

**CARMEL-BY-THE-SEA
A GOVERNANCE REVIEW**



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SUMMARY

In the fall of 2014 the Monterey County Civil Grand Jury (MCCGJ) received a written complaint from a group of Carmel-by-the-Sea (Carmel or City) residents asserting that during 2012-2014 the City's governance and administration had "substantially failed." The complainants requested that the MCCGJ investigate various alleged improper activities such as fiscal irresponsibility, lack of transparency, unfair treatment of employees, legal exposure, and others, and determine what led to the failure of proper oversight during the period. The complainants also asked the MCCGJ to recommend how Carmel's governance structure may be improved to avoid such problems in the future.

At the same time, the MCCGJ received a written request (see Attachment 1) from the Mayor and City Council asking that the MCCGJ review the City's organization—the adequacy of its policies, internal controls, safety checks, and recent corrective actions—and make any recommendations to ensure a more robust functioning of Carmel's government. The MCCGJ undertook the investigation as requested by the Mayor, City Council and citizens.

Carmel-by-the-Sea is a California General Law City (California Government Code Section 34000 et seq) founded in 1902 and incorporated on October 31, 1916. Under California Penal Code Section 925a, Grand Juries may investigate and report upon the operations, accounts, and records of the officers, departments and functions, and the method or system of performing the duties of any city and make such recommendations as it may deem proper and fit.

The investigative process led to some general conclusions by the MCCGJ:

- That in the years preceding the period covered in this Report the City had significant lack of compliance, Human Resources (HR) issues, and outdated systems and processes that aggravated the City's problems during 2012-2014;
- That the steps taken to bring the City into compliance and mitigate legal exposure encountered pushback from City employees and the citizenry;
- That the City Council and citizenry did not fully understand the "City Manager" form of government and the rules governing how the Mayor, City Council and administrators may interact;
- That the actions of the Mayor and City Council appeared to place more importance on avoiding public criticism, unfavorable media exposure and the threat of litigation than on conscientious oversight and governance;
- That many of the articles in local media heightened or escalated local concern by echoing the one-sided viewpoints of terminated employees since the City was prohibited by law from disclosing its reasons for terminations.

BACKGROUND

The governance of Carmel is controlled by the General Law provisions of the California Government Code (CGC) beginning at Section 34000. CGC section 36501 authorizes that general law cities be governed by a City Council of five members, a City Clerk, a City Treasurer, Police and Fire Chiefs, and any subordinate officers or employees required by law.

In the mid-1970s, Carmel adopted the City Manager/Weak Mayor form of local government, which combines the political leadership of elected officials with the strong managerial experience of an appointed local government manager. This form establishes a representative system where all power is concentrated in the elected City Council (Council), which hires a professionally trained manager (Carmel uses the term Administrator) to oversee the delivery of public services. It is the Council's *duty to supervise the performance of* the City Administrator as well as the City Attorney, City Treasurer and City Engineer.

The Carmel Municipal Code (CMC) provides that the City Administrator appointed by the Council is the administrative head of the City's government, under the direction and control of the Council. The Administrator brings to local government the benefits of training and experience in administering projects and programs on behalf of the governing body and carries out the Council's policies, ensuring that the entire community is being served. It is the responsibility of the Administrator to make certain that municipal laws and ordinances are enforced, to oversee fiscal and budgetary matters, to manage all employee actions, and to provide administrative direction for the day-to-day operations of all departmental activities. The Administrator also serves as the Council's chief adviser.

The role of the City Council is set forth in the Carmel Municipal Code (CMC), Chapter 2.08 (see Attachment 2). Under City Manager/Weak Mayor government, Council members are the leaders and policy makers elected to represent the community and to concentrate on policy issues that are responsive to citizens' needs and wishes. Power is centralized in this elected legislative body, which approves the budget and determines the tax rate. The Council also focuses on the community's goals, major projects, and such long-term considerations as community growth, land use development, capital improvement plans, capital financing, and strategic planning. The Mayor is a member of the City Council and holds the same power as the other Council members. He/she has one vote and no veto power. The Mayor sets the agenda and manages the Council meetings, and performs a ceremonial function. Notwithstanding this limited authority of the Mayor under the law, the MCCGJ investigation revealed that during the period in question, the Mayor played a strong and influential leadership role in the City's governance.

The CMC also provides that the City Council deals with administrative services and department heads only through the City Administrator, *except for purposes of inquiry*. The MCCGJ understands this exception to mean that the Council members may—and indeed should when needed— inquire of those engaged in the City's administration concerning City affairs. How the City Council and the City Administrator are permitted to interact is severely constrained by the Ralph M. Brown Act, which mandates that, with certain limited exceptions, the only meetings of a majority of the Mayor and City Council with the City Administrator to discuss City business must be held during a duly convened, public Council meeting. The most common exceptions that permit “closed sessions” of the Council concern matters relating to litigation, real estate transactions, and personnel issues.

INVESTIGATIVE METHODOLOGY

In preparation for this investigation, the MCCGJ reviewed laws that apply to various kinds of local governments as well as the specific characteristics and processes of a General Law City, the policies and procedures of a City Manager form of government, and applicable transparency and ethics laws including the Ralph M. Brown Act, the California Public Records Act and the Political Reform Act of 1974.

DOCUMENT REVIEW

To understand the background of Carmel’s governance problems and to sift out factual evidence from the flood of media coverage, citizen claims, and widely circulated rumor, the MCCGJ first performed an in-depth review of the Carmel Municipal Code, the California Government Code provisions covering General Law Cities, and the City Council Rules and Procedures, and then carefully reviewed additional documents, including:

- Minutes of all City Council meetings from January 2012–November 2014
- Carmel Public Records Act Response Policy adopted by City Council on August 5, 2014
- Correspondence
- City contracts
- Attorneys’ engagement agreements and billings
- Financial data
- “The Municipal Organization—Past, Present and Future:” an overview report by new City Administrator Doug Schmitz dated November 4, 2014, as updated March 3, 2015.
- Citizen petition
- Newspaper articles
- Investigative reports
- Court-ordered search warrant
- Employee emails where provided
- City records produced in response to the MCCGJ’s subpoena
- Citizen complaints
- Investigative Report on City of Carmel-by-the-Sea Contracts, dated May 5, 2015¹

¹ The MCCGJ is not able to accept this report because of its limited and selective scope, its failure to recognize the City’s historic and systemic contract process problems, the conspicuous lack of an interview with the City Administrator who was in office, and the absence of an audit prepared according to Generally Accepted Accounting Principles, as would have been provided by the use of a Certified Public Accountant.

