

MONTAGUE CITY COUNCIL

SUMMARY

The Grand Jury received complaints concerning the operation of the Montague City Council. The complaints alleged a multitude of problems: the council was seated illegally; the council violated the Ralph M. Brown Act; the council violated the “City of Montague Personnel Policy and Procedures and Employee Handbook”; the council did not direct the code enforcement officer to uniformly enforce the city’s ordinances; and the council did not conduct meetings in a professional manner. The need for more community participation became apparent during our investigation. Oversight and accountability by the community is lacking.

The Grand Jury decided to conduct an investigation of the operation of the Montague City Council and its relationship with City staff.

GLOSSARY

“City of Montague Personnel Policy and Procedures and Employee Handbook” revised January 7, 2016 (Handbook)

BACKGROUND

Prior to the November 8, 2016 election, there were five seated members of the Montague City Council. The terms of two of the members expired on November 8, 2016, and another decided not to run for re-election in November. Hence, there would be three vacancies on the council on November 9, 2016.

Citizens of any community are entitled to know how the officials of their governmental agencies are doing business on their behalf. According to the California Attorney General’s office, “All the deliberative processes by legislative bodies, including discussion, debate and the acquisition of information shall be open and available for public scrutiny.” To this end, the California State Legislature enacted California Government Code Section 54950 et seq. in 1953. This legislation is commonly known as the “Brown Act” and guarantees the public’s right to attend and participate in meetings of local legislative bodies. Perhaps a 1952 statement in the Sacramento Bee newspaper best describes the importance of this law to an informed citizenry: “A law to prohibit secret meetings of official bodies, save under the most exceptional circumstances, should not be necessary. Public officers above all other persons should be imbued with the truth that their business is the public’s business and they should be the last to tolerate any attempt to keep the people from being fully informed as to what is going on in official agencies. Unfortunately, however, that is not always the case. Instances are many in which officials have contrived, deliberately and shamefully, to operate in a vacuum of secrecy.”

Of course, it is also important to note here that while the Brown Act focuses on the need for open meetings, it does contain a limited number of exceptions from its requirements where the government has demonstrated a need for confidentiality. A few examples of these exceptions

include employee disciplinary actions, pending litigation and labor relations. There is a wealth of information available on the Internet about the Brown Act and its requirements for anyone interested in gaining more information. Some complaints alleged violations of the Brown Act by the Montague City Council.

After reviewing the Handbook, selected employee records and correspondence, the jury found no evidence of violations of the Handbook.

While there were claims of unequal code enforcement, the Grand Jury could not confirm them, as there was no existing method for tracking complaints, citations or resolution of any complaints or citations.

As previously mentioned, the Montague City Council consists of five members. Each of these members has served three years or fewer, with several serving only a matter of months. The city administrative staff is all new to their positions. The city clerk started work in July 2016, and the remaining three began after that date. The previous administrative staff retired in April 2016, leaving a two-month gap in continuity, which has hindered smooth city operations.

METHODOLOGY

The Grand Jury interviewed the complainants, members of the Montague City Council, Montague city staff and members of the Siskiyou County Clerk's office. The jury reviewed council meeting minutes, as well as pertinent correspondence between the city council and the city attorney, the County Counsel, the County Clerk and correspondence with a terminated employee. Members of the jury also did extensive online research and reviewed both California election codes and the California penal codes, and reviewed an opinion by County Counsel on the election proceedings.

DISCUSSION

Some complaints received by the Grand Jury alleged there were improprieties in the appointments in lieu of election of two incumbents. The Grand Jury's review of the events follows.

California Election Code Section 10299 states that candidates for office must file their papers no later than 88 days prior to the upcoming election (in this case August 12, 2016) or, if the candidate is an incumbent, 83 days prior to the upcoming election (in this case August 17, 2016). Two City Council incumbents failed to file the required paperwork by the August 17, 2016 deadline.

