



**SOUTH SAN LUIS OBISPO COUNTY
SANITATION DISTRICT**

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AGENDA

BOARD OF DIRECTORS MEETING

Arroyo Grande City Council Chambers

215 E. Branch Street

Arroyo Grande, California 93420

**Action Summary Minutes of the
Regular Meeting of Wednesday, September 20, 2017, at 6:00 p.m.**

1. CALL TO ORDER AND ROLL CALL

Chairman Shoals called the meeting to order and recognized a quorum.

Present: John Shoals, Chairman, City of Grover Beach
Jim Hill, Director, City of Arroyo Grande
Linda Austin, Vice Chair, Oceano Community Services District

District Staff: Richard Sweet, Technical/Administrative Services Consultant
Gilbert A. Trujillo, District Legal Counsel
Paul Karp, Technical/Administrative Services Consultant

2. PLEDGE OF ALLEGIANCE

Chairman Shoals led the Pledge of Allegiance

3. AGENDA REVIEW

Motion: Director Hill made a motion to approve the Agenda as presented.

Second: Chairman Shoals

Action: Motion approved 3 – 0

Ayes: Directors Hill, Austin and Chairman Shoals

Noes: None

4. PUBLIC COMMENTS ON ITEMS NOT APPEARING ON AGENDA

Chairman Shoals opened the Public Comment period.

Speaking from the public were:

- Patty Welsh, who requested a moment of silence for a local resident who passed away after being hit by a vehicle in the Village;

- Julie Tacker, who spoke on the former Administrator's relocation expenses which the contract did not reflect, requested that the Board agendaize some resolution to the matter.
- Tim Brown, spoke about the devastation in Florida, the Florida Keys and the Virgin Islands from the recent hurricane and asked that the Board take a step back and keep that in perspective during the meeting, the past history at the Sanitation District and former Administrators and the current Board, legal fees, employees who are on paid administrative leave, and consideration of a five member board.
- Patricia Price, distributed and read a document to the Board voicing concerns about numerous District issues, no confidence with the District, staff and the Board, violations of the Brown Act and the Bylaws.
- Teri Klier, spoke about the Board and her strong support for Director Hill.
- Debbie Peterson commented on some of the documents in the 3,700+ emails, and that she had not met at any of the locations noted in the Investigation Report.
- Kris Victorine, commented and acknowledged Director Hill's diligence and oversight of the District, concerns about expenses and budgetary funds within the current budget and answers and false statements that were provided by the former District Administrator.
- Ron Holt commented on civility and moving on, and continuing to attend future meetings until answers and actions are taken.
- Ron Arnoldson, commented about past District Administrators and the problems that occurred along with further investigations, employees on paid administrative leave, politically motivated Brown Act violations against Mayor Hill, and the Redundancy project.

Chairman Shoals closed the Public Comment period.

5. **CONSENT AGENDA:**

Director Hill requested the Approval of Warrants be taken separately.

5A. **Approval of Warrants**

Board discussion ensued. Director Hill noted legal fees for District Counsel and Liebert Cassidy Whitmore ("LCW"), and the Board not being apprised of the number of investigations, the fiduciary responsibility to the residents of the District to control expenses, and would not support the fees and would vote no on the expenses. Director Austin felt it was apparent the bills were due to the investigations and if not paid, would there be legal ramifications. Legal Counsel responded that they are legally binding contracts to provide professional services and if payment is promised and not approved, the District would be in breach of contract. Chairman Shoals asked about a breakdown of the LCW fees; Technical Consultant Sweet provided the answers.

Chairman Shoals opened the Public Comment period.

Speaking from the public were:

- Stewart Jenkins, stated he was the attorney for Mayor Hill, commented about the contract with LCW and felt the District has the obligation, if the

investigation or services have been shoddy and not quality work, to question the bill, and referenced comments in the LCW letter.

- Julie Tacker, agreed with the previous speaker, noting legal counsel should have been informed if the amount was going over what had been approved, and the redacting of 3,715 pages of record that the legal counsels from Arroyo Grande and the District didn't go through.
- Mary Lucey, commented about good government and suggested moving the Consent Agenda to the end of the agenda.
- Ron Holt, spoke about legal bills that had not gone through the proper process of approval.
- Patricia Price, commented about the \$7,500 for the investigation and that was all that was being spent without it being brought back to the Board.
- Tim Brown, spoke about the legal bills which should be scrutinized and reviewed, and it is a fiduciary responsibility.
- Debbie Peterson, spoke about the legal bills, referring to LCW bills.
- Ron Arnoldson, agreed with what Mr. Jenkins stated about the investigation report and fees, along with other ongoing investigations and evaluating the costs.
- Nancy McNeil, commented about the person who caused the latest investigation by violating process is now complaining about not following process.
- Kevin Rice, spoke about the appalling bills for legal counsel and LCW, investigation was shoddy and the bill should be questioned.

Chairman Shoals closed the Public Comment period.

Chairman Shoals asked Technical Consultant Sweet to respond to questions regarding the Liebert Cassidy Whitmore ("LCW") bills. Mr. Sweet clarified the invoices were for a two-month period and provided information. Legal Counsel also provided responses regarding the warrants and the review process for those warrants. Special Legal Counsel was also asked to provide any additional information and clarification on the LCW invoices.

Board comments ensued, with the following action taken:

Motion: Director Austin made a motion to approve the Warrant Register as presented.

Second: Chairman Shoals

Action: Motion approved 2 – 1

Ayes: Director Austin and Chairman Shoals

Noes: Director Hill

Chairman Shoals then opened the Public Comment period for the remaining item on the Consent Agenda.

Speaking from the public were:

- Julie Tacker, stated the District should get out of the litigation business, questioned the LCW contract being retroactive, and the number of investigations at the District.

Chairman Shoals closed the Public Comment period.

5B. Approval of Minutes for Meeting of September 6, 2017

Motion: Director Hill made a motion to approve the Minutes, noting the minutes stated the previous speaker spoke on the LCW contract.

Second: Director Austin

Action: Motion approved 3 - 0

Ayes: Directors Austin, Hill and Chairman Shoals

Noes: None

6. ACTION ITEMS:

6A. JOINT INVESTIGATION WITH ARROYO GRANDE:

- 1. PRESENTATION BY LIEBERT CASSIDY WHITMORE ("LCW");**
- 2. DIRECTION TO STAFF.**

Technical Consultant Sweet provided a brief report regarding the presentation by Liebert Cassidy Whitmore ("LCW") with the findings of the joint investigation with the City of Arroyo Grande, and to provide direction to staff. He also noted some additional information received from the City of Arroyo Grande, and other supplemental information that had been received. Mr. Sweet then introduced Shelline Bennett of Liebert Cassidy Whitmore ("LCW") who presented the Final Legal Conclusions and Recommendations following Allegations of Brown Act Violations by Arroyo Grande Mayor and Board Member Jim Hill. Ms. Bennett provided an in-depth report on the allegations primarily affecting the Sanitation District which included: (1) Disclosure of confidential District and City closed session communications to third parties; (2) Disclosure of confidential District and City attorney-client communications to third parties; (3) Acting unilaterally and outside the scope of his legislative role as Board Member and Mayor, including involvement in personnel matters; and (4) Disclosure of confidential District and City personnel information to third parties.

Board questions and comments ensued. Director Austin asked for an explanation regarding immunity and liability of the Board (Special Counsel provided response), the billing for LCW, polling of the public records requests and a question on a particular document (Special Counsel provided response), invoice estimate for the District and the City; and LCW offices and locations. Director Hill questioned District Counsel as to who reviews and prepares staff reports (District Counsel responded), referred to several allegations raised in the Investigative Report by Investigator Scott Nelson and requested Special Counsel to respond to each of the questions raised, referenced emails and other documents that were cited in

the report, noting the report was factually inaccurate, and responses were inadequate, questioned Special Counsel regarding Page 18 of the report that stated “the District’s Board of Directors includes three Directors and two Alternates”, Special Counsel provided responses, followed by comments from Director Hill.

Chairman Shoals called for a break at 8:16 p.m. The Board reconvened at 8:25 p.m.

Chairman Shoals asked Special Counsel about oversight with investigations that LCW handles, Special Counsel provided a response; and conflict of interest with legal counsel and LCW, District Counsel provided a response.

Chairman Shoals opened the Public Comment period.

