

**EL DORADO COUNTY GRAND JURY  
2008-2009**

**FINAL REPORT  
Part II**



April 9, 2009

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## **EL DORADO COUNTY GRAND JURY 2008-2009**

### **El Dorado County Charter Review**

Case No. GJ-08-005

#### **REASON FOR REPORT**

The Board of Supervisors is required by the El Dorado County Charter to form a “Charter Review Commission” at least every five years. A 2009 Charter Commission was called into session in March 2009. The commission consists of one member and one alternate from each supervisory district. The purpose of the Charter Commission is to recommend potential amendments or revocations of charter provisions to the Board of Supervisors. If the Board of Supervisors approves the Charter Commission recommendations, the recommended amendments must be placed on the ballot seeking voter approval. The approval process for any changes to the Charter rests solely with the Board of Supervisors.

Over the past several years, while studying a number of issues relating to the structure and operation of county government, the Grand Jury has determined that substantial changes in county operations are needed. Those changes include financial philosophy, management structure and long term planning. In addition, this Grand Jury concluded that the purpose of County Charter government should be reviewed. This Charter Review Report is written to provide assistance and input to the Charter Review Commission and the Board of Supervisors.

#### **BACKGROUND**

The California Constitution allows for two types of counties: General Law Counties and Charter Counties, both of which are technically legal subdivisions of the State. General Law counties are organized and governed according to State Law. Charter Law counties are similarly organized and governed. However, charter counties have a limited degree of “home rule” authority that may provide some additional flexibility or potential power.

The Charter form of government has been in effect in California since the early 1900's. In 1911 California voters enacted non-partisan local elections and home rule charter authority for cities and counties. The voters enacted these amendments to the California Constitution for cities and counties when the State of California Legislature was unable to address local concerns effectively. In the early 1900's, in an era that lacked modern democratic innovations like public records acts, open meetings, notification requirements, and strict public contracting laws, the major goal was to achieve the reduction of corruption in professional public service. The California Constitution, Article XI, Sections 3(a), 3(b) and 3(c) allows the electors of a county, by majority vote pursuant to general law to adopt, amend, review or repeal a charter (Election Code §9100-9126).

In his study, "The limited and Contrary Usage of County Charter Reform: Two California Cases", Alvin D. Sokolow (a public policy specialist at the University of California-Davis) concluded that charters have had little influence on local governments. The premise of a charter is also questionable since general law applies to almost 95% of functions in county government. In fact, California constitution law, government codes and general law supersede local ordinances or rules in most cases. University of Arizona professors Dawn Cowan and Tanis Salant stated in their article "The Prospects for County Charter Form in California" that charters do not provide much opportunity for expanded fiscal and functional powers. Another noted quote from the California State Association of Counties states "a charter does not give county officials extra authority over local government, revenue raising abilities, budgetary decisions and intergovernmental relations."

## **METHODOLOGY**

The State of California has fifty-eight counties of which fourteen counties are Charter Counties. The remaining forty-four counties are General Law Counties. The 2008-2009 Grand Jury gathered information and studied from ten charter counties in the State, namely: Alameda, Butte, Fresno, Orange, Placer, Sacramento, San Bernardino, San Mateo, Santa Clara and Tehama.

Charters not studied by the Grand Jury were Los Angeles, San Diego and San Francisco Counties. These counties, considering population size and diversity, do not compare well with El Dorado County.

## **FINDING 1**

The Grand Jury has come to the conclusion that the County has been operating for several years with an "obsolete government philosophy". Investigations by the Grand Jury found few, if any, progressive innovations in county departmental operations. Previous Grand Juries have focused on personnel turnover, deficient operations in many departments, and too much supervisory control by the Board of Supervisors over day-to-day operational issues in county government.

In its recap of Grand Jury reports over the last five plus years, the same question arose time after time: "why is there no improvement in El Dorado County operations?" During its interviews with elected officials, department heads, county counsel, management and a large number of county employees, the same theme seemed to come

into focus. Change was slow and too little. Progress was always just around the corner. Why the large number of turnover amongst department heads? Why such little change and progress over many years when problems had been identified, but left uncorrected?