INTERVIEWS

The MCCGJ conducted twenty-four personal interviews with individuals believed to have information relevant to this investigation. All interviewees signed an “admonishment” pledging not to disclose the fact of their interview, what questions were asked, and what answers were given. Interviewees were in the following categories:

- Current and former elected officials
- Current and former employees
- City residents
- City contractors and service providers
- Individuals representing the multiple complaints received by the MCCGJ

KEY REQUESTS MADE BY THE MCCGJ

As the discussion below will illustrate, the City engaged in a “request and deny” strategy, which served only to cause many weeks of delay. The investigation was further hampered by instructions from the City Attorney and private legal counsel advising some interviewees not to answer MCCGJ questions relating to personnel matters of which they had direct, personal knowledge.

Security System Audit

In July 2013, the City contracted for professional services to perform a complete audit of the existing IT system and to report findings and security concerns. The security system audit was intermixed with related contracts for technical assistance and forensic services investigating reported unauthorized access to employee emails and protected accounts, so it is difficult to ascertain how much of the approximately \$383,000 total spent on forensic services actually related to the audit. The audit report was described to the MCCGJ as an estimated 150 pages in length listing more than 800 security vulnerabilities. The MCCGJ asked to see the report.

In response to the MCCGJ’s request, the City reported that the audit report could not be found, preventing the MCCGJ from assessing the City’s response to this key report and from assessing the value of the “deliverable” for this large contract.

Waiver of Attorney-Client Privilege

Because of the considerable use by the City of outside legal counsel between 2012 and 2014 for employee terminations, Public Records Act (PRA) request reviews, HR matters, contract matters, and general legal services at a cost to the City of more than \$475,000, the MCCGJ wanted to know more about the involvement of the City Attorney in such services and whether he has a regular procedural role in a defined list of City matters or is “on call” when needed. The MCCGJ also wished to speak with the outside attorneys who acted for the City in the areas noted above, to gain clarity about the appropriate use of separately retained counsel and to help determine if charges of cronyism were founded. For these, and only these, purposes the MCCGJ requested a waiver of attorney-client privilege.

In response to this request, the City staff used outside counsel to inform the MCCGJ that it would not waive attorney-client privilege, preventing the Grand Jury from examining this critically important area.

Waiver of City Council Closed Session Privilege

To further its investigation and gain insight into City Council processes regarding establishment of key initiatives and priorities, approval of contracts, supervision of the City Administrator, (and City Attorney, Treasurer and Engineer), public records request positions, and knowledge of major personnel actions taken, the MCCGJ requested waiver of the City Council's closed session privilege for these, and only these, purposes for the period 2012-2014.

In response to this request, the Mayor and Council voted on Feb. 10, 2015 to table the request until outside counsel could be consulted. The waiver was subsequently not granted.

Selected Personnel and Investigative Files

In order to form conclusions about the City's HR processes and the appropriateness of its major personnel actions during 2012-2014, the MCCGJ in January 2015 requested specific files for the affected employees relating to employment contracts and agreements, performance evaluations, progressive discipline, investigations, terminations and rehiring.

In response to this request, the MCCGJ was advised by the City Attorney to narrow the scope of the request. The MCCGJ complied by providing a shorter list of items, notably those records relating to the process of handling employee matters of behavior, terminations, and rehiring. This more limited request was made in writing to the City Attorney and in a personal meeting with the Mayor and City Administrator. The MCCGJ's letter was provided to local media by someone other than the MCCGJ, despite its confidential nature.

The City then advised that it would not comply without a court order, so a subpoena was issued by the Presiding Judge of the Monterey County Superior Court and served on the City. Shortly thereafter the City filed a motion to quash the subpoena. In the subpoena hearing, the City Attorney argued that the MCCGJ must disclose why each document was requested.

On March 29, 2015, the Monterey County Superior Court issued its decision that the MCCGJ must provide an in-camera (confidential to the court only) showing that the MCCGJ's need for the requested disclosure of personnel information outweighs the employees' California constitutional right of privacy. The MCCGJ filed the requested showing on April 1, 2015, and the City quickly followed up with a letter to the Court asking to be present at any related confidential hearing. The Court denied the City's request. On April 7, 2015, the MCCGJ was asked by the Court for more information. The MCCGJ's response was filed with the Court on April 8, 2015. In a court order dated April 8, 2015, the Court ruled that the City's motion to quash the subpoena was denied, and that the requested records must be produced. The records were provided to the Court, which subsequently released them to the MCCGJ on April 23, 2015 along with a protective order providing for their return to the City after examination.

INVESTIGATIVE METHODOLOGY SUMMARY

The comprehensive research and fact-finding done by the MCCGJ over seven months and through nearly 1500 hours of document review, personal interviews, and analysis have revealed a reasonably clear picture of governance in Carmel City Hall prior to 2012 and the part it played in the City's chaos that followed. The MCCGJ has also been able to form conclusions about the chain of events that took place between 2012 and 2014, and how the City's governance processes shaped those events.

These conclusions have been verified with multiple sources, and they will appear in the **Findings** section of this Report. Although the City has not fully cooperated in providing information that would conclusively corroborate certain of the Findings, the MCCGJ nevertheless believes that this Report is accurate and complete.

DISCUSSION

THE SCOPE OF THE INVESTIGATION

In the course of this investigation, the Civil Grand Jury examined a number of obvious problem areas in the City's government, most notably the clash between old and new administrative styles, a lack of knowledge and attention on the part of City Council members, information technology security breaches, departmental irregularities, and allegations of misconduct. To assess these areas, the MCCGJ focused on the operating conditions of the City prior to the new administration, the directives given to City Administrator Jason Stilwell by the Mayor and City Council upon his hiring, the actions of senior City staff from November 2011 through 2014, the propriety of personnel actions taken by the City, including terminations and rehiring, and the City's governance throughout the period.

THE STATE OF THE CITY BEFORE 2012

Following the economic slowdown of 2007 to 2010, the City of Carmel was left understaffed. The director's position in most departments had been vacant through retirement or separation, and this attrition caused many employees to take on multiple responsibilities. Most departments were affected, but the areas of Human Resources, Finance and Administration, and Planning were the most severely impacted.

In 2011, the staff of this charmingly unique City was a collegial group. City business was conducted, but in a quietly unorthodox manner for a municipal organization. Many City policies were outdated, ignored, or didn't exist. This was especially evident in the areas of:

- Financial Management (contract administration, payroll, purchasing, etc.);
- Human Resources (performance reviews, progressive discipline, salary ranges, job descriptions, etc.); and
- Administration (Public Records Act requests and Information Technology—network security, password administration, access to City files by unauthorized employees, etc.).

