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County of Santa Cruz

Cities & Other County Agencies

Review of the Santa Cruz County Planning Department

Background

The Santa Cruz County Planning Department is part of county government and reports to the five-member elected County Board of Supervisors through the County Administrative Officer. This department was established by and derives its authority from Government Code §65000 *et seq.*

The County Board of Supervisors has absolute discretion to enact county land use ordinances. The Planning Department has the power to enforce county land use ordinances as well as discretionary power to define and implement county land use policies.

The Planning Commission, whose members are appointed by the Board of Supervisors, is responsible for the approval of large commercial and residential projects. The Planning Department provides staff support to this commission.

The County of Santa Cruz General Plan is the primary set of policies for the county's land use that guarantees development is directed in an orderly manner. The Planning Department's responsibilities include drafting and administering this plan.

The four prominent and controlling issues outlined in the 1994 General Plan continue to be primary areas of concern today. These are

- Managing population growth through a comprehensive growth management system (implemented by Measure J, adopted in the 1970's) to assure adequate services, particularly water, to current and future residents
- Providing affordable housing
- Preserving the county's environmental quality
- Preventing conversions of agricultural lands through alternative methods such as "in fill" development

The Planning Director is responsible for the overall management and administration of the Planning Department. Assistant directors manage the two major divisions

- Planning division
 - Development review
 - Environmental planning
 - Advanced planning
 - Resource planning
- Building division
 - Building permits
 - Code compliance
 - Geographic Information System

Scope

Fieldwork for the Grand Jury's report was concluded on April 4, 2001.

This Grand Jury review focused only on the three sections of the Planning Department that have the greatest contact with the general public:

- Development Review Section
- Building Permit Section
- Code Compliance Section

Development Review Section: This section is the key point of public contact for the planning and zoning functions of the county Planning Department. It is the primary information resource for property owners and land use professionals who need to know what can be done with their property. This section interfaces with the public primarily through the zoning counter, located on the fourth floor of the county building.

At the zoning counter, the development review staff provides information on the planning and zoning classifications for land use as established in the county's General Plan and ordinances. These dictate the allowable uses and development restrictions regarding the property, such as property line setbacks and height limitations. This section reviews and processes all proposals for developing land.

Development review requires the exercise of professional judgment on the part of both project review staff planners and decision-makers. Projects requiring a development review permit range from a coastal permit for a single-family dwelling to a subdivision. Project review planners review applications for conformance with county General Plan policies, code requirements, design guidelines, and compatibility with other land uses in the area.

Building Permit Section: This section is responsible for reviewing building plans for conformity with measurable code requirements, routing the plans to all outside reviewing agencies, monitoring that review process, issuing permits and inspecting all permitted work until final completion. The building counter is the main point of contact for obtaining building permits and is located on the fourth floor of the county building.

Code Compliance Section: This section is responsible for enforcement of county codes relating to land use, building code, zoning ordinance and resource protection ordinances. It administers an abatement program for dangerous conditions on properties as well as an abandoned vehicle program. These programs operate in response to citizen complaints about alleged code violations initiated by telephone or by visiting the Planning Department. This section investigates the complaints and, if appropriate, issues warning or violation notices. When a property owner refuses to comply, the county may correct the violation and charge the property owner for the work completed. Such actions may be followed by additional legal sanctions such as code violation recordations, fines or civil penalties. The overall objective of the code enforcement process is to protect the health and safety of the public and to put an end to illegal land use.

The Grand Jury reviewed the following areas to determine the adequacy of the Planning Department to administer the highly complicated processes for which it is responsible.

- Training programs
- Attitude and morale of department staff
- Number of employees in relation to the workloads
- Proficiency of the staff
- Policies, procedures and computer programs

To obtain the findings that serve as the basis of this report, the Grand Jury employed the following measures:

