



**City of Madera
Fails to Enforce the Golf Course
Contract Requirements**

**2022-2023
Madera County Grand Jury
Final Report 2223-02
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Summary

The City of Madera (City) owns the Madera Municipal Golf Course located at 23200 Avenue 17, Madera, CA. It is adjacent to the west side of Madera Airport. The City does not operate this business. The Golf Course includes the building which houses a pro-shop for golfing attire and accessories, a banquet room, kitchen and bar, including onsite food and beverage concessions, and patio area. In 2009 the golf course management and operation were turned over to Sierra Golf Management, Inc. (Sierra) under a Lease Agreement (Lease) with the City. Recently, Sierra made an agreement with Sugar Pine Smokehouse, LLC (Sugar Pine) to operate the golf course food and beverage concessions. Sugar Pine presently operates the food and bar services. The City does not have a copy of the Sierra – Sugar Pine agreement, although the Alcohol Beverage Control (ABC) requires the City to approve the agreement before it can issue a Liquor License. As of March 2023, the City is aware that Sugar Pine has a temporary ABC permit to serve liquor and Sugar Pine is operating the kitchen and bar concessions. The City has not produced any documentation on the Sierra – Sugar Pine agreement after the Madera County Grand Jury (MCGJ) request.

This report explores the City golf course, budgeting, revenue, and its operation by Sierra. The City has not enforced the Lease requirements for Sierra’s signage and catering violations. The City budget and financial reports are misleading and failed to include \$64,000 rent City pays to the Airport. The City Budget shows a Net Surplus for the golf course which is actually only 10 percent of the amount shown. The City has often deviated from Sierra’s contractual payment requirements, by making revenue concessions to Sierra. The City has been timid in negotiations, lax in oversight, and has not enforced the Lease terms.

The City’s 14-year history of golf course agreements with Sierra, unless renewed by the City terminates on June 30, 2023.

Abbreviations

ABC - California Alcohol Beverage Control

City – City of Madera

Lease - All references to the 2009 Madera Municipal Golf Course Agreement and amendments.

MCGJ - Madera County Grand Jury

Sierra – Sierra Golf Management, doing business as Sierra Golf Management, Inc.

Sugar Pine – Sugar Pine Smokehouse, LLC

USGA - United States Golf Association

Background

In 1991 the City of Madera established the Madera Municipal Golf Course in an Open Space Zone located at 23200 Avenue 17. In 2009, the City executed the original Lease with Sierra. The Lease includes the use, management, and operation of the 18-hole golf course, pro golf shop, driving range, putting green, golf carts, banquet room, parking lot, kitchen and beverage concessions, and events. The Lease period ended April 30, 2023, however it provided for two 30-day extensions. The City Manager signed the two 30-day extensions with Sierra, which are in effect until June 30, 2023.

Sierra is required to pay for annual Capital Improvements to the golf course. Sierra combined the 2021-22 Capital Improvement payments into the first extension year. Sierra spent \$40,000 total to replace drains and sand in 11 bunkers for Capital Improvements. Sierra was to invest \$15,000 to hook up a pipeline to the Madera Irrigation District, which as of March, the City states had not been done.

The Lease requires for Sierra to pay the United States Golf Association (USGA), a golf course advisory service, to provide reports annually on golf course Americans with Disabilities Act (ADA) compliance and guidance on golf course improvements. After a request to the City no USGA reports were provided to the MCGJ by the City. Sierra is required to keep records and reports for five years (see Lease Section 36). If these reports do not exist, and/or Sierra failed to pay the USGA for annual reviews, then Sierra has materially breached the Lease contract.

Lease Section 7.13 states, “Sierra shall be authorized to sell food and beverages . . . , or to subcontract for such services . . .” Section 23 allows Sierra to sublet the food and beverage concessions. Sugar Pine claims to have a ten-year lease with the City for the kitchen and bar concessions. The City denied the existence of any additional golf course agreements except the one with Sierra. The City as a prudent landlord should demand a copy of the Sierra – Sugar Pine agreement to evaluate insurance coverage, credit, and the City’s liability exposure.

