



CITY OF MANTECA

BENJAMIN CANTU, MAYOR
GARY SINGH, VICE MAYOR
DAVID BREITENBUCHER, COUNCILMEMBER
CHARLIE HALFORD, COUNCILMEMBER
JOSE NUÑO, COUNCILMEMBER

September __, 2021

Honorable Xapuri B. Villapudua, Presiding Judge
Superior Court of California, County of San Joaquin
180 East Weber Street, Suite 1306J
Stockton, California 95202

Re: Grand Jury Report – City of Manteca: A City Government in Turmoil

To the Honorable Judge Villapudua:

This letter responds to the above-referenced Grand Jury Report in accordance with California Penal Code sections 933 and 933.05. The City Council for the City of Manteca (the “City”) and City staff have thoroughly reviewed the findings and recommendations, and considered the Grand Jury Report in its totality. The City Council for the City of Manteca (“City Council”) has approved the responses contained in this letter at its council meeting of September 14, 2021.

In addition, the City Council notes that the City has retained the services of a Program Specialist who will assist the City in implementing and/or reviewing the recommendations and/or proposed actions set out in the Grand Jury Report and/or in further detail below.

1.0 – INCONSISTENT EMPLOYMENT PRACTICES

1.1 - Hiring

F1.1 – *The city manager and assistant manager positions were filled without the benefit of an established recruitment process. This caused community-wide turmoil while they struggled to learn the job.*

City's Response: The City agrees with this finding.

R1.1 – *By December 31, 2021, develop, adopt, and implement effective written recruitment policies and procedures, and strictly adhere to them for all executive hiring.*

City's Response: This recommendation has not yet been implemented, but will be implemented in the near future, consistent with R1.1. The City also wishes to note that it did conduct a national search with a well-regarded search firm beginning in May 2021 to recruit and hire its next City Manager.

1.2 – Insufficient Training & Development

F1.2.1 – *Some managers were not capable of providing necessary training for staff, particularly within the finance department, which resulted in poor decision making.*

City's Response: The City agrees with this finding.

F1.2.2 – *The City has no policy for employee training or professional development; therefore, employees lack the necessary skills to maintain efficient operations.*

City's Response: The City disagrees partially with this finding; while the City does concede that certain departments may have no formal policies as described above, other departments (for instance, police and fire) do have written, approved, and formalized policies for training and professional development.

R1.2.1 – *By March 31, 2022, develop and implement a written policy requiring department heads to regularly evaluate staff performance, ensuring they have the knowledge and skillset to perform the job assignments, and provide training when necessary.*

City's Response: This recommendation has not yet been implemented, but will be implemented in the near future, consistent with R1.2.1, to the extent that certain departments lack these memorialized policies.

R1.2.2 – *By March 31, 2022, develop and implement a written policy requiring staff be trained or cross-trained, ensuring work can be covered during temporary absences.*

City's Response: This recommendation has not yet been implemented, but will be implemented in the near future, consistent with R1.2.2, to the extent that certain departments lack these memorialized policies.

1.3 – Reorganization/Position Control

F1.3.1 – *The city council approved the reorganization without the benefit of a detailed position control schedule, causing confusion and failure of the reorganization plan.*

City's Response: The City disagrees partially with this finding; while certain aspects of the reorganization plan may have caused confusion and/or lacked a detailed position control schedule, this was not universal. The City believes that select language of this finding is too all encompassing, and requires caveats.

R1.3.1 – *By December 31, 2021, develop and implement a policy that requires a detailed position control schedule be presented to the city council for approval, prior to the execution of any reorganization.*

City's Response: This recommendation has not yet been implemented, but will be implemented in the near future, consistent with R1.3.1.

1.4 – Inconsistent Promotion Policy

F1.4.1 – *The City of Manteca has a history of unfair promotional practices which caused low morale and the loss of employees.*

City's Response: The City disagrees partially with this finding; while the City does concede that certain promotions may have been consistent with the finding in F1.4.1 (in particular, as noted in the Grand Jury Report, the hiring of the city manager and assistant city manager discussed therein), other appointments were both fair and appropriate. The City believes the language of this finding is too all-encompassing, and requires caveats.

