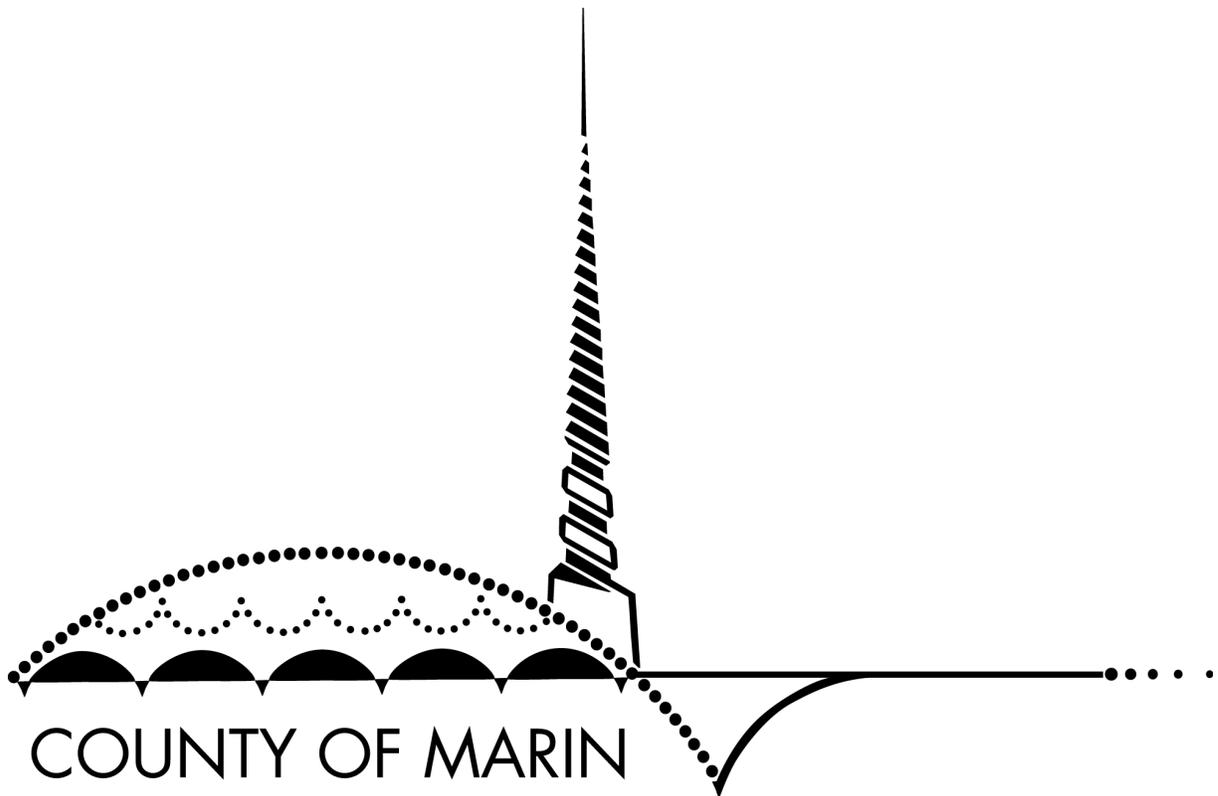


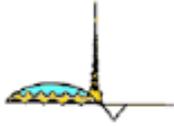
2013/2014 MARIN COUNTY CIVIL GRAND JURY

Novato Fire Protection District Board: A Cautionary Tale

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COUNTY OF MARIN



NOVATO FIRE PROTECTION DISTRICT BOARD: A CAUTIONARY TALE

SUMMARY

In May 2013, the Marin County Civil Grand Jury received a complaint against the Board of Directors (BOD) of the Novato Fire Protection District (NFPD). The request for investigation alleged, "...over the last six years, the Board of Directors of the Novato Fire District have either by failure to act, ignorance, arrogance, or inexperience, expended taxpayer money in a frivolous manner with no regard for maintaining essential services, following internal policies, California law or governmental transparency." After the 2013-2014 Grand Jury was sworn in they opened an investigation into these charges.

In November 2013, the Grand Jury learned that a lawsuit had been filed against the NFPD. The former Fire Chief sued the NFPD, two members of the BOD and the interim fire chief who replaced him, alleging defamation of character, slander, and negligent misrepresentation. Unwilling to influence the outcome of this lawsuit, which is still pending, we suspended the investigation. Ultimately, the Grand Jury decided to write a status report, without findings or recommendations, in the belief that the taxpayers of Marin had a right to the information we had collected. We were gratified to find that the NFPD Board had learned from the mistakes that were made and had instituted needed changes and new policies, for which they should be commended. However, the Grand Jury concluded that the problems that came to light during our investigation are not unique to this particular board. In a county where there are more than 30 special districts headed by boards of directors, we have come to the conclusion that, in most cases, there is very little attention paid to board performance by the voters who put them into office.

