

Upland Council Shuns Action On Grand Jury's Altered Document Findings

By Mark Gutglueck

The newly constituted Upland City Council this week granted City Manager Rosemary Hoerning a reprieve, opting not to undertake an investigation that would inevitably have led to fully and unequivocally documenting that Hoerning and Finance Manager Londa Bock-Helms on at least three occasions in 2019 altered documents signed by former City Treasurer Larry Kinley

before they were officially posted.

It is generally known and understood that Hoerning and Bock-Helms were directly involved in preventing Kinley from exercising the purview of his elected office to disclose to city residents a deepening pension debt crisis that threatens to eat up half of the city's general fund and by Fiscal Year 2030-2031, a circumstance that could potentially lead to bank-

ruptcy.

Without directly enunciating so, all five of the city's elected legislators reflected at one level or another an understanding that having the city manager and city finance director identified as the perpetrators of the effort to muzzle Kinley that was described by the grand jury in a report released last month which did not provide the names of those responsible would lead to

a circumstance in which they might then be overwhelmed with calls for Hoerning's and Bock-Helms' terminations.

Instead of commissioning a probe into precisely what had occurred, on the night after two new city council members were sworn into office and an incumbent councilman was elevated to mayor, the city's political leadership showed itself unwilling to challenge the

city's top administrators, tabling the call for an investigation in a city that has lacked stability for a decade and a half.

In this way, the manner in which Hoerning and Bock-Helms, along with three previous city managers and eight current and previous members of the city council slighted Kinley will essentially go unofficially acknowledged by the city, even as a growing number of city **See P 2**

As COVID-19 Cases Spike, SB County Sues Newsom Over Precautionary Restrictions

In a questionably defiant and unquestionably ill-timed legal move, San Bernardino County has lodged with the California Supreme Court a complaint against Governor Gavin Newsom, contesting what it maintains are his overbearing COVID-19 precaution mandates and stay-at-home orders.

The county's challenging of the governor's constitutional authority comes just as the coronavirus pandemic has spiked to unprecedented levels, overwhelming hospitals and medical providers, even as deaths from the condition have increased to the point that Newsom has ordered up 5,000 more body bags for statewide distribution to head off overcrowding within the Golden State's morgues.

Of substantial note, is that San Bernardino County is pursuing legal relief from the governor's order while statistics demonstrate that San Bernardino County's current infection rates on a per capita basis are out-running those of California's 57 other counties.

Incomprehensibly, San Bernardino County's filing asserts communities with fewer COVID-19 infections should have fewer restrictions. Nevertheless, San Bernardino County has recently, and continues to, evince an infection rate unparalleled in the region and the state. Over the last two months, as measured by the state's statistics relating to the cases of infection and its graduated system of granting counties an exit from the precautionary restrictions, San Bernardino **See P 5**

Granted Intervention, Red Brennan Group Papers Judge In Suit To Vacate Measure K

Today, San Bernardino County Superior Court Judge David Cohn approved a motion by The Red Brennan Group to intervene in a lawsuit the members of the county board of supervisors are pursuing in an effort to overturn Measure K, a local government reform effort passed by voters in the November election. Approved by more than

two-thirds of the county's voters, the initiative sets total compensation for an elected supervisor at \$60,000 per year and limits an elected supervisor to a single four-year term.

The Red Brennan Group sponsored Measure K this year, eight years after the late Kieran "Red" Brennan led a similar county govern-

ment reform effort, the centerpiece of which was a pay-and-benefits reduction initiative, Measure R, passed by the voters in the November 2012 election. Measure R called for reducing each individual board member's total annual compensation – salary and benefits of just under \$220,000 – by nearly \$160,000 to \$60,000. The

supervisors at that time were able to sidestep Measure R by putting their own "reform" measure on the same ballot, Measure Q, which called for leaving the supervisors' \$151,000 salaries intact while reducing their \$69,000 in yearly benefits to \$64,000, such that their annual compensation totaled just under \$215,000. The

supervisors heavily promoted Measure Q as a "sensible" reform effort, and while Measure R passed by a convincing 64.25 percent to 35.75 percent, with 326,939 voters in favor of it and 181,907 opposed, Measure Q achieved passage by a 67.28 percent to 32.72 percent margin, 344,226 votes in support to 157,369 **See P 3**

Sone To Replace Gardner As County Public Defender, At Least Temporarily

Thomas Sone, San Bernardino County's assistant public defender since 2018, will replace Christopher Gardner as public defender in the immediate aftermath of Gardner's resignation last week.

Christopher Gardner had served as public defender since the exit of former Public Defender Phyllis K. Morris in 2018.

At that time, Thomas W. Sone, a senior liti-



Thomas Sone

gator in the public defender's office who had gotten his undergraduate bachelor of arts degree at Washington State

Law School and then attended law school at the University of San Diego before passing the California Bar examination on December 8, 1999, was appointed the assistant public defender on March 31, 2018.

Gardner's resignation and Sone's appointment to replace him was announced in a December 9 email to county employees from San Bernardino County Chief Executive Officer Leon-



Christopher Gardner

ard X. Hernandez. The public defender's office provides legal defense to indigent residents of San Bernardino

County who have been criminally charged.

Lawyers from the District Attorney's Office are the primary adversaries of the attorneys with the public defender's office.

While the district attorney is an elected position, the public defender is appointed to carry out the role of providing legal representation to those who cannot afford it by the county board of supervisors

Across County, Newly Elected And Incumbant Officeholders Installed Until 2024

Phil Courtney has replaced Barstow Mayor Julie Hackbarth-McIntyre and Marilyn Dyer-Kruse has supplanted District 4 Councilwoman Carmen Hernandez in San Bernardino County's northernmost city. Barbara Rose, who was likewise elected on November 3, will fill the vacancy in the city's District 3 that came after the resigna-

tion of Rich Harpole 12 months ago.

In the City of Big Bear Lake on December 14, Alan Lee succeeded Bill Jahn as District 1 Councilman, and Bynette Mote moved into the District 5 post formerly held by Bob Jackowski. At the same meeting, Dave Caretto was elevated by his colleagues to serve as mayor.

Jesse Sandoval, who

was reelected to the Fontana City Council to represent District 2 and former School District Trustee and former Planning Commissioner Peter Garcia who was elected to represent District 3, were sworn in during the Fontana City Council meeting on December 8. Sandoval was issued the oath of office by San Bernardino County Second District

Supervisor Janice Ruth-erford. Garcia was sworn in by Mayor Acquanetta Warren.

In Hesperia, the three incumbents competing in this year's race, Mayor Larry Bird, Rebekah Swanson and Brigit Bennington, were victorious.

This month, Bird surrendered the mayoral gavel to Councilman Cameron Gregg, who was selected to the post

on a 4-to-1 vote, with Swanson dissenting. Bennington was selected to serve as mayor pro tem.

In Highland this year, no opponents came forward to run against incumbents Jesus "Jesse" Chavez in District 1, Penny Lilburn in District 3, and Mayor Larry McCallon in District 5. Upon the trio being sworn in **See P 5**

At Every Turn, Upland City Officials Blocked Former Treasurer Kinley In His Effort To Warn Residents About Burgeoning Pension Debt Crisis *from front page*

residents are becoming acutely aware and concerned over the issue Kinley fought so valiantly, albeit ineffectually, to highlight during his time in office.

California in general has a looming pension debt crisis that is threatening the provision of public services and the financial viability among its various counties, agencies and 192 of California's 453 municipalities. In some cities, the financial crisis is so severe that those entities are in danger of an eventual bankruptcy.

Former Mayor Pomierski committed city to paying retirees hefty retirement benefits

In Upland, the pension debt, already a serious problem, is escalating on a per capita scale that is outrunning that of all but 13 of California's cities. Upland's pension debt crisis has been exacerbated by a succession of civic leaders, elected, appointed and hired, whose actions enriched themselves, put their personal ambition above the interests of those they were elected to serve, and severely compromised the city's finances.

John Pomierski was Upland mayor for more than a decade, from December 2000 until March 2011, at which point he was indicted by a federal grand jury on political corruption charges, including bribetaking, and ultimately convicted and imprisoned. Pomierski's depredations included taking bribes and kickbacks from entities seeking project approval, contracts or franchises from the city. To quell talk about his activity, Pomierski arranged to buy the silence of the handful of city employees who recognized what he was up to, and the larger circle of city employees who had suspi-

cions, by increasing their salaries and benefits. Doing so without making it obvious that a cabal of city employees, including members of the police department, were in on the graft entailed increasing the salary and benefits for virtually all of the city's employees, including fattening their pensions.

