

MONTEREY COUNTY CIVIL GRAND JURY



2020-2021 FINAL REPORT

JUNE 17, 2021

MONTEREY COUNTY CIVIL GRAND JURY

**2020/21
FINAL REPORT**

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MONTEREY COUNTY CIVIL GRAND JURY

P.O. Box 414
Salinas, CA 93902
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May 26, 2021

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

Re: 2020/21 Monterey County Civil Grand Jury Final Report

Dear Judge Hulse:

On behalf of my fellow jurors on the 2020/21 Monterey County Civil Grand Jury, I am pleased to present our Final Report. The civic-minded residents who served on the jury dedicated their one-year term of service to evaluating how well government is working in Monterey County. The Civil Grand Jury hopes these reports will shine light on and give guidance to the government agencies investigated. The jurors devoted many long hours collaborating, researching, investigating, verifying, and writing these reports which we hope will make a difference within our county.

The global COVID-19 pandemic has continued to affect the day-to-day lives of all Monterey County residents and the Civil Grand Jury was no exception. For the first time ever, the Monterey County Civil Grand Jury conducted its work virtually. Our ability to do this was due in large part to the foundational work laid by the prior Civil Grand Jury as well as the flexibility and determination of my fellow jurors to serve the residents of Monterey County.

It has been an honor to serve with this dedicated and committed team of fellow jurors. The experience of being on the Civil Grand Jury underscored the important role of citizen oversight in local government.

We thank you for your initial charge to us to conduct our investigations diligently and impartially in the furtherance of the general good as we began our term and for your support throughout the year. We extend a special thank you to County Counsel Leslie J. Girard who helped answer our legal questions, and to Sandra Ontiveros, Management Analyst with the Office of the County Counsel, for her dedicated support and guidance in achieving our goals.

We thank you for the privilege of serving our fellow citizens.

Respectfully,

Maria A.Y. Garcia, Foreperson
2020/2021 Monterey County Civil Grand Jury

2020/21 MONTEREY COUNTY CIVIL GRAND JURY ROSTER

OFFICERS

Foreperson	Maria A.Y. Garcia
Foreperson Pro Tem	John La Londe
Recording Secretary	John Geiss
Corresponding Secretary	Bryan Laws
Treasurer	Steven Rubin

JURORS

George Ash (Monterey)
Georgette Beyah (Monterey)
Paige Blossom (Monterey)
Rick Busman (Carmel)
Maria Garcia (Marina)
John Geiss (Monterey)
Donald Goodhue (Carmel)
Marianne Howard (Monterey)
Grant Hunt (Monterey)
John LaLonde (Pacific Grove)
Bryan Laws (Salinas)
Steve Martin (Carmel)
Thomas Mastre (Salinas)
Mark Posson (Pebble Beach)
Jason C. Reed (Monterey)
Sister Rosa Dolores Rodriguez (Castroville)
Steven Rubin (Monterey)
Richard Dick Stott (Carmel)



Back Row from left to right -
Dick Stott, John Geiss, Grant Hunt, Rick Busman, John La Londe, George Ash, Jason Reed, Bryan Laws, and Steve Martin

Front Row from left to right -
Marianne Howard, Sister Rosa Dolores Rodriguez, Steven Rubin, Don Goodhue, and Maria A.Y. Garcia

Video Off -
Georgette Beyah, Mark Posson, Paige Blossom, and Tom Mastre

2020/21 Monterey County Civil Grand Jury

Mission Statement



The principal mission of the Monterey County Civil Grand Jury is to serve the residents by performing a watchdog function in reviewing and evaluating the performance of county, municipal and special district agencies within Monterey County. The Civil Grand Jury accomplishes this mission by conducting selected independent inquiries of agency operations and annually publishing a report of its findings, recommendations, and commendations.

CIVIL GRAND JURY MISSION AND RESPONSE REQUIREMENTS

The primary mission of a civil grand jury in the State of California is to examine county and city governments, as well as districts and other offices, in order to ensure that the responsibilities of these entities are conducted lawfully and efficiently. The civil grand jury is also responsible for recommending measures for improving the functioning and accountability of these organizations, which are intended to serve the public interest.

Jury Selection

Each year, citizens of the county who apply for civil grand jury service are invited to an orientation session for an overview of the process. The court then interviews them, and approximately 40 names are forwarded for inclusion in the annual civil grand jury lottery. During the lottery, 19 panel members are selected, with the remaining to serve as alternates. Those selected to serve are sworn in and instructed to their charge by the presiding judge. Civil grand jurors take an oath of confidentiality regarding any civil grand jury matters for the rest of their lives.

Investigations

Each civil grand jury sets its own rules of procedures and creates committees to investigate and create reports. California Penal Code section 925 states:

The grand jury shall investigate and report on the operations, accounts, and records of the officers, departments, or functions of the county including those operations, accounts, and records of any special legislative district or other district in the county created pursuant to state law for which the officers of the county are serving ex-officio capacity as officers of the districts.

Additionally, Section 919 prescribes that:

The grand jury shall inquire into the condition and management of the public prisons within the county, including inquiring into willful or corrupt misconduct in office of public officers of every description within the county.

The public may submit directly to the Monterey County Civil Grand Jury complaints requesting that it investigate issues of concern regarding public agencies or official in Monterey County. The public may request complaint forms by contacting the office of the Monterey County Civil Grand Jury at (831) 883-7553 or through the Grand Jury's website address at www.monterey.courts.ca.gov/grandjury or <http://www.co.monterey.ca.us/government/participate-get-involved/civil-grand-jury>.

Grand juries conduct proceedings behind closed doors, as required by law, primarily for the protection of people who file complaints or who testify during investigations. All who appear as witnesses or communicate in writing with a grand jury are protected by strict rules of confidentiality, for which violators are subject to legal sanction.

Reports

Section 933(a) of California Penal Code declares:

Each grand jury shall submit...a final report of its finding and recommendations that pertain to county government matters during the fiscal or calendar year.

The civil grand jury summarizes its findings and makes recommendations in a public report, completed at the end of its yearlong term. Each report is presented to the appropriate department or agency.

Section 933(b) declares:

One copy of each final report, together with the responses thereto, found to be in compliance with this title shall be placed on file with the clerk of the court and remain on file in the office of the clerk. The clerk shall immediately forward a true copy of the report and the responses to the State Archivist who shall retain that report and all responses in perpetuity.

Each report is distributed to public officials, libraries, the news media and any entity that is the subject of any of the reports. The public may also view each year's final report through the Monterey County Civil Grand Jury's website at <http://www.co.monterey.ca.us/government/participate-get-involved/civil-grand-jury> or www.monterey.courts.ca.gov/grandjury.

Content of Responses

Section 933.05 of the California Penal Code declares:

- (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.

Timeline of Responses

Section 933(c) states:

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 recommendation pertaining to matter under the control of that county officer or agency head any and agency or agencies which that officer or agency head supervises or controls...All of these comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury.

Address for Delivery of Responses

The Honorable Stephanie E. Hulse
Judge of the Superior Court
c/o County of Monterey
Civil Grand Jury Liaison
168 W. Alisal Street, 3rd Floor
Salinas, CA 93901

AN EXAMINATION OF MONTEREY COUNTY CONTRACTING AND PURCHASING PRACTICES

SUMMARY

The Monterey County budget for Fiscal Year 2020-21 projects expenditures of over \$1.64 billion. Of that total, nearly \$392 million has been budgeted for the purchase of goods and services. Significant purchases of goods and services involve contracts between the County and its vendors and suppliers.

Due to media attention and citizen concern, the 2020/21 Monterey County Civil Grand Jury initiated an investigation into the management and oversight of contracts. As part of that effort, we began by looking at the policies and procedures utilized by the Monterey County Administrative Office. As the investigation unfolded, we expanded its scope to include a study of the decentralized nature of contracting and purchasing used in Monterey County.

When the Civil Grand Jury first requested copies of large contracts for review, we were informed that those records were scattered among the various departments and would take several months to produce. It became immediately apparent that management and oversight by members of the County senior management team are severely impaired by an inability to have ready access to details of key contract information. We found many dedicated employees responsible for individual department contracts trying to provide the best results for the residents of the County. Moreover, we heard accounts of how significant savings could be achieved by preventing the incidental waste caused by inaccessible information.

The Civil Grand Jury found significant areas that provide opportunity for improvement in contracting practices that will not require significant expenditures.

The areas identified are:

- Lack of Countywide centralized contract data.
 - Centralized contract and purchasing data will enhance transparency.

- Centralized contract and purchasing data will provide information for informed business decisions.
- Centralized contract and purchasing data could eliminate incidental waste from purchasing decisions.
- The Standard Operating Procedures (SOPs) approved by the Board of Supervisors are not consistently followed across county departments.
 - Requiring the use of the approved SOPs across all 28 county departments could instill greater confidence among those approving contracts.
- The Contracts/Purchasing division of the Monterey County Administrative Office developed and deployed an award-winning Contracts and Purchasing Academy, but it is not available online for self-directed learning.
 - The Contracts & Purchasing Academy has been on a hiatus since March due to the COVID-19 pandemic.
 - Providing the training in an “online” format would expand the training availability.
- The Contracts/Purchasing Manual prepared and used by the County has not been updated for 13 years and is not user-friendly.
 - Updating and reorganizing the Manual would make it a valuable resource.

With the specter of tightening County budgets and a wider use of contracting in post-pandemic times, capturing savings while enhancing business practices would allow the County to forge a winning budgetary strategy without significant expenditures.

GLOSSARY

Contracts/Purchasing – Contracts/Purchasing division of the Monterey County Administrative Office

CAO – County Administrative Officer

Auditor – Monterey County Auditor–Controller

RMA – Resource Management Agency (now separated into two departments-Housing and Community Development and Public Works, Facilities and Parks)

BoS – Monterey County Board of Supervisors

ECMS – Enterprise Contract Management System

Requestor – Person in a County department with the need for supplies or services

Originator – Person in a County department responsible for liaison with Contracts/Purchasing

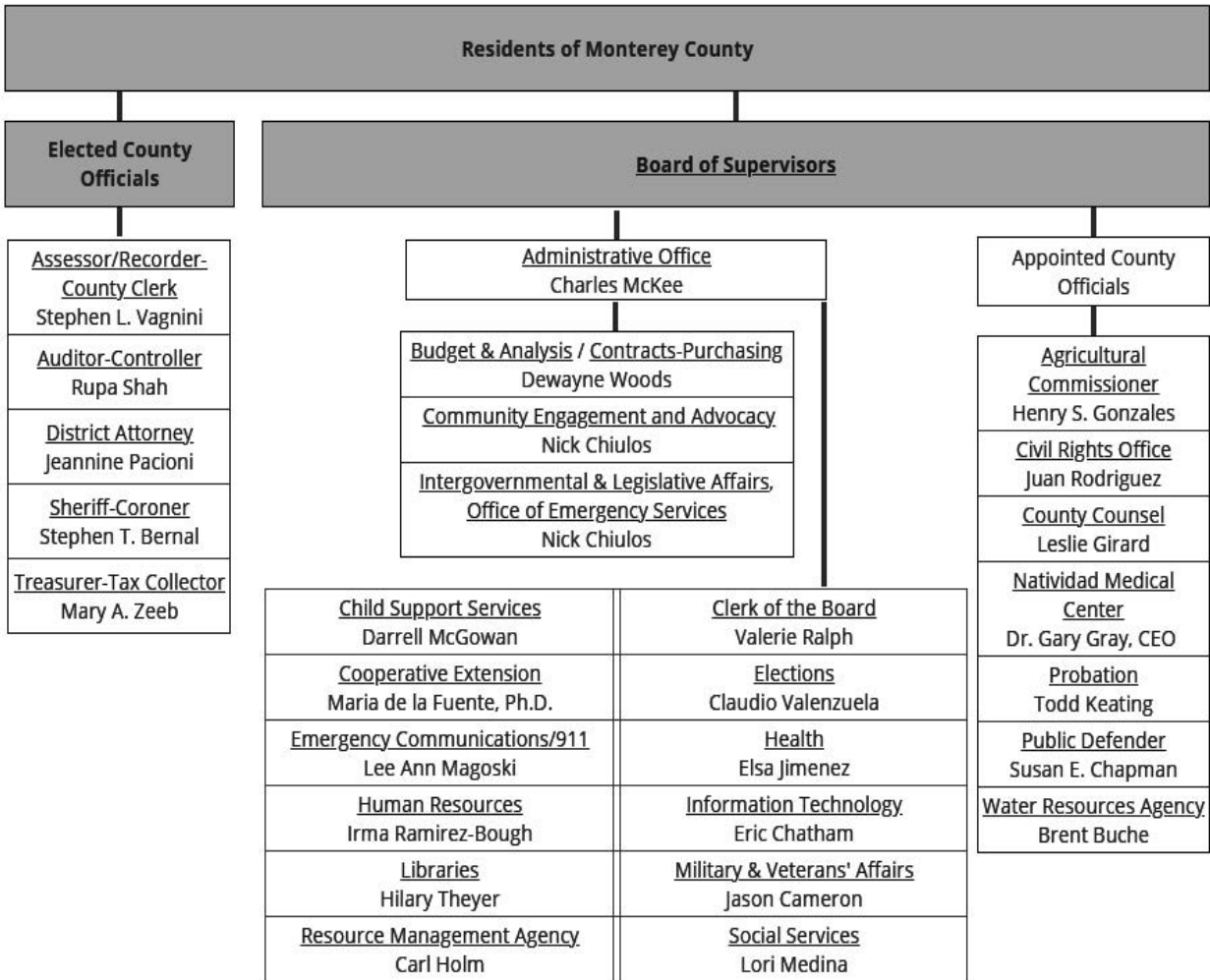
Manual - Monterey County Contracts/Purchasing Manual

SOP – Standard Operating Procedures

BACKGROUND

The Monterey County organizational chart below shows a decentralized organization with a mix of elected officials, appointed officials, and career employees. Elected County officials include the Assessor-County Clerk-Recorder, the Auditor-Controller, the District Attorney, the Sheriff-Coroner, the Treasurer-Tax Collector, and the Board of Supervisors.

Appointed officials include the County Administrative Officer, the heads of the Civil Rights Office, Natividad Medical Center, the Probation Department, as well as the Agricultural Commissioner, the County Counsel, and the Public Defender. Most County departments and employees are under general supervision of the County Administrative Office. Together these account for 5,400 employees who serve Monterey County citizens and support the operation of Monterey County government.



It takes goods and services to support the operations of Monterey County government and to facilitate the work done for its citizens. As seen in the table below, taken from the County's 2020/2021 budget, proposed expenditures for services and supplies are approximately 25% of the total budget in any given year. Dollar figures are expressed in millions.

All Funds	2018- 19 Actual	2019- 20 Adopted	2020 -21 Recommended
Expenditures			
Salaries & Benefits	\$ 656.2	\$ 711.0	\$ 749.1
Services & Supplies	376.1	395.7	391.8
Other Charges	154.5	126.6	133.5
Fixed Assets	85.3	66.3	93.6
Op. Transfers Out / Other Financing	236.9	238.4	265.3
Extraordinary Items	-	0.2	-
Contingencies	-	5.8	6.8
Total Expenditures	\$ 1,509.0	\$ 1,543.9	\$ 1,640.1

Continuing on with the topic of the decentralized nature of Monterey County government, as of the point in time that this investigation was undertaken, there were three separate and individually functioning purchasing departments to help county employees adhere to all the laws and regulations that control the spending of public money. Those departments were in the Resource Management Agency (RMA) (now separated into two departments-Housing and Community Development and Public Works, Facilities and Parks), Natividad Medical Center, and the Contracts/Purchasing division of the County Administrative Office. Additionally, many individual County Departments have employees that perform contracting functions of various types for their respective departments. This creates a decentralized purchasing business model for the County. The Civil Grand Jury limited its investigation to the Contracts/Purchasing division of the of the County Administrative Office and the contracting functions of individual departments.

Depending on the need and cost, there are several ways a Monterey County department can buy goods and services. The State of California has “master agreements” with pre-negotiated prices and terms that Monterey County departments can use, and the Contracts/Purchasing division has “master agreements” that departments can use. Additionally, Monterey County has a “purchase card” system for purchasing low dollar items. For more costly or unusual goods and services it has established formal and informal contracting processes with levels of purchasing and

contracting authority based on the value and terms of the contract. Final approval for expenditures over \$100,000 lies with the Monterey County Board of Supervisors.

Given the large amount of the County budget allocated to supplies and services, the expressed concern Monterey County residents had regarding several county contracts negotiated in 2019, and the media coverage those contract actions garnered, the Civil Grand Jury viewed purchasing and contracting as an area of government to be examined. We wanted to know the following:

- Are the Monterey County contracting and purchasing policies in place being consistently followed across County departments?
- Are the Monterey County contracting and purchasing procedures in place being consistently followed across County departments?
- Is there adequate oversight to ensure fraud, waste, and abuse are eliminated or at least minimized?

The investigation attempted to answer the question: Are there recommendations to Contracting and Purchasing processes and procedures that would save Monterey County taxpayer dollars?

METHODOLOGY

The Civil Grand Jury employed four methods of research. First, we reviewed publicly available documents, including meeting notes and consent agendas of Monterey County Board of Supervisors meetings for the past two years, and several contracts authorized by the Monterey County Board of Supervisors that were valued at more than \$100,000.00. Second, we reviewed County documents including the Contracts/Purchasing Manual and Training materials provided to employees with contracting authority. Third, we interviewed employees from a cross section of County departments to gather information on the contracting practices used by each department. Lastly, we arranged for a demonstration of the capabilities of the ECMS (Enterprise Contract Management System) software application that is employed by several County departments. The facts reported throughout this report are a result of those activities.

DISCUSSION

The Civil Grand Jury found facts that fell into five broad categories as shown below.

Three Monterey County Purchasing Authorities

When this investigation began, there were three independent contracting and purchasing authorities in Monterey County: RMA, Natividad Medical Center, and all other departments of Monterey County via the Contracts/Purchasing division within the County Administrative Office. We did not review Natividad Medical Center or the RMA but instead focused the investigation on the other departments. Below, we use the term “departments” to mean “all other departments”.

Contract Information

An array of methods is available for tracking contract information across Monterey County departments. They include spreadsheets, departmentally developed custom computer applications, and a tracking system developed by Monterey County Information Technology Department (Enterprise Contract Management System or ECMS). The departmental systems and spreadsheets do not connect with each other or to the Monterey County Enterprise Resource Planning (ERP) accounting system to provide a comprehensive view of contracts across Monterey County.

Improved access to information will enhance decision-making to support the dedicated staff of civil servants.

The Civil Grand Jury identified the following areas of concern:

- The current ERP system does not provide all contract information.
 - Information in departmental systems is not available to other departments in real-time, resulting in issues such as making it difficult for departments to achieve consistent pricing.
 - Creating a barrier to check other departmental experience with vendors.
 - Creating unintended competition among departments for services from the same vendor.

- The Enterprise Contracts Management System as deployed lacks the ability to store contract data useful to departments (i.e., Terms and Conditions and open contracts with a given vendor).
- The Contracts/Purchasing division of the County Administrative Office does not have comprehensive access to all contracts.
- Monterey County departments do not track the same set of contract information.
- Because ECMS allows it, Monterey County departments use different names for the same vendor.

Contract Process

On July 22, 2014, the Board of Supervisors adopted a set of standard operating procedures (SOPs) prescribing contracting and purchasing processes. The standard operating procedures provide an overview of the tasks in the purchasing process and give guidance as to which processes to use and when. Departments' staff necessarily must fill in gaps in the SOPs.

The Civil Grand Jury identified the following areas of concern:

- The SOPs do not provide guidance to the departmental purchasing person on the appropriateness of making vendor contacts at the beginning of the process.
- The person in a department with the need for supplies or services may be responsible for negotiating a final agreement.
- The invoice approval process for payment varies from department to department and is not documented in the SOPs.
- The SOPs do not prescribe how to manage the contract after it has been awarded.
- The BoS-mandated requirement to use the Contracts/Purchasing division is not consistently followed in practice.
- The SOPs associated with the Contracts & Purchasing Academy are not consistently followed.

- Monterey County departments do not have a method to check if a vendor is providing consistent pricing to each department.
- Monterey County departments do not have a method of checking other departments' experience with vendors.
- Monterey County departments compete for the same services from the same vendor.

