



City of South Lake Tahoe

"making a positive difference now"

STAFF REPORT CITY COUNCIL SPECIAL MEETING OF JULY 27, 2010

Date: July 26, 2010
TO: Honorable Mayor and Council
FROM: City Manager
RE: **DISCUSSION AND ACTION REQUESTED TO SUBMIT THE CITY'S
RESPONSE TO THE 2009-2010 EL DORADO COUNTY GRAND JURY
REPORT**

RECOMMENDATION:

Review the proposed response to the Grand Jury and authorize the City Manager to submit same to the Presiding Judge of the Superior Court.

ISSUE AND DISCUSSION:

City government is required under State law to respond in writing to findings and recommendations of the Grand Jury. The attached report examines some challenging and sensitive issues faced by City government and perceptions held by the Grand Jury. The format and approach used for this report is the same approach as has been used in the past.

I am proud of the work of City government as a whole and City employees to deliver efficient, effective and a high quality of service to the people of South Lake Tahoe each and every day of the year. Employees are our greatest resource and we must work with them and the community in a positive and constructive manner to address the pressing needs of our community. The City Council is the policy maker in City government. You are the elected leaders who are entrusted by the people to lead City government. City staff needs to support elected leaders to successfully undertake and complete the work of the people and the delivery of services to the community.

FINANCIAL AND/OR POLICY CONSIDERATION:

The response to the Grand Jury Report is required under State law.

DAVID M. JINKENS

DRAFT LETTER REPLY TO THE GRAND JURY

July 26, 2010

The Honorable Suzanne N. Kingsbury
Presiding Judge of the El Dorado County Superior Court
1350 Johnson Boulevard
South Lake Tahoe, California 96150

**Re: RESPONSE ON BEHALF OF THE CITY OF SOUTH LAKE TAHOE TO
COMMENTS MADE BY THE GRAND JURY CONCERNING CITY OF SOUTH
LAKE TAHOE - Case No. GJ 09-008**

Dear Presiding Judge Kingsbury

Pursuant to Section 933.05 of the Penal Code, the City of South Lake Tahoe provides the following comments to the Grand Jury Final Report, Case No. GJ 09-008- City of South Lake Tahoe City Council. The report was reviewed and authorized to be sent by the City Council at its meeting of July 27, 2010.

Methodology

The Grand Jury findings and recommendations have been carefully reviewed in light of statements contained in the report that deal with work place issues, City litigation and personnel matters that involve the privacy of employees that are protected under State law. These are not matters that lend themselves to easy or simple replies, but an earnest attempt has been made to do so.

Overview and Comments

The City of South Lake Tahoe employs highly skilled and trained employees who provide vital services to the 24,000 people who reside in South Lake Tahoe. These employees have a right to expect that they will be treated fairly and with dignity by the City Council and City management in the handling of municipal affairs even while City operations come under scrutiny. The City Council, City Manager, City Attorney and all department heads have a duty to ensure that the workplace is productive and devoid of illegal harassment and discrimination of any kind.

2009 was a very difficult year for City government as a number of highly charged and emotional issues were dealt with by City officials at all levels. However, even while dealing with these challenging issues, City government employees continued to provide consistently excellent service to the people of South Lake Tahoe and the thousands of visitors who come here each year. City government has been able to maintain the fiscal integrity of municipal operation in the face of economic adversity and a State government that is fiscally out of control. City officials are proud of the service provided by City employees to the people of South Lake Tahoe.

Response to Findings

Finding #1

1. "The Grand Jury investigation revealed that many factors have contributed to impaired functioning of the city's government at multiple levels."

a. Constant hostility and bickering among members of the City Council and their unprofessional conduct has resulted in a consistent 3/2 split vote creating two "camps" of Council members..."

Response:

The City does not agree in part with the finding. Most votes taken by the City Council at a duly noticed public meeting are unanimous. The City Council agrees on the vast majority of issues coming before it. Having split votes on important matters by elected leaders is not uncommon in the public service and is not in itself an indicator of dysfunction.

The split vote is not the problem on important and/or controversial matters. It is the conduct before, during, and after the vote by certain Council members that can be the problem. There has been conduct by some members that is not professional and ethical and this conduct has diverted attention of the City Council from important local issues to dealing with these disputes. It is understood that elected and appointed officials may have strong opinions about public policy and personnel matters. These matters should be handled ethically, professionally and with care to better serve the public in a positive and constructive manner.

