

BUTTE COUNTY GRAND JURY REPORT 2009-2010

CITY OF OROVILLE – PERSONAL SERVICE CONTRACTS AND PERSONNEL ISSUES

SUMMARY

Turmoil and controversy have surrounded the City of Oroville during the 2009/2010 Butte County Grand Jury's term of service. The issues brought to public attention include an email from one Oroville City Council Member to another which was considered by some as an attempt at extortion, public chastisement of the City Council by the Oroville City Administrator, and the ongoing division within the Oroville City Council over the administration of the City, including removal of the position of Personnel Officer from the City Administrator's duties.

Due to time constraints, the Grand Jury limited its investigation to three major areas: Personal Services Contracts, personnel matters, and alleged violations by an Oroville City official of the Oroville City's planning and zoning codes. This report covers Personal Services Contracts and personnel issues. The Grand Jury found a Personal Services Contract was entered into with a business entity that failed to file the appropriate articles of organization with the California Secretary of State, incomplete contracts were submitted to the Oroville City Council for signature, failure to adhere to and abuse of existing personnel rules, and the need for either a Personnel Commission or a Personnel Officer free from external control and constraints.

The Grand Jury is making recommendations regarding the Oroville City's Personnel Policies and Procedures, including the nepotism rule, letters of reprimand, arbitration procedure, *Relief of Duty* (administrative leave); creation of an independent Personnel Commission or addition of an independent Personnel Officer; creation of a procedure for department head investigations; availability of agenda information, adherence to the Oroville City employee evaluation procedures; and issuance of identification cards.

GLOSSARY

Agenda Packet – The information such as the staff report, proposed resolution, proposed ordinance, proposed contract, or other information pertaining to a requested action by the City Council

CSG – CSG Consultants, Inc.

City – City of Oroville

City Council – Oroville City Council

Consent Agenda – A group of items on the City's agenda being considered for approval

Department Head – An individual contracted directly with the City Council to run a department within the City

Grand Jury – 2009/2010 Butte County Grand Jury

Grievance – Subject of a complaint filed by an employee to be resolved by procedures provided in the Memorandum of Understanding

Letter of Reprimand – A letter to an employee placed in their employment file setting forth violations of rules and regulations

MOU – A Memorandum of Understanding is the employment agreement between an employee organization and the City

Meet and Confer – Meeting between opposing sides at which the parties try to reach a mutually agreeable resolution

Personal Services Contract – A contract entered into with an individual or entity to provide services to the City

BACKGROUND

The Grand Jury began its investigation as a result of two complaints, one by an employee alleging mistreatment and violation of the City's Personnel Rules and Regulations and the other by a public official regarding unprofessional behavior by another public official. After beginning its inquiries, the Grand Jury became aware of additional issues.

APPROACH

The Grand Jury began its investigation of the City in August 2009. A committee of the Grand Jury began attending City Council meetings in August 2009, missing very few. Attendance at the City Council meetings and the ongoing investigation raised many concerns on our part. Therefore, of our own volition, we decided to have more Jurors attend some of the meetings beginning with the February 2, 2010, meeting.

In addition to attending the meetings, the Grand Jury reviewed:

- the Council's agendas and minutes beginning in January 2007,
- the City Charter and portions of the Municipal Code,
- the current and prior Memoranda of Understanding between the City and employee organizations,
- various personnel documents produced by the City,
- various court filings,
- some prior Grand Jury reports, and
- documentation presented by concerned citizens and employees.

The Grand Jury interviewed members of the City Council, four Department Heads, 14 current and prior employees of the City (some multiple times), three contract employees, and one concerned citizen. During this investigation, two employees and one Department Head left the City's service. The former Chief of Police stated he left employment with the City due to the culture which he described in his letter of resignation, which was published in local newspapers, as *deeply rooted in mistrust which fosters uncertainty, suspicion, and fear*. In addition to the interviews, the Grand Jury heard formal sworn testimony from four witnesses.

DISCUSSION

General Observations

One of the major issues is that the Oroville City Administrator holds so many different positions. City of Oroville Municipal Code section 2-31 states that the City Administrator is also the City Personnel Officer, Purchasing Agent, Risk Manager, Labor Negotiator, and Executive Director of the Redevelopment Agency. In addition, the current City Administrator holds the position of City Clerk. If there is a department head vacancy, the City Administrator also assumes those duties if, and until, an interim or permanent department head is appointed. As of the writing of this report, three of the six department head positions are vacant: Director of Community Services and Public Works, Director of Parks & Trees, and Chief of Police.