Speaking from the public were:

- Stewart Jenkins, stated he had a few responses to what had been stated, encouraged the Board to do the right thing and move forward, that there was no refusal by Mayor Hill to participate, due process is guaranteed by the Constitution, and LCW not complying with basic due process; referenced numerous sections in the LCW letter, and feels Mayor Hill deserves an apology.
- Nancy McNeil, voiced numerous concerns including refusal of Director Hill to participate in the investigation, investigations are done to uncover the truth and the facts and LCW has done an exceptional job with the investigation, pay for mistakes and learn from them, and implement the recommendations that have been made by LCW.
- Mike Brennler, commented about good government, supported and respected Director Hill, and questioned the investigative report and those involved.
- Coleen Kubel, commented about time not given to Mr. Jenkins or his responses, support for Director Hill and blames others for the investigation.
- Mary Lucey, spoke about good government, paid \$100,000 for the Knudson Report, and the LCW Investigative Report was exceptional.
- Ron Holt, spoke about the law firm of LCW being politically motivated and biased, possible conflict if LCW was handling another investigation for the District.
- Ron Arnoldson, commented about the investigative report and Special Legal Counsel, and changing of the Bylaws.
- Julie Tacker, distributed a document and referenced the Jenkins letter, spending more money redacting phone numbers and charging for it, and complying with the Public Record Act with regard to the Investigator.
- Joe Shacker, spoke about the former District Administrators, and the hiring of a new Administrator.
- Kevin Rice, commented about the “kangaroo court witch hunt”, and the investigative report being irrelevant.
- Shirley Gibson, spoke about the cost of the public records request that the City and District will have to pay, past pattern of Director Hill in driving out past City Managers District Administrators which cost the ratepayers money for hiring replacements.

- Debbie Peterson, spoke about human rights and Mayor Hill is entitled to human rights, the Board should declare a mistrial and move on, referenced emails and the bylaws, and noted in an email that she met at a local business and she did not attend any meetings as was noted.
- Kris Victorine, commented about serial meetings and offered an explanation from what was in the investigative report, and inconsistencies with the report.
- Patricia Price, commented about the public records requests and the expense created, no confidence in the Investigative Report, has concerns about other investigations in the District and feels they will be unbiased, and that Director Hill was not interviewed.

Chairman Shoals closed the Public Comment period.

Board questions and comments ensued. Director Austin questioned due process; Special Counsel responded. Director Hill commented that the investigation showed he consistently asked that items be placed on an agenda which did not occur, has not done misdeeds as characterized, did not refuse to participate in the investigation as he was leaving on vacation and asked Mr. Jenkins to respond to the request, shares concerns about other investigations at the District and the potential for unfairness, leaves it in the hands of the Board and stated Special Counsel owes him an apology. Director Austin commented about the focus of the investigation and the “threat of litigation” and spending thousands of ratepayer dollars to uncover the truth, Director Hill’s refusal to accept responsibility, no remorse and no admission of wrongdoing on what was proven by the Investigator and noted in the Investigative Report. She also provided other comments as to the report and Director Hill’s pattern of behavior and the interaction with third parties and interaction on the Board that put the District in the threat of litigation due to his misconduct. Chairman Shoals stated he is not interested in a witch hunt and it is unfortunate that this is before the Board and that all are subject to attacks which come with the territory. He shared his many concerns, specifically when it comes to personnel issues and items that were requested to be placed on an agenda and not following the bylaws. It does become a concern when you infringe on an employee’s right to privacy and protecting the District. He also noted issues related to the Administration trailer, related permits that were handled by the former District Administrator and commented about the number of issues and projects that were handled by the former District Administrator. He also corrected comments that were made by Mr. Rice. He concluded by stating that some action must be taken on this item. Director Hill then spoke about allowing an employee to address the Board in closed session; District Counsel responded to the question. Director Hill responded that the Board was put on notice to be watchful of issues at the District. Chairman Shoals provided additional comments. Director Austin stated she represents the residents of Oceano and the District.

Chairman Shoals called for the motion:

- Motion:** Director Austin made the following motion:
- Adopt recommendations provided by Liebert Cassidy Whitmore;
 - Direct staff to prepare a resolution of public censure and agendize for a future meeting;
 - Draft letter for Chair's signature to be addressed to City of Arroyo Grande requesting that they designate a different representative to the Board and authorizing Legal Counsel to research whether it is feasible or plausible;
 - Direct staff to exclude Director Hill from all confidential emails;
 - Direct staff to not respond to unilateral direction from any Board Member and to notify the entire Board immediately of such actions;
 - Direct staff to not respond to any attempt by any Director to interfere in personnel matters and notify the entire Board if such attempts are made;
 - Adopt the recommendation to have one-on-one training with the Director, and could include all Directors.

Second: Chairman Shoals

Action: Motion approved 2 – 1

Ayes: Director Austin and Chairman Shoals

Noes: Director Hill

Chairman Shoals then inquired if there would be a Board consensus to add an item to a future agenda to consider the formation of an executive committee consisting of the two City Managers and the General Manager to help provide some oversight to explore and research the possibility of expanding the Board to five members. Board discussion ensued with direction to have staff research and come back to the Board at a future meeting with recommendations and/or suggestions.

Due to the lateness of the meeting, Board discussion ensued to extending the time for the meeting.

Motion: Director Austin made a motion to extend the meeting to 10:20 p.m.

Second: Chairman Shoals

Action: Motion approved 2 – 1; Director Hill voted No

Ayes: Director Austin and Chairman Shoals

Noes: None

Chairman Shoals called for a five minute recess at 10:00 p.m. The Board reconvened at 10:05 p.m.

6B. TECHNICAL CONSULTANTS AND PLANT OPERATION'S REPORT

Motion: Director Hill made a motion to continue Item 6B. to the next regular Board meeting.

Second: Director Austin

Action: Motion approved 3 – 0

Ayes: Directors Hill, Austin and Chairman Shoals

Noes: None

7. BOARD MEMBER COMMUNICATIONS

None.

8. CLOSED SESSION

District Counsel Gilbert Trujillo read the Closed Session items into the Record.

Chairman Shoals opened the Public Comment period.

Speaking from the public were:

- Julie Tacker, commented about closed session, no Union until the former Administrator arrived, violation of the Public Record Act, and ongoing litigation and investigations.
- Stewart Jenkins, commented about the Brown Act and referred to code sections in items 8B and 8C; Legal Counsel provided response.

Chairman Shoals closed the Public Comment period.

The Board adjourned to closed session at 10:20 p.m. to consider the following items:

8A. CONFERENCE WITH LABOR NEGOTIATORS pursuant to Government Code Section 54957.6: Agency designated representatives: Richard Sweet or Paul J. Karp; Susan Wells and Employee organization: Service Employees International Union (SEIU) Local 620

Discussed, no reportable action.

8B. CONFERENCE WITH LEGAL COUNSEL: ANTICIPATED LITIGATION: significant exposure to litigation pursuant to **paragraph (2) of Government Code Section: 54956.9 (d), paragraph 2, and (e)(5):** Three Items

Discussed, no reportable action.

8C. CONFERENCE WITH LEGAL COUNSEL: ANTICIPATED LITIGATION:
significant exposure to litigation pursuant to **Government Code Section:**
54956.9 (d), paragraph 2, and (e)(4): One Item

Discussed, no reportable action.

The Board reconvened the meeting at 10:35 p.m.

9. ADJOURN MEETING

The meeting was adjourned at 10:36 p.m.

**THESE MINUTES WERE APPROVED BY THE BOARD OF
DIRECTORS AT THE MEETING OF OCTOBER 04, 2017.**



MEMORANDUM

TO: CITY COUNCIL

FROM: JAMES A. BERGMAN, CITY MANAGER

**SUBJECT: SUPPLEMENTAL INFORMATION
AGENDA ITEM 11.a. – SEPTEMBER 12, 2017 CITY COUNCIL
MEETING - CONSIDERATION OF REPORT OF INVESTIGATION**

DATE: SEPTEMBER 11, 2017

Attached is correspondence received from Stewart D. Jenkins following distribution of the Agenda packet.

cc: City Attorney
City Clerk
Public Review Binder

Law Office of
STEWART D. JENKINS

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September 8, 2017

Jim Hill, Mayor
City of Arroyo Grande

[REDACTED]
Arroyo Grande, CA 93420

Barbara Harmon
Council Member
City of Arroyo Grande

[REDACTED]
Arroyo Grande, CA 93420

Tim Brown, Pro Tem
City of Arroyo Grande

[REDACTED]
Arroyo Grande, CA 93420

Caren Ray
Council Member
City of Arroyo Grande

[REDACTED]
Arroyo Grande, CA 93420

Kristen Barneich
Council Member
City of Arroyo Grande

[REDACTED]
Arroyo Grande, CA 93420

Re: My client, Mayor Jim Hill; Response to 50 page report of investigator S.K. Nelson, released August 7, 2017 and 23 page letter from Kimberly A. Horiuchi of Liebert, Cassidy, Whitmore.

Dear Mayor Hill and Council Members
Tim Brown, Kristen Barneich, Barbara Harmon
And Caren Ray:

This firm represents Mayor Jim Hill and his spouse, Mrs. Lin Hill.

Your council, without the vote or consent of Mayor Hill, used poor judgment hiring the Fresno law firm of Liebert, Cassidy, Whitmore to investigate your fellow council member, Mayor Hill, and his spouse based on outlandish claims made during public comment. Council members who may have policy differences with Mayor Hill should keep their disagreements focused on policy instead of engaging in an obvious waste of City funds.

