

City of Patterson
City Council Special Meeting
Tuesday, July 14, 2015
(Closed Session)
Minutes

1. Call to Order

The special (Closed Session) meeting of the City Council of the City of Patterson was called to order in City Hall, City Council Chambers, 1 Plaza, Patterson at 7:17 p.m. by Mayor Molina.

Pledge of Allegiance

Present: Councilmembers Farinha, Novelli, McCord and Mayor Molina (4)

Staff: City Manager Irwin, City Attorney Hallinan, Deputy City Attorney White, Special Attorney Shalline Bennett, Fire Chief Hall, Police Chief Dirkse and City Clerk Vela (7)

Excused: Councilmember Lustgarten (1)

At this time, Mayor Molina announced the item to be discussed in Closed Session and open the item to public comments.

The City Council will adjourn to Closed Session to address the following:

- a. Conference with City Attorney, Anticipated Litigation Significant exposure to litigation pursuant to paragraph (2) of subsection (d) of California Government Code Section 54956.9 (1 case).

The City Council will discuss the Hammon Senior Center investigation and the final results contained in the investigation report. The City Council will consider taking further action and issuing findings based on legal recommendations.

2. Statements of Conflict - none.

3. Items from the Public

Jeff Lustgarten, Patterson – addressed the City Council stating the meeting was not legally posted within the required 24 hours. Mr. Lustgarten addressed his concerns about the investigation report. Mr. Lustgarten spoke in support of Councilmember Lustgarten.

Jessica Self, Attorney – addressed the City Council speaking in support of Councilmember Lustgarten. Ms. Self addressed the City Council speaking in support

of transparency.

Chi Chi Jack, Patterson – addressed the City Council asking for clarification on the investigation. Mrs. Jack’s asked if Councilmember Lustgarten was provided an attorney at the beginning of the investigation. Mrs. Jack’s asked if due process and legal protection was given to Councilmember Lustgarten.

City Attorney Hallinan addressed Ms. Self’s and Mrs. Jack’s concerns.

Heather Nosek, Patterson – addressed the City Council stating for issue to be left to City Council to review. Mrs. Nosek addressed her concerns stating if issues were founded that she would like to see that action is taken.

Amanda Hillsdale, Patterson (Patterson Neighborhood Watch) – addressed the City Council asking about the next steps, asking if something was being done about this issue.

Victoria Arendsee, 510 sunflower Drive, Patterson – addressed the City Council stating she has seen Mrs. Lustgarten go through a lot of slander and attacks by the neighborhood watch group. Bullying by Amanda Hillsdale, Heather Nosek, Tony Porcella, etc. Mrs. Arendsee addressed the City Council speaking in support of Councilmember Lustgarten. Mrs. Arendsee stated she knew Councilmember Lustgarten’s personal struggles and that she was also a domestic violence survivor.

Alicia Homen, 313 Halley Court, Patterson – addressed the City Council speaking in support of Councilmember Lustgarten. Mrs. Homen stated her concerns that the investigation was one sided. Mrs. Homen stated she would like to see due process done. Mrs. Homen stated her concerns that the investigation was not founded.

4. Adjourn to Closed Session

At 7:37 p.m. there being no further public comments, the Patterson City Council adjourned to Closed Session.

5. Report from Closed Session (if any)

At 9:27 p.m. the Patterson City Council returned from Closed Session.

Mayor Molina stated: The Council has returned from closed session, and we have a report from closed session, and now I turn this over to the City Special Counsel Shelline Bennett at this time.

City Special Counsel Shelline Bennett stated: Thank you Mayor. Mayor and Council, again my name is Shelline, S- H-E-L-L-I-N-E, Bennett. I am an attorney at the Law Firm of Liebert, Cassidy and Whitmore. I am one of the firm’s managing partners. It’s a statewide firm. I have practiced for approximately twenty-two years, exclusively in labor and employment, representing management. For the last ten or so years of my practice, I have represented almost exclusively cities, counties and special districts; so public agencies.