California Election Code Section 10299 also provides relief for small cities that do not have enough interested candidates to fill all the openings: it allows for appointment in lieu of election, which saves the city the cost of an election. This provision exists because many entities do not have adequate numbers of candidates to fill vacancies. Specific to the Montague election, there were three openings and only one candidate. Appointees shall serve exactly as if elected. Appointments in lieu of election must be completed 75 days before the upcoming election date (in this case, August 25, 2016), or the city would be required to hold a special election. In

Montague, one person, not an incumbent, filed papers on time. The two incumbents failed to file their papers before the deadline. On August 17, 2016, the County Clerk's office sent Montague a letter explaining that the city had three council seats vacant and only one candidate running for office. The letter outlined three possible options: one option was to appoint the candidate in lieu of election; one was to nominate an eligible elector; or hold the election. In order to choose the option to appoint in lieu of election, the City Council had to execute that option prior to August 25, 2016.

The council members chose the appointment in lieu of election option before August 25, 2016. On August 17, 2016, the Montague City Council decided, via email communications, to call a special meeting on August 23, 2016 to discuss and act on the election options. However, on August 23, 2016, not only did the City Council appoint the one qualified candidate, they additionally appointed the two incumbents, who voted to appoint themselves. The council voted to appoint the candidate who was on the ballot for a four-year term. They appointed the two incumbent council members for two-year terms.

On August 29, 2016, the city council received a letter from the city attorney who opined that California Election Code Section 10299 might not apply and that the two incumbent appointments might not stand.

On August 30, 2016, the Montague City Attorney received a lengthy email from County Counsel's office expressing its opinion on California Election Code Section 10299. The County Counsel office's interpretation of Election Code Section 10299 resulted in an opinion different from that of the City Attorney. That opinion stated that the three members who were appointed in lieu of election were seated legally and could serve as if actually elected. The differing legal interpretations of Election Code Section 10299 resulted in conflict among City Council members.

An additional complaint received by the Grand Jury was the alleged violations of the Brown Act via serial meetings by City Council members. The Grand Jury obtained copies of email threads documenting violations of the Brown Act in at least two such meetings. A serial meeting occurs when one or more council persons, but less than a majority, meet to discuss a pending city issue in private. A serial meeting can be face-to-face, via email, texting, phone calls or a combination thereof. One of these persons then engages with other members of the Council in private on the same issue. This constitutes a series of meetings in which a majority of the Council participated without the benefit of an open public meeting. These serial meetings may be well intended and are conducted in this manner to speed up the process of decision-making by the governing body. However, this practice denies the public's right-to-know, creates a lack of transparency in the act of decision-making and presents the appearance of impropriety to the community. In the age of the Internet and texting, serial meetings are tempting and easy to do, but they are still prohibited by law.

The next segment of the Grand Jury investigation included a review of relations between City Council members and City staff. Due to the rapid turnover of city council members and staff, the benefit of experienced mentors was lost. City of Montague staff is governed by the City of Montague Personnel Policy and Procedures and Employee Handbook, which does not actually

contain policies and procedures. The Grand Jury was advised that the employees are also accountable to an incomplete document entitled Policy and Procedures Manual. This Policy and Procedures Manual is supposed to outline city operations, job duties and responsibilities. As an example, the Grand Jury was advised one previous city employee routinely carried original city documents in a personal vehicle. Upon the employee's termination, these city documents remained in the employee's possession. As of this writing, the Grand Jury is unable to verify that these City documents have been returned.

The Grand Jury was further advised that there is no procedure for the tracking, monitoring or documentation of the resolution of citizen complaints and citations. While the Grand Jury has not seen an organizational chart, several interviewees stated that all five council members supervise the City Clerk. It is difficult to serve five bosses at one time. There were allegations that city council members gave conflicting instructions to city staff and were impatient with staff. When the current city clerk was hired, it had been several months since the city had any paid administrative staff.