On examining your minutes and those of the Sanitation District you seduced into sharing in the "investigation," it soon became clear the intent of the exercise was to conduct a fishing expedition to please hidden detractors of Mayor Hill when you commissioned that expensive law firm to conduct an investigation "into allegations made by the public," without specification, "against the Mayor of misconduct."¹ Had someone accused Mayor Hill of tinting his hair, the Council had commissioned public money to be spent investigating that claim. A number of the "allegations" investigated were just that inconsequential. And, the way these things work, when you authorized \$7,500 be paid the

¹ Page 7, AG City Council Minutes, February 14, 2017.
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law firm, another \$7,500 in City staff time and record production will have now been swirled down the drain supporting the “investigation.”

Even the private eye hired by Liebert, Cassidy, Whitmore assigned complained about the enormous volume of material that was shoveled at him to review by Mayor Hill’s political opponents; biased complaints that were opinionated, but irrelevant to any violation.

Your Council compounded this wrong by choosing a firm that expressly refused to comply with basic ethical due process. When asked to supply a list of the charges against Mayor Hill, and the identities of the accusers, as a precursor to meeting with an agent of Liebert, Cassidy, Whitmore, that firm refused in a letter that can only be described as a tantrum. That firm broke contact, rather than comply with the same due process you would expect as an elected official.

The claim made in the report that Mayor Hill refused to participate in the investigation is false. What is true is that Liebert, Cassidy, Whitmore conducted a secretive Star Chamber inquisition of your Mayor – at your behest. As your agents, and advisors, their misconduct denying due process and wasting the public’s funds rests on your shoulders.

As public officers, you are bound to exercise the powers conferred on you with disinterested *skill*, *zeal*, and *diligence* for the primary benefit of the public.² Instead, by commissioning the investigation you used public funds for your own personal political interests attacking a mayor with whom you disagree on policy. In the alternative you were abdicating your native judgment, failing to use your skill or diligence, to weigh outlandish claims made.

It would be a further abdication if you fail to read the citations given you in the 23 page letter authored by Kimberly A. Horiuchi of Liebert, Cassidy, Whitmore. Compare them against the conduct that has been “investigated.” A good example is the 1928 *Noble v. City of Palo Alto* case (below in the footnotes) cited as authority for the conclusion that Mayor Hill writing the Federal Trade Commission to get information why the high bidder had not been awarded a closed Hagen’s grocery store *might* pose a conflict of interest. Your native judgment will tell you that a corrupt police chief pocketing the money from abandoned bicycle sales in the 1920s has no relation to a Mayor seeking information to help the general citizenry get restoration of the city’s only full service grocery store. You have received cosmetic value, if at all, the verbiage from a form book.

With regard to the allegations made by or about the Sanitation District Administrator, you should understand that the position is not one of a mere employee. Instead that position is one of a public official in charge of the Executive Branch of the Sanitation District, subject to the scrutiny of *each* member of the that District’s legislative branch. The Sanitation District administrator is subject to the scrutiny of the public, as well as of the Board members who represent three different cities.³ I recommend that each of you read or re-read the Declaration of Rights in the California Constitution. Sections 1-3 are herewith provided.

² *Noble v. City of Palo Alto* (1928) 89 C.A. 47, 51.

³ For purposes of this discussion, the Oceano Community Services District stands in the shoes of a city with regard to collection and treatment of sewage.
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I urge you to repent of this kind of internecine politically motivated warfare, at the public's expense.

Permit me to address the eight accusations which finally first appeared in the report(s) released August 7, 2017 by the City of Arroyo Grande.

Accusation related to City of Arroyo Grande

AG Accusation 1: Disclosure of terms of release or termination of former City Manager Dianne Thomson.

No witnesses are provided for a claim that terms for ending said city manager's service to the city was discussed in closed city council meeting.

An unnamed witness claimed to observe Mayor Hill having dinner with his spouse after a city council meeting, and claimed he said things about a former city manager's performance and qualification, which that unnamed witness asserted were discussed in the closed session preceding the meeting.

Nelson's conclusion: "objective evidence reveals ... evidence is in and of itself insufficient to conclude [Mayor Hill] intentionally disclosed closed session information to third parties"

Response to this Accusation: The accusation is categorically denied.

AG Accusation 2: As Mayor, Jim Hill disclosed confidential City attorney-client and/or attorney work product privileged information/documents to third parties.

No witness or source of this accusation was reported.

Nelson's conclusion: there is no evidence supporting this accusation.

Response to this Accusation: The accusation is categorically denied.

AG Accusation 3: "If alleged ... Jim Hill individually and outside the direction of a majority of the Council acted unilaterally and outside his legislative role, including in personnel matters?"

Highlighting the fishing expedition of the investigation, this accusation starts "If alleged." The "if alleged" statement then catalogues three things apparently raised by political opponents of Mayor Hill.

Accusation 3(a): Mayor Hill's February 23, 2016, letter to the Federal Trade Commission seeking an explanation why the high bid on the City's one and only full service grocery store had not been accepted in the Hagen's Bankruptcy proceeding, leaving that store closed.

Mr. Nelson observes nothing in the City Council Operations Manual addressed this type of letter until the city council adopted a Council Communication Policy a month later on March 24, 2016.⁴ Mr. Nelson's opinion is that Mayor Hill should have said he was speaking for himself and not for the city, appears to be the basis for his opinion that this potential accusation is "sustained."

⁴ Nelson report, page 10, fn 9. No elected official should be confused. A city council policy does not supersede the reach of the U.S. or of the California Constitutional rights and duties that Mayor Hill was exercising to freely consult for the common good, petition, speak and instruct.
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Response to this Accusation: Mayor Hill categorically denies that his letter to the Federal Trade Commission was improper. Mr. Nelson's claim that this accusation is sustained is without any legal or ethical basis.

A mayor does not lose his or her 1st Amendment rights to freedom of speech, or freedom of petition to a Federal agency upon being elected. Moreover, the California Constitution's Declaration of Rights includes the right to *freely consult for the common good*, and to *freely instruct* the council. A mayor actually fulfills his or her duty to city residents by taking action to seek information about a critical matter affecting the common good like the continued closure of a city's **only full service grocery store**. That information may be provided by the Mayor to the full council or to the city's residents, or both, so that the city may restore full service grocery services.

Failure to take action to get information for the citizens of Arroyo Grande would have been the real violation. Council members who failed their constituents by exercising no effort to inquire have no standing to object when they simply never thought to ask, or paid so little attention to the status of bids for the closed store that they didn't think to find out.

Conflict of interest imaginings⁵ of Mr. Nelson or of *Special Counsel* are devoid of facts and actually misrepresent statutes and cases. Government Code §§ 1090 (Conflicts of interest contracts, sales and purchases), when read with 1091 (Remote interest of officer or member), 1091.5 (Interests not constituting an interest in a contract), and 87105 demonstrate that Mayor Jim Hill had no conflict of interest and generated no possibility of conflict of interest when he wrote the Federal Trade Commission. Cases from 1928 and 1952 are no more applicable to Mayor Hill's actions to help all the people of Arroyo Grande. No motive or temptation to personal gain exists or has been demonstrated.

Neither Mayor Hill nor his spouse owned any interest in Spencer's Markets, in the building where the closed full service grocery had operated, or in any real property near that closed full service grocery. Neither Mayor Hill nor his spouse work for any company paid to provide Spencer's Markets with goods or services. No quid-pro-quo payment or contribution before or after the February 23, 2016, letter was made by any member of the Spencer family or their company to Mayor Hill, his spouse, his campaign. Judicial holdings on actions completely unrelated to Mayor Hill's request for official information, such as 1977-*Finnegan v. Schrader*, 1977-*Witt v. Morrow*, 1985-*Thomson v. Call*, and 2001-*Fraser-Yamor Agency, Inc. v. Co. of Del Norte*, have been limited in their holdings to their fact and do not bear at all on Mayor Hill's efforts to help Arroyo Grande determine why and when a full service grocery store could be re-established. There is not even circumstantial evidence triggering such imaginings.⁶ Read those cases and see. Mrs. Spencer's status as a political supporter, even if that included making a political contribution, raises no conflict of interest. See *BreakZone Billiards v. City of Torrance* (2000) 81 CA4th 1205, at 1231, and *Woodland Hills Residents Association, Inc. v. City Council* (1980) 26 Cal.3d 938, at 946.

Identification of Jim Hill's status of mayor to engender a timely and full response to the request for information was not, and is not, illegal under any rational theory.

Nelson's erroneous conclusion ignores the merits to all city residents' of the need for the inquiry triggered when the highest (possibly the only) bid for that **only full service city grocery**

⁵ When Ms. Horiuchi closes here discussion of Gov.C. § 1090 on page 11 of her letter with "It is not difficult to *imagine* how Hill could *conceivably* benefit ...," your judgment should tell you that not only is there no evidence of conflict, but that that author is stretching the truth to make it look like the public dollars you spent produced an imaginary value.

⁶ *People v. Honig* (1996) 48 CA4th 289, 315.

