



MEMORANDUM

DATE: July 3, 2012

TO: Richard Miranda
City Manager

FROM: Liana Perez
Director, OEOP

SUBJECT: Report of Findings Referral # 11/12 I-07

In accordance with Administrative Directive 2.05-8, attached is the Report of Findings for the above-referenced referral which was submitted to my office by City Attorney, Mike Rankin on May 31, 2012.

Please call me if you have any questions.

Attachments
LP

Report of Findings 11/12 I-07

Date: July 3, 2012

To: Richard Miranda, City Manager

Cc: Mike Rankin, City Attorney

From: Liana Perez, Office of Equal Opportunity Programs Director



Re: Referral to Initiate Investigation of Councilmember Paul Cunningham

Jurisdiction

On May 31, 2012, City Attorney Mike Rankin requested that the Office of Equal Opportunity Programs (OEOP) conduct an investigation of allegations pertaining to the conduct, comments and statements made by Councilmember Paul Cunningham during an economic development trip to San Diego, California on May 16-18, 2012 pursuant to Administrative Directive (A.D.) 2.05-8.

The stated purpose of the A.D. is to prohibit discrimination, harassment and retaliation in the workplace. Furthermore, it is the policy of the City of Tucson to provide a work environment free from discrimination and to promote equitable treatment of all employees.

Mr. Rankin indicated that several allegations had been brought to his attention that, if accurate and substantiated, could constitute violations and prohibitions in A.D. 2.05-8 relating to sexual harassment and/or harassment creating a hostile, intimidating or offensive working environment.

In accordance with A.D. 2.05-8, Councilmember Cunningham was provided written notice of the Complaint Referral on June 1, 2012.

Background

Tucson Regional Economic Opportunities, Inc. (TREO) coordinated a Leadership Exchange Trip to San Diego, CA from May 16-18, 2012. The trip was an invitation-only program designed for a group of local leaders from the Tucson region. The group of attendees included three city staff members and two city councilmembers. A total of thirty-seven individuals were listed as attendees.

A review of the daily itinerary indicated that meetings, speaker presentations and tours related to the objective of the program were scheduled throughout each of the days beginning at 8:00 a.m. to as late as 9:00 p.m. on the first day, May 16th. The daily schedule was coordinated by TREO staff who were also on the trip.

Documents Reviewed

- San Diego TREO Leadership Exchange May 16-18 2012 travel itinerary, list of attendees and daily schedule.
- June 11, 2012, Response to complaint referral memorandum submitted by Councilmember Cunningham's attorney, George Curtis.

Investigation

A total of fifteen witnesses were interviewed that had been identified as either having personal knowledge of, or had witnessed the comments made by Councilmember Cunningham to three female city staff members.

The witness interviews confirmed that on the first day of the trip, May 16th, during an evening event, the Councilmember engaged the three female staff members in conversation in the patio area of the hotel bar, that was inappropriate, graphic and sexual in nature. The comments included those of a sexual nature that were specifically directed at two of the women. There were no reported allegations of inappropriate physical contact between the Councilmember and these individuals.

Witnesses confirmed that the Councilmember had consumed large amounts of alcohol throughout the late afternoon during an earlier gathering and that he continued drinking heavily during the evening events. His demeanor was described as loud and boisterous. One of the females who was specifically targeted by the sexually suggestive comments reported that she told the Councilmember that she was offended and that she got up and walked away when he continued with his comments. The other two women described his comments as offensive and unprofessional. They remained in the area, citing that they felt it was their obligation as representatives of the City of Tucson to contain his behavior to that particular area in the patio so as not to allow him to offend or expose other guests to his comments and inappropriate behavior.

Witnesses reported that they had observed the interaction between the Councilmember and the women, and that it was apparent that the one female staff member who walked away was visibly offended by the comments and behavior.

There were no further reports of similar incidents for the remainder of the trip. However, two of the women stated in their interviews that they had experienced similar comments and behavior directed at them from the Councilmember on prior occasions during non-city sanctioned events. Both stated that the behavior was unwelcome and that they had verbally indicated such to the Councilmember. In both instances, the women reported that Councilmember Cunningham appeared to have been intoxicated.

Several current and former members of the Councilmember's staff were interviewed for purposes of the investigation to determine if any similar conduct had occurred with members of his staff. No instances of inappropriate conduct were reported during the interviews.

During his interview with the OEOP, Councilmember Cunningham recalled some of the statements he made to the women, but described them as "banter." He stated that the discussion started as business related and led to personal issues, acknowledging that the remarks were "of a sexual nature to some degree."

When questioned about several of the specific statements that were made of a sexual nature describing one of the female's bodies, he stated that due to his intoxicated state, he could not recall having made the statements. He stated that he had no intent to offend the women, further acknowledging that he used poor judgement in the situation.

Councilmember Cunningham stated that he could understand the potential future impact on his working relationship with these particular women due to their position within the organization and the frequent interactions between council offices and city staff.

A.D. 2.05-8 was reviewed with Councilmember Cunningham both at the beginning and at the conclusion of his interview with the OEOP. He acknowledged that under the definitions of sexual harassment, his comments could be construed as violations of several areas of A.D. 2.05-8.

Conclusion

A finding of cause is issued with respect to this referral. Witness statements supported the allegations of inappropriate verbal conduct of a sexual nature, including remarks that drew attention to a person's body, in violation of City of Tucson A.D. 2.05-8, Section III. G., Sexual Harassment.

The definition of Harassment as stated in A.D. 2.05-8 Section III. D. (1) is verbal