

BOARD OF SUPERVISORS' PAY RAISE:

Mistakes Have Consequences

SUMMARY

“The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is good for them not to know. The people insist on remaining informed so that they may retain control over the instruments they have created.” – The Ralph M. Brown Act

In 2023, the Sacramento County Board of Supervisors (BOS) passed a local ordinance giving themselves a massive 36% salary increase. As if the salary windfall was not enough, all salary-driven benefits, including qualified retirement benefits, annual cost-of-living adjustments, and a 3.35% management differential pay increased proportionally as well.

The pay raise ordinance was voted upon by way of a BOS consent calendar. This is a common parliamentary process where dozens of routine non-controversial matters are grouped as a single agenda item and generally passed by a single unanimous vote. It is a tool to efficiently handle items that are expected to elicit little or no discussion, leaving discussion time for matters of significant public interest such as, perhaps, compensation for elected officials.

The inconspicuous nature of the consent calendar, whether intended or not, often results in an uninformed and marginalized constituency. The issue of Supervisor compensation deserved and required more public participation and input than this process encouraged.

The Supervisors were called upon to vote for their own very substantial pay raise, a responsibility indeed authorized by statute. But it is commonly believed that government should always avoid even the appearance of impropriety. Where the act of self-enrichment is so clearly evident, use of the consent calendar was not only “a mistake,” as one top County official commented, in the eyes of the Sacramento County Grand Jury, it was wrong.

So why and how did this happen? The Grand Jury investigated and the answers it received were mixed and elusive.

The decision to use a process lacking full transparency was a mistake in judgment and irresponsible. In the course of investigating the lack of full transparency, the Grand Jury discovered additional mistakes, the kind of mistakes that result from lack of formal procedures or just sloppy work.

These mistakes had big consequences. One such mistake placed the validity of the pay raise ordinance in question. Monies paid pursuant to the ordinance could potentially be owed back to the taxpayers.

The mistakes were correctable. Ironically, had the BOS opted for a more transparent process, the mistakes likely would have been caught and the Grand Jury would be reporting on some other topic.

BACKGROUND

The supervisor pay raise ordinance was initiated by the Department of Personnel Services (DPS), and in coordination with the County's Executive team. The ordinance was introduced on the consent calendar and approved on April 18, 2023, by a 4-1 vote. Then, as the process provides, it was continued to May 23, 2023, when it was summarily adopted by consent.

At neither the April 18, 2023, nor May 23, 2023, meetings did any Supervisor, as is their right, direct the item be removed from the consent calendar and placed among the agenda's openly discussed "Timed Matters." Such a decision was within each Supervisor's discretion and could have encouraged public comment and provided an opportunity to fully explain the salary increase. The consent calendar process was not sufficiently transparent for the adoption of the salary increase. This was an important question for the Grand Jury to examine.

In the course of investigating the lack of full transparency, the Grand Jury discovered additional issues not previously acknowledged by County officials or reported on by the media.

An Executive team, comprised of the County Executive, Assistant Executive, and Head of DPS, and a third-party compensation consultant, all recommended a pay increase which they stated "would result in an increase of approximately 20% to the Board of Supervisor salaries." The salary increase was actually 36%.

Also, the Executive team represented to the public that the total cost of the recommended pay raise ordinance for all five Supervisors combined would be \$173,296 for FY2023-24. The Grand Jury learned the true estimated cost was in fact \$333,069, nearly double the amount presented to and relied upon by the Supervisors.

Of the many issues uncovered, the most troubling may be that the language of the pay raise ordinance conflicted directly with the language on effective date in the California Government Code, and violated the California Election Code regarding the time period allowed for public protest. This placed the validity of the pay raise ordinance in question.

The Grand Jury investigated the mistakes by staff and misjudgments by the Executive team and BOS. The consequences from their mistakes could be costly. It may be cliché, but it's true: "someone has to pay." If so, that "someone" should not be the residents of Sacramento County.

METHODOLOGY

The Grand Jury conducted extensive research and data collection to better understand the nature of the laws, rules, and regulations pertaining to the procedural operations of the Board of Supervisors and their compensation, as highlighted below.

