Stanislaus County Civil Grand Jury
City of Patterson
Case numbers 11-01C, 11-02C, 11-03C, 11-04C, 11-05C, 11-06C, 11-08C, & 11-18C
Part Two: Immediate Past Mayor

SUMMARY

The Stanislaus County Civil Grand Jury (SCCGJ) received eight (8) specific complaints requesting the SCCGJ investigate the Immediate Past Mayor (IPM) of willful misconduct, failure to reside within Patterson city limits, violations of the Brown Act, a FPPC mandate, and the Patterson Municipal Code.

After a review of documents and interviews of key personnel, it was determined:

1. The IPM, spouse and family had a home built outside the Patterson city limits. Occupancy records indicate the home was completed and occupied in 2007. The IPM has claimed to have split the time between this home and one occupied by the mother of the IPM. State and local laws are clear that elected officials must reside within the jurisdictional boundaries of the city they serve or their term of office shall be deemed immediately vacated.

2. The IPM initiated a closed session vote after an earlier denial by the full City Council. The Immediate Past City Attorney (IPCA) had stepped out of the room. The IPM voted in the affirmative to give back non-verified funds of attorney fees (which were unknown at the time of the closed session vote) to a commercial developer without a properly filed lawsuit, verification of funds, court order, contract or statutory authority.

3. The IPM participated in the termination/resignation of the Immediate Past City Manager (IPCM) and the Immediate Past Community Development Director (CDD) after failed attempts to influence a colleague into filling a staff position within the Planning Department.

4. The IPM failed to comply with FPPC regulations during the years of 2008-2010 to complete mandated ethics training as per AB 1234.

5. The IPM appointed a personal business subordinate to the Patterson Planning Commission.

6. The IPM signed off on behalf of the entire City Council approving a conditional use permit that was not properly completed and placed the City of Patterson in a position of potential liability.

GLOSSARY

§: A special character used to indicate the section of a statutory code.

AB 1234: On October 7, 2005, the Governor signed Assembly Bill No. 1234. AB 1234 (Public Service Ethics Education) requires that if a local agency provides any type of compensation, salary, or stipend to, or reimburses the expenses of a member of its 'legislative body' (as that term is defined in California Government Code § 54952), that local agency's officials must receive training in ethics. AB 1234 certification must be completed every two years.

Brown Act: Meetings of public bodies must be "open and public," actions may not be secret, and action taken in violation of open meetings laws may be voided. (California Government Code §§ 54953(a), 54953(c), 54960.1(d)). Closed meetings are the exception and permitted only if they meet for defined purposes of the Government Code and follow special requirements.

CDD: City of Patterson Community Development Director.

Statements of Economic Interests (SEIs or Form 700s): Are an important means for the official that files them, the media, and the public to help gauge where potential conflicts of interest may exist. These state mandated forms include information about the sources of an official's income, investments, business positions, real property holdings and gifts.

FPPC: The Fair Political Practices Commission. It was created by the Political Reform Act of 1974.

Government Code § 87100 - Conflict of Interest: No public official at any level of state or local government shall make, participate in making or in any way attempt to use their official position to influence a governmental decision in which he/she knows or has reason to know he/she has a financial interest.

IPCM: Immediate Past City Manager.

IPM: Immediate Past Mayor.

Preponderance of Evidence: Preponderance of evidence means proof by information that, compared with information opposing it, leads to the conclusion that the fact at issue is more probably true than not.

Public Records Act: The Public Records Act is designed to give the public access to information in possession of public agencies: "public records are open to

inspection at all times." The Public Records Act is located within California Government Code § 6250 et seq.

Recusal: To remove oneself from participation to avoid a potential or perceived conflict of interest.

SCCGJ: Stanislaus County Civil Grand Jury.

Sustain: To support by adequate proof.

Willful Misconduct: Willful misconduct generally means a knowing violation of a reasonable and uniformly enforced rule or policy. It means intentionally doing that which should not be done or intentionally failing to do that which should be done.

BACKGROUND

The SCCGJ received eight (8) complaints specifically naming the IPM. The IPM was elected to the position of Mayor in 2006 and 2008. The IPM served as the Mayor of Patterson until the election in November of 2010. All eight complaints allege willful misconduct within the time frame that the IPM was an elected official in Patterson.

Many of the complaints were related to residency status, alleged Brown Act violations, willful misconduct, and initiating termination proceedings of the IPCM and CDD. During the course of this investigation, additional complaints were shared by both witness testimony and documents obtained through the Public Records Act. Some discovery was brought to the attention of this investigation through voluntarily submitted documents outside of the Public Records Act. Those matters were investigated as well.

