



DATE: August 7, 2023

TO: Honorable Mayor and Members of the City Council through City Manager

FROM: Peggy Flynn, City Manager
Brian Cochran, Assistant City Manager
Brian Oh, Community Development Director
Eric Danly, City Attorney

SUBJECT: Resolution Authorizing the City Manager to Submit Comments of the Petaluma City Council to the Presiding Judge of the Sonoma County Superior Court Concerning the Findings and Recommendations of the Sonoma County Civil Grand Jury 2023 Report Entitled "Outsourcing Petaluma Planning Department" (In Accordance With California Penal Code Sections 933 and 933.05)

RECOMMENDATION

It is recommended that the City Council approve a Resolution Authorizing the City Manager to Submit Comments of the Petaluma City Council to the Presiding Judge of the Sonoma County Superior Court Concerning the Findings and Recommendations of the Sonoma County Civil Grand Jury 2023 Report Entitled "Outsourcing Petaluma Planning Department" (In Accordance With California Penal Code Sections 933 and 933.05)

BACKGROUND

Not unlike many other jurisdictions, the City of Petaluma utilizes a hybrid workforce that includes public-sector employees, private and non-profit contractors to deliver a number of different city services. Since 2009, the City has used this approach to provide planning and land use services with in-house staff working in conjunction with staff and expertise provided by M-Group, a Bay Area-focused planning consulting firm that works solely with public agencies. As the community needs and City Council priorities have evolved, the level of service has been responsive to this change and has supported a City and its City Council that has been at the forefront of landmark legislation and policies much of which go through extensive public dialogue with the community. As such, planning and land use is a highly regulated field that intersects state, regional and local laws with robust public engagement. To that end, there is a high level of interest regarding land use development and the various factors that influence land use decisions.

In December 2022, a complainant made a request to the Sonoma County Civil Grand Jury (CGJ) to examine how the City provides its planning and land use services. The CGJ is an independent institution with the principal function of overseeing all aspects of county, special district, and city governments in Sonoma County to ensure that the best interests of its citizens are being served. Nineteen Grand Jury members are selected annually from applications submitted by County residents to serve a one-year term. The CGJ conducts investigations based on citizen complaints and on its own initiative. The CGJ has the authority to inspect and audit the financial expenditures of county and city departments and special districts to ensure the public funds are properly accounted for and legally spent, inquire into the performance of any county, city, or special district public official or employee. The CGJ issued their Final Report for 2022-2023 on June 18, 2023. Topics listed in the report include City of Sonoma Cemeteries; Outsourcing Petaluma Planning Department; and Warming Centers. The CGJ notified the City on June 13, 2023 of its obligation to respond to the “Outsourcing Petaluma Planning Department: Is It Better or Is It Easier?” investigation reports. The City Council has 90 days, or until September 11, 2023, to provide a response. Staff has prepared a response for City Council consideration (Attachment 2 and 3).

DISCUSSION

Since 2009, the City of Petaluma has used a hybrid service model with the support of M-Group, a Bay Area-focused planning consulting firm that provides a range of planning services to public agencies. M-Group’s contract with the City of Petaluma was most recently approved by the City Council in 2018 and provides continuity in the planning division since fiscal impacts prompted the City to eliminate its in-house planning function in 2009. This hybrid service model is not unique to the Planning Department and is used throughout the City, including in Information Technology, Parks and Recreation, Housing, Building, Code Enforcement, Transit, Facilities, and Public Works. This service model not only allows the City to scale up/down depending on needs and activity levels, but ultimately saves taxpayer funds for other priorities.