This is a cautionary tale for voters and boards of directors alike. It may motivate taxpayers to pay more attention to the activities of local boards and serve as a sobering reminder to elected officials that they must be accountable to the public for their decisions and their use of taxpayer funds. With this as a goal, the Grand Jury will send copies of this report to the boards of all the special districts in the County with no obligation to respond.

BACKGROUND

Before there was a town of Novato, there was a fire department. The Novato Volunteer Fire Department was established in June 1894, to protect the homes and businesses of a small settlement constantly threatened with fires. After Novato was granted township in 1926, the fire department became a Fire District – one of eight fire districts in the County - and the first chief was appointed. Today, the NFPD encompasses 71 square miles and

has 89 full time employees working out of five stations. Its total operating revenue was \$22,949,297 for the fiscal year 2012-2013, almost exclusively derived from property taxes.

The NFPD is governed by a Board of Directors whose five members are elected to four-year terms. Many are reelected to multiple terms; one present Director has been on the Board since 1997. The Board holds a monthly meeting that is open to the public but sparsely attended. The Directors are responsible for: (1) setting policies and objectives; (2) selecting, supporting and reviewing the performance of the Fire Chief; (3) approving an annual budget; and, (4) setting salaries and compensation for district staff.

As with all public boards of directors in California, NFPD Board members must take an ethics course every two years and abide by the Ralph M. Brown Act, (See Appendix A for a summary of the act¹). The Brown Act facilitates public participation in local government and curbs the use of secret actions by public boards. Independent districts with elected Boards are accountable only to the voters of the district whose tax dollars they are managing. NFPD Board members are paid \$100 per meeting but financial gain is rarely the reason people seek election to Special District boards. As a rule, these are individuals interested in giving back to the community, looking for a rewarding way to share their skill sets and, occasionally, using board membership as a springboard into local politics.

In October 2011, a Battalion Chief with the Novato Fire Department filed a \$6,000,000 claim against the former Chief, the Deputy Chief and the NFPD. In this claim, the officer alleged that hostility directed toward him in the work environment by the chief and deputy chief had escalated to an intolerable level. The claimant further alleged that he was retaliated against, harassed, threatened with demotion and disciplined with punitive actions by the two commanding officers. The BOD settled this claim for \$250,000 and the officer resigned from the department. The investigation into this claim cost the NFPD \$100,000 in legal fees.

In October 2012, the Deputy Chief resigned and took a job with another department. His office remains unfilled by the Board.

On the evening of November 28, 2012, at a special meeting, the BOD met in a closed session for a performance evaluation of the Fire Chief. Emerging from their meeting almost four hours later, the Board unanimously approved two motions: 1) to accept the Fire Chief's request for retirement effective immediately and 2) to hire an interim Fire Chief, who had apparently already been chosen in closed session. It was noted in the minutes that the appointment would become effective "after the posting of this meeting's agenda." There was no public notification of this special meeting at which the Board of Directors had considered and made major changes in the leadership of the NFPD.

According to the Brown Act, section 54954.2, "No action or discussion will be undertaken on any item not appearing on the posted agenda."² Acceptance of the Chief's

¹ http://ag.ca.gov/publications/2003_Main_BrownAct.pdf

² <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=54001-55000&file=54950-54963>

request for retirement occurred prior to the posting of the Board's meeting agenda. It remains unclear where and when the meeting agenda was posted and the timing of an Interim Chief's appointment is not spelled out, but he began his tenure one day after the Chief resigned. One week later, on December 5, the Directors of the NFPD again called a special meeting of the Board to order. The meeting agenda noted, "The Board will elect a President...." The new President served for twenty- three days before being ousted during yet another special meeting convened on December 28, 2012. At this meeting accusations were leveled that the new President had disclosed information from a closed session regarding the resignation of the Chief, and that he had violated "government code" by revealing information on personnel matters obtained in a closed session. The President, who said he was "blindsided" by this vote, disputed the claim and explained that he only revealed information already made public by another Director. Although he continues to sit on the Board, he was removed from the presidency.

These abrupt changes in leadership at the highest levels of NFPD management received a good deal of media attention, resulting in concerned citizens sending a request for investigation to the Grand Jury in 2013. In view of the pending lawsuit, the Grand Jury did not reach a conclusion about these allegations, but will encourage the next Grand Jury to continue monitoring the situation. In the course of our investigation, the Grand Jury became aware of troubling issues that led the jurors to ask, who was minding the store?

APPROACH

The Grand Jury interviewed past and present fire fighters and officers of the NFPD, as well as members of the Board. We reviewed the Ralph M. Brown Act, the district's financial records, the district's Operations Manual, articles and editorials in the *Marin Independent Journal* and *Novato Patch*, and on-line minutes from the open sessions of the Board meetings. We obtained copies of the two lawsuits filed against the NFPD in 2012 and 2013 and read the District's responses to a report by the 2012-2013 Grand Jury on Marin's Retirement Health Care Benefits.