The Grand Jury sourced historical, legal, and code of ethics documentation pertaining to the issue of elected official compensation and matters of transparency. Some of the documents and information reviewed from public sources are listed below:

- California State Constitution (Section 1, 4 and 7 of Article XI)
- Sacramento County Charter (Section 10,15, 34, and 73)
- Sacramento County Ordinance Nos. 1382, 1498,1544, and 1598
- Government Code Section 25123.5, 3511.1(d)
- Ralph M. Brown Act, Government Code Sections 54950-54963
- Penal Code Section 932
- Election Code Section 9144
- City of Sacramento Charter, Article 3, Section 29
- California Citizens' Compensation Commission
- Contra Costa County Ad Hoc Salary Commission

The Grand Jury reviewed parliamentary procedural documentation pertaining to the issue of Board of Supervisor compensation. All documentation was publicly sourced:

- BOS Agenda Packet for April 18, 2023 and May 23, 2023
- BOS Compensation Survey by Ralph Andersen and Associates
- The public recordings made of meetings held April 18, 2023, and May 23, 2023, via the Sacramento County Board of Supervisors website as well as YouTube.
- Sacramento County Budget FY 2023-2024

The Grand Jury conducted 16 in-person interviews. The interviews assisted with historical perspectives, legal considerations, and procedural interpretations and clarifications. As with all Grand Jury investigations, individuals who spoke with the Grand Jury were afforded the rights and protection of confidentiality for the purpose of anonymity. Therefore, no names are used in this report. Interviews were conducted with individuals who gave direct, first-person testimony and perspective in the following employment/responsibility capacities and classifications:

- Sacramento County elected officials, executives, department heads, and staff
- Private government contractors
- Sacramento County legal staff

The Grand Jury reviewed media reports and analyses from several news organizations in the region, as well as those local to Sacramento County, which were published after the BOS vote on the Supervisors' compensation. See the Appendix for links to various media reports.

DISCUSSION

The Sacramento County BOS answers ultimately to the voters. To provide effective oversight, the voters need information and an understanding of how County government runs, how money is allocated and spent, and how to get more involved. There also must be mutual trust between County government leaders and the voters. These factors are important considerations to understand the context of the events related to the adoption of the BOS salary adjustment in 2023.

The Grand Jury believes the key questions in relation to the BOS pay raise are as follows:

1. What was the legal process for adjusting the BOS compensation and was the law followed?
2. Did the supporting documentation to the ordinance amendment reflect the true cost to Sacramento County?
3. Was the process transparent and were the residents of Sacramento County given a fair chance to participate?

These key questions not only stand by themselves in terms of singular importance, but also compounded the impact of each by way of how the events played out.

Ordinance Adoption Process

Recognizing the BOS had no base salary review since 1991, the County Executive team decided in the fall of 2022 to have Ralph Andersen & Associates conduct a salary compensation survey. In the intervening years, the Supervisors had, however, regularly received the same cost-of-living adjustments that were granted to other non-represented County employees.

The last ordinance to establish the base salary for the BOS was adopted in 1991. It set the Supervisors' base pay at 55% of a Municipal Court Judge's salary. In 2001, Ordinance No. 1544 was adopted to reflect the reclassification of Municipal Court Judges to Superior Court Judges, and the base pay remained at 55%.

On April 18, 2023, the proposal to amend Ordinance No. 1544 was introduced on the BOS board meeting consent calendar and passed by a 4-1 vote. It was continued to May 23, 2023, when it was re-introduced and adopted as Ordinance No. 1598, establishing "salaries will be raised from the current 55% to 75% of a Superior Court Judge's salary." The ordinance provided, "This update will take effect on June 4, 2023, after adoption of the ordinance." Furthermore, it stated, "This ordinance shall take effect and be in full force on and after thirty (30) days from the date of its passage."

What was overlooked by the BOS, County Executive team, and County Counsel was California Government Code section 25123.5. This state law mandates ordinances which change supervisory salaries shall become effective *60 days* after their adoption. This gives voters a 60-day window afforded under California Election Code section 9144 to object to the ordinance and, if the voters decide, initiate a referendum process.

The “effective date” stated in the pay raise ordinance was 30 days after adoption with the increase in pay itself to “take effect” on June 4. While it remains unclear which of the two dates represents the actual “effective date” of the ordinance, both dates fall well short of the 60 days required by state law.

This presents four unresolved issues Sacramento County must not ignore:

1. The 60 days have come and gone. How will voter rights be restored?
2. The “effective date” of the ordinance conflicts with state law. This places the validity of the ordinance in doubt. Does the ordinance have legal force and effect?
3. If the ordinance is invalid, were the monies paid pursuant to the ordinance done so lawfully? Are any monies owed to Sacramento County?
4. The Grand Jury has authority under California Penal Code Section 932 to order the District Attorney to pursue recovery of monies that may be owed to the County. If the County does not address these issues, should the matter then be referred to the District Attorney?