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store was rejected, a fact that should be considered regardless of the political views of the bidder. Nelson's erroneous conclusion ignores the fact that the letter contained no statement representing any city governmental action being taken.

Nelson's focus on the political views of the bidder is at odds with the purpose of awarding assets through public bid processes to the highest bidders, regardless of the bidder's political views, race, ethnicity, religion, marital status, or a host of other considerations.

Accusation 3(b): Political opponents, again unnamed, have accused Mayor Hill of unilaterally initiating meetings with his constituents' State Senator and State Assemblyman to discuss important issues bearing on the quality of life in the City of Arroyo Grande. Worse, these opponents have accused Mayor Hill of talking about his discussions with these state elected officials at Council meetings.

Mr. Nelson concluded that this accusation was "**non-sustained**" and that none of the discussions could be criticized as "espousing official policies or positions of the city."

Response to Accusation: Ask anyone what she or he thinks of a complaint leveled at a Mayor for talking to their state senator about their city's need for fire protection. You'll no doubt hear them say: "Wait a minute. That sounds like a pretty good Mayor!"

Get over it. Argue the merits of your proposal instead of trying this kind of cynical publicly funded personal "investigation" on those you don't agree with. A mayor does not lose his or her California Constitution, Article I, rights to freedom of speech, freedom to consult for the common good, freedom of instruction, or freedom of petition with a State Senator, State Assembly Member, or state agency upon being elected. If you are a fellow council person and have different views, go see your Senator or Assembly Member to chat about issues, get information, or give your view yourself. If you want a better city council, be a better and more engaged council member. *If the Mayor outworks you for the public good, the proper reaction is to work with him, or work harder yourself. Jealousy that you didn't think of the action yourself first is not proper or becoming.*

Accusation 3(c): Mayor Hill's political opponent(s) asked that an issue they unsuccessfully raised during the Mayor's re-election campaign be investigated. **The unnamed accuser(s) groused that in 2015 the Mayor unilaterally negotiated the terms of the Courtland-Grand Avenue project development.** Having now sullied Mayor Hill's reputation with this false claim, and wasted public funds to investigate the matter, the accuser(s) actually admitted during questioning that they knew about and/or had participated in the negotiations leading to the project. Mr. Nelson's conclusion is that this accusation was "**non-sustained**."

Response to Accusation: Of course the accusation was false. To those who made it originally, stop making things up.

AG Accusation 4: Again unnamed detractors accuse Mayor Hill of disclosing confidential personnel matter to third parties, specifically concerning the past city manager.

Mr. Nelson's report concludes that this is **not sustained** by the evidence,⁷ but Nelson then spends 4 pages focused on an unverified rambling incomprehensible alleged text message of an

⁷ Nelson report, page 13, 1st ¶ below "The Text Message Conversation of January 2017." See also page 48, ¶VII. 4.
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unnamed witness supposedly had with another unnamed witness, as though that hearsay were evidence implying that, goodness gracious, maybe something was said.

Response to Accusation 4: This is categorically denied.

AG Accusation 4 (A): Again unnamed detractor accuses Mayor Hill of giving access to his spouse to his city “laptop.” The accusation is in three parts:

- (i) A former acquaintance of Lin Hill claimed:
- (1) that she observed Mrs. Hill handle a chiming *laptop* and thought Mrs. Hill entered in some sort of password;
 - (2) but also claimed that Mrs. Hill never gave her confidential information; and
 - (3) that this unnamed accuser was forwarded e-mails which she says she cannot actually produce as evidence.⁸

Nelson’s conclusion: the only objective evidence (if it ever existed) **was destroyed by the witness.** Inherent flaw, this appears to be the “testimony” of Patty Welsh, a former supporter of Mayor Hill whose anger following being excluded from his re-election campaign turned to blind hatred. That hatred appears to have caused her “recollections” of encounters years in the past to be re-invented. Even Mr. Nelson comments that the city never issued Mayor Hill a “laptop.” Nelson’s *speculation* that the “witness” was referring to the Mayor’s city issued tablet or that Mrs. Hill was entering a city password is without basis; speculation that is the unfortunate result of having been paid to find *something*.

Response to Accusation 4(A)(i): This is categorically denied.

(ii) A public records request seeking “emails and/or correspondence between Mayor Hill and Mayor Pro Tem Harmon from May 1, 2016 to May 5, 2016” was made allegedly at 4:48 p.m. on Cinco De Mayo, 2016, a Thursday, the same day that five hours earlier Barbara Harmon had emailed Hill her complaint about his having written the Federal Trade Commission.⁹ A fair reading of Councilwoman Harmon’s email is that it was designed for publication. Clearly that email was not a confidential document, nor was it something for or from a closed session of the council. Whether it was blind copied on anyone, or later forwarded, by Councilwoman Harmon is impossible to tell from the report. Some individual operating or with other access to the city’s email system advised “Patty” to make a public records request for the email had not been excluded. The report *speculates* (1) without foundation that Mayor Hill was out of contact with his city tablet or email during that entire 5 hours, (2) that “Patty” did not have some other reason for seeking emails sent by Councilwoman Harmon over the 5 day period, (3) that Mrs. Hill had the Mayor’s email password (*ignoring entirely the fact that Mr. Nelson reports that 9 months later on January 23, 2017, Mrs. Hill has to ask a city staffer to provide the Mayor’s email password because he doesn’t remember what it is (see fint 7, below)*).

Response to Accusation 4(A)(ii): This is categorically denied. There is nothing here of significance. No spark, no smoke.

⁸ Nelson Report, pages 18 - 20

⁹ Nelson Report, pages 20 - 22
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(iii) An unnamed city employee responsible for overseeing information services regularly provided Mrs. Hill with documents for Mayor Hill¹⁰ and says that the employee gave Mrs. Hill Mayor Hill's city email password on January 23, 2017, the day before a city council meeting at which Patty Welsh and Mary Lucey made their claims.¹¹ That unnamed individual indicated that Mrs. Hill indicated "Jim needs to get into his email. He forgot his password."¹²

Nelson's willingness to report speculation and groundless suspicion runs rampant here. The single dot purporting to connect to Mrs. Hill's ordinary request to give her husband his email password is that "the allegations [were] leveled at Mr. Hill the following day" at the January 24th, 2017, city council meeting. Completely ignored by this erroneous connection is the fact that

(1) "the allegations" referred to were not on the agenda,

(2) "the allegations" were not the subject of city emails then sent to Mayor Hill in advance, and

(3) "the allegations" were in fact presented during the public comment period of the city council meeting by Patty Welsh and Oceano residents Mary Lucey and Mathew Guerrero without prior notice.

Nelson's extrapolation that the Mayor "more likely than not provided, permitted and/or was aware of access to his city account by his wife" is without foundation, basis, or evidentiary support.

Response to the accusation 4(A)(iii). Calling his erroneous conclusion a "Special" Finding does not elevate the Specious to the Factual.

Mayor Hill denies supplying the password for his city tablet or email to Mrs. Hill. He admits that on January 23, 2017, he asked his spouse to get the password for his city webmail account so that he could access that account remotely. In all other respects he denies that he has permitted or had any knowledge that Mrs. Hill has ever had access to or utilized those passwords.

Mrs. Lin Hill denies having had access to the password for Mayor Hill's city tablet, or his webmail account, at anytime, other than on January 23, 2017. Mrs. Hill admits asking for the webmail password from a city employee on January 23, 2017. She represents that she contacted Mayor Hill by phone, read him that password, and then destroyed the scrap of paper on which the city employee had written that password. Mrs. Hill represents that she did not commit the password to memory or otherwise record or input that password before, on or after January 23, 2017.

If you want a better City Council, be better Council Members. The assumption and speculation evidenced in the report that Mrs. Hill would want Mayor Hill's password to access information on a computer or tablet reflects a complete lack of familiarity with Mrs. Hill that is unbecoming of other Council Members. Don't you make any effort to get to know each other, and each other's families? Public service is, after all, about people. Ms. Hill's lack of computer skills and health issues that impair her vision make a truly flimsy web out of Mr. Nelson's spurious "special" finding. It is beyond all belief.

¹⁰ Nelson Report, last line page 22 – 2nd line page 23.

¹¹ Nelson Report, pages 23 – 24.

¹² Nelson Report, page 24, 2nd ¶.

Accusation related to the South SLO County Sanitation District

An understanding of the statutory genesis, structure, purpose and history of the South San Luis Obispo County Sanitation District is essential to recognize the several ways in which the Nelson report misrepresents actions and communications that were examined.

The primary obligations of any city are to deliver protection for its residents by providing water, sewage treatment, streets, fire and police protection. The portion of the Health and Safety Code under which the South San Luis Obispo County Sanitation District was created permits the City of Arroyo Grande to collect, treat and discharge the treated sewage in conjunction with the city of Grover Beach and the community of Oceano through the Sanitation District. The Legislative Body for the Sanitation District is a Board made up of the Mayor's of the two cities, and a representative from the Oceano Community Services District. That Board sets rates and appropriates funds for expenditures. That Board is tasked with oversight of the District's Executive Branch made up of a District Administrator, an Attorney for the District, and a Plant Superintendent (the Executive Officers of the District).

