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

SUMMARY

The 2010/2011 Stanislaus County Civil Grand Jury (SCCGJ) received (6) specific complaints requesting that the SCCGJ investigate the Immediate Past City Council members (City of Patterson) for clearly established violations of the Brown Act, willful misconduct, FPPC violations, providing gifts of public funds, City of Patterson - City Council Handbook (2007 edition), the California Government Code and the Patterson Municipal Code.

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

1. Following an investigation and admonishment from the watchdog group Californians Aware (CalAware), the Immediate Past City Council (IPCC) acknowledged that they have committed oversights under California's open meeting laws and pledged to fully comply with the law. The Immediate Past Mayor (IPM) described the Brown Act violations as an "oversight" and assured the community members that the Brown Act compliance will take place immediately. This comment was made to CalAware on November 9, 2009, yet the violations continued through the end of November 2010.

2. During the week of April 12-16, 2010, the IPM, Council member A and Council member B had a meeting with the Immediate Past City Manager (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, 2010, 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.

3. Specific City Council members attempted to use their position of power (misfeasance) to influence key city staff workers while circumventing the IPCM.

4. Both the IPM and Council member A last completed their mandated AB 1234 ethics training as required by the Political Reform Act of 1974 on November 9, 2006. This course must be taken every two-years to ensure compliance. Their terms during 2008-2010 were not in compliance with AB 1234. Council member A completed his/her AB 1234 training after the 2010 election.

5. The IPM, Council member A and Council member B were derelict in their vote to give a gift of public funds without following city rules or verification of funds at the time of the vote.

6. The SCCGJ made several requests for emails, memorandums, audit spreadsheets,

copies of checks and other correspondence under the Public Records Act. Patterson City officials were remiss in their duties of providing full disclosure of all documents as requested though formal channels. Many emails, memorandums, itemized check statements and correspondence were not provided to the SCCGJ. Some documents were obtained through witnesses and other investigative functions.

7. Further requests for documents concerning the actions and billing statements of the Immediate Past City Attorney (IPCA) were denied in an email sent to the SCCGJ on April 28, 2011, by the interim City Attorney citing "Attorney-Client" privilege. The actual client is the City of Patterson and this information should be transparent.

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. 123 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.

California Constitution, Article XVI, Section 6: (In Summary). The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State, or of any county, city and county, city, township or political corporation or subdivision of the State now existing, or that may be hereafter established, in aid of or to any person, association, or corporation, whether municipal or otherwise, or to pledge the credit thereof, in any manner whatever, for the payment of the liabilities of any individual, association, municipal or other corporation whatever; nor shall it have power to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation.

CalAware: A nonprofit organization established to help journalists and others keep Californians aware of what they need to know to hold government and other powerful institutions accountable for their actions. Its mission is to support and defend open government, an enquiring press and a citizenry free to exchange facts and opinions on public issues. In short, Californians

Aware will be a center for information, guidance and initiatives in public forum law.

CDD: City of Patterson Community Development Director.

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.

Investigative Functions: Techniques such as interviewing, auditing, and observing that the grand jury uses to gather data for civil investigations.

IPCA: Immediate Past City Attorney.

IPCM: Immediate Past City Manager.

IPM: Immediate Past Mayor.

Misfeasance: Incorrectly or unlawfully executing a lawful duty, act, or responsibility.

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 reviewed a total of nine (9) complaints/accusations and voted to investigate them. The Government/Administration committee handled the investigative functions through May of 2011.

Violations of the Brown Act were reported. Testimony received had many examples such as the IPM not allowing public comment until after closed sessions and reducing public comments below the established five-minute time allotment. On October 26, 2009, a special meeting of the City Council was called and agenda notes indicated the council would be discussing the performance and evaluation of the Immediate Past City Manager (IPCM) along with "anticipated litigation." (Refer to attachment #1).

Nearly 100 residents/constituents attended the meeting due to rumors that the IPCM's job was in jeopardy. These people wanted to make public comments but were not allowed to until after the meeting was concluded. The items discussed do fall under the provisions of a closed session (personnel matter and anticipated litigation). The IPM said there was no action taken against the IPCM and the council had voted to reimburse a developer for legal fees. However, the IPM did not announce the vote count or which member voted in the affirmative or negative. Although the October 26, 2009 minutes of this special meeting were posted, it was not until November 3, 2009 (a regular council meeting) that voting results were revealed to the public.

On November 9, 2009, CalAware notified the IPM of their lack of compliance of with the Brown Act requirements. The following four stipulations were provided by CalAware and Patterson council members agreed to adhere to all four with the IPM stating, "It might be beneficial for the council to brush up regularly on the Brown Act."

