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Placer County Charter Review Committee 2007-2008

- Aldo Pineschi (Seat 1)
- Vice Chairman - Gregory H. Nau (Seat 2)
- Chairman - Wayne Nader (Seat 3)
- Ronald L. Feist, Ed.D (Seat 4)
- Rick Brown (Seat 5)
- Annabelle McCord (Seat 6)
- Todd Lindstrom (Seat 7)

Final Report – Placer County Charter Review Committee November 26, 2007

Presented to the Placer County Board of Supervisors:
Wayne Nader, Chairman, Placer County Charter Review Committee

Prepared by:
Michael E. Paddock, Senior Management Analyst, County Executive Office
Brian Wirtz, Deputy County Counsel, County Counsel's Office

I. INTRODUCTION

The Placer County Charter was adopted by the voters of the County in 1980. The County Charter is an important governing document that provides a level of flexibility in local decision making and contains provisions that guide the organizational structure, duties and responsibilities of elected and appointed officials. It also contains a provision for the periodic review and assessment of the Charter document as a means to recommend any changes or additions to it. Specifically, Section 601 of the Charter requires the Board of Supervisors to convene a Charter Review Committee within five years of the last review and every five years thereafter. The last review action occurred in late November 2001 and on February 20, 2007, the Board of Supervisors approved an action and authorized the process to convene a new Charter Review Committee.

A. Composition and Selection of Committee Members

1. Background:

On February 20, 2007, your Board approved the formation and membership structure of the 2007-08 Placer County Charter Review Committee. The purpose of the Committee is to review the County Charter, conduct at least two public hearings and then submit a report of recommendations, if any, to make changes or additions to the Charter. Your Board approved the staff recommendation for a seven member committee consisting of one appointee or candidate from each Supervisor and two at large members. Your Board also accepted the recommendation of staff to submit the names of all of the candidates to your Board for final approval. The names of the selected candidates including the two at-large members were approved by your Board on July 24, 2007. The names of the appointed members to the Committee are listed below:

2. Appointees:

- Seat 1 Mr. Aldo Pineschi
- Seat 2 Mr. Gregory H. Nau, Vice Chairman
- Seat 3 Mr. Wayne Nader, Chairman
- Seat 4 Dr. Ronald L. Feist, Ed.D
- Seat 5 Mr. Rick Brown
- Seat 6 At-Large Ms. Annabell McCord
- Seat 7 At-Large Mr. Todd Lindstrom

B. Meetings of the Committee – A Brief Summary

The Charter Review Committee conducted six public meetings beginning on August 27, 2007, including its final meeting on November 29, 2007. A copy of the approved Minutes from all of the meetings are attached to this Report. A summary of the major points of discussion or actions are summarized as follows:

1. August 27, 2007:

The Committee convened its first meeting and elected Mr. Wayne Nader as Chairman and Mr. Gregory Nau as its Vice-Chairman. A general background about the County Charter and the review process was provided to the Committee by County staff. The Committee discussed possible topics for review including the salary cap for County Supervisor, the nature and process for selecting the elected position of County Superintendent of Schools and the responsibilities of the appointed position of County Counsel and the status and relationship of this position with the Board of Supervisors. The Committee also asked that all County Departments be contacted to see if they had any recommendations relating to the Charter.

2. September 10, 2007:

The Committee received a presentation and documents of information from County Counsel, Mr. Anthony La Bouff, regarding the responsibilities of the office of County Counsel and how this position is appointed and its status under the County Charter and by the general law of the State. The Committee decided to consider this matter further with the possibility of amending the County Charter to match the provisions of general law. The Committee also discussed the position of Personnel Director and its reporting relationship with the Civil Service Commission. County staff also presented information to the Committee on the various methods and models used by other counties in the State to set the salary for the elected position of County Supervisors, including indexing to another office or position (e.g. superior court judge), survey of comparable counties, average amount from a designated pool of counties or by other local method and option.

