MOORPARK CITY COUNCIL
AGENDA REPORT

TO: **Honorable City Council**

FROM: **David A. Bobardt, Community Development Director**

DATE: **July 8, 2014 (CC Meeting of July 16, 2014)**

SUBJECT: **Consider Response to Final Report of the Ventura County Grand Jury 2013-2014 on Moorpark Zoning Compliance, Tracking, and Reporting**

BACKGROUND/DISCUSSION

On June 9, 2014, the Ventura County Grand Jury provided the City Council, City Manager, and Community Development Director with a Final Report of its investigation entitled, "Moorpark Zoning Compliance, Tracking, and Reporting." The Grand Jury report has required a response from the City Council on the findings and recommendations within 90 days of its provision (September 7, 2014). The July 16, 2014 City Council meeting is the last scheduled meeting prior to this deadline. A form was provided for the response. Staff has provided the attached draft response to this report for City Council consideration. Responses to the report findings and recommendations have been requested, but not required, from the City Manager and Community Development Director. Both the City Manager and Community Development Director intend to provide the same responses as those provided by the City Council.

STAFF RECOMMENDATION

1. Approve the draft responses to the Grand Jury report findings and recommendations and authorize the Mayor to sign and submit the responses to the Presiding Judge of the Superior Court.
2. Direct staff to implement the direction of the City Council contained in the draft responses.

Attachment: Response to Grand Jury Report Form

ATTACHMENT

Response to Grand Jury Report Form

Report Title: Moorpark Zoning Compliance, Tracking, and Reporting

Report Date: June 9, 2014

Response By: Janice Parvin, Roseann Mikos, Keith Millhouse, Mark Van Dam, David Pollock

Title: Mayor and City Councilmembers

FINDINGS

- I(we) agree with the findings numbered: FI-03 through FI-07
- I(we) disagree wholly or partially with the findings numbered: FI-01, FI-02, FI-08, FI-09

(Attach a statement specifying any portions of the findings that are disputed; include an explanation of the reasons therefore.)

RECOMMENDATIONS

- Recommendations numbered R-07 have been implemented.

  (Attach a summary describing the implemented actions.)

- Recommendations numbered R-01 through R-06, R-08 have not been implemented, but will implemented in the future.

  (Attach a timeframe for the implementation.)

- Recommendations numbered _____ require further analysis.

  (Attach an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or director of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.)

- Recommendations numbered _____ will not be implemented because they are not warranted or are not reasonable.

  (Attach an explanation.)

Date:_____ Signed:_____

Janice Parvin, Mayor
City of Moorpark

Number of pages attached: 9

DRAFT

GRAND JURY REPORT FINDINGS (*in italics*)

AND CITY OF MOORPARK CITY COUNCIL RESPONSES

GRAND JURY FINDING FI-01:

The Moorpark City Council violated the Municipal Code when it approved a Zoning Clearance for a new business venture that was not permitted by current zoning, against the advice of the City Attorney. Because of agreements between the City and the developer before the Zoning Clearance was approved, the developer was able to postpone submittal of CDD-specified permit applications and processing fees. By granting the Zoning Clearance prematurely, the City effectively waived its enforcement leverage and this frustrated subsequent compliance efforts. CDD processes and actions proved ineffective in obtaining compliance of the new business venture use for 17 years.

CITY COUNCIL RESPONSE TO FINDING FI-01:

The City Council respectfully disagrees in part with Finding FI-01 of the Grand Jury report in that the City Council did not approve a Zoning Clearance for the business that was the subject of this finding and disagrees with the implication of Finding FI-01 that the Zoning Clearance was approved recently or by the current City Council. The Zoning Clearance was approved in 1994 by the City's Community Development Director at the time (not presently employed by the City). Furthermore, the Zoning Clearance was rescinded once the City Attorney reviewed the matter, and a new Zoning Clearance was issued to address the concerns of the City Attorney. The following is a history of this matter, derived from the public record for this case:

