

# GOVERNMENTAL REFORM



## **GOVERNMENTAL REFORM**

The 2008-2009 Grand Jurors started their term with questions and inquires regarding ethics and integrity, immediately following being sworn in. The subject of ethics in County politics had just made the news, and there was a large public outcry. While many in the County had never heard of an Ethics Commission, just these two words in one sentence seemed to give a feeling of security. One prospective County Supervisor ran for office with the promise of creating an Ethics Commission, and he won.

With this in mind, the Grand Jury established a new section in the Grand Jury Final Report for the year 2008-2009. This section is dedicated to topics related to ethics, integrity, and county law, as well as to the very subject of ethics itself. The Governmental Reform section of the Final Report will cover Findings and Recommendations for the following:

- The Board of Supervisors
- Form 700
- Campaign Contributions
- Establishing an Ethics Commission
- 1200 acres of property in Rancho Cucamonga

## **BOARD OF SUPERVISORS**

### **BACKGROUND**

The 2008-2009 Grand Jury Administrative Committee established a subcommittee to monitor and observe functions, activities, actions taken, and decisions made by the Board of Supervisors (Board). The committee assigned a minimum of two members to attend all regular and special Board meetings.

The Grand Jury would like to thank the Board for providing reserved seating for the Grand Jury members attending their meetings. A weekly Board meeting report was prepared for all members of the Grand Jury.

The Grand Jury has reviewed the 2007-2008 Final Report of the Grand Jury “The Assessor’s Function” and the “The Investigation of County Assessor Bill Postmus – Report of Findings” released by the Board of Supervisors on May 12, 2009.

A copy of the Rule I, Code of Ethics and Commitment to County Public Service, was reviewed by the Grand Jury (See Attachment A). The code of ethics from various state, county and city governments was also studied and compared with the San Bernardino County’s Code of Ethics.

Two Grand Juries have encountered instances of newly-elected County officials requesting and receiving approval from the Board of Supervisors for staff allowances. The 2008-2009 Grand Jury also witnessed the placement of start-up staff for the most recently won seat on the Board of Supervisors. Currently, staffing increases and start-up budgets for newly-elected county supervisors are based on the discretion of the Board. There are no Board policies that provide guidance on the issues of staffing and start-up budgets for newly-elected county supervisors.

### **FINDINGS**

1. The current County Code of Ethics does not clearly address the abuse of office documented in the 2007-2008 Grand Jury Final Report and the “Hueston Report.”
2. The code of ethics of other governmental entities prohibits a public official from using his/her office or position for personal gain.
3. The inclusion of such a prohibition would strengthen the oversight of public officials by the Grand Jury and by the proposed Ethics Commission.
4. There are no regulations or policy regarding staff start-up time and number of start-up staff. The current process appears arbitrary and has no governing rules. This was demonstrated at the Board meeting on August 26, 2008 by the

discussion over so-called precedents. A motion was passed by the Board allowing for the staff of Supervisor-elect Neil Derry to begin setting up his office ninety days prior to being sworn in. The Board used two very old examples to support its decision to approve Mr. Derry's request. Neither of these precedents was approximate to the time and expense of Mr. Derry's request.

### **RECOMMENDATIONS**

- 09-82 Amend the Code of Ethics to include a section prohibiting the use of a public office or position by a public official for personal gain. (Findings 1, 2, and 3)
- 09-83 Draft and approve a Board policy that establishes start-up time frames, staffing and budget limits, with emphasis on minimum staff until an official takes office. (Finding 4)

## **STREAMLINE FORM 700 - REPORTING OF GIFTS AND INCOME**

### **BACKGROUND**

San Bernardino County's Board of Supervisors has created a commendable one-stop, main County internet site. In addition to reporting Board activities and other contact information on an easily accessible web link, it now has an Open Government link that provides access to financial reporting information including the Statement of Economic Interest and County Conflict of Interest Code Form 700 procedure.

A Form 700 is used to report all gifts, such as lunches, tickets, and other personal services, and also includes any outside income. Designated County officials and their executive staffs, members of County boards and commissions, and some other local public entities are required to file a Form 700 when assuming/leaving office and on an annual basis.

Due to recent well-publicized problems with Form 700 reporting, the Chairman of the Board of Supervisors has requested that the Grand Jury investigate and make recommendations to streamline the reporting procedure for Form 700.

