



City of  
**LEMOORE**  
CALIFORNIA

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June 18, 2019

Honorable Donna Tarter, Presiding Judge  
Kings County Superior Court  
1640 Kings Court Drive  
Hanford, CA 93230

Re: City of Lemoore's Response to Grand Jury Report Dated May 28, 2019

Dear Judge Tarter:

The City of Lemoore has received the Grand Jury Report dated May 28, 2019, and entitled "Lemoore City Council." As requested, we are providing the following comments to the recommendations contained in the report. While the City understands the Grand Jury has almost unfettered discretion to investigate and issue findings and recommendations on those investigations, the City is disappointed that the Grand Jury has issued this report in a manner that seems to attack two specific individuals. Additionally, despite the requirement of the Grand Jury to maintain confidentiality (Penal Code section 924.1), the Grand Jury chose to cite to the interviews and comments of these two individuals in an effort to support its allegations that they engaged in misconduct, a claim for which the Grand Jury has provided no facts or evidence in support of the inaccurate allegations.

**Finding 1**

It was discovered during the interview process that not all City Council members attended the local training where the Rules of Procedures would have been discussed. Some members chose not to attend, nor was it apparent that the Rules of Procedures were discussed.

**Recommendation 1**

The recommendation is that all City Council members are highly recommended to attend the League of California Cities annual conference which includes Brown Act training as well as other responsibilities of the City Council. Any members not attending the annual conference training are encouraged to attend the City Attorney training session that is offered. Training should be conducted by the City Attorney with specific emphasis on the Lemoore City Council Rules of Procedures and Brown Act.

**City Response:**

The City disagrees with the Finding 1. The City has provided training for Council on a regular basis, and the Council Members have attended same. Specifically, the current sitting members of the Council have attended the following trainings at the League of Cities:

- Blair and Brown  
League of California Cities New Council training 1/18 – 1/20/17
- Blair and Neal  
League of California Cities Annual training 9/13-9/15/17
- Brown and Neal  
League of California Cities Annual training 9/12-9/14/18
- Lyons  
League of California Cities Annual training 6/19-6/20/19

As part of an introduction to their position as council members, the City Attorney has also provided training to each of the Council Member Elects after confirmation of their appointment to the City Council on the following topics: Council Rules, the Brown Act, conflict of interest and other matters related to their roles as Council Members.

In addition to the above, the City Attorney has provided Council Trainings for Council Members. The List of City Attorney Trainings since 2015 are as follows:

- January 28, 2015 – Ethics & Public Service – Biennial Training;
- January 28, 2015 – Sexual Harassment Prevention Training;
- February 2017 – Council/Commission Governance, Ethics & Public Service: Biennial Training;
- September 7, 2017 – City Council Retreat Role of City Council, City Manager, City Staff and City Attorney;
- April and May 2018 - Preventing Sexual Harassment and Abusive Conduct in the Workplace; and
- December 5, 2018 – Ethics & Public Service: Biennial Training  
May and June 2019- Ethics, Whistleblowing, Brown Act & Public Service

(Copies of the Training Materials are attached as Exhibit 1-A.)

As to the Grand Jury's statement that "Some members chose not to attend, nor was it apparent that the Rules of Procedures were discussed", this statement is wholly inaccurate.

First the Council Rules of Procedure were adopted by the City Council in early 2018, prior to the election of current Council Members Billingsley and Lyons, who were seated on December 18, 2018. Staff drafted and brought to Council at a Study Session in an agendaized regular meeting on March 20, 2018, proposed rules of procedure for the City Council, where such rules were introduced and discussed. Present at the meeting were Council Members, Blair, Brown, Neal and Madrigal. The Matter was again discussed at a Special Meeting on April 10, 2018, and specific

direction from the Council was provided to Staff. Finally, the Council Rules of Procedure were adopted at a Regular Council Meeting on April 17, 2018, on a vote of 3-1-1 (Ayes – Brown, Madrigal, Chedester; Noes – Blair, Absent – Neal) While Council Member Neal was absent for the vote, he had been present at the previous two meetings. Therefore, all members of the City Council at the time of the adoption of the Council Rules of Procedure reviewed and discussed the rules. (See Minutes of Meetings attached as Exhibit 1-B.)

Additionally, the Grand Jury's recommendation, if accepted as written, could require the City to expend public funds. The City may not be in a position financially to expend the funds for travel to the League of Cities for all Council Members annually. Therefore, the City cannot agree with the recommendation. While the City disagrees with the Grand Juries Finding 1, the City will continue to provide opportunities for training as required by law and as allowed by the City budget.

### **Finding 2**

The Mayor has demonstrated his inexperience in the position of Mayor which is not uncommon for a first-time mayor. He has not had time to become familiar with the duties and responsibilities of his position which has led to his inability to 'control' either the meeting or the City Council.

### **Recommendation 2**

The recommendation is for the Mayor to attend all training sessions which include those offered by the League of California Cities and local training provided by the City Attorney. The content of this training should include specific issues of the City.

### **City Response:**

The City disagrees with Finding 2. This finding provides no specific facts or circumstances as a basis for the opinion provided. Even though no specific basis exists, the City responds as follows:

The current Mayor of Lemoore has been a Council Member since December of 2012. During his time as a Council Member he has seen several changes in the Council and experienced discord among members of previous Councils. However, the current situation which the City Council has faced is both unique and unusual.