F1.4.2 – *Employees were ill-prepared for promotions, leading to inexperienced and unqualified employees being promoted.*

City's Response: The City disagrees partially with this finding; while the City does concede that certain promotions may have been consistent with the finding in F1.4.2 (in particular, as noted in the Grand Jury Report, the hiring of the city manager and assistant city manager discussed therein), other appointments were both fair and appropriate. The City believes the language of this finding is too all-encompassing, and requires caveats.

R1.4.1 – *By March 31, 2022, develop and implement a revised written policy that ensures promotions are based on qualifications.*

City's Response: This recommendation has not yet been implemented, but will be implemented in the near future, consistent with R1.4.1.

R1.4.2 – *By March 31, 2022, develop and implement an employee development program to assist candidates in acquiring education and/or training to help them gain skills that could lead to promotions.*

City's Response: This recommendation has been implemented; the City notes that the budget approved for Fiscal Year 2021-2022 includes \$50,000.00 total for employees for tuition reimbursement.

1.5 – Lack of Formal Succession Planning

F1.5.1 – *The city has no succession plan to fill management positions with qualified candidates. Without a transitional process, there was a delay in preparation and completion of important reports, including the annual audit.*

City's Response: The City agrees with this finding. Following its nationwide search for a new City Manager, the City will work with City management to develop appropriate succession plans.

R1.5.1 – By December 31, 2021, develop and implement a succession plan for all management positions.

City's Response: This recommendation has not yet been implemented, but will be implemented in the near future, consistent with R1.5.1, provided, however, the City will need additional time to develop this plan, and anticipates its completion on or before March 31, 2022.

R1.5.2 – By March 31, 2022, department heads develop and implement a plan that ensures employees are sufficiently trained or cross-trained in multiple positions so that critical vacant positions can be filled with qualified personnel.

City's Response: This recommendation has not yet been implemented, but will be implemented in the near future, consistent with R1.5.2.

1.6 – Inconsistent Administrative Leave and Employee Termination Process

F1.6.1 – The policy for placing an employee on administrative leave, also called suspension, is ambiguous and subject to misinterpretation, leading to unfair practices.

City's Response: The City disagrees partially with this finding; the City cannot discuss and/or opine publicly on confidential, personnel matters. Without knowing the specific instances considered by the Grand Jury, the City cannot fully concede to or acknowledge this finding. Moreover, each case where an employee is placed on administrative leave is done so on a case-by-case basis, based on the specific facts of that case.¹

F1.6.2 – Investigations conducted by outside law firms are expensive and costly to taxpayers.

City's Response: The City disagrees with this finding. The City has a duty to investigate select categories of misconduct based on federal and/or state law, and/or its own personnel rules and policies. Moreover, the City takes its duty to investigate these matters very seriously. Summarily labeling all investigations conducted by outside law firms as “expensive and costly to taxpayers” does not take into account the specific facts of that particular disciplinary matter and why the decision was made to investigate the matter using an outside law firm. While the City does recognize there have been multiple wrongful termination claims in the recent past, outside law firms are needed at times to ensure a fair, efficient, just, and impartial process for all involved parties. Significantly, despite multiple claims, very few wrongful termination lawsuits were actually filed. The City believes part of the reason for that is that some of the outside investigations led to sustained findings, which negated possible lawsuits and permitted claims to be resolved more quickly and favorably to the City. Furthermore, the City anticipates that costs related to outside law firms shall diminish moving forward since the City opened its first in-house City Attorney’s Office on February 1, 2021.

¹ To note, the City (and most jurisdictions) distinguish between “paid administrative leave” (which is generally not a form of discipline) and a “suspension” (which is in fact, discipline).

