FILED

JUN 21 2019

SIERRA COUNTY SUPERIOR COURT

BY _____ DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SIERRA

In the Matter of

2018-2019 Sierra County Grand Jury **MINUTE ORDER**

_____/

HONORABLE CHARLES H. ERVIN, JUDGE PRESIDING

The County Clerk is hereby directed to file the **Sierra County Grand Jury 2018-2019 Final Report**, attached hereto.

I HEREBY CERTIFY the foregoing to be a full, true and correct copy of an order entered on the minutes of said Superior Court of the State of California, County of Sierra, this 21st day of June 2019.

ATTEST my hand and seal of the Superior Court of the State of California, County of Sierra, this 21st day of June 2019.

SIERRA SUPERIOR COURT

BY _____ **Clerk**

cc: Heather Foster
Sierra County Clerk
Courthouse
Downieville, CA 95936

F:\grandjury\18-19\Final Report\minute order to file final report wpd

A Report to the People of Sierra County, California

from
the 2018-2019
Sierra County
Grand Jury

REPORT RELEASE DATE: June 21, 2019

Sixty (60) day response deadline: August 20, 2019

Ninety (90) day response deadline: September 19, 2019

Members of the 2018-2019 Grand Jury

Laurie Belli
Carrie A. Blakley
Docia Bostrom
Kathleen H. Colburn
H. David Crosby
Claude A. (Gus) Donowho *(foreperson)*
Paul Bascom Guffin
Karen Linde
Jeffrey McCollum
Bobby Wheeler
Bonnie Jessee Wheeler

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INTRODUCTION TO THE 2018-2019 SIERRA COUNTY GRAND JURY REPORT

Even though the Constitution of the United States originally contained no reference to a grand jury, the Fifth Amendment to that founding document states, in part:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury…

In California, Article I, Section 23 of the state constitution mandates:

> One or more grand juries shall be drawn and summoned at least once a year in each county.

It is on the basis of these mandates, and on our individual and collective conviction that a grand jury, acting morally and ethically under the law, serves the people of Sierra County as a much-needed and honorable agency of oversight of government, that we undertook our work throughout this year.

As you will note in this report, this Grand Jury interacted with a number of people in a variety of capacities. We here express our gratitude to each and every one of these persons for their willingness to work with the Grand Jury, and for the input they gave to our various investigations and quests for information and knowledge.

Additionally, we express our gratitude to those persons who trusted the grand jury process enough to lay complaints before us, believing that we would honor their confidentiality and their grievances. It is our hope that each of these persons feels that the Grand Jury treated their complaints with respect and honest effort.

Finally, we express our gratitude to the people of Sierra County for the opportunity to serve them as members of this Grand Jury. It has been a humbling experience to take up the responsibility laid before us. It is our hope that the members of the Sierra County community feel that they have been well-served by this Grand Jury. And, we encourage those who are able to do so to consider serving on a Grand Jury in the future.

CHAPTER 1: COUNTY GOVERNMENT

The California Penal Code (¶925) states (in relevant parts):

> The grand jury shall investigate and report on the operations, accounts, and records of the officers, department, or functions of the county....The investigations may be conducted on some selective basis each year...

This Grand Jury understands that mandate to mean that its responsibility entails evaluating and reporting on the "regular" functioning of county departments and officers, as well as investigating and reporting on any extraordinary circumstances within county departments or involving county officers.

To this end, this Grand Jury invited the heads of several county departments to share with the Grand Jury the normal operations of their respective departments. These were not investigations into these departments, but merely an opportunity for the members of the Grand Jury to learn how the county government operates on an everyday basis.

Additionally, in fulfilling its mandate, this Grand Jury chose to view and participate in the election process as handled by the Elections Office, under the direction of the Registrar of Voters. This participation has become a constant for the Grand Jury over the past several years, and thus has been reported in previous Grand Jury reports — as it will be in this one.

Finally, this Grand Jury chose to investigate the travel policy of the Board of Supervisors, which had become an extraordinary issue about the time the Grand Jury was impaneled. This investigation took the form of interviews and requesting and receiving documents from various governmental sources.

SECTION 1.1: DEPARTMENTAL ORIENTATION

In order to educate itself as to the normal functioning of Sierra County government, this Grand Jury invited the heads of several departments to make presentations to the Grand Jury about the workings of their various departments. These presentations included information regarding staffing, finances, operations, practices, and policies that direct the functioning of their departments.