- Conducted interviews
 - Current Planning Director and one former director
 - Two current members of the Santa Cruz County Planning Commission
 - Two Assistant Planning Directors
 - Six employees, representative of the support services of the Santa Cruz Planning Department, with varied lengths of service
- Reviewed documents
 - The 1994 General Plan
 - The department's organizational chart
 - The department's current web pages
 - The employee's standard rating form
 - The department's current public brochures
 - The November 1993 Code Compliance Investigator's Manual
 - Department's current Code Compliance Investigator's Manual
 - 1997-98 Grand Jury Report reviewing the code compliance division of the Planning Department
 - The June 8, 1999 ordinance covering the adoption of the uniform codes and amendments
 - The August 16, 2000 Planning Department's Final Conversion Plan for eliminating old unresolved code compliance complaints. The plan included information regarding staff capacity for handling new complaints and reducing the backlog of outstanding complaints
 - The October 17, 2000 Planning Department's Operations Report to the County Board of Supervisors
 - The November 30, 2000 report from the Planning Department to the Board of Supervisors regarding the year 2001 annual population growth goal
 - Board of Supervisors resolution adopting Annual Population Growth Goals for 2001: Resolution No. 396-2000 passed and adopted December 5, 2000
 - The California Government Code pertaining to Planning Departments

The Grand Jury also:

- Requested from the Planning Department computer lists of applications and complaints received during the first quarter of 2000 and all outstanding applications and complaints at the end of 2000. The following lists were prepared:

Computer Lists Reviewed	Received in Q1 2000	Outstanding at the end of 2000
Applications for development approval of land use requests	246	456
Applications for building permits and the inspection process from issuance to completion	465	717
Code compliance violations from complaint to resolution	258	3,848

- Randomly selected and reviewed 27 files from the above computer lists and compared them to their respective physical files.

Type	Sample	Population
Development review section	8	243
Building permit section	10	465
Code compliance section	9	258

- Compared the 27 files selected to the Planning Department’s web site to determine their status as of April 4, 2001.

This investigation was conducted without participation by one juror of this 2000-01 Grand Jury who is related to a county employee.

Findings

1. The California Planning and Zoning Law (Government Code §65300 *et seq.*) requires adoption of a comprehensive long-term General Plan that determines the development of the county.
2. The Board of Supervisors determines the annual allocation of the maximum number of building permits to be issued in accordance with Measure J’s growth management program. The 2001 building permits allocations are set at 0.5% over the number of housing units on December 31, 2000.
3. Land use codes and ordinances are broadly constructed and, therefore, susceptible to multiple interpretations.

Personnel Findings

1. The Grand Jury found that the department employees were cooperative and professional at all times. The Planning Director offered help, even during this very busy time in their department.
2. There are approximately 110 positions in the department, including 12 new staff positions recently approved by the Board of Supervisors.
3. The Graphic Information Systems department is a sophisticated operation and was very helpful in providing the Grand Jury with maps and other data.
4. The planning staff's responsibility is to explain to applicants the limitations imposed on the applicant's use of their own property by (1) state laws, (2) county codes and (3) county ordinances. Often these rules conflict with the property owner's desires.
5. Political influence by the Board of Supervisors places added pressure on the planning staff. Supervisors act for the best interest of their constituency. When membership on the board changes, direction from the supervisors changes.
6. City governments in the county and many neighboring counties pay higher salaries than Santa Cruz County does. Salaries in Santa Cruz County government are based on a nine-county comparison using Contra Costa, Fresno, Marin, Monterey, Napa, San Mateo, Santa Clara, Solano, and Sonoma.
7. Employee morale is low and turnover is at an unprecedented high. This resulted from failure in negotiations to successively challenge the nine-county comparison. At the peak, there were 24 vacancies in the department. This necessitated taking staff from the advanced planning section to cover shortfalls in other sections.
8. The personnel department has been unable to attract the necessary people with requisite qualifications to fill vacancies in the Planning Department staff. Some vacant positions are difficult to fill because they are classified as temporary positions. The Planning Department requested hiring an outside consultant to assume the recruitment effort.
9. According to interviews with employees, workloads continue to be excessive. Also, employee performance evaluations have not been conducted on a consistent basis.
10. The department has budgeted 125 computer classes, approximately one day's training for each employee of the Planning Department. The managers of each section are responsible for budgeting additional training courses for staff as needed to enhance their skills.
11. The Planning Director has implemented a program to acquaint new hires with the operations of the department as well as familiarize current employees with functions of other areas within the department. Additional training for new hires is left to other employees in the area where the person works. The responsibility for ensuring that employees obtain continuing or additional training lies with each manager.
12. In the fall of 2000, the Planning Director has obtained approval from the Board of Supervisors for a new staff position devoted to training. This staff position will evaluate the training needs of the department and devise strategies and methods to satisfy those needs.

