

2002-2003 SANTA CLARA COUNTY CIVIL GRAND JURY

INQUIRY INTO SAN JOSE CITY COUNCIL DECISION MAKING AND VOTING PROCESSES

Summary

The 2002-2003 Civil Grand Jury (Grand Jury) reviewed the San Jose City Council members' decision-making and voting processes to determine if they were in compliance with the Ralph M. Brown Act (Brown Act), contained in Section 54950 et seq. of the California Government Code, which requires that legislative bodies hold open meetings. The Grand Jury concluded that council members have been very mindful of Brown Act constraints and that, with one publicly known potential exception, there have been no Brown Act violations. Concerning the actual council voting process, the Grand Jury recommends that more attention be paid to making individual council member votes clearly visible to the viewing public, particularly in the soon to be constructed city hall facilities.

Background

This review was precipitated by Grand Jury visits to city council meetings concerning another inquiry. The Grand Jury members were surprised to discover that the voting lights system was rarely employed. The voting procedures used by the council left the observers perplexed, at best.

The San Jose City Council chamber is equipped with a light system which can be used to display the vote of each council member. The system is comprised of a large board displaying the name of each council member, followed by columns of lights labeled to indicate how the member is voting. At San Jose City Council meetings, the mayor registers votes without much discussion, often with members not seeming to pay attention to the vote, and without use of the light system. This practice of collecting votes without using the lights appeared to the Grand Jury as unprofessional and confusing, and led the Grand Jury to ask whether decisions had been made previously behind closed doors, which would be a violation of the Brown Act. The colocation of council members' offices raised the concern that prior discussion among members might easily be happening. Given this concern, the Grand Jury proceeded to observe several council meetings, to attend a rules committee meeting, to interview each of the members of the San Jose City Council, the mayor, the city clerk, and the city attorney to determine the manner in which decisions are made, and to ascertain if the process is in compliance with

the Brown Act. These visits took place during the period from September 2002 through mid-January 2003. The Grand Jury noted that other legislative bodies in the county that have voting light systems, for instance Palo Alto City Council, do appear to use them regularly.

Discussion of Lights

Those who observe the San Jose City Council meetings, whether in person or via cable television, will seldom see the voting light system used. It is used only at the direction of the mayor, who upon occasion will ask the members to vote using the light system. In practice, the system is used only for the most contentious of issues. The mayor calls for all votes, and then following the collection of votes, announces the outcome. The city clerk completes the process by formally recording the votes. In most situations, this process is conducted by the mayor with lightning speed: "all in favor, all opposed, motion carries unanimously." Seldom are hands raised or voices heard. Some members, digging in briefcases or shuffling papers, seem not to be paying attention. Without the use of the lights, there is some question as to whether all council members really are voting for the measure at hand. In fairness, there has been no groundswell of complaints from the citizens. Of course, the number of citizens that actually views the real time voting is presumably very small.

The Grand Jury raised the voting light issue during interviews with all San Jose City Council Members, including the mayor. None of the city council members thought there was any significant problem with the process. One believed that the speedy process was an efficient use of members' time. It was noted that no council member had ever complained that the vote was improperly recorded (the official recording being done by the city clerk). All members felt that if they did oppose the issue at hand, they would feel comfortable in voicing their objection. Hence, the Grand Jury concluded that while no vote-counting errors are being committed, the perception prevails that voting is haphazard.

With construction of the new city hall now underway, installation of a light system that would be reliable and easy to use could easily be provided. Perhaps it could also automatically record the formal vote for the city clerk. The Grand Jury was informed that this level of design had not yet been considered in the city hall planning process.

Discussion of Brown Act

The Brown Act is a law designed to ensure that public agencies make formal decisions in public rather than in closed backroom deals. Voting parties, such as city council members, may discuss issues among themselves, as long as those discussions do not involve a majority of the voting members. The collocation of the San Jose council members' offices prompted the Grand Jury to inquire as to what kind of interactions occurred regarding votable issues and the level of understanding of the members regarding the Brown Act.

Interviews with all the council members determined that there is some Brown Act training provided to first-year council members, particularly to those who are new to public life. The city attorney, who is responsible for Brown Act oversight, provides the training and answers council members' questions regarding the Brown Act. The training includes discussions of the Brown Act in the council members' formal training materials which are provided by the city attorney.