The ABC Fresno Office has a file open to the public on Sugar Pine’s application for a

temporary Permit allowing Sugar Pine to serve liquor at the golf course. The ABC cannot issue Sugar Pine a liquor License because no agreement between Sierra and Sugar Pine, and signed by the City, has been submitted to the ABC. The City as the property owner, is required to approve the Sierra – Sugar Pine agreement before the ABC can grant Sugar Pine a liquor license. Thus, the Sierra-Sugar Pine agreement, if and when it is produced to the ABC, will be available to the City and the public. The Sierra - Sugar Pine agreement may be void unless Sierra is able to keep and extend some agreement with the City.

The City did not provide an answer to the MCGJ about whether or not a Public Notice of the expiring golf course contract with Sierra must be put out for public bids.

Methodology

Interviewed key City personnel.

Examined City Lease with Sierra and six amendments.

Studied City budget noting identified loans, debt service, omitted Airport Lease payment, and revenue.

Inspected three years of monthly reports that Sierra filed with the City.

Reviewed equipment list (Exhibit B from original contract).

Followed payment record of Sierra.

Reviewed capital improvement costs for 2021.

Reviewed the City, Sierra, Sugar Pine, North Fork Indian Casino, ABC, and other websites.

Checked Secretary of State's Business records on Sierra (none exist) and Sugar Pine Smokehouse, LLC.

Reviewed the North Fork Rancheria's Environmental Impact Review (EIR) for planned casino construction off CA-99.

Contacted and reviewed and the ABC history of the liquor license ownership and present incomplete ABC file on Sierra's license transfer to Sugar Pine.

Reviewed Sierra ownership and golf courses managed by Sierra.

Visited the premises and observed signage, ABC posting the change of liquor license to Sugar Pine, offsite catering information,-menus and pricing, signage, banquet room, dining room, and bar areas.

Reviewed the City water and sewer infrastructure system.

Reviewed the City zoning maps to note designation requirements and property development plans.

Reviewed the USGA website and the services it offers to golfers and golf courses.

Discussion

The MCGJ discovered that many Lease Sections, some of which are presented below are without clear definitions, are inconsistent, lack required updates, and carry forward irrelevant matters over the years. There has been a lack of City oversight and enforcement of Sierra's contractual requirements. A major portion of the golf course revenue is excluded from the City's participation. The City's Budget financial information is misleading. The Net Surplus shown in the Budget is \$361,236 when it is only \$32,392. The inflated City Budget Report is misleading because it failed to subtract the debt service from the Net Surplus.

On March 17, 2021, the City and Sierra signed the sixth contract amendment to the 2009 Lease Agreement. This contract included all of the prior amendments, Exhibits; and carried with it many irrelevant, contradictory, confusing, and outdated terms. This creates problems for the City decision makers on what the golf course requires for upgrades, and its true financial picture.

During the pandemic, the City made generous financial concessions to Sierra by lowering Sierra's annual Capital Improvement payments from \$50,000 to \$20,000 per year. The City reduced Sierra's annual rent payments from \$40,000 to \$19,992 per year. These concessions add up to \$100,000. However, Sierra's monthly income reports to the City during that time showed no significant reductions to its income.

Sierra pays City \$1.75 for each person playing a round of golf. Sierra's monthly reports to the City exclude hundreds of rounds of golf in the sales column with \$0.00. It is not clear from the monthly reports if all rounds of golf played are paid to the City. The contract definitions are not clear about this.

The City should negotiate for a percentage of excluded income defined in Lease section 4.4 to receive a more equitable share of revenue from Sierra. Reporting the rounds of golf played should not exclude any round or revenue from the City. The City has neglected to exercise reasonable oversight over this valuable public asset.