CALIFORNIA GOVERNMENT CODES

§ 34882.

A person is not eligible to hold office as a member of a municipal legislative body unless he or she is otherwise qualified, resides in the district and both resided in the geographical area making up the district from which he or she is elected and was a registered voter of the city at the time nomination papers are issued to the candidate as provided for in Section 10227 of the Elections Code.

§ 34904.

*A person is not eligible to hold office as **mayor** unless he or she is at the time of assuming that office an elector of the city, and was a registered voter of the city at the time nomination papers are issued to the candidate as provided for in Section 10227 of the Elections Code.*

§ 36502 (a).

> *A person is not eligible to hold office as council member, city clerk, or city treasurer unless he or she is at the time of assuming the office an elector of the city, and was a registered voter of the city at the time nomination papers are issued to the candidate as provided for in Section 10227 of the Elections Code. If, during his or her term of office, he or she moves his or her place of residence outside of the city limits or ceases to be an elector of the city, his or her office* ***shall immediately become vacant.*** (emphasis added).

Direct testimony indicated the IPM was "splitting time" between a rental home in the city limits of Patterson and a home completed/occupied in 2007 owned by the IPM and his/her family outside of the geographical limits of the city. The IPM indicated there was no lease/rental agreement, utility bills, or other form of documentary proof of residency outside of voting registration and the public FPPC Form 700. However, witnesses and community residents report a consistency in watching the IPM leave the home outside of the city to drive their child to school in the morning. Either the IPM chose to ignore, or there is no proof of residency detailing specific information for the rental home that the IPM was asked to produce. The IPM said his/her spouse and their family reside full-time in the home outside of the City of Patterson.

The SCCGJ was provided a document authored by the IPM on May 14, 2008. This document was written to and presented by the recipient. The recipient is a resident within the City of Patterson. The correspondence addresses some personal issues but the IPM wrote the following quotations (in summary within this correspondence):

- "For me, the reality is that I cannot run again. I really wanted to run for a second term, but as you know I will not mislead the community by "renting" a room in town to stay within the city limits."

- "I will not hold you hostage anymore." "I realize the unfairness of my silence to the other potential candidates who have been waiting on my decision. When I announce I will state that because of my residency situation, I am not eligible to run again. I really don't want to put too much emphasis on the announcement because I don't want to be distracted from my current Mayoral duties."

Despite this admission, the IPM ran for elected office again in 2008 and was re-elected for the position of Mayor. The IPM served a full term, ending in 2010.

The following page contains the minutes of the Patterson City Council closed session meeting of October 26, 2009. The minutes corroborate the vote to give a gift of public funds (dollar amount not verified at the time) to a developer.

NOTICE IS HEREBY GIVEN that a special meeting of the City Council of the City of Patterson will be held on Monday, October 26, 2009, commencing at 6:00 p.m. in the City Council Chambers, 1 Plaza, Patterson, California.

Said special meeting shall be for the purpose of holding a <u>Closed Session:</u>

- City Manager Evaluation/Potential Action (Pursuant to Government Code Section 54957).

- Conference with Legal Counsel, Anticipated Litigation. Significant exposure to Litigation pursuant to subdivision (b) of Section 54956.9: (1 case).

The special closed session meeting of the City Council of the City of Patterson was called to order in the City Council Chambers, Closed Session Room at 6:00 p.m. by Mayor Campo.

PRESENT: Councilmember Smith, Councilmember Farinha, Councilmember Cuellar, Councilmember Shelton and Mayor Campo (5)

STAFF: City Attorney Logan and City Manager Morris (2)

At 8:25 p.m. after Closed Session, Mayor Campo announced the following:

In regards to the Item of City Manager Evaluation/Potential Action (Pursuant to Government Code Section 54957). There was no action taken by Council.

In regards to the Item of Conference with Legal Counsel, Anticipated Litigation. Significant exposure to Litigation pursuant to subdivision (b) of Section 54956.9: (1 case). The City Council voted 3-2 to reimburse John Ramos $27,101.74 for legal fees incurred in his appeal of the Health Care District zoning issue, subject to verification of cost. Councilmembers Smith, Farinha and Mayor Campo voted yes. Councilmembers Cuellar and Shelton voted no.

There being no further business, the special closed session meeting of the City Council of the City of Patterson of October 26, 2009 was adjourned at 8:30 p.m.

Approved by the Patterson City Council on November 3, 2009.

Municipal Code Violations / Brown Act Violations

§ 2.16.040 Relations with city council.