The Grand Jury took a close look at the Charter and determined that this document in the past fifteen years stood in the way of progress and failed in its mission to guide the county to better and more efficient government. It has, in effect, become the county's "Achilles heel". The Grand Jury surmised that the Charter impedes progress and in fact contributes little to the promises that were made to the voters when enacted in 1994.

The cumbersome and costly compliance with Charter enforcement runs into hundreds of thousands of dollars annually. The enactment and delays encountered because of the County Charter has significantly contributed to a large increase in the cost of county government. The commissions, boards and charter procedures costs runs into the hundreds of thousands of dollars. Collectively these costs amount to an estimated \$1,000,000 per year. The uncontrolled costs of the Charter are a clear waste of taxpayer money.

If the Charter were in fact a significant policy document that meaningfully guided El Dorado County's course, the hidden cost of the Charter would be a reasonable tradeoff. However, the Charter typically addresses insignificant issues or makes insignificant clarifications. The El Dorado County Charter contains approximately seventeen references and/or deferrals to General Law. In fact, a line-by-line comparison of the El Dorado County Charter and the enormous body of state law governing counties reveals only minor differences between the Charter and General Law.

Moreover, of the nineteen amendments that have occurred since the adoption of the Charter, ten of those have been simply adoptions of references to general law and became inoperative due to changes in state law and outdated timeframes, or corrected outdated wording and references. Many of the more "substantive" amendments such as term limits for supervisors, or Sheriff salaries, could be addressed outside of the Charter through general law if voters so choose. It is very questionable whether such a large amount of time and resources should be devoted to something that provides such little tangible benefit. The Charter has not delivered on its promise to enhance local control or make the county government more efficient. On the contrary, it appears to be a cumbersome self-sustaining administrative document that only adds unnecessary bureaucratic requirements to county government. Weighing the benefits against the burdens, it appears that the El Dorado County Charter is more burdensome than it is beneficial.

## **RECOMMENDATION 1**

The Grand Jury recommends to the Charter Commission and the Board of Supervisors that the revocation of the Charter be placed on the ballot for a decision by the voters at the next election.

*In the event that the El Dorado County Charter is not revoked, then the following analysis and recommendations for amending the Charter follows:*

## **Article II – Board of Supervisors**

### **Section 203: Filling of Vacancies**

Section 203 states: “Whenever a vacancy occurs in the office of supervisor, the unexpired term shall be filled by election. If the vacancy occurs more than 90 days but less than 120 days before a scheduled primary, general, or special election, involving the district in which the vacancy has occurred, then the election to fill the vacancy shall be consolidated within the scheduled election. If the vacancy occurs more than 120 or less than 90 days before scheduled primary, general, or special election involving the district in which the vacancy has occurred, then the vacancy shall be filled at a special election, called by the Board of Supervisors to take place not less than 90 nor more than 120 days after the vacancy occurs. The special election shall be conducted in accord with the provisions of general state law regarding special elections. The candidate with the highest number of votes shall be elected to fill the unexpired term.”

Government Code §25060: Filling of Vacancies

It states: “Whenever a vacancy occurs in any board of supervisors, the Governor shall fill the vacancy. The appointee shall hold office until the election and qualification of his successor.”

Charter section 203 remains one of the key differences between the County’s Charter and general law. It requires a special election to fill an unexpected vacancy and that individual holds the office until the next election for that seat.

In the past the Board of Supervisors has not called a special election within the required time frame, leaving a four person Board of Supervisors. This makes it difficult to reach a majority decision, and leaves the district in which the vacancy occurs without representation. Special county elections are costly, estimated costs between \$35,000 to \$45,000.

