

Attorney-Client Privileged & Work Product

Report of the Investigation of Allegations  
in Affidavit of Jefferson Wagner

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*Submitted Pursuant to the Commission of  
the Malibu City Council*

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## I. Executive Summary of Investigation and Conclusions

After an objective and thorough review of available evidence, and interviews of numerous witnesses, we have determined that the allegations and insinuations of public corruption set forth in the December 20, 2020, affidavit of former Malibu City Councilmember Jefferson Wagner (the “Affidavit”) are either *inaccurate* or *unsubstantiated*.<sup>1</sup> In our opinion, the credibility of the affiant also is doubtful.

To the extent that the Affidavit purports to reveal corrupt acts (such as an offer to pay or the payment of bribes, or providing services or official functions or actions based on favors or illegal inducements), the allegations are incorrect, untruthful and/or not substantiated by the information obtained by the undersigned counsel (hereafter, “Counsel”). Based on our findings, we do not recommend any follow-up action be taken by the City Council.

We reached these conclusions after interviewing 28 witnesses, including former Councilmember Wagner, reviewing numerous written materials (including materials provided by witnesses and the City of Malibu), litigating a motion to unseal materials related to certain allegations in the Affidavit, reviewing publicly available records and media pertaining to select matters, and analyzing potentially applicable laws, regulations and other authorities.

We attempted without success to interview a small number of additional potential witnesses; our investigation may have been hindered by select witnesses’ declination to provide information which they were claimed by others to have. With those caveats in mind, we nonetheless have a high degree of confidence in our conclusions -- especially our finding that Malibu City Government is corruption-free -- and our opinion that further investigation and analysis would not serve any useful purpose.

In the course of our investigation, some witnesses expressed displeasure with various actions taken (or not taken) by City personnel. These complaints, whether factual or not, might support a conclusion that the City’s administration is imperfect in the views of some. They certainly evidence the universal truth that government administrators cannot always satisfy everyone, particularly on controversial issues such as controlling or encouraging development in a City like Malibu. Upon determining that a complaint did not implicate potential corruption, however, we did not evaluate it further. We reach no conclusions regarding such matters, as they pertain to public policy and the quality of government services, which lie outside of our mandate and expertise.

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<sup>1</sup> A copy of the Affidavit is attached as Exhibit A.

## **II. Purpose and Scope of Investigation**

This investigation was undertaken at the direction, and for the benefit, of the Malibu City Council for the purpose of (1) investigating the factual basis underlying certain allegations in the Wagner Affidavit; (2) determining whether the allegations of corruption in the Affidavit are substantiated, or at least are substantial enough to merit follow-up actions, including additional investigation; and (3) recommending appropriate actions to be undertaken if we found material evidence of corruption. We were *not* engaged to investigate or make recommendations regarding the quality or efficiency of City services. Nor were we engaged to assess whether the City's operations will meet the varying visions of Malibu's future that some of its elected officials, City staff and residents subsequently shared with us.

### **A. Request For Proposal and Engagement**

Pursuant to the direction of the Council, in February, 2021, the City issued a request for proposals for an independent investigation of the Wagner Affidavit. On the recommendation of Councilmembers Karen Farrer and Bruce Silverstein, on April 26, 2021, Counsel was notified of their selection to complete an objective and impartial investigation of the allegations in the Affidavit, and thereafter to provide the City Council with a confidential, attorney-client protected report and appropriate legal advice. Councilmembers Farrer and Silverstein were designated as client representatives for purposes of our investigation. We thank them for the excellent support, advice and suggestions that they imparted during our investigation.

### **B. The Confidential Internal Investigation**

Our investigation, as approved by the City Council, consisted of the following steps: (1) assessing the issues implicated in the Wagner Affidavit; (2) collecting and evaluating evidence or information from witnesses, or other sources, pertaining to alleged corrupt acts described in the Affidavit; (3) evaluating whether the allegations in the Affidavit are or are not substantiated and/or credible; (4) researching and assessing potential remedial measures with respect to any evidence of corruption; and (5) preparing an objective and attorney-client privileged report for the City Council regarding our findings and any recommendations.

During the course of our investigation, we were informed, but could not corroborate, that some Malibu residents have personal knowledge of certain corrupt acts, but were concerned about revealing this information because they were concerned about retaliation by City personnel. Thus the City Council, at our request, authorized us to receive information from witnesses on an anonymous basis, if requested by the witness. The few witnesses who invoked this protection are not identified by name herein, or in the accompanying materials, and instead are referred to only as a "Confidential Source" or "CS." It should be pointed out that

witnesses of this type are, by their nature, of limited use and credibility. This is because anonymity impairs an investigator's ability to test a witness' veracity or objectivity, potential motives and biases, and/or to assess information they purport to know by asking other witnesses about such claims, including such things as whether the subject witness is in a position to know things that she/he may claim. Where witnesses provided only select information on a confidential basis, that information has been redacted in the reports of their interviews.

### **III. Investigative Process**

The investigation followed conventional practice in commencing with witness interviews. Counsel did not interview every conceivable witness, but instead sought to interview witnesses with potential material information pertaining to the key allegations of corruption in the Affidavit, or who appeared important in assessing the credibility of a significant witness. Because an investigation can be no more accurate than the underlying evidence which surfaces, hearsay which could not be corroborated was largely discounted in reaching our ultimate conclusions. Written records were maintained at each step, consisting of witness interview reports, records provided by witnesses or otherwise obtained, any material communications with witnesses, court pleadings, and miscellaneous research materials. Counsel communicated on an ongoing basis with City Attorney John Cotti, and provided interim status updates to the designated Client Representatives, Councilmembers Karen Farrer and Bruce Silverstein. Counsel also communicated with each other on an ongoing basis to evaluate and analyze the evidence, make strategic decisions, assess and designate further steps, and allocate outstanding tasks.

#### **A. Persons Interviewed**

1. David Barkhurst, Deputy District Attorney, Public Integrity Division, LA County District Attorney regarding the investigation of Jefferson Wagner;
2. Bonnie Blue, Former City Planning Director;
3. Candace Brown, Jefferson Wagner's significant other;
4. Scott Dittrich, Malibu resident;
5. Rob DuBoux, Director of Public Works;
6. Karen Farrer, Councilmember;
7. Reva Feldman, Former City Manager;
8. Janet Friesen, Malibu resident;
9. Heather Glaser, Former City Clerk;
10. Paul Grisante, Mayor;
11. Kraig Hill, City Planning Commissioner;
12. Christy Hogin, Former City Attorney;

13. John Mazza, City Planning Commissioner;
14. Richard Mollica, City Planning Department Director;
15. Rick Mullen, Former Councilmember and current firefighter with L.A. County Fire Department;
16. Skyler Peak, Former Councilmember;
17. Kelsey Pettijohn, Acting City Clerk;
18. Mikke Pierson, Councilmember;
19. Michael Robinson, LA County District Attorney Investigator;
20. Bruce Silverstein, Mayor *Pro Tem*;
21. Gary Smith, Esq., Attorney and former criminal defense counsel for Jefferson Wagner;
22. Lisa Soghor, Assistant City Manager;
23. Mari Stanley, Malibu resident;
24. Steve Uhring, Councilmember;
25. Jefferson Wagner, Former Councilmember and Wagner Affidavit affiant; and
26. Miriam Woodrow, City Human Resources Manager.

**B. Confidential Sources (“CS”) Interviewed**

1. Malibu Resident No. 1; and
2. Malibu Resident No. 2.

**C. Other Sources**

1. Marshall Camp, Esq., outside counsel for Mani Brothers Real Estate, owners of The Malibu Beach Inn; and
2. John Cotti, Esq., Malibu City Attorney.

**D. Persons Who Did Not Respond to Multiple Requests for an Interview**

1. Rob Joseph, Private investigator, supposedly hired by a media source, who lists himself on his website as “Officer Hollywood”;
2. Antonio Villaraigosa, Former Mayor of Los Angeles; and
3. J. Flo (“JJ”) Katz, Malibu resident.

**E. Other Tasks Completed**

1. Brought motion to unseal affidavit in support of search warrant regarding Jefferson Wagner's home;
2. Reviewed contract for renovation of City Hall, and associated records for possible bribery suspects or other corrupt acts;

3. Reviewed select Malibu City Council proceedings and materials pertaining to time periods and matters alleged in the Wagner Affidavit;
4. Reviewed recorded material regarding The Malibu Beach Inn;
5. Researched and reviewed publically available documents and media regarding events and individuals described by witnesses;
6. Reviewed and analyzed select laws, regulations and other authorities. These include provisions of the California Penal, Government, Elections and Public Contract Codes; United States Code (Federal Criminal Provisions); and Malibu Municipal Code (*See* Exhibit B); and
7. Communicated with LA District Attorney's Office Investigators Arthur Choi and Britton Schaefer (Public Integrity Unit).

#### **IV. Investigation of Specific Allegations and Findings**

##### **A. Wagner Affidavit Allegation No. 1 – Attempt to Bribe Councilmember**

Wagner's primary claim of corruption is that "[d]uring the remodeling and renovation of the current Malibu City Hall, [he] was offered (but did not accept) valuable personal 'incentives' to approve a specified vendor / contractor who was bidding to perform various services in connection with the construction project." (Affidavit, ¶ 6)<sup>2</sup>

Wagner states that he was offered one of three forms of a bribe: (1) either cash equivalent casino chips in a basket which he could use during an all-expenses paid "weekend in Las Vegas," (2) an all-expenses paid trip to Costa Rica, or (3) the vendor would perform "re-stuccoing and painting of [his] personal property." (*Id.*, ¶ 7) In return, the vendor had to be "selected for the project based on a vote of the Malibu City Council." (*Id.*, ¶12) Wagner further states that the vendor posited a potential value of these inducements to be \$50,000, and offered suggestions for structuring bank deposits. (*Id.*, ¶¶ 9, 11). As described by Wagner, this constitutes a classic form of bribery of a public official.