Training

In December 2013, the Board of Supervisors approved the development of a Contract Academy and the implementation of a Contract Tracking System. The Contracts/Purchasing division of the County Administrative Office developed the Contracts & Purchasing Academy ("Academy"), which is a structured training program for contract development and processing. Academy certification is required for all County staff assigned to contract functions.

The Academy has received recognition and has been adopted with modifications by other counties. Monterey County employees have found the Academy courses to be valuable. Academy courses are available to Monterey County employees engaged in purchasing or contracting.

The Civil Grand Jury identified the following areas of concern:

- Some Monterey County employees who are doing contracts and purchasing activity have not been certified by the Academy.
- Academy training is only offered in an "in person" setting as it is not available online.
- Academy training has not been offered to new contracting personnel during the COVID-19 pandemic.
- The Academy training has gaps in ethics material, such as:
 - Academy training does not have ethics material that helps employees understand how to use public funds legally.
 - Academy training does not have ethics material that helps employees understand how to avoid pitfalls when interacting with vendors.

- Academy information related to ethics does not cover the laws and regulations related to ethics.
- The Academy training does not have a contracts management module.
- Recertification is not required.

Monterey Contracts/Purchasing Manual

One resource for Monterey County employees involved in purchasing is the “Monterey County Contracts/Purchasing Manual” (Manual). The most current version dated April 25, 2008 is available [online](#).¹

The Manual contains sections that discuss procurement policies, local preference policies, the duties of the Contracts/Purchasing Division, and a variety of other contracts/purchasing topics.

The Manual states, “It is the policy of the County of Monterey to centralize the purchasing of goods and services, to the extent possible”. The Civil Grand Jury found contract and purchasing activity to be *decentralized* - most contracting and purchasing activities were performed at the departmental level.

The Civil Grand Jury identified the following areas of concern:

- The Manual, dated April 25, 2008, is outdated.
- The Manual is inconsistent with the Academy training.
- The Manual is inconsistent with the SOPs adopted by the Board of Supervisors.
- The Manual does not make it clear that it is the final and authoritative source of information for County contracts and purchasing.
- A section captioned “Ethical Standards for Purchasing” that provides ethical guidance related to contracts and purchasing is found at pages 346 - 347.
- The Manual does not reference contracts and purchasing ethics laws and regulations.
- The table of contents for the Manual does not contain page numbers.

¹ <https://www.co.monterey.ca.us/home/showpublisheddocument?id=62280>

- The Manual is not presented in an intuitive manner.
- The Manual lacks an index.
- The Manual lacks a glossary.
- The Manual lacks sufficient references or citations.

FINDINGS

- F1. The Contracts/ Purchasing division of the Monterey County Administrative Office does not have access to all contracts executed by/on behalf of the County, which inhibits visibility and transparency of vital management information.
- F2. Two Monterey County departments have developed homegrown software systems to track contracts, while other departments use Microsoft Excel or other methods for contract tracking. Because contract tracking is performed using multiple methods at the departmental level, cumulative contract business across Monterey County government departments requires manual tabulation. The lack of timely information being available to decision-makers can contribute to ineffective decision making by senior management. Based upon discussions with numerous Department level employees, not having standardized contract information available across Monterey County government departments precludes information sharing and could lead to poor business decisions such as inconsistent terms and conditions and variable pricing among other contract stipulations.
- F3. Based upon discussions with Department level employees, a lack of departmental access to other department contracts is a barrier to consistent pricing from vendors and creates the potential for different departments to pay the same vendor different prices for the same services.
- F4. Based upon discussions with Department level employees, a lack of departmental access to other department contracts is a barrier to checking experience with vendors among the various County departments.

- F5. Based upon discussions with Department level employees, the lack of a method of providing real-time contract details could lead to added cost when multiple departments are competing for the same services from the same supplier.
- F6. Standard Operating Procedures associated with the Contracts & Purchasing Academy, as approved by the Board of Supervisors on July 22, 2014, are not consistently followed in some Monterey County government departments which has the potential for County employees to avoid policies and procedures deemed critical by the Board of Supervisors for the efficient execution of contract commitments on behalf of the County.
- F7. The County's practice of allowing departmental-level staff ("The person in a department with the need for supplies or services") to contact potential suppliers may create bias toward or away from some suppliers, leading to reduced competitiveness in County purchasing. This also takes away the vital negotiating tool of using a professional negotiator to seek the best terms and conditions available.
- F8. The County's practice of allowing "The person in a department with the need for supplies or services" to contact potential suppliers can create the potential for such staff to make an unauthorized or inadvertent commitment.
- F9. The County's practice of allowing "The person in a department with the need for supplies or services" to negotiate contracts with suppliers could lead to fraud and abuse.
- F10. Not requiring Monterey County departments to use the Contracts/Purchasing division to acquire goods and services can lead to staff who are not contracting specialists agreeing to contracts that are not optimal.
- F11. The Contracts & Purchasing Academy is a valuable resource for Monterey County employees because it guides them through the contracts and purchasing processes.

- F12. Training offered by the Contracts & Purchasing Academy is not required of all Monterey County employees involved in contracting and purchasing of supplies and services, which could cause those employees to deviate from the Contracts and Purchasing Standard Operating Procedures.
- F13. Discussions with numerous Department level personnel revealed that ethics and contract management training was either minimal or nonexistent in the current format of the Contracts & Purchasing Academy, which may lead to unintentional ethical lapses and the perception by county employees that they have authority beyond what law and regulations allow. New departmental contracting personnel have not been able to attend the Contracts & Purchasing Academy since early in 2020 due to COVID-19, which could lead to errors due to lack of training.
- F14. The Contracts & Purchasing Academy is not available online, which is an impediment to achieving and maintaining an optimal level of flexibility in delivery of employee training,
- F15. The Monterey County Contracts/Purchasing Manual has not been updated since 2008 and may have sections that do not comply with current County and State laws and regulations. County employees who rely on the accuracy of the Manual could use that information to make non-compliant decisions.
- F16. The Manual lacks an index, glossary, and references about where to obtain more information. In addition, the Manual's table of contents does not contain page numbers, making it difficult to use.
- F17. The Manual does not connect to County training in contracts and purchasing—including required ethics involved in contracts and purchasing, making it difficult for employees to gain a deeper understanding of their responsibilities.
- F18. The Manual does not make it clear that it is the final and authoritative source of information for County contracts and purchasing leaving County employees to use other sources for contracts and purchasing policies and procedures which may not align with current County policies and procedures.

RECOMMENDATIONS

- R1. Develop a uniform set of required contract information (to include but not limited to Terms and Conditions, vendor information, overall cost, unit cost) to support sound decision-making for all County departments. (F1,2,3,4,5)
This recommendation should be implemented by the CAO on or before January 31, 2022.
- R2. Establish and fully implement a system that provides online, real-time access to all Monterey County contract information that meets the unique needs of individual departments. (F1,2,3,4,5)
This recommendation should be implemented by the CAO on or before April 1, 2022.
- R3. Provide a system and training designed to promote collaboration among the County's departmental employees and staff in the Contracting/Purchasing division of the County Administrative Office. (F1,2,3,4,5)
This recommendation should be implemented by the CAO on or before February 1, 2022.
- R4. Continue to fund the Contracts & Purchasing Academy course material updates. (F11,12,13,14)
This recommendation should be implemented by the CAO on or before February 1, 2022.
- R5. The Contracts & Purchasing Academy should be made available in an on-demand, self-directed online instructional format. (F14)
This recommendation should be implemented by the CAO on or before April 1, 2022.
- R6. Require all Monterey County departmental managers and employees involved in contracts and purchasing to recertify their contracts and purchasing skills on a periodic basis. (F11,12)
This recommendation should be implemented by the Board of Supervisors on or before February 1, 2022.
- R7. Provide a more robust module in the Contracts & Purchasing Academy training materials that directly addresses current contracting ethical standards. (F13)
This recommendation should be implemented by the CAO on or before April 1, 2022.

- R8. Require Monterey County government departments to follow the Contracts & Purchasing Academy Standard Operations Procedures adopted by the Board of Supervisors July 22, 2014. (F6)
This recommendation should be implemented by the Board of Supervisors on or before February 1, 2022.
- R9. Update the Monterey County Contracts/Purchasing Manual to reflect all current policies and procedures and SOP's. Edit the updated Manual for organization and readability. The County should use the services of a professional editor if internal staff is not a viable resource. (F17)
This recommendation should be implemented by the Contract/Purchasing Officer on or before February 1, 2022.
- R10. Update the material in the "Ethical Standards for Purchasing" section of the Monterey County Contracts/Purchasing Manual to be consistent with current contracting ethical standards. (F18)
This recommendation should be implemented by the Contracts/Purchasing Officer on or before February 1, 2022.
- R11. Emphasize the "Ethical Standards for Purchasing" section of the Monterey County Contracts/Purchasing Manual by expanding the content and repositioning the text. (F18)
This recommendation should be implemented by the Contracts/Purchasing Officer on or before February 1, 2022.
- R12. Make the Monterey County Contracts/Purchasing Manual available in an online format with easily searchable content. (F19)
This recommendation should be implemented by the Contracts/Purchasing Officer on or before April 1, 2022.

REQUIRED RESPONSES

Pursuant to Penal Code §933 and 933.05, the Civil Grand Jury requests responses as follows:

From the following governing body within 90 days:

- Monterey County Board of Supervisors
 - F1 through F18
 - R1 through R12

INVITED RESPONSES

- County Administrative Officer (CAO)
 - F1, F2, F3, F4, F5, F6, F7, F8, F11, F12, F13, F14, F15, F16
 - R1, R2, R3, R4, R5, R8, R9, R10
- Contracts & Purchasing division of the Monterey County Administrative Office
 - F8, F9, F10, F12, F14, F16, F17, F18, F19
 - R6, R7, R9, R11, R12

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.
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COMPLIANCE AND CONTINUITY REPORT: 2020/21 Monterey County Civil Grand Jury

SUMMARY

The 2020/21 Monterey County Civil Grand Jury reviewed the responses to the seven investigative reports issued by the 2019/20 Monterey Civil Grand Jury. The purpose of this review was to identify levels of compliance with the California Penal Code governing Grand Jury reports. The complete texts of these reports can be accessed at the following website:

[2019/20 Monterey County Civil Grand Jury](#)

The website also provide links to the responses given by the County agencies to the Findings and Recommendations contained in the reports.

BACKGROUND

California Penal Code Section 933(a) requires the Civil Grand Jury to “submit to the presiding judge of the superior court a final report of its Findings and Recommendations that pertain to county government matters during the fiscal or calendar year.” Governing bodies or department offices are required to respond to the Findings and Recommendations directed to them within 90 days of the release of a Civil Grand Jury’s report. Elected County officials are required to respond within 60 days. (PC §933(c)).

This Compliance and Continuity Report focuses only on the Penal Code requirements for responding to the Recommendations.

Penal Code §933.05 states that the body or official so designated in the reports is required to select one of four possible responses to the Recommendations (PC §933.05(b)):

- 1) The Recommendation has been implemented, with a summary of the action taken;

- 2) It will be implemented, with a timeframe for implementation being provided;
- 3) It requires further analysis, with an explanation and the scope of the analysis and a timeframe for further response of not more than six months from the release of the report; or,
- 4) It will not be implemented because it is not warranted or is not reasonable, with an explanation being provided.

The 2019/20 Monterey County Civil Grand Jury issued the following reports in its consolidated report dated June 29, 2020:

1. Camp Gabilan #38, Going Out of Business
2. Enhancing Public Access to Pesticide Use Information
3. Sexual Harassment Prevention, Training Compliance
4. Overdue Responses to the 2018/19 Civil Grand Jury Report
5. Monument to a Failed Process: South County Use Permit PLN 180317
6. Monterey Peninsula Airport District, The Airport Master Plan
7. Human Resources - Building and Maintaining a Productive Workforce, the Lifeblood of an Organization

METHODOLOGY

The 2020/21 Monterey County Civil Grand Jury evaluated responses to the 2019/20 Civil Grand Jury recommendations to ensure compliance with the governing section of the Penal Code (PC §933.05(b)). The following criteria were used:

- 1) If a response indicated that a Recommendation had been implemented, did it include a summary of what was done?
- 2) If a response indicated that a Recommendation would be implemented, did it include a summary and a timeframe for what would be done?

- 3) If a response indicated that a Recommendation required further analysis or study, did it include an explanation of the scope, parameters, and timeframe of the proposed analysis or study?
- 4) If a response indicated that a Recommendation would not be implemented because it was unwarranted or unreasonable, did the respondent include a reasoned explanation supporting that position?

Response to Reports

The table below provides a general summary of responses by the agencies identified in the 2019/20 Monterey County Civil Grand Jury Report, as outlined by PC §933.05(b). As evidenced by the data herein, a significant number of agencies have not complied with the requirements of that code. Specifically, thirty-nine percent (39%) of the agencies involved did not respond within the timeframe as prescribed by PC §933.05(b). Fifty-five percent (55%) failed to respond to the criteria as outlined by that code.

Report Number	Number of Agencies Required to Respond	Number of Recommendations Given	Number of Agencies Responding Within the Identified Timeframe	Number of Responses Adhering to the Criteria of PC §933.05(b)
1	Not required	--	--	--
2	1	3	0 of 1	1 of 3
3	11	30	7 of 11	21 of 30
4	3	3	3 of 3	3 of 3
5	1	11	0 of 1	4 of 11
6	1	4	1 of 1	1 of 4
7	1	8	0 of 1	6 of 8
Total	18	59	11 of 18	36 of 59

DISCUSSION

The following tables offer summaries of the responses provided to the 2019/20 Monterey County Civil Grand Jury's seven reports, as assessed by the 2020/21 Monterey County Civil Grand Jury. In some cases, the responses may contain additional details that are not included in the tables.

Shaded boxes indicate that the agency has not complied with one or more requirements of PC §933.05(b).

1. Camp Gabilan #38 Going Out of Business			
Note: While the Camp Gabilan report did generate several findings, no recommendations were made. F1. The California State Conservation Camp Program fire camps provide a significant service to California communities, to the local environment, and to the inmates who participate in that program. F2. Camp Gabilan's ability to support local fire incidents has been reduced without sufficient substitute in Monterey County. F3. Camp Gabilan's ability to provide local ecological conservation projects has been reduced by the reduction in Camp Gabilan's operating capacity.			
Responding Agency	Findings	Response Date; Timely or Tardy?	Content Responsive to PC §933.05(b)?
Ca. Dept. of Corrections & Rehabilitation	F1, F2, F3	None required	Not applicable

2. Enhancing Public Access to Pesticide Use Information

- R1. Within budget limitations and personnel constraints, MCACO should create a simple, accessible forum on MCACO (Monterey County Agricultural Commissioner's Office) website that is general-public focused, and that publicizes relevant pesticide information directly to the Monterey County community. This website forum should be bilingual in content (English/Spanish). This Recommendation should be completed within one year of the publication of this report.
- R2. MCACO (Monterey County Agricultural Commissioner's Office) should expand its use of social media to a more varied range of portals, outlets, media and platforms. These outlets should link to the proposed general public pesticide forum, when active, and also publicize MCACO's rich resources of pesticide information throughout. This expanded outreach should include printed materials and bilingual (English/Spanish) content. This should be completed within one year of the publication of this report.
- R3. MCACO (Monterey County Agricultural Commissioner's Office) should prepare its current social media and all expanded outreach channels to support contingency planning and public notifications for any incidents under MCACO's purview that might develop or create public interest or concern. This should be operational within six months of the publication of this report.

Responding Agency	Recommendation	Response Date; Timely or Tardy?	Content Responsive to PC §933.05(b)?
Monterey County Board of Supervisors	R1	Due: 9/27/20 Received: 10/9/20	No. Will be implemented but lacks timeframe
Monterey County Board of Supervisors	R2	Due: 9/27/20 Received: 10/9/20	No. Further analysis is required but the scope, parameters or timeframe were not provided
Monterey County Board of Supervisors	R3	Due: 9/27/20 Received: 10/9/20	Yes. Has been implemented, with summary

3. Sexual Harassment Prevention #TrainingCompliance

Recommendations – City of Carmel-by-the-Sea

- R1. By September 30, 2020, AB 1825 sexual harassment/abusive conduct training undertaken by and/or at the direction of the city of Carmel-by-the-Sea should follow the directives and protocols laid out in 2 CCR §11024, including but not limited to the following areas: frequency, duration, and documentation of training; content of training; method of delivery of training; qualification of the trainer.
- R2. By September 30, 2020, Carmel-by-the-Sea should always have a staff member whose responsibility includes oversight of AB 1825 sexual harassment/abusive conduct workforce training.

Recommendations – City of Del Rey Oaks

- R3. By December 31, 2020, those Del Rey Oaks supervisory employees who received AB 1825 training in 2018, should have completed the training again, as the law mandates the training must be completed every two calendar years or every 24 months, whichever method is chosen by the employer.
- R4. By September 30, 2020, Del Rey Oaks should have published an updated Personnel Manual that references current law on harassment of all types and on mandated harassment training. Del Rey Oaks should make the revised manual available to all employees.

Recommendations – City of Gonzales

- R5. By September 30, 2020, AB 1825 sexual harassment/abusive conduct training undertaken by and/or at the direction of the city of Gonzales should follow the directives and protocols laid out in 2 CCR §11024, including but not limited to the following areas: frequency, duration, and documentation of training; content of training; method of delivery of training; qualification of the trainer.
- R6. By September 30, 2020, the city should retain a full and complete written record with respect to all AB 1825 trainings that it provides, sponsors, or otherwise uses, regardless of whether delivered via classroom, e-learning, or webinar format.
- R7. By December 31, 2020, the city should prepare a written AB 1825 harassment, discrimination, retaliation prevention policy that is consistent with 2 CCR §11023; the policy should contain a provision covering the employer's training obligation under G.C. §12950.1 and 2 CCR §11024.

Recommendations – City of Greenfield

- R8. Greenfield should revise its sexual harassment prevention policy to reflect current state law, city practices, and to make it a useful guide for employee and supervisors alike. This revision should be completed by December 20, 2020.
- R9. The city's Office of the City Manager should review and revise current management practices for AB 1825 supervisory training and tracking. This

revision should include: (1) development of a city supervisory responsibility system that will create a “demand pull” for AB 1825 supervisor training to complement the current “requirement push” approach that the city has used; (2) integration of all in-person classroom AB 1825 training rosters and training data with the TargetSolutions learning management system to ensure one unified management, tracking, and reporting system for all AB 1825 training; and (3) off-loading the AB 1825 training and tracking responsibilities from the Office of the City Manager to a new or existing HR section, or augmenting the Office of the City Manager’s personnel with part-time or dedicated personnel responsible for tracking and coordinating AB 1825 training and compliance data. This revision should be completed by June 30, 2022.

Recommendations – City of Marina

- R10. Marina should employ a back-up online training provider in the event of a future hiatus in the TargetSolutions training program. This Recommendation should be implemented no later than 6 months after this report is published.
- R11. Department heads should be models to other supervisory employees on the importance of respect in the workplace. Therefore, by September 30, 2020, the one city official who did not train in 2017 and 2019 should complete online AB 1825 training in 2020, 2021, and subsequent odd years.
- R12. The city should update its written, stand-alone, “Policy Against Sexual Harassment,” and its associated Acknowledgement of Receipt form, within 90 days of the publication of this report.
- R13. The city should revise its Personnel Policy Manual so that it reflects the mandated training requirements outlined in 2 CCR §11024. This Recommendation should be completed no later than 12 months after this report is published.

Recommendations – City of Monterey

- R14. Monterey should revise their personnel tracking system to include all city employees regardless of department, each employee’s date of hire as a supervisor or date of promotion to a supervisory position, and date of classification change to a non-supervisory position, in order to accurately determine if AB 1825 training mandates are being met. This Recommendation should be completed no later than 12 months after this report is published.
- R15. The city should review its Harassment/Discrimination/Retaliation/Abusive Conduct/Bullying Policy to include the employee training requirements mandated by 2 CCR §11024. This Recommendation should be completed no later than 12 months after this report is published.
- R16. The city should diligently assess whether the AB 1825 training programs it uses, such as those offered by the federal EEOC, meet the training curriculum mandates outlined in AB 1825 and its amendments. This Recommendation should be completed no later than 12 months after this report is published.

