

Staff, Consultants & Attorneys Stamped Upland Council Into Bond Issuance

By Mark Gutglueck

City staff, retained consultants and the city attorney are stampeding the Upland City Council toward issuing \$130 million worth of so-called pension obligation bonds in an effort to defer into the future the overwhelming financial burden of providing pensions to Upland's municipal retirees, saddling upcoming generations of the city's taxpayers, including many who have

not yet been born, with the debt formed when Upland city officials two decades ago elected to provide city employees with benefits it has since been demonstrated the city cannot afford.

The move to have the city use pension obligation bonds – a form of long term borrowing – was hatched after a pension reform movement among city residents had grown last year to the point that city officials

were being asked to take measures to rescind the generous pensions the city had committed to during the time when former Mayor John Pomierski was dominating Upland City Hall. Under Pomierski, those employees' salaries, upon which their benefits and pensions are calculated, increased, and city staff was further provided with even more generous retirement provisions than they had been

promised previously. Those inflated pension benefits are on a trajectory to bankrupt the city within ten years.

Because municipal operations are in essence controlled by city employees, who are the beneficiaries of those salary scales and their accompanying benefit packages which include those pensions, the city's highest ranking employees, who are on schedule to be provided with an-

nual pensions exceeding \$200,000 when they retire, have taken the option of reforming the pension system the city is involved in off the table in favor of the bond financing arrangement. In doing so, those senior city employees have networked with the city attorney and city consultants, who themselves stand to see a financial benefit if the city opts to issue bonds, to dissuade the city See P 2

Federal Tax Suspension Promotes Trona Mineral Operation & Depletes School Funding

Action by the federal government aimed at promoting domestic mineral development taken during the final stage of the Donald Trump Administration and left in place during the opening months of the Joseph Biden Administration already is having a positive impact on the largest company at the furthest northwestern extension of San

Bernardino County.

While the new federal policy carries with it the potential to rejuvenate the long-sputtering economy in Trona, an unincorporated community of roughly 1,950 population just south of the gateway to Inyo County and Death Valley and east of the border with Kern County, it has simultaneously deprived the educational system

there of a crucial means of support.

In an ironic twist, First District Supervisor Paul Cook, who was an architect of the federal policy while he was yet a member of Congress two years ago, is now faced with the seemingly intractable problem of redressing the funding imbalance in the Trona Joint Unified School District, which lies with-

in one of the larger unincorporated areas of the jurisdiction Cook now represents as a county official.

Beginning in 2019, Congress began discussions of how to even the playing field soda ash producers had to play on within the context of global markets for their product, given the way in which China heavily subsidizes its soda ash

industry and Turkey, another leading exporter of the product, has worked to keep its soda mining enterprises competitive.

The United States is the world's largest producer of natural soda ash, while China is the world's largest producer of synthetic soda ash. Over 80 percent of the soda ash production in the United States takes place in Wyo- See P 3

Illicit Fireworks Explosion Bares Ontario's Substandard Districts

An explosion that killed two apparent traffickers in illegal fireworks in the home they shared in south Ontario has drawn attention to what many members of the public perceive as an "out of control" district, a neighborhood where lawlessness prevails and city officials are at a complete loss as to how to bring the denizens of the area into rudimentary compliance with civilized standards and the law.

At roughly 12:30 p.m. on Tuesday, March 16, a sizable cache of fireworks that were stored in a home in the 400 block of West Francis Street near the intersection with Fern Avenue less than a mile east of Ontario High School exploded, touching off several nearby fires, resulting in at least \$3.4 million worth of property damage.

The initial blast created a towering fireball, dislodging de- See P 3

Concern As Orange County Judge Orders Child Rapist To Take Up Residence In Twentynine Palms

In Twentynine Palms there is concern about the anticipated release of a convicted sex offender into the community.

San Bernardino County officials have been notified that Lawtis Donald Rhoden, who has at least four convictions for sex crimes involving minor victims, has been consigned by the Orange County Superior Court to reside in Twentynine Palms.

Rhoden's criminal record extends back more

than 50 years.

Rhoden, now 71, has committed multiple rapes of children. In Cocoa Beach, Florida in 1969, he lured a 13-year-old victim to his apartment and raped her on three separate occasions. Rhoden was convicted through a plea agreement of one felony relating to lewd and lascivious acts with a child under the age of 14 years. He was sentenced to 14 months in a state mental hospital and 12 years in state prison.

Rhoden was treated, apparently unsuccessfully, in the state mental hospital for his inability to control his sexual urges toward young girls.

After serving his prison sentence, he was paroled.

While on parole, Rhoden sexually assaulted four children in two states. Rhoden was convicted of rape by force, forceful sexual penetration, sexual battery, and two counts of forcible rape stemming See P 3

San Bernardino School District Brings In Superintendent From Bakersfield

Just under a year following the departure of former San Bernardino City Unified School District Superintendent Dale Marsden, the district's board members voted on Tuesday night, March 16, 2021, to hire Harry "Doc" Ervin to head the district.

Ervin is to replace Harold Vollkommer, who has served as the district's interim superintendent since Marsden's departure.

In a prepared statement, Ervin said, "I look forward to ensuring every San Bernardino City Unified School District student has the support they need to be successful. The San Bernardino City Unified School District has a lot of great programs in place for students, and I look forward to taking what they have to the next level."

Ervin's hiring was unanimously ratified by board members Gwen-

dolyn Dowdy-Rodgers, Scott Wyatt, Barbara Flores, Mayra Ceballos, Margaret Hill, Danny Tillman and Abigail Rosales-Medina.

Ervin, currently the superintendent of the Bakersfield City School District, will begin with San Bernardino City Unified on July 1.

Marsden privately informed the district's board members of his intended resignation effective at the end of March

2020 at the school board's meeting on December 10, 2019, and he made a public announcement the next day. Mystery has attended the circumstance, as there were no overt signs of dissatisfaction with Marsden among the school board's members.

Both Marsden and Ervin were members of the U.S. Military. Marsden served in the U.S. Air Force for four years before attending college, after which he went into

the teaching profession. Ervin is a U.S. Marine Corps veteran.

Ervin has a bachelor of arts degree in liberal studies and master of science in education administration from Alliant International University. His administrative credential was earned at California State University, Fullerton. He and his wife have three sons and one daughter.

An African American, Ervin is See P 5

SB Approves 1.1 Million Square Foot Warehouse Near Airport

The San Bernardino City Council in a 5-to-2 vote Wednesday night gave the San Manuel Band of Mission Indians clearance to proceed with the construction of a 1.153 million-square-foot warehouse proximate to San Bernardino International Airport south of Third Street between Victoria and Central avenues in San Bernardino. The project lies technically within the City of San Bernardino, contiguous with the Highland City Limits immediately north of Third Street.

The project, referred to as "San Manuel Landing," is to be located on four now-consolidated parcels totaling 52.97 acres owned by the San Manuel Band of Mission Indians, the San Bernardino International Airport Authority and the Inland Valley Development Agency.

The warehouse, which is to consist of 1,153,644 square feet under roof, is slated to feature 113 docks and roll-up doors on the north side and 105 docks and roll-up doors facing south.

