June 23, 2010

Honorable Charles S. Crandall, Presiding Judge
Superior Court of California
1050 Monterey Street
San Luis Obispo, CA 93408

Dear Judge Crandall:

Subject: **2009/2010 San Luis Obispo County Grand Jury Report:**
ELECTING CITY TREASURERS AND CLERKS: WISE OR OTHERWISE?

The County Grand Jury has issued a report entitled *ELECTING CITY TREASURERS AND CLERKS: WISE OR OTHERWISE?* concerning the value of electing versus appointing City Clerks and Treasurers in general law cities in the County. The report included six recommendations which are intended to ensure that the duties of these positions are carried out effectively and with integrity.

The Grand Jury has requested the City of Atascadero provide formal responses to Recommendations 1 - 5. The Recommendations and the Atascadero City Council formal responses are below.

<u>Grand Jury Recommendation #1</u>

Given state law, city councils should make sure that their investment policies are as air tight as possible and assure that those policies are carefully and continually followed to eliminate the potential for an elected treasurer to misuse his or her powers. (Findings 1, 2, and 5)

- **Finding #1:**
  Elected city treasurers sometimes lack the technical skills and professional experience to adequately perform the duties of the office.

- **Finding #2:**
  Health benefits alone may be sufficient to attract unqualified persons to run for the job, leaving the work to city staff and costing the cities health benefits for persons performing no useful function.

- **Finding #5:**
  Communication is minimal between the Atascadero treasurer and the other city officials who have financial oversight responsibilities.

<u>City Council Response to Recommendation #1</u>

Summary

- The City agrees with Recommendation #1 in that investment policies should be effective and should be adhered to. This Recommendation has been implemented as a strong Investment Policy has long been in place and adhered to.
- The City did not have access to the same information as the Grand Jury regarding Findings #1 & #2, and therefore, due to the lack of sufficient supporting data, can neither agree nor disagree with these Findings.
- The City disagrees with Finding #5.

Analysis

The City has a strong Investment Policy which has long been effective at keeping the City safe from the misuse of powers by elected Treasurers. The Policy is carefully followed and reviewed annually. A revised Investment Policy was recently approved by Council on February 23, 2010. This policy requires the Treasurer to submit investment reports to Council on a quarterly basis. The December 2009 investment report was approved by Council in February, and the March 2010 investment report was approved May 11, 2010.

The Investment Policy authorizes the City Treasurer, City Manager, and the Director of Administrative Services to undertake investment transactions on behalf of the City. According to the Policy, the Director of Administrative Services manages the investment activity of the funds of the City, and the City Manager and the City Treasurer supervise the Director of Administrative Services. The Finance Review Committee, which is made up of all five members of Council, meets to discuss investments and strategies.

The City of Atascadero has been fortunate with the elected Treasurers. The City's current Treasurer, Joe Modica, Jr., is a Certified Financial Planner, Enrolled Agent, and Registered Investment Advisor. His firm, Modica Financial & Tax, Inc. offers local individuals and businesses investment advice and financial planning strategies. Mr. Modica is fully qualified and has the technical skills and professional experience necessary for the position of City Treasurer. The Treasurer prior to Mr. Modica was Mr. David Graham. During the term of Mr. Graham, he was a part-owner of North County

Tax, Inc., a tax preparation and accounting firm in Atascadero. He, too, was quite experienced in the world of finance and effectively executed his duties as elected Treasurer.

There is frequent informal communication between the Treasurer and other city officials with oversight responsibilities. The Treasurer and the Director of Administrative Services work effectively together to maintain the City's financial assets and invest the City's funds with the primary concerns of safety, liquidity and yield. Although formal communications are less frequent, and for a time were temporarily suspended, the informal communications remain, and had remained, quite regular. The obligations to preserve and grow the City's cash and investments are taken very seriously by the elected Treasurer and staff, and prudent and adequate steps are outlined and followed to ensure the strength of the City's assets.

Grand Jury Recommendation #2

City councils and city managers should require that their functioning treasurers and city clerks, whether elected, appointed or deputized, provide all reports required of those offices at the time designated in state law. (Finding 6)

- **Finding #6:**
  Atascadero officials failed to complete and provide the council with the state-required monthly financial reports in a timely manner for the period of April 2008 through November 2009.