Recommendations – City of Pacific Grove

- R17. By September 30, 2020, Pacific Grove should continue to improve its recordkeeping efforts and fully update its supervisory employee roster worksheet to better track and address potentially late AB 1825 training before it becomes late.
- R18. The city should develop a practice to individually counsel and refer new and promoted supervisors to online training when classroom training is not available within six months of their hire. Those employees also should be encouraged to take the next session of in-person classroom training to reinforce the city's culture of respect. This Recommendation should be completed no later than six months after this report is published.
- R19. By December 31, 2020, the city should amend their Administrative Policies and Procedures Manual, policies no. 100.80 –100.110, Harassment, Discrimination, and Retaliation Prevention Policy and Complaint Procedure, to reference AB 1825 training requirements per 2 CCR §11024 regulations.
- R20. The city should publish an updated Employee Handbook that references current law on harassment of all types, on abusive conduct, and on mandated harassment training. Pacific Grove should distribute the revised handbook to all employees and require them to sign a new acknowledgement of receipt. This Recommendation should be completed within 18 months of the publication of this report.

Recommendations – City of Salinas

- R21. By June 30, 2021, the city of Salinas should automate the six-month new supervisor training signal for AB 1825 training. The city's HR Department should develop an automated HR noticing process that informs all newly hired or appointed supervisors of the six-month AB 1825 supervisor training requirement, and signals HR to (automated or manually) enter that training suspense in the New World ERP system.
- R22. By June 30, 2022, the city should continue to advance HR integration and automation of training processes and functions. This should include (1) automated notices or "ticklers" to supervisors on AB 1825 training deadlines, (2) integrating online training records with the New World ERP system, and (3) routinely creating global city reports of compliance that can provide HR and senior city leadership with a comprehensive snapshot of AB 1825 training compliance by city supervisory personnel.
- R23. By September 30, 2020 the city's senior management should adopt a stronger emphasis on promoting individual city supervisory employee responsibility to complete required training, including AB 1825 supervisor training, in a timely manner.

Recommendations – Sand City

- R24. By December 31, 2020, Sand City should ensure that AB 1825 sexual harassment/abusive conduct prevention training undertaken by and/or at the direction of the city follows the directives and protocols laid out in 2 CCR §11024, including but not limited to the following areas: frequency, duration, and documentation of training; content of training; method of delivery of training; qualification of the trainer.
- R25. Sand City should develop a system to ensure that a full and complete written record of all AB 1825 trainings that it sponsors, regardless of whether delivered via classroom, e-learning, or webinar format, is in place and includes the date of the trainings and the names of attendees. This Recommendation should be completed within 18 months of the publication of this report.
- R26. By December 31, 2020, Sand City should engage with the City Attorney, other staff, or an outside contractor to prepare a written policy regarding AB 1825 sexual harassment/abusive conduct prevention training for its workforce.

Recommendations – City of Seaside

- R27. By September 30, 2020, the city of Seaside's HR Director should assign one HR staff member to oversee AB 1825 training requirements and recordkeeping, so that all employees with training due in 2020 are trained by December 31, 2020.
- R28. Seaside should implement an onboarding system that effectively captures new or promoted employees and requires them to complete AB 1825 training within six months of their hire or promotion. This Recommendation should be completed within 90 days of the publication of this report.
- R29. Seaside should adopt an effective training tracking system to assemble all AB 1825 recordkeeping in one location, preferably saved to electronic files with cloud access. This Recommendation should be completed within 18 months of the publication of this report.

Recommendations – County of Monterey

- R30. The Monterey County Civil Rights Office should review and revise the processes used to manage AB 1825 supervisory employee records to include the following: (1) develop a unified interface for accessing and directly managing all past training; (2) develop a method either with Learning Management Specialists, or centralized with an automated and trackable notice or tickler for AB 1825 training due dates; and (3) increase staffing and authority for personnel responsible for tracking and coordinating AB 1825 training and compliance data. This Recommendation should be completed within 18 months of the publication of this report.

Responding Agency	Recommendation	Response Date; Timely or Tardy?	Content Responsive to PC §933.05(b)?
The City of Carmel-by-the-Sea	R1	Due: 9/27/20 Received: 8/5/20	Yes. Has been implemented, with summary
The City of Carmel-by-the-Sea	R2	Due: 9/27/20 Received: 8/5/20	Yes. Has been implemented, with summary
The City of Del Rey Oaks	R3	Due: 9/27/20 Received: 8/25/20	Yes. Has been implemented, with summary
The City of Del Rey Oaks	R4	Due: 9/27/20 Received: 8/25/20	Yes. Will be implemented with general date
The City of Gonzales	R5	Due: 9/27/20 Received: 7/13/20	No. Has been implemented, but lacks summary
The City of Gonzales	R6	Due: 9/27/20 Received: 7/20/20	No. Has been implemented, but lacks summary
The City of Gonzales	R7	Due: 9/27/20 Received: 7/20/20	Yes. Has been implemented, with summary
The City of Greenfield	R8	Due: 9/27/20 Received: 2/1/21	No. Will be implemented but missed timeline

The City of Greenfield	R9	Due: 9/27/20 Received: 2/1/21	Yes. Will be implemented, with date
The City of Marina	R10	Due: 9/27/20 Received: 7/24/20	Yes. Will be implemented, with date
The City of Marina	R11	Due: 9/27/20 Received: 7/24/20	Yes. Has been implemented
The City of Marina	R12	Due: 9/27/20 Received: 7/24/20	Yes. Will be implemented, with date
The City of Marina	R13	Due: 9/27/20 Received: 7/13/20	Yes. Will be implemented, with date
The City of Monterey	R14	Due: 9/27/20 Received: 7/22/20	No. Lacks response to specific Recommendation
The City of Monterey	R15	Due: 9/27/20 Received: 7/22/20	No. Lacks response to specific Recommendation
The City of Monterey	R16	Due: 9/27/20 Received: 7/22/20	No. Lacks response to specific Recommendation
The City of Pacific Grove	R17	Due: 9/27/20 Received: 9/14/20	Yes. Will be implemented with specific date

The City of Pacific Grove	R18	Due: 9/27/20 Received: 9/14/20	Yes. Has been implemented
The City of Pacific Grove	R19	Due: 9/27/20 Received: 9/14/20	Yes. Will be implemented with specific date
The City of Pacific Grove	R20	Due: 9/27/20 Received: 9/14/20	Yes. Will be implemented with specific date
The City of Salinas	R21	Due: 9/27/20 Received: 9/18/20	Yes. Will be implemented with specific date
The City of Salinas	R22	Due: 9/27/20 Received: 9/18/20	Yes. Will be implemented with specific date
The City of Salinas	R23	Due: 9/27/20 Received: 9/18/20	Yes. Will be implemented with specific date
Sand City	R24	Due: 9/27/20 Received: 9/28/20	Yes. Will be implemented with specific date
Sand City	R25	Due: 9/27/20 Received: 9/28/20	Yes. Will be implemented with specific date
Sand City	R26	Due: 9/27/20 Received: 9/28/20	Yes. Will be implemented with specific date
The City of Seaside	R27	Due: 9/27/20 Received: 10/15/20	No. Has been implemented, but lacks summary

The City of Seaside	R28	Due: 9/27/20 Received: 10/15/20:	No. Has been implemented, but lacks summary
The City of Seaside	R29	Due: 9/27/20 Received: 10/15/20	No. Has been implemented, but lacks summary
The Monterey County Board of Supervisors	R30	Due: 9/27/20 Received: 10/8/20	Yes. #1-Will be implemented with specific date #2-Will not be implemented and includes reasoned response #3-Will not be implemented and includes reasoned response

4. Overdue Responses to the 2018/19 Civil Grand Jury Report

- R1. The City of Soledad should develop and implement new procedures (if none currently exist) and review existing procedures for responding to the Civil Grand Jury's findings and recommendations to ensure that the city's response is delivered to the presiding judge on or before the due date. These procedures should be developed and implemented within 90 days of the publication of this report.
- R2. The City of Seaside should develop and implement new procedures (if none currently exist) and review existing procedures for responding to the Civil Grand Jury's findings and recommendations to ensure that the city's response is delivered to the presiding judge on or before the due date. These procedures should be developed and implemented within 90 days of the publication of this report.
- R3. The City of Del Rey Oaks should develop and implement new procedures (if none currently exist) and review existing procedures for responding to the Civil Grand Jury's findings and recommendations to ensure that the city's response is

delivered to the presiding judge on or before the due date. These procedures should be developed and implemented within 90 days of the publication of this report.			
Responding Agency	Recommendation	Response Date; Timely or Tardy?	Content Responsive to PC §933.05(b)?
The City of Soledad	R1	Due: 9/27/20 Received: 8/11/20	Yes. Will be implemented with specific date
The City of Seaside	R2	Due: 9/27/20 Received: 7/16/20	Yes. Has been implemented, with summary
The City of Del Rey Oaks	R3	Due: 9/27/20 Received: 8/25/20	Yes. Has been implemented, with summary

5. Monument to A Failed Process: South County Use Permit PLN 180317
R1: The RMA Services Manager should review and improve the RMA Current Planning division's work practices for RMA planners and Planning managers. Critical thinking, attention to detail, and higher professional standards must be imbued into the RMA Planning process. When County Code directs higher levels of decision making, RMA Planning should require assigning higher level, more experienced planners and higher-level supervisors to prepare and review those applications. This review should be completed no later than 90 days after the publication of this report. R2: The Director of RMA should investigate whether the erroneous description of PLN 180317 alternative site's conditions, as provided to RMA Planning in support of that application, constituted "false material information," as the term is used in Monterey County Code 21.70.070 (Revocation). Director RMA should then determine if action in accordance with that code is appropriate or necessary for PLN 180317. This investigation and determination should be completed no later than 90 days after the publication of this report.

- R3: The Board of Supervisors should revise the Resolution that establishes and provides guidance to the County Land Use Advisory Committees (LUAC), the "LUAC Guidelines," to update Exhibit B. Stop using the "Bradley-Parkfield" LUAC name and start using the "South County" LUAC name. This will accurately reflect the change that was made to that LUAC in August 2008 and implemented in January 2009. This revision should be completed no later than six months after the publication of this report.
- R4: The Board of Supervisors should revise Monterey County Code, to include a set of Design Guidelines that empower planners and decision makers to make land use decisions that comply with federal and state regulations, meet applicant needs, yet can still preserve Monterey County's character in rural and suburban environments. Design Guidelines should be both developmental standards and criteria for character and aesthetics. The Design Guidelines should be applicable to both wireless communications facilities and a wide range of other infrastructure developments. The Design Guidelines should augment existing Monterey County code, including Monterey County Code 21.64.310 (Wireless Communication Facilities). This revision should be completed no later than 24 months after the publication of this report.
- R5: The RMA Services Manager should develop explicit guidance to ensure public hearing noticing for significant projects in Monterey County's rural environments include other means in addition to those listed in Monterey County Code 21.70.040.A (Public Notice Required). This guidance should identify the appropriate social media and local micro-resources that are active in the rural community where a significant project is planned. This guidance should be completed and operational no later than 90 days after the publication of this report.
- R6: The Board of Supervisors should revise Monterey County Code 21.70.040.A (Public Notice Required) to include the following provision from California Government Code Section 65091(A)(5)(c): "In addition to the notice required by this section, a local agency may give notice of the hearing in any other manner it deems necessary or desirable." This revision should be completed no later than 24 months after the publication of this report.
- R7: The RMA Services Manager should develop explicit guidance to encourage and support applicant-sponsored town halls or orientations for rural communities where significant projects are planned. These events should be in advance of, or early into the application process. This guidance should be completed and operational no later than 60 days after the publication of this report.
- R8: The RMA Services Manager should revise the RMA land use request application supplemental add-on for wireless communications facilities. The revision should account for the different types of facilities, the current rules for accepting and correcting incomplete applications, and add provisions to identify and track the appropriate shot clock in the application --as an automated ongoing function. This

guidance should be completed and operational no later than 12 months after the publication of this report.

R9: The Board of Supervisors should revise Monterey County Code 21.64.310 (Wireless Communication Facilities) to include a provision that permits County staff to secure outside experts, at applicant expense, to support technical considerations or issues attendant to processing of wireless communications facilities when required. This revision should be completed no later than 24 months after the publication of this report.

R10: The Board of Supervisors should revise Monterey County Code 21.64.310 (Wireless Communication Facilities) to include a provision that requires a post-operational RF-EME survey to be conducted by a certified RF engineer selected by the County but at applicant expense, when any wireless communications facility first becomes operational or has its Use Permit renewed. This revision should be completed no later than 24 months after the publication of this report.

R11: The RMA Services Manager should develop a planners' training and operations standard operating procedure (SOP) for RMA Current Planning division, supplemental to any County or RMA employee handbook. This SOP should articulate (1) required planner and staff tasks and coordination, (2) required standards of performance, (3) division routines and site visit procedures, (4) planner-specific professional knowledge goals, and (5) note funded and optional planner-specific training and professional development opportunities. This guidance should be completed and operational no later than 12 months after the publication of this report.

Responding Agency	Recommendation	Response Date; Timely or Tardy?	Content Responsive to PC §933.05(b)?
The Monterey County Board of Supervisors	R1	Due: 8/26/20 Received: 10/9/20	No Will be implemented, includes reason but lacks timeframe
The Monterey County Board of Supervisors	R2	Due: 8/26/20 Received: 10/9/20	Yes Has been implemented with summary
The Monterey County Board of Supervisors	R3	Due: 8/26/20 Received: 10/9/20	No Will be implemented, includes reason but lacks timeframe

The Monterey County Board of Supervisors	R4	Due: 8/26/20 Received: 10/9/20	No. Failed to respond to this Recommendation
The Monterey County Board of Supervisors	R5	Due: 8/26/20 Received: 10/9/20	No. Failed to respond to this Recommendation
The Monterey County Board of Supervisors	R6	Due: 8/26/20 Received: 10/9/20	Yes Has been implemented with summary
The Monterey County Board of Supervisors	R7	Due: 8/26/20 Received: 10/9/20	Yes. Will be implemented with specific date
The Monterey County Board of Supervisors	R8	Due: 8/26/20 Received: 10/9/20	No. Failed to respond to this Recommendation
The Monterey County Board of Supervisors	R9	Due: 8/26/20 Received: 10/9/20	No. Failed to respond to this Recommendation
The Monterey County Board of Supervisors	R10	Due: 8/26/20 Received: 10/9/20	Yes. Will not be implemented and includes reasoned response
The Monterey County Board of Supervisors	R11	Due: 8/26/20 Received: 10/9/20	No. Failed to respond to this Recommendation

6. Monterey Peninsula Airport District – Response received 7/15/20

- R1. Within the scope of the contract recently executed for advice on funding sources for the “Local Share” of the project, a complete re-forecast of enplanements (and resulting PFC and FAA grant money) should be done, so that the total remaining unfunded local share amount is as accurate as possible.
- R2. Communicate immediately with the residents of the District about the potential implications of the shortfall in grant funding available for the Terminal Building Project.
- R3. As soon as they become available, share the results of the contracted inquiry into available funding sources for the local share amounts with the taxpayers.
- R4. Revise the table (or alternatively add a separate table) in the Management Discussion section of future annual financial statements to include strictly revenue- passenger enplanements since that (rather than total enplanements) is the metric used by the FAA in determining available AIP funding and PFCs.

Responding Agency	Recommendation	Response Date; Timely or Tardy?	Content Responsive to PC §933.05(b)?
The Monterey Regional Airport	R1	Due: 9/2/20 Received: 7/15/20	No. Will implement, but lacks timeframe
The Monterey Regional Airport	R2	Due: 9/2/20 Received: 7/15/20	No. Will implement, but lacks timeframe
The Monterey Regional Airport	R3	Due: 9/2/20 Received: 7/15/20	No. Will implement, but lacks timeframe
The Monterey Regional Airport	R4	Due: 9/2/20 Received: 7/15/20	Yes. Will not be implemented, includes reasoned response

7. Human Resources Building and Maintaining a Productive Workforce, the Lifeblood of an Organization

- R1. The “Compensation Philosophy” should be updated to reflect appropriate and comparable counties and cities for each job classification. This update should be completed in six months.
- R2. County Human Resources should engage an experienced compensation consultant to assist in the creation of a transparent and global compensation and classification program. This should be completed in three months.
- R3. Budgeted positions should be posted in a timely manner giving priority to posting positions that affect the health and safety of County residents. This posting should occur within 60 days.
- R4. Open positions should be proactively advertised within 30 days of an employment vacancy or upon notice of retirement, transfer, or resignation to avoid reduction of essential public services, departmental job burnout, and overtime or temporary hiring expense.
- R5. Each budget cycle should include specific opportunities for department heads to identify and justify specific referral and hiring bonuses for their hard-to-fill positions. This process should begin within six months of the date of this report.
- R6. In order to ensure an adequate staffing level for essential County public health workers, the County should begin a process to identify supplemental funding sources to mitigate un-forecast budget shortfalls in federal and state grants, aid, or other direct program funding. This analysis should be completed in 30 days.
- R7. The Learning and Organizational Development Division of the Human Resource Department should be restored to include classroom training. This should be completed within 18 months.
- R8. The County should conduct a review to determine the level of Human Resources staffing, both in the departments and in the Human Resources Department, that can provide support levels sufficient to achieve the 10% vacancy rate goal as assumed with the County budget. This review is to be completed within 15 months.

Responding Agency	Recommendation	Response Date; Timely or Tardy?	Content Responsive to PC §933.05(b)?
The Monterey County Board of Supervisors	R1	Due: 9/9/20 Received: 10/9/20	Yes. Will be implemented with a specific timeframe

The Monterey County Board of Supervisors	R2	Due: 9/9/20 Received: 10/9/20	Yes. Will not implement, with reasoned response
The Monterey County Board of Supervisors	R3	Due: 9/9/20 Received: 10/9/20	Yes. Will not implement, with reasoned response.
The Monterey County Board of Supervisors	R4	Due: 9/9/20 Received: 10/9/20	Yes. Will not implement, with reasoned response.
The Monterey County Board of Supervisors	R5	Due: 9/9/20 Received: 10/9/20	Yes. Will not implement, with reasoned response
The Monterey County Board of Supervisors	R6	Due: 9/9/20 Received: 10/9/20	Yes. Will not be implemented, with explanation
The Monterey County Board of Supervisors	R7	Due: 9/9/20 Received: 10/9/20	No. Further analysis is required but the scope, parameters or timeframe were not provided
The Monterey County Board of Supervisors	R8	Due: 9/9/20 Received: 10/9/20	No. Further analysis is required but the scope, parameters or timeframe were not provided

CONCLUSION

The 2020/21 Monterey County Civil Grand Jury takes seriously its obligation to investigate issues that affect our county and municipal government operations. The Civil Grand Jury also takes seriously the obligation of responding agencies to fulfill their obligation under Penal Code §933.05. The expectation is that each agency will respond in a timely manner, addressing each Finding and Recommendation, as required by law.

The intent of this report is to monitor the rate of compliance with the requirements of Penal Code §933.05. We found that multiple agencies fulfilled that obligation, as seen in the table under the heading “Response to Reports” on page 3. Conversely, many did not. Specifically, of the 18 agencies contacted, 7 did not respond in a timely manner. Of the responses, 23 of 59 possible responses were not consistent with the requirements of Penal Code §933.05(b).¹ It is interesting to note that of the 23 responses that were not consistent with those requirements, 4 of them were from reports that required responses from the Monterey County Board of Supervisors. Those reports were “Overdue Responses to the 2018/19 Civil Grand Jury Report,” “Human Resources: Building and Maintaining a Productive Workforce,” “Enhancing Public Access to Pesticide Use Information,” and, “Monument to a Failed Process: South County Use Permit PLN180317.

Other agencies not responding in accordance with Penal Code §933.05 were the City of Gonzales (Sexual Harassment Prevention Compliance Training), the City of Greenfield (Sexual Harassment Prevention Compliance Training), the City of Monterey (Sexual Harassment Prevention Compliance Training), the City of Seaside (Sexual Harassment Prevention Compliance Training), and the Monterey County Airport District (The Airport Master Plan – A Well-Conceived Notion but Indications of Turbulence Ahead).

¹ In several instances, responses were sent to the wrong jurisdiction, further delaying the required “timely” requirement of §933.05(b).

Missing in numerous cases were statements of implementation and work completed or to be completed.

Failure to respond as required undermines the civil grand jury system and its ability to support government agencies by making recommendations which could result in improved governmental functions. Additionally, it does not allow the public and future civil grand juries to know if the recommended improvements are being addressed.

It is hoped that in publishing this data, future respondents to the Monterey County Civil Grand Jury will be encouraged to comply with the California Penal Code. The residents of Monterey County deserve nothing less.

