



DATE: August 19, 2009

TO: Honorable Mayor and City Councilmembers

FROM: Economic and Community Development

SUBJECT: **RESPONSE TO GRAND JURY AUDIT OF THE CITY OF OCEANSIDE CONTRACT WITH MAINSTREET OCEANSIDE, INC., REPORT NO. A-09-024**

SYNOPSIS

Staff recommends the City Council accept the attached response to the Grand Jury Audit of the City of Oceanside Contract with MainStreet Oceanside, Inc., Report No. A-09-024.

BACKGROUND

The Grand Jury of San Diego County informed the City on December 3, 2008 that they would be conducting a Grand Jury Audit based on a citizen complaint. The initial report was concluded in April 2009 and a final report issued in May 2009. In that report there were three major findings and two recommendations. The City is required to formally respond to the Grand Jury in accordance with State Law, and the response must be approved by the City Council.

ANALYSIS

The findings of the Grand Jury were consistent with City staff's experience of the reporting by MainStreet, and the subject of numerous meetings to obtain information in a useful format. The City also conducted its own procedural audit and most of those findings were also recommended by the Grand Jury to MainStreet.

In addition, and most importantly, the City Council has now implemented City Council Policy 200-09 which requires that all non-profit organizations that receive funding from the City of Oceanside to submit quarterly financial reports in a format specified by the City. Non-profits receiving City funds must also provide a year-end report along with an independent audit by a third party certified public accounting firm. Failure to comply with this requirement shall be a basis for termination of the contract by the City and a loss of all funding.

FISCAL IMPACT

Not applicable

INSURANCE REQUIREMENTS

Does not apply.

COMMISSION OR COMMITTEE REPORT

Not applicable

CITY ATTORNEY'S ANALYSIS

Pursuant to Penal Code Sections 933 and 933.05, the City must indicate in its response whether the City agrees or disagrees with the applicable findings. With regard to recommendations made by the Grand Jury, the City must indicate whether the recommendation has been implemented, including a summary of the implemented action. If the City determines not to implement a recommendation, it must provide an explanation of its decision. The City's response to the presiding judge is due on August 24, 2009.

RECOMMENDATION

Staff recommends the City Council approve the Response to the Grand Jury Audit of the City of Oceanside Contract with MainStreet Oceanside, Inc., Report No. A09-024.

PREPARED BY:

SUBMITTED BY:



Jane McVey
Economic and Community
Development Director



Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager
Teri Ferro, Financial Services Director



August 20, 2009

The Honorable Kenneth K. So
Presiding Judge, San Diego County Superior Court
220 W. Broadway
San Diego, California 92101,

Dear Judge So,

In response to the Grand Jury Audit of the City of Oceanside Contract with MainStreet Oceanside, Inc., Report No. A09-024, Recommendations 09-30 and 09-31, the City of Oceanside submits the following response:

Finding # 01: The City of Oceanside is currently unable to adequately monitor of the use of City funds by MainStreet Oceanside.

Main Street has no contract providing public funding for fiscal year 2009-2010. At the time of the Grand Jury Audit, the City agrees that inadequate information was provided by Main Street Oceanside to the City making it difficult to monitor the use of the funds.

Finding # 02: MainStreet Oceanside's financial reports have not shown a clear correlation between the amounts and categories of authorized funds, and how the funds have actually been used.

The City agrees with this finding. The City has established a Council Policy that requires non profits receiving City funds to report quarterly and in a specific format. Failure to do so will result in a loss of City funding.

Finding # 03: MainStreet Oceanside is not in compliance with the contract requirements for financial reporting to the City of Oceanside.

While the City agrees that more detail should have been included within Main Street Oceanside's quarterly reports it is unclear whether the lack of detail amounted to a breach of contract by Main Street Oceanside. However, the City has established Council Policy # 200.09 that requires non profits receiving City funds to report quarterly and in a specified format. Failure to do so will result in a loss of City funding.