3. October 1, 2007:

The Committee received a presentation from Dr. Donald Brophy, President of the Placer County Board of Education, regarding the nature and method of selection of the elected position of County Superintendent of Schools. Dr. Brophy (who stated that he was appearing as a private individual, and not in his capacity with the Board of Education) presented his personal viewpoints and perspective on this elected position, and he advocated for amending the County Charter to make this position appointed instead of elected. The Committee also reviewed a request from the Director of Child Support Services to make some minor and grammatical changes to the County Charter under Section 303 (d) to clarify the authority of the County Board of Supervisors to review and investigate entities that receive funding from the County of Placer. The Committee also made a formal recommendation to amend Section 507 of the County Charter to change or formalize the method of selection and tenure of the position of County Counsel to make this process consistent with the general law under Section 27641 of the Government Code. The staff to the Committee also presented information from other counties that have conducted salary surveys for the position of County Supervisor. Information about previous elections related to the Personnel Director of Placer County and the Civil Service Commission was also presented by staff. The Committee requested this information to begin its review and deliberations on the matter of amending the County Charter to change the salary of the elected position of County Supervisor.

4. October 22, 2007:

The Committee began its business by discussing the perception of the “part-time” nature of the elected position of County Supervisor and how this perception is not supported by the actual hours and work demands upon each of the five County Supervisors. The Committee directed staff to conduct a study of the hours/work demands of the County Supervisors and report back to the Committee. The Committee also received a presentation and other information and documentation from the Placer County Superintendent of Education, Ms. Gayle Garbolino-Mojica, regarding her perspective and viewpoints on the nature, function and method of selection of this elected position. She advocated a position that would retain the current method of selection, i.e., elected position over other methods. She also presented a formal report on this matter entitled the Janus Report, to support her position and viewpoint.

5. November 13, 2007:

The Committee received a verbal summary from staff regarding the issue and 1996 election outcome related to changing the method of appointment of the Personnel Director from appointment by the Placer County Civil Service Commission to appointment by the County Executive Officer with confirmation from the Board of Supervisors. The Committee discussed this matter and, although there was general agreement that the current method of selection is not consistent with a “preferred business model,” there are no defects in the current personnel operations, reporting and leadership of that office or department. On the basis of this conclusion, the Committee

made a formal declaration not to take action or other recommendation on this matter. The Committee also made a formal declaration not to take an action or make a recommendation related to the matter of selection of County Superintendent of Schools. Again, the Committee decided that there is no basis to make a change from the current method of selection for this elected position. The Committee also reviewed and made comment on the staff report of hours and work demands of each County Supervisor and how this report clearly demonstrates the equivalent full time nature of the position of County Supervisor. On the basis of this report and the salary survey information from other counties, the Committee made a formal declaration to recommend an amendment to the County Charter to change (increase) the current salary from \$30,000 per year to approximately \$99,000 (inclusive of salary and any benefits). The Committee also made a formal declaration to amend the Charter to declare the full time equivalent nature and work demands of this elected position.

II. TOPICS OF REVIEW

A. Salary Cap - County Supervisor

1. Issue/Problem:

Section 207 of the County Charter, paragraph 2, places a cap on the maximum level of annual compensation, \$30,000 for each member of the Board of Supervisors. This amount includes all compensation including salary and benefits, but also excludes employer paid expenses including social security, worker's compensation, unemployment insurance, CalPers retirement (if applied) and reimbursement for actual expenses. This section of the Charter was added by initiative action under Measure A submitted to the voters of the County on June 2, 1992. The members of the Placer County Charter Review Committee believe that the current salary as restricted by this provision of the Charter is inadequate given the complexity and the full time demands of the office of County Supervisor. The compensation is also inequitable as measured by and compared to all of the other counties in the State, including those counties that closely match the demographics and organizational structure of Placer County.