- This finding FI-01 of the Grand Jury report is based on one case involving the issuance of a Temporary Zoning Clearance for a recreational vehicle storage business at 4875 Spring Road in 1994. This use had been previously established without permit on a permitted contractor's storage yard and the new recreational vehicle storage yard use was the subject of code enforcement efforts by City staff at the time.
- The action of the City Council on October 5, 1994, on this permit case was to "Receive and File" a report from the Community Development Director at the time on the pending issuance of this Temporary Zoning Clearance. <u>The City Council did not take any action to approve the Zoning Clearance as stated in the Grand Jury report</u>. It should be noted that no members of the current City Council were on the City Council at the time of this action.
- This Temporary Zoning Clearance was issued by the Community Development Director at the time on October 7, 1994.
- After receiving a complaint from a nearby resident over the issuance of the Temporary Zoning Clearance, the City Attorney's Office reviewed the matter and opined on November 18, 1994, that the temporary timeframe and the use of conditions were of questionable legality on a Zoning Clearance.
- As a result, the Temporary Zoning Clearance was rescinded and a new Zoning Clearance was issued on November 28, 1994 by the Community Development Director at the time for the temporary storage of recreational vehicles on the site for up to 24 months.

The City Council concurs with the finding in the Grand Jury report that the issuance of a Zoning Clearance for this use on a temporary basis affected the City's enforcement leverage in getting the applicant to apply for and obtain proper permits for the recreational vehicle storage business.

GRAND JURY FINDING FI-02.

The City organizational structure does not provide for adequate and timely management oversight and technical review of Zoning Clearances or permits.

CITY COUNCIL RESPONSE TO FINDING FI-02:

The City Council respectfully disagrees with Finding FI-02 of the Grand Jury report. The Community Development Department is responsible for the review and issuance of Zoning Clearances and other land use permits. Section 17.44.030 of the Moorpark Municipal Code states that, "A zoning clearance is a permit that is granted on the basis of a ministerial decision by the community development director or designee without a hearing. A zoning clearance certifies that a proposed use of land or structures meets all requirements of (the Zoning Ordinance) and the applicable conditions of any previously approved discretionary permit, administrative permit, and/or conditional use permit." The adopted City budget provides the organization chart for the Community Development Department, which is currently staffed with planners at three levels of responsibility: Community Development Director, Principal Planner, and Assistant Planner.

The Assistant Planner is responsible for most of the day-to-day interactions with permit applicants at the public counter. Per the City Council's adopted Classification Plan and Job Descriptions (most recently amended by Resolution No. 2014-3309), this position requires the proper knowledge, abilities, training and experience for this responsibility. The vast majority of Zoning Clearance applications are for small property improvement projects that do not require a higher level of review before a Zoning Clearance is issued. The Assistant Planner position is properly trained to consult with the supervising Principal Planner on complex projects, or if there is any question as to whether or not a project is eligible for a Zoning Clearance.

A supervising Principal Planner position oversees the issuance of Zoning Clearances by the Assistant Planner and interacts with the Assistant Planner on a daily basis on this oversight role. The Principal Planner position, per the City Council's adopted Classification Plan and Job Descriptions, requires the proper knowledge, abilities, training and experience for this responsibility. The Principal Planner position is properly trained to consult with the Community Development Director if there is any question as to whether or not a project is eligible for a Zoning Clearance.

The Community Development Director position, per the City Council's adopted Classification Plan and Job Descriptions, is required to, "provide expertise in application and interpretation of the Municipal Code, including Zoning Code." Combined with the other requirements in the Classification Plan and Job Descriptions, this position requires the proper knowledge, abilities, training and experience to make decisions on permits, including Zoning Clearances. The Community Development Director may consult with the City Attorney when necessary. The Community Development Director holds monthly staff meetings with all planner positions in the department to discuss recent projects, review procedures, and

to address other issues relevant to the issuance of permits, including Zoning Clearances. The Community Development Director has issued written administrative procedures on the review of written material in the department to ensure written communications are handled at the appropriate level. The Community Development Director reviews zoning clearance logs on a regular basis to provide additional oversight, to maintain a working understanding of department operations, and to determine if any additional training or direction is needed.

The organizational structure outlined above is appropriate for adequate and timely oversight and technical review of Zoning Clearances or permits. The conclusion in the Grand Jury report was made based on the handling of one case by Community Development staff (see response to FI-01) that occurred 20 years ago. The handling of that case is not reflective of the organizational structure today. In fact, the current organizational structure allowed for the resolution of that previously unpermitted use by requiring that an application be filed (which occurred within 3 months or requiring the application), and presenting the project for review by the City Council for a decision (which occurred within 11 months of the filing of the application). These timeframes were reasonable for a complex case that included the preparation of a Settlement Agreement to be considered by the City Council concurrently with the Conditional Use Permit application. Nonetheless, the current organizational structure can be strengthened. As noted in the City Council's response to the recommendation of the Grand Jury report R-08, the City Council has directed City staff to review the Community Development Department's administrative policy on the review of written material, including the issuance of Zoning Clearances and other permit approvals, implement any necessary changes, and provide a report to the City Council by December 17, 2014.

