

2021–2022 San Joaquin County Grand Jury



Lathrop-Manteca Fire District: A Work in Progress: From Turmoil to Healing Case #0721



Summary

The Lathrop-Manteca Fire District (LMFD) grabbed public attention through media reports following a retreat held in Napa in February of 2021. The reports cited allegations of inappropriate behavior and improper use of the District's credit card for personal services,

personal items and the purchase of alcoholic beverages, all prohibited under the District's credit card policy. After media reports came to light, the LMFD Board of Directors employed a third party to investigate complaints regarding the retreat and the workplace environment. Upon completion of that investigation the Fire Chief retired with full benefits.

The District's Ordinance 1 grants the Fire Chief broad and autonomous powers to manage all aspects of the District. Ordinance 1, along with ineffective policies, provides little or no Board oversight of District management. The Grand Jury found that employees of the District endured a hostile work environment over several years stemming from abuses of power that included harassment, intimidation, financial mismanagement and retaliation. The caustic work environment left emotional wounds on the employees. In late 2021, The Board brought in outside trainers to assist the District in healing the wounds created by previous management. They are providing training and direction for improving the work environment, but healing is a process that will require significantly more time to effect results.

The Board of Directors is in the process of reviewing and updating policies and procedures, including Ordinance 1, but the process is not yet complete.

The Grand Jury recommends that the LMFD Board of Directors:

- replace Ordinance 1 with policies and procedures that clearly define the authority of the Fire Chief and provide greater Board oversight of the operations for the District;
- develop, adopt and implement a policy, with procedures for financial oversight, that includes a system of checks and balances;
- develop, adopt and implement updated travel and education policies compliant with the District Memorandum of Understanding for Executive Staff and the Fair Labor Standards Act;
- develop, adopt, and implement a formal employee complaint policy with procedures for filing complaints, reporting back to complainants and filing appeals;
- develop, adopt and implement an annual employee satisfaction survey and an employee engagement process to review survey results to ensure that new management and updated policies are providing a positive effect on the District's work environment;
- complete an investigation into allegations that merit increases or step increases were withheld from employees pending their signing a non-disclosure agreement; and
- complete an investigation into the allegations that non-exempt employees did not receive mileage payments and were not paid for overtime hours while attending the Napa retreat.

Glossary

- **AB1234 Ethics Training:** Assembly bill for ethics training required for all elected government officials. Training includes promoting public trust, respect, fairness and responsibility.
- **BOD:** Board of Directors.
- **Brown Act:** Ralph M. Brown Act "requires local government business to be conducted at open and public meetings, except in certain limited situations. The Brown Act is based upon

state policy that the people must be informed so they can keep control over their government.” California Government Code beginning at Section 54950.

- **Cal Card:** Referred to as District Credit Card, one of the State of California's commercial card services programs available to State and publicly funded local agencies.
- **Cal-JAC:** The California Firefighters Joint Apprenticeship Committee is a standards-based apprenticeship program.
- **California Public Records Act:** Provides the public access to public records in the State of California.
- **FLSA:** The Fair Labor Standards Act establishes minimum wage, overtime pay, recordkeeping and employment standards affecting employees in the private sector and in Federal, State and local governments. “Covered nonexempt employees must receive overtime pay for hours worked over 40 per workweek (any fixed and regularly recurring period of 168 hours – seven consecutive 24-hour periods) at a rate not less than one and one-half times the regular rate of pay. There is no limit on the number of hours employees 16 years or older may work in any workweek. The FLSA does not require overtime pay for work on weekends, holidays or regular days of rest, unless overtime is worked on such days.” And “Hours worked ordinarily include all the time during which an employee is required to be on the employer’s premises, on duty, or at a prescribed workplace.”
- **FPPC:** Fair Political Practice Commission. Every elected official and public employee who makes or influences governmental decisions is required to submit a Statement of Economic Interest, also known as the Form 700.
- **Form 700:** “Is the tool used by public officials to disclose their financial interests that may be affected by their public official decisions. This ensures that the public is aware of a public official's financial interests and also reminds the public official of potential conflicts.”
- **ISD:** Independent Special Districts. ISDs are a form of local government, with an independent governing board, that provide services to the community.
- **LAFCo:** Local Agency Formation Commission. A regulatory agency with a county-wide jurisdiction established by State law to coordinate logical and timely changes in local government and to ensure that services are provided efficiently.
- **LMFD:** Lathrop-Manteca Fire District.
- **MOU:** Memorandum of Understanding. A type of agreement between two or more parties.
- **Merit Increase:** Financial reward for good performance.
- **NDA:** Non-Disclosure Agreement. **A legally binding contract that establishes a confidential relationship.**
- **State of California Mass Mutual Aid System:** The state is divided into **six mutual aid regions** to facilitate the coordination of mutual aid to respond to the occurrence or imminent threat of a disaster.