The departments and department heads involved in this orientation process were:

- Assessor's Office: Laura Marshall, Assessor
- Auditor's Office: Van Maddox, Auditor, and Caleb Nelson, Chief Deputy Auditor
- Clerk-Recorder's Office: Heather Foster, Clerk-Recorder and Registrar of Voters
- District Attorney's Office: Sandra Groven, District Attorney
- Human Resources Office: Judi Behlke, Personnel Analyst
- Planning and Building Department: Tim Beals, Director of Planning and Building
- Public Works Department: Tim Beals, Public Works, Roads, and Transportation Director
- Treasurer-Tax Collector's Office: Van Maddox, Treasurer-Tax Collector

The Grand Jury expresses its gratitude to each of these persons for taking the time to meet with the Grand Jury, and for helping to orient the Grand Jury as to the normal functioning of government in Sierra County.

SECTION 1.2: ELECTIONS

It has become somewhat customary for the Grand Jury to view and participate in the elections process, as handled by the County Elections Department, under the direction of the Registrar of Voters. This Grand Jury chose to continue that "tradition", and, therefore, participated in the vote counting during both the general election, held on November 6, 2018, and the primary election for California Senate District 1 on March 26, 2019.

In the first instance, two members of the Grand Jury took part, and, in the second instance, three members of the Grand Jury took part. Knowing that the Grand Jury has made this participation a customary part of its business, the Registrar of Voters relies on two Grand Jury members each time to serve as the Logic and Accuracy Board.

By viewing the election process, the Grand Jury learned:

- the Registrar of Voters is responsible for preparing and printing the ballots (including candidates and, possibly, propositions);

- the vote-by-mail process, which is used for all Sierra County voters, provides for voters to submit ballots either through the mail, bringing them to the Clerk/Recorders Office, or dropping them off at the Senior Citizen Center in Loyalton;

- the Registrar of Voters' election staff, including both county employees and volunteers, examines each submitted ballot for correct signature and legible votes; and, if necessary, prepares a duplicate ballot where the voter's intention is clear on the original ballot, but the ballot, itself, is not able to be processed through the optical scanner; and,

- the ballots are processed through the optical scanner, which produces a report of all the votes cast in the county.

By participating in the election process as the Logic and Accuracy Board, the Grand Jury learned:

- the Registrar of Voters prepares several sample ballots, randomly marked to simulate the various ways in which a real ballot might be submitted, and making sure that each candidate and/or proposition is represented;

- the sample ballots are processed through the optical scanner, with the result that a sample Election Summary Report is produced;

- the Logic and Accuracy Board then manually checks the sample Election Summary Report against the sample ballots to guarantee that the optical scanner system is functioning properly; and,

- the Logic and Accuracy Board signs a form certifying that the system is functioning properly.

Additionally, during the primary election for California Senate District 1, members of the Grand Jury learned:

- the primary and run-off elections for California Senate District 1 will cost the county $20,000;
- a request has been made to the California Department of Finance for reimbursement to cover this cost;
- if there needs to be a follow-up primary and run-off election for California Assembly District 1, it will cost the county an additional $20,000;
- the Premier AccuVote OS/Tsx Voting System, which the county is currently using, has been decertified by the Secretary of State's office;
- the current election for California Senate District 1 will be the final election for which the current system may be used;
- the Registrar of Voters must choose a new system from among two that the Secretary of State's office has certified, and that are viable options for Sierra County; and,
- the new system may cost in excess of $200,000, which is estimated to be an actual increase to the county over eight years of about $40,500, partly due to matching funds from the state and the possible utilization of some federal funds, and factoring in the costs of operating the current system.

Findings

F1.2.1 The Registrar of Voters and staff are highly knowledgeable and qualified to handle elections in Sierra County.

F1.2.2 The optical voting system for counting ballots functioned accurately and without problems.

F1.2.3 Voters in Sierra County can be assured that the voting process is fair and accurate, and that their votes are handled with competence and respect.

SECTION 1.3: BOARD OF SUPERVISORS TRAVEL POLICY

Through filed complaints and direct discussion with some county government personnel, the Grand Jury was made aware that there were some potential problems with the travel policy of the Sierra County Board of Supervisors. Therefore, an investigation was begun, and eventually concluded, within the term of this Grand Jury.

This investigation was conducted using the following methodology:

- the Grand Jury gathered information from nine persons, via face-to-face interviews, correspondence, and/or telephone conversations;
- the Grand Jury examined printed minutes of Board of Supervisors meetings;
- the Grand Jury listened to recordings of Board of Supervisors meetings; and,
- the Grand Jury examined a variety of documents related to the subject.

