



**2006-2007 Yuba County Grand Jury  
Final Report**

**City of Marysville:  
Business Improvement District**

# 2006-2007 Yuba County Grand Jury Final Report

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## Subject of Investigation

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**City of Marysville:  
Business Improvement District**

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## Reason for Investigation

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Pursuant to California Penal Code 925(a), the Grand Jury is mandated to review the operation and procedures of the municipalities within the county on a periodic basis. Since the Downtown Marysville Business Improvement District (BID) has never been investigated, the 2006-2007 Grand Jury chose to inquire into the structure and operations of the BID. This review was done in order to determine if the association is actually performing its stated mission and what role the members play in its activities.

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## Background

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On April 7, 1998 the City of Marysville, authorized by the California Streets and Highways Code section 36500 et. seq., introduced Resolution 98-11 declaring its intention to form a business improvement district, for the purpose of promoting economic revitalization and physical maintenance of the downtown area, create jobs, attract new business, and prevent erosion of the business district. On April 21, 1998, the City Council adopted Ordinance 1233, approved a levy of funds on all businesses in the district and set its boundaries. These are as follows: “North Seventh Street to the toe of the levee and East E Street to East C Street.”

There are two “Zones of Benefit” in the BID, with Zone A being the immediate downtown core district including the three blocks of D Street from Third to Sixth streets while Zone B is made up of non-zone A businesses that are located between First and Seventh Streets and from C Street to the east side of E Street.

On June 14, 2005 the Board of Directors of the Downtown Marysville BID adopted bylaws and created a California Mutual Benefit Corporation. These bylaws were created under the provisions of Streets and Highways Code section 36500 et. seq., commonly known as the Parking and Business Improvement Area Law of 1989 (“1989 Law”) and they identify the BID as a non-profit organization.

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## **Method of Investigation**

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The Grand Jury studied California Streets and Highways Code sections 36500 through 36504, Resolution 98-11, City Ordinance 1233 and the BID bylaws. Jurors interviewed current officers of the BID and attended BID monthly meetings. Members interviewed City of Marysville Administrative Services Department personnel, Yuba County Counsel, and staff from the Territorial Dispatch newspaper. Jurors reviewed the Marysville Economic Strategic Plan, documents from the Yuba Sutter Chamber of Commerce and the 2005-2006 BID annual report, which includes their mission statement. Additionally the jurors examined the BID's profit and loss statements, projected budget amounts, and the cash flow statements provided by the association. After mailing questionnaires to 127 current BID members, the panel working in groups of two collected the surveys and listened to the concerns of many of the business members.

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## **Facts and Observations**

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Considerable time was spent by the jurors reviewing the BID documents which were confusing. In interviews, elected officers of the BID stated they were not aware of the contents of the governing documents. The membership questionnaires revealed that 76 percent of the respondents were unaware of the bylaws, and only a few understood them.

While interviewing the BID officers, the jurors noted that the participation of the BID members is very limited. Members are only allowed to vote for the election of the Board Officers and not in matters affecting their BID. The membership questionnaire revealed that 67 percent of the respondents feel they have no voice in the decisions made by the BID. This method of operation is contradictory to both Ordinance 1233 and the BID bylaws. Section 4.04.040 of Ordinance 1233 clearly states:

All voting within the District regarding election of Board Members and any actions regarding the normal and routine conducting of District Business shall be based on one (1) vote per assessed dollar, and said business must be current in payment of their District assignment(s) to participate in such votes.

The bylaws, under Section 3.3, add, in part:

All regular members in good standing shall have the right to vote, as set forth in Section 3.1 and 3.2 of these bylaws on the election of directors, on the disposition of all or substantially all of the assets of the Association, on any merger and its principal terms and any amendment of those terms and on any election to dissolve the Association.... [Note: Section 3.1 defines regular and

voluntary members; section 3.2 specifies the rights of regular and voluntary members.]

One area of confusion is the dissolution of the BID mentioned above. The bylaws state a simple majority vote of members present at any given meeting can dissolve the district. However, Ordinance 1233 Section 4.04.150 takes precedence and states:

Proceedings to disestablish the District shall be initiated by the City Council following the presentation of a petition to the City Council signed by business owners paying 50 percent or more of the assessments levied in the District. Proceedings to disestablish the District shall follow the procedures set forth in Section 36550. The City Council shall disestablish the District if, following the public hearing prescribed in Section 36556(b), written protests are not withdrawn as to reduce the protests below the 50 percent level.

The rules regarding membership termination are drafted by the board and are not specified in any of the districts documents. Section 3.6 of the bylaws states that “in no event shall terminating a regular membership result in the termination of the obligation to pay assessment.” Sections 3.5 (termination), 3.7 (suspension), and 3.8 (procedures for expulsion or suspension) all state that a member may be penalized for not conforming to the BID rules of conduct. Therefore, by definition, any member can lose their “member in good standing status” for any alleged reason and will still be required to pay fees to support an organization that does not want their participation.