13. The Planning Director proposed that employees be assigned to planning teams to be responsible for virtually all the development activity in a particular geographical area. Each team leader will be responsible for acquiring a thorough understanding of the assigned geographic location.

Development Review Section Findings

1. Review of the 8 selected files revealed
 - 7 of the 8 files selected were completed. The department is correctly handling the incomplete file. It is still incomplete because an outside agency, over which the Planning Department has no control, has yet to give its approval.
 - 6 of the 7 completed files were processed in an average of three months; 1 took almost a year to complete.
 - 3 of the 7 completed files were not shown as completed on the computer system.
 - 1 file approved on June 1, 2000 erroneously showed a future hearing of August 4, 2000.
As of April 4, 2001, it still showed as scheduled for that hearing.
 - 1 file is shown as withdrawn however there is nothing in the file to support this.
2. Planners must possess a high degree of proficiency in diverse land use regulations in order to handle the increased development applications for “in fill” projects. These projects are located in heavily developed areas that require highly technical planning, engineering, geologic and/or hydrologic issues. According to the Planning Director, the current capacity of the department to administer such sophisticated processes is limited.
3. A single development permit application may have several separate files associated with it. This happens when more than one reviewing department is involved. However, no cross-indexing exists for files in circulation. Anyone attempting to review these files has no way of knowing how many files exist. Only when the process is complete are the files put together.

Building Permit Section Findings

1. Review of the 10 selected files revealed the following:
 - 9 of the 10 files were complete by the date of the review
 - 6 Complete
 - 3 Withdrawn
 - 1 Not approved
 - 10 Total
 - 1 physical file could not be found
 - 4 of the 6 files were completed in less than 45 days and the other 2 were completed in 60 days

Code Compliance Section Findings

1. According to the Planning Department’s Final Conversion Plan, the department has a policy of resolving code compliance complaints within four months.
2. At the end of the year 2000, there were 3,848 unresolved code compliance complaints. This represents more than three years of unresolved complaints. The Planning Director attributes the high backlog to the fact that code compliance staff worked on easiest-to-resolve complaints first to reduce the volume of unresolved complaints. The director also asserted that approximately 3,000 of the 3,848, that currently show unresolved in the computer system, should show resolved. These 3,000 are a combination of (1) old resolved complaints that are not shown properly resolved in the computer or (2) old complaints which are considered too minor to work on.
3. The computer listing of code compliance complaints received during the first quarter of 2000 indicates a “Priority Code” for each complaint type, consisting of Codes A, B, C. Listed below is a breakdown and a description of the priority code for the 258 complaints received:

15	Code A – involving immediate threat to public health and safety
232	Code B – health or safety considerations but no immediate threat to the public
<u>11</u>	Code C – low priority for violations confined to a single property
<u>258</u>	Total
4. Review of the 9 selected files revealed
 - 6 of the 9 complaints selected were still unresolved more than a year after they were filed
 - 2 of the 9 complaints were assigned the highest priority status (Code A). Neither was resolved
 - 3 of the 9 complaints had recorded code violations (Red Tags) shown in the computer records, but only 1 contained a copy of the recorded code violation in the physical file
 - 1 file had all the work done but the file was still shown as active
 - 1 file had no work done on it at all
 - 1 file had an unsigned copy of a settlement agreement when it should have contained a signed copy in the file
5. When the Grand Jury questioned the meaning of the compliance Priority Codes A, B, C, the director stated that he was unaware of these priority codes because the system was installed before he started with the county. Senior code compliance management had earlier asserted these codes were useless and they did not mean anything. In contrast, two computer-input clerks stated that they always assign a Priority Code B when entering the initial code compliance complaint in the computer and then route the file to the senior code compliance management who may change it to Code A or C as appropriate.
6. As a result of this information, the Grand Jury increased the scope of its review to include all of the complaints bearing the highest priority code received during the first quarter of 2000. There were 15 Code A complaints. One year later, 9 of the 15 Code A complaints were still unresolved.