City Council Response to Recommendation #2

Summary

- The City agrees with Recommendation #2 in that all required reports should be timely. This Recommendation has been implemented as all reports are current.
- The City agrees with Finding #6.

Analysis

The City is now in full compliance with all local and State laws, and has provided all required reports to Council. The reporting requirements of the City's Investment Policy actually surpass the reporting requirements of the State.

California Government Code §53646(b) (1) states that the City Treasurer "may render a quarterly report to the chief executive officer, the internal auditor, and the legislative body of the local agency." Subdivision (d) of that code section further states that "the legislative body of a local agency may elect to require the report specified in subdivision

(b) to be made on a monthly basis instead of quarterly." However, this same code section's final subdivision asserts

> (h) In recognition of the state and local interest served by the actions made optional in subdivisions (a) and (b), the Legislature encourages the local agency officials to continue taking the actions formerly mandated by this section. However, nothing in this subdivision may be construed to impose any liability on a local agency that does not continue to take the formerly mandated action.

State law does not require monthly investment reporting. It does allow the legislative body to elect to require reporting, either quarterly or monthly. The Investment Report that was approved by the Council in February requires quarterly investment reporting. The Council is receiving those reports on a quarterly basis.

On behalf of the Treasurer, City staff has historically prepared the investment reports (which are subsequently reviewed and approved by the Treasurer), but during the period April 2008 through November 2009, the reports were delayed due to limited staffing resources. However, all internal fiscal controls and financial reconciliations remained in place. The delayed reports were approved by Council at the Special Meeting held on January 7, 2010. All reports are current through the quarter ending March 31, 2010.

A separate section of the California Government Code, Section 41004, requires the Treasurer to submit "a written report and accounting of all receipts, disbursements, and fund balances" on a monthly basis to the City Clerk. This report does not include investment activity, but does include summary information regarding cash ins and outs and fund balances. During the period when the investment reports were completed monthly, this information was included in those reports. However, since switching to quarterly reporting of the investment reports effective January 1, 2010, a summary report including the above information is submitted monthly to the Atascadero City Clerk, with a copy going to the Council. The monthly report is in addition to the quarterly investment report, which is also approved by the Council.

Grand Jury Recommendation #3

Financial reports, and backup documents recording changes in investments, should be carefully scrutinized by a council member on a monthly basis. (Findings 1, 2, 5 and 6)

- **Finding #1:**
  Elected city treasurers sometimes lack the technical skills and professional experience to adequately perform the duties of the office.

- **Finding #2:**
  Health benefits alone may be sufficient to attract unqualified persons to run for the job, leaving the work to city staff and costing the cities health benefits for persons performing no useful function.

- **Finding #5:**
  Communication is minimal between the Atascadero treasurer and the other city officials who have financial oversight responsibilities.

- **Finding #6:**
  Atascadero officials failed to complete and provide the council with the state-required monthly financial reports in a timely manner for the period of April 2008 through November 2009.

City Council Response to Recommendation #3

Summary

- The City agrees with Recommendation #3 in that the Council should routinely review financial reports. This Recommendation has been implemented to the extent that the entire Council receives a monthly summary report and quarterly detailed investment report.
- As discussed above, the City did not have access to the same information as the Grand Jury regarding Findings #1 & #2, and therefore, due to the lack of sufficient supporting data, can neither agree nor disagree with these Findings.
- As discussed above, the City disagrees with Finding #5.
- As discussed above, the City agrees with Finding #6.

Analysis

As indicated in the above response, a report of cash receipts, disbursements and fund balances is submitted to the Council via the City Clerk on a monthly basis. A more detailed investment report (including investment change data) is prepared and presented to Council quarterly.

The Treasurer, the City Manager and the Director of Administrative Services carry the day to day responsibility to maximize the City's assets and ensure safety, liquidity and yield. Together, they analyze and monitor all investments and backup documentation. The City's investments, other than LAIF, are typically medium term, stretching out between one and five years. Therefore, Council scrutiny of detailed information on a monthly basis regarding changes in investments and backup documentation would not yield a significant benefit to the financial situation of the City, but would put more of a burden on the Council to perform such detailed analysis.