Confidential information about employment matters, the privacy rights of public employees, City litigation matters, and matters subject to the attorney-client privilege must be guarded and protected by all City officials in the conduct of City business even while pursuing City government matters of interest and concern to elected and appointed leadership.

b.” Council members and senior staff are unwilling or afraid to address and deal with the existing hostile work environment. In a matter that involved an inappropriate written poem (involving sexual comments from one Council member to another), the City Manager and City Council failed to take action until questioned by the Grand Jury.”

Response:

The City agrees in part and does not agree in part. There has been fear in the past among some members of the City Council and some members of staff to act or not in certain circumstances out of fear of retaliation by certain other members of the City Council on them personally or on their families. The fear and concern was real and impacted negatively the operation of the municipal service. The climate was bad at times and difficult in which to work for council members and staff.

The Grand Jury was informed of the referenced “poem” problem to seek help where City policy was not clear on the proper manner to handle. The Grand Jury response now criticizes City officials for bringing the problem to it which is troubling. When the newest City Attorney (Mr. Enright) and City Manager were informed of the particular “poem” in question, discussion occurred internally and with legal counsel on how best to handle the matter, taking into account the wishes of the victim who revealed the poem to City staff members in the October-November 2009 timeline. There was doubt about how best to handle the matter, and the Grand Jury urging in this regard was helpful in focusing attention on the matter even though the roles of who is supposed to do what was unclear. A third party investigator was approved by the City Manager to determine facts in the subject matter and the report in draft that has been forwarded to City Attorney Enright to determine appropriate next steps.

The City Council does not have a specific written policy that clearly defines whose responsibility it is for investigating harassment and discrimination claims made by employees or council members against other council members. One is needed and the City Council will develop a specific policy for handling this matter over the course of the next few months.

Finding #2

“The City Council, when facing controversial issues or after threat of litigation, routinely drops issues, even if addressing the issue would improve the function of government or service to the public.”

Response:

The City does not agree with the general statement above. The City Council (as City corporate officers) must carefully weigh the legal merits and costs of engaging in matters that could lead to litigation and could cost the taxpayers of the City thousands of dollars or more to litigate, even if the City prevails in a court action. In addition, City government is self insured and part of a risk management authority whose officers (the risk management JPA) provide coverage and advice to City government officials on potential matters of litigation, City liability exposure on pending matters, and ongoing litigation.

The City Council carefully and weighs matters involving litigation or ones that could lead to litigation with care and scrutiny, and they are wise to do so. City government should not refrain from making *sound* policy decisions and taking action on matters to improve the operation of local government because of threats made against it. City government should refrain from taking precipitous actions that could create liability for City government, its officials, employees and ultimately the taxpayers of South Lake Tahoe.

- a. When the [former] City Attorney recommended that the City Finance Director be placed under the direct control of the City Council, rather than the City Manager, the Finance Director expressed strong opposition. This action came after the City Attorney had challenged the Finance Director about the propriety and amounts of an expenditure made by the City. This move for the Finance Director to be placed under City Council control was a suggestion that had been made by a City Council member in prior years. The City Manager, fearing loss of supervisory control of the Finance Director, advised the City Council that the Finance Director would probably file an official complaint against the City Attorney and the city charging them with harassment if the move took place. This statement was viewed by some employees as a threat by the City Manager.”

Response:

The City does not agree with the statement. The decision on whether the Finance Director should be under direct supervisory control of the City Manager or City Council is ultimately a policy decision that was discussed by the City Council in open session. Whatever the motives of individual Council Members or staff, the City Council ultimately decided not to pursue this organizational change after conducting a survey of cities in California and a majority the City Council determined that there was no problem with the existing organizational structure of the Finance operation. The Council decided the move was not a good public policy choice. Ironically, under the municipal code, the City Manager is “technically” the Director of Finance and he already reports directly to the City Council.

City finances, finance policies, financial reporting, the City's and City Redevelopment Agency's bond rating, City budgeting, and City reserves are in the best condition ever. The addition of an active and informed Council Finance Committee has helped to keep Council members informed on financial matters and answer questions that arise from time to time about City finance matters.

- b. "During a contentious June 30, 2009 City Council meeting it was suggested that the City Manager should resign. Testimony received indicated the City Manager later threatened to file a Workers Compensation claim, hire outside counsel, and sue the City."

Response:

The City agrees in part and disagrees in part with the statement. The June 30, 2009 meeting of the City Council referenced in the Grand Jury statement was contentious, and the comments and responses of all parties to matters that we brought forward then are matters of public record and available through the City's website.