To fulfill its duties to the residents of the City of Arroyo Grande, *the statute* places the city Mayor on the Sanitation District Board *to assure oversight* that will provide that sewage is safely and fully treated at reasonable cost for Arroyo Grande's residents. In the current circumstance, Mayor Hill has supported examining ways to treat and reuse waste water for Sanitation District residents. In spite of the fact that the population of the City of Arroyo Grande (18,000+/-) makes up nearly half of the people served by the Sanitation District's sewage treatment facilities and ocean discharge, the city has only one representative on the Board to protect the interest of city residents in having their waste water safely and fully treated.

The community of Oceano (population 7,000+) and the City of Grover Beach (population 13,000+) each have one representative with the obligation to oversee that sewage is safely and fully treated at reasonable cost by the Executive Officers of the District for the residents of each of those communities. In spite of the difference in populations, each community has one vote on the Board, and each board member has significant other primary duties on their own community's city council or CSD board.

If any two of the equally weighted representatives on the Sanitation Board fail in their attention to oversight, or fail to independently examine information without letting it be filtered and sanitized through the Executive Officers, the nature of sewage treatment permits pockets to be lined at the expense of the residents served in disregard of the primary purpose: that sewage is safely and fully treated at reasonable cost.

The history of the Sanitation District demonstrates the reality of this danger, in that through inattention and/or improper collaborations, millions of dollars set aside to maintain and upgrade the sewage collection, treatment and discharge facilities were squandered, the residents have been required to pay the State Water Quality Control Board fines and legal fees for litigating those fines, and a former District Administrator now is being prosecuted for conflicts of interest resulting from awarding millions of dollars of contract work to his own outside engineering firm over many years while two or more Board members looked the other way. At least two of Mayor Hill's
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accusers at the January 24th, 2017, meeting of the Arroyo Grande City Council were among those former Sanitation Board members who looked the other way. The current Sanitation District chair served during those years without providing the scrutiny that would have prevented the district's funds being picked clean.

Because Mayor Hill did pay attention and fulfill his duties of oversight for the residents of the City of Arroyo Grande, and of the District as a whole, he observed that the current Superintendent, Mr. John Clemons, took over and restarted the biological process after the former Administrator, John Wallace's service terminated. Mayor Hill's attention to operations revealed that Superintendent Clemons reliably operated the sewage treatment plant in the interim, between Administrators, despite severe financial constraints, materially improving the financial outlook for residents of Arroyo Grande, Grover Beach and Oceano.

Because Mayor Hill paid attention and fulfilled his oversight responsibilities he pushed for the Knudson investigation, over the loud inexplicable objections of former Oceano Board Members Mary Lucey and Mathew Guerrero, to determine how the 7 million dollars in Sanitation District reserves had been squandered during John Wallace's time as Administrator. That investigation led to the current prosecution of Mr. Wallace. It takes no imagination to conclude that Lucey's and Guerrero's affiliation to defend Wallace's misadministration motivated their concoction of insubstantial and false accusations fueling the runaway Nelson/Liebert, Cassidy, Whitmore "investigation."

5. Accusation that Mayor Hill disclosed closed session communication: On its face this was rejected by Nelson's report as not true.

Response to accusation: It is agreed that the accusation was untrue. The accusation was so obviously rubbish when it was made, that the expenditure of \$15,000 "investigating" it was a waste of the public's funds that should have been utilized to treat wastewater or maintain a city police vehicle.

6 & 7. Accusation that Mayor Hill disclosed confidential attorney-client and/or attorney-work product privileged information and became involved in personnel matters. These two accusations are so intertwined Nelson addressed them in a snow flurry of misrepresented emails.

The questions raised by the way in which the accusations are posed are important. Do the unelected attorney for a sanitation district, and an unelected administrator, run the Board that make up the natural Legislative Branch of three equals overseeing the district? Or should the elected Board control the administrator and attorney that naturally make up the Executive Branch employees tasked with executing the Board's direction? And, are the citizens of a city with nearly half of the people in the sanitation district to be deprived of their one representative having information to oversee, and sufficient influence to assure that sewage is safely and fully treated at reasonable cost and residents expect active and diligent attention to that function?

The answer revealed by Nelson's report is a runaway Administrator, and Attorneys for the Sanitation District instituting unauthorized investigations, appropriating funds for those investigation, and disrupting the operations of the Sewage Treatment function delegated by three communities to the

District without seeking direction from the Board, or giving the full Board the information or ability to make choices about whether and how employee complaints will be addressed; whether appropriating funds for the Administrator's or the Attorneys' desired investigations will be made, whether key employees will be put on leave, and whether those employees will be given notice of why they are on leave.

This is particularly troubling given the history of administrative mismanagement and alleged corruption that has cost Arroyo Grande residents millions of dollars and culminating in California Water Quality fines and the ongoing criminal prosecution of the former administrator (Wallace).

Emails on September 15 and 16, 2016¹³, publicized by Mr. Nelson from Mayor Hill defended the Sanitation District's Superintendent, John Clemons, a man significantly responsible for bringing the Sanitation District into compliance with clean water regulations. And what was he defending Clemons against? Public disparagement and public comments criticizing Clemons for his personal relationship with a white woman by Oceano's representative on the Sanitation Board, Mary Lucey.

Nelson criticizes the fact that Mr. Clemons was copied on the email relating that the disparagement and Lucey's unilateral direction of District management be agendized in a request to censure Lucey. Superintendent Clemons did not request confidentiality of the emails.

Response: There is a legal term, "*demur*," that applies to these emails. It roughly translates from its French origins at this: "If everything you say is true, so what." A Legislative Body member's email *to* the attorney and administrator demanding that mistreatment of a key employee by another board member be agendized does not disclose confidential attorney-client or work product matters. Instead of interfering with personnel matters, it supports and preserves personnel relations. *In contrast to the accusations made by his detractors*, Mayor Hill requested that all these matters be brought to the full Board for public discussion and resolution. This was invoking the legislative role, not working outside of it.

This invocation of the legislative role is evidenced by provision 4.1 of the Sanitation District's own Bylaws, which reads in relevant part: "Any Director may call the District Administrator and request an item to be placed on the regular meeting agenda no later than 5 p.m. 11 calendar days prior to the meeting date. Such a request must also be submitted in writing either at the time of communication with the District Administrator or delivered to the office within the next working day."¹⁴

October 5, 2016 email responding to Julie Tacker's complaint that a Public Records Act had not been satisfied, and threatening to contact the DA for the Sanitation District's refusal¹⁵: The short email addressed to the attorney and administrator for the Sanitation District indicating that "noncompliance with both the letter and the spirit of the Public Records Act is not acceptable" and asking that these individuals responsible for compliance follow the law when records had not been provided is fully within the scope and duties of any member of a legislative body.

¹³ Nelson's Exhibit 11.

¹⁴ This provision appears to predate the use of email as an accepted and substitution method for providing the request by any Director to put a matter on the agenda.

¹⁵ Nelson's Exhibit 12.

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Mr. Nelson's comments about the tone and language somehow imply unilateral action add nothing. The fact that this transmission *to* the attorney and administrator is copied on the person complaining that their request has not been fulfilled is not an attorney-client communication any more than if a State Assembly member copies a letter on a constituent directing a demand to the Attorney General that he or she takes action to follow the law.

Response: Demur.

November 15, 2016 email to Gil Trujillo, attorney for the Sanitation District, and a Sanitation District Board alternate member.¹⁶ Mayor Hill requested that a request by an employee to meet with the board be agendized for a closed personnel session, offering to attend a special meeting if helpful. The employee's email which the Mayor forwarded to Mr. Trujillo showed that it had been sent to Mayor Shoals, Mayor Hill, Oceano CSD representative Lucey, and their alternates, as well as attorney's Trujillo and Stockton, and others.

Nelson's critique: action outside of the legislative role involved in a personnel matters.

Response to accusation: Demur. Asking to agendize for a closed personnel session a matter is fully within the legislative role of a Sanitation District Board Member. See Sanitation Board Bylaws provision 4.1 (above). The consideration of personnel matters by the board, in closed session, is not affected or impaired by a complaining employee being informed that one (or more) board members have asked that the matter be agendized. To state the proposition that asking to agendize a matter is outside the legislative role, by itself, refutes the proposition.

November 21, 2015, email to Gerhardt Hubner and Gil Trujillo asking to agendize discussion of a temporary trailer procured without Board approval of the expense.

Nelson's critique: another example of Mr. Hill's tendency to unilaterally step beyond his legislative role.

Response: Demur. Asking to agendize expenditures that have not been approved by the Board, and asking that further expenditures not be made until the Board has an opportunity to consider and approve them is fully within the legislative role. See Sanitation Board Bylaws provision 4.1 (above). To state the proposition that asking to agendize a major expenditure is outside the legislative role is to refute the proposition.