Wagner could not identify the vendor, but stated that he was given literature "identifying the vendor [he] was being asked to vote to approve." (¶ 14) Wagner states he provided the "literature" to then-City Attorney Christy Hugin, who allegedly took the documents while agreeing with Wagner that an attempt to bribe him had occurred. (*Id.*, ¶ 15)

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<sup>2</sup> In July, 2010, the City entered into a construction contract for the City Hall renovation work, which was completed by January, 2013.

Wagner apparently did not write down or otherwise document the name of the corrupt contractor or his company, nor does he recall this information. (*Id.*, ¶ 18)

Wagner never followed-up to see what action (if any) had been taken after he reported the attempted bribe to the City Attorney. Wagner also did not bring the matter to the attention of the Malibu City Council. In Wagner's words: "I do not know what, if anything, the Malibu City Attorney did to follow up on this matter. To the best of my knowledge and recollection, the Malibu City Attorney did not bring this matter to the attention of the full Malibu City Council in my presence." (*Id.*, ¶ 16) Wagner, as noted, did not attempt to do so either. It does not appear that he even told members of the City Council at the time about the bribe attempt. Accordingly, Wagner states that he "do[es] not know whether other Members of the Malibu City Council and/or any employees of the City of Malibu received and/or accepted similar offers." (*Id.*, ¶ 17)

Wagner evidently did not ask any City Hall staff whether they or others had also been approached by a lawless contractor, or been offered unlawful inducements to provide favorable treatment to some while denying fair services to others.

When interviewed by Counsel, Wagner stated that, in addition to telling the City Attorney, he told Planning Commissioner John Mazza, Councilmember Steve Uhring and a friend, Scott Dittrich, about the bribe attempt at or about this time.

Mazza confirmed that he had been so informed at or about the time, but his description of what Wagner said to him is inconsistent with Wagner's description of the events. According to Mazza: "Yeah he [Wagner] told me right off . . ." Mazza doesn't "remember the occasion," but stated that Wagner told him about "some guy who was gonna plaster his house." (*See Appendix of Interviews, Mazza Report*).

Councilmember Steve Uhring said that "long ago," Wagner had told him that someone tried to bribe him. As with Mazza, Uhring's description of what Wagner told him does not correspond closely with Wagner's description of the events. Uhring told Counsel that Wagner claimed to have called the DA, who told him, "Get used to it kid."<sup>3</sup> (*See Appendix of Interviews, Uhring Report*). When interviewed by Counsel, Wagner did *not* claim to have called the DA's office, and recited no such statement.<sup>4</sup>

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<sup>3</sup> In Counsel's opinion, the use of such flippant language, by a LA District Attorney's Office Public Integrity Section prosecutor or investigator, is highly unlikely. A local politician's report of attempted bribery of this magnitude would not have been handled so dismissively.

<sup>4</sup> Counsel was informed by one witness that a local resident named "JJ Katz" had also been contemporaneously informed of the bribe, but repeated efforts to contact Katz to confirm this went without a response.

Scott Dittrich said he “explicitly” remembered a conversation at Zuma Jay’s, the surf shop, in which Wagner told him he had been offered a bribe *via email* by a contractor *working on* the City Hall project which he did not accept, and that he (Wagner) had gone with John Mazza to the FBI, but the agents told him “hey it’s [the purported bribe] not a million bucks,” so it is of “no interest.”<sup>5</sup> (See Appendix of Interviews, Dittrich Report). Dittrich could not date the conversation, but estimated it occurred seven years ago (2014) or maybe around November, 2011.

Wagner’s statements to Counsel were materially different. First, Wagner claimed that the bribe was conveyed orally; he never mentioned an email. Second, Wagner claimed an attempted bribe by a *potential* vendor, not a contractor working on the City Hall renovations, as related by Dittrich.<sup>6</sup> Third, Wagner variously claimed that he spoke with the FBI twice - *after* the release of his Affidavit in 2021, and in 2016. Both dates are inconsistent with having told Dittrich about doing so (on a single occasion) years earlier. Fourth, Wagner did not allege the dismissive comments by the FBI that Dittrich recited, although he did say that the FBI showed little interest.

Wagner’s partner, Candace Brown, corroborated Wagner’s allegations insofar as she stated that she recalled a man coming into Wagner’s shop, Zuma Jay’s, and offering Wagner benefits in exchange for a piece of the contract. She could provide no further details. Her recollection also differs from Wagner’s insofar as she stated that the man came into Zuma Jay’s on *two* occasions. When interviewed, Wagner claimed only *one* occasion.

**Is Allegation No. 1 substantiated?** No.

**Are the claims in Allegation No. 1 credible?** No. In our opinion, the allegations are untrue, and they clearly are insufficiently corroborated.

### Analysis Regarding Basis for Allegation No. 1.

#### **Evidence Supporting the Bribe Allegation**

1. Wagner’s direct testimony that it happened.
2. Brown corroborates that she witnessed or was aware of a man offering Wagner a bribe. But, her description of the event lacks detail, and is not entirely consistent with Wagner’s.

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<sup>5</sup> In Counsel’s opinion, the use of such flippant language by an FBI agent is highly unlikely. Based on Counsel’s experience, there is no dollar threshold for the initiation of a corruption investigation by the FBI. The DOJ would have aggressively pursued such a tip.

<sup>6</sup> Query why any vendor already working on the project would offer a bribe. This would be both a dangerous and irrational act.

3. Although they were not directly involved at the time, Mazza, Uhring and Dittrich stated that they were informed *at some point* in the past about the bribe attempt. But, their statements are materially different from Wagner's (and each other's) in multiple ways, as discussed more fully below.

### Evidence Not Supporting the Allegation

There are many reasons why the allegation, the essence of the Wagner Affidavit, are unworthy of belief. Substantial evidence does not support, and indeed refutes, the allegation for the following reasons.

1. Since Wagner claims that he promptly informed former City Attorney Christi Hogin about the attempted bribe, Ms. Hogin is a critical witness. Hogin, however, emphatically denies that Wagner ever reported the alleged "bribe" to her, pointing out that if it had been reported to her, she would certainly have taken appropriate action. As Hogin stated in her interview by Counsel, she was given "no such paperwork from Wagner." There is "no chance" she would have heard about the matter from Wagner, and/or accepted documents from him, and done nothing about it. As Hogin made clear, "You never want anything to die on your desk" when you are the position of a City Attorney. (*See Appendix of Interviews, Hogin Report*).

Hogin emphasized that she is fully aware of her obligations in the circumstances suggested by Wagner. If she had received the claimed report from Wagner, she would have complied with those obligations by having Wagner make a report to the District Attorney, to whom any written materials (or other evidence) would have been provided directly. She expressed certainty that Wagner did not provide any materials to her supporting any alleged bribe.

Hogin is a reputable attorney with many years of service to Malibu and other municipalities, and she spoke with clarity and certainty when interviewed by Counsel. We believe it is highly unlikely that she would have shirked her professional responsibilities as Wagner alleges.

2. Of even greater import is Wagner's inability to identify the allegedly corrupt contractor. He has no records corroborating his claim, and his recollection is inconsistent. As more than one witness has observed, Wagner's Affidavit is both very detailed, while also significantly lacking important supporting details, such as the identity of the person who offered a bribe or even the name of the subcontractor he worked for. It defies credulity that Wagner would not have written down the name of the contractor, or retained any relevant paperwork, given his duty as a Councilmember to safeguard the public interest. Thus he cannot even say whether he himself may have subsequently voted to approve the contract under which the supposed lawless vendor may have been employed. The lack of corroborating evidence here is fatal to the credibility of Wagner's claim.

3. Wagner's admitted lack of follow up also undermines his credibility. An attempt to bribe a public official is a serious and notorious crime. Despite his

duty as a Councilmember to safeguard the public interest, Wagner (1) did not follow-up with Hogin to find out what action had been taken by her, if any; (2) failed to timely report the purported bribe to the City Council – or apparently any other City Official -- until more than a decade later, when the Wagner Affidavit was prepared and formally made public with some fanfare; and (3) took no other steps to ensure that even he, himself, did not vote to approve the corrupt vendor's proposed employment.

4. If it had occurred, one would expect that the bribe attempt would have been timely reported to law enforcement, and one or more investigations opened. But, there is no evidence that the District Attorney's Office, or FBI, were contemporaneously informed, and every indication is that no investigation by the DA's office was opened until 2016 – *six years* later – at the earliest. There are many law enforcement agencies which would have jumped in to investigate a clear attempt to bribe a public official, including the FBI, U.S. Attorney's Office (U.S. Department of Justice), Los Angeles County District Attorney's Office (which has an active Public Integrity Section), and the L.A. County Sheriff's Department.<sup>7</sup> It would appear that none of them were informed at or near the time of any bribe. Had they been so informed, as noted, it is highly unlikely that any law enforcement officer or agency would brush off the allegations with flippant remarks like those related by Uhring and Dittrich in recounting Wagner's statements to them. Moreover, Wagner would have learned of any investigation when law enforcement sought to interview him, and the City undoubtedly would have learned of any investigation through law enforcement seeking records from the City, and/or seeking to interview potential witnesses. No City personnel (or anyone else) interviewed by Counsel reported these things, which would have been sure signs of a pending investigation.

