

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)

August 7, 2023

Honorable Shelly Averill
Presiding Superior Court Judge
Hall of Justice
600 Administration Drive
Santa Rosa, CA 95403

Peter Maschewitz
Foreperson
Sonoma County Civil Grand Jury
P.O. Box 5109
Santa Rosa, CA 95402

Dear Presiding Judge Averill and Foreperson Maschewitz,

Following are the comments of the Petaluma City Council concerning the findings and recommendations of the Sonoma County Civil Grand Jury 2023 report entitled “Outsourcing Petaluma Planning Department” in accordance with the requirements of California Penal Code Sections 933 and 933.05. A completed Response to Grand Jury Report Form is also attached.

I. Introduction

Before providing the City Council’s comments on the Grand Jury’s findings and recommendations, in this introduction we provide what we believe is important context. We hope this introductory information will assist members of the Grand Jury and the public in better understanding the framework within which the City of Petaluma performs its planning functions. In Petaluma, planning functions, and other related functions that are discussed below, are performed with in-house staff working in conjunction with M-Group staff and other consultants under contract, in preparation for deliberation and action by City decisionmakers. In the following we also address the City’s extensive program of contracting for professional services, which involves all City departments, not just planning, and many contractual service providers in addition to the M-Group, to maximize the quantity and quality of public services the City can deliver for its residents and visitors based on its available financial resources. In addition, in the following we briefly explain the ethical rules and regulations that apply to M-Group in its work for the City, which are the same rules and regulations that apply to all City officials, employees, and consultants in carrying out their official duties. There is no inherently greater danger of conflicts of interest regarding the work of contract service providers than there is regarding City

elected or appointed officials or employees. The City is committed to rigorous compliance with its ethical obligations regarding all City officials, employees and contractors.

1. Petaluma's Planning Process

a. Initiation and processing of private development applications

Private development applications are not initiated by local agencies. Private development projects are initiated by private property owners seeking to develop their property. Processing of development applications is not optional for local jurisdictions. As a land use regulatory body, the City of Petaluma is required by state law to review and process all applications that are submitted, subject to time frames specified in various laws and regulations. Each development application is reviewed for consistency with applicable laws and regulations, which may include federal, state, and local laws and regulations, prior to being presented to the reviewing body to consider the scope of the project and the entitlements sought. While the City is required to process all applications received, the discretion of City decisionmakers to approve or deny a particular application is determined by the consistency of the application with applicable laws and regulations. Typically, the City decision making body has the discretion to deny a development application that is not consistent with applicable laws and regulations, unless the applicable laws or regulations have limited the decision makers' discretion and made approval of an application partly or wholly ministerial (non-discretionary).

b. State and local land use regulations

Laws that may apply to private development applications submitted to the City for review and processing include Federal laws like the National Environmental Policy Act (NEPA), the Religious Land Use and Institutionalized Persons Act (RLUIPA); California laws like the California Environmental Quality Act (CEQA) and the Planning and Land Use Law; and the City's own laws and regulations. The City's land use and related regulations include the City's General Plan, Specific Plans, Zoning Ordinance, Subdivision Ordinance, and Building and Fire Codes, among others. The City laws and regulations related to the development review process are adopted by the City Council through a public process prescribed in the City charter and state law. The City Council, as a body, is accountable to the Petaluma voters regarding the adoption of Petaluma land use laws, regulations, and policies. Similarly, the City Council (with assistance from the Planning Commission and the Historic and Cultural Preservation Commission) is responsible for its decisions regarding approval of private development projects. City staff are responsible for preparing City Council land use regulations and project applications for review, deliberation and decision by the City decision making body. The City Manager and City Attorney working in conjunction are together ultimately responsible to the City Council for project review and decision materials and land use regulation materials presented for decision. City planners prepare City development application review and land use regulation materials under the oversight and with the support of the City Manager and City Attorney. Typically, the City planners are also assisted by staff in other departments, particularly the public works, fire, and building departments, when preparing development applications for review by City reviewing bodies.

Changes to the City's land use regulations and policies can be proposed by the City Council or City staff, property owners, or other members of the community. All changes to the City's land use regulations and policies are reviewed for consistency with applicable federal and state law, the City's General Plan, Zoning Ordinance, and other applicable laws and regulations. Such changes to the City's land use regulations are publicly noticed and presented at public hearings to the appropriate bodies for review, recommendation, and decision. Changes to the City's land use regulations and policies are ultimately the responsibility of the City Council. Such decisions are not made at the staff level.