Financial Discrepancies

The County Executive and the Clerk of the Board are responsible for preparing the agenda packets for the BOS meetings. They create the agenda, gather the agenda packet items (including Board Letters), decide what will get openly discussed or debated, and what gets added to the consent calendar. The department heads and Executive team are responsible for the accuracy of all information provided to the BOS. This is especially important on matters which require a vote.

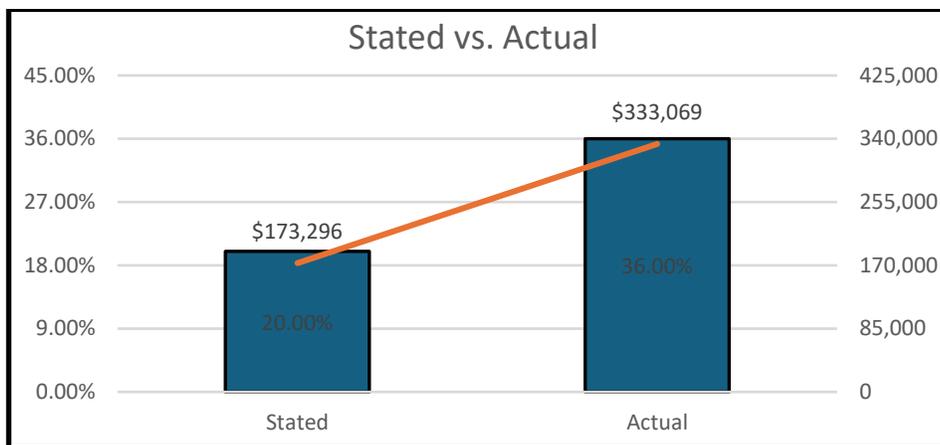
Each Supervisor receives the agenda packet at least 72 hours before the meeting. This gives them time to review the materials and, if necessary, use their independent authority to move an item from the consent calendar to the non-consent calendar.

The Grand Jury found no evidence the Supervisors knew any details of the pay raise proposal before receiving their agenda packet. The compensation survey prepared by Ralph Andersen & Associates was presented to the Executive team with recommendations based on comparable counties. The Executive team determined how much of a pay raise the Supervisors were due and drafted the amendment to Ordinance No.1544 raising the pay from 55% of a Sacramento County Superior Court Judge's salary to 75%.

Here is where the numbers get murky. Board Letters are commonly used by County staff and officials to introduce policies, procedures, and recommendations for the BOS

to act upon. In this instance, the April 18, 2023, Board Letter wrongly represented the salary increase as 20% for each Supervisor. In fact, it was actually 36%, as reported by many media outlets. Where County staffers went astray is they used simple math ($75\% - 55\% = 20\%$) rather than an algebraic formula ($(75 - 55) / 55 = 36.36\%$) to calculate the percent of increase. It was not a 20% increase, but that's what the Supervisors were told.

The Board Letter further stated the total increased cost to the County for the pay raise for all five Supervisors would be \$173,296 for FY2023-2024. This was calculated based on the erroneous figure of 20%. Upon closer examination by the Grand Jury, it was discovered the actual cost to the County, and ultimately to the taxpayers, was \$333,069, a difference of \$159,773 and nearly double what was originally represented.



Inaccurate information in the agenda packet, including the Board Letter, misled Supervisors to believe they were voting for a 20% salary increase. Our investigation included 16 interviews of County officials, County executives, heads of departments, and staff. Based on these interviews, the Grand Jury conclusively determined at least two Supervisors understood and believed they were voting for a 20% raise.

The true pay raise of 36% was reported by most major regional news outlets. Some Supervisors suggested they paid no attention to the news accounts. Still, all five Supervisors did nothing. There were no calls for audit, no calls for explanation, and no calls for correction.

These financial mistakes were uncovered after-the-fact by a financial analyst working at the County Office of Budget and Debt Management (BDM). The errors were discovered in the normal course of reconciling the County budget. The analyst reported the discovery to their department head who revised the budget with the correct data.

The discovery, however, was not reported to the BOS. Those interviewed did not remember details concerning the non-disclosure.

