

**A Report of
The 2023 – 2024 Contra Costa County
Civil Grand Jury**

Report 2405
6/12/2024

Challenges Facing the City of Antioch

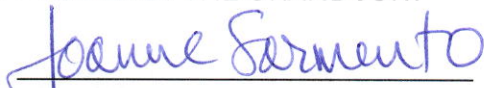


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APPROVED BY THE GRAND JURY



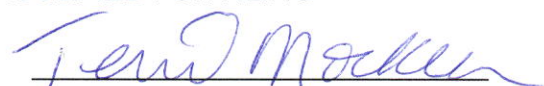
JOANNE SARMENTO

GRAND JURY FOREPERSON

6/14/24

Date

ACCEPTED FOR FILING



Hon. TERRI MOCKLER

JUDGE OF THE SUPERIOR COURT

6/14/24

Date

SUMMARY

Antioch is a dynamic and diverse city that faces a number of challenges. Among these challenges are:

1. Turnover in city leadership (six permanent or acting City Managers since 2013) which has resulted in an average tenure for Antioch City Managers that is less than half the state average (less than two years vs. 4.5-year average).
2. A city employee vacancy rate that is 4-times the national average (21.6% vs. 5.3%).
3. Possible Brown Act violations by the Mayor and certain City Council members, as outlined in a letter to Antioch's Acting City Manager from the Contra Costa District Attorney (see Appendix A).

An important first step in addressing the challenges facing Antioch will be stabilizing leadership by hiring an experienced and qualified City Manager. The city has hired a Human Resources consulting firm and is in the process of recruiting a City Manager. A new City Manager's success will depend, in part, on the Mayor and City Council creating an environment that while maintaining the oversight required by city ordinances, enables the City Manager to operate with independence, as also mandated by city ordinances. The Mayor and City Council should also perform their functions in compliance with the Brown Act.

This report details the Grand Jury's research and findings related to the challenges facing Antioch. We conclude with our recommendations to help address these challenges.

BACKGROUND

Why This Report?

Controversy regarding the Antioch Police Department was receiving wide press attention at the time the Grand Jury was considering topics to investigate during its 2023-2024 term. We concluded that the police force was receiving adequate attention from other investigative bodies, including the Federal Bureau of Investigation and the Contra Costa County District Attorney's Office. However, the Grand Jury learned that the issues surrounding the police force are related to other issues of oversight and management within city government. In particular, we noted the average tenure for Antioch City Managers has been less than half the California state average over the last decade (average City Manager tenure of less than 2 years in Antioch vs. 4.5 years for the state).

Accordingly, the Grand Jury decided to examine the issue of turnover in city leadership. In pursuing this investigation, the Grand Jury learned that in addition to a high level of turnover in the City Manager position, Antioch has a city employee vacancy rate in excess of 20% (the national average for government agencies is 5.3%). Seven of the eleven most senior positions in Antioch city government are currently filled with acting (not permanent) or part-time personnel.

Our investigation also raised concerns regarding the Mayor and City Council's involvement in operating issues that are the responsibility of the City Manager. All of these issues are interrelated as is discussed later in this report.

Our investigation revealed evidence that one or more violations of the Brown Act, the California law requiring open and public meetings, may have occurred. We also learned that the Contra Costa County District Attorney's Office investigated potential Brown Act violations. The District Attorney's findings are discussed later in this report and in Appendix A.