I. Grossly Misleading City Budget Reports.

According to the 2022-2023 Madera Municipal Golf Course Fiscal Budget there is a \$361,236 Golf Operations Net Surplus. This surplus does not include and subtract the golf course annual Debt Service of \$328,844. The debt service is paid from the City's Special Payments account. Line Item 8000 lists \$12,744 for Interest Payments, and Line Item 8001 lists \$316,100 for Principal Payments. These line-item expenses were not included in the golf course Operations Expense Budget. Deducting this \$328,844 debt service from the stated \$361,236 Net Surplus total there is only an actual \$32,392 Net Surplus. The City admitted that because the Net Surplus is only 10 percent of the Net Surplus stated in the Budget, this could be misleading. Since the figure is misleading, the City Council, Mayor, City Manager and the public cannot have an accurate financial picture about the golf course operation.

The City golf course makes an annual lease payment to the City Airport. This rent payment is approximately \$64,000. This payment was omitted from the City Budget. It is not clear why the golf course charges \$40,000 rent and pays the City Airport about \$64,000 rent for a 15-acre water storage area. The City explained that the rent differential is an accounting practice adjusting payments between different City projects.

The monthly revenue generated by the golf course is stated in monthly reports that Sierra generates and provides to the City. The Lease requires Sierra to provide the City with monthly reports totaling the income Sierra received that month and the number of golfers using the course. The practice of totaling the revenue and rounds of golf played stopped in March of 2020. Sierra's reporting change made it difficult for City to see how much money was owed by Sierra, because the City would have to add up all the figures in each column. The MCGJ totaled Sierra's monthly reports in 2020 – 2022 which showed that during the Covid-19 pandemic, the golf course showed no slowdown in golf course income.

II. The 2009 Lease incorporated Exhibits A and B which are Obsolete.

The Lease, due to years of amendments and extensions without creating a new contract, includes many outdated inconsistent items. For example, Exhibit A has a revenue chart showing a 10-year revenue projection ending in the year 2019. That became obsolete in 2019. Exhibit B is

the inventory of equipment owned by the City in 2009. The City sold all of this equipment and the pro-shop inventory to Sierra on November 18, 2009, making Exhibit B obsolete.

III. Record Keeping for Capital Improvements. The Lease requires Sierra to keep records for five years of its costs for annual Capital Improvements and Maintenance. Specifically, this requires keeping Capital Improvement and Maintenance plans, design plans, diagrams, work orders, materials, receipts, and proof of Sierra's payments.

The City produced only one Capital Improvement record for the year 2021. The list shows the purchase of sand for about \$7,000, and other items, however there were no plans, details, or evidence of City oversight. That record was a list of materials with corresponding costs. Lease Section 16.4 states that sand is a maintenance expense for Sierra, not a Capital Improvement expense. However, in 2021, sand was paid as a Capital Improvement instead of a Maintenance expense. Maintenance items should not be credited for Sierra's annual Capital Improvement costs.

The ultimate guidance for golf course annual planning is the *U.S. Golf Association's Annual Turf Advisory Service* (USGA). Lease Section 7.2 states: "Sierra at its sole expense shall coordinate the annual USGA turf service. The annual turf advisory service *shall serve as a baseline for course conditions* and will provide Sierra and the City another tool for determining and prioritizing capital improvements and maintenance delivery plans." This service offers the City and Sierra, the USGA's independent golf course review and advice for improvements. This advice covers grading the slopes for handicapped persons' access. The USGA offers many other detailed suggestions for capital improvement and maintenance goals to upgrade the golf course each year. Sierra has a mandatory duty to pay for these reports as part of planning. City was not able to provide any of these mandatory annual USGA reports.

IV. The City Oversight Director for the Golf Course.

The City Parks and Community Services Director is assigned to coordinate with Sierra to oversee the golf course, its events, condition, and upkeep. This oversight involves reviewing plans, approving designs, overseeing projects, construction, purchase orders, reports, implementing the USGA baseline improvement goals, and other "details" which are spelled out under annual Capital Improvements and other sections of the Lease. This oversight involves

construction. As of December 2022, there had been no communication between Sierra and the Parks and Community Services Director who was appointed during the summer of 2022.