The BOS should have been informed and the Board Letter corrected with the true numbers. It should have been re-presented at a BOS meeting in order to rectify the official record, affirm the vote, and inform the public. A correction to the County budget alone, in our opinion, was not enough. This appears to be an attempt to hide the true facts from the public.

Procedural Transparency and Public Engagement

The Sacramento County Supervisor pay raise ordinance was essentially developed and proposed under wraps. When it was eventually presented at the April 18, 2023 BOS meeting, the proposal was tucked away deep within the collective of 26 consent items, a decision that did not encourage public discussion, input, or outwardly upfront awareness of it. The consent calendar was not appropriate for this vote.

The last base salary review of the BOS was addressed 33 years ago. The significant time between the last review and present, as well as the need for active participation of the citizenry, made the decision about BOS pay non-routine, unlike other County staff pay decisions. It called for significant publicity and discussion, making it abundantly clear the decision to put the item on the consent calendar was inappropriate. In the spirit of transparency, the BOS should have opted to place this on the Board's agenda as a Time Matter, allowing for more discussion during the board meeting to ensure the public received a full understanding of the rationale for the raise and an opportunity to have their say as well.

The majority of Supervisors acknowledged in interviews their pay raise was a controversial matter of significant public interest. However, none of the Supervisors made a motion to pull the item from the consent calendar and allow for a robust, thorough discussion. The consultant with Ralph Andersen and Associates was on standby during the April 18, 2023 BOS meeting to answer questions from the BOS or perhaps the citizenry, but leaving the item on the consent calendar did not encourage such an interactive discussion. Supervisors Frost and Serna, during the April 18, 2023 meeting, did make public comments but did not exercise their authority to pull the item and set it forward for discussion.

During the Grand Jury investigation, a County official involved in placing the matter on the consent calendar stated doing so was a mistake. Though the decision was a matter of discretion, the exercise of discretion should require the exercise of good and ethical judgment. Political expediency should not override public interest and input. Issues of the compensation for elected officials, including County Supervisors, requires a higher standard of transparency. The voters, serving as oversight, need to be included and informed to effectively perform their oversight responsibilities. Without this, there is no accountability until it is too late.

To be more transparent, the County could look to examples such as the California Citizens' Compensation Commission which determines pay for state elected officials and the members of the Legislature. Contra Costa County has a citizen's compensation panel for County Supervisors, and the City of Sacramento has a citizen's volunteer board which meets annually to discuss any pertinent pay raises for the Mayor and City

Council. These are public groups made up of average citizens who are afforded the opportunity to participate in government, and actually get to say things like “We pay your salary!”

FINDINGS

- F1 The financial mistakes contained in the Board Letter of April 18, 2023, were discovered after-the-fact by County staff and were not reported to the BOS directly, thereby leaving both the Board and the public misinformed. [R1] [R2]
- F2 Because the BOS are voted into office by the people to serve the people, decisions relating to compensation for the BOS should be decided with public participation and input. [R3]
- F3 Although the BOS's use of the consent calendar was not unlawful, the consent calendar process lacked the level of procedural transparency essential to maintain the public's trust when voting on controversial matters of significant public interest. [R4]
- F4 Ordinance No. 1598 conflicts, on its face, with California Government Code Section 25123.5 and thereby places the validity of the ordinance in question. [R5] [R6]
- F5 Ordinance No. 1598 violated California Election Code Section 9144 by depriving Sacramento County residents of their right to protest the ordinance and initiate the referendum process. [R7]

RECOMMENDATIONS

- R1 The Office of Budget and Debt Management should explain the financial mistakes described in F1. The explanation should include how it was discovered and provide the correct financial information to the BOS in open session by no later than November 1, 2024. [F1]
- R2 The County Executive, in collaboration with the Clerk of the Board, should establish a formal procedure, by no later than December 31, 2024, to ensure material flaws concerning information presented to the BOS are brought to the attention of the Clerk of the Board or the BOS directly. [F1]
- R3 The County Executive should establish a citizen-based compensation commission such as those procedures established by other local and state governmental jurisdictions by no later than April 1, 2025. [F2]
- R4 The County Executive, in collaboration with the Clerk of the Board, should establish a formal procedure to limit the use of the consent calendar to only non-controversial matters that are reasonably expected to elicit little or no discussion by no later than November 1, 2024. [F3]
- R5 The Board of Supervisors should direct the County Executive, in collaboration with County Counsel, to determine the validity or invalidity of Ordinance No. 1598

and upon doing so, present recommendations to the Board of Supervisors in open session by no later than November 1, 2024. [F4]

