

SUMMARY

The Grand Jury initiated this investigation due to a citizen complaint regarding employee health and safety, which suggested a lack of leadership by Tuolumne County (County) executives concerning compliance with state safety laws, regulations, and procedures. During the investigation, the Grand Jury found functional deficiencies in the County administration that contributed not just to deficiencies in safety documentation, but other aspects of employee safety and the safety of County residents at large. It was determined that the County does not have a document control system for safety documents, a Safety Management System, or functioning safety committee. The administration lacks a culture that recognizes the importance of safety and that prioritizes, requires, and rewards maintenance of procedures and safety information sharing.

During the investigation, it was also found that the Tuolumne County Administrative Officer (CAO) has not followed through with the commitment to release the updated County Personnel Rules and Regulations which has left them out of sync with current human resource practices. Also, the Grand Jury observed a lack of adherence to or knowledge of the Code of Conduct and Resolution No. 23-15, that establishes rules and regulations of the Board of Supervisors (Board), leading the Grand Jury to recommend improvements.

The Grand Jury is a non-political body whose purpose is to improve the effectiveness of local government and while it does not review or critique policy, it does involve itself in the effects of policy. Based on our investigation, the Grand Jury is concerned about the lack of a united front from all County officials at the beginning of the pandemic, and discord among Supervisors concerning vaccines, testing, and COVID-19 treatments; and suggests this may have compromised our community's health. Our County has lost 183 citizens to the current pandemic. The Grand Jury hopes that the Tuolumne County Board of Supervisors and County Administration will have the discussion: Could we have done better?

It is the Grand Jury's hope that Tuolumne County will have a more robust Risk Management Program and functioning Safety Management System in place to provide the service and guidance the community will require before the next pandemic or when disaster strikes, as well as to promote day-to-day prevention of injury and illness.

The Grand Jury extends its gratitude to the many people interviewed during this investigation. The respondents were forthright and respectful. Their dedication to the county and its citizens was apparent.

Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code, Section 929, requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.

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GLOSSARY

AB 1234	California Assembly Bill (AB) 1234 that governs local agencies' compensation and ethics and mandates ethics training for certain officials.
Board	Board of Supervisors of Tuolumne County
Cal/OSHA	State of California Division of Occupational Safety and Health
CAO	County Administrative Officer
CDC	Centers for Disease Control and Prevention
Confirmation bias	Confirmation bias is the tendency to search for, interpret, favor, and recall information in a way that confirms or supports one's prior beliefs or values.
County Counsel	Primary legal advisor to the Board of Supervisors and other County departments, committees, and commissions.
CSAC	California State Association of Counties
Document Control System	A document control system is a process for approving documents, updating them as needed, tracking changes, ensuring version control, managing access, and archiving obsolete documents.
HIPAA	Health Insurance Portability and Accountability Act
HR	Human Resources Department
IIPP	Illness and Injury Prevention Plan
OSHA	Occupational Safety and Health Administration
Safety Management System (SMS)	A Safety Management System includes four components: Management Commitment and Employee Involvement, Worksite Analysis, Hazard Prevention and Control, and Safety and Health Training. ¹

¹ OSHA. Safety Management Systems. https://www.osha.gov/sites/default/files/2018-12/fy2008_SH-17815-08_01_pg_module_1.pdf. Accessed March 26, 2022.

BACKGROUND

Founded in 1850, the County of Tuolumne has a rich history dating back to its settlement as a mining camp in the east belt of the Mother Lode in the later years of California's gold rush. The present-day County has its seat in the City of Sonora. Located on the western slope of the Sierra Nevada, the County encompasses an area of 2,274 square miles, and according to the 2020 census, it hosts a population of 55,620.

Tuolumne County is not a wealthy county. The property tax base on which the County budget is based has been growing slowly in comparison to neighboring counties due to having little development. The budget stresses increased dramatically in 2008 due to the Great Recession and caused drastic staff reductions in some County departments. These included reduction in staff in the Human Resources (HR) Department which is responsible for updating safety documents and the Risk Management Program for the County. In the last two years, HR staffing has expanded by reinstating the Safety Analyst position. With more than a decade of neglect, the task to update more than twenty county safety documents has, at this point, just begun.

The 2020-2022 Grand Jury investigated the Tuolumne County HR Department and the County's leadership for four reasons:

- A citizen sent a complaint about employee health and safety and a lack of leadership by County executives concerning compliance with state safety laws, regulations, and procedures.
- Initial review of safety documents required of the County for its employees revealed outdated and unsigned documents on the County website.
- The County did not update their 1997 Personnel Rules and Regulations by March 2021 as stated in their response to the 2019-2020 Grand Jury report on employment practices.
- The Grand Jury observed the Board of Supervisors conducting inefficient meetings.

Human Resources

The Department reports to the CAO and is led by the Human Resources Director/Risk Manager. There are currently five employees, including the manager. The Department is responsible for the County's human resources, labor relations, organizational

development, and Risk Management Programs. This investigation focused on the risk management responsibilities and the County's Safety and Loss Prevention Program.

The County Website states that the Safety and Loss Prevention Program provides a safe environment for County employees and members of the public. The program consists of:

- Safety Committee
- Injury and Illness Prevention Program (IIPP)
- Incident Response
- OSHA and HIPAA compliance

Training is provided to department safety representatives who assist in maintaining safety standards and implementing safety programs.²

In 2008 when County revenue decreased during the Great Recession, the County eliminated staff positions to reduce expenses. During the elimination of staff positions, HR lost a Risk Analyst position who had the responsibility of overseeing the Safety and Loss Prevention Program. From 2008 until late 2020, there was no dedicated staff member to oversee the Safety and Loss Prevention Program. These safety responsibilities were handled by the remainder of the HR Department, which was reduced from 7 to 3.8 Full Time Equivalent (FTE). Fortunately, the HR Risk Analyst position was reinstated at the end of 2020, and some progress is being made to get Risk Management Programs back on track.