Lease Section 8.3 states, “The Director of Administrative Services shall act as City representative with respect to the work to be performed under this Lease Agreement. Such person shall have the complete authority to transmit instructions, receive information, interpret, and define City’s policies and decisions with respect to materials, equipment elements, and systems pertinent to Sierra’s services.” This Director does not exist in City job descriptions.

V. The City Has Failed to Enforce the Contract - Use of Name Violation by Sierra.

Both the Sierra and Sugar Pine websites omit the required City logos and the word “Municipal” from the name. The Lease states, “Sierra shall ensure that all brochures, scorecards, and other printed advertising and marketing materials always bear and maintain the City’s identity with the mandatory use by Sierra of the name ‘*Madera Municipal Golf Course*’ with the accompanying logos of the City and the City Parks and Community Services department as provided by the City.” The City has not enforced this requirement.

VI. The City Failed to Enforce the Catering Violation – Sierra and Sugar Pine offer Catering.

Sugar Pine has assumed the golf course liquor and food operations from Sierra. Sierra and Sugar Pine websites offer offsite catering services under the heading of FOOD. Sugar Pine offers offsite catering with menus for parties of 10, and individual meals paid for separately. This is in direct conflict with the catering prohibitions in Lease Section 7.13. This section continues, “Sierra agrees to limit its services under this agreement to the facilities at the golf course and will not under the auspices of this agreement provide catering services off of the golf course facility.” Use of the golf course kitchen for offsite food sales violates the catering prohibitions of the Lease. The last paragraph in Section 7.3 states: “Sierra shall have the exclusive rights, license, duty, and privilege to utilize the food and beverage concessions facilities **within** the restaurant and banquet building and patio **at** the Golf Course.” Kitchen use for offsite food and beverage delivery and sales is expressly prohibited. The City has not enforced this prohibition.

The ABC issued Sugar Pine a temporary permit to serve liquor from the bar. The ABC cannot issue a liquor license until the City signs off on the Sierra-Sugar Pine agreement. In

March 2023, the City confirmed Sugar Pine has a temporary permit to serve liquor, and that there is no agreement between the City and Sugar Pine. The City states the only golf course agreement it has is the one with Sierra. Sugar Pine only has a “temporary permit” to serve alcohol because it has failed to submit its agreement with Sierra to the ABC. According to the ABC, the City as the property owner would have to approve any Sierra - Sugar Pine agreement making Sugar Pine the liquor operator before the ABC can change the temporary permit into a license. The City has never requested the Sierra – Sugar Pine agreement.

VII. Reporting Revenue Generated by the Golf Course – The City is Omitted from Most Revenue.

Lease Section 4.4 Permitted Uses - The “permitted uses” is a list of services and activities Sierra offers at the facility. “All revenue generated by Sierra shall be the property of Sierra including one hundred percent of all gross receipts from the sale of green fees, green fees packages, golf equipment, soft goods, supplies, lessons, driving range, cart fees, and food, beverage and banquet operations.”

Sierra advertises various golf – green fee packages ranging from weekly to annually. These require payment to Sierra of upfront fees, and other monthly/annual fees. These programs require annual payments which range from \$1,919 to \$4800. Golfing activities and accessories such as golf carts, training, lessons, booking for tournaments, etc., are available.

None of the income from any of these specific activities is shared with the City.

VIII. Confusing Lease Definitions for Sierra Income and Rounds of Golf Played.

Lease Section 5.3. Per Round Rate. States, “per round rate shall be applied to all golf course rounds played in which Sierra received revenue or compensation from golfers.” Reviewing Lease Section 4.4 herein above, green fee packages are 100 percent Sierra income and are not shared with the City. Revenue from membership, green fee packages, or member players are not identified in Sierra’s monthly reports as revenue it received in that month. (See Lease Section 5.4.)

It is unclear if the City has or has not received revenue for each round of golf played where a “green fee package” or membership was sold instead of a day-player, day-payer. This is because the Sierra monthly reports show -0- under “sales” for member rounds of golf. The “sale

of green fees, green fee packages” are 100 percent excluded from City payments. Each monthly report provided by Sierra to City shows -0- sales in the member column for rounds of golf played by members in that month.