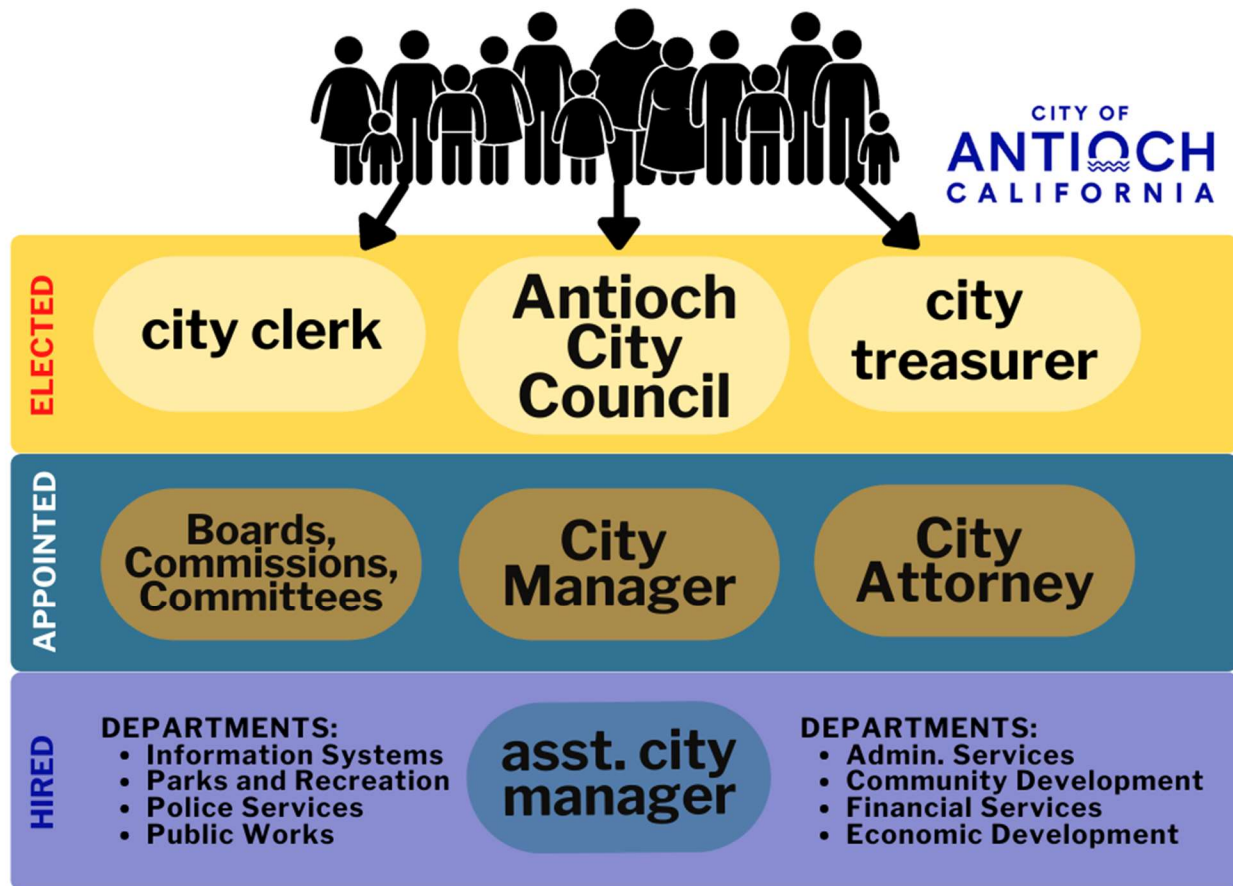
Antioch Government Structure

In examining the issue of turnover in Antioch city leadership it is helpful to first understand the structure of Antioch's local government. Like many California cities, Antioch is a general law city, operating under the Council-Manager form of government. Policymaking and legislative authority are vested in a five-member city council, which consists of a mayor and four council members. The four council members are elected by district, with the mayor elected city-wide. All serve four-year staggered terms. Under city ordinances the mayor and council hire and supervise the City Manager and City Attorney. The City Manager is responsible for day-to-day operations of the city, including supervision of all city employees (Antioch City Code § 2-2.06).

Under its Council-Manager structure, and as specified in city ordinances, the Antioch City Council has the responsibility of appointing the City Manager and City Attorney (Antioch City Code § 2-2.02). The City Manager serves as the chief administrative officer of the city, with responsibility for day-to-day operations of the city and the hiring and supervision of the Assistant City Manager as well as nine department heads. The department heads, in turn, hire and supervise departmental employees. See Exhibit 1. Under city ordinances the City Council, including the Mayor, have no direct authority to direct, supervise, hire, or fire any city employees, other than the City Manager and City Attorney (Ordinance 246-A).

Given the City Manager's role as chief administrative officer of Antioch, this position is critical to the City's successful operation. A vacancy in this position creates a void in city leadership and prevents the appointment of new permanent department heads when there is turnover. Antioch's policy is to defer the appointment of new department heads until a permanent City Manager is in place. This policy allows the permanent City Manager to appoint their own staff. Because the city has not had a permanent City Manager since March 2023, no new permanent department heads have been appointed since that time. As a result, the city now has acting heads in five of its nine most senior staff positions (three department heads, the City Manager, and the Assistant City Manager).