### **FINDINGS**

1. The current San Bernardino County's Form 700 reporting procedure utilizes the internet to aid users in posting information. This makes it much easier to fill out the form as it saves information from previous years. However, with the current

practice of filling out the form once a year, as state law requires, it is too easy for filers to forget appointments, gifts or even income received.

Form 700 was created by the California Fair Political Practices Commission, and the form itself cannot be changed. Any changes on a County level will have to be on the reporting process. In addition, the Political Reform Act requires every government agency to review its Conflict of Interest Code biennially to determine whether it should be amended. The Clerk of the Board oversees this biennial review process for designated agencies within San Bernardino County.

### **RECOMMENDATION**

09-84            Require that all gifts and outside income be reported online, using the Form 700, within a thirty-day window instead of annually. (Finding 1)

**RULE I:  
CODE OF ETHICS AND COMMITMENT  
TO COUNTY PUBLIC SERVICE**

**Section 1 – Purpose**

This code establishes the standards of conduct required of all public officials and employees for the proper operation of County government and has the force of law. These standards are intended to strengthen public service and to maintain and promote faith and confidence of the people in their government.

**Section 2 – Responsibilities of Public Office**

Public officials and employees are agents of the public purpose and serve for the benefit of the public. They shall uphold and adhere to the Constitution of the United States, the Constitution of the State of California, and the Charter of the County of San Bernardino, rules, regulations and policies of the County, and shall carry out impartially the laws of the Nation, State, and County. In their official acts, they shall discharge faithfully their duties, recognizing that the public interest is paramount. All public officials and employees must demonstrate the highest standards of morality and ethics consistent with the requirements of their position and consistent with the law.

**Section 3 – Dedicated Service**

In the performance of their duties, all officials and employees shall support governmental objectives expressed by the electorate and interpreted by the Board of Supervisors and the County programs developed to attain these objectives. Officials and employees shall adhere to work rules and performance standards established for their positions by the appointing authority. The County requires all officials and employees to use good manners, to be considerate, to be accurate and truthful in statement and to exercise sound judgment in the performance of their work. During the hours covered by active County employment, no official or employee shall work for any other employer or agency and neither conduct nor pursue any unauthorized activity for remuneration. Officials and employees shall neither exceed their authority nor breach the law nor ask others to do so. They shall work in full cooperation with other public officials and employees unless prohibited from so doing by law or by officially recognized confidentiality of the work.

**Section 4 – Nondiscrimination**

No official or employee shall grant any special consideration, treatment, or advantage to any person beyond that which is available to every other person in similar circumstance. No person shall be favored or discriminated against with respect to any appointment in the County service because of family or social relationships, sex, race, religion, national origin, marital status, age, physical handicap, political opinion or political affiliation.

**Section 5 – Oath of Allegiance**

Pursuant to State law, all officials and employees must execute an Oath of Allegiance as follows: “I ....., do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation

freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.”

**Section 6 – Confidential Information**

As appropriate, every appointing authority shall make known to subordinates which information is regarded as confidential. No official or employee shall neither disclose such confidential information except as authorized or required by law or office nor otherwise use such information for personal gain or benefit. All personnel records shall be confidential except when disclosure is required by law.

**Section 7 – Use of Public Property**

Officials and employees are prohibited from using County-owned equipment, materials, or property for personal benefit or profit unless specifically authorized by the Board of Supervisors as an element of compensation.

**Section 8 – Conflict of Interest**

No official or employee shall engage in any business or transaction or shall have a financial or other personal interest or association, which is in conflict with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties. Personal as distinguished from financial interest includes an interest arising from blood or marriage relationships or close business, personal, or political association. This section shall not serve to prohibit independent acts or other forms of enterprise during those hours not covered by active County employment providing such acts do not constitute a conflict of interest as defined herein. An employee is also subject to applicable provisions of the California Government Code, including but not limited to Sections 1090, 1126, 87100, and/or any other conflict of interest Code, policy or rule applicable to County employment.

**Section 9 – Political Activity**

It is the intent of the Board of Supervisors that every County employee participates in the political process to the extent that such participation does not interfere with the orderly performance of County employees’ duties and functions. The provisions of California State Government Code 3201-3205 and 3302 and any future amendments thereto are hereby incorporated as part of this Rule. Employees engaged in political activity in violation of any personnel rule, County policy, labor contract, or regulation governing the conduct of County employees shall constitute cause for disciplinary action.