2. Findings:

a. Salary Survey

A recent survey of salaries and benefits conducted by Nevada County and reviewed by the Committee reveals that of the 58 counties in the State, Placer County ranks number 52 in terms of salary for its members to the Board of Supervisors. Within this ranking only six other Counties, Del Norte - \$28,080, Alpine - \$25,176, Trinity - \$25,008, Colusa - \$24,000, Modoc - \$15,859 and Tehama - \$12,540 rank lower than Placer. Also within this ranking the six Counties that rank immediately above Placer County and exceed the current salary include Glenn - \$30,285, Sierra \$31,000, Siskiyou, \$33,129, Sutter - \$34,471, Tuolumne - \$37,210 and Mariposa - \$37,290. It should be noted that some of these Counties also provide benefits in addition to the salaries listed

above; however, the Committee only used the actual salary when determining the salary recommendation. A copy of the complete survey is attached to this Report (Exhibit 1.)

Placer County also ranks at the bottom in salary paid to its County Supervisors when compared to its eight comparable counties that include Contra Costa - \$97,479, El Dorado - \$76,876, Sacramento - \$94,406, Santa Clara - \$137,318, Solano - \$90,973, Sonoma - \$111,862, Santa Cruz - \$99,424 and San Luis Obispo - \$79,014. The computed average salary of the comparable county survey is \$98,419 or \$68,419 more than Placer County (Placer County is 70% lower than the average). A copy of the Comparable County Survey and computed average is attached to this Report (Exhibit 2).

b. Work Hours – Placer County Supervisors

The Committee has also reviewed the results of an analysis of work hours of each County Supervisor, and the results of this study reveal that each Supervisor is working on an equivalent full time basis in order to meet the needs and demands of the office and to address constituent issues. The study indicates that in terms of documented meetings and cell phone usage each Supervisor is working approximately 1300 hours. This documented time does not include other requirements such as responding to e-mails, reading the agenda package to absorb and respond to any issue or policy matter prior to the bi-monthly meeting schedule. Staff of the office has also made the observation that these documented and un-documented duties could be reasonably increased by a factor of 30% to 40% to reach a more realistic accounting of hours. By applying this factor to the documented hours and assuming a productive yearly hour total of 1780 hours suggests a full time work requirement for each member of the Board of Supervisors. A copy of the Analysis of Work Hours study is attached to this Report (Exhibit 3)

3. Conclusion/Recommendation:

The Charter Review Committee has considered this provision of the Charter and has concluded that the current level of compensation of \$30,000 per year is inequitable and inadequate by any reasonable measure or survey. The Committee has also concluded that each County Supervisor is working on an equivalent full time basis to meet the demand of the office and to address the concerns of constituents. The Committee recommends the Board amend or replace Section 207 of the Charter to adjust the Board members' salary and provide for cost of living adjustments in future years.

B. County Counsel – Method of Appointment and Terms of Service

1. Issue / Problem:

Section 507 of the Charter sets forth the method of appointment of the County Counsel. This section reads, in relevant part, that the "County Counsel shall be appointed by the Board of Supervisors and serve at its pleasure." The Committee was concerned that having the County Counsel serve as an at-will employee of the Board could, at some point in the future, lend itself to the County Counsel being pressured for opinions that

were more reflective of political pressure than of sound, impartial legal grounds. The Committee was also quite clear that this concern was general in nature, and was in no way reflective of the actions of the current County Counsel or Board of Supervisors.

On August 27, 2007, the Committee directed the County Counsel's Office to compare Placer County's method of appointment with the method used in the State statutes. On September 10, 2007, this report was provided. The report pointed out that Government Code Section 27641 provides that a County Counsel shall serve for a four-year term (as opposed to the County Charter, which provides for service at the Board's pleasure).

In addition, the report pointed out that Government Code Section 27641 provides a specific process that must be undertaken in order for the Board to remove a County Counsel. The reasons for removal must be "due to neglect of duty, malfeasance or misconduct in office, or other good cause shown" and can only occur "upon written accusation to be filed with the board of supervisors, by a person not a member of the board, and heard by the board and sustained by a three-fifths vote of the board."

After receiving this report on September 10, 2007, the Committee directed the County Counsel's Office to provide draft language that would amend the Charter to be consistent with the Government Code. The suggested language was provided at the Committee's October 1, 2007 meeting.