7. The contradictory information regarding the complaint coding system led the Grand Jury to review the history of the code compliance computer system Codes A, B, C. The findings in chronological order are
 1. In November 1990, the Board of Supervisors approved a set of criteria for assigning priority rankings to code violation complaints.
 - Code A – involving immediate threat to public health and safety
 - Code B – health or safety considerations but no immediate threat to the public
 - Code C – low priority for violations confined to a single property.
 2. In 1993 the, A, B, C coding was implemented and integrated into the computer system ALUS (defined later).
 3. The code compliance section has failed to properly use this system. There has always been a reminder computer report for code compliance violations (A, B, C) as a part of the ALUS system.
 4. In August 2000, a new set of codes for assigning priority rankings was devised using designations 1 through 5 rather than A, B, C. Code 1 is equivalent to Code A. Codes 2 through 5 are in descending order of importance.
 5. A substantial amount of time and effort was spent on the new system. In spite of the costly preparations, Codes 1 through 5 system has never been implemented.

Systems and Policies Findings

1. The department runs its data processing system on a 1990's mainframe software system called ALUS. ALUS does all its processing and data storage on a single large piece of computer hardware. The department also has smaller data processing system modules on a user's desktop computer, like word processing, spreadsheets, etc. An e-mail system was recently installed in the department. ALUS is the backbone of the Planning Department and is a well-tested and reliable system, however it is difficult to upgrade and has no user documentation. This is a considerable detriment to its future use.
2. The Planning Department does not accept credit cards for payment of fees. The fiscal manager of the department has devised a plan by which applicants can submit a credit card and pay a convenience fee to defray the credit card cost charged to the department. This plan has not been implemented.
3. The reviewing agency does not always update the status of their review in the computer system. In such instances the Planning Department does not complete this section either.
4. Almost anyone in the Planning Department can change data in the computer.
5. Of the four primary functions of the department, the development approval process and the building permit process were recently made available on the internet. The General Plan and the code compliance status are not yet available on-line.
6. To provide a more convenient and less crowded location for the public, the department operates a satellite permit center in Felton. This center operates three days a week. Plans are underway to open another satellite office in the Aptos/Watsonville area.

7. The Planning Department has streamlined the process for small projects such as permits for water heaters, fences, decks and roofs by allowing applicants to apply by telephone, internet or fax.

Conclusions

In the creation and administration of the General Plan, the Planning Department has broad discretionary powers to define and implement land use policy, which must be balanced with the rights of applicants, surrounding property owners and the community at-large.

When codes and ordinances are broadly constructed, they allow a proponent to argue either side of an issue and find justification for their position.

It is standard practice to update the General Plan every ten years. However, since such significant changes have occurred in the county over the last seven years, the General Plan should be updated sooner.

If the county grows in 2001 as it did in 2000, the county will run out of permits sometime late in the year.

Personnel Conclusions

The Planning Department is experiencing an endless cycle of inter-dependent factors, which has resulted in the department's current personnel problems, including:

- Low pay
- Heavy workloads
- Low morale
- Inadequate training
- Loss of staff
- Political pressures from Board of Supervisors
- Stressful situations for employees who have to tell people what they cannot do with their property

Each part of this cycle interacts with another and produces an unstable workforce and a dysfunctional department.

Santa Cruz County employee salaries are low relative to housing costs and living expenses in the county. A major contributor to this problem is the nine-county average that is used to determine Santa Cruz County employee salaries. Using the salaries of comparable staff positions in the four cities in the county would be more relevant than counties like Fresno, Napa, Solano or Sonoma. A weighted-average is a better method for calculating benchmark salaries than a simple average.

The Planning Department has little control over salaries. Therefore, the problems that plague the Planning Department in regards to employees will continue indefinitely despite their good effort to retain and hire enough new people.

Silicon Valley has become a major source of income for a number of Santa Cruz County residents. This has its good and bad points. Since a Silicon Valley employee earns substantially more than a Santa Cruz County employee, Silicon Valley income-earners have driven up the cost of housing in the county. The present salaries of new county employees make it difficult to find affordable housing. This negatively affects recruitment.

Training programs for employees are critical to the building of their work skills. The high vacancy rate, which has prevailed within the department, has contributed heavily to the lack of essential training.