Curiously, at this point the tenant of the facility has not been specified. While indications are the building is to be used as a distribution facility, it is unlikely that the occupant will be on-line retailer Amazon, as that company has already established nearby a 660,000-square foot regional air hub, at which merchandise arriving as freight aboard planes landing at Southern California Logistics Airport is temporarily housed and then transferred to trucks for delivery either directly to Amazon customers or to Amazon fulfillment centers.

"This project is proposed as a speculative business with no specific tenant, but has been designed specifi- See P 5

To Ward Off Being Prosecuted For The Kickbacks He Was Taking, Mayor Pomierski Bribe Upland City Employees With Salary Raises & Enhanced Benefits To Keep Them Quiet *from front page*

council from exploring pension reform options. One suggested approach to pension reform consists of the city taking administrative, procedural or legal action to either reduce those pensions or transfer the cost of paying for them to the city's employees by having them, while they are still working, endow a fund to pay for the benefits they are to receive after they retire rather than having the taxpayers bear that cost.

The City of Upland is a participant in CalPERS, the California Public Employee Retirement System. The terms by which Upland participates in CalPERS is similar to those of all of the other governmental entities that are engaged with the California Public Employee Retirement System. The city contributes a given amount of money to CalPERS for each city employee. The California Public Employee Retirement System then invests that money in a variety of financial instruments, including the stock market and real estate ventures. The return on, or earnings from, those investments is then utilized to pay out the pensions to the retired employees.

The two most common type of pension systems exist as either a defined-contribution plan or a defined benefit plan.

In a defined-contribution plan, the employer and employee make matching contributions on a regular basis toward the retirement fund set up for each employee. That money is either put into an interest bearing savings account or invested. Upon the employee's retirement, money drawn from that particular retiree's account is dispensed on a regular basis, monthly, quarterly, every six months or yearly, to that employee as his or her pension. In a defined-contribution plan, the amount of the employee's pension is

not guaranteed, but instead controlled by how much money is in that particular employee's retirement account and the earnings from the investments made by the money in that account. If the value of the investments go up, the amount of the pension goes up. If the investments fare poorly, the pension goes down.

In a defined-benefit plan, the retiree is provided with a guaranteed pension based on the number of years of employment, the highest salary that retiree earned while employed multiplied by an agreed-upon percentage, usually between 2 percent and 3 percent.

In a defined-benefit plan, such as that used by Upland, the employer accepts all of the investment risk relating to the retirement fund, such that if the investments over a given year fail to achieve the returns needed to meet the amount of the yearly payout guaranteed to the retired employee, the employer, such as a city or county, must then make up for the degree to which those earnings have fallen short.

The California Public Employees Retirement System is a defined-benefit plan, meaning all of the participants in it, such as the City of Upland, have guaranteed that those who have retired as city employees will receive the full pensions offered them when they were employed with the city.

During the strong economy of the late 1990s and early 2000s, the California Public Employee Retirement System was heavily invested in the booming stock market, which was advancing on the basis of rapidly prospering start-up technology companies. This became known as the dotcom bubble. Based on the market's performance, CalPERS was superfunded, and its investment earnings had created a circumstance where it had 140 percent of the money it needed to meet its obligations to all of its then-current pensioners. In the exuberance of this confidence and in the mistaken belief that the state's public employee retirement fund would remain shipshape perpetually, along with the overall bright

financial picture at that time, many municipal governments throughout California, including Upland, provided their employees with substantial salary and benefit increases.

John Pomierski was elected Upland mayor in 2000. Domineering, manipulative and dishonest, Pomierski solidified his hold on the city by forming lock-tight political alliances with members of the city council. Virtually from the outset of his time in office he took advantage of his position of power and authority, and violated the trust the voters of the city had placed in him, taking bribes and accepting kickbacks from all order of business interests seeking permits or project approval from the city council, planning commission or community development department or those seeking contracts or franchises to provide goods or services to the city and its residents.

As Pomierski was enriching himself in this fashion, the circle of those who directly saw what he was doing or who had come to understand the depredations he was engaged in widened. In early 2005, he forced the departure of City Manager Mike Milhiser, who had held that post since 1996, conferring upon him a \$200,000 severance package to buy his silence. Two weeks later, then-Police Chief Martin Thouvenell was persuaded to retire. Pomierski then induced the city council to hire his hand-picked replacement for Milhiser, Robb Quincey, and he elevated a captain in the police department, Steve Adams, to police chief.

Because he had concerns that the circumstantial knowledge about his bribetaking and other illegal activities that existed among city staff might not contain itself, Pomierski made arrangements to increase employee salaries generally at City Hall and had the city go to a four-day work week. A handful of city employees were actively assisting Pomierski in shaking down those doing business with the city or subject to its regulatory authority. The lion's share of city employees, while not directly involved in Pomierski's pillaging, were

nonetheless cognizant of what was taking place. As beneficiaries of the generosity being shown them in terms of the up-rating of their salaries and benefits, they simply chose to passively ignore what the mayor was doing.

Quincey had been hired as city manager on a contract that provided him with a combined salary and benefits package of slightly less than \$260,000 per year. Pomierski in time arranged to get the city council's acquiescence in conferring upon Quincey a contract enhancement that guaranteed he would receive the same percentage increase in his salary and benefits that were provided to the members of the police department. Pomierski also designated Quincey to represent the city in its negotiations with the police officers' union in the collective bargaining process by which the officers' salaries and benefits were set. During the slightly more than five-and-a-half years that he served as city manager, Quincey was provided with eight raises that boosted his combined salary and benefits from less than \$260,000 per year to \$425,000 per year, making him the second-highest paid city manager in California. Meanwhile, the members of the police department saw their salaries and benefits escalate significantly, such that their silence and investigative inactivity with regard to Pomierski's activities was secured. At the pinnacle of the police department was Adams, who, like Quincey, was beholden for his professional and financial advancement. Adams at no point had his department act to bring Pomierski's violation of the law to a halt.

Throughout his ten years and a little more than two months in office, Pomierski had a free rein and experienced no obstruction from anyone at City Hall with regard to the graft he was involved in, even as that activity intensified during the last five years he was Upland mayor. It was only after Thouvenell approached the FBI in late 2009 that any semblance of an effort to hold Pomierski to account was made. Nevertheless, even af-

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ter a joint FBI/IRS task force descended on Upland City Hall, Pomierski's home and his business office as well as the homes and offices of several of his business associates in June 2010, Pomierski maintained his domination of Upland's city government, and he continued to exact an under-the-table tribute from those who wanted to ensure they had an edge over their competition in securing city contracts or would get permission to proceed with their property development proposals or see their applications for business licenses or permits approved. With the dawn of 2011, in rapid succession, Quincey was suspended in January, Pomierski resigned as mayor in February and in March a federal indictment was unsealed in which he was charged with bribery. The following year, in April 2012, Pomierski pleaded guilty and was given a two-year sentence. In October 2012, Quincey, was arrested and charged by the San Bernardino County District Attorney's Office with three felonies consisting of unlawful misappropriation of public money, gaining personal benefit from an official contract, and giving false testimony under oath. Quincey's lawyer would later work out with prosecutors a plea deal for him on a reduced charge.