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.
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Revisiting the 2017 Civil Grand Jury Report: “Preservation of Historical Documents of Monterey County”



SUMMARY

Monterey County is steeped in history with a unique past that includes such notables as California’s first constitution, first newspaper, and first public library; significant discoveries from early Spanish explorers Sebastian Vizcaino and Captain Gaspar de Portola; the final resting place of Father Junipero Serra and the birthplace of author John Steinbeck; and the list goes on and on. The journey Monterey County has taken to where it is today has been chronicled with documents, maps, and artwork, some dating back hundreds of years. The preservation of these historical documents and artifacts that provide links to the County’s roots and its people while preserving its unique character and personality is critical.

The 2016/17 Civil Grand Jury produced a report titled “[Preservation of Historical](#)

Documents of Monterey County”¹ (2017 Report) in order to determine if these historical documents were being preserved and cared for properly. The report contained Findings and Recommendations to improve document preservation.

The City of Salinas, the City of Monterey, the Monterey County Assessor-County Clerk-Recorder, and the Monterey County Board of Supervisors were required to respond to the 2017 Report’s Findings and Recommendations.

The 2020/2021 Monterey Civil Grand Jury (Civil Grand Jury) has chosen to follow-up on the 2017 Report. The goal of the 2020/2021 report is to establish whether the entities that were required to respond to the 2017 Report’s Findings and Recommendations followed through in a manner consistent with their initial responses, and to document any gaps which may have subsequently occurred, capturing updated time frames for implementation as appropriate.

The Civil Grand Jury contacted each noted entity and requested a status update as to the disposition of the 2017 Findings and Recommendations. The City of Salinas, the City of Monterey, and the Monterey County Assessor-County Clerk-Recorder each provided status updates. The Monterey County Board of Supervisors did not respond.

BACKGROUND

The Civil Grand Jury’s function is to investigate and provide reports on the operations of local governments in Monterey County including the County, Cities, and the numerous Special Districts that serve the residents of the County. The investigations and subsequent analysis of materials obtained by the Civil Grand Jury may result in the issuance of a report. If issued, the report will ultimately contain Findings and Recommendations regarding the chosen subject. Once the report is published, the entities that were the subjects of the investigation must respond to that report’s Findings and Recommendations.

California Penal Code 933.05 requires that the entity’s responses do the following: either agree, disagree, or partially agree with a Finding, and if the entity disagrees

¹ <https://www.co.monterey.ca.us/home/showpublisheddocument?id=27567>

wholly or partially with the finding the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor. The Code also requires that the respondent indicate whether a Recommendation has been implemented, will be implemented (with a specified timeframe), or further study is required (with a specified timeframe).

Once the entity's responses are received and accepted by the Civil Grand Jury, that is usually the end of the story. It is the hope of the Civil Grand Jury that any agreed-on Findings and Recommendations are ultimately implemented as per the responses, but there is no requirement for the entities to issue any subsequent reports documenting their progress.

One path the Civil Grand Jury can follow to address whether an entity that agreed to implement a Finding or Recommendation actually did so is to launch an "implementation review report." This type of report revisits a past Civil Grand Jury report, along with the required entity's responses, and asks those entities for a status update on their responses. The 2020/2021 Civil Grand Jury chose to revisit the 2017 Report to obtain status updates from the City of Salinas, the City of Monterey, the Monterey County Assessor-County Clerk-Recorder, and the Monterey County Board of Supervisors.

METHODOLOGY

The Civil Grand Jury contacted the 2017 Report responding entities and asked them to provide a status update on specific Findings and the Recommendations contained in the 2017 Report. The City of Salinas, the City of Monterey, and the Monterey County Assessor-County Clerk-Recorder each provided status updates. The Monterey County Board of Supervisors did not respond.

The Civil Grand Jury also conducted interviews with City of Monterey staff and performed internet searches of documents, agendas, and meeting minutes for the various entities.

DISCUSSION

The 2017 Report contained nine Findings and three Recommendations. This Jury asked the entities to provide a status update on two of the nine Findings, along with the three Recommendations.

2017 Report - Relevant Findings:

F3: The documents stored and maintained in these repositories vary. The most modern and up to date methods are those maintained in a temperature and humidity-controlled vault at the Monterey County Historical Society.

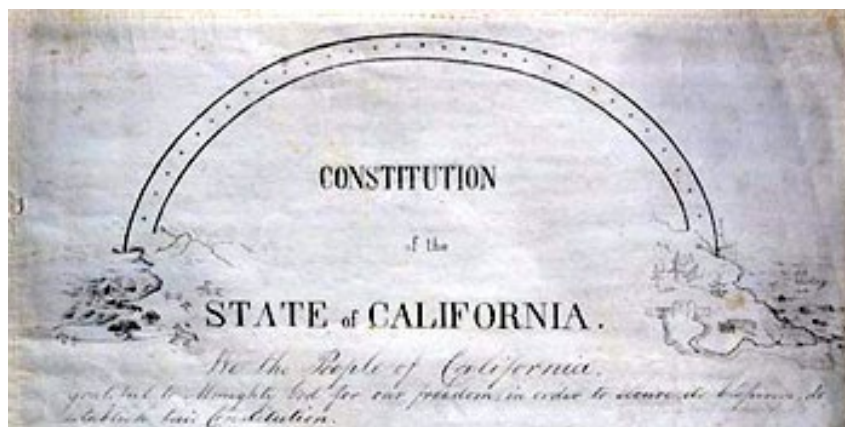
F4: The volumes of records in the vestibule of the office of the Assessor-County Clerk-Recorder, although preserved, may be damaged by public use. These documents are neither temperature nor humidity controlled. Additionally, access to the title transfer records is uncontrolled.

2017 Report - Relevant Recommendations:

R1: All Cities and agencies within Monterey County should catalog and index all historical documentation they maintain.

R2: This index once created should be shared between each city and all county historical agencies.

R3: Monterey County offices should have all their historical documents stored in humidity and temperature-controlled environments. To address the lack of funding to protect these documents the County Clerk should add a small assessment on documents requested to generate revenue.



California Constitution. (Photo: www.sos.ca.gov)

The following is a synopsis of each entity's 2017 responses and their new status update responses:

City of Salinas:

The Civil Grand Jury asked the City of Salinas to provide status updates specifically to Finding 3 and Recommendations 1 and 2 from the 2017 Report.

Salinas' 2017 response to F3:

The City of Salinas agrees with this finding. As stated in the final report, the Salinas Public Library is currently studying more effective methods of storing and securing historical documents.

The Civil Grand Jury asked Salinas the following two questions regarding their 2017 response to F3:

1. Has the City of Salinas completed their study of more effective methods of storing and securing historical documents?
2. Have there been any other changes in the City, since the original report was published, that would affect the City's response?

Salinas provided a current update response, stating that they have completed a study on more effective methods of storing historical documents titled "Preservation Needs Assessment of the Local History Collection in the Salinas Public Library," prepared by

Barclay Ogden of the California Preservation Program (CPP)², which was attached with their response to the Civil Grand Jury.

The assessment was occasioned by the Library's participation in the CPP's Collection Preservation Assessment Project (CPAP)³. The Library wanted to address the concern as to whether they were taking appropriate actions to preserve their collections, and to ensure that these materials continue to be available for use by current and future library patrons.

The California Preservation Program is a task force created in 1992 by the California State Library to design a preservation program for California to meet preservation, education, training, and assistance needs. Part of the CPP is the Collection Preservation Assessment Project designed to help small and mid-sized libraries and archives plan improvements in care for their permanent and historical collections. The CPP website states that:

A preservation assessment of the collections, including scope and scale of the preservation needs as well as recommendations, is an essential first step to create a plan for enhanced collection care. Further, preservation assessments often are a required step preliminary to preservation grant funding.

Consequently, CPAP was created to assist California institutes plan programs and projects to meet preservation needs of their collections.

Notably, past California Preservation Assessment Project awards have been received by Monterey History and Art Association, Monterey County Free Libraries, Salinas Public Library, and California State University Monterey Bay.

The City of Salinas also indicated that while they continue to agree with the original report's F3, they are not sure if the recommendation on temperature and humidity control has been implemented at this time. They cite staff turnover in the City's preservation effort as the main reason for this.

Salinas' 2017 response to R1:

² <https://calpreservation.org/>

³ <https://calpreservation.org/projects/cpap/>

The City of Salinas has not yet implemented this recommendation but is currently assessing all historical documents within their collection. This task will be complete by the end of FY 17-18. By the end of FY 18-19, the process of cataloging and indexing documents is expected to be completed.

The Civil Grand Jury asked Salinas the following two questions regarding their 2017 response to R1:

1. The City indicated that all historical documents would be assessed, catalogued, and indexed. Has this been accomplished?
2. Have there been other changes in the city, since the original report was published, that would affect the City's response?

Salinas provided a current update response stating that they have not yet assessed, catalogued, and indexed all historical documents, but they are in the process of completing an assessment of their historical records, including the records that are stored at the John Steinbeck Library and the National Steinbeck Center. They anticipate the assessment will be complete by August 2021, with the subsequent process to catalog and index all historical documents complete by August 2022. They again cited staff turnover as the reason for not meeting the original recommendation of achieving compliance by 2019.

Salinas' 2017 response to R2:

The City of Salinas has not yet implemented this recommendation but is currently assessing all historical documents within their collection. This task will be complete by the end of FY 17-18. By the end of FY 18-19, the process of cataloging and indexing documents is expected to be completed and the index will be shared with all other agencies.

The Civil Grand Jury asked Salinas the following three questions regarding the City's 2017 response to R2:

1. Has this been accomplished?

2. Do the responses by the County Board of Supervisors, the County Recorder, and the City of Monterey affect the City's response? (copies of above entity responses were provided to Salinas for consideration)
3. Have there been any advances in technology that you are aware of that would affect the City's response?

Salinas provided a current update response stating that the historical document index has not been completed, but when this is complete they will be able to cooperate with other agencies that have a compatible share index. They also agreed with the City of Monterey's assessment that there may be technical challenges with harmonizing agencies' different online index services. Finally, they indicated that they are unaware of any advances in technology that would facilitate sharing, but they are working with the Cities of Pacific Grove, Monterey, Carmel, and San Juan Bautista and the Monterey County Free Libraries on a study to determine the feasibility of sharing.



City of Monterey Public Library

City of Monterey:

Founded in 1849, the Monterey Public Library is California's first public library. The original Library was housed in El Cuartel, a Mexican government building located on Munras Avenue just south of what is now Simoneau Plaza. The current facility, located at 625 Pacific Street, was funded by a bond measure in 1950. Designed by noted

California architect William Wurster, the building opened in 1952.

It is important to note that the City of Monterey is planning an extensive remodel/addition to the public library, which currently houses the “California History Room.” The anticipated construction activity will require a temporary relocation of the California History Room, after which it will be moved back into the remodeled library.

Currently, in addition to historical documents and artifacts located in the Library’s California History Room, there are historical documents and artifacts stored in an old computer server room located in the basement of the Library, and additional historical materials are stored off-site. This distributed storage limits the ability for the public to view these documents and artifacts in a centralized location.

The Civil Grand Jury asked the City of Monterey to provide status updates specifically to Finding 3 and Recommendations 1 and 2 from the 2017 Report.

City of Monterey’s 2017 response to F3:

The City Council partially agrees with this finding. While the Monterey County Historical Society’s vault is modern and up-to-date, the City of Monterey maintains a secure, UV protected, climate and humidity-controlled California History Room at the Monterey Public Library, the facility is maintained to high document preservation standards, while allowing public access through City’s museums, Cultural Arts and Archives Manager, trained librarians, and through document finding aids within the Library’s online catalog, accessible at www.monterey.org/library.

The Civil Grand Jury asked Monterey City the following two update questions regarding their 2017 response to F3:

1. Does the possible remodel/rebuild of the Monterey Library affect the City’s response?
2. Have there been any other changes in the city, since the original report was published, that would affect the City’s response?

The City of Monterey’s response to both questions was that there is no change to their 2017 responses.

City of Monterey's 2017 response to R1:

The recommendation has been implemented for the City of Monterey. The Monterey Public Library catalogs and indexes historical documentation, and documents finding aids, through the Library's online catalog, accessible at www.monterey.org/library. The Museum Division catalogs many historical items through the Library's online catalog, while maintaining others in the Division's online art and artifact database, PastPerfect⁴, which is not accessible to the public.

The Civil Grand Jury asked the following two questions regarding their 2017 R1 response:

1. Does the possible remodel/rebuild of the Monterey Library affect the City's response with respect to the Historic Preservation Room?
2. Have there been other changes in the city, since the original report was published, that would affect the City's response?

The City of Monterey's response to both questions was that there is no change to their 2017 responses.

City of Monterey's 2017 response to R2:

This recommendation will not be implemented because it is not reasonable. It would be very challenging to have each city and all county historical agencies agree upon one shared index for use, due to each agency having distinct missions, patron needs, fiscal realities, purchasing and technological requirements. As an example, currently there are at least four different online indexes used by these types of organizations, and even those who use the same index service (e.g., Koha, PastPerfect) have different versions which are not able to work seamlessly with each other. Management and funding of a shared index is also a considerable project. In the 1990s and early 2000s public libraries across Monterey, San Benito and Santa Cruz counties received State Library

⁴ <https://museumsoftware.com/>

funding to support a shared library index which drew from their different online catalog systems. It became cost-prohibitive to support and maintain after State Library funding was reduced, with few users to justify the increasing costs. It was discontinued in the mid-2000s.

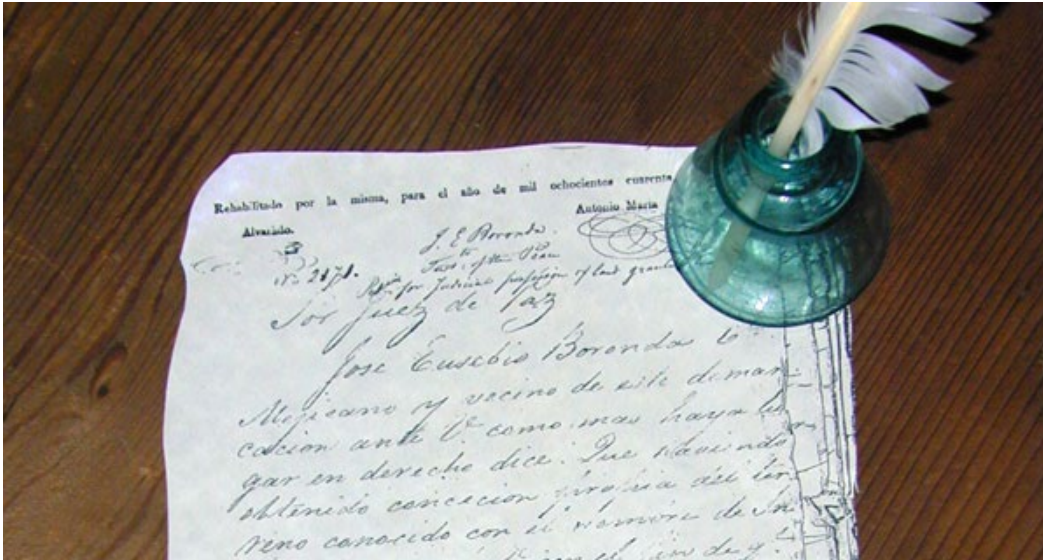
The Civil Grand Jury asked three questions regarding the City's 2017 response to R2:

1. Has this been accomplished?
2. Do the responses by the County Board of Supervisors, the County Recorder, and the City of Salinas affect the City's response?
3. Has there been any advances in technology that you are aware of that would affect the City's response?

Regarding the three questions relating to R2, the City of Monterey said there would be no change to their 2017 responses. They additionally noted that while the Monterey Public Library's catalog and index of historical documents is accessible through the Library's online catalog, the Museum's index utilizing PastPerfect is not accessible to the public.

The Civil Grand Jury observed that the City of Monterey commissioned [Group 4 Architecture](#)⁵ to create the "Monterey Public Library Feasibility Study" which was published in the Spring of 2020. The study was presented to the Monterey City Council in October 2020 and sets the direction for the library expansion and renovation in the future, according to the Monterey Public Library website [Facility Feasibility Study](#). However, that study did not include a Preservation Needs Assessment of the type recommended by the CPP. The Civil Grand Jury found no evidence that the City of Monterey has had a "Preservation Needs Assessment" completed by the CPP, or other qualified source, in a manner similar to the one commissioned by the City of Salinas. As noted above in the Salinas section of this report, the CPP states that a needs assessment is an essential first step to create a plan for enhanced collection care and is often a required step for preservation grant funding.

⁵ <http://www.g4arch.com/>



Monterey County Assessor-County Clerk-Recorder:

The Civil Grand Jury asked the Monterey County Assessor-County Clerk-Recorder to provide updates specifically to Finding 4 and Recommendation 3 from the 2017 Report based on the following questions:

1. Has there been any follow-up activity?
2. If so, please elaborate?
3. If not, please explain the delay and provide a revised timeline.

Monterey County Assessor-Clerk-Recorder's 2017 response to F4:

The Assessor-County Clerk/Recorder agrees partially with this finding. The volumes referenced are located in the County Clerk/Recorder's public access area and represent only a small number of books maintained by the Office. These books have already been digitized and although customers are currently free to view these books on their own, the viewing area is subject to constant supervision and monitoring by way of a close circuit video camera surveillance system. In the very near future these volumes, as suggested and agreed upon, will be stored off-site and will be available only in supervised and arranged conditions.

The Monterey County Assessor-Clerk-Recorder responded with an update to Finding 4 stating that, with the exception of thirty-one books, all of the books referred to in the

Finding have been preserved by a company called Kofile⁶ and they are now housed in the “Monterey County Records Retention” facility located in Salinas. Additionally, they indicated that the remaining thirty-one books will be sent to Kofile for preservation during fiscal year 2021-2022 and upon return the preserved books will be housed at the Monterey County Records Retention facility. They also stated that the retention facility does not need special temperature and humidity control because the temperatures maintained in the facility and the average humidity in Salinas are within acceptable parameters.

Monterey County Assessor-Clerk-Recorder’s 2017 response to R3:

The Monterey County Clerk/Recorder's Office agrees that all historical documents should be stored in humidity and temperature-controlled environments. This would require working with the State and the County to find the best viable way of providing funding for such a facility or adding humidity and temperature control components to our existing Records Retention facility. Such a financial burden cannot be imposed solely upon persons who are currently requesting documents from the Monterey County Clerk/Recorder’s Office.

The Monterey County Assessor-Clerk-Recorder responded with an update to R3 by reiterating that no special temperature and humidity controls are necessary at its retention facility. They also stated that each Monterey County department is responsible for the maintenance and preservation of its own historical records and that each department decides where to house those documents. The Monterey County Assessor-Clerk-Recorder has housed their documents in the Monterey County Records Retention facility since 2017 and maintain that they have had a very positive experience with the facility in all ways.

Finally, the Monterey County Assessor-Clerk-Recorder stated that no additional funding is currently necessary in order to preserve documents properly.

⁶ <https://kofile.com/>



Founding painting of Father Serra's first Mass, by Leon Trousset, 1877, oil on canvas, 53"x72" ⁴

Monterey County Board of Supervisors:

The Civil Grand Jury asked the Monterey County Board of Supervisors to provide updates to the 2017 Report in a manner similar to the other entities discussed in this report.

The Monterey County Board of Supervisors did not respond.

FINDINGS

City of Salinas:

- F1. The City of Salinas is to be commended for taking the step of having a "Preservation Needs Assessment of the Local History Collection in the Salinas Public Library" report completed by Barclay Ogden of the California Preservation Program which contains Findings and Recommendations specific to the preservation needs of the City.
- F2. The City of Salinas is to also be commended for their continuing efforts to complete the assessment of their historical records with a completion goal of August 2022.

- F3. The City of Salinas is to also be commended for working with the cities of Pacific Grove, Monterey, Carmel, San Juan Bautista along with Monterey County Free Libraries on a study to determine if a shared integrated library system is feasible.

