Roberts Rules of Order Revised, 4th, Article X, Section 60. Robert's Rules of Order does not require or suggest that meeting minutes should be approved at the next meeting. Thus, approval of meeting minutes two or three months later, while not preferred, is not a violation of Government Code section 36914.

D. Implementation of Recommendation.

The City will continue its current practices which satisfy Recommendation R1 (b). As discussed above, the City substantially complied with all Brown Act requirements and provided timely records of meeting minutes to the best of the City staff's ability. The City has limited resources to dedicate to drafting accurate and informative minutes immediately, but will continue to endeavor towards improving and streamlining this process.

IV. Finding F2 and Recommendation R2.

A. Finding.

F2 - The City of Patterson demonstrated disregard for the law and did not exercise due diligence in the acquisition of the property at 21/25 S. Del Puerto Avenue.

B. Recommendation.

R2 - The City of Patterson needs to comply with applicable laws concerning the acquisition of property by a public entity, including but not limited to, the California Government Code and Public Resources Code.

C. Response to Finding.

The Respondent disagrees wholly with this finding. The City substantially complied with all laws and duties related to the acquisition of the 21/25 S. Del Puerto Avenue property.

D. Implementation of Recommendation.

The City will continue to comply with all applicable laws.

V. Finding F2 (a) and Recommendation R2 (a).

A. Finding.

F2 (a) - The City of Patterson neglected to submit its plan to acquire property to the Planning Commission as required by California Government Code Section 65402 (a), and the City proceeded to acquire the property without a determination by the Planning Commission if the project was consistent with its General Plan.

B. Recommendation.

F2 (a) - The City of Patterson needs to adopt and approve a written policy and check list for the acquisition of real property, assuring compliance with all applicable laws and regulations.

C. Response to Finding.

The Respondent disagrees partially with this finding. The City agrees that California Government Code Section 65402 (a) requires that the planning commission review all property acquisition for conformity with the General Plan. The City disagrees with the finding that the City "neglected to submit its plan". The City substantially complied with the necessary requirements to acquire property for the proposed City Hall Annex. The City then asked the Sword Company to perform a needs assessment/available real estate analysis. The City Building Official even performed an inspection of the property prior to the City entering any negotiations for the purchase. Thus, there were multiple notifications and discussions regarding the potential property purchase. Thus, the City substantially complied with Government Code section 65402.

D. Implementation of Recommendation.

The City will review and evaluate its internal procedures and update them as necessary for compliance with all applicable laws and regulations. The City will then implement the policy for future property purchases. This will not necessarily include more bureaucracy in the form of a written policy and check list

VI. Finding F2 (b).

A. Finding.

F2 (b) - There was no CEQA documentation prepared by the City, informing the public of the environmental consequences of this purchase.

B. Response to Finding.

The City agrees with this finding because none was required. As stated by the City Attorney, the purchase of the 21/25 S. Del Puerto Avenue property was not a project for CEQA evaluation purposes. At the time the City decided to purchase 21/25 S. Del Puerto Avenue, there was no definite construction planned for the parcels. While, the City hoped to use it for a future City Hall annex, a full inspection still had not been completed to determine if the property was fit for the use. Therefore, there was no

significant impacts that were certain from the purchase of the property because there was no definite plan. At the point when final plans are set and permits are requested to complete a project, the City will have to do an environmental evaluation to advise the public on any potential significant environmental impacts. Since no final construction plans have occurred, the City is not yet required to perform a CEQA analysis. Accordingly, the implication in the finding that a CEQA review was required is wrong.

VII. Finding F2 (c).

A. Finding.

F2 (c) - No hazardous materials assessment was performed prior to, or during, the acquisition process despite being required for the same reason as in F2(b).

B. Response to Finding.

The City agrees with the finding. A hazardous materials assessment was not required for the same reasons stated above regarding the CEQA environmental review. An assessment of potential hazardous materials would be performed when there are concrete plans for construction of the property.

VIII. Finding F3.

A. Finding.

F3 - The building purchased by the City cannot be used as intended without extensive remodeling and repair at significant cost.

B. Response to Finding.

The City agrees with this finding. While the City had hoped that the 21/25 S. Del Puerto Avenue property would be a convenient location and an opportunity to expand the City Hall, it turns out that there are significantly more repairs required to satisfactorily update the building's condition.

IX. Finding F4 and Recommendation R4.

A. Finding.

F4 - The lack of due diligence has resulted in the waste of approximately \$2,400,000.00 in public funds based upon estimates supplied by the City of Patterson.

B. Recommendation.

R4 - The City of Patterson needs to adopt and approve a written policy and check list for the acquisition of real property, assuring compliance with all applicable laws and regulations.

C. Response to Finding.

The Respondent disagrees wholly with this finding. The Grand Jury failed to do its own due diligence by citing a totally unsubstantiated and therefore, speculative figure. The City substantially complied with all laws and duties related to the acquisition of the 21/25 S. Del Puerto Avenue property.