Recommendation 09-30

This recommendation has been implemented by City Council Policy # 200.09, which requires that all non-profit organizations that receive funding from the City of Oceanside are required to submit quarterly financial reports in a format specified by the City. Non-profits receiving city funds must also provide a year-end report along with an independent audit by a third party certified public accounting firm. Failure to comply with this requirement shall be a basis for termination of the contract by the City and a loss of all funding.

Recommendation 09-31

This recommendation has been implemented. On June 17, a staff report was presented to the City Council which addressed a uniform policy for reporting by non-profits that receive City funding. In addition to the requirements referenced above in Recommendation 09-30 the policy states that at a minimum, the mandated quarterly financial reports must demonstrate how City funds were expended. Receipts must be made available upon request, and retained for a minimum of four years. In addition, neither the members of the Board, nor its employees shall be financially interested in any agreement funded in whole or in part by City funds. (See Staff Report dated 06-17-09 and Policy 200-09)

The City has valued the services provided by MainStreet Oceanside and the many successes they have had in the production of special events and being a forum for downtown businesses. The analysis and recommendations by the Grand Jury and the City's auditor have resulted in an intensive review by Main Street of its business plan, organization, operations and controls. For the 09-10 fiscal year Main Street Oceanside will focus on only four activities: the morning Farmers Market, the evening Sunset Market, the Beach Vending program, and the Pier Sign program and will receive no City funding.

This response to the Grand Jury was heard and passed by the City Council of the City of Oceanside at the August 19, 2009 City Council meeting.

Sincerely,

Jane McVey
Economic and Community Development Director



GRAND JURY

County of San Diego
Hall of Justice
330 W. Broadway, Suite 477
San Diego, CA 92101-3830
(619) 515-8707 Fax (619) 515-8696

LEONARD D. MARTIN, Foreman

May 14, 2009

CONFIDENTIAL

Oceanside City Council
300 N. Coast Highway
Oceanside, CA 92054

Rick Wright, Executive Director
Main Street Oceanside
701 Mission Avenue
Oceanside, CA 92054

Re: Grand Jury Report: "Contract Oversight In The City of Oceanside".

Dear Gentlemen:

The 2008/2009 San Diego County Grand Jury herewith provides the referenced report for your review and comment to the Presiding Judge of the Superior Court in compliance with the Penal Code of California §933(c). This report was prepared pursuant to §925a of the Penal Code.

In accordance with Penal Code §933.05(e), a copy of this report is being provided to affected agencies two working days prior to its public release and after being approved by the Presiding Judge of the Superior Court.

Please note that §933.05(e) specifies that **no officer, agency, department, or governing body of a public agency shall disclose any contents of the report prior to its public release.** This report will be filed with the Clerk of the Court and released to the public on Tuesday, May 26, 2009.

Sincerely yours,
2008/2009 SAN DIEGO COUNTY GRAND JURY

LEONARD D. MARTIN
Foreman

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**CONTRACT OVERSIGHT IN
THE CITY OF OCEANSIDE**



**A Report by the
2008/2009 San Diego County Grand Jury
filed May 26, 2009**

CONTRACT OVERSIGHT IN THE CITY OF OCEANSIDE

SUMMARY

The City of Oceanside (City) has contracted with MainStreet Oceanside, Inc. (MSO) since 2000 for services related to the promotion and revitalization of downtown Oceanside. The 2008/2009 San Diego County Grand Jury (Grand Jury) received a citizen complaint alleging improprieties in the financial accounting practices used by both the City and MSO in connection with MSO's use of City funds. The Grand Jury requested that an audit be conducted by the San Diego County's Office of Audits & Advisory Services (OAAS) to examine those accounting practices. The resulting audit is titled: *Final Report: Grand Jury Audit of the Oceanside Contract with MainStreet Oceanside, Inc.* (Grand Jury Audit). It is Report No. A09-024 dated April 2009. The results of the audit indicate that there are accounting problems that should be corrected by both the City and MSO.