5. The publicly available documents do not support the claim that a subcontractor who did painting, stucco or similar work would have been likely to have solicited a bribe. Counsel's review of the City's renovation contract file reveals no likely subcontractor who could have been selected *before the main contract* was determined by competitive bidding under which the "lowest responsible bidder"

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<sup>7</sup> As noted, law enforcement in Southern California takes bribes and potential corruption extremely seriously, and the area has been very actively prosecuted by federal and state authorities in Los Angeles, going back to the 1980/1990's, when Mr. Newhouse spent seven years supervising the Public Corruption and Government Fraud section of the U.S. Attorney's Office in Los Angeles, and accelerating in 2010, when the LA District Attorney filed corruption charges against numerous City of Bell officials. Zealous prosecution in the area continues unabated, and recent public events in Los Angeles confirm how seriously the federal authorities regard alleged municipal and local corruption, as evinced by the recent indictment of LA City Councilmember Mark Ridley-Thomas, and the ongoing prosecution of former LA City Councilmember Jose Huizar, and others.

was selected, as required by law. Further, the renovation work on City Hall (its exterior being largely concrete) does not indicate that painting or stucco work was even a significant part of the contract.

6. Assuming the bribe offer was made, it was not part of a pattern. No other Councilmember has reported being offered a bribe, either before or since the bribe alleged by Wagner. Even the idea of trying to bribe a single Councilmember to approve a contractor for work on a public contract defies common sense; indeed, it manifests a complete unawareness of applicable law. Public Contract and Government Code provisions regarding the awarding of contracts for large public works projects conclusively refute the notion that even offering to pay a bribe would benefit a contractor. The reason for this is that the City is required to select the “lowest responsible bidder” from among the contractors who have submitted sealed bids for a project. City officials familiar with public bidding on government contracts said that there would have been no purpose served in trying to bribe a single corrupt Malibu City Councilmember, even if one could have been identified. In short, a single corrupt Councilmember does not have the discretion or power to benefit a lawless vendor.

7. A number of additional deficiencies regarding the Affidavit reflect poorly on Wagner’s overall credibility, as detailed below.

The circumstances underlying the preparation of the Affidavit weigh against the credibility of Wagner’s claims insofar as Wagner and Councilmember Bruce Silverstein provided materially different descriptions about *how* the Affidavit was created in the first place. Wagner and Silverstein even disagree on how the information was provided to Silverstein (who drafted the document). Specifically, Wagner claims to have written out a *draft* of the language and given it to Silverstein, while Silverstein says that Wagner orally provided the information, which he reduced to a written document. Silverstein’s account would appear to have greater credibility as the style and prose of the document reflects a lawyer’s touch. (*See* Appendix of Interviews, Wagner and Silverstein Reports).

Wagner’s story materially changed between the two sessions in which he was interviewed by Counsel. The most glaring inconsistency was *when* he first told law enforcement about the alleged bribe attempt. In his first meeting with Counsel, Wagner stated that he first met with federal law enforcement -- at the Wilshire Offices of the FBI in Westwood -- after the release of the Affidavit (*i.e.*, early 2021), about the same time he met with investigators from the Los Angeles District Attorney’s Office. (*See* Affidavit, Ex. A at p.2). Wagner also claimed that he was taken to the FBI meeting with Private Investigator Rob Joseph. During Counsel’s second interview with Wagner, however, he told us that he had first gone to the FBI with Mazza sometime in **2016**, “after I was elected Mayor.” The meeting lasted, Wagner said, for 1-2 hours. We were unable to corroborate the date of the first claimed meeting with the FBI.

Finally, as noted, the statements of Mazza, Uhring and Dittrich (about what Wagner told them about relevant events) are materially different from Wagner's description of the events, and from each other's. Brown vaguely confirmed Wagner's description of the events, but her statements were not entirely consistent with Wagner's (or those of Mazza, Uhring and Dittrich). Where, as here, witnesses cannot get their facts straight, the statements of all must be discounted. (*See* Appendix of Interviews, Mazza, Uhring, Dittrich and Brown Reports).

**B. Wagner Affidavit Allegation No. 2 – Misuse and Abuse of Governmental Authority Regarding Crosswalk Adjacent to the Malibu Beach Inn**

Wagner states that, “In late 2017 or early 2018, the ‘Mani Brothers,’” owners of the Malibu Beach Inn, sought to install a crosswalk across PCH “in order to facilitate the possible addition of a pool to the hotel [located on the West side of PCH] and accommodate required additional parking” [on the East side of PCH, at the Hertz property lot, just South of the Malibu Beach Inn]. To do that, “the Mani Brothers . . . required permission to use the property as a stand-alone parking lot, which was not permitted (and still is not permitted by the Malibu Zoning).” (*Id.*, ¶ 19). He also states that he received a call from Antonio Villaraigosa, who reportedly articulated support for Mani Brothers’ proposed project, and revealed that Mani Brothers had contributed to Villaraigosa’s and Wagner’s campaigns. (*Id.*, ¶¶ 21-23). Wagner added that the “Mani Brothers’ crosswalk was approved,” but was not submitted to the Malibu Planning Commission, Public Works Commission or the City Council for approval, but instead “was handled by the City Staff, who perform under the supervision and direction of” the City Manager (Feldman). (*Id.*, ¶¶ 23-24). The upshot of the claim is the allegation that Mani Brothers skirted the City’s review and approval (or rejection) of the crosswalk. Note that in Wagner’s telling, although there is no direct allegation of corrupt behavior, such inferences are clearly invited.

**Was Allegation No. 2 substantiated, or do the facts support an inference of corruption?** No. To the extent the allegations insinuate any wrongdoing by City personnel, including, but not limited to, former City Manager Reva Feldman, the allegations are not corroborated. Even if they were true, the allegations do not support an inference of any corruption by Feldman, or any other City personnel or officials. Rather, both interviews, and a review of relevant Coastal Commission paperwork on the project, support the conclusions that (1) there was no need for the City to approve or issue a permit for the crosswalk in order for it to be constructed, and (2) there was no improper lobbying by Villaraigosa on behalf of Feldman or Mani Brothers.

**Analysis Regarding Basis for Allegation No. 2.**

**Evidence Supporting the Allegation:** Wagner’s Affidavit is corroborated in part by the fact that the crosswalk was allowed by the Coastal Commission, approved by Caltrans, and installed without the City’s prior approval. Full consideration of all relevant facts, however, rebuts any inference of illicit behavior or any attempted exercise of improper influence.

### **Evidence Not Supporting an Allegation of Corruption**

1. Malibu Director of Public Works Rob DuBoux and Planning Director Richard Mollica were interviewed. Both stated that the crosswalk was part of an agreement between the Coastal Commission and Mani Brothers regarding problems with the property preceding Mani Brothers’ acquisition of it, and that the Coastal Commission permitted, and Caltrans approved, installation of the crosswalk without first requiring a permit from the City, as would otherwise have been required under Malibu’s Local Coastal Program. They indicated that because of this, what transpired was an anomaly in that the usual procedures were not followed. (*See* Appendix of Interviews, DuBoux and Mollica Reports).

2. Former City Manager Feldman stated that the City had no authority to stop installation of the crosswalk after Caltrans issued a permit, and that no one from the City acted improperly to authorize the crosswalk. Per Feldman, the crosswalk was a *fait accompli* when presented to the Public Works Department. (*See* Appendix of Interviews, Feldman Report).

3. The referenced agreement (a publicly filed consent decree between the Coastal Commission and Mani Brothers) contains a provision requiring installation of the crosswalk upon approval by Coastal Commission “Staff,” with notice to the City of the “final crosswalk plans.” Thus, the Coastal Commission only required that the City be *notified* of the plans to install a crosswalk, but *not* that the City approve such plans. This is consistent with the statements of then-City Manager Feldman, DuBoux and Mollica, and refutes Wagner’s insinuations.

4. Mani Brothers’ outside counsel responded to our request for an interview with a member of the organization by offering to relay to their client any specific questions. At our request, counsel provided a copy of a statement that Mani Brothers had provided to the *Malibu Times* soon after the release of the Affidavit. It reads, in relevant part: “We did not ask former Mayor Villaraigosa to call any Malibu city official nor did we have any knowledge of the alleged conversation between Mr. Wagner and Mr. Villaraigosa involving our organization. . . . [T]he crosswalk to which Mr. Wagner referred was approved by the California Coastal Commission and was constructed by the California Transit Authority (Caltrans)—a decision in which, to our knowledge, Mr. Wagner was not involved. . . . [T]he comment of a \$50,000 ‘contribution’ referenced by Mr. Wagner was in fact a

donation made by Mani Brothers in 2007 to help fund the creation for Partnership for Los Angeles Schools, a non-profit designed to promote improved access to a better education for all LA Unified School District students. . . . This charitable donation was made eight years prior to our acquisition of Malibu Beach Inn, and was in no way a contribution to any political campaign.” (See Appendix of Interviews, Mani Bros. Atty Report).

5. None of the many witnesses asked about the crosswalk, including Wagner, claimed to have knowledge of any improper or illicit influence, *i.e.*, bribes, pay-offs, illicit inducements, threats or improper favoritism involving Malibu government or City staff and the crosswalk.

**Details Regarding Allegations No. 2.** As noted, we found no evidence materially corroborating Wagner’s insinuation that City personnel, including but not limited to former City Manager Feldman, or Mani Brothers, engaged in any inappropriate activity (including bribes, pay-offs, illicit inducements, threats or improper favoritism) regarding the crosswalk. Multiple witnesses described the process by which the crosswalk was installed, and none was aware of any evidence of wrongful conduct by City personnel (or Mani Brothers). The publicly available agreement by which the crosswalk was approved by the Coastal Commission corroborates that permission by the City was not required for its installation.

We queried various City personnel about the issue. Their statements were all consistent with the conclusion that the crosswalk was installed as a consequence of the consent decree between Mani Brothers and the California Coastal Commission. That agreement mandated installation of the crosswalk, which was permitted by the Coastal Commission and installed by Caltrans (which has jurisdiction over the installation of crosswalks on PCH). Pursuant to Malibu’s Local Coastal Program, the City would otherwise have had authority to evaluate the crosswalk prior to Caltrans authorizing the installation. Because of the consent decree, however, the situation is unique and the normal procedures were not followed.