The Grand Jury believes that each member of the City Council has a positive vision for the economic development of the City of Oroville. However, their approaches to achieve this vision appear to be very different. It appears to the Grand Jury that the City Administrator has actively pursued this vision of economic development resulting in the violations of various provisions of the Oroville City Code and the Uniform Building Code as set forth in more detail in the accompanying report entitled City of Oroville Codes, Ordinance and Permits Report.

Demotion of Planning Staff

After the contract for the Director of Community Development and Public Works was not renewed in June 2009 and with the position of Planning Director being vacant, an employee received an interim promotion to Planning Manager in July 2009. This same employee was subsequently demoted in December 2009. This demotion took place after disagreements with the City Administrator regarding the occupancy load at the Cleantech Innovation Center, issuance of the building permit for a single-family residence in the Mission Olive Ranch Subdivision, issues with the buildings at Table Mountain Golf Course, and discrepancies in the General Plan regarding traffic models. The explanation for the demotion provided by a City official included the employee's lack of experience. The Grand Jury asked a City official why this employee had been promoted in the first place when he did not possess the necessary experience. The City official responded *at the time there really was not another option*. The employee believed he was demoted because of the disagreement over planning issues. In light of the fact that local zoning

and planning laws were ignored by the City Administrator in issuing building permits and temporary certificates of occupancy, the Grand Jury gives some credence to the issues set forth above as contributing to the demotion of this employee.

Staff Reports and Transparency

At most City Council meetings, a number of items are placed on the Consent Agenda for discussion by the City Council members and the public. After discussion, the City Council votes on the measures. While observing a number of City Council meetings from August 2009 through April 2010, the Grand Jury noted that the Staff Reports to the Consent Agendas were sometimes inadequate, resulting in:

- confusion as to the issue,
- unnecessary discussion by the Council members in an attempt to clarify the issue, and
- Council members being required to vote without knowing the full facts.

Examples of inadequate staff reports are:

- During the March 2, 2010, City Council meeting, an item was on the Consent Agenda to add an amendment to the Walters & Nichols Investigative Services, Inc., contract for \$6,000. The Staff Report did not:
 1. summarize the expenditures of the \$20,000 authorized by the original contract in 2008,
 2. summarize the amounts expended in 2008 and 2009,
 3. provide the amount of funds remaining,
 4. identify the services performed to date, or
 5. identify the proposed purpose for the \$6,000 amendment.

Instead there was confusion about the \$20,000 original contract resulting in a lengthy discussion of the type of services that had been performed and were to be performed. The City's Human Resources representative advised that the contract amendment for the additional funds was needed to pursue an investigation of violence in the workplace complaint. In addition, the Staff Report should have stated the reason for not having these services performed by the Police Department, since that Department has the capability to perform them.

- At the same City Council Meeting, a nomination for an appointment to the Oroville Mosquito Abatement District was on the Consent Agenda. There was no Staff Report which resulted in City Council member confusion and a lengthy discussion. This could have been prevented by the submission of a Staff Report which:
 1. indicated the date of the resignation of the previous member,

2. summarized the makeup of the Board and the open positions,
 3. outlined the actions taken by City staff to recruit new appointees, and
 4. set forth the amount of the stipend for the position.
- An even more significant example of an inadequate Staff Report is the Consent Agenda item in August 2009 for an amendment to the CSG Consulting Services (CSG) contract for \$135,000. The Staff Report (see Appendix A) only indicated that the money would be obligated against the Fire Department and Building Department budgets. There was NO mention of:
 1. the total value of the Contract which with this amendment was \$478,555 (see Appendix B),
 2. the anticipated hours of consulting services under this amendment,
 3. why these services could not be performed by City staff,
 4. the analysis of the costs of the services versus hiring full or part-time employees to fulfill the services,
 5. steps, if any, being taken to train City staff in closely related fields to perform some or all of these services in the future, or
 6. if a review had been undertaken of other contractors who could perform these same services at a competitive hourly rate.

Although the agenda is posted on the City's website, the Agenda Packet containing any information such as a proposed resolution, contract, Staff Report, or other background material is not provided. Information regarding agenda items is not readily available to citizens without going to City Hall to review the Agenda Packets. In the interest of having an informed constituency, the Agenda Packet should be provided online. The City could follow the process utilized by the Butte County Board of Supervisors on its website at www.buttecounty.net. It is the Grand Jury's understanding that this procedure is going to be implemented by the City in the near future.

The Grand Jury was surprised that when a resolution authorizing the mayor to sign a contract on behalf of the City is presented, the amount of the contract, if included in the contract, was not provided on the agenda. Since the Grand Jury started its investigation, the cost of proposed contracts are now being included in the title of the resolution, thus appearing on the agenda. We commend the City for making this change.