- **Step Increase:** This is a periodic **increase** in an employee's rate of basic pay from one **step** of the grade of his or her position to the next higher **step** of that grade.

Mission-Vision Values-LMFD (available at www.lmfire.org)

Mission Statement: Through professionalism and compassion we will serve all, by empowering our members who embody our core values.

Vision Statement: Preparing for the future, developing skilled leaders, training for your needs and serving in solidarity.

Values Statement:

Members: Value our members and promote a competent highly trained team with a devotion to duty, honored to provide service to our community.

Service: Professional service delivered with sincerity, dignity & respect to the growing diverse needs of our community.

Passion: Foster our insatiable need to develop and grow within our craft for our community.

Leadership: Embody the highest level of Servant Leadership at all levels within our organization demonstrated by our ethical actions to earn the respect of our members and stakeholders.

Background

The Lathrop-Manteca Fire District provides fire protection and emergency services for the City of Lathrop and the rural areas surrounding both Lathrop and Manteca, encompassing approximately 90 square miles. Lathrop and the rural areas around Manteca are rapidly growing communities. The area population has grown more than 50 percent since the 2010 census and now has a population exceeding 37,000 residents.

The Fire District is organized under the State of California Health and Safety Code section 13800 Fire Protection District Law of 1987. LMFD is an Independent Special District in San Joaquin County funded by constituents' property tax assessments exclusively for fire and emergency services.

Currently, the District operates five fire stations strategically located based on population density and accessibility for optimum service requirements. Each station is staffed with an Engine Company and a Rescue Company. There are plans to build a sixth station in the area around River Islands, a newer master-planned community on the west side of Lathrop. Each

station has one Battalion Chief or Captain who is responsible for management and oversight of the firefighting staff. All stations are staffed with career firefighting personnel. At least one station is staffed by a combination of career and volunteer firefighters. Currently, the District firefighting staff consists of 40 career and 15 volunteer firefighters. Fire personnel from LMFD are also deployed throughout California as part of the State's Mass Mutual Aid System to respond to major wildfires as needed.

The District has an elected five-member Board of Directors serving overlapping four-year terms with elections held every two years. The Board is subject to the California Public Records Act and the Brown Act. The Board members are required to file Fair Political Practice Commission (FPPC) Statement of Economic Interests Form 700 to disclose any possible financial conflicts.

Each Board member is required to complete Ethics Training (AB1234) within 60 days of taking the oath of office and every two years thereafter. AB1234 Ethics Training includes promoting public trust, respect, fairness and responsibility. The training also addresses the importance of avoiding the appearance of impropriety, including receiving personal financial gain by public servants.

Reason for Investigation

The Grand Jury received a written complaint and subsequently reviewed media reports of questionable expenditures by LMFD management.

Method of Investigation

The Grand Jury conducted 16 interviews with the District's management, staff, Board members and residents.

Materials Reviewed

- Articles of Incorporation of Behind the Fire LMFD, a Nonprofit 501(c)(3)
- Citizens Complaint Policy–LMFD
- City of Oakland Policy for Nepotism and Cronyism, City Ordinance 13645
- District Credit Card Policy–LMFD
- District Policies and Procedures–LMFD
- Fire Chiefs Firefighter Bill of Rights–LMFD
- LAFCo letter dated January 29, 2019, to the LMFD Board of Directors regarding the former Fire Chief
- LMFD Bylaws
- LMFD Mission, Vision and Values
- LMFD Ordinance 1
- LMFD Policy: Personal Relationships in the Workplace
- Manteca Bulletin article–November 6, 2021, "Firefighters train at swanky Napa resort complete with massages"