**Section 10 – County/Employee Responsibility**

The County shall provide all employees appointed to a regular classified or unclassified position with the County, with a copy of these Rules. It shall be the responsibility of employees to become aware and knowledgeable of these Rules.

**Section 11 – Delegation of Approval**

Any action which requires the approval of the Director of Human Resources may be taken by a Human Resources employee who has been delegated that responsibility in writing by the Director of Human Resources.

## CAMPAIGN CONTRIBUTIONS

### BACKGROUND

The 2008-2009 San Bernardino Grand Jury has reviewed campaign contributions made to elected and appointed officials in the County of San Bernardino during the past five years. Data available at the Registrar of Voters reveal that Board of Supervisors and other elected officials in San Bernardino County have raised hundreds of thousands of dollars to finance their campaigns. For example, during the 2007 calendar year, more than \$2.3 million was contributed to the five San Bernardino County Supervisors. Contributions, ranging from a modest \$200 to \$400,000, were made by individuals, special interest groups, land developers, businesses, employee associations, and others.

Political science literature indicates that contributors tend to support candidates with whom they are already in agreement. However, when large sums of money are contributed to a candidate, the public perception is that the donor expects some favor in return. Also, many citizens equate campaign financing with corruption and bribery. It is possible that individuals and/or organizations that contribute large sums of money to an elected official's campaign have better access to that official than those who do not contribute. Better access may not necessarily guarantee favorable results, but it may allow an individual and/or organization to make its point and promote special interests.

Incumbent officials have contended that a limit on campaign contributions will result in only rich individuals running for elected office. Others claim that the current fund-raising requirements discourage many individuals from entering the election process. Additionally, other incumbent officials believe that none of this matters because the public can access all contribution information, thus keeping an eye on officials and holding them accountable by good conscience.

The reality is that attempting to obtain such information from the Registrar of Voters and from the many Political Action Committees (PAC) is a complex task. Countless ordinary citizens lack access both to computers and to the technological knowledge necessary to obtain such information. Limiting campaign contributions and spending limits puts campaigns within the reach of ordinary citizens. Under the current "no limit" campaign contribution system, ordinary citizens are, to some extent, denied entry into the political processes.

During the past three years, media reports have been replete with accounts of investigations of unethical behavior by county officials and the suggested influence by special interest groups through their monetary contributions. Recent arrests of County officials have harmed the reputation of the County. Such behavior of elected officials communicates to ordinary citizens that a culture of corruption exists in the County.

The solution to the problem of excessive campaign contributions does not lie with elected or appointed officials or with those who may seek such offices. The problem lies

with the lack of reasonable regulations of large contributions from various sources by which such candidates are allowed to finance their campaigns. Changing the rules by placing a reasonable limit on contributions made by special interest groups and/or individuals will help to restore the public trust of elected and appointed County officials.

The Grand Jury investigated several state, county and national ethics commissions. Some commissions have worked, and a few have established successful guidelines for campaign contributions. Two of the more successful commissions are those of the City of Los Angeles and Ventura County.

### **FINDINGS**

1. The County of San Bernardino has no contribution limits for candidates running for County office.
2. California State Law only sets minimum requirements and restrictions for campaign financing. Basically the requirement is limited to disclosure.
3. In California, 13 counties and 98 cities have enacted campaign finance reform laws.
4. Proposition 208, approved by voters in 1996, allowed most donors to give no more than \$240 per election to candidates for local offices and the Legislature, and \$500 for election of state-wide candidates. However, in 1998, a federal judge struck down the limits, ruling they were too stringent to allow the typical candidate to communicate with voters. In 2000, voters approved Proposition 34 that placed campaign limits on statewide officers, but was silent on local election contributions.
5. Campaign contributions made to Supervisors and other candidates for County office have been in excess of \$2.2 million in each of the past five years. During this same period, Supervisors and six County elected officials received a total of \$13,297,197 in contributions from individuals and special interest groups.