Initially this was done in correspondence to the California Public Employees Retirement System's confident projections that such generosity to those involved in the retirement system, including Upland's municipal employees, could be sustained indefinitely, based on the performance of the stock market, in which the California Public Employees Retirement System (commonly called CalPERS) was heavily invested. The CalPERS model called for the state and participating counties, cities and agencies providing an agreed-upon per-year contribution generally set as a percentage of the salaries paid to the participants, which was then invested in various instruments, including stocks, bonds and real estate. As long as those investments showed an annual return of 7.5 percent, CalPERS was able to meet all of its commitments to the growing numbers of public sector retirees who were participants. In those cases where the combined investment returns failed to meet the 7.5 percent annual goal, the public agencies would make up the shortfall with payments to CalPERS. A booming stock market in the late 1990s and early 2000s kept the state, counties, cities and agencies from having to shore up the retirement system and led to the atmosphere in which Upland, like many other cities, was able to offer its employees ever more generous retirement benefits. But the stock market panic of 2007 and major economic downturn – sometimes referred to as the Great Recession – which lingered until 2014, illustrated the hazard of making those open-ended commitments to public employees. As the economy contract-

ed and investments on returns diminished or foundered altogether, Upland diverted general fund money that would have otherwise gone to the provision of services. The city was no longer able to construct new, or engage in the maintenance or refurbishing of existing, infrastructure. Nor could it make capital improvements. The added burden of making up the CalPERS losses meant that rather than accruing reserves, the city was instead spending down what reserves it once had to balance its yearly budgets. Meanwhile, with the retirement of more and more city workers and the dwindling of revenue into the city that accompanied the Great Recession, the city saw its projected pension debt – consisting of what it was committed to pay its retirees going forward based on the amount of money owed to them each year and the actuarial statistics relating to how long they would live and would therefore be collecting that annual retirement stipend – escalate astronomically. In this way, as of June 30, 2012, the City of Upland's unfunded pension liability, calculated on an actuarial basis, had reached \$88,994,066.

Kinley became concerned over Upland's precarious financial state.

That same year – 2012 – two fateful events occurred. The certified public accounting firm Mayer Hoffman and McCann, retained by the City of Upland to prepare its annual financial reports, offered an auditor's opinion stating that there were serious questions with regard to the city's solvency to the point that in a short while "it will be unable to continue as a going concern." Almost simultaneously, Larry Kinley, an Upland resident who had worked for Bank of America for 42 years, the last 15 of which he was that institution's vice-president overseeing the problem loan administration department dealing with borrowers with financial difficulties, retired. Some months later, in early 2013, Kinley by

chance heard that Standard and Poor's Financial Services intended to downgrade the City of Upland's credit rating. Indulging the interest and expertise he had cultivated professionally, he began looking into the situation involving his city, at which point he came across the 2012 auditor's report from Mayer Hoffman and McCann. With some idle time on his hands, Kinley began acquainting himself with city officials and residents who were interested in civic affairs, expressing to those who would listen to his concern that the city was not going to be able to generate sufficient revenue to outrun the pension debt, and that some means of attenuating or reversing its growth had to be found, such as shifting the burden for defraying its cost from the city's taxpayers to the eventual recipients of the largesse, the city's current employees themselves, or radically reducing the benefits to be paid.

In 2016, when the city's then-current treasurer, Dan Morgan, opted out of running for reelection as treasurer to instead seek a seat on the city council, Kinley, thinking that might give him the opportunity to capture a platform within City of Upland's governmental structure from which he would have the opportunity to, first, inform the city's residents of the financial crisis about to overtake the city and, second, form the collective will to do something about it, ran for the treasurer's post. Also running was Stephen Dunn, who had departed as Upland city manager in 2014 and who had served in the role of Upland's finance director prior to that. Campaigning on a platform that made reference to the unfunded pension liability while noting that Dunn was a pensioner drawing a \$104,000 annual pension who therefore might not be sensitive to the need for pension reform, Kinley handily won the 2016 election for treasurer, capturing 16,625 votes or 62.46 percent to Dunn's 9,992 votes or 37.54 percent. Kin-

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ley's performance in that election made him the top vote-getter among all of the city's elected officials, including the council members and the mayor.

Heartened by his victory, Kinley somewhat confidently took office, assuming he was going to be provided with the accommodations and authority befitting the city's elected treasurer, and would receive the benefit of cooperation and access to the information, data and personnel assigned to the city's finance department.

In addition to carrying out the standard duties of the city's treasurer, Kinley was resolved to see that he continued in his elected capacity to bring the same degree of focus to the unfunded pension liability issue as he had as a candidate. He saw this as part of an effort to get Upland's citizenry to take up and embrace the concept of pension reform, such that the burden of paying for the hefty pensions would be transferred from the taxpayers and future taxpayers to the city's employees, who would be called upon to drastically increase their contributions toward sustaining the pension fund as a part of contract negotiations.

The way Kinley viewed it, if the city's employees were to be provided with retirement benefits that were unparalleled in the private sector, such that city employees could depend on collecting pensions that in most cases exceeded what well-paid individuals in the private sector were paid while they were yet employed,

those city workers could justifiably be called upon to adjust to a pay-as-you-go arrangement that would call on them to make ongoing contributions into the retirement fund while they were employed with the city that would sustain the retirement system rather than allow it to persist as a burden upon the city, which had to sacrifice the depth and quality of services it has to supply to its residents in the here and now in order to continue to pay former city employees who are no longer working.

It was Kinley's intention that he would constantly recalculate the degree to which Upland's unfunded pension liability was increasing, and relay that information to the Upland public-at-large. The \$88,994,066 in unfunded liability as of June 2012 that had first caught Kinley's attention steadily mounted thereafter, reaching \$99,976,917 as of June 30, 2018, and then climbing ever more steeply thereafter, hitting \$112,039,675 as of June 30, 2019 and \$120,920,721 as of June 30, 2020.

Kinley also kept an eye on how much, as a percentage of the budget, payments into the retirement pool consumed money from the city's general fund.

As treasurer, he approached other officials at City Hall, informing them that he wanted to kickstart the pension reform movement in Upland by having the city carve out for him an opportunity to weigh in, albeit briefly, during

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Red Brennan Group Granted Status To Respond To Suit To Block Measure K Reforms *from front page*

against it. Because Measure Q passed by more votes than did Measure R, the supervisors' measure went into effect instead of Red Brennan's.

This year, after the Red Brennan Group and the chief proponent of what was ultimately designated by the county registrar of voters as Measure K, Nadia Renner, succeeded in gathering 75,132 signatures of county voters to put that initiative on the November ballot, the board of supervisors attempted to repeat what had occurred in 2012 by using its power as an elected body to place an alternative initiative on the ballot, one which was billed again as a reform measure that would adjust certain outdated language used in the county charter and also set the board members' individual compensation packages at \$290,000. Measure J further replicated an existing limitation of three four-year terms on supervisors. It was the supervisors' collective hope that just as Measure Q had outperformed Measure R at the polls in 2012, their measure in 2020, designated by the registrar of voters as Measure J, would likewise gather more support than Measure K, and thus keep the pay reductions in Measure K from going into effect. As it turned out, however, Measure K did much better at the polls than did Measure J. Measure K passed with 516,184 or 66.84 percent of the 772,282 voters participating supporting it, and 256,098 voters or 33.16 percent opposed.

According to the final

certified election results released by the San Bernardino County Registrar of Voters, Measure J passed, with 378,964 votes or 50.72 percent of the 747,188 votes cast supporting it and 368,224 or 49.28 percent opposed.

Under state law, a conflict between the provisions of two measures simultaneously adopted by the voters is resolved by implementing the provisions of the winning measure that gets the most votes and disregarding the conflicting provisions of a winning measure that gets fewer votes. This principle was applied in 2012 with regard to the conflicting provisions of measures Q and R. Expectations were this year that Measure K's provisions – consisting of limiting supervisors to a total annual compensation of \$60,000 and a single four-year term – would by virtue of the greater number of votes it received trump Measure J's provisions allowing a supervisor a \$290,000 per year stipend including salary and benefits and the option of serving three four-year terms, subject to the will of the voters in three separate elections.

Once the election results were certified, the board of supervisors, using taxpayer funds, contracted with three Los Angeles-based attorneys - Bradley Hertz, James Sutton and Nicholas Sanders – to take legal action to block Measure K from going into effect. In their suit on behalf of the board of supervisors, Hertz, Sutton and Sanders did not sue the Red Brennan Group or Renner, but rather the supervisors' own employee, San Bernardino County Clerk of the Board Lynna Monell. The legal action, a petition for a writ of man-

date, alleges that Measure K is fatally flawed because it "violates California Constitution Article XI, Section 1(b) by seeking to set supervisor compensation via citizen initiative... [and] it exceeds the initiative power of the electorate by intruding on matters that are exclusively delegated to the governing body, in this case the San Bernardino County Board of Supervisors... [and its] term limit provision for members of the county board of supervisors violates the First and Fourteenth Amendments to the United States Constitution [by] impermissibly infring[ing] on voters' and incumbents' First and Fourteenth Amendment rights." Additionally, the writ of mandate maintains Measure K violates what "the single subject rule" pertaining to voter initiatives and that "Measure K must not be implemented because it does not embrace a single subject."