Similarly, development applications are reviewed for consistency with the City's adopted regulations and policies, publicly noticed, and brought before the appropriate City bodies for review, recommendation and/or decision at public hearings. The City's Zoning Ordinance governs the City's development review process. Recently, there has been an increase in state laws emphasizing housing production that have partly or wholly preempted local regulations and have established ministerial (non-discretionary) review requirements or limited discretionary review for some types of housing projects, especially affordable housing projects. The City of Petaluma has been fortunate to collaborate with affordable housing partners and engage with the public on affordable housing projects tailored for our community despite limited discretionary authority afforded by state law regarding such projects.

c. Economics of development applications

Some of the City's land use services are supported by the City's General Fund, the same fund responsible for most core City services, including police, fire, parks, and roads. Such General Fund land use services include staffing the planning counter for inquiries and questions from members of the public. City-initiated regulatory changes may also be supported by the General Fund. Some City-initiated regulatory changes may also be supported by grant funds. The cost of reviewing and processing private development applications is generally borne by the applicant, by payment of fees according to a schedule, and/or billings for staff time expended on an application subject to a cost-recovery account. Costs that the City charges to project applicants include not only application review costs, but also costs of preparing City regulatory changes, such as General Plan or Zoning amendments, for applicants seeking such amendments. To the extent that the cost of reviewing and processing private development applications is not recovered through cost-recovery accounts, the City would bear the cost, most likely in its General Fund. In other words, to the extent the City does not recover from applicants the cost of processing private development applications, the same City funds used for police, fire, parks, roads and other core services must subsidize the cost.

Private development applicants pay fees to cover the City's cost of staff time devoted to processing a development project. The City charges project applicants the cost of both contract services and in-house staff time devoted to processing of an application. The charges can include M-Group and other consultants' time as well as time of City employees in the Building, Public Works and Utilities, Fire, and Police Departments. All are involved in City review of development applications. The City pays contract service providers involved in development application review – M Group team members and other consultants. The City is generally able to recover the charges of contract service providers and the cost of City employee time involved in development review from the charges private applicants pay the City. Many cities across

California have developed a cost recovery system to recoup staff costs associated with processing private development applications. The City of Petaluma adopted a cost recovery system in 2008, before the initial contract with M-Group, to recover time and materials associated with the processing of development applications.

2. Petaluma's M-Group Contract as Part of the City's Service Contract Program

Like virtually all other California cities, Petaluma contracts to supplement the public services that City employees are able to perform. A well-managed contracting program can significantly augment the public services a city can provide with its existing revenue and employees, and result in savings to the city, and thus to the public, in comparison with the cost of performing all services with employees. Petaluma's contract with M-Group is one of many the City uses to expand the number of person hours and the breadth and depth of professional expertise that the City can deploy in serving the community.

The M-Group contract, like a number of other City contracts, does not solely involve services related to development applications or new or amended City land use regulations. Some of the services the M-Group and other consultants provide are internally directed, and support other City divisions, projects and programs. For example, M-Group provides environmental review services for City public works projects and existing City programs, like park programs. Other consultants also provide internal assistance for City projects and programs, including architect and design services, engineering services, project management services, environmental review and permitting services, etc.

To provide a sense of scale of the City's contract with M-Group in comparison with other City service contracts, since July 1, 2022, M-Group performed contract services for the City for a total contract amount of \$2,646,186. During the same period, the City entered approximately 33 new service contracts, totaling approximately \$9.8 million. The number and amount of existing City service contracts is actually greater than these numbers indicate, because some existing City service contracts are multi-year contracts, and some are approved other than by service agreements, such as by purchase order. In addition to the Community Development Department, every other City department, including the City Attorney, City Clerk, Economic Development and Open Government, Finance, Human Resources, Public Works and Utilities, Police and Fire Departments all rely in part on contracts with outside service providers to deliver public services. The City's M-Group contract is an important part of a larger service contract program by which the City of Petaluma maximizes the services it can provide to the public as a full-service city with a \$330 million annual budget.

3. Conflict of Interest Laws and Regulations

The same conflict of interest laws that apply to City elected and appointed officials and employees also apply to City contractors. Those laws are the Political Reform Act of 1974, and the implementing regulations of the Fair Political Practices Commission, Section 1090 of the Government Code, and the common law doctrine against conflicts of interest. These laws and regulations all prohibit public agency officials, employees and contractors from acting on behalf of the government when doing so could affect their personal financial interests. The Political

Reform Act and the related FPPC regulations require specified officials, employees and contractors to disclose their economic interests, and prohibit making or participating in making government decisions that the official, employee or contractor knows or has reason to know may result in a material financial effect on their economic interests or those of an immediate family member. The financial interests of public officials, employees and contractors that may trigger a conflict under the Political Reform Act are interests in a business entity, real property, or sources of income or gifts.