EXHIBIT 1



Source: City of Antioch website

A Bit About Antioch

Antioch is the second largest city in Contra Costa County, with a population of approximately 115,000. It is also among the county’s most racially diverse cities (see Table 1, Antioch At-A-Glance for details).

Affordable housing relative to other parts of the county has contributed to meaningful population growth in Antioch in recent decades. Improving transportation infrastructure, including a BART extension, has also made Antioch a more desirable community for commuters. As the city’s population has grown it has experienced significant demographic shifts, which are highlighted in Table 1.

TABLE 1

Antioch At-A-Glance

	Antioch		Contra Costa County	
	2010	2022	2010	2022
Population	102,372	115,264	1,049,025	1,156,966
Population Growth		12.6%		10.3%
Land Area (square miles)		28.4		715.9
Housing Units	32,252	36,639	400,203	430,081
Homeownership Rate	NA	61.5%	67.1%	67.2%
Racial Mix				
White (a)	35.6%	25.4%	47.8%	39.8%
Hispanic/Latino	31.7%	35.5%	24.4%	27.0%
Asian	10.5%	13.7%	14.2%	20.2%
Black/African American	17.3%	19.5%	8.9%	9.5%
Other	4.9%	5.9%	4.8%	3.5%
Household Income (median)	\$62,088	\$90,709	\$73,678	\$120,020
HH Income as % of County Average	84%	76%		
Poverty Rate	9.2%	12.1%	9.0%	8.7%
High School Graduates (b)		85.6%		89.7%
Bachelor's Degree (b)		23.0%		44.5%

(a) Not Hispanic or Latino

(b) Among adults 25 or older

Source: US Census Bureau

METHODOLOGY

- We interviewed government officials in Antioch and experts in city government practices and regulation.
- We reviewed press reports and other documents related to Antioch’s city government operations and performance.
- We reviewed recordings and transcripts of city council meetings.
- We reviewed city budgets for the past 20 years.
- We also reviewed documents related to city government best practices.

DISCUSSION

Excessive City Manager Turnover is a Negative for Antioch

Over the past ten years, Antioch has had six permanent or acting city managers, with an average tenure of less than two years (see Table 2). At least two of the city's last three permanent city managers were terminated by the Mayor and City Council or resigned under threat of termination.

While turnover among city managers can be healthy, bringing new approaches and fresh views to city government, excessive turnover in leadership in any organization will be disruptive to that organization. According to data from the California City Managers Foundation, the average tenure of a City Manager in California is slightly over 4.5 years. This compares to the average in Antioch of less than 2 years.

The level of turnover for City Managers in Antioch has impacted the city in several ways. First and perhaps most importantly, it is disruptive to city operations. The City Manager is responsible for hiring and directly supervising all department heads. As highlighted in Exhibit 1, in Antioch this includes Community Development, Economic Development, Financial Services, Human Resources, Information Systems, Recreation, Police Services, Public Safety, and Public Works, as well as Assistant City Manager. As previously noted, as a result of having no permanent City Manager for over a year, the city has delayed appointing permanent department heads who supervise day-to-day operations in such critical departments as Public Works, Community Development and the Police Department. In addition, the Directors of the Economic Development and Recreation Departments are currently serving as Acting City Manager and Acting Assistant City Manager, respectively. Accordingly, these departments do not have full-time Directors. As a result, more than half of the city departments are headed by acting or part-time directors.

TABLE 2

Antioch City Managers

Name	Title	Begin Date	End Date	Tenure (months) (a)
Kwame Reed	Acting City Manager	6/23/2023		12 months
Forest Ebbs	Acting City Manager	3/17/2023	7/14/2023	4 months
Ana Cortez	Acting City Manager	3/15/2023	3/17/2023	< 1 month
Cornelius (Con) Johnson	City Manager Interim City Manager	22-Oct 21-Nov	7/14/23 - Resigned 3/2023 - On administrative leave	16 months (until on leave)
Ron Bernal	City Manager	17-Mar	12/2021 - Retired	57 months (4.5 years)
Steve Duran	City Manager	13-Dec	4/2017 - Terminated 3/2017 - On administrative leave	39 months (until on leave)

Average Tenure: 21 months

Notes:

(a) There can be overlap in manager's tenure reflecting timing of hiring and departure

Source: City of Antioch press releases, media reports

Turnover in the City Manager position also imposes incremental costs on the city. These costs include duplicative salaries when City Manager tenures overlap. This was the case when former City Managers Steve Duran and Cornelius Johnson were placed on administrative leave before being replaced. Other costs include recruiting, training, and severance expenses. Mr. Duran received one year of severance pay (\$230,000) following his termination.