The City Manager serves at the pleasure of the City Council and therefore, the decision of whether the City Manager should resign or not is within his total discretion. A majority of the City Council at that time did not support his resignation. The fact is that the City Manager never filed a Workers Compensation claim, never hired outside counsel in action against the City or individual council members and never filed a lawsuit against the City.

The statement of the Grand Jury made above attributed to the City Manager is not complete or within context but did come up in an energized discussion between the City Manager and former City Attorney (Mittelstadt) in regard to roles, responsibilities and obligations of elected City officials and the City Attorney to protect employees from arguably unlawful or discriminatory acts by elected officials.

- c. "The City Manager used intimidation to retain control over parts of the government. The City Manager attempted to keep the Finance Director under his direct control. He informed the City Attorney that he could make the Finance Director's complaints against the City Attorney "go away" if the City Attorney dropped the suggestion to move the Finance Director under the control of the City Council as an "at will" employee."

Response:

The City disagrees with the first sentence and agrees with aspects of the paragraph as explained below. In regard to the first question, the City has already answered that the decision regarding organizational structure and

reporting of the Finance Director and Department is in the purview of the City Council and the decision to maintain the current organizational structure was decided in an open and public meeting.

As to the second part, the City Attorney (Enright) advises that matters relating to the former City Attorney (Mittelstadt) and her employment with the City are personnel matters covered under a confidentiality agreement signed and agreed to by both parties and the City Council must adhere to the agreement and protect the rights and privacy of employees as a matter of Law.

Suffice it to say that the City Manager in handling a request for help from a City Department Director in her dealings with the former City Attorney acted on the best advice and legal counsel available to him at the time in an attempt to resolve the matter amicably and protect the City from potential liability. The City Manager made several suggestions on how best to resolve the matter.

d. "Based on testimony received by the Grand Jury the public impression is that the City of South Lake Tahoe has a "bush league" City Council, which is incapable of maintaining confidences, operates in an atmosphere of intimidation, and is frequently distracted from important City business by personal feuds. The Council operates at an inconsistent and barely functional level."

Response:

The City does not completely agree with the statement. The City is unfamiliar with the term, "bush league."

In spite of the divisive actions, statements and conduct by some City Council members, the City Council and City government still continued to maintain and provide essential community services including police, fire, EMS, and snow removal during this period of time even when other cities, counties and State government were facing fiscal disarray and dysfunction

The City is committed to reviewing and strengthening **existing** ethics policies and including them in their adopted City Council protocols. Ultimately, the quality of local government is heavily dependent on the quality of elected leadership and the City encourages responsible and eligible people to run for public office.

2. "Some City officials engaged in avoidance and obstruction during the Grand Jury investigation. Despite assurances from the City Council that City officers and employees would cooperate with the Grand Jury in its attempts to analyze City government, actions by senior City officials were

engineered in an attempt to keep the Grand Jury from getting information it requested.”

Response:

The City disagrees with the general finding above. To the best of the City’s knowledge, all City officials and staff who were asked to appear before the Grand Jury voluntarily did so and provided records and information they had and could legally provide. There was no attempt to keep the Grand Jury from getting information it was legally entitled to receive. In some instances, other employees subpoenaed before the Grand Jury requested the City Attorney (Enright) provide advice on what they should do because they had never testified before a Grand Jury before, and he provided advice to them.

- a. The Grand Jury submitted a written request to the Mayor asking for introduction of an agenda item to have the City Council waive the attorney-client privilege so that the City Attorneys could be free to give complete answers to all inquiries. The Mayor, through the City Attorney, responded by stating that the request had been improperly addressed to the Mayor and not to the City Council. Therefore, it could not be placed on the City Council agenda. This information was subsequently contradicted by the City Manager advising the Grand Jury that the Mayor can place items on the City Council discussion on the agenda. According to other testimony, Council members can only place items on the agenda when at least three out of five members agree. According to the City Manager, both he and the City Attorney can place items on the agenda at their discretion.”

Response:

The City agrees with parts and disagrees with parts of the statement. There is likely a good-faith misunderstanding here by the Grand Jury on the facts and sequence of events involving their request to the Mayor. The City understands that the Mayor (Kathay Lovell) received a letter from the Grand Jury on January 13, 2010 requesting that the City Council waive in general the attorney-client privilege so that the Grand Jury could interview the City’s attorneys (both full time and contract) on unspecified City legal matters. The Mayor could not place the request of the Grand Jury on the agenda on her own in accordance with City Council protocols that require a consensus of Council Members to do so. Ultimately, the request was added to an agenda for Closed Session of the City Council. The City Council declined to waive the attorney-client privilege unless the Grand Jury agreed to narrow the waiver of the attorney-client privilege to a specific subject. The Grand Jury would not discuss the purpose of the

waiver request and continued to act without affording any clarity to the City Council on the matter.