The Charter direction to hold a special election to fill a vacancy on the Board of Supervisors has not always been followed in El Dorado County. In early 2006 a supervisor seemingly abdicated his office but made no formal declaration of resignation. In July 2006 the Board of Supervisors made an unprecedented move and declared the office vacant under Government Code 1770(g). In order to fill the vacant office, the Board should have called a special election. However, 2006 was an election year and there were already candidates vying to win the seat in the General Election scheduled for November. A costly special election would have resulted in the winner filling the supervisory seat for a few months before the winner of the November election was sworn into office. Consequently, the Board of Supervisors opted to disregard the Charter requirement and did not call a special election. Although the Charter does allow a significant deviation from the General Law in this regard, it is not clear that the special election requirement has turned out to be a benefit above General Law.

## **RECOMMENDATION**

The Grand Jury recommends that the Charter be revoked. However, this portion of the Charter needs to be amended if the Charter is not revoked in its entirety.

To alleviate the cost and time lag of replacing a Board Member the Grand Jury recommends the following language: Whenever a vacancy occurs in the office of Supervisor, the unexpired term shall be filled by the remaining Supervisors within thirty-days. If the Supervisors do not select a replacement, the Governor shall make an appointment after the vacancy occurs per Government Code §25060.

### **Article 11 – Board of Supervisors**

#### **Section 202: Term of Offices**

Section 202 states: “The term of office of supervisor is four years. Board members shall be limited to two consecutive terms. No person elected supervisor may serve as such for more than two successive four-year terms. Any person elected to the office of supervisor to complete in excess of two years of a four-year term shall be deemed, for the purpose of this section, to have served one full term upon the expiration of that term. No person having served two successive four year terms may serve as a supervisor until at least four years after the expiration of the second successive term in office. Any supervisor who resigns with less than two full years remaining until the expiration of the term shall be deemed, for the purpose of this section, to have served a full four year term. The above shall not disqualify any person from running for election to the Board of Supervisors for any term or terms that are not successive. The term of office commences at noon on the first Monday after the January 1<sup>st</sup> succeeding their election.

The supervisor for each of the First, Second and Third districts shall be elected in 1996. The supervisor for each of the Fourth and Fifth districts shall be elected in 1994.”

Government Code §25000 (a)

It states: “Each county shall have a board of supervisors consisting of five members. Not more than three members shall be elected at the same general election. If the terms of office of more than three members of the board expire at the same time, at the first regular meeting after January 1<sup>st</sup> following their election the members so elected shall so classify themselves by lot that three members shall serve for four years and two for two years. Thereafter the term of each member shall be four years.”

Government Code §25000 (b)

It states: “Notwithstanding any other provision of law, the board of supervisors of any general law or charter county may adopt or the residents of the county may propose, by initiative, a proposal to limit or repeal a limit on the number of terms a member of the board of supervisors may serve on the Board of Supervisors. Any proposal to limit the number of terms a member of the board of supervisors may serve on the board of supervisors shall apply prospectively only and not become operative unless it is submitted to the electors of the county at a regularly scheduled election and a majority of the votes cast on the question favor the adoption of the proposal.”

**RECOMMENDATION**

The Grand Jury recommends that the Charter be revoked. However, this section of the Charter needs to be amended if the Charter is not revoked in its entirety.

Term limits create an experience drain and allow for lack of continuity of County governance. None of the above listed government codes affects other elected El Dorado County officials. No elected officials in El Dorado County, besides the County Supervisors whom are elected, have term limits. The Grand Jury recommends that the County abide by Government Code §25000 (a)(b) and eliminate term limits for County Supervisors.

**Article III – Chief Administrative Officer**

**Section 301: Chief Administrative Officer**

Section 301 states: “The Chief Administrative Officer (CAO) is the Chief Executive Officer (CEO) of the County”. Other pertinent sections in the Charter in reference to the CAO’s position are Sections 302, Appointment and Removal; Section 303, Compensation; Section 304, Duties.