Interviews with the then City Council members revealed a serious lack of knowledge about the depth of these issues at the time (late 2011). The interviews also exhibited differing understand-

ing of the responsibilities of City Council members in a General Law City using a Weak Mayor form of government. Answers by Council members varied widely when asked what they believed were their responsibilities as a City Council member. Though some failed to mention oversight, the critical item consistently missing in the answers was the power of inquiry, cited in the Background section of this Report.

City Council members also consistently explained that they had had no authority regarding the actions of the City staff, despite the fact that the Carmel Municipal Code clearly cites the City Council's supervisory responsibility over the City Administrator, City Attorney, City Engineer and City Treasurer. Council members' understanding of the role of the City Treasurer was fragmented and none could explain why the Treasurer (a contract, part-time position) was not involved in the tracking of contract disbursements, a chronically troublesome area.

Many witnesses acknowledged that the City's financial accounting was inefficient, cumbersome, and error prone. The software is antiquated and its (limited) capabilities not fully implemented. Most management reports were developed on off-the-shelf spreadsheet software, after manual input from the financial system. These deficiencies made it difficult for City staff to provide the City Council with contract payment schedules and accumulated payment tracking reports.

THE NEW CITY ADMINISTRATION

Following the departure of former City Administrator Mr. Rich Guillen, Mr. Jason Stilwell was hired in November 2011 as the new City Administrator. Mr. Stilwell's education and background were impressively deep in municipal finance, budgeting, state laws, municipal codes, and public administration systems and procedures. Mr. Stilwell also brought a large-organization perspective to a small City—something that would eventually cause difficulties.

Mr. Stilwell immediately observed the lack of process discipline, and took measures to understand the severity and the alternatives for problem solving. He began to staff the directors' positions that had been eliminated by the economic downturn. A key hire was Administrative Services Director, Ms. Susan Paul, in January, 2013. Ms. Paul was a 30-year municipal administration veteran with expertise in policy, municipal codes, purchasing systems, human resources and compliance, and her assignment as Director was to bring together, organize, and manage the functions of purchasing, contracts, finance, human resources, and the City Clerk. Contrary to what many residents and employees believed, the MCCGJ verified that Ms. Paul was hired through a competitive recruitment and interview process in which Mr. Stilwell did not participate.

Mr. Stilwell was employed by the City for 14 months before Ms. Paul was hired. When she assumed the Administrative Services Director position, they worked together to implement organizational changes, making personnel appointments, and instituting policy and procedural changes needed to move the City into compliance with City policies, the Municipal Code, and the various demands of fiscal and proper management of the public's resources. Ms. Paul acted quickly and decisively, although often in what has been described as an abrupt and non-communicative manner that began to cause irritation and resentment.

Problems identified by Ms. Paul and Mr. Stilwell included compliance violations, mishandling of contracts and payments, Human Resource issues, network security breaches, and other procedu-

rally deficient activities. These new administrators also uncovered employee behavior that they judged to be improper or dishonest, that put the City at risk, or that was a misuse of the City's resources for personal gain. Such behavior was dealt with swiftly by Ms. Paul, sometimes resulting in terminations, or in suspensions followed by terminations. Progressive discipline (which was not legally required) was rarely used, causing many ensuing problems and legal actions..

Multiple witnesses described Jason Stilwell as extremely bright and experienced in the management of a municipal organization. Although he received public accolades and positive performance reviews from the Mayor and City Council for his performance, he was also described as "not a good communicator." The MCCGJ believes that he failed to recognize the long-term and collegial relationships among the "Old Guard" employees (see "Five Forces" section below) and was not sensitive to the long-standing organizational culture at City Hall. Much the same can be said about Ms. Paul. She was an experienced, professional municipal manager who also underestimated the significance of the existing relationships and the coordinated pushback that would occur when long-term employees or contractors were terminated, even with what would otherwise be "good cause." Her style was described as loud, aggressive, and at times abrasive. Though personality clashes and major dysfunction ensued, the MCCGJ found no evidence of malicious motives by either Mr. Stilwell or Ms. Paul. Both held a strong desire to succeed, and both wanted to fix what many witnesses described as "a mess."

It should be noted that neither Mr. Stilwell nor Ms. Paul was able to completely implement procedurally sound workflow systems during their employment. A review of the files covering contracts generated during their tenure showed that a number contained the same issues that they were trying to remedy—missing statements of work, payment schedules, and milestone measurements. Moreover, the mounting adverse employee actions and increased Public Records Act requests were consuming a large amount of their time.

The MCCGJ was interested in the knowledge and involvement of the Mayor and City Council with what was happening under the new administration. Several witnesses testified that the Mayor and City Council received regular updates and communications regarding staff activity, personnel matters (although in some cases after actions were taken), processes and behaviors, and Code/policy violations during the 2012-2014 timeframe. Regardless, as the investigation progressed, it became clear, in the opinion of the MCCGJ, that the Mayor and City Council had vacated their responsibilities of oversight and inquiry. And when the public pressure to remove Mr. Stilwell and Ms. Paul and to rehire previously terminated employees became overbearing, it appeared that the Mayor and City Council chose public appeasement over problem solving.

THE FIVE FORCES

The overall function/dysfunction of the City during the three-year period of 2012-2014 can be depicted in a five-force relationship. Following are the factions that played a significant role in the disruptive conduct of the City's business:

- **The Old Guard** ("We've always done it this way...")

The long-term employees of the City were making do with limited resources, and taking short cuts to stay afloat. Because of the reduction in the work force, most departments were functioning without a director and were in the hands of employees who may not

have been familiar with the provisions of the Carmel Municipal Code or who did not necessarily know how to keep or bring the City into compliance.

- **The New Administration** (“We need to fix this fast...”)

The new administrators saw policies and practices that were undocumented, unstructured, and out of compliance, giving the City legal exposure.

- **The City Council**

With little attention to its responsibility for inquiry and oversight, the City Council was ineffective. When the Old Guard and the New Administration clashed, the Council took no action and allowed a business problem to escalate into a major public disruption.

- ***The Carmel Pine Cone***

The local newspaper incited a groundswell of public opinion among the residents through articles generally biased against the New Administration. Articles supporting the Old Guard were the residents’ only source of information about employee matters in particular, as the City was unable to respond to accusations for reasons of employee privacy. On November 1, 2013, the newspaper ran this statement in its Editorial Section:

City employees: Please help us figure out what’s really going on at City Hall by contacting us with news tips. We guarantee your confidentiality. But DO NOT use a City computer, phone or email address to do it, because those are probably being monitored by your supervisors...

