ONE CEO FOR THE PRICE OF TWO

A Report on the CEO Termination Process

June 7, 2007

SUMMARY

The 2006/2007 Mendocino County Grand Jury conducted an investigation into the termination of the Mendocino County Chief Executive Officer (CEO), due to the controversy that ensued. The Grand Jury originally started this investigation to determine why the Mendocino County Board of Supervisors (BOS) terminated the CEO, but due to lack of cooperation from individual Supervisors and County Counsel, the decision was made to investigate the process instead. The Grand Jury has spent exhaustive hours reviewing BOS minutes, policies concerning employment, and interviewing various County officials and staff to compile this report. This report also provides a history of the brief tenure of the CEO.

BACKGROUND

December 2004	The BOS directed the interim County Administration Officer (CAO) to prepare an ordinance establishing a CEO office and bring it to the BOS for review in January 2005.
January 4, 2005	The interim CAO brought before the BOS a draft CEO ordinance, the draft was tabled until January 24, 2005.
January 24, 2005	The BOS held a thorough review of the draft CEO ordinance with the interim CAO. BOS members expressed their concerns, observations, BOS needs and interests, possible areas of conflict of authority, and reflections on “how the county got to where it was”. The draft was approved by a 4/1 vote and the BOS directed staff to prepare a final draft of the CEO ordinance
February 1, 2005	A final draft of the CEO ordinance was introduced and voted on, again it passed, but by a narrower margin (3/2). Negative comments were made concerning the need for the BOS to retain direct oversight of certain departments which would now fall within the purview of any new CEO.
March 1, 2005	The CEO ordinance was adopted unanimously via the consent calendar, paving the way for recruitment and hiring of a CEO.
June 7, 2005	The BOS approved an amendment to the employment agreement with the newly appointed CEO. The new CEO suggested to the BOS a need to examine the relationships between the Executive Office, other parts of the County Government, and the community.
August 16, 2005	CEO staff provided an overview of ways in which the components of the CEO ordinance were being, and would be, addressed; the BOS concurred. Concurrence was also sought

	for the CEO's interpretation of the lines of communication between department heads and the BOS; none was given.
August 30, 2005	The CEO indicated an interest in further reviewing the CEO ordinance.
September 19, 2005	The CEO again asked for a discussion with the BOS to seek clarification and direction with regard to implementation of the CEO ordinance. The CEO reviewed a proposal for a revised Mendocino County Organizational Chart and the CEO's interpretation of it, with the BOS.
October 4, 2005	The CEO reflected on the challenge of responding to contradictory individual Supervisor's directives. The CEO provided an update relative to the County organizational review process. The CEO's interpretation of the BOS's direction was to start immediately at looking into those departments with known executive transitions/retirements occurring over the next 15 months.
December 12, 2005	The CEO indicated a proactive, rather than a reactive, approach to managing the work of the organization. Staff was working toward a coordinated view for the organization, as opposed to 25 competing views, as in past practice. The CEO expressed interest in formalizing the process of communication with the BOS, including the development of the Board's agenda, clear timelines, roles, and responsibilities. The CEO noted that both the BOS and CEO need to remain aware of the challenges surrounding the transfer of control. A member of the BOS suggested scheduling the CEO performance evaluation in mid-September.
January 24, 2006	The CEO announced that staff had prepared for distribution an updated 2006 Mendocino County Work Plan.
February 7, 2006	After reviewing changes in the structure of the Mental Health Department, the BOS requested copies of "all-staff" correspondence previously distributed to employees by the CEO. The BOS also requested to be kept apprised of all organizational correspondence transmitted regarding restructuring matters. The CEO expressed a difference of opinion regarding these requests.
February 14, 2006	During a discussion on priority planning projects with the CEO, one Supervisor was openly confrontational concerning the timing of the material received. Another Supervisor complained about the excessive time spent on one particular project.
March 14, 2006	The CEO announced, for the record, that staff had formally commenced the administrative process for the merger of the County's three Human Services Departments: Public Health, Social Services, and Mental Health. The Executive Office would transmit an "all-staff" memo announcing the process.