**Section 304: Duties**

Section 304 states: “The Chief Administrative Officer shall be responsible to the Board Of Supervisors for the proper and efficient administration of such of the affairs of the county as are or hereafter may be placed in the charge of the Chief Administrative Officer, pursuant to the provisions of the Charter, or of any ordinance, resolution or order of the Board of Supervisors. In addition to other powers and duties herein provided, the Chief Administrative Officer shall have the duty and power to:

- a) Coordinate the work of all offices and departments, both elective and appointive, and devise a way and means to achieve efficiency and economy in all county operations.
- b) Formulate and present to the Board plans to implement policies and accomplish goals established by the Board.

The CAO has assigned responsibilities by the Charter which include Para. C - Budgets, Para. D - Administration of the budget, Para. E - Provides analysis of county programs, Para. F - Implement accountability systems for county money and property, Para. G - Work with other government agencies such as federal, state, regional and local, Para. H - On an annual basis reviews and appraises performances of appointment department heads except county counsel, and Para. I - Coordinate publication of the County long-range fiscal plan and the annual statement of goals.”

Based on interviews and information received from department heads, elected county officials and county employees, the Grand Jury found that the office of the CAO is perceived as an administrative function only. Interviews with former and current supervisors indicate strong support that the CAO function needs to be upgraded in stature. Under the Charter, this requires approval from the voters.

## **RECOMMENDATION**

The Grand Jury recommends that the Charter be revoked. However, this section of the Charter needs to be amended if the Charter is not revoked in its entirety.

The Grand Jury recommends upgrading the status and responsibilities of this function to CEO. The position should be given the authority and responsibility it is designed to perform. The duties of the CAO have not kept up with the growth and change in government in El Dorado County. The Board of Supervisors should be a policy decision-making body. The CEO office should be responsible for the day-to-day management of the county. The Grand Jury recommends that the CEO serve at the will of the supervisors. Except for the purpose of obtaining information, the members of the Board of Supervisors shall deal solely and directly through the CEO’s office with all county departments.

## **Article IV – Department Heads, Boards and Commissions**

### **Section 402: Elected Department Heads**

Section 402 states: “The following departments heads shall be elected: (a) Assessor, (b) Auditor/controller, (c) District Attorney, (d) Recorder/Clerk, (e) Sheriff/Coroner/Public Administrator, (f) Surveyor, (g) Treasurer/Tax Collector. The term of office of all elected officers is four years. However, there are no term limits for these elected department officers.”

Under authority of Penal Code §928, the Grand Jury may recommend and initiate the following: “Every Grand Jury may investigate and report upon the needs of all county officers in the county, including the abolition or creation of offices and the equipment for, or the method or system of performing the duties of several offices. Such investigation and report shall be conducted selectively each year. The Grand Jury shall cause a copy of such report to be transmitted to each member of the Board of Supervisors of the County”.

California Constitution, Article XI §1 (b) provides for county powers to elect as a minimum: (a) Assessor, (b) District Attorney, and (c) Sheriff. All other elected officers are listed in the Charter or in government code §24000.

The Board of Supervisors is elected by district. Other elected officials are elected in county wide elections. Evidence provided to the Grand Jury indicated that this has created political difficulties for the Board of Supervisors' ability to bring changes and control the county's management structure. It has decreased efficiency and raised the cost of operating in the county. Elected officials are not evaluated. There is no check and balance system to evaluate them, except by the voters.

This inequity in the election process, per the County Charter, raises questions for effective county government. There is, according to testimony, a serious movement by those elected department officials to block any change to the present election structure in the county. To balance the effectiveness of elected officials with no term limits vs. those elected officials with term and district boundary limits, serious questions are raised regarding the overall effectiveness of the current charter provisions.

## **RECOMMENDATION**

The Grand Jury recommends that the Charter be revoked. However, this section needs to be amended if the Charter is not revoked in its entirety.