The Mayor is responsible for implementing the parliamentary procedures of the meeting and has attempted to do so in a fair, legal and judicious process. Often times he is confronted with unanticipated interruptions or unpredictable conduct by other individuals. When these incidents occur, the Mayor has tried to maintain order by using those methods legally available to him including taking a recess, requesting that members get back on topic or wait to provide their comments, or admonishing the speaker.

Further, as established by the Lemoore City Council Rules of Procedure in Chapter 3 section 2, it is the City Council as a whole who is responsible for taking action against a council member who does not follow the expectations outlined in the rules, which this Council has attempted to do as a body. Additionally, please see the response to Finding 1 above.

### **Finding 3**

The City Attorney expressed her opinion that enforcement of the Rules of Procedures is the responsibility of the City Council. Due to the Mayor's lack of experience there is no one providing leadership to the City Council. The hands-off approach of the current City Attorney appears to contribute to this void in leadership.

### **Recommendation 3**

The Grand Jury recommends that the City Council utilize an attorney with a more hands-on approach to the enforcement to the City Council Rules of Procedures. This was demonstrated with the substitute attorney's active participation during the meeting of March 5, 2019. The substitute attorney played an active role in the enforcement of the Brown Act and Rosenberg Rules of Order violations during an open session meeting.

### **City Response:**

The City disagrees with Finding 3. Other than the one opinion expressed regarding the meeting of March 5, 2019, the Grand Jury has provided no legal or factual basis for this opinion. The City also disagrees with Recommendation 3. The Grand Jury does not have the right or ability to direct the City Council on hiring choices. The Grand Juries authority is limited to procedural matters and not substantive policy concerns. (78 Ops.Cal.Atty.Gen. 290 (1995).) The Council has the ability to select the individuals they feel are the best for the City. Their choice of legal council is their choice and theirs alone.

Additionally, and understandably, it is apparent that the Grand Jury does not fully comprehend the roles of the individuals in the City. The City of Lemoore is a Charter City. Under both the Government code beginning at section 34450 and the City's Charter, the City Council has the right to determine its own rules and order of business. This same rule is the first sentence of the Lemoore City Council Rules of Procedure. These rules, the state code and the Lemoore Municipal Code all establish that the City is governed by the City Council as a collective body and policy maker for the City. The City Council directly hires both the City Manager and the City Attorney. The City Manager is in charge of the day to day operations of the City as directed by Council. The City Attorney is the legal advisor to the City and is obligated to follow all lawful directives provided to her by the City Council as a body.

As legal advisor, the City Attorney has an attorney-client relationship with the City. As such the City Attorney, who is bound by ethical rules and laws, owes an undivided duty of loyalty to the City and not any one individual member, the same as in any attorney client relationship. (California Rules of Professional Conduct 3-600.) It is the City Attorney's job to provide legal

guidance and advice to the City, not to make the decisions or policy for the City. The City Attorney, by law, must not act as a policy maker, which is the job of the Council, for to do so could be considered illegal. In the 9th Circuit case of *Biggs v. Best, Best & Krieger*, 189 F.3d 989, the Court held that a contract city attorney firm could be terminated because of political activity related to the city since she acted as a policymaker. (See also *Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811.) Further, as the legal advisor, the City Attorney is prohibited from disclosing confidential information to anyone without the client's consent. (California Rules of Professional Conduct 3-600.) The City understands the assertion of this privilege was a position asserted by the City Attorney in this investigation.

Further, as established by the Lemoore City Council Rules of Procedure in Chapter 3 section 2, it is the City Council as a whole who is responsible for the conduct of individual Council Members.

The Grand Jury has alleged that the City Attorney is "hands off". While it is understandable that a lay person may view the City Attorney's actions or inaction as "hands off", inevitably there are multiple factors at play which will determine how a City Attorney interacts with the City Council and the public in specific circumstances. Often times the City Attorney is prohibited from making statements or taking actions that would exceed her authority, disclose privileged information, or create the appearance of liability on behalf of her client, the City. So while the public may view this as inaction, in reality the City Attorney is performing her function of protecting the legal interests of the City within the bounds proscribed by the City Council and the law.

#### **Finding 4**

There are additional remedies to City Council member violations in Chapter 3 section 2 of the Rules of Procedures under 'Norms and Expectations'. This section includes but is not limited to public censure.

#### **Recommendation 4**

It is the recommendation of the Grand Jury that a copy of these Rules be distributed to and then reviewed with the City Council. There should be enforcement of violations of these rules.

#### **City Response:**

The City disagrees with the Finding 4. Further the recommendation is unnecessary and simply a restatement of the actions already taken by the Lemoore City Council.

Please see the information in Response to Finding 1 above regarding the review and adoption of the Lemoore City Council Rules of Procedure.

As to enforcement for violations of the rules, the City has done everything in its power to control the conduct of its members. The City would note that the findings do not appear to be related to

Honorable Donna Tater, Presiding Judge

June 18, 2019

Page 6

one particular individual or circumstance. Despite this lack of clarity, the City in recent history has publicly admonished a member for not following the rules. When that did not work, the City publicly censured the member. When that did not work, the City Attorney sent a cease and desist letter. Ultimately when nothing else seemed to work the City filed a lawsuit in Kings County Superior Court, which was ultimately settled in a manner which to date, has corrected the conduct.

The City, the Council Members, and Staff have all addressed the issues as they have arisen and will continue to do so in a professional, legal and fair manner.

Sincerely,

Edward Neal, Mayor  
On Behalf of City Council  
For City of Lemoore

Enclosures: Exhibit 1-A – Training Materials  
Exhibit 1-B – Minutes

cc: Kings County Grand Jury  
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