

NEVADA CITY GOVERNMENT: “Asleep at the Wheel”

Reason for Investigation

Nevada City is a California General Law City (California Government Code §34000 et seq.) incorporated on April 19, 1856. Under California Penal Code §925a, all Grand Juries may investigate and report upon the operations, accounts and records of the officers, departments and functions, and the method or system of performing the duties of any city and make such recommendations as it may deem proper and fit.

The 2006-2007 Nevada County Grand Jury (Jury) received information from a credible source alleging lost revenue to the City of Nevada City (City) due to delinquent collection of Transient Occupancy Taxes and irregularities in assessing water and sewer charges. The Jury initiated a confidential investigation to determine whether the City had suffered a significant loss of revenue, and if so, to identify if possible, the cause of such loss.

Background

Nevada City is a General Law City, which established a city manager form of government. The powers and duties of the City Manager, which are set forth in Ordinance No. 2.08.030 states, “He shall be responsible to the city council for the efficient administration of all the affairs of the city which are under his control.” The ordinance goes on to list 21 specific duties assigned to the City Manager. Under law, Nevada City is governed by a City Council of five members who hold office for four-year staggered terms. The City Council is responsible for overseeing the operations of the city including selecting, directing and supervising the City Manager.

Under current law, Nevada City is required to have a City Clerk, an elective office (California Government Code §35601). The City Clerk is elected for a term of four years. The current City Clerk’s term expires on March 31, 2010. The City Council may, however, at a regular or special election, ask the electorate to make the City Clerk’s position appointive (California Government Code §36508).

Under California Government Code §§40801-40814, the duties of a City Clerk include keeping indexed accurate records of City Council proceedings, serving as the City’s Accounting Officer and maintaining records of the City’s financial condition, maintaining an Ordinance Book, and performing such other duties as City Ordinances may mandate. By a City memorandum, dated January 1, 1982, the City Clerk’s duties include, but are not limited to:

- “Attend all Council and special meetings and perform as the recording secretary”
- “Attest, publish and maintain index and files of City ordinances”
- “Receive and process petitions relating to initiative, referendum and recall”
- “Act as the official filing officer for Statements of Economic Interest and Campaign Disclosure Information”
- “Administer and file Oaths of Office and be the custodian of the City Seal”

Nevada City created the salaried position of Office Operations Supervisor without any documentation of the duties of the position. The person appointed to this position also continued in the role of City Clerk.

Prior to the Jury’s investigation, expert consultants retained by the City initiated an extended and in-depth review of files, documents and other City records in the care, custody and control of the City Clerk/Office Operations Supervisor.

The nature of the information received by the Jury caused it to investigate the manner in which various appointed and elected City officials carried out their duties.

Five years ago, the 2001-2002 Grand Jury reported, “The City’s records management system is antiquated ... does not have a written procedure for records management ... and does not comply with the State’s Record Management Guidelines.”

Procedure Followed

The Jury conducted its investigation through interviews with elected officials, current and former City employees and various investigative consultants retained by the City. Additionally, the Jury reviewed the reports prepared by the City’s investigative consultants, and the Jury’s 2001-2002 Report on the City’s records management system.

The Jury wishes to express their appreciation to the City Officials and employees for their cooperation in this investigation.

The current Jury’s investigation focused on five topics:

- Records Management
- Finances
- City Clerk’s Office
- City Management Practices and Accountability
- City Council Oversight

Records Management

Findings:

1. At the time of the Jury's investigation, the City's offices contained 26 boxes of unorganized paperwork, substantial unopened mail going back five years, and unfiled/unorganized City records going back to the 1980's.
2. At the time of the Jury's investigation, City offices contained stacks of records, which were unsecured from risk of theft, loss or damage.
3. At the time of the Jury's investigation, there was no apparent record retention/disposal policy in place. Rather, record keeping appeared to be fragmented and duplicative.
4. In its 2001-2002 Report, the Jury found the City did not then "...have a written procedure for records management, resulting in a lack of guidelines for employees. Additionally, the manner of maintaining public records does not comply with State guidelines."
5. In its 2001-2002 Report, the Jury recommended, among other matters, (a) the City develop a much-needed records management system; (b) the City implement the Local Government Records Management Guidelines issued by the California Secretary of State; and (c) the City initiate a records security and back up system.
6. The City, in its Response to the Jury's 2001-2002 Report wrote, "The City is currently in the process of hiring a new City Manager. The City Clerk will discuss this item [Records Management] with the new City Manager after the position is filled."
7. In further response to the Jury's 2001-2002 Report, City representatives also wrote: "When the Grand Jury provides funding, we will implement new Records Management Guidelines."

Conclusions:

1. In the five years since the Jury's 2001-2002 Report, the City has made no observable effort to correct, let alone improve, the manner in which its municipal records are kept, indexed or safeguarded.
2. The manner in which the City's records are maintained and accessible preclude reasonable access thereto and utilization by members of the public, City officials or members of the City Council.
3. Effective oversight of the City's affairs by the City Council is impaired by the current lack of any ordered record keeping and protection policy.

Recommendations:

1. The City should, as a matter of highest priority, establish a record keeping and protection policy with appropriate procedures.
2. The City should assure that all currently unfiled City records and documents are filed and indexed consistent with its record keeping policy and applicable law.
3. All unopened mail and related correspondence should be properly processed, with suitable explanations where appropriate.

Finances

Findings:

1. At the time of the Jury's investigation, City records made it clear the City had lost significant revenue due to the City's failure to bill, or the sending of incorrect bills for business license fees, water and sewer fees, and Transient Occupancy Taxes.
2. The examination of the City's financial records by City-retained expert consultants reflected significant uncollected debt (accounts receivable) which had been on the books for years, some now uncollectible because of the passing of statutes of limitation.
3. The examination of the City's books by its expert consultants disclosed inconsistent (or non-existent) practices with regard to follow-up of past due accounts.
4. The examination of the City's books by its expert consultants also disclosed only sporadic bank statement reconciliation, no general ledger reconciliation to cash, and substantial variances in financial accounts.
5. The City's expert consultants also found, historically, the City's basic accounting activities were left to the year-end auditors, and the new Government Accounting Standards Board Policy, GASB 34, which became effective in 2004, had not yet been implemented by the City.
6. In the course of the review of the City's affairs by the City and its expert consultants, a number of undeposited checks payable to the City dating back several years were discovered.
7. Effective February 19, 2007, the City hired a Finance Manager to replace a full-time financial consultant who has worked over the past months to address many of the deficiencies noted above.

Conclusions:

1. The manner in which the City has managed its finances over the past many years has resulted in the loss of significant revenue to the City.
2. The City has clearly been at unnecessary risk of financial loss by reason of the manner in which its financial records were maintained (or not maintained), and the apparent absence of any oversight or meaningful audit of its financial practices.
3. The continued operation of the City's current financial practices and procedures would be a breach of the public's trust.
4. With the guidance of the full time consultant, the City appears to be making substantial progress in implementing appropriate financial procedures and policies.
5. The Jury commends the City for its hiring of a Finance Manager.

Recommendations:

1. The City should provide extensive transitional guidance for its newly hired Finance Manager and direct such individual to establish written policies and practices which will assure the City's financial rights and assets are protected.
2. The City Council should exercise diligent oversight of the City's financial resources and take steps to assure its members understand the relevant processes and are given timely periodic reports.

City Clerk's Office

Findings:

1. The incumbent City Clerk was first appointed in 1987 and has been reelected to the office every four years since.
2. Shortly thereafter, the incumbent City Clerk was designated as the Office Operations Supervisor and held that position until its elimination by the City Council on April 25, 2006.
3. Over the years, the functions of the elected office of City Clerk and the appointed office of Office Operations Supervisor were allowed to become blended and the duties indistinguishable.
4. The City Council eliminated the position of Office Operations Supervisor, following reports from a citizens' committee, and an investigative team composed of a forensic

certified public accountant, a personnel specialist, a former law enforcement officer and a financial consultant.