R1.6.1 – *By December 31, 2021, develop and implement a written administrative leave policy that is clear and concise.*

City's Response: This recommendation has not yet been implemented, but will be implemented in the near future, consistent with R1.6.1; provided, however, the City also recognizes that each matter must be analyzed on a case-by-case basis. Furthermore, on all administrative leave decisions made moving forward, the City shall get sign-off from the City Attorney's Office.

R1.6.2 – *By March 31, 2022, develop and implement a written reciprocal agreement for an investigating team from a neighboring city or cities, to conduct internal investigations (similar to law enforcement agencies utilizing investigative staff from a neighboring community or department).*

City's Response: This recommendation will not be implemented because it is not warranted and it is not reasonable. Many cities do not have trained investigators and/or an abundance of individuals who are approved to review and/or handle confidential, personnel matters. In addition, certain personnel investigations require an outside investigator to be licensed. Furthermore, investigations conducted by neighboring cities could be poorly implemented, and may cause confusion and turmoil for all parties. Finally, in the interest of justice and due process, investigations should be conducted in a timely manner. If a neighboring city is unavailable for several months, this process is no longer a fair process for both the complainants and the subjects.

Instead, the City has recently trained investigators in its Employee Services & Engagement department, thus it can provide trained, in-house investigators for purposes of an investigation. In addition, the City will utilize its newly formed City Attorney's Office to conduct select, internal investigations, as set out in further detail below.

R1.6.3 – *By March 31, 2022, develop and implement a policy for employing external resources, when necessary.*

City's Response: This recommendation has not yet been implemented, but will be implemented in the near future, consistent with R1.6.3.

1.7 – Flawed Grievance Procedure

F1.7.1 – *Employees were afraid that if they complained they would become the subject of harassment and retaliation by management, causing them not to avail themselves of the existing grievance procedure, resulting in increased denigration of morale.*

City's Response: The City disagrees partially with this finding; while the City cannot discuss specific, confidential personnel matters, the City cannot confirm or deny that certain employees may have been afraid to formally complain, consistent with F1.7.1. The City, however, believes the language of this finding is too all-encompassing, and requires caveats. Importantly, the City

has available a multitude of mechanisms for reporting misconduct, including those set forth in its Personnel Rules and Regulations and Policies and Procedures, which include, e.g., a Discrimination and Harassment Policy, Domestic Violence Policy, Gifts and Gratuities Policy, Internal Complaint and Grievance Policy, Whistleblower Policy, Workplace Civility Respect Policy, Workplace Violence Policy, and a general Workplace Wrongdoing Policy. *See* <https://www.ci.manteca.ca.us/HR/Pages/Policies-And-Procedures.asp>. Each of these policies encourages the reporting of internal complaints and issues and provides vehicles for employees to raise and report concerns, which the City takes seriously and investigates. The City will continue to make employees aware of these avenues for submitting complaints and encourage employees to come to their supervisor, to Employee Services & Engagement Department (“HR”), and/or elsewhere as may be appropriate.

F1.7.2 – *Complaints were not addressed and no action was taken until the large volume of complaints could no longer be ignored, resulting in frustration and low morale.*

City’s Response: The City disagrees with this finding; while the City cannot discuss specific, confidential personnel matters, the City notes that it abided by all laws and policies in response to complaints. In addition, the City believes the language of this finding is too all-encompassing, and requires caveats.

R1.7.1 – *By March 31, 2022, revise the current grievance procedure to include a reciprocal program, which would allow grievances to be reviewed by another city’s administrators, assuring impartiality.*

City’s Response: This recommendation will not be implemented because it is not warranted and it is not reasonable. Many cities do not have trained investigators and/or an abundance of individuals who are approved to review and/or handle confidential, personnel matters. Furthermore, investigations conducted by neighboring cities could be poorly implemented and may cause confusion and turmoil for all parties. Finally, in the interest of justice and due process, investigations should be conducted in a timely manner. If a neighboring city is unavailable for several months, this process is no longer a fair process for both the complainants and the subjects.