The investigation brought to light these facts:

- the travel policy for the Board of Supervisors is spelled out in the Sierra County Code, Section 2.04.090, "Supervisors' Mileage Allowance";
- at the time this investigation began, the relevant code read as follows:

  > Members of the Board of Supervisors shall be allowed reimbursement for their actual expenses in traveling on official business. Reimbursement for these expenses is subject to the provisions in Government Code Section 53232.2 and 53232.3 and members shall be allowed reimbursement for mileage when using their private vehicle on County business at the mileage rate allowed for other County employees and officers.

- three supervisors had, apparently, requested (and received) mileage reimbursements beyond what was allowed, either by requesting mileage reimbursement for meetings not attended, or by requesting mileage reimbursement for attendance as representatives of the Board of Supervisors to the County Transportation Commission;
- at the time this investigation began, the Transportation Commission reimbursement policy read as follows:

  > Every Sierra County Transportation Commission member who attends a Sierra County Transportation Commission meeting shall receive $50.00 reimbursement for expenses for attendance of that meeting.

- the Auditor maintained that requesting mileage reimbursement in addition to the $50.00 reimbursement for expenses for Transportation Commission meetings was beyond what was allowed;
- two of the three supervisors who had requested (and received) mileage reimbursement beyond what was allowed repaid the overages to the county;

- one of the three supervisors who had requested (and received) mileage reimbursement beyond what was allowed refused to repay the overages to the county;

- as a result of this issue, the Board of Supervisors revised its mileage allowance policy in the code to read (in relevant parts):

> Travel shall be authorized only when the travel is in the best interest of the county....
> In-county travel shall not be reimbursed. For out-of-county travel: Advance authorization by the Board of Supervisors as a representative or alternate to a committee or commission is required for any travel reimbursement....
> Travel by private vehicle will be reimbursed at the IRS rate for business use of a personal vehicle in effect in the county at the time of travel.
> Mileage is not reimbursable if it is in addition to a per diem payment or mileage paid by the organization hosting the event, meeting or function unless specifically authorized by the Board of Supervisors....
> Board members' mileage to the regular place of business from home is in-county travel and may not be claimed.
> Mileage in conjunction with authorized county travel to and from the authorized destination shall be based on the distance to the destination from the Board member's home or their regular place of work, whichever is shorter.

- as a further result of this issue, the Transportation Commission revised its travel reimbursement policy as follows (in relevant parts):

> The Transportation Commission shall not reimburse Commission members who are elected officials representing the County of Sierra-Board of Supervisors or City of Loyalton-City Council as those members have the option to seek travel reimbursement (vehicle mileage reimbursement) from their respective governing Board.
> The Transportation Commission shall authorize and approve travel reimbursement (vehicle mileage reimbursement) if Commission members representing either the County of Sierra or City of Loyalton are not elected members of the respective governing body; and, the respective governing body does not pay such members travel reimbursement for participation on the Commission.
> The Transportation Commission shall authorize and approve travel reimbursement (vehicle mileage reimbursement) for the one member of the Commission that represents transit in the County or City.

- as a still further result of this issue, the Auditor garnished the wages of the one supervisor who had refused to repay the overages to the county, without notifying that person in advance that the garnishment would happen; and,

- as a final result of this issue, all monies owed to the county due to overages paid for mileage reimbursements were reclaimed.

Findings

F1.3.1 The Auditor's Office is to be commended for its diligence in safeguarding the county's finances.

F1.3.2 The Board of Supervisors is to be commended for taking action to resolve the issue of mileage reimbursement in a manner that is equitable and fair to all involved.

F1.3.3 The Transportation Commission is to be commended for taking action to rectify the source of confusion surrounding mileage reimbursement in a manner that is understandable and fair to all involved.

F1.3.4 While it is uncertain as to whether the Auditor's decision to garnish one supervisor's wages was done according to law, it is the opinion of this Grand Jury that the Auditor's decision not to notify that supervisor that a garnishment of wages would happen lacked the level of compassion and moral correctness toward the person involved that should be expected of county officials.

Recommendation

R1.3.4 It is the recommendation of this Grand Jury that the Auditor, working in conjunction with the Board of Supervisors, develop a policy by December 31, 2019, so that any future garnishment of wages is done in compliance with the law. *(See Appendix 1: Garnishment of Wages)*

Required responses

In regards to Finding F1.3.4 and Recommendation R1.3.4, the Auditor shall respond in writing to the presiding judge of the superior court within sixty (60) days of the release of this report.