5. The incumbent City Clerk, subsequent to April 25, 2006, has failed to enter the Nevada City Offices for purposes of performing the duties of City Clerk.
6. At the time of the Jury's investigation, the Jury found that deeds conveying real property to the City had not been recorded.
7. At the time of the Jury's investigation, City Ordinances and Council Resolutions were not being maintained in an organized manner, were not readily accessible by the public, and had not been codified, indexed or published since 1990. Additionally, City Council Minutes had not been filed since 1995.
8. The City has had to hire additional personnel to perform functions of the City Clerk and to cover the responsibilities of the former Office Operations Supervisor.
9. The incumbent City Clerk, in her individual capacity, has sued Nevada City alleging wrongful termination of her employment as Office Operations Supervisor.
10. Over seventy percent of California cities utilize an appointed City Clerk in order to provide more effective oversight of the work of that position.

Conclusions:

1. The incumbent City Clerk is no longer performing the material duties of that public office.
2. The City is without a functioning City Clerk to perform the statutory duties imposed by California Government Code §§40801-40814.
3. The incumbent City Clerk, while also the City's Office Operations Supervisor, failed in a material manner to perform both the statutory City Clerk duties and those of Office Operations Supervisor, to the detriment of the City.

Recommendation:

The City should, as permitted by California Government Code §36508, hold an election to make the office of City Clerk an appointive position, and the City Council should thereafter by Ordinance, determine whether the City Council or the City Manager appoint the City Clerk.

City Management Practices and Accountability

Findings:

1. The principal duties of the City Manager of Nevada City include the efficient administration of all the affairs of the City, which are under his control.
2. The City has had two City Managers during the past 41 years, the present City Manager having been in the position for almost five years.
3. The City Manager is responsible for overseeing all City personnel, which included the Office Operations Supervisor.
4. Prior to April 26, 2006, the City did not employ any experienced accounting personnel, and the City's financial software had not been upgraded for almost two decades.
5. At the time of the Jury's investigation, there was insufficient oversight of the City's administration of various grant programs and loans.
6. At the time of the Jury's investigation, available records pointed to inconsistent application of City Ordinances.
7. At the time of the Jury's investigation, there was evidence of improper employee classifications (regular versus temporary) as well as the finding of derogatory material being entered into employee personnel files by a department head without advisement or the employee's right to respond as required by law.
8. The Jury was unable to locate any City office policy or procedures manuals.
9. During the transition, the City Manager directed the expert financial consultant not to discuss prior history of the City's financial affairs with the new Finance Manager.

Conclusions:

1. Historically, there appears to have been little, if any, supervision of the Office Operations Supervisor by the City Manager.
2. The City Manager does not appear to have instituted (or required the institution of) the most basic of operational policies and procedures, or financial safeguards.
3. There is no indication that the City Manager made any effort prior to April 2006, to provide a written evaluation of the job performance of the Office Operations Supervisor.
4. The City Manager is not availing the City of the benefit of collaboration between the financial consultant and the new Finance Manager in correcting the City's financial problems.
5. During his tenure, the City Manager has fallen short in the performance of duties assigned by the City Council.

Recommendation:

The City Manager should develop and implement fundamental policies and procedures including, but not limited to, personnel, records management, and financial management consistent with sound generally accepted management principles.

City Council Oversight**Findings:**

1. At the time of the Jury's investigation, it did not appear the City Council had ever conducted a comprehensive performance evaluation of its City Manager.
2. Subsequent to April 2006, the City Council designated one of its members to seek an accommodation with the incumbent City Clerk such that the duties of City Clerk would be performed.
3. There is considerable disagreement as to the efficacy of the interim solution, which has resulted in the City Clerk performing certain duties in her automobile parked in front of City Hall.
4. According to Government Code §36804, "If the city clerk is absent, the deputy city clerk shall act. If there is none, the mayor shall appoint one of the councilmen as city clerk pro tempore."
5. For the past fourteen years, the City has contracted with the same outside auditing firm to perform the annual audit of the City's financial records.
6. The City's outside auditors have not performed a comprehensive audit, but rather have examined only materials provided by the Office Operations Supervisor and other City staff.
7. To date, only one Auditor Management Review Letter has been located for the past seven years. (An Auditor's Management Review Letter identifies any significant issues discovered in the audit process.)
8. Between May 17, 2006 and June 28, 2006, the City received seven consultant interim reports covering the review of materials under the care, custody and control of the City Clerk/Office Operations Supervisor.
9. The interim reports referred to in No. 8 above contained in excess of 70 detailed and task specific recommendations.
10. The City Manager terminated these investigations prior to the issuance of a final report.

11. The City, as of March 2007, could not provide the cost of the reports referred to in No. 8 above; however, materials reviewed by the Jury suggest the cost will exceed \$200,000.

Conclusions:

1. The City does not appear to have viable administrative and operational plans in place delineating clear lines of authority and accountability with checks and balances to assure proper functioning of the City.
2. The effort of the City Council to accommodate the City Clerk in the performance of her duties has not succeeded.
3. The City Council historically appears to have abdicated its oversight responsibilities in favor of a comfortable relationship with the City's Senior Administrators – they have, sadly, been “asleep at the wheel”.
4. The Jury agrees with one of the consultant's investigative reports that offered the following assessment: *“Failure to observe basic system procedures, training, record maintenance and upgrade protocols has severely damaged the ability of the City to function and meet the required service needs to Nevada City. This failure is so unusual and so extreme – in dollars, personnel, customer service, and efficiency, that it is difficult to quantify.”* It is evident the City has been suffering from a lengthy chronic malady and has become the victim of institutionalized inertia. Whatever the cause of the City's difficulties, it is inescapable that “the buck stops with the City Council”.

Recommendations:

1. The City Council should evaluate the job performance of the current City Manager with a view to assuring itself that the City is being effectively managed.
2. The City Council should review the duties and responsibilities of the City Manager position to be certain they are comprehensive and suitable.
3. The City Council should establish a comprehensive working plan, with completion dates, for implementation of the recommendations contained in the reports of the City's retained expert consultants.
4. Members of the City Council should, with the assistance of the City Attorney, review their statutory and fiduciary duties and assure that senior management is doing its job.

Required Responses

City Clerk of Nevada City – July 30, 2007

City Manager of Nevada City – July 30, 2007

City Council of Nevada City – August 28, 2007



RECEIVED

City of Nevada City

August 15, 2007

Judge Robert L. Tamietti
NEVADA COUNTY SUPERIOR COURT
211 Church Street
Nevada City, California 95959

RE: GRAND JURY RESPONSE

Dear Judge Tamietti,

On July 23 2007, the City Council held a special public meeting for the sole purpose of responding to the Grand Jury Report. All comments from the public were noted and thoughtfully considered. After a second public forum was held at its regular meeting of August 8, 2007, the City Council of Nevada City approved, at that same meeting, the attached response to the findings and recommendations of the Grand Jury Report.

Since Councilmembers have no independent knowledge of some of the issues raised in the report, several responses are based on input from City staff during the Council's public review of the Grand Jury Report.

The City Council and the citizens of Nevada City wish to thank the members of the Grand Jury for their considerable investment of time and expertise in issuing their report, as well as the constructive and beneficial recommendations offered to the City.

Sincerely,

Sally Harris
Mayor

attachment

cc: Jim Anderson, City Attorney
Mark Miller, City Manager

**GRAND JURY RESPONSE
CITY OF NEVADA CITY**

Records Management

Findings:

1. At the Time of the Jury's investigation, the City's offices contained 26 boxes of unorganized paperwork, substantial unopened mail going back five years, and un-filed/unorganized City records going back to the 1980's.

Answer: The Council agrees that as of April 2006 the finding was true.

2. At the time of the Jury's investigation, City offices contained stacks of records which were unsecured from risk of theft, loss or damage.

Answer: Agree, except for planning files which were in locked cabinets.

3. At the time of the Jury's investigation, there was no apparent record retention/disposal policy in place. Rather, record keeping appeared to be fragmented and duplicative.

Answer: Agree. The task of establishing policy and procedure for record keeping and retention is underway and shall be implemented by the end of the year, 2007.

4. In its 2001-2002 Report, the Jury found the City did not then "...have a written procedure for records management, resulting in a lack of guidelines for employees. Additionally, the manner of maintaining public records does not comply with State guidelines."

Answer: Agree

5. In its 2001-2002 Report, the Jury recommended, among other matters, (a) the City develop a much-needed records management system; (b) the City implement the Local Government Records Management Guidelines issued by the California Secretary of State; and (c) the City initiate a records security and back-up system.