Political pressure is a way of life for any county's planning department. Training personnel to deal with this inevitable reality will have the effect of lowering stress and improving morale.

The Grand Jury commends the dedicated and loyal Planning Department employees who have persevered during these difficult times. Special thanks go to the employees who cooperated with this review.

Development Review Section Conclusions

The files selected were completed in a timely manner. They contained sufficient information to understand the decisions that were made in each case. Any deficiencies are not of major significance and can be readily resolved.

Building Permit Section Conclusions

The files selected were completed in a timely manner. They contained sufficient information to understand the decisions that were made in each case. Any deficiencies are not of major significance and can be readily resolved.

Code Compliance Section Conclusions

Code A complaints (highest priority involving immediate threat to public health and safety) were not given the high priority indicated by the department's own policies. One year after the complaint filing date 60% were still unresolved.

The failure to promptly resolve serious code violations (Code A) creates circumstances of undue risk of serious injury or death.

Code compliance files that are incomplete result in inefficiency.

Proper use of the current ALUS code compliance system will accomplish the goal of screening out the old files with a few minor changes. This result can be attained by

- Adding a new status type
- Considering the new status type the same as a closed complaint
- Removing the closed files from all computer reports that show active complaints
- Keeping the history in the computer
- Changing all old complaints without health or safety problems to the new status type

Relying on a new code compliance computer system as an excuse for not reducing the number of code compliance complaints is unacceptable. Code A-C verses 1-5 should not be an excuse for inaction. Although the department has defined its problems and designed initiatives to help correct the code compliance issues, the department is unable to get beyond the planning stage and implement the policies.

It would be very beneficial to have the code compliance status on the internet for the following reasons:

- The department would receive fewer calls and visits, which will increase efficiency
- The department would have a greater incentive to reduce outstanding code compliance complaints

Systems and Policies Conclusions

Inability to accept credit cards is a disservice to the public. This simple reform would do much to improve public relations and reduce the frustration of the employees. The cost savings of personnel time and the convenience to the citizens would justify the cost.

Since almost anyone can enter information into the computer, there is a potential for personal gain, collusion or errors. The department or the Auditor-Controller's Office should consider installing an internal audit system, randomly picking both closed and open files to review.

The web sites for both the development approval process and the building permit process are an excellent source of information to the public.

Obtaining a new computerized planning system, currently used by other planning departments in the state, has the potential to reduce personnel costs. Further benefits include:

- Easy and flexible report writing module
- Easy way to update internet screens using the data stored in the system
- Consecutive numbering of the code compliance complaints in order of receipt
- Prevent a file from advancing to the next stage without completion of previous steps

Recommendations

1. The Planning Department should accept credit cards.
2. The Planning Department should immediately resolve all complaints classified as a threat to public health and safety.
3. The Planning Director should ensure there is strong management in the Code Compliance Section.
4. Physical files should include copies of the recorded code violations (Red Tags) and be consistent with the status shown on the computer screen.
5. The Planning Department should utilize the existing ALUS code compliance system for tracking the status of code priority classifications until a future system is operational.
6. The Planning Department should complete the status of the outside agency's review in the computer system.
7. The Planning Department should develop a system to cross-reference the multiple physical files that exist for a single development permit application.
8. The Auditor-Controller's Office should implement an internal audit system on Planning Department files.
9. The Board of Supervisors should update the 1994 General Plan as soon as is feasible.

10. The Board of Supervisors should conduct a formal study to determine the relationship of current salaries to employee retention.
11. The Board of Supervisors should consider changing the entities in the nine-county comparison used in salary surveys to include the four cities in the county.
12. Immediate priority must be given to training Planning Department personnel.
13. Planning Department managers should conduct employee reviews consistent with the stated personnel policy of the department.
14. The Planning Department should establish the Aptos/Watsonville Satellite Permit Center.
15. The Felton Satellite Permit Center should be available five days a week.
16. The General Plan and the code compliance complaint status should be available the internet.
17. The following should be added to the web site:
 - Development approval process
 - Description of the project
 - Cross reference to a related building permit
 - Building permit process
 - The alpha digit at the end of the permit number is confusing and should not be part of the record number
 - If a permit has been issued, the status on the web page should not show “READY TO ISSUE”
 - Withdrawn permits should be shown on the web page
 - Complete projects should show the date of completion on the web page
 - Cross reference the building permit to any related development approval