- **The Residents**

Most of the politically active residents seemed to be strongly influenced by *The Carmel Pine Cone* and there was no real understanding of the difficult position the City was in following the strained economic period leading up to 2011/2012. Compliance issues, lack of adherence to City policy and the Municipal Code, and the impact of the absence of a professional Human Resources Director or management were not observable to the general public.

CITY COUNCIL ORIENTATION AND TRAINING

Managing local government is not easy because issues are complex, resources are scarce, the media watches closely, and municipalities are governed with lengthy policies and Municipal Codes. Governing as a collective body is very different from running for office as an individual. Trying to remain true to one's political commitments and beliefs while also making decisions that are in the best interest of the entire community is something every elected official has to confront daily. All too often, new mayors and council members receive little more than on-the-job training to equip them for their roles.

A solution to this problem is provided by the League of California Cities (The League), which provides a “New Mayors & Council Members Academy”—a must-attend for newly elected officials and for veteran council members wanting a refresher course on the basic legal and practical framework in which City officials operate. The 2½-day Academy (not to be confused with the League’s Annual Meeting) is held in late January in Sacramento and includes the state mandated

AB 1234 Ethics course and important fundamental topics taught by subject matter experts and seasoned elected officials. The League offers a follow-up program in leadership development, the “Mayors and Council Members Executive Forum.”

The MCCGJ requested information as to whether any Carmel elected officials had ever attended this Academy training. The City did not respond to the request; however information from the interviews suggests that although some City Council members had attended an annual meeting of the League, none had ever attended the Academy Training or the Executive Forum.

INFORMATION TECHNOLOGY SECURITY AND PROCEDURES

Upon the arrival of the new Administrative Services Director, Susan Paul, a review of the Information Technology network and the City’s computer systems was conducted. It was found that network security was almost nonexistent, and that several employees (some accounts say the number was as high as a dozen) reported that their files and email had been accessed without their knowledge or permission, including those of Mr. Stilwell and Ms. Paul. To locate the source(s) of this unauthorized computer access, the City contracted in February 2013 with a forensic investigator to conduct a security audit. The seriousness of some of these actions prompted a police investigation.

According to interviews, the audit revealed the following pertinent facts:

- Standard security software updates for servers and computers had not been applied and were several updates behind.
- Wi-Fi access was unprotected and easily accessible, even from the street outside City Hall.
- Many computers were not properly password protected, and multiple employees had access to computers assigned to others.
- Access rights defining specific lists of individuals with levels of information privileges were compromised, and were in violation of the City Municipal Code 2.52.780 Personnel Files—Security), which states:

Personnel files are private and confidential. All persons will insure that confidentiality of the records is not revealed, nor open to scrutiny by the casual observer, nor the contents altered or removed. Personnel files may be reviewed only upon authorization of the City Administrator or designate with reasonable notice. Any review will be in the immediate presence of the employee having custody of the files. (Ord. 87-1 § 2, 1987).

Witnesses reported that personnel files, including medical records, had been accessed, and in some cases downloaded to other City computers.

- The security audit was provided to the City through a report estimated at 150 pages in length that enumerated some 800 security vulnerabilities. As noted earlier, a copy of this report was requested by the MCCGJ but it was not provided. The City was unable to locate the report.

- Following the initial audit, another investigation was conducted into the alleged unauthorized access of employee emails and files. The MCCGJ was informed that findings of this investigation included the following:
 - Network shares were created, allowing unauthorized employee access to the computers assigned to others, including access to that employee's email and protected files.
 - General computer access went beyond the administration level; employee-assigned computers were accessed with specific employee passwords.
 - Some employees gained unauthorized access to the City's computer records from their personal computers at home.
 - City computers were often left logged-in while unattended, leaving them easily accessible by anyone.
 - Examples of unauthorized files accessed were:
 - Payroll information of a Police Services Officer and other City employees,
 - General fund revenues and budget information,
 - Personnel documents including private medical records,
 - Employee performance appraisals,
 - Emails sent to City Council members.

HUMAN RESOURCES: EMPLOYEE TERMINATIONS/RESIGNATIONS

The MCCGJ conducted numerous witness interviews covering the lack of structure and compliance violations in the handling of Human Resources procedures prior to the hiring of the new City Administrator, Jason Stilwell. Examples of such violations occurring before 2012 included:

- Pay raises awarded outside of the pay grade schedule for the position without proper approval to amend the pay scale,
- Employees assigned HR or payroll duties without experience or job knowledge,
- Some employees in positions requiring specific certifications without said certifications,
- Confusion among employment status and classifications; i.e. part time, contract, at will, represented, etc.,
- Failure to address Causes for Disciplinary Action (Carmel Municipal Code: 2.52.340),
- Failure to abide by the City Municipal Code regarding employee progressive discipline (Carmel Municipal Code: 2.52, Article IX. Disciplinary Actions).

Between February 2013 and July 2014 six City employees were terminated and one employee was placed on indefinite leave. There were also two employees who resigned during this period. The employment suspensions and terminations were all approved by Mr. Stilwell and occurred after Susan Paul was hired and assumed responsibility for Human Resources. The City had not had an HR Director since 2010.

Some employment terminations were preceded by a period of administrative suspensions with pay; others were done swiftly. All of the terminations occurred after extensive review by, and with advice from, outside legal counsel, hired at significant expense to the City by Mr. Stilwell. (The cost of employment matters billed by outside counsel is outlined in another section of this Report.) Several terminations had been desired or recommended much earlier by their respective managers, and witnesses reported that in at least one case the termination had not been author-

ized by the prior administration in order to avoid the risk of litigation. When Ms. Paul arrived, personnel actions moved to the front burner and, with the endorsement of outside counsel, went forward.

Although the Carmel Municipal Code (CMC) has a discretionary progressive discipline process (CMC Article IX. Disciplinary Actions), according to witnesses this process was largely unused either before or after 2012. Under a General Law City, however, the City Administrator has the exclusive authority to administer employee discipline, including terminations, and the City Council has the right of inquiry into these matters *before* they are made final. Several witnesses reported that the Mayor and City Council were made well aware of the circumstances surrounding these termination issues. However, most Council members erroneously believed that an inquiry into these employee matters was not permitted until a termination was complete and litigation was threatened or filed against the City.

Most suspensions, terminations, and resignations during this period were made public by articles in the local media (primarily *The Carmel Pine Cone*). As noted earlier, only the employees' versions of the acts or omissions leading to the adverse employment actions were reported, since the City was restrained by law from reporting the employer's side to the local media concerning any individual employment matter. This one-sided reporting was instrumental in defining the public perception that most of the involved employees were treated unfairly and that the City was losing valuable talent and "institutional knowledge."

