



***City of Madera Fails to Enforce the Golf Course
Contract Requirements Madera
Municipal Golf Course:
REVISITED 2023-2024
Madera County Grand Jury
Final Report 2324-06
June 19, 2024***



Summary

After receipt of responses from the City of Madera (City) to the 2022-2023 Madera County Grand Jury Report, City of Madera Fails to Enforce Golf Course Contract Requirements, 2223-02, the Madera County Grand Jury (MCGJ) revisited the City's multi-million-dollar asset, the Madera Municipal Golf Course (MMGC). The City has taken few positive actions since the previous report, and there is an ongoing lack of oversight, enforcement, and no action on deferred maintenance, failure to investigate and identify the subtenant bar operator, and failure to verify that the bar operator has ABC and City licenses.

Background

In 1991, the City of Madera (City), on behalf of its residents, established the open space recreational facilities, known as Madera Municipal Golf Course (MMGC), which is located on the southeast corner of Road 23 at 23200 Avenue 17, Madera, CA. The 18-hole Golf Course property is about 200 acres. It includes a large building that houses a pro shop for attire and accessories, a banquet room, a dining room with a bar, a kitchen, offices, and a patio area. The Madera County Tax Assessor has placed a value of \$2.8 million dollars for this public asset. Since the City opened this business in 1991, the City has never operated the business. The City has had at least nine different business operators for the golf course facilities from the private sector. These nine businesses held a Type 47 liquor license, and they are named on the Alcoholic Beverage Control (ABC) website. In 2009, the City signed a management and lease agreement

(Lease) with the current operator, SGM Inc., dba Sierra Golf Management Inc., (SGM), and dba Madera Municipal Golf Course (MMGC). There have been nine amendments to this agreement with the last amendment signed in June 2023 and ending after five years in 2028.

The Lease allows SGM to sublet parts of the premises. SGM took over the kitchen and bar operations from a suspended corporation and former SGM subtenant.

The MCGJ searched the ABC website for the MMGC bar history. The MCGJ discovered the identity of the business entity operating the city bar. The MCGJ read the ABC Notice posted at the MMGC, that SPS Madera Group LLC dba SPS at the Muni (GROUP), is operating the bar. (Please see the picture on the cover of this report which is the ABC Notice of liquor license transfer from SGM to GROUP.) The City confirmed that GROUP has never applied for a city business license. If the information the City provided to the MCGJ is accurate the GROUP's failure to obtain a City business license is a violation of City Ordinances. As of March 2023, SGM sublet the MMGC kitchen and bar facilities and businesses to SPS Madera Group, LLC dba SPS at the Muni (GROUP).

However, for some unknown reason both SGM and the City claim that Sugar Pine Smokehouse, LLC (Smokehouse) is SGM's subtenant that has been operating the food and bar businesses since March 2023. As of May 1, 2024, Smokehouse is not on the ABC list of operators at the MMGC. The ABC website shows no record of Smokehouse having ever held a liquor license.

After receiving the 2022-2023 MCGJ report, for the first time since 2009, the City followed the 2009 Lease by establishing a Golf Course Advisory Committee (GCAC), and it also received the first contract-mandated United States Golf Association (USGA) annual report in 13 years.

Since 2009, SGM has been required by the Lease to produce a USGA report on how to maintain and improve the MMGC every year. SGM's failure to follow this Lease requirement saved SGM about \$30,000 over a 13-year period. The City informed the MCGJ that it will overlook SGM's violation and not request any compensation for this Lease violation. This is evidence that the City is not enforcing the Lease and has no intention of holding SGM accountable for the Lease violation which saved SGM around \$30,000. SGM's failure to provide the annual USGA inspection reports for 13 years has contributed to the deferred maintenance now under discussion by the GCAC, SGM, and the City Council.

Questions linger about why the City takes such a lax position in enforcing the Lease by merely accepting, overlooking, and ignoring SGM's violations. The bar operator's identity and if the operator does not have a city business license may result in the City asserting its Chapter 6 Business License Ordinances to levy fines and/or criminal penalties. The 2023-2024 MCGJ has revisited the MMGC to delve into these and other matters.

Abbreviations

ABC - California Alcoholic Beverage Control

ADA - Americans with Disabilities Act

BOE - Board of Equalization

GCAC - City Golf Course Advisory Committee

CI - Capital Improvements

City - City of Madera, an incorporated city

GROUP - SPS Madera Group, LLC dba SPS at the Muni (verified with SOS, ABC, and MCR)

FTB - Franchise Tax Board

Lease - All references to the 2009 Madera Municipal Golf Course Agreement and the 9 amendments.