Answer: Agree

6. The City, in its Response to the Jury's 2001-2002 Report wrote, "The City is currently in the process of hiring a new City Manager. The City Clerk will discuss this item [Records Management] with the new City Manager after the position is filled."

Answer: Agree

7. In further response to the Jury's 2001-2002 Report, City representatives also wrote: "When the Grand Jury provides funding, we will implement new Records Management Guidelines."

Answer: Agree

Recommendations:

1. The City should, as a matter of highest priority, establish a record keeping and protection policy with appropriate procedures.

Response: This Recommendation is being implemented.

2. The City should assure that all currently un-filed City records and documents are filed and indexed consistent with its record keeping policy and applicable law.

Response: The City is in the process of implementing this Recommendation. All boxes have been emptied and contents are now in file drawers. Files are in the process of being indexed.

3. All unopened mail and related correspondence should be properly processed, with suitable explanations where appropriate.

Response: This Recommendation has been implemented, and is our current policy.

Finances

Findings:

1. At the time of the Jury's investigation, City records made it clear the City had lost significant revenue due to the City's failure to bill, or the sending of incorrect bills, for business license fees, water and sewer fees, and Transient Occupancy Taxes.

Answer: Agree to the finding that City has lost significant revenue due to failure to correctly bill for sewer/water and business licenses. However, the City does not bill for Transient Occupancy Tax.

2. The examination of the City's financial records by City-retained expert consultants reflected significant uncollected debt (accounts receivable) which had been on the books for years, some now uncollectible because of the passing of statutes of limitation.

Answer: Agree. City debt collection procedures have been corrected.

3. The examination of the City's books by its expert consultants disclosed inconsistent (or non-existent) practices with regard to follow-up of past due accounts.

Answer: Agree. City debt collection procedures have been corrected.

4. The examination of the City's books by its expert consultants also disclosed only sporadic bank statement reconciliation, no general ledger reconciliation to cash, and substantial variances in financial accounts.

Answer: Agree, but there has been no financial loss to the City.

5. The City's expert consultants also found, historically, the City's basic accounting activities were left to the year-end auditors. And the new Government Accounting Standards Board Policy, GASB 34, which became effective in 2004, had not yet been implemented by the City.

Answer: Partially agree, but all audits have been GASB 34 compliant. The first audit subject to GASB 34 was that of 2002/2003, which was completed in 2006 and compliant.

6. In the course of the review of the City's affairs by the City and its expert consultants, a number of un-deposited checks payable to the City dating back several years were discovered.

Answer: Agree. The current policy is to deposit all checks, with bank deposits completed several times a week.

7. Effective February 19, 2007, the City hired a Finance Manager to replace a full-time financial consultant that has worked over the past months to address many of the deficiencies noted above.

Answer: Agree

Recommendations:

1. The City should provide extensive transitional guidance for its newly hired Finance Manager and direct such individual to establish written policies and practices which will assure the City's financial rights and assets are protected.

Response: The City agrees and is in the process of implementing. Extensive transitional guidance has been provided for the new Finance Manager, including ongoing consultations with an experienced governmental accounting firm, financial managers and other government agencies. Funds have been budgeted to ensure guidance is available as needed.

2. The City Council should exercise diligent oversight of the City's financial resources and take steps to assure its members understand the relevant processes and are given timely periodic reports.

Response: The City agrees and is in the process of implementing. Diligent oversight of the financial resources is being provided by the Council directly through two finance-experienced Council members serving full-time on the Finance Committee and Finance Manager and City Treasurer reports to the City Council, and additionally through the Finance Committee's citizen expertise and detailed oversight and reporting back to City Council. A new audit firm specializing in government audits has been engaged, is currently performing the City audit and is providing recommendations for the Council.

City Clerk's Office

Findings:

1. The incumbent City Clerk was first appointed in 1987 and has been reelected to the office every four years since.

Answer: Agree

2. Shortly thereafter, the incumbent City Clerk was designated as the Office Operations Supervisor and held that position until its elimination by the City Council on April 25, 2006.

Answer: Partially agree. The Office Operations Supervisor position was eliminated on June 26, 2006.

3. Over the years, the functions of the elected office of City Clerk and the appointed office of Office Operations Supervisor were allowed to become blended and the duties indistinguishable.

Answer: Partially agree. The positions were blended but not indistinguishable. The duties of City Clerk are clearly set forth in the government code.

4. The City Council eliminated the position of Office Operations Supervisor, following reports from a citizens' committee, and an investigative team composed of a forensic certified public accountant, a personnel specialist, a former law enforcement officer and a financial consultant.

Answer: Agree

5. The incumbent City Clerk, subsequent to April 25, 2006, has failed to enter the Nevada City Offices for purposes of performing the duties of City Clerk.

Answer: Disagree. The City Clerk has entered City Hall at least twice, possibly more times, for the purpose of performing her duties

6. At the time of the Jury's investigation, the Jury found that deeds conveying real property to the City had not been recorded.

Answer: Agree

7. At the time of the Jury's investigation, City Ordinances and Council Resolutions were not being maintained in an organized manner, were not readily accessible by the public, and had not been codified, indexed or published since 1990. Additionally, City Council Minutes had not been filed since 1995.

Answer: Agree

8. The City has had to hire additional personnel to perform functions of the City Clerk and to cover the responsibilities of the former Office Operations Supervisor.

Answer: Partially agree. Some of duties of the Clerk and previous Office Operations Supervisor are being performed by employees who were already employed by the City prior to April 25, 2006.

9. The incumbent City Clerk, in her individual capacity, has sued Nevada City alleging wrongful termination of her employment as Office Operations Supervisor.

Answer: Agree

10. Over seventy percent of California cities utilize an appointed City Clerk in order to provide more effective oversight of the work of that position.

Answer: City accepts this premise but cannot verify accuracy.

Recommendations:

The City should, as permitted by California Government Code Section 36508, hold an election to make the office of City Clerk an appointive position, and the City Council should thereafter, by Ordinance, determine whether the City Council or the City Manager appoint the City Clerk.

Response: The City agrees that the issue should be addressed by the public. The City Council will agendize the matter for public input before the end of the year in order to determine if money should be expended to place the matter on the ballot at this time. The Grand Jury should be aware that the citizens have voted previously on this issue, approximately ten years ago, and rejected it.

City Management Practice and Accountability

Findings:

1. The principal duties of the City Manager of Nevada City include the efficient administration of all the affairs of the City which are under his control.

Answer: Agree

2. The City has had two City Managers during the past 41 years, the present City Manager having been in the position for almost five years.

Answer: Agree

3. The City Manager is responsible for overseeing all City personnel, which included the Office Operations Supervisor.

Answer: Partially agree. The City Manager is responsible for overseeing all City personnel except for the City Attorney, who serves at the pleasure of the Council.

4. Prior to April 26, 2006, the City did not employ any experienced accounting personnel, and the City's financial software had not been upgraded for almost two decades.

Answer: Partially agree. The City's financial software had not been upgraded for 16 years.

5. At the time of the Jury's investigation, there was insufficient oversight of the City's administration of various grant programs and loans.

Answer: Disagree. The water record keeping was not up to acceptable standards, but the City has applied for and received numerous grants that were administered well and oversight was excellent.

6. At the time of the Jury's investigation, available records pointed to inconsistent application of City Ordinances.

Answer: Agree as to sewer and water Ordinances only.

7. At the time of the Jury's investigation, there was evidence of improper employee classifications (regular versus temporary) as well as the finding of derogatory material being entered into employee personnel files by a department head without advisement or the employee's right to respond as required by law.

Answer: Agree. The Council is aware of one occasion of improper employee classification and one incident of material in a personal file without advisement or the employee's right to respond.

8. The Jury was unable to locate any City office policy or procedures manuals.

Answer: Agree

9. During the transition, the City Manager directed the expert financial consultant not to discuss prior history of the City's financial affairs with the new Finance Manager.

Answer: Disagree.

Recommendations:

The City Manager should develop and implement fundamental policies and procedures including, but not limited to, personnel, records management, and financial management consistent with sound, generally-accepted management principles.