2. Findings:

The Committee found that the State statutes relating to the method of appointment and removal of a County Counsel would better protect a County Counsel from being unduly pressured by political considerations. The Committee also pointed out its belief that this recommended amendment was intended to be proactive in nature, and was in no way reflective of the actions of the current County Counsel or Board of Supervisors.

3. Conclusion/Recommendation:

The Committee concluded that Section 507 of the County Charter be amended so that the position of County Counsel shall be appointed by the Board of Supervisors and serve at its pleasure consistent with the terms of Government Code section 27641 as currently enacted or hereafter amended including any successor statute enacted by the State Legislature to replace it.

C. County Superintendent of Schools – Method of Appointment

1. Issue/Problem:

The Committee was approached by members of the public who were interested in the current process of selection of the Placer County Superintendent of Schools. Section 401 of the County Charter provides requires the Superintendent of Schools to be an

elected position. The public members were interested in discussing the possibility of having the Superintendent of Schools appointed by the Board of Education, rather than having it remain as an elected position.

On October 1, 2007, the Committee received a presentation from Dr. Donald Brophy, President of the Placer County Board of Education, regarding the nature and method of selection of the elected position of County Superintendent of Schools. Dr. Brophy (appearing in his personal capacity and not in his capacity as President of the Board of Education) presented his personal viewpoints and perspective on this elected position. Dr. Brophy advocated for amending the County Charter to make this position appointed instead of elected. His primary concern was that there was a fundamental and growing inequity between the powers of the Superintendent of Schools relative to those of the Board of Education. Dr. Brophy provided the Committee with extensive documentation to support his viewpoint.

On October 22, 2007, the Committee also received a presentation and other information and documentation from the Placer County Superintendent of Education, Ms. Gayle Garbolino-Mojica, regarding her perspective and viewpoints on the nature, function and method of selection of this elected position. She advocated a position that would retain the current method of selection, i.e., elected position over other methods. She also presented a formal report on this matter, the Janus Report, to support her position and viewpoint.

2. Findings:

After hearing from members of the public and reading the materials provided, the Committee found that the bulk of the alleged inequity in authority between the Superintendent and the Board of Education was largely a result of historic legislative activity which has had the effect of shifting of mandated duties to the Superintendent. The Committee further found that there are only five appointed Superintendents statewide, and, based on the information provided, there was no measurable difference across the state, regardless on whether the Superintendent was appointed or elected. The Committee further found that several attempts have been made in other counties to change the Superintendent from an elected to an appointed position. All of these efforts failed by a large margin. Finally, the Committee found that the existing system in Placer County appeared to be working well, and found no reason to make any changes.

3. Conclusion/Recommendation:

The Committee unanimously made a formal declaration not to take an action or make a recommendation related to the matter of selection of County Superintendent of Schools. Again, the Committee decided that there is no basis to make a change from the current method of selection for this elected position.

D. Personnel Director – Selection / Appointing Authority

1. Issue/Problem:

On September 10, 2007, the Committee noted that the Director of Personnel was appointed by the Civil Service Commission (with concurrence of the Board of Supervisors). The Committee noted that the heads of other County Departments were appointed by the County Executive Officer (with Board of Supervisors concurrence), and requested County staff to provide additional information and history regarding this appointment process.

On November 13, 2007, the Committee discussed this issue. The voters of Placer County were presented with a measure at the November 5, 1996, election with regard to the appointment of the Personnel Director. This department head position, unlike all other non-elected department heads, is not selected by the County Executive Officer subject to confirmation by the Board of Supervisors, but rather serves in a "Classified" status and appointed by the Civil Service Commission. It was noted that the Civil Service Commission members are appointed by the Board of Supervisors.

The 1996 measure asked the voters to approve a change in the County Charter that would make the selection process of the position of Personnel Director similar to all other non-elected department heads. The measure failed with 44.6% in favor and 55.4% against.