In the meantime, while Pomierski and Quincey were opening up the city treasury and handing money hand over fist to the city's employees to keep them from going public with their knowledge about the criminality at City Hall, the bursting of the dotcom bubble – the

precipitous drop in the value of tech stocks – took place, precipitating the economic downturn of 2007 and the ensuing seven-year financial slump, often referred to as the Great Recession. The collapsing of the national, state and local economy would have a devastating impact upon Upland as well as the California Public Employees' Retirement System's fiscal position. The abrupt drop in stock values meant that the California Public Employee Retirement System's investments did not net the returns needed to keep the pension plan fully funded, resulting in cities and counties up and down the state along with the state government itself having to step up and make substantial payments beyond what they normally made to CalPERS. Those disbursements, in the case of cities and counties, were made out of their operating funds, often referred to in individual cases as that particular county's or city's general fund, and in the case of the state, out of its reserves. For cities like Upland, this meant money that otherwise was used for basic operations such as paying salaries, purchasing and carrying out maintenance on city vehicles, fueling those vehicles, providing care and upkeep of city parks, trimming trees, creating or renewing infrastructure such as paving roads, maintaining sidewalks, curbs, gutters and culverts, water and sewer lines, providing services and the like was in short supply. That translated into layoffs and resultant manpower shortages and service reductions, along with delays in construct-

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Federal Reduction Of Lease Levy On Trona Mining Company Adversely Impacts Schools

from front page

ming. Trona, however, which is home to the Searles Valley Mining Company, is a major soda ash source, as well.

As a raw material, soda ash is vital to the production of certain types of detergents and cleaning agents, as well as various chemical fertilizers and dyes. It is also used in the processing of pulp for the paper industry. Types of adhesives and sealants are also manufactured utilizing soda ash. Several chemicals, such as sodium silicate, sodium bicarbonate and percarbonate, sodium chromate and dichromate, are produced using soda ash. It has metallurgical applications as well, including the recycling of aluminum and zinc.

Paul Cook, who was then a U.S. Congressman representing California's 8th congressional District, which includes Trona, worked with Wyoming Congresswoman Liz Cheney toward rejuvenating the American soda ash mining industry beginning in 2019 and into 2020.

Ultimately, in conjunction with the Bureau

of Land Management, a strategy of reducing the 6 percent royalty soda ash producers pay to the federal government to 2 percent was arrived at. A royalty is a lease payment for mining on federal land, based on a percentage of the gross earnings from that mining activity. After he achieved that goal, Cook departed from Congress in December 2020 to take on the position of supervisor he had won in the March 2020 election.

That royalty reduction is to remain in place for ten years, and became effective January 1, 2021 for all existing and future federal soda ash and sodium bicarbonate leases. Implementation of the royalty rate reduction was intended to counter the expanded global market influences of Chinese and Turkish production, encourage expanded investment and job creation by U.S. industry, promote U.S. mineral development, and enhance national security. By putting the reduction into place for a decade, federal officials believe companies involved in soda ash mining will have greater economic certainty to make immediate, long-term investments to strengthen the industry.

On July 4, 2019, Trona was hit by a 6.4 Richter Scale earthquake, followed by a 7.1 Richter

scale earthquake the following day. Homes, buildings, roads and other infrastructure were damaged by the seismic disturbance. Of note was that the schools in the Trona Joint Unified School District sustained substantial damage. While Trona High School was initially used as a place where residents whose homes were rendered uninhabitable by the quake congregated and were provided with assistance, it was later determined that the high school's buildings were unstable. High school students returned to classrooms they had been in when they were in the fifth and sixth grade at the district's elementary school to receive instruction.

With the onset of the coronavirus pandemic, the district bought students laptops so instruction could continue on-line. Last year, the district, led by newly-hired Superintendent Jairo Arellano, began casting about for ways it would be able to repair or replace the district's schools when the COVID-19 crisis ends.

The district functioned on an annual budget of roughly \$5.58 million previously, some \$4.11 million of which came from the soda ash royalty paid by Searles Valley Minerals. With the reduction of the soda

ash royalty the company is paying, the district is now receiving around \$1.37 million annually in funding put up by Searles Valley Minerals through the federal government, a reduction of \$2.74 million. The district, now functioning on a budget of around \$2.75 million, is struggling to educate its 260 students. It has no money left to contribute toward the estimated \$55 million repair costs for district schools. While some state and federal money for that purpose might be coming in the future, it is not available yet.

In November 2020,

just prior to his leaving Congress, Cook co-sponsored the Soda Ash Funding for Education (SAFE) Act, H.R. 8728, which called for "redirecting federal funds to establish a Soda Ash Education Equalization Fund to provide grants to local schools that could be impacted by" the soda ash royalty reductions. Cook said he hoped the legislation, which was not passed by the time he left Congress, would "prevent unnecessary education funding cuts in communities like Trona." He said he did not want to saddle the Trona Joint Unified School

District with a funding challenge it had no hope of overcoming.

H.R. 8728 has been routed to the Committee on Natural Resources and the Committee on Education and Labor. No infusion of funding to the district has arrived.

The dire situation in Trona, created in part by the gap in funding that comes with the reduction of the soda ash royalty collected by the Bureau of Land Management, now stands as an issue the County of San Bernardino and Cook have no easy means of solving.

-Mark Gutglueck

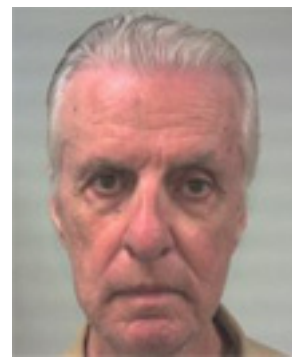
Judge Saddles 29 Palms With Hosting Inveterate Sex Offender

from front page

from crimes he committed in Orange County and Los Angeles County in April and June 1984. These sexual assaults were committed in three separate incidents against two 14-year-old girls and one 17-year-old girl. While those crimes were under investigation, Rhoden went to Nashville, Tennessee where he sexually assaulted a 13-year-old girl in December 1984 and was subsequently convicted of rape and use of a minor for obscene purposes. In all four in-

stances of sexual assault, Rhoden held himself out as a photographer and, in an effort to lure in his victims, offered them modeling photoshoots.

Rhoden drove up to



Lawtis Rhoden

each of his three sexual assault victims in Orange County and Los Angeles County while they were on foot when attempting to entice

them into his car.

The State of Tennessee sentenced Rhoden to 20 years in state prison, the Orange County Superior Court sentenced him to 12 years in state prison, and the Los Angeles County Superior Court sentenced him to six years in state prison.

From March of 1983 until his arrest in Tennessee, Rhoden also defrauded people in California, Florida and Texas of approximately \$440,000. Rhoden's grift involved inserting personal ads in newspapers, creating a relationship with women answering the ads, holding himself out as an investment broker or lawyer, and con-

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Ontario Fireworks Explosion Betrays Illicit Underbelly Of County's Most Financially Stable Municipality

from front page

bris of all sorts, including portions of the house, fence planks, tires and even a bicycle, which reached heights of 35 feet or more before they crashed to the ground, witnesses said.

Tentatively identified as those killed in the blast were cousins Alex Paez, 38, and Cesar Paez, 20, who were linked to the home on the property, which was destroyed in the explosion.

Three other people suffered minor injuries, the Ontario Fire Department said. A dog killed in the blast was found on the property. Two horses that were on the property or next to it were safely recovered.