In regards to Finding F1.3.4 and Recommendation R1.3.4, the Sierra County Board of Supervisors shall respond in writing to the presiding judge of the superior court within ninety (90) days of the release of this report.

Disclaimer

Section 1.3 of this report is issued by the Grand Jury with the exception of one juror who, due to a possible conflict of interest, was recused from all parts of this investigation, including interviews, deliberations, and the writing and approval of this portion of the report.

CHAPTER 2: CITY GOVERNMENT

The California Penal Code (¶925a) states (in relevant parts):

> The grand jury may at any time examine the books and records of any incorporated city...located in the county. In addition to any other investigatory powers granted by this chapter, the grand jury may investigate and report upon the operations, account, and records of the officers, departments, functions, and the method or system of performing the duties of any such city...and make a recommendation as it may deem proper and fit.

The City of Loyalton (hereafter, "City") is the only incorporated city located in Sierra County. According to the welcome signs at either end of town on Highway 49, Loyalton was established in 1864. Incorporation dates from August 21, 1901.

The City has a City Council (hereafter, "Council") form of government, with the Council composed of five persons elected at large by the city voters. The mayor is selected by the Council from among its own members.

This Grand Jury understands its mandate under the Penal Code to mean that its responsibility entails evaluating and reporting on the normal functioning of city departments and officers, as well as investigating and reporting on any extraordinary circumstances within city departments or involving city officers.

To this end, this Grand Jury investigated the actions of city departments and city officials in regard to the following:

- administration and finances
    - record-keeping
    - accounting procedures
    - CalPERS
- public works
    - water meters
    - Loyalton Hotel fire
    - building and planning
- overall conclusion of City government

In order to educate itself as to the normal functioning of the City government, as well as to follow-up on complaints received, this Grand Jury:

- gathered information from eighteen persons, via face-to-face interviews, correspondence, and/or telephone conversations;
- reviewed Council meeting minutes;
- reviewed City and Council documents;
- attended Council meetings; and,
- made field visits to City Hall, the City record storage "barn", and the sewage treatment plant.

SECTION 2.1: ADMINISTRATION AND FINANCE

Item 2.1.1: City and Council Administration Practices

Investigation of the City and Council administration practices brought to light these facts:

- City and Council records are disorganized;
- some Council minutes are missing, both in written and recorded format; and,
- the City's legal counsel is not present at most Council meetings.

Findings

F2.1.1.1 The City has no policy or procedure, or disregards any in existence, for maintaining and preserving documents.

F2.1.1.2 The Council puts the City at great risk by not insuring the presence of the City's legal counsel at all Council meetings.

Recommendations

R2.1.1.1 It is the recommendation of this Grand Jury that, by December 31, 2019, the Council develop administrative policies and procedures for maintaining and preserving City and Council documents, including availability to the public of those policies and procedures both in "hard" copy maintained at City Hall and through digital media.

R2.1.1.2 It is the recommendation of this Grand Jury that, beginning immediately, the Council guarantee the presence at all Council meetings of the City's legal counsel.

Required responses

In regards to Findings F2.1.1.1 and F2.1.1.2 and Recommendations R2.1.1.1 and R2.1.1.2, the Council shall respond in writing to the presiding judge of the superior court within ninety (90) days of the release of this report.

Item 2.1.2: City and Council Finance Practices

Investigation of the City and Council finance practices brought to light these facts:

- for years, the City used Quickbooks for its accounting platform;
- the City would then pay a certified public accountant to put the records into Excel format so that they could be read by an auditor;
- the City is now in the process of switching to a new software program, funded by the Sierra Business Council;
- the last "clean" audit of City books was completed in 2010;
- the 2010 audit, and every audit since then, has come to the same conclusions:
    - adequate and correct financial policies and procedures are not in place;
    - there are no internal controls over financial reporting;
    - there is inadequate segregation of financial duties;
    - there is no fixed asset policy; and,
    - personnel are not knowledgeable about general accounting procedures.

Findings

F2.1.2.1 The City has demonstrated a blatant lack of financial policy and practices, including a historical disregard of auditor's conclusions and recommendations.

F2.1.2.2 The City does not employ personnel with adequate financial expertise and knowledge to implement its financial programs.

F2.1.2.3 The City is to be commended for putting in place a new financial software system.

Recommendations

R2.1.2.1 It is the recommendation of this Grand Jury that, by December 31, 2019, the Council develop financial policies and procedures consistent with the auditor's conclusions and recommendations, including specific oversight by the Council of the City's finances, and also including availability to the public of those policies and procedures both in "hard" copy maintained at City Hall and through digital media.