December 26, 2016, meeting between Mayor Hill and Gerhardt Hubner.

Nelson's critique: Weakness in the conclusion that actions were taken outside the legislative role, when the critique starts out "admittedly somewhat more subjective" and relates a long self-serving diatribe by the now former Administrator, Gerhardt Hubner, on a meeting where Mayor Hill was fulfilling his legislative role by inquiring whether there was progress by the administrator as to an October 19th Board direction to prepare a personnel policy manual and to expedite drafting of employee job descriptions. Spanning pages 37 and 38, Nelson quotes Hubner objecting to being asked: (1) to explain why he'd made no progress and (2) to being told what Mayor Hill's opinion was of how quickly he should be making progress on fulfilling the Board's direction.

Hubner discloses in his complaints that Hubner was offended when confronted with the fact

¹⁶ Nelson's Exhibit 13.
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that he had not reported to the whole Board that the District Attorney's investigator had come to District offices seeking records concerning the Wallace administration.

The obvious bias in Hubner's self-serving note (Nelson's Exhibit 15) is evident when he refers at the top to "Jill Hill Mtg." The intention of obfuscating and withholding information critical to the legislative function to oversee the Executive Administrator is disclosed by Administrator Hubner's notation on the second page of Exhibit 15 "Instigation/Complain Not Board Informed – Gil (*emphasis added*, "Gil" referring no doubt to the Attorney for the Sanitation District).

Response to accusation: Demur. Inquiring about the progress or lack of progress in carrying out Board Direction is fully within the legislative function. Inquiring why the full Board is not being provided critical information is fully within the legislative function. Finding out whether the Administrator is complying with the law and a District Attorney's requests for information is fully within the legislative oversight role.

It is clear from Nelson's account that the now former Administrator, Hubner, objected to being subject to appropriate legislative oversight when he bridled at being asked about the progress of his performance of matters with which the full Board had tasked him; and when he was confronted about his failure to provide the full Board with information concerning critical matters such as the District Attorney's request for records.

It was the Board's responsibility to assure that any and all records of the District be made available to the District Attorney to assure that the law was followed and that any evidence of misappropriation of public funds or conflicts of interest that had occurred were made available to the District Attorney. The notation at the end of Hubner's note, "No surprises," suggests that it was no surprise to Mr. Hubner that Mayor Hill was committed to full disclosure of records, and this knowledge motivated the withholding of information about the D.A.'s investigation from the full Board.

Further Response to accusation: Demur-Denial that individual meetings are improper. Board Practices Support Propriety of Members Meeting directly with Administrator and Superintendent: Board Member John Shoals has unilaterally met with the Administrator and/or the Superintendent concerning employee disputes without permission from, consultation with, or reporting to the full Board in May 2016, and twice in August 2016. On one occasion this related to disputes between line employees related to the treatment they were receiving by the Administrator, and on two other occasions it related to the Administrator criticizing and instituting discipline of the Superintendent for quietly attending a public meeting of the Board as member of the public when the Superintendent was not scheduled to give any report. Multiple other meetings by other Board Members unilaterally with the District Administrator have periodically occurred in 2016 and 2017.

Completely unsupported claim that Mayor Hill unilaterally intervened in contract extension.

Nelson critique: relates that 3 emails between Gerhard Hubner, one Greg Larson and Wendy Stockton (co-counsel with Gil Trujillo) purporting to memorialize that Mayor Hill had a conversation with Wendy Stockton¹⁷ concerning a long-range planning agreement the district was

¹⁷ Nelson's Exhibit 16, page 3; Nelson's report, page 38.
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negotiating with a service contractor. Nelson goes on to describe the conversation as having had no effect on the contract.

Response to accusation: *Demur.* The proof that Mayor Hill is paying attention, and making inquiry and helpful suggestions about the financial matters being carried out by the Executive Officers of the Sanitation District merely demonstrates that he is carrying out his legislative oversight role. No one who is failing to fulfill their duties of oversight may complain. Nothing in this accusation suggests otherwise.

Nelson's self-described "most compelling evidence of Jim Hill's unilateral involvement and interference in personnel matters to a complaint by a member of the public regarding a district employee."¹⁸ Nelson goes on to analyze emails he or someone has labeled 1 – 12.

The Sanitation District executive officers' unnatural and destructive fondness for secrecy about the public's business¹⁹, *even when events occur in public*, that are illustrated by Nelson's statements about 12 emails discloses more about Mayor Hill's accusers' violations than it does about the Mayor. The Sanitation District executive officers' penchant for taking action and expending public funds without Board consideration or approval is revealed. Mayor Hill's objection, succinctly stated in his January 17, 2017, 11:44 am email says it all, as he sought to stop executive officers from conducting expensive investigations that the Board had never authorized:

"Subject: Re: Confidential – Notice of Investigation"

"I demand that the [Redaction-1] cited by [Redaction-2] cease immediately!! Stop the phony "investigations", stop wasting our time and resources!! -Jim Hill"

The "Formal Complaint Emails."

The event, which occurred in public, just outside the door from a Sanitation District Board meeting held on December 21, 2016, was no secret and had been well documented by witnesses. The emailed "Formal Complaint" from Nancy J. MacNeil that begins the teapot tempest *was not private or internal*, but was in fact copied by Ms. MacNeil on jbrennan@co.slo.ca.us (legislative aide to Supervisor Compton) and ianparkinson@co.slo.ca.us. (Sheriff of San Luis Obispo)²⁰

¹⁸ Nelson's Report, pages 38 – 43; Nelson's 15 page Exhibit 17 & somewhat duplicative Exhibit 17 Supplemental Information.

¹⁹ Please see California Constitution Article I, Declaration of Rights, § 3(b)(1) which reads: "The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny."

²⁰ The 12-30-16 email from Nancy J. MacNeil included as part of Exhibit 17, #-1 and #-2 both claim "to document an incident" that occurred after a Sanitation District meeting. The content appears to have been cut out of that email, except for the reference to the event occurring "December 21, 2016 – approximately between 7:15 pm and 7:30 pm." (underlining in the original) **Both copies show that the email "complaint" was sent to, among others, Sheriff Ian Parkinson, and to the legislative aid for Supervisor Lynn Compton. The "Formal Complaint" was not a confidential complaint by any stretch of the imagination; and Superintendent Clemons has made no**
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An investigation by the San Luis Obispo County Sheriff's Department was conducted. The Sheriff's personnel found nothing worthy of action.

Mary Lucey,²¹ whose last meeting as a member of the Sanitation Board had occurred two weeks earlier on December 7th, was present at the meeting. Ms. Lucey had a long history as a Sanitation Board Member demeaning and making racist comments about Superintendent Clemons. Mr. Clemons walked out of the meeting when his portion of the reporting and discussions had ended into the parking lot. Outside of the meeting Ms. Lucey, walking with her spouse or partner, Nancy MacNeil, launched into a loud diatribe against Superintendent Clemons that was heard by members of the public inside the building where the Board was meeting. This involved accusation that he was trying to make them pay to wash his "dirty laundry," and a statement that she didn't know why he'd think employees needed a washer-dryer. One percipient witness to "the incident" was Mrs. Hill, standing in close proximity. Mr. Clemons brushed off MacNeil's statements about the washer-dryer with something along the lines of "Well, that's because you've never run a waste water plant." Following this brush-off, Ms. Lucey and Ms. MacNeil each shouted that "You better watch your back! Without any aggression, Mr. Clemons responded with "Watch my back? What do you mean by 'watch your back?'" And at that point Ms. Lucey and Ms. MacNeil each said words to the effect of "you threatened me, I'm calling the Sheriff," and walked away toward their vehicle which was several stalls over from Mr. Clemons' vehicle. A loud bang was heard from over by or past Mr. Clemons' vehicle.

The "Formal Complaint" email completely falsified these events, inventing actions and statements days later with which to falsely accuse the District's Plant Superintendent.

Mr. Nelson's report disapproves Mayor Hill for letting Mr. Clemons, a critical employee licensed to operate and operating the sewer plant efficiently to produce safely treated water, **that the false complaint had been publicly lodged** against him.²² Mayor Hill's action was appropriate to provide due process so that this key district employee could respond. Mayor Hill's provision of information to the attorney for the District that Mrs. Hill had witnessed the "incident" and that the content of the event "reminded" Mayor Hill of Mary Lucey's and MacNeil "having continually harassed" Mr. Clemons appropriately provided Mr. Trujillo with a percipient witness to the events.²³ Letting this key employee who had been responsible for bringing the District into compliance with State Water Quality standards know that a witness has been made available to the attorney for the District²⁴ is also proper. *This is not interference, it is fulfilling the duties of a member of the Legislative Body.* The need for this may have been prophetic, since the law firm that hired Mr. Nelson to prepare his report expressly, in writing, denied Mayor Hill all right to due process concerning what charges were being leveled against him.

request that it be kept confidential and indicated to this author that it should be publically disclosed.