MCGJ - Madera County Grand Jury

MCR - Madera County Recorder

MMGC - Madera Municipal Golf Course

PCS - Parks and Community Services Director

PRA - Public Records Act – Government Code sections 7920 - 7931

SGM - SGM, Inc., doing business as Sierra Golf Management, Inc., and dba Madera Municipal Golf Course (verified by SOS, MCR, City license deletes “Municipal”)

SOS – California Secretary of State

Smokehouse -Sugar Pine Smokehouse

USGA - United States Golf Association

Methodology

- Interviewed key City personnel and other knowledgeable people.
- Examined City Lease with SGM and nine amendments.
- Studied the City budget noting the golf course debt was retired in 2023.
- SGM monthly payment, and revenue reports.
- Inspected three years of monthly reports that SGM filed with the City.
- Reviewed equipment list (Exhibit B in the original contract).
- Followed payment records of SGM.
- Reviewed capital improvement fund and costs.
- Reviewed City, SGM, Sugar Pine Smokehouse (SPS), SPS Madera Group, LLC, North Fork Indian Casino, ABC, SOS, and other websites.
- Checked the Secretary of State’s Business records.
- Reviewed the North Fork Rancheria’s Environmental Impact Review (EIR) for planned casino construction off CA-99.
- Contacted and reviewed the ABC history of the liquor license ownership and present status of the incomplete ABC file on SGM’s liquor License transfer to SPS Madera Group, LLC.

- Reviewed SGM ownership and golf courses managed by SGM.
- Visited the premises, website, and observed signage, ABC posting the Notice of change of liquor license to SPS Madera Group, LLC, menus and pricing, signage, restrooms, 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, its August 2023 report to the City, and the services it offers to golf courses.
- Reviewed MCR records for fictitious business name filings.
- Reviewed GCAC reports, City Council reports, and agendas and attended meetings.
- Reviewed Smokehouse – City business license applications and issued business licenses.
- Reviewed the County Personal Property tax filings in the Madera County Assessor’s Office.

Discussion

I. Correction to the MCGJ Report 2223-02 About the Sublessee

References to Sugar Pine Smokehouse (Smokehouse), in the MCGJ Report 2223 -02, are not correct. Most of those references to Smokehouse should be replaced by the business SPS Madera Group LLC, dba SPS at the Muni (GROUP) because Smokehouse has never been the business entity legally operating the MMGC bar.

The MCGJ was misled. The City and SGM represented that the Smokehouse was SGM’s subtenant operating the kitchen and bar. This information included written and verbal reports to the City Council, SGM’s website offering the Smokehouse menu, documents, records, agendas, public and official comments, stored videos of Council meetings, and interviews with the City Administration. By misleading the MCGJ that Smokehouse was SGM’s subtenant, the public was also misled. This report explains why Smokehouse cannot legally operate the MMGC bar.

II. The True Identity of SGM’s Subtenant

The City and SGM are required to know the parties involved in operating the businesses at the MMGC. The operators are SGM and its subtenant, GROUP, the bar operator. SGM knows that it is not selling its liquor license to Smokehouse because the ABC records show the Buyer is GROUP.

A. The City business license records processed by the City Finance Department indicate Smokehouse obtained its first business license in 2018 and was formerly located at 1830 West Cleveland Avenue in Madera.

B. Chapter 5 of the California Business and Professions Code requires that when a business, uses a fictitious name it must register that name in the county where it operates. Businesses which are not registered with the SOS as corporations or LLCs cannot falsely claim to be those entities. Corporations and LLCs must file, publish, and record their fictitious business

name statement with a county recorder no later than 40 days after using the name. As of May 1, 2024, the Madera County Recorder (MCR) had no record of any Smokehouse fictitious business name. As of May 1, 2024, the SOS had no records for Smokehouse.

A. With great difficulty the MCGJ followed the mysterious Smokehouse history through various public and government records. Smokehouse first appeared when it applied for a city business license on October 2, 2018. This application claims Smokehouse is a corporation. The application form was allegedly signed by the CEO corporate officer of Smokehouse. However, Smokehouse has never been a corporation, has never been an LLC., and has never had an ABC liquor license; Smokehouse is just a name.

D. The City Finance Department accepted Smokehouse business license applications as a corporation in 2018 and as an LLC on December 5, 2023. The City business license applications require signatures under penalty of perjury. The City's ongoing acceptance of Smokehouse as the MMGC subtenant, without checking with the ABC, SOS, and MCR, is evidence of the City's failure to exercise its oversight responsibility. On February 29, 2024, the City Finance Department issued a new business license to Smokehouse directly transferring the business location from the Cleveland address to the MMGC address with a new number and the notation, restaurant without alcohol. The City explained that without alcohol means the City Planning Department will check with the ABC to verify that Smokehouse has a liquor license, and if a license is verified, the without alcohol language will be removed. Thus, on February 29, 2024, Smokehouse appeared to become the subtenant operating a restaurant at the MMGC but without alcohol. This City issued business license to Smokehouse raises many questions.

E. If Smokehouse now claimed to be commencing its business at the MMGC without serving alcohol, and its name is not in the ABC records or on the ABC Notice, is this arrangement legal? Who was operating the restaurant prior to February 29, 2024, if it wasn't Smokehouse? As of February 29, 2024, since Smokehouse is stating it is a restaurant without alcohol then who is presently operating the City's bar facility? The food servers serve alcoholic beverages to tables and the patio which indicates that the restaurant is dispensing the alcohol. There appears to be some intrigue involved with these relationships.