County Leadership

Tuolumne County leadership is composed of the County Administrative Officer (CAO) and a five-member elected Board of Supervisors (Board). The CAO's office is responsible to the Board for the proper and efficient administration of all County offices and departments under the jurisdiction of the County of Tuolumne. They manage the operations of many departments within the County government so they can properly provide services to our citizens.³

The Board oversees the management of the County government and a few special districts, and has both executive and legislative duties. In its legislative duties, the Board adopts ordinances, resolutions, and minute orders within the limits prescribed by state law. As an executive body, the Board:⁴

² [Safety & Loss Prevention | Tuolumne County, CA - Official Website](#)

³ <https://www.tuolumnecounty.ca.gov/128/Administration-Office>

⁴ <https://www.tuolumnecounty.ca.gov/132/Board-of-Supervisors>

- establishes policy;
- approves the annual budget;
- appoints a County Administrative Officer, County Counsel, and Clerk of the Board, as administrative and legal staff to the Board;
- conducts public hearings on land use, committees, commissions, and certain special districts; and
- serves as the Joint Powers Authority Board for the Tuolumne Public Power Agency, the Air Pollution Control Board, and the Board of Equalization (assessment appeals).

COVID-19 Pandemic Impact on County Activities

During the past two years, the COVID-19 pandemic has been one of the greatest threats to the County, with over 180 deaths, high rates of community spread, hospitalization, and disability, especially among the most vulnerable.⁵ The rate of deaths per 100,000 population is the second highest among counties in the state.⁶ Despite the availability of effective vaccines, these have remained controversial in the County and completed vaccination rates are low compared to other counties and the state; only 57.7% of Tuolumne County’s eligible population have received a primary vaccine series compared to 75.4% statewide.⁷ The rate of death in those unvaccinated in California at the peak of the Omicron wave in February 2022 was over eighteen times greater than among those vaccinated and boosted for COVID-19.⁸

The County adjusted to virtual work for many employees, virtual meetings of the Board, and decreased in-person public services following CalOSHA, California Department of Public Health (CDPH), and CDC guidance to protect employees and the public. As the pandemic evolved with new variants of the COVID-19 virus, mandates were issued by the CDPH, including social distancing, mask use, COVID-19 testing procedures, and vaccination or testing requirements for certain employees—especially health workers and first responders—to protect both employees and the public during this unprecedented time.⁹

⁵ California Department of Public Health. <https://covid19.ca.gov/state-dashboard/#location-tuolumne> Accessed May 2, 2022.

⁶ California News. Counties with the highest COVID death rates in California. Tuolumne county listed as second highest in the state with 312 deaths (170) per 100,000 population as of 2/17/2022. Stacker.com <https://stacker.com/california/counties-highest-covid-19-death-rate-california>.

⁷ California Department of Public Health. <https://covid19.ca.gov/state-dashboard/#location-tuolumne> Accessed May 6, 2022.

⁸ California Department of Public Health. <https://covid19.ca.gov/state-dashboard/#postvax-status>

⁹ CDPH State Public Health Officer Orders July 26, 2021; August 11, 2021 and August 16, 2021. <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Guidance.aspx>, Accessed April 11, 2022.

METHODOLOGY

The COVID-19 pandemic posed significant health and safety issues for County employees and the public that coincided with the term of the current Grand Jury. This meant that many public meetings were conducted virtually; however, meetings were recorded and video records were available to the Grand Jury.

To better understand issues related to employee safety, the Grand Jury:

- conducted eleven interviews with County employees, managers, Administration, and elected officials;
- consulted with legal advisors;
- listened to recordings and transcripts, and reviewed minutes of public meetings;
- reviewed government documentation from the County staff and the County website;
- reviewed CalOSHA and OSHA websites and literature on best practices for safety management;
- reviewed best practices for County governance from the California State Association of Counties (CSAC); and
- reviewed health orders from the California Department of Public Health and the CDC.

Due to the COVID-19 pandemic in the County, the Grand Jury conducted all interviews virtually using Google Meet. This proved to be effective, efficient, and necessary to avoid the risks and challenges of being in closed, private spaces with County employees and officials. It also ensured privacy, confidentiality, and avoided the requirements of masking and social distancing for in-person meetings.

Confidentiality

Grand Jury members are sworn to secrecy regarding any matter brought before them. This assures all individuals that their testimony will be strictly confidential. Each Grand Juror must keep all evidence confidential. It is a misdemeanor to violate the confidentiality of any individual or evidence brought before the Grand Jury.

Recusal

The Grand Jury recognizes that a conflict of interest may arise during its investigations. In such instances the juror may ask to be recused from all aspects of an investigation. Those members do not investigate, attend interviews and deliberations, or assist in the making and acceptance of a final report that may result from an investigation.

Therefore, whenever the *perception* of a conflict of interest existed on the part of a member of the 2020-2022 Tuolumne County Grand Jury, that member abstained from any investigation involving such a conflict and from voting on the acceptance or rejections of any related subject.

DISCUSSION

Part 1: Safety Planning and Documentation

The Tuolumne County Grand Jury 2020-2022 began a review of the HR Department following a citizen complaint that County safety documents were not being updated and maintained. The Department reports to the CAO and is led by the Human Resources Director/Risk Manager. There are currently five employees, including the manager. The Department is responsible for the County's human resources, labor relations, organizational development, and Risk Management Programs. This investigation focused on the risk management responsibilities and the County's Safety and Loss Prevention Program.

The County Website states that the Safety and Loss Prevention Program provides a safe environment for County employees and members of the public. The program consists of:

- Safety Committee
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- Incident Response
- OSHA and HIPAA compliance

From a review of County documents it was apparent that many documents were out of date and/or were missing approval signatures, making it difficult to determine whether the documents were approved or current. Additionally, a previous Grand Jury's recommendation relating to personnel policies and procedures has gone unresolved and/or unaddressed. While interviewees stated safety was among their very top priorities, implementation of the safety priority was not evidenced by promotion and integration of that priority into the County's daily workplace culture. For example, the process of drafting, reviewing, agendaing, approving, signing, storing, and updating the County's safety documents is not tracked. The Grand Jury examined the factors that may have contributed to such documents being decades old, and often unsigned with no proof they were approved.