City Hall’s commitment to public safety and traffic management, and willingness to take action contrary to the desires of property owners and developers (*e.g.*, Mani Brothers), is reflected in the City’s subsequent rejection of Mani Brothers’ application for a permit to utilize as parking space its land on the East side of PCH, just South of the Malibu Beach Inn (the Hertz lot). City staff told Counsel that this decision was made to safeguard against potential safety risks arising from valet parking between the hotel and the desired parking lot. This decision by the City substantially impairs Mani Brothers’ interest in the construction of the crosswalk in the first place, although the crosswalk does facilitate both public safety and beach access (as noted in the consent decree).

We were not able to confirm that Villaraigosa made the statements attributed to him in the Affidavit, or even that the phone call to Wagner was made. As noted, Villaraigosa did not respond to multiple requests for an interview. But even if Villaraigosa had, in fact, called Wagner in the hope of spurring support for the crosswalk, this would not necessarily suggest any attempt to exert improper influence on Wagner. The most likely scenario, however, is that Villaraigosa did not in fact lobby Wagner at all on the issue. Because City Council approval for the crosswalk was not needed, it seems highly unlikely that Villaraigosa (or anyone else) would have been lobbying Wagner on the issue since no purpose would have been served by such lobbying.

Councilmember Silverstein suggested Counsel investigate whether City staff might have exerted influence over the process by which the crosswalk was installed, and thereby either facilitated or delayed its installation. This appears to be outside of our mandate to investigate potential corruption, of which we found none. Nonetheless, we queried several witnesses, and were told that: (a) Caltrans's approval of the crosswalk without prior City approval was outside the norm, and it occurred because the Coastal Commission had already approved the installation (in the consent decree with Mani Brothers); (b) there is an ongoing commitment to improving coordination between the City and Caltrans, in order to advance the City's goals of public safety and reduced traffic congestion; and (c) the City was able to advance its goals of enhancing safety and traffic management in the area by later denying a permit for the operation of a parking lot on the East side of PCH, which Mani Brothers had sought so it could install a swimming pool in its current parking area on the West side of PCH.

### **C. Wagner Affidavit Allegation No. 3 – Abuse of Governmental Authority Regarding Feldman's Contract Extension and Salary Increase**

The Wagner Affidavit states that “[d]uring the same time as the Mani Brothers were seeking a crosswalk and stand-alon[e] parking for their hotel,” then-City Manager Feldman “had made known openly her desire to have her contract amended and to provide for an extended term and an increased salary.” (Affidavit, ¶ 20)<sup>8</sup> Wagner further alleges that, preceding the June 5, 2018 primary race for California Governor, he received a phone call from then-Gubernatorial candidate Antonio Villaraigosa, who allegedly told him that (1) he “wanted to make sure everything was ‘good’ with me [Wagner] on the amendment to [the City Manager’s] . . . contract,” and (2) he had spoken with City Councilmembers Skyler Peak and Rick

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<sup>8</sup> Obviously it was appropriate and proper for Feldman to make known her interest in extending her own contract and increasing her remuneration. We believe it be a mere coincidence that this coincided with Mani Brothers' interest in the construction of a crosswalk and off-site hotel parking.

Mullen about this issue, suggesting that they supported Feldman’s contract extension as well. Wagner also states that “it has been publicly reported that” Feldman “ha[d] a relationship with a close relative of Mr. Villaraigosa.” (*Id.*, ¶ 23)

In sum, Wagner strongly implies that Villaraigosa was improperly lobbying on Feldman’s behalf by “pressuring” three members of the City Council who would soon have before them the matter of Feldman’s contract extension and salary increase.

**Is Allegation No. 3 substantiated?** No. There is no credible evidence supporting the claim, and the insinuation of the allegation has been conclusively refuted.

**Are the claims in Allegation No. 3 credible?** No. The allegation is almost certainly untrue.

### Analysis Regarding Basis for Allegation No. 3.

**Evidence Supporting the Allegation:** Wagner’s allegation about his purported call with Villaraigosa about Feldman’s contract (and Mani Brothers).

We were not able to corroborate even the fact of the call with Wagner’s co-Councilmembers at the time (Mullen and Peak), only one of whom actually spoke with Villaraigosa, *without* the subject of the City Manager’s contract (or Mani Brothers or the crosswalk) having been raised. (*See* Appendix of Interviews, Mullen and Peak Reports). Nor were we able to corroborate it with Villaraigosa as he did not respond to Counsel’s outreach.

### **Evidence Not Supporting the Allegation:**

1. Councilmember Mullen stated that he received a call from Villaraigosa seeking his support for Villaraigosa’s campaign for Governor, but he recalls no reference during the call to Feldman, or Mani Brothers/the crosswalk. Councilmember Peak stated that he recalls receiving a voicemail message from Villaraigosa or his campaign (more likely a staff member), but that he did not return the call, and thus never spoke with Villaraigosa. Since Peak did not return the call, he certainly was not lobbied by Villaraigosa on any issue. In sum, the two former Councilmembers undermine Wagner’s allegations.

2. No other Councilmembers made a contemporaneous or subsequent report of receiving any inappropriate calls from Villaraigosa. As previously noted, lobbying a single Councilmember would serve no purpose unless the lobbyist knew that the Councilmember’s vote on an issue would be turnkey.

3. Wagner’s vote was not needed (or material) in any event, and there is no reason to believe that anyone would have thought otherwise in advance of his

vote. In fact, whether or not Wagner voted for Feldman's contract extension was immaterial because the Council majority voted in favor of it (4-1). As several Councilmembers reminded us, in City Council politics, one has only to learn to "count to three." In this case, the count was to four, and Wagner's vote on the issue made no difference. There is no evidence supporting a conclusion that anyone (including Villaraigosa) would have believed differently prior to the vote.

4. Feldman stated that she had a relationship with a relative of Villaraigosa (his brother) which ended acrimoniously in 2012 (*i.e.*, many years before the call alleged by Wagner), and that since then, she has had virtually no contact with Villaraigosa's brother or Villaraigosa. (*See* Appendix of Interviews, Feldman Report). Wagner alleges no other interest that Villaraigosa conceivably could have had in the issue. Therefore, there is no reason to believe that Villaraigosa would have placed a call seeking support for Feldman's contract extension or salary increase.

5. As noted, Mani Brothers provided a statement shortly after the release of the Affidavit, which states: "We did not ask former Mayor Villaraigosa to call any Malibu city official nor did we have any knowledge of the alleged conversation between Mr. Wagner and Mr. Villaraigosa involving our organization."

6. Notwithstanding his duty to protect the public interest, Wagner made no contemporaneous report, to the City Attorney, Council or anyone else, of receiving a call from Villaraigosa, even though he states that he "was disturbed by Mr. Villaraigosa's remarks," and expressed a concern that the calls to the three Councilmembers violated the Brown Act. Nor did Wagner ask Councilmembers Mullen and Peak whether they had received similar calls. As noted, they did not. Again, it defies credulity to believe Wagner would have suspected a violation of the law, yet failed to make a contemporaneous report to law enforcement (or anyone else), particularly given his duty as a Councilmember.

**D. Wagner Affidavit Allegation No. 4 – Retaliatory Law Enforcement Search of Wagner's Home Based on His Opposition to the City Manager's Contract**

**Details of Allegation No. 4:** Wagner alleges that "On May 31, 2018, my home was raided by law enforcement officers who work for the L.A. County District Attorney, Jackie Lacey, a politician with known ties to Mr. Villaraigosa. The raid occurred just two days after I was the sole Member of the Malibu City Council to vote against the amendment to the Malibu City Manager's contract, which extended the term of her employment and increased her salary." (Affidavit, ¶ 25)

**Was Allegation No. 4 substantiated?** No. The allegation appears to be false insofar as it insinuates that the law enforcement search of Wagner's home was in retaliation for, or in response to, Wagner's adverse vote on then-City Manager Feldman's contract. The claim is contradicted by the available evidence and unsupported by any credible evidence. The relevant timeline also irrefutably disproves it.

**Are the Claims in Allegation No. 4 credible?** No. The allegation is almost certainly untrue to the extent it suggests there is any relationship between Wagner's home being searched and his negative vote on Feldman's contract.

#### **Analysis Regarding Basis for Allegation No. 4**

The timing of the "raid" on Wagner's residence, which occurred around the time of the vote on Feldman's contract extension and salary, conclusively refutes any inference that it may have been precipitated by Wagner's opposition to Feldman's contract. This is the case for a number of reasons. Additional points make inescapable the conclusion that the two events are unrelated.

1. The DA's investigator opened the investigation that led to the search of Wagner's home in *2016*— years before the raid and search of his home. The District Attorney's investigator working on the matter also sought records at City Hall relevant to Wagner's residence back in April, 2018 — long before the vote on Feldman's contract surfaced as an issue before the Council. (*See* Appendix of Interviews, Deputy District Attorney David Barkhurst, DA Senior Investigator Sgt. Michael Robinson, and City Clerk Heather Glaser Reports).

2. A Superior Court judge signed the warrant authorizing the search of Wagner's home in the afternoon on May 29, 2018, *i.e.*, **before** Wagner voted against Feldman's contract that evening. Therefore, the search could not possibly have been retaliatory because current events cannot precipitate past actions.