R.2.1.2.2 It is the recommendation of this Grand Jury that, by December 31, 2019, the City employ a full-time bookkeeper or accountant who is fully qualified on government accounting practices, and provide the opportunity for regular and ongoing training.

Required responses

In regards to Findings F2.1.2.1 and F2.1.2.2 and Recommendations R2.1.2.1 and R2.1.2.2, the Council shall respond in writing to the presiding judge of the superior court within ninety (90) days of the release of this report.

Item 2.1.3: CalPERS

This Grand Jury received complaints regarding the Council's decision to remove the City from CalPERS. Investigation of this matter resulted in these facts:

- the CalPERS contract with the City was initiated on January 16, 1986;
- in 2012 and 2013, members of the Council were Jim Beard (later replaced by Ernie Teague), Betty Ferguson, Craig McHenry, Brooks Mitchell, and Pat Whitley;
- sometime prior to February 24, 2012, someone from the City contacted CalPERS about the possibility of terminating the contract;
- a February 24, 2012, letter from CalPERS to then-mayor, Brooks Mitchell (indicated as a response to Brooks Mitchell's previous inquiry regarding termination of the contract), included a Resolution of Intention for the Council to be returned to CalPERS;
- on March 6, 2012, the Council adopted the Resolution of Intention to terminate the contract, which was subsequently received by CalPERS on March 19, 2012;
- a September 25, 2012, letter from CalPERS to then-mayor, Brooks Mitchell, included a Resolution, an Agreement Terminating the Contract, a Certification of Final Action of Governing Body, and AESD-1 forms for employee separation;
- on September 25, 2012, at a previously called special meeting of the Council, then-mayor, Brooks Mitchell, added the following "emergency items" to the agenda:
    - discussion and possible action regarding CalPERS documentation which will include the First Reading of Ordinance 417, approval of Resolution 7-2012, approval of amendment to Resolution for Employer Paid Contributions; and,
    - discussion and possible action for selection of counsel for CalPERS;
- as emergency items during the special Council meeting of September 25, 2012, the ordinance (of which the first reading was waived), resolution, and amendment were approved by unanimous vote, and Council member Craig McHenry requested the City hire an additional attorney specifically to guide the city through the process of terminating the contract;
- on October 16, 2012, the Council voted to adopt Ordinance 417 (of which the second reading was waived), terminating the contract, by unanimous vote;
- a January 4, 2013, letter from CalPERS to then-mayor, Brooks Mitchell, informed the City that CalPERS had executed the termination of contract, effective March 31, 2013, and included the funded status of the plan at 39.5%;
- on December 11, 2013, the Council voted 4-1 (with Ernie Teague casting the dissenting vote) to terminate CalPERS for any future City employees;

- a June 10, 2014, letter from CalPERS (accompanied by an actuarial valuation as of March 31, 2013) to the City stated that the City owed CalPERS $1,661,897 by June 20, 2014, and that, afterwards, interest would accrue;

- this letter was followed, over the next twenty-six months, by several more demand letters from CalPERS to the City;

- the City refused to pay the amount owed to CalPERS;

- on August 31, 2016, CalPERS notified the City that, if the City were to default on the amount owed to CalPERS within 30 days, the City retirees would suffer a 60.5% reduction in their pension benefits;

- City employees and retirees were not informed that their pensions from CalPERS would be reduced by 60.5% until retirees received a September 7, 2016, letter from CalPERS informing them that, due to the City failing to pay CalPERS the amount due, their benefits could be reduced;

- in 2017, the City paid 11 months of the unfunded pension amounts to its retirees;

- since December, 2017, the City has not paid any of the unfunded pension amounts to its retirees;

- the City retirees subsequently sued the City to recover their pension losses; and,

- at no time during this process were City employees and retirees informed or consulted about the decision to terminate the contract.

Findings

F2.1.3.1 The Council demonstrated a lack of the compassion and moral integrity we expect of our governmental officials when they failed to inform City employees and retirees that the termination of the CalPERS agreement was under consideration, or to involve them in the deliberations and decision-making.

F2.1.3.2 The Council may have violated the Brown Act when it added emergency items regarding CalPERS to the special meeting agenda on September 25, 2012.

Recommendations

R2.1.3.1 It is the recommendation of this Grand Jury that, by September 30, 2019, the Council develop a policy that, whenever employees, retirees, and/or members of the community might be effected by Council actions, those persons be notified prior to the relevant meeting(s), and shall be involved in deliberations that lead to decision-making.