PURPOSE AND BACKGROUND

MSO is a not-for-profit organization that is affiliated with the national Main Street program that operates under the National Trust for Historic Preservation. As part of the Main Street program, the National Trust provides guidelines for the authorized use of the name "MainStreet". The purpose of MSO is to help the City to promote and revitalize downtown Oceanside.

In furtherance of its general purpose, MSO's primary activity has consisted of the promotion and management of a variety of special events in the Oceanside area. Some of those events include: Arts Alive, O'Fest, Día de Los Muertos, and the Sunset Market.

When MSO was founded, it was funded by the City with the understanding that MSO would become self-sustaining. MSO generates funding on its own from such sources as contributions, profits from special events, and membership dues. In fact, MSO has never become self-sustaining due to a variety of factors such as rising costs and limited profitability of the special events. Probably the largest reduction in MSO revenues came from the discontinuation of the O'Fest event. As a result, MSO has always been substantially funded by the City.

The Grand Jury received a complaint indicating that MSO was not properly accounting for the funding it receives from the City, and that the City has not taken sufficient steps to obtain proper financial reporting from MSO.

PROCEDURES

The Grand Jury determined that the complaint alleged serious accounting problems within the City, and that an investigation should be conducted to determine if problems truly exist. In order to properly investigate the accounting procedures in question, the Grand Jury asked the OAAS to conduct an audit involving the City's contract with MSO. A copy of that audit is attached to this report as *Attachment A*. That Grand Jury Audit

notes that a separate internal control audit of MSO was conducted in January 2009 by the Miller Consulting Company. A copy of the Miller Consulting Company audit is attached to the Grand Jury Audit. The Grand Jury also reviewed documents relevant to the City's relationship with MSO, including City Council meeting minutes.

DISCUSSION

MSO is part of a nationwide Main Street program aimed at revitalizing downtown areas across the United States. It is one of several Main Street programs operating in the County of San Diego. MSO has successfully run a number of special events for the City that have attracted favorable attention to the City, and that have been popular with residents of the City. Statements appearing in minutes from meetings of the City Council indicate that downtown business people are pleased with efforts by MSO to promote downtown activities and development.

However, accounting irregularities have been alleged in connection with the City's funding of MSO, and irregularities have been identified in the Grand Jury Audit. On the City's side, problems exist primarily because the City has been lax in requiring adequate accounting reports from MSO. On MSO's side, problems have arisen primarily because MSO has not taken a professional approach to maintaining its accounts and preparing proper reports to the City on a timely basis. MSO has also allowed the appearance of improprieties to arise through the practice of hiring its own employees, or directors, to provide services to the organization.

The Grand Jury adopts the Grand Jury Audit, and concludes that the City and MSO should use the recommendations in that report as guidelines in improving MSO's financial accounting practices as well as the City's oversight functions. That report includes a full discussion of: the activities of MSO, MSO's financial reporting practices, the funding MSO has received from the City, MSO's lack of proper accounting practices, and the City's problems in conducting proper oversight of its contract with MSO.

In essence the problems with MSO's accounting practices are a result of a failure to implement generally accepted accounting practices. For instance: MSO has not had annual operating budgets; and has only employed one bookkeeper to handle all accounting, payroll, and personnel functions.

FACTS AND FINDINGS

Fact: MSO is a not-for-profit organization that was formed for the purpose of promoting the revitalization of downtown Oceanside.

Fact: MSO receives a significant amount of its funding from the City.

Fact: The City has failed to require MSO to submit adequate financial reports accounting for MSO's use of City funds.

Fact: MSO's accounting procedures are deficient in that MSO has not followed generally accepted accounting practices.

Fact: MSO has not complied with certain terms and conditions of its contract with the City.

Fact: MSO lacks internal controls to establish and maintain compliance with its contract with the City.

Finding #01: The City of Oceanside is currently unable to adequately monitor the use of City funds by MainStreet Oceanside.