However the evidence considered by the MCCGJ indicated that there was employee conduct that violated commonly accepted employment standards and/or specific provisions of the Carmel Municipal Code. The terminations and suspensions that followed took place with the assistance of counsel and followed an appropriate process.

Shortly after the hiring on October 1, 2014 of new City Administrator, Mr. Douglas Schmitz, three former long-term employees who had been fired under Stilwell were rehired and given back pay, retroactive benefits, and substantial damages payments in settlements of their threatened or existing lawsuits. In at least one case, the salary at rehire was significantly higher than the new position would otherwise warrant. These settlements, including the rehires, leave several areas without closure:

- They were completed without the involvement of the City's outside defense counsel, the person most knowledgeable about the facts and legal issues of these terminations.
- The rehiring of these employees raises some long-term issues for the City, including the adverse effect on the morale of fellow employees.
- The fact that these settlements were made quickly and early in the litigation or pre-litigation stages, with only the employees' version of the circumstances publicly known, strongly implies that all of them were wrongfully terminated and made arbitrary victims of the "Stilwell/Paul Administration." That conclusion, based on the body of evidence and documentation reviewed by the MCCGJ, is neither fair nor warranted.
- Finally, the settlement process noted above indicates, in the MCCGJ's opinion, a desire to quell political unrest rather than address serious employment issues.

CONTRACT AWARDS

Media reports and Carmel resident complaints concerning governance and administration of Carmel during the 2012-2014 period emphasized the belief that something was very wrong with how the City awarded and administered contracts for City services and supplies, with such assertions as the following (discussed in detail below):

- Contract Splitting
- Severing Relations with Local Vendors
- Cronyism
- Contract Value
- Legal Counsel Issues

While on occasion these reports and complaints questioned the role of the Mayor and City Council, the overwhelming ire was directed at Mr. Stilwell as City Administrator and Ms. Paul as Administrative Services Director. The assertions listed above formed one of the key grounds for citizen demands that the employment of Mr. Stilwell and Ms. Paul be terminated.

The MCCGJ requested copies of the various contracts going back as far as 1984, including those about which the media and citizenry complained, and supporting materials such as requests for proposals, proposals, staff reports recommending contracts, City Council Resolutions approving contracts, purchase orders, invoices and payment records, and amending materials where applicable. While the City was cooperative, its files generally did not contain all the materials comprising the contracts. Contract proposals and exhibits reflecting the scope of the work to be performed were missing on occasion, as were staff reports to the Council. There was no evidence of public bidding for contracts in excess of \$25,000 as called for in the Carmel Municipal Code (CMC). Some contracts used a prior contract form but failed to use the name of the new contractor. Copies of contracts executed by both parties were missing. In spite of these deficiencies, the MCCGJ believes that the materials provided by the City are sufficient to support the conclusions that follow.

- **Contract Splitting**

CMC Section 3.12.310 states: “No purchase orders involving amounts in excess of \$25,000 shall be split into parts to produce amounts of \$25,000 or less for the purpose of avoiding the provisions and restrictions of this Article.” The CMC does not define contract splitting but speaks in terms of splitting purchase orders into contracts.

The media and citizenry complained primarily about three contracts, each initially not to exceed \$25,000, issued to computer forensics expert Mark Alcock:

- Contract No. ASD-PCS-MA-001-2013 called for unspecified forensic technology investigative services. The date of this contract is unclear. The copy provided by the City is dated July 23, 2013; however, other materials reviewed by the MCCGJ suggest that its original date was February 25, 2013. Invoices reflecting services in the February-May 2013 time frame were not provided.
- Contract No. ASD-PCS-MA-Sec-002-2013, dated May 5, 2013 called for the installation and configuring of network routers and security devices, providing security devices, and providing security guidance and additional technology services as

necessary. The manner in which all of these contracts are numbered supports the conclusion that contract 001 (a. above) preceded contract 002.

- Contract No. ASD-PCS-MA-Examiner-003-2013 dated June 19, 2013 covered the coordination of investigative activities with various enforcement agencies, serving as “forensic technology” to support various agencies, and additional technology services as necessary.

On August 23, 2013 the City Council authorized amendments to both the May 5 and June 19 contracts to increase the amounts thereunder respectively to \$43,500 and \$60,000.

There appeared to be a practice of allowing the consultant to overrun the contract amounts, followed by a “catchup” City Council-authorized contract amendment.

The use of the word “investigative” in two of the three contracts lends some credence to the concern of contract splitting as well as the overruns calling for contract amendments. However, the CMC speaks in terms of splitting purchase orders, not contracts. The MCCGJ found no use of purchase orders to secure the services of this consultant. The probability is that under the circumstances confronting the City at that time and given the believed urgency in the need for forensic technology services, plus uncertainty as to the scope of forensic services needed, the action taken was warranted. In all events, the MCCGJ received credible testimony that Mr. Stilwell was given legal advice that the Alcock contracts did not constitute contract splitting

- **Severing Relations with Local Vendors**

A prominent concern of the media and Carmel citizenry was their assertion that City administrators eroded the effectiveness of the City’s Community Planning and Building Department by closing out a long-standing contractual relationship with Carmel Fire Protection Associates (CFPA). By mid-2007 CFPA was principally represented by two retired long-term Carmel City employees who provided the same fire protection and building plan-checking services to the City and to those general building contractors active within the City that they had provided as employees. Both were well regarded and popular within the City administration and the local construction industry.

The arrival of Mr. Stilwell and Ms. Paul brought a review of the City’s contracting practices and scrutiny of large contracts. It became apparent that the City was not adhering to its public bidding obligation for contracts in excess of \$25,000 and that services were being provided and paid for under expired contracts.

The City provided the MCCGJ with copies of the agreements with CFPA going back to September 1, 2004 up to and including the last agreement in effect dated September 1, 2007. Although this agreement was for a two-year term ending August 31, 2009, CFPA continued to provide services under the 2007 agreement and the City continued to pay for such services through at least August 2012. In August 2012, CFPA drafted a renewal contract dated August 1, 2012 for a two-year term and sent it to Mr. Stilwell for processing. The City took no action to renew the CFPA arrangement, and in March 2013 Ms. Paul received input from the Community Planning and Building Department that the contract with CFPA was no longer necessary because the City of Monterey was providing some of the same services under a November 16, 2011 “Agreement to Provide Fire Services be-

tween the Cities of Monterey and Carmel.” Therefore Ms. Paul directed that there be no further business with CFPA.

