



# City of Sebastopol

CITY HALL  
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## CITY COUNCIL

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August 16, 2005

Judge Allan Hardcastle  
Presiding Judge of the Superior Court  
Hall of Justice  
P.O. Box 5109  
Santa Rosa, CA 95402

Re: Response to the Sonoma County Grand Jury Report of FY 2004-05

Dear Judge Hardcastle:

As required under the California Penal Code Section 933 I am submitting to you my responses to the Grand Jury report of FY 2004-05.

### **A Disaster Waiting to Happen**

*F3. Written plans and checklists are not consistent among county, cities, agencies, and departments, and in some cases are non-existent.*

Response: I am unable to agree or disagree with this finding as I have not reviewed all the plans and checklists of other jurisdictions to determine whether the finding of the Grand Jury is accurate. However, I do know that the City of Sebastopol has checklists for all pertinent positions in the emergency operations plan. The checklists and plan are consistent with the operational area and were distributed by the operational area to all agencies as the accepted checklists.

*F4. Where plans and checklists do exist, they are not always stored in multiple safe places for guaranteed access in the event of a disaster. The most common place is "the office" notwithstanding that a disaster does not limit itself to regular work hours, and office buildings may not be accessible!*

Response: In regard to the City of Sebastopol, I disagree with this finding. Plans and checklists are stored at the Sebastopol Fire Station, Police Station, City Hall, Public Works Building and in the Emergency Operations Center itself. The plan is stored in sufficiently redundant locations so as to be available in an emergency.

*F9. All county employees are listed as disaster recovery resources, as indeed are members of the grand jury, but there is no clear plan on how they will report in for duty, or how they will be used*

Response: I can neither agree or disagree with this finding as I have no knowledge of the county policy on response to a disaster.

*F10. The city plans are not consistent in scope and detail. The City of Santa Rosa has a well structured but dated plan, Cotati's plan is literally a copy of the county plan, Cloverdale is still using the 1989 two volume door-stopper plan that existed before the adoption of SEMS, and Healdsburg's plan is dated 1987. See Exhibit D for a table comparing the format and date of the county and city plans.*

Response: I disagree with this finding. The City of Sebastopol Emergency Operations Plan was created in 1996, with the assistance of Sonoma County Operational Area Staff. The plan was originally written for San Mateo County (by Sonoma County Emergency Services Coordinator Sandy Covall-Alves) and modified and adapted to meet the needs of Sebastopol. The plan is SEMS based and meets State requirements with a statement to that effect found on page 4-1 of the plan, and provides appropriate direction to city staff. The plan is consistent with other plans in the Operational Area and has been exercised jointly with the county plan.

*F13. There is an agreement dated 1997, between the cities and the county, promising help from the county for the construction of, training in and testing of city-based disaster plans. This assistance is not provided, nor sought on a continually consistent basis, despite the payment of a \$2000 annual fee by the cities.*

Response: Based upon our experience in the City of Sebastopol, I disagree with this finding. The City of Sebastopol has found this agreement between the city and the county to be very successful and has helped immensely in providing the city with a quality plan. The county was instrumental in working with the city to create the current plan and the needed checklists. The county provides semi-annual Disaster Council meetings, which Sebastopol is a member, as well as quarterly Emergency Coordinators Forums. The county is the lead agency that coordinates the Auxiliary Communications Section with all of the cities and provided a conduit for information shared from the state to the operational area. The county has provided numerous materials and written documents that have enhanced the preparedness for the city. Earlier this year, the county provided written documents enabling the city to provide a quality update to our emergency operational plan, as well as many new annexes to that plan including bioterrorism and weapons of mass destruction. The county also provides frequent exercises and includes the city in planning and implementation. The city is already working with the county to implement the federal requirements of the National Incident Management System.

## **Conflict of Interest in Sonoma County**

### *Recommendation R1 – Adopt an Incompatible Activities List*

*Each commission, board and public agency should have their own Incompatibility Activities list as a supplemental resource. This list would assist the officials in understanding how to avoid conflict-of-interest issues, enhance the assurance of public trust—the integrity of officials—and political processes as well. The following is a sample of the type of list the grand jury recommends:*

#### *Incompatible Activities – Sample List*

- 1. Cannot have an interest in a contract made by the board, commission or committee that one is involved with.*
- 2. Cannot request, receive or agree to receive anything of value or other advantages in exchange for a decision.*
- 3. Cannot influence decisions relating to potential business or prospective employers.*

4. *May not acquire property interests within redevelopment areas over which one has decision-making influence.*
5. *Cannot receive compensation from third parties for speaking, writing an article or attending a conference.*
6. *Cannot use public agency resources (money, travel expenses, staff time and agency equipment) for personal or political purposes.*
7. *Cannot participate in decisions that may affect (positively or negatively) their personal interests, interests of their immediate family or their business partners.*

Response: This recommendation will require further discussion with the City Council before implementation of this recommendation can be considered. However, I will be recommending that no action be taken on this recommendation.

Having a list of incompatible activities is desirable, but I find the Grand Jury's list to be identical to that list provided by the Institute for Local Self Government ("Key Ethics Law Principles for Public Servants") which further advises that one should consult with their agency's legal counsel to discuss the specifics of their situation. I doubt whether any document could reasonably substitute for legal advice on these complex matters. We typically advise elected and appointed officials to consult with our City Attorney when these questions of conflict often arise and have been able to guide them appropriately and in some cases to secure their own legal advice. I will be distributing additional copies of the ILSG checklist to all elected and appointed officials in Sebastopol and make it one of the regular handouts for all new elected and appointed officials.