DISCUSSION

In the course of our investigation, the Grand Jury focused on three key principles that define a well functioning board: diligent oversight, sound fiscal management and transparency. Applying these principles to the NFPD, we examined these facts:

Oversight

- Numerous sources reported to the Grand Jury that morale in the fire department was at an all-time low during the years the former Chief ran the department. The Grand Jury was told by members of the department that the command staff was in a constant state of fear and intimidation. The claim filed by the Battalion Chief against the former Fire Chief and Deputy Chief contained serious allegations about both officers. The Board members interviewed by the Grand Jury

maintained, nevertheless, that they were not aware of any complaints about the chief.

- Firefighters and officers were told by the former Chief not to speak with Board members, and even casual contact between a Board member and staff had to be reported to the Chief. A written policy in the department was that staff was not to have any contact with Board members or members of the city council. The BOD was not aware of this policy.
- The relationship between the Novato Firefighters Association and the former Chief was so acrimonious that the president of the association could not get the Chief to return his phone calls. Both the president and vice president of the association spoke to individual board members about their concerns months before the Chief's resignation.

Fiscal Management

- Both the former Fire Chief and former Deputy Chief received overtime pay, approved by the BOD, despite the fact that both positions are exempt from the requirement of overtime under Fair Labor Standards Act (FLSA) law, and there is no provision in District Policy, Memorandum of Understanding or other agreements that provide for the issuance of overtime to these officers. The Chief and Deputy Chief had traditionally received Administrative Time Off (ATO) in lieu of overtime pay and were expected to respond to emergencies and attend night and weekend trainings and workshops as part of their responsibilities. In 2011, the former chief was paid \$16,364 in overtime, and the Deputy Chief received \$11,791³. A member of the Board stated that the Board did not know how much overtime or special pay the former Chief and former Deputy Chief were making.
- The former Deputy Chief was the highest paid public employee in the County in 2011: \$407,661.
- The six highest paid firefighters in the County in 2011 were all top officers of the Novato Fire Protection District. Board members expressed surprise at how much top staffers were making when these salaries were published online by *The Mercury News*.
- In 2009, the Board approved funding for the District to pursue International Accreditation - a worldwide measure of excellence - at a cost that exceeded \$500,000. In February 2013, the Board voted not to pursue re-accreditation, although this is required in order to maintain the title.
- By June 2013, staff salaries had been negotiated down by \$350,000 but overtime pay over the same three-year period (2010-2013) rose by \$900,000.

³ <http://www.novatofire.org/Modules/ShowDocument.aspx?documentid=1186>

- A new IT system that cost \$488,000 was installed without a budget and without being put out to bid. Board members say that they did not approve this expenditure and that this purchase violated policies requiring an open bidding process.
- In May 2011, the BOD hired an architectural firm at a cost of \$910,000 to provide project management for a new Ignacio fire station. Three years later, the station has not been built. The amount paid out for teardown of the old station, rent for a temporary station and soil decontamination has now cost the District over \$2,000,000. The rebuilding of Station 64 is estimated to cost \$4,200,000. The District will accept bids for this construction contract in April 2014.
- The NFPD has incurred legal fees of \$537,000 over the past five years. This does not include fees for the most recent lawsuit, which has not yet been adjudicated.

Transparency

- On December 12, 2012, The BOD stated to the press that the former Chief was retiring, “and that’s the information we’ll be releasing.”⁴
- In the same *Novato Patch* article, two County Supervisors expressed surprise at the news of the Chief’s resignation. One described the move as “pretty opaque.”
- Three months elapsed between the resignation of the former Chief and the release of records to the *Marin Independent Journal* in response to their request under the State Public Records Act. It took filing three requests for NFPD officials to respond to the reporter making inquiries. The reporter who pursued the story and obtained the documents won a national media award from Digital First Media for her persistence in following the paper trail.
- A strongly worded editorial written after a meeting between the editorial staff of the *Marin Independent Journal* and the NFPD officials, stated: “The board violated the public’s trust by not being aware of what was going on in the district voters elected them to run.”⁵

Do We Have Containment?⁶



⁴ Novato Patch, December 1, 2012, “Fire Chief’s Departure Reverberating around Country, National Group Says”

⁵ WWW.marinij.com/opinion/ci_22649467/editorial-novato-fire-board-needs-to-get-its-act-together, March 10, 2013

⁶ Cartoon by George Russell, Marin Independent Journal, 2/18/13

Following the upheaval within the NFPD, the Board made some important decisions to put the District back on track and to align it with the BOD's Mission Statement and Guiding Principles:

To care for, protect and serve the community

We set the direction

We establish the structure

We provide the support

We ensure accountability

We act as community leaders.