III. Who is Operating the Madera Municipal Golf Course Bar?

The SGM held an ABC Type 47 liquor license which is only issued to restaurants that offer alcoholic drinks *incidental to the food it serves*. The ABC website shows that the SGM

license has restrictions and specific conditions. One condition is that it will not serve alcohol on the patio. The MCGJ did an inspection on May 7, 2024, which discovered that the food servers served bar drinks at dining room tables and outside on the patio. Perhaps the *without alcohol* notation should have been a red flag to the City informing it that *Smokehouse* has not been operating the bar since March 2023. If that didn't raise a flag, perhaps the City Planning Department if it finally checks with the ABC will discover that *Smokehouse* has not operated the MMGC bar for over a year. However, if *Smokehouse* has been operating the bar since March 2023 the ABC has no records approving *Smokehouse* to serve alcohol at the City bar. The City Planning Department and/or Code Enforcement hasn't checked the ABC website yet to make any findings about *Smokehouse* serving alcohol.

As of April 2024, the City provided the MCGJ with information which confirmed there is no copy of any ABC liquor license in the City's *Smokehouse* file. This is because the ABC has never issued *Smokehouse* a liquor license. The SGM website showing *Smokehouse* is operating the food concession, if true, would require *Smokehouse* to be the restaurant applying to the ABC for a Type 47 Liquor license *restaurant serving alcohol* incidental to the food service. The City business license states *restaurants without alcohol*. This too is notice that something is not right at the MMGC.

If *Smokehouse* purports to be a sole proprietorship, it has never been registered by the owner with the MCR. *Smokehouse* is not listed with the SOS, or MCR, and it has never held an ABC liquor license and it cannot legally operate the MMGC bar. The SGM Type 47 ABC license requires a restaurant to be the bar operator, not the other way around. The City has no written procedures requiring a business entity to offer proof and/or evidence of its legal status or an ABC license. The City does have ordinances requiring businesses to prove their identities.

The obvious discrepancy here is GROUP was a newly established business entity on November 11, 2022. GROUP never operated at the Cleveland location. This is because GROUP didn't exist until after the Cleveland building was demolished. Whereas the City Finance Department records show the *Smokehouse* history going back to 2018. ABC records show that GROUP has claimed to operate the MMGC bar since March 9, 2023. Nine (9) months later, on December 5, 2023, *Smokehouse* claimed that it was transferring its business location directly from Cleveland Avenue to the MMGC. This appears to be impossible due to the fact the Cleveland building didn't exist, and *Smokehouse* had ceased operations at that location about a year earlier.

The ABC, SOS, MCR, and City records clearly show that these alleged businesses, GROUP and *Smokehouse*, have traveled different paths over different time periods.

IV. GROUP is SGM's Subtenant and GROUP is Not Licensed by the City

The City initially cooperated with the MCGJ by providing documents until the MCGJ asked for more detailed records. At that point the MCGJ was directed to make a Public Records Act (PRA) request for more documents and/or contact the City attorney. The MCGJ made a PRA request to the City requesting the following documents:

(a) *Business license applications and issued business licenses for the following:*

(1) *GQ Investment Group, Inc. (GQ)*

(2) *Sugar Pine Smokehouse (Smokehouse)*

(3) *SPS Madera Group LLC dba SPS at the Muni (GROUP).*

The City provided two applications and a City license for *Smokehouse* dated February 29, 2024. The City also made the written statement that *no applications or business licenses exist for GQ or GROUP*. However, both GQ and GROUP have operated businesses in the City.

This is very surprising because GROUP is registered on the ABC website as the MMGC bar operator as of March 9, 2023. The absence of any City business license record for GROUP may indicate that GROUP has been operating the bar and kitchen in the City for over a year without ever applying for a City business license. If the records the City provided to the MCGJ are complete and accurate, and if GROUP has operated the bar without a City business license for over a year, the City may determine this situation is a violation of the City Business License Ordinances. The Ordinances provide for fines up to \$500. a day for every day. If this is correct, the City fine could be up to \$500.00 per day for 400+ days = \$200,000+. The GROUP posted the ABC Notice of License Transfer on March 9, 2023, that it was serving alcohol at the MMGC, and by May 1, 2024, that is about 420 days. (Please see the City Ordinances, Section VI, below.) The MCGJ is not asserting this is a fact, nor advocating any result, it is merely trying to follow the confusing, twisted connections involved and how any of this could happen under the City's scrutiny. It will be interesting to see if the City overlooks violations of the City Code, Chapter 6, as it overlooked SGM's failure to pay for USGA reports for 13 years.

V. The City Has Failed to Adopt and Follow an Accurate Business License Process

Although the City has specific ordinances, the City has not adopted a written policy concerning how it *confirms* the legal identity of business license applicants. If the City had a policy all businesses would prove their legal identities to operate as a legal business. Businesses would not be able to file papers under penalty of perjury claiming to be different types of entities. How did *Smokehouse* apply for City business licenses stating it is the three different types of business entities when *Smokehouse* did not exist? How could GROUP operate the MMGC bar for over a year without the City's knowledge or a city business license?

Again, these MCGJ premises are based on the accuracy of the records and information provided by the City to the MCGJ or stated by the City as no record found.

The City has not implemented any procedures to identify and catch violators, even when the parties are mentioned at City Council meetings, or posted on ABC notices, and websites.

VI. Victims of Corporate Fraud Compensation Fund (VCF CF)

The SOS administers the VCF CF, under its Business Programs Division. This fund may be available to persons who obtain a judgment against certain businesses like corporations. In some cases of criminal restitution, applications to this fund may be analyzed for payment if the

Debtor is unable to satisfy the judgment. Such judgments are not dischargeable in bankruptcy proceedings.