During the investigation, it became apparent to the Grand Jury that safety documents were not the only classification of County documentation that has been neglected. Important County employee documents, like the Tuolumne County Personnel Rules and Regulations, have not been updated for twenty-five years.

Safety Documents

The Tuolumne County Human Resources Department has the responsibility for maintaining many of the County's safety documents, as well as carrying out employee training to ensure compliance with safety protocols. The Master Safety Manual is a collection of all the County safety information for County agencies to follow and is intended to protect County employees and the public from a multitude of potential hazards. It contains safety documents ranging in topics from forklift operation safety to a County emergency preparedness plan. A Safety Management System defines how core documents are to be maintained using document control to keep master copies, track distribution and revisions, and update schedules by entities identified in the documents or Safety Management System instructions. CalOSHA requires that these documents be maintained.¹⁰

A best practice in the safety field entails annual review and updates every one to three years.¹¹ Tuolumne County keeps its Master Safety Manual on the County-maintained website. Contained in the Master Safety Manual are the following:

1. Emergency Preparedness Plan
2. Ergonomic Workplace Program
3. Report of Unsafe Condition or Hazard
4. General Risk Factor Checklist
5. Ergonomic Injuries and the Office
6. Back Safety
7. Exposure Control Plan
8. Fire Safety
9. Forklifts: Operation & Safety Procedures
10. Hazard Communication
11. Hazmat Incident Response Procedures
12. Hearing Conservation Program
13. Injury and Illness Prevention Program (IIPP)
14. Report of Unsafe Condition
15. Accident Report (non-employee)
16. Automobile Incident Report
17. Ladders & Steps: Safe Usage Procedures

¹⁰ CalOSHA. Guide to developing your workplace injury and illness prevention plan with checklists for self-inspection. https://www.dir.ca.gov/dosh/dosh_publications/iipp.html

¹¹<https://www.powerdms.com/policy-learning-center/why-it-is-important-to-review-policies-and-procedures#bullet-1>

18. Lockout/Tag-out Procedures
19. Respiratory Protection Program
20. Smoking Policy
21. Vehicle Usage & Safety Belt Policy
22. Welding & Cutting Safety Procedures
23. Workplace Violence Prevention Program

The Grand Jury uncovered several concerns related to this Master Safety Manual. The first concern is the lack of any approval signatures on the documents contained in the Manual. Approval signatures provide the reader with the knowledge that the document is official policy of the County and not, for instance, a generic example taken from the internet or a draft work in progress. The second concern is that the release dates shown on the individual documents range from 1991 to 2009, which means the newest safety document in the Tuolumne County Master Safety Manual has not been updated for thirteen years. A third concern is that there is inconsistent use and knowledge of the Manual as a repository of the County's most current safety information.

Additionally, the lack of a system for maintaining approved documents and a lack of approval signatures on certain documents make it difficult to determine whether the documents were approved or current. In discussion with County staff, there were copies of some documents circulating that did have approval signatures; but in some cases, these were older releases than the ones contained in the Master Safety Manual. No master copies of these safety documents could be found by any County staff responsible for authoring, maintaining, or approving them. There is no way to know if a particular copy of a safety document is the latest release or an obsolete version. Most members of staff and administrators to whom the Grand Jury spoke thought they knew where the masters were kept. Suggestions from interviewees that they could be maintained on the County website by HR or other departments thought to have authored them, proved to be inaccurate.

Each county is required by law to maintain an IIPP under CalOSHA regulation.^{12 13} The Tuolumne County IIPP was previously approved in March 2009, and an updated version was in draft form for approximately five years. During the course of the Grand Jury investigation, an updated IIPP was finally approved by the Board on January 11, 2022.

The current process for approving new safety documents is undocumented, but several

¹² CalOSHA. §3203. Injury and Illness Prevention Program. <https://www.dir.ca.gov/title8/3203.html> Accessed April 11, 2022.

¹³ CalOSHA. Guide to Developing your workplace Injury and Illness Prevention Program with checklists for self-inspection. https://www.dir.ca.gov/dosh/dosh_publications/iipp.html. Accessed March 17, 2022.

county staff state it includes these steps:

- HR Safety Analyst develops documents with direction from HR Director/Risk Manager.
- Department heads provide input.
- County Counsel reviews and approves documents.
- County Counsel and HR Director/Risk Manager review documents with CAO.
- Concurrence obtained from labor bargaining units.
- CAO approves documents.
- Board approves documents.
- HR and department heads implement documents and provide training if needed.

No safety document shown on the County website or available to the Grand Jury had a place for a County Counsel approval signature, CAO approval signature, or Board approval signatures. The documents may well have been approved, but the Grand Jury was unable to verify whether they were or not. The Board of Supervisors' meeting minutes may have a record of approval, but it would be necessary to review all the meeting minutes going back more than twenty years to verify approval of all of the documents when a simple signed signature block on the face of the document would have provided the evidence to each reader at a glance.

The safety documents available on the County website are largely not used by County departments, according to multiple interviewees. Instead some County departments issue contracts with private outside sources like the Safety Services Company for up-to-date safety documents and information. Those departments found it necessary to contract for that information outside the County's resources to ensure employee safety.