March 21, 2006	Disagreements were expressed concerning inaction on a building moratorium, as presented on March 14, 2006. The CEO clarified, for the record, that staff had been directed by a 4/1 vote of the BOS to present options and alternatives concerning the moratorium.
April 24, 2006	One Supervisor requested that individual Supervisor input be considered by staff regarding the budget process. The CEO indicated that the budget would reflect Board priorities identified throughout the year. The CEO stated that at some point the recommended proposed budget be on the table for Board consideration.
April 25, 2006	The CEO briefly described current budget activities, including departmental budget conferences, and suggested further dialogue on May 24, 2006.
May 16, 2006	The CEO introduced the newly appointed Director of Shared Business Services. The CEO spoke about the integration of Information Services and General Services, and the alignment of County departments into a cost-effective operational structure. The restructuring of the County to function as an enterprise was noted.
June 6, 2006	The CEO noted the County's statutory/legal requirements associated with the annual budget adoption process, including the BOS deadline to adopt the proposed budget on or before July 20. A lengthy discussion followed concerning Supervisor's budgets, compensation, travel, staff, etc. It was suggested that immediate attention be given to Supervisor's budgets, prior to the adoption of the proposed County budget on June 20, 2006. CEO staff sought direction regarding the venue for holding detailed discussions and making decisions regarding the Supervisor's budgets.
June 20, 2006	The CEO commented on the Board meeting on June 6, 2006 and the legal requirements and options available to the Board with regard to the proposed budget. At the conclusion of the CEO staff budget presentation, staff stated that the proposed budget was balanced and recommended adoption as presented. Instead of addressing the request, the chair continued the item until 2:30 p.m. After reconvening from recess at 3:05 p.m., the chair noticed the absence of the CEO and sought permission from the Board to continue the discussion at a later date.
June 27, 2006	A closed session to consider two items started at 9:03 am, and ending at 10:00 am, occurred. One of these items was a performance evaluation of the CEO, no action was taken. Immediately after returning from closed session, the Mendocino County Public Health Advisory Board presented a letter to the BOS regarding organizational developments, including the creation of the Health and Human Services Agency, and

	requested the BOS schedule time at a future meeting to allow comment. In addition, a representative of the Employers Council of Mendocino County (ECMC) introduced the new Executive Director of ECMC to the BOS.
June 28, 2006	A special meeting of the BOS was called, and after public comment, adjourned to closed session starting at 11:52 am and ending at 2:40 pm, for discussion of CEO discipline, dismissal, or release. The BOS reconvened after recess at 2:44 pm in open session, at which time it was announced that the BOS voted to terminate the services of the CEO effective June 27, 2006; the vote was 3/2.
June 29, 2006	The BOS chair announced that the Board voted unanimously in closed session, to present an employment offer to an individual who would serve as an interim CEO. The BOS anticipated the arrangement would be in place for approximately three to six months.

METHODS

The Grand Jury interviewed members of BOS, Clerk of the Board (COB) staff, and Executive Office staff (both current and past), County Counsel, and Mendocino County Employers Council staff. The Grand Jury also researched numerous public documents, State codes, County codes, and other related documents which were relevant to the investigation. Legal counsel was sought from the District Attorney's Office.

FINDINGS

1. The initial draft CEO ordinance was approved by a vote of 4/1.
2. The final draft CEO ordinance was approved by a vote 3/2.
3. Search for the new CEO started in February 2005.
4. The CEO ordinance was adopted unanimously via the consent calendar.
5. The CEO ordinance set forth clear guidelines concerning CEO authority.
6. On April 12, 2005 the BOS announced the selection, but not the hiring, of a new CEO.
7. Through the consent calendar the BOS unanimously approved the appointment and "terms of employment" of the new CEO.
8. The CEO "terms of employment" was a binding contract, effective May 8, 2005, and was agreed upon and signed by both parties May 9, 2005. The contract was accepted by the BOS on May 10, 2005
9. June 7, 2005 was the first BOS meeting attended by the new CEO.
10. The CEO contract set forth clear conditions and resulting consequences in the event of termination.
11. The BOS could have terminated the CEO, by majority vote anytime prior to February 8, 2006, with minimal monetary penalty to the county.
12. The BOS could have declared a "breach of contract" by written notice prior to May 8, 2006. The BOS did not employ the "30 day cure" period as provided for in the

contract. This “cure” period would have allowed the parties to resolve their differences.