- Memorandum of Understanding (MOU) Between LATHROP-MANTECA FIRE PROTECTION DISTRICT And LATHROP-MANTECA FIREFIGHTERS ASSOCIATION INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL #4317, AFL-CIO effective Dates: July 1, 2020, through June 30, 2023
- Memorandum of Understanding (MOU) for MEMBERS OF THE EXECUTIVE STAFF of the Lathrop-Manteca Fire District July 1, 2020–June 30, 2023
- Superior Court of California–Case #STK-CV-UCP-2021-0009068
- Supporting financial documents

Websites Searched

- *AB1234 Ethics Training*. (n.d.). www.fppc.ca.gov. Retrieved May 17, 2022, from <https://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/ethics-training.html> [5](#).
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- *Cal Card Procurement Division*: <https://www.dgs.ca.gov/PD/>. Accessed [May 11, 2022](#).
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- *elaws - Fair Labor Standards Act Advisor*. (n.d.). webapps.dol.gov. <https://webapps.dol.gov/elaws/whd/flsa/screen74.asp#:~:text=Employers%20who%20willfully%20or%20repeatedly,who%20was%20employed%20in%20violation>. Accessed [May 12, 2022](#).
- *Enforcement | U.S. Department of Labor*. (n.d.). www.dol.gov. Retrieved May 17, 2022, <https://www.dol.gov/general/topic/youthlabor/enforcement#:~:text=It%20is%20a%20violation%20to>.
- *FPPC Home*. (n.d.). www.fppc.ca.gov. <https://www.fppc.ca.gov/>. Accessed May 12, 2022.
- *LAFCo: Local Agency Formation Commission*. (n.d.). [Sjgov.org](http://sjgov.org). Retrieved May 17, 2022, from <https://www.sjgov.org/commission/LAFCo/home>.
- *Lathrop Fire Home Page*. (n.d.). Lathrop Manteca Fire District. Retrieved May 17, 2022, from <https://www.lmfire.org/>.
- *Lathrop-Manteca Fire Protection District–Human Resources: Policies* <https://www.lmfire.org/administration/page/human-resources>. Accessed May 11, 2022.
- *LMFD Ordinance 1: Lathrop-Manteca Fire Protection District AGENDA 1. CALL TO ORDER 2. ROLL CALL 3. CLOSED SESSION: 3.1. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION Significant Exposure to Litigation Pursuant to Paragraph (2) of Subdivision (d) of Section 54956.9: 4 Potential Cases. (2021).* https://www.lmfire.org/sites/default/files/fileattachments/board_of_directors/meeting/5331/lmfd_special_board_meeting_packet_-_may_10_2021.pdf. Accessed May 11, 2022.

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- *The Brown Act*: <https://oag.ca.gov/system/files/media/the-brown-act.pdf>. Accessed May 11, 2022.
- *U.S. Department of Labor. (2021). Wages and the fair labor standards act. Dol.gov.*
<https://www.dol.gov/agencies/whd/flsa>. Accessed May 17, 2022.



Discussions, Findings and Recommendations

1.0 Financial Matters and Board Training

1.1 Financial Matters

Excerpts from ORDINANCE NO. 1

SECTION 1: OFFICERS

Article 2. The Fire Chief shall be the chief executive officer of the fire department and shall be appointed by the Board of Directors of the Lathrop-Manteca Fire District for an indefinite period of time, tenure of office shall depend upon his/her good conduct and efficiency.

Article 7. The Chief shall be held accountable to the Directors only, and shall make written and verbal reports thereto as the Directors may require. All other employees are accountable to the Chief only.

In 1997, the District passed Ordinance 1, along with accompanying rules and regulations, appointing the Fire Chief as the Chief Executive Officer of the District.

The Fire Chief, as CEO of the District, oversees every aspect of the District's operations, including financial, administration and firefighting efforts. Ordinance 1 grants the Chief broad authority to make decisions with little to no oversight by the Board. The District does not have a system of checks and balances to thwart financial abuse or malfeasance by the Chief, thus providing opportunity for financial abuse, which occurred in several ways over recent years.