A hearing on the petition for a writ of mandate was held on December 4 before San Bernardino Superior Court Judge David Cohn.

Hertz, Sutton and Sanders pressed Judge Cohn to grant their motion for a temporary restraining order to halt the implementation of Measure K while the petition for a writ of mandate is being litigated.

The Red Brennan Group, which has been authorized by Measure K's official proponent, Renner, to defend her interests, was present at the hearing in the form of its attorney Aaron Burden. Also in attendance was attorney Cory Briggs, representing the Inland Oversight Committee. Both Burden and Briggs, on behalf of their clients, had drafted and submitted motions to intervene as defendants in the case. Judge Cohn, initially, held the position that neither Burden nor Briggs nor the Red Brennan Group nor the Inland Oversight Committee were parties involved in the matter, as the board of supervisors' suit is against the clerk of the board, and as such they did not have status to involve themselves in the proceedings. The pe-

tion for a writ of mandate requests that the court order Monell "not to take any actions that would cause the implementation of Measure K's provisions."

Judge Cohn on December 4 appeared poised to rule in favor of the board of supervisors and grant the temporary restraining order. When, however, Briggs asserted there was a question as to whether the court had jurisdiction in interfering with a matter already decided by a vote of the people, Judge Cohn balked, thereafter delaying his decision, and he gave both Burden and Briggs an opportunity to file by Friday, December 11, briefs supporting why the Red Brennan Group's and the Inland Oversight Committee's motions to intervene should be granted, allowing them a seat at the table to argue the case against the petition for a writ of mandate's request that Measure K be prevented from going into effect. Judge Cohn gave Hertz, Sutton and Sanders until Monday, December 14 to submit a brief as to why Measure K is to be stayed.

It is the Red Brennan Group's position that upon the election results being certified, voter-mandated Measure K became a county ordinance, and, according-

ly, the San Bernardino County Office of County Counsel, the county's in-house stable of lawyers headed by County Counsel Michelle Blakemore, is responsible to defend both Measure K, on behalf of the voters who passed it, and Monell, as the clerk of the board and a county employee. Blakemore and the office of county counsel, however, have not undertaken to defend either in court filings or in open court discussion.

The result, the Red Brennan Group maintains, is that "an initiative approved by over 66% of county voters is being ignored by the public servants sworn to protect the voters' interests."

Today's hearing on the motions to intervene began in Judge Cohn's court and ultimately ended later that day in front of Judge Donald Alvarez.

Judge Cohn, in accordance with settled law, approved the Red Brennan Group's motion to intervene. Thereupon the group's attorney, Aaron Burden, immediately followed with a preemptory challenge of Judge Cohn, based on the group's belief it will not be able to have a fair and impartial trial or hearing before him. The matter was then sent to Judge Alvarez for his

consideration.

Upon taking the case up, Judge Alvarez delayed further rulings pertaining to motions now pending, and scheduled a hearing for January 28. At that point he is to hear the motion to intervene from the Inland Oversight Committee and to consider the board of supervisors' request for a temporary restraining order.

The supervisors and their supporters argue that the reduction of their pay would be bad public policy and harm the quality of the county's governance. The Red Brennan Group maintains putting the reins of county power in the hands of elected officials remunerated at a level equal to the income of the average county household and chosen to serve a single term will create a new culture of politics in which the incentive to remain in office will be removed, thereby preventing the corruption of government function by donors willing to donate tens of thousands or hundreds of thousands or even millions of dollars to officeholders to gain control of their decision-making authority over those donors' projects or applications for county contracts or franchises.

-Mark Gutglueck

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High Ranking City Officials, Due To Receive Annual Pensions Exceeding \$125,000 And As High As \$220,000, Continuously Sought To Muzzle City Treasurer Kinley As He Raised Pension Debt Crisis Issue

from page 2

city council meetings, through a forum from which he could give a concise overview of the city's financial picture, perhaps from a seat provided to the city treasurer on the council dais, as is the case in some other Southern California cities.

What Kinley had not counted on, however, was the reaction he would get from Martin Thouvenell, Upland's former police chief, who was serving as the city's interim city manager. Thouvenell, when he was hired into the interim position in July 2016, was originally supposed to remain in that capacity for only a brief interlude while a full-fledged city manager was being recruited. As it turned out, however, Thouvenell remained in that post for 18 months, a duration in place that was actually longer than the tenures of the two city managers who served before him and the two who served after him. When Kinley engaged with Thouvenell, himself a pensioner who was receiving the second-highest pension among the legion of Upland retirees – roughly \$157,000 per year at that point, which now stands at \$170,000 this year – he told him of his plans to spark pension reform from the bully pulpit within the council chambers as a co-equal with the rest of the city's elected lead-

ership. Thouvenell, reminding Kinley that he was not only a newcomer to the public sector but a rookie elected public official with no experience to speak of, let him know that as such Kinley was hardly qualified to lecture anyone on issues central to the function of the government. He informed Kinley that no one was interested in hearing Kinley prattle on about how the sky would be buried under an avalanche of pension debt. There would be no forum for him as city treasurer, Thouvenell told him, and that was it.

If Kinley wanted to sound his dire warnings about the unfunded pension liability at those forums, he would not be given a platform to do so as city treasurer, but had to present a speaker card to the city clerk and make his presentation from the podium provided to members of the public. On those occasions when Kinley summoned up the dignity to do so, if his message did not contain itself to the three minutes allotted to public speakers, then Mayor Debbie Stone, who had received 588 fewer votes for mayor than Kinley had received for treasurer in the 2016 election and who had heard as much about the city's unfunded pension liability as she could stand, would shut off the microphone.

Kinley battled on, undercut at virtually every turn. He was able to score one significant and meaningful breakthrough, though it was grudgingly conceded to him. Using his status as city treasurer and the authority of his elected position, he arranged to have not only a reference to the unfunded pension liability made in the city's comprehensive annual financial report, but a projection of where that liability stood as of June 30, the end of each fiscal year, based upon actuarials composed of the pensions being provided to the city's retirees, their ages and current average life expectancy.

It grew clear that Upland's city employees were far less alarmed over the pension debt crisis than was Kinley.

A somewhat frustrated Kinley told the *Sentinel* at that time that city staff members "have no incentive to check on it [the unfunded pension liability] at all because doing so might interfere with their pension plans. They have too much tied up in the way things are to enable me to do things as treasurer where I might be able to show everyone that those pension plans are going to eventually bankrupt the city. The pension plan investments do not generate enough money to pay the pensioners, so the city has to make up the difference. That's what we're facing."

Thouvenell remained in the capacity of acting city manager throughout 2017, succeeded by Bill Manis, who had been lured to

Upland from his position as Rosemead city manager with the offer of an increase in annual salary from \$195,000 to \$250,000 and increase in total annual compensation, including both pay and benefits, from \$259,000 per year to a total annual compensation of \$368,000. But Manis, whose move into the Upland City manager post meant that he would be able to see his entitlement to a pension under CalPERS retirement formula with his anticipated retirement in 2021 rise from \$170,000 to \$218,000, was likewise in no mood to indulge Kinley in his efforts to bring awareness to the financial crisis the city's pension commitments entail. And even if Kinley had proven able to use his status as the city's elected treasurer to convince Manis that he should be allowed a forum at City Hall or during city council meetings from which he could engage the public, such a move would have been vetoed by Thouvenell, who remained as a management consultant under contract with the city to advise Manis at least through the end of 2018.

As it turned out, Manis remained in place only until September of 2018, at which point he departed with an official separation date of November 1. He was succeeded by Deputy City Manager Jeannette Vagnozzi. In December 2018, Thouvenell severed his contract as the city's management consultant one month early.