Section 1090 of the Government Code prohibits City officials, employees and contractors from having financial interests in City contracts made by them in their official capacity. In other words, City officials, employees and contractors cannot be on both sides of a City contract – they cannot negotiate or approve the contract for the City and benefit financially from that contract. Similarly, the common law doctrine against conflicts of interest prohibits public officials, employees and contractors from using their official positions for private benefit.

These conflict of interest laws and regulations apply to negotiations and other preliminary dealings, not just to a final decision. When City officials, employees or contractors stand to gain a personal financial benefit from an official decision or action on behalf of the government, they may not take part in that decision or action. Usually, refraining from taking part in the decision or action is sufficient to avoid a conflict of interest. When City decision makers are prohibited from taking part in a decision that may affect their personal financial interests, they must announce that fact publicly.

The only compensation City officials, employees and contractors may receive for performance of their official duties is that provided by the City itself — in the case of City decisionmakers, \$5 per meeting (\$10 for the Mayor), health benefits, and reimbursement of expenses in accordance with City policy, payment of salary and other compensation in the case of City employees, and payment of bills for services performed in the case of City contractors. Significant civil and, in some cases, criminal penalties apply to violation of the conflict of interest laws and regulations. These penalties are personal. In some cases, a violation of the conflict of interest laws or regulations can be a basis for invalidating a City action.

In Petaluma, as in most cities, the City Clerk helps City officials, employees and contractors file their economic interest disclosure forms. The disclosure forms are public records. The Political Reform Act requires the City Council members, the City Manager, City Attorney, Finance Director and Planning Commission members to file economic interest disclosures. The City's adopted Conflict of Interest Code also requires the City's other commission and committee members, and specified employees who may make or participate in decisions which may foreseeably have a material effect on their economic interests to file economic interest disclosures. The City's Conflict of Interest Code also lists contractors who must file economic interest disclosure forms. These include the North Bay Animal Services Executive Director and the City's contract Planning Manager, Deputy Planning Manager and Principal Planners.

The Petaluma City Attorney's Office works with City elected and appointed officials, employees and contractors to advise when the conflicts laws and regulations may be implicated to avoid any violations. If a member of the City Attorney's Office knows that a City official, employee or

contractor may violate the ethical laws or regulations, they are generally required to report that fact to the City Council. The City's form contracts also include provisions requiring all City contractors to comply with all applicable conflict of interest laws and regulations, and reserve to the City the right to terminate a contract in case of a prohibited conflict.

II. Findings

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.

Comment: The City Council partially disagrees with the finding. M Group performance has been evaluated and cost benefit analysis has been conducted regarding M Group services.

Before renewing any City service contracts, including the M Group contract, the City evaluates the services performed and the City's needs based on performance to date and cost and benefit of the services. Each time the M Group contract has been renewed, first in 2013 and most recently in 2018, the City Council found that M-Group had been providing current planning services on a cost-effective basis, had reduced the backlog of planning applications that had existed before the City retained M-Group, had increased office hours and access for the public, and had improved customer service and planning processes.

Since 2009, with the staffing and services provided by M Group, the City has successfully completed a number of landmark initiatives that has put Petaluma at the forefront of addressing the state's housing crisis and climate resiliency goals. M-Group staff have been critical in accomplishing City legislative and policy priorities such as a first in the nation prohibition of new fossil fuel gas stations, adoption of all-electric requirements for new construction and substantial remodels, a City Council declaration of a shelter crisis emergency, reduction in development impact fees for City-supported affordable housing projects, creation of age-friendly accessibility policies for new residential construction, the City's adopted Climate Emergency Framework, the City's new Vehicle Miles Traveled traffic impact standards, Zoning Ordinance amendments to make design review applications and specified large retail uses subject to full review under the California Environmental Quality Act, processing of entitlements for affordable housing projects, creation and expansion of the City's public art program, on-going historic preservation efforts, increased support to our Committees, Commissions and Boards, and most recently, approval of Petaluma's certified Housing Element, which was recently awarded Best Overall Housing Element in the State of California by the regional housing advocacy non-profit group YIMBY Law.