13. The BOS could have held a performance review of the CEO prior to February 8, 2006, leading to a discussion of termination of the CEO’s services at minimal cost to the county.
14. The contract provided for automatic renewal for one year, if the BOS did not take action prior to February 8, 2006.
15. Some BOS members indicated they did not fully read the CEO contract, but instead relied on advice from others.
16. Most Supervisors indicated they had no knowledge of the three month termination clause in the CEO contract.
17. According to California Government Code §54950 “that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.”
18. There were clear indications of dissatisfaction with the CEO by members of the BOS, as early as December 2005, as shown by testimony and public records.
19. Failure by the dissatisfied Supervisors to act prior to February 8, 2006, resulted in the automatic renewal of the CEO contract. This automatic renewal ultimately cost the citizens of the County at least $167,000 in termination penalties.
20. Testimony given indicates that a performance review, as agendized, was not actually carried out on June 27, 2006. Testimony indicated that a motion was made 3½ minutes into the meeting to fire the CEO. Counsel advised that the action could not be taken at that time, so it was decided to give a 24 hour notice to the CEO “to resign or else”; the vote was 3/2.
21. Prior to February 8, 2006 any BOS member whether dissatisfied or not with the CEO’s performance, could have initiated any of the options available to the BOS, by having an appropriate item placed on the agenda.
22. The failure of some Supervisors to be familiar with the conditions of the CEO contract is demonstrated by the suggestion to schedule the CEO performance evaluation in mid-September 2006.
23. The BOS did not approve the CEO’s proposed County Organizational Chart until 2½ months after submittal by the CEO on June 21, 2005.
24. Individual Supervisor’s directives, reflecting their personal desires, are often contradictory and are not directives of the Board.
25. On October 18, 2005 the BOS voted unanimously to formalize the CEO appointing authority of various department heads and their duties.
26. Pursuant to the CEO ordinance, the CEO attempted to organize the executive level of County government.
27. Under the terms of the CEO ordinance there was no longer a direct link between the BOS and department heads; a fact ignored by the BOS. This information was

provided to the board by the CEO on January 10, 2006.

28. Individual Supervisors do not determine policy. This is the role of the entire Board. A review of BOS minutes shows that this is a role they have failed to fulfill.
29. A willingness on the part of some BOS members to accept the CEO form of management as defined by the ordinance passed by the BOS, was totally lacking.
30. Testimony and public documents make it clear the termination of the CEO was a decision made without forethought, resulting from conflicting personalities, and originating within a period of four days.
31. The process of terminating the CEO was carried out in a manner which failed to meet the ideals of governmental transparency, and did not address the questions and concerns of the citizens of the County.

RECOMMENDATIONS

The Grand Jury recommends that:

1. prior to hiring a new CEO there be a candid discussion between the BOS and the candidate to determine compatibility of views and a philosophical understanding. (Findings 18, 25, 27)
2. the BOS educate themselves on the various forms of executive management. (Findings 25, 28-29)
3. the BOS inform themselves fully before entering into any contract. (Findings 12-16, 19, 22)
4. Human Resources Department review all "at-will" and contract employees to ensure all contract conditions are met. (Findings 12-16, 19, 22)
5. the BOS provide clearly defined policy direction by majority vote. (Findings 5, 24, 28-29)
6. the BOS conduct periodic reviews of any new CEO, regardless of performance. (Findings 5, 13, 20-21)
7. the BOS put personal agendas aside for the good of the County and it's citizenry. (Findings 5, 24)
8. the BOS revert to the original CEO ordinance. (Findings 2, 4-5, 25, 27)
9. the BOS avoid taking on day-to-day managerial duties of staff or department heads. (Findings 23, 25-28)
10. the BOS avoid temptation to interfere with CEO responsibilities. (Findings 23, 25-28)
11. the BOS embrace positive change, and a willingness to relinquish direct control. (Findings 23, 25-28)
12. the BOS support a chain of command as defined by the Mendocino County Organizational Chart. (Findings 23, 25-27)
13. the BOS avoid any circumvention of the established line of authority and/or reporting as defined by the Mendocino County Organizational Chart. (Findings 23, 25-27)
14. the BOS be totally transparent in conducting the citizen's business. (Findings 17, 31)

COMMENTS

For an elected official to fail to initiate an action when warranted is to neglect their duty to County citizens. Before hiring the CEO there was no effort by the BOS, as a body, to determine a clear direction which any CEO would be charged with implementing. Prior to the CEO arrival, there was no formal discussion between the BOS and County employees, to address or discuss their concerns and anxieties.

For the first two and a half months of the CEO tenure a clear line of authority was not established, due to BOS reluctance to accept an executive organizational structure. This resulted in heightened anxieties within all levels of County government. The persistence of the BOS to conduct business as usual, by ignoring the CEO's authority, further complicated the role of the CEO. Issuance of individual policy directives instead of a majority vote is common practice by most BOS members, resulting in fragmented policy and frustration among executive staff. Insistence by individual Supervisors that the CEO insert increased funds for Board use, has the appearance of an attempt to bypass the fiduciary duties of the CEO.

The process of termination "had no process."

REQUIRED RESPONSE

Board of Supervisors (All Findings; All Recommendations)
County Executive Office (All Findings; All Recommendations)
Human Resources (Finding 12-16, 19, 22; Recommendation 4)

REQUESTED RESPONSE

Mendocino County District Attorney (All Findings; All Recommendations)
California State Attorney General (All Findings; All Recommendations)