Reporting by Sierra is an honor system based on mutual trust. The City has never done an audit of the Golf Course financial reports. According to City personnel, if an audit was ever conducted, it was an analytical audit. An analytical audit is the historical comparisons of the monthly reports for different years. These audits do not verify the facts and figures listed in prior or current monthly/yearly reports, only the historical trends compared.

Findings:

F 1 The MCGJ finds that the City’s golf course Budget reports are misleading. This gives the City Council and the public a false understanding of the actual Net Surplus in the City Budget.

F 2 The MCGJ finds that Lease Exhibit A and Exhibit B are obsolete.

F 3 The MCGJ finds that the record-keeping requirements of the Lease are not being met.

F 4 The MCGJ finds that the City appointed the Parks Director to coordinate with Sierra for this golf course planning and oversight role.

F 5 The MCGJ finds that the City has failed to exercise reasonable oversight and enforcement over the golf course maintenance and capital improvements.

F 6 The MCGJ finds that the Lease requires that logos and name “Madera Municipal Golf Course” must always be used for all signage, announcements, menus, events, websites, etc. The MCGJ finds that the logos and word “Municipal” have been often omitted from required usage.

F 7 The MCGJ finds that use of the golf course kitchen for catering from the golf course, is offered on both Sierra and Sugar Pine websites. Catering from the golf course is Prohibited and is a breach of the Lease.

F 8 The MCGJ finds that in 2021-23 the City gave Sierra unnecessary financial concessions due to the Covid-19 pandemic.

F 9 The MCGJ finds that Lease section 4.4 unnecessarily excludes the City from receiving any revenue from the described activities.

F 10 The MCGJ finds that there are no United States Golf Association reports as required by the Lease.

Recommendations

- R 1 The MCGJ recommends that the City Finance Director correct and clarify all budget entries by December 31, 2023.
- R 2 The MCGJ recommends that the City of Madera immediately rewrite a new contract for the lease, management, and operation of the Madera Municipal Golf Course.
- R 3 The MCGJ recommends “Detailed” records of Capital Improvements and Maintenance expenditures and the USGA advice reports, be kept by the City for public viewing and for at least five years or as required by law.
- R 4 The MCGJ recommends that Parks Director or other City Representative immediately begin to monitor and exercise oversight over the golf course Capital Improvement and Maintenance expenditures.
- R 5 The MCGJ recommends that the City immediately specify the Maintenance and Capital Improvement categories as defined by USGA to eliminate confusion as to what Sierra is paying and/or has paid for golf course Capital Improvements and Maintenance.
- R 6 The MCGJ recommends that the City immediately enforce the Lease provisions requiring the word ‘Municipal’ and all other name and logo requirements.
- R 7 The MCGJ recommends that the City immediately review its position on catering. When making any decision, the City should determine its original purpose for prohibiting offsite food service and catering. City should enforce the agreement or allow the use.
- R 8 The MCGJ recommends that the City immediately negotiate for concessions it made during Covid-19. The City should consider increasing its share of revenue by participating in all of Sierra’s income excluded from the City in Lease Section 4.4.
- R 9 The MCGJ recommends that a new Lease be drafted immediately deleting all obsolete terms which unnecessarily exclude the City from City revenue.
- R 10 The MCGJ recommends that the City should immediately make the USGA mandatory annual reports available for public review.

Required Responses Pursuant to Penal Code sections 933 and 933.05, the Madera County Grand Jury requests responses as follows:

From the following elected county officials within 60 days:

Mayor of Madera

Madera City Hall
205 West 4th Street
Madera, CA 93637

Madera City Council

Madera City Hall
205 West 4th Street
Madera, CA 93637

Invited Responses Pursuant to Penal Code sections 933 and 933.05, the grand jury requests responses as follows:

From the following governing bodies within 90 days:

City Manager

Madera City Hall
205 West 4th Street
Madera, CA 93637

Director of Parks and Community Services

John W. Wells Youth Center
701 East 5th Street
Madera, CA 93638

Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.