### **RECOMMENDATION**

- 09-85            Enact County ordinance setting a cap on campaign contributions to a candidate's campaign committee by individuals, corporations, PACs, employees unions and other non-individual contributors. (Findings 1, 2, 3, 4, 5)

## **ETHICS COMMISSION**

### **BACKGROUND**

One of the first topics of interest the 2008-2009 San Bernardino County Grand Jury entertained was that of the establishment of an Ethics Commission for this County. We looked at the mechanics of the three major ethics commissions in California, California's Fair Political Practices Commission, and numerous other state and municipal ethics commissions including the cities of Los Angeles, San Diego and San Francisco. Some of these commissions work quite well, some not.

### **FACTS**

Currently, San Bernardino County maintains two ethics-oriented organizations.

San Bernardino County District Attorney Michael A. Ramos campaigned on the issue of restoring public integrity to San Bernardino County. Within the first four months after being elected, Mr. Ramos fulfilled his promise to the electorate, and in 2003 created the Public Integrity Unit. The Unit, which is comprised of two attorneys, three investigators and a secretary, handles complaints involving those people holding public office. Some types of issues might involve the following: the illegal use of campaign funds, residency violations, and open meeting/Brown Act violations. The Unit is responsible for monitoring City Councils, elected Boards, and Commissions.

The San Bernardino County Office of Compliance & Ethics works under the direction of AB1234 which the Governor signed on October 7, 2005. This law requires that all local agencies that provide compensation, salary, or stipend to, or reimburse the expenses of members of a legislative body must provide ethics training to local agency officials by January 1, 2007, and every two years thereafter. Among many other responsibilities, the Office of Compliance & Ethics provides ethics training to all County employees.

Although both of these organizations provide a valuable service to the County, ethics issues among the County's elected officials, their staffs and other appointed officials continue. The District Attorney's Public Integrity Unit was created by the current District Attorney in 2003. This Unit is not permanent and may not be carried on by future District Attorneys. The Office of Compliance & Ethics is basically a training and informational department. Neither of these organizations is tasked with the responsibility of monitoring improper, but not necessarily illegal behavior by the County's elected officials, their staffs, or appointees.

### **FINDINGS**

1. The Board of Supervisors has expressed a desire to establish an ethics commission. The Board's efforts are currently ongoing.

2. The selection of unbiased and independent ethics board commissioners is the most important and controversial aspect of creating an ethics commission.
3. Other counties and municipalities have tried various methods of commissioner selection. For example, a panel of three Superior Court Judges selects the ethics commissioners from a qualified pool of applicants.

### **COMMENDATION**

The Grand Jury commends the County Supervisors for their desire to establish an ethics commission. The Grand Jury supports the Board of Supervisors' efforts to establish an effective and independent ethics commission.

### **RECOMMENDATION**

- 09-86            Establish a credible selection process for members of the ethics commission that is untainted by political influences and biases. Such a selection process must result in an independent ethics commission. (Findings 1, 2, 3)

## **1200 ACRES/SURPLUS LAND SALE IN RANCHO CUCAMONGA**

### **BACKGROUND**

On June 7, 2008, the Board of Supervisors (Board) approved a project concept for 1200 acres of County Flood Control District (FCD) property deemed surplus property. This surplus flood control land is one of the last large undeveloped parcels in the Inland Valley. A portion of this property is located within the City of Rancho Cucamonga (City) and the rest in the San Bernardino County (County). This includes 385 acres of mitigated land. Also, all 1200 acres are within the City's sphere of influence.

Under the project concept, the County would enter into an Option to Purchase Agreement with FCD to purchase the property at an appraised market value. According to the County, the FCD would receive fair market value for the property, "receiving periodic option payments" and ultimately the entire agreed upon purchase amount from the County.

Once the County had acquired the property, the project concept proposed that the County enter into a Cooperative Agreement (Agreement) with the City to plan jointly for development of the area. Under the Agreement, the City in cooperation with the County would finalize and issue a Request for Qualifications (RFQ) to interested developers for two sub-areas described as "Area A" and "Area B." In the agreement, the City would hold public hearings and recommend the two "best qualified" developers, in order of preference, to the Board for final consideration for each sub-area, or one developer for both.

The Board may approve or reject the City's recommended candidates. If the Board rejects both of the City's recommended candidates for either or both sub-areas, the Board may then select any other developer. The County or the City may also cancel the Agreement with a 30-day notice.