It is true that the City Manager and City Attorney may place items on the agenda of the City Council that are within their respective purviews.

The City must comply with provisions of California's Open Meeting Law, and City officials and staff endeavor to do so.

Matters discussed by the Grand Jury with City witnesses appear to come from (in part) confidential City attorney-client privilege documents or matters falling within an employer-employee confidentiality agreement that were not provided to witnesses and which some City witnesses have never seen.

- b. Prior to being interviewed by the Grand Jury, some employees were counseled by the City Attorney on how to testify in a manner that was designed to limit the information that the Grand Jury would receive. City employees who had been subpoenaed to testify before the Grand Jury were instructed by memo that they should not volunteer information, and they should not attempt to refresh their memories when asked about specific events or topics. This memorandum and counseling go beyond normal and acceptable witness preparation for testimony in Grand Jury proceedings."

Response:

The City disagrees with the statement. The City Attorney responded to a request for information from certain City employees on how best to respond to subpoenas by the Grand Jury, and the City Attorney gave them written advice similar to what he would give them if they were being called to testify in court or giving a deposition.

4. "The City's government employs a notable number of married couples and family members among its employees, commission members, and elected officials. Some of the related employees are in positions of significant influence. Although the policy relating to nepotism does not seem to have been violated, the existence of these close relationships has resulted in an atmosphere where many employees are afraid to discuss operational problems in the City. They are concerned that their observations might be viewed as criticism of family members. In testimony they received, there is angst by City employees, who believe, that employees who have spoken about problems within City government have ended up on "layoff lists." This fear is so pervasive that some witnesses requested assurance, when they appeared before the Grand Jury, that

members of the Grand Jury were no related to officers and employees of the South Lake Tahoe City government before they testified.”

Response:

The City agrees with portions of the statement and disagrees with others.

Being married is not a crime or tort that bars people from public employment.

The City has an adopted policy on nepotism that is referenced in Section 7-7 of the City’s Personnel Rules entitled: ANTI-NEPOTISM:

“Any person related by consanguinity or marriage to an officer of the City, elected or appointed, or head of any department, or supervisor, shall not be hired directly by or employed in, a position directly under the actual line supervision of said related officer, department head, or supervisor. For the purpose of this rule, “any person related by consanguinity or marriage” means husband/wife, parent/child, brothers/sisters. All other relationships are permitted under the rule.

This section shall not apply to those City employees related by consanguinity or marriage who were employed by the City prior to July 1, 1974.”

The City of South Lake Tahoe is comprised of 24,000 residents in a relatively remote part of California. The City has an adopted personnel system and openly recruits all employees under rules and regulations specified in the Personnel Rules or adopted in memoranda of understanding. Selection of new employees is based on a validated testing system that tests employees based on skill sets needed for the job to be performed. The system is a merit system. Most employees are members of employee association or unions who can and will engage management if they perceive problems with recruitment of new employees or improper favoritism in employment issues.

The City of South Lake Tahoe employs approximately 195 regular employees and dozens of part-time employees (seasonal). The Human Resources Manager estimates that there are seven (7) married couples employed by the City. One married couple work in the same City department. In this latter instance, the spouse does not supervise one another. There are an estimated eight (8) family members who work for the cities in different City departments.

Over the last year the City has laid off six (6) employees due to cost containment or reorganization measures in accordance with adopted personnel rules.

The City knows of no instance of and agrees that there are no known violations of the City’s nepotism policy. The City appreciates the acknowledgement of the Grand Jury that no known violations exist.

Two members of the City Council have spouses appointed to the Planning Commission, and they serve the Commission with skill and distinction. In order to be appointed to a City Commission at least three Council votes out of five Council members are needed to appoint a commissioner and the appointment is made at a publicly noticed meeting after an open recruitment for interested parties to apply that is conducted by the City Clerk.

The statement of the Grand Jury gives insufficient information to determine if the alleged concerns by complaining parties are on a city-wide basis or in one or more City departments. In order to properly evaluate this statement, more information is needed and requested about the situation.

The City has existing rules within their adopted memoranda of understanding for the layoff of personnel due to cost containment needs of the City, and these rules are followed. Employees who feel that they are not being treated properly in the process may engage in the services of their association or union representative or directly contact top city management.

