



Office of the City Attorney  
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June 24, 2010

**FILED**

JUL 06 2010

DAVID H. YAMASAKI  
Chief Executive Officer/Clerk,  
Superior Court of CA County of Santa Clara  
BY D. ALDYCKI

The Honorable Jamie A. Jacobs-May  
Presiding Judge  
Superior Court of California, County of Santa Clara  
191 North First Street  
San José, CA 95113

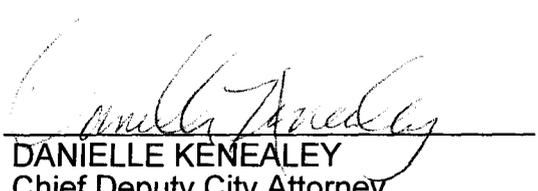
Re: Grand Jury Report -- Hayes Mansion

Dear Judge Jacobs-May:

Pursuant to California Penal Code Section 933, et seq., please accept the response of the City Council to the Grand Jury Report submitted by the 2009-2010 Santa Clara County Civil Grand Jury to the City of San José, entitled "Money-Losing Hayes Mansion: A San José City Council Responsibility." The City Council approved the response on June 22, 2010. The approved City response and the Grand Jury Report are enclosed for your review.

Very truly yours,

RICHARD DOYLE, City Attorney

By: 

DANIELLE KENEALEY  
Chief Deputy City Attorney

DMK/rt

Enclosures

cc: Mayor Chuck Reed (w/o encs.)  
Debra Figone, City Manager (w/o encs.)



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Scott P. Johnson  
Peter Jensen

**SUBJECT:** SEE BELOW

**DATE:** June 1, 2010

Approved

Date

6/8/10

**COUNCIL DISTRICT:** City-Wide  
**SNI AREA:** N/A

**SUBJECT: RESPONSE TO CIVIL GRAND JURY REPORT: MONEY-LOSING  
HAYES MANSION: A SAN JOSE CITY COUNCIL RESPONSIBILITY**

## RECOMMENDATION

Accept the staff response to the Civil Grand Jury Report entitled "Money-Losing Hayes Mansion: A San Jose City Council Responsibility".

## OUTCOME

An understanding of the rationale for the Administration's responses to findings and recommendations raised in the Civil Grand Jury Report will result in improved efficiencies in the current or alternate use of the Hayes Mansion, including the reporting of such efficiencies to the public.

## EXECUTIVE SUMMARY

The Administration's detailed responses to the four (4) findings and three (3) recommendations of the Grand Jury are included in this report. The Administration agrees with each of the four findings, agrees with two of the recommendations, and partially disagrees with one recommendation.

## **BACKGROUND**

On May 6, 2010, the Civil Grand Jury released a report entitled "Money-Losing Hayes Mansion: A San Jose City Council Responsibility". The Grand Jury initiated an investigation following a request to look into the ongoing City subsidies for the Hayes Mansion (the "Mansion") and the efforts of the City to address and reduce these subsidies in light of the City's continuing budget shortfalls. The projected deficit of the General Fund budget for 2010-2011 is \$118.5 million, and the projected General Fund subsidy for the Mansion is \$5.9 million.

The City paid for the improvements to the Mansion with lease revenue bonds issued by the City of San José Financing Authority (the "Authority"). The City is obligated to make lease payments to the City of San José Financing Authority in order for the Authority to make debt service payments on its Series 2008C and Series 2008D lease revenue bonds.

## **ANALYSIS**

California Penal Code Section 933c requires that a governing body of the public agency which has been subject to a Grand Jury final report shall respond within 90 days to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under control of the governing body. California Penal Code Section 933.05 provides that the responding public agency must state one of the following in response to the Grand Jury findings:

- It agrees with the finding.
- It disagrees partially with the finding and provides explanation.
- It disagrees wholly with the finding and provides explanation.

In addition, for each Grand Jury recommendation, the City is required to report one of the following actions:

- Recommendation has been implemented, with a summary regarding the implemented action.
- Recommendation has not yet been implemented, but will be implemented in the future, with an implementation timeframe.
- Recommendation requires further analysis, with an explanation and the scope of the parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion, which shall not exceed six months from the date of publication of the Grand Jury report.
- Recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation.