Response: The City agrees. Implementation is in process. The City Manager has been instructed by the City Council to work with staff and consultants as necessary to develop modern, effective policies and procedures. Several policies and procedures have been developed, primarily in the financial management area, more are underway in all areas, and funding has been budgeted. The codification portion of the records management procedures is well underway and will be brought to City Council for formal adoption in the near future.

City Council Oversight

Findings:

1. At the time of the Jury's investigation, it did not appear the City Council had ever conducted a comprehensive performance evaluation of its City Manager.

Answer: Disagree in part. There have been performance evaluations of the current City Manager.

2. Subsequent to April 2006, the City Council designated one of its members to seek an accommodation with the incumbent City Clerk such that the duties of City Clerk would be performed.

Answer: Agree.

3. There is considerable disagreement as to the efficacy of the interim solution, which has resulted in the City Clerk performing certain duties in her automobile parked in front of City Hall.

Answer: Agree

4. According to Government code Section 36804, "If the city clerk is absent, the deputy city clerk shall act. If there is none, the mayor shall appoint one of the councilmen as city clerk pro tempore."

Answer: Agree

5. For the past fourteen years, the City has contracted with the same outside auditing firm to perform the annual audit of the City's financial records.

Answer: Agree

6. The City's outside auditors have not performed a comprehensive audit, but rather have examined only materials provided by the Office Operations Supervisor and other City staff.

Answer: Agree. Audits completed prior to April 2006 lacked comprehensiveness.

7. To date, only one Auditor Management Review Letter has been located for the past seven years.

(An Auditor's Management Review Letter identifies any significant issues discovered in the audit process.)

Answer: Agree

8. Between May 17, 2006 and June 28, 2006, the City received seven consultant interim reports covering the review of materials under the care, custody and control of the City Clerk/Office Operations Supervisor.

Answer: Agree.

9. The interim reports referred to in No. 8 above contained in excess of 70 detailed and task specific recommendations.

Answer: Agree

10. The City Manager terminated these investigations prior to the issuance of a final report.

Answer: Disagree. The investigations are on-going, mostly by staff, and the services of at least one consultant are still utilized by the City

11. The City, as of March 2007, could not provide the cost of the reports referred to in No. 8 above; however, materials reviewed by the Jury suggest the cost will exceed \$200,000.

Answer: Disagree

Recommendations:

1. The City Council should evaluate the job performance of the current City Manager with a view to assuring itself that the City is being effectively managed.

Response: The City shall implement a job performance review of the City Manager within six months.

2. The City Council should review the duties and responsibilities of the City Manager position to be certain they are comprehensive and suitable.

Response: The City agrees and will implement within six months as part of the performance review process. Municipal Code spells out the duties and responsibilities.

3. The City Council should establish a comprehensive working plan, with completion dates, for implementation of the recommendations contained in the reports of the City's retained expert consultants.

Response: The City agrees in part and will implement this recommendation in that the City will review the recommendations contained in the reports and determine completion dates if appropriate.

4. Members of the City Council should, with the assistance of the City Attorney, review their statutory and fiduciary duties and assure that senior management is doing its job.

Response: The City agrees. The implementation of the recommendation is on-going.

July 30, 2007

VIA HAND DELIVERY

Honorable Robert Tamietti,
Presiding Judge of the Nevada County Grand Jury
201 Church St.
Nevada City, CA 95959

RE: Response to Nevada County Grand Jury – Nevada City Government

Honorable Judge Tamietti:

Thank you for taking time to review the situation that exists at City Hall in Nevada City. Unfortunately, I do not believe the Grand Jury was given all of the information needed to draw a fair, impartial conclusion on what is happening at City Hall. I would like to note that there is no mention of the City Treasurer in the entire Grand Jury report even though there is a complete section on Finance. It is common knowledge that the former City Treasurer did none of the statutory duties of the City Treasurer position (which then fell to me). Why was the City Treasurer's position not equally scrutinized and a similar recommendation made?

In response to the recently-issued report I offer the following:

RECORDS MANAGEMENT:

Findings:

1. **At the time of the Jury's investigation, the City's offices contained 26 boxes of unorganized paperwork, substantial unopened mail going back five years, and unfilled/unorganized City records going back to the 1980's.**

I don't agree or disagree. At the time of the Grand Jury's investigation, I had been gone from City Hall for seven (7) months, during which time various people had been going through my files. There were definitely NOT twenty-six (26) boxes of unorganized files in my office at the time I left. I had boxes with files in them because I didn't have enough file cabinets, even though I'd requested them. But the documents in the boxes in my office were neatly organized in labeled file folders, filed alphabetically unlike the ones in the City Manager's, Chief of Police's, City Planner's and City Engineer's offices that were just stacked all over or thrown into boxes with no rhyme or reason. Citizens who had been in my office requesting documents can testify to this. Additionally there were boxes with records waiting to be picked up for confidential disposal. I had spoken to the Chief of Police, who

coordinated the pickups, regarding this matter and arrangements had not yet been made when I was locked out of my office.

- 2. At the time of the Jury's investigation, City offices contained stacks of records, which were unsecured from risk of theft, loss or damage.**

I have no opinion. At the time of the Grand Jury investigation, I had no control over "stacks of records which were unsecured" since I had not been allowed access to records for over 7 months. I did write memos to the City Manager prior to my being locked out expressing concerns about security, to which he never responded.

- 3. At the time of the Jury's investigation, there was no apparent record retention/disposal policy in place. Rather, record keeping appeared to be fragmented and duplicative.**

I agree. To my knowledge there was never an adopted record retention/disposal policy other than for police department records. Some records were also duplicative. Because there was no enforced policy for retrieval of records and because there were resulting problems of records "disappearing", I began keeping duplicate copies of many important ones. Therefore there are duplicate copies.

- 4. In its 2001-2002 Report, the Jury found the City did not then "... have a written procedure for records management, resulting in a lack of guidelines for employees. Additionally, the manner of maintaining public records does not comply with State guidelines."**

I agree with this finding.

- 5. In its 2001-2002 Report, the Jury recommended, among other matters, (a) the City develop a much-needed records management system; (b) the City implement the Local Government Records Management Guidelines issued by the California Secretary of State; and (c) the City initiate a records security and back-up system.**

I agree with this finding.

- 6. The City, in its Response to the Jury's 2001-2002 Report wrote, "The City is currently in the process of hiring a new City Manager. The City Clerk will discuss this item (Records Management) with the new City Manager after the position is filled."**

I agree with this finding and I did discuss with the new City Manager the need for a Records Management system and additional personnel to assist with it. The City Manager never responded to me or budgeted for implementing such a system.

- 7. In further response to the Jury's 2001-2002 Report, City representatives also wrote: "When the Grand Jury provides funding, we will implement new Records Management Guidelines."**

I have no comment.

Conclusions:

- 1. In the five years since the Jury's 2001-2002 Report, the City has made no observable effort to correct, let alone improve, the manner in which its municipal records are kept, indexed or safeguarded.**

I disagree with this statement. With the assistance of part-time help, the Planning files were completely reorganized and placed in locked cabinets and some of the Administrative files were reorganized. When that part-time person left, however, I was never given money, authorization or personnel to accomplish more, despite requests for same.

- 2. The manner in which the City's records are maintained and accessible preclude reasonable access thereto and utilization by members of the public, City officials or members of the City Council.**

I partially disagree with this statement. The general public, Council, and staff could easily obtain/review records from my office. The California Public Records Act Section 6253(a) requires that access be immediate. An agency has 10 days to decide if copies will be provided in "unusual or voluminous" requests. On any given day I would easily retrieve records and reports for Councilmembers, staff and the general public as can be verified by them. Additionally, a review of the "Requests for Records" file kept by me would show that most requests were filled immediately or within 2-3 days. I do not know how the records have been kept since April 25, 2006 but it is my understanding that citizens are routinely kept waiting for records the maximum 10 days or longer.

- 3. Effective oversight of the City's affairs by the City Council is impaired by the current lack of any ordered record keeping and protection policy.**

I disagree. During the past five years, two Councilmembers regularly asked for records and information, the rest of the councilmembers rarely, if ever, requested anything from my office. Therefore, I do not believe that their ineffective oversight was caused by recordkeeping.

Recommendations:

- 1. The City should, as a matter of highest priority, establish a record keeping and protection policy with appropriate procedures.**

I agree with this recommendation.

