

Ventura County Grand Jury 2010 - 2011



Final Report

Santa Paula City Council

June 17, 2011

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Santa Paula City Council

Summary

The 2010-2011 Ventura County Grand Jury (Grand Jury) undertook this investigation of the activities of the City of Santa Paula (City) City Council (Council) pursuant to questions raised by the public. These questions were raised concerning possible violations of the Ralph M. Brown Act (Brown Act) and scheduling “special” meetings of the Council for the purpose of discouraging public participation. The Grand Jury was unable to find substantiation of violations of the Brown Act. [Ref-01]

During the progress of the investigation, the Grand Jury received additional public complaints. Among the issues raised were favoritism, bias, and perceived conflicts of interest regarding Council members’ votes on high value contracts. In addition, citizen concerns were received about a Council member’s trip involving business affairs of the City that was alleged to have been taken without formal Council authorization.

In the course of its investigation, the Grand Jury had the opportunity to observe and study the decision making process of the Council. These observations mainly involved the study of two major issues between 2008 and 2011: the awarding of the contract to build a waste water treatment plant (WWTP) and the awarding of the refuse contract. [Ref-02 through Ref-04]

The Grand Jury investigated the circumstances concerning the process of selecting a contractor for the building of the WWTP. The vote to award the contract generated questions of “bias and favoritism” against some Council members by members of the public. The Grand Jury found that suggestions that Council votes were influenced by campaign contributions were not substantiated. The Grand Jury did find that the Council did not adequately or reasonably justify their decision to award the WWTP contract; this award was made contrary to the City Manager and their own staff recommendations.

The Grand Jury recommends that Council members be required to adequately and reasonably explain their understanding of the financial basis for their votes, when awarding a contract to a higher cost vendor, which are more costly in terms of City debt and cost to taxpayers, or which depart from City staff recommendations.

The Grand Jury recommends the City amend its Conflict of Interest Code, as necessary, to include open acknowledgement of campaign contributions or gifts from a petitioner for City business before debating or voting on any matter of benefit to that petitioner.

The Grand Jury recommends that the Council fully adhere to regulations regarding approval of trips relating to City business. As City policy requires, this approval must be requested in open session, prior to travel, even if expenses are to be paid by a third party. [Ref-11]

Background

Santa Paula, founded in 1902, is a town of roughly 30,000 people. Its once robust economy, based largely on oil and agriculture, supported a thriving commercial base in its downtown area. The lucrative oil business is gone and agriculture as a single industry, though still healthy, has not been sufficient to support the City's fragile finances as in past years. Related to all this is a diminished commercial base resulting in lower sales tax revenues. In addition, property tax revenues have declined, partially due to lack of higher-end housing development and an increase in affordable housing for residents with limited incomes. The result has been further stagnation in the property tax base attended by an increased demand for City services. Along with State of California budget cuts, the City faced tight budget choices. In such times, budget cuts were inevitable, involving tough decisions on programs and personnel. [Ref-06 through Ref-08]

Responding to these difficult economic realities, the Council faced several critical public policy decisions in its quest for solvency. Among these decisions were the substantial downsizing of the City's Public Works Department and contracting out many of its functions. Included, as well, were the decisions to privatize its City refuse handling services by eliminating the City Refuse Department, selling its equipment, and contracting with an outside vendor to provide these services. These decisions created public complaints related to the Council's decisions on financial matters. Several decisions were seen by many as a challenge to the small-town tradition of having self-sustained city services. [Ref-09]

The awarding of the contract for the City's new WWTP to a large corporation in 2008 raised public concern. Allegations of bias and favoritism surfaced during and after the award. [Ref-02 and Ref-03]

Further allegations came to light regarding perceived bias, conflict of interest, and non-compliance with City and FPPC regulations. As a result of these concerns, the Grand Jury decided to investigate the activities of the Council.

Methodology

Grand Jury members attended Council meetings during the fiscal year 2010–2011.

The Grand Jury interviewed City officials, staff, and interested citizens of Santa Paula.

The Grand Jury reviewed public documents including agendas and minutes of present and past Council meetings, staff reports, City policies, and consultant studies, as well as DVD recordings of past Council meetings.

Newspaper articles and relevant letters to the Editor of the *Santa Paula Times*, the *Ventura County Star*, the *Los Angeles Times*, and the *Ventura County Reporter* were also reviewed by the Grand Jury.