Finding #02: MainStreet Oceanside's financial reports have not shown a clear correlation between the amounts and categories of authorized funds, and how the funds have actually been used.

Finding #03: MainStreet Oceanside is not in compliance with the contract requirements for financial reporting to the City of Oceanside.

RECOMMENDATIONS

The 2008/2009 San Diego County Grand Jury recommends that the City Council of the City of Oceanside:

09-30: Adopt procedures that will ensure that MainStreet Oceanside is giving financial reports to the City of Oceanside that will enable the City to exercise thorough oversight of the use of City funds by MainStreet Oceanside. Similar procedures should also be applied in other situations involving the use of City funds by outside organizations.

09-31: Make a public report describing how the City of Oceanside intends to address the problem of obtaining adequate financial reports from organizations that receive City funding.

The 2008/2009 San Diego County Grand Jury recommends that MainStreet Oceanside:

09-32: ✖ Adopt financial accounting procedures that will enable MainStreet Oceanside to comply with the financial reporting requirements contained in its contract with the City of Oceanside. ✖ Those procedures should meet the standards of generally accepted accounting procedures for reporting on the receipt and expenditure of City funds.

REQUIREMENTS AND INSTRUCTIONS

The California Penal Code §933(c) requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case

of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code §933.05(a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

- (a) As to each grand jury finding, the responding person or entity shall indicate one of the following:
 - (1) The respondent agrees with the finding
 - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
- (b) As to each grand jury recommendation, the responding person or entity shall report one of the following actions:
 - (1) The recommendation has been implemented, with a summary regarding the implemented action.
 - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
 - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
 - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.
- (c) If a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the grand jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with the Penal Code §933.05 are required from the:

<u>Responding Agency</u>	<u>Recommendations</u>	<u>Date</u>
City Council, City of Oceanside	09-30, 09-31	8/24/09
Main Street Oceanside	09-32	8/24/09

SUBJECT:
Financial Reporting Requirements for
Non-Profit Organizations

POLICY NUMBER 200-09
ADOPTED 06-17-09

It is the policy of the City Council that all non-profit organizations that receive funding from the City of Oceanside are required to submit quarterly financial reports in accordance with the format provided by the Financial Services Department. The quarterly financial report shall demonstrate, at a minimum, how the City funds were expended. Receipts must be made available upon request, and retained for a minimum of four years. In addition to the quarterly financial reports, the non-profit organization will be required to submit a year-end report, along with an independent audit performed by a third-party certified public accounting firm. Neither the members of the Board of Directors of a non-profit organization, nor its employees, shall be financially interested in any agreement funded in whole or in part by City funds. All contracts with non-profit organizations shall require mandatory compliance with this policy, and the non-profit's failure to comply shall be a basis of termination of the contract by the City and a loss of all funding.



CITY OF OCEANSIDE
 Financial Services Department
 300 N. Coast Hwy, Oceanside, CA 92054
 telephone 760.435.3830 fax 760.439.9011

Non-Profit Organization Financial Report
 in compliance with City Council Policy No. 200-09
Master Schedule

1. Organization Name _____		3. Period Ending: (A separate report is REQUIRED for each period)		4. Fiscal Year _____				
Check the appropriate boxes								
2. Report Type		<input type="checkbox"/> Sep 30 (report due Oct 15) <input type="checkbox"/> Mar 31 (report due Apr 15) <input type="checkbox"/> Quarterly <input type="checkbox"/> Dec 31 (report due Jan 15) <input type="checkbox"/> Jun 30 (report due Jul 15) <input type="checkbox"/> Year End Other (Specify) _____						
Budget Line Items	5. Total Operating Budget		6. Quarterly Expenses		7. Cumulative Expenses		8. Balance (Column 5 minus 7)	
	Other	City	Other	City	Other	City	Other	City
A. Personnel								
B. Travel								
C. Equipment								
D. Supplies								
E. Contract Services								
F. Facilities/Rent								
G. Other								
H. TOTALS								
FOR CITY USE ONLY								
9. Signature _____ Print Name _____			10. Report Prepared by: _____			Audited by: _____		
			Title: _____			Date: _____		
			Telephone: _____			Comments: _____		
			Email: _____			Approved by: _____		
			Date: _____			Date: _____		
						Financial Services Director _____		

Certification: My signature below hereby certifies that the information contained on this page is based on official accounting records, and that expenses shown have been made in accordance with applicable City terms and conditions, and that documentation to support these expenses is available.



