



**JOHN C. FREMONT
Healthcare District**

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SEP 28 2022

by: _____
Mariposa Superior Court

September 23, 2022

The Honorable Michael Fagalde, Presiding Judge, and Members of the Grand Jury
Mariposa County Superior Court
PO Box 28
Mariposa, CA 95338-0028

Re: Comments of the John C. Fremont Healthcare District's Board of Directors to the Presiding Judge of the Superior Court and Grand Jury in response to the 2021-2022 Mariposa County Civil Grand Jury Report: Board Meeting Violations

Dear Judge Fagalde and Members of the Grand Jury:

The John C. Fremont Healthcare District District's Board of Directors ("JCF Board") is in receipt of the 2021-2022 Civil Grand Jury report titled "John C. Fremont Healthcare District Board Meeting Violations." Per your request, and in compliance with section 933 of the California Penal Code, please find within this letter the response of the JCF Board. Overall, the JCF Board thanks the Grand Jury for its efforts at making the District a better healthcare district and it welcomes the efforts, findings, and recommendations of the Grand Jury.

The 2021-2022 Mariposa County Civil Grand Jury ("MCCGJ") summarized its report on JCF as follows:

"At the end of its investigative process, the MCCGJ concluded the errors were not done maliciously or with intent to harm. Nevertheless, these errors must be addressed by the JCF board. The MCCGJ believes the first steps towards reaching compliance is to have all board members and appropriate administrative staff trained on the relevant codes and to develop a specific schedule for training and retraining. Acting in compliance with government code will lead to increased public knowledge about, collaboration with, and trust in, JCF." (p. 54.)

Under the category of "Inadequate Wording and Missing Code References in Closed Session Agenda Items," the Grand Jury raised concerns with a number of agenda descriptions, and provided template language that the JCF Board should use going forward to avoid any Brown Act violations. (pp. 55-57.) The Board has discussed this matter, and understands the suggestion that the Board is to use Government Code "safe harbor" language in the future. The Board has committed to ensuring this is done by asking the CEO to change JCF procedures for staff training and agenda preparation accordingly. This will include taking care to reference specifically when an item is a "hearing," and being sure to include language that makes it clear to the public that no final action is taken on any proposed item prior to the closed session. This will improve JCF's transparency and ensure future compliance with the Brown Act.

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Under the category of “Improper Wording and Action Regarding Potential Litigation,” the Grand Jury found that JCF has previously listed litigation improperly and raised the same concern with certain closed session language used to describe such litigation matters. Further, the Grand Jury advises that although legal counsel is always consulted before meetings where pending litigation will be discussed, legal counsel must also be present at all closed sessions where anticipated litigation will be discussed. (pp. 57-58.) The Board understands that closed sessions which are held pursuant to the authority of Government Code section 54956.9 require the presence of legal counsel at the closed session, and improved agenda descriptions to clarify which cases are being discussed and under what particular subdivisions of the closed session provisions. The Board is committed to ensuring such changes are made going forward by having legal counsel present at all future litigation-related closed sessions, and requesting that the CEO train staff on correct agenda wording as provided in the Report.

Under the category “Potential Lack of Necessary Disclosure Regarding Litigation,” the Grand Jury reported its concerns regarding whether the JCF Board consistently makes necessary reports, in open session, of action taken during closed session relating to litigation. And, the Grand Jury notes that while it understands Board agendas don’t often contain wording “that specifies what litigation or potential litigation is about,” to avoid putting the Board at a disadvantage, the Grand Jury would like to see “as much information as possible about litigation or potential litigation [as] is necessary to ensure the public’s right to know per the Brown Act.” (p. 58.) The Board has reviewed the relevant sections of the Brown Act and the related pamphlet issued by the Secretary of State’s office. In light of the Grand Jury’s recommendation, the Board is committed to ensuring future Brown Act compliance by guaranteeing that if, during a closed session, the Board makes a final determination as to defending or initiating a case, intervening in a case, seeking or declining to seek appellate review of a case, appearing in an amicus capacity, or settling an existing case, the Board will report such action when it commences open session after the closed session. The Board will also comply with the requirement to make copies of the related documents available as soon as possible.

Under the category “Improper Discussion in Closed Session of an Open Session Item,” the Grand Jury reports that although one particular item from November 17, 2021 was agendized as an open session item, some discussion of the item occurred during closed session, although the item did not meet the criteria for a closed session item. (p. 59.) The Board understands this concern and has committed itself to ensuring all Board members are trained that only matters properly agendized for closed session may be discussed during closed session, and that items agendized for open session may only be discussed during open session.

Under the category “Responsibility for Agenda and Minute Wording,” the Grand Jury notes that although the CEO’s Administrative Assistant, who also acts as Clerk to the Board, is given the responsibility of drafting the agendas and Board minutes, she has never had Brown Act or Health and Safety Code training. (p. 59.) The Board concurs with the Grand Jury’s position that it is

ultimately the Board's responsibility to ensure the Clerk and other members of staff receives the training needed to carry out the functions assigned to them, and to ensure that agendas are drafted with adequate detail and references per the Brown Act.