Response Required

Entity	Recommendations	Respond Within
Board of Supervisors	1 – 17	90 Days
Planning Director	1 – 7, 12 – 17	60 Days

Investigation of the Reporting Structure between the Capitol City Council and City Manager

Background

The City of Capitola is a general law city incorporated January 11, 1949 that operates under the council-manager form of government. Capitola is largely a suburban, business, recreation and tourist area of approximately two square miles. Capitola's population is estimated to be about 11,000 as of January 1, 2000.

Traditionally, the Santa Cruz County Grand Jury reviews one of the four cities in the county each year on a rotating basis. While gathering information in preparation for the review of the City of Capitola, the Grand Jury reviewed city council meeting minutes and several newspaper articles (see Newspaper Sources). These revealed friction between city council members and radical changes in the supervisory relationship between the city manager and the finance director.

As the Grand Jury delved into these issues, it became clear that it could not complete the traditional review of the city and fully investigate the city council's handling of the change in the reporting structure. Therefore, the Grand Jury decided to eliminate the traditional review and focus its attention solely on the reporting structure issue.

Scope

Under the Penal Code §925(a), the Grand Jury may investigate cities located in the county.

“The grand jury may at any time examine the books and records of any incorporated city or joint powers agency located in the county. In addition to any other investigatory powers granted by this chapter, the grand jury may investigate and report upon the operations, accounts, and records of the officers, departments, functions, and the method or system of performing the duties of any such city or joint powers agency and make such recommendations as it may deem proper and fit.”

The following sources for this investigation, which was completed on April 5, 2001:

- Interviewed a past city manager.
- Interviewed a past city mayor/council member.
- Interviewed the finance director.
- Interviewed the county auditor.
- Reviewed 1998, 1999 and 2000 city council meeting minutes.
- Reviewed selected 2000 and 2001 city council agenda packets.
- Reviewed the finance director employment agreements.
- Reviewed selected Capitola Municipal Codes as quoted in the attached Exhibit.
- Reviewed City of Capitola Management Employee's Compensation Plan, July 1 1998 – June 30, 2000 which detailed the process for grievance resolution.
- Reviewed related newspaper articles in the Santa Cruz Sentinel and Mid County Post.

Findings

Findings are presented in chronological order.

1. A current comprehensive Policy & Procedures Manual for the City of Capitola was not available for review by the Grand Jury.
2. The current finance director started working for the city in 1994 as a part-time controller.
3. The city council created the position of finance director, reporting to the city manager, and approved the employment agreement and job description of the current finance director on November 26, 1996 effective January 1, 1997 (Resolution No. 2854).
4. The organizational charts of the city included in the FY 1998, 1999 and 2000 financial statements show the finance director reporting directly to the city manager.
5. Based on interviews, the Grand Jury found the working relationship between city manager and finance director negatively impacted city operations, contrary to Municipal Code §2.08.220.
6. On January 27, 2000, the city council revised the job description of the finance director to include direction over the Capitola Redevelopment Agency.
7. In January and February 2000, the finance director filed grievances against the city manager. Ordinarily, the city manager would review and act upon the grievance as stated in the Management Employee's Compensation Plan. However, since the grievances were against the city manager, the city council decided to review them.
8. The Capitola City Attorney authored a memo to the city council dated February 17, 2000 regarding potential conflicts with the city's ordinances and the job description and employment agreement of the finance director. In particular Municipal Code §2.08.210 and 2.08.220 were cited. This concern was reiterated in the March 3, 2000 memo from the city attorney citing Municipal Code §2.04.060.
9. On March 23, 2000, the city council voted to approve an amendment to the November 26, 1996 employment agreement with the finance director. This amendment was executed on March 30, 2000 and removed the finance director from the direct supervision of the city manager. "Employee" in the quote below refers to the finance director.

Item 1 states:

"...The parties therefore agree that when, in Employee's professional judgement it is necessary or desirable, Employee shall present such matters directly to the city council for consideration and copy the City Manager."