To eliminate inequities, and generate cost savings, the Grand Jury recommends that the following action be enacted under the authority of Government Codes §24300 and §24300.5. Create a position of Financial Officer, to serve as Financial Officer of County government reporting to the CEO's office. The position would also supervise the following appointed positions of Treasurer and Tax Collector. The positions of Surveyor, Public Administrator, Recorder, County Clerk and Coroner should be changed to appointed positions and report to the CEO's office or another administrative county entity. The function of Auditor/Controller should remain an elected position and supervise all financial transactions and financial compliance in the county.

Under this recommendation the following positions will continue to be elected: Board of Supervisors, Sheriff, Assessor, District Attorney and Auditor/Controller.

## **Article IV – Department Heads, Boards and Commissions**

### **Section 404: Appointed Department Heads**

Section 404 states: "The position of department head shall be designated by ordinance. Department heads serve at the pleasure of the appointing authority, the Board of Supervisors. Department heads shall have and may delegate the power to appoint, supervise, suspend and remove all persons employed in their departments subject to the provisions of Article V of this charter."

## **RECOMMENDATION**

The recommendation is to upgrade the CAO's position to CEO. The appointed department heads should serve at the pleasure of the CEO and not report to the Board of Supervisors. The CEO should have the authority to hire, discipline, adjust salaries, and terminate those department heads according to County human resource policies and in accordance with the needs of the County.

### **Article V – Sheriff's Salary Limitation**

#### **Section 504: Sheriff's Salary Limitation**

Section 504 states: "The Sheriff's Salary initiative, commonly known as Measure A, and passed by the voters at a general election on November 7, 1972, is hereby repealed.

The Board of Supervisors shall, at least annually determine the existing average salaries for the South Lake Tahoe Police Department, Amador County Sheriff's Department and the California Highway Patrol for each class of position employed by said agencies. Effective on the first day of January of each year after this charter provision first becomes effective, the Board of Supervisors shall adjust and determine that the average salary for each class of position as set forth herein be at least equal to the average of the salaries for the comparable positions in the South Lake Tahoe Police Department, Amador County Sheriff's Department and the California Highway Patrol.

As used herein, the term 'comparable class of position' shall mean a group of positions substantially similar with respect to qualifications or duties or responsibilities using the following positions as guidelines: Undersheriff, Captain, Lieutenant, Sergeant, Deputy Sheriff, and Clerk.

The provisions of this section shall prevail over any otherwise conflicting provisions of the Charter or general law which may relate to salaries of county officers or employees who are not elected by popular vote."

Under the present structure there is no fiscal accountability. It abdicates the control and responsibility of elected El Dorado County Supervisors to negotiate and effectively control expenditures and budgets of the Sheriff's Department employees. This year, as other employees were being terminated due to the County's budget shortfall, the raises in the Sheriff's Department drew much attention from area media. Just weeks after the County eliminated ninety positions across multiple departments; many Sheriff's Department employees were granted raises. This Charter provision has enshrined automatic spending over which the Board of Supervisors has no control. Section 504 of the Charter indexes El Dorado County Sheriff employee salaries to the average of the salaries for comparable positions in the South Lake Tahoe Police Department, Amador County Sheriff's Department and the California Highway Patrol. This section actually repealed a 1972 Measure known then as Sheriff Salary Initiative, and was adopted into the Charter.

Consequently, each year salaries (and all subsequent benefit costs) must be adjusted according to the Charter. As one Sacramento area television station reported, “neither the county supervisors nor any administrator can stop (the pay hikes), even in these tough economic times”.

The County can only plan to fund the automatic salary increases within its annual budget. The County budgets \$500,000 each year to account for the increase. The Charter dictates that the raises become effective on the first of January each year. The actual amount of the increase varies from year to year. In December 2008 the estimated annual cost to provide the automatic increase was \$589,000 for the raise that took effect January 1, 2009.

## **RECOMMENDATION**

The Grand Jury recommends that the Charter be revoked. However, this section needs to be amended if the Charter is not revoked in its entirety.

This is a very costly and unpredictable section in the Charter from the taxpayer point of view. It would be unconscionable if this section in the Charter remains in effect. Eliminating this provision of the Charter will return financial accountability for Sheriff Department salaries back under County control and not under other jurisdictions.