3. The home search related to potential perjury and Elections Code violations by Wagner, according to the responsible Deputy District Attorney and DA's Office Investigator. No charges were ultimately brought, but the basis for the investigation does not appear to have been pretextual. Rather, the investigation had a substantial basis in fact and law. The District Attorney's file memorandum concluding the investigation that led to the search summarizes the reason for the investigation. It states that the investigation pertained to the fact that Wagner was living outside of the City of Malibu at the time that he represented, in his City Council nomination paperwork, that he was a resident of Malibu. (*See* Appendix of Interviews, Barkhurst Report, Exhibit).

Wagner's potential commission of perjury and an Elections Code violation had a substantial basis, as demonstrated even by Wagner's own acknowledgment to Counsel that, before the Woolsey fire (November, 2018), he lived on Old Chimney Road in Malibu (which is outside City limits). The fact that this was the reason for

the search of Wagner's home was confirmed to Counsel by Deputy D.A. David Barkhurst and D.A. Senior Investigator Michael Robinson, both of whom were personally involved in the investigation. Both Barkhurst and Robinson strongly disputed any suggestion that the raid was, or could have been, retaliatory.

4. As noted, Wagner's negative vote on Feldman's contract extension was immaterial since a clear majority (4-1) voted to extend the contract. This makes it *highly* unlikely that anyone in the District Attorney's Office would have cared enough about Wagner's vote to manufacture a baseless criminal investigation in order to obtain a warrant to search his home, as Wagner suggests.

5. Wagner's argument that the search related to politics rather than public integrity lacks support. Wagner's citation of "published opposition research" (Affidavit, ¶ 26), is a reference to a 2018 negative campaign document opposing the re-election of then-District Attorney Jackie Lacey. That information, insofar as it relates to the search of Wagner's home, however, is entirely false. Specifically, the purported "research" incorrectly links the search of Wagner's home to then-City Manager Feldman, Wagner's vote against Feldman's contract extension, and Feldman's supposed "relationship with a close relative of Villaraigosa." As noted, the search of Wagner's home pertained to his (likely) false statement that he was a resident of Malibu in connection with his candidacy for City Council. More than one witness has informed us that it was common knowledge that Wagner lived outside of Malibu City limits when he filed his nomination papers in early 2016, and Wagner even confirmed living in that home until November, 2018. As noted, Feldman's relationship with Villaraigosa's brother ended in 2012, and they had no relationship thereafter.

6. Finally, Wagner's reference to a "public corruption specialist" appears to be a reference to private investigator, Rob Joseph, who operates a Utah private investigations firm and touts himself on his website as "Officer Hollywood." A photograph of Joseph and Wagner together was included in an on-line article by CeCe Woods regarding the home search, with a by-line stating, "Public Corruption specialist Rob Joseph reviewing evidence in April after the first raid getting evidence."<sup>9</sup> A review of PI Joseph's background dispels any suggestion that he is, in fact, a "public corruption specialist."

Nonetheless, witness John Mazza informed Counsel that PI Joseph went to the FBI's offices in Westwood with Wagner (and Mazza as well) so that Wagner

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<sup>9</sup> PI Joseph is not licensed to do private investigations in California, but does claim on his website that he frequently serves as a technical consultant to movie productions in Utah. He does not appear to have any actual law enforcement experience in public corruption cases based on his career as a police officer in Salt Lake City. *Se* [REDACTED].

could make a report as to his claims of corruption *after* the Affidavit was released. When interviewed by Counsel, Wagner stated that online reporter CeCe Woods had hired Joseph, and that Joseph was preparing a report that would detail the names of persons who “know” about corruption in Malibu (names that Wagner claimed to know, but declined to provide to us). No such document has been released to date.

According to Councilmember Silverstein, Joseph declined to be interviewed by Counsel, or even to respond to our repeated requests for an interview, because Joseph doubts that our investigation is “objective.” Contrary inferences are suggested regarding PI Joseph’s lack of cooperation – namely, that he may be concerned about exposure of his biases, motives and/or background. (*See* Appendix of Interviews, Mazza Report, fn. 2, Wagner Report, fn. 3).

#### **E. Wagner Affidavit Allegation No. 5 – General Allegations of “Other Actual or Potential Corruption” Within City Government**

Finally, Wagner offers a host of other allegations of corruption in Malibu. These go unsubstantiated because Wagner could not provide corroboration, or could not (or would not) provide credible leads for us to follow regarding the claims, or because they are overly general in nature and thus could not serve as grounds for further investigation.

Wagner states for example, “[d]uring the eight years on which I have served as a Member of the Malibu City Council,” and an additional year serving on an appointed task force, “I have seen, been told of, and heard of many activities that have been very disturbing to me – some now which I believe to be unlawful.” (Affidavit, ¶ 2) He further claims: (1) “Over the years in which I have been involved in Malibu’s government, I have been told of multiple acts of actual or attempted corruption by at least one Member of the Malibu City Council,” (2) “I have been told about members of the City Staff who solicited and received incentives to facilitate actions sought by residents willing to make a direct payment to members of the City Staff to obtain what the residents desire,” (3) “I have been told of at least one member of the City Staff who was caught receiving an incentive to expedite a property inspection and was discharged quietly without the incident being publicly reported,” (4) “I also know of one other employee who suddenly resigned in the wake of talk of her having been caught soliciting or receiving an incentive,” (5) “I have been told about various valuable ‘favors’ (some at the expense of the City and its residents) done by various members of the City Staff for, among others, friends and/or supporters of the Malibu City Manager,” and (6) “I have been told of multiple incidents in which code violations have been deliberately overlooked for favored residents and/or favored residents have been alerted to surprise inspections by members of the City Staff.” (*Id.*, ¶¶ 27-30).

**Are any of the claims in Allegation No. 5 substantiated?** No. Wagner acknowledges that he has no personal knowledge of alleged matters, and the allegations were generally not corroborated with facts known by witnesses to whom Wagner referred us, or who we otherwise were able to interview based on leads supplied by Wagner or other witnesses.

### **Analysis Regarding the Basis for Allegation No. 5**

The allegations were generally not substantiated, either by Wagner, or any other witnesses. Counsel learned from certain witnesses about being upset at, and disagreeing with, certain actions (or inactions) by City staff regarding various issues, particularly regarding the City's issuance or denial of building permits and code enforcement. However, this did not appear to exceed what would be expected in any similar municipality. City staff also confirmed that one tenured inspector was terminated after multiple acts in violation of his duties (but not giving rise to an inference of corruption or receipt of bribes, but rather simple misfeasance), and another inspector immediately reported to his supervisor (and then to law enforcement) his discovery that a Malibu resident had given him an unsolicited envelope containing cash - a classic "gratuity."

In conducting our review, Counsel contacted multiple witnesses who Wagner (and other witnesses, including Planning Commissioner Mazza) stated were the sources of information about the alleged acts of corruption. Specifically, that such persons had "direct" evidence of corrupt acts, and/or could corroborate these claims. Those who responded to Counsel's outreach were interviewed by Counsel. They either did *not* support the claimed information, or related knowledge of events that suggested potentially derelict government acts, but did not raise an inference of corruption.

Nobody reported direct knowledge of any corruption, including, but not limited to, any bribes, solicitations of bribes, kick-backs, or illicit favoritism by City personnel in exchange for personal benefits. "Favoritism," as described by several aggrieved residents, did not rise to the level of corruption or criminal acts. As noted, we did not evaluate such non-criminal matters as they are beyond the scope of our mandate and expertise.

A few other witnesses who we were told had information about corrupt acts did not respond to our requests for an interview, or refused to come forward despite our assurances that they could do so on an anonymous basis. Since the knowledge and credibility of these individuals cannot be assessed, the information must be discounted.

**Evidence Supporting the Claims:** Wagner's allegations were corroborated to a small degree by witnesses who described City actions (or omissions) with which they disagreed, and details of the relevant events.

**Evidence Not Supporting/Refuting the Claims:** Wagner's failure to make timely reports of alleged corruption weighs heavily against his credibility given his duty as

an elected official to protect the public interest. Rolling out the Affidavit as he departed the Council after nearly eight years of service also suggests that he was not truly upset by what he claimed to have observed or witnessed in the prior years.

Wagner admits that he made no reports of any of these alleged acts of wrongdoing during the near-decade he served in Malibu government - to the City Council, law enforcement, the City Manager or the City Attorney. Multiple witnesses confirmed that if he had done so (or if the claimed matters otherwise had come to their attention), the allegations would have been investigated and addressed by City personnel, management and/or the City Attorney.

Wagner appears to attribute his inaction to his lack of legal training and knowledge about what to do. Affidavit, ¶ 3. However, he has not explained why he waited almost a decade to seek guidance from another Councilmember or anyone else. We do not credit the explanations that Wagner was told by law enforcement to “just get used to it, kid,” or that because the alleged bribe was “not a million bucks,” it was of “no interest” to them. Further, Wagner’s claimed lack of sophistication is undermined by other facts and features of his life, personally and professionally. These include his lengthy service on the City Council, decades of operating a retail business, and possession of multiple federal licenses permitting him to handle various types of firearms and explosive devices.

When interviewed and asked by Counsel to detail any “egregious activities” he claimed to have witnessed and/or or heard about during his course of service on the Council (as alleged in his Affidavit, ¶ 5), Wagner described three matters, none of which gave rise to any inference of corruption by City personnel or officials. Two involved the construction of turn lanes, and one involved unpermitted work that he reported to City Hall. Wagner acknowledged that he does not know any specific facts involving corruption, including payoffs, bribes or inappropriate favoritism, regarding any of these matters. As to one turn lane installation he referenced, he simply inferred wrongdoing merely from observing increased traffic. As to another turn lane installation, he referred us to another witness (Mazza) who provided no evidence of any wrongdoing. As to the third project, it appears that the City acted on Wagner’s report of unpermitted work (albeit not as promptly as Wagner would have desired) because when he re-checked the site following his report to the City and Council, the unpermitted changes he had reported were gone, and the construction had ceased.