GRAND JURY FINDING FI-03.

CDD processes do not require use of independent Municipal Code SMEs for review of CDD permits.

CITY COUNCIL RESPONSE TO FINDING FI-03:

The City Council agrees with Finding FI-03 of the Grand Jury report that the City does not require the use of independent Municipal Code Subject Matter Experts for the review of Community Development Department permits. Nonetheless, the organizational structure allows for appropriate review of Community Development Department Permits at several levels. The job description for the Community Development Director position includes having to "provide expertise in application and interpretation of the Municipal Code, including Zoning Code." See response to Finding FI-02 above for further explanation.

GRAND JURY FINDING FI-04.

The CDD does not have an effective warning/alarm/time reporting process (e.g., flags in reports, time duration metrics, etc.) for alerting City management and CDD personnel about exceptional time limit status of pending/outstanding violation actions and permit expirations. Omitting the concept of time can allow problem cases to slip schedule indefinitely. Likewise, no metrics are tracked to dramatize the extent of overdue projects.

CITY COUNCIL RESPONSE TO FINDING FI-04:

The City Council agrees with Finding FI-04 of the Grand Jury report. As noted in responses to the Grand Jury report Findings FI-05 through FI-07, while the Community Development Department staff currently has a reporting and tracking process, it has begun the process of improving and expanding its permit log database using existing City software to include status and tracking information, including deadlines, which can be viewed directly to determine current status, or integrated directly into the creation of reports. The intent is to strengthen a current system of tracking critical timelines in the review of permit applications. In response to the Grand Jury report Recommendation R-06, the City Council has directed staff to provide a report on these efforts by December 17, 2014, and complete the implementation of this recommendation by June 30, 2015.

GRAND JURY FINDING FI-05.

The CDD is handicapped in keeping records because it does not maintain a centralized database containing date-tagged status logs of significant transactions such as discussions, meetings, or correspondence involving Municipal Code compliance-related issues. The current methods for keeping status are inadequate and fragmented.

CITY COUNCIL RESPONSE TO FINDING FI-05:

The City Council agrees with Finding FI-05 of the Grand Jury report. As noted in responses to the Grand Jury report Findings FI-04, FI-06, and FI-07, the Community Development Department staff has begun the process of improving and expanding its permit log database using existing City software to include status and tracking information, including deadlines, which can be viewed directly to determine current status, or integrated directly into the creation of reports. This work effort will result in a centralized database that includes the information noted in this finding. In response to the Grand Jury report Recommendation R-06, the City Council has directed staff to provide a report on these efforts by December 17, 2014, and complete the implementation of this recommendation by June 30, 2015.

GRAND JURY FINDING FI-06.

The information currently provided to City management by CDD- generated permit summary reports lacks important status concepts that would provide transparency to management. Reports lack original estimate of completion date; current estimate of completion date; cumulative processing time; expiration date of time-limited permits; flag- alerts of excessive processing time for violations; permit applications or permit expirations that have exceeded original estimated completion date; and detail about what is holding up processing completion. Status text should be more descriptive than simply "Open" or "Closed." In a status report, an open case should have an adequate text description of why it is still open.

CITY COUNCIL RESPONSE TO FINDING FI-06:

The City Council agrees with Finding FI-06 of the Grand Jury report. As noted in responses to the Grand Jury report Findings FI-04, FI-05, and FI-07, the Community Development Department staff has begun

the process of improving and expanding its permit log database using existing City software to include status and tracking information, including deadlines, which can be seen directly in its logs and reports to determine current status, or integrated directly into the creation of reports. This work effort will result in status reports that include the information noted in this finding. In response to the Grand Jury report Recommendation R-06, the City Council has directed staff to provide a report on these efforts by December 17, 2014, and complete the implementation of this recommendation by June 30, 2015.

GRAND JURY FINDING FI-07.

Comprehensive reports need to be created and available to fully brief and alert successor CDD Directors about problem compliance cases. This need was demonstrated by the fact that the CDD lost track of a developer's new-business use case sometime during periods of frequent turnover of past CDD Directors. Lack of summaries with sufficient historical details of issues such as those associated with a developer's permit situation can lead to—and has led to—total case loss by the CDD.