The City receives various forms which persons sign under penalty of perjury. The City has ordinances specifically targeted at misrepresentations made to the City. See the following section quoting City Ordinances and specifically Section 6-1.93. The MCGJ is not advocating for application to this fund because the City has no Civil judgment for fraud or judgment for restitution against any corporation.

Access to this fund is another reason for the City to verify business entities that apply for City business licenses. If the City obtains a judgment for misrepresentation or restitution and the business is unable to satisfy the money judgment, then the City can apply to the SOS for payment from this fund.

VII. City Chapter 6, Business License Ordinances Include Fines and Crimes

A. According to the *CITY CODE OF ORDINANCES FOR BUSINESS LICENSES sections 6-1.01 – 6-1.94, CRIMINAL AND CIVIL ACTIONS AUTHORIZED FOR FAILURE TO PAY LICENSE TAX*. The purpose of applying for a business license is to register a business in the City. This is so the tax can be properly credited to that business and to approve the zoning.

The title for *Section 6-1.93* is *VIOLATIONS; PENALTIES*:

Any person, . . . violating any provision of this chapter, . . . or knowingly or intentionally misrepresenting to any officer of the city any material fact in procuring the license or permit provided for in this chapter shall be deemed guilty of a misdemeanor.

B. A report was filed with the City by SGM. On April 3, 2024, as stated in the Report to City Council - Agenda Number E-3, under the heading *Food and Beverage*.

In early 2023 we entered into a sublease agreement with Sugar Pine Smokehouse (Sugar Pine) . . . Sugar Pine has become a great partner for SGM and the City of Madera . . .

SGM failed to mention to the City that the bar operator is GROUP. However, if SGM's bar operator is in fact *Smokehouse* as SGM represents, and if *Smokehouse* is operating the bar with SGM's approval, there is no ABC approval which is a violation of the ABC regulations.

At the April 3, 2024, City of Madera Council meeting, *Smokehouse* was proclaimed as a partner with SGM, and the City according to the following statement under the heading, *Food and Beverage*

Food and Beverage

In early 2023 we entered into a sublease agreement with Sugar Pine Smokehouse (Sugar Pine) that has benefited not only the golf course but the community, as their beloved local eatery found a new home at the golf course. They have done a great job of creating a community feeling around the course with outside events and entertainment for the residents of Madera. Sugar Pine came in and invested time and money into getting the building where it needs to be to be successful.

These announcements are questionable because *Smokehouse* is not SGM's sublessee. The *Smokehouse*, without a city business license or ABC liquor license, hosted an event at the MMGC in November 2023 with 20 wine vendors participating. *Smokehouse* has photos of this event and other photos of alcohol displayed on its Facebook page. *Smokehouse* is not licensed by the ABC to serve alcohol.

A. The MCGJ discovered that this publicly acclaimed sublease to *Smokehouse* in early 2023, did not occur as stated. The City of Madera is not a partner with *Smokehouse* or *Sugar Pine* as SGM reported to the City. No sublessee of SGM signed any agreement with the City. This continues to raise questions about the City's oversight and ability to understand its agreements, know its subtenants, oversee the legal operation of its business concessions, enforce its Business License Ordinances, and collect taxes due to the City.

B. *Section 6-1.05 LICENSE REQUIRED* states, *it shall be unlawful for any person to commence . . . any business in the city without first having procured a license from the city so to do, [sic] without complying with . . . the regulations of this chapter . . .* This ordinance was last updated in 1999.

The tax on businesses is supposed to be collected by the City Tax Collector. The Tax Collector merely sends out annual notices to renew business licenses. In the event that the City Tax Collector cannot collect the tax, the ordinance invokes help from the Police Chief. It is the responsibility of Code Enforcement to enforce this and all City ordinances.

VIII. *Smokehouse* Does Not Exist

The MCGJ is apprehensive about stating that *Smokehouse* is fictional based on claims and proclamations by SGM and the City. It was reported to the City Council on April 3, 2024, at the regular Madera City Council Meeting, that the *Smokehouse* exists and is doing a *great job*. Therefore, to verify the non-existence of the business *Sugar Pine Smokehouse, LLC.*, and after searching the SOS, ABC, MCR and City records, the MCGJ reserved the name *Sugar Pine Smokehouse, LLC* from the California Secretary of State (SOS) on May 2, 2024. The fact that MCGJ was able to reserve and control this name for 60 days is irrefutable evidence that *Smokehouse* is not registered as a legal business entity. On December 5, 2023, the City accepted an improper application for a business license, and on February 29, 2024, issued a license to *Smokehouse*. This application to the City identifies *Smokehouse* as both a sole proprietor and an LLC. This application was circulated and approved throughout City Departments; however, the application conflicts with itself.

Additional evidence suggests that SGM may be operating in violation of the Lease and/or City ordinances. A website, physical address, and domain name are all found to be questionable as to the identity of the SGM subtenant(s).

As recently as May 2024, the MCGJ continuous review discovered on the SGM website that SMG continues to identify *Smokehouse* as the food and beverage provider at the MMGC. On

the website, there are photos, a menu, and the letters SPS. Further down in bold, black letters display the name *Sugar Pine Smokehouse*.