Wagner was not forthcoming in responding to Counsel’s requests for specific information of alleged corrupt acts. He declined to provide information about specific persons who he claimed had personal knowledge of corrupt actions because he was “afraid of being sued.” Those to whom Wagner referred us did not respond to our efforts to interview them, or largely failed to support or corroborate Wagner’s allegations. This leaves many of Wagner’s generalized claims wholly unsubstantiated. For a number of these, Wagner assured us that we would be provided with requested details, including the names of witnesses with direct

evidence of corruption, when the “report” of private investigator, Utah PI Joseph, was produced. As noted, said report has never surfaced, Joseph did not respond to our efforts to interview him, and Joseph’s potential biases, motives and credibility remain in doubt. Accordingly, these details remain unsubstantiated.

Finally, although Wagner stated that he would provide documents supporting various allegations, he instead gave Counsel materials such as media reports, a generalized complaint by an unidentified author, and a Malibu City Council public policy statement.

Another witness who stated that he knew someone with direct knowledge of corruption was Councilmember Uhring. Uhring said that the potential witness claimed to have bribed a former City staff member, and also to have been a victim of unspecified retribution by a City Council member. However, the potential witness would not come forward, notwithstanding our assurances of anonymity (relayed to the witness multiple times by Uhring). We are grateful to Councilmember Uhring for his efforts to obtain the cooperation of this potential witness. However, it is our opinion that even serious allegations such as these cannot be credited where, as here, they are entirely uncorroborated, and the biases, motivations and credibility of the potential witness cannot be assessed. Firm conclusions of potential misconduct may not rest on mere hearsay.

**F. Additional Issue – the Circumstances Under Which Jefferson Wagner’s Affidavit Was Created**

Wagner’s Affidavit does not state that it was prepared with the assistance of counsel or any other third party. When the Affidavit was made public, neither Wagner nor Councilmember Silverstein disclosed that Silverstein was involved in its preparation. The omission is particularly noticeable because Paragraph 4 of the Affidavit otherwise describes Wagner’s views of Silverstein and their relationship. Subsequently, Wagner and Silverstein gave Counsel differing descriptions of the way in which the Affidavit was prepared. This further impairs the Affidavit’s credibility.

**Councilmember Silverstein’s Description:** During the City Council meeting on March 8, 2021, Silverstein informed the Council as follows regarding the Wagner Affidavit: “Jefferson came to me. He came to me with a lot of facts, and asked me to help him put this into the form that would be legally appropriate. So I did. I took notes of what he said . . . I took notes of what he said and I wrote it down in the proper legal format that I understood to be proper. I then gave it to him. He reviewed it, he edited it, he made changes, and ultimately concluded it was his affidavit and he signed it.”

When interviewed by Counsel, Silverstein’s explanation was substantially similar: Wagner brought Silverstein a box of documents, which Silverstein reviewed but found unilluminating. Then, Wagner orally related the allegations in the Affidavit to Silverstein. Silverstein told him the information must be in a sworn affidavit, and “I helped him write it – I put them down in writing . . . I prepared that for him . . . I acted as a scrivener . . . I’m not good at remastering. I didn’t embellish what he said.”

**Jefferson Wagner’s Description:** When interviewed by Counsel, and asked to describe how the initial draft of the Affidavit was prepared, Wagner stated that although the final version had been “typed up” by Silverstein, Wagner himself had prepared, in his own handwriting, the initial draft, and had given that draft to Silverstein. Counsel asked if he still had the initial draft, and he stated that he did and that it was in his office at Zuma Jay’s. Counsel asked if he would show it to us, and Wagner agreed to do so. After the interview, we walked together to Wagner’s nearby office, so that Wagner could produce the draft. Wagner looked through his files for a while, and eventually stated that he could not find it. He said that he would provide a copy to Counsel if he located it. To date, he has not done so.

Wagner was also asked by Counsel to describe how the Affidavit came about. His response to this question was that he and Silverstein had discussed their perception of corruption in City Hall during the election in November, 2020, and had resolved “whoever is going to vote Reva out will get our support.”

## V. Conclusion

We agree that the issues raised in the Wagner Affidavit are serious and deserve the attention of Malibu’s leadership. However, to the extent that the Affidavit alleges corruption by City personnel and/or officials, our investigation has established that such allegations are *incorrect* in nearly all material respects and/or *unsubstantiated*. Wagner’s motives and credibility also are in serious doubt. His overall veracity is questionable, given his failure to timely report his awareness of wrongdoing while he was serving as a City Councilmember. His failure to contemporaneously document a matter as serious as attempted bribery, and his substantial inability to back up his allegations when questioned by Counsel, further calls his credibility into question. In light of the preceding, we conclude that the allegations of corruption in the Affidavit may safely be rejected by the City Council, as they evidently have been by law enforcement.

We would like to express our gratitude for the superior cooperation and support that we have received from the City Hall staff and City Council, including past members, the designated client representatives, Councilmembers Farrer and Silverstein, and Malibu City Attorney John Cotti. This facilitated our investigation, and reinforces our confidence in the conclusions we have reached. Far from

determining that the City has been plagued by corruption, we believe that the City has been, and remains, well-served by devoted administrators, Staff and civic leaders.

We would be pleased to meet with the City Council to discuss our investigation and this report, which remains protected by attorney-client privilege and work product protections, unless and until waived by the Council.

LAW OFFICES OF EVAN A. JENNESS

*Evan A. Jenness*

Evan A. Jenness

RICHARDS CARRINGTON

*George B. Newhouse, Jr.*

George B. Newhouse, Jr

*Attorney-Client Privileged & Work Product*

**Report of the Investigation of Allegations  
in Affidavit of Jefferson Wagner**

**Exhibit A**

**Affidavit of Jefferson Wagner**

**Evan A. Jenness and George B. Newhouse, Jr.,  
Special Counsel to the City of Malibu**

*Submitted Pursuant to the Commission of  
the Malibu City Council*

**Los Angeles, California**

## **AFFIDAVIT OF JEFFERSON WAGNER**

I, Jefferson Wagner, being duly sworn according to law, do hereby depose and state on personal knowledge as to my own actions, and on information and belief as to the actions of others, as follows:

1. My name is Jefferson Wagner. I am a Member of the Malibu City Council, currently serving out the final days of my second four-year term, during which I also was twice elected by the Members of the Malibu City Council to serve as the Mayor of Malibu.

2. During the eight years on which I have served as a Member of the Malibu City Council, the additional year that I served on the Civic Center Task Force appointed by Councilmember John Sibert, and at other times, I have seen, been told of, and heard of many activities that have been very disturbing to me – some of which I believe to be unlawful.

3. Because I lack legal training, I have not known what, if anything, I could do about the activities I have witnessed and heard about, and the Malibu City Attorney has not provided such guidance when I have raised two of these matters with her.

4. Over the course of the past two years, I have been encouraged by the community activism I witnessed by Bruce Silverstein, who I understand to be an experienced lawyer and who has seemed to me to be someone who would be interested and willing to follow up on the disturbing matters I have witnessed and heard about. Accordingly, when the nomination process for the election of Members of the Malibu City Council commenced in July of this year, I encouraged Mr. Silverstein to run for office in the hope that he would, among other things, press to have these matters reviewed, investigated, and pursued in a legally appropriate manner if he were elected to the Malibu City Council.

5. What follows is a relatively high-level summary of some of the more egregious activities I have witnessed and/or heard about, which have been disturbing to me over the course of my nine years of public service for the City of Malibu.

### **Attempted Bribery of City Council Member**

6 During the remodeling and renovation of the current Malibu City Hall, I was offered (but did not accept) valuable personal “incentives” to approve a specified vendor / contractor who was bidding to perform various services in connection with the construction project.

7. Specifically, I was offered the following "incentives":
  - a. An all-expense-paid three-day weekend in Las Vegas, which would include my choice of a "Flower Basket" or a "Fruit Basket" upon arrival.
  - b. An all-expense-paid trip for two to Costa Rica.
  - c. Re-stuccoing and painting of my personal property.

8. It was explained to me that the two alternative "baskets" would contain casino chips, and that the difference between the two baskets is that "Fruit" lasts longer than "Flowers." In other words, the Fruit basket has "a higher chip count."

9. It was explained to me that the casino chips would be mine to do with as I please – which could include cashing them out and pocketing the cash. Additionally, I understand that casino chips from one casino can be cashed in at any of multiple casinos, and that the casino chips in the baskets could be divided up into groups that could be cashed-in at several casinos in a manner that may be impervious to detection and would not need to be reported to the I.R.S. if done in amounts under \$10,000.

10. I was told that I could choose one of (i) the re-stucco and painting option, (ii) the trip to Las Vegas option with the Fruit Basket, or (iii) the Trip to Costa Rica and the Trip to Las Vegas with Flower Basket.

11. It was explained to me that the three options each had approximately the same value. At the time that the described offer was made to me, it was my understanding that the cost to re-stucco and paint my property would be approximately \$50,000 if I were to have that work done by a private contractor.

12. It was explained to me that I would receive the alternative of my choice (i.e., the "pay-off") if the specified vendor was selected for the project based on a vote of the Malibu City Council in which I had voted in support of the vendor's selection / nomination.

13. Today, it is my understanding that the Las Vegas offer is the same type of offer that was identified by the United States Attorney for the Central District of California in connection with the indictments of Los Angeles City Councilmembers Jose Huizar and Mitch Englander, as well as certain city staff members.

14. In addition to explaining the three alternatives, how they worked, and what I would need to do to “earn” the proposed incentive, I was provided with literature identifying the vendor I was being asked to vote to approve.

15. After the described offer was made to me, I met with the Malibu City Attorney at my retail store, recounted the terms of the offer, and gave her the literature I had been provided. I distinctly recall the Malibu City Attorney saying that what I described to her was a “bribe,” and that I responded by stating that is why I brought it to her.