- 2. The City should assure that all currently, unfiled City records and documents are filed and indexed consistent with its record keeping policy and applicable law.**

I agree with this recommendation.

- 3. All unopened mail and related correspondence should be properly processed, with suitable explanations where appropriate.**

I agree with this recommendation.

FINANCE:

Findings:

- 1. At the time of the Jury's investigation, City records made it clear the City had lost significant revenue due to the City's failure to bill, or the sending of incorrect bills for business license fees, water and sewer fees, and Transient Occupancy Taxes (TOT).**

I agree with this statement. I would like the Grand Jury to note that from December 2005 through April 2006 I had prepared Business License renewals. The City Manager ordered them not to be sent out. He also interfered with them being kept up to date. The networking system on which the Business Licenses were tracked and processed failed. When it was finally brought back on-line, I was working with an independent contractor who had originally implemented the system and had maintained it for years to bring the data base up-to-date. When the City Manager

became aware of this, he flatly refused to allow me to continue to use outside assistance.

Additionally, neither the Director of Public Works or the City Engineer provided me with information needed to correctly bill for water/sewer. They were also asked specifically if there were any accounts they were aware of that were not being billed, except for illegal 2nd units, and they indicated there were none. I was not in the field where I would have knowledge of service connections made and the use of properties, nor was it my job responsibility to find these properties. I depended on information from other departments to keep records accurate and current.

I also brought to the City Manager's and City Attorney's attention disparities with TOT paid by one of the Bed & Breakfast (B&B) establishments in town. This resulted in litigation and an ultimate settlement (after I was discharged) of \$20,000.00 for the City. I might point out that the \$20,000 was well below the amount that appeared to be owed the City.

Apparently there are items that were not brought to the Grand Jury's attention which caused significant revenue loss also. Some examples are: 1) Failure of the City Manager to renegotiate a rental agreement/lease with D&D Plumbing Supplies at the former City Corporation Yard on Zion St. Over three years ago they offered the City \$1,000.00 a month more, yet it has never been collected because of lack of action on the part of the City Manager. This has caused a loss of over \$36,000 to the City. 2) As a direct result of the City Manager's decision, Nevada City Cohousing paid less in AB1600 mitigation fees and water/sewer connection fees than similar projects such as Community Spirit located on Perseverance Mine Ct., off Searls Ave. I believe this resulted in a direct revenue loss of over \$100,000.

2. The examination of the City's financial records by City-retained expert consultants reflected significant uncollected debt (accounts receivable) which had been on the books for years, some now uncollectible because of the passing of the statutes of limitation.

I agree with this statement. Water/sewer accounts receivable were left on the books, with liens filed against the property so that they could be collected at the time of sale. Over the years we were able to collect on a number of past-due accounts this way. It should be noted that State law makes it illegal to charge the new property owner or renter for the uncollected bills. Because of my workload, the Office Clerk had responsibility for water/sewer billing and collection. Though the City policy was to collect payment in full each billing cycle to avoid the problem of uncollectible accounts, the Office Clerk would let people "slide." This is evidenced by the audit trail. Then, if they moved or sold the house, the money would be uncollectible unless

we could catch it in time to place a lien on the property. I relied on assistance from the auditors in “writing off” debts that were uncollectible in a legal and appropriate way. I had no expertise in this area.

3. The examination of the City’s books by its expert consultants disclosed inconsistent (or non-existing) practices with regard to follow-up of past due accounts.

I agree with this statement. Once a new water/sewer billing cycle began, the software program that we used made it very difficult to track past due accounts. That was why it was critical to collect before the next billing cycle. This was also the case with other accounts receivable and we lacked sufficient staff to follow-up.

4. The examination of the City’s books by its expert consultants also disclosed only sporadic bank statement reconciliation, no general ledger reconciliation to cash, and substantial variances in financial accounts.

I agree with the statement in regards to the Bank Statement. When the Accounting Technician left in October 2003, the part-time new hire did not know how to reconcile the bank statements. I requested the hiring of a competent Accounting Technician and was not allowed to hire one. We then entered into an agreement to have the accounting firm reconcile the bank statement.

I disagree with the statement in regards to reconciliation of the General Ledger to Cash. This was done monthly as my files will show. I would reconcile the bank statement to the cash flow using a printout from the General Ledger. I would check each deposit and warrant-run against the cash flow sheet and mark the incorrect cash flow entries and give it back to the Office Clerk to correct any mistakes that had been made. I would also adjust for returned checks, bank charges, etc.

5. The City’s expert consultants also found, historically, the City’s basic accounting activities were left to the year-end auditors, and the new Government Accounting Standards Board Policy, GASB 34, which became effective in 2004, had not yet been implemented by the City.

I agree with this statement. I did not have a background in accounting and did not know GASB 34 standards or how to implement them. For the 2004/2005 Fiscal Year Audit, the City Manager was required to write a Management Discussion and Analysis to comply with GASB 34. Yet, to my knowledge, it was not done. I repeatedly offered my assistance in every way so that the audit could be completed. It was my understanding that the auditing firm kept asking the City Manager and he kept promising he’d do it but as of April 25, 2006 it had not been done. The former

City Manager worked closely with the auditing firm, but that did not seem to be the case with the new City Manager.

- 6. In the course of the review of the City's affairs by the City and its expert consultants, a number of undeposited checks payable to the City dating back several years were discovered.**

I agree with this statement. From time to time the City Manager, City Attorney, City Planner or City Engineer would instruct the Office Clerk or me to hold checks and not deposit them immediately. These checks were placed in the vault. It was usually done when, for some reason, a project was deemed incomplete or a question of dispute arose. Two specific checks were placed in files on my desk at the direction of the City Manager and I was waiting for his further dispensation.

- 7. Effective February 19, 2007, the City hired a Finance Manager to replace a full-time financial consultant who has worked over the past months to address many of the deficiencies noted above.**

I have no direct knowledge of this finding to agree or disagree.

Conclusions:

- 1. The manner in which the City has managed its finances over the past many years has resulted in the loss of significant revenue to the City.**

I don't agree or disagree with this statement.

- 2. The City has clearly been at unnecessary risk of financial loss by reason of the manner in which its financial records were maintained (or not maintained) and the apparent absence of any oversight or meaningful audit of its financial practices.**

I agree with this statement.

- 3. The continued operation of the City's current financial practices and procedures would be a breach of the public's trust.**

I have no knowledge of the City's current financial practices and procedures.

- 4. With the guidance of the full time consultant, the City appears to be making substantial progress in implementing appropriate financial procedures and policies.**

I have no knowledge of the City's progress in implementing appropriate financial procedures and policies. I would like to indicate that I asked for such a person numerous times and was ignored by the current City Manager. It is sad that so much money has been spent to get to a point that would have been gotten to years ago if the City Manager had only been willing to address the issue. With my workload and increasing overtime I requested of the current City Manager numerous times a person to fill this need and was ignored. It should be noted that there are now at least four people sharing the work that I was trying to get accomplished but which I had been denied personnel to assist me with.

- 5. The Jury commends the City for its hiring of a Finance Manager.**

I agree. It should be noted that the City had a Finance Manager hired in late 1987. When that person left (I believe it was in 1990 or 1991), the City Council chose to allow the position to remain vacant and placed many of the duties and responsibilities on me. The former City Manager and I were splitting the responsibilities along with a part-time Accounting Technician who was also hired to help with payroll, business licenses and accounts payable. The new City Manager did not assume the same responsibilities.

Recommendations:

- 1. The City should provide extensive transitional guidance for its newly hired Finance Manager and direct such individual to establish written policies and practices which will assure the City's financial rights and assets are protected.**

I agree. My concern or question is who would specifically provide the guidance since the City Manager appears, in my opinion, to be incapable of doing so.

- 2. The City Council should exercise diligent oversight of the City's financial resources and take steps to assure its members understand the relevant processes and are given timely periodic reports.**

I agree and my comment is the same as #1 above. I consistently told all members of the City Council to come to my desk to talk to me about finances or to ask any questions they had. Again, only one or two ever did. The others showed no interest at

all. Whatever information they got was from the City Manager who told me I was not to give them too much information. Memos I prepared to go in Council packets were removed by the City Manager, who stated that they reflected our financial condition too negatively.