City of Monterey:

- F4. The City of Monterey commissioned Group 4 Architecture to create the “Monterey Public Library Feasibility Study” which sets the direction for library expansion and renovation in the future. That study did not include a Preservation Needs Assessment, of the type recommended by the CPP, to address the temporary relocation of the California History Room documents and artifacts during the construction of the Library remodel/addition which could lead to those historical items being stored in a way that could be damaging.
- F5. The City of Monterey commissioned Group 4 Architecture to create the “Monterey Public Library Feasibility Study” which sets the direction for library expansion and renovation in the future. That study did not include a Preservation Needs Assessment, of the type recommended by the CPP, to address the requirements for the California History Room’s permanent location in the new Library which could lead to a design that is sub-optimal.
- F6. California Preservation Program states that a needs assessment is often a required step for preservation grant funding. A Preservation Needs Assessment for the City of Monterey Library’s history collections, like the one commissioned by the Salinas Public Library, could help the City of Monterey obtain grant funding for the Library renovation.

Monterey County Assessor-Clerk-Recorder:

- F7. The Monterey County Assessor-Clerk-Recorder is to be commended for having all but thirty-one books preserved by Kofile along with their continuing efforts to have the remaining thirty-one books sent to Kofile for preservation by FY 2021-2022.

RECOMMENDATIONS

City of Monterey:

- R1. The Civil Grand Jury recommends that City of Monterey City Council have a Preservation Needs Assessment of the Monterey Public Library's History Collections completed from a qualified source, to include, but not limited to:
- i. The specific requirements for the new California History Room in the renovated Library in order to ensure the documents are protected and preserved
 - ii. The specific requirements for the protection and preservation of the Historical Documents and Artifacts for their relocation during the Library renovation
 - iii. Space requirements to bring as many of the City's historical collections together as feasible in order to consolidate and preserve the collections. The Assessment may also aid in the City's ability to obtain grant funding for the Library renovation.

This Assessment should be completed 30 days prior to publishing the RFP for the professional design services for the Library Renovation project so it can be included in the Request For Proposal. (F4, F5, F6)

REQUIRED RESPONSES

Pursuant to Penal Code §933 and 933.05, the Civil Grand Jury requests responses as follows:

From the following elected officials within 60 days:

- The City Council of the City of Monterey
Findings: F4 – F6
Recommendations: R1

INVITED RESPONSES

- The City Council of the City of Salinas
Findings: F1 - F3
- Monterey County Assessor-County Clerk-Recorder
Findings: F7

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

SALINAS POLICE DEPARTMENT

From Traditional Policing to Community Policing



SUMMARY

After experiencing an exceptionally violent five-month period in 2014, the Salinas Police Department (SPD) knew it needed a change. Chief Kelly McMillan requested assistance from the U.S. Department of Justice's Office of Community Oriented Policing Services (COPS) to give the SPD guidance in developing and implementing a community policing philosophy. Eighteen months after the report was issued in 2016, the U.S. Department of Justice discontinued the COPS program, but the SPD persevered in following the roadmap that the report provided. As of January 2021, the SPD has addressed 97% of the findings and recommendations with support from the City of Salinas.

GLOSSARY AND ACRONYMS

Civil Grand Jury – Monterey County Civil Grand Jury

COPS – Community Oriented Policing Services

COPS Office – the Office of Community Oriented Policing Services of the U.S.

Department of Justice seeks to advance the practice of community policing by law enforcement agencies through information and grant resources¹

CRI-TAC – Collaborative Reformation Initiative Technical Assistance Center provides technical assistance to law enforcement agencies on a wide variety of topics that is tailored to the individual agency²

CRI-SPD report – Collaborative Reform Initiative, An Assessment of the Salinas Police Department – the report issued by the COPS Office in 2016

DOJ – U.S. Department of Justice

FTO – Field Training Officer

OIS – Officer Involved Shooting – the discharge of a firearm by an on or off duty police officer whether accidental or intentional

PCAC – Police/Community Advisory Committee

SPD – Salinas Police Department

UOF – Use of Force – refers to a broad set of guidelines defined by individual law enforcement agencies to determine when and what level of force to use in a given situation

BACKGROUND

The City of Salinas experienced four officer-involved shootings (OIS) over the span of five months in 2014. For a city that averaged one OIS each year, this was unusual.³ The suspects were Hispanic males, two of whom may have had mental health issues. While investigations determined that all the shootings were considered justified, the deaths of these four men further frayed the fragile trust between the community and the Salinas Police Department and triggered protests against the SPD.

¹ <https://cops.usdoj.gov/aboutcops>

² <https://cops.usdoj.gov/collaborativereform>

³ Collaborative Reform Initiative: An Assessment of the Salinas Police Department, p. 9

In 2015, Salinas Police Chief Kelly McMillin sought the help of the U.S. Department of Justice's Office of Community Oriented Policing Services (COPS) to improve the relationship between the SPD and the community. The COPS Office offers a program, the Collaborative Report Initiative for Technical Assistance (CRI-TA), that helps law enforcement agencies with organizational transformation around specific issues.⁴ Participation in the program is voluntary and requires a long-term commitment formalized by a signed agreement between the COPS Office and the SPD.

The COPS Office agreed to help, and from June to August 2015 a team conducted a comprehensive assessment of the SPD. The goal was to "improve the SPD's responsiveness and accountability to the community, taking into account national standards, promising practices, existing research, and community expectations."⁵ The result of the assessment was a report titled, "Collaborative Reform Initiative: An Assessment of the Salinas Police Department" (CRI-SPD report). The report's recommendations are meant to instill the philosophy of community policing into the SPD's daily operations. The recommendations provide a roadmap for the SPD but leave the method of achieving completion up to the department.

After the CRI-SPD report was published in March 2016, the COPS Office was to work with the SPD to implement the recommendations and monitor its progress over the next 12 months.⁶ In December 2016, newly appointed Chief of Police Adele Fresé reported that 6% of the CRI-SPD report recommendations had been completed. She began working with the COPS Office consultants closely in early 2017. By June 2017, Police Chief Fresé reported to the Salinas City Council that 40% of the recommendations had been implemented (Appendix A).

The partnership between the COPS Office and the SPD was expected to continue through the entire process of change, which typically lasts several years. However, the DOJ made significant changes to the CRI-TA effective September 15, 2017⁷ that

⁴ https://cops.usdoj.gov/pdf/technical_assistance.pdf

⁵ CRI-SPD, p. 1

⁶ CRI-SPD, p. 121

⁷ <https://www.prisonerresource.com/departments-of-justice/doj-rolls-back-obama-program-aimed-fixing-police-problems/>

precluded continued participation by the COPS Office in the SPD's journey towards community policing. Despite this unexpected withdrawal by the COPS Office, Police Chief Fresé said that the SPD would continue to make progress on community policing.⁸



Salinas Police Department

SCOPE AND METHODOLOGY

The civil unrest occurring across the U.S. in the summer of 2020 cast a spotlight on traditional policing and its limitations. Although community policing is not a new concept, questions about whether it is a viable alternative to traditional policing as well as the difficulty of transitioning from traditional to community policing remain.

In a review of those questions, the Civil Grand Jury discovered that the SPD had continued on the process of shifting from traditional policing to community policing using the CRI-SPD report as a roadmap. We were concerned about how far the SPD had

⁸ https://www.montereycountyweekly.com/blogs/crime_blog/salinas-police-re-commit-to-community-policing-after-doj-cancels-program/article_7bb350f2-9a6e-11e7-a4fe-132f2f7433c5.html

made it in the transition process, particularly after finding out that the COPS program had been discontinued.

To assess the SPD's progress in going from a traditional policing model to a community policing model, the Civil Grand Jury conducted interviews with SPD personnel and performed internet searches of documents, agendas, meeting minutes, newspaper articles, and training materials.

DISCUSSION

The DOJ COPS Office issued its report, *Collaborative Reform Initiative: An Assessment of the Salinas Police Department* (CRI-SPD), in 2016. The report contains 61 findings and 110 recommendations covering six categories: Use of Force, Officer Involved Shootings, Community Collaboration, Internal and External Communications, Resource Allocation, and Training.

Transitioning from traditional to community policing does not happen overnight. It is a journey with twists and turns and the occasional speed bump or detour. The SPD's journey had a rocky start. Its progress in addressing the CRI-SPD report's findings and recommendations was stalled early when Police Chief Kelly McMillin retired and little to no work was done on the recommendations until the new Police Chief, Adele Fresé, was hired in November 2016.

Resistance to change is an inevitable speedbump when any new program is rolled out and the SPD was no different. However, a sincere desire among the SPD leadership to re-establish trust with the community and reduce crime helped to reduce the resistance.

Use of Force (UOF)

As much as the term "Use of Force" (UOF) has been in the news, it is interesting to note that according to the National Institute of Justice, an agency of the DOJ, there is no definition for UOF that is universally accepted.⁹ In general, UOF "becomes necessary and is permitted under specific circumstances, such as in self-defense or in defense of

⁹ <https://nij.ojp.gov/topics/articles/overview-police-use-force>

another individual or group.”¹⁰ It is up to each police department to provide guidelines to help their officers determine when and what level of force is necessary in a given situation.

The CRI-SPD report contained 23 findings and 42 recommendations regarding UOF policies, procedures, and training items:

Finding: The SPD’s policies 300 (Use of Force), 308 (Control Devices and Techniques), and 309 (Conducted Energy Device) are too vague in the description of use of force decision-making guidance, oversight, and accountability. **(1)**¹¹

Recommendation: Overall, the SPD should revise policies 300, 308, and 309 to be more specific and more in line with policing best practices. In doing so, the SPD should consider all of the following recommendations for this finding. **(1.1)**¹²

Recommendation: The SPD should update and revise policies 300, 308, and 309 to describe the appropriate level of force to be applied under various circumstances. **(1.4)**

Recommendation: The SPD should include and emphasize the importance of de-escalation in its UOF policies. **(1.5)**

Recommendation: Specific de-escalation training should be administered, at a minimum, annually. **(1.6)**

Recommendation: To maintain transparency with the community after a UOF incident, the UOF policies should clearly state what types of information will be released to the public, when, and in what situation in accordance with applicable state law.² **(1.7)**

¹⁰ Ibid.

¹¹ The bold whole numbers in parentheses refer to the CRI-SPD finding.

¹² The bold decimals in parentheses refer to the CRI-SPD recommendation.

Finding: The SPD does not follow its own policy and practice for the use of written statements or recording of suspects and witnesses of UOF incidents. **(18)**

Recommendation: When possible, the SPD should include audio recordings of suspects, witnesses, and officers as part of the UOF investigation. **(18.1)**

Finding: The supervisor investigating the UOF incident is not consistently gathering all the facts from officers. **(19)**

Recommendation: SPD supervisors should interview all officers who were involved with or at the scene during a UOF incident or indicate why officers were not interviewed. **(19.1)**¹³

The SPD revised policies 300, 308, and 309 to address the findings and recommendations. In implementing the revised policies, the SPD had to overcome resistance to change, refocus its manner of service from traditional policing to community policing, and ensure that UOF training included de-escalation techniques. Officers are trained in de-escalation techniques that include a 19-step mental checklist for deciding the appropriate level of force needed.

The Civil Grand Jury's review of documents and interviews with SPD personnel substantiated that SPD achieved 100% compliance with the UOF findings and recommendations in the CRI-SPD report.

Officer Involved Shootings (OIS)

As with UOF, there is no universal standard for what constitutes an Officer Involved Shooting (OIS). The Police Data Initiative defines an OIS "as the discharge of a firearm, which may include accidental and intentional discharges, by a police officer, whether on or off duty."¹⁴

¹³ CRI-SPD, pp. 2-3

¹⁴ <https://www.policedatainitiative.org/datasets/officer-involved-shootings/>

The CRI-SPD report had six findings and seven recommendations in the OIS category. Key findings and recommendations include:

Finding: The SPD does not have a practice or policy to require all OISs and in-custody deaths to be investigated by an outside agency. **(24)**

Recommendation: The SPD should adopt the practice of retaining an outside independent agency to investigate all officer-involved shootings and in-custody deaths. **(24.1)**

Finding: The SPD is limited in its ability to use less lethal weapons. **(26)**

Recommendation: The SPD should train and outfit all first-line supervisors (sergeants) with less lethal shotguns. **(26.1)**

Finding: The administrative investigations (i.e., internal affairs investigations) of the OISs were not completed in a timely manner. **(27)**

Recommendation: The SPD should establish a 30-day timetable for all administrative reviews (i.e., internal affairs investigations) that are completed after an OIS incident has been reviewed and adjudicated by the Monterey County District Attorney's Office. **(27.1)¹⁵**

To address the findings and recommendations, the SPD instituted the policy that all OISs are referred to the Monterey County District Attorney's office for review and internal adjudication. This review and adjudication must be completed within 30 days after an OIS.

Properly charged Electronic Control Weapons (ECW) are important because they give officers a less lethal force option in any given situation. The SPD procedure for testing ECWs was revised to align with TASER International recommendations. ECWs are now regularly charged and tested.

The Civil Grand Jury's investigation substantiated that the SPD achieved 100% compliance with the OIS findings and recommendations in the CRI-SPD report.

¹⁵ CRI-SPD, pp. 3-4

Community Collaboration

Community policing is a philosophy that requires buy-in from all Department members, from rookie to veteran police officers. It also needs community involvement and interaction, which helps to build trust between the SPD and residents of Salinas.



At the Crescita Early Education Center

The CRI-SPD report had 10 findings and 18 recommendations in the Community Collaboration category. Following are some key findings and recommendations:

Finding: The SPD lacks a unified, overarching community-collaborative policing philosophy and strategy. **(30)**

Recommendation: The SPD should develop a community-collaborative policing strategy. **(30.1)**

Finding: The SPD is not training its members regularly on implicit bias, cultural awareness, or procedural justice. **(32)**

Recommendation: The SPD should provide training such as the Fair and Impartial Policing training for all members of the department, including civilian staff. **(32.2)**¹⁶

Officers interacting with community members were encouraged to offer help as appropriate, to listen, to address individuals respectfully and, when possible, to explain what is happening. Calls for service that might not receive an immediate response because of other higher priority public safety calls receive follow-up telephone calls within 20 minutes to explain why there is a delayed response.

As part of its outreach, the SPD developed programs designed to build trust and invest in the needs of the community. Following are some of the programs implemented in an effort to improve community collaboration:

- The SPD offered their presence to all local schools. Initially, however, not every school welcomed the idea of officers' presence on their campus, although this is slowly changing as the SPD continues to improve its relationship with the Salinas community.
- School programs developed by the SPD include a self-image and identity program for young women, a driver safety class, job interview preparation, "Why'd You Stop Me?", and Salinas Police Awareness, Responsibility, and Knowledge (SPARK).
- Sergeants are required to be in the field. Officers are back on foot patrol and on Enduros (off-road motorcycles), and are conducting door-to-door visits to check on Salinas residents.
- The SPD has a mascot, a pet dog named Buddy, who accompanies Homeless Outreach Team (HOT) officers visiting homeless encampments. The HOT officers help homeless individuals access services that are available to



¹⁶ CRI-SPD, pp. 4-5

them.¹⁷ Buddy plays a key role in this outreach effort by humanizing the contact interactions.

- The Charro¹⁸ Uniform Program was developed to unite the community by recognizing the rich culture and history of Salinas' Mexican heritage.¹⁹ The program was jointly created by the SPD and the recently formed Police Foundation. It has achieved global recognition from the media.



SPD Officer in Charro Uniform

- The SPD has increased the number of Spanish-speaking sworn officers and civilian staff to improve communication as well as outreach efforts.

The Civil Grand Jury's review of documents and interviews with SPD personnel substantiated that SPD achieved 100% compliance with the Community Collaboration findings and recommendations in the CRI-SPD report.

Internal and External Communications

Ineffective communication can be as detrimental as non-existent communication. The need for a well-thought-out and implemented communications plan that considers internal and external stakeholders at all levels is vital for the smooth operation of any organization.

The CRI-SPD report had five findings and ten recommendations covering Internal and External Communications. Following are some key findings and recommendations:

¹⁷ <https://www.cityofsalinas.org/our-city-services/police-department/news/salinas-pd-continues-homeless-outreach>

¹⁸ "Charro" is a Mexican horseman or cowboy

¹⁹ <https://www.santacruzsentinel.com/2019/07/25/police-don-mexican-charro-suits-to-connect-with-community/>

Finding: Internal communication is inconsistent and, in some cases, nonexistent. **(40)**

Recommendation: SPD staff meetings should be held monthly and meeting minutes or summaries shared with all SPD members as appropriate. **(40.1)**

Recommendation: The SPD should develop a consistent system to enable communication with department members at all levels of the organization. **(40.4)**

Finding: The SPD does not have a formal process for communicating with various external community groups or organizations. **(44)**

Recommendation: The chief of police should share more information with the Police/Community Advisory Committee (PCAC), which is another outlet for enhanced communications with the community for both positive and negative information. **(44.1)²⁰**

Based upon discussions with SPD leadership, the Civil Grand Jury learned that assistant chiefs and commanders now have formal weekly meetings. The executive staff has established quarterly meetings with all civilian staff with an emphasis on developing a more effective working relationship. The meetings between the Chief of Police and command staff with the Salinas Police Officers Association are now collaborative and address key issues and concerns of officers. The department has developed an employee focus group representing each unit and division within the department that meets monthly with the Chief of Police and executive staff. These meetings include an agenda and minutes from the meeting.

The SPD has created an e-newsletter housed on the department's intranet site which is disseminated via email.

²⁰ CRI-SPD, p. 5

The Civil Grand Jury's investigation substantiated that the SPD achieved 100% compliance with the Internal and External Communications findings and recommendations in the CRI-SPD report.

Resource Allocation

Having the right resources available, both people and equipment, is necessary for a law enforcement agency to serve its community. While the assessment provided by the CRI-SPD report was not a proposal of a staffing study, it did provide the impetus for several critical changes in the allocation of staff and the provision of additional fiscal resources.



SPD swears in seven new officers

The CRI-SPD report had 10 findings and 19 recommendations to address the theme of Resource Allocation. Following are some key findings and recommendations:

Finding: The SPD Currently follows a minimum staffing model for patrol resource deployment. **(45)**

Recommendation: The SPD should update its staffing model using various contemporary data sources, including calls for service crime reports and input from officers and supervisors and the community. **(45.1)**

Finding: The SPD does not have an adequate crime analysis capability. (47)

Recommendation: The SPD should hire at least one experienced full-time crime analyst. (47.1)

Finding: The SPD has no formal systematic accountability process that focuses on crime prevention and crime reduction, performance evaluation, and resource allocation. (48)

Recommendation: The chief of police and his executive staff should conduct regular accountability meetings. (48.1)

Finding: The SPD lacks a comprehensive crime reduction approach. (54)

Recommendation: The SPD should develop and implement a comprehensive crime reduction approach that includes evidence-based crime reduction strategies, community partnerships, problem solving, and accountability (e.g., Stratified Policing). (54.1)

Recommendation: The SPD's crime reduction strategy should include specific and quantifiable performance measures with regular reporting of goal attainment and overall strategy progress. (54.2)²¹

The SPD hired a consultant to conduct a study on staffing and workload and is in the process of changing from three shifts to four shifts in patrol. The department hired a crime analyst to increase its crime analysis capability. The SPD also developed and implemented a crime reduction approach in line with CRI-SPD recommendations.

Since 2016, substantial financial resources have been allocated to the SPD in annual budget appropriations to facilitate and implement the programs and initiatives described in this report. These financial resources came from the City of Salinas general fund and were not program grants from either Federal or State sources.

²¹ CRI-SPD, p.6

The Civil Grand Jury's review of documents and interviews with SPD personnel substantiated that SPD achieved 100% compliance with the Resource Allocation findings and recommendations in the CRI-SPD report.

Training

The California Commission on Peace Officer Standards and Training (POST) sets minimum selection and training standards for California law enforcement. While it is a voluntary program, participating agencies can avail themselves of several benefits and services provided by the Commission so long as they agree to follow the standards set by POST.²²

The CRI-SPD report had 7 findings and 14 recommendations relating to the SPD training program. Following are some key findings and recommendations:

Finding: The SPD does not have a consistent process to track or review training lesson plans or individuals who attend training. **(55)**

Recommendation: The SPD should create and establish an accountability process to systematically track and save all training lesson plans and track individuals' attendance. **(55.1)**

Finding: The SPD's Training policy 208 indicates that a training plan will be developed and maintained by the Training unit. **(56)**

Recommendation: The SPD should follow its policy 208 and develop a training plan that at a minimum addresses changes to the law, state-mandated training, and critical issues training. In addition, the SPD's training plan should include relevant training for SPD's civilian staff. **(56.1)**

Finding: The SPD's FTO²³ program provides training in the use of force but does not incorporate community-policing training throughout its objectives. **(59)**

²² <https://post.ca.gov/About-Us>

²³ Field Training Officer

Recommendation: The FTO program should infuse the concepts of community policing throughout the training objectives. **(59.1)**

Finding: The SPD does not provide regular training on interactions with persons with mental disabilities and is not adhering to SPD policy 418, “Mental Illness Commitments.” **(61)**

Recommendation: The SPD should develop and implement a Peace Officer Standards and Training-approved training curriculum for all SPD sworn personnel and those civilian personnel dealing with the community directly in the response and handling of situations involving persons with mental challenges, those with mental illness, or individuals in crisis and deliver annually. **(61.1)²⁴**

To address the findings and recommendations, the SPD developed and implemented a plan for tracking lesson plans and attendance at trainings as well as a plan for holding individuals accountable for attending the trainings. The department revised its various training programs to align with the CRI-SPD report recommendations and trained relevant personnel using the revised curricula.