The Grand Jury learned that there was no orientation for new city council members. Members begin serving without knowing their job duties or the expectations they must fulfill. The administrative staff did not receive formal training either, and were told little of their job duties and/or responsibilities.

The City of Montague has had a number of difficulties with employee relations, and several terminations have occurred in the last year. The Grand Jury discovered the events that led to these terminations. Jury members also found a number of conflicts and issues with other employees. It seems the council members are having difficulties managing employees.

The Grand Jury was also told that city council meetings were contentious, and that the meetings lacked decorum and civility. When the Grand Jury listened to a recording of a random city council meeting, they heard council members using the public comment period to bring up issues not on the agenda and attacking one another for personal behavior not related to council business. The Grand Jury members found the exchanges were not civil. It appears that City Council members might benefit from training in meeting etiquette. Several agencies provide information and training to city council members and city clerks. The Grand Jury located the following information that may assist the City of Montague. The League of California Cities (www.cacities.org) offers classes for mayors, city managers, planning commissioners, public works employees, city attorneys, city clerks and fire chiefs. Montague City Council members believed that the city must be a member of this organization to participate in training, and the membership cost was significant (approximately \$1,500 per year), which has prevented the City from joining in the past. However, there are electronic training handouts available on their website at no cost.

Another organization with relevant resources for council members is the Institute for Local Government (www.ca-ilg.org) which is supported by tax-deductible donations; their materials are also free. There is a wealth of information provided on this website. There are trainings offered through this organization as well. The City Clerks Association of California offers a plethora of information; the primary membership is \$90 per year, with secondary memberships

of \$40 per year. Through these organizations, there are YouTube videos, printed handouts for presentations, social media pages such as Facebook and Twitter, Listservs (email lists specific to city service whose members serve as mentors to those who are new to their jobs), and webinars. Much of this information is available to the city at no cost. Some of the titles for training included “New Mayors and Council Members Academy”, “City of Dysfunction Junction-How to Conduct an Effective and Respectful Council Meeting”, and the “Relationship Between City Council, City Manager and Staff.” There are many others, all with handouts available for download without cost.

FINDINGS

- F1. The Montague City Council was seated in accordance with the recommendation of Siskiyou County Counsel.
- F2. One or more documented serial meetings took place in violation of the Brown Act.
- F3. There is no orientation of new city council members.
- F4. There is an incomplete Policy and Procedures manual.
- F5. There is no written documentation of job duties or responsibilities for either staff or council members.
- F6. Because more than one city council member gives instructions to city staff and the instructions are not consistent, the result is ineffective communication and expectations between City Council members and city staff.
- F7. There is no established chain of command between the City Council and staff members.
- F8. The lack of orientation and training has resulted in confusion and inconsistent communication between staff and council members.

RECOMMENDATIONS

- R1. No recommendation.
- R2. The Council should undergo periodic Brown Act training to ensure it is well versed in the Act and the limits the Act imposes on the use of emails, texting or phone calls among members regarding city business.
- R3. The City should establish an orientation training program for new and incumbent city council members which should take effect before the next election cycle.
- R4. The City should complete its Policy and Procedures manual by January 2018.

- R5. The recommended orientation (R3) and the Policy and Procedures Manual (R5) need to clearly define the duties and expectations for City Council members, the City Clerk's position and all other positions at the city by January 2018.
- R6. The City Council should clearly define responsibilities in managing staff.
- R7. While all city staff is responsible to the board as a whole, the City Council should generate an organizational chart, with each staff position reporting to a single council member. Policy should be decided by the Council, but should be communicated to staff via one person.
- R8. The City Council members should immediately avail themselves of online, free or low cost training programs concerning conduct, decorum and the governing of civic meetings.

REQUEST FOR RESPONSES

Pursuant to Penal Code Section 933.05, the Grand Jury requests responses as follows:

From the following governing bodies:

- Montague City Council; R2 – R7

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