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CIVIL GRAND JURY

2018-2019 FINAL REPORT

JUNE 24, 2019

**MONTEREY COUNTY
CIVIL GRAND JURY**

2018 -2019

FINAL REPORT

JUNE 24, 2019

Cover Image by Priscilla Martinez
(courtesy of Monterey County)

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MONTEREY COUNTY CIVIL GRAND JURY

P.O. Box 414
Salinas, CA 93902
Telephone: (831) 883-7553



June 24, 2019

The Honorable Stephanie E. Hulse
Judge, Superior Court of California
County of Monterey
240 Church Street
Salinas, CA 93907

Re: 2018 – 19 Monterey County Civil Grand Jury Final Report

Dear Judge Hulse:

On behalf of my fellow jurors on the 2018-19 Monterey County Civil Grand Jury, I am pleased to present our Final Report. The members of the jury are all civic minded and have dedicated their one-year term of service to evaluating how government is working in Monterey County. The Civil Grand Jury hopes these reports will shine light on and give guidance to the government agencies investigated. The jurors devoted many long hours collaborating, investigating, researching, writing and publishing these reports which we hope will make a difference within our county.

It has been an honor to serve with this dedicated and committed team of fellow jurors. The experience of being on the Civil Grand Jury underscored the important role of citizen oversight in local government. We wish to thank you for your initial charge to us as we began our term and your support throughout the year. A special thank you to Chief Assistant County Counsel Les Girard who helped answer our legal questions, and Sandra Ontiveros, Management Analyst with the Office of the County Counsel, for her dedicated support and guidance in achieving our goals.

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

Respectfully,

J. Allen Miller, Foreperson
2018-2019 Monterey County Civil Grand Jury



**IN MEMORIAM OF GREGORY KOLBO
(AUG 21, 1951-MAR 7, 2019)**

The members of the 2018-19 Monterey County Civil Grand Jury dedicate this Final Report to the memory of our fellow juror Gregory Kolbo. Greg epitomized what a juror should be. He was a respectful collaborator and a dedicated, hardworking team player. Greg was always inquisitive, thoughtful, and open minded with a good sense of humor. Proud to serve Monterey County as a juror, Greg was always willing to work on assignments with interest, integrity and enthusiasm. He was also very proud to be a veteran and frequently spoke about his time serving our country. He touched all of us with his keen interest in people and desire to be of service. Greg's death left a vacancy in our jury and a sadness in our hearts. We dedicate this Final Report in memory of this kind, gentle, thoughtful, and respectful juror.

2018-2019 MONTEREY COUNTY CIVIL GRAND JURY ROSTER

OFFICERS

Foreperson	J. Allen Miller
Foreperson Pro Tem	John Mutty
Secretary	Chris Mayhew
Corresponding Secretary	Matthew Schuss
Treasurer	Kathleen Stoudt

JURORS

Paula Alderson	Monterey
Rosemarie Barnard	Prunedale
Duane Borba	Pacific Grove
Andy Cariaga	Salinas
Amy DePaola	Carmel
Linda Lannon	Salinas
Chris Mayhew	Seaside
J. Allen Miller	Monterey
John Mutty	Carmel
Robert Nolan	Marina
Robert Reikes	Pacific Grove
Phillip Richer	Monterey
Joseph Ryan	Monterey
Matthew Schuss	Carmel
Gina Sessions	Monterey
Kathleen Stoudt	Salinas
Howard Timm	Carmel



FRONT ROW (left to right): Rosemarie Barnard, Robert Reikes, Duane Borba, Judge Stephanie E. Hulsey, Chris Mayhew, J. Allen Miller

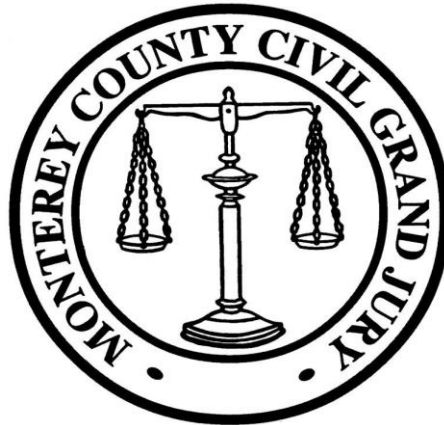
MIDDLE ROW (left to right): Andy Cariaga, Matthew Schuss, Kathleen Stoudt, Paula Alderson, Linda Lannon