The current City Manager who is the Personnel Officer has no relatives of any kind appointed to City commissions or in other positions of employment with the City. The City Manager will over the course of the next six months meet with representatives of recognized employee associations and unions to determine if changes to the current nepotism policies are needed and report same to the City Council.

5. "City Council members and City officials have varying degrees of understanding and openly disagree with the Brown Act. Although bound by the laws of the State of California to obey the same, some violate them on a regular basis."

Response:

The City agrees with this statement in general. Most members of the Council and members of City management know the Law and follow it regularly based on advice provided by the City Attorney that has been consistently provided over recent years. Most members of the City Council work hard to obey the Law even though they know the public would like to know everything which is certainly understandable in a democratic system. Responsible Council Members understand that violation of people's constitutional and statutory rights by improper disclosure or breaching confidentiality in pending legal matters before the City Council aside from being wrong can be very costly for a public agency...and thus the people of South Lake Tahoe.

For example:

- a. More than one Council member or City staff member erroneously has reported Brown Act violations by City officials.

Response:

The City does not have sufficient information. The City is aware of reports of Brown Act violations being made but there are insufficient details in the Grand Jury statement to narrow down the situations at hand that were erroneous. The City Attorney Mr. Enright, since his employment as City Attorney, has given the City Council and City management staff clear instructions on Brown Act issues. The Council is unaware of erroneous reporting of Brown Act violations.

- b. One Council member publicly and frequently expressed disdain for the Brown Act and has often been identified as the source of improper disclosures about confidential matters within City government. The Council member also disclosed information which was discussed in closed session by the City Council.

Response:

The City cannot respond without specifics as to whom the Council Member is, and in what context the Grand Jury believes there were improper disclosures of confidential matters within City government. Clarity in this specific instance would be helpful and informative and enable the City to better respond. To whom is the Grand Jury referring?

- c. Closed sessions are reserved for discussions of confidential and sensitive information. Disclosures of information from closed sessions could have detrimental consequences for the City. When information about this disclosure was obtained by the other members of the City Council, they failed to take the appropriate corrective action by censuring or officially reprimanding the offending City Council member.

Response:

The City agrees with this statement with qualifications. City government officials and staff have struggled with the unauthorized and inappropriate release of confidential information discussed in Closed Session and about matters that are in litigation or headed toward litigation that have been disclosed.

Over the last two years these situations have generally been brought to the attention of the then sitting City Attorney (we have had three different City Attorneys over the last two years) by members of City Council and staff to

caution, warn or alert the errant member and seek compliance. During Mr. Enright's tenure as City Attorney he has been particularly diligent in cautioning verbally and in writing Council members not to divulge confidential and privileged information to members of the public or media in accordance with the Brown Act and State law protecting the privacy of public employees.

The City Council has not taken action to censure any member of the City Council.

Unfortunately, State law provides few effective remedies to cities to discipline or otherwise handle egregious conduct of council members that falls short of criminal conduct. The City is aware of three remedies found in law for non-criminal conduct in general law cities:

1. **Censure;**
2. **Filing a complaint with the Grand Jury** that can under certain circumstances recommend removal of a council member; and
3. **Filing a complaint with the District Attorney**

Censure – The definition of censure to be the “formal resolution of a legislative, administrative, professional or other body reprimanding a person, normally one of its own members, for specified conduct.” **Blacks Law Dictionary** 1983 Edition. Other related means available to a City Council might be to formally criticize, disapprove or condemn a member's conduct. However, the legal effect of these measures is limited and elected council members can ignore these actions if they wish to do so.

Filing a Complaint with the Grand Jury – The Grand Jury has the authority under State law to consider violations of the Brown Act, evaluate same and determine whether the conduct is so egregious that the member should be removed from office. Members of the City Council did register complaints with the Grand Jury about the conduct of elected officials.

Filing a complaint with the District Attorney – A complaint with the District Attorney (DA) may be filed, the complaint can be investigated, and if the complaint is found egregious enough the DA can recommend removal of the council member from office. The City understands that members of the Council filed complaints with the District Attorney.

- d. The instructor elected by the City of South Lake Tahoe gave ethics training to Council members with only cursory information about the Brown Act, and appeared to have limited knowledge about the Act.

Response:

The City does not agree with the statement in the report. Joanne Speers, Executive Director and Ethics Program Director for the Institute for Local Self Government did provide training to the City Council and key management staff in public sessions of the City Council on January 6, 2009 and January 16, 2007. The City brought her in every two years for training. She would have been asked back for training in 2011 under our past schedule. Ms. Speers is an experienced and recognized expert in local government law (and a lawyer). Ms. Speers is well versed in all aspects of municipal law including the Brown Act.