In 2019, the City initiated a year-long comprehensive fiscal and organization sustainability (FOS) study to analyze in detail all aspects of the City's General Fund finances and define options that would provide for a sustainable future for Petaluma. The process included a robust public outreach component to both provide information and solicit feedback about the various challenges and facing the City. As was emphasized in the years leading up to this process, the City faced a structural budget deficit of \$6.5m annually, which if left unaddressed would have

significantly reduced essential services including both police and fire staffing and emergency response. The choices facing the community were largely focused on infrastructure and continuity of services, workforce stabilization, including recruiting and retaining highly qualified staff, and included discussions on staffing, public safety, infrastructure and roads, and the community's parks and recreation needs.

As is the City's current practice with contractual relationships that are successfully meeting or exceeding performance expectations and that continue to meet or exceed budgetary requirements, the potential for contract renewal and/or solicitation for new proposals is considered as a contract approaches completion. The City is in the midst of a multi-year General Plan update that is expected to conclude in late 2025. Partly for that reason, the current M Group contract expires in mid-2026. This allows the City to avoid interrupting and delaying the General Plan effort and to avoid significant delay costs that would result otherwise. The City currently plans to release an RFP for contract planning services in early 2026, approximately six months before the M Group's contract expires. This timeline helps ensure timely delivery of an updated General Plan.

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.

Comment: The City Council wholly disagrees with the finding. The City has repeatedly conducted cost-benefit analyses of the services M-Group performs for the City, which continue to show that the City's contract with M-Group yields significant savings for the City.

The City of Petaluma adopted a cost recovery system in 2008 to recover time and materials costs associated with development applications. The City keeps the development application fees (or cost recovery charges) it imposes to recover development related services costs. The City uses some of these funds to reimburse M Group and other consultants for project review services. Some are used to cover other City staff time devoted to development-related services. In either case, the cost recovery charges for development-related services avoid subsidies from City General Fund moneys needed for core services like public safety, parks and roads.

In response to new state laws, community needs and City Council priorities, the M Group's scope of work has changed significantly. While some increases in M Group charges reflect M Group periodic rate adjustments, others result from that expanded scope. The City's M-Group contract limits the reimbursable services to those the contract specifies. The contract does not permit adjustments to hourly base level service rates over the life of the contract, and permits limited annual increases to hourly cost recovery rates based on changes in the Consumer Price Index.

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.

Comment: The City Council wholly disagrees with the finding. The cost-benefit analyses that the City has conducted concerning the services M-Group performs for the City include a comparison of performing base-level services with City employees.

The City routinely performs a cost/benefit analysis for City contracts. As part of the Fiscal Year 23-24 Budget preparation, the City performed a cost benefit analysis to compare three planning 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 combining Planning, Building and Code Enforcement services. Consistent with prior analyses performed at the end of each M Group contract, the most recent study for the M-Group contract as part of the FY 23/24 budget preparation process continued to show annual savings of approximately 24%, or \$624,417.00, compared to a fully "in-house planning department" (Appendix A). The analysis includes a thorough review of M-Group's monthly and annual costs, including positions, hours worked, and services provided. This most recent analysis, which assessed all levels of service, including base level services, reaffirms the cost-effectiveness of the City's approach to using both Community Development staff and M Groups services.

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.

Comment: The City Council partially disagrees with the finding. The City has hired a community development director and has considered hiring employees to perform base level services.

Following the public engagement that was part of the Fiscal and Organization Sustainability study completed by the City in 2020, Petaluma voters successfully passed Measure U, a 1-cent sales tax measure, to support the community's desire for more investment in City roads and infrastructure and continuity of essential services, and public safety response times. The City continues to monitor its resources closely and with every budget cycle, adjusts where changes are needed.

At the end of 2023, the City hired its first Community Development Director to oversee a new department that combines the City's Planning, Building, Housing, and Code Enforcement programs. One of the Director's primary responsibilities is building and retaining a diverse workforce that is responsive to both short- and long-term community needs and City Council priorities. At this time, the hybrid model includes in-house and contracted services across all Community Development Department divisions to provide high quality, cost-effective service to the community. Please refer to the City's response to Finding 3 and the attached Appendix A regarding the City's planning service cost analysis.

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.

Comment: The City Council wholly disagrees with the finding. All M Group employees working in Petaluma are required to wear identifying badges.

Each staff member doing work in City facilities for the City has an identification badge that distinguishes each as such. For example, the badge of each M Group employee clearly states that the employee is an M Group contractor representing the City of Petaluma. Additionally, each M Group employee working in Petaluma has an M Group issued business card that is prominently displayed at the public counter and is easily distinguished from City-issued business cards. As the City continues to develop a diverse, inclusive and highly-productive workplace that attracts top talent, the City will continue to explore ways to better integrate its hybrid workforce as one cohesive and efficient organization.

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.

Comment: The City Council agrees with the finding and has implemented it.