The explosion was localized to a building behind a house between Francis Street and Maple Street, investigators said.

The residential property involved at one time was used for agricultural purposes, and had some structures other than a residence on it, perhaps including chicken coops or a shelter for livestock.

An initial report was that the fireworks involved were of an industrial grade. Subsequently, however, authorities said they were illegal fireworks believed to be of Chinese origin, of a type considered to be illegal in virtually all contexts within the United States, but not of the sort used in large-scale public pyrotechnic displays.

The blast was audible at the Upland Post Office, located roughly four-and-one-half miles north northeast of the blast, where it resounded very similarly to thunder.

As a precaution, au-

thorities initially ordered the evacuation of 62 properties surrounding the area where the explosion occurred. As of late today, there were yet mandatory evacuation orders for 13 homes immediately surrounding where the explosion occurred, including those on the north side of Francis Street, the south side of Maple Street and the west side of Fern Avenue. As of late this afternoon, officials had rescinded the mandatory evacuation orders for the residents of 49 properties proximate to the site of the explosion, including those on the north and south sides of Francis Street between Fern Avenue and San Antonio Avenue, homes on the east and west sides of Fern Avenue between Francis Street and Maple Street and homes on the north and south sides of Maple Street between Fern Avenue and

San Antonio Avenue, but were still requesting that the residents living in those homes voluntarily evacuate.

A report was that in the aftermath of the explosion, fireworks were still exploding sporadically and unexploded fireworks had been thrown by the blast to various spots around the neighborhood. Shortly after 5 p.m. on March 16, some of the small fires that spread or were lit by the first explosion were yet to be doused, and one of those sparked a secondary explosion of a bundle of fireworks that had been thrown clear of the house when the initial explosion occurred.

Windows, walls and doors of nearby homes, and in at least one case a roof, were damaged or destroyed by the blast.

Bomb squad members engaged in controlled detonations of fireworks found around the site.

As of this morning, firefighters, police officers and bomb squad members had filled 187 medium-size bins with fireworks they had collected from around the neighborhood. Those materials were subjected to safe detonation under controlled conditions.

Ontario as a municipality is the most financially well-fixed of San Bernardino County's 22 cities and two incorporated towns, with nearly \$600 million running through all of its governmental funds annually, more than twice that of its closest competitor in the county. Nevertheless, there are sections of the 185,000 population, 50.01-square mile city that are virtually lawless, and overrun with crime and poverty. In one neighborhood which blends industrial uses and residences roughly a mile-and-a-half from where the explosion

took place, nearly all of the homes there are substandard. Mounds of trash and debris illegally dumped in open areas and at the sides of that district's streets are left unattended. Two and three bedroom homes built anywhere from 80 years to a century or more ago originally intended to house a single family in many cases are severely overoccupied. A significant number of the cars parked along those streets have no license plates. Perhaps as many as a third of the cars with license plates are not outfitted with current tags. Police patrols in that area, part of the city's transportation corridor, are nonexistent or so rare as if to be nonexistent. In the last two years there have been two massive industrial fires in the vicinity of Sultana and State Street.

-Mark Gutglueck

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San Bernardino County **Sentinel**

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Exorbitant Pay & Pensions To City Employees Is Driving Upland Toward Bankruptcy from page 2

ing new infrastructure, the deterioration of existing infrastructure and the deferring of purchasing new equipment and vehicles and the neglect of maintenance and servicing to city assets.

The difference between the total amount of benefits owed to all of a city's current employees & retirees and the value of the financial assets devoted to that city's pension plan is referred to as an unfunded liability.

As of June 2012, the City of Upland had an \$88,994,066 unfunded pension liability. That debt had reached \$99,976,917 as of June 30, 2019, and then climbed more steeply thereafter, hitting \$112,039,675 as of mid-fiscal year 2019-20 and \$120,920,721 as of June 30, 2020. Unofficial documentation available to the *Sentinel* suggests that as of this month, Upland's unfunded pension liability has climbed to \$130,185,277.

At present, \$8,996,364 of the city's current annual \$43,559,950.78 general fund budget is utilized in paying off its pension debt, such that 20.65 percent of the city's operating costs are devoted to paying those who are no longer actively working for the city.

Projections are that by 3032, with more and more of the city's current employees joining the rolls of the city's retirees drawing pensions at ever higher and higher

rates, the city will be expending more than 50 percent of its operating budget on paying pensions to former city employees, resulting in the city drastically reducing the municipal services it provides.

A significant factor in the pension debt crisis consists of the very generous terms contained in the formulas for those pensions. Generally speaking, employees are eligible to retire at the age 55 or 60 and begin to draw a yearly pension equal to two percent of their highest annual pay, including salary and overtime, multiplied by the number of years they were employed in the public sector in California. Thus, a city employee who retires at the age of 55 and has achieved the paygrade of \$100,000 per year and has 30 years of employment within the public sector would be eligible to draw an annual pension of \$60,000 per year [$\$100,000 \times .02 \times 30$] for the remainder of his/her life. Upon that former employee's death, his or her spouse/widow/widower would be eligible to continue to draw a pension equal to half that amount, \$30,000, for the rest of her/his life. The more an individual rises in the municipal ranks in Upland, the more generous the formula. Senior administrative employees such as the city manager are eligible to draw a pension equal to his/her highest annual salary and add-on or overtime pay during that year times two-and-a-half percent times the number of years that person was employed in the public sector in California. Thus, a city manager paid \$250,000 per year who retires at 60 after a

35-year career as a public employee in California would receive an annual pension of \$218,750 [$\$250,000 \times .025 \times 35$] for the rest of his/her life, with his/her surviving spouse eligible to collect \$109,375 yearly for the remainder of his/her life.

In the case of police officers, they are eligible to retire at the age of 50 and receive a pension of three percent times their highest level of pay multiplied by the number of years they have worked as government employees in California.

A circle of Upland residents sensitive to the circumstance of their city's looming pension crisis years ago began a serious discussion over what steps could be taken to reduce the onerous burden of the city's escalating pension costs and the resultant impact on ongoing and future municipal operations. Among the limited options contemplated was altering future employee contracts to reduce the level of benefits guaranteed to city personnel going forward. Another contemplated solution consists of maintaining the level of benefits as they are but shifting the cost of participating in the California Public Employees' Retirement System from the city to the employees themselves, meaning those employees – through payments deducted from their wages – would cover the cost of making annual payments the city is currently making to CalPERS, alleviating the taxpayers of that financial responsibility. Another approach would be to use the collective bargaining process to work into the employment contracts with em-

ployees a cap on pension amounts at what might be considered to be a reasonable maximum – perhaps \$100,000 annually, for example – that would still provide the means for retirees to live in dignity without breaking the public treasury. Another option would be for the city to pull out of the California Public Employees' Retirement System altogether, paying off its debt to CalPERS, and instituting a municipal employee 403 (B) retirement program for those city workers which they pay for themselves, perhaps with some modest city contribution, similar to 401 (K) programs available in the private sector. Another option would be for the city to utilize the legal leverage available to it and uniformly revoke the past salary and benefit increases provided to city employees under the Pomierski regime and as part of the negotiations engaged in by Quincey, based on the statutory principle that any contractual arrangement entered into by a public agency as a consequence of a conflict of interest in violation of Government Code Section 1090 is rendered null and void and is therefore unenforceable.