²¹ See previous indications concerning Mary Lucey's obsessive demeaning behavior toward Mr. Clemons during the years that she was a Board member.

²² Nelson, Exhibit 17, #2.

²³ Nelson, Exhibit 17, #1

²⁴ Nelson, Exhibit 17, # 4, and #3 (a repetition of 17, # 1)

The “Confidential – Investigation into Complaint from a ‘Member of the Public’” emails

Whether intentionally, or through omission, Exhibit 17, #5, confuses by leaving off the first portion of the email sent to the Sanitation District Board January 17, 2017, which can only be observed on the 2nd page of “Exhibit 17 Supplemental Information.”

Besides that material obfuscation, **Nelson omits and overlooks the most important preliminary fact** about the labeled “confidential – investigation ...” email first transmitted by Wendy Stockton (co-counsel for the District with her former Santa Maria employee Gil Trujillo) to which Mayor Hill Responded on January 16, 2017.

The Board had never met to consider or authorize any investigation of the District Superintendent between the receipt of MacNeil’s December 30, 2016, “Formal Complaint” email and Stockton’s January 16, 2017, purportedly “Confidential – Investigation” email!

The Board was never given a choice. It is simply false to state that the District had no choice but to investigate.²⁵ The Sheriff had already investigated the false “Formal Complaint.” And no evidence supports the idea that the District had no choice or that its Board of Directors should be stripped of making a choice. Use of the disinterested *skill*, *zeal*, and *diligence* for the public in applying good judgment would have rejected the investigation of a key employee when no arrest was made and no citation issued by law enforcement. Abdication to a Fresno law firm to tell a legislative body what to do about a key employee who has been falsely charged, as evidenced by law enforcement taking no action, is not a responsible disinterested exercise of skill, zeal or diligence to achieve sewage treatment.

The Sanitation Board meeting of January 4, 2017 included no agenda items or closed session addressing the matter. The only closed session on January 4th was a negotiation with SEIU Local 620 non-represented management and non-management employees pursuant to Government Code § 54957.6. “salaries, salary schedules or fringe benefits.” The January 18, 2017 meeting of the Sanitation District Board was cancelled without explanation. And the matter of *the unauthorized “investigation”* would not be placed on the agenda by the run-away Administrator and Attorneys for the District at the next meeting of February 1, 2017. No closed session on any subject was scheduled or held February 1st. No opened or closed session to hire the outside Fresno law firm of Liebert, Cassidy, Whitmore to conduct the unauthorized investigation, or to appropriate funding, was ever held on the matter of MacNeil’s “complaint” against the District’s plant Superintendent.

Mayor Hill’s objection to the *unauthorized investigation* of an obviously bogus invented complaint against a respected competent key district employee, **without ever bringing the matter to the Board** fulfilled his duties of legislative oversight of what was obviously a runaway executive branch of the District’s administration. The inherent statutory structure of the Sanitation District which places the Mayor of each of the participating Cities on the Board to provided direct oversight amplifies Mayor Hill’s right, duty and authority to object to the unauthorized waste of public funds, and palpable interference with proper operation of the sewage treatment plant.

²⁵ Stockton email, Exhibit 17, #8, and Hill email immediately above #8 and also Exhibit 17, #11.
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Mayor Hill's demand to stop investigations without the Board deciding to conduct them amounted to a request to agendaize the matter (Sanitation Board Bylaw 4.1). Any forwarding of information about this that provided Superintendent John Clemons in Exhibit 17, #12, with due process notice concerning what he was being investigated about fulfilled the duties that the District owed to its key employee to provide notice and opportunity to respond. Nothing more or less.

Jan. 16, 2017, "Confidential – Notice of Investigation" email to Superintendent John Clemons

Co-Counsel for the District, Wendy Stockton, sent this email to Superintendent Clemons, Ex 17, #6. It copied on her Co-Counsel Trujillo.

In Exhibit 17, # 9, there is a January 17, 2017, email header saying "John Clemons ... wrote:" with all content gone. There is no indication as to who all Mr. Clemons email may have been sent in the exhibit. Whether additional information was cut out besides the content of his e-mail is unclear, and proof that it actually is part of a string is not provided. The absence of content would suggest that Jim Hill forwarded his demand to Stockton, Trujillo, Clemons, Hubner and Edwards (Tacker) *without appending the content of whatever John Clemons wrote*. In other words, "disclosure" by Mayor Hill to Edwards (Tacker) of a demand that an unauthorized investigation is the only thing demonstrated by Exhibit 17, #9 and 10.

Exhibit 17, #10, shows Jim Hill at close to noon emailing Stockton, Trujillo, Clemons and Hubner saying "I demand that the **REDACTION-1** cited by **REDACTION-2** cease immediately!! Stop the phony 'investigation', stop wasting our time and resources!!

Having now seen the un-redacted version of the full email, it is clear that there is *no* attorney-client privileged or work product information in the string. See attached.

Redaction-1 is the word "harassment" (hardly an attorney-client privileged communication).

Redaction-2 is "Mr. Clemons," already revealed in Exhibit 17, #9, showing something had been sent to Mayor Hill by John Clemons. *Due process would require that redactions be removed, and it is clear that the redactions relate to embarrassment rather than substance.*

The entire string consists of two comments by Mr. Clemons (obviously in a case where he is being investigated by the District, he not the client of the District) objecting to his unequal treatment, along with the Stockton two-sentence email telling Clemons that the original transmission had a "Notice of Investigation" attached. None of that is attorney-client privileged matter, nor is it work product, nor is it substantive, nor is it confidential unless Mr. Clemons wished to keep it confidential. Clemons' transmission of it to 3rd parties, such as Mayor Hill, evidenced that he did not wish to keep it confidential. Unlike the District Administration, Clemons was not hiding events.

Response to accusation: Denial. Mayor Hill's forwarding of Exhibit 17, #10 and #9 to Jeff Edwards (Julie Tacker) with a very short string of previous emails sent him by John Clemons attached disclosed no attorney-client or attorney work product information.

Demur. The proof that Mayor Hill is paying attention, and demanding that the Board of Directors take a vote and authorize funds *before* the Administrator and Attorneys for the District commence an investigation of a key employee *based on patently false charges* already rejected by the County Sheriff, is a fulfillment of his legislative duties and role (See South Sanitation District Bylaws, 4.1, above). Disclosing the demand that he has frequently made in public in a bcc that investigations which were never authorized by the Board cease was perfectly proper.

8. Mayor Hill is accused of *improperly* disclosing the contract for Gerhardt Hubner, with Hubner's home address displayed on the contract, before his contract as *District Administrator* was approved by the Board at the *public* meeting of April 6, 2017.²⁶

Response to accusation: *Demur and Denial*. Mayor Hill was right to distribute the contract, and nothing that was distributed would properly be considered confidential, nor was any part of the contract designated confidential when it was sent to him. Mayor Hill was not aware the contract sent to him before the meeting of April 6, 2017, contained Hubner's home address when a constituent asked for a copy, nor was he at first aware that it was missing pages.

Tremendous doses of inexplicable suspicion, innuendo and false premises are injected to give the cosmetic appearance of life to this corpse of an accusation. It is easily put to rest.

False Premise: That the public should not know the background and address of a prospective District Administrator seeking the position of the chief Executive Officer of the public entity. There is no bar to the contract being made public with the potential Executive Officer's home address when that contract is being presented for public approval at a public meeting. The public has a right to comment and support or oppose the selection of this chief Executive Officer at such a meeting, implying that the public has a right to know where the applicant is from and to inquire in advance of the meeting about that applicant in order to confer for the public good, and instruct their legislative representatives.²⁷ None of the nine other Government Code sections referred to in Government Code § 54963(a) – the Brown Act's requirement preventing disclosure of "confidential information" – make a prospective executive administrator's home address confidential in nature.

Innuendo and Baseless Suspicion.

As background, it is helpful to know that the only Board member who possibly had knowledge about the terms and text of a proposed contract to place Gerhardt Hubner in the public office of Sanitation District Administrator was Mayor John Shoals, who had been tasked by the Board with negotiating such a contract. The first time Mayor Hill received a copy of the proposed contract was as part of the publically available agenda items distributed for an April 6, 2016, public meeting at which the full Board had the option of considering, approving, or rejecting that contract.

Much ink is spilled in the Nelson report concerning the fact that the Sanitation District Supervisor emailed the proposed contract with Gerhardt Hubner (already signed by him) to Mayor Hill, Mayor Shoals, and Oceano CSD representative Mary Lucey at 3:36 p.m. on April 4, 2016, and that Mayor Hill forwarded it to his personal email address within a few hours.