Members of the City Council have been told or should know about the Brown Act confidentiality provisions related to matters involving personnel, litigation, and/or potential litigation based on advice provided to them by current and past City Attorneys and special counsel. Whether they choose to take the advice given and comply with the Brown Act is their choice. There is an old adage, "*You can lead a horse to water, but you can't make it drink*" and it is appropriate in regard to this matter. Sadly, some elected officials will do what they want to do particularly if they believe that there are no serious consequences for their inappropriate action.

6. "A City Council Member filed a complaint with the Grand Jury that the City Manager was operating without authority and not doing his job. The Council member also made his remarks in public. The Grand Jury received testimony and found these accusations without merit and misleading. The City Council hires and supervises the City Manager and apparently was unwilling to conduct its own investigation to address these accusations. Instead, the Council attempted to use the Grand Jury as its tool to correct a situation that was completely within their jurisdiction."

Response:

The City agrees in part with clarifications. The City is unaware of the specific comment referenced in the Grand Jury statement though is aware of public comments being made from time to time about the City Manager by certain members of the City Council. The City Council and City Manager recognize and understand that individual members of the City Council may not always agree with the actions of the City Manager and may feel a need to publicly comment on his performance or administrative actions. The City Manager is an at-will employee who works at the pleasure of the City Council. While an at-will employee, the City Manager generally has the same protection under Federal and State laws against illegal and/or improper conduct or actions of elected officials. If a member had a concern with the performance of the City Manager he/she should have brought it to the attention of the City Council and called for a Closed Session to discuss the concerns and then participated in the Closed Session.

The City Council never made a finding that the City Manager was “operating without authority and not doing his job.” The City appreciates the finding of the Grand Jury that the accusations were “without merit and misleading.”

7. “Testimony supports that City officers and employees at times operate using accepted historical practices that conflict with official written policy. This has resulted in misunderstandings, contentious City Council meetings, and a public impression that the City government operates outside of the law. These misconceptions can expose the City to lawsuits.”

Response:

The City agrees in part with the general statement with a clarification. The City agrees that the City’s municipal code and the operations of City government should be synchronized. Over the last three years the City Council and City management have taken steps to do so (for example, by clarifying how and when special legal counsel will be used and within what authority and limits). In general, City officials and staff work diligently to obey the spirit and intent of the Law. The use of legal counsel to provide expertise to City government on complicated and litigious matters is and has been intended to protect City government and its employees from liability and protect the taxpayers from losses sustained by the City from imprudent actions.

The City agrees that the City Council, public and public employees have had to endure contentious public meetings.

The City agrees that unresolved misconceptions about policy and past practices and at times mean-spiritedness by a few City officials can expose the City to lawsuits and creates stress in the City organization. Responsible City officials will do all in their power individually and collectively to engage important policy matters in a constructive and non-threatening manner.

- a. A member of the City Council requested reimbursement for legal fees paid by an outside law firm. The legal advice consisted of a legal opinion and preparation of a letter to the Fair Political Practices Commission. No contract had been signed and the City Council had not approved the expenditure. The City Manager stated that he gave verbal approval for the expenditure. California State Law clearly states that government contracts for payment may not be backdated. All unusual expenditures should be approved in open session. The City’s Purchasing Policy and Procedure Manual calls for the presence of written contracts when professional services are sought and makes no provision for payment and reimbursement absence the presence of a contract.

Response:

The City agrees and disagrees with the statement. The City agrees that a member of the City Council sought reimbursement for legal fees paid by him for a conflict of interest matter opinion he was seeking from California's Fair Political Practices Commission. The Council member received pre-approval to use the services of a skilled and experienced municipal lawyer to assist the former City Attorney to craft a letter request to the FPPC and to speak with FPPC staff in advance of writing the letter. The Council Member sought reimbursement for this pre-approved expenditure, and the City Council supported the reimbursement. The current City Attorney, based on all evidence and a complete review of the matter, determined the reimbursement was legal. The City did *not* have a contract for services with the private counsel. The Council Member paid for the services himself. The City reimbursed the Council Member for expenses incurred on City business. The District Attorney found no wrong doing in making the reimbursement when another Council filed a complaint. No City policy was violated in making the reimbursement.

The reimbursement request was paid by a City warrant. The warrant list on which the expenditure was made was provided to the City Council and the public after the check was paid. Although the City Manager has recommended to the City Council on more than one occasion that all warrants be presented to the City Council in advance of payment for approval by the Council, the City Council does not require warrants to be approved by the City Council under existing sections of State law that authorize the City practice.