CITY COUNCIL RESPONSE TO FINDING FI-07:

The City Council agrees with Finding FI-07 of the Grand Jury report, however notes that this occurred on one case. As noted in responses to the Grand Jury report Finding FI-04 through FI-06, the Community Development Department staff has begun the process of improving and expanding its permit log database using existing City software to include status and tracking information, including deadlines, which can be viewed directly to determine current status, or integrated directly into the creation of reports. This work effort will result in a centralized database that includes the information noted in this finding. In response to the Grand Jury report Recommendation R-06, the City Council has directed staff to provide a report on these efforts by December 17, 2014, and complete the implementation of this recommendation by June 30, 2015.

GRAND JURY FINDING FI-08.

Briefings and briefing materials supplied by the CDD for City management tend to be limited to what the CDD thinks the City management needs to know and what can be readily provided. Because of the deficiencies in the current report formatting, City management does not have access to an effective independent monitoring mechanism.

CITY COUNCIL RESPONSE TO FINDING FI-08:

The City Council respectfully disagrees with Finding FI-08 of the Grand Jury report. The Community Development Department reports provide content based on direction by the City Manager as to what is needed for management oversight. As noted previously in these responses, there is only one notable case where the Community Development Department failed to monitor and obtain compliance. The Community Development Department currently provides numerous reports to the City Council and City Manager and those reports will be improved and expanded to include a specific permit tracking database.

GRAND JURY FINDING FI-09.

Being overly "business friendly" or "community friendly" can have significant consequences to the City, as the situation with the Zoning Clearance investigation demonstrated. The Grand Jury investigation determined that such agreements can establish an unintended precedent that can later be exploited by a developer or violator to obstruct the City's zoning-compliance efforts.

CITY COUNCIL RESPONSE TO FINDING FI-09:

The City Council respectfully disagrees with Finding FI-09 of the Grand Jury report. Being business friendly does not imply that the City condones or ignores the violation of any of its laws. Furthermore, the current City Council is not in a position to second guess the intentions or actions of the 1994 City Council.

GRAND JURY REPORT RECOMMENDATIONS (*in italics*)

AND CITY OF MOORPARK CITY COUNCIL RESPONSES

GRAND JURY RECOMMENDATION R-01.

The Grand Jury recommends that the City Council re-examine its policies, procedures, and training materials to include directives that emphasize the risks involved to the City in working out inappropriate, undocumented agreements between the City and permit applicants or Municipal Code violators.

CITY COUNCIL RESPONSE TO RECOMMENDATION R-01:

The City Council maintains a formally adopted set of policies on a variety of issues, which are reviewed and updated on a regular basis. These policies, last updated and adopted by Resolution No. 2014-3294 on May 28, 2014, provide specific direction in Policy 4.3 to Community Development staff on procedures to resolve code violations. The City Council concurs with the Grand Jury report that this policy could be strengthened with direction on documentation on agreements with responsible parties for abating code violations. While there is currently no specific policy addressing inappropriate, undocumented agreements with permit applicants, a new policy would be appropriate. The City Council has directed staff to prepare a draft amendment to the Code Compliance Program policy related to requiring written documentation for all City code compliance agreements between City representatives and Municipal Code violators. The City Council has also directed staff to prepare a draft new policy related to requiring written documentation for all City entitlement processing decisions and agreements between City representatives and applicants pertaining to condition compliance for City Council consideration by December 17, 2014.

GRAND JURY RECOMMENDATION R-02.

The Grand Jury recommends that the City Council direct the CDD to develop and adopt a unified and robust solution for maintaining permit and Municipal Code compliance status information critical to producing current and historical status reports and supporting independent audits of the CDD.

CITY COUNCIL RESPONSE TO RECOMMENDATION R-02:

The Community Development Department staff has begun the process of improving and expanding its permit log database using existing City software to include status and tracking information, including deadlines, which can be seen directly in its logs and reports to determine current status, or integrated directly into the creation of reports. The City Council has directed City staff to provide a report on its efforts by December 17, 2014, and complete the implementation of this recommendation by June 30, 2015.

GRAND JURY RECOMMENDATION R-03.