Item 3 states:

"The City Council shall have sole and exclusive authority to impose discipline upon Employee for any alleged misconduct, misfeasance, malfeasance, incompetence or negligence in the performance of his duties, and/or take any other adverse action toward Employee. Employee shall not be terminated from employment or placed on administrative leave with or without pay, except by the City Council."

10. Immediately following this vote, a council member resigned citing the acrimony within the city government, as recorded in the minutes

“...The extent of the acrimony at meetings of the Council, as well as the on going attacks by elected officials against individual council members and city staff are unprecedented in the 8 years she has served here. This behavior has already seriously impacted the services provided to residents and has eroded the morale of even the best of our employees. She went on to state she would not participate in the destruction of this city and neither should you. When previous councils have had differences, and faced difficult financial situations, the council and the staff pulled together to resolve them. In contrast, the renewed efforts of the city treasurer to embroil the city in controversy, and the support of the council majority to allow this to occur, are causing paralysis in a previously well-functioning city government. The damage that this course of actions causes is significant. While fingers point and voices shout, Capitola languishes. She regrets that it has become impossible for her to get the work of the Capitola community that she cherishes completed in this vicious atmosphere...”

11. In a letter dated March 30, 2000 to the mayor, the finance director withdrew his grievances citing that his new job description and supplemental employment agreement resolved most of the issues in his grievances.
12. On June 18, 2000, the Capitola City Manager submitted his resignation effective August 1, 2000.
13. On September 28, 2000, the city council rescinded the super-majority (four-fifths) vote requirement for removal of the city manager per Municipal Code §2.08.240.
14. On January 11, 2001, the City of Capitola and its finance director negotiated the Amended Supplemental Employment Agreement. This amendment superceded the March 23, 2000 amendment in its entirety. This action reinstated the direct supervisory relationship between the city manager and finance director.

Item 2 states the current finance director will retire June 30, 2001.

Item 6 states:

“...The parties expect that the directive of the City Manager will be consistent with the position’s ‘Essential Duties and Responsibilities.’ If the Finance Director believes that a directive of the City Manager cannot be reconciled with the above-quoted duty, he may pursue that as a grievance under the grievance procedures in the Management Employees Compensation Plan.”

- Included as an exhibit to the January 11, 2000 agreement, the City of Capitola and the current finance director entered into a Contract for Professional Services commencing September 1, 2001 terminating on June 30, 2003. In this contract, the contractor would give advice, recommendations and drafts on several policies and procedures and perform other non-routine tasks. Under the agreement, the contractor is expressly prohibited from performing day-to-day routine tasks. Item 3, under the Duties heading states:

“Contractor shall not be requested to, nor shall Contractor, perform any day-to-day, ongoing, routine accounting or fiscal duties, and Contractor shall not supervise, or be supervised by, any official, employee, or agent of the City.”

- In response to a question, the finance director stated in the interview the list of contemplated projects attached to the Contract for Professional Services included some tasks that he characterized as ordinarily the responsibility of a finance director.

15. Despite the impending retirement of the finance director, at the close of fieldwork the City of Capitola had not begun its search for a new finance director. Under the Professional Services Agreement signed by the current finance director, the contractor is prohibited from assisting the city in its day-to-day operations after his retirement. This raises the question: Who will act as finance director after June 30, 2001? The Grand Jury was unable to determine the plans of the city regarding this matter.

16. In preparing this report, the Grand Jury found it necessary to interview the finance director alone. For six weeks, the Grand Jury attempted to arrange for such a routine interview. This was refused and he was therefore subpoenaed to appear before the Grand Jury.

In preparing this report, the Grand Jury found it necessary to conduct a private interview with the finance director. For six weeks, the Grand Jury attempted to arrange for an interview, however, the finance director refused to appear alone. Based on review of the correspondence received from the City of Capitola on this matter, the finance director's refusal to voluntarily cooperate was supported by the city attorney, mayor and new city manager. A subpoena was subsequently issued and the finance director did appear alone. Penal Code §939 has been interpreted by the courts as operating to prohibit the presence of anyone at a grand jury session other than grand jurors and witnesses actually under examination. The only exceptions are a bailiff, court reporter, or interpreter.