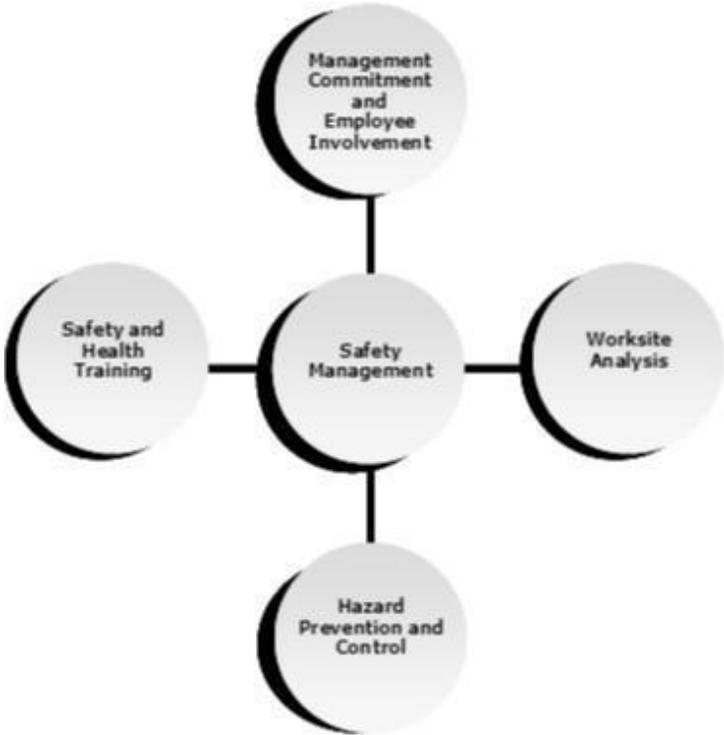
An anomaly uncovered by the Grand Jury was that County HR staff responsible for updating and maintaining County safety documents believe the County does not have a Safety Management System, whereas some County leadership believes it does, and inaccurately point to the IIPP as that system. The available County IIPP lists as its objective, to "assist management in determining what hazards exist in the workplace, how to correct hazards that may occur, and what steps to take to prevent them from recurring." A Safety Management System is much more inclusive, having four components: Management Commitment and Employee Involvement, Worksite Analysis, Hazard Prevention, and Control and Safety and Health Training.¹⁴ A Safety Management System is a systematic, explicit, and comprehensive process for managing safety risks, including goal setting, planning, and measuring performance. A Safety

¹⁴ OSHA. Safety Management Systems.

https://www.osha.gov/sites/default/files/2018-12/fy2008_SH-17815-08_01_pg_module_1.pdf Accessed March 26, 2022.

Management System is woven into the fabric of an organization and is good business. It becomes part of the culture—the way people do their jobs.

Figure 1. Safety Management System



Safety Committee

Tuolumne County has traditionally had a safety committee comprised of representatives from County departments and led by the HR Safety Analyst. Its function is to inform departments of changing conditions, developments, new rules, near misses, and to generally promote the improvement of safety within the County. Since COVID-19 restrictions began in early 2020, the Safety Committee did not meet until March 2022. Even prior to COVID-19, members of the committee were often chosen for the assignment *in absentia* and were not motivated. Grand Jury interviewees stated many have not been interested in the assignment. The recently approved IIPP expands the role and provides a description of the Safety Committee responsibilities.¹⁵ The Safety Committee’s effectiveness in the future will depend on the active representation and participation of all departments and implementation of recommendations.

¹⁵ Tuolumne County. Injury and Illness Prevention Program (IIPP). Approved January 11, 2022. <https://www.tuolumnecounty.ca.gov/DocumentCenter/View/535>

County Leadership

Tuolumne County has an Employee Rules and Regulations Manual that was last updated twenty-five years ago.¹⁶ The CAO was tasked by the 2019-2020 Grand Jury to ensure the HR Department updated the manual by March 2021. The HR Department completed an update and delivered it to the CAO. In a response to the 2019-2020 Grand Jury Report, the CAO agreed with the finding on Personnel Rules & Regulations and said this about the recommendation:

“The updated personnel rules have been drafted and are currently under review with the CAO and County Counsel. Upon the completion of this process, the department heads will then be given the ability to comment prior to sending the updated rules to all bargaining units. Once the meet and confer process is completed with the bargaining units, the updated Personnel Rules and Regulations will be presented to the Board for adoption. This entire process should be completed by March 2021.”

However, March 2021 has come and gone and an updated document has not been presented to the Board for adoption.

HR Department staff that report to the CAO are responsible for the County's Risk Management Program. This program consists of the Safety Committee, the IIPP, incident response, and OSHA and HIPAA compliance. Training is provided to departmental safety representatives who assist in maintaining safety standards and implementing safety programs. Although the HR Department has recently had the vacant Safety Analyst position reinstated, it has not, over past years, been provided with personnel resources sufficient to carry out its mandates.

When the HR Department has submitted documents to the County Administration for approval and adoption, it has taken years for that to occur, as in the case of the IIPP, or not at all, as in the case of the Employee Rules and Regulations. It is the County Administration Office that is responsible to recommend that the Board of Supervisors provide departments, including the HR Department, with sufficient resources to carry out their mandates, present completed documents to the Board for approval, and ensure the HR Department is carrying out its mandates. Over the last several years these things have not been happening consistently. Effective risk management does not happen by itself. It requires a proactive approach to all aspects, and this is lacking in County leadership. County leadership has not kept important documents related to employee relations and safety up-to-date nor has it set a policy to keep those documents current. This includes the Employee Rules and Regulations Manual, the Master Safety Manual, and the only recently updated IIPP.

¹⁶ [Personnel-Rules-and-Regulations-1997 \(ca.gov\)](https://www.ca.gov/personnel-rules-and-regulations-1997)

FINDINGS AND RECOMMENDATIONS

Findings

F1.1: Tuolumne County does not maintain or update safety documents in a manner consistent with prioritizing employee safety, and the lack of a document control system makes it impossible for a County employee to know if a particular copy of a document is the current release or an obsolete version.

F1.2: The County's failure to keep safety documents current have caused some County departments to contract with outside entities to obtain current documents adding to County expenditures.

F1.3: The Tuolumne County Administration Office does not effectively promote keeping safety documentation up to date with OSHA standards and best practices.

F1.4: Many shortcomings with safety document maintenance and management can be attributed to the County lacking a Safety Management System that would mandate updating, maintaining, and implementing safety documents.

F1.5: For many years Tuolumne County has not had a functioning and effective Safety Committee that enables County departments to react to new safety issues, to learn from near misses, or steer an improved safety culture within County departments.

F1.6: The Tuolumne CAO has not followed through with the commitment to update by March 2021 the Personnel Rules and Regulations adopted in 1997, leaving them out of date compared with current human resource best practices.