Instead, the City will allow employee complainants to bring complaints either to the Employee Services & Engagement Department (“HR”), or to the newly formed City Attorney’s Office.² Should an employee bring a complaint to the City Attorney’s Office, the City Attorney’s Office will review the complaint and determine one (1) of three (3) options: 1) send the complaint to HR for review and investigation; 2) review the complaint in the City Attorney’s Office; or 3) refer the matter outside of the City for investigation.

2.0 – INEFFECTUAL CITY MANAGEMENT

² Per the Manteca Municipal Code, the City Attorney does not answer directly to and is not managed by the City Manager, but instead answers directly to the City Council, thus helping to ensure impartiality in select matters of concern for the Grand Jury.

2.1 – The Team Approach

F2.1 – *A series of mistakes were made that more experienced managers could have avoided, costing the taxpayers undue financial expense.*

City's Response: The City agrees with this finding.

F2.2 – *The team approach was inefficient, duplicating many efforts and requiring constant conferences to update other members of management. This cost unnecessary time and money.*

City's Response: The City disagrees partially with this finding; while the City does concede that previous city management was not always efficient, and some inefficiency did lead to repetitive time and cost money, the City believes that this approach can be efficient under the right city management team.

R2.1 – *By December 31, 2021, the city council review the structure of the city manager's office to ascertain a management approach that is most efficient and cost-effective.*

City's Response: This requires further analysis; again, the City believes that with a different city management team in place, the team approach may work, and could be more efficient and cost-effective. Moreover, the City wishes to wait, observe, and review the performance of its incoming City Manager after six (6) months, and determine whether or not this recommendation will be implemented.

2.2 – Qualifications of City Manager

F2.2.1 – *There currently is no explicit requirement for previous city management experience for the position of city manager, leading to the hiring of inexperienced and unqualified personnel.*

City's Response: The City disagrees partially with this finding; while the City does agree with the finding of the Grand Jury that the lack of an updated policy may have led to the hiring of an inexperienced and/or unqualified city manager, the City does not believe “previous city management experience” alone should be the lone and/or dispositive requirement for the position. For instance, executive experience at the county level, special districts level, an up and coming “assistant city manager”, and/or other executive level experience may also serve as the experience needed to be successful in this position. The City does not believe it should limit its candidate pool in this regard.

R2.2.1 – *By December 31, 2022, develop and adopt new minimum qualifications in the city manager's job description, to include previous city management experience, city municipal finance experience, and capital improvement project management.*

City's Response: This recommendation will not be implemented because it is not warranted and it is not reasonable. Again, while the City does agree with the finding of the Grand Jury that the lack of an updated policy may have led to the hiring of an inexperienced and/or unqualified city manager, mandating the three (3) areas noted above would limit applicants and would likely not result in the best individual to lead the City. Instead, the City will update the city manager qualifications by December 2022 (or sooner) to include relevant executive experience, mandate that the city manager vacancy only be filled following (at a minimum) a statewide search, and at the very least, an understanding and/or knowledge of the areas noted above (but not a requirement).

2.3 – City Council Interference with Management

F2.3.1 – The mayor and some councilmembers violated Municipal Code section 2.08.080. This circumvented the public's right to have city business conducted in public, and caused confusion among staff, subverting the required chain of command.

City's Response: The City disagrees partially with this finding; while there were instances where the Mayor and select councilmembers may have reached out directly to staff (and such actions did cause confusion and/or subvert the chain of command), it is unclear if this ultimately resulted in a violation of the Municipal Code or violated the Brown Act. Indeed, the Grand Jury Report does not state that the City, at the direction of the Mayor or City Council, implemented plans and/or policies and did not bring them to the public for consideration. While the City does concede that borderline impermissible direction to and/or requests of City staff may have been made by the Mayor and select councilmembers to City staff, those facts alone do not amount to a violation of the Municipal Code and/or the Brown Act.

R2.3.1 – By March 31, 2022, develop, adopt, and implement a written censure policy for municipal code violations by the mayor and city councilmembers.