*Recommendation 2 – Adopt a Code of Ethics*

*Sonoma County and each city should establish and implement a Code of Ethics. All commissions, committees and boards, as well as elected and appointed officials, should review the Code of Ethics and attest to understanding the policy as it pertains to their position. Thereafter, the county and city officials should mandate periodic ethics training and testing, just as is required of federal and state employees. For establishing a Code of Ethics, the Attorney General's Office and FPPC, have developed a web-based ethics training course. The California League of Cities also has information and guidelines.*

Response: This recommendation will require further discussion with the City Council before implementation of this recommendation can be considered. Elected and appointed officials receive opportunities for training in ethics law and behaviour at professional conferences and receive articles in professional publications such as the League of California City's "Western City" magazine that has periodically published articles on the subject (Dec. '03 & Feb. '05; another article is scheduled for Dec. '05). We distribute the Institute for Local Self Government's publication "A Local Official's Reference on Ethics Laws" to all elected and appointed officials in Sebastopol. The ILSG is developing a webpage on this topic that will be a valuable resource to public officials. Both the City Attorney and I periodically provide educational information to individuals and group basis.

However, I will be recommending that the City Council consider the adoption of a resolution that consolidates a viable Code of Ethics to be included with our existing training that is periodically conducted for all public officials by the City Attorney. I will recommend that public officials attest to the receipt and understanding of the city ethics code, but would not support the grand jury's recommendation for a testing procedure.

*Recommendation 4 – Institute regular, mandatory training*

- a) Provide Designated Filers with basic informational training.*
- b) Increase utilization of FPPC for training of Form 700 Filing Officers and Clerks*
- c) Require Code of Ethics training at the city and county level as similar to that as mandated by state agencies (available online).*
- d) Require basic conflict-of-interest training for:*
  - o Incumbent elected and appointed officials*
  - o New appointees and elected officials*

Response: Again, this recommendation will require further discussion with the City Council prior to consideration of implementing these recommendations.

In response to recommendation 4(a), The recommendation by the grand jury to provide filers with training already occurs in Sebastopol. All candidates for elected office are provided information by the City Clerk for the “State of Economic Interest Form 700”. When public officials are elected or appointed by the City Council, the City Clerk provides and explains to them the Form 700 for their “Assuming Office Statement” which is due to the FPPC within 30 days. Annual filers under Gov. Code Section 87200 are notified in January/February of the requirement to file by April 1<sup>st</sup> and advised of the FPPC information telephone line available to assist them in completing the form. As a courtesy, the City Clerk provides two reminders to this group of filers to complete their forms. The FPPC is the ‘Filing Officer’ and therefore the most appropriate source of information for those required to file under GCS 87200.

The second category of filers are ‘code filers’ designated in the city’s Conflict of Interest Code (eg. department heads, Design Review Board members, consultants). For these classifications, the City Clerk is the ‘filing officer’. These Form 700 submittals are retained by the City Clerk and only forwarded to the FPPC if no report is filed after 90 days after two additional notifications are made from the City Clerk to gain compliance.

In response to recommendation 4 (b), I will not recommend that the City Council take action on increasing utilization of the FPPC for training as I believe it not necessary in our city. Based upon our current procedures described above, the City Clerk is highly qualified and knowledgeable about the reporting requirements and effectively administers our Conflict of Interest reporting program while clearly advising filers of the FPPC resource for information.

In response to grand jury recommendations 4 (c) and (d), I would not recommend that the City do anything differently than our current procedures except as described in my response to grand jury recommendation 2 which is to adopt a policy resolution on a Code of Ethics. We already provide adequate training on the subjects of a code of ethics and conflict of interest through the City Attorney’s individual meetings with newly elected and appointed officials, the periodic local training provided by the City Attorney, the distribution of informational and educational materials and the support for attendance of elected and appointed officials at League of Cities sponsored conferences that address this topic.

*Recommendation 5 – Re-file Form 700 on a material change*

*Sonoma County administration and respective cities in Sonoma County should require Designated Filers to file amendments to Form 700 with clerks of the county or city within 30 days of a material change. “Material Change” is defined in Government Code Section 87103.*

Response: This recommendation will require discussion with the City Council prior to any consideration of implementing any change in our requirements. Currently, there is no requirement by the PPPC that

Form 700s be amended between reporting periods and there does not appear to be a definition of “material change” in Government Code Section 87103 as referenced by the grand jury. However, GCS 87103 does define the concept of a conflict of interest when a public official has a financial interest in a decision where that decision will have a “material financial effect” distinguishable from the effect on the public generally, to the benefit of themselves, members of their immediate family or assets, income, business associates or donors above certain monetary thresholds.

Public Officials who have a financial interest in a decision are already obligated to identify the conflict of interest or potential conflict immediately prior to even the consideration of the matter and must disclose the nature of the conflict “in detail sufficient to be understood by the public” and are required to recuse themselves from further participation on the matter before the decision making body. This requirement and subsequent procedure is outlined in Gov. Code Sec. 87105. This would seem to provide the public with a more immediate disclosure than requiring additional paperwork that occurs well after the event in question.

I will not be recommending any change to be made from our current practices in Sebastopol due to my belief that appropriate and reasonable procedures are in place.

Thank you for the opportunity to respond to the findings and recommendations of the grand jury on these topics.

Yours Truly,

David Brennan  
City Manager

C City Council  
Hollie Fiori, City Clerk  
Larry McLaughlin, City Attorney  
John Zanzi, Fire Chief