When Larry Kinley, who was elected Upland treasurer in 2016, attempted to draw attention to the pension cost crisis facing the city by providing a running tab of the city's unfunded pension liability in the monthly treasurer's report he signed which gave a tallying of the city's investments and reserve funds, the city manager and the city's finance director altered that document by eras-

ing or whiting out the inclusion of the unfunded pension liability before that document was posted or provided to the city council. When Kinley stood his ground, made a public issue of the matter and refused to sign the report without that information being included, the city council sided with the city manager, Rosemary Hoerning, and the finance manager, Londa Bock-Helms, disenfranchising Kinley, changing the name of the treasurer's report to the treasury report and eliminating the treasurer's oversight of it.

Kinley opted out of seeking reelection last year. The growing contingent of Upland residents concerned with the city's quickly eroding financial condition brought on by its ever mounting pension debt united around Greg Bradley, who ran against two others in the November election to replace Kinley as treasurer. Among those residents there was hope that Bradley once in office would have the strength and resolve to stand up to the entrenched forces at City Hall and within the California Public Employees' Retirement System and city employee unions in a way that would reform the one-sided arrangement that is providing the City of Upland's public employees with pensions that are on the order of five and six times as generous as those available in the private sector and which is on the brink of bankrupting the city and depleting its treasury. It was hoped Bradley would succeed where Kinley had tried but had been stymied, and that by doing so he would

render the city's finances into a far more manageable state, eliminating the future prospect of bankruptcy and heading off the impingement on city services.

Late last summer, city officials had welcomed Suzanne Harrell, a financial advisor, into their midst. Harrell provided the city council with a sales job relating to the possibility of issuing pension obligation bonds as a means of defraying over time the exorbitant cost of the city's unfunded pension liability.

Bradley, who was then a candidate for treasurer, cautioned against blindly utilizing the pension-debt bond-issuing solution to overcome the financial challenges brought on by the current funding demands of the pension system.

"I'm here to speak against the pension obligation bond at this time, before the election," Bradley told the Upland City Council at its September 10, 2020 meeting. "Upland has experienced financial troubles for a decade, as city leaders have mismanaged city finances and dismantled institutional systems and procedures intended to foster transparency. The actual truth is we have no idea what our city might look like in just a few months. This is not the time to make large changes to obligations or commitments. A pension obligation bond to cover the unfunded accrued liability may be something to consider after the new council is seated. We will have a better idea of the investment environment at that point. If elected, I would insist that we have a plan to stop adding new debt

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San Bernardino Council Gives Tribe Go-Ahead To Build Massive Warehouse Near Airport *from front page*

cally for use as a high cube warehouse facility,” the staff report for the project stated. According to the staff report, the project upon completion will impact local streets with 2,500 additional vehicles daily, emanating from or going to the warehouse, with 136 of those trips coming during morning rush hours and 174 during peak use evening hours.

The San Manuel Band of Mission Indians, which operates the San Manuel Casino at the base of the foothills above Highland near the northeast portion of San Bernardino, has captured considerable wealth because of its regional gambling monopoly. The tribe has used a portion of that revenue stream to generate community goodwill by engaging in charity work and sponsorship of community activities, and it has emerged in the last two decades as a major contributor to the political funds of elected officeholders, including those on the San Bernardino City Council.

Cal State San Bernardino President Tomás Morales, San Bernardino Valley College President Diana Rodriguez, Inland Valley Development Agency Executive Director Mike Burrows and San Bernardino Area Habitat For Humanity Director David Hahn were among local luminaries heard from during the course of the meeting, which was held remotely and by means of teleconferencing to minimize the potential spread of the coronavirus. They recommended that the city council give the project approval, citing the tribe’s generosity and community involvement. Others supporting the project were local construction union members, who touted the project as one which would supply construction jobs to its members. Those workers are to be provided with, union representatives said, union scale wages agreed to by the tribe.

There were, nonetheless, a fair number of

individuals who made phone calls to the city prior to the meeting, and registered objections to the project. Those recorded calls were played during the general public comment portion of the meeting. Most of the calls enunciating opposition to the project did so on either or both environmental and long-term economic grounds. Those objections held that the project would result in substantial negative impacts on air quality and that warehouse work does not provide a reasonable livable wage.

The project’s supporters maintained that the warehouse would be a “green” one in at least one respect, that being it met or exceeded Leadership in Energy and Environmental Design standards. The staff report for the project nevertheless stated, “Based on the initial [environmental] study provided, the proposed project has the potential to result in significant effects on the environment for which feasible mitigation measures may or may not be available to reduce all of those effects to below thresholds of significance.” The report stated that in making its recommendation for the approval for the project, a statement of overriding considerations had been prepared for the city council to sign off on, an admission that the city’s leadership recognized the project would have deleterious impacts upon the area in question but that this was outweighed by the positive elements of the project.

Given the tremendous political pull of the tribe, observers and project opponents found troubling the manner in which the council’s consideration of the development proposal was carried off without any members of the public who opposed the project during the hearing on the matter.

Councilman Ted Sanchez, while acknowledging that it was unfortunate those wishing to inveigh against the project during the public hearing held for it did not get to participate, said that circumstance was not the result of a deliberate effort to disenfranchise project opponents. He said that the council not meeting in person as

is traditionally the case and the conducting of meetings remotely, along with poor communication by the city clerk, explained what happened.

“Whenever the council sits in judgment as to whether a project will get approval or not, one of the legal requirements is that you allow the public to comment,” Sanchez said. “Before, when we had open meetings, all you had to do is show up. Now, with this COVID ordeal, the steps you need to take to be heard are more elaborate, and a lot of people are not familiar with how to do that.”

In the general public comment period for the meeting, people phone in to a well-advertised number fielded by the city clerk’s office before the meeting takes place, and their calls are recorded and then played during the meeting. To participate in a public

hearing, citizens must dial a specific number that is not widely distributed to be able to speak while the proceedings are under way.

“People in the immediate area of the project get a letter and the number to call for them to participate in the public hearing is on that,” Sanchez said. “To be candid, even I, as a councilman, don’t know what that number is. I doubt that I could find that number right off. We need to find a better way to get the message out there.”

Asked how it was that those who were in support of the project were able to get through during this week’s meeting, Sanchez said, “I don’t know. The tribe or someone with them may have made calls to those people to inspire them to call in with messages of support during the meeting and gave them the number. I know there

are a lot of players out there trying to game the system, but I don’t really think this was an example of that. I don’t think there was anything nefarious about this. There were a lot of people who spoke against the project during public comments and if they would have known they could actually make their point during the public hearing, they may have preferred to do that. We will have to work on correcting that in the future.”

Sanchez said he supported the project because he felt its positive aspects outweighed the negative ones. He pointed out that the tribe was sensitive to the environmental impact of the project and had vowed to use “tier four” machinery, such as earthmovers and bulldozers, in the construction phase.

Sanchez explained what he meant by tier four machinery.

“Since 2015, standards have been put in place on off-road diesel-powered vehicles,” he said. “The most advanced of these falls into the tier four category. They spew very little in the way of diesel exhaust into the air, with something like 90 percent of the pollutants captured before they are released.”