The departure of Thouvenell cleared the

way for Kinley to once more try to undertake the information campaign relating to the pension issues, but Vagnozzi, like her predecessors, had a lot riding on the perpetuation of the pension set-up as it exists. She had been hired as deputy city manager in Upland in 2015 after having accumulated 26 years as a municipal employee. As deputy city manager, she was earning a \$139,000 annual salary before benefits. After almost three years, she had promoted to assistant city manager, which paid \$147,000 in salary minus benefits. In promoting to city manager, her salary had increased to \$205,000 per year. Her contract ran until January 1, 2022, with an option for a three-year extension. Vagnozzi's promotion to city manager conferred upon her the advantage of an increased multiplier of 2.5 percent per year being used in her pension calculation, such that if she were to remain in position until 2025, as was a possibility under her contract, given the 3 percent annual cost of living adjustment she would be due, Vagnozzi would be receiving an annual salary of at least \$244,780 by 2025, making her eligible for an annual pension of \$220,302 [$\$244,780 \times 36 \text{ (years)} \times 2.5 \text{ percent}$]. Thus, Vagnozzi was opposed to allowing Kinley a forum to make his case.

Vagnozzi's tenure as city manager was even more attenuated than that of Manis. She was jettisoned by the city council in May 2019. She was succeeded by

the city's public works director, Rosemary Hoerning.

Stymied by a succession of city managers, all of whom had a personal interest in the perpetuation of the pension system as it exists, Kinley resolved that he would tarry no longer.

Kinley resolved to use the forum of the monthly treasurer's report to knell his warning about the city's skyrocketing pension costs.

Taking stock in early 2019 of the implication of his calculation that at the end of Fiscal Year 2018-19 as of June 30, 2019 that Upland's unfunded pension liability would reach \$112,039,675, up from \$99,976,917 at the end of Fiscal Year 2017-18, he redoubled his efforts to get the issue front and center before the residents of Upland. At the rate it is metastasizing, the runaway unfunded pension liability will monopolize 60 percent of the city's general fund by 2030, meaning the city will be paying 60 cents out of every dollar it spends to pay people who are no longer working for the city. Desperate for a forum from which to project his alarm, Kinley set his sights on the monthly treasurer's report that traditionally was posted publicly as part of the first city council meeting of each month. Treasurer's reports are a relatively common document among municipalities, one which lays out what the city has over its history up until the present salted away in terms

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With Cases & Deaths Skyrocketing, San Bernardino County Sues Governor Over COVID-19 Restrictions *from front page*

County's rate for the spread of the COVID-19 contagion has kept it in the state's most restrictive tier, which does not permit any indoor dining at restaurants, shutter certain types of businesses and disallows worship at churches.

San Bernardino County is collectivized with 11 counties from the Baja California border northward labeled the Southern California Region, which accounts for more than half of the state's population. The Southern California Region, is subject to a stay-at-home order, which is in effect at least until Christmas. That order, which Governor Newsom was advised to make by the state's brain trust of medical authorities, was triggered when the occupancy rate within the intensive care units in the region's hospitals eclipsed 85 percent in the days after Thanksgiving. Newsome cited the California Emergency Services Act in imposing the preventative mandates, which went into effect in the Southern California Region as of Sunday, December 6.

The California Emergency Services Act provides the governor with "complete authority over all agencies of the state government" to "promulgate, issue, and enforce such orders and regulations as he deems necessary."

As the state's fifth-most populous county with 2.2 million residents, San Bernardino County has the second-highest number of coronavirus cases among California counties, with only 11.5-million population Los Angeles County having more. In Los Angeles County as of this week, there had been 566,000 confirmed cases of coronavirus infection, a known rate of infection of 5.39 percent among its residents. San Bernardino County as of yesterday, Thursday, December 17, had

a reported 144,455 confirmed cases, a known rate of infection of 6.566 percent.

Additionally, yesterday, San Bernardino County experienced its largest single-day increase in the number of reported cases, as the number of known infectees leapt by 9,383, along with 19 reported virus-related deaths. Since the start of the pandemic in February, California has logged 21,194 deaths wholly or partially attributed to COVID-19. Of that number, 1,241 occurred in San Bernardino County.

A critical statistic considered by the state in mandating and maintaining precautionary measures relates to the availability of medical facilities, including both hospital beds overall and intensive care unit capacity specifically. Following the Thanksgiving weekend, the numbers of those hospitalized with COVID-19 symptoms began to steadily climb. On November 30, the number of available beds in the Southern California Region's hospitals stood at 15 percent. There was a slight respite less than a week thereafter, when 20.3 percent of the intensive care unit beds were unoccupied regionally. By Saturday, December 12, the number of available intensive care unit beds in the Southern California Region hovered at 4 percent, although reportedly at that point the number of intensive care unit beds in San Bernardino County had not dwindled as low as in surrounding counties. Two days ago, on Wednesday, 1.4 percent of the intensive care unit beds in the Southern California Region were unoccupied. As of yesterday three days after San Bernardino County asked the Supreme Court to remove it from the governor's mandate, every intensive care unit bed in the 11-county Southern California Region was occupied.

San Bernardino County had 1,413 confirmed COVID-19 patients in its hospitals as of yesterday, 94 more than the 1,319 with Coronavirus symptoms hos-

pitalized throughout the county the previous day, Wednesday, December 16. As of yesterday, all 569 of the county's intensive care unit beds were occupied, 271 of them with those experiencing critical COVID-19 symptoms.

Nevertheless, on Monday, San Bernardino County had lodged a filing with the California Supreme Court claiming that Governor Newsom and the state government were being unduly alarmist in applying stay-at-home orders and other restrictions to San Bernardino County, its residents and its businesses. It sought an exemption from the regional guidelines pertaining to itself as well as Imperial, Inyo, Los Angeles, Mono, Orange, Riverside, San Diego, San Luis Obispo, Santa Barbara and Ventura counties, and a decree from the Supreme Court that the county would be able to ascertain what restrictions should be applied to residents and businesses within its jurisdiction without interference from the governor.

The county said it should be allowed to reclaim "its constitutional authority to tailor regulations and orders which are specific to its residents based on facts which are unique to their locations rather than subject its residents to overbroad multi-county, governor-implemented, regionalized lockdowns."

Chairman of the San Bernardino County Board of Supervisors Curt Hagman said Newsom has overstepped his authority. "The governor is not permitted to act as both the executive and legislative branch for nine months under the California Emergency Services Act," Hagman said. "If it is concluded that the act allows him to do so, the act is unconstitutional as it permits the delegation of the legislature's powers to the executive branch in violation of the California Constitution."

County officials have said they should be able to fine-tune the governmental regulations pertaining to the health

threat that will be imposed locally rather than having the county, its residents and businesses subject to an edict from on high in Sacramento.

According to the lawsuit, San Bernardino County has squandered considerable resources in enforcing the governor's order, including expending 117,281.5 sheriff's department man-hours, including 24,356.5 overtime hours on COVID-19-related activities. Furthermore, according to the suit, the San Bernardino County Department of Public Health has seen its attention diverted from the provision of other critical services to county residents, such as public health education, family services, nutrition and animal control. "The respondents subjectively decided that these services were secondary to the enforcement of their stay-at-home laws, requiring the San Bernardino County Department of Public Health to enforce respondents' legislative acts instead of allowing the San Bernardino County Department of Public Health to provide important services to county residents," according to the lawsuit.

Forcing the San Bernardino County Department of Public Health to focus on the state's priorities will be counterproductive, according to the lawsuit, now that inoculating the county's population with the coronavirus vaccine is a task that should be undertaken.

The lawsuit was not lodged at the level of the Superior Court or with any appellate districts, but rather directly to the California Supreme Court on December 14. It maintains that Governor Newsom does not have the legal or constitutional authority to ban gatherings, close businesses deemed nonessential, curtail dining at restaurants or prevent a restaurant's occupancy from exceeding 20 percent of normal capacity set by an applicable local fire code. The filing requested that the Supreme Court render a decision on the request by Monday, December 28, at which time the three-

week stay-at-home order is set to elapse, with an option for Newsom to extend it. The county began preparations to file the lawsuit in November, prior to Newsom's order going into effect on December 6.

The county board of supervisors had contemplated, when the concept of a lawsuit against the state was first being discussed in November, of joining in with the region's other counties in filing the suit. That approach fell apart, however, when the counties of Ventura, Santa Barbara, and San Luis Obispo themselves approached the state, saying they should be excused from the order because it was unfair for them to be lumped in with counties experiencing high rates of infection such as San Bernardino County.

The county is hoping to replicate the success achieved in Michigan in October when the Michigan Supreme Court struck down COVID-19 precautionary orders put into effect by Democratic Governor Gretchen Whitmer after Michigan's Republican state state legislators challenged her authority at the trial court and appellate court levels.

Most legal observers rate the prospect of San

Bernardino County prevailing in its action as low, given the blanket nature of the authority invested in the governor by the California Emergency Services Act and the escalating COVID-19 infection rates and COVID-19-related deaths in the county.