The Grand Jury also examined the *Statement of Economic Interests Form 700* and *Recipient Committee Campaign Statement and Monetary Contributions Received*

Form 460, required by the Fair Political Practices Commission (FPPC) to be filed by certain City employees, Council members, and candidates for elective office. FPPC and City policy concerning trips made by members of the Council were reviewed. [Ref-05 and Ref-10]

Facts

- FA-01.** The Grand Jury received a complaint raising questions about possible Council violations of the Brown Act through the scheduling of a “special” meeting of the Council on May, 13, 2010 for the alleged purpose of discouraging public participation.
- FA-02.** Meetings of the City’s governing body must be held open to the public. An exception is made for “Closed Sessions” which are allowed by law for certain legal and personnel matters. Adequate notice to the public is required for all meetings under the Brown Act. This law mandates that Regular Meetings must be posted publicly at least 72 hours in advance; Special Meetings, 24 hours in advance. [Ref-01]
- FA-03.** Adequate 24-hour notice was given in accordance with the Brown Act requirements regarding the Council Special Meeting of May 13, 2010.
- FA-04.** Questions of bias, favoritism, and conflict of interest surfaced during Grand Jury interviews, in readers’ commentaries in newspapers, and on the internet. These questions involved Council votes on two major issues within the past three years: awarding the refuse contract and awarding the WWTP contract. Questions were raised in regard to Council members casting their votes in favor of businesses whose owners or officials contributed money to their campaigns, or on the basis of favoritism and bias.
- FA-05.** Additional public complaints received by the Grand Jury questioned whether City Refuse Department enterprise fund monies may be used for general fund purposes, or whether these funds must revert to ratepayers in the event the City privatized the City Refuse Department.
- FA-06.** After the City dissolved the City Refuse Department, applicable enterprise fund monies were transferred into the general fund, and the Council followed established procedures in voting to award the refuse contract to a private company. [Ref-04]
- FA-07.** At the Council meeting of February 22, 2011, the City Attorney rendered a legal opinion that the transfer of enterprise fund monies into the general fund was within the bounds of applicable law. [Ref-09]
- FA-08.** The Council decision on awarding the WWTP contract was considered at the April 15, 2008 Special Meeting. The staff report presented at that meeting detailed the comparative costs and the design, construction, and operation experience of the companies competing for the WWTP contract. This information was derived from the responses to the Request for Proposal (RFP) of the two competing vendors; Pacific Environmental

Resources Corporation (PERC), and Veolia Water Operating Systems, Inc. (Veolia). [Ref-02 and Ref-03]

- FA-09.** According to the staff report, the Veolia proposal showed significantly lower total project and ratepayer costs than those shown in the PERC proposal. Veolia had significantly more experience in the design, construction, and operation of WWTPs with the required Membrane Bioreactor (MBR) filtration system. The total project costs of the Veolia proposal was more than \$22 million less than that of the PERC proposal. The staff concluded that “. . . Veolia is the recommended partner because of experience . . . [and provides] . . . the lowest overall cost to the City.” [Ref-02 and Ref-03]
- FA-10.** The staff report addressed the financing proposals of the competing vendors. Veolia’s proposal offered financing of the project with a short-term construction loan financed through private activity bonds, while helping the City secure a State allocation for tax-exempt debt. PERC offered to provide 30-year fixed-rate private financing. The staff report recommended the Veolia plan as it provided “. . . the best financial option to the City . . .” [Ref-02 and Ref-03]
- FA-11.** The Council majority voiced concern with the uncertainty of the bond market associated with the Veolia proposal. They feared that the interest rates might rise, and adding another bond issue to the City’s indebtedness might lead to a lower City credit rating. [Ref-03]
- FA-12.** The City Manager stated that, historically, rising bond rates should not present a significant risk. Under the Veolia proposal, bonds could be refinanced at a lower rate. [Ref-03]
- FA-13.** PERC and Veolia each submitted a revised Best and Final Offer (BAFO) by the previous Thursday’s deadline. However, the Council allowed PERC to amend its BAFO verbally at the April 15, 2008 Council meeting. Veolia stated that it had met the deadline, stood by its proposal, and objected to the manner in which verbally revised BAFOs were presented at this meeting. [Ref-03]
- FA-14.** The Council recognized that they were facing the deadline date of April 15, 2008 set by the regulatory agency. Fines of \$10,000 per day were to be assessed if a decision to award the WWTP contract was not made in the time specified. [Ref-03]
- FA-15.** On April 15, 2008, the Council awarded the WWTP contract to PERC, contrary to the recommendations of City staff and the City Manager. [Ref-02 and Ref-03]
- FA-16.** In addition to the potential for alleged financial risk associated with the Veolia proposal, majority Council members offered the following reasons for awarding the WWTP contract to PERC, with insufficient or no supporting data to quantify and offset cost differences:
- the Veolia design lacked redundancy for screens and grit removal

