



CITY COUNCIL AGENDA REPORT

City of Anaheim CITY MANAGER'S OFFICE

DATE: OCTOBER 25, 2022
FROM: CITY MANAGER'S OFFICE
SUBJECT: INDEPENDENT INVESTIGATION/AUDIT REGARDING
CAMPAIGN CONTRIBUTIONS INTERIM REPORT #1

ATTACHMENT (Y/N): NO **ITEM # 24**

ACTION:

That the City Council receive an update from retired Judge Clay Smith who is serving as the neutral and administrator of the investigation regarding former Mayor Harry Sidhu's and the City Council's campaign contributions and potentially related contractors and agreements along with an evaluation of staff's involvement, if any, and whether any serial communications/meetings in violation of the Brown Act occurred in the context of the facts alleged in the federal investigation.

DISCUSSION:

At the October 4 City Council meeting, Council Member Moreno requested an update regarding the independent investigation and audit regarding campaign contributions and city contracts. The following update was provided by the neutral selected by Council on August 9, retired Judge Clay Smith.

Dear Members of the Anaheim City Council:

At your request, I am submitting this Interim Report No. 1 to provide a general overview of the status of the investigation being conducted by JL Group, LLC. As you will appreciate, this report is quite general for two important reasons. First, the investigation is in its early stages. The investigative team is actively gathering information (in the manner described below), but we are certainly not yet able to form any opinions or conclusions. Second, it is critical to preserve the substance of our efforts confidential until the effort is concluded in order to avoid compromising the investigation.

At this point, the efforts of the investigation can be summarized into three categories. First, the investigative team has developed a comprehensive roster of persons who may have relevant information. The team has worked conscientiously to refine this list of potential interviewees to those persons most likely to have meaningful information.

Second, the team is actively working to identify documents which should be analyzed. Of course, there exist an immense number of documents pertaining to the activities of such a large and dynamic city and its officials and staff. Accordingly, the team is working hard to identify and preserve those written materials most germane to our

assignment and to obtain them from on-line sources and from city records. The team has been working closely with City Clerk Theresa Bass to accomplish this task.

Third, the investigative team has begun the process of interviewing persons who potentially have relevant information. The results of these interviews are summarized and circulated among all members of the investigative team and stored in a central repository. As you would expect, these interviews may lead to the identification of additional persons we wish to interview.

In addition to the forgoing specific tasks being undertaken by the investigative team, there are four additional observations I wish to share with the members of the City Council. First, the team is operating in a very methodical and professional manner. The team meets weekly in an all-hands meeting. In these meetings, all relevant information is shared with team members, strategy is developed, and assignments are made. This results in a careful prioritization of assignments and avoids duplication of efforts. Second, the team strives to maintain the highest level of integrity. Great care is being taken to avoid unwarranted conclusions and to ensure that ultimate conclusions are based on demonstrable evidence. Third, the team is rigidly adhering to the scope of the assignment. When the team receives complaints or grievances which are clearly outside the scope of our assignment, such matters are noted but not pursued. Fourth, all members of the team are conscientiously preserving the confidential nature of our effort. No information is allowed to escape the control of team members until the assignment is concluded and our written report is presented to the City Council.

I hope this report will be useful to the City Council and I will be pleased to provide additional interim reports as requested. We appreciate the opportunity to be of service to the City.

Sincerely,

Judge Clay M. Smith (Ret.)

IMPACT ON BUDGET:

To date the city has received an invoice from the JL Group for \$128,000 for the period of August – September 2022. The cost of the JL Group is estimated not to exceed \$750,000. To date the city has paid the neutral \$21,525 in fees. The cost of the neutral is estimated at \$100,000.

Respectfully submitted,

Jim Vanderpool
City Manager

Interim Progress Report No. 2

November 18, 2022

Dear Members of the Anaheim City Council:

This is my second interim report to you on the progress of the investigation being conducted by the JL Group, Inc. As set forth below, the investigative team is continuing to make excellent progress and some significant milestones have been reached.