The Cal-JAC program, funded by the State of California to support training of apprentice firefighters, provides reimbursement to fire departments and districts based on the number of hours spent training apprentice firefighters. In recent years, LMFD utilized funds from this program to purchase weightlifting equipment which was placed in a location where most firefighters have limited access. In 2021 over \$25,000 of Cal-JAC funds were spent on a staff retreat in Napa. That retreat was attended by 13 individuals, provided minimal training, damaged staff morale and generated media reports that placed the District in a negative light. District policies did not require Board approval for the use of Cal-JAC funds. Therefore, the funds were used at the sole discretion of the Chief.

Board members were not aware of the extent of financial latitude exercised by the Fire Chief until media reports disclosed the District's credit card receipts from the Napa retreat. Expenses from the retreat included recreational activities, personal services and alcohol, all of which are explicitly prohibited under the District credit card policy dated April 16, 2015. The District requires that the credit card program abides by the District's Purchasing Policy and requires that all purchases are provided in a warrant list for the Board of Director's approval.

Non-exempt administrative employees who were required by the Fire Chief to attend this retreat, which began on a Wednesday evening and ran until Sunday, received no overtime pay or compensatory time off for the time they were in attendance beyond their normal 40-hour work week. Also, those who drove their personal vehicles to the retreat did not receive mileage reimbursement. The LMFD MOU for Members of the Executive Staff states that Non-Exempt Employees are subject to FLSA requirements. The MOU also states that, "The Executive Assistant shall receive time and one-half pay or compensatory time off (CTO) for all Fire District Board Meetings, Special Board Meetings, and special functions assigned outside of their normal work hours." The same MOU states, "Employees who are directed by the Fire Chief or a designated representative to use their personal vehicle in the conduct of District business shall be compensated at the rate of current IRS factor per mile or shall be provided gasoline for the same vehicle."

In 2010, the District was assigned by the City of Lathrop to operate the City's annual raffle for Fourth of July fireworks booths. The District was also granted a license from the City to operate its own booth annually without participating in the raffle. In 2019, a 501(c)(3) nonprofit, Behind the Fire LMFD, was created with the former Chief's spouse listed as the incorporator and the agent of service for process. The service address for Behind the Fire LMFD was recorded as 800 J St., Lathrop, CA 95330, which is the same location as the District's administration office.

Behind the Fire LMFD assumed operation of the fireworks booth. The proceeds from the fireworks booth were spent outside of District control and without Board oversight.

These actions occurred without prior approval by the Board of Directors. Current policies, rules and regulations, and Ordinance 1 effectively allow the Fire Chief to take these types of actions at his or her sole discretion without Board approval or oversight.

Findings

F1.1 Ordinance 1 and District rules and regulations enable the Fire Chief to control most financial operations of the District with limited or no Board oversight, thus providing an opportunity for financial malfeasance.

F1.2 Ordinance 1 and current policies allow the Fire Chief, as Chief Executive Officer, to alter or disregard District policies without approval by the Board, causing confusion and discord within the District.

F1.3 The Board of Directors failed to enforce the District's Credit Card Policy providing an opportunity for financial malfeasance.

F1.4 Requiring non-exempt administrative employees to attend a retreat that created overtime hours without compensation was in violation of the current Memorandum of Understanding and the Fair Labor Standards Act, opening the District to potential liability.

F1.5 Funds generated for the use of the District through the Cal-JAC program were allocated to purchases, services and events, uses that were not in compliance with District's purchasing and credit card policies. These expenditures could be construed as misuse of funds.

F1.6 Beginning in 2019 the District's fireworks booth was operated by the 501(c)(3) nonprofit Behind the Fire LMFD, overseen by a member of the Chief's family. This occurred with no oversight by the Board, who held the license for the booth, a situation that could expose the District and its Board to allegations of misconduct and malfeasance.

Recommendations

R1.1 By November 1, 2022, the Board of Directors replace Ordinance 1 in its entirety by developing, adopting and implementing policies and procedures that clearly define the authority, and limitations thereon, of the Fire Chief and provide greater Board oversight of the operations of the District.

R1.2 By November 1, 2022, the Board of Directors develop, adopt and implement a policy to require Board approval for any alterations or deviations from established policies and procedures.