D. Implementation of Recommendation.

As stated above, the City will review and evaluate its internal procedures and update them as necessary for compliance with all applicable laws and regulations. The City will then implement the policy for future property purchases.

X. Finding F5 and Recommendation R5.

A. Finding.

F5 - The City of Patterson failed to comply with the 2014-2015 SCCGJ request for the purchase agreement for the properties at 21/25 S. Del Puerto Avenue. The SCCGJ was led to believe, based upon review of City documentation and council agendas that a purchase agreement existed.

B. Recommendation.

R5 - The City of Patterson must cooperate with the Stanislaus County Civil Grand Jury and the Stanislaus County Superior Court in their lawful attempts to obtain public documents.

C. Response to Finding.

The Respondent disagrees wholly with this finding. The City substantially complied with all requests related to the acquisition of the 21/25 S. Del Puerto Avenue property. While there was never a written purchase agreement for the property, the City did properly carry out the purchase of the property. The City Council Agendas and documentation are provided to notify the public of City action and to keep residents

apprised on real property negotiations as required under the Brown Act. The Agendas and documentation never stated, nor implied that there was a written purchase agreement other than what was included in the escrow instructions. Moreover, any discrepancy or confusion about the existence of a purchase agreement was unfortunately exacerbated by the departure of the City Manager who handled the majority of the negotiations to purchase the building.

D. Implementation of Recommendation.

The City is committed to assisting the Grand Jury with all information requests and will continue to be responsive in the future.

XI. Finding F5 (a).

A. Finding.

F5 (a) - The City of Patterson did not respond to the written request for information by the 2014- 2015 SCCGJ as required by law California Penal Code 925(a).

B. Response to Finding.

The Respondent disagrees with this finding. The City responded within the best of its ability to all requests from the Grand Jury. As stated above, any delays in responding to the SCCGJ's written request was caused by the departure of the City Manager who handled the majority of the negotiations to purchase the building.

XII. Finding F5 (b).

A. Finding.

F5 (b) - The City of Patterson failed to fully comply in delivering all requested documents by February 17, 2015 as requested under the Freedom of Information Act in order to provide proof of the purchase agreement.

B. Response to Finding.

The Respondent disagrees with this finding. The City responded within the best of its ability to all requests from the Grand Jury. As stated above, any delays in responding to the SCCGJ's written request was caused by the departure of the City Manager who handled the majority of the negotiations to purchase the building.

XIII. Finding F5 (c).

A. Finding.

F5 (c) - The City of Patterson failed to comply with the subpoena served on the City Manager, issued February 2, 2015, by the Stanislaus County Superior Court, concerning information related to the purchase agreement.

B. Response to Finding.

The Respondent disagrees with this finding. The City responded within the best of its ability to all requests from the Grand Jury. As stated above, any delays in responding to the SCCGJ's written request was caused by the departure of the City Manager who handled the majority of the negotiations to purchase the building.

XIV. Finding F5 (d).

A. Finding.

F5 (d) - The Stanislaus County Superior Court issued the City Manager an Order to Show Cause, dated March 13, 2015.

B. Response to Finding.

The Respondent agrees with this finding.

XV. Finding F5 (e).

A. Finding.

F5 (e) The City Manager and City Attorney appeared before a Superior Court Judge on April 13, 2015 and agreed to appear before the 2014-2015 SCCGJ to testify under oath concerning the existence of a purchase agreement.

B. Response to Finding.

The Respondent agrees with this finding. The City Manager and City Attorney, who could have hidden behind the Attorney-Client Privilege, voluntarily testified and answered every question asked by the Grand Jury. In fact, on one other occasion, the City Manager and City Attorney were issued a subpoena to appear and the Grand Jury failed to show up at the time they requested.

XVI. Finding F6 and Recommendation R6.

A. Finding.

F6 - The 2014-2015 SCCGJ is resigned to the fact that a formal purchase agreement did not exist.

B. Recommendation.

R6 - None

C. Response to Finding.

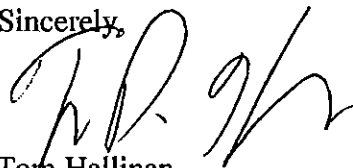
The Respondent agrees with this finding. As stated to the Grand Jury on more than one occasion, the prior City Manager chose to have the terms of deal included in the escrow instructions rather than a separate purchase agreement.

D. Implementation of Recommendation.

None. Lastly, the City must point out that the Grand Jury violated state law by publically quoting "raw evidentiary materials" in its publication of this report in contravention to McClatchy Newspapers v. Superior Court, 751 P.2d 1329 (1988).

If you have any questions regarding the City's response or would like additional information, please contact me at tom@churchwellwhite.com.

Sincerely,



Tom Hallinan
Patterson City Attorney

TH:kro

cc: Ken Irwin, City Manager