A big part of my practice is to work with cities and counties when it comes to investigations. I am

retained by cities, and in this situation I was retained by the City of Patterson in approximately June of 2014, on behalf of the City retain an outside investigator so I start initially with some background information which is pretty standard in what I do. I've handled a good number of investigations in the time that I've been practicing, and a part of those investigations include how this matter was brought to my attention; and that was again in about June of 2014, when one of your City Attorneys contacted me about issues that had been brought to then City Manager's attention, Rod Butler and specifically, the issues were within the realm of my practice. It was an area that it was believed at the time that there were complaints and concerns related to potential bullying and harassment not only of visitors, volunteers, participants of the Senior Center but potentially employees and with the potential of employees that would be the area of where I practice.

Under the law and under the City of Patterson policies, a legal obligation was triggered by the information that had been conveyed to the City Attorney and then to me. A legal obligation was triggered to investigate and an investigation was commenced. I believe that prior to June 2014, I have not worked specifically with your Attorney. I think this was my first interaction with your cities.

I retained on behalf of the City outside neutral Investigator, Scott Nelson. It's also my understanding Mr. Nelson had not worked previously with your City. We did not know the individuals, neither myself nor Mr. Nelson, here at the City involved communicated with them until this investigation started. Once the investigation started, my general practice is to take a hands off approach because the goal is to keep the investigation as neutral as can be with the outside Investigator, Mr. Nelson. It was pretty much under his jurisdiction that I proceed in the fashion that he as a professional Investigator proceeds, and it's my understanding he did that. So, I wanted to just highlight for you that generally in these invitations, there is no what I've heard referred to tonight due process issues at play. Even if we had an employee situation here where there was an employee of the city accused of wrong doing, there are no due process rights of an individual to be advised ahead of time what the allegations are, what the documents are, to be allowed to confront alleged complainants. There is no such legal obligation that I am aware of.

The closet we get under the law to some sort of notice to individuals of what the allegations are would be Law Enforcement. They have special protections. The Firefighters and your Police, your Deputies; they have protections under the Peace Officer Procedural Bill of Rights and Firefighter's Procedural Bill of Rights. We did not have that here. There were no legal requirements to notify anyone ahead of time of the allegations of anything of this sort. Along those lines, it's important to consider that in investigations integrity is key and preserving integrity is not communicating to individuals ahead of time what the allegations and issues are. That potentially corrupts, taints and prejudices the investigation. We want it as clean and neutral as possible.

In this investigation, I am not aware of anyone's due process rights being violated in any way. I am also aware of an abundance of due process being provided to, in this situation, Councilmember Lustgarten much more so than I've experienced in my practice. I have not seen as much that has been provided as I've seen with Councilmember Lustgarten. The fact that there was at the point that she requested that the City provide for her with an attorney. It's my understanding, my involvement was the City almost immediately provided her with any attorney. That's not something I typically see. Also, the transparency here is above and beyond what I typically see in investigations, and I don't say this lightly. I take these investigations very seriously. There are many privacy issues involved. It is not that often that I see reports go out. It is legally appropriate to have the report go out but the norm is that there is a request made

and typically there is a lot of legal jargon and back and forth before a report is released in Redacted Format. You saw that this City has provided that right out of the gate. In fact, it's my understanding that the public received the Readapted Report at the same as your Mayor and Council.

So with all of that, I would like to report to the Council tonight the findings of the investigation and the conclusions. The investigation was initiated in the latter part of June 2014, regarding these conflicts and complaints concerning the Senior Center and revolving around an alleged at Councilmember Lustgarten. That is where the complaints were originally. Specifically the complaints that came in, and I was charged with retaining an Investigator on, were that Councilmember Lustgarten bullied and harassed employees, visitors and volunteers at the Senior Center. The legal obligations were triggered to immediately investigate. The investigation report was completed by the outside Investigator, Scott Nelson, in July of 2015, that's this month. Almost immediately after it was completed, we got it in and we're getting it to the Council and the Public. The City has made every effort to be at the forefront of getting this out there as soon as it could.