The Antioch City Manager has broad responsibilities including oversight of a roughly \$100 million general fund budget and responsibility for an authorized staff of over 400 full-time personnel. High turnover means more time on the learning curve for each new City Manager.

Appointing a qualified and effective permanent City Manager is an important first step for Antioch in addressing current challenges, including filling key department head vacancies, reducing the employee vacancy rate, and managing a large and complex organization. For the new City Manager to succeed, the Mayor and City Council must create an environment that enables the City Manager to operate with the authority vested in the position and without interference, as outlined in city ordinances (Antioch City Code § 2-2.06 and § 2-2.10) as well as in the position's job description¹. In particular, city ordinances specify that "Except for the purpose of inquiry, the Council and its members shall deal with the administrative service solely through the City Manager, and neither the Council, nor any member thereof, shall give orders to any of the subordinates of the City Manager" (Antioch City Code § 2-2.10).

The job description Antioch posted in its recruiting process calls out the need for the new City Manager to work effectively with staff while providing "appropriate buffering between the City Council and the Department Directors." In addition, the City Manager is tasked with "refereeing elected official involvement" in city operations and ensuring compliance with the Brown Act. These are critical and difficult tasks.

¹ The Antioch City Manager's job description can be found here: https://www.antiochca.gov/fc/human-resources/document-warehouse/IEDA223_CITY%20MANAGER.pdf

High Employee Vacancy Rates Negatively Impact City Services

In addition to turnover in city leadership, Antioch currently experiences a level of vacancies in city staff that is roughly four-times the national average. These issues are related. In the absence of a permanent City Manager, three department head positions have not been filled permanently. The Community Development and Public Works Departments have not had permanent Directors for over a year (see Table 3). This has delayed the hiring process for staff members within these departments. Multiple interviewees noted that turnover at senior levels of city management has negatively impacted recruitment efforts because job candidates are often reticent to accept a position when the permanent supervisor is not in place. Table 4 provides data on the vacancy rates for the three departments currently without permanent department heads.

TABLE 3

Antioch Department Heads

Department	Director	Status	Tenure (a)
City Manager	Kwame Reed	Acting	12 months
Assistant City Manager	Bradley Helfenberger	Acting	10 months
Community Development	Kevin Scudero	Acting	13 months
Economic Development	Kwame Reed	Part-time	
Financial Services	Dawn Merchant	Permanent	
Human Resources	Ana Cortez	Permanent	
Information Systems	Alan Barton	Permanent	
Recreation	Bradley Helfenberger	Part-time	
Police Services	Brian Addington	Acting	3 months (b)
Public Safety/Comm. Resources	Tasha Johnson	Permanent	
Public Works	Scott Buenting	Acting	16 months

(a) Number of months person has served as Acting Director

(b) Acting Chief Addington replaced Acting Chief Joe Vigil, who served in the role for 6 months

Source: City of Antioch, media reports

Figure 1 tracks the employee vacancy rate in Antioch since 2012. Vacancy rate refers to the percentage of authorized and funded positions in the city that are currently unfilled. Between 2012 and 2023 the vacancy rate in Antioch city government positions has averaged roughly 12% each year. This has spiked to over 21% in the past two years, with a vacancy rate of 21.6% as of February 2024. For comparison purposes according to the U.S. Bureau of Labor Statistics, the employee vacancy rate for all U.S. employers as of February 2024 was 5.3%. The vacancy rate for state and local governments (excluding education) was also 5.3%.²

Staff turnover in Antioch contributes to the city’s vacancy rate. Since July 1, 2022, the city has hired 102 new employees (out of a total authorized staff of approximately 409). Over the same period, 98 employees have departed. Recurring reasons cited by employees for leaving their jobs included: (1) overwork in the context of understaffing and (2) dysfunction within and lack of support from the City Council.