Councilman Ben Christmas-Reynoso, who has long advocated against warehouse and distribution center development in San Bernardino, said, “I can’t in good faith support this project, or any warehouse in the city of San Bernardino.” He joined with Councilwoman Kimberly Calvin in voting against its approval. The remaining members of the council, Sanchez along with Sandra Ibarra, Juan Figueroa, Fred Shorett and Damon Alexander, supported the project.

-Mark Gutglueck

SB School District Getting New Superintendent *from front page*

fluent in Spanish. His 25 years in the educational field range from classroom teaching to principal, assistant superintendent and superintendent. He was superintendent in Bakersfield since 2016.

In 2012, Marsden replaced Dr. Arturo Delgado as San Bernardino City Unified’s superintendent, where 54,000-student were then enrolled. Just under 90 percent of the district’s student population at that time lived in households below the federally defined poverty level. That statistic has not changed for the better in the nine years since. About 2,800 of the district’s students are homeless.

The number of students in the district dropped during Marsden’s tenure, such that there are now roughly 49,000 students enrolled throughout the district, from kindergarten to 12th grade. The district at this point stands as the ninth-largest school district in California.

Academic progress across the spectrum in the San Bernardino City Unified School District has been spotty over the years.

Marsden made some inroads while with the

district. Of those that managed to make it to the 12th grade, 91 percent of the senior class in San Bernardino City Unified high schools in 2019 graduated, surpassing the county, state and national average.

Marsden was praised for having put into place a community engagement strategy to deal with issues interfering with students’ ability to focus on their studies, and heading off behavioral and attitudinal problems, which was deemed at least partially successful in increasing the district’s graduation rates and achieving a 50 percent reduction in student suspensions and citations. He also championed a “career pathway” focus for students to instill in them the skills necessary to find work, while not necessarily aiming at preparing 100 percent of the district’s students to attend college.

At the same time that Marsden was being lauded, the district was loathe to acknowledge that only 28.3 percent of its students met college course requirements. According to the California State Department of Education, 49 percent of students in San Bernardino are performing below state standards in math, 39 percent are not meeting standards in English language arts/literacy

and 45 percent are testing below the standard level in reading.

The school board was stymied in its effort to replace Marsden because of issues relating to the COVID-19 pandemic. A nationwide recruitment was resumed in January. Erwin was selected from among 20 applicants.

The school board was impressed with Ervin’s emphasis on striving for equity and student engagement, and his efforts to make education possible for economically-disadvantaged students from culturally-diverse backgrounds, according to a statement put out by the district.

San Bernardino City Unified School Board President Gwen Dowdy-Rodgers said the board “listened closely to our SBCUSD community about the qualities we should look for in a new superintendent.”

With Ervin, she said, “We are confident we have found a transformational leader, as his experience at all levels of the educational system will help us effectively navigate the opportunities and challenges that come as we recover and grow from the COVID-19 pandemic.”

The school board is set to approve Ervin’s contract April 6. Salary figures and the benefit package Ervin is to receive have not been pub-

licly provided.

There had been some criticism leveled at Marsden over his level of compensation.

Just before the onset of the school year in 2017, Marsden negotiated a four-year contract worth \$1.2 million in base pay, consisting of an annual salary before benefits of \$307,546. Calculation of his total compensation included another \$124,271.32 in yearly benefits, including contributions toward his pension plus \$24,000 worth of annual life insurance deposited into a trust account, another \$12,000 per year put into a tax-sheltered account for him, a \$14,400 annual housing allowance and a \$9,120 auto allowance. The contract provided him with 24 vacation days and 30 sick days per year and full lifetime medical and dental coverage for himself and his wife upon his retirement. Marsden was given a district-issued credit card for expenses incurred while at work, and the district entitled him to reimbursement for all necessary business-related expenses he personally paid in the conducting of his duties. Thus, Marsden’s total annual compensation package stood at \$432,817.32, making his four-year contract worth \$1.7 million all told.

-Mark Gutglueck

City Consultants, Who Stand To Profit If Upland Issues Bonds, Tell City Council It Should Ignore Calls To Reform The Municipal Pension System And Instead Seek To Defer The City's Pension Debt Into The Future Through Bond Financing *from page 4*

before we consider a bond to push off old debt. You can't get out of debt while you're adding new debt," he said.

With the pension debt mounting and more and more Upland residents becoming aware of how acute the problem is and clamoring for some rational solution to be applied, Bradley after his election consulted with city officials with regard to the issue. As it would turn out, however, the two primary principals at City Hall with whom Bradley was in contact – City Manager Rosemary Hoerning and Assistant City Manager Steven Parker – were the two individuals currently employed by the city with the least interest in effectuating the reform that those most concerned about the pension debt challenge have in mind.

Having risen to the very top of the city's administrative/managerial totem pole, Hoerning is in line to collect a pension through the California Public Employees' Retirement System somewhere in the neighborhood of \$250,000 to \$260,000 per year upon her anticipated 2025 retirement. Parker, who is roughly 14 years younger than Hoerning and is licensed as a certified public accountant, worked in the private sector for a decade after graduating from college before initiating his career as a public employee. He is on track to ultimately succeed Hoerning as Upland city manager. He will need to stay employed in the public sector well into his 60s to qualify for a pension comparable to the one Hoerning is now qualified to receive at the age of 56. Nevertheless, Parker is on a trajectory to qualify for a pension of \$210,000 or thereabouts upon retirement at the age of 60 in 2038.

In this way, it is contrary to both Hoerning's and Parker's personal financial interests that any reform of Upland's city employee pension arrangements be insti-

tuted. Rather than accommodate Bradley in exploring whether the city could transfer the burden of its pension costs to the city's employees, reduce the level of pension benefits provided to the city's employees, withdraw the city from CalPERS, create an alternate pension system utilizing a municipal employee 403 (B) retirement program which city workers would pay into themselves with a prudent contribution from the city or utilizing the provision of Government Code Section 1090 to rescind the generous terms of the employment contracts offered to city employees during Quincey's management of the city as a means of buying those employees' silence with regard to Pomierski's criminal activity, Hoerning and Parker instead steered Bradley toward the concept of refinancing the pension debt on terms that were represented as being preferable to what the city is now enduring by saddling the coming generations of Uplanders – the children, grandchildren and great-grandchildren of Upland's current taxpayers – with that debt by the issuance of bonds.

On March 2, the city council held a mid-day workshop relating to the city's pension debt and the way in which the city might come to terms with it. In doing so, Hoerning and Parker ensured that the subject of reforming the pension system was sidestepped and that the focus of the forum was limited merely to refinancing the debt.

After it was noted that Harrell's firm, Harrell & Company, stood to profit if the city resolved to issue pension obligation bonds and used her company in guiding the city through the thicket of procedures involved in doing so, Hoerning and Parker elected to utilize a different advisor to stand off a suggestion that the city might not have been getting the straight scoop from Harrell because of

her financial stake in the city's eventual decision. Nevertheless, the other experts Hoerning and Parker turned to in order to provide the city council with orientation with regard to this relatively obscure means of financing could themselves have their own financial stake in the outcome of the city council's decision to utilize pension obligation bonds. Moreover, the firm that employs one of those advisors, Urban Futures, for reasons that were hidden from both the city council and the public, had a motivation to prevent the City of Upland from undertaking pension reform and instead defer the problem runaway pension costs represent into the future through some form of refinancing mechanism, of which pension obligation bonds are the most likely option.