Recommendations

R1.1: Tuolumne County Board of Supervisors should mandate the CAO adopt a policy and a document control system (commercial, freeware, or manual) to ensure that safety documents are maintained, updated, and tracked. This should include the date of approval and date of updates with approval signatures. This should be implemented by December 31, 2022. (F1.1, F1.2, F1.6)

R1.2: Tuolumne County Board of Supervisors should require the CAO to adopt a Safety Management System for the County that would oversee not just documentation, but all aspects of safety policy, risk management, safety assurance, and safety promotion. This should be put in place by December 31, 2022. (F1.3, F1.4)

R1.3: The Tuolumne County Human Resources Director/Risk Manager should ensure the newly reconvened Safety Committee meets its responsibilities as outlined in the new IIPP with participation by all departments. An assessment of implementation should be reported to the Board of Supervisors by December 31, 2022. (F1.5)

R1.4: The Tuolumne CAO should follow through with the commitment to update the Personnel Rules and Regulations. This should be implemented by December 31, 2022. (F1.6)

Part 2. County Leadership Effectiveness and Support to Employee and Public Safety

As discussed in Part 1 of this report, several Boards of Supervisors and County administrations over the past decades have neglected to update safety documents and personnel policies. Reductions in staffing during the Great Recession, when HR Department staff was reduced from eight to four employees, likely contributed to or exacerbated this issue. In the twelve years following the Great Recession, HR Department staffing levels remained at reduced levels and the County did not rebuild its safety management capabilities. Only at the end of 2020 was one staff member added. The responsibility for staffing levels lies with the Tuolumne County Administration and the Board of Supervisors.

During its investigation, the Grand Jury interviewed Board members and administrative officials and watched videos of Board meetings. In addition, the Grand Jury researched best practices for government entities by reviewing education materials produced by the California State Association of Counties and the League of California Cities, comparing these best practices to the governance procedures adopted in Tuolumne County.

The Grand Jury acknowledges that the County administration and Board have difficult positions and responsibilities, particularly with respect to decision-making on the issues of resource allocation and budgeting. Members of the Board also have significant challenges in representing disparate constituents, while having their own goals, platforms, and opinions. All five members of the Board are in their first term of office, and are working hard to function effectively. Two members have been in office since January 2019, and three since January 2021. The Grand Jury observed that members of the Board and County administrators are passionate and dedicated to their jobs and constituents. In the course of its investigation, however, the Grand Jury observed instances where, in the Grand Jury's opinion, the Board could improve its governance and adherence to its adopted policies and procedures.

For example, the Grand Jury observed that the Board in 2021 often conducted inefficient, lengthy meetings that did not focus on matters that the County had the power to influence. In the Board meetings held on September 7, 14, and 21, 2021, for instance, Board members spent significant time discussing matters related to State mandates related to the COVID-19 pandemic that were outside the jurisdiction of the County Supervisors because the subjects involved State law, whereas Tuolumne County, being a general law county, does not have the power to change. Accordingly, no legal action could have been taken by the Board after its lengthy discussions.

Discussion by certain members of the Board also centered on matters that other members of the Board and other County officials stated should have been left to County public health professionals, which had not been consulted in advance. These discussions consumed many hours of time that could have been spent conducting other County business.

The Grand Jury inquired into the legal requirements, policies, and procedures governing the conduct of the Board's business including County Resolution No. 23-15, which is the Board's Rules and Regulations, adopted on February 17, 2015, the Board's Code of Conduct, and the Brown Act. The Grand Jury assessed the Board's conduct during the September 2021 and other meetings against these authorities. For example, consistent with the Brown Act, which generally requires that the Board agenda meeting discussion items, Section 2 of Resolution No. 23-15 requires that each Board "agenda shall contain a brief description of each item of business to be transacted or discussed." The Grand Jury is concerned that, notwithstanding this requirement, at the September 7, 2021 Board meeting a Supervisor made a one-hour slide show presentation (that was not attached to the agenda) in response to the Public Health Department report, and despite objection from the chairman who stated that this was a presentation and was not included with the agenda. It was, however, allowed to continue after the presenter insisted it was not a presentation, but merely questions posed to another properly agendized report given to Board members. The Grand Jury, however, was doubtful of this explanation, given that the Board member had pre-prepared a slide show presentation.

The Grand Jury similarly has a concern that a member of the Board placed a document on the Board meeting agenda for September 7, 2021, concerning public health guidance relating to COVID-19.¹⁷ The Grand Jury reviewed the claims in the document against publicly available information provided by county, state, and federal public health agencies and officials. The document advanced by the Board member largely conflicted with these authorities and included selected references and information that these authorities characterize as inaccurate or misleading. This included the promotion of ivermectin (an antiparasitic medication) and hydroxychloroquine (an anti-malaria medication), and also discredited information regarding COVID-19 vaccines. This paper began with references to the Nuremberg Code, suggesting violations to research ethics in language certain to inflame discourse on the subject of vaccines. The Public Health Department was not invited to review and discuss these assertions. Therefore the public health experts hired by the County were not able to add value.

Another Board member presented a series of references at the same meeting that

¹⁷https://granicus_production_attachments.s3.amazonaws.com/tuolumneco/389ecd7a7dce10bdb993be005236afe50.pdf (Position paper link at "Appointments")

included information from a preprint journal article that had not been cleared through a peer review process for journal publication.¹⁸ The disclaimer on this and other preliminary papers is noteworthy: “This article is a preprint and has not been peer reviewed. It reports new medical research that has yet to be evaluated and so should **not** be used to guide clinical practice.”

The conflict between the information advanced by Board members and county, state, and federal health guidelines has contributed to the divisiveness in the County regarding COVID-19. It has also been reported to have created confusion among County residents, undermining public health guidance, and potentially compromising the safety of County employees and residents.¹⁹ The aforementioned presentations and document also conflicted with the County Code of Conduct, which directs: “Provide accurate and usable information.”

In the course of its interviews with members of the Board, the Grand Jury discovered that certain Board members did not know that they are required to follow the Board Rules and Regulations adopted with Resolution No. 23-15.²⁰ The very existence of this Resolution was not known to all board members, and others believed the Resolution to be only advisory.