Upon the Board's approval of the City's recommendation, the County must promptly enter into negotiations with the selected developer for a development agreement, which must be brought back to the Board for consideration and approval.

Six developers submitted RFQs. These developers were Rancho Alliance Investors, LLC, Foremost Communities, K & K Developers, Richland Communities, Brookfield Homes and Toll Brothers. According to the Board, the Rancho Alliance Investors includes the following: Lewis Group of Companies, Diversified Pacific, Young Homes, and Shea Homes. Jeff Burum is founder and member of Diversified Pacific and also a co-managing member of Colonies Partner.

After the issuance of the “Hueston Report” which investigated wrongdoing within the Assessor's Office and the filing of civil lawsuits against former assessor Bill Postmus and Rancho Cucamonga Councilmember Rex Gutierrez, among other former Assessor's Office employees, the Board on May 19, 2009, terminated the Agreement with the City and the option agreement with FCD.

## **FINDINGS**

1. This project has been terminated by the Board of Supervisors. The 2008-2009 Grand Jury received several complaints from citizens requesting that it initiate an investigation. The Grand Jury created a special committee and conducted confidential interviews with County and City staff and elected officials who were involved in this selection process.
2. During the 2006 lawsuit involving the County and Colonies Partners, the 1200 acres of property were discussed as part of the settlement negotiations.
3. In a “Talking Points” document distributed by the County to officials involved in the process, officials were to respond to the question “What does the County expect to gain from this sale?” They were told that the answer should be “By purchasing the 1200 acres property from the Flood Control District, the County will provide funding for a number of vital flood control projects in the County’s west end.” However, a report to the Board of Supervisors states, “The value of the property is estimated to be in the range of \$50 to 80 million and this could be used to pay down most or all of the outstanding debt settlement the District incurred as a result of The Colonies case.”

The FCD is obligated to pay \$7 million per year on the bonds issued to pay the Colonies settlement. The number of flood control projects to be funded by the sale of the 1200 acres is unknown and dependent on future Board decisions regarding allocation of proceeds between flood control projects and pay down of FCD bond indebtedness.

4. San Bernardino County surplus property is sold according to the following procedure:
  - The Board declares the land to be surplus
  - The land is appraised and the appraised value is used to establish a minimum bid
  - A public auction is held at a time and date decided upon by Board resolution
  - The land is advertised for not less than 30 days and up to six months depending on the size of the property
  - An auction is held and the property is sold to the highest bidder

The auction is standard procedure in San Bernardino County and other counties when selling surplus real property.

5. The Cooperative Agreement requires the County to enter into a development agreement with the selected developer, but leaves the critical issue of the sale price unanswered. First, the sale price of the property will be negotiated by the Board in closed session and will not be subject to public scrutiny or oversight. Second, the appraised value of the property is uncertain and subject to a broad range of valuation. The Grand Jury has received different information on how and when the property would have been appraised. For example in 2005 it was estimated that the property “was worth more than \$100 million.” A recent unofficial estimate by the County reflected the property would likely sell somewhere near the lower end of \$37.5 million to \$75 million.
6. According to the “Hueston Report,” Jeff Burum, whose Rancho Alliance Group is competing to develop the surplus property, had intervened twice on behalf of Rancho Cucamonga Councilman Rex Gutierrez's employment with the Assessor's Office; when Rex Gutierrez was first hired with the Assessor's office and when his position was extended for a number of months. After leaving the Assessor's Office, Rex Gutierrez was hired by the Economic Development Department on January 5, 2009, as an economic development specialist. The Grand Jury has documented that before Rex Gutierrez was hired by that department, Jeff Burum called an individual within the Economic Development department and discussed Rex Gutierrez and the specialist position.

### **RECOMMENDATIONS**

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| 09-87 | Support the Board of Supervisors' action of terminating the option purchase agreement with the Flood Control District and the cooperative agreement with the City of Rancho Cucamonga. (Finding 1)   |
| 09-88 | Dispose of the flood control property in the future utilizing the established County auction procedure. (Finding 4)  |
| 09-89 | Refer issue of whether the activities of Jeff Burum on behalf of Councilmember Rex Gutierrez create a bias and conflict of interest requiring the councilmember to recuse himself from the developer selection process to the City of Rancho Cucamonga City Council and City Attorney. (Finding 6) |