16. I do not know what, if anything, the Malibu City Attorney did to follow up on this matter. To the best of my knowledge and recollection, the Malibu City Attorney did not bring this matter to the attention of the full Malibu City Council in my presence.

17. I also do not know whether other Members of the Malibu City Council and/or any employees of the City of Malibu received and/or accepted similar offers, but I would be surprised if I were the only person who received such an offer because it requires at least three favorable votes for contracts of the magnitude at issue.

18. I no longer recall the name of the vendor I was asked to approve, but the name is on the literature I provided to the Malibu City Attorney, and I am hopeful that the Malibu City Attorney has retained that literature in her files.

### **Apparent Misuse and Abuse of Governmental Authority**

19. Sometime in late 2017 or early 2018, the “Mani Brothers” (owners of, among other properties, the Malibu Beach Inn and the “Hertz Property” on the other side of Pacific Coast Highway) were looking to have a crosswalk installed in the vicinity of their hotel in order to facilitate the possible addition of a pool to the hotel and accommodate required additional parking for the 40 plus rooms. There were numerous impediments to the installment of the desired crosswalk – as was well known to the Malibu residents who live on the land side Pacific Coast Highway along La Costa Beach, who had been seeking the same benefit in the vicinity of their community beach club for ten years. In order to be able to use the Hertz Property for hotel parking, the Mani Brothers also required permission to use the property as a stand-alone parking lot, which was not then permitted (and still is not permitted) by the Malibu Zoning Code.

20. During the same time as the Mani Brothers were seeking a crosswalk and stand-alone parking for their hotel, the Malibu City Manager had made known

openly her desire to have her contract amended and to provide for an extended term and an increased salary.

21. During the same time as the foregoing matters, Antonio Villaraigosa was running to obtain the nomination of the Democratic Party as its candidate for the office of the Governor of California in 2018. During the campaign leading up to the June 5, 2018 primary, I received a telephone call from Mr. Villaraigosa. During that call, Mr. Villaraigosa addressed two topics.

22. The first topic Mr. Villaraigosa addressed was the Malibu City Manager's contract. With respect to that topic, it is my recollection that Mr. Villaraigosa said that he wanted to make sure everything was "good" with me on the amendment to the Malibu City Manager's contract. Mr. Villaraigosa also said that he had spoken with Councilmember Peak (who Mr. Villaraigosa referred to as "Skylar") and would be speaking with Councilmember Mullen (who Mr. Villaraigosa referred to as "Rick"). I was disturbed by Mr. Villaraigosa's remarks, and I told Mr. Villaraigosa that he would see how I vote on the Malibu City Manager's contract when the issue comes up for discussion and vote of the Malibu City Council.

23. The second topic Mr. Villaraigosa addressed was the Mani Brothers' crosswalk. Mr. Villaraigosa stated that the Mani Brothers had contributed to his campaign (which I later learned to be an indirect but lawful contribution of \$50,000) and to my campaign as well – for which I had publicly disclosed and expressed my appreciation. As with respect to the topic of the Malibu City Manager's contract, I made no commitment of any sort to Mr. Villaraigosa. Although Mr. Villaraigosa did not state the reason for his interest in the City Manager's contract, it has been publicly reported that that the Malibu City Manager has a relationship with a close relative of Mr. Villaraigosa.

24. The Mani Brothers' crosswalk was approved. The approval was not submitted to the Malibu Planning Commission, the Malibu Public Works Commission or the Malibu City Council. Instead, it is my understanding that the matter was handled by the City Staff, who perform under the supervision and direction of the office of the Malibu City Manager

25. On May 31, 2018, my home was raided by law enforcement officers who work for the L.A. County District Attorney, Jackie Lacey, a politician with known ties to Mr. Villaraigosa. The raid occurred just two days after I was the sole Member of the Malibu City Council to vote against the amendment to the Malibu

City Manager's contract, which extended the term of her employment and increased her salary.

26 While I lack personal knowledge of the full details of the secretive background to how the raid of my property came to occur, published opposition research respecting now-former D.A. Lacey states, among other things, that "Villaraigosa 'personally sought to persuade [Wagner] and two other council members to renew the City Manager's contract with the City,'" and that "[a] public corruption specialist spoke on the warrant issued against Wagner, stating that the DA's actions appear to 'be a clear exercise in intimidation and an excessive show of force or color of authority.'" The opposition research appears can be viewed at <https://static1.squarespace.com/static/5e1521faa9839d5293d21d61/t/5e29d60bc905d22289bfd2e5/1579800100176/Lacey+Research.pdf>, at 12-13, 19, 82, 90-92.

### **Other Actual or Potential Corruption**

27. Over the years in which I have been involved in Malibu's government, I have been told of multiple acts of actual or attempted corruption by at least one Member of the Malibu City Council.

28. Over the years in which I have been involved in Malibu's government, I have be told about members of the City Staff who solicited and received incentives to facilitate actions sought by residents willing to make a direct payment to members of the City Staff to obtain what the residents desire, and I have been told of at least one member of the City Staff who was caught receiving an incentive to expedite a property inspection and was discharged quietly without the incident being publicly reported. I also know of one other employee who suddenly resigned in the wake of talk of her having been caught soliciting or receiving an incentive.

29. Over the years in which I have been involved in Malibu's government, I have been told about various valuable "favors" (some at the expense of the City and its residents) done by various members of the City Staff for, among others, friends and/or supporters of the Malibu City Manager.

30. Over the years in which I have been involved in Malibu's government, I have been told of multiple incidents in which code violations have been deliberately overlooked for favored residents and/or favored residents have been alerted to surprise inspections by members of the City Staff.

31. Unlike the incidents about which I have personal knowledge discussed in the first two sections of this Affidavit, I have no personal knowledge of wrongdoing in these other situations, but there are too many examples of otherwise

exquisite coincidences to turn a blind eye to such matters. Only by conducting a proper investigation will the truth be known, and wrongdoing proven or disproven.

\* \* \*

32. It is my hope that my provision of the information in this Affidavit will spur a thorough and independent investigation that is both (i) led by Bruce Silverstein and one other Member of the Malibu City Council who has no current or prior business or other financial relationships with the City of Malibu, the Malibu City Manager or any member of the City Staff, and (ii) assisted by knowledgeable and disinterested Malibu residents.

33. It also is my hope that a proper investigation will establish that there is no corruption within Malibu's government beyond some rogue members of the City Staff who already have been identified and are no longer employed by the City of Malibu.

34. As I see things, there appears to be smoke swirling around Malibu City Hall. At a bare minimum, it is important to investigate whether this is smoke from a fire that needs to be extinguished, or simply a marine layer that drifted in from the Pacific Ocean.

**FURTHER AFFIANT SAYETH NOT**

Jefferson Wagner  
Jefferson Wagner

STATE OF CALIFORNIA

SS

LOS ANGELES COUNTY

This \_\_\_ day of December, 2020, personally appeared before me, a Notary Public for the State of California, Jefferson Wagner, who, by me first sworn, deposed and said that the facts set forth in the foregoing Affidavit are true and correct to the best of his knowledge and belief.

(SEE ATTACHED CALIFORNIA ACKNOWLEDGMENT)

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires on \_\_\_\_\_

# CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }

County of LOS ANGELES }

On 12.12.2020 before me, ALLISON RAY, NOTARY PUBLIC,  
(Here insert name and title of the officer)

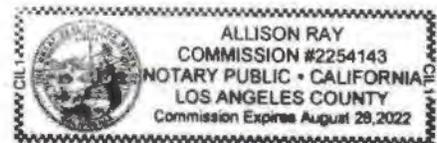
personally appeared JEFFERSON WAGNER,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Allison Ray  
Notary Public Signature

(Notary Public Seal)



### ADDITIONAL OPTIONAL INFORMATION

#### DESCRIPTION OF THE ATTACHED DOCUMENT

AFFIDAVIT OF  
(Title or description of attached document)

JEFFERSON WAGNER  
(Title or description of attached document continued)

Number of Pages \_\_\_\_\_ Document Date \_\_\_\_\_

#### CAPACITY CLAIMED BY THE SIGNER

- Individual (s)  
 Corporate Officer

\_\_\_\_\_  
(Title)

- Partner(s)  
 Attorney-in-Fact  
 Trustee(s)  
 Other \_\_\_\_\_

### INSTRUCTIONS FOR COMPLETING THIS FORM

*This form complies with current California statutes regarding notary wording and, if needed, should be completed and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law.*

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~, is /are ) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
  - ✦ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
  - ✦ Indicate title or type of attached document, number of pages and date.
  - ✦ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document with a staple.

Attorney-Client Privileged & Work Product

**Report of the Investigation of Allegations  
in Affidavit of Jefferson Wagner**

**Exhibit B**

**Statutes, Regulations & Other  
Authorities**

**Evan A. Jenness and George B. Newhouse, Jr.,  
Special Counsel to the City of Malibu**

*Submitted Pursuant to the Commission of  
the Malibu City Council*

**Los Angeles, California**

## PUBLIC CORRUPTION LAWS

Public corruption generally is the misuse of public office for private gain, and/or actions that violate the basic tenet that government is to be used for the good of the public and to preserve public confidence in democracy, and not to be used for undisclosed personal enrichment by public officials or to extend illicit benefits to corrupt officials. Both federal and California state criminal laws punish public corruption. The following are among the statutes considered by counsel in investigating and analyzing this matter.