The payment was made public because the City Manager and Finance Director complied with the City Council's policy of placing a list of paid warrants in the agenda packet for Council members and the public.

The City agrees that in the future request for legal services should be handled by the City, not a private council member and has so directed staff.

GRAND JURY RECOMMENDATIONS

1. "The City Council should develop a code of conduct, a code of ethics, practice professionalism, and receive training in conflict resolution. Council members should be able to express concerns about City issues without being exposed to ridicule by their fellow Council members."

Response:

The City agrees with the recommendation. This City has a Council adopted Code of Ethics, Resolution No. 1992-49: A Resolution of the City of South Lake

Tahoe Setting Forth Code of Ethics Relating to Administration which provides guidance to elected and appointed City Officials and to City Employees in their conduct while discharging their public responsibilities. Each elected official and appointed official, and City employees hired post 1992 received a copy of said Code of Ethics from the Human Resources Office as part of the new hire packet.

In addition, on February 6, 2007, the Council after receiving ethics training in compliance with Assembly Bill 1234 adopted Resolution No. 2007-6 entitled "Resolution Adopting Institute of Local Government Ethics Publications: Doing the Right Thing: Putting Ethics Principles into Practice in Public Service; Key Ethics Law Principles for Public Servants; the ABCs of Open Government Laws.

All City Council members have a copy of the Resolution with its attachments in each of their Councilmember agenda binders for reference and as a reminder of the importance of government ethics.

Council Members are aware of or should be aware of City Ethics policies and observe them. Most Council Members observe them and continued training of City Council and management employees will be undertaken by City government to ensure that a complete understanding of the Law is maintained.

2."The City Council must be assertive in dealing with inappropriate conduct by Council Members. This should include securing opinions from the City Attorney, the El Dorado County District Attorney, the California League of Cities, or other appropriate agencies."

Response:

The City agrees with the statement. The City Council must protect the rights of all Council Members and staff in the operation of City government and ensure that matters are handled in a professional and appropriate manner. The City Council will continue to seek appropriate legal advice from the City Attorney, District Attorney, League of California Cities and expert legal counsel as may be needed to handle difficult and complex municipal issues. The City Council and staff understand that the energy of City government should be focused on addressing and solving pressing community problems and addressing community needs.

Clear and precise City written policies must be developed to specify how alleged violations of the City's anti-harassment and anti-discrimination policies should be handled for elected leadership. A review will be undertaken.

3. "The City Council should review the current practice that requires three Council members agree before they can put items on meeting agendas. The procedure for placing items on the agenda should be adopted as written policy."

Response:

The City agrees with this statement. State law gives city councils in general law cities the prerogative of establishing their own rules to conduct meetings of the City Council. The City Council periodically reviews its protocols and should do so once a new City Council is seated after the November 2010 election. The recommendation made by the Grand Jury will be considered at that time.

The City Clerk provides the following insight into the matter:

The Council, in its adopted Protocols dated October 2, 2007, does have a policy provision which states:

“Placement of Item on Future Agenda – Under Councilmember Reports, a Councilmember may request that an item be placed on a future agenda. Upon a majority of the Council by a show of hands, direction shall be given to the City Manager to calendar the item for a future agenda.

A review of the City Council protocols was also then conducted at a Strategic Planning Workshop on August 4, 2009, and the Council at their August 19, 2009 regular meeting adopted an amendment to the protocols under Section 7, Councilmember Reports, which included the language below (in red):

Councilmember Reports - The Council Reports section of the agenda provides Council the opportunity to briefly comment on Council business, city operations, city projects, attendance at meeting(s) attended as a City-appointed Representative and other items of interest to the Council. This is also the opportunity for a Councilmember to request a specific issue come back on a future agenda for consideration and possible action as set forth in paragraph 9 below or to request a majority consensus of the Council to direct staff to research, explore, examine or make inquiry into a specific item of interest.”

4. “City Council members, elected City officers, an senior appointed City officers should received mandatory training, on a regular basis, in the duties and responsibilities of their positions.”

Response:

The City agrees with this statement. Ongoing training in roles and responsibilities of being on a city council and training of all staff members are important ways for City officials and staff to remain informed on their roles and duties and stay current on the law. Attendance at the League of California Cities training sessions and specialized training on particular City-related matters is vital to the success of community leaders. The City Council will budget funds

annually to ensure that employees and elected officials are trained and remain current on matters related to their jobs. The City Council thanks the Grand Jury for emphasizing the importance of training for municipal officials and employees.

