



**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 thereof, 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