The March 2 workshop was directed by Parker and featured as its main informational presenters Julio Morales, a managing director with Urban Futures, and Ira Summer, an actuary who is well versed in public pension statistics. Also in attendance at the remotely held forum conducted by means of a teleconference as a precaution against the spread of the coronavirus was Assistant City Attorney Thomas Rice, a partner with the law firm of Best Best & Krieger, which provides legal services to the city. One of Rice's colleagues at Best Best & Krieger is City Attorney Steve Deitsch. Like Morales and Summer and their companies, the law office of Best Best & Krieger has a potential financial interest in the city issuing pension obligation bonds.

Throughout the March 2 workshop, neither Morales nor Summer engaged in any serious or meaningful discussion of the city's pension reform options, such as ending its relationship with the California Public Employees' Retirement System beyond precluding the concept by advising that it was unattainable or prohibitively expensive. Nor did Morales or Summers engage in a dialogue relating to switching the burden of defraying pension costs to the city's employees or altering the terms of the

city's employee benefit packages either through negotiation or on the basis of the illegality inherent in the circumstances under which those benefits, during the Pomierski era, were derived, offered and accepted.

Morales acknowledged that in the current economic circumstance, over the last several years pension funds dependent upon stock market and other investment returns have been about 75 percent funded.

Morales shot down the concept of the city moving out of its contractual arrangement with the California Public Employees' Retirement System and switching to a 403 (B) program, saying that CalPERS would not allow employees in its system to withdraw. He further said that the California Public Employees' Retirement System would not allow a city that currently has its employees in the California Public Employees' Retirement System to hire new employees who were not automatically enrolled in the retirement system. Without making any citation to his authority for saying so, Morales indicated that doing so would be a violation of California law.

Morales said it was not impossible for the City of Upland to leave CalPERS, but that it would cost more than paying off its current unfunded liability, which he put in the neighborhood of \$120 million. Rather, he said, Upland could not buy its way out of the California Public Employees' Retirement System for anything less than \$490 million.

Morales continuously sought to paint the option of issuing pension obligation bonds in the best light possible, acknowledging that doing so would create for the city new debt that would need to be paid, but insisting that payment of that bill would "avert a worse bill," such that the city and its council would find itself and themselves "in a better position than you would have been" if it did not issue the pension obligation bonds.

Admitting the city could take the approach of having its employees pay more of their pension costs, Morales nevertheless said the best

that would do is have some impact "around the margins" of the mounting debt issue. He told the city council that it would essentially prove futile for the city to seek getting out of its relationship with CalPERS or strive to lessen its actual payments into the system, but should instead seek to use bonds to reduce the cost of financing its pension debt. Doing so at this point, he explained, would escalate the savings the city is to potentially reap, given the historically low interest rates in the financial marketplace at present.

He referenced the "California Rule," a legal precedent that bars public employers from revoking any benefits given to public employees in the past without compensating them with an offsetting improvement in benefits going forward.

"You cannot undo these formulas," Morales solemnly informed the counsel with reference to the pensions that Upland's past and current employees are guaranteed through the California Public Employees' Retirement System.

Morales admitted that the city ran a certain limited risk in utilizing the pension obligation bonds option, explaining that the city would save money, relatively by issuing the bonds as long as the earnings of the California Public Employees' Retirement System's investments remained higher than the interest on the bonds. If CalPERS suffered consistent or sustained low, flat or negative earnings on its investments, Morales pointed out, the relative advantage of issuing pension obligation bonds would be wiped out. He nevertheless said it would be to the city's advantage to pursue the pension obligation bond issuance option and that doing so immediately while interest rates remain low offered the greatest chance of benefit to the city.

Parker, while making reference to the concept of employee pension reform, avoided any substantive discussion of the subject, emphasizing instead other cost savings or revenue generating efforts the city could make to improve its overall financial position.

Parker said the city at present is purposed to establish a pension fund stabilization element/plan into the city's upcoming 2021-22 budget, and he mentioned bargaining with city employees in upcoming contract negotiation to take on more of the pension cost. He touted outsourcing moves the city had made in the past, such as those of the fire department, library and animal control service division, which had frozen in place the city's pension costs for those employees moved off the municipal payroll. He made an oblique rather than overt reference to the possibility of shuttering the police department in favor of contracting law enforcement services out to the county sheriff's department.

Parker said the California League of Cities has suggested the issuance of pension obligation bonds as a possible way of stabilizing pension costs.

Summer, a specialized consulting pension fund accountant who works in the arena of public pension administration and financing, was less heavily involved in the presentation than Morales. Parker introduced Summer as being a principal or officer with a firm, Dove Invest. Sources available to the *Sentinel* show Summer as a "consulting actuary and president with Public Pension Professionals." Summer backed Morales in his exhortations to have Upland make use of pension obligation bonds to render the city's pension debt manageable.

At no point during the workshop did Hoerning, Parker, Assistant City Attorney Thomas Rice, Morales or Summer discuss the position of the Government Finance Officers Association, a fraternity of American and Canadian public/government financial officers founded in 1906, has taken with regard to pension obligation bonds. In a warning to governmental entities, the association stated, "The Government Finance Officers Association recommends that state and local governments do not issue pension obligation bonds for the following reasons: The invested pension ob-

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Protecting Their Future Quarter Million Dollar and \$200,000 Per-Year Pensions, City Manager & Assistant City Manager Discourage The Upland City Council From Initiating Pension Reform, Recommending The City Pursue Bond Refinancing Of Pension Debt Instead *from page 11*

engage himself in the discussion to offer any information whatsoever with regard to the city's legal or procedural options in altering the terms by which the city participates in the California Public Employees' Retirement System.

So effectively did Morales and the others commandeer the workshop, ensuring that its focus was directed away from pension reform and concentrated primarily upon the option of refinancing the debt and using pension obligation bonds to do just that, that at the end of the workshop the city council voted to initiate the process of moving toward a validation of the bond issuance. Based upon Morales' encouragement, the city council unanimously agreed to put itself into the position of being able to issue those bonds at the earliest opportunity while interest rates remain low.

The general upshot of the presentation was that public pension obligation bonds would save the city money. The council ultimately complied with Morales' suggestion that it make a preliminary application for the issuance of the bonds without actually committing to do the issuance, to cut down on any delay should the council ultimately decide to use the pension obligation bonds option. Timely action now, he said, would help to ensure the bonds could be issued while interest rates remain low, giving the city the full advantage of that market condition.

Undisclosed during the course of the workshop was Parker's relationship with Urban Futures. In 2013, during a five month interim between the time he was employed with the Yorba Linda Water District in July of that year and the time he was hired on as the director of administrative services with the City of Stanton in November 2013, Parker was employed by Urban Futures. In that five-month period, he was employed as a consultant on loan

from Urban Futures to the City of San Bernardino, serving in the capacity of financial manager following the departure of Jason Simpson as that city's finance director earlier that year.