- **Bribery.** Bribery is the offering, giving, or taking something of value, with corrupt intent, in order to unlawfully influence a person in any public or official capacity. California law penalizes those seeking to bribe or corruptly influence a legislator (Cal. Penal Code § 85), and any California legislator who asks for or receives a bribe (Cal. Penal Code § 86). Bribery offenses may also implicate California Penal Code Sections 67, 68, 92, 93, 137, 138, 165, and 641.3. Bribery can be a federal crime if certain jurisdictional and definitional predicates are met, such as the bribe is offered to a federal official or otherwise invades the public's right to fair and honest services of said public official. *See* 18 U.S.C. § 201. The so-called "pay-to-play" related aspects of the allegations in the Wagner Affidavit, if accurate, could give rise to such an offense. An offense related to bribery generally requires a *quid pro quo*, *i.e.*, requires that the bribe be given in exchange for official action.
- **Perjury.** The crime of perjury is committed when someone knowingly makes a declaration under penalty of perjury, whether in court or in a legal document, and willfully states as true any material matter that he knows to be false. Cal. Pen. Code § 118.
- **False Statements in Candidacy Declarations.** A candidate for public office commits a crime when the candidate submits for filing a nomination paper or declaration of candidacy knowing that any part of it was falsely made. Cal. Elections Code § 18203.
- **Political Reform Act Violations.** Under California law, it is a misdemeanor to knowingly or willfully violate any provision of California's public service laws intended to enforce ethics in government. Cal. Gov't Code § 91000. This includes things like violations of disclosure and disqualification requirements by candidates for elective office.
- **Brown Act Violations.** Members of governing bodies in California who intentionally violate open meeting laws may be guilty of a misdemeanor. *See* Cal. Gov. Code § 54959. Affected decisions are voidable, among other potential remedies. *Id.*, at § 54960.1

• **Extortion.** Extortion is the obtaining of property or other consideration from another person, with that person's consent, or the obtaining of an official act of a public officer, induced by a wrongful use of force or fear, or under color of official right. Extortion, particularly when committed by or with respect to government officials, violates both federal and state criminal laws. *See* Cal. Pen. Code § 518. Extortion by a public official can be prosecuted as a felony or a misdemeanor. *See* Cal. Pen. Code §§ 520-521. The Hobbs Act, 18 U.S.C. § 1951, also reaches extortionate acts by public officials acting under the color of law. A public official commits extortion under color of law when s/he obtains a payment to which s/he is not entitled, knowing that it was made in exchange for official acts. Section 1951 not only embraces the same conduct as the federal bribery statute (18 U.S.C. § 201), but is also goes further in two ways: (1) it is not limited to federal public officials, but also includes state and local politicians, and (2) prosecutors need only prove that a public official agreed to take some official action in exchange for payment as opportunities arise to do so (*i.e.*, a "stream of benefits" theory of prosecution).

• **Misappropriation of Public Funds.** Public officials face both criminal and civil penalties for using public resources for personal benefit. State and local officers may neither appropriate public funds for their own use nor make a profit out of the funds. Cal. Penal Code § 424. Allegations that government officials used public funds to benefit themselves, family members or business associates could give rise to a violation. Personal use of public resources may also constitute embezzlement, a form of theft. Cal. Pen. Code § 504. Embezzlement from a program with any degree of federal funding may give rise to federal criminal violations of corruption and embezzlement laws. *See, e.g.*, 18 U.S.C. §§ 641 (embezzlement against the United States), 749 (misuse of government funds).

• **Conspiracy and Aiding and Abetting.** Knowing about and participating in criminal schemes may suggest conspiracies or aiding and abetting those crimes. *See e.g.*, Cal. Pen. Code § 182(a)(1) (criminal liability "[i]f two or more persons conspire ... [t]o commit any crime").

• **Appointments for Compensation.** Officials receiving payment or favors in exchange for appointments face forfeiture of office, disqualification from future positions, and fines. Cal. Penal Code § 74.

• **Honest Services Fraud/Mail and Wire Fraud.** Under federal laws, public officials owe a duty of loyalty and honesty to members of the public. That duty is violated when a public official either receives or solicits a bribe, or makes a decision that is motivated by his or her personal interests instead of the public interest. 18 U.S. Code §§ 1341, 1343, 1346. "Honest services fraud" includes things like a public official receiving personal benefits to take or refrain from taking public action (*i.e.*, bribery or kick-back schemes).

- **Racketeer Influenced and Corrupt Organizations Act (RICO).** RICO is an organized crime statute. It makes it a crime for anyone, including public officials, to be employed by or associated with any enterprise that is engaged in or affecting interstate or foreign commerce and conducts its affairs through a pattern of racketeering activity. Racketeering activity includes conduct chargeable under various state and federal criminal laws.
- **Money Laundering.** The use of proceeds of specified unlawful activity (the scope of which includes “bribery of a public official, or the misappropriation, theft, or embezzlement of public funds by or for the benefit of a public official”) can rise to money laundering, including the payment of bribes through alternative means such as casino chips. *See* 18 U.S.C. §§ 1956 and 1957. The allegations in the Affidavit that a bribe was offered in the form of casino chips that “may be impervious to detection and would not need to be reported to the I.R.S.” could implicate tax laws. Since we encountered no evidence of the payment of bribes or other illegal inducements, we did not evaluate any tax laws.

## NON-CRIMINAL LAWS, REGULATIONS AND OTHER AUTHORITIES

Many of the offenses above also carry civil remedies and penalties, including, *inter alia*, forfeiture of office, disqualification from future positions, fines, restitution, liability for attorneys’ fees awards, injunctive relief and/or nullification of actions.

Also considered by counsel in the course of investigating this matter were various *non*-criminal laws and regulations.

- **Pay-to-Play Contribution Restrictions.** California Government Code Section 84308, among other things, prohibits a person from seeking a contract (other than competitively bid), license, permit, or other entitlement, from making a contribution of more than \$250 to an “officer” of an “agency,” including a candidate, and prohibits officers of an agency from soliciting such contributions from a party with a pending matter, or for three months thereafter. Exempted from coverage are, among others, local agencies whose members are elected by voters (*e.g.*, city councils), but members of an exempt agency may be covered if sitting as an appointed member of a non-exempt agency.
- **Misconduct in Office.** Willful or corrupt official misconduct may provide a basis for a grand jury to initiate proceedings to remove an official from office. *See* Cal. Gov’t Code §§ 3060-3074.

• **Conflicts of Interest.** Under California law, specifically Government Code § 1090, an officer, employee, or agency is prohibited from participating in or making government contracts in which the official or employee within the agency has a financial interest. Section 1090 applies to virtually all state and local officers, employees, and multimember bodies, whether elected or appointed, at both the state and local levels. Government officials with any potential personal interests in the selection or awarding of contracts may run afoul of this provision. Knowing/intentional violations of Section 1090 can give rise to criminal violations. Violations of Section 1090 can result in the voiding of contracts, criminal, civil and/or administrative penalties, as well as a ban on holding public office. Note that violations of this law are frequently the subject of criminal prosecution by County and State prosecutors.

• **Eligibility to Serve on Malibu City Council.** A Malibu City Council member must, *inter alia*, be a registered voter in the City of Malibu at the time the nomination paper is issued. Cal. Elections Code § 201. Under Elections Code Section 349, “Residence for voting purposes means a person’s domicile,” which means a person’s fixed habitation and the place to which the person intends to return whenever absent; a person may have only one domicile at a time. This contrasts with “residence” which means a temporary fixed habitation; a person may have more than one at a time. *Id.* Under Government Code Section 34882, a person is ineligible for office unless, *inter alia*, the person “resides in the district and both resided in the geographical area making up the district from which he or she is elected and was a registered voter of the city at the time nomination papers are issued to the candidate.” If a City Council member changes their residence to outside of the City limits during his/her term in office, the office of that elected official immediately becomes vacant. Cal. Gov’t Code § 36502.

• **Elected Officials Oath of Office.** California elected officials, including City Council members, must, before entering upon the duties of the office, take an oath that requires, *inter alia*, “I will well and faithfully discharge the duties upon which I am to enter.” Cal. Cons. Code, Art. XX, Sec. 3. .

• **Elected Officials – Ethics Laws.** State and federal laws contains detailed public service ethics laws which establish minimum standards of behavior for elected officials. *See, e.g.*, Public Service Ethics Laws, Institute for Local Government, at [https://issuu.com/instituteforlocalgovernment/docs/ethics\\_booklet\\_full\\_v3](https://issuu.com/instituteforlocalgovernment/docs/ethics_booklet_full_v3). These cover such matters as personal financial gain, conflicts of interest, compensation, reimbursement, use of public resources, gifts to public officials, transparency, and fair processes.

- **Failure to Discharge Powers and Duties.** Local laws require City personnel to see that all state laws and local ordinances are enforced, and they must appropriately supervise all departments of the City government. Malibu Municipal Code § 2.12.070.
- **Procurement and Contract Award Violations.** City Code and California law provide a formal bidding procedure requiring, with limited exceptions, that contracts be awarded to the lowest responsible bidder following public notice and bidding. Cal. Public Contract Code §§ 20160, *et seq.*; Malibu Municipal Code §§ 2.56.140. Bids must include specific information, including the identity of subcontractors, and may later substitute a different subcontractor only under limited circumstances and with the consent of the awarding authority. Cal. Public Contract Code §§ 4100-4114.
- **City of Malibu, City Council Policies, Policy No. 13** (Establishment of Ethical Standards; “The City shall expect and enforce the highest ethical standards in the conduct of all City business by all paid staff, all volunteers, and all appointed and elected officials, and to prohibit staff from working on any project or program where the staff member may have a conflict of interest”), at <https://www.malibucity.org/DocumentCenter/View/46/Council-Policies?bidId=>.
- **City of Malibu, City Council Policies, Policy No. 15** (General Welfare to be Primary over Special or Group Interests).
- **City of Malibu, City Council Policies, Policy No. 14** (Establishment of Policy Manual).