A telling indicator is that the county is represented in the action by the Murrieta-based law firm of Tyler & Bursch, whose principal, Robert Tyler, in Southern California is known as the patron saint of lost legal causes. In 2016, the Chino Valley School District, having already been rebuffed by the federal court in Riverside over its policy of engaging in prayer, specifically evangelical Christian prayer at public meetings, appealed the ruling, with Tyler as its legal representative.

Ultimately, the District Court's ruling was upheld and the school district, which had already been ordered in 2016 to pay \$202,971.70 to the Freedom From Religion Foundation for its attorney's fees and other costs, was called upon once more in 2019 to cover the Freedom From Religion Foundation's roughly \$147,000 in legal costs accruing during the appeal.

Officeholders Installed

from front page

to serve in those positions for the next four years, the council appointed Lilburn to serve as mayor for 2021 and McCallon as mayor pro tem. Chavez, who filed a Brown Act complaint a year ago when he was not honored with the mayoral appointment, accepted without objection that he had been bypassed again this year.

In Rialto, where Mayor Deborah Robertson and councilmen Rafael Trujillo and Andy Carrizales were handily re-elected while Councilman Joe Baca, Jr. was successful in his bid for Fifth District County supervisor, the council last week appointed Karla Perez to fill the vacancy that had been created by Baca's resignation to

take up the county position.

In Upland, where Bill Velto ousted former Mayor Debbie Stone, Velto and newly-elected First District Councilwoman Shannan Maust and Third District Councilman Carlos Garcia were sworn into office on Monday.

In Yucaipa, two new and one incumbent councilmen have been sworn into office for the next four years. Justin Beaver, who defeated Stacey Chester in November, was sworn into the city's District 4 post, replacing longtime councilwoman Denise Hoyt; Dick Ridell, who had been one of the longest serving council members in San Bernardino County, was defeated by Jon Thorp in the city's District 5 election. Councilman Bobbie Duncan was retained by the voters.

After Seeking To Augment Treasurer's Report With A Tally Of The City's Pension Debt And Being Rebuffed, Kinley Went To the District Attorney

from page 4

of its surpluses garnered from revenue in excess of its expenditures in current and past budgetary cycles, and delineates how and where that money is invested. Typically, a treasurer's report is current to approximately 60 days prior to its issuance, and it shows the amount of money the city has in investment funds, shared investment funds with other municipalities, interest-bearing bank accounts and change funds, securities, money market funds, government agency securities, corporate bonds and U.S. Treasury notes. Municipalities generally present their treasurer's reports to the treasurer before they are made public, so that the treasurer can inspect and sign them.

Figuring that the treasurer's report is a listing of the net assets the city has, and further reasoning that any indebtedness against those assets would impact the total amount of available savings, Kinley believed that the city's outstanding debt would be properly listed on the treasurer's report.

Kinley realized, however, that in Upland he was isolated on the issue relating to creating a public awareness of the city's pension debt, as the other elected officials at City Hall – the mayor and city council – were highly dependent upon political donations from the city's employees' unions, who wanted to preserve the pension system status quo. Instead of going out on a limb and simply adopting the treasurer's report from what was presented to him into a more comprehensive accounting of the city's financial picture using his own authority, Kinley instead sought backing for what he was going to do by

going further up the governmental evolutionary chain, getting from state financial affairs experts clearance for what he planned to do.

"I called the state treasurer's office to ask if there is something I can do to ensure I am able to fulfill my duties as I see them," Kinley told the *Sentinel* in 2019. "I was handed over to one of their lawyers. The first question I was asked was 'Who do you report to?' I said, 'Per the city's organizational chart, I report to the citizens of Upland. That is the only line going to anyone above me. The lines from me or to me go down to the rest of the city staff.' The lawyer's comment was, 'Therefore, since there is no one in the city with higher authority on financial issues than you, you are independent and you can add the information you deem relevant to the treasurer's report.'"

Kinley next consulted the California Government Code relating to a municipality's financial reports. California Government Code § 53646 requires and authorizes municipalities to carry out financial reporting no less frequently than quarterly. There is nothing in California Government Code § 53646 which expressly forbids a city treasurer from making mention of the city's unfunded financial liabilities in a statement of investment policy, which, California Government Code § 53646 states, "the board [i.e., the city council] shall review and approve at a public meeting."

Indeed, in subparagraph 3, California Government Code § 53646 reads, "The quarterly report shall include a statement denoting the ability of the local agency to meet its pool's expenditure requirements for the next six months, or provide an explanation as to why sufficient money shall, or may, not be available."

If questioned about what he was next going to do, Kinley was prepared to contend that the city's unfunded pension liability has the potential for preventing the city from meeting future expenditure requirements.

Based on that, when

the treasurer's report was next given to him, Kinley took what he calculated would be the first incremental step to giving Upland's citizenry a window on the pension debt that was about to eat the city alive.

"What I wanted to do in the treasurer's report was add a comment as the treasurer about the city's pension liability, to see if I could get it in there," Kinley told the *Sentinel* in 2019. "I wanted to provide both sides of the balance sheet, the net, if you will, which would include not just our assets but our liabilities." He handwrote onto the treasurer's report a note that showed his calculation of what the city's unfunded liability was at that point. Then he signed the report.

When Kinley tallied the pension debt and put it into the treasurer's report, city officials erased it.

City Manager Jeanette Vagnozzi, and later, City Manager Rosemary Hoerning and Finance Officer Londa Bock-Helms were having none of that, however. Vagnozzi, Hoerning and Bock-Helms all had or have a dog in the hunt when it comes to the pension system. Vagnozzi stood to achieve, eventually, an annual pension of \$220,302. If Hoerning remains in place another three years as city manager in accordance with the elements in her contract, she will be eligible for a \$219,911 annual pension [$\$251,327.21 \times 35$ (years) $\times 2.5$ percent]. Should Bock-Helms promote from her current position of finance manager and accede to that of Upland's finance director, as she is at present on a trajectory to reach, she would be likely to top out at a salary of somewhere between \$160,000 and \$175,000. If Bock-Helms, retires with 35 years as a municipal employee, that being the sum total of her years as an Upland employee and with the City of Murrietta, where she was employed previously, she will likely be, at the very least, eligible for a pension of \$126,000 per year [based upon a formula of $\$160,000 \times 35$ years $\times .0225$], annually for the

remainder of her life.

When Kinley made clear his intention of augmenting the treasurer's report from the form in which it was presented to him first by Vagnozzi and subsequently by Hoerning and Bock-Helms in order to have it include a line delineating the calculation of the city's then-current outstanding pension liability, Vagnozzi rejected his efforts to widen the scope of the report.

In May 2019, Vagnozzi was terminated in her role as city manager and replaced by Hoerning.

Hoerning, when she was faced with Kinley's move to add a reference to the accumulating pension debt to the treasurer's report, resisted. Eventually, she went to the city's finance committee, which consisted of Councilwoman Janice Elliott and Councilman Rudy Zuniga, Bock-Helms and Kinley, to put the kibosh on Kinley's efforts. Kinley, through his incessant efforts to put the pension debt crisis squarely before the community, had been disenfranchised from the remainder of the finance committee. The committee made a directed determination that the language Kinley was seeking to include should not be contained within the report. He was proffered a clean version of the report for his signature and his signature only.

"I told them that if they were going to erase my input, I just wouldn't sign the report," Kinley said. "And I didn't."

Thereafter, Hoerning and Bock-Helms changed the title of the treasurer's report to the treasury report. They now sign it in lieu of Kinley.

Kinley was paid a stipend of \$200 per month. California law pertaining to general law cities, of which Upland is an example, calls for those cities providing the treasurer with staff members, including a deputy treasurer, to carry out those functions which the treasurer deems appropriate. The past and current city councils have not appropriated any money for the treasurer's staff in Upland. Nor was the

council, composed in 2019 and early 2020 of Mayor Debbie Stone, Councilwoman Janice Elliott and councilmen Rudy Zuniga, Ricky Felix and Bill Velto, any more willing than Thouvenell was to provide the treasurer with a place at the council dais during meetings so that he had a public forum from which to inform the public about the city's financial condition in keeping with his own analysis. If Kinley wanted to speak at city council meetings, he was required, as any member of the public, do so from the public speaker's platform, and confine his report to no more than three minutes.

In June 2019, a month after Hoerning had been moved into the position of acting city manager, Kinley was confronted with the realization that there was no prospect of his being able to bring attention to the pension fund crisis threatening the City of Upland with financial ruin. At that point, he coordinated with former City Councilman Glenn Bozar in drafting a letter to the San Bernardino County District Attorney's Public Integrity Unit, relating that he had been and was continuing to be prevented from carrying out his elected and sworn duties as city treasurer. After a cursory review of what Kinley and Bozar had presented, Deputy District Attorney Carlo DiCesare responded, saying that it appeared that Kinley's allegations "involve non-criminal governmental misfeasance," which was "not within the public integrity unit's mandate." DiCesare said he had therefore forwarded the complaint to the San Bernardino County's civil grand jury.