City's Response: This recommendation has been implemented, as the City Council unanimously approved a censure policy in April 2021. Furthermore, the City Council has also approved an Ethics Policy that applies to all of the councilmembers and the Mayor. In addition, on August 2, 2021, the City Council adopted a policy regarding the direction of staff by the City Council.

R2.3.2 – By March 31, 2022, include a review of Municipal Code section 2.08.080 during the annual ethics training for the mayor and councilmembers.

City's Response: This recommendation has been implemented, consistent with R2.3.2. The City Council has also implemented a Council policy concerning the direction of City staff and staff time, which was passed by the City Council on August 2, 2021, at the conclusion of the City Council Retreat. At the August 2, 2021 City Council Retreat, a review and presentation of Municipal Code section 2.08.080 took place.

3.0 – FAULTY FINANCIAL OPERATIONS

F3.1 – *Councilmembers asked few questions of staff about the city’s financial condition or the fiscal impacts of major expenditures they were being asked to approve. This caused ill-informed decision making.*

City’s Response: The City disagrees partially with this finding; while the City concedes there may have been instances where the City Council could have inquired more and/or requested follow-up from previous city management, the City believes that the City Council as a whole has in fact asked appropriate and sufficient questions of staff, especially once some of the issues concerning the financial condition of the City came to light. Moreover, the current City Council did in fact follow-up with and inquire of staff constantly following the financial disclosures that were revealed in the Fall of 2020.

F3.2 – *Major projects were presented to councilmembers with inadequate time to review the complex issues involved. This caused ill-informed decision making.*

City’s Response: The City disagrees partially with this finding; while the City concedes there may have been instances where the City Council should have been provided more time to review major projects and items should not have been presented last minute, the City does not believe this was universal for all major projects. The City believes the language of this finding is too all encompassing, and requires caveats.

F3.3 – *The city council’s approval of loans between restricted funds, without receiving any information or documents on the repayment requirements or fiscal impacts, created an unclear picture of the actual fund balances in the various accounts.*

City’s Response: The City disagrees partially with this finding; while the City concedes there may have been instances where the City Council should have received more information, without knowing the specific instances, the City cannot agree to this finding in totality. The City believes the language of this finding is too all encompassing, and requires caveats.

R3.1 – *Beginning October 1, 2021, the city council conduct public study sessions, at least quarterly, to receive and discuss complex financial issues. These sessions include, but not be limited to, the city’s financial condition, long-term impacts of past, current, and proposed fiscal obligations of the city, major capital outlays, and employee contracts.*

City’s Response: This recommendation has not yet been implemented, but will be implemented in the near future, consistent with R3.1; provided, however, some of these recommendations and/or responsibilities may be sent to and/or overseen by the City Council’s recently formed Finance Ad Hoc Committee, which was established by the City Council in June 2021.

R3.2 – *By October 1, 2021, develop, adopt, and implement a policy which requires information regarding major new or existing complex projects or programs, including a detailed financial analysis, be provided to the city council and the public at least ten days in advance of the item being considered for approval at a city council meeting.*

City's Response: This recommendation will not be implemented because it is not warranted and it is not reasonable. The City abides by and follows the Brown Act, which controls when items should be posted to the public. Instead of setting a ten (10) day posting period, the City will endeavor to work with the Finance Ad Hoc Committee to conduct research with staff and/or meetings, and for City staff and/or the Finance Ad Hoc Committee to update the City Council on a quarterly basis at a minimum, and try to focus on major projects and/or the areas noted above by the Grand Jury.

R3.3 – By October 1, 2021, all proposals for the city council authorizing inter-fund loans be accompanied by loan documents detailing obligations of the loan by appropriate department heads or entities, including an analysis of impacts on the city's overall financial condition.

City's Response: This recommendation has been implemented, as the Finance Department has taken steps to include these documents as outlined herein.

Thank you for your efforts that resulted in your report and recommendations. The City will move forward consistent with the actions set out in this letter.

Sincerely,

City of Manteca City Council