Job vacancies in Antioch’s city government are broad-based, covering most departments. The police department has engaged in proactive recruiting efforts (including a current \$30,000 recruitment bonus and other incentives for Police Officer positions) which has helped reduce the vacancy rate in that department. Nevertheless, the department still has approximately 30 open positions. The vacancy rates in the Community Development and Public Works departments, the other two departments without permanent heads, exceed the city-wide average vacancy rate.

Table 4

Department Vacancy Rates

	Filled Positions	Funded Positions	Vacancy Rate
Community Development	20	31	35%
Police Services	128	157	18%
Public Works (a)	87	117	26%
TOTAL City	315	409	23%

(a) includes water and sewer departments

Data reflects full time equivalent positions, excluding seasonal and temporary staff

Source: Fiscal 2023-2025 Antioch City Budget

Vacancy rates for government agencies tend to be higher in the San Francisco Bay Area than the nation overall³. This is a function of a tight local labor market and high local cost of living, among other factors. For example, the vacancy rate (as of 2023, the most recently available data) for San Francisco was 14%, Concord 11%, Richmond 19%, and Oakland 12% (excluding unfunded and frozen positions). While all these cities have rates well above the national average, Antioch’s 21% rate stands out at nearly four-times the national average.

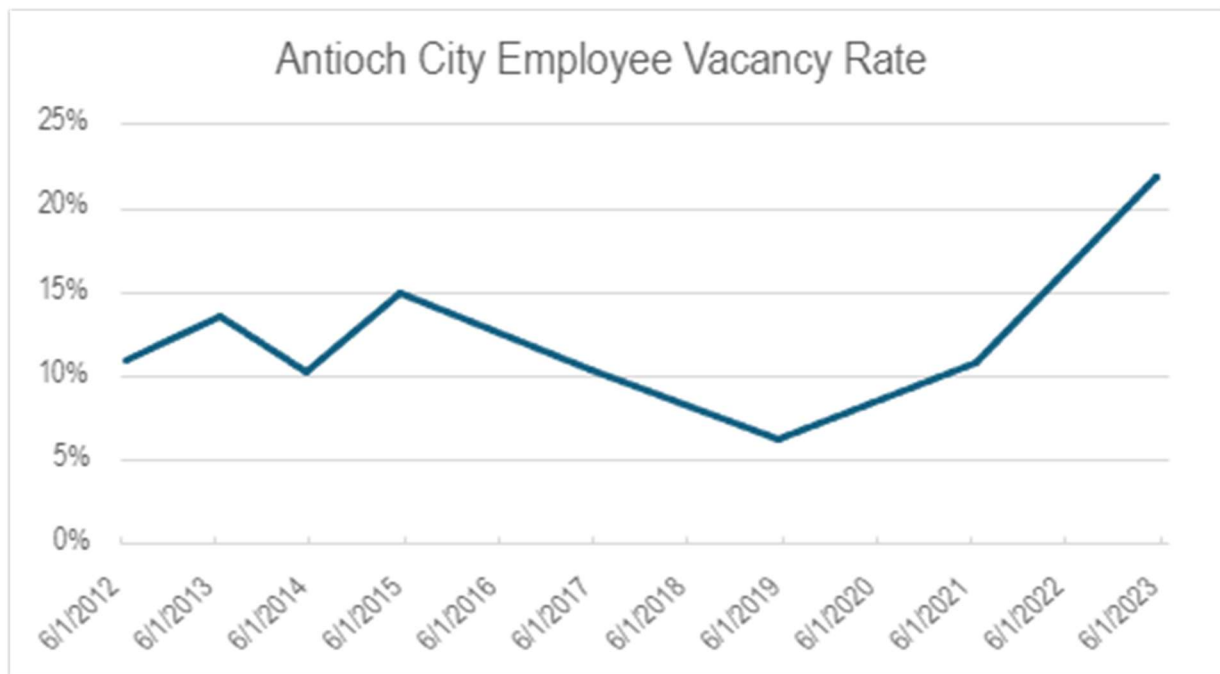
² U.S. Bureau of Labor Statistics, Economic News Release, 4/2/24.

³ “Civil Service Vacancies in California: 2022-2023”, UC Berkeley Labor Center, December 12, 2023.