Conclusions

The city council spent an inordinate amount of time in 2000 discussing and restructuring the reporting relationship of the city manager and finance director that was ultimately returned to its previous state in conformity with Municipal Code. The city council allowed itself to be diverted from crucial city business by the antagonism between these two important city officials, which, in part, led to the resignation of a council member.

Instead of using standard government practices to resolve a formal personnel grievance, the city council entered into a contract with one of the parties that contravened its own Municipal Code. A change in the reporting relationship between the city manager and finance director as a quid pro quo agreement for the withdrawal of the grievances presents serious public policy questions.

Recommendations

1. The Capitola City Council should never enter into contracts that are inconsistent with its Municipal Code.
2. The city council should expedite its efforts to find a new finance director.
3. The city council should ensure its legal advisor is knowledgeable in grand jury law and case history.
4. The city council should direct all city employees to cooperate fully with any grand jury investigations including individual interviews.
5. The 2001-02 Grand Jury should conduct a comprehensive review of the City of Capitola including the anticipated Policies & Procedures Manual currently being prepared by the city.

Response Required

Entity	Recommendations	Respond Within
Capitola City Council	1 – 4	90 Days

Newspaper Sources:

- Gumz, Jondi, “Political power struggle swirls around embattled city manager,” *Santa Cruz Sentinel*, February 12, 2000.
- Gumz, Jondi, “City manager’s spending scrutinized in Capitola,” *Santa Cruz Sentinel*, March 11, 2000.
- Gumz, Jondi, “Unauthorized expenses in Capitola totaling thousands prompts policy change,” *Santa Cruz Sentinel*, March 22, 2000.
- Bryant, Mary, “City’s Finance Director Gets Pay Raise and More Time Off,” *Mid County Post*, August 15, 2000.
- Olson, Jay, “Former Mayors Threaten to File Grand Jury Complaint Against Capitola Council,” *Mid County Post*, October 10-23, 2000.

Exhibit

Selected Capitola Municipal Code

2.04.060 City personnel use. The various boards and commissions may utilize the services of the appropriate city departmental personnel in carrying out their respective functions subject to the administrative control of the city manager.

2.08.070 Powers and duties. The city manager shall be the administrative head of the government of the city under the direction and control of the city council except as otherwise provided in this chapter. He shall be responsible for the efficient administration of all the affairs of the city which are under his control. In addition to this general powers and administrative head, and not as a limitation thereon, it shall be his duty and he shall have the power set forth in Sections 2.08.080 through 2.08.200.

2.08.100 Power of appointment and removal. It shall be the duty of the city manager to, and he shall, appoint, remove, promote and demote any and all officers and employees of the city except the city clerk, city attorney, and city treasurer, subject to all applicable personnel ordinances, rules and regulations.

2.08.110 Administrative reorganization of officers. It shall be the duty and responsibility of the city manager to conduct studies and effect such administrative reorganization of offices, positions or units under his direction as may be indicated in the interest of efficient, effective and economical conduct of the city's business.

2.08.140 Financial reports. It shall be the duty of the city manager to keep the city council at all times fully advised as to the financial condition and needs of the city.

2.08.210 Internal relationships with council. The city council and its members shall deal with the administrative services of the city only through the city manager, except for the purpose of inquiry, and neither the city council nor any member thereof shall give orders to any subordinates of the city manager. The city manager shall take his orders and instructions from the city council only when sitting in a duly convened.

2.08.220 Departmental cooperation. It shall be the duty of all subordinate officers and the city clerk, city treasurer and city attorney to assist the city manager in administering the city efficiently, economically and harmoniously.

2.08.240 At-will employment. The city manager shall be an at-will employee, who may be removed from office, or his/her authority temporarily suspended, at the sole discretion of the city council, subject to any such restrictions as are specifically set forth in the city manager's contract of employment. (Ordinance 818, September 2000)

Text of 2.08.240 prior to its amendment:

The removal of the city manager shall be effected only by four-fifths vote of the council in a regular council meeting, subject, however, in the provisions of Sections 2.08.250 through 2.08.280. In case of his intended removal by the city council, the city manager shall be furnished with a written notice stating the council's intention to remove him and the reason therefore, at least thirty days before the effective date of this removal.