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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.



County of Santa Cruz

Special Districts