In addition, it is suggested that the City review the Grand Jury's report pertaining to *Accountability and Transparency in Butte County Government*, in particular the section regarding the *Local Appointments List* (a state-mandated listing of vacancies and other information for boards and commissions appointed by the City Council). By providing this information on the City's website, citizens are informed of existing boards and commissions and any vacancies.

Personal Services Contracts

The City utilizes many Personal Services Contracts. The Grand Jury heard from some City Council members that they believe this process is being misused, and we agree. The contract with CSG Consulting Services (CSG) was initially entered into because of issues with an employee being off work for an extended length of time while still technically holding the position. The City was not able to hire someone to replace that employee. Therefore, the City entered into a Personal Services Contract for the services normally provided by that employee. However, rather than filling that position when it became available, the City continued renewing and expanding the contract with CSG. The majority of services provided by CSG were for the Building Official and the Fire Marshal. The funds paid to CSG could have paid for part-time employees to perform these services. This contract effectively removed supervision of the Fire Marshal from the Fire Chief and placed it with the Director of Developmental Services and Public Works (whose duties were assumed by the City Administrator in July 2009). During the City Council meeting of February 2, 2010, it was clarified that the Fire Chief supervises the Fire Marshal rather than the City Administrator acting as the Interim Director of Developmental Services and Public Works. Attached as Appendix B is a listing of contracts and amendments entered into with CSG totaling \$478,555.

Another issue observed by the Grand Jury was the lack of oversight in the preparation and submission of Personal Services Contracts to the City Council. Contracts have been submitted to the City Council for approval and action while inaccurate or incomplete. When various City officials were asked who was responsible for the Personal Services Contracts being correct, the Grand Jury received answers ranging from the City Attorney, the City Administrator, the Director of Finance, or the Department Head entering into the contract. None of the City officials interviewed accepted responsibility for the accuracy of the contracts. The Grand Jury believes there should be a designated person to review all Personal Services Contracts for accuracy and completeness prior to submission to the City Council. In addition to inaccuracies, there have been some major issues, such as the B&M Development LLC contract discussed below.

Contract with B&M Development LLC

The contract with B&M Development LLC was presented by the City Administrator to the City Council on February 2, 2010, for approval. Corrections to the contract were made by the City Attorney during the meeting, and the City Council approved the contract for signature by the Mayor. The contract, as approved, did not contain a maximum dollar amount nor the address of B&M Development LLC to which any notices by the City were to be sent. Additional changes were made to the contract after adoption to add the mailing address for B&M Development LLC. It was explained to the Grand Jury that sometimes contracts are approved without maximum amounts since at the time of adoption the remainder of the monies allocated to that service may not be known due to invoices yet to be billed from a prior provider. The Grand Jury is uncomfortable with this information not being included at the time of adoption of a

contract and suggests that this process be reviewed and revised. At the very least, the reasoning for not including the amount should be contained in the Staff Report.

The most troubling of all the issues is that at the time of entering into the contract with B&M Development LLC, that business entity had not yet been formed by filing the required articles of organization with the California Secretary of State, Business Division. As of May 21, 2010, the required articles of organization still have not been filed. The insurance required by the City and issued to B&M Development LLC was issued to a business entity that had not yet been formed. If it has not already been done, the City should consult with the City Attorney as to the appropriate actions to be taken to remedy this problem, whether the contract with an unformed business entity is valid, and if any payment of invoices, if presented, can be legally made to an unformed business entity.

Even if the issues with the formation of B&M Development LLC are resolved, that entity had not provided the required insurance documents to the City prior to the City signing the contract. In fact, the required insurance was not obtained until March 3, 2010, a month after the contract was signed. The Grand Jury has been assured by a City official that there will not be any invoices paid to B&M Development LLC for any services rendered during the time it was not insured.

Progressive Discipline

As it stands, the City's current Personnel Rules and Regulations regarding progressive discipline are unclear. Although the definition of discipline states that a letter of reprimand for non-punitive reasons is not subject to grievance, it is unclear in reading section 11.4, subdivision c of the City of Oroville's Personnel Rules and Regulations which states, *a statement advising the employee that written notice of the written disciplinary action is to be placed in his or her official personnel file and that the employee has the right to appeal under the Skelly procedure set forth*. This section could be interpreted as meaning an employee has the right to grieve the letter of reprimand.

With four bargaining units to negotiate with and all having the 'Meet and Confer' clause in their respective MOU's, the Grand Jury feels it would be appropriate for the City to revise this section of the Personnel Rules and Regulations to clearly define the progressive discipline process. By doing so it would make for consistent and equal treatment of all. This would give clear and concise instructions on what is, and is not, progressive discipline and employees' rights. Letters of Reprimand reviewed by the Grand Jury did not include the signature of the person issuing the reprimand nor a place for the employee to sign and date to show receipt of the letter. Addition of these items could eliminate some of the misunderstandings with employees.