R6 The Board of Supervisors should direct the County Executive, in collaboration with County Counsel, to determine if any monies paid pursuant to Ordinance No. 1598 are owed to the County and upon doing so, present recommendations to the Board of Supervisors in open session by no later than November 1, 2024. [F4]

R7 The Board of Supervisors should direct the County Executive, in collaboration with County Counsel, to determine the nature and extent of the violation of voter rights afforded by California Election Code Section 9144 and upon doing so, present recommendations to the Board of Supervisors in open session by no later than November 1, 2024. [F5]

REQUIRED RESPONSES

All responses are required pursuant to Penal Code Sections 933 and 933.05. From the following governing body, as to all findings and recommendations, the response is required within 90 days:

Sacramento County Board of Supervisors
700 H Street
Sacramento, CA 95814

INVITED RESPONSES

David Villanueva, County Executive
Sacramento County
700 H Street, #7650
Sacramento, CA 95814

Amanda Thomas, Chief Fiscal Officer
Office of Budget and Debt Management
700 H Street, #7650
Sacramento, CA 95814

Mail or deliver a hard copy of required and invited responses to:

The Honorable Bunmi Awoniyi
Presiding Judge
Sacramento County Superior Court
720 9th Street
Sacramento, CA 95814

Email a digital copy of the required and invited responses to:

Erendira Tapia-Bouthillier
Sacramento County Superior Court
Grand Jury Coordinator
Email: Tapia-E@saccourt.ca.gov

DISCLAIMER

This report was issued by the Sacramento County Grand Jury, with the exception of one juror who had a conflict of interest with the jurisdiction in this report. This juror was

excluded from all parts of the investigation, including interviews, deliberations, and the writing and approval of the report.

APPENDIX

Regulatory and Legal Resources

- California State Constitution (section 1 and 4 of Article XI)
[https://ballotpedia.org/Article XI, California Constitution](https://ballotpedia.org/Article_XI,_California_Constitution)
- Sacramento County Charter (section 10, 15, 34, 73)
<https://bos.saccounty.net/CountyCharter/Pages/default.aspx>
- Government Code Section 25123.5 (60-day rule)
<https://law.justia.com/codes/california/2022/code-gov/title-3/division-2/part-2/chapter-1/article-7/section-25123-5/>
- Government Code Sections 54950-54963 (Ralph M. Brown Act) subsection 54953(c)(3)
https://www.rcrcnet.org/sites/default/files/documents/Gov_Code_Section_54950-54963.pdf
- Government Code section 3511.1(d)
<https://law.justia.com/codes/california/2011/gov/title-1/3511.1-3511.2/3511.1>
- City of Sacramento Charter, Article 3, §29
https://library.qcode.us/lib/sacramento_ca/pub/city_code/item/city_of_sacramento_charter-article_iii-29
- California Citizens' Compensation Commission
<https://www.calhr.ca.gov/cccc/Pages/home.aspx>
- Contra Costa County Ad Hoc Salary Commission
<https://www.contracosta.ca.gov/gov/DocumentCenter/View/55852/BOS-Salary-Committee-NEWS-RELEASE-12-18-18>

Sacramento County Board of Supervisors and Civic Resources

- Board of Supervisors Agenda Packet for April 18, 2023, and related attachments
<https://agendanet.saccounty.gov/onbaseagendaonline>
- The public recordings made of the Board of Supervisors meeting held April 18, 2023, via the Sacramento County Board of Supervisors website as well as YouTube.
<https://www.youtube.com/watch?v=BxYdeIU4dEA>
- Sacramento County Budget
https://bdm.saccounty.gov/Documents/Budget_in_Brief_2023-2024.pdf

Media Resources

- ABC10 KXTV, May 23, 2023
<https://www.abc10.com/article/news/politics/sacramento-county-supervisors-pay-raise/103-3d33b1ea-e654-46ca-b850-500f211550a1>
- The California Globe, May 24, 2023
<https://californiaglobe.com/articles/sacramentos-elected-politicians-enrich-themselves-with-pay-increases-and-shiny-stadiums/>
- The Sacramento Bee, May 26, 2023
<https://www.sacbee.com/news/local/article275749676.html>
- KCRA News, May 24, 2023
<https://www.kcra.com/article/sacramento-county-board-of-supervisors-big-pay-raise/43995407>