Two Supervisors have stated they could not simply follow the guidelines laid out by county, state, and national health officials. They stated that they prefer to do their own research and reach their own conclusions. The Grand jury is concerned whether it is acceptable for supervisors to use their own research conclusions to influence public safety. The two shared their private health guidance research with the community, and likely affected decisions of some citizens concerning COVID-19 mitigation compliance (masking and distancing) and vaccine acceptance. Tuolumne County lost 181 citizens to the pandemic by May 2022.²¹ The Grand Jury hopes none of these individuals’ health decisions were affected by the actions of these Supervisors.

Is it a best practice for a supervisor or policy maker to give treatment advice and medication advice for the treatment of COVID-19 or any other disease? Is a compiled

¹⁸ Gazit S, Shlezinger R, Perez G, et.al. Comparing SARS-CoV-2 natural immunity to vaccine-induced immunity: reinfections versus breakthrough infections. medRxiv preprint doi:<https://doi.org/10.1101/2021.08.24.21262415> Accessed March 17, 2022.

¹⁹ Kost R. How the pandemic divided the California County where 1 in 300 people died of COVID. San Francisco Chronicle. May 8, 2022. <https://www.sfchronicle.com/california/article/Tuolumne-County-pandemic-17152653.php>

²⁰ Tuolumne County Board of Supervisors. Resolution 23-15. filed February 17, 2015.

²¹ Kost R. How the pandemic divided the California County where 1 in 300 people died of COVID. San Francisco Chronicle. May 8, 2022. <https://www.sfchronicle.com/california/article/Tuolumne-County-pandemic-17152653.php>

selection of internet links proper analysis of a worldwide pandemic? Should policy makers rely more heavily on expert staff for medical advice rather than their own individual research?

Carl Sagan wrote in his 1995 book “Science is more than a body of knowledge; it is a way of thinking.”²² He goes on to say “awesome powers are in the hands of a very few—people have lost their ability to set their own agendas or knowledgeably question those in authority—our critical faculties in decline, unable to distinguish between what feels good and what’s true, we slide, almost without noticing, back into superstition and darkness. The dumbing down of America is most evident in the slow decay of substantive content in the enormously influential media, the 30-second sound bites (now down to 10 seconds or less), lowest common denominator programming, credulous presentations of pseudoscience and superstition, but especially a kind of celebration of ignorance.” How will history assess our County’s safety efforts through this critical period?

The Grand Jury reviewed best practices for effective governance that are relevant to a discussion of employee and public safety, including:

- Training for effectiveness
- Tactics for efficient meetings
- Know your code of conduct
- Become familiar with rules of order
- Ask questions beforehand and utilize staff expertise

Training for Effectiveness

Most professionals require specific education or training. In addition, continuing education is required of certain licensed professionals (e.g., nurses, doctors, and real estate agents), but the only training requirement identified by the Grand Jury for the County elected officials²³ who make critical decisions is the AB 1234 ethics training every two years. This training, which requires approximately one hour to complete biennially, primarily covers campaign finance and financial conflicts of interest and has little to do with the skills requirements of the role. The Board would benefit from additional training, including training on: (i) the legal requirements and policies and procedures applicable to the Board; (ii) running effective meetings, rules of order, and leading effective teams; and (iii) substantive topics within the Board’s jurisdiction, such as fire protection and emergency response.

²² Sagan C, Druyan A.. The demon-haunted world: science as a candle in the dark.

²³ State of California Department of Justice. Ethics Training Courses. <https://oag.ca.gov/ethics> Accessed April 6, 2022.

Table 1. Continuing education requirements for various professions in California

Profession/Role	Requirement	Hours/year
Registered nurses ²⁴	30 hours CNE; recertify every 2 years	15 hours
Physicians and surgeons ²⁵	50 hours CME; relicense every 2 years	25 hours
Certified Public Accountants ²⁶	20 hours each year, including 12 hours in a technical area; recertify every 4 years	20 hours
Real Estate Agents ²⁷	45 hours every 4 years	11.25 hours
Local Elected Officials	AB 1234 training every 2 years (approximately 1 hour)	less than 1 hour

While some members of the Board interviewed by the Grand Jury stated they already knew the training material or were “too busy” once in office to take time for training, some of this training could have been offered after they were elected and before they were sworn in. The California Association of Counties offers a continuing education program at their annual conference, including a New County Supervisors Institute offered online in election years, and the William “Bill” Chiat Institute for Excellence in County Government.^{28 29}

During the Grand Jury’s investigation, it was found that the Board had also recognized the need for additional training to improve their effectiveness as a governing body and hired Robert Bendorf of Municipal Resources Group to conduct a workshop for the Board in December 2021. All members of the Board commented favorably on the benefits to interpersonal relationships and cooperation. While this workshop did not address ethics, Code of Conduct, or training on meeting rules of order, it did address collaboration, teamwork, and behavior to increase effectiveness.

²⁴ California Board of Nursing. Continuing education for license renewal. <https://www.rn.ca.gov/licensees/ce-renewal.shtml> Accessed April 6, 2022.

²⁵ Medical Board of California. Continuing Medical Education. <https://www.mbc.ca.gov/Licensing/Physicians-and-Surgeons/Renew/Current-Status/Continuing-Medical-Education.aspx> Accessed April 6, 2022.

²⁶ California Board of Accountancy. License Renewal Requirements. <https://www.dca.ca.gov/cba/licensees/lic-renew-require.shtml> Accessed April 6, 2022.

²⁷ California Department of Real Estate. Continuing Education Requirements, <https://www.dre.ca.gov/licensees/cerequirements.html> Accessed April 6, 2022.

²⁸ California Association of Counties. Education and Events/New County Supervisors Institute. <https://www.counties.org/csac-new-supervisors-institute> Accessed April 9, 2022.

²⁹ California Association of Counties. The William “Bill” Chiat Institute for Excellence in County Government <https://www.csacinstitute.org/> Accessed April 9, 2022.