R.2.1.3.2 It is the recommendation of this Grand Jury that, beginning immediately, the Council utilize the City's legal counsel in order to avoid violation of the Brown Act, and that, by December 31, 2019, all Council members undergo Brown Act and ethics training. *(See Appendix 2: Brown Act)*

Required responses

In regards to Findings F2.1.3.1 and F2.1.3.2 and Recommendations R2.1.3.1 and R2.1.3.2, the Council shall respond in writing to the presiding judge of the superior court within ninety (90) days of the release of this report.

SECTION 2.2: PUBLIC WORKS

Item 2.2.1: City Water System

Investigation of the City water system brought to light these facts:

- on September 29, 2004, the Governor signed AB 2572, which required urban water suppliers to:

  Install water meters on all municipal and industrial service connections located within its service area on or before January 1, 2025.

  Charge each customer that has a service connection for which a water meter has been installed, based on the actual volume of deliveries, as measured by the water meter, beginning on or before January 1, 2010.

- in 2004 the City received a grant from USDA for the purpose of installing water meters throughout Loyalton;

- the water meters were installed in 2004;

- since that time, the meters have not been used to determine residents' water usage or to determine water usage charges;

- prior to 2014, the monthly water rate was $36.44 for a single family residence;

- historically, the water rates included a built-in 1% annual increase; however, starting in 2012, that increase was not applied;

- in 2014, the monthly water rate was reduced by the Council to $32.44 for a single family residence;

- this reduction in rate was done despite objection from the USDA, which claimed that the new rate would not cover expenses;

- this reduction in rate was reportedly done as a part of a Council re-election bid by the then-Public Works Director, Craig McHenry; and,

- effective January 1, 2019, the monthly water rate was increased to $49.63 for a single family residence, with a built-in 2% annual increase.

Findings

F2.2.1.1 The City is possibly violating the law by not utilizing the water meters to determine water usage and to base charges on actual usage.

F2.2.1.2 The City is to be commended for increasing current water rates and instituting an annual increase in the rate.

Recommendations

R.2.2.1.1 It is the recommendation of this Grand Jury that, by December 31, 2019, the City will begin utilizing all water meters in the city in order to monitor water usage and determine charges for that usage.

Required responses

In regards to Finding F2.2.1.1 and Recommendation R2.2.1.1, the Council shall respond in writing to the presiding judge of the superior court within ninety (90) days of the release of this report.

Item 2.2.2: Loyalton Hotel Fire

Investigation of the Loyalton Hotel fire brought to light these facts:

- the Loyalton Hotel, located at 603 Main Street (Highway 49), in Loyalton, was a privately-owned property;
- in a fire during the early hours of December 14, 2013, the hotel was completely destroyed;
- the conclusion of the fire investigator was that "the fire was most likely human caused", based on an inspection conducted on December 14, 2013;
- after consultation between the Loyalton Fire Department, Sierra County Sheriff's Department, the fire investigator, and then-mayor, Brooks Mitchell, it was decided that, for the safety of fire personnel and the protection of nearby property, the standing outer walls of the hotel should be knocked down;
- then-mayor, Brooks Mitchell, authorized Folchi Logging and Construction to knock down the walls and handle the clean-up;
- then-mayor, Brooks Mitchell, tried to get trucks from Folchi Logging and Construction for the purpose of hauling debris to the county landfill;
- then-Public Works Director, Craig McHenry, tried to get trucks from other private haulers for the purpose of hauling debris to the county landfill;
- both then-mayor, Brooks Mitchell, and then-Public Works Director, Craig McHenry, were informed that the only hauler licensed by the county to haul to the county landfill was Intermountain Disposal;
- Ricky Ross, CEO of Intermountain Disposal, agreed to allow one Folchi Logging and Construction truck to haul under the Intermountain Disposal license;
- then-mayor, Brooks Mitchell, and then-Public Works Director, Craig McHenry, were adamant that the fire debris be hauled to the county landfill immediately;
- then-mayor, Brooks Mitchell, wanted unfettered access to the county landfill;
- Folchi Logging and Construction knocked down the standing outer walls of the hotel, while there was still some fire burning, and began loading two Intermountain Disposal trucks and one Folchi Logging and Construction truck with the debris, which was then hauled to the county landfill;
- property owner, Joan Carroll, was present at the fire scene, and informed the Sheriff's Office that the City had no permission to access the fire site;
- this process of demolition and hauling took place over the next two-and-one-half days, being completed on December 16, 2013;

- then-Public Works Director, Craig McHenry, authorized Joy Engineering to haul material from the City sewer plant to the site of the hotel fire;