Preliminarily, I do want to alert you to one concern. We understand that the City Council has voted to release our final report to the public and, of course, we respect the Council's decision. We do wish respectfully to note, however, that city employees may have protected privacy rights while participating in investigative interviews. As a result, it may be appropriate for the City to consider whether any redactions are appropriate prior to releasing the final report. Of course, we will leave this to the City's discretion.

At this point, the JL Group has completed gathering a vast amount of background information pertaining to key persons and their respective roles. This includes the preparation of a very detailed timeline. This preliminary effort has enabled the investigators to prioritize the key interviews to be conducted first. Assignments have been made to the various investigators and a robust plan consisting of approximately 24 interviews of these key actors will be implemented following Thanksgiving.

An important and preliminary step in the investigation process is nearing completion. My research assistant and I are completing a concise reference guide of the various criminal statutes (in addition to the Brown Act) which may be relevant to the investigation. We believe this reference guide will assist the investigators in shaping their interviews and recognizing potentially criminal behavior. Interestingly, we have identified as many as two dozen different criminal statutes which may have potential application.

Importantly, the JL Group is expecting to receive the first tranche of documents from the City within the next several days. The documents will be received into a digital platform that will allow the investigators to organize, search, and store the documents efficiently and confidentially. We appreciate that a substantial effort by the City Clerk and others has gone into preparing the documents to be transmitted.

Finally, I would just note that I have occasionally seen or heard our investigation referred to as an "internal" investigation. The Council wisely ordained this investigation to be "independent," and not internal. We respectfully suggest that others should be reminded of that distinction when appropriate.

November 18, 2022

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I hope this report will be useful to the City Council and I will be pleased to provide an interim progress report on a monthly basis as you have requested. We appreciate the opportunity to be of service to the City.

Sincerely,

Judge Clay M. Smith (Ret.)

Interim Progress Report No. 3

December 16, 2022

Dear Members of the Anaheim City Council:

This is my third interim report to you on the progress of the investigation being conducted by the JL Group, Inc. As described below, the investigative team continues to make significant progress.

The team has transitioned from gathering a large amount of background information and building a detailed timeline to collecting information from more than 100 witnesses. Interviews are now being conducted on an almost daily basis and I expect that more than 20 will have been completed by the end of December. Interviews are conducted by two investigators and, whenever possible, are conducted in-person.

The JL Group has now received from the City more than 700,000 emails from city officials and employees. These emails were received into a highly specialized software platform. Investigators have created a customized search protocol to enable them to review this vast amount of information accurately and efficiently. This process will, however, be quite time-consuming.

The JL Group has advised me that some of the emails produced by the City may have been subject to a legal privilege or other basis for confidentiality. Of course, the investigators are reviewing everything produced by the City without any limitation. This does, however, renew our concern, expressed in my Interim Progress Report No. 2, regarding the City Council's decision to release our final report to the public. As I previously indicated to you, although we sincerely respect the Council's decision, we do urge the City to consider taking appropriate action (perhaps by redaction) to protect implicated privacy rights of City employees and possible legal privileges before releasing the report.

I previously advised you that my research assistant, Ms. Jenna Kelleher, Esq., and I had completed a concise reference guide of the various criminal statutes (in addition to the Brown Act) which may be relevant to the investigation. At my direction, Ms. Kelleher has also provided the investigators very practical guidance on dealing with confidentiality issues.

In addition to the emails reference above, The JL Group is expecting to receive a large amount of text messages. The investigators are currently evaluating how best to review and assess these text communications.

I hope this report will be useful to the City Council and I will be pleased to provide an interim progress report monthly as you have requested. We appreciate the opportunity to be of service to the City.

Sincerely,

Judge Clay M. Smith (Ret.)

Interim Progress Report No. 4

January 19, 2023

Dear Members of the Anaheim City Council:

This is my fourth interim report to you on the progress of the investigation being conducted by the JL Group, LLC. As described below, the investigative team is working diligently and making significant progress. In addition, there are some important updates to bring to your attention.