Urban Futures has long been involved in an advisory or consultancy role in Upland municipal operations. A major portion of the firm's work consists of advising the city with regard to and then making the arrangements for debt refinancing. In doing so, Urban Futures stands to gain fees pursuant to the ancillary services it provides relating to the refinancing. Given the financial stake Urban Futures has in these refinancings, questions have arisen about the integrity of that advice.

Moreover, in this circumstance, Urban Futures, or at least some of its employees, have an interest in discouraging any options that might pertain to Upland exiting the California Public Employees' Retirement System.

Steve Dukett from 2018 until 2019 served as Upland's contract development services manager after having served, more than a decade prior to that, as an Upland municipal employee, in the post of development services manager. Dukett is one of three managing partners with Urban Futures. In addition to his work for Urban Futures, Dukett draws a significant amount of his personal income from CalPERS. Dukett served stints as the redevelopment or development director with the cities of Redlands, Upland, Hesperia, Ontario, Lancaster and San Bernardino. He was briefly, in the late 1990s, the interim city manager in Hesperia. His employment in Upland took place during the reign of then-Mayor John Pomierski. At present he pulls a \$173,071.80 public pension consisting of \$119,863.44 per year provided to him by the California Public Employees' Retirement System based on his 29.43 years with various

municipal entities, as well as \$53,208.36 from the retirement system Los Angeles County has for its public employees based on the 12.42 years he worked there, including within the county administrative office.

At the March 2 workshop, Parker stated that the city at that point was utilizing both Urban Futures and Summer only for advisory and informational services. Pointedly, however, he did not rule out that they might have roles related to the bond issuances.

The *Sentinel* has learned that in the more than two weeks that has elapsed since the workshop, the city is now fast angling toward the issuance of the pension obligation bonds, and that the city council will be asked to make a commitment toward doing so as early as next Monday.

All of those the city council is relying upon for advice with regard to the bond issuance – Morales, Urban Futures, Summer, City Attorney Steve Deitsch, Assistant City Attorney Thomas Rice, the law firm of Best Best & Krieger and most importantly City Manager Rosemary Hoerning and Assistant City Manager Steven Parker – have a personal financial stake in having the city issue pension obligation bonds.

Internal city discussion of the pension obligation bond issuance has shifted, the *Sentinel* is reliably informed, from whether the bonds should be issued to effectuating their issuance.

One element of the discussion that took place over the last two weeks, the *Sentinel* has learned, pertained to whether or not the city will use the same entity that is to carry out the validation proceeding for the issuance of the bonds as will be used for serving as bond counsel and disclosure counsel

with regard to those issuances. On the inside track for gaining that assignment is the law firm of Best Best & Krieger. By capturing all three of those assignments – validating the bond issuance, serving as bond counsel and then serving as disclosure counsel – Best Best & Krieger stands to gain as much as \$1,006,389.57 in legal fees.

There is only the slimmest of possibility remaining that the city might use different law firms to carry out the validation proceeding and to serve as bond counsel and disclosure counsel.

Assuming the city will issue \$130,185,277 in pension obligation bonds, an amount equal to its current unfunded pension liability, the entity doing the validation can expect to pull down roughly \$30,000 for providing that service, which will consist of fully analyzing the city's financial situation and its credit rating and using that information to file for permission from the San Bernardino Superior Court to issue the bonds at a percentage most advantageous to the city. The law firm that will serve as bond council would be paid \$650,926.38, or one half of one percent of the total \$130,185,277 issuance, for serving in that capacity, which entails acting as the city's legal representative with regard to issuing municipal securities and in so doing rendering a legal opinion as to the tax status of interest payments and as to the city's authority as the issuer to sell the bonds. The bond counsel also provides a legal opinion relating to the taxation of the interest payments received by investors. Disclosure counsel, the attorney or law firm retained by the issuer to provide advice on what information

about the city's financial position and the intended use of the bonds is to be disclosed to the investors and to prepare the official statement or offering document for the bonds, is to be paid \$325,463.19, one quarter of one percent of the bond issuance.

If the city decides up front to use the same law firm to carry out the validation of the bond issuance and serve as bond counsel, there will not be a separate request for proposals from law firms. There will not be, the *Sentinel* has learned, a competitive bidding process to serve in the bond council or disclosure counsel roles. Such competitive bidding would encourage the firms seeking the role of bond council or disclosure counsel to lower the commission they are to potentially receive for the work. Thus, rather than seeking those counsel assignments by offering to drop the .005 commission for serving as bond council to, for example, .0045 or .004 or .0035 of the bond issuance, or offering to drop the .0025 commission for serving as disclosure counsel to, for example, .002 or .0015 of the bond issuance, those competing will proceed with the understanding that they will receive the standard .005 of the total bond issuance to serve as bond council and .0025 to serve as disclosure counsel, with the only point of competition being the experience each has had in participating in bond issuances in the past.

At the upcoming Monday March 22 Upland City Council meeting, the city council is set to consider a recommendation from Hoerning and Parker to "authorize city staff to proceed with [the] next steps in filing a validation action for pension obligation bonds." That staff report also anticipates that "The

law firm selected for validation counsel on a non-conditional basis would also act as bond and disclosure counsel on a conditional basis contingent upon the actual issuance of the POBs."

It further appears at this point that Urban Futures and Summer will be involved in guiding the city in the issuance of the pension obligation bonds.

Thus, city staff has entirely diverted the city council from considering any effort to reform the city's pension provision arrangements or address the underlying issue that has created the city's overwhelming pension debt. Furthermore, the staff report for next Monday's meeting makes clear, both Hoerning and Parker expect the city council to accept and adhere to the advice provided to them by entities which have themselves an actual or potential financial interest in the action those advisors are recommending, i.e. the issuance of the pension obligation bonds, action that will create a future liability upon the residents of Upland, matching or compounding its current liability.

According to City Treasurer Greg Bradley, Hoerning and Parker, with the assistance of Morales, Urban Futures, Summer, Deitsch, Rice and Best Best & Krieger, are stampeding the city council toward the inevitable issuance of the bonds by the threatening suggestion that if the city does not act now, the opportunity for coming generations of Uplanders to realize a reduction in retiring the city's contemplated future bonded indebtedness will be lost if interest rates should increase.

Indeed, on Monday night, the city council is slated to take a historic first step in a series of refinancings of its pension debt into perpetuity.

Judge Orders Sex Offender To Set Up Residence In Twentynine Palms *from page 3*

vincing the women as well as their friends to provide him with large sums of money to invest.

Rhoden was released from state prison in 2004 and detained in the Orange County jail based on a sexually violent

predator petition filed by the Orange County District Attorney's Office. He was later found by an Orange County jury to be a sexually violent predator under the state Welfare & Institutions Code and committed to the Department of State Hospitals for treatment.

On October 25, 2019, the Orange County Superior Court ordered Rhoden released into the

community under the supervision of Liberty Healthcare.

On February 5, 2021, the Orange County Superior Court found "extraordinary circumstances" existed to authorize relocating Rhoden outside of Orange County.

On March 12, 2021, the Orange County Superior Court tentatively ordered Rhoden to live

at a residence in Twentynine Palms.

San Bernardino County District Attorney Jason Anderson has assigned deputy district attorneys from his office's sexually violent predator unit to appear before the Orange County Superior Court on April 16 and oppose Rhoden's release into San Bernardino County.