2. Findings:

Some Committee members stated that, although the current selection and reporting process may not be a preferred business model and that other options exist, they saw no reason to amend a system that appears to be functioning. The Committee found that no issues or operations in the Personnel/Human Resources arena have come to their attention. Accordingly, the Committee found that no action on this issue was warranted.

3. Conclusion/Recommendation:

The Committee has concluded that there is no apparent need to make any recommendations to the Board to amend the appointment process of the Personnel Director and have decided to make no recommendation at this time to change the nature and method of selection of the Personnel Director.

E. Charter Section 303(d) - Clarification of Board's Review Authority

1. Issue/Problem:

The Committee reviewed a memorandum from the Director of Child Support Services regarding the possible need for minor changes to the County Charter under Section 303 (d) to clarify the authority of the County Board of Supervisors to review and investigate entities that receive funding from the County of Placer.

Section 303(d), in relevant part, allows the Board of Supervisors to "[r]equire periodic or special reports of expenditures and costs of operation; examine all records and accounts, and inquire into the conduct of any office, commission department or other entity to which the county contributes funds." The concern expressed by County staff was that the language in Section 303(d) might preclude the County from reviewing the conduct or books of those County departments that receive all of its funding from the State of California. The Committee subsequently directed staff from the County Counsel's Office to research this issue and report back with its findings. On November 13, 2007, the Committee discussed staff's findings that the Charter provided ample authority to allow the Board to require periodic or special reports of expenditures of any County department, regardless of its funding source.

2. Findings:

After considering the findings of the County Counsel's Office, the Committee found that the Board of Supervisors has the inherent authority to require periodic or special reports of expenditures, has the ability to examine records and accounts and inquire into the conduct of any part of the County under its inherent powers granted to it by State statutes and the County Charter. The Committee further found that the department's funding source was not a factor that affected this authority.

3. Conclusion/Recommendation:

The Committee has concluded that the Charter provides ample authority to allow the Board to require periodic or special reports of expenditures of any County department, regardless of its funding source, and further action on this issue is not required.

F. Minor Amendments Not Requiring a Public Vote

1. Issue/Problem:

During the various Committee meetings, two typographical errors in the Charter were noted. County Counsel explained to the Committee that Section 609 of the Charter allows the Board of Supervisors to "direct County Counsel to make spelling, punctuation or grammatical corrections in the County Charter or to change the sequence of specific Charter provisions as long as no change in the legal meaning or intent of the Charter results."

The first minor amendment mentioned is found in Section 303(d) of the Charter. This section, currently reads, in relevant part, to allow the Board to "... examine all records and accounts, and inquire into the conduct of any office, commission department or other entity to which the county contributes funds." The need for a comma between "commission" and "department" for clarity was noted.

The second minor amendment is found in footnote 1 of Section 207 of the Charter, which currently reads, in relevant part, "... in the case of *Ferreira v. Williams*,

Placer County Superior Court Case No. SCV-00553, the *count* ruled that ...” (emphasis added). Staff noted that the word “count” should be “court”. Staff mentioned that the word “count” should be corrected to “court”, so that this portion of the Charter reads, in relevant part, “... in the case of Ferreira v. Williams, Placer County Superior Court Case No. SCV-00553, the court ruled that ...”

The County Counsel’s Office noted that making these minor amendments would not change the legal meaning or intent of the Charter, and as a result, the Board could direct County Counsel to make these changes to the Charter without a vote of the public.

2. Findings:

The Committee found that there was a need to make a minor correction to Section 303(d) by adding a comma between “commission” and “department”, and that Section 207 should be amended by changing the word “count” to “court”.

3. Conclusion/Recommendation:

The Committee recommends that the Board make two minor typographical corrections to the Charter: first, Section 303(d) needs a comma between the words “commission” and “department”, and; in footnote 1 of Section 207 the word “count” should be changed “court”.