The MCCGJ found no documentation indicating that the services described in the CFPA contracts ever went out for public bid or that they were of such a special nature as to qualify for the exception to public bidding found in CMC Sections 3.12.140 and 160, which permits the City Administrator to utilize “competitive negotiation” where warranted.

In terms of the City’s failure to use public bidding where local vendors were involved, the City also entered into eight agreements between June 2006 and December 2014 for consulting services covering destination marketing and public relations with Monterey and Carmel firms known variously as Anda/Burghardt Advertising and Burghardt/Dore Advertising. Each of these agreements was for \$100,000 or more (the average about \$180,000) and they were usually for a one-year term. The records provided by the City did not include any indication that any of these agreements was a result of public bidding. The current agreement (No. 013-13-14) expires June 15, 2015.

- **Cronyism**

The media and Carmel citizenry identified the following contractual relationships as reflecting “cronyism,” a not otherwise identified or explained term:

- The four contracts, with amendments, between the City and Public Consulting Group, Inc., (PCG) of Sacramento and its Vice President, Sally Nagy, for information technology services especially in connection with the development of the City’s Strategic Information Technology Plan and Interactive Government Project. A fifth contract to implement the technology plan with PCG was pulled from consideration by the City Council in September of 2014 after public outcry, with the intent that a bidding process would be used; and
- The engagement of the Santa Barbara office of the law firm of Stradling, Yocca, Carlson & Rauth, APC, to represent the City in employment law matters, including unlawful termination litigation, and Public Record Act response issues.

The City provided copies of the agreements between these two service providers. The history of the relationship between these two vendors and Mr. Stilwell and Ms. Paul was explored to the extent the persons interviewed were able to comment. Other than the prior (before 2012) presence of the vendors in the City of Santa Barbara while Mr. Stilwell and Ms. Paul were employed by Santa Barbara County, and an acknowledged working relationship in Santa Barbara between Ms. Paul and Ms. Nagy some five years earlier, the MCCGJ found nothing to suggest any special relationship between Mr. Stilwell or Ms. Paul and either of these two vendors. The MCCGJ found nothing to suggest that Mr. Stilwell or Ms. Paul benefited economically from the City’s engagement of these two vendors. It is not uncommon for professional administrators to establish relationships with professional service providers and to call upon such providers for assistance in new circumstances.

Regarding the engagement of other attorneys from outside the area by the City Administrator, specifically from Santa Barbara, the MCCGJ found no evidence of cronyism, as

charged by the local media and many City residents. Further, the MCCGJ questioned why Mr. Freeman, the City Attorney, was not involved in the selection of outside counsel. The question remained unanswered because the City denied the waiving of attorney-client privilege for the City Attorney.

- **Contract Value**

The four contracts with Public Consulting Group, Inc. (PCG) discussed above were also criticized on the ground that they were a waste of money as they produced little value.

Based on materials provided by the City (which may not be accurate or complete), it appears that the contracts in question, including overruns, called for the City to pay PCG a total of \$269,460, of which \$88,660 remains unpaid. While some of the services provided by PCG were for day-to-day IT support, the bulk of the services were for work performed in the development of the City's Strategic Information Technology Plan and Interactive Government Project. The MCCGJ has been unable to identify any meaningful progress implementing this IT Plan, although witnesses have said that it continues to be a City Council goal. The usefulness and appropriateness of the IT Plan to meet the City's needs would appear to be a wait-and-see situation, as the MCCGJ was unable to address the accusation that the contracts produced little or nothing of value.

- **Legal Counsel Issues**

Concerns regarding legal counsel revolve around three areas: the use of firms outside Monterey County, the services provided by local legal counsel, and the amount spent on outside counsel from 2012-2014.

- *Securing legal services from firms outside Monterey County:*

The media and Carmel citizenry were critical of the City's use of law firms located in Santa Barbara and Los Angeles during 2012-2014, and what they felt were excessive payments to such firms. The City provided the MCCGJ copies of the engagement agreements between the City and all law firms engaged by the City during the 2012-2014 period, as well as their related billing statements. The MCCGJ's ability to review the legal services provided during the period 2012-2014 was hampered by the City's unwillingness to waive the attorney-client privilege, which would have allowed the MCCGJ to discuss with retained counsel more details concerning the nature of and need for services rendered.

- *Local Legal Counsel:*

Donald G. Freeman, Esq. has been employed as the Carmel City Attorney continuously since February 1984. Based on records provided by the City, Mr. Freeman was included in the City's retirement plan from 1984 to 2007. His latest open-ended Employment Agreement for Legal Services became effective June 1, 2004 and provides for both "Ordinary" and "Extraordinary" Services: "Ordinary Services" include providing legal advice and opinions to the Mayor, City Council and City Administrator in the regular course of City business covering such matters as administrative procedures, Council and Commission actions, and attendance at all regular Council meetings, as well as drafting and preparing ordinances, ordinary contracts and engaging in legal research necessary to properly advise and protect the interests of the City. "Extraordinary Services" include preparation of complex legal documents, representing

the City in any Court litigation, Court appearances for prosecution of City ordinances, eminent domain proceedings, labor negotiations, municipal bond and assessment proceedings.

The MCCGJ noted that the services to be rendered by Mr. Freeman, who in addition to his City employee duties also engages in the private practice of law, do not specifically include assisting in employment termination matters, HR matters, contract review and compliance, or PRA response advice. Nor do the services to the City specifically involve him in the engagement and supervision of outside special counsel.

The involvement of the City Attorney throughout the relevant time period was questioned by the MCCGJ because there were many instances of the City's turning to outside counsel for employee terminations, PRA request reviews, HR matters, contract matters, and general counsel. In some instances, outside counsel was provided by firms outside the Carmel area, and by firms appearing to be previously known to the New Administration (Stilwell and Paul). Occasionally, Mr. Freeman acted as counsel on the above matters, and, as noted earlier, it is unclear if the City Attorney had a regular procedural role in a defined list of City matters, or was "on call" when judged as needed.

An interview with Mr. Freeman would have allowed the MCCGJ to better determine if cost-saving improvements could be made in this area, and also to determine more definitively if there was cronyism, as described in the citizen complaint. However, because the City denied the waiver of attorney-client privilege, the MCCGJ recognized that such an interview would not offer any meaningful inquiry.

-- *Use of Outside Counsel:*

During 2012-2014 the City looked to outside special legal counsel for significant support in employee termination matters, wrongful termination litigation, real estate litigation, Public Records Act requests and related litigation, as well as human resource issues. These services were not available from Mr. Freeman; the MCCGJ was informed that he did not desire to provide such services and encouraged the use of outside special counsel.