R1.3 By November 1, 2022, The Board of Directors develop, adopt and implement a policy and procedure for financial oversight by the Board that includes a system of checks and balances.

R1.4 By November 1, 2022, the Board of Directors develop, adopt and implement updated travel and education policies compliant with the District Memorandum of Understanding for Executive Staff and Fair Labor Standards Act.

R1.5 By November 1, 2022, the Board of Directors develop, adopt and implement a policy with detailed procedures for the use of earned Cal-JAC program funds that is in accordance with the District's purchasing and credit card policies.

R1.6 By November 1, 2022, the Board of Directors appoint a committee of no less than three to pre-approve Cal-JAC expenditures.

R1.7 By January 1, 2023, the Board of Directors develop, adopt and implement a policy and procedure for the operation of the fireworks booth raffle and for the operation of the District booth.

1.2 Board Training

The Board of Director's lack of training for government oversight and District policies granted the Fire Chief near autonomous authority over the District without including a system of checks and balances or an oversight function by the Board.

Under the California Public Records Act, the District's five Board members are required to provide their AB1234 Ethics Training Certificates upon request. Historically the certificates have been posted on the LMFD website. Three Board member certificates currently posted on the website have expired, and two Board member certificates are missing.

Finding

F1.2.1 Board members' AB1234 Ethics Training Certificates posted are expired or missing, indicating that some Board members may not be in full compliance with AB1234 regulations.

Recommendations

R1.2.1 By November 1, 2022, the Board of Directors complete required AB1234 training and make the Ethics Training Certificates available upon request per the California Public Records Act.

R1.2.2 By January 1, 2023, the Board of Directors develop, adopt and implement a policy requiring all incoming elected, or appointed, Board members complete AB1234 training within 60 days of taking office.

2.0 Harassment and Intimidation: Board Oversight

The Grand Jury reviewed complaints made by employees against the Chief and managers alleging administrative staff members were harassed and intimidated in the days following the February 2021 retreat in Napa. Current District policies contain no procedures to refer complaints, or to appeal decisions, to the Board. Firefighters have a defined complaint/grievance process through their MOU, but administrative staff do not.

Board members were largely unaware of the extent of personnel issues and complaints until the Napa retreat came to light in media reports. When the Board learned of the issues, a third party was engaged to investigate complaints and personnel issues related to the off-site retreat.

Ordinance 1-General Conduct Code (6.)

No member shall make contact with the Board of Directors, or an individual Board Member, regarding District Policies, Procedures, or related business without permission of the Fire Chief. Unless the contact is as a[sic] authorized representative of the employee group, or as a resident of the Fire District.

Several employees alleged that, after filing complaints against the Fire Chief, earned merit or step increases prescribed in Section 7A: Eligibility for Advancement in Pay, stipulated in the Executive Staff MOU, were withheld pending the signing of a Non-Disclosure Agreement (NDA). Staff viewed this as a form of coercion. There is currently no policy or procedure to address this situation.

Members of the firefighting and administrative staff reported that they felt intimidated, threatened or harassed to the point of taking medical stress leave, while some resigned their positions. There is at least one legal action filed (Superior Court of California–Case #STK-CV-UCP-2021-0009068) involving the District which cites multiple occurrences of intimidation and harassment.

Harassment by the District’s managers was not limited to employees. The San Joaquin County LAFCo sent a letter to the LMF D Board of Directors on January 29, 2019. Members of the LAFCo executive team wrote that they felt they were being harassed and intimidated by two LMF D chiefs while at the San Joaquin County Administration Building. In the letter, LAFCo stated, “In an effort to ensure LAFCo staff is comfortable in their work environment, they have been instructed not to interact with [redacted] in person or over the phone. In addition, [redacted] is not allowed to interact in person or over the phone with LAFCo staff.”

Employees also expressed concerns related to nepotism existing in the District where family members were hired for key positions or given preferential treatment, but the Board was unaware of these family connections/relationships. There have also been allegations of cronyism where preferential treatment or promotions were given to employees who were favored by the Chief. The District policy Personal Relationships in the Workplace was established on October 11, 2005, and revised on October 1, 2008. As written, this policy defines

personal relationships but does not set forth the expectations and best practices for employees in these relationships working together. There is also no language to prohibit direct supervision of relatives.