A current review of search engines by the MCGJ indicates prior to the issuance of the City business license, on February 29, 2024, *Sugar Pine Smokehouse, LLC.*, address remained listed at 1830 Cleveland Avenue with a phone number. *Smokehouse* is also listed at the MMGC address.

Finally, on the *Smokehouse* Facebook page, there is a link to an address connecting to a link that shows that the domain name, sugarpinesmokehouse.com, is for sale for \$599.

The MCGJ could not determine if SGM has two subtenants at the MMGC. If both *Smokehouse* and GROUP are operating businesses as SGM's subtenants that could attract the attention of the ABC. The Facebook photos posted in November 2023 indicate that *Smokehouse* has been serving *food and alcohol* before the City license was issued on February 29, 2024. The ABC website is proof that *Smokehouse* has no approval to serve alcohol at the bar. GROUP has only appeared on the ABC website and on the ABC Notice taped to the dining room door since March 2023. However, GROUP's dba SPS at the Muni, appears on menus, SGM, and *Smokehouse* websites and elsewhere. Due to the confusion caused by SGM the MCGJ cannot determine the identity of the actual SGM subtenants or operator(s) of the kitchen and bar.

IX. City Golf Course Advisory Committee (GCAC) Oversight

The 2009 original Lease between the City and SGM recommends the establishment of the GCAC. After the MCGJ released the 2223-02 report, the City promptly moved to establish this Committee. This Committee meets monthly and provides the City Council with written reports of its deliberations, findings, and recommendations. The GCAC publishes reports for open public comments and City Council discussions with committee members about these reports. The Committee has seven members including the City, SGM, the business operator Director/Representative, and members of the public. The Committee is a positive first step towards establishing local oversight with the Parks Department to focus on this multimillion-dollar public asset, which has been in decline suffering from *deferred maintenance* for decades.

In October 2023, the GCAC received a report prepared by the Interim Fire Marshal, Matthew S. Tarr, following his inspection of the conditions in and around the MMGC building. The report determined that there were various ADA and City Code violations. Code violations include requiring and installation of new Exit signs, upgrading the restrooms to ADA and Code requirements, and repair damage to the building. The GCAC determined these violations are of the *highest priority to reduce the potential for liability*. The MCGJ has not determined if any of this required work has been done.



X. Capital Improvements vs. Deferred Maintenance

The City Council meeting on April 3, 2024, showed a positive focus on this public asset. There was a discussion about the new Capital Improvement (CI) funds. The 2009 Lease required SGM to pay \$50,000 for CI. Later this was reduced to \$19,900. The SGM cannot apply its normal maintenance expenses (Lease *Section 16*) to its CI contributions. The use of CI money and SGM's completion of CI projects has been on the honor system. This was because nobody from the City monitored the physical results from SGM's application of the CI money. The Lease requires the City and SGM to keep reports for five years on where CI money was used. These CI reports were not readily available to the MCGJ until days after it received the approval to publish last year's report. Since SGM is required to buy sand as normal maintenance (Lease *Section 16.4*) and it maintains many other golf courses where it presumably is buying sand, the City should set up a system to make sure that invoices for sand, etc., are delivered to the MMGC and not going elsewhere.

Presently the CI requirements have been raised in the 9th Amendment to \$25,000 payable by SGM, and \$25,000 by its sublessee. Thus, the original \$50,000 is now back in place. These payments are made in advance, every July. The City has no enforcement against the sublessee because the sublessee never signed the 9th Amendment. The payments are held by the City and SGM submits statements for evidence of its CI expenses. It is unknown who in the City verifies if invoices are for maintenance or CI. There is no verification of work performed and materials used.

The City and SGM claim confusion in the Lease between the identification of CI and maintenance. However, *Section 16* is very clear about what constitutes maintenance. The Lease lists what SGM must supply. For example, normal maintenance includes equipment, materials, labor, fuel, sand, etc. In 2021, the City allowed SGM to apply the purchase of sand to CI instead of a normal maintenance expense under Lease *Section 16.4*.

On April 3, 2024, and again on May 1, 2024, the City Council discussed renovating the MMGC restrooms due to numerous complaints from golfers. Also, serious restroom problems are mentioned in both the August 2023 USGA report and the April 2024 GCAC report. A third report prepared by the City consultant studying the MMGC for Americans With Disabilities Act (ADA) compliance, shows pictures of restrooms that do not have basic handrails attached to the walls. The predominant discussion on April 3, 2024, was about *deferred maintenance*, and the discussion also alluded to using the CI money for the deferred maintenance. Since SGM has failed to maintain the premises, it is assumed that SGM caused some of the deferred maintenance by not painting and performing other normal upkeep. The CI monies should never be credited for deferred maintenance that was caused by SGM's years of neglect.

The Lease allows the City to give SGM a *10-Day Notice* for needed repairs describing what the City expects to be done. If SGM fails to take action to fix the problem within ten days, the City can make the repair and bill SGM for its services. The City has never enforced this Lease term against SGM.