For land use planning, the model has provided high-quality service while contributing to a balanced city budget with an annual cost savings of approximately \$624,417 (24%) compared to a fully in-house planning department. Most importantly, the breadth and depth of work completed by the City of Petaluma using this model has changed significantly in response to community priorities, changes in state laws, and City Council direction. This model has allowed the City to expand staff expertise in the Planning Department to include environmental planners, public art specialists, and historic preservation specialists. The M-Group partnership has been integral to Petaluma’s landmark legislation over the years in response to climate change and the housing crisis, including adoption of an all-electric code, visitability and universal design regulations, fossil fuel gas station ban, emergency shelter declaration, reduction in applicable development impact fees for affordable housing, and most recently, adoption and certification of the City’s 6th cycle Housing Element.

Additionally, performance of M-Group's services is also based upon successful completion of special projects associated with citywide Council goals and priorities. The City Manager, who manages the City’s contract with M-Group, and with the recent hire of the Community Development Director which enhances this constant oversight, both meet with M-Group staff

regularly to assess progress and performance, and budgetary considerations, resulting in reprioritization as needed. In 2022, the City consolidated its building, planning and housing service divisions into one integrated department, the City's first Community Development Department since 2009, which is led by a recently hired Director of the Community Development Department (Director). The Director will continue to adhere to the City goal to provide in-house services whenever financially feasible and practicable, a goal that was discussed with Council when the position was reestablished in 2022.

The City routinely performs a cost/benefit analysis with City contracts. As part of the Fiscal Year 23-24 City Budget preparation process, a cost benefit analysis was performed to compare three service delivery models: City in-house planning department, M- Group only, and our current hybrid model that is based on a City Council initiative to reconstitute the City's Community Development Department. The analysis includes a thorough review of M-Group's monthly and annual costs, which includes reviewing positions, hours worked, and services provided. This most recent analysis, which includes assessing all levels of service including base level services, reaffirms the City's approach to utilize staff and services provided by the M-Group.

As is the City's practice with contractual relationships that are successfully meeting or exceeding performance expectations and that continue to meet or exceed budgetary requirements, a Request For Proposals (RFP) is typically issued near or at the completion of a contract. Given that the City is in the midst of a multi-year General Plan update that is expected to conclude in late 2025 and the current M-Group contract expires in mid-2026, and to avoid having to put the General Plan effort that the M-Group is primarily supporting on hold and potentially costing the City significant delays and costs, the City plans to release an RFP in early 2026, approximately six months prior to the expiration of the contract, and to ensure the conclusion of the General Plan process.

The CGJ report was prompted by a citizen complaint submitted to the CGJ in December 2022. Staff has prepared responses to address the complainant's main concerns that are summarized below.

- **The Report concludes there is no evidence of any conflict-of-interest M-Group has by providing staffing and services to the City of Petaluma. No findings or recommendations were made by the CGJ on this topic.**
 - The complainant states that conflicts of interest may exist between M-Group, which is purportedly pro development, and the City of Petaluma.
- **The City uses a number of ways to provide transparency to its planning process such as identification badges and business cards that distinguish an M-Group-employed consulting planner serving the City of Petaluma. Additionally, the City has implemented CGJ recommendations to expand this to include email signatures. Furthermore, the City will continue to look for additional ways to ensure transparency and inclusion of all Petalumans in the planning process.**
 - The complainant states that citizens of Petaluma may or may not be aware that M-Group is processing their planning and construction needs rather than employees of the City.

- **The people of Petaluma and the people elected to represent them on the City Council have always been an integral part of the decision-making process. Land use planning and development is a complex, multi-disciplinary process that is dictated by policies and regulations adopted by the City Council. These policies come from a number of places including but not limited to the city's General Plan and various land use documents, its Implementing Zoning Ordinance, Municipal Code, as well as local and state regulations. A number of factors, primarily citizen input, inform the planning process. Staff whether employed directly by the City or through its various contracts work to implement those policies and regulations to deliver city services. M-Group and the staffing and services provided has demonstrated the ability to be responsive to the City Council and to the community's needs related to land use and sustainability. While various city and state regulations have changed how local jurisdictions implement land use, the planning process has not changed from a community and city-led planning process.**
 - The complainant states that the City has given up primary control of construction planning and has ignored citizen input in the process.
 - The complainant states that over time, modifications and extensions of the contract have given over more control to the M-Group.