- Post special meeting notices that invite people to comment on agenda items before or during the council's consideration of those items at the special meeting.
- Announce the "existing facts and circumstances" of anticipated litigation before closed-session discussion, as required by the Brown Act.
- Announce each council member's vote when reporting action taken in closed session.
- Post regular meeting agendas that allow for public comment on closed-session items prior to closed sessions.

During the special meeting of October 26, 2009, the closed-session meeting dealt with anticipated litigation. This action was a request for reimbursement of attorney fees to the developer for challenging the city on zoning ordinances. In February of 2009, the City Council members voted 5-0 to not return the fees to the developer. The IPCA was instructed to inform the developer of their decision. The IPCA drafted an email to the developer on September 2, 2009. The IPCA did inform the developer of the vote. This

email was not provided through the Public Records Act and was obtained by the SCCGJ through investigative functions.

There is no evidence to indicate that the developer was treated with bias, illegal interpretations, or disparate treatment. The developer wanted to be reimbursed for the legal fees he/she incurred on his/her own behalf to stop the Del Puerto Health Care District facility from moving to Keystone from the building owned by the developer.

During the special meeting of October 26, 2009, the IPM took the initiative to make a motion that the developer's legal fees be paid. The motion was seconded and a 3-2 vote passed to pay/reimburse the developer's legal expenditures. It was made very clear to the SCCGJ that there was no verification of attorney fees, knowledge of the amount of fees, lawsuit, or court order demanding payment, contract or statutory authority. The IPM, Council member A and Council member B voted yes. Council member C and Council member D voted no, stating they would not support the payment of public funds (from the taxpayers general fund) for a non-verified figure. Three days after this vote was taken, Council member A drafted an email to the IPCA and the other council members requesting the amount of the bill.

The IPCA testified the landlord/developer was acting as a "private attorney general" and was acting on behalf of the residents of the City of Patterson. Evidence supports the landlord/developer was only acting on his/her own behalf. No other individual(s) were to benefit from this action. There is no statutory authority that would allow the City Council to reimburse a citizen acting on his/her own behalf for the reimbursement of attorney fees.

On January 5, 2010, the IPM, Council member A, Council member B, and a local developer (not the same one that collected the fees) entered and sat at the same table at a bar and grill. A review of the minutes from this date indicated that the developer did address the City Council at the earlier regular session City Council meeting (just prior to this encounter) about the general plan and when it would be completed so he/she could start a development. This could be perceived as a conflict of interest. Council member D and his/her spouse entered the establishment during this time and became aware of the group seated together. Council member D and his/her spouse recognized this as a potential conflict of interest and decided to leave the restaurant.

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, 2010, 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.

The SCCGJ could find no evidence of a code of ethics and a requirement to complete AB1234 Ethics Training for members appointed to boards and commissions.

§ 2.16.120 Removal—Written notice. (Patterson City Ordinance)

> *The removal of the city manager shall be only upon a majority vote of the whole council in* ***regular council meeting****, (emphasis added)all five members being present, subject, however, to the provisions of Sections 2.16.130 through 2.16.160. In case of his intended removal by the city council, the city manager shall be furnished with written notice stating the council's intention to remove him, at least thirty days before the effective date of his removal, which shall be shown upon the written notice. If the city manager so requests, the city council shall provide in writing, reasons for the intended removal, which shall be provided the city manager within seven days after the receipt of such request from the city manager, and at least fifteen days prior to the effective date of such removal. (Ord. 220 Art. 1 § 7 (part), 1972).*

Item six on the April 20, 2010 agenda states, "City Manager Evaluation." During the closed session, The IPM mentioned that he/she wanted the IPCM terminated. The IPCA was asked to go into chambers and ask if he/she would be willing to resign. The IPCM said, "No." When the IPCA entered the closed session, he/she had a piece of paper (the back of an agenda) that was handwritten. The note read, *"(IPCM: Pursuant to P.M.C. § 2.16.120 you are hereby given notice of intent to remove you as City Manager effective May 24, 2010."* Two Council members (Council members C and D) stated that this was a premeditated action since the note was already written when the IPCA entered the room and showed concerns that the removal of a City Manager must be done during a regular council meeting as stipulated in the City ordinance. The IPCM resigned in lieu of termination sometime after the April 20, 2010 notice of intent to terminate.

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 District facility. This was done without direction and Council member A acted alone (§ 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

- Reviewed submitted complaints.
- Requested 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 numerous witnesses. The testimony was under oath and recorded with their knowledge.