Finally, under the category "Government Code Training," the Grand Jury recommends, as a first step, having all Board members and appropriate administrative staff trained on the Brown Act, and to repeat the training on a specified regular schedule. The Board understands and agrees with this recommendation, and has already taken steps to schedule an initial training, and regular ongoing updated trainings, with our legal counsel's Brown Act compliance team, for all Board members and pertinent members of staff.

FINDINGS

F1. The JCF board does not always comply with the Brown Act, California Health and Safety Code §3200-32499.4, and California Government Code §54956.87 regarding the wording of closed session agenda items and actions at board meetings.

Response: JCF's Board agrees partially with this finding, in that the Board always endeavors to word closed session agenda items and take actions at Board meetings in a manner that is fully compliant with the Brown Act and Health and Safety Code. However, to the extent there have been inadvertent instances of noncompliance, the Board agrees to take all necessary corrective actions to ensure no such instances occur going forward.

F2. The JCF Board does not have a lawyer present during closed session litigation or potential litigation discussions.

Response: JCF's Board partially agrees with this finding; JCF's counsel has, from time to time, attended litigation-related closed session discussions, but the Board will work in conjunction with the CEO to ensure counsel is present at every litigation-related closed session going forward.

F3. Regarding a November 2021 agenda item about the request for registered nurse union recognition, there was improper board discussion of this item during closed session.

Response: JCF's Board agrees with this finding, and will ensure no such discussion of agendized open session items occur in closed session going forward.

F4. The JCF bylaws state that the agenda and minutes are the responsibility of Administration and yet neither the CEO nor the COB have had Brown Act, Health and Safety Code §3200-32499.4, and GC §54956.87 training.

Response: JCF's Board partially agrees with this finding; the Clerk of the Board has not been formally trained in Brown Act or Health and Safety Code § 3200-32499.4, but has received some on-the-job training. Further, the CEO has received formal training in these matters in recent years. Still, the Board commits to ensuring that the CEO, and all pertinent staff, receive regular Brown Act and Health and Safety Act trainings from qualified individuals going forward.

F5. The JCF board members are not required to attend Brown Act training. While some have received this training, none retrain on a regular basis.

Response: JCF's Board partially agrees with this finding. Board members have, in the past, been required to attend Brown Act training. However, with respect to regular re-trainings, the Board and CEO have already begun the process of scheduling a refresher training course, and will ensure that all Board members will be required to attend regularly scheduled trainings going forward.

RECOMMENDATIONS

R1. The JCF board must follow Brown Act, Health and Safety Code §3200-32499.4, and GC §54956.87 requirements. One way to ensure this would be to use the GC templates.

Response: This recommendation has been implemented in all Board meeting agendas published since the Grand Jury Report, and will continue to be implemented on an ongoing basis in the future.

R2. JCF's legal counsel must be present for all closed session items regarding litigation.

Response: This recommendation has been implemented, as the Board recently held a litigation-related closed sessions after the release of the Grand Jury Report and ensured that legal counsel was present. In addition, the Board is committed to ensuring that legal counsel will attend all litigation-related closed sessions in the future.

R3. The JCF Board must ensure it is only discussing items in closed session that fall under the purview of closed session and are properly noticed.

Response: This recommendation has been implemented, as the Board recently held a closed session after the release of the Grand Jury Report. At that meeting, the Board was careful to discuss only those items in closed session that were properly noticed and fell within the scope of the agendized closed session item. In addition, the Board is committed to ensuring continued compliance at all future meetings.

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R4. The JCF Board should ensure staff drafting meeting agendas and minutes have the training they need to carry out that job function

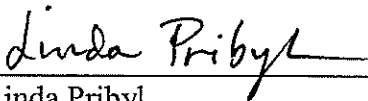
Response: This recommendation has not yet been implemented, but the Board, through the CEO, is in contact with personnel who are capable of and willing to provide such training, and is in the process of scheduling the training for the coming weeks.

R5. The JCF Board should schedule Brown Act training on a regular timeframe.

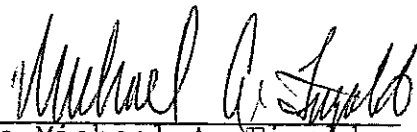
Response: This recommendation has not yet been implemented, but the CEO is in contact with personnel who are capable of and willing to provide such training, and is in the process of scheduling the training for the coming weeks.

If you have any questions, please contact District Counsel, Noel Caughman, at (925) 977-3334.

Sincerely,



Linda Pribyl
Board Chair, John C. Fremont Healthcare District Board of Directors

Received 
Honorable Michael A. Fagalde, Per PC933