- Joy Engineering hauled the material from the City sewer plant to the site of the hotel fire on December 17, 2013;

- the City paid Joy Engineering for hauling from the City sewer plant to the site of the hotel fire;

- then-Public Works Director, Craig McHenry, engaged volunteers, using City equipment, to spread the material from the City sewer plant over the site of the hotel fire;

- the City paid Folchi Logging and Construction for the demolition work and its share of the hauling;

- Intermountain Disposal invoiced the City for its share of the hauling and for the county landfill charges, but the City refused to pay, denying that the City had ever requested Intermountain Disposal to haul fire debris to the county landfill;

- testing on the fire debris at the county landfill subsequently determined that it contained asbestos, and was therefore classified as hazardous waste;

- the county hired a hazardous waste disposal company to remove the hazardous fire debris from the county landfill, at a cost of more than $120,000;

- the county billed one-third of that cost each to the hotel property owners, the City, and Intermountain Disposal; and,

- the City, Intermountain Disposal, and the hotel property owners have each paid their $40,000 share of the cost.

Findings

F2.2.2.1 Council officials misused City funds, materials, and equipment on private property.

F2.2.2.2 Then-mayor, Brooks Mitchell, and then-Public Works Director, Craig McHenry, tried to circumvent county regulations regarding licensed haulers and access to the county landfill, and proceeded to clean up the hotel property without the owners' permission.

F2.2.2.3 The activity authorized by City officials, without permission of the hotel property owners, subsequently resulted in the City having to pay out over $50,000.

F2.2.2.4 Due to the age of the hotel, the possibility of asbestos and/or other hazardous materials should have been considered prior to any debris being removed from the property; the failure to do so put personnel at the scene and people throughout the community at risk.

Recommendations

F.2.2.2.1 It is the recommendation of this Grand Jury that, by December 31, 2019, the Council develop a policy that prevents the City from using City funds, personnel, and/or equipment on private property, except where a public safety violation exists, and its remediation has been reviewed and approved according to City policy.

Required responses

In regards to Findings F2.2.2.1, F2.2.2.2, F2.2.2.3 and F2.2.2.4 and Recommendation R2.2.2.1, the Council shall respond in writing to the presiding judge of the superior court within ninety (90) days of the release of this report.

Disclaimer

Item 2.2.2 of this report is issued by the Grand Jury with the exception of one juror who, due to a possible conflict of interest, was recused from all parts of this investigation, including interviews, deliberations, and the writing and approval of this portion of the report.

Item 2.2.3: Building and Planning

Investigation of the City's building and planning procedures brought to light these facts:

- the City and Sierra County entered into a Planning Services Agreement, dated April 1, 2008, whereby the county provided building and planning services to the City;
- at a special Board of Supervisors meeting on November 26, 2013, then-Council member, Craig McHenry, informed the Board that:
  - the City had not been using the county's planning services since July, 2012;
  - the City had discussed with the City of Portola using Portola's building inspector;
  - the City of Portola had agreed to issue joint building permits on a six month trial basis, and,
  - the City's preference was to suspend the Planning Services Agreement with the county for six months.
- at the November 26, 2013, special meeting, the Board of Supervisors voted on a motion of intent to terminate the Planning Services Agreement;
- at a regular Board of Supervisors meeting on December 3, 2013, the Board adopted a resolution terminating the Planning Services Agreement;
- at a Council meeting on December 11, 2013, the Council adopted a resolution terminating the Planning Services Agreement;
- at a regular Board of Supervisors meeting on December 17, 2013, the Board adopted an amendment to the resolution termination the Planning Services Agreement; and,
- currently:
  - the City appears to have no building code;
  - the City appears to have no formal process for granting building permits;
  - the City appears to grant building permits without a building code;
  - the City has no building inspector; and,
  - the City appears to have no building and planning enforcement process.

Findings

F2.2.3.1 The lack of a building code, permitting process, and enforcement creates a situation of public safety for the City and its people, and possible liability for the City.

Recommendations

R2.2.3.1 It is the recommendation of this Grand Jury that, by December 31, 2019, the Council, in conjunction with the Board of Supervisors, re-establish the Planning Services Agreement, so that the county again has responsibility for building and planning within the city.

Required responses

In regards to Finding F2.2.3.1 and Recommendation R2.2.3.1, the Council shall respond in writing to the presiding judge of the superior court within ninety (90) days of the release of this report.

In regards to Finding F2.2.3.1 and Recommendation R2.2.3.1, the Sierra County Board of Supervisors shall respond in writing to the presiding judge of the superior court within ninety (90) days of the release of this report.