The Grand Jury was informed by the City that when an arbitration hearing is conducted both the process used in applying the discipline and the discipline itself are examined. However, a recent Supreme Court decision upheld the decision of the California Court of Appeal, Third Appellate District in the matter of the *City of Oroville v. Oroville Police Officers Association, et al.* (Case No. C053640), a portion of which is attached as

Appendix C. This decision states that this is not the standard the City wished to apply in a binding arbitration involving a grievance by a police officer. In this matter the City's position was that binding arbitration is limited to only reviewing how the decision was reached, not the actual decision. The upheld decision of the Court of Appeal states that the arbitrator should conduct a trial de novo (a hearing from the beginning) to determine independently if there was cause for discharge and confirm the discharge or determine other appropriate discipline. The City should set forth in its rules that the subject of arbitration hearings include (1) whether the decision was the correct decision and (2) was the proper procedure followed in making that decision. It is recommended that the City review the City of Chico's rules for the appeal of disciplinary actions in addition to its grievance procedure. A copy of a portion of the City of Chico's Municipal Code regarding Disciplinary Action and Dispute Resolution are attached hereto as Appendix D.

Training and Conflict Resolution

In February of 2006, the City adopted the following policies: *City of Oroville Unlawful Workplace Harassment Policy and Complaint Procedure* and *Workplace Violence Prevention Policy*. There are mandatory annual trainings on these policies for every employee, manager, and supervisor. In interviewing employees, it became apparent there are long-standing issues that have not been resolved (employees concerned about being subjected to hostile work environment). Another issue brought to our attention is that although a hostile work environment complaint was submitted in October 2009 and an investigation conducted, the complaining party has not yet been officially advised of the outcome of the investigation. Although the Grand Jury was informed that the results of the investigation of the complaint were orally provided to the complainant by the City Attorney, the failure to provide written notification is a violation of the City's *Unlawful Workplace Harassment Policy and Complaint Procedure*, requiring written notification to the complainant of the outcome within 20 days.

Although there is some training already in place regarding conflict resolution, the City should consider additional training for all department heads, managers, supervisors, and staff. The Grand Jury personally observed and is aware of a pervasive pattern of conflict at all levels at the City of Oroville. If an existing conflict cannot be resolved because an employee is not able to learn how to act appropriately, then the City needs to reflect these shortcomings in evaluations, document violations of City policies and procedures, and follow their progressive discipline procedures.

In addition to mandatory trainings regarding the above policies and procedures, the City provides the opportunity to attend training for job enrichment and/or advancement within the City's structure. These classes are offered through Butte Community College and, upon successful completion, the employees are reimbursed the cost of the class by the City.

Nepotism

One issue brought forth by the 2005/2006 Grand Jury is the fact that an immediate family member of the City Administrator was employed by the City in what the Grand Jury believed was a violation of the City's Personnel Rules and Regulations, Rule 4.8e – Nepotism. This rule specifically states that the Personnel Officer (a position usually held by the City Administrator) shall not appoint a member of a Council Member's or the City Administrator's immediate family to any position within the City of Oroville. In its response to the Grand Jury report alleging violation of this rule, the City pointed out that the City was not in violation because of the last paragraph of Rule 4.8e which states:

Anyone employed as a full-time or part-time City of Oroville employee prior to the effective date of this Policy may continue in their position if their department head, in consultation with the City Administrator, has determined that continued employment would not create a conflict of interest or have a potentially adverse impact on supervision, safety, security, morale, or productivity. However, under no circumstances will an employee directly or indirectly supervise or be supervised by an immediate family member. Any future promotion or appointment within the City of Oroville will be subject to this policy as stated above.

The Grand Jury finds it perplexing why such a provision was adopted. Either nepotism is acceptable or it is not. If it is not, then there should be no immediate family members of the City Administrator or City Council Members employed by the City. Before accepting the position of City Administrator or before the swearing in of a new Council Member, any immediate family member employed by the City should resign his position, or the City Administrator or Council Member should not accept the appointment or office. In addition, how could the department head and the City Administrator make a determination whether or not morale will be affected by allowing the immediate family member to remain employed? In our discussions with various employees, the employment of the City Administrator's immediate family member has had a negative impact on the morale of some employees.

One of the requirements of the last paragraph of Rule 4.8e is that an employee cannot be supervised, directly or indirectly, by an immediate family member. The Department Head position of the Department in which the City Administrator's immediate family member works is vacant. Therefore, the City Administrator has taken on the duties of that Department Head. However, so the City Administrator does not “directly” supervise her immediate family member, another Department Head has been assigned to supervise the immediate family member and that section of the Department. Chapter 2, Article III, section 2-37, subdivision (b) of the Oroville Municipal Code regarding the duties of the City Administrator states, *Direct and supervise the administration of all departments, offices, and agencies of the city.* In taking this provision in consideration, the Grand Jury believes that the City Administrator “indirectly” supervises her immediate family member.