CITY OF OCEANSIDE

Financial Services Department

300 N. Coast Hwy, Oceanside, CA 92054

telephone 760.435.3830 fax 760.439.9011

Form Preparation Guidelines

Master Schedule

1. Organization Name: type in organization name
2. Report Type: identify if report is quarterly or year-end
3. Period Ending: check specific period being reported
4. Fiscal Year: fiscal year being reported (July - June)
5. Total Operating Budget: the City amount established via contract. Identify other matching funds provided by the organization
6. Quarterly Expenses: City and other expenses incurred during the reporting period
7. Cumulative Expenses: a year-to-date running total of City and other expenses
8. Balance: balance of total operating budget after expenses
9. Signature: organization's Financial Officer or Executive Officer signature required
10. Report prepared by: contact information of person who prepared the report

SCHEDULE A – Personnel

Provide detail of Personnel costs (salary / fringe benefits) of each position that was funded via City funds for the quarter. Costs include, but are not limited to, salaries, wages, overtime, and fringe benefits. Fringe benefits in the form of employer contributions or expenses for social security, employee insurance, workmen's compensation insurance, and the like, are allowable, provided such benefits are granted in accordance with established written organization policies.

SCHEDULE B – Travel

Provide detail of travel expenses for positions funded via City funds for the quarter along with the reason. Travel expenses include transportation, lodging, subsistence and related items incurred by the organization when they are directly attributable to

specific work for the City or are incurred in the normal course of administration of the organization. Receipts for transportation and lodging are to be submitted as backup. Any mileage costs will be reimbursed at the prevailing IRS rate.

SCHEDULE C – Equipment

Provide detail expenditure of general purchase equipment. Equipment is defined as an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) \$1000. Examples of general purpose equipment include office equipment, reproduction and printing equipment, automatic data processing equipment. Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are not allowed. Capital expenditures for general purpose equipment require prior approval of the City.

SCHEDULE D – Supplies

Provide detail expenditure of materials and supplies necessary to carry out the City program. Such costs should be charged at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the organization.

SCHEDULE E – Contract Services

Provide detail expenditure of professional and consultant services with third-party vendors. This would include advertising, audits, legal, and specialized services.

SCHEDULE F – Facilities/Rent

Provide detail of facilities expenses. The expenses under this heading are those that have been incurred for

the administration, operation, maintenance, preservation, and protection of the organization's physical plant. They include expenses normally incurred for such items as: janitorial and utility services; repairs and ordinary or normal alterations of buildings, furniture and equipment; care of grounds; maintenance and operation of buildings and other plant facilities; security; property, liability and other insurance relating to property; space and capital leasing.

SCHEDULE G – Other

Provide detail of expenses that do not apply to Schedules A-F. Overhead expenses that are not direct costs to City programs are not allowed. (i.e. depreciation, taxes, licenses, bank charges, interest, memberships, etc.)

RECEIPTS:

Receipts must be made available upon request, and retained for a minimum of four years.

REPORT SUBMITTALS:

All reports are required to be submitted by the due date to:

City of Oceanside
Financial Services Department
300 N. Coast Highway
Oceanside, CA 92504

YEAR-END INDEPENDENT AUDIT

Within 90 days after year-end, the organization is required to submit an independent audit of City funds performed by an independent CPA firm, along with a copy of the organization's audited year-end financial report.