Tactics for Efficient Meetings

Inefficiency and inconsistencies in the procedures and process of Board meetings creates an opportunity cost, may contribute to public confusion on important issues, and delays action on other priorities. This investigation revealed that several previous Boards of Supervisors did not direct actions to correct outdated safety documents, nor did they address staffing gaps in roles vital to employee and public safety. The California State Association of Counties (CSAC) has suggestions for efficient meetings (Figure 2). The Grand Jury observed ways in which the Board could have benefitted from these suggestions. The Grand Jury also observed instances where the Board failed to follow three of the listed tactics: know your Code of Conduct, become familiar with your rules of order, and ask questions beforehand of the CAO and department heads.³⁰

Figure 2. Tactics for Efficient Meetings³¹



³⁰ California State Association of Counties. William Bill Chiat Institute. Best practices for managing effective public meetings: 2021-21 California County Supervisors Resource Guide. https://csac.imiscloud.com/CSACInstitute/Knowledge_Student_Center/Supervisors_Resource_Guide/CSACInstitute/Knowledge_Student_Center/New_Supervisor.aspx?hkey=2095476d-c89a-4a52-b0a7-43e9bf843137 Accessed March 17, 2021.

³¹ California State Association of Counties. William Bill Chiat Institute. Best practices for managing effective public meetings: 2021-22 California County Supervisors Resource Guide. https://csac.imiscloud.com/CSACInstitute/Knowledge_Student_Center/Supervisors_Resource_Guide/CSACInstitute/Knowledge_Student_Center/New_Supervisor.aspx?hkey=2095476d-c89a-4a52-b0a7-43e9bf843137 Accessed March 17, 2022.

Know Your Code of Conduct

Most local governments adopt codes of ethics and/or conduct that guide behavior. Such codes of ethics or conduct contain statements regarding adherence to laws relating to financial ethics and conflicts of interest as set forth in California in AB 1234. They also serve to expand on the vision, mission, and values of the respective governmental body and describe appropriate behavior for staff and elected officials in dealing with each other and the public.³²

To further understand the process for organizing and conducting meetings, the Grand Jury reviewed the Board's Code of Conduct (Figure 3).³³ The Grand Jury found that the code consisted of one presentation slide. This slide is vague and lacks the same kind of detail or examples that can be found in some other counties' codes of conduct and ethics that better guide ethical and effective behavior.^{34 35 36}

³² California Legislative Information. AB-1234 Local compensation and ethics (2005-2006). https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=200520060AB1234 Accessed April 4, 2022.

³³ Tuolumne County. Vision, Mission, Values, Code of Ethics & Code of Conduct; Five Year Program & Major Projects Plan. <https://www.tuolumnecounty.ca.gov/documentcenter/view/5655> Accessed March 17, 2022.

³⁴ County of Marin. Code of Ethics. <https://www.marincounty.org/depts/bs/boards-and-commissions/member-handbook/code-of-ethics> Accessed April 2, 2022.

³⁵ City of Alameda. City Council Handbook & Code of Conduct. <https://www.alamedaca.gov/files/assets/public/boards-and-commission/code-of-conduct.pdf> Accessed March 17, 2022.

³⁶ San Joaquin County. Code of Ethics Policy - Human Resources. <https://sjcengage.com/wp-content/uploads/2021/09/Ethics-Policy.pdf>. Accessed April 4, 2022.

Figure 3. Tuolumne County Code of Conduct ³⁷



The Grand Jury discovered that a new Code of Conduct was posted on the County website on January 28, 2022 (Figure 4). This is identical to the one adopted in 2011 which still exists on the County website’s list of documents, with the exception that it omits the statement: “Provide accurate and usable information”.³⁸ Since no document control system is used by the County, it is not possible to know if the change is intentional or an oversight. It is clear from the postings on the County website as well as posters in County facilities, however, that the changed Code of Conduct is now considered to be official whether the change was intended or not.

³⁷ Tuolumne County. Vision, Mission, Values, Code of Ethics & Code of Conduct; Five Year Program & Major Projects Plan. <https://www.tuolumnecounty.ca.gov/documentcenter/view/5655> Accessed March 17, 2022.

³⁸ Tuolumne County. Mission, Vision, Values and Ethics Statements. <https://www.tuolumnecounty.ca.gov/766/Mission-Vision-and-Value-Statements> Accessed March 17, 2022.

Figure 4. Code of Conduct on website January 28, 2022



The Institute for Local Government states that legal requirements are minimum standards for ethical conduct—a “floor for conduct, not a ceiling”.³⁹ AB 1234 training describes universal standards for ethics that suggest a higher standard for conduct, including responsible behavior that promotes the best interests of the public and community and does not waste public resources.

Ethics training provided to senior staffers within the County is self-enforced by the recipients and is only required every two years. For new supervisors, this training may not be received until their second year in office. Members of the Board are not required to take other training that could improve their knowledge of state law and regulations or their jurisdictional limitations. Such additional training could improve their effectiveness as County decision-makers and leaders.

³⁹ Institute for Local Government. Understanding Public Service Ethics Laws. <https://www.ca-ilg.org/understanding-public-service-ethics-laws>

Become Familiar with Rules of Order

Resolution No. 23-15, adopted by the Board on February 17, 2015, sets forth the Board's Rules and Regulations "to accomplish the objectives heretofore set forth and to expedite the business of the Board of Supervisors as well as to provide for orderly presentation of matters to be considered. . . ." Resolution No. 23-15 further states: "The rules **shall govern** the presentation and consideration of **all matters** brought before the Tuolumne County Board of Supervisors." (Emphasis added.) Included are rules for agenda preparation in compliance with the Brown Act, Rules for the Chair and Vice-Chairpersons who are responsible for applying the rules for the conduct of the meeting, and Board procedures that govern how meetings are to be conducted.

As previously stated, the Grand Jury discovered that certain members of the Board did not know that the Board is required to follow the Rules and Regulations adopted pursuant to Resolution No. 23-15.⁴⁰ The very existence of these rules was not known to all Board members; others believed them to be only advisory.

In the May 10 and 17, 2022 Board Meeting Agenda, a reference was made to a 2021 draft Tuolumne County Board of Supervisors Governance Manual, yet to be finalized, with the suggestion that it be discussed in a facilitated Board workshop.⁴¹ It was stated "Staff is also recommending the Board commit to a facilitated workshop to finalize the manual." In the Grand Jury's interviews, none of the interviewees had mentioned this draft manual, which was presented to the Board on February 2, 2021.⁴² The Grand Jury is concerned that although it is stated on the first page of the document that it was adopted February 2, 2021; every page of the document contains the watermark "DRAFT".⁴³ It is therefore unclear to the reader what the status of this document actually is. The implementation of a document control system as outlined in Part 1 of this Grand Jury report would enable clarification of this status. The document is encouraging as it provides greater detail than currently available on governance and, if implemented, would address a number of the concerns that the Grand Jury raises. The Grand Jury hopes that this investigation will aid in the finalization of the Governance Manual, and that County staff and Supervisors will become well versed in and rely upon its contents.

