



2006-2007 SANTA CLARA COUNTY CIVIL GRAND JURY REPORT

SUNNYVALE VIOLATED STATE ELECTION LAW

Summary

The Santa Clara County Civil Grand Jury's investigation of whether the City of Sunnyvale violated State election laws arose from a citizen's charge that following the November 2005 elections, Sunnyvale swore in its three newly elected Councilmembers prior to certification by the Registrar of Voters (ROV). State election laws proscribe local agencies from installing new officials until the ROV has canvassed all votes and has formally certified the election results. On December 6, 2005, the ROV certified the results from Sunnyvale's November 2005 Special Statewide Election. Yet six days earlier, on November 29, 2005, Sunnyvale swore in its new Councilmembers and selected its Mayor and Vice Mayor.

In the course of this inquiry, the Grand Jury discovered that on May 13, 2006, the Santa Clara County District Attorney's Office received a citizen complaint which was similar to the complaint received by the Grand Jury on August 25, 2006. The District Attorney's Office concluded its investigation with a letter dated July 10, 2006, notifying Sunnyvale's then-mayor that "...the Councils' [sic] action appears to be a knowing violation of the Election Code."

The Grand Jury finds that the City of Sunnyvale violated the California Elections Code and recommends that Sunnyvale establish a procedure that conforms to State law effective with the election scheduled for November 6, 2007.

Discussion

This Grand Jury investigated whether Sunnyvale violated Elections Code Sections 10262 and 10263. After several interviews and a thorough review of relevant documents, the Grand Jury determined that Sunnyvale's early swearing in of newly elected Councilmembers and the selection of Mayor and Vice Mayor violated the Elections Code.

California Elections Code Sections 10262 and 10263 prohibit the declaration of election results and installation of newly elected officers by governing bodies until the ROV has completed the canvassing of votes for each local agency:

§ 10262 (b). Canvassing of returns and certification of results.

For a consolidated election, the city elections official, upon receipt of the election from the elections official conducting the election, shall certify the results to the governing body which shall, no later than the next regularly scheduled city council meeting following presentation of the 28-day canvass of the returns, or at a special meeting called for this purpose, comply with the applicable provisions of Section 10263.

§ 10263 (b). Declaration of results and installation of newly elected officers.

For a consolidated election, the governing body shall meet at its usual place of meeting no later than the next regularly scheduled city council meeting following presentation of the 28-day canvass of the returns, or at a special meeting called for this purpose, to declare the results and to install the newly elected officers.

On November 8, 2005, Sunnyvale held a consolidated election with a Special Statewide Election, in which three Councilmembers were elected. In a November 9, 2005 press release, Sunnyvale disclosed the names of the three newly elected Councilmembers, acknowledging that the election results “will not be officially certified by the Santa Clara County Registrar of Voters for several weeks....” The press release also announced:

The new Council members are tentatively scheduled to take their seats for the first time at the regular Council meeting Tuesday, November 29. A new mayor and vice mayor will be selected by the Council that same evening.

Then, during its regularly scheduled council meeting on November 29, 2005, Sunnyvale adopted a resolution certifying the November 8th election results, and the three newly elected Councilmembers took their oaths of office. The City Manager’s staff report for that Council meeting recommended certification of the 2005 election results and stated:

As of this writing, the Santa Clara County Registrar of Voters has not yet completed the official canvass of returns for the City’s November 8, 2005, General and Special Municipal Election...However, we have been informed we will receive the official final results of the vote, as well as the precinct by precinct breakdown sometime on Tuesday November 29th. At that time this report and certifying resolution will be updated with the data contained in the official final results, and distributed to council at the November 29, 2005, Council meeting.

However, it was not until December 6, 2005, that the ROV canvassed and certified the results of Sunnyvale's 2005 elections. Nonetheless, Sunnyvale went forward with swearing in its new officers at the predetermined November 29, 2005 Council meeting. Since the prematurely seated Councilmembers did not take any official action between November 29 and December 6, 2005, Sunnyvale avoided the need to untangle potentially unenforceable decisions.

According to Sunnyvale officials, there were several conversations with the ROV prior to the November 29, 2005, swearing in ceremony, and therefore they acted on the belief that the ROV had no objection to their decision. However, in a meeting with the Grand Jury, the ROV stated that the current requirement of ratifying election results in a consolidated election on the 28th day of the canvass, as required by California Elections Code Section 10262 (b), has been in place since 2002. The ROV further stated that there would be no endorsement or certification until the 28th day regardless of whether the official count was ready in advance.

When queried by the Grand Jury, the Office of the City Attorney responded that as a Charter City it had the authority to act counter to the State-mandated election process. And yet, Sunnyvale's Charter expressly provides:

Unless otherwise provided by ordinance hereafter enacted, all municipal elections shall be held in accordance with the provisions of the Elections Code of the State of California, as the same now exist or may hereafter be amended, for the holding of elections in cities organized under the General Law of the State of California, insofar as the same are not in conflict with this Charter [Sunnyvale Charter § 1403].

No conflicting ordinance was found by the Grand Jury.

Conclusion

The City of Sunnyvale violated State election laws by installing new Councilmembers and selecting its Mayor and Vice Mayor before its 2005 election results were officially canvassed and certified by the ROV.

Finding

The following finding was reviewed by the subject agency.

F1: The City of Sunnyvale violated California State Elections Code Sections 10262 and 10263.

Recommendation

The 2006-2007 Grand Jury recommends the City of Sunnyvale take the following action:

R1: Establish a formal procedure that conforms with California State Election Code Section 10263 commencing with the November 6, 2007, election.

Bibliography

California Elections Code Sections 10260-10266.

City of Sunnyvale. *City Charter of the City of Sunnyvale.* December 14, 2005.

City of Sunnyvale. *City Council's Approved Minutes,* November 29, 2005.

City of Sunnyvale. Staff report titled *Certification of 2005 General and Special Municipal Election Results – Revised,* including the enabling Resolution, dated November 29, 2005.

Lowney, Stephen P., Office of the District Attorney, County of Santa Clara. Letter to Mayor of the City of Sunnyvale, July 10, 2006.

Office of the Registrar of Voters, County of Santa Clara. *Certificate of Election Results,* December 6, 2005.

Sunnyvale News Release No. 11-07. *Sunnyvale Ballot Measures Pass; New Members to Join City Council.* November 9, 2005.

Interviews

November 27, 2006	Interviewed former City of Sunnyvale personnel
December 18, 2006	Interviewed County Registrar of Voters officials
February 14, 2007	Interviewed a Santa Clara County Deputy District Attorney
March 14, 2007	Interviewed officials of the Office of the City Attorney, City of Sunnyvale

PASSED and **ADOPTED** by the Santa Clara County Civil Grand Jury on this 10th day of April 2007.

Ronald R. Layman
Foreperson

David M. Burnham
Foreperson Pro tem

Kathryn C. Philp
Secretary