It became apparent that some employees work in an atmosphere that they consider uncomfortable because of the relationship between the City Administrator and her immediate family member. Some interviewed employees felt they had been retaliated against for criticizing the Administrator's immediate family member. Others felt that if they ever did criticize or took negative action toward the City Administrator's immediate family member, they would be subject to retaliation. Yet, other employees interviewed saw no problem with the Administrator's family member working for the City. Although retaliation was a common theme in complaints by past and present employees in personnel actions, the Grand Jury was not able to confirm the allegations of retaliation for criticism of the City Administrator's immediate family member.

An additional problem is the fact that the City Administrator is also the Personnel Officer (This duty has been removed from the City Administrator and assigned to the Fire Chief for 365 days effective May 7, 2010.) The Personnel Rules and Regulations define the Personnel Officer as the City Administrator, or other person designated by a majority of the City Council, having the power of appointment and removal of employees. The City Administrator's immediate family member was involved in an off-duty misdemeanor driving offense and, under normal procedures, would have been disciplined by the City Administrator as the Personnel Officer. The City Administrator, very appropriately, removed herself from this matter. The Grand Jury was advised, at the time of the writing of this report, that any disciplinary action arising from the incident will be handled by the Fire Chief after assuming his duties as the Personnel Officer. However, having the City Administrator's immediate family member employed by the City, at the very least, creates the perception of nepotism and a basis for complaints by employees. The Grand Jury believes it would be best if this perception were avoided.

To that end, Rule 4.8e of the Personnel Rules should be amended to delete the clause allowing the employment of any immediate family members of the City Administrator or the City Council.

City Council Interference in Personnel Matters

A major complaint by the City Administrator in open Council meetings is that disgruntled employees contact City Council members directly about personnel matters resulting in City Council members interfering in those matters. The Grand Jury heard many complaints from employees about discipline being administered unevenly and employees being denied the ability to grieve certain matters. Since the City Administrator was, until recently, also the Personnel Officer, these employees felt they had no recourse except to directly approach members of the City Council with their concerns. A majority of these issues could be resolved by having an independent review board available to review personnel matters, adopting a provision for an appeal process such as that used by the City of Chico (Appendix D), and/or the removal of the Personnel Officer duties from the City Administrator and the hiring of a qualified Personnel Officer.

An appropriately empowered independent board or hearing officer could not only review determinations by the Personnel Officer to assure the proper procedure was followed; it

could make a determination whether the actions taken by the Personnel Officer were appropriate. This procedure could be put into place inexpensively by calling upon community members to sit on such a board. This would result in improved employee morale by giving employees an independent forum to air their issues. If such an independent body were adopted, the Grand Jury suggests its members be recruited from all of Butte County rather than just residents of the City. A broader recruitment base would allow more people with experience in personnel matters, governmental operations, etc., the opportunity to volunteer their services. The creation of such a board was proposed at a City Council meeting by one of the Council Members, and the Grand Jury supports this proposal. One of the possible options proposed was that used by the City of Grass Valley, a copy of which is attached hereto as Appendix E. Adding an appeal process as used by the City of Chico or an independent board could also provide an outlet for review of decisions as well as increased employee morale.

Another option is the hiring of a qualified Personnel Officer, with the skills and abilities to handle hiring, discipline, and training. This person would also be able to update job specifications, revise the personnel rules and regulations, and conduct labor negotiations, along with assisting with other administrative duties such as reviewing Personal Services Contracts.

Under any of the above options, anticipated benefits would be a reduction in expensive and time consuming arbitration hearings and litigation. In addition, City Council members' involvement in personnel issues would be greatly reduced, if not eliminated, removing a point of contention between the City Council and the City Administrator.

“Relief of Duty” Provision Applied Inappropriately

The Oroville Personnel Rules and Regulations Rule 6.3d – Relief of Duty – states, *The Personnel Officer, with approval of the City Administrator, may remove any employee from service temporarily, with pay, during a review or investigation.* This type of leave is commonly referred to by the City as *administrative leave*.

This provision gives the Personnel Officer (with the approval of the City Administrator, who historically has been the same person) the authority to place any employee on leave with pay. The City has no criteria as to the type of allegations being investigated that would give rise to such leave. Currently, such decisions are made by the Personnel Officer on a “case-by-case” basis. There is no time limit as to how long such leave can be imposed. There is no provision for a review of the decision to impose administrative leave. Nor is there a method to determine if administrative leave is still appropriate.