The Investigator knows the investigation occurred over, "A very protracted timeline consisting of nearly a year," which he says was due primarily to Councilmember Lustgarten's "initial lack of response in participation and the City of Patterson's apparent desire to extend to her every opportunity to participate over an extended period of time."

In the Readapted Report, you have notes on page 5 the details of what the City tried to do, the Investigator tried to do to get Councilmember Lustgarten to participate in the investigation and with the investigation starting in June of 2014, it wasn't until May 4th of 2015, that Councilmember Lustgarten finally agreed to be interviewed by Investigator, Scott Nelson. And it wasn't until May 7 and May 10 that she brought forward for the first time her complaints.

"The findings of the report, an unspecified times during 2013 and 2014, Sheree Lustgarten has more likely than not engaged in verbal and occasionally physical behavior that has left multiple senior citizen volunteers and visitors to the Hammon Center feeling bullied, intimidated or belittled. All of whom are 40 years of age or older. Sustained, the alleged conduct occurred." That is his most significant finding and that is it for about 100 page 110 of the report. The report sustains allegations that Councilmember Lustgarten verbally and in at least two instances physically bullied, intimidated or belittled elderly Senior Center participants. Councilmember Lustgarten also made in about May of 2015 harassment complaints herself. The Investigator noted it was very difficult for him to understand why she would make complaints at such a late stage in the investigation. It's particularly true the indicated given the assertions of Mrs. Lustgarten and her supporters that the complaints, the alleged wrong doers, that Ms. Lustgarten was making accusations against have played a significant role in the conflict. The report concluded that Councilmember Lustgarten's complaints of harassment are not sustained. The report also concluded that Sheree Lustgarten has not engaged in illegal behavior specifically regarding employees and visitors at the Hammon Senior Center being discriminate against. The report specially found that those allegations are not true and that the City is not legally liable for discrimination against its employees and others.

I know for you specifically, in the report beginning at page 89 and specifically pages 104-107 there are some quotes in there that I highlight for you the Investigator noted, "Clearly the most troubling evidence obtained during the course of the examination relates to the personal behavior of Ms. Lustgarten while involved in activities taking place at the Hammon Senior Center." He noted that her behavior "may be actively characterized as intimidating or bullying

particularly given the fact that many of those making such reports are themselves senior citizens.”

Further he indicated, “There are indications that on at least some occasions, Mrs. Lustgarten has risen from her chair and physically pointed at a senior while angrily raising her voice.” “It is difficult to find justification in such behavior under virtually any circumstance. The Investigator says that the fact that it occurred during interaction with senior citizens amongst the most vulnerable segments of the population arguably paints such conduct as even more egregious.”

The report refers to Councilmember Lustgarten bringing her husband Jeff Lustgarten to meetings where he rose and angrily confronted “seniors loudly and aggressively” and engaged in “screaming, and yelling and pointing his finger” at anyone who disagreed with his wife. The report concluded that there is clearly significant conflict at the Senior Center and there appears to be one common thread in the conflict and that is Mrs. Lustgarten; her behavior and her ever evolving role and authority at the Senior Center.

There are additional quotes that I won’t go into at this late hour. However again, I know that they are primarily in the areas of the factual analysis discussion of the report and primarily a hundred and one and thereafter.