There has been a *ghost* handprint on the Men's restroom door for at least a year. This is where the black material covering the outside of the door has worn through to the white paint on the metal door. At the May 1, 2024, City Council meeting the City presented its own photo of this ghost-like handprint on the men's restroom door. In December 2023, the City had an employee Appreciation Breakfast in the MMGC banquet room for 200 employees. Every City employee had to walk past the men's restroom door viewing the handprint eyesore which appeared to be brown and unsanitary. Although the City has been aware of this condition for over a year, and it has been under public discussion for months, no action has been taken by the City or SGM for this minor repair.



XI. The City Increased the Rent by \$25,000, But it Now Pays \$25,000 to CI

The Ninth Amendment raised SGM's CI from \$19,900 to \$25,000. The City has never paid into the CI account. The 9th amendment to the Lease now requires the City to pay \$25,000 into the CI account. To compensate for this new City contribution to the CI fund, the City raised SGM's annual rent from \$40,000 to \$65,000. The result is no net increase to the City because the City's CI contribution is the same as SGM's raised rent payment. Thus, there is no net financial gain for the City from this offset. However, the City negotiated a higher *round of golf paid rate* which should result in a net increase in City revenue.

XII. Ongoing Failure to Use the Full Name of Madera Municipal Golf Course

In 2009, SGM Inc. first filed a fictitious business statement with the Madera County Recorder (MCR) doing business as *Madera Municipal Golf Course*. SGM applied for and was issued a city Business License for MMGC. The City Lease requires that this name, MMGC, must always be used by SGM together with the City and Parks logos. This business name is not used consistently as required by the Lease. For example, SGM letterhead and its website have often failed to include the word *Municipal*. In March 2024, SGM presented a letter to the Mayor and City Council that omitted the word *municipal* and the City and Parks logos from its letterhead. This omission was received by the City Mayor and Council without comment.

The GCAC had this name violation as a topic at its public meeting, but no action was taken.

The SGM website displays *Sugar Pine Smokehouse* as the MMGC food operator [Madera Golf Course | Dining \(maderamuni.com\)](https://maderamuni.com) and often omits the required City and PCD logos and the word *Municipal* from the name. The Lease states:

Sierra [SGM] shall ensure that all brochures, scorecards, and other printed advertising and marketing materials always bear and maintain City's identity with the mandatory use by Sierra [SGM] 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's response to Recommendation six (R6), in the MCGJ 2223-02 report, agreed that there were violations of the name and logo requirements, and the City would make necessary corrections. However, as of the end of the day, May 1, 2024, there have been no changes or corrections to these name and logo violations. The City has been aware of this Lease violation for almost a year and yet it has not enforced this requirement. This infraction appears to be the pattern in this SGM City business relationship.

Due to the City's ongoing neglect to enforce the Lease terms, the name requirement has been an unresolved, ongoing issue since the MCGJ Report last year. This brings up the question whether any person in the City is responsible for understanding how such contracts are supposed to operate and be enforced. This becomes a more obvious issue when the City is admittedly aware of minor type cosmetic repairs and yet fails to enforce any remediation.

XIII. The City Has Not Designated a Person Responsible to Review Contract Requirements, Performance, Compliance, and Enforcement

The City Attorney is available to review contracts and explain the terms. However, once a contract has been approved by the Council, who is responsible for City oversight of contractual performance? This question is directed to all agreements, bids for services and materials, etc. In 2014, with the third amendment, the City delegated the MMGC oversight to PCS. However, there has been no history of any oversight by the PCS. While that oversight involves constant physical investigation it does not involve interpreting the Lease and its nine amendments to understand and enforce the management company's duties.

XIV. There is No Current Inventory of Personal Property and Fixtures which the City Owns vs. What SGM or GROUP Owns

The MCGJ asked the City for an inventory listing the personal property and fixtures it owns at the MMGC facility. This list is important for insurance claims in case of a loss from fire or other insurable events. This is also important due to the replacement of equipment by management and to avoid a dispute as to who owns what. The reply from the City was that the last inventory list is Exhibit B to the original 2009 Lease. However, as the MCGJ report last year explained, fourteen years ago, all equipment/property was sold to SGM two weeks after the

Lease was signed and is no longer City property. This is another indication that, due to numerous amendments to the Lease instead of drafting one consolidated document, such successive changes over the past 14 years have simply created much confusion and no transparency. The goals and thoughts of the original planners back in 2009 are unclear because the City claims *we do not know what those people were thinking because they are no longer available*. This underscores the necessity for a new comprehensive Lease agreement.

XV. The City Consultant's 96 Page ADA Report – MMGC Inspection

A consultant was paid by the City to inspect and report on *Americans with Disabilities Act* (ADA) compliance throughout the City including the MMGC. The Report dated December 2022 resulted in a very detailed report and an inspection on the MMGC with 96 pages of observations including color pictures of the golf course facilities. The report raised concerns about the lack of ADA compliance. Again, the restrooms became the focus of this report. Each item noted in the report was supported with a color photo and a comment about the building code and ADA requirements which are of concern. The MCGJ was informed that each item is being inventoried by the consultant. Since the consultant's inventory, each of these items is supposed to be physically observed and noted by the *Parks and Community Services Department* (PCS) with its comments. This minute, detailed itemization has not been done by PCS. A previous ADA report was completed in 2009. However, there is no record of any review or response regarding the MMGC in the City records to that ADA report.