The City's position is that since there is no financial loss to the employee, this action is not subject to the grievance procedure or arbitration. This leaves the employee without any recourse for any inappropriate use of the Relief of Duty provisions.

The Grand Jury became aware of what it considered to be an inappropriate use of the Relief of Duty provision. A non-management employee was placed on paid leave for

nine months while an investigation was being conducted. In this particular instance, the employee was placed on leave March 27, 2008, . . . *pending an investigation into possible violations of City of Oroville Personnel Rules and Regulations*. The reasons for such leave were provided in the notice of investigatory interview dated May 14, 2008 (48 days after being placed on leave). The allegations set forth were, *harassment, hostile work environment, inefficiency in performing your duties, discourteous treatment of other employees, insubordination and violations of safety rules*. The investigative interview was conducted May 21, 2008, 55 days after the employee was placed on leave.

The investigation conducted by an independent outside investigative firm was completed May 25, 2008, and found the allegations by the City to be “unsubstantiated.” Rather than returning the employee to work, the matter was discussed with another outside investigative firm with the intention of retaining that investigator for a second investigation into both this matter and another pending personnel matter. The City Administrator requested the City Council to provide the funding for a second investigation. At the first presentation of this request, the City Council requested further information regarding the qualifications of the second investigator. At the second presentation, the City Council denied the request for funding. Prior to funding being approved, the second investigator proceeded with her investigation into both matters, completed one investigation, and provided that report to the City. The City was left with a bill for both investigations without funding to pay the second investigator.

On December 18, 2008, approximately four months after the investigation finding the allegations unsubstantiated, and just over nine months after being placed on paid leave, the employee was reinstated. A Letter of Reprimand was issued citing poor supervision and oversight on department activities; disparaging remarks and comments; rude and demeaning comments and attitude toward employees; lack of communication, creating a hostile work environment; refusing to give properly fitting uniform shirts; and tearing patches off employee's uniform shirts in front of that employee. It is disturbing that matters found as “unsubstantiated” were included in the Letter of Reprimand, the most serious of which is the allegation of creating a hostile work environment. Again, the disciplined employee was denied the opportunity to file a grievance regarding this matter by the City Administrator after having been advised by the City Attorney that a Letter of Reprimand is not subject to the grievance procedure under either the MOU or the Personnel Rules and Procedures.

When asked why it took so long to return the employee to active status, we were told by the City's representative during sworn testimony that concerns over liability issues, uncertainty as to how to proceed, not having seen the May 25, 2008, investigation report, and poor quality of the investigation hampered a final decision. Finally, under direct examination, we were advised that it was the lack of attention on the part of City officials that the employee had not been returned to work.

During the administrative leave, the employee attended training regarding the underlying issues which would account for a small portion of time the employee was on leave. From May 25, 2008, after the alleged violations were found to be unsubstantiated, to December

17, 2008, the employee was paid approximately \$23,000 in salary, plus benefits, while remaining on administrative leave. Since returning to work, this employee has continued to receive a salary of \$3,827 a month while performing duties normally assigned to a lower-paying position. Since there has been no reduction in salary, the City Administrator does not consider the matter subject to the grievance procedure.

Rule 6.3d – Relief of Duty does not give a time frame within which a notice of disciplinary action must be given to an employee. Such notice would trigger the provisions of Section 26 of the MOU regarding discipline. As currently written, an employee placed on administrative leave is left in limbo indefinitely while being paid their full salary. The Grand Jury finds this provision can be easily manipulated and abused resulting in unnecessary expense to the taxpayers and undue stress on both the employee placed on leave and the employees having to cover that employee's duties. This provision is in need of revision. It is recommended that the City adopt a rule similar to that of Butte County requiring a disciplinary action begin prior to an employee being placed on leave, limiting the time the employee may be placed on leave, and making a provision for review prior to an extension of such leave. A copy of Butte County Merit System and Rules, Rule 7.11 Notice of Disciplinary Action is attached hereto as Appendix F. In addition, similar provisions are used by the City of Chico (Appendix D) and Sutter County (Appendix G).

As an aside, this employee has alleged that the above actions were taken because of a poor evaluation given to the City Administrator's immediate family member. The Grand Jury was not able to determine the validity of this allegation. However, this is a perfect example of the perception of nepotism previously discussed.

Evaluations

The Personnel Rules and Regulations require that probationary employees be evaluated every three months until the end of the probationary period. Once an employee passes their probationary period, evaluations are to be given annually. The evaluations are an important management tool for supervisors. Evaluations offer an opportunity to encourage well-performing employees and provide guidance and training to those employees in need of it.