The Grand Jury recommends that the CDD use a centralized computer database solution for maintaining status. This database should be based on a date-stamped log of each significant transaction step during the processing of permits or Municipal Code violations. For example the database should include

memoranda and e-mails sent/received; permit applications received; and permits granted. Copies of scanned documents sent to or received from clients should be preserved in the database. Links to these documents should be included in the corresponding status log record. Multiple violations and compliance actions on a property should be tracked independently but linked so that consolidated reports can be generated.

CITY COUNCIL RESPONSE TO RECOMMENDATION R-03:

The City Council has directed City staff to provide a report on its efforts to implement this measure by December 17, 2014, and complete the implementation of this recommendation by June 30, 2015.

GRAND JURY RECOMMENDATION R-04.

The Grand Jury recommends that CDD-prepared status reports of Municipal Code compliance-related issues should be automatically producible from the status log database, without the need to manually cut and paste or manually enter/edit data into the report files. Multiple violations on a property should be displayable independently as well as consolidated.

CITY COUNCIL RESPONSE TO RECOMMENDATION R-04:

The City Council has directed City staff to provide a report on its efforts to implement this measure by December 17, 2014, and complete the implementation of this recommendation by June 30, 2015.

GRAND JURY RECOMMENDATION R-05.

The Grand Jury recommends that the CDD database solution have the capability of exporting selectable historical status log information to a file that can be off-line filtered by common desktop computer software tools such as Microsoft Excel. This capability will provide greater transparency of CDD operations by allowing more comprehensive auditing of activities recorded in the database.

CITY COUNCIL RESPONSE TO RECOMMENDATION R-05:

The Community Development Department staff has begun the process of expanding its permit log database using existing City software to include status and tracking information, including deadlines, which can be seen directly in its logs and reports to determine current status, or integrated directly into the creation of reports. The City Council has directed that staff provide a report on these efforts by December 17, 2014, and complete the implementation of this recommendation by June 30, 2015.

GRAND JURY RECOMMENDATION R-06.

The Grand Jury recommends that the CDD database solution facilitate transparency of the CDD within the City. Reports generated should always flag cases exceeding critical time-limit attributes such as original expected compliance date or permit expiration date. The status should also indicate what the next significant action necessary will be and what is holding up the compliance process.

CITY COUNCIL RESPONSE TO RECOMMENDATION R-06:

The Community Development Department staff has begun the process of expanding its permit log database using existing City software to include status and tracking information, including deadlines, which can be seen directly in its logs and reports to determine current status, or integrated directly into the creation of reports. The City Council has directed that staff provide a report on these efforts by December 17, 2014, and complete the implementation of this recommendation by June 30, 2015.

GRAND JURY RECOMMENDATION R-07.

The Grand Jury recommends that the City Council critically examine the job descriptions of City employees who should be expected to have a role in monitoring or commenting on the effectiveness of CDD permitting and Municipal Code compliance activities. Explicit oversight tasks should be designated where appropriate in these job descriptions and employee performance reviews should include a review of how well these duties were performed.

CITY COUNCIL RESPONSE TO RECOMMENDATION R-07:

On July 2, 2014, the City Council adopted Resolution No. 2014-3309, amending the Classification plan for the City Manager, Assistant City Manager, Deputy City Manager, Community Development Director, Planning Director, Planning Manager, and Principal Planner job descriptions, which included changes in language to more clearly emphasize the requirement for expertise in relevant municipal code to implement this recommendation. Employee performance reviews are already based on the performance of tasks identified in the job descriptions.

GRAND JURY RECOMMENDATION R-08.

The Grand Jury recommends that the CDD change its processes to provide for an independent critical review by a Municipal Code SME of all permits and correspondence sent to permit applicants and Municipal Code violators. The independent reviewer could be a CDD employee or an outside consultant. However, this independent review should be done by an individual who did not participate in any aspect of the subject permit application process nor participate in the compliance process with the subject Municipal Code violator. The name of the independent reviewer (i.e., the "SME Approver") should be recorded in the status log database to establish accountability.

CITY COUNCIL RESPONSE TO RECOMMENDATION R-08:

At the present time, the Community Development Department has a written administrative policy that provides for oversight of different types of written communication, including permit approval letters. In light of the amendments to the classification plan per Resolution No. 2014-3309, the City Council has directed City staff to review the Community Development Department's administrative policy on the review of written material, including the issuance of Zoning Clearances and other permit approvals, implement any necessary changes, and provide a report to the City Council by December 17, 2014.