The MCGJ made visual walk-through inspections of the MMGC main building which began with bird droppings and a smashed egg on the outside walkway near the entrance. This is near the upright concrete ashtrays which were filled up with cigarette butts, cigars, a banana peel, and other trash. Entering the double glass doors and viewing the men's restroom door to the left, the ghost handprint on the men's door was obvious where the black covering is worn out from years of pushing the door open. Entering the right hallway into the bar-dining area is a raised lip of curved black tile which could be a hinderance or hazard for guests and employees. In addition, a transitions area at the entry to the dining room/bar area features areas of gaps in the flooring material. These are just a few examples of obvious, visible deferred maintenance and failures of ADA compliance.

XVI. The City Shows No Plans to Enforce SGM's Lease Compliance

The City has failed to take any action related to SGM's Lease violations except for changing the catering prohibition and enforcing the USGA report.

Ramifications of the City's failure to enforce the Lease after more than a decade have caused normal maintenance issues to become major deferred maintenance expenditures. Although the City is aware of the neglect of this multi-million-dollar public asset, the City has an uphill climb to achieve active oversight of the property and enforcement of the Lease. Issues such as compliance with the Lease and normal maintenance, and if the SGM liquor license can be transferred to the subtenant, are yet to be identified. No corrective action has been taken by

the City. It appears to the MCGJ that SGM expects that its Capital Improvement (CI) fund credits will be applied to its deferred maintenance expenditures in violation of the current Lease agreement. The City indicated that the CI could cost over \$4 million dollars. Worn out paint was quoted to cost \$50,000 which is two-thirds of the CI fund.

In 2023 the City made the final payment for MMGC, and this multi-million-dollar public asset is now debt-free. The retirement of the MMCG debt creates an opportunity for the City to redirect those freed-up funds to improve this long overly, neglected property. Improving this asset will improve MMCG's value, reputation, and desirability to the world of golf.

Conclusion

The City entered the Lease with SGM 14 years ago in 2009. The Lease allowed SGM to operate the public MMGC and facilities efficiently and maintain the entire property in good condition for public use. In 2024 both the City and SGM recognized that the property has seriously deferred maintenance issues. This and ADA compliance have created a financial crisis for MMGC.

Although the City Lease allows SGM to sublet the premises, and in 2023 SGM sublet the kitchen, bar, and banquet room, the City has failed to investigate SGM's subtenant. Not only has the City failed to inquire about this subtenant, but the City has also failed to check with the ABC to identify the business entity operating the MMGC bar. Had the City checked the ABC website it might have questioned why SGM has not been able to sell its liquor license to the subtenant after the one-year escrow. The ABC website shows that on February 29, 2024, the Board of Equalization (BOE) placed a hold on the SGM-GROUP liquor license escrow. However, the SGM liquor license was transferred to GROUP in late April 2024. The information presented in this MCGJ report should trigger a City inquiry about the insurance coverage on the subtenant's activities and legality of operating the City bar.

The very lax ability of the City to connect these and other obvious facts has become the major focus of this MCGJ investigation and report. For example, the ABC records available on its website show that GROUP is SGM's subtenant operating the MMGC bar. The ABC notice posted on March 9, 2023, has been taped to the MMGC dining room door for over one year. The City has hosted its Employee Breakfast in the building and has apparently ignored this notice. The SOS confirms that GROUP has a valid registration as an LLC as of November 11, 2022. The City has no written policy to check the registration of businesses seeking a City business license and has registered *Smokehouse* as three different types of business entities.

The alleged *Smokehouse* business operating under City business licenses since 2018, cannot be found in any other government records. The City records show inconsistent types of businesses for *Smokehouse* which cannot be verified from any other sources.

The City has many blind spots that it must address to monitor the services and public properties under its trust. The City must get serious to create a system of accountability with written procedures to enforce violations of the City ordinances. As stewards of the City, the City Administration has the responsibility to protect and maintain the public's assets in good condition.

Findings

F1. The MCGJ finds that the City has followed the 2009 Lease by establishing the Golf Course Advisory Committee to inspect, discuss, and report monthly to the City with findings and recommendations about MMGC.

F2. The MCGJ finds there is no current Inventory list of City owned personal property and fixtures located at the MMGC.

F3. The MCGJ finds that after 13 years the City has enforced one section in the Lease by requiring SGM to pay for the 2023 mandatory annual USGA report which was received in August 2023.

F4. The MCGJ finds that the City's PCS has failed to inspect, inventory, or comment to the 2022 consultant's 96-page ADA report evaluating the conditions at the MMGC.

F5. The MCGJ finds that the City has failed to understand the Lease and the series of nine amendments that have generated confusion hindering the orderly exercise, reasonable oversight, and enforcement over the MMGC tenants, maintenance, and capital improvement obligations.

F6. The MCGJ finds that the City business license application processing has no written procedures and thus no safeguards against fraudulent applications.

F7. The MCGJ finds that the logos and name *Madera Municipal Golf Course* are often omitted from signage, scorecards, announcements, menus, events, websites, etc.

F8. The MCGJ finds that the golf course kitchen and bar have not been operated by *Sugar Pine Smokehouse*.