Four of the 14 recommendations are listed as “In Progress” by the SPD. The recommendations involve forming a training committee that incorporates community partners and the Police/Community Advisory Committee (PCAC), developing a comprehensive training plan and communicating it with the department, conducting a training needs assessment, and reviewing all UOF incidents for training-related purposes. These four recommendations have a target completion date of July 2021.

CONCLUSION

Today, the SPD is an example of community policing at its best as evidenced by being the recipient of the 2019 James Q. Wilson Award for Excellence in Community Policing for its program, “Community Policing in a Challenging Environment.” The award honors

²⁴ CRI-SPD, p.7

law enforcement agencies in California who have adopted the Community Policing philosophy and are doing an outstanding job in their communities. It is given by the Regional Community Policing Institute-California, a national network of training centers that provides training on region-specific community policing issues.



SPD Chief Adele H. Fresé

FINDINGS

- F1. The CRI-SPD Report recommended that the Salinas Police Department develop programs that engage the community through in-school activities and interactions with their officers. The Civil Grand Jury believes that by implementing this recommendation the SPD has strengthened the relationship between the Police Department and the community.
- F2. The Salinas Police Department has developed a Use of Force oversight committee and has adopted policies that involve a multi-step process of de-escalation before using force. The Civil Grand Jury believes that the SPD's incorporation of these less than lethal intervention strategies into their daily practice has enhanced the safety of the community and the officers.

- F3. A new procedure was implemented to require that officer involved shootings and use of force incidents resulting in death be referred to the Monterey County District Attorney's Office for review and internal adjudication within 30 days from the incident. The Civil Grand Jury believes that this practice leads to greater transparency.

INVITED RESPONSES

Pursuant to Penal Code §933 and 933.05, the Civil Grand Jury invites responses as follows:

- Salinas Police Department (F1 – F3)

Photo Credit:

Photos used with permission from the Salinas Police Department.

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

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2. City of Salinas Press Release – March 6, 2019
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3. Monterey County Weekly – September 16, 2017
Salinas Police Re-Commit to Community Policing after DOJ Cancels Program

4. Santa Cruz Sentinel – July 25, 2019
Police wear Mexican charro suits to connect with community
5. Salinas Police Department Policy Manual
6. Collaborative Reform Initiative: An Assessment of the Salinas Police Department

APPENDICES

- A. Staff Report to the Salinas City Council – June 6, 2017
Collaborative Reform Update

THE NORTH FREMONT BICYCLE AND PEDESTRIAN IMPROVEMENTS PROJECT

A Bike Path to Nowhere?



SUMMARY

On April 1, 2014 the City of Monterey adopted the North Fremont Specific Plan (NFSP). That action was the first step in the process of the planning and execution of a major infrastructure renovation of North Fremont Street stretching from Casa Verde Way to Canyon del Rey Boulevard (SR 218).

That project, labeled the North Fremont Bicycle and Pedestrian Improvement Project (NFBPIP), was initially planned to be multifaceted and included Class 2 bike lanes on either side of North Fremont to run from Casa Verde to Canyon Del Rey. According to the City, the bike lanes would at that point connect to the Transportation Agency for Monterey County's (TAMC) 30-mile bike path project called the Fort Ord Rec Trail and Greenway (FORTAG).

Along the way, the original idea of having Class 2 bicycle lanes running both directions between Casa Verde Way and Canyon del Rey evolved into a design comprised of, according to the City's website, California's first Class 4 bicycle lanes in the roadway median, running from Casa Verde Way reaching only as far as Casanova Avenue. The

original plan for the NFBPIP to run all the way to Canyon del Rey was modified because of budget overruns. By adopting this modification, the NFBPIP was left with incomplete access to the envisioned FORTAG project, contributing to the public perception that this was a “bike lane to nowhere.”

Since the NFBPIP was completed in September of 2019, it has received numerous awards, including the “2020 Caltrans Excellence in Transportation Award” (Appendix A). The project was also named “The Best Public Boondoggle/Best Way to Anger Commuters” by the Monterey County Weekly readers in its annual “Best of Monterey County” edition, thereby creating what the Civil Grand Jury sees as a disconnect between the experts and the general public. The 2020/21 Monterey County Civil Grand Jury investigated how decisions that were made along the way could have led to two such strongly opposed opinions as to the worthiness of the project, and to make recommendations to the City to enhance their procedures and communicate better with the residents of Monterey on future City projects to help avoid this disconnect.

GLOSSARY

ARC: City of Monterey Architectural Review Committee

Caltrans: California Department of Transportation

FORTAG: Fort Ord Rec Trail and Greenway

Gap Project: The bike lane and pedestrian project to be built between Casanova Avenue and Canyon Del Rey Boulevard (SR218)

NFBPIP: The North Fremont Bicycle and Pedestrian Improvements Project

TAMC: Transportation Agency for Monterey County

BACKGROUND

While the Civil Grand Jury is not focusing on the choice of bike lanes for the NFBPIP, a quick primer on bike lanes will be useful for the purpose of reading this report. Bike lanes, or bikeways, are broken down into classes. Generally, higher class numbers correspond to being deemed safer by transportation experts. Class 1 is a shared path with pedestrians. Class 2 bikeways (the most common type of bikeway) are bike lanes

established along streets and are defined by pavement striping and signage and can be buffered from traffic by using chevron or diagonal markings. Class 3 bikeways, or bike routes, designate a preferred route for bicyclists on streets shared with motor traffic and not served by a dedicated bikeway. These bike routes are generally not appropriate for streets that have higher speed traffic, such as North Fremont. Class 4 bike lanes are physically separated from traffic utilizing vertical features such as grade separation, flexible posts, inflexible barriers, bollards, railings, or on-street parking.¹

North Fremont is one of Monterey's major thoroughfares, averaging approximately 28,000 car trips per day.² It has essentially remained untouched for nearly fifty years. The North Fremont Bicycle and Pedestrian Improvement Project was to be one of the largest public works projects in the City's history with an original price tag estimated to be just over \$10 million.

\$ Project Funding	
\$	Active Transportation Grant (CalTrans), \$6,480,000
\$	Regional Surface Transportation Program (TAMC), \$1,933,000
\$	Measure P, \$700,000
\$	Measure X, \$810,000
\$	Neighborhood Improvement Program, \$200,000

From City of Monterey Website

In September of 2019, after approximately 15 months of construction, the City of Monterey completed the NFBPIP, which they describe as the first ever Class 4 bike lanes located in the median of a street in California. The street is North Fremont in Monterey, CA and the bike lanes run for one-half mile between Casa Verde Way and Casanova Avenue. Based on the Civil Grand Jury's research into what other cities are doing with bike lane design, it is clear that the NFBPIP design is an innovative and creative way to separate bicyclists from the traffic to keep them as safe as possible.

The NFBPIP project cost was about \$8.5 million and was mostly paid for by a \$6.48 million federal grant distributed through the Caltrans Active Transportation Program and a \$1.933 million grant from the Transportation Agency for Monterey County (TAMC). In

¹ Caltrans Design Information Bulletin 89-01

² North Fremont Specific Plan

their 2014 Caltrans grant application the City described the project's purpose as providing "safe access to bicycle and pedestrian facilities for disadvantaged communities." At that time, the NFBPIP envisioned Class 2 bike lanes on both sides of North Fremont running between Casa Verde and Canyon Del Rey, as described in the North Fremont Specific Plan. The grant funds were awarded on this design concept. Along the way, the project scope and design changed to what you see today, with Class 4 lanes located in the median, running from Casa Verde to Casanova, eliminating the final block between Casanova and Canyon Del Rey.

The path that the City took to arrive at the current design of the NFBPIP is the focus of this Civil Grand Jury report, with the goal to avoid the "perception disconnect" between the City and some residents that we have found exists on the NFBPIP. Better communication and improved design on future projects can be the result.

METHODOLOGY

The Civil Grand Jury employed several methods of investigation of the NFBPIP project. Initially, we gathered public documents pertaining to all aspects of this project via extensive internet searches as well as requested documents obtained from the City. We then held a number of interviews. Finally, we performed a site visit to the NFBPIP.

DISCUSSION

The North Fremont Bicycle and Pedestrian Improvements Project can be segmented into the five broad categories discussed below.

Timeline of NFBPIP

In an effort towards revitalizing what the City of Monterey described as a "struggling neighborhood commercial business district," the North Fremont Specific Plan (NFSP) was adopted in 2014 and amended in August of 2016. The NFSP's intention was to "serve as a guide for future development along North Fremont Street, an area identified by the city's General Plan as a "Mixed-Use Village," which is a "mix of residences, retail

shops, services and jobs in close proximity.” These types of areas are designed to be well served by transit and bicycle routes. According to the NFSP, one of its goals is to: “*Create Comprehensive, Multi-Modal Transportation and Parking Plan that addresses safety and security.*” One component of this Plan is titled “challenges & opportunities,” which contains a section captioned “Bicycle Circulation,” stating:

The City’s Multi-Modal Mobility Plan (MMMP) designates North Fremont as an important connector for inner-city bicycle circulation. Consistent with the MMMP, the streetscape plan includes new Class 2 bicycle lanes along North Fremont in both directions.

The planning process for the NFSP included several community meetings with businesses and residents in the adjacent areas as well as an Ad Hoc Committee made up of Planning Commissioners.

As explained later in this Report, the NFBPIP design was changed from Class 2 bike lanes running from Casa Verde to Canyon Del Rey to Class 4 bike lanes located in the median running from Casa Verde to Casanova, leaving the original bike lane design running the final one block from Casanova to Canyon Del Rey. This design change happened sometime after February 2016 and was approved by Caltrans in June of 2016. The North Fremont Specific Plan was amended in August of 2016 but did not include this Class 4 bike lane concept.

In 2014, the City of Monterey staff started its research in order to acquire grant funds from the State of California to help finance a portion of this project. In September 2014, the City received an award of \$6.48 million from the California Department of Transportation for the NFBPIP. In August of 2015, the City appropriated the \$6.48 million Caltrans grant funds for the project by approving a resolution that described the NFBPIP as having Class 2 bike lanes on both sides of North Fremont.

A Request for Proposal was issued by the City in order to receive bids for the design of the overall project. On October 7, 2014, the City Council adopted a resolution³ awarding

³ A Resolution is a document used by Governmental Agencies when dealing with temporary or special matters and involving only a factual determination that conditions necessary for the operation of a statute

the NFBPIP preliminary design services contract to the firm Kimley-Horn. The adoption of a resolution, with findings, creates a record of action taken by the city council. The description of the NFBPIP in that approved resolution reads:

WHEREAS the North Fremont project includes the design and construction of Class 2 bicycle lanes along both sides of North Fremont, with signing and bicycle detection at each of the five intersections. It will also include changes to the travel lanes and median to accommodate bicycle lanes and Bus Rapid Transit queue jump lanes, shortened pedestrian crossings, median refuges, audible pedestrian signals, and ADA⁴ improvements.

On August 18, 2015, the City Council adopted a resolution to appropriate the Caltrans \$6.48 million grant. That resolution contained the following project description:

WHEREAS the North Fremont project includes the design and construction of Class 2 bicycle lanes along both sides of North Fremont (from Casa Verde to Canyon Del Rey). This project also includes ADA improvements at five intersections.

On February 2, 2016, the City Council adopted a resolution awarding the final design contract to Kimley-Horn in the amount not to exceed \$896,806.00. The staff report described the NFBPIP consistent with the language of the October 7, 2014 resolution but did not include the project description in this resolution.

On May 1, 2018, the City Council adopted a resolution awarding the construction contract for the NFBPIP. The staff report⁵ contained the following partial description:

The project includes the design and construction of Class IV (protected bike lanes) along both sides of North Fremont and adjacent to the median ...

The adopted resolution, however, did not contain the revised project description. According to the interviews and research undertaken by the Civil Grand Jury, it appears

or ordinance have been met and creates a record of action by the approving body. League of California Cities

⁴ Americans with Disabilities Act

⁵ Staff Report means any memorandum prepared by a member of City staff pertaining to a matter to be considered by the policy body at the meeting.

that this was the first time, since the project was revised in 2016, that any City Council agenda packet contained the Class 4 bike lane description. However, the City Council never approved a revised resolution containing the Class 4 Bike Lane modification, thereby not creating an accurate record of action. For instance, the City of Pacific Grove is involved in a significant problem relating to a mistake in a City Council approved Resolution⁶. The ramification of that error highlights the importance of complete and accurate resolutions.

Some other relevant facts gleaned from our investigation:

- In June of 2016 Caltrans approved the change from Class 2 to Class 4 bike lanes for the NFBPIP running from Casa Verde to Casanova and retaining the improvements from Casanova to Canyon Del Rey.
- On Jan 25, 2018, the City solicited bids for the NFBPIP.
- Bids for the NFBPIP were opened on March 13, 2018 and all bids exceeded the project budget.
- In order to bring the project within budget, a request for a Project Scope Change to delete the Casanova to Canyon del Rey portion of the NFBPIP was prepared by the City on March 19, 2018 for submittal to Caltrans.

The City of Monterey Modifies the NFBPIP

It is not unusual for major projects to experience design changes as dictated by any number of construction conditions. This is certainly true for the NFBPIP.

The NFBPIP was initially a standard, albeit large, city street improvements project that contained common Class 2 bike lanes on each side of the street like many other projects, including one recent prominent project located on Broadway in Seaside.



Seaside Project March 7, 2021

⁶ ["Pacific Grove's new sales tax halted by state" – Monterey Herald, Tuesday, February 15, 2021 \(Appendix B\)](#)

When the decision was made to change from the common Class 2 bike lanes to California's first ever Class 4 bike lanes located in the median of a busy street, that's when this project became something other than standard. According to the City, the change from Class 2 to Class 4 was made because Class 4 bike lanes are the safest bike lanes possible for shielding cyclists from traffic and other obstacles normally encountered on streets. However, this choice of replacing Class 2 with Class 4 bike lanes came with an associated cost, exacerbating what was already an overbudget project.

When project bids were opened in March 2018, each bid exceeded the adopted budget. It was at this point that a critical decision was made by the City. It was decided to delete a portion of the bike lane project stretching from Casanova Avenue to Canyon del Rey Boulevard. By removing this part of the NFBPIP, the project was now within budget. Paperwork was sent to Caltrans for approval. The public was not made aware at that time that a critical gap would be created leaving the bike lane as an unviable means of connecting with the FORTAG project. The perceived "bike lane to nowhere" was now conceived. In May 2018, the City adopted a resolution to start construction, but its language did not include anything stating the fact of that the City had changed the plan for construction of Class 4 bike lanes. If the City Council had approved a revised resolution, it would have been a good opportunity to inform the public that the design had changed. In June 2018, construction began, and it would be completed in September of 2019.

One eye-opening fact learned by the Civil Grand Jury is that only about 12% of the overall cost of this project is directly attributed to the construction of the bike lanes. The balance of the total cost was for planning, design, construction, and upgrades to other public works infrastructure along the long neglected North Fremont Street. This project can be metaphorically thought of as an iceberg. The smaller portion of the project is visible while the bulk of the project is below the surface. The City missed an opportunity to communicate the overall upgrade of North Fremont by concentrating its messaging on the bike path. This miscommunication included the limited title of the project. Residents were left wondering how a simple, apparently unfinished bike path could cost \$10 million when, in reality, a major upgrade of the infrastructure, particularly sewers,

paving, signaling and drainage, of a long-neglected thoroughfare was the key value to residents from the NFBPIP.

Unplanned Maintenance Issues Appear

Any casual observer traveling on North Fremont will notice the extensive required maintenance to some of the stainless-steel uprights and to many of the horizontal cables of the railings on either side of the Class 4 bike lane. The City likely did not anticipate damage to this extent, nor did they make any added allowance for the costs involved with repairs and maintenance of the railings.



NFBPIP Railing: February 18, 2021

Some other relevant facts gleaned from our investigation include:

- Caltrans Design Guidelines for Class 4 bike paths recommend that there be a maintenance plan addressing routine maintenance and long-term maintenance needs, such as removing debris, maintaining landscaping, repairing and replacing the separation vertical elements, and maintaining the pavement and traffic control devices.
- During a presentation by the City of Monterey Engineering Department to TAMC at their March 1, 2017 meeting, the City representative was asked about maintenance for the NFBPIP. The response was that city maintenance staff would likely maintain the protected bike lanes.
- The Civil Grand Jury has found no evidence that the City has prepared a specific maintenance plan for the NFBPIP.
- There is noticeable damage to the stainless-steel uprights and horizontal cables that are sagging or broken.



Gaps in Community Communications

The City of Monterey is to be commended for a comprehensive effort to communicate with local stakeholders, including the business community, neighborhood associations, and nearby residents domiciled near North Fremont throughout the planning and construction project. The City also created two very informative websites⁷ detailing the NFBPIP's design and construction along with information regarding the other improvements to Fremont Street, and the Civil Grand Jury commends the City for this.

However, being such a large Public Works project creating California's first ever Class 4 bike lanes in the median on a street that has 28,000 car trips per day, it is incumbent upon the City to communicate these changes to all stakeholders. While nearby business and residential stakeholders received information, another key stakeholder group was less informed, specifically all other residents of Monterey.

Some public building projects and most private building, landscape or signage projects are required to go through a design approval process from the Architectural Review Committee (ARC). Depending on the scope of the project, other public hearings might be required. According to the City's website, the purpose of the Architectural Review Committee is to preserve Monterey's unique, historic character. It states as follows:

Monterey is full of character. From New Monterey to Old Town, from Fisherman's Flats to Cannery Row, each of our neighborhoods – commercial and residential – has distinct features that make it special.

In order to maintain these unique qualities, the City established an Architectural Review Committee (ARC) to encourage and promote development that is harmonious with the surrounding area as it exists.

Their website further states:

The seven-member ARC is composed of citizens with expertise and interest in design and architecture. ARC reviews all aspects of a proposed project that deal with the outside appearance.

⁷ [The North Fremont Bike and Pedestrian Access and Safety Improvements Project \(monterey.org\)](http://monterey.org)
[North Fremont Street Corridor | Have Your Say Monterey](#)

In an on-line review of all 52 published agendas for the Architectural Review Committee dating from July 1, 2015 to March 21, 2018, the Grand Jury found no evidence that the NFBPIP, as modified with the Class 4 bike lanes, was ever on the agenda for any of those meetings. There were, however, several privately owned properties located on North Fremont that were on agendas in that time frame for design review on projects including new signage, landscaping, building alterations, and new buildings.

Given that the NFBPIP contains California's first ever Class 4 bike lanes in the median of a very busy street with a highly visible railing element, we believe the NFBPIP would have benefited going through the ARC process. It would have helped get the word out citywide about the NFBPIP, thereby potentially involving more residents in the design and decision-making process. Also, given the design expertise of the ARC members, there would likely have been a thorough review of the railing design which could have led to railing design changes to prevent the significant maintenance required for the horizontal cables.

Some other relevant facts gleaned from our investigation include:

- The NFBPIP has received several design awards from the State, County, and private sector.
- There have been negative letters to the editor regarding the NFBPIP in the Monterey Herald and the Monterey County Weekly.
- There have been both informative and negative articles in the Monterey Herald and the Monterey County Weekly about the NFBPIP since the completion of the project.
- The City of Monterey held multiple meetings with the North Fremont Business Association and area Neighborhood Associations to explain the design and construction for the NFBPIP throughout the project up until completion.
- The City of Monterey has two websites, [NFBPIP](#) and [Have Your Say Monterey](#), detailing information about the NFBPIP, the Casanova to SR218 connection (Gap Project), and the overall Fort Ord Rec Trail and Greenway project known as ["FORTAG"](#).