All city staff, regardless of employee status, use a standard email signature that identifies name, department and contact information. As noted in the City's response to the Grand Jury's recommendations, the City will be updating its email signatures to indicate staff that are contract service providers.

F7. The City has failed to identify persons listed on the Planning Directory located on the City's website as M Group employees.

Comment: The City Council agrees with the finding and has implemented it. Formerly, all City staff regardless of employee status were listed in a standard staff directory that identifies name, department and contact information. Now, the City staff directory identifies M Group staff as "M Group Consulting Planners."

III. Recommendations

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)

Comment: The recommendation has been implemented.

The City routinely performs a cost/benefit analysis with City contracts and [recently completed this study for the M-Group contract](#) as part of the FY 23/24 budget preparation. This analysis includes a thorough review of M-Group's monthly and annual costs, including hours worked and services provided, based on the needs of a full-time City Planning Department. Refer to response to findings F1, F2, F3, and F4 and Appendix A.

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)

Comment: The recommendation has not yet been implemented, but will be implemented in the future.

Before the conclusion of the current contract with M-Group in July 2026, the City will release a Request for Proposals (RFP) for planning services to solicit proposals from multiple private firms prior for a new contract for planning services. The City will continue to consider the best combination of City employees and contractors to provide the best, most cost-effective service delivery for the Petaluma community. The City has determined that a employee-only model would be more expensive and provide no higher level of service.

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)

Comment: The recommendation was implemented before publication of the Civil Grand Jury report.

Each staff member has an identification badge. The badge of each M Group employee clearly states that the employee is a contractor representing the City of Petaluma. Additionally, each M Group employee uses their M Group-issued business cards that identify them as M-Group employees. M Group's branded business cards are easily distinguishable from those issued by the City of Petaluma. M Group business cards are prominently displayed at the public planning counter.

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)

Comment: The recommendation has been implemented.

An updated email signature is being used for all M Group staff identifying their status as a "M Group Consulting Planner serving the City of Petaluma".

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)

Comment: The recommendation has been implemented.

The staff directory available on both the Community Development Department and the Planning Division websites now identifies M Group staff as M Group Consulting Planners. Additionally, a separate discussion about the City's staffing model for the Planning Division is available on the City's website to provide the public additional information.

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)

Comment: The recommendation has not yet been implemented, and will not be implemented, because it is not reasonable.

The City of Petaluma has a rich history, unique natural assets, historic resources and public amenities, a robust business community, a strong focus on sustainability and climate action, and a diverse housing program. The City Council and other local leaders are attuned to the community's values and all of its needs. To that end, the City will continue to find diverse ways to remain engaged with its constituents and to ensure that all City services are delivered to the public in the best and most cost-effective ways possible. This applies to all City services, not just to one type of City service, such as planning services. Therefore, by December 31, 2024, the City will conduct a formal survey to increase awareness of the full range of existing city services and solicit feedback on the effectiveness of those services and the community's needs.

IV. Conclusion

The City Council appreciates this opportunity to respond to the findings and recommendations in the 2022-2023 Civil Grand Jury report entitled "Outsourcing Petaluma Planning Services." We hope we have provided information that will help the Grand Jury and the public more fully understand the City's hybrid planning service delivery approach, in the context of the City's entire contracting program for augmenting the services the City is able to deliver to the Petaluma community. We have also provided additional information regarding the mechanics of planning services cost recovery that is common in most cities. We have also provided information on the ethics laws and regulations that govern not only municipal contract service providers, but also city elected and appointed officials and employees. The City of Petaluma takes its ethical obligations very seriously, and all elected and appointed officials, employees and contractors are expected to fully comply with their ethical duties. We have provided the thorough cost benefit analysis that City staff have periodically performed that continues to support the significant cost benefits to the City, its developers and taxpayers from the City's hybrid planning service delivery model. We have also listed some of the especially noteworthy City planning accomplishments that are a direct result of the City's unique approach to planning services. We are proud to note that those accomplishments are in direct response to City Council policy priorities, which are in turn responsive to community needs the Council members have perceived. The City of Petaluma has been and will continue to be a leader in the region, the state, and the nation, in responding to our current climate and housing crises. Our expectation as the City Council is that our City staff, as a whole, including all employees and contract service providers, will continue to effectively implement the City Council's policy direction, and that the City's staff team carrying out its important public service duties will continue to evolve as needed, as determined by the City executive team under the Council's supervision, to preserve and enhance the wonderful Petaluma community we all love. As a City Council, we judge our staff according to the results of their work. We invite all our community members to do the same, and hope the information provided in our response will assist them in doing so.