In the area of finances, review of 2006-2007 projected budget reveals BID annual revenue of \$37,910.00. Of this total, \$18,955.00 is generated from BID membership assessment fees and another \$18,955.00 is to be donated by the City of Marysville as matching funds. According to the City of Marysville Administrative Service Department personnel, the city council decides annually if matching funds are available. If so, these funds are donated to the BID to be spent at their discretion.

All expenses are approved by the Board and two signatures are required on all checks written. The accounting program used by BID is *Quickbooks* by Intuit. Planned expenditures are as follows:

- 43% advertising
- 12% scheduled events
- 20% new events
- 15% promotions
- 10% operating expenses

The Grand Jury noted that most of the BID budget will be spent on advertising. Most notable are the BID tri-fold and the experimental “Downtown Marysville” section included monthly in the Territorial Dispatch. Other advertising venues include the *Appeal-Democrat*, Beale’s “High Flyer,” Gold Sox baseball, and signage.

The “Downtown Marysville” insert, included in the Territorial Dispatch, has advertising paid for by individual business. The articles in the insert consistently favor the same few establishments.

A large portion of the budget (32 percent) will be spent on downtown events such as the Christmas Parade, the Veterans Day Parade, the Peach Festival and Bok Kai, although the community benefits from these events, 67 percent of the respondents to the BID membership questionnaire reported that they do not benefit from these events.

Another 15 percent of the budget will be spent on promotions, which includes an improved website, decorations to empty storefronts, colorful planters, and flags throughout the downtown area. Although the BID has a savings account in excess of \$12,000, 70 percent of the BID survey respondents stated that they did not see their levied funds being spent in a visible way.

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## **Findings and Recommendations**

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### **Finding 1**

The BID bylaws are vague and confusing.

### **Recommendation**

Review and revise the bylaws to clarify their content.

### **Finding 2**

Many BID members are not aware of the bylaws.

### **Recommendation**

Ensure that all BID members receive a copy of the revised bylaws.

### **Finding 3**

A majority of the BID members are not aware of their right to vote on the decisions made by the BID.

### **Recommendation**

Inform members of their right to vote on decisions by the BID and encourage their participation.

### **Finding 4**

BID has a savings account balance roughly equivalent to one-third of their budget.

### **Recommendation**

Decide best use of the funds in the savings account with the full membership.

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**PASSED and ADOPTED by the Yuba County Grand Jury on the 15th day of May 2007.**

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## **Response Required**

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**Penal Code sections 933 and 933.05 require that specific responses to both the findings and recommendations contained in this report be submitted to the Grand Jury Presiding Judge of the Yuba County Superior Court (Hon. Debra L. Givens) within 90 days from:**

**City of Marysville: Business Improvement District**

## **California Penal Code**

### **Part 2 of Criminal Procedure**

#### **Title 4. Grand Jury Proceedings**

##### **Chapter 3. Powers and Duties of Grand Jury**

###### **Article 2. Investigation of County, City, and District Affairs**

###### **§ 933. Finds and recommendations; copies of final report; comment of governing bodies, elective officers, or agency heads; definition**

(a) Each grand jury shall submit to the presiding judge of the superior court a final report of its findings and recommendations that pertain to county government matters during the fiscal or calendar year. Final reports on any appropriate subject may be submitted to the presiding judge of the superior court at any time during the term of service of a grand jury. A final report may be submitted for comment to responsible officers, agencies, or departments, including the county board of supervisors, when applicable, upon finding of the presiding judge that the report is in compliance with this title. For 45 days after the end of the term, the foreperson and his or her designees shall, upon reasonable notice, be available to clarify the recommendations of the report.

(b) One copy of each final report, together with the responses thereto, found to be in compliance with this title shall be placed on file with the clerk of the court and remain on file in the office of the clerk. The clerk shall immediately forward a true copy of the report and the responses to the State Archivist who shall retain that report and all responses in perpetuity.

(c) No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations. All of these comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury. A copy of all responses to grand jury reports shall be placed on file with the clerk of the public agency and the office of the county clerk, or the mayor when applicable, and shall remain on file in those offices. One copy shall be placed on file with the applicable grand jury final report by, and in the control of the currently impaneled grand jury, where it shall be maintained for a minimum of five years.

(d) As used in this section "agency" includes a department.

### **§933.05. Responses to findings**

(a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding.

(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.

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

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

(c) However, if a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the board of supervisors shall respond if requested by the grand jury, but the response of the board of supervisors shall address only those budgetary or personnel matters over which it has some decisionmaking authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

(d) A grand jury may request a subject person or entity to come before the grand jury for the purpose of reading and discussing the findings of the grand jury report that relates to that person or entity in order to verify the accuracy of the findings prior to their release.

(e) During an investigation, the grand jury shall meet with the subject of that investigation regarding the investigation, unless the court, either on its own determination or upon request of the foreperson of the grand jury, determines that such a meeting would be detrimental.

(f) A grand jury shall provide to the affected agency a copy of the portion of the grand jury report relating to that person or entity two working days prior to its public release and after the approval of the presiding judge. No officer, agency, department, or governing body of a public agency shall disclose any contents of the report prior to the public release of the final report.