## **Article VI – Finance**

### **Section 602: Contract Administration**

Section 602 states: “The Board of Supervisors shall not authorize the payment of money or other compensation for the performance of any service or function by a private entity except pursuant to a written contract meeting all legal requirements for county contracts as established by the Board of Supervisors. Each contract shall identify the county officer or employees with responsibility for administering the contract”.

Section 602 of the Charter has significantly increased costs to the County. The contract administration process creates several inefficiencies. The major problem with this section is the requirement to have a “written contract meeting all legal requirements for county contracts as established by the Board of Supervisors” for “any service or function”. Since the definition of “service or function” is not specific in the Charter, any activity that could be construed as a service or function requires a full written contract. The Charter provides no flexibility. For example, if a department receives a state grant to provide educational items and the vendor charges an artwork fee to inscribe the items with the county logo, instead of a simple purchase order, a full written contract is required.

Other simple purchases that could trigger the written contract requirement include minor rental fees for tanks used to store purchased oxygen gas. Although the County could simply issue a purchase order for the oxygen itself, the tank rental fee is a “service” which requires a written contract. Simple equipment repair jobs also require full contracts instead of purchase orders. In addition, under state law a written contract meeting legal requirement is one that is signed by both parties. This can add lengthy delays in executing contracts because vendors often do not understand why the County insists on a full

contract or the corporate officer signature required on some contracts which are difficult to acquire. In some cases vendors simply refuse to sign the contracts.

Another hurdle is the requirement for each contract to “identify the county officer or employee with responsibility for administering the contract.” The Charter does not provide a definition of “administering the contract” so this requirement is interpreted differently among departments. For example, some departments always specify the department head as the contract administrator while others denote specific employees. Consequently, if something does go wrong with the contract this Charter section does little to increase accountability because it is not clear who is actually responsible for the contract.

County department’s management, County Counsel officers and county departments’ staffs spend huge amounts of time and subsequently county funds on executing Charter required written contracts. It is questionable whether this section in the Charter is required for simple purchases that have minimal risks.

## **RECOMMENDATION**

The Grand Jury recommends that the Charter be revoked. However, this section should be amended in the event the Charter is not revoked it is entirety.

This section of the Charter does not make fiscal sense. Although the intent may be sound, the procedures and execution per the Charter has not worked as intended and is costing the taxpayers hundreds of thousands of dollars each year in cumbersome bureaucratic paperwork. This makes the County very inefficient in purchasing and executing contracts. The reputation of the County with outside vendors is one of inefficiency and very difficult to deal with. There is no reason to keep this section in the Charter and it should be revoked.

## **Conclusion: The 2008-2009 Grand Jury states the following:**

During its investigation the 2008-2009 Grand Jury discovered that the El Dorado County Charter is one of the least read documents in the County and in County Government. The Grand Jury interviewed many directors, supervisors and county employees. Many had not read nor had any idea what was in the Charter. Interviews and discussions with employees made it clear that the Charter is not effective. Because of the Charter provisions, change is difficult to achieve. The Charter is typically reviewed or changed every five years.

It is the Grand Jury’s opinion that the Charter has not been effective for the past fifteen years. The Charter Commission should seriously investigate the Charter shortcomings and make its recommendations strongly but fairly to the Board of Supervisors.

There are articles in the Charter that are not enforced or that have created difficulties. The Charter is, and has been, an ineffective instrument for County Government. The Charter Commission has a serious mission to recommend changes that could have a profound effect in county government structure and operations. Government in El Dorado County

could and should be made more effective and cost efficient. This Grand Jury respects the difficulties faced by the Charter Review Commission and its tasks.

For the past fifteen years the County has operated under a Charter form of government and it has not improved County governing functions. If the Charter is revoked, the next fifteen years should lead El Dorado County to a better and more effective County government under General Law.

## **RESPONSES**

None required