Findings

F2.1 The Board of Directors was not aware of issues that District employees had with the Chief. Ordinance 1 general conduct rule blocked employee accessibility to the Board. This situation contributed to a hostile work environment.

F2.2 The District does not have a formal employee satisfaction survey or engagement process to allow employees to share work environment concerns with the Board and Management. The District is unable to implement warranted improvements for issues and concerns if they are not brought to light by employees.

F2.3 Requiring non-exempt administrative employees to attend a retreat that created overtime hours without compensation was in violation of the current Memorandum of Understanding and the Fair Labor Standards Act. This action could expose the District to potential liability including financial penalties.

F2.4 Allegations were made that merit or step pay increases were withheld pending the signing of a non-disclosure agreement which violates the District's Memorandum of Understanding for Executive Staff. If proven to be true, and not corrected, the District could be subject to legal action brought by affected employees.

F2.5 Pending litigation filed against the Fire District by employees for harassment and intimidation could expose the District to expenses for financial settlements and legal fees.

F2.6 The District does not have a nepotism and cronyism policy that prohibits the direct supervision of family members and/or individuals with whom the supervising manager has a romantic or other close personal, financial, business or political relationship. Not having a clear policy for nepotism and cronyism has created discord within the District.

Recommendations

R2.1 By December 1, 2022, the Board of Directors develop, adopt and implement a formal employee complaint policy with procedures for filing complaints, reporting back to complainants, filing appeals and providing accessibility to the Board while adhering to all laws and rules regarding confidentiality.

R2.2 By January 1, 2023, the Board of Directors develop, adopt and implement an annual employee satisfaction survey and employee engagement process to review survey results to ensure that new management and updated policies are providing a positive effect on the District's work environment.

R2.3 By November 1, 2022, the Board of Directors complete an investigation into the allegations that non-exempt employees did not receive mileage payments and were not paid for overtime hours while attending the Napa retreat and, if the allegations are found to be true, take corrective action to ensure payments are made to the affected employees within 30 days thereafter.

R2.4 By November 1, 2022, the Board of Directors complete an investigation into allegations that merit and/or step increase payments were withheld from employees pending the signing of a non-disclosure agreement and, if the allegations are found to be true, take corrective action to ensure payments, including applicable retroactive pay, are made within 30 days thereafter.

R2.5 By December 1, 2022, the Board of Directors develop, adopt and implement an updated policy addressing nepotism and cronyism in the District.

Conclusion

The Lathrop-Manteca Fire District Board of Directors is taking steps toward creating an improved culture by updating policies and by defining LMFD's mission, vision and values. The District improvement process is a work in progress. The Board acknowledges that the District will need more time to heal and restore trust following the turmoil and upheaval created under previous management. The Board employed a third party to conduct the search and screening process for hiring the permanent Fire Chief. The Board believes that the selection of a new Chief is a critical decision that must be done correctly if the Lathrop-Manteca Fire District is to move in a positive and effective direction.

Disclaimers

Grand Jury reports are based on documentary evidence and the testimony of sworn or admonished witnesses, not on conjecture or opinion. However, the Grand Jury is precluded by law from disclosing such evidence except upon the specific approval of the Presiding Judge of the Superior Court, or another judge appointed by the Presiding Judge (Penal Code Sections 911, 924.1 (a) and 929). Similarly, the Grand Jury is precluded by law from disclosing the identity of witnesses except upon an order of the court for narrowly defined purposes (Penal Code Sections 924.2 and 929).

Response Requirements

California Penal Code Sections 933 and 933.05 require that specific responses to all findings and recommendations contained in this report be submitted to the Presiding Judge of the San Joaquin County Superior Court within 90 days of receipt of the report.

The Lathrop-Manteca Fire District Board of Directors shall respond to all findings and recommendations.

Mail or hand deliver a hard copy of the response to:

Honorable Michael D. Coughlan, Presiding Judge
San Joaquin County Superior Court
180 E Weber Ave, Suite 1306J
Stockton, California 95202

Also, please email a copy of the response to Ms. Trisa Martinez, Staff Secretary to the Grand Jury, at grandjury@sjcourts.org