In the months thereafter, Kinley cooperated with the grand jury, and from time to time made efforts to use his official status as city treasurer to bring the pension debt crisis into the public consciousness, only to be repeatedly rebuffed by Hoerning, Bock-Helms, the mayor and the city council. In August 2020, 14 months after having filed his complaint with the district attorney and 13 months after the com-

plaint had been passed along to the grand jury, Kinley, despairing that his efforts were to ever result in anything approaching the needed pension reform he saw as necessary, and further buffeted by a precipitous deterioration in his wife's health, resigned as treasurer in a letter to the city council. Stating he would not be seeking reelection, Kinley leveled the charge that Mayor Stone, as well as the two members of the city's finance committee, Elliott and Zuniga, had, along with city staff, obstructed him in carrying out his fiduciary duties as treasurer. He used the term "malfeasance" in describing the actions by both the city council and staff members, intimating they had crossed the line into criminal conduct, which included, he stated, "wrongful or unlawful acts." Kinley characterized the treatment he had received and the city's efforts to prevent the public from learning of the huge financial challenge engulfing the city as "a corrupt process," which extended to his being prevented from meeting with an independent auditor who was going over the city's books or being stopped from interacting with city staff with regard to the city's finances.

Two-and-a-half months after Kinley's resignation, on November 2, the day before the November 3, 2020 election, the grand jury released its report into the treatment Kinley had been subjected to by Upland officials. The report vindicated Kinley, with the grand jury determining that Upland city officials, including the city manager, finance manager and members of the city council had disenfranchised the city treasurer to prevent him from vectoring the public's scrutiny to the city's burgeoning pension crisis, action which included the alteration of public documents and forgery.

In preventing Larry Kinley from performing his duties as treasurer, the grand jury concluded, city officials

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that all information on this statement becomes Public Record upon filing. s/ JOSE M. GARCIA, PRESIDENT. Statement filed with the County Clerk of San Bernardino on: 12/03/2020. I hereby certify that this copy is a correct copy of the original statement on file in my office San Bernardino County Clerk By:/Deputy Notice-This fictitious name statement expires five years from the date it was filed in the office of the county clerk. A new fictitious business name statement must be filed before that time. The filing of this statement does not of itself authorize the use in this state of a fictitious business name in violation of the rights of another under federal, state, or common law (see Section 14400 et seq., Business and Professions Code). Published in the San Bernardino County Sentinel 12/11/2020, 12/18/2020, 12/25/2020, 01/01/2021 CNBB49202005MT. FBN 20200011039. The following person is doing business as: K9 ENFORCEMENT PATROL, INC 519 W FOOTHILL BLVD #E RIALTO, CA 92376; K9 ENFORCEMENT PATROL, INC 519 W FOOTHILL BLVD #E RIALTO, CA 92376. The business is conducted by: A CORPORATION. The registrant commenced to transact business under the fictitious business name or

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SUS URRUTIA 11866 STOCKTON ST ADELANTO, CA 92301. The business is conducted by: AN INDIVIDUAL. The registrant commenced to transact business under the fictitious business name or names listed above on: N/A. By signing, I declare that all information in this statement is true and correct. A registrant who declares as true information which he or she knows to be false is guilty of a crime (B&P Code 179130. I am also aware that all information on this statement becomes Public Record upon filing. s/ JESUS URRUTIA, OWNER. Statement filed with the County Clerk of San Bernardino on: 11/17/2020. I hereby certify that this copy is a correct copy of the original statement on file in my office San Bernardino County Clerk By:/Deputy Notice-This fictitious name statement expires five years from the date it was filed in the office of the county clerk. A new fictitious business name statement must be filed before that time. The filing of this statement does not of itself authorize the use in this state of a fictitious business name in violation of the rights of another under federal, state, or common law (see Section 14400 et seq., Business and Professions Code). Published in the San Bernardino County Sentinel 12/11/2020, 12/18/2020, 12/25/2020, 01/01/2021 CNBB49202007SN.

Grand Jury Determined Upland City Manager & Finance Manager Altered Treasurer's Report from page 6

were in violation of the city's policies, and had disregarded or were out of compliance with state law and the California Government Code, and in at least one instance quite likely crossed the line into outright criminal conduct.

According to the report, "The 2019-2020 San Bernardino County Civil Grand Jury discovered evidence that in 2019 the City of Upland purposely covered up, on no fewer than five treasury reports, a handwritten notation made by the elected city treasurer of \$112,039,675.00 regarding the City of Upland's unfunded pension liabilities. The city's management personnel then forwarded the treasury report without the handwritten note to the city council as unaltered. The evidence established that, eventually, the cover-up of the unfunded pension liabilities notation was discovered, but that the City of Upland failed to take any disciplinary action. Instead, they decided to permanently remove the elected city treasurer's signature from the treasury report. The evidence further established that masking of the hand-written notation was then supported

by the City of Upland's motivation to prevent the citizens of Upland from asking questions about the status of the city's unfunded pension liabilities. The civil grand jury also discovered evidence that when the city treasurer submitted an appointment for [the] deputy treasurer's position to the City of Upland, city management personnel denied the request without statutory authority. Evidence established that the city council was not made aware of the appointment. California Government Code Title 4, Chapter 3, Section 41006, states that "The city treasurer may appoint deputies." Evidence established that the City of Upland City Council determines what compensation is provided for a deputy treasurer. The civil grand jury found evidence that members of the City of Upland Finance Committee were confused about their responsibilities. Evidence established that finance committee members differed as to who did and who did not have voting rights. Evidence also established that finance committee members did not have an accurate assessment of pension costs related to the City of Upland."

While noting that "The civil grand jury found that most actions mentioned in this report may not violate the law," the report states, "The San Bernardino County Civil Grand Jury is

aware that there potentially may be criminal activity associated with these actions that are not within the jurisdiction of the civil grand jury. The civil grand jury does, however, view these practices as deceptive. These actions also demonstrate a lack of proper government practices and transparency to the citizens of Upland."

There were indications, according to the grand jury report, "that the elected treasurer of the City of Upland is not being allowed to perform many of his duties by the City of Upland." Without referring to Kinley by name, the grand jury report said that shortly after being sworn into office, Kinley was informed by the city's management personnel that one of several responsibilities he had included signing the monthly treasury report as outlined in California Government Code Title 4, Chapter 3, Section 41004, and that his other duties and authority as treasurer were outlined in California Government Code Sections 41001- 41007.

Under Section 41002, the city treasurer is required to "receive and safely keep all money coming into his hands as treasurer."

Section 41003 requires that the treasurer must "comply with all laws governing the deposit and securing of public funds and the handling of trust funds

in his possession." Under California Government Code Section 41004, the treasurer is restricted from paying out a municipality's money to any entity other than those for warrants "signed by legally designated persons."

Government Code Section 41005 mandates that "Regularly, at least once each month, the city treasurer shall submit to the city clerk a written report and accounting of all receipts, disbursements and fund balances" and that "He shall file a copy with the legislative body."

Government Code Section 41006 specifies that a treasurer is to "perform such duties relative to the collection of city taxes and license fees."

California Government Code Section 41007 states that "The city treasurer may appoint deputies for whose acts he and his bondsmen are responsible" and that "The deputies shall hold office at the pleasure of the city treasurer and receive such compensation as is provided by the legislative body."

"Evidence revealed that with the exception of signing the monthly treasury report, the city treasurer rarely, if ever, performed these duties," the report states. "The evidence revealed that the role and scope of the newly elected city treasurer's duties were significantly reduced from the role played by former

city treasurers, and that the treasurer's activities were limited to oversight of the city's investments, and reviewing and signing the monthly treasury report. The evidence showed that taking action to limit the city treasurer's scope of authority from the outset of his tenure was motivated by the city management's desire to suppress the city treasurer's pre-election and post-election oral and written communications concerning the city's unfunded pension liabilities, because it would result in the public asking too many questions of management personnel and elected city officials. The evidence revealed that management personnel were of the opinion that the unfunded pension liabilities were noted in the city's consolidated annual financial report, and that the calculation of the unfunded pension liabilities did not constitute a real number and therefore, should not be noted on the treasury report, nor anywhere else, because it would result in the public asking too many questions of management employees and management personnel."