CITY CLERK'S OFFICE

Findings:

- 1. The incumbent City Clerk was first appointed in 1987 and has been reelected to the office every four years since.**

I agree.

- 2. Shortly thereafter, the incumbent City Clerk was designated as the Office Operations Supervisor and held that position until its elimination by the City Council on April 25, 2006.**

I agree if “shortly thereafter” is about two (2) years.

- 3. Over the years, the functions of the elected office of City Clerk and the appointed office of Office Operations Supervisor were allowed to become blended and the duties indistinguishable.**

I agree.

- 4. The City Council eliminated the position of Office Operations Supervisor, following reports from a citizens' committee, and an investigative team composed of a forensic certified public accountant, a personnel specialist, a former law enforcement officer and a financial consultant.**

I have no opinion. I have insufficient knowledge of who comprised the team or reasoning behind the City Council's decision to eliminate the Office Operations Supervisor.

- 5. The incumbent City Clerk, subsequent to April 25, 2006, has failed to enter the Nevada City offices for purposes of performing the duties of City Clerk.**

I strongly disagree. I have been in City Offices on several occasions after April 25, 2006 to perform the duties of City Clerk. This can be verified by City

Attorney Jim Anderson, City Councilwoman Barbara Coffman, Deputy City Clerk Yolanda Bachtell, Consultant Bob Austin and Attorney M. Catherine Jones. Due to hostile actions by the City Manager during the last visit I made, I requested the duties be performed elsewhere. This action included locking the elevator after we had specifically requested it be opened and insisting that I use the stairs. That required me going past several individuals who had made and continue to make disparaging remarks about me. I would also like to note that I have performed EVERY single duty that has been requested of me as City Clerk since April 25, 2006, even though many of them were requested at the last minute.

6. At the time of the Jury's investigation, the Jury found that deeds conveying real property to the City had not been recorded.

I don't agree or disagree. I have no knowledge of deeds being unrecorded. I did have a cover page and Resolution in a file ready to record a utility easement on a property located on Drummond St., however, I could not complete the recordation because the City Engineer had been unable to supply the necessary documentation.

7. At the time of the Jury's investigation, City Ordinances and Council Resolutions were not being maintained in an organized manner, were not readily accessible by the public, and had not been codified, indexed or published since 1990. Additionally, City Council Minutes had not been filed since 1995.

I strongly disagree. For over 18 years I took minutes at the City Council meetings. Up until April 25, 2006, ALL City Council minutes, Ordinances and Resolutions were kept in an organized manner. The minutes had not been punched and bound in Minute books since 1995 due to the price (approximately \$200 per book with some years requiring more than one book) and the increasing difficulty of obtaining them. **HOWEVER**, on April 25, 2006, the last day I had any access to the records in City Hall, the signed, attested minutes, along with the original ordinances and resolutions were properly filed in pocket files with the date (2000, 2001, etc.) clearly marked and kept in chronological order along with all other minute books dating back to the 1800's in a locked cabinet.

In addition, copies of the Ordinances and Resolutions were kept in separate files, one per year, with indexes in a filing cabinet (one drawer for Ordinances, one for Resolutions) so they were readily accessible for public review or copying. Additionally the original agenda coversheets for all City Council meetings and Planning Commission meetings were filed in chronological order, as were the

Planning Commission minutes. Also, all Minutes, Ordinances, Resolutions and Agendas prepared after the City started using computers were filed on the computer in file folders appropriately marked and named in a uniform naming order. A backup file was also kept on the County computer system.

I agree that Ordinances had not been codified since 1990, the last time money was budgeted for that project. Despite my repeated requests to the current City Manager for money to be budgeted to accomplish that task, he never responded. I had been in contact with representatives from Lexis/Nexis and another company that I can't recall the name of, regarding bringing our Municipal Code up-to-date. That correspondence was on the right-hand side of my desk on April 25, 2006. However I could not proceed without money to do so and City Manager authorization.

8. The City has had to hire additional personnel to perform functions of the City Clerk and to cover the responsibilities of the former Office Operations Supervisor.

I have no knowledge of this finding. The City informed me that I would only be allowed to perform the statutory duties of City Clerk, not the duties I had customarily been performing as City Clerk. I have performed ALL of the duties that the City will allow me to perform as City Clerk. I have expended approximately \$5,000.00 in legal costs out of my own pocket to try to protect the office of City Clerk, which office pays \$100.00 per month. I am not sure what the Grand Jury expects me to do in this situation.

Government Code Section 40811 states "The City Clerk is the custodian of the City seal." The City Manager refused to allow me custody of the City seal. He indicated it would be locked in the Chief of Police's office with no access to it and if I needed it, it would be made available to me. It has come to my attention that in the past 15 months it has been used a number of times by City employees, not deputized by me to act on my behalf, and without my authorization. This is just one example of the City Manager interfering with the legal duties of the City Clerk.

As to performing duties of the Office Operations Supervisor, this is a surprise to me since I was informed that position had been eliminated in a "reorganization" and replaced with a Finance Director who was hired in-lieu of an Office Operations Supervisor, not as "additional" personnel.

- 9. The incumbent City Clerk, in her individual capacity, has sued Nevada City alleging wrongful termination of her employment as Office Operations Supervisor.**

I agree.

- 10. Over seventy percent of California cities utilize an appointed City Clerk in order to provide more effective oversight of the work of that position.**

I have no knowledge of what other California cities do in regards to City Clerks. I do know that many of my peers are elected and have no knowledge where the seventy percent (70%) figure came from.

Conclusions:

- 1. The incumbent City Clerk is no longer performing the material duties of that public office.**

I strongly disagree with this statement. I am doing everything I am allowed by the City Manager and City Attorney to do. Their tampering with the office should be reviewed by the Grand Jury. Additionally I completed the tasks required to conduct the June 2006 election which included adding a last-minute write-in candidate and a ballot measure for road improvements.

- 2. The City is without a functioning City Clerk to perform the statutory duties imposed by California Government Code §§40801-40814.**

I strongly disagree with this statement. The City of Nevada City is only without a functioning City Clerk, if it truly is, because the City Manager and City Attorney have chosen for it to be so with the inaction of the City Council to stop them. I have been available to perform any and all City Clerk duties that are asked of me.

- 3. The incumbent City Clerk, while also the City's Office Operations Supervisor, failed in a material manner to perform both the statutory City Clerk duties and those of Office Operations Supervisor, to the detriment of the City.**

I strongly disagree with this statement. I was given so many duties to perform no one person could have performed them completely, yet I was not given any additional help as requested. When I told the City Manager I was overloaded and asked him for additional staffing, he ignored my requests. When I asked him to

prioritize the items he wanted done first, he gave me more to do. When I told him I was having to work 50-60 hours a week and was still falling behind he told me to “just go home at 5:00 p.m. and not worry about it.”

Recommendation:

1. **The City should, as permitted by California Government Code §36508, hold an election to make the office of City Clerk an appointive position, and the City Council should thereafter by Ordinance, determine whether the City Council or the City Manager appoint the City Clerk.**

I have no problem with the voters of Nevada City deciding whether to have an elected or appointed City Clerk, as is their right. In the 1990s the voters were asked and they voted to retain the City Clerk and City Treasurer as elected officials. It is my opinion that the citizens' will has been usurped by the recent actions of the City Manager, City Attorney and certain members of the City Council in severely limiting my ability to perform the duties of City Clerk.

As an individual, I do believe that an appointed City Clerk (rather than an elected one) removes the checks and balances that were originally built into our system. Case in point: the actions of the City Manager, City Attorney and ultimately the City Council this past year which fly in the face of the voters. The City Manager and City Attorney have decided what duties could be performed yet they legally have no say or control over the office of the City Clerk. The City Council allowed it by going along with these actions. The City Clerk is an ELECTED office and stands separate from the Council who are also elected (the City Manager and City Attorney are under the City Council). Their action (or inaction) amount to tampering with and interfering with an elected office. Those actions made it almost impossible to perform any of the duties. I strongly believe the citizens of Nevada City deserve better.