Although department heads are given reminders to conduct evaluations by the Human Resources Technician, most evaluations are not given timely. At least one department head stated they did not give evaluations unless there was a problem. Most of the employees interviewed had not received timely evaluations or there had been large gaps of time between evaluations. The City has failed to adhere to its own rules and regulations regarding evaluations. There is no consequence for department heads that do not ensure that all employees in their department are evaluated in a timely manner. Evaluations of department heads should include a provision regarding compliance with this aspect of their duties, and failure to comply with this provision should have appropriate consequences.

Department Head Investigations

A citizen's complaint was made regarding a department head. Issues arose because there is no process to investigate such allegations. The procedure to conduct investigations of employees is contained in their respective MOUs with the City. Department heads have individual employment contracts. Everyone's behavior should be subject to examination, and there needs to be a formal procedure for the investigation into the behavior of department heads. If there are allegations made regarding a department head, these allegations should be presented to the City Council in closed session as a personnel matter. The City Council, with the advice of the City Administrator and the City Attorney, should decide the action to be taken. No investigation should be launched at the request of a single City Council member or City employee. This, or a similar procedure, needs to be incorporated into all department head employment contracts and the Personnel Policies and Procedures.

Identification Cards

It came to our attention that there may have been some controversy regarding purchases improperly charged to the City. There are no identification cards issued to City staff, department heads, or City Council members. Currently, employees working in the field are only identified by having City of Oroville patches on their clothing. Having an identification card would reassure members of the public that the person requesting permission to enter their property is there on legitimate, official business. Additionally, there is no way for a local vendor with an open purchase order to determine if someone is authorized to make purchases on behalf of the City. The Grand Jury understands that the City is in the process of exploring the issuance of identification cards and encourages implementation as soon as possible.

FINDINGS

- F1. While attending Oroville City Council meetings, the Grand Jury observed confusion and lengthy discussions between the City Council and City staff due to inadequate background information in the Staff Reports.
- F2. The normal procedure for members of the public to review and/or obtain Staff Reports is to go to City Hall to access such reports.
- F3. Contracts submitted to the City Council have been inaccurate and, in at least one instance, the required insurance document was not submitted timely to the City.
- F4. The City entered into a Personal Services Contract with an unformed business entity.
- F5. The City's Personnel Policies and Procedures are unclear as to what constitutes progressive discipline.
- F6. It was noted that the Letters of Reprimand reviewed by the Grand Jury were not signed, dated, nor was there an acknowledgment of receipt by employees.

- F7. The City failed to officially advise in writing a hostile workplace complainant of the outcome of the investigation.
- F8. The Grand Jury observed ongoing conflict among the City Council, Department Heads, and employees.
- F9. The City's nepotism rule has been modified so that the employment of immediate family members of the City Administrator or City Council Members already in the employment of the City is permitted.
- F10. There is a perception of nepotism by having an immediate family member of the City Administrator employed by the City.
- F11. Until the recent removal of Personnel Officer's duties from the City Administrator, there was ongoing conflict between members of the City Council and the City Administrator in performance of those duties, particularly regarding disciplinary matters.
- F12. Employees circumvent the “chain of command” regarding disciplinary matters because of their belief of being treated unfairly.
- F13. Administrative leave (Relief of Duty) provisions of the City's Personnel Rules and Regulations have has been used inappropriately.
- F14. As currently written, there is no provision to appeal the imposition of the administrative leave (Relief of Duty) provisions.
- F15. The City is not adhering to its established procedure for employee evaluations.
- F16. There is no procedure for initiating an investigation of a department head for alleged misconduct.
- F17. The City does not issue identification cards.

RECOMMENDATIONS

- R1. Staff reports provided to the City Council in support of agenda items should be more detailed and provide better background information to avoid confusion and unnecessary discussions.
- R2. Agenda Packets, in addition to being available at City Hall, should be provided to the public via the City's website.
- R3. The City should institute a procedure for reviewing Personal Services Contracts for accuracy, insuring required documents are provided in a timely manner, and confirming the formation of a business entity entering into the contract with the City.
- R4. The City Attorney should be consulted on the legality of making payments to an unformed business entity – B&M Development LLC.