The data provided by the City covering the use of outside legal counsel included, in addition to the engagement agreements, invoices, purchase orders, and payment records. These additional materials did not appear to be complete in every case, however the MCCGJ regards the materials as sufficiently complete to make the conclusions reasonable under the circumstances.

The table below, reflects the approximate amounts paid by the City during the 2012-2014 period to outside special counsel for the most-called-for special services: Public Record Act (PRA) requests, Employee Terminations, and General Employment Law advice, as well as the hourly billing rates.

Attorneys' Fees Total by Category 2012-2014

| Firm and Office Location | Billing Rate/hr | PRA Requests | Terminations | General Employment | Totals |
|--------------------------------|-----------------|-----------------|-----------------|--------------------|------------------|
| Stradling Santa Barbara, CA | \$150-395 | \$73,568 | \$72,123 | \$183,741 | \$329,432 |
| Liebert Los Angeles, CA | \$225-300 | \$26,103 | \$7,981 | \$36,686 | \$70,770 |
| Burke Los Angeles, CA | \$180-280 | | | \$31,087 | \$31,087 |
| Ogeltree Columbia, SC | \$395 | | \$9,394 | | \$9,394 |
| Meyers Oakland, CA | \$275 | | | \$42,792 | \$42,792 |
| Totals | | \$99,671 | \$89,498 | \$294,306 | \$483,475 |

This analysis is an approximation because it is not clear if the City provided copies of all billing statements; the Stradling invoices covering general employment matters for the last Quarter of 2013 clearly include advice with regard to some terminated employees. However, the MCCGJ believes that the billing statements that were provided support its conclusions as to the kind of services being rendered.

The hourly rates charged by these firms are not out of line, ranging from \$150/hr to \$395/hr, with most of the work being done by associates in the \$225-\$280/hr range. The highest fees were charged by a partner with the Stradling Firm at \$395/hr for work in the termination/litigation area

Since 2012, the City has paid for outside legal advice and services for:

- General legal counsel (2 different firms)
- PRA requests
- General business and facilities
- Employment advice including training on harassment and discrimination, discipline, terminations, post-termination hearings, labor & employment topics & Skelly hearings
- The proposed events center project
- Potable water allocations
- Acquiring water rights
- Joint Powers agreements
- City's right to provide advanced life support EMS
- The PG&E explosion of March 3, 2014
- Negotiating and drafting the lease of Flanders mansion
- Defending suit brought by Flanders Foundation
- Government transparency
- Litigation settlement

The attorney invoices establish that Mr. Stilwell and Ms. Paul were doing their “due diligence” in the termination cases and seeking guidance at every turn. Had they been acting irresponsibly or vindictively, their attorneys would almost certainly have advised against completing the adverse employment actions. While the MCCGJ acknowledges the significant dollar amounts spent on outside legal services, they were not, under the circumstances, unusual. The sum of **\$483,475** for 2012-2014 compares favorably with legal expenses in the four prior fiscal years, as follows:

| | |
|-----------|-----------|
| 2008-2009 | \$612,940 |
| 2009-2010 | 463,402 |
| 2010-2011 | 358,502 |
| 2011-2012 | 452,277 |

PUBLIC RECORDS ACT INQUIRIES

A source of significant controversy was the area of PRA requests. In the late 2011 timeframe, these were handled very informally. There was no process for logging requests or recording what information was provided. There was also no structure in place to determine whether the information requested was actually a public record and whether it was proper to release it. It appeared that anyone could walk up to the window in City Hall, ask for a record, and it was provided. The new City Administrator addressed this issue.

Processes were created by, or at the direction of, Mr. Stilwell to log and review PRA requests and properly edit them where required. With public attention focused on the City, requests increased in number, burdening City staff. As the threat of legal actions grew, requests swelled to the point where a timely response was almost impossible. Outside counsel and other advisors were brought in to assess and edit requests and relieve City staff of the additional workload. The money spent on outside assistance was widely and controversially publicized.

This matter has been addressed by City Council Resolution 2014-059, dated August 5, 2014, Public Records Response Policy.

CONCLUSION

The 2014/2015 Monterey County Civil Grand Jury was asked by the Mayor of Carmel to review the City’s policies and internal controls and to make recommendations. In addition, a formal Citizens’ Complaint was filed requesting that the MCCGJ examine City governance and failed oversight. This Report is as comprehensive as possible, given the constraints of time and resources, and the systematic lack of cooperation by the City. However it could not purport to address all the complaints, issues and problems of Carmel-by-the-Sea’s management and governance.

FINDINGS

Findings F1 through F6 apply to the time period prior to the hiring of Mr. Jason Stilwell in late 2011.

- F1.** In the time period note above, City operations were undisciplined, as City policies were outdated, nonexistent or ignored. With several empty Department director positions, employees worked hard to keep up and paid little attention to standard municipal procedures.
- F2.** In the time period noted above, there were serious flaws and vulnerabilities in network system security, placing the City at risk financially and legally.
- F3.** In the time period noted above, contracts were mismanaged with regard to public bidding, purchase order processing, and services provided with expired contracts.
- F4.** In the time period noted above, the City Council was not provided with contract payment schedules or accumulated payment tracking reports.
- F5.** In the time period noted above, the Human Resources process was mismanaged with regard to pay grades, progressive discipline, and proper staff training, and was lacking in leadership.
- F6.** In the time period noted above, the Public Records Act request process was unstructured, noncompliant, and ad hoc.
- F7.** The Mayor and City Council did not fully execute their responsibilities of inquiry and oversight.
- F8.** Neither the Mayor nor the City Council members received any formal training or substantive orientation on the responsibilities of their positions.
- F9.** The Mayor and the City Council members were more responsive to political pressure than to the need for effective governance.
- F10.** Mr. Stilwell was a well-qualified City Administrator who recognized and diligently addressed widespread City management problems and tried to implement shifting City Council priorities, maintaining a professional attitude in spite of external pressure and criticism. He may have avoided much of the upheaval surrounding his administration by having a clearer perception of the nature of small-town government and exercising a more thoughtful and measured approach to change.
- F11.** Ms. Paul was an experienced Administrative Services Director who quickly recognized areas of mismanagement and risk for the City and implemented solutions within what she understood to be her areas of authority with due diligence and proper municipal procedure. Her decisive by-the-book actions and abrupt manner caused resentment among longtime employees and City residents, which may have been avoided with more sensitivity on her part to the City's culture.
- F12.** There was no credible evidence to support allegations of contract splitting, cronyism or any other wrongdoing under Mr. Stilwell or Ms. Paul.