Thank you again for the opportunity to respond and for your patience in reading my response. I did not feel it appropriate for me to respond to the sections on **City Management Practices and Accountability** or **City Council Oversight** other than to give a simple illustration of what happened to me. My situation was like an employee being given ten tons of boulders and told to move them. When I asked for help or equipment to do the job I was handed a shovel – no wheelbarrow, no backhoe, no front loader and no additional people to help me. At the end of each day, another ton of boulders are added to the pile. After a long period of time and many requests for

equipment and manpower, I was publicly criticized, humiliated and terminated for not getting the job done because there is still a large pile of disorganized boulders. Of course, no mention is made of the neat, well-done rock wall that I managed to complete despite the working conditions and lack of resources.

It is easy to criticize and point the finger at others when we don't want to look at ourselves under the same magnifying glass. This past year and a half has forced me to take a long, hard look at the job I did, the person I am, and the time and energy I gave to the City at the expense of my family. I make no apologies for my job performance and the things I accomplished. Could I have done things better or differently? Of course! We can all do better. Could I have done more? Absolutely not! I was already doing the duties of 3-4 people. I think a lot of other people would have crumbled under the workload and lack of resources long ago. My regret is that I had no resources to implement improvements and no support from the City Manager or City Council to accomplish much-needed changes.

Nevada City government is broken. It is broken in places that haven't even been brought to light yet. I believe that, if the rest of the operations of the City are as thoroughly examined as was my performance, through this exhaustive process the citizens of Nevada City will be better served. But that will happen only if the City Council is willing to take off their blinders, roll up their sleeves and get into the muck and see for themselves what is really wrong. They must then be willing to make hard, unpleasant decisions rather than tippy-toe around the problems. Unfortunately for me, it has come too late and much more painfully and expensively than was needed or merited had the increasing workload and demands been addressed realistically a long time ago.

Respectfully submitted,


Cathy Wilcox-Barnes
City Clerk

July 31, 2007

Grand Jury
County of Nevada
Superior Court Judge Robert L. Tamietti
201 Church Street
Nevada City, CA 95959

Re: City Manager's Response to 2006-2007 Nevada City Grand Jury Report

Honorable Judge Tamietti, Foreman and Nevada County Grand Jurors,

Enclosed is a copy of the City Manager's Response to 2006-2007 Nevada City Grand Jury Report that was previously delivered to the Grand Jury, care of the Eric Rood Administration Center instead of Church Street. I apologize for any inconvenience.

Sincerely,

A handwritten signature in cursive script that reads "Mark Miller". The signature is written in black ink and is positioned above the printed name.

Mark Miller

RECEIVED
JUL 30 2007
COUNTY COUNSEL

July 27, 2007

Grand Jury
County of Nevada
Nevada City, CA 95959

Re: City Manager's Response to 2006-2007 Nevada City Grand Jury Report

Honorable Foreman and Grand Jurors,

Thank you for the opportunity to respond to your 2006-2007 report on Nevada City Government. Your report was comprehensive and highlighted most of the items that were reported through the City's internal operations investigation. In response to the Grand Jury's report recommendations, please receive the following from the City Manager.

Records Management

Findings:

1. At the Time of the Jury's investigation, the City's offices contained 26 boxes of unorganized paperwork, substantial unopened mail going back five years, and unfiled/unorganized City records going back to the 1980's.

Answer: Agree, as of April 26, 2006 when the City began its operations investigation. The records have since been reviewed and organized.

2. At the time of the Jury's investigation, City offices contained stacks of records which were unsecured from risk of theft, loss or damage.

Answer: Agree, regarding the Office Operations Supervisor files, as of April 26, 2006 when the City began its operations investigation. City planning files were and are in locked cabinets as recommended by the Grand Jury's 2001-2002 Report.

3. At the Time of the Jury's investigation, there was no apparent record retention/disposal policy in place. Rather, record keeping appeared to be fragmented and duplicative.

Answer: Agree, as of April 26, 2006 when the City began its operations investigation.

4. In its 2001-2002 Report, the Jury found the City did not then "...have a written procedure for records management, resulting in a lack of guidelines for employees. Additionally, the manner of maintaining public records does not comply with State guidelines."

Answer: Agree

5. In its 2001-2002 Report, the Jury recommended, among other matters, (a) the City develop a much-needed records management system; (b) the City implement the Local Government Records Management Guidelines issued by the California Secretary of State; and (c) the City initiate a records security and back-up system.

Answer: Agree

6. The City, in its Response to the Jury's 2001-2002 Report wrote, "The City is currently in the process of hiring a new City Manager. The City Clerk will discuss this item [Records Management] with the new City Manager after the position is filled."

Answer: Agree

7. In further response to the Jury's 2001-2002 Report, City representatives also wrote: "When the Grand Jury provides funding, we will implement new Records Management Guidelines."

Answer: Agree. This response was generated by the office operations supervisor.

Recommendations:

1. The City should, as a matter of highest priority, establish a record keeping and protection policy with appropriate procedures.

Response: Agree. Implementation of this was begun prior to the Grand Jury report and is ongoing.

2. The City should assure that all currently unfiled City records and documents are filed and indexed consistent with its record keeping policy and applicable law.

Response: Agree. Implementation of this was begun prior to the Grand Jury report and is ongoing. The City is in the process of implementing this Recommendation. All boxes have been emptied and contents are now in file drawers. Files are in the process of being indexed.

3. All unopened mail and related correspondence should be properly processed, with suitable explanations where appropriate.

Response: Agree. Implementation of this was begun prior to the Grand Jury report. This Recommendation had been fully implemented, and is our current policy.

Finances

Findings:

1. At the time of the Jury's investigation, City records made it clear the City had lost significant revenue due to the City's failure to bill, or the sending of incorrect bills, for business license fees, water and sewer fees, and Transient Occupancy Taxes.

Answer: Agree to the finding that City has lost significant revenue due to failure to correctly bill for sewer/water and business licenses. However, the City does not bill for TOT, as lodging owners submit their returns based on occupancy. The City is doing periodic audits of the TOT generators.

2. The examination of the City's financial records by City-retained expert consultants reflected significant uncollected debt (accounts receivable) which had been on the books for years, some now uncollectible because of the passing of statutes of limitation.

Answer: Agree. City debt collection procedures had been corrected. prior to the Grand Jury report and is additional improvement is ongoing.

3. The examination of the City's books by its expert consultants disclosed inconsistent (or non-existent) practices with regard to follow-up of past due accounts.

Answer: Agree. Implementation of this was begun prior to the Grand Jury report. City debt collection procedures have been corrected with Council approved debt follow-up procedures.

4. The examination of the City's books by its expert consultants also disclosed only sporadic bank statement reconciliation, no general ledger reconciliation to cash, and substantial variances in financial accounts.

Answer: Agree. Implementation of this was begun prior to the Grand Jury report the City has hired new auditors with extensive government experience and created the new position of Finance Manager.

5. The City's expert consultants also found, historically, the City's basic accounting activities were left to the year-end auditors. And the new Government Accounting Standards Board Policy, GASB 34, which became effective in 2004, had not yet been implemented by the City.

Answer: Partially agree, but all audits have been GASB 34 compliant. The 2002/2003 audit was the first year of requirements on Nevada City, and that audit was fully compliant. The new finance manager provides in-house financial expertise that is assisting in GASB compliance.

6. In the course of the review of the City's affairs by the City and its expert consultants, a number of undeposited checks payable to the City dating back several years were discovered.

Answer: Agree. Correction of this was made prior to the Grand Jury report and is ongoing. The current policy is to deposit all checks, with bank deposits completed several times a week.

7. Effective February 19, 2007, the City hired a Finance Manager to replace a full-time financial consultant that has worked over the past months to address many of the deficiencies noted above.

Answer: Agree

Recommendations:

1. The City should provide extensive transitional guidance for its newly hired Finance manager and direct such individual to establish written policies and practices which will assure the City's financial rights and assets are protected.

Response: The City agrees and is in the process of implementing. Extensive transitional guidance has been provided for the new Finance Manager, including ongoing consultations with an experienced governmental accounting firm, financial managers and other government agencies. The City Council has budgeted funds to ensure guidance is available as needed.

2. The City Council should exercise diligent oversight of the City's financial resources and take steps to assure its members understand the relevant processes and are given timely periodic reports.