FINDINGS

Immediate Past Mayor (IPM) **Council member A** **Council member B**

F-1: The IPM was not a resident of the City of Patterson during the 2008-2010 term as Mayor. The IPM, spouse and family lived in the home outside the city limits that was occupied in 2007. The IPM made a written admission indicating he/she was ineligible to serve as Mayor of Patterson and misled the community members to the actual place of residency. The California Government Code states that the position of Mayor shall become immediately vacant upon moving from within the jurisdictional boundaries of the city.

F-2 Council member A failed to disclose a fiduciary conflict of interest with the landlord/developer 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/developer. Council member A never reviewed a verification of legal expenses prior to voting to pay attorney fees, which is a gift of public funds in the SCCGJ's opinion. The money paid to the landlord/developer was absorbed through the City of Patterson's general fund account while this individual was still the landlord of Council member A.

F-3: On October 26, 2009, the IPM (nor any other council member) never reviewed a verification of legal expenses prior to voting to pay attorney fees to the landlord/developer, which is a gift of public funds in the SCCGJ's opinion. 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 monies without a properly filed lawsuit, verification of funds, court order, contract or statutory authority.

- Council members C and D voted not to provide the landlord/developer with a gift of public funds due to the lack of verified itemization and further legal opinion(s).

F-4 Between 2008 and 2010, the IPM and Council member A were not in compliance with the mandated AB 1234 ethics training required under the Political Reform Act of 1974. The IPM and Council member A's vote to gift the landlord/developer took place during the time of non-compliance.

F-5 The IPM, Council member A, and Council member B were involved in the resignations of the IPCM and the CDD.

F-6. The SCCGJ could find no evidence of a code of ethics and a requirement to complete AB1234 Ethics Training for members appointed to boards and commissions.

RECOMMENDATIONS

R-1: 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 forfeit any voting privileges or other powers of the Mayor during the 2008-2010 years of elected service. The IPM shall reimburse the City of Patterson his/her salary of $300.00 per month, ($9,300.00) from the time of admitting the fact that he/she was not a Patterson resident and was not eligible to run for office (2.12.020 (b) Patterson City Municipal Code). (California Government Code §§ 34882, 34904, and 36502 (a)).

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, 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: 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. Council member A had a fiduciary conflict of interest with the landlord/developer.

R-3: All Patterson City Council members shall have established criteria and authenticated documentation for the disbursement of public funds on any claim, litigation, or payments prior to voting.

R-4: 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.

R-5: On April 20, 2010, Council members A, B and the IPM voted to terminate the IPCM during a closed session of a City Council special meeting. The Patterson City Municipal Code mandates that this action shall be done during a regular City Council meeting. (Patterson Municipal Code § 2.16.120).

FINDINGS

Council member C **Council member D**

F-1: There is no evidence that Council member C or Council member D violated any Brown Act statutes, city policies, or other statutory codes.

The Entire Immediate Past Patterson City Council / (Current members)

F-1: There is no job description for the position of City Attorney.

F-2: The City of Patterson elected officials are not taking advantage of educational or team building training opportunities.

F-3: The City of Patterson needs to be a transparent governmental agency with all matters regarding the public's right to know where and how their tax dollars are being spent.

F-4: The SCCGJ sustains that the vote by the City of Patterson's City Council to provide the gift of public funds to the landlord/developer was **invalid.**

F-5: The SCCGJ could find no evidence of a code of ethics and a requirement to complete AB 1234 ethics training for members appointed to boards and commissions.

RECOMMENDATIONS

R-1: The City of Patterson reviews their contractual agreement for the City Attorney. In addition, an actual job description for the position of City Attorney should be created to list job specifics, transparent billing practices and schedule of evaluations as part of this contract/job description.

R-2: The City of Patterson's current and future City Councils should research and attend a training seminar/workshop provided by the California League of Cities.

- Attending this training will help to ensure that individual Council members conduct city business in a civil and orderly fashion while following the chain of command. This will also mitigate the perceived appearance that Council members act as a group, outside of their own individual agendas, to avoid conflicts of interest and abuse of powers associated with their elected positions.

R-3: The City of Patterson shall be in full compliance with the Public Records Act and not hide behind the umbrella of "Attorney-Client privilege" to avoid producing formal public records.

R-4: The City of Patterson shall take the necessary steps to seek repayment from the landlord/developer for expenses paid to him/her.

1. The IPM's vote was null and void due to his/her vacated position.

2. Council member A had an undisclosed fiduciary conflict of interest with the landlord/developer.

3. City policy and statutory authority prohibit this payment of funds in the amount of $27,790.94.

R-5: The SCCGJ recommends that the Patterson City Council create an ordinance that requires members of appointed boards and commissions complete AB 1234 ethics training.

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.

ATTACHMENT #1

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.