- the Veolia plan consumed more electrical energy
- the Veolia proposal would have resulted in added costs associated with the purchase of public bonds, including administrative costs and refinancing fees
- the PERC design had a smaller footprint, providing more land for future use
- the PERC design for the building was aesthetically superior
- the PERC proposal offered a recreational vehicle dump station

[Ref-03]

FA-17. In order to ensure ethical behavior by public officials and to promote transparency in government, the California Political Reform Act of 1974 (PRA) mandates periodic reporting by public officials. Among the required reports are *Statement of Economic Interests Form 700*, and *Recipient Committee Campaign Statement and Monetary Contributions Received Form 460*. To administer this mandate, the law established the FPPC. [Ref-05 and Ref-13]

FA-18. City Resolution No. 6697 certifies that the City adopted the FPPC Conflict of Interest Code in its Resolution dated September 20, 2010. Members of the Council are covered by this policy. [Ref-10]

FA-19. The City regulations regarding conflicts of interest state, in part, “. . . public identification [financial interest in the decision] shall be made orally and shall be made part of the public record . . . [and] . . . the public identification shall be made . . . following the announcement of the agenda item to be discussed or voted on but before the discussion or vote commences. . . .” [Ref-10, and Ref-12]

FA-20. Council members filed Forms 700 and Forms 460 as required by law. Review of Forms 700 and Forms 460 and comparison to voting records alone, disclosed no evidence to indicate that Council member votes were influenced by campaign contributions.

FA-21. Two Council members’ Forms 460 showed monetary campaign contributions from a refuse disposal firm actively engaged in business with the City. One of these Council members cast his vote for a firm that contributed to his campaign and was competing for the refuse contract.

FA-22. The public record did not reflect that Council members made any open disclosure of a possible conflict of interest during debates on the awarding of the City refuse contract, even though members received campaign contributions from one of the firms.

FA-23. The Council operates under a conflict of interest code which is reviewed annually and supplements requirements of the PRA. Accountability is required by City policy regarding “gifts of travel.” City officials are required to obtain approval from the Council prior to any trips which may

involve City affairs. Travel expenses paid by the City or by third persons require specific prior Council approval. [Ref-05, Ref-10, and Ref-11]

- FA-24.** In November 2010, a Council member attended a conference in Washington, D.C. *without* prior approval at third party expense. At this conference, the member was recognized as a representative of the City and "City of Santa Paula" appeared on the list of conference participants. The event was attended by major industries and universities, as well as by local, state, and federal agencies. A record of the Council member's expenses was reflected in his Form 700.

Findings

- FI-01.** The Council did not violate the Brown Act with regard to the Special Meeting of May 13, 2010. (FA-03)
- FI-02.** The Council acted within applicable law in its use of enterprise funds generated by the City Refuse Department. (FA-06 and FA-07)
- FI-03.** The Council elected to accept a WWTP proposal that was \$22 million higher and at a higher monthly cost to ratepayers than the competing proposal. This decision was made contrary to City Manager and staff recommendations. (FA-08 through FA-10, FA-12, FA-13, and FA-15)
- FI-04.** The Council did not adequately or reasonably justify their decision in public to award the WWTP contract to the higher-cost vendor. Nor did the Council address the selection of a firm with substantially less experience in the design, construction, and operation of MBR type WWTPs. (FA-08 through FA-13)
- FI-05.** The Council compelled itself to make the WWTP contract award decision on the deadline date set by the regulatory agency. (FA-14)
- FI-06.** Council members complied with State of California and City requirements for completing campaign contribution disclosure forms. Allegations that Council votes were influenced by campaign contributions were not substantiated. (FA-17 through FA-20)
- FI-07.** During the vote on the awarding of the City Refuse contract, some Council members did not announce their receipt of campaign contributions from one of the vendors. (FA-18, FA-19, FA-21, and FA-22)
- FI-08.** Council members are inconsistent in complying with City requirements for prior approval of trips relating to City business. (FA-23 through FA-24)
- FI-09.** No substantiation was found to support allegations of improper procedure in awarding the refuse contract to a private vendor. (FA-06)