Antioch’s employee vacancy rate has negative implications for several reasons. Most importantly, services to citizens have been negatively impacted by a lack of staff. For example, limited staffing has caused delays in certain capital projects. This includes traffic signal installations; road improvements and park renovations have been delayed due to staffing issues in the Public Works Department. Longer response times for police services have resulted from staffing shortages in the Police Department. The Mayor and Council Members have cited police staffing shortages and associated slower police response times as contributors to the higher crime rate the city has experienced in the past three years. Total Group A offenses in Antioch (the most serious crimes) have increased from 5,733 in 2021, to 6,130 in 2022, to 7,257 in 2023, with a further 24% increase year-to-date through April in 2024.

In addition to the negative impact on services to citizens, staff shortages impose an additional work burden on existing staff. This negatively impacts staff morale, contributing to the city’s high employee turnover rate. Finally, staff shortages lead to increased overtime expenses and the need to outsource services.

FIGURE – 1



In the course of numerous interviews, the Grand Jury learned that turnover in the City Manager position and high employee vacancy rates are both related to a failure, at times, by the Mayor and City Council to respect the City Manager’s operating authority. As previously noted, Antioch’s government structure calls for the City Manager to make hiring decisions (with the exception of City Attorney) and oversee day-to-day operations of the city. However, Antioch’s Mayor and City Council have on occasion overstepped their authority in seeking to implement personnel and other changes that are the responsibility of the City Manager.

Examples over the last three years include efforts by certain Council Members to direct the City Manager to fire then Public Works Director John Samuelson in December 2022. Mr. Samuelson was terminated, but subsequently received a settlement and severance totaling \$244,000. Other examples include pressure to hire Gregory Rolen as a consulting attorney in November 2022. Mr. Rolen was hired without prior approval of his contract, as required by Antioch Resolution #2021/26 (adopted 2/26/21). Mr. Rolen's contract was subsequently terminated after payment of a \$39,000 fee. Finally, the Grand Jury learned of instances of Council Members setting up meetings with City Staff without the approval or involvement of the City Manager, as required by city ordinance (Antioch City Code § 2-2.10). The Grand Jury found evidence that Council interference with City Manager responsibilities contributed to the departures of some of the recent City Managers. In turn, the City Managers' departures contributed to subsequent increases in employee vacancy rates due in part to extended vacancies in key department head positions.

Brown Act Compliance

The Ralph M. Brown Act (California Code § 54590, et. seq.) is a California law that specifies, among other things, that government business must be conducted in open and public meetings, with limited exceptions. In particular, elected government officials cannot meet as a group in private, unannounced, and/or secret sessions to discuss government business⁴.

A meeting is defined as a "congregation of a majority of the members of a legislative body" (§ 54952.2a). In the case of the city of Antioch, this would be 3 out of 5 Council Members. Under the Brown Act, a meeting and the agenda must be noticed and posted at least 72 hours in advance of the meeting. It must be held in a place accessible to the public. A legislative body may not take action on any item not on the agenda, except to seek information on the topic. The exception is a "closed meeting" to discuss labor negotiations, real estate transactions, personnel issues, and lawsuits. For these, an agenda of closed session items is posted, and any reportable actions taken in closed session are subsequently announced in open session.

A violation of the Brown Act occurs when a majority of members of a governing body are together in an unnoticed meeting, in a place not accessible to the public, and discuss business about their jurisdiction (or disclose privileged information from closed meetings). Violations of the Brown Act are a misdemeanor, with penalties including fines of up to \$1,000, imprisonment in state prison, and/or permanent disqualification from holding any office in California.

In the course of our investigation, the Grand Jury discovered evidence that one or more Brown Act violations may have occurred involving members of the Antioch City Council. The Grand Jury learned that the hiring of former City Manager Cornelius Johnson may have been discussed at a private meeting in October 2021 with Mayor Hernandez-Thorpe and Council members Monica Wilson and Tamisha Torres-Walker. This meeting was held without public notice and

⁴ The full text of the Brown Act can be found at:

https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?division=2.&chapter=9.&part=1.&lawCode=GOV&title=5.

without the participation of the full Council. Mr. Johnson was subsequently hired as Acting City Manager in a 3-2 council vote on November 9, 2021, with Mayor Hernandez-Thorpe and Council members Wilson and Torres-Walker voting yes, and Council members Michael Barbanica and Lori Ogorchock voting no.