> *The city council and its members shall deal with the administrative services of the city only through the city manager. The city manager shall take his/her orders and instructions from the city council as a body, and no individual councilman shall give any orders or instructions to the city manager or his/her subordinates. When a decision has been made by the city council as a body, it shall be final and conclusive. Further reference to any such decision to the council shall not be made by the city manager except to the council as a whole.*

City of Patterson / City Council Handbook

Council/Manager Relationship

> *The employment relationship between the City Council and City Manager honors the fact that the City Manager is the chief executive officer of the City. The City Council should avoid situations that can result in City staff being directed, intentionally or unintentionally, by one or more members of the City Council. Regular communication between the City Manager is important in maintaining open communications (page 16*).

Council Roles

> *Individual members of the City Council should not make attempts to pressure or influence staff decisions, recommendations, workloads, schedules, and department priorities without the prior knowledge and approval of the Council as a whole. If a Council member wishes to influence the actions, decisions, recommendations, workloads, work schedule, and priorities of staff, that member must prevail upon the Council to do so as a matter of Council policy (page 18).*

During the week of April 12-16, 2010, the IPM, Council member A and Council member B had a meeting with the IPCM. Testimony indicates that the IPCM would be terminated unless he/she terminated the CDD. The IPCM refused to terminate the CDD without cause. On April 20th, the same three Council members voted to terminate the IPCM during a closed session of a City Council meeting after his/her refusal to resign.

A Patterson resident applied for a position with the city in 2006 as an Assistant Planner. According to the CDD's testimony, this applicant (currently a sitting City Council member) failed to secure this employment opportunity. There is direct testimony that the IPM and Council member A called the CDD directly and suggested that this individual be given a second interview and that he/she be hired for the position. This individual

was not hired for the position and the CDD was called again by the IPM and Council member A and explained that they were “disappointed Council members.” However, this applicant was appointed to the City Council in 2007, after being interviewed by the IPM.

Testimony indicated that the IPM and Council member A made several verbal statements where they would do everything within their power to fight the relocation of the Del Puerto Health Care District facility from it’s current location. Both the IPM and Council member A wanted the CDD to recommend that the Health Care District facility not be re-located within the Keystone Business Park.

On February 24, 2010, a Patterson business owner drafted a letter for approval of expansion on a bar premises. The letter is not an approved application form for a conditional use permit for the City of Patterson’s Community Development Department. The business owner hand delivered the letter to the IPM who signed and checked off on the approval on behalf of the entire City Council at the IPM’s place of employment. This letter was then delivered to the Patterson Community Development Department for approval and was forwarded to the IPCM who explained that the letter was invalid. This letter was never viewed by other Council members, police, or fire officials and created a potential for city liability if the bar owner went solely on the approval of the IPM.

The IPM often called the staff of the Community Development Department directly. The IPM made several attempts to push permits through with greater ease and speed. One permit holder had moved into a new home and was required to have the Community Development Department update the conditional use permit of his/her business. The IPM called a staffer, circumventing the IPCM and asked, “Is there any way this one time we can waive the fee for this permit?”

The IPM completed AB 1234 (mandated ethics training required by the FPPC) upon election to the Office of Mayor in 2006. The IPM failed to comply and chose not to complete this mandate of certification every two (2) years as required by the Political Reform Act of 1974. During the years of 2008 - 2010, the IPM was not in compliance with this mandate.

INVESTIGATION METHODOLOGY

The following methods of investigation included:

- Reviewed submitted complaints.
- Requested and received documents (emails and correspondence) through the Public Records Act.
- Reviewed voluntarily submitted memorandums and correspondence by interested witnesses.
- Reviewed thousands of emails - some of which were not included in our Public Records Act request but brought forward by witnesses.

- Attendance at City of Patterson Council meetings.
- Direct testimony was received by witnesses. The testimony was under oath and recorded with their knowledge.

FINDINGS

F-1: The IPM was not an actual resident of the City of Patterson during the 2008-2010 terms as Mayor. The IPM, spouse and family lived in the home, outside the city limits and was occupied in 2007. The IPM made written admissions that establish the IPM ineligible to serve as Mayor of Patterson and misled the community members as to his/her actual place of residency.

- On 10/26/2009, the IPM (nor any other council member) never reviewed a verification of legal expenses prior to voting to pay attorney fees, which is a gift of public funds. Factual and procedural statutes outlining gifts of public funds are located within the **California Constitution, Article XVI, Section 6.** Besides the lack of knowing/viewing any verified funds, the council cannot give public money without a properly filed lawsuit, verification of funds, court order, contract or statutory authority.
- Money paid to the developer was absorbed through the City of Patterson's general fund account.