- The City received several letters of support for the project from the North Fremont Business Association. along with various other organizations, when applying for funds and other approvals.

Bridging the “Gap”

One major complaint that the Civil Grand Jury heard during the investigation was that most casual observers only rarely see bicyclists using the current North Fremont Class 4 bike lanes. As often cited in this report, a major contributor to this situation is the existence of a “gap” in the bike lane running from Casanova Avenue to Canyon del Rey Boulevard. Planning for bike and pedestrian connection between Casanova and Canyon Del Rey (the Gap Project) is well underway and will connect the NFBPIP with the Laguna Grande Trails and FORTAG projects. To date, we are unaware of any funding the City has received in order to complete construction of the Gap Project, however, the City states that they are actively searching for funding. The City expressed hope that ridership will grow once the North Fremont bike lane is connected to the entire FORTAG project in Monterey County.

Given the high profile the NFBPIP project has attained by the media and residents, the Civil Grand Jury believes the City has an opportunity to involve all residents of Monterey for the design and construction of the Gap Project by holding public hearings before the Architectural Review Committee. Some other avenues of communication could be town hall meetings, mailers, or working with the local bike clubs.

Some other relevant facts gleaned from our investigation include:

- The design of The Gap Project has been, or is nearly, completed by the City and they are actively trying to find funding for construction.
- The City claimed that they expected to see an increase in bicyclists of 200% which amounts to 140 new daily riders in the Class 4 lanes between Casa Verde Way and Casanova Avenue.

FINDINGS

- F1. The City is to be commended for holding multiple meetings with the North Fremont Business Association and the local Neighborhood associations to inform them on the NFBPIP throughout the design and construction process.
- F2. The City is to be commended for creating two very informative websites relating to the NFBPIP.
- F3. The City did not hold any public hearings before the Architectural Review Committee for the design of the NFBPIP, which would have helped inform residents throughout the city of Monterey about the project.
- F4. The City did not hold any public hearings before the Architectural Review Committee which, given the expertise of the Committee members, could have improved on the railing design maintenance issues to help eliminate the significant maintenance needed.
- F5. The City Council did not adopt a revised resolution changing the design description of the NFBPIP from Class 2 to Class 4 bike lanes, which would have helped inform more residents citywide and would have created an accurate record of action by the City Council for the NFBPIP.
- F6. The City's failure to have a specific maintenance plan in place for the NFBPIP, as recommended by Caltrans, has led to significant maintenance issues in the first 18 months of operation.
- F7. To date, the City of Monterey has not held any public hearings before the Architectural Review Committee for the design of the Gap Project, thereby limiting the ability to inform and gain input from the residents of Monterey and missing out on possible improvements to the design by members of the ARC. This could result in more negative public opinion as well as a sub-standard design.

RECOMMENDATIONS

- R1. For all City projects that contain design elements, the City should hold Public Hearings before the Architectural Review Committee.

This process should begin by August 1, 2021.

- R2. On future City projects, the governing body of record should approve revised resolutions to document changes to a project.

This process should begin by August 1, 2021.

- R3. The City should begin holding Public Hearings before the Architectural Review Committee for their input on the Gap Project design.

This should begin by August 1, 2021.

- R4. The City should create a maintenance plan addressing routine and long-term maintenance, as recommended by Caltrans.

This plan should be made available by September 1, 2021.

REQUIRED RESPONSES

Pursuant to Penal Code §933 and 933.05, the Grand Jury requests responses as follows:

From the following elected county officials within 90 days:

- City Council of the City of Monterey. All findings and recommendations

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

APPENDIX

- A. Monterey Street Project Nets State Award, Monterey Herald, December 14, 2020
- B. Pacific Grove's New Sales Tax Halted by the State, Monterey Herald, February 15, 2021

Vacation Rentals Enforcement in Monterey County: Little Progress Despite Years of Struggle

SUMMARY

The term “Vacation Rentals” – also referred to as “Short Term Rentals” - refers to residential properties rented to visitors for stays of 30 consecutive days or less. While this type of visitor serving activity has been in practice for many years, it has grown substantially in the last decade, advanced by the popularity of large-scale advertising platforms such as Vrbo and Airbnb. In the unincorporated areas of Monterey County, this growth has been most visible in Carmel Valley and the Coastal Zone and has led to increased public concern and discussion regarding the potential need for additional regulation. While cities within Monterey County have the right to institute their own regulations regarding Vacation Rentals, unincorporated areas of the County are directly under County jurisdiction.

Monterey County has been actively discussing Vacation Rental ordinance changes for the unincorporated areas since the late 1990’s and has had an ordinance effort underway since 2013. While this work is progressing, with the adoption of new ordinances currently expected in 2021/2022, there continues to be significant discourse, both publicly and within the County government, regarding the eventual shape of these regulations.

While the new regulations have been in development during the past seven years, the County has consciously taken a passive approach to enforcing the current ordinances. This has resulted in a significant growth of unpermitted Vacation Rentals throughout the County, increasing public tensions over this uncontrolled growth. The lack of enforcement, coupled with uncontrolled growth, will likely magnify the difficult problems that the County must ultimately address when new ordinances are eventually enacted and take effect.

It is the view of the 2020/21 Monterey County Civil Grand Jury (Civil Grand Jury) that the County Board of Supervisors has allowed this ordinance development effort to drag on for far too long. This delay, combined with the lack of a proactive enforcement of current ordinances, has effectively exacerbated the problem over time.

The Civil Grand Jury recommends that the Board of Supervisors commit to enacting new ordinances no later than end of calendar year 2021, and concurrently enable a properly funded, effective, and sustainable compliance enforcement program. The County should draft and adopt Vacation Rental ordinances that contain both comprehensive coverage as well as appropriate enforcement tools, that are supported by fiscal capabilities which promote sustained viability.

GLOSSARY & ACRONYMS

ADU – Accessory Dwelling Units

APN – Assessor's Parcel Number, a unique number assigned to each parcel of land by a county tax assessor

CCC – California Coastal Commission

CCD – Code Compliance Division of RMA/HCD

Coastal Zone – That portion of the unincorporated portion of the County lying in the Coastal Zone as established by the Coastal Act of 1976. Land Use Plans have been adopted by the County Board of Supervisors and certified by the CCC as governing plans for specific areas of the Coastal Zone lying in the unincorporated area of the County of Monterey. Specifically, these are the North County, Del Monte Forest, Carmel, and Big Sur Land Use Plans, respectively.

Discretionary Permit - Discretionary land use permits require review and approval by the Zoning Administrator, Planning Commission or Board of Supervisors (compare with Ministerial Permit).

HCD – Monterey County Housing & Community Development Department, formerly part of the Resource Management Agency (RMA)

Inland Areas – Also referred to as the Inland Zone, refers to those portions of unincorporated Monterey County which lie outside of the Coastal Zone.

LUAC – Land Use Advisory Council

Ministerial Permit - Ministerial permit approval is granted upon determination that a proposed land use complies with established standards set forth in the zoning ordinance and/or other applicable policy documents (compare with Discretionary Permit).

Operator – A person who operates a Vacation Rental and, if not the Owner, has the legal permission of the Owner to operate the Vacation Rental on the subject real property.

Owner – The person or persons who hold title to the real property that constitutes the Vacation Rental

RMA – Monterey County Resource Management Agency, now separated into two departments: Housing & Community Development (HCD), and Public Works, Facilities, and Parks

STR – Short Term Rental (STR), an alternate term commonly used to refer to Vacation Rental

TOT - Transient Occupancy Tax (TOT), a tax of 10.5% of the rent charged to transient guests in hotels and motels, bed and breakfast inns, and Vacation Rentals for stays less than thirty (30) consecutive calendar days, located in the unincorporated areas of Monterey County. TOT is commonly known as a “bed tax” or “hotel tax”.

TTC – Monterey County Treasurer-Tax Collector Department

Vacation Rental – The use by any person of residential property for transient lodging for remuneration for a period of thirty (30) consecutive calendar days or less.

BACKGROUND

Since the 1980's, Monterey County has allowed bed and breakfast facilities in certain residential areas of the County in both the Inland Areas and the Coastal Zone.

Bed and breakfast facilities (B&Bs) are a type of short-term rental in which the property owner occupies and manages the facility.

In the late 1990's, Monterey County determined the need to define and regulate a broader category of short-term rental uses of residential properties (also known as Vacation Rentals) separate from B&Bs. In 1997, the County adopted an ordinance for the Inland Areas (Title 21) that regulates transient use for remuneration of single and multiple family dwelling units, duplexes, guesthouses, caretaker units, and other structures normally occupied for residential purposes. This ordinance provides a discretionary permit procedure in the Inland Areas to allow non-B&B short term rentals.

At the same time, the County adopted a similar ordinance for the Coastal Zone (Title 20). This required approval by the California Coastal Commission (CCC). Such approval, however, was not forthcoming, and the Coastal Zone regulation therefore never became effective. Consequently, under the current legacy ordinance, a Coastal Development Permit from Monterey County may be applied for if the proposed new use is similar to the uses specifically allowed in the zoning district where the property is located. This would be a discretionary permit subject to approval by the Monterey County Planning Commission (Planning Commission).

More recently, Monterey County has experienced a rapid increase in the number of residential properties being used for Vacation Rentals. In 2013, in response to this growing trend, Monterey County began work to update the zoning ordinances for the Inland Areas and to draft a new ordinance to specifically regulate Vacation Rentals in the Coastal Zone.

The Vacation Rental ordinance redraft initiative has now been in progress for over seven years, driven by County RMA (now by HCD) resources under the direction of the Planning Commission. For reference, the summary timeline of that effort is as follows:

- 2013/14 Initial community meetings
- 2015/16 STR working groups
- 2016/17 LUAC outreach

- 2017 Preliminary draft ordinance
- 2018 Revised preliminary draft ordinances
- 2019 Public draft ordinances
- 2020 Revised public draft ordinances

It is currently expected that the new ordinances may be finalized in late 2021 or early 2022 for the Inland Areas and approximately twelve (12) months later for the Coastal Zone due to required CCC reviews. Further detail on the development of the new ordinances is available on the County website:

- [Vacation Rental Ordinance Development](#)¹

During meetings held over the course of 2020, the Planning Commission and the Board of Supervisors received significant public input including hundreds of pages of written submissions² as well as many hours of verbal comment as the latest draft ordinances were considered. It is clear from monitoring these proceedings that the issues under consideration are both complex and controversial, with many policy elements still not resolved.

Analysis of these proceedings and the written submissions reveals that public opinion on this matter is clearly very divided and appears to be generally reflective of the various constituencies represented in the discussion, including:

- Residential property owners and neighborhood associations
- Vacation Rental owners and operators
- Affordable housing advocates
- Tourists and visitors
- Traditional hospitality and visitor serving industry representatives

¹ <https://www.co.monterey.ca.us/government/departments-i-z/resource-management-agency-rma-/planning/short-term-rental-ordinances-coastal-ref130043-inland-ref100042>

² <https://www.co.monterey.ca.us/home/showpublisheddocument?id=81075>

As evidence of the many open issues remaining unresolved after their June 2020 meeting, the Planning Commission took the unusual path of drafting a formal letter to the County Board of Supervisors³ asking for additional policy guidance on five areas essential to finalizing the proposed ordinances:

- Affordable Housing: How will a new Vacation Rental ordinance affect affordable housing?
- Support, Monitoring and Enforcement: How will we effectively support, monitor, and enforce new vacation rental ordinances?
- Character and Intensity: Staff assumes vacation rental is a 'similar use' consistent with character and intensity of residential use. Is there sufficient evidence to support this assumption?
- Visitor Serving Unit Caps: How do Vacation Rentals affect Visitor Serving Unit counts in areas with Visitor Serving Unit caps, if at all?
- Unique Neighborhoods: Some developments claim unique circumstances. Should developments such as this be provided with special rules?

Given the significance to the regulatory effort of the items identified by the Planning Commission in their June 2020 letter, the Civil Grand Jury finds it both surprising and deeply concerning that such obvious questions would remain unaddressed after seven years of ordinance development.

In a nearly three-hour session dedicated to Vacation Rentals during their November 17th, 2020 meeting, the Board of Supervisors discussed these topics in detail, thereby providing feedback to RMA/HCD staff and the Planning Commission as the ordinance development process continued.

In observing and monitoring these proceedings in recent months, and noting that the future ordinances will potentially affect many hundreds of residential properties

³ PDF download: <https://monterey.legistar.com/View.ashx?M=F&ID=8917755&GUID=ABBA1CC0-9A40-4CFB-A90A-86AF6B2E81F7>

throughout the County, scores of neighborhoods, and thousands of visitors annually, a number of questions came to mind with respect to County governance:

- Why does it appear that there are many public complaints regarding Vacation Rentals, but little apparent follow up by the County? How does the County manage incoming complaints from residents regarding Vacation Rentals? What actions are taken on those complaints, by whom and to what effect?
- Why haven't the existing regulations regarding Vacation Rentals in the County been enforced up to the present day, leading to hundreds of properties operating without required permits?
- Why does the County enforce and collect Transient Occupancy Taxes (TOT) on the operation of many hundreds of Vacation Rentals that are not in compliance with County land use regulations?
- What are the potential future ramifications of adopting proposed new ordinances currently under consideration without first addressing the need for a viable and effective enforcement policy and program?
- Why has the Board of Supervisors allowed efforts to develop new ordinances drag on for over seven years, further exacerbating the problem, particularly in light of the non-enforcement of current ordinances?

The fundamental question is whether our County government is acting in an efficient, effective, and consistent manner with respect to Vacation Rentals, and whether all necessary aspects of making the proposed new ordinances successful are being fully considered.

METHODOLOGY

In performing this investigation, the Civil Grand Jury interviewed multiple senior staff members from both the County Housing & Community Development and Treasurer-Tax Collector departments.

In addition, hundreds of relevant records and documents were obtained and reviewed from the above County departments as well as from the cities of Carmel-by-the-Sea, Marina, Monterey, Pacific Grove, and Seaside (see “Local Cities Perspective” in the Appendix for additional information).

There was also extensive review of all publicly available materials on the Monterey County website including Board of Supervisors and Planning Commission meeting recordings and public documentary submissions. The Civil Grand Jury investigation also extended to live attendance at numerous meetings, and review of other relevant public websites, including services vendor [Host Compliance](https://granicus.com/solution/govservice/host-compliance/)⁴ and the [Monterey County Vacation Rental Alliance](https://www.mcvra.org)⁵.

Finally, regional press archives covering the past seven years were extensively reviewed for relevant coverage to provide historical context. Select articles are noted in the bibliography section of this report.

DISCUSSION

Scope

In considering the potential scope of an investigation, the Civil Grand Jury elected to focus primarily on aspects related to ordinance compliance and enforcement. Our investigation therefore includes an analysis of current internal County processes such as complaint handling, tax registration and collection, permitting, code enforcement, as well as enforcement considerations for new ordinance development. The Civil Grand Jury also considered business software applications and departmental staffing levels to understand how these potentially contribute to the current environment.

The Civil Grand Jury consciously avoided considering, or taking any position on, the eventual content of the new ordinances, as that responsibility is clearly with the Board of Supervisors. Rather, our intent was to attempt to identify relevant objective factors in the

⁴ <https://granicus.com/solution/govservice/host-compliance/>

⁵ <https://www.mcvra.org>

environment that potentially contribute to the current issues, and through that process highlight areas where additional attention must be focused in order to ensure the success of any new Vacation Rental ordinances which are adopted.

Please note that this report does not attempt to account for COVID-related impacts experienced by the local economy during 2020/21. For example, TOT revenue is reported through fiscal year 2018/19 only; fiscal year 2019/20 is not considered as part of this analysis due to the unusual drop in visitor activity resulting from the pandemic.

Current Complaint Process

One of the most common methods by which concerned residents and other interested parties interact with the County with respect to Vacation Rentals is through complaints.

These complaints are quite varied, including for example, noise and parking concerns, unsafe or illegal activities such as fireworks or open fires, and inquiries as to whether a particular residence has obtained the proper permits and tax registrations for Vacation Rental operation. Most often the complaints are initiated by concerned neighbors, sometimes in frustration after failing to gain resolution directly from the property owner, or sometimes in an effort to avoid direct interaction and possible confrontation with the property owner or their guests.

Complaints can come to the County in many ways and through a variety of access points, such as through the Sheriff's department, County Supervisor's office, the Treasurer-Tax Collector's office (TTC), or the Code Compliance Division (CCD) of RMA/HCD. For the purposes of this investigation, the Civil Grand Jury focused on complaints which came to the County through TTC as well as CCD, as the Civil Grand Jury believes these represent the two most common avenues for the filing of public complaints.

TTC typically receives complaints and inquiries via email. Within the office, there are several individuals who are knowledgeable on Vacation Rental related matters and who consequently are tasked with responding to these inquiries. In reviewing approximately one hundred fifty (150) email records provided by TTC, the overwhelming majority of the inquiries were requests for information as to whether a given property was properly

registered for TOT, and whether that property was properly reporting and paying TOT. It was evident from the tone and content of many of the emails that knowledgeable, concerned citizens have deduced that one potentially effective means of discouraging Vacation Rentals in their neighborhood is to alert TTC as to the operation. For Vacation Rentals that are not registered for tax payments, TTC compels the Operator to register for TOT and pay the required occupancy taxes, including back taxes where applicable. For the more casual or occasional Operators, this action in itself may act as a deterrent to continued Vacation Rental operation.

In a few cases, the inquiry to TTC included concerns that extended beyond TTC's purview such as parking and noise. In these cases, the complainant was typically referred by TTC to CCD to pursue possible resolution. As such, while TTC appears to be quite responsive to external requests, in practice they clearly limit their responses to matters for which they are directly responsible.

The Code Compliance Division has responsibility for enforcement of codes, applicable ordinances, and land use regulations in the County, and therefore has the responsibility to receive, record, and act on all complaints and inquiries regarding the same. This includes responding to complaints concerning Vacation Rentals to the extent the nature of the complaint is believed to be zoning or code enforcement related.

Beyond the occasional direct referral by TTC, there are many ways that zoning or code related complaints can be communicated to CCD. These avenues are detailed on the County website page dedicated to this purpose:

- [Filing a Complaint | Monterey County, CA](https://www.co.monterey.ca.us/government/departments-i-z/resource-management-agency/building-services/building-services/code-compliance/code-compliance-complaint)⁶

⁶ <https://www.co.monterey.ca.us/government/departments-i-z/resource-management-agency/building-services/building-services/code-compliance/code-compliance-complaint>

Additionally, specifically for Vacation Rentals, there is a separate Complaint Hotline phone number as well the capability to enter a complaint directly via an online form:

- [Short Term Rental Information | Monterey County, CA⁷](#)

Vacation Rental related complaints and inquiries which come through these specific interfaces are initially routed to a third-party vendor [Host Compliance](#) that provides initial responses to the complainant before routing the complaint to CCD personnel.

CCD enforcement activities are almost exclusively reactive in practice, meaning Code Compliance acts on the basis of receiving citizen complaints. CCD classifies all incoming code-related complaints according to three categories, depending on the risk to human life, health, and safety:

- Priority One cases pose an immediate risk to human life, health and safety or immediate environmental impacts.
- Priority Two cases include situations not of an immediate threat to human life, health, and safety, but that require attention to avoid such future risks.
- Priority Three cases pose no actual or potential danger to human life, health and safety, but include situations where there is a claim or belief that County zoning or building codes are not being followed.

Vacation Rental complaints are classified by default as Priority Three unless there is a reason to believe that additional, more serious violations also exist. CCD prioritizes its response efforts according to these categories in order to focus its resources on the situations which pose the most danger to the community.

For Priority Three complaints, CCD sends a Courtesy Letter to the property owner advising how to remedy the code violation. Follow-up is done as time allows, which given current staffing levels for Code Enforcement Inspectors within CCD effectively means that there is very little follow up on Priority Three complaints.

⁷ <https://www.co.monterey.ca.us/government/departments-i-z/resource-management-agency-rma-/planning/ordinances-plans-under-development/short-term-rental-ordinances-coastal-ref130043->

CCD currently has three fulltime Code Enforcement Inspectors on staff with budget for a fourth which they are attempting to fill in early 2021. These inspectors are responsible for responding to all code and zoning related matters across the 3770 square miles of the County. Each inspector is typically assigned over one hundred (100) new cases per year, and currently there is a backlog over two thousand (2000) open cases.