The Contra Costa District Attorney's Office conducted an investigation into alleged violations of the Brown Act by Mayor Hernandez-Thorpe and Council members Wilson and Torres-Walker (see Appendix A for details on the District Attorney's findings). The District Attorney's investigation focused on meetings held at Mayor Hernandez-Thorpe's home in 2022 that may have involved discussions regarding restructuring the Public Works Department, hiring a City Engineer and redistricting the city's electoral map.

The Grand Jury found evidence that the meetings cited by the District Attorney took place at the dates and locations specified in the District Attorney's letter (Appendix A). The Grand Jury was unable to independently confirm the content of those meetings.

In concluding its investigation into potential Brown Act violations in Antioch, the District Attorney noted that there was insufficient evidence to prove beyond a reasonable doubt that intentional violations occurred. The District Attorney's Office nevertheless noted that it "has serious concerns that noncompliance with the Brown Act may have occurred" and indicated that "any similar meeting on matters concerning the city could subject Council members to criminal liability." (See Appendix A).

The Grand Jury found that the city of Antioch has not historically provided formal training on Brown Act compliance to Council members. Following the District Attorney's investigation, a formal session on the Brown Act and Brown Act compliance was held at the City Council meeting on February 13, 2024. Given the importance of Brown Act compliance, we encourage the Council to consider conducting similar training events on an ongoing basis.

FINDINGS

- F1.** Antioch's City Manager has broad responsibility to ensure the efficient operation of the city, including supervision of an approximately \$100 million general fund budget and an authorized staff of over 400 employees.
- F2.** The city began the process of recruiting a new permanent City Manager in January 2024. As of June 10, 2024, no hiring decision has been announced.
- F3.** As outlined in both the City Manager job description and in city recruitment materials, the City Manager position requires a qualified and experienced individual.
- F4.** There has been a lack of continuity in City Managers in Antioch, with six City Managers or Acting City Managers since December 2013.

- F5.** Under city ordinances the City Council, including the Mayor, has no direct authority to direct, supervise, hire, or fire any city employees, other than the City Manager and City Attorney (Ordinance 246-A).
- F6.** The Mayor and City Council members have on occasion overstepped their authority in seeking to make personnel decisions, including terminating the then Public Works Director in December 2022, in ways not permitted by city ordinance (Antioch City Code § 2-2.06 and § 2-2.10).
- F7.** The Mayor and City Council members have on occasion sought to conduct meetings with City Staff without the approval or involvement of the City Manager, as required by city ordinance (Antioch City Code § 2-2.10).
- F8.** Antioch’s city government had a 21.6% employee vacancy rate as of February 2024, roughly four-times the national average for government agencies.
- F9.** In the absence of a permanent City Manager since March 2023, the city has deferred hiring new department heads when openings occur.
- F10.** The Police, Public Works and Community Development departments currently are without permanent department heads.
- F11.** Seven of the eleven most senior positions in Antioch city government are currently held by acting or part-time personnel, including City Manager, Assistant City Manager, Directors of Community Development, Police Services, and Public Works (all acting) and the Directors of Economic Development and Recreation (both part-time).
- F12.** The employee vacancy rate is above the city-wide average in the Public Works Department (26% vacancy rate) and Community Development Department (35% vacancy rate), both of which currently do not have permanent directors.
- F13.** Recruitment and retention of staff has been impacted by the absence of a permanent City Manager and the lack of permanent department heads in multiple city departments.
- F14.** The Contra Costa County District Attorney’s Office conducted an investigation into alleged Brown Act violations by Mayor Lamar Hernandez-Thorpe and Council Members Tamisha Torres-Walker and Monica Wilson, which was forwarded to the Grand Jury.
- F15.** The District Attorney’s Office noted serious concerns that noncompliance with the Brown Act may have occurred, however, there was insufficient evidence to prove beyond a reasonable doubt intentional violations of the statute occurred.

RECOMMENDATIONS

- R1.** The Mayor and City Council should follow through on the ongoing process of hiring an experienced and qualified City Manager.
- R2.** The Mayor and City Council should abide by city regulations (Antioch City Code § 2-2.06 and § 2-2.10) that preclude the Mayor and City Council from having any direct authority to direct, supervise, hire or fire any city employee, other than the City Manager and City Attorney.
- R3.** The new City Manager should, within 6 months of their appointment to the position of City Manager, recruit and appoint permanent department heads to fill current department head vacancies.
- R4.** By 1/1/2025 the City Council should direct the City Manager to undertake a study to determine the factors leading to the city’s high employee turnover and vacancy rates.
- R5.** By 1/1/2025 the Mayor and City Council should consider directing the City Manager and City Attorney to organize an annual training session focused on Brown Act requirements and compliance for the Mayor, City Council members, relevant city employees and members of city boards and commissions.