The report concludes with a set of findings and provides a set of recommendations that the Petaluma City Council is required to respond to per Penal Code 933 and 933.05. Staff has prepared responses to each of the recommendations for City Council consideration.

The Sonoma County Civil Grand Jury determined that:

- F1. The City of Petaluma has continued to contract with M-Group for the past 14 years and has failed to conduct a formal performance review, cost-benefit analysis, or new RFP to determine if the level of costs can be improved.
- F2. The amount of money flowing from the City to M-Group has increased over the life of the contracts due to the increase in development activity and M-Group's rate increases. The City has failed to provide a cost-benefit analysis justifying the continuing issuance of contracts.
- F3. The City has failed to conduct a cost-benefit analysis to determine if base level services could be filled with City employees and reduce overall costs.
- F4. The City of Petaluma recently hired a director of community development, demonstrating an interest in increasing oversight, however, the City has failed to consider hiring FTE employees in base level services positions.
- F5. The City has failed to require M-Group employees working in the planning department to wear identifying badges or logos that would inform the public that they are interacting with contractors and not City employees.

F6. The City has failed to require M-Group employees working in the planning department to include the M-Group logo or company name in their email signatures.

The Sonoma County Civil Grand Jury recommends that:

R1. By December 31, 2023, the City completes a cost-benefit analysis of using a private firm versus employees to staff the planning department. (F1, F2, F3, F4)

R2. By no later than March 1, 2024, the City opens an RFP for planning services and considers a combination of city employees and private contractors to staff the planning department. (F1, F3)

R3. By September 30, 2023, the City requires M-Group to provide badges or logos to their employees that identify them as M-Group employees. (F5)

R4. By August 31, 2023, the City requires M-Group to direct their employees to include their firm's logo and or name in their email signature. (F6)

R5. By August 31, 2023, the City includes an M-Group designation on each staff listing under the planning staff directory on the website. (F7)

R6. By December 31, 2023, the City conducts a formal survey of the citizens of Petaluma to better understand their awareness and understanding of the outsourcing of the planning department and their experiences interacting with M-Group employees. (F5, F6, F7)

The City agrees with findings F6, F7 and disagrees wholly or partially with findings F1, F2, F3, F4, F5. The City has implemented recommendations R1, R3, R4, R5. The City has not yet implemented, and will not be implementing in the future recommendation R6 as it is narrowly recommended. The City has not yet implemented, and will be implementing in the future recommendation R2 at the conclusion of the current contract with M-Group.

PUBLIC OUTREACH

This agenda item was publicly noticed in compliance of the California Brown Act at the most recent City Council meeting held on July 17, 2023 on the tentative agenda for the August 7 meeting.

ENVIRONMENTAL REVIEW

The proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15378, in that appointing a voting delegate and alternate does not meet CEQA's definition of a "project," because the action does not have the potential for resulting either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment, and because this action that constitutes organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

FINANCIAL IMPACTS

There are no financial impacts as a result of this item. Grand Jury recommendations have either already been implemented or are in the process of being implemented under existing budget appropriations.

ATTACHMENTS

1. Attachment 1 - Resolution Responding to the Sonoma County Civil Grand Jury Investigation Reports entitled “Outsourcing Petaluma Planning Department: Is It Better or Is It Easier?”
2. Attachment 2 - “Outsourcing Petaluma Planning Department: Is It Better or Is It Easier?” Response Form
3. Attachment 3 - “Outsourcing Petaluma Planning Department: Is It Better or Is It Easier?” Summary of Responses
4. Attachment 3 - Appendix A “Outsourcing Petaluma Planning Department: Is It Better or Is It Easier?” Summary of Responses
5. Attachment 4 - Sonoma County Civil Grand Jury Investigation Report Entitled “Outsourcing Petaluma Planning Department: Is It Better or Is It Easier?”