Further, the grand jury report states, "The evidence established that the city treasurer was responsible for reviewing and signing the treasury report. The evidence revealed that the treasury reports were prepared by city employees and forwarded

to the city treasurer for review and approval. This is consistent with statutory authority and long-standing practice of management personnel and the city council. Once the city treasurer signed the treasury report, it was forwarded to the city manager's office and then placed on the city council's consent agenda. The evidence revealed that the city treasurer sought to inform the citizens of Upland on numerous occasions by making a handwritten notation on the monthly treasury report that the city's unfunded pension liabilities exceeded \$112 million. The evidence established that as far back as January 2019, management personnel began covering up the city treasurer's handwritten notation on the treasury report concerning the unfunded pension liabilities. The altered treasury reports were then filed with the city clerk on no fewer than five occasions between January 2019 and June 2019, and were included in the council's monthly consent agenda. The evidence revealed that both versions of the treasury reports were in the city's files. However, only the copies that covered up the city treasurer's notation of the unfunded pension liabilities were sent to the city council. The evidence established that making a notation on the treasury report regarding unfunded pension

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Grand Jury Report Delineated Degree To Which City Officials Prevented Upland Treasurer From Carrying Out His Sworn Duties *from page 10*

liabilities is within the elected city treasurer's authority. Additionally, there was near unanimous agreement from witnesses interviewed that the city's unfunded pension liabilities posed both a serious threat and a financial liability to the citizens of the city. The evidence established that management personnel did not inform either their superiors or city council that a staff member covered up the city treasurer's handwritten notation concerning the unfunded pension liabilities prior to submission to the city council."

According to the grand jury, the city council at that point elected to back city staff in its action to disenfranchise Kinley.

"The finance committee met in October 2019, and voted that the unfunded pension liabilities should not be included on the treasury report," according to the grand jury. "The evidence showed that once the city treasurer learned that the handwritten unfunded pension liabilities note on the treasury report was not going to be included on the monthly treasury reports, he refused to sign the treasury report, and has never signed another treasury report. The evidence showed that if the treasurer did not sign the October 2019 Treasury Report without the handwritten note concerning the city's unfunded pension liabilities, then his signature block would be removed from the treasurer's report altogether. In place of the city treasurer's signature, both management personnel and senior management personnel would sign the report, effectively making the treasury report no longer the city treasurer's report. This is contrary to the city's statement of investment policy. In November of

2019, members of the management personnel did, in fact, remove the city treasurer's signature block entirely from the treasury report, and replaced it with their own signatures. The evidence revealed that members of the city's management personnel unilaterally took this action without informing members of city council of their decision(s) regarding another elected city official. Evidence also determined that city officials mismanaged this matter, in that there were alternate solutions to the problem of noting the city's unfunded pension liabilities on the treasury report, other than covering up the notation, but they were not pursued. For example, a simple memo attached to the treasury report concerning the city's unfunded pension liabilities would have sufficed to address the matter. This mismanagement was due in part to confusion among city officials about the responsibilities and duties of an elected city treasurer, and determined actions to prevent the citizens of Upland from seeing the city treasurer's messaging regarding the unfunded pension liabilities."

City officials also preempted Kinley in his effort to utilize his authority to augment city staff with a deputy city treasurer to ensure that he would be able to engage in his capacity to exercise oversight of the city's financial situation.

"Evidence also showed that the city treasurer appointed a deputy city treasurer, in keeping with the city treasurer's statutory authority," according to the grand jury. The city treasurer's appointment was denied by the city's management personnel. California Government Code Title 4, Chapter 3, Section 41006 states that "The city treasurer may appoint deputies." The evidence revealed that management personnel acted unilaterally in denying the appointment. The evidence revealed that elected city council and management personnel did not have a complete understanding and/or were confused

about the role and responsibilities of the city treasurer... [and] that not all finance committee members were familiar with the city's statement of investment policy."

The city has no formal orientation process in place for newly elected officials at the City of Upland, according to the grand jury, and "As a consequence, the evidence revealed that management personnel took steps to limit the roles and responsibilities of the city treasurer in an effort to suppress his messaging on the city's unfunded pension liabilities from public inquiry."

City officials' suppression of Kinley's function as city treasurer cannot be attributed solely to ignorance, the grand jury said, as a good measure of the violation of policy and the law was done deliberately by the council and senior staff.

"Even before the city treasurer was sworn into office in December 2016, the evidence revealed that management personnel, motivated by a desire to suppress the city treasurer's messaging concerning the city's unfunded pension liabilities, limited the input of the city treasurer by dissolving the finance committee," according to the grand jury. "Officially, the finance committee was dissolved on March 13, 2017 at a city council meeting. The evidence revealed that the dissolution of the finance committee by the city council was based on the recommendation of management personnel. The minutes of this meeting reflected no discussion on this topic from the city council members. Historically, the city treasurer was always an active member of the finance committee, and gave input on a broad range of financial matters as outlined in California Government Code Title 4, Chapter 3, Sections 41001 - 41007, California Government Code Title 5, Division 2 53646, and the city's statement of investment policy. The evidence revealed that the only committee the city treasurer was a member of was the city's investment com-

mittee. The evidence disclosed that the city treasurer was not invited to other meetings involving discussion of the city's finances. The evidence further revealed that by taking these actions, the city's management personnel sought to limit the roles and responsibilities of the city treasurer in an effort to suppress his messaging on the city's unfunded pension liabilities from public inquiry."

The city council and senior city staff eventually reestablished the finance committee, but in doing so structured it in such a way that it abridged Kinley's purview as city treasurer that was out of keeping with state law.

"Ironically, by Resolution 6504 being passed, approved, and adopted by city council on August 12, 2019, the finance committee was reinstated," according to the grand jury report. "In reinstating the finance committee, the city council gave wide parameters to members of the finance committee by stating that, 'The committee shall be responsible for reviewing matters pertaining to the finances of the city.' However, even though the city treasurer was renamed as a member of the finance committee, the language of the resolution specifically limited the duties of the city treasurer to the 'review of quarterly investment reports' per Resolution 6504. The finance committee is composed of two city council members appointed by the mayor, the city treasurer, and the finance officer. The evidence revealed that the voting responsibility of the city treasurer as a member of the finance committee ranged from full voting authority, limited voting authority and no voting authority. As a result, the views of the city treasurer are nullified and easily ignored. The evidence supported that minutes of the finance committee meetings are recorded. Evidence also supported that the minutes are not detailed and appear to not change substantially from meeting to meeting. The evidence

established that City of Upland elected officials did not understand the calculation nor the financial impact of the pension liabilities facing the city. For example, evidence determined that a finance committee member thought that the City of Upland expends approximately \$2 million annually on pension costs. Evidence reveals that the City of Upland's 2019 projection of pension costs exceeded \$11 million in Fiscal Year 2019-20 and is projected to reach \$15 million annually in Fiscal Year 2027-28. In the end, evidence supported a strong motive for management personnel and elected officials at the city to take steps to prevent this information being brought forward in the treasury report for public scrutiny."

According to the grand jury, "The City of Upland considers actions of publicly addressing the unfunded pension liability as inviting negative criticisms and questions from the citizens of Upland, and not being part of the solution. The duties of the elected city treasurer have been reduced or limited to simply overseeing the investment funds, rather than overseeing all funds received and paid out by the city, as specified by California Government Code Title 4, Chapter 3, Sections 41001 - 41005 and the city's statement of investment policy. The City of Upland does not have a clear understanding of the amount of annual pension cost and seriousness of the unfunded pension liabilities threatening the City of Upland."

The grand jury recommended that "The Upland City Council investigate and make public, at an open public city council meeting and on the Upland city webpage, how city staff covered up the notation of unfunded pension liability made by the city treasurer on the monthly treasury report [and] make public, at an open public city council meeting and on the Upland city webpage, what disciplinary action was taken addressing the alteration of the treasury report after it was signed

by the city treasurer."

The grand jury further recommended that the "Upland City Council make public, at an open public city council meeting and on the Upland city webpage, the actions taken to assure that this type of incident, the altering of a signed report will not recur" and that "Any changes made to the city treasury report, after the document is signed by the city treasurer and submitted to the city clerk, must be documented in writing with the city treasurer, the city manager, and the mayor, to be implemented immediately."

The grand jury called upon the city to reinstate the practice of having the city treasurer sign the treasury report, which was formerly known as the treasurer's report, and provide him with a forum at one city council meeting per month to present the treasury report and the submitted financial status including, but not limited to, those responsibilities as outlined in California Government Code Title 4, Chapter 3, Section 41004 and California Government Code Title 5, Division 2 53646. The city should also, the grand jury recommended, clearly outline the role of the city treasurer and establish a structured orientation process defining his duties, responsibilities, authority, and his expected interactions as a member of the City of Upland's management team, consistent with what is the specified role of a city treasurer under California regulations relating to the structure of general law cities.