SECTION 2.3: OVERALL CONCLUSION OF CITY GOVERNMENT

The Grand Jury's year-long investigation into the City of Loyalton, taking into consideration all of the facts gathered, leads to the following finding and recommendations.

Findings

F2.3.1 The City and Council have demonstrated, over a number of years, that they are unable to manage the City in a responsible, transparent, and ethical manner.

Recommendations

R2.3.1 It is the recommendation of this Grand Jury that, by December 31, 2019, the Council adopt a resolution to disincorporate the City. *(See Appendix 3: Disincorporation)*

R2.3.2 It is the further recommendation of this Grand Jury that, if, by December 31, 2019, the Council fails or refuses to adopt a resolution to disincorporate the City, the citizens of the City initiate disincorporation proceedings by petition. *(See Appendix 3: Disincorporation)*

Required responses

In regards to Finding F2.3.1 and Recommendation R2.3.1, the Council shall respond in writing to the presiding judge of the superior court within ninety (90) days of the release of this report.

APPENDIX 1: GARNISHMENT OF WAGES

California Labor Code 2929 *(in relevant part)*

(a) As used in this section:

(1) "Garnishment" means any judicial procedure through which the wages of an employee are required to be withheld for the payment of any debt.

California Labor Code 224

The provisions of Sections 221, 222 and 223 shall in no way make it unlawful for an employer to withhold or divert any portion of an employee's wages when the employer is required or empowered so to do by state or federal law or when a deduction is expressly authorized in writing by the employee to cover insurance premiums, hospital or medical dues, or other deductions not amounting to a rebate or deduction from the standard wage arrived at by collective bargaining or pursuant to wage agreement or statute, or when a deduction to cover health and welfare or pension plan contributions is expressly authorized by a collective bargaining or wage agreement.

Nothing in this section or any other provision of law shall be construed as authorizing an employer to withhold or divert any portion of an employee's wages to pay any tax, fee or charge prohibited by Section 50026 of the Government Code, whether or not the employee authorizes such withholding or diversion.

California Code of Civil Procedure 706.122 *(in relevant part)*

The "notice to employee of earnings withholding order" shall contain a statement that informs the employee in simple terms of the nature of a wage garnishment, the right to an exemption, the procedure for claiming an exemption, and any other information the Judicial Council determines would be useful to the employee and appropriate for inclusion in the notice...

Note: Interested persons should examine the entirety of Chapter 5 ("Wage Garnishment") *(¶706.10-¶706.154 inclusive)* of Division 2 ("Enforcement of Money Judgments") of Title 9 ("Enforcement of Judgments") of Part 2 ("Of Civil Actions) of the California Code of Civil Procedure.

APPENDIX 2: BROWN ACT

California Government Code 54954.2 *(in relevant part)*

(b) Notwithstanding subdivision (a), the legislative body may take action on items of business not appearing on the posted agenda under any of the conditions stated below. Prior to discussing any item pursuant to this subdivision, the legislative body shall publicly identify the item.

(1) Upon a determination by a majority vote of the legislative body that an emergency situation exists, as defined in Section 54956.5.

(2) Upon a determination by a two-thirds vote of the members of the legislative body present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).

(3) The item was posted pursuant to subdivision (a) for a prior meeting of the legislative body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

California Government Code 54956.5 *(in relevant part)*

(a) For purposes of this section, "emergency situation" means both of the following:

(1) An emergency, which shall be defined as a work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body.

(2) A dire emergency, which shall be defined as a crippling disaster, mass destruction, terrorist act, or threatened terrorist activity that poses peril so immediate and significant that requiring a legislative body to provide one-hour notice before holding an emergency meeting under this section may endanger the public health, safety, or both, as determined by a majority of the members of the legislative body.

APPENDIX 3: DISINCORPORATION

California Government Code 56034

"Disincorporation" means the dissolution, extinguishment, or termination of the existence of a city and the cessation of its corporate powers, except for the purpose of winding up the affairs of the city.

California Government Code 56654 *(in relevant part)*

A proposal for a change of organization or a reorganization may be made by the adoption of a resolution of application by the legislative body of an affected local agency...

California Government Code 56765

A petition for the disincorporation of a city shall be signed by not less than 25 percent of the registered voters residing in the city proposed to be disincorporated as shown on the county register of voters.

Note: Interested persons should examine the entirety of Division 3 ("Cortese-Knox-Hertzberg Local Government Reorganization Act or 2000") *(¶56000-¶57550 inclusive)* of Title 5 ("Local Agencies") of the California Government Code.