F9. The MCGJ finds that the City made the written statement that no applications or City business licenses exist for GROUP.

F10. The MCGJ finds that the use of CI money has been discussed by the City and SGM as being used for deferred maintenance at the MMGC.

F11. The MCGJ finds that the City Tax Collector has no system to track businesses within the City to ensure that the City is receiving prompt and continuous tax payments.

F12. The MCGJ finds that the City of Madera has had discussions about writing one coherent consolidated MMGC Lease with SGM.

F13. The MCGJ finds that the City has repeatedly failed to ascertain or confirm the true identity of SGM's purported subtenant(s) at the MMGC.

F14. The MCGJ finds that SGM appears to have two subtenants: *Smokehouse* for the food service, and the undisclosed bar operator GROUP.

F15. The MCGJ finds that the Interim Fire Marshal recommended that the MMGC be brought up to both the ADA requirements and the City Building Code due to serious violations.

F16. The MCGJ finds that the City has failed to ensure that its tenant and subtenants at the MMGC have performed their daily maintenance obligations under the Lease

Recommendations

R1. The MCGJ recommends that this GCAC continue its monthly oversight of MMGC.

R2. The MCGJ recommends that the City create an Inventory list of property and fixtures it owns at the golf course within 90 days of the publication of this report.

R3. The MCGJ recommends that SGM continue to provide the mandatory annual USGA advisory reports.

R4. The MCGJ recommends that the City have the PCS physically inspect and provide a written report to the City Council on each observation noted in the 96-page ADA Consultant's MMGC report within 90 days of receipt of this report.

R5. The MCGJ recommends that the City assign a person or department responsible for following up on all contracts to determine contractual performance and to enforce violations of required performance within 90 days of receipt of this report.

R6. The MCGJ recommends that the City enact written procedures for reviewing and processing Business license applications within 30 days of this report.

R7. The MCGJ recommends that the City correct the omission and take action to either enforce this Lease requirement or delete the requirement within 30 days.

R8. The MCGJ recommends that the City require proof of the identity of the tenants and /or subtenants operating the kitchen and the bar and obtain a copy of the ABC liquor license within seven days.

R9. The MCGJ recommends that the City seek the maximum fines and penalties against GROUP within seven days of publication of this report.

R 10. The MCGJ recommends that the City enforce the maintenance provisions in Lease *Section 16* to require SGM to pay for all deferred maintenance.

R 11. The MCGJ recommends that the City enact adequate tracking systems to ensure that businesses are paying taxes to the City within 30 days from the publication of this report.

R 12. The MCGJ recommends that the City complete negotiations and memorialize the product of the negotiations into one modern consolidated Lease within 90 days from the publication of this report.

R 13. The MCGJ recommends that the City recognize that SGM has represented its subtenant as *Smokehouse* and commence all appropriate actions to determine and correct the subtenant's true identity of the kitchen/dining and bar operator(s) within 30 days of the publication of this report.

R 14. The MCGJ recommends that the City investigate this subtenant discrepancy and take appropriate action within 7 days of the publication of this report.

R 15. The MCGJ recommends that the City and SGM take action to correct these violations and complete the required work to avoid serious potential liability within 30 days of the publication of this report.

R 16. The MCGJ recommends that the City enforce timely maintenance at the MMGC immediately.

Report Respondents

Pursuant to Penal Code sections 933 and 933.05, the Madera County Grand Jury requests that the statutory required responses be delivered within the deadlines in both written form and PDF to the following:

Superior Court of Madera County
200 South G Street
Madera, CA 93637

Madera County Grand Jury
Po Box 534
Madera, CA 93639

Required Responses:

Pursuant to Penal Code sections 933 and 933.05, the MCGJ requests responses as follows;
From the following elected county officials within 90 days:

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

Mayor of the City of Madera
Madera City Hall
205 West 4th Street
Madera, CA 93637

Madera County District Attorney
300 South G Street
Madera, CA 93637

Invited Responses:

Pursuant to Penal Code sections 933 and 933.05, the Madera County Grand Jury invites
responses from the following within 60 days:

California Attorney General
1300 I Street Ste 1142
Sacramento, CA 95814

Alcoholic Beverage Control
1330 E. Shaw Avenue Ste or Building B
Fresno. CA 93710

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

City of Madera Director of Parks and Community Services
John W. Wells Youth Center
701 East 5th Street
Madera, CA 93638

City of Madera Finance Department
Madera City Hall
205 West 4th Street
Madera, CA 93637

City of Madera Police Chief
330 C Street
Madera, CA 93637

City of Madera Planning Department
Madera City Hall
205 West 4th Street
Madera, Ca 93637

City of Madera Code Enforcement
330 C Street
Madera, CA 93637

City of Madera ADA Advisory Council
Madera City Hall
205 West 4th Street
Madera, CA 93637

City of Madera Golf Course Advisory Committee
Madera City Hall
205 West 4th Street
Madera, CA 93637

Note: This report was prepared using current information available on the websites listed.

Reports issued by the Civil 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 Civil Grand Jury. The California State Legislature has stated that it intends the provisions of Penal Code Section 929 prohibiting disclosure of witness identities to encourage full candor in testimony in Grand Jury investigations by protecting the privacy and confidentiality of those who participate in any Civil Grand Jury investigation.