The grand jury stated, "In the best interests of the citizens of Upland, management personnel, both elected and appointed [should] reinstate all fiduciary duties to the elected city treasurer, as outlined in California Government Code Title 4, Chapter 3, Sections 41001-41005" and "establish guidelines and practices which support the appointment of a deputy city treasurer by the city treasurer, should the city treasurer so desire, for the proper ful-

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Unwilling To Fully Document Degree To Which Top Municipal Officials' Action Crossed The Line Into Criminality, Upland City Council Receded From Ordering Up An Investigation *from page 11*

fillment of the city treasurer's financial duties and responsibilities." In addition, the grand jury directed that the "city establish guidelines/practices and training for management personnel at the City of Upland and elected city council members of the amount of and a full understanding of the unfunded pension liabilities facing the city."

The City of Upland should also, the grand jury said, "publish a comprehensive quarterly report on the city website that lists current pension costs, plus a 10-year pension cost projection. This report, in addition to the city's comprehensive annual financial report, should include the most current unfunded pension liability information, including the city's comprehensive plan addressing the escalation of the unfunded pension liability."

The grand jury report did not mention by name any of the actors in the misfeasance nor the malfeasance relating to the alteration of public documents that took place during Kinley's three year-and-eight-month tenure as city treasurer. Nor did the report use Kinley's name, referring to him as "the Upland city treasurer," "the elected city treasurer" and "the city treasurer." Based upon the dates, times and events referenced, Kinley can be identified as the city treasurer. So, too, can the identities of Thouvenell, Manis, Vagnozzi and Hoerning be extrapolated as city managers who precluded Kinley from exercising his authority as city treasurer. Likewise, Bock-Helms is identifiable as the city finance officer involved in disenfranchising Kinley. Based upon the date and time references in the grand jury report, it can be established that Vagnozzi and Hoerning were functioning in the role of city manager during the January to September timeframe when

Kinley was providing the handwritten addendum to the treasurer's reports that were altered by removing the pension fund debt calculation that made up Kinley's addendum.

On November 3, incumbent Councilman Bill Velto was elected mayor, ousting incumbent Mayor Debbie Stone. Also elected to become First District Councilwoman that day was Shannan Maust and Third District Councilman Carlos Garcia. At the November 23 council meeting, which occurred in the nearly six-week interim between the election and the installation of the newly-composed council, the former council had taken up and then ultimately postponed a decision on whether to hire an outside investigative firm to look into the precise facts and occurrences related in the grand jury report. Two firms – Barrister Professional Services and the Titan Group – had responded to a request for proposals on doing that investigative work. In addition to those two firms, the city had solicited bids from two other firms, Holland & Knight and Public Interest Investigations, both of which had declined to submit responses. Based on concerns that the Titan Group had previously done background investigations on those to potentially be hired as police department personnel, and that this could compromise the independence of that firm's investigative work in examining the action and potential culpability of senior city staff with regard to effort to muzzle Kinley, the council on November 23 directed Hoerning to seek out a larger pool of candidates or firms to do the investigative work.

On the afternoon of December 14, Velto was sworn in as mayor, Maust and Garcia were sworn in as council members and Greg Bradley was sworn in as city treasurer. The

newly-embodied council met, not in a public forum at the council chamber at City Hall but by means of an electronic video/audio hook-up as a precaution against the spread of COVID-19, for the first time that evening, again taking up the issue of whether the city should commission an investigation into the events circumscribed by the grand jury report.

Hoerning reported that her efforts to interest other investigative firms beyond Barrister Professional Services and the Titan Group in carrying out the investigation had not been successful.

There ensued a discussion as to the rationale for proceeding with an investigation, and the possibility of having Bradley, in his role as treasurer, conduct the investigation.

Hinted at but unstated was the complication that carrying the investigation out could have on the atmosphere at City Hall. Because the grand jury report does not use the names of the city officials who engaged in the effort to hinder Kinley in his function as city treasurer, a fig leaf behind which those current and former city officials can position themselves and avoid direct and exacting scrutiny yet exists.

Implicated in the matter are two of the city's current key staff personnel, Hoerning and Bock-Helms. In their roles overseeing the management of the entire city and the city's finances, respectively, they are deemed, if not absolutely indispensable to city operations, nevertheless vital to the city being able to carry on in the here and now and in the immediate future. Losing either or both would prove disruptive, the city's elected leadership collectively believes. What is known is that under the last months of Vagnozzi's tenure as city manager and the first months of Hoerning's time as acting city manager prior to her elevation to full-fledged city manager status, Kinley had upped his efforts to expose the pension funding crisis by making his handwritten notation of the pension debt total on

the treasurer's reports. At various times, Hoerning has given contradictory statements with regard to her involvement in altering those documents. In September of this year, she said that the alterations had been made by a previous city manager. On at least two previous occasions, however, Hoerning appeared to acknowledge that she, along with Bock-Helms, had removed Kinley's addendum from treasurer's reports or had prevented him from doing so.

At the November 11, 2019 Upland City Council meeting, Hoerning said, "The treasurer wanted to take the treasury report and handwrite a note on that treasury report that pertained to the city's unfunded liability. That information is contained in the context of an annual financial report and really does not belong on the treasury report because the treasury report is specifically for investment purposes. So, I requested that the treasurer, if he wanted to sign the treasury report, which is prepared by our finance department, he's welcome to do so, but he's not entitled to alter the report. On this particular item the investment committee made a determination as to whether that language should be included in the report, and it was determined that it should not be on the report. That information was conveyed to Mr. Kinley, and he's elected not to sign the report. There is no governmental mandate that requires him to sign that report, so only Londa Helms, our finance manager, is on that report. If he chooses not to sign the reports in the future, I've offered to sign those reports as a co-signer with Londa. That's where we are with that."

Some seven months later, at the Upland City Council's June 8, 2020 meeting, Hoerning came very close to acknowledging that she had authorized Bock-Helms to prevent the treasury reports that Kinley had augmented with a quantification of the pension debt from seeing the light of day.

"When the treasurer was signing the report, he would alter it, so our finance officer, Londa Helms, would sign the report as it stands, which is just reflective of all of our treasury investments, and then the treasurer would make alterations to the report and then sign it," Hoerning said. "So, it didn't have her concurrence with any corrections. The correction that he was making to the report is regarding the city's unfunded liability position, which is included in part of our CAFER [comprehensive annual financial report] document, and is indicative of information that is not necessarily germane to this particular report. That is the reason why he has elected not to sign the report."

In the immediate aftermath of the grand jury report's release, Hoerning put out a public statement that sought to divert attention from the alteration of public documents that she and Bock-Helms had engaged in by suggesting that it was Kinley, by his addition of the pension debt tallying addendum to the treasurer's report, who had engaged in the altering of public documents.

Indeed, lost in the discussion that Upland city officials have engaged in relating to the matter is that the documents in question were originally titled "The Treasurer's Report." The name implies that the treasurer had discretion as to their contents, as they were not labeled as an investment report, although the contents as controlled exclusively by city staff, in apparent violation of Kinley's role and authority as city treasurer, were limited to references to the city's investment pool.

Having an investigator question both Hoerning and Bock-Helms about the matter would likely put both in a position where they would have to either prevaricate about what had occurred or make an admission to having altered public documents. Being questioned by investigators would also put Bock-Helms in the position, if she acknowledged having altered

the document, of very likely justifying having done so by pointing out that she had been authorized to do so by Hoerning. Members of the city council recognized that creating a situation in which Bock-Helms implicates her boss in what could be interpreted as a crime could quite possibly poison the relationship between Hoerning and Bock-Helms, two moving parts in the machinery at City Hall that need to constantly articulate with one another to allow municipal operations to run smoothly.

Overhanging the matter is the consideration that the alteration of public documents is a crime, prosecutable as felony. Were an investigation to document that Vagnozzi, Hoerning and Bock-Helms had engaged in a felony and/or a conspiracy to do so, that would leave the city council in the awkward position of opening the door to a prosecution of two of the highest ranking employees at City Hall or ignoring that implication, which could have serious complications for the council members politically down the road or immediately in terms of adverse publicity, including charges that they are colluding with senior staff to sweep a very difficult matter under the rug.

Moreover, the grand jury report references questionable although perhaps not illegal action by the city's finance committee, of which both which Elliott and Zuniga were members, as well as action by the city council as it was previously composed in backing senior city staff in disenfranchising Kinley.

After the round of discussion among the newly-composed council drew to an end on Monday night, the council concluded it did not want to cast the captain of the city's ship of governance overboard while the vessel is being buffeted about by waves on the high seas of municipal existence. The council therefore tabled the concept of hiring an investigator to look into the matter encapsulated in the grand jury report.