

## **Does Appearance Trump Substance?**

### **Watsonville City Personnel Commission's Discipline Appeal Process**

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#### ***Summary***

The City of Watsonville has a Personnel Commission and procedures to enable city employees to appeal a disciplinary action taken by management. On August 20, 2009, the Commission conducted an open hearing on an appeal. After the hearing, a complaint was filed with the Santa Cruz County Grand Jury questioning the fairness of the procedures and the behavior of the commissioners and the city attorney before and during the appeal process. The complainant stated that there was possible “bias” as the commissioners and the department manager had dinner together before the hearing, and that the city attorney unduly influenced the commissioners during the deliberations.

The Grand Jury found that the Personnel Commission and other parties involved correctly followed hearing procedures, and it commends the City of Watsonville for the construct of the appeals process for its city employees. However, the Jury recommends some changes to remove the potential appearance of bias and to encourage employee confidence in the appeal process.

#### ***Background***

The City of Watsonville, through its charter and municipal code, has established a Personnel Commission and defined a process for its employees to appeal a disciplinary action taken by management, including actions such as suspension, demotion, or dismissal. The Commission is comprised of seven citizens appointed by the city council and conducts hearings according to established rules and procedures. The city attorney is present at hearings and may advise the commissioners during their deliberations. The commissioners hear appeals, deliberate, and make recommendations to the city manager.

In some cases, as when a hearing lasts into the evening, the City of Watsonville provides dinner for the commissioners, with a standing invitation to the city manager, the city attorney, and department heads. Other employees involved in the proceedings are invited to participate in the dinner but must pay for the meal themselves. An agenda is posted to announce when a dinner is provided; however, personnel not fully aware of the protocol for the dinners may have scheduling conflicts and be unable to attend.

A complaint was filed with the Grand Jury on September 23, 2009. The complainant was concerned with “unethical issues” relating to the August 20 appeal, stating that:

- the department manager greeted the commissioners at the door and had dinner with them, providing an informal opportunity for him to discuss the details of the case with them before the formal hearing, and
- although the city attorney represents the commission and other city committees, it appeared that the commissioners were not allowed to independently come to a decision without strict constraints placed upon them by the city attorney.

## **Scope**

The Grand Jury reviewed the City of Watsonville disciplinary appeal process, including the governing documents, and investigated the activities of the Personnel Commission and other participants in the hearing that took place on August 20.

## **Findings**

- F1.** The City of Watsonville appeal process is outlined and governed by three documents: the City Charter, the Municipal Code, and the Rules and Procedures of the Personnel Commission.
- F2.** Per the Watsonville Municipal Code and the City Charter, recommendations made by the Personnel Commission are only advisory to the city manager
- F3.** Prior to the hearing on August 20, the city did provide dinner for persons involved in the hearing. An agenda was posted announcing the dinner. The commissioners attended, as did the city attorney and the department manager defending the disciplinary action. In fact, the manager greeted and admitted one of the commissioners into the room where the dinner took place.
- F4.** Those interviewed confirmed that the commissioner knew the department manager and that they did exchange salutations, but that nothing was said regarding the appeal. The hearing was not discussed during dinner. However, some of the commissioners also were concerned about the potential appearance of collusion.
- F5.** The employee who requested the Commission hearing could have attended the dinner but would have been required to purchase his meal; however, he was not told he could attend.
- F6.** The hearing was held after dinner. All parties were represented by counsel, including the commissioners, who were represented by the city attorney. When the hearing was completed, the commissioners went into closed session with the city attorney for deliberations. The city attorney provided clarification and advice when requested by the commissioners; the attorney only answered questions asked by the commissioners and did not influence their decision on the appeal.
- F7.** The Watsonville city attorney advises and represents the city council and all city boards and commissions. The Santa Cruz city attorney and the Capitola city attorney similarly advise and represent the city councils and all boards and commissions in their cities. However, the Watsonville City Charter, unlike the charters of these other cities within the county, does not explicitly include commissions and committees for city attorney representation.

**Conclusions**

- C1. The Personnel Commission conducted the appeal in accordance with the requirements of the City Charter, the Municipal Code, and the Rules and Procedures of the Commission, and there were no errors in the manner in which the hearing was accomplished.
- C2. There is a need to ensure that all participants receive a fair and impartial hearing by an independent judge. Although the dinner was not an illegal action, the mingling of commissioners with management prior to the hearing could result in a perception of bias that may undermine the credibility of the Personnel Commission in the eyes of the participants and the general public.
- C3. The addition to the City Charter of specific language about the city attorney’s representation of city commissions and committees would help to clarify the role and eliminate speculation about the legitimate powers and duties of that attorney.

**Recommendations**

- R1. The Watsonville Personnel Commission should maintain a fair process free from suspicion of bias and to this end should limit the dinner attendees prior to the appeal hearings to commissioners, their legal counsel, and the recording secretary only.
- R2. To eliminate speculation about the role of the city attorney, the Watsonville City Charter should expand the description of the powers and duties of the attorney to include the representation of city commissions and committees.
- R3. To provide the greatest separation between the Personnel Commission and city management, the city should consider hiring independent counsel for the Commission.

**Commendations**

The Grand Jury commends the City of Watsonville for the disciplinary appeal process for its city workers. The catered dinner for the private citizen personnel commissioners also is noteworthy.

**Responses Required**

<i>Respondent</i>	<i>Findings</i>	<i>Recommendations</i>	<i>Respond Within/ Respond By</i>
Watsonville City Council	F1, F4, F7	R1-R3	60 days September 1,2010
Watsonville City Manager	F3-F7	R1, R3	90 days October 1,2010

## **Sources**

### **Interviews/Visits**

City of Watsonville Employee Complainant  
City of Watsonville Officials:  
    Attorney's Office  
    Manager's Office  
City of Watsonville Personnel Commissioners  
Santa Cruz County Officials:  
    County Counsel's Office

### **Publications/Documents**

Grand Jury citizen complaint form 09-07  
Agenda for the Special Personnel Commission meeting on August 20, 2009  
City of Capitola Municipal Code Chapter 2.04. VII City Attorney 2.04.340 Powers and Duties.  
City of Santa Cruz Charter Section 812 City Attorney: Appointments, Powers, and Duties  
City of Watsonville City Charter Article IX Boards and Commissions Sections 902, 908, 909  
City of Watsonville City Charter Section 804 City Attorney: Powers and Duties  
City of Watsonville Municipal Code Article 2 City Attorney 2-3.201  
City of Watsonville Municipal Code Title 2 Personnel Commission Chapter 4.02,03,04,12  
City of Watsonville Rules and Procedures of the Personnel Commission

### **Web Sites**

<http://www.ci.capitola.ca.us>  
<http://www.ci.santacruz.ca.us>  
<http://www.ci.watsonville.ca.us>