One witness stated she stopped volunteering with the Senior Meals Task Force when Councilmember Lustgarten grabbed a container of ice cream out of her hands at an ice cream social. Another witness, an alleged supporter of Councilmember Lustgarten, stated that she had seen Lustgarten yelling at seniors in a manner she considered verbally aggressive. The report also found that in one instance Councilmember Lustgarten forcibly ripped Bingo cards out of elderly players’ hands and told them they could not play anymore. Unfortunately, following the investigation, there have been recent events that have made this matter a more legally troubling issue. Following completion of the investigation, Councilmember Lustgarten has left numerous emotionally charged threatening and or profane messages for City representatives and has stated in front of several witnesses regarding one Councilmember that if that Councilmember leaked out session information, “He’s dead, he’s dead.” Councilmember Lustgarten’s inappropriate treatment of Senior Center volunteers and visitors as well as best business practices necessitate that your City and your City Council distance themselves from Councilmember Lustgarten determined by the investigation report inappropriate conduct as to do nothing could be interpreted as implied looking condoning such behavior. The City should consider admonishment and public censure of Councilmember Lustgarten based on the findings of this report that she engaged in verbal and physical behavior that left multiple senior citizens, volunteers and visitors at the Hammon Senior Center feeling bullied, intimidated and belittled. As part of the public censure, the City should also make it clear to Senior Center employees that any participation by Councilmember Lustgarten and Senior Center activities is undertaken as a private citizen and Councilmember Lustgarten’s conduct may be addressed accordingly.

The City may want to consider scheduling refresher trainings on the City’s complaint procedures as well as trainings on preventing discrimination, harassment, retaliation and abusive conduct in the work place which is a relatively new law that came into place January 1, 2015, that talks about abusive conduct. At a minimum, the City should remind its employees that if they see or hear anything that causes them concern to immediately report such and not be silent. At the very least, the City should pay close attention to Councilmember Lustgarten’s actions in the future in order to address any issues as soon as they occur. The City should make clear an inequivalent statements that it does not tolerate this type of conduct and will investigate any complaints it receives. Pursuing to the personal goals, Section 108, in the

City's Anti- harassment Discrimination Policy dated August 11, 2009, the City should inform the employees at issue of any corrective action that the City is taking. As to the recent events related to the numerous profane highly emotionally charged messages that have been left for City representatives combined with the statement from Councilmember Lustgarten "He's dead, he's dead." Based on these comments, these messages, it is strongly recommended and I believe that the city has already followed up on obtaining a temporary restraining order related to Councilmember Lustgarten. It is also recommended that, and I believe the City also has done this, the Police be contacted, a Police Report be filed and extra security provided for anyone that Councilmember Lustgarten has expressly and or implied to be threatened or made to feel their health and safety are threatened. At a minimum, Councilmember Lustgarten should be admonished and publicly censured to cease and assist from such further activity.

Councilmember Lustgarten insisted that the City pay her attorney's fees during the course of this investigation, because she believed any complaints levied against her resulted within the course and scope of her work with the City. However, Councilmember Lustgarten is not an employee and was not retained by the City to perform the work at the Senior Center. Councilmember Lustgarten arguably was not entitled to attorney's fees for representation during the invitation process. Furthermore, even if she were acting under the direction of the City Council, as determined by the report, her bullying and abusive conduct is not within the course and scope of employment or her role as a City Councilmember. Accordingly, the City is not legally required to indemnify Councilmember Lustgarten for her costs or any of the costs related to her legal representation. Here now concludes my report of findings and recommendations, conclusions and recommendations related to the investigation.

City Attorney Tom Hallinan stated: Yes, thank you Mayor and Council. It gives me, and I know none of you any pleasure in doing this but you've waived the attorney client privilege to outline the recent activity in the investigation. I'm going to play one of those messages and warn everybody some graphic language here so I'm going to play that message at this time.

Councilmember Sheree Lustgarten's Recording "Tom Hallinan, you cannot come at me and tell Alex Hurly not to talk to my attorney and then turn around and tell me that's the only way to stop this. "G-----" you lying SOB. What the hell you better have that attorney call my attorney now. Why "f-----" now? You lying piece of "s---".

Mayor Luis Molina stated: I just want to reiterate this is not a happy day. Based on the findings and recommendations contained in the report of investigation authority, the City of Patterson Hammon Senior Center, the City Council has considered and voted to take the following action:

By unanimous vote, the City Council finds that Councilmember Lustgarten has violated the highest standards of conduct required by the City's Code of Ethics for an elected official, as stated in Section 107 of the City's Personnel Rules:

"The following value statement rather elected, appointed or employed, guides us as officials and employees of the City of Patterson. Ethical behavior is critical in this organizations ability to achieve its mission, goal and objectives. The community's perception of and competence in City employees and officials are fundamental to quality government. As public servants, we are accountable for highest standards of conduct."

