

## **2003-2004 SANTA CLARA COUNTY CIVIL GRAND JURY**

### **INQUIRY INTO THE FORMATION OF AN INVESTIGATIVE SUBCOMMITTEE AT A SUNNYVALE CITY COUNCIL MEETING**

#### **Summary**

In response to a citizen complaint, the Santa Clara County Civil Grand Jury (Grand Jury) conducted an inquiry into the formation of an investigative ad hoc subcommittee during the Sunnyvale City Council (Council) meeting that took place on October 7, 2003.

The 2003-2004 Grand Jury concluded its inquiry with two findings and two recommendations. The recommendations, if adopted, will improve the Council's adherence to the Charter of the City of Sunnyvale (Charter) and state law.

#### **Background**

The president of the Police Service Officers Association (PSOA) addressed the Council during the *Citizens to be Heard* category of the meeting. He requested that the Council investigate the actions of the vice mayor and the city manager, alleging the use of undue influence during a police incident that had taken place at a downtown Sunnyvale establishment over the 2003 Labor Day weekend.

In response, the mayor\* formed an ad hoc subcommittee to investigate the charges. Although one council member questioned the mayor's authority to do so, the mayor expressed the right to form such a subcommittee, citing the City of Sunnyvale Code of Conduct for Elected Officials (Code). The city attorney did not voice an objection.

The investigative subcommittee met on several occasions subsequent to October 7, 2003. The result of its investigation found the vice mayor not to be in violation of the Charter, but to have demonstrated poor judgment in the matter brought forth by the PSOA.

The complainant claimed that the Charter, under Section 807, prohibited the formation of such a subcommittee without the affirmative vote of at least four council members, and was also a violation of the Ralph M. Brown Act (Brown Act).

\* The City of Sunnyvale, similar to *General Law* cities, selects by motion, the positions of mayor and vice mayor from Council members every year.

## Discussion

The relevant section of the Code, “Councilmembers Behavior and Conduct,” upon which the mayor based her authority to form an ad hoc investigative subcommittee, reads as follows:

“If violation of the Code of Ethics or Code of Conduct is outside of the observed behaviors by the Mayor or Council members, the alleged violation should be referred to the Mayor. The Mayor should ask the City Manager and/or the City Attorney to investigate the allegation and report the findings to the Mayor. It is the Mayor’s responsibility to take the *next* appropriate action. These actions can include, but are not limited to:

- Discussing and counseling the individual on the violations;
- Recommending sanction to the full Council to consider in a public meeting;
- Forming a Council ad hoc subcommittee to review the allegation; the investigation and its findings, as well as to recommend sanction options for Council consideration.”

The transcript (*reference documents*) of the October 7, 2003 Council meeting indicates that the mayor had not performed the required action in the Code, that is, to “ask the City Manager and/or City Attorney to investigate the allegation....” in order to take the *next* action of forming a council ad hoc subcommittee.

## Conclusion

Examination of the Code did not uphold the mayor’s assertion that it gave the mayor the authority for the formation of a subcommittee without a prior investigation by the city manager and/or the city attorney. It is also the opinion of the Sunnyvale City Attorney that the mayor’s interpretation and reliance upon this section for the purpose of unilaterally forming an ad hoc subcommittee was not valid.

Examination of the Charter Section 807 is not relevant in that it deals mainly with Council member interactions “with officers and employees in the administrative service under the jurisdiction of the City Manager” and not Council members. Although some exceptions are listed, none apply in this case.

The formation of the ad hoc subcommittee was brought forth during the *Citizens to be Heard* category and as such was not on the public agenda. Since proper notice was not given to the public for the meeting that night, it would appear to be a violation of the Brown Act, Section 54954.2, that is, “No action or discussion shall be undertaken on any item not appearing on the posted agenda....”

The Sunnyvale City Council may have been technically in violation of the Brown Act by allowing an action, specifically the formation of an ad hoc subcommittee, to take place during the October 7, 2003 Council meeting without the action being placed on the meeting’s agenda and properly publicized to the general public. However, the Grand Jury finds that the spirit of

the act was not violated by its actions, particularly since the investigative subcommittee meetings were open to the public.

## **Finding I**

The mayor was not authorized under the Charter or Code to unilaterally form an ad hoc investigative committee during the council meeting of October 7, 2003, without first requiring an investigation by the city manager and/or the city attorney.

## **Recommendation I**

None

## **Finding II**

The City Charter does not explicitly bar the city attorney from offering unsolicited legal advice, either verbally or in writing, on matters before the Council.

## **Recommendation II**

- A. The Council should consult the city attorney on the validity of procedural matters.
- B. The Charter should be interpreted such that the city attorney should be outspoken in giving advice on the validity of procedural matters.

**PASSED** and **ADOPTED** by the Santa Clara County Civil Grand Jury on this 16<sup>th</sup> day of April 2004.

---

Richard H. Woodward  
Foreperson

## **References**

### **Documents**

Charter of the City of Sunnyvale, as amended November 30, 1995.

City of Sunnyvale Code of Conduct for Elected Officials.

Ralph M. Brown Act, Govt. Code Section 54950, et seq. (Open Meeting Law)

Report to Mayor and Council No. 0304 CA dated November 11, 2003.

Video and written transcript of the October 7, 2003 Council meeting.

### **Interviews**

Meeting with Sunnyvale City Attorney on January 27, 2004

Meeting with a Sunnyvale Council Member on March 24, 2004