⁴⁰ Tuolumne County Board of Supervisors. Resolution 23-15. filed February 17, 2015.

⁴¹ Tuolumne County Board of Supervisors Meeting Agenda for May 17, 2022. CAO Memo May 10, 2022. https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/1377402/BOS_Memo_Agenda_Request_Protocol_5-17-22.pdf

⁴² Tuolumne County Board of Supervisors, meeting Agenda February 2, 2022. https://tuolumneco.granicus.com/AgendaViewer.php?view_id=5&clip_id=484

⁴³ Tuolumne County Board of Supervisors Governance Manual. draft, February 2, 2021. https://tuolumneco.granicus.com/MetaViewer.php?view_id=5&clip_id=484&meta_id=69676

Ask Questions Beforehand and Utilize Staff Expertise

The Board can seek guidance from the Clerk of the Board (who is the CAO), County Counsel, or County department staff about items they wish to put on the agenda concerning their jurisdiction over the items or if the items have other legal implications. Failure to ask for such input may cause wasted meeting time in the form of debating issues of jurisdiction or legality. The Grand Jury is impressed that Tuolumne County has many exceptional staff in various departments. The Board should take advantage of staff's expertise by consulting staff, where appropriate, prior to placing items on the agenda, and utilizing staff during meetings, particularly on items involving specialized or technical expertise. Staff should be scheduled on the agenda and empowered to present at Board meetings when issues are relevant to safety of employees and the citizens of our County.

The Grand Jury has a concern about the possible consequences when Board members present inadequately vetted information in public meetings, especially with regard to sensitive safety matters such as pandemic response. For example, two Supervisors presented information about COVID-19 vaccines at the September 7, 2021 board meeting without review of the information by the department of Public Health. The Grand Jury is concerned that the information presented caused a lack of trust by some community members in the guidelines and orders of the Department of Public Health of the County and the CDPH.

Conclusion

In the response to COVID-19 there are questions that should be answered. Why has Tuolumne County had the second-highest death rate in the state from COVID-19? Why have vaccination rates lagged compared to the state overall? Why has there been so much discord and questioning of scientific information in the County with this pandemic? Was the early response adequately coordinated between elected leadership, department staff, and the community? Could we as a county have done better in the prevention of illness and death? The Grand Jury is not a scientific body whose role is to answer these questions or engage in these debates, but is concerned with the impact on our citizens.

Being an elected official, whether a supervisor, council member, or member of Congress, does not guarantee expertise on every subject. One expects these officials to rely on staff who have more knowledge and experience and to trust their judgment and empower them by actively listening to their guidance and creating a forum for them to present their work. Failing to align presentations with expert input/guidance has an

opportunity cost (what is given up or the tradeoff of time, money, or resources when one choice is made over another). The Grand Jury believes that this failure contributed to the neglect of other important issues facing the County, including the attention to safety and personnel policies noted in Part 1 of this report.

FINDINGS AND RECOMMENDATIONS

Findings

F2.1: The Grand Jury finds that the Board meeting rules and regulations adopted pursuant to Resolution No. 23-15 and the Code of Conduct are not consistently followed or well understood by Board members, contributing to inefficient and ineffective meetings.

F2.2: The Grand Jury finds that the County's Code of Conduct and Code of Ethics are not specific enough to guide Board of Supervisors and staff behavior towards achieving excellence in governance and the omission of "Provide accurate and usable information" in the recently approved Code of Conduct is unexplained.

F2.3: The Grand Jury finds that the Board of Supervisors does not have an adequate, structured training requirement for the subjects of ethics, Code of Conduct, or meeting rules of order.

F2.4: The Grand Jury finds that Supervisors presented material during public Board Meetings without utilizing County professionals to vet the information, resulting in information being presented that was later refuted by the scientific community.

F2.5: The Grand Jury finds that the draft Tuolumne County Board of Supervisors Governance Manual dated February 2021 has not yet been finalized leaving the Administration without an effective governance document.

Recommendations

R2.1: The Board of Supervisors should undergo induction as well as annual training on the Board Rules and Regulations and Board Code of Conduct and Code of Ethics. This should be implemented by December 31, 2022. (F2.1, F2.3)

R2.2: The Board of Supervisors should review, revise, and expand the Code of Conduct and Code of Ethics by December 31, 2022 to include additional details with examples and specific guidance. (F2.2)

R2.3: Supervisors should consult with qualified County staff prior to placing technical or health and safety items on the agenda, to provide accurate and usable information. The Board should revise its Rules and Regulations to include guidance on how this is accomplished and documented by December 31, 2022. (F2.4)

R2.4: The Board of Supervisors should complete, obtain independent review, adopt and implement the draft Tuolumne County Board of Supervisors Governance Manual by December 31, 2022. This should include annual training to ensure supervisors and staff are cognizant of the full contents of the Governance Manual. (F2.5)

REQUESTED RESPONSES

Required Responses

Pursuant to Penal Code section 933(c), responses to all Findings and Recommendations are required from the Board of Supervisors within 90 days.

Invited Responses

Although not required under Penal Code section 933(c), the following responses are invited within 90 days from the report release.

- County Administrative Officer: All Findings and Recommendations.
- Human Resources Director/Risk Manager: Findings F1.1 through F1.5 and Recommendations R1.1 through R1.3

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2020-2022 TUOLUMNE COUNTY GRAND JURY

EMPLOYEE AND PUBLIC SAFETY REPORT

I authorize the 2020-2022 Tuolumne County Grand Jury Employee and Public Safety Report to be released on or after the date of my signature.

DATED this 17th day of June, 2022



LAURA LESLIE KRIEG
Assistant Presiding Judge