By unanimous vote, the City Council requests that Councilmember Lustgarten immediately resign from City Council.

If Councilmember Sheree Lustgarten will not voluntarily resign:

By unanimous vote, the City Council requests that Councilmember Lustgarten submit to a fitness for duty examination as it is unclear she is competent to continue to hold her office.

By unanimous vote, the City Council requests that Councilmember Lustgarten pay back the five thousand dollars the City paid in legal fees on behalf of Councilmember Lustgarten because the report found that her acts at the Senior Center were not in her capacity as a Councilmember.

By unanimous vote, the City Council reiterates that it will not pay any further legal fees related to the Senior Center investigation on behalf of Councilmember Lustgarten.

By unanimous vote, with the exception of City Council Meetings, the City Council requests that Councilmember Lustgarten cease visiting the City Hall and Senior Center.

By unanimous vote, Councilmember Lustgarten participate in one-on-one training, including but not limited to, the prevention of discrimination, harassment, retaliation and abusive conduct in the workplace, sensitivity training, civility training and anger management before seeking appointment to any further City Board, Commissions, or advisory groups.

By unanimous vote, the City Council directs Councilmember Lustgarten to exclusively communicate with the City Manager or City Attorney in written or electronic form regarding all City business.

By anonymous vote, the City Council directs City Staff and the City Attorney to prepare a formal resolution to be presented to the City Council at the next regular City Council meeting for the formal admonishment of Councilmember Lustgarten based on the findings of the Report that she engaged in verbal and physical behavior that left “multiple senior citizen volunteers and visitors to the Hammon Senior Center feeling bullied, intimidated, or belittled”.

By unanimous vote, the City Council directs City Staff and the City Attorney to prepare a censure ordinance to establish the process and procedure to formally censure City Councilmembers for actions on becoming of elected officials. The City Council further directs City Staff, and the City Attorney to initiate censure proceedings against Councilmember Lustgarten once the censure ordinance is effective.

By unanimous vote, the City Council directs the City Manager to prepare a resolution for the Council’s consideration at the next regular City Council Meeting to formally remove Councilmember Lustgarten from any appointed position of authority on the Senior Center Board Recommendation Committee and to strip her of any advisory role the Council may have granted her in Senior Center decisions.

By unanimous vote, the City Council directs the City Manager to prepare a resolution for the Council’s consideration at the next regular City Council Meeting to formally remove Councilmember Lustgarten from any appointed position of authority of any City Boards or Commissions and to strip her of any advisory role the Council may have granted her in City-related decisions.

By unanimous vote, the City Council authorizes the City Manager to temporary close the Senior Center, until a special City Council Meeting can be called, if any incidents occur at the Senior Center.

By unanimous vote, in an effort to assist the healing process, the City Council directs the City

Manager to make available as soon as possible temporary counseling to seniors at the Senior Center.

By unanimous vote, the City Council will provide all Councilmembers and Senior Center employees a refresher course and training, including but not limited to the prevention of discrimination, harassment, retaliation and abusive conduct in the workplace, sensitivity training, civility training and anger management.

And finally, by unanimous vote, the City Council requests that Councilmember Lustgarten reframe from engaging in any conduct that could be perceived as harassing, bullying or retaliatory against any person in the report that has been identified as a victim.

And that concludes our report from closed session. Our next regular scheduled meeting will take place in these chambers on Tuesday, July 21st. Closed Session is typically at 6:00 p.m. with an open meeting concluding closed session around 7:00 p.m. or thereabouts. And with that, we're adjourned.

6. Adjournment

There being no further business, the special meeting (Closed Session) of the City Council of the City of Patterson of July 14, 2015 was adjourned at 9:54 p.m.

Approved by the Patterson City Council on September 1, 2015.