REQUEST FOR RESPONSES

Pursuant to California Penal Code § 933(b) et seq. and California Penal Code § 933.05, the 2023-2024 Contra Costa County Civil Grand Jury requests responses from the following governing bodies:

Responding Agency	Findings	Recommendations
Antioch City Council	F1 – F16	R1 – R5

These responses must be provided in the format and by the date set forth in the cover letter that accompanies this report. An electronic copy of these responses in the form of a Word document should be sent by e-mail to ctadmin@contracosta.courts.ca.gov and a hard (paper) copy should be sent to:

Civil Grand Jury – Foreperson
725 Court Street
P.O. Box 431
Martinez, CA 94553-0091

APPENDIX A

NOTE: The letter from the Contra Costa County District Attorney's Office is incorrectly dated January 4, 2023. The Grand Jury has confirmed with the District Attorney's Office that the correct date is January 4, 2024.



OFFICE OF THE DISTRICT ATTORNEY
CONTRA COSTA COUNTY

Diana Becton
DISTRICT ATTORNEY

January 4, 2023

Kwame Reed
Acting City Manager
City of Antioch
200 H Street
Antioch, CA 94509

RE: Alleged violations of the Brown Act by Antioch City Council members

Dear Mr. Reed:

The Contra Costa County District Attorney's Office was contacted earlier this year regarding alleged violations of the Brown Act by Antioch Mayor Thorpe, Antioch Councilmember Torres-Walker and Antioch Councilmember Wilson. Specifically, we were told that those three council members met in private to discuss matters within the council's jurisdiction regarding the Public Works Department and the hiring of the City Engineer. Our investigation also led to an allegation that those three city officials met in private to discuss the redistricting of the city's electoral map. The District Attorney's Office reviewed these allegations and the applicable law and then interviewed potential witnesses to determine whether any Brown Act violations occurred.

As you are aware, the Brown Act is set forth in California Government Code sections 54950, et seq. Our analysis here is specifically guided by Government Code section 54952.2. That section prohibits a majority of the members of a legislative body to develop a collective concurrence as to action to be taken on any item within the subject matter jurisdiction of the legislative body unless such a meeting is open and public.

In this matter, there is evidence that Mayor Thorpe and Councilmembers Torres-Walker and Wilson met at Mayor Thorpe's home in 2022 and held discussions. Furthermore, it appears that the discussions may have included an agreement to take action on matters within the subject matter jurisdiction of the council. As defined by Government Code section 54952.6, "action taken" means a collective decision, or even a commitment or promise to make a decision, on a matter concerning the city. Our investigation leads us to believe that Mayor Thorpe and Councilmembers Torres-Walker and Wilson did meet and may have developed a collective occurrence absent a public forum.

District Attorney Administration
900 Ward Street, Fourth Floor
Martinez, California 94553

(925) 957-8604
Fax (925) 646-4683

Government Code sections 54959 through 54960.5 set forth the actions that may be taken by the District Attorney's Office to enforce and prevent Brown Act violations. Following our review of the underlying facts and the applicable laws that are relevant to this matter, the District Attorney's Office has serious concerns that non-compliance with the Brown Act may have occurred, however, there is insufficient evidence to prove beyond a reasonable doubt intentional violations of the statute at this time.

We have decided to bring our concerns to your attention in order for you to impress upon the council the importance of the Brown Act and the requirements of the statute. Any similar meeting on matters concerning the city could subject council members to criminal liability. Further, we are referring this letter to the Contra Costa County Grand Jury to provide that body the opportunity to take any action it may deem appropriate.

Thank you for your serious consideration of this matter. As the Brown Act makes clear, the deliberations and actions of our governmental representatives must occur openly and be subject to public scrutiny. If you have any questions or concerns regarding this matter, please feel free to contact me.

Sincerely,

DIANA BECTON
District Attorney

Steven Bolen
Deputy District Attorney
Contra Costa County

cc: Thomas L. Smith, City Attorney, City of Antioch
Contra Costa County Grand Jury