- F13.** The General Law/Weak Mayor structure was often misunderstood by Carmel citizens and the City Council.
- F14.** The local media provided easy access for City employees to vent their side of a story when the City's hands were tied by employee privacy restraints.
- F15.** The governance and administration of the City is unduly influenced by the reportorial and editorial practices of *The Carmel Pine Cone*.
- F16.** The position of City Treasurer is underutilized and so provides little benefit to the City.
- F17.** The City Treasurer was isolated from any meaningful role in the contract/invoice disbursements and tracking system.
- F18.** There was no evidence of any systematic review of contracts in excess of \$25,000 by legal counsel as to form or content.
- F19.** A significant amount of money is spent on outside counsel as it supplements the City Attorney position in numerous matters including but not limited to labor and employment concerns, public records requests, general business and facilities, joint powers agreements, municipal law, and miscellaneous lawsuits.
- F20.** Historical averages of amounts spent on outside legal services over the past five years would support a full-time City Attorney and staff where such attorney would have experience in contracts, employment matters, and Public Records Act requests, as well as municipal law.
- F21.** The City Council seriously failed to exercise its power of inquiry in its decision-making process regarding rehires, by excluding the City's outside defense counsel from the process and by negotiating hasty settlements of claims in the early or pre-litigation stages, which precluded any meaningful scrutiny of these employment issues.

RECOMMENDATIONS

- R1.** The City require all elected officials to undergo The League of California Cities "New Mayors & Council Members Academy" formal training, for each new term of office.
- R2.** The Mayor and City Council conduct a structured review of the City's departments each month, to ensure proper oversight of City operations and more aggressive use of their power of inquiry.
- R3.** The City immediately procure or upgrade to an appropriate IT System and secure the data network.
- R4.** The City immediately hire an experienced Human Resources Director and fill all open positions as quickly as possible.
- R5.** The City define and utilize a formal, mandatory progressive discipline system to be consistently applied for all employee disciplinary matters.
- R6.** The City require that all employees undergo formal training, with specific focus on job responsibilities, City policy, and Municipal Code guidance for their specific positions.

- R7.** The City immediately procure and implement appropriate, full-function financial management software.
- R8.** The City review the contract awarding process to ensure that the Carmel Municipal Code provisions are being followed at departmental levels, and that where called for, public bidding is used.
- R9.** The City review (or rewrite if necessary) the purchasing process, to ensure that the Carmel Municipal Code provisions are current, complete, and are being followed.
- R10.** The City adopt a procedure whereby all major contracts are reviewed and signed off by the City Attorney and City Treasurer.
- R11.** The City report periodic payments under contracts to the City Council, in a manner which reflects the total contract amount and total payments to date, as well as the current monthly payment.
- R12.** The City establish a content list for City contract files and assure that such files contain (as applicable): bidding process compliance (RFP); vendor proposal and all attachments; legal review; staff summary report to the City Council; City Council resolution; and where there are contract amendments, all of the foregoing as appropriate.
- R13.** The City enhance the role of the City Treasurer such that the position has responsibility in the day-to-day financial management, including tracking the status of all contracts, identifying payment overages, and reporting to the City Council.
- R14.** The City make the City Attorney position a full-time City employee requiring meaningful experience in the areas of contracts, employment law, and Public Records Act requests, as well as municipal law.
- R15.** The City Attorney manage the selection, and oversee the engagement of outside legal counsel, including the review and approval of their billings.

RESPONSES REQUIRED

Pursuant to Penal Code Section 933.05, the MCCGJ requests responses to all Findings (except F10, F11, and F14) and all Recommendations from the following governing body:

- The City Council, Carmel-by-the-Sea

ATTACHMENT #1

Letter to the Monterey County Civil Grand Jury from Mayor Jason Burnett

City of Carmel-by-the-Sea

POST OFFICE BOX CC
CARMEL-BY-THE-SEA, CA 93921
(831) 620-2000

November 5, 2014

Francis M. Small, Jr., Foreperson
Brandon Hill, Foreperson Pro Tem
Civil Grand Jury
P.O. Box 414
Salinas, CA 93901

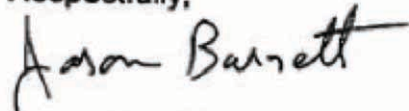
Dear Foreperson Small and Foreperson Pro Tem Hill,

Recent events within the City of Carmel-by-the-Sea's organization have called into question the adequacy of our policies, internal controls and safety checks. These must be robust to function for the public's benefit regardless of who is serving the city including the City Council, appointees, the City Administrator, the City Attorney, the City Treasurer or who is on staff.

The City Council, the City Administrator, and the City Attorney have undertaken numerous corrective actions, have called for several independent investigations and will likely take additional action following the conclusion of these investigations.

The City Council requests the Civil Grand Jury review our organization, our corrective actions and make any additional recommendations.

Respectfully,



Jason Burnett
Mayor of Carmel-by-the-Sea

ATTACHMENT #2
Carmel Municipal Code Section

Internal Relations 2.08.070

A. Council-Administrator Relations. The City Council and its members shall deal with the administrative services and department heads of the City only through the City Administrator, except for the purpose of inquiry, and neither the City Council nor any member thereof shall give orders or instructions to any subordinates of the City Administrator. The City Administrator shall take orders and instructions from the City Council only when it is sitting in a duly convened meeting, and no individual Council member shall give any orders or instructions to the City Administrator.

B. Departmental Cooperation. It shall be the duty of all subordinate officers, including department heads, the City Attorney, the City Engineer and the City Treasurer to assist the City Administrator in administering the affairs of the City efficiently, economically and harmoniously.

C. Attendance at Commission and Committee Meetings. The City Administrator may, and upon request of the City Council shall, attend all meetings of the Planning Commission, the Library Board, the Community and Cultural Commission, the Forest and Beach Commission, the Community Activities Recreation Commission, and any other commission, board, or committee created by the City Council. At such meetings, the City Administrator shall be recognized and heard by the presiding bodies on all matters upon which the Administrator wishes to address such body.

D. Appeals of Commission or Committee Decisions. Notwithstanding any other provisions of this code, and consistent with State law, the City Administrator may appeal any decision of any commission, board, or committee created or appointed by the City Council. The appeal shall follow the procedures established for other appeals, except that no fee shall be required. In making such appeal, the City Administrator shall have the same rights, privileges, and responsibilities as any other appellant. (Ord. 98-2 § 1, 1998; Ord. 77-22 § 1, 1977; Code 1975 § 234).