In addition to the academic training, there are real world examples that, during the course of their term, become instructive to the council members. These real world examples are those situations that the members find or stumble into themselves. One recent example dealt with a written memo supporting a position on a votable issue. The memo had been signed by one less than a majority of the council members, which is legal, but which was followed by a discussion between one of the signatories and another member who had not signed the memo. This last discussion, along with the memo, constituted a potential non-public serial discussion (depending upon what exactly was discussed) by a majority of members. This would be a violation of the law. When this situation was discovered after the formal vote had already been taken, the city attorney advised the council that, as a corrective measure to ensure no impropriety, the vote should be invalidated and the matter brought back before the council for a re-vote. As a result, the issue was placed back on the agenda for a subsequent meeting and a second vote taken at that time. With real world examples in members' experience, all become attuned to potential pitfalls and become more watchful to ensure compliance.

The Grand Jury raised the concern of serial discussions occurring amidst the tightly clustered offices. This is the situation when a majority of members have not met at the same time to discuss an issue, but when one communicates with another, who in turn communicates with yet another, and so on, until there exists a serial chain of communications that equates to a majority participation in establishing a position. Similarly, the chain could involve staff employees of the council members who communicate with other council staffs or members themselves. The problem is that a serial violation could occur without any member in the chain being aware that a majority of voting members has been involved.

As a result of the Grand Jury interviews, it was determined that each council member is aware of this serial communication problem, and each has his/her own methods of ensuring it does not occur. These methods range from keeping track of whom they have talked to about a specific issue, to simply not talking to others on votable issues, and also to instructing staff employees to never engage in any such discussions. As far as the Grand Jury was able to ascertain, these strategies appear to be working. There are no water cooler meetings where issues are kicked around. There are no standing meetings which involve staffs of a majority of council members (for instance, no meeting of all chiefs of staff). Hence, each council member is charged with ensuring compliance with the Brown Act.

Although some formal tracking system of who-talked-to-whom-about-what was discussed, such a council-wide system does not exist. It was suggested that such a system would be prohibitively cumbersome. The Grand Jury is not recommending such a system.

Finding I-1

The San Jose City Council rarely uses the light system to record votes.

Finding I-2

The San Jose City Council routinely uses a very quick verbal voting process.

Finding I-3

Voting systems have yet to be designed for the new city hall.

Recommendation I-1

The Grand Jury recommends that the existing voting light system be used for most votes, reserving the quick verbal voting process for only the most routine matters, such as approval of minutes and consent calendar changes.

Recommendation I-2

The Grand Jury recommends that a voting light system be designed into the new city hall and that it be used for all votes.

Finding II-1

All 2002 San Jose City Council members are knowledgeable, to various degrees, about Brown Act issues.

Finding II-2

The San Jose City Council appears to be in compliance with the Brown Act.

Recommendation II

None.

PASSED and **ADOPTED** by the Santa Clara County Civil Grand Jury on this 13th day of March 2003.

Fred de Funiak
Foreperson

Ron R. Layman
Foreperson Pro Tem

Patricia L. Cunningham
Secretary

References

Documents

Ralph M. Brown Act (California Government Code Section 54950 et seq.)

Interviews

San Jose City Attorney, January 17, 2003.
San Jose City Clerk, November 1, 2002 and December 11, 2002.
San Jose City Council Member District 1, November 24, 2002.
San Jose City Council Member District 2, November 25, 2002.
San Jose City Council Member District 3, November 13, 2002.
San Jose City Council Member District 4, November 25, 2002.
San Jose City Council Member District 5, November 18, 2002.
San Jose City Council Member District 6, November 25, 2002.
San Jose City Council Member District 7, November 30, 2002 and December 11, 2002.
San Jose City Council Member District 8, November 14, 2002.
San Jose City Council Member District 9, November 13, 2002.
San Jose City Council Member District 10, November 12, 2002.
San Jose City Mayor, December 6, 2002.

Meetings attended:

Palo Alto City Council, September 23, 2002.
San Jose City Council, September 3, 2002.
San Jose City Council, September 17, 2002.
San Jose City Council, November 12, 2002.
San Jose City Council, November 19, 2002.
San Jose City Council Rules Committee, December 11, 2002.