## **GRAND JURY FINDINGS, RECOMMENDATIONS AND CITY'S RESPONSE**

### **Civil Grand Jury Finding & Recommendation 1:**

**Finding 1:** To ease the structural budget deficit, after extensive opportunity for public input on city budget priorities from citizens, employee and business groups, and city staff, the City decided to assess the management and possible alternative uses of City properties. The list of properties to be reviewed in the Asset Management Program (AMP) includes the Mansion.

**Recommendation 1:** The City should continue the AMP, focusing on those properties that present the biggest drain on City finances, such as the Mansion.

**City Response:** The Administration agrees with this finding and concurs with this recommendation. A Manager's Budget Addendum was submitted to the Council in May 2010, outlining the work plan and schedule related to the Mansion. It calls for a report to be presented to Council in fall 2010 regarding the costs and service impacts of various alternative uses, including the one-time and ongoing effects of a sale or lease on the City's current operating subsidy and debt service payments. The memo clarifies that this report will be designed to provide the Council with information on its options related to the Mansion in its consideration of the 2011-2012 Operating Budget.

### **Civil Grand Jury Finding & Recommendation 2:**

**Finding 2:** The AMP study of the Mansion is behind schedule. Deadlines have been set and subsequently extended.

**Recommendation 2:** The City Council should require adherence to City staff's currently estimated 2010 study completion date.

**City Response:** The Administration agrees with this finding and concurs with this recommendation. The Grand Jury Report refers to Council direction in October 2008 regarding analyzing ways to reduce the General Fund subsidy of the debt service payments for the Mansion. When staff presented Asset Management recommendations in April 2009, analysis of alternative uses of the Mansion was delayed because of an unfavorable real estate market, and consideration of the number of large, complex properties placed on the initial work plan. Council approved the revised timing and approach, and approved adding the Mansion to the work plan for 2010 in February.

As mentioned above, the recent Manager's Budget Addendum confirms the plan to present a report to Council this fall regarding alternative uses.

**Civil Grand Jury Finding & Recommendation 3:**

**Finding 3:** Since the City initiated the AMP and its study of the Mansion, the financial condition of the City has gone from bad to worse. In November 2008 the projected deficit for 2010-11 was \$109.7 million. Now that projected deficit has increased to \$116.2 million.

**Recommendation 3:** None.

**City Response:** The Administration agrees with this finding; however, for clarification purposes, the projected deficits noted in this finding relate to the total General Fund shortfall, and have been adjusted to \$118.5 million to reflect the development fee program shortfall.

**Civil Grand Jury Finding & Recommendation 4:**

**Finding 4:** The City Council will have extensive information and an opportunity to act on the Mansion when the study of the Mansion is complete.

**Recommendation 4:** The City Council should either sell the Mansion or articulate for the public what the more important values are that offset the significant long standing and continuing financial drain of the Mansion on the City's budget.

**City Response:** The Administration agrees with this finding and disagrees partially with the recommendation. When the study of the Mansion is complete, the City Council will be presented with extensive information on its options related to the Mansion. The recommendation implies that the only options for the Mansion are to sell it or keep it in its current use, but the staff analysis will include not only selling the Mansion, but leasing it, converting it to another use, or restructuring the operating and/or debt service expenses to reduce City costs. The Council will examine the various options presented in the analysis and choose the option that it believes best serves the interests of the City.

**EVALUATION & FOLLOW-UP**

Staff will ensure that a full analysis of the various options for the Mansion will be provided to the City Council in fall 2010, focusing on addressing the Mansion's ongoing debt service obligations and General Fund subsidies.

### POLICY ALTERNATIVES

Staff will provide policy options as part of the report described above.

### PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Although this memorandum does not meet any of the above criteria, the item will be posted on the City's website for the June 22, 2010 Council Agenda.

### COORDINATION

This memorandum was coordinated with the City Attorney's Office.

### FISCAL/POLICY ALIGNMENT

Not applicable.

### CEQA

Not a project – PP10-069.

/s/  
SCOTT P. JOHNSON  
Director, Finance

/s/  
PETER JENSEN  
Director, General Services

For questions, please contact Scott P. Johnson, Director of Finance, at (408) 535-7000.