In the exceptional instance when a Vacation Rental complaint is actively pursued, the general process is well established but can be quite time consuming. Once the Courtesy Notice has been sent to the owner and there has been either no response or an unsatisfactory response, an investigation file is created, and an inspection is conducted to establish direct evidence of a violation. If the inspection confirms a violation, a Notice of Violation is issued triggering fines. Further failure to reach agreement on resolving the violation can result in initiation of an Administrative Hearing process, which often results in a Stipulated Agreement between the County and the Owner.

From the original complainant's perspective, this is generally an opaque process which can contribute to public frustration. There is limited ability for direct, online public access to complaint information. CCD utilizes the Accela⁸ software application for much of their internal records management. Accela is used by many government entities and is generally regarded as capable. Nonetheless, it is quite difficult in practice to use the County's Accela Citizen Access web portal⁹ to obtain property-specific complaint information. Part of this difficulty is attributable to the fact that, as a matter of policy, details of open investigations are not publicly viewable. Additionally, due to staff constraints, there is little detail provided regarding complaints registered with CCD due to the need for department personnel to review and redact any sensitive information prior to public posting. Finally, as noted previously, most Vacation Rental complaints received by CCD are classified as Priority Three with no subsequent action. The net

⁸ <https://www.accela.com>

⁹ <https://www.co.monterey.ca.us/government/departments-i-z/resource-management-agency-rma-/resources/online-permit-information>

effect from the public's perspective is that complaint processing can appear to be somewhat of a black hole, where complaints go into the County but nothing tangible seems to result.

It is also worth noting that, as a matter of general practice, there is minimal interaction between CCD and TTC with respect to processing of complaints. While CCD utilizes Accela for maintaining complaint data on properties, TTC typically utilizes email records specifically for complaints and inquiries and as such does not utilize Accela, though that access capability does reportedly exist. And, as discussed in more detail in the next section of this report, TTC uses the services of Host Compliance for discovery of possible Vacation Rental operators who have not registered for TOT payments. CCD has the ability to access these data but reportedly rarely does so.

Tax Collection

Based on data the Civil Grand Jury received from TTC, as of December 2020 there were approximately 658 Vacation Rental properties currently on the Monterey County tax rolls. Putting aside the recent impacts of Covid-19, TOT registrations for Vacation Rental properties have grown significantly in recent years, rising from approximately 400 registered properties in June 2018 to 658 by December 2020. Much of the growth is attributable to TTC contracting with third-party software/services vendor Host Compliance during the past four years to effectively front-end the registration process for the department. Host Compliance monitors more than sixty (60) vacation rental websites through automated software algorithms, identifies non-compliant properties, and streamlines outreach efforts to property owners. According to TTC personnel, Host Compliance has been extremely effective in identifying non-compliant Vacation Rental operations and subsequently helping to bring them into TOT compliance.

Host Compliance also collects and aggregates occupancy information from publicly available sources which enable TTC personnel to assess approximate levels of unpaid back tax for which a given Owner may be liable. This information has reportedly been used on occasion as evidence during CCD investigations into public complaints of unpermitted Vacation Rental operations.

TOT revenue from Vacation Rental operations totaled approximately \$1.39M in fiscal year (FY) 2016/17, \$1.84M in 2017/18, and \$2.60M in 2018/19. Calculations based on gross [TOT receipts from the table below](#)¹⁰ therefore imply that the TOT attributable to Vacation Rentals comprised approximately 6.5% of the total occupancy tax revenue in FY 2016/17, rising to approximately 9.0% in FY 2018/19. TTC personnel attribute this rise to a combination of factors which include engaging the services of Host Compliance, updating of TOT tracking software, and dedicating an internal resource to the TOT program.

Transient Occupancy Tax Collections						
FISCAL YEAR	1 st QUARTER	2 nd QUARTER	3 rd QUARTER	4 th QUARTER	TOTAL	+ / -
2020-21	\$5,713,854					
2019-20	\$9,843,682	\$6,868,705	3,869,845	\$1,225,393	\$21,807,625	-24.47%
2018-19	9,217,666	6,720,632	4,734,079	8,198,714	\$28,871,091	+17.08%
2017-18	7,142,513	5,540,099	4,904,513	7,070,590	\$24,658,596	+16.44%
2016-17	7,300,709	5,318,097	3,426,404	5,131,661	\$21,176,871	-7.18%
2015-16	7,193,366	5,635,239	4,106,349	5,879,581	\$22,814,535	+ 6.13%

It is worth noting that due to current record keeping methods within TTC, obtaining accurate information on Vacation Rental registrations and revenue generation requires manual data collection by TTC staff. Current data entry and database design does not differentiate between traditional hotels, B&Bs, and Vacation Rentals, therefore making more detailed data less readily available.

TTC currently utilizes [HdL Prime](#)¹¹, a software solution designed for the management of government revenue administration processes, for common operations including managing tax collection and business licenses. From discussions with TTC personnel, the Civil Grand Jury learned that they intend to modify their data practices in the future

¹⁰ <https://www.co.monterey.ca.us/home/showpublisheddocument?id=98898>

¹¹ <https://www.hdlcompanies.com/services/software>

to allow direct breakout of Vacation Rental information. However, that improvement has been on hold for the past several years awaiting final enactment of the revised Vacation Rental ordinances and necessary budget allocations.

TOT Registration applications are submitted via a hard copy form available via download from the County website. The forms may be filled in by computer or by hand and then submitted to TTC where they are subsequently manually input into the internal database by TTC personnel. TOT quarterly reports of occupancy data for tax calculation purposes are due one month after the close of every quarter and are also submitted via a hard copy form which is manually processed by TTC personnel, or via online direct entry which is now available as an alternative method for submittal. TOT quarterly reports submitted by Operators only report aggregate numbers and do not include detailed occupancy data such as specific visitor dates, number of occupants for each date, or number of rooms rented. Members of the general public who want to know whether a given property is properly registered for TOT must send their inquiry via email to TTC personnel, who respond manually.

Improvements in the processes and systems noted above could lead to increased public transparency, increased revenue through decreased tax avoidance, and greater departmental efficiency through reduction of manual operations.

Alignment of County Actions

Throughout the Vacation Rental ordinance development process during the past seven years, one of the key recurring questions asked by policymakers and the public alike is: how can the County collect taxes from unpermitted and possibly illegal businesses?

As noted above, TTC has issued TOT Certificates and currently collects occupancy tax receipts from approximately 658 Vacation Rental businesses in the unincorporated County, a number which reflects significant growth over time.

At the same time, RMA/HCD has approved and issued approximately twenty (20) total permits for Vacation Rental operations in the unincorporated County, a number which has remained constant for a number of years.

From Civil Grand Jury discussions with County personnel in TTC and RMA/HCD, as well as a review of select communications involving various members of the Board of Supervisors dating back to at least 2015, it is clear that there is a general awareness of this apparent inconsistency and a tacit acceptance of this situation by the County.

The TTC perspective is straightforward and is referred to internally as the “Al Capone Rule,” referring to the infamous gangster from the 1930’s who, despite his many crimes, was ultimately convicted and jailed on charges of tax evasion after he famously bragged that “they can’t collect legal taxes from illegal money”. The U.S. Government ultimately proved that statement to be false, fining Capone today’s equivalent of millions of dollars and sentencing him to eleven years in prison. It is TTC’s job to collect taxes and generate revenue for the County, and their focus remains on this task. It is worth noting that TTC’s TOT registration certificates and other relevant TTC documents prominently feature a legal disclaimer notifying the recipient that tax registration does not confer a legal permit for operation:

Registration with the Tax Collector is for the purpose of collecting and remitting TOT to the Tax Collector. It does not authorize any person to conduct any unlawful business, or conduct any lawful business in an unlawful manner, nor to operate without strictly complying with all local applicable laws, including, but not limited to those requiring a permit from any board, commission, department or office of this county. Registration with the Tax Collector does not constitute a permit to operate. Operators should contact the Resource Agency for information related to permits and zoning.

While the Civil Grand Jury understands that TTC is not responsible for zoning enforcement, hence the prior disclaimer, it is nonetheless interesting to note that the disclaimer language specifies that “Operators should contact the Resource Agency for information related to permits and zoning,” therefore implying that these steps are optional. In conversations with TTC personnel, it was similarly noted that they do not attempt to cross check with RMA/HCD as to whether a property has the required zoning permits in place before issuing a TOT Certificate.

CCD, as previously noted, currently has three fulltime Code Enforcement Inspectors on staff with a fourth position currently budgeted. CCD has responsibility for responding to all property code and zoning related matters across the County. As such, enforcement of zoning regulations specifically pertaining to Vacation Rentals is classified as a low, Priority Three matter and is therefore handled on a purely reactive basis.

In discussions with CCD personnel, it is apparent that there is simply insufficient staff to enforce Vacation Rental zoning ordinances proactively. In addition, there is also an understanding that a more active enforcement profile would likely result in a decrease of TOT revenue as businesses are forced to either comply or shutter operations, an outcome that CCD believes the Board of Supervisors would likely find undesirable.

In summary, all personnel interviewed by the Civil Grand Jury understood the apparent inconsistencies of the current approach but felt that it was an inevitable outcome of the current situation, with significant modification only possible when the new Vacation Rental ordinances are ultimately enacted.

New Ordinance Finalization & Establishment of Enforcement Program

The Vacation Rental ordinance redraft initiative has now been in progress for over seven years driven by HCD/RMA under the direction of the Planning Commission. Throughout this period, there have been numerous acknowledgements in Board of Supervisor and Planning Commission statements as well as in local press regarding “community tension” surrounding Vacation Rentals.

In examining how to enable an effective enforcement program, the Board of Supervisors has been aware for many years of staff and budget limitations preventing development of a robust code enforcement capability. Quoting from a June 2018 Board communication to the Planning Commission¹²:

... the Board is not in support of increasing funding for code enforcement but will reconsider that issue once an ordinance is developed. However,

¹² <https://monterey.legistar.com/View.ashx?M=F&ID=7038683&GUID=9E011D2B-3D45-4325-B770-730DD38888E6>

we are clear that there is an urgency to complete the ordinances along with the need to continue with enforcement efforts to manage the current STR situation and reduce community division on this topic.

Despite the Board's recognition of the "urgency to complete the ordinances," it is now approaching three years since those statements were made and the new draft ordinances remain in development. During this same period, known unpermitted Vacation Rental operations – as evidenced by TOT registrations - rose from approximately 400 in June 2018 to 658 in December 2020.

Separately, effective in January 2020, the State of California passed new Accessory Dwelling Unit (ADU) statutes¹³ resulting in mandatory changes to relevant County ordinances. The State statutes, which prompted the County to update its ordinances for ADUs, establish a more permissive environment for ADU construction to help reduce housing market pressure. The updated ordinances explicitly prohibit use of an ADU for Vacation Rental operations.

In Civil Grand Jury conversations with multiple County personnel, there was general acknowledgment that the new ADU ordinances will likely exacerbate the issues with unpermitted – and in this case illegal – Vacation Rental operations, particularly without a viable, proactive enforcement program.

The Civil Grand Jury applauds and supports recommendations from the Planning Commission for an "ongoing, funded, effective, and proactive program that does not depend on neighbors reporting on one another for enforcement."

The Civil Grand Jury also applauds the Board of Supervisors for encouraging a thoughtful, thorough, and inclusive process for the development of new ordinances over the past seven years. However, that needs to be balanced with expediency, which it clearly has not been, therefore allowing the problems to continue to fester and grow. The excessive multi-year development time for the new draft ordinances, coupled with the lack of direction from the Board of Supervisors on enforcement, has allowed

¹³ www.hcd.ca.gov/policy-research/accessorydwellingunits.shtml

uncontrolled growth of new unpermitted Vacation Rentals, resulting in substantially increased public tension and further magnifying the difficult problems which will need to be resolved when new ordinances are eventually enacted.

FINDINGS

- F1. Adobe PDF¹⁴ documents are currently used by TTC to enable Vacation Rental Operators to submit TOT Registration applications. TTC must then manually input the data into the necessary software database application. This manual data input process is inefficient and increases the possibility of introducing errors.
- F2. Because data on properties which are currently registered and paying TOT is not publicly available on the County website, unnecessary additional email requests for information are received and processed manually by TTC.
- F3. Current accounting methods and database systems in TTC do not allow Vacation Rental TOT tax revenues to be easily broken out from other TOT classifications such as hotels and B&Bs, thereby reducing transparency and limiting data available for management and decision making.
- F4. Due to current quarterly TOT reporting methods, Vacation Rental occupancy data that is both timely and contains sufficient detail for use in CCD complaint investigation and enforcement activities is not readily available.
- F5. Vacation Rental complaints often occur at night or during weekends. Due to current budget allocations and staffing levels for Code Enforcement, complaint investigation timeliness and effectiveness is impacted by the lack of 24x7 coverage.
- F6. CCD classifies Vacation Rental complaints as Priority 3 and therefore only reacts when there are immediate concerns for Life, Health, or Safety. Due to current

¹⁴ Portable Document Format (PDF), registered trademark Adobe Corp.

budget allocations and staffing levels for Code Enforcement, proactive enforcement of applicable zoning ordinances is precluded thereby encouraging the growth of unpermitted Vacation Rentals.

- F7. Online public access to complaint information is limited by poor web portal design, the lack of a common database between TTC and CCD, and insufficient internal staff necessary to perform timely processing of Vacation Rental complaints. It is therefore difficult for the general public to determine, with respect to a given property, whether complaints have been registered against that property, how many such complaints have been made, and the disposition of individual complaints.
- F8. While the capability exists for TTC to access the Code Compliance database for Vacation Rental zoning information and complaint information, and similarly CCD is able to request TOT registration data from the Tax Collector's office, the Civil Grand Jury could find no evidence that such direct cross checking occurs as a standard practice thereby contributing to the growth of unpermitted Vacation Rentals which are nevertheless registered for TOT.
- F9. Implicit internal acknowledgement of the desire not to negatively impact TOT revenue has contributed to a reluctance on the part of CCD to actively enforce applicable Vacation Rental zoning ordinances. The lack of consistency between TTC and CCD in enforcing Vacation Rental ordinances has served to further increase public confusion and community tension.
- F10. Due to the potential increase in secondary housing units resulting from newly enacted County ADU ordinances, coupled with the current Priority Three reactive Vacation Rental enforcement policies, increased community tension and complaints with respect to Vacation Rentals are likely to result.
- F11. The Board of Supervisors failure to take timely, definitive enforcement action to limit the growth of non-permitted Vacation Rental operations in the County has

allowed the problem to continue to grow in an uncontrolled fashion, exacerbating tensions within the community.

- F12. The failure of the Board of Supervisors to enact new ordinances in a timely manner has further magnified difficult problems that must be resolved as new ordinances are put into effect, including establishing policy and driving subsequent compliance and enforcement actions for existing unpermitted Vacation Rentals whose operations may ultimately be illegal under the new ordinances.

RECOMMENDATIONS

- R1. The Treasurer-Tax Collectors Department should migrate Vacation Rental TOT registration to an online software service with an electronic database repository to allow applicants to apply and check application status directly through the County website, and which also allows the general public to verify whether a given property is registered and possesses a valid TOT Certificate. (F1, F2)
This capability should be operational within six months after the date of enactment of new ordinances.
- R2. The Treasurer-Tax Collectors Department should construct an online records system and require Vacation Rental operators to directly enter visitor occupancy data (including specific occupancy dates, number of occupants, number of rooms rented, and revenues received) in near real time, thereby facilitating tax verification and code compliance related activities. (F3, F4)
This capability should be operational within six months after the date of enactment of new ordinances.
- R3. The Treasurer-Tax Collector's Department and Department of Housing and Community Development should implement an online system for direct public access to file complaints and obtain the status of enforcement action and complaint resolution. This system should be implemented in such a way that that complete, consolidated electronic records including TOT registrations

and Vacation Rental zoning permits can be easily maintained, searched, and referenced by street address and APN. (F1, F2, F7, F8)

This capability should be operational within six months after the date of enactment of new ordinances.

- R4. The Treasurer-Tax Collector's Department and Department of Housing and Community Development should implement Internal process changes to ensure future alignment between County departments in the registration, permitting, licensing, and enforcement of vacation rental businesses. (F8, F9)

These process changes should be implemented within six months after the date of enactment of new ordinances.

- R5. As a necessary part of new Vacation Rental ordinance development, the Board of Supervisors should establish specific paths and timelines for addressing how current unpermitted Vacation Rental operations may be eligible to obtain permits under the new ordinances. (F11, F12)

These regulations and processes should be complete effective with the date of enactment of new ordinances.

- R6. As part of the new ordinance development, the Board of Supervisors should specify procedures for handling current Vacation Rental operations that may be illegal and ineligible for permits under the new ordinances. (F11, F12)

These regulations and processes should be complete effective with the date of enactment of new ordinances.

- R7. The Board of Supervisors should authorize the development of a comprehensive Vacation Rental enforcement program funded through revenue generated from TOT tax receipts, zoning permit fees, and zoning ordinance violation penalties in a manner similar to the Cannabis program. The program should be designed to be sustainable and should include the funding necessary for IT system enhancements, dedicated personnel for proactive enforcement, and contracting of third-party services for development assistance and staff augmentation, as needed.

This program should be implemented as soon as possible - in advance of new ordinances being enacted - enabling personnel and systems to effectively enforce the new ordinances upon adoption. (F1, F2, F3, F4, F5, F6, F7, F10)
These authorizations should be completed at least three months prior to the date of enactment of new ordinances.

R8. The Board of Supervisors should fully commit to accelerating efforts to achieve final approval of new Vacation Rental ordinances by end of calendar year 2021. (F11, F12)

The new ordinances should be enacted no later than December 31, 2021.

REQUIRED RESPONSES

The following responses are required pursuant to Penal Code sections 933 and 933.05:

From the following governing body within 90 days:

- Monterey County Board of Supervisors
Findings: F1-F12
Recommendations: R1-R8

From the following elected County officials within 60 days:

- Monterey County Treasurer-Tax Collector
Findings: F1-F4, F7, F8
Recommendations: R1-R4

INVITED RESPONSES

- Monterey County Director of Housing & Community Development (formerly part of RMA)
Findings: F4-F10
Recommendations: R3-R6

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

Local Cities Perspective

While this report is focused on the unincorporated areas of Monterey County, it is instructive to consider briefly how the local coastal cities within the County have responded to the growth in Vacation Rentals. The Civil Grand Jury requested relevant documents from Carmel-by-the-Sea, Marina, Monterey, Pacific Grove, and Seaside in order to gain an understanding of their general ordinance structure and their respective approaches to tax collection and code enforcement.

With respect to ordinance structure, each city has well defined policies regulating Vacation Rentals within their jurisdiction. The approaches taken by the individual cities are quite varied, reflecting the specific character and sensibilities of each area. For example, Monterey and Carmel both prohibit the operation of all Vacation Rentals in residential areas of their respective cities. Marina allows Vacation Rentals but only in an Owner's primary home, non-hosted rentals are prohibited. Seaside has taken the approach of allowing licenses to Operators who can provide proof that they were operating a Vacation Rental prior to April of 2018.

Pacific Grove's unique ordinance structure resulted from the 2018 voter approved Measure M which prohibits Vacation Rentals in non-coastal residential zones. Vacation Rentals are permitted in the coastal zone subject to a city-wide maximum limit and a density limit requiring a minimum fifty-five (55) lineal feet exclusion zone between Vacation Rentals.

Regarding tax collection and code enforcement, four of the five cities have contractual engagements with vendor Host Compliance to provide Vacation rental monitoring and management services. Various levels of service are contracted by the four cities, from a minimum of Address Identification and 24/7 Hotline capability to the maximum of Address Identification, 24/7 Hotline, Compliance Monitoring, Tax Registration & Collection, and Rental Activity Monitoring.

In addition to engaging contract services provided by third-party vendors such as Host Compliance, effective Vacation Rental enforcement programs require dedicated

municipal personnel to handle necessary tasks such as monitoring and managing the reports and activities of Host Compliance, providing information on regulations to property owners and the general public, responding to complaints, working with property owners to correct code violations, issuing citations, etc. Several of the cities in the survey use outside contracting firms such as CSG Consultants¹⁵ for augmentation of internal code enforcement staff given the potentially variable workload requirements.

Finally, while not specifically requested as part of the survey, at least one of the cities noted that it formally funds its Vacation Rental compliance and enforcement program by specifying that up to 10% of TOT receipts be used for this purpose.

¹⁵ www.csgegr.com