F-2: Between 2008 and 2010, the IPM was not in compliance with the mandated AB 1234 ethics training required under the Political Reform Act of 1974. The IPM's vote to gift the developer took place during the time of non-certification.

F-3: Violations of Patterson Municipal code and City Council handbook.

- Failure to follow the proper chain of command as it relates to approaching city employees to request information, expedite permit processes, manipulate city policy, and request the waiver of fees owed to the city.
- The IPM was presented a letter authored by a business owner who was in the process of obtaining a conditional use permit. The letter indicated that all of the requirements had been met. The IPM approved and signed this letter, representing the entire City Council. When the letter reached the Community Development Department, it was found the business had not satisfied all of the requirements to be issued this permit. The letter was brought to the attention of the IPCM and the process was stopped due to non-compliance on behalf of the business owner. (Refer to attachment #1).
- The IPM, Council member A, and Council member B were instrumental in the resignation/termination of the IPCM and the CDD.

RECOMMENDATIONS

R-1: The IPM shall reimburse the City of Patterson his/her salary of $300.00 per month, from the time of admitting the fact that he/she was not a Patterson resident and was not eligible to run for office ($9,300.00). The IPM knowingly failed to follow established statutory laws and policy by residing outside the city limits of Patterson. The California Government Code stipulates that the position shall become immediately vacant and thereby voided any voting privileges or other powers of the Mayor during the 2008-2010 years of elected service (2.12.020 (b) Patterson City Municipal Code).

- The Patterson City Council shall review all votes that the IPM rendered during the term of 2008-2010. Specifically, the votes that were 3-2 (deciding vote(s) that were a common theme during the 2008-2010 time range) which had a direct impact on city business shall be examined. This review of votes cast by the IPM during this term of ineligibility shall be done during a public City Council meeting.

R-2: All Patterson City Council members shall post their AB 1234 Ethics Training results on the City website to ensure compliance. The City Clerk shall monitor this requirement and place upcoming AB 1234 expiration dates on the public agenda. Members who fail to remain in compliance of AB 1234 shall be mentioned at open meetings until they complete the certification by the City Clerk.

R-3: Any City Council business correspondence or actions by individual members of the City Council must be approved in advance by the City Manager. (Patterson Municipal Code § 2.16.040).

REQUEST FOR RESPONSES

Patterson City Council.

REFERENCES

- California Fair Political Practices Commission http://www.fppc.ca.gov/.
- California Government Codes.
- California Constitution, Article XVI, Section 6.
- City of Patterson. (2007). City of Patterson - *City Council Handbook.* Approved February 20, 2007 by City Council Members of Patterson.
- City of Patterson, California. http://ci.patterson.ca.us/.
- City of Patterson, Municipal Code (§ 2.16.040).

- Correspondence voluntarily submitted by witnesses.

- Documents obtained via the Public Records Act.

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code § 929 requires that reports of the Grand Jury not contain the name of any person, or facts leading to the identity of any person who provides information to the Civil Grand Jury. The California State Legislature has stated that it intends the provisions of Penal Code § 929 prohibiting disclosure of witness identities to encourage full candor in testimony in Civil Grand Jury investigations by protecting the privacy and confidentiality of those who participate in any Civil Grand Jury investigation.

RECUSAL ADVISEMENT

This report of cases 11-01C through 11-08C, and 11-18C are issued by the 2010/2011 Stanislaus County Civil Grand Jury with the following exception: One (1) member of the grand jury volunteered to recuse his/her self due to a perceived conflict of interest. This grand juror was excluded from all phases of the investigation, including interviews, deliberations, voting, and in the writing and approval of this report. None of the information included in this report was obtained from the excluded grand juror as a means of mitigating a potential bias to the integrity of this report.

* ATTACHMENT 1 *

[redacted]
Patterson, Ca 95363

To: Patterson City Council
Patterson Police Department
Patterson Fire Department
Patterson Planning Department

2-24-2010

Subject: Approval of expanded [redacted] premises

The [redacted] would like to request the approval to serve and consume alcoholic beverages in the expanded area adjacent to the main bar area (See Premises Diagram).

The [redacted] has all required permits and the City of Patterson conditional use permit on the expanded area. The area will primarily be used as a additional Pool Room and Dance Floor on weekends. We recently had a fire and safety inspections and all areas are within standards.

Any questions concerning this request please contact me @ [redacted]

[redacted]
Owner

Department	Name	Signature	Approve
Patterson City Council	Becky Campo		X
Patterson Police Department			
Patterson Fire Department			
Patterson Planning Department			

6/10