Recommendations

- R-01.** Council members should be required to adequately and reasonably justify the basis for their votes when those votes contradict City staff recommendations. (FI-03)
- R-02.** Council members should be required to adequately and reasonably explain their understanding of the financial basis for their votes when awarding a contract to a higher cost vendor. (FI-04)
- R-03.** The Council should annually place on its agenda a public discussion of its Conflict of Interest Code. This Code should be amended, as necessary, to specifically include a requirement that Council members acknowledge at each meeting any potential conflict of interest, including any campaign contributions or gifts received from any person or business entity having an agenda item before the City. (FI-07)
- R-04.** The Council should fully adhere to City regulations regarding Council approval of trips relating to City business. As policy requires, this approval must be requested in open session, prior to travel, even if expenses are to be paid by a third party. (FI-08)

Responses

Responses Required From:

Santa Paula City Council (FI-03 through FI-05, FI-07, and FI-08) (R-01 through R-04)

References

- Ref-01.** State of California. *Ralph M. Brown Act, California Codes, Government Code Section 54950-54963*, August 28, 2004.
- Ref-02.** City of Santa Paula. *Special Meeting of the City of Santa Paula*, "Staff Report on Water Recycling Facility Requests For Proposal," April 15, 2008.
- Ref-03.** City of Santa Paula. *DVD, Special Meeting of the City of Santa Paula*, April 15, 2008.
- Ref-04.** City of Santa Paula. Agenda. *Regular Meeting of the City of Santa Paula, 11. ORDER OF BUSINESS, Item B. Franchise Agreement with Crown Disposal, Inc.*, April 18, 2011.
- Ref-05.** State of California. *California Code of Regulations, Title 2, Division 6, Sections 18109-18997*. 2011.
- Ref-06.** Triem, Judith, *Ventura County: Land of Good Fortune*. 2nd ed. San Luis Obispo: EZ Nature Books, 1990.
- Ref-07.** Menchaca, Martha, *The Mexican Outsiders: A Community History of Marginalization and Discrimination in California*. Austin: University of Texas Press, 1995.

- Ref-08.** Belknap, Michael, "The Era of the Lemon: A History of Santa Paula, California," *California Historical Quarterly*, 47, no. 2 (1968).
- Ref-09.** City of Santa Paula. Agenda. *Regular Meeting of the City of Santa Paula*, "Item 11A, General Discussion," February 22, 2011.
- Ref-10.** City of Santa Paula. *RESOLUTION NO. 6697, A RESOLUTION ADOPTING THE 2010 CONFLICT OF INTEREST CODE FOR THE CITY OF SANTA PAULA IN ACCORD WITH THE POLITICAL REFORM ACT*, Santa Paula, CA, September 20, 2010.
- Ref-11.** Barclays Official California Code of Regulations, *Title 2. Administration, Division 6. Fair Political Practices Commission, Chapter 9.5. Ethics*. 2009.
- Ref-12.** State of California. California Code of Regulations. *Section 18702.5 Public Identification of a Conflict of Interest for Section 87200 Filers of Regulations of the Fair Political Practices Commission, Title 2, Division 6*.
- Ref-13.** State of California. *California Political Reform Act of 1974*.

Glossary

TERM**DEFINITION**

BAFO	Best and Final Offer
Brown Act	Ralph M. Brown Act - a state law that forbids certain local government elected bodies from holding secret meetings and regulates the holding of executive sessions
City	City of Santa Paula
Council	Santa Paula City Council
FPPC	Fair Political Practices Commission
Grand Jury	2010-2011 Ventura County Grand Jury
PERC	Pacific Environmental Resources Corporation - a major development company based in Arizona and California. Builder of Santa Paula WWTP.
PRA	Political Reform Act of 1974 - established to govern the conduct of affairs of state and local governmental bodies. Requires, in part, that officials perform their duties without bias because of personal financial interests or in the interests of financial supporters. Requires disclosure of income and assets which could be affected by official actions (Form 700). Election campaign receipts and expenditures must also be disclosed.
RFP	Request For Proposal – technical description of the product and conditions to be met by vendors in their applications for a contract to be let by the City
Veolia	Veolia Water Operating Services, LLC, Inc. Competing bidder for Santa Paula WWTP.
WWTP	Waste Water Treatment Plant - facility which processes solid waste