The team is actively interviewing persons believed to have knowledge and information about the relevant events. This is a time-consuming process because there are more than 100 witnesses who have been identified so far. The investigators are preparing very extensive and detailed summaries of the interviews, which we expect will assist greatly in the preparation of the final report.

The interviews conducted to date have revealed the complexity of the investigation. The interviews are averaging 2-3 hours in duration and frequently identify a new person or persons to be interviewed and new events or transactions to be reviewed. Each individual transaction the investigators review spawns a number of issues which need to be carefully considered because of the multitude of potentially applicable statutes. Significantly, the highly experienced investigators are unaware of prior independent investigation of a California municipality having this degree of complexity.

As you may be aware, this complexity has impacted the scope, timing, and cost of the investigation. As to the scope, the team is carefully staying within the scope (as described on page 1 of JL Group's proposal dated July 28, 2022). Even within that scope, however, the investigators have discovered a wide range of transactions, events, communications, and conduct which justify careful scrutiny.

As to the timing, the team initially estimated that its work would be complete in about March of 2023. I do not believe they can be finished by then. In addition to the very large number of witnesses, there are literally more than 700,000 emails that are being reviewed. We also expect to receive an enormous number of text communications which will require careful examination. I would like to emphasize that, in my opinion, the investigators are being efficient and mindful of the costs of the investigation. On the other hand, they feel (as do I) the need to be thorough and ultimately provide the City the definitive review and restatement of exactly what happened. Accordingly, I respectfully request that the target completion date be revised to the summer of 2023.

As to the budget, I would note the following: I have reviewed JL Group's proposal of July 8, 2022, and do not see that it contains a not-to-exceed amount. The City Manager's Offices' City Council Agenda Report dated August 9, 2022 states that the investigation would cost "from \$1.5 million to \$2.5 million . . ." And finally, I have been advised by Ms. Lylyana Bogdanovich that the City Council approved a not-to-exceed amount of \$750,000. It is certain that the JL Group will need an additional authorization in order to complete this highly complex investigation in the thorough and professional manner the City and I expect.

In light of all of the above (particularly the complexity and the necessity of having the investigation completed at the highest quality level), I respectfully suggest that the City approve JL Group's proposal as submitted, that is on an hourly basis. If the City prefers to continue with a not-to-exceed limit, my request is that the limit be revised to reflect the lowest number presented in the staff report of August 9, 2022, \$1.5 million.

Please be assured that I do not make this request lightly. I do so because I have carefully monitored all of the work performed to date and I am certain the JL Group is being as efficient as possible, consistent with achieving the best possible work product.

I would welcome the opportunity to discuss these issues (scope, timing, and budget) with City representatives at any time. I know that we all want the project to be completed expeditiously and that we also want it done right. In my role as the administrator of the investigation, those two goals have been my guiding principles. I would respectfully request the City Council to authorize sufficient additional time and resources to enable the JL Group to complete the project appropriately.

As a final matter, I want to touch briefly on an issue I have raised previously (Interim Progress Report No. 2). It is our understanding that the City Council has voted to release the final report to the public. As I have said, we respect the City Council's decision. I do, however, want to emphasize that this decision may have two unintended impacts. First, we are finding that some witnesses are reluctant to speak to the investigators because they know that whatever they say will be attributed to them and will be released to the public. The investigators are coping with this obstacle, but I did want you to be aware of it. Second, City employees or officials ultimately identified in the report may have applicable privacy and employment rights impacted by releasing the report. We urge the City to review carefully these issues prior to the release of the final report.

As you know, I meet weekly with the investigative team to review and monitor their progress. I can assure you of the professionalism and caution with which the work is being done. I look forward to meeting or speaking with City representatives regarding the scope, timing, and budget issues discussed above so that I can guide the investigative team appropriately.

I hope this report will be useful to the City Council and I will be pleased to continue to provide an interim progress report monthly as you have requested. We appreciate the opportunity to be of service to the City.

Sincerely,

Judge Clay M. Smith (Ret.)