- R5. The Personnel Rules and Procedures should be revised to clearly define the progressive discipline process, including Letters of Reprimand and the arbitration procedure.
- R6. Letters of Reprimand should be signed and dated by both a City representative and the employee.
- R7. The City needs to adhere to its Unlawful Workplace Harassment Policy and Complaint Procedure regarding notification of outcome of investigations.
- R8. The paragraph allowing employment of immediate family members of the City Administrator or City Council Member should be rescinded from the City Personnel Rules and Regulations, Rule 4.8e.
- R9. The City should establish an independent body to review personnel decisions, such as a Personnel Commission composed of citizens of Butte County, adopt an appeal process for personnel decisions, and/or retain a qualified Personnel Officer.
- R10. Oroville Personnel Rules and Regulations, Rule 6.3d should be amended to limit the length of administrative leave (Relief of Duty).
- R11. A procedure to appeal the imposition of administrative leave (Relief of Duty) should be adopted.
- R12. Department Heads should adhere to the City's evaluation procedure and a provision regarding compliance with that procedure should be included in Department Heads' evaluations.
- R13. A procedure to conduct investigations of department heads for alleged misconduct should be established by the City Council.
- R14. Identification cards should be issued for all employees, department heads, and City Council Members.

REQUEST FOR RESPONSES

Pursuant to Penal Code §§ 930 and 933.05, the 2009/2010 Butte County Grand Jury requests responses as follows:

- Oroville City Administrator
- Oroville City Council

The governing body indicated above should be aware that the comment or response of the governing body must be conducted subject to the notice, agenda and open meeting requirements of the Brown Act.

BIBLIOGRAPHY

- Memoranda of Understanding with OCEA and OCMA
- Oroville City Charter

- Oroville Municipal Code
- Oroville Personnel Rules and Regulations (Amended June 2006)
- “Police Chief’s Resignation Presented by Mayor Jernigan.” The Oroville Community Mirror 5 February 2010: 9; “Police Chief Trostle’s letter of resignation.” The Oroville Mercury-Register 5 February 2010: 6A.

Reports issued by the Civil 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 Civil Grand Jury. The California State Legislature has stated that it intends the provisions of Penal Code Section 929 prohibiting disclosure of witness identities to encourage full candor in testimony in Civil Grand Jury investigations by protecting the privacy and confidentiality of those who participate in any Civil Grand Jury investigation.

APPENDIX A

Oroville City Council Staff Report dated August 4, 2009, regarding Amendment to the Agreement with CSG Consultants, Inc.

APPENDIX B

List of CSG Consultant, Inc., contracts with the City of Oroville

APPENDIX C

A portion of the opinion of the Court of Appeal, Third Appellate District, in the matter of the *City of Oroville v. Oroville Police Officers Association, et al.*, (Case No. C053640)

APPENDIX D

City of Chico Municipal Code, Chapter 2R.72, Personnel and Employee Representation Rules, Rule 2R.150 Disciplinary action and Rule 2R.72.240 Dispute resolution provisions

APPENDIX E

Grass Valley Personnel Commission

APPENDIX F

County of Butte Merit System and Personnel Rules 20006, Rule 7.11 Notice of Disciplinary Action

APPENDIX G

Sutter County Personnel Rules and Regulations, Section 18.0, Discharge, Dismissal, Suspension, Reprimand, Reduction in Rank, and Right of Appeal, Rule 18.1 Regular Employee, Rule 18.3 Removal From Work Site Prior to Written Notice – Conditions, and Rule 18.5 Causes for Discipline

APPENDIX A: OROVILLE CITY COUNCIL STAFF REPORT DATED AUGUST 4 2009, REGARDING AMENDMENT TO THE AGREEMENT WITH CSG CONSULTANTS, INC.

**OROVILLE CITY COUNCIL
STAFF REPORT**

TO: MAYOR AND COUNCIL MEMBERS

FROM: DIANE MACMILLAN, FINANCE DIRECTOR
LES BOWERS, INTERIM FIRE CHIEF

RE: AMENDMENT TO THE AGREEMENT WITH CSG CONSULTANTS, INC.
TO PROVIDE BUILDING OFFICIAL AND FIRE INSPECTION SERVICES

DATE: AUGUST 4, 2009

SUMMARY

The Council will consider amending the agreement with CSG Consultants, Inc., in the amount of \$135,000, to provide on-call building official and fire inspection services for the Building Division and to extend the agreement to June 30, 2010.

DISCUSSION

Since November 2006, CSG Consultants, Inc. has been providing the City with part-time building official services. These services include plan checking, building inspection, and other building official services, such as dealing with special projects, seismic retrofits, and fire-life-safety review of commercial building. CSG is now also providing all of the fire inspections, which include occupancy inspections for business, fire alarm inspections, underground fire services and fire sprinkler systems. This amendment is for the new fiscal year 2009/10. This is on an as-needed basis and the City can discontinue services anytime.

FISCAL IMPACT

A budget adjustment will be made from salaries to outside services for the 2009/10 approved budget:

General Fund – Salaries – Fire	001-5xxx -2000	<\$60,000>
General Fund – Outside Services	001-7000-2000	\$60,000
General Fund – Salaries – Bldg.	001-5xxx- 2990	<\$75,000>
General Fund – Outside Services	001-7000-2990	\$75,000