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 Three: Council member A

SUMMARY

The 2010/2011 Stanislaus County Civil Grand Jury (SCCGJ) received eight (8) specific complaints requesting the SCCGJ investigate Council member A of willful misconduct, failure to disclose a fiduciary conflict of interest, 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. Council member A was a tenant of a Patterson landlord and commercial developer for at least 13 years and during the time of office, votes were made in favor of the landlord. Council member A was in arrears in rental payments during this time and some fees were "written off."

2. Council member A failed to ever disclose the fact that the landlord brought items of significant revenue to the attention of the Patterson City Council and Council member A never recused from voting on these issues. One such issue was an email asking the Immediate Past City Attorney (IPCA) about the attorney fees of the landlord/developer over the Del Puerto Health Care District facility. This was done three days after a majority of the council voted to provide a gift of public funds to the landlord without any verification, lawsuit, court order, contract or statutory authority.

3. Council member A participated in the termination/resignation of the Immediate Past City Manager (IPCM) and the Immediate Past Community Development Director (CDD).

4. Council member A 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 the landlord mentioned in item 1.

5. Council member A attempted to use political influence and acted alone in an effort to interfere with the relocation of the Del Puerto Health Care District facility and disregarded the fiduciary responsibility to the community members of Patterson.

6. Council member A failed to comply with the FPPC (ethics training) mandate during the years of 2008 through 2010 as per AB 1234.

7. Council member A initiated a verbal condemnation to a constituent at a public supermarket over an initiative dealing with city business in an unprofessional and offensive manner.

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.

Arrears: Money that is owed and should have been paid earlier.

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.

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, financial, 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 Council member A. Council member A was appointed to the Patterson City Council in 2006 and was elected to the City Council in 2008. The current term is due to expire in 2012. Council member A chose to bring the interim City Attorney to the grand jury appointment. The lawyer was not allowed inside the room where testimony was given (California Penal Code § 939).

Many of the complaints were related to alleged Brown Act violations, willful misconduct, fiduciary conflicts of interest 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. Those matters were investigated as well.

Council member A was a tenant of an influential Patterson commercial developer. Council member A leased a commercial business property and a storage unit from this landlord/developer for at least thirteen years. Based on sworn testimony and documented evidence, rent was intermittently delinquent or late with arrearages to both properties in question. There is evidence to indicate that portions of the rent were "written off." There was no evidence to the contrary to establish that Council member A ever recused from a vote involving the landlord.

Testimony indicated that Council member A and the IPM 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 its current location. The center is currently on land owned by Council member A's landlord and Council member A was quoted by a witness (under oath) stating, "I will get them" since the close friend (the landlord) would lose investment opportunities if the Health Care District facility was to move from the site that the landlord owned. Both Council member A and the IPM wanted the CDD to recommend that the Health Care District facility not be re-located within the Keystone Business Park.

There is no evidence, either oral or written, to indicate that Council member A ever chose to recuse from voting on any agenda item related to City business if the landlord was involved in the matter. This includes the failure to disclose a fiduciary conflict of interest in matters involving the non-litigated reimbursement of undisclosed attorney

fees to the landlord during the closed session hearing on October 26, 2009. Council member A was still an active tenant of the landlord receiving the non-verified legal fees at the time this vote was taken. Council member A chose not to recuse in the vote when the legal expenses of the landlord/commercial developer was reimbursed from the general fund account without verification.

Council member A completed AB 1234 (ethics training by the FPPC) upon appointment to the City Council in 2006. Council member A failed to comply with the mandated AB 1234 and chose not to take another ethics training course until December of 2010.

In early 2010, a Patterson resident was in the process of collecting signatures for an initiative to move the Del Puerto Health Care District facility from its current location to a modern venue at Keystone. This incident began at a local supermarket and Council member A walked past the table and asked the resident, "What in the hell are you doing?" The resident explained the initiative to Council member A. Council member A said, "You're a F****** Bitch!" The Patterson resident did not want a confrontation and said nothing in return. Council member A then walked into the supermarket and said in a loud and offensive voice that other patrons heard, "You're in Keystone's pocket - you're a F****** Bitch."

During an open City Council meeting on March 1, 2011, members of the SCCGJ were in attendance. There was a presentation (designed for the members of the City Council) about "Civility" and immediately following this training, Council member A made some inappropriate comments, from the dais during open session, to the sitting Mayor about comments on a Facebook page. Council member A was overheard by a current member of the SCCGJ while outside with a candidate for City Council yelling that the process was circumvented and he/she was upset with members of the council for the way the appointment of a new City Council member was being made.

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).*

Council member A was observed approaching a representative of the Keystone Business Park to speak with them about the Del Puerto Health Care facility. This was done without direction and Council member A acted alone (§ 2.16.040) / Brown Act violation.

Pursuant to a complaint and discovery of documentary evidence, Council member A directed a City Hall staffer to draft a letter on city stationary inviting a resident to a meeting of the General Plan Advisory Committee on June 25, 2007. The staffer did not question the Council member and drafted the letter as instructed. The staffer then personally delivered the letter to Council member A at A's place of employment for signature (§ 2.16.040).

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.

INVESTIGATION METHODOLOGY

This investigation began in July of 2010 and concluded in May of 2011. The complaints were investigated by the SCCGJ Government / Administration committee with results

and reports provided to the full panel for review, editing, and deliberation. The following methods of investigation are as follows:

- 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: Council member A failed to disclose a fiduciary conflict of interest with the landlord to other Council members or with the community members. With a history of late payments, arrearages, and funds "written off," Council member A never recused from a vote involving the landlord and commercial developer.

- On 10/26/2009, Council member A (nor any other council member) never reviewed a verification of legal expenses prior to voting to pay attorney fees which is, in the SCCGJ's opinion, 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.

F-2: Between 2008 and 2010, Council member A was not in compliance with the mandated AB 1234 ethics training required under the Political Reform Act of 1974. Council member A's vote to reimburse the landlord 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 representatives of Keystone Business Park while negotiating terms for the Del Puerto Health Care facility.
- Directing a city staffer to author a letter regarding city business without proper permission from the city council or city manager.

- Making calls to the Community Development Director in an effort to influence the decision to hire a lower scoring applicant to the position of Assistant Planner.
- Sustaining violations of the FPPC. (Conflict of Interest and AB 1234 Ethics Training).
- Unprofessional outbursts at City Council meetings and in the public to both colleagues and residents concerning city business.

RECOMMENDATIONS

R-1: Council member A should be held accountable for the sustaining violations and resign from elected office (Patterson City Council). Community members can evaluate the need and collect signatures for a special recall election if they feel warranted by this report and if Council member A refuses to resign.

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 certification.

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 Code.
- 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.
- Correspondence voluntarily submitted by witnesses.
- Correspondence acquired from certified letter to commercial developers.
- 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.