III. SUMMARY OF RECOMMENDATIONS

Following is a summary of the 2007 Charter Review Committee’s recommendations:

**A. Section 207 – Compensation of County Supervisor
(Recommendation of the Committee on 11-13-07)**

The Charter Review Committee has considered this provision of the Charter and has concluded that the current level of compensation, \$30,000 per year is inequitable and inadequate by any reasonable measure or survey. The Committee has also concluded that each County Supervisor is working on an equivalent full time basis to meet the demand of the office and to address the concerns of constituents. Accordingly, the Committee recommends the following:

1. Salary

The Committee recommends the Board consider an amendment to Section 207 of the County Charter to substitute or replace the existing salary cap to provide:

- The salary of the elected position of County Supervisor shall not exceed the average of the County survey of comparable counties (eight county survey)

currently in use by Placer County to evaluate the salaries of current employees and;

- The computed average amount of the survey shall include the total amount for both salary and for benefits (benefits that are available to County employees), and;
- Each Supervisor's salary, inclusive of any compensation necessary to purchase insurance or retirement benefits, shall be increased the first full pay period in January of each year in an amount equal to the average general wage percentage increase provided to all County employees in the non-safety retirement category during the prior calendar year. Those increases that are mandated for law enforcement (i.e., mandated by Measure F) shall not be included when computing this average.

2. Full Time Equivalent:

- Amend by adding an amendment to Section 207 of the Charter a provision or statement that would express the view, conclusion or fact that the office and position of County Supervisor requires the effort and time that is at least equivalent to a "full time position" or FTE.

B. County Counsel – Method of Appointment and Terms of Service
(Recommendation of the Committee on October 11, 2007)

The Committee found that the State statutes better insulate a County Counsel from being unduly pressured by political considerations than does the County Charter. The Committee also pointed out its belief that this recommended amendment was intended to be proactive in nature, and was in no way reflective of the actions of the current County Counsel or Board of Supervisors.

Accordingly, the Committee recommends that Section 507 of the County Charter be amended so that the position of County Counsel "... shall be appointed by the Board of Supervisors and serve at its pleasure consistent with the terms of Government Code Section 27641 as currently enacted or hereafter amended including any successor statute enacted by the State Legislature to replace it."

C. County Superintendent of Schools
(Recommendation of the Committee on November 12, 2007)

After receiving substantial information from the public from both sides of this issue, the Committee made several findings, which are discussed in detail above.

Based on these findings, the Committee has decided to make no recommendation at this time to change the nature and process of selecting the elected position of County Superintendent of Schools.

D. Personnel Director – Selection/Appointing Authority
(Recommendation of the Committee on November 12, 2007)

The Committee found that, although the current method of selection of the Personnel Director is not consistent with their view of a “preferred business model,” the Committee found no issues with the current personnel operations, reporting and leadership of that department.

Accordingly, the Committee found no need to make any recommendations to the Board to amend the appointment process of the Personnel Director.

E. Section 303(d) Issues
(Recommendation of the Committee on November 12, 2007)

The Committee examined the language of Section 303(d) to determine whether the Board of Supervisors has the inherent authority to inquire into the conduct of a County department that receives all of its funding from the State of California, and found that sufficient authority exists without any need for amending the Charter.

Accordingly, the Committee found no need to make any recommendations to the Board to amend this section relative to this issue.

F. Minor Typographical Corrections to Charter
(Recommendation of the Committee on November 12, 2007)

The Committee recommends that the Board make two minor typographical corrections to the Charter. Pursuant to Section 609 of the Charter, both amendments may be made by County Counsel upon direction from the Board without a vote of the public. The direction would be to:

- Correct and clarify Section 303(d) of the County Charter by adding a comma between the words “commission” and “department” so that this portion of the Charter reads, in relevant part, “... inquire into the conduct of any office, commission, department or other entity to which the county contributes funds.”
- Correct a typographical error in footnote 1 of Section 207 of the Charter by changing the word “count” to “court”, so that this portion of the Charter reads, in relevant part, “... in the case of *Fierra v. Williams*, Placer County Superior Court Case No. SCV-00553, the court ruled that ...”

The 2007-2008 Charter Review Committee hereby presents its report and recommendations to the Board of Supervisors for consideration and possible action.