Response: The City agrees and is in the process of implementing. Diligent oversight of the financial resources is being provided by the Council directly through two finance-experienced Council members serving full-time on the Finance Committee and Finance Manager and City Treasurer reports to the City Council, and additionally through the Finance Committee's citizen expertise and detailed oversight and reporting back to City Council. A new audit firm specializing in government audits has been engaged, is currently performing the City audit and is providing recommendations for the Council.

City Clerk's Office

Findings:

1. The incumbent City Clerk was first appointed in 1987 and has been reelected to the office every four years since.

Answer: Those findings predate the current City Manager

2. Shortly thereafter, the incumbent City Clerk was designated as the Office Operations Supervisor and held that position until its elimination by the City Council on April 25, 2006.

Answer: Partially agree. The City Council voted 4-1 on June 26, 2006, to eliminate the Office Operations Supervisor position in a public meeting after extensive public input and receiving the unanimous recommendation of the City's consultants.

3. Over the years, the functions of the elected office of City Clerk and the appointed office of Office Operations Supervisor were allowed to become blended and the duties indistinguishable.

Answer: Partially agree. The positions were blended but not indistinguishable. City Clerk duties are detailed by State law.

4. The City Council eliminated the position of Office Operations Supervisor, following reports from a citizens' committee, and an investigative team composed of a forensic certified public accountant, a personnel specialist, a former law enforcement officer and a financial consultant.

Answer: Agree

5. The incumbent City Clerk, subsequent to April 25, 2006, has failed to enter the Nevada City Offices for purposes of performing the duties of City Clerk.

Answer: Partially disagree. The City Clerk has entered City Hall on approximately two times, to perform an official duty.

6. At the time of the Jury's investigation, the Jury found that deeds conveying real property to the City had not been recorded.

Answer: Agree, as was report to the Grand Jury. Deeds are now recorded.

7. At the time of the Jury's investigation, City Ordinances and Council Resolutions were not being maintained in an organized manner, were not readily accessible by the public, and had not been codified, indexed or published since 1990. Additionally, City Council Minutes had not been filed since 1995.

Answer: Agree. Minutes are now filed and a draft new Municipal Code is being proofed.

8. The City has had to hire additional personnel to perform functions of the City Clerk and to cover the responsibilities of the former Office Operations Supervisor.

Answer: Partially agree. The Finance Manager has been hired to perform finance duties.

9. The incumbent City Clerk, in her individual capacity, has sued Nevada City alleging wrongful termination of her employment as Office Operations Supervisor.

Answer: Agree

10. Over seventy percent of California cities utilize an appointed City Clerk in order to provide more effective oversight of the work of that position.

Answer: I believe this premise to be true but have not investigated the Clerk issues.

Recommendation:

The City should, as permitted by California Government Code Section 36508, hold an election to make the office of City Clerk an appointive position, and the City Council should thereafter, by Ordinance, determine whether the City Council or the City Manager appoint the City Clerk.

Response: This recommendation is to the City Council.

City Management Practice and Accountability

Findings:

1. The principal duties of the City Manager of Nevada City include the efficient administration of all the affairs of the City which are under his control.

Answer: Agree

2. The City has had two City Mangers during the past 41 years, the present City Manager having been in the position for almost five years.

Answer: Agree

3. The City Manager is responsible for overseeing all City personnel, which included the Office Operations Supervisor.

Answer: Partially agree. The City Manager is responsible for overseeing all City personnel except for the City Attorney, which serves at the pleasure of the Council. The Office Operations Supervisor on several instances made comments that the position was not responsible to the City Manager.

4. Prior to April 26, 2006, the City did not employ any experienced accounting personnel, and the City's financial software had not been upgraded for almost two decades.

Answer: Partially agree. The City's financial software has not been upgraded for 16 years.

5. At the time of the Jury's investigation, there was insufficient oversight of the City's administration of various grant programs and loans.

Answer: Disagree. The record keeping was not up to acceptable standards, but the City has applied for and received numerous grants that were administered well and oversight was excellent. The City has even been shown as an example for successful Federal projects by the USDA.

6. At the time of the Jury's investigation, available records pointed to inconsistent application of City Ordinances.

Answer: Agree as to sewer and water Ordinances.

7. At the time of the Jury's investigation, there was evidence of improper employee classifications (regular versus temporary) as well as the finding of derogatory material being entered into employee personnel files by a department head without advisement or the employee's right to respond as required by law.

Answer: Potentially correct but classifications were not formally made until after April 26, 2006 and now are correct.

8. The Jury was unable to locate any City office policy or procedures manuals.

Answer: Agree

9. During the transition, the City Manager directed the expert financial consultant not to discuss prior history of the City's financial affairs with the new Finance Manager.

Answer: Disagree. The Finance Manager has many discussions on prior history with the city's financial consultants and continues to do so. Specific work on investigative matters was not part of the Finance Manager position.

Recommendation:

The City Manager should develop and implement fundamental policies and procedures including, but not limited to, personnel, records management, and financial management consistent with sound, generally-accepted management principles.

Response: The City agrees. Implementation is in process and began before the Grand Jury's investigation. The City Manager has been instructed by the City Council to work with staff and consultants as necessary to develop modern, effective policies and procedures. Several policies and procedures have been developed, primarily in the financial management area, more are underway in all areas, and funding has been budgeted. The codification portion of the records management procedures is well underway and will be brought to City Council for formal adoption in the near future.

City Council Oversight

Findings:

1. At the time of the Jury's investigation, it did not appear the City Council had ever conducted a comprehensive performance evaluation of its City Manager.

Answer: Disagree in part. There have been three formal performance evaluations of the current City Manager and informally reviewed two additional times. The previous City Manager was not evaluated in 37 years.

2. Subsequent to April 2006, the City Council designated one of its members to seek an accommodation with the incumbent City Clerk such that the duties of City Clerk would be performed.

Answer: Agree.

3. There is considerable disagreement as to the efficacy of the interim solution, which has resulted in the City Clerk performing certain duties in her automobile parked in front of City Hall.

Answer: Agree

4. According to Government code Section 36804, "If the city clerk is absent, the deputy city clerk shall act. If there is none, the mayor shall appoint one of the councilmen as city clerk pro tempore."

Answer: Agree

5. For the past fourteen years, the City has contracted with the same outside auditing firm to perform the annual audit of the city's financial records.

Answer: Agree

6. The City's outside auditors have not performed a comprehensive audit, but rather have examined only materials provided by the Office Operations Supervisor and other City staff.

Answer: Agree, regarding audits prior to April 2006. New audits are more comprehensive.

7. To date, only one Auditor Management Review Letter has been located for the past seven years. (An Auditor's Management Review Letter identifies any significant issues discovered in the audit process.)

Answer: Agree

8. Between May 17, 2006 and June 28, 2006, the City received seven consultant interim reports covering the review of materials under the care, custody and control of the City Clerk/Office Operations Supervisor.

Answer: Agree

9. The interim reports referred to in No. 8 above contained in excess of 70 detailed and task specific recommendations.

Answer: Agree

10. The City Manager terminated these investigations prior to the issuance of a final report.

Answer: Disagree. The City manager continued investigations through the final investigative phase and the improvements phase is continuing, with reports by consultants and staff.

11. The City, as of March 2007, could not provide the cost of the reports referred to in No. 8 above; However, materials reviewed by the Jury suggest the cost will exceed \$200,000.

Answer: Disagree

Recommendations:

1. The City Council should evaluate the job performance of the current City Manager with a view to assuring itself that the City is being effectively managed.

Response: The City Council has agreed to do an additional job performance review of the City Manager within six months.

2. The City Council should review the duties and responsibilities of the City Manager position to be certain they are comprehensive and suitable.

Response: Agree and will be implemented within six months as part of the performance review process. The Municipal Code spells out the duties and responsibilities.

3. The City Council should establish a comprehensive working plan, with completion dates, for implementation of the recommendations contained in the reports of the City's retained expert consultants.

Response: The City Council will implement this recommendation in that it will review the recommendations contained in the reports and determine completion dates as appropriate.

4. Members of the City Council should, with the assistance of the City Attorney, review their statutory and fiduciary duties and assure that senior management is doing its job.

Response: The City Council and City Attorney have agreed and the implementation of the recommendation is on-going.

Please do not hesitate to contact me if you have any questions.

Sincerely,



Mark Miller
City Manager,
City of Nevada City