Years ago, before Mrs. Hill experienced her vision impairment, that personal email address had been set up for Jim and Lin Hill at 1JLHill@gmail.com, with the display name Lin Hill. In order to be able to print and thoroughly read the contract, instead of trying to read it on the small screen of the city issued tablet, Mayor Hill forwarded it to himself from his city email to his personal email, 1JLHill@gmail.com. This was two days before a scheduled Sanitation District Meeting of

²⁶ Nelson Report, pages 44 - 47

²⁷ California Constitution, Article I, Section 3(a).
www.stewjenkins.com

April 6, 2016, and the contract transmission was sent as part of the board's information for the public portion of the meeting. The same document had already been posted at the Sanitation District website.

No indication about confidentiality of the contract or the confidentiality of the address of the potential District Administrator was included with the transmission. And given the public nature of the contract and the nature of the public office as Sanitation District Administrator, to which Mr. Hubner aspired, no such designation of confidentiality would have been proper.

Mayor Hill received a communication from Patty Welsh on the afternoon of April 6, 2016, complaining that there were multiple pages missing from the scanned contract that had been posted on the Sanitation District's web available agenda materials. She asked if he could forward her a copy of the contract. Assuming that what had been sent to him was complete, Mayor Hill forwarded Ms. Welsh the contract copy he had received from 1JLHill@gmail.com. Upon his own subsequent review of that document he discovered that the one he and the Board had been sent was also missing the pages. Mayor Hill brought this to the attention of the District Superintendent and Secretary so that a complete copy could be posted for the public. As a result of the lack of full notice to both the public and the Board he requested, and the Board voted, to continue consideration of Mr. Hubner's contract until April 20th, 2016.

At no point before the contract was considered and approved did Mayor Hill learn of any desire by Mr. Gerhardt Hubner to keep his Ventura home address a secret.

Citizens of Arroyo Grande, and of the Sanitation District, do not believe that public officials, responsible to the public, should properly hide out from the public. The home address and phone number of a public official, or of a prospective public official, is a matter of public concern which may be freely distributed. See *Doe Publius v. Boyer-Vine, in her official capacity as Legislative Counsel of California* (2017) 237 F.Supp.3d 997, at 1014, for the proposition that a public official's personal information is of public concern [citing *Snyder v. Phelps*, 562 U.S. 443, 453, ("Speech deals with matters of public concern when it can be fairly considered as relating to any matter of political, social, or other concern to the community" (citation and quotation marks omitted)) and *Org. for a Better Austin v. Keefe*, 402 U.S. 415, 417)].

Nelson "sustaining" that disclosure was made of a public document which should have been made available to anyone interested in the selection of a new District Administrator is without basis or merit. The irony of Ms. Welsh, who requested the document as a constituent so she could investigate the qualities of Mr. Hubner before his appointment, now complaining that she received what she asked for should not be lost on any rational observer.

Conclusion

Investigators and self-described "Special Counsel" paid to find something, anything, have produced a document purporting to show something.


But on examination; there is no there, there.

It is time to stop wasting the public's money, and disrupting sewage treatment, pretending that members of the City Council or of the Sanitation District Board are members of the Ervin Committee investigating Watergate. That is an expensive and self-destructive fantasy.

There is no merit to the charges leveled against Mayor Hill by Liebert, Cassidy, Whitmore or that firm's investigator, S.K. Nelson. There is no merit to Liebert, Cassidy, Whitmore's recommendations.

Those who authorized the Liebert, Cassidy, Whitmore fishing expedition should seriously now consider **making a public apology** to Mayor Hill, his spouse, and the public whose money they have wasted.

Sincerely,


Stew Jenkins

C: City Attorney, Heather Whitman
City Manager, Jim Bergman

Preamble

We, the People of the State of California, grateful to Almighty God for our freedom, in order to secure and perpetuate its blessings, do establish this Constitution.

Article I

§ 1. Inalienable rights

Section 1. All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.

Credits (Added Nov. 5, 1974.)

§ 2. Liberty of speech or of the press; responsibility for abuse; right to refuse to disclose source of information by member of news media

Sec. 2. (a) Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press.

(b) A publisher, editor, reporter, or other person connected with or employed upon a newspaper, magazine, or other periodical publication, or by a press association or wire service, or any person who has been so connected or employed, shall not be adjudged in contempt by a judicial, legislative, or administrative body, or any other body having the power to issue subpoenas, for refusing to disclose the source of any information procured while so connected or employed for publication in a newspaper, magazine or other periodical publication, or for refusing to disclose any unpublished information obtained or prepared in gathering, receiving or processing of information for communication to the public.

Nor shall a radio or television news reporter or other person connected with or employed by a radio or television station, or any person who has been so connected or employed, be so adjudged in contempt for refusing to disclose the source of any information procured while so connected or employed for news or news commentary purposes on radio or television, or for refusing to disclose any unpublished information obtained or prepared in gathering, receiving or processing of information for communication to the public.

As used in this subdivision, "unpublished information" includes information not disseminated to the public by the person from whom disclosure is sought, whether or not related information has been disseminated and includes, but is not limited to, all notes, outtakes, photographs, tapes or other data of whatever sort not itself disseminated to the public through a medium of communication, whether or not published information based upon or related to such material has been disseminated.

Credits (Added Nov. 5, 1974. Amended June 3, 1980.)

**§ 3. Right to instruct representatives, petition and assembly;
right of access to government information**

SEC. 3. (a) The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good.

(b)(1) The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

(2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. A statute, court rule, or other authority adopted after the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

(3) Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer.

(4) Nothing in this subdivision supersedes or modifies any provision of this Constitution, including the guarantees that a person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws, as provided in Section 7.

(5) This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings of public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.

(6) Nothing in this subdivision repeals, nullifies, supersedes, or modifies protections for the confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses provided by Section 7 of Article IV, state law, or legislative rules adopted in furtherance of those provisions; nor does it affect the scope of permitted discovery in judicial or administrative proceedings regarding deliberations of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses.

Credits (Added Nov. 5, 1974. Amended by Stats.2004, Res. c. 1 (S.C.A.1) (Prop. 59, approved Nov. 2, 2004, eff. Nov. 3, 2004).)

Historic: Section 3(a) appeared in the original 1849 Constitution as Section 10, which read: SEC. 10. The people shall have the right freely to assemble together, to consult for the common good, to instruct their representatives, and to petition the Legislature for redress of grievances. **Courts have held the rewording did not change the plain meaning.**

Fwd: Confidential - Notice of Investigation
From: Jeff Edwards <jhedwardscompany@gmail.com>
To: Stew Jenkins <info@stewjenkins.com>
Date: 2017-09-08 19:21

- image002.jpg (~3 KB)

Julie Tacker
Administrative Assistant

J.H. Edwards Company
P.O. Box 6070
Los Osos, CA 93412

805.528.3569 - Office

----- Forwarded message -----

From: **Jim Hill** <jhill@arroyogrande.org>
Date: Tue, Jan 17, 2017 at 11:44 AM
Subject: Re: Confidential - Notice of Investigation
To: Wendy Stockton <wendylegal55@gmail.com>, Gil Trujillo <gat1848@comcast.net>, John Clemons <jclemons@sslocsd.us>, Gerhardt Hubner <Gerhardt@sslocsd.us>

I demand that the harassment cited by Mr. Clemons cease immediately!! Stop the phony "investigations", stop wasting our time and resources!! -Jim Hill

Sent from my iPad

On Jan 17, 2017, at 10:00 AM, John Clemons <jclemons@sslocsd.us> wrote:

From: John Clemons
Sent: Tuesday, January 17, 2017 9:30 AM
To: 'Wendy Stockton' <wendylegal55@gmail.com>
Cc: Gil Trujillo <gtrujillo@cityofsantamaria.org>
Subject: FW: Confidential - Notice of Investigation

Wendy,

It seems very clear to me that this is further retaliation for my complaints against former Director Lucey and against the District Administrator. I am asking that this harassment cease immediately.

Thank you,

John L. Clemons

Plant Superintendent/CPO

South San Luis Obispo County Sanitation District

1600 Aloha Place

Oceano, Ca. 93445

805-489-6666

[REDACTED]

<image002.jpg>

From: John Clemons

Sent: Tuesday, January 17, 2017 9:21 AM

To: 'Wendy Stockton' <wendylegal55@gmail.com>

Cc: Gil Trujillo <gtrujillo@cityofsantamaria.org>

Subject: RE: Confidential - Notice of Investigation

9/3/2017

Roundcube Webmail - Fwd: Confidential - Notice of Investigation

Wendy

I find it interesting that when I complained to District Counsel and the Board Chairman that I was threatened on the night of the incident, that no action was taken. Now, since you received a complaint from Mary Lucey's partner, this rises to the level of an investigation. This tactic is troubling.

John Clemons

From: Wendy Stockton [<mailto:wendylegal55@gmail.com>]
Sent: Monday, January 16, 2017 4:54 PM
To: John Clemons <jclemons@sslocsd.us>
Cc: Gil Trujillo <gat1848@comcast.net>
Subject: Confidential - Notice of Investigation

John,

Attached is a Notice of Investigation. Please contact me if you have questions.

Sincerely,

Wendy

Wendy

Wendy Stockton, Esq.

Please note my new telephone





image002.jpg

~3 KB