The first of these was their choice of an interim fire chief in November 2012, a man who was respected and admired by the firefighters. In the months of his tenure, he helped the Board to rewrite their policies on purchasing, travel and payroll, and personally approved every invoice. He also rewrote the job description for a new chief and managed the recruitment process. Secondly, in May 2013, a new fire chief was chosen from among the rank and file, and he appears to be working closely with the BOD and the Novato Firefighters Association. He attends every Board meeting and helps prepare the agenda. The stated goal of the BOD is one hundred percent transparency, and, to this end, they have instituted a system of checks and balances so that expenses are closely monitored. The Chief and the financial director now routinely review policies that were not closely adhered to in the past, such as submitting receipts for every item charged on a credit card. Monthly financial reports prepared for the board now include every transaction and are easier to read, which was not the case in the past. Other noteworthy changes:

- Two new Board committees have been formed – a policy committee and a financial committee.
- Additional training on performance management and discipline was given to first-line supervisors.
- An outside audit firm was hired to thoroughly examine the District's finances and business practices.
- There is now an open line of communication between the rank and file fire fighters and the Board of Directors that has not existed in years.
- An outside mediator was hired to oversee union contract talks.

While investigating many special districts in Marin County, the Grand Jury heard repeatedly that members of the public don't come to Board meetings and nobody pays much attention to what they do. Sadly, this appears to be true. A director of a sanitary district, water district or fire district is only as good as the members the public votes into office. We expect an elected board to provide oversight, practice prudent financial management and be accountable and transparent. As citizens, it is our responsibility to make sure they do just that.

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Please Note: Some of the links listed in the footnotes and bibliography may not be active and might require copying the information into a search engine. At the time this report was prepared, the information was available at the sites listed.

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 Grand Jury investigations by protecting the privacy and confidentiality of those who participate in any Civil Grand Jury investigation.

APPENDIX A

Excerpt from publication, *THE BROWN ACT-Open Meetings for Local Legislative Bodies*⁷

CHAPTER I. PURPOSE AND SCOPE

The Ralph M Brown Act (Gov. Code, §54950⁸ et seq., hereafter "the Brown Act," or "the Act") governs meetings conducted by local legislative bodies, such as boards of supervisors, city councils and school boards. The Act represents the Legislature's determination of how the balance should be struck between public access to meetings of multi-member public bodies on the one hand and the need for confidential candor,

⁷ http://ag.ca.gov/publications/2003_Main_BrownAct.pdf

⁸ All statutory references are to the Government Code except as otherwise indicated.

debate, and information gathering on the other. As the rest of this pamphlet will indicate, the Legislature has established a presumption in favor of public access. As the courts have stated, the purpose of the Brown Act is to facilitate public participation in local government decisions and to curb misuse of the democratic process by secret legislation by public bodies. (*Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 555.) To these ends, the Brown Act imposes an “open meeting” requirement on local legislative bodies. (§ 54953 (a); *Boyle v. City of Redondo Beach* (1999) 70 Cal.App.4th 1109, 1116.)

However, the Act also contains specific exceptions from the open meeting requirements where government has a demonstrated need for confidentiality. These exceptions have been construed narrowly; thus if a specific statutory exception authorizing a closed session cannot be found, the matter must be conducted in public regardless of its sensitivity. (§ 54962; *Rowen v. Santa Clara Unified School District* (1981) 121 Cal.App.3d 231, 234; 68 Ops.Cal.Atty.Gen. 34, 41-42 (1985).)

Where matters are not subject to a closed meeting exception, the Act has been interpreted to mean that all of the deliberative processes by legislative bodies, including discussion, debate and the acquisition of information, be open and available for public scrutiny. (*Sacramento Newspaper Guild v. Sacramento County Bd. of Suprs.* (1968) 263 Cal.App.2d 41; 42 Ops.Cal.Atty.Gen. 61, 63 (1963); 32 Ops.Cal.Atty.Gen. 240 (1958).) The Act only applies to multi-member bodies such as councils, boards, commissions and committees since, unlike individual decision makers, such bodies are created for the purpose of reaching collaborative decisions through public discussion and debate.

A host of provisions combine to provide public access to the meetings of legislative bodies. For example, the times and dates of all meetings must be noticed and an agenda must be prepared providing a brief general description of all matters to be discussed or considered at the meeting. (§§ 54954, 54954.2.) As a precondition to attending the meeting, members of the public may not be asked to provide their names. (§ 54953.3.) While in attendance, members of the public may make video or audio recordings of the meeting. (§ 54953.5.) As a general rule, information given to a majority of the members of the legislative body in connection with an open meeting must be equally available to members of the public. (§ 54957.5.) Before or during consideration of each agenda item, the public must be given an opportunity to comment on the item. (§ 54954.3(a).)