Similar to the Grand Jury's Finding #1 regarding treasurers, there is no way to guarantee that future Council Members will have the professional experience or expertise to evaluate such financial data. However, for the Council Members that are interested in such information, communications to review the data with the Treasurer, City Manager, and Director of Administrative Services are encouraged. Additionally, all of the monthly investment statements and banking statements remain public records and are available at City Hall for Council or community viewing.

Finally, an independent audit of the financial statements and all supporting financial documents, records, policies, and practices is performed annually.

Grand Jury Recommendation #4

City councils in Arroyo Grande, Atascadero and Paso Robles should consider trying again to convince the electorate to make at least the position of treasurer appointive, while educating the electorate about qualifications needed in a treasurer and committing the city to require appointed treasurers to possess those qualifications. (Findings 1, 2, 3, 4 and 5)

- **Finding #1:**
  Elected city treasurers sometimes lack the technical skills and professional experience to adequately perform the duties of the office.

- **Finding #2:**
  Health benefits alone may be sufficient to attract unqualified persons to run for the job, leaving the work to city staff and costing the cities health benefits for persons performing no useful function.

- **Finding #3:**
  Efforts to convince voters to approve making the job appointive have failed in all three cities.

- **Finding #4:**
  The cities have found different ways to deal with these challenges. One approach is to arrange for a city employee to be elected treasurer and have that employee designate the finance director to do the job. But that approach can have inherent conflicts of interest.

- **Finding #5:**
  Communication is minimal between the Atascadero treasurer and the other city officials who have financial oversight responsibilities.

City Council Response to Recommendation #4

Summary

- The City disagrees with Recommendation #4 in that it is a violation of State law to use public funds for this purpose. This Recommendation has not been and will not be implemented.

- As discussed above, the City did not have access to the same information as the Grand Jury regarding Findings #1 & #2, and therefore, due to the lack of sufficient supporting data, can neither agree nor disagree with these Findings.
- The City cannot comment as to the other cities on Finding #3, but as for Atascadero, the City disagrees that there were, “Efforts to convince voters to approve making the job appointive”, but agrees that this issue was on the ballot in 1984 and it failed to win voter approval.
- The City cannot comment as to the other cities on Finding #4, but as for Atascadero the City agrees that there are different ways of dealing with the challenges, delegating to staff is one way, and there could potentially be conflicts of interest.
- As discussed above, the City disagrees with Finding #5.

Analysis

The City may not use public funds to “convince the electorate to make the treasurer appointive” because doing so would be a violation of State law. A government may not spend public money or resources to assist in the passage or defeat of an initiative or other ballot measure.

The Grand Jury may refer to Government Code Section 54964 and case law regarding: Stanton v. Mott (1976) 17 Cal. 3d 206; League of Women Voters v. Countywide Criminal Justice Coordinating Commission (1988) 203 Cal. App. 3d 529; and Vargas v. City of Salinas (2009) 46 Cal. 4th 1. The City suggests that the Grand Jury consult with its legal counsel regarding Recommendation #4.

The issue to make the Treasurer appointed instead of elected did appear on the ballot in 1984, but it was not approved by the vote of the people.

<u>Grand Jury Recommendation #5</u>

All general law cities in the county should post the state-required monthly treasurer’s report and annual financial statement on the city’s web site in a location easy to find. (Finding 6)

- **Finding #6:**
  Atascadero officials failed to complete and provide the council with the state-required monthly financial reports in a timely manner for the period of April 2008 through November 2009.

<u>City Council Response to Recommendation #5</u>

Summary

- The City agrees with Recommendation #5. This Recommendation will be implemented effective July 1, 2010.
- As discussed above, the City agrees with Finding #6.

Analysis

All approved investment reports can be found on the City's web site in the Council agenda packages. As an alternative, the Administrative Services department also is working with the Technology Department to add an additional location on the web site where both the investment reports and monthly reports of cash receipts, disbursements and fund balances can be found more easily.

Very truly yours,

Roberta Fonzi
Mayor

Tom O' Malley
Mayor Pro Tem

Ellen Béraud
Council Member

Jerry Clay
Council Member

Bob Kelley
Council Member

Wade G. McKinney
City Manager