5."The City should review its written policies on nepotism and job relationships between family members and domestic partners. The policies should be changed as necessary to assure that these relationships do not interfere with City operations and promote an atmosphere of cooperation."

Response:

The City agrees with this statement. The City will review within the next six months its existing nepotism policies in the Personnel rules and MOU from a legal perspective and with representatives of recognized employee associations to determine if changes are needed and the City Manager will report his findings to the City Council.

6. "City employees, starting with the City Council members and senior City officials, should receive mandatory training in ethics, sexual harassment, and confidentiality with emphasis on the Brown Act. The City should consider training from sources from other than those used in the past."

Response:

The City agrees with this statement with clarification. The City Manager and Human Resources Manager have routine anti-harassment and anti-discrimination training scheduled for all senior staff and supervisors on a regular basis. The City Council is invited to participate in this training. The City has not had formal Brown Act training for the City Council though the City Attorney (Mr. Enright) routinely and clearly advises City Council members on matters that are confidential or subject to the attorney-client privilege. City staff cannot mandate City Council members to attend anti-discrimination and anti-harassment training though responsible members will certainly agree to do so in the future and act in accordance with the training received.

The City also agrees that formal training in the Brown Act in detail would be useful and the training should be conducted in a public forum by known experts in the field. Such training will be scheduled.

7. City officials must find a way to assure the City adheres to written policies and procedures, and does not allow itself to "cut corners" by using historically accepted practices that violate written policies. Senior City officials and Council members should receive mandatory annual training on policies and procedures. Enforcing adherence to this might require establishment of an Ombudsman or Inspector General.

Response:

The City agrees in part and disagrees in part. Mandatory annual training on City policies and procedures would be a valuable tool for elected and senior appointed officials on a regular basis. The City does not agree that at this time an ombudsman is needed or necessary. If particular questions about City financial operations arise, the City's independent auditor should be asked to review and report on the matters to the City Council as part of the annual audit. The City does not agree that another management position is needed in the form of an ombudsman.

Enforcement of City policies rests with the City Council, City Manager, City Attorney, and City Department Managers and employees. City staff and most City Council members strive to ensure adherence to City policies. Internal training is conducted periodically. For example, over the last few years training for new policies has been provided to employees in such areas as Meetings and Travel, Purchasing 1010, Budget Management and Cash Procedures. Senior staff is regularly trained in anti-harassment and anti-discrimination law and experts in their field.

CONCLUSION

“The City Council, in its reports, procedures and the by the evidence received by the Grand Jury, points to a severely handicapped organization that needs major changes. The 2009-2010 Grand Jury has recommended to the County Supervisor for District V, that the City of South Lake Tahoe needs a Management and Procedural Review” to be conducted by an independent consultant. The consultant should make the report to the District Attorney for possible legal action....”

Response:

The City agrees with parts of this statement and disagrees with other parts. The City does not understand the reference in this statement regarding a recommendation being made to the County Supervisor, District V for a management audit. This must be a mistaken reference. The County Supervisor for District V has no authority or control over the operation of City of South Lake Tahoe government. In no California city (except the City/County of San Francisco) does a County Supervisor have any control or authority over a city government operation.

This City government can certainly improve in the overall way that it operates. City government is not severely handicapped. The 195 + employees of the City provide quality and consistent services to the 24,000 people who live here. By all objective standards for municipal operations, City services are providing the highest quality of services within the dollars available to operate each and every

day of the year and City officials are proud of the work and effort of all employees to serve the public efficiently and effectively.

At a time when city and county governments throughout the State and Nation are making major cuts in service to the people of their communities, this City government has maintained a high quality and level of municipal services. While suffering from State budget cutbacks and State theft of local government revenues, this City government has built over the last eight years a sound fiscal base, and good fiscal management, sound reserves, and financial policies. Improvements can always be made in any system, and this City government measures up very well in criteria set by people who know and understand municipal government.

People elected and appointed to public office have no greater duty than to serve efficiently, effectively and honestly the people of South Lake Tahoe and put the interests of the people of the community first in all deliberations.

The City believes the people of the South Lake Tahoe will exercise their right in November 2010 with knowledge and thought about the direction they think local government should take over the next few years. An informed and involved electorate is a positive safeguard and healthy asset to ensure efficient and effective local government.

The City appreciates the insight and help of the Grand Jury to review within the means available to them difficult and challenging issues brought before them. While the City does not agree with all statements or findings made, the City respects the vital and important role played by Grand Juries in our democratic process.

David M. Jinkens, MPA, CMC
City Manager