BACK ROW (left to right): Gina Sessions, Robert Nolan, Amy DePaola, John Mutty, Joseph Ryan

Not pictured: Howard Timm, Phil Richer

2018-2019 MONTEREY COUNTY CIVIL GRAND JURY

MISSION STATEMENT



The mission of the Monterey County Civil Grand Jury is to conduct independent inquiries and to respond to citizen complaints concerning any government agency, municipality, or special district within Monterey County. The reports of the Civil Grand Jury will provide a clear picture of the functioning of the organizations. Recommendations for improvement will be made, and commendations will be offered when effectiveness, efficiency, or excellence is found.

CIVIL GRAND JURY MISSION AND RESPONSE REQUIREMENTS

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

Jury Selection

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

Investigations

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

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

Additionally, Section 919 prescribes that:

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

The public may submit directly to the Monterey County Civil Grand Jury complaints requesting that it investigate issues of concern regarding public agencies or official in Monterey County. The public may request complaint forms by contacting the office of the Monterey County Civil Grand Jury at (831) 883-7553 or through the Grand Jury's website address at www.monterey.courts.ca.gov/grandjury or

<http://www.co.monterey.ca.us/government/participate-get-involved/civil-grand-jury>.

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

Reports

Section 933(a) of California Penal Code declares:

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

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

Section 933(b) declares:

One copy of each final report, together with the responses thereto, found to be in compliance with this title shall be placed on file with the clerk of the court and remain on file in the office of the clerk. The clerk shall

immediately forward a true copy of the report and the responses to the State Archivist who shall retain that report and all responses in perpetuity.

Each report is distributed to public officials, libraries, the news media and any entity that is the subject of any of the reports. The public may also view each year's final report through the Monterey County Civil Grand Jury's website at

<http://www.co.monterey.ca.us/government/participate-get-involved/civil-grand-jury> or

www.monterey.courts.ca.gov/grandjury.

Content of Responses

Section 933.05 of the California Penal Code declares:

- (a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:
 - 1. The respondent agrees with the finding.
 - 2. The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
- (b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:
 - 1. The recommendation has been implemented, with a summary regarding the implemented action.
 - 2. The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.
 - 3. The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.
 - 4. The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

Timeline of Responses

Section 933(c) states:

No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendation pertaining to matter under the control of that county officer or agency head any and agency or agencies which that officer or agency head supervises or controls...All of these comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury.

Address for Delivery of Responses

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

A REVIEW OF THE CITY OF MONTEREY'S NEIGHBORHOOD IMPROVEMENT PROGRAM

SUMMARY

The City of Monterey Neighborhood Improvement and Community Program, more commonly known as the Neighborhood Improvement Program (NIP), was established in 1985 by the Monterey City Council. In 1988, the voters approved Measure B, now included as section 6.6 of the Monterey City Charter, which states that at least 16% of the Transient Occupancy Tax (TOT) is to be set aside for improvements to the residential neighborhoods of Monterey. The original NIP budget in 1986 was \$2 million. The estimated budget for 2017-18 was \$4 million. The NIP has accomplished many beneficial projects in the years since it was established and is generally seen in a positive light by the residents of the City of Monterey.

This investigation began as a result of a citizen's concern that the NIP wasn't adequately serving the neighborhoods. This report will show that the City of Monterey has followed the original intention of the voters for the most part but there are some exceptions detailed below.

This report will identify that the City of Monterey and/or the NIP Committee:

- a) failed to diligently review, and update, the Policies and Procedures Manual (NIP Manual) to currently reflect changes within the NIP operations and structure;
- b) included and funded projects in an entity called Citywide, which is not specified as a neighborhood in the NIP Manual, and which should be funded from the City's General Fund; and
- c) provided inadequate Public Notices for NIP publicly held meetings.

For the above reasons, updated written policies and procedures should be drafted and approved reflecting the current protocols utilized by the NIP. The Monterey County Civil Grand Jury (MCCGJ) recommends that the Monterey City Council in collaboration with the NIP Committee address this matter and:

- a) review the NIP Manual annually and make appropriate changes;
- b) define Citywide and differentiate it from Community-wide (terminology used in the City Charter to describe use of the NIP funds);
- c) avoid using NIP funds for Citywide projects that should be funded through the General Fund; and,

A REVIEW OF THE CITY OF MONTEREY'S NEIGHBORHOOD IMPROVEMENT PROGRAM

- d) adopt a protocol to better inform the residents of Monterey, as well as the public at large, when NIP Public Meetings are being held.

BACKGROUND

The MCCGJ began this investigation as a result of a citizen's complaint. The complaint focused on the NIP in the City of Monterey. The three main concerns of the complainant were:

- 1) The lack of term limits for NIP representatives creates an atmosphere that supports vote trading and cronyism;
- 2) The NIP budget is used for projects not included under Measure B, which is described on page 6 of the Manual;¹ and,
- 3) The processes by which the NIP projects are prioritized and by which the funds are allocated do not provide equal treatment for all the neighborhoods' projects.

The MCCGJ began the inquiry into the NIP specifically focused on the three issues brought to our attention by the complaint. During the investigation, several other issues were uncovered that called into question whether the government of the City of Monterey was transparent in its policies, procedures, and finances as they relate to the NIP. In order to better understand the issues, the MCCGJ researched the following:

- a) the organization of the City of Monterey's government;
- b) the history of the City of Monterey; and
- c) the genesis of the NIP.

The following information was obtained from the NIP Policies and Procedures Manual;² interviews conducted by the MCCGJ; review of City of Monterey public documents located on the City website using the tool I-SEARCH³; and documents provided by City officials, NIP members, and residents.

¹ <https://monterey.org/Portals/0/Reports/NIP/NIP-Policies-and-Procedures-Manual.pdf>

² <https://monterey.org/Portals/0/Reports/NIP/NIP-Policies-and-Procedures-Manual.pdf>

³ <http://isearchmonterey.org/home.html>

A REVIEW OF THE CITY OF MONTEREY'S NEIGHBORHOOD IMPROVEMENT PROGRAM

The Government Structure

The City of Monterey is a charter city that operates under a charter (essentially its own constitution) that has been adopted by local voters. The City of Monterey operates under a Council-Manager form of government. This is a government in which the Monterey City Council governs legislative issues and the City Manager is responsible for all administrative and everyday functions. The Monterey City Council is composed of five councilmembers, one of which is the mayor. Councilmembers are all elected positions and serve staggered four-year terms. The Monterey City Council meets the first and third Tuesday of each month. The city's fiscal year is from July 1st through June 30th. Each Monterey City Council meeting has a predetermined agenda. The City Manager has final approval of the Monterey City Council agenda and has responsibility over the functions of the NIP. Appendix A shows the Organizational chart of the City of Monterey.

A Brief History of the City of Monterey

The City of Monterey, which was incorporated in 1850, has come a long way from being initially known for its fishing industry in the early to mid-1900s. Due to its strategic location, it was identified as a key military outpost and was the home to an active military base, the Presidio. The City of Monterey is presently a well-known tourist destination due to several attractions, most notably the Monterey Bay Aquarium. As the area's popularity grew, the negative impact to the natural surroundings and the infrastructure, mainly caused by the increase of automobile traffic, raised great concerns to the residents of the neighborhoods of the city.

In 1985, then Mayor Clyde Roberson introduced a proposal for a system in which a portion of the TOT, charged by lodging establishments, would be diverted to support the needs of the neighborhoods. This system was officially amended into the Monterey City Charter and approved by voters in the General Election of November 8, 1988, as Measure B, Monterey City Charter Amendment Neighborhood and Community Projects Program.⁴ The major aspects of Measure B are:

⁴ <https://monterey.org/Residents/Neighborhoods/Neighborhood-Improvement-Program>

A REVIEW OF THE CITY OF MONTEREY'S NEIGHBORHOOD IMPROVEMENT PROGRAM

1. At least 16% of the annual TOT revenue is to be budgeted for capital projects to improve the residential neighborhoods or projects of community-wide benefit; and
2. The Monterey City Council may, by a four-fifths vote, reduce said budget below 16%.

A copy of Section 6.6 of the Monterey City Charter is attached as Appendix B

The Neighborhood Improvement Program

To provide guidance to the NIP Committee on how to conduct its business, the NIP Manual was developed.⁵ The Council Approved Edition of the NIP Manual, currently in use by the NIP, is dated December 4, 2012.

The NIP includes 16 neighborhoods. The Monterey City Charter defines the appropriate use of NIP funds as targeted for neighborhoods and community-wide capital projects. For clarification purposes of the NIP Manual and this report, the Merriam-Webster Dictionary defines “neighborhood” as “the people living near one another” or “a section lived in by neighbors and usually having distinguishing characteristics.”⁶ “Community”⁷ is defined as “people with common interests living in a particular area” and Citywide as “including all parts of the city.” The MCCGJ believes community-wide projects benefit the residents within the neighborhoods and Citywide projects benefit the residents of the entire city. A map of the 16 neighborhoods is attached as Appendix C.

Each neighborhood chooses one representative and an alternate to serve on the NIP Committee. Each representative is then approved and appointed by the Monterey City Council. The NIP Committee chooses a Spokesperson and an Alternate Spokesperson to represent the NIP Committee in meetings with the Monterey City Council and other committees. There are no representatives for Citywide.

A neighborhood, as defined in the City Charter, has an identified and distinct boundary. Each neighborhood has a base allocation for funding projects. The base allocation⁸

⁵ <https://monterey.org/Portals/0/Reports/NIP/NIP-Policies-and-Procedures-Manual.pdf>

⁶ <https://www.merriam-webster.com/dictionary/neighborhood>

⁷ <https://www.merriam-webster.com/dictionary/community>

⁸ <https://monterey.org/Portals/0/Reports/NIP/NIP-Policies-and-Procedures-Manual.pdf>

A REVIEW OF THE CITY OF MONTEREY'S NEIGHBORHOOD IMPROVEMENT PROGRAM

(funding allocation) is set by the per capita formula per year and is based on the population of each neighborhood. Citywide has no base allocation.

There is a designated City of Monterey NIP Coordinator who is appointed by the City Manager⁹ and is responsible for coordinating development and execution of the NIP. The NIP Coordinator's immediate supervisor is the Director of the Public Works Department. Each NIP representative is responsible for submitting resident suggested projects to the NIP Coordinator for review. City staff frequently submit city projects for consideration by the NIP committee at the request of the City Manager, the majority of which are Citywide. These projects are then reviewed by the NIP Coordinator, evaluated as to completion cost, and presented for review by the NIP Committee during Voting Night (as described below).

Each year within the first quarter, NIP representatives meet to vote on projects within their own neighborhoods. During the NIP prioritization meeting, NIP members can support other projects outside of their neighborhoods by lending their allocation of monies to other projects. Approved projects are reviewed by the Monterey City Council for approval or rejection. Once the Monterey City Council approves projects, they return the list of approved projects to the NIP Coordinator for scheduling with the City Engineer, Parks and Recreation Department, and the Public Works Department.

APPROACH

The MCCGJ interviewed several NIP Spokespersons, NIP representatives, and residents of several neighborhoods. The cross section of interviewees included more recently appointed representatives and representatives who have over 15 years of experience on their respective NIP Committees. The MCCGJ also interviewed senior officials within the City of Monterey who had knowledge of the NIP functions and procedures. The interviews included staff members and senior and middle management officials, including elected officials. These interviews provided information that prompted the MCCGJ to research City documents, public meeting minutes, and the finances of the City of Monterey Budget.

⁹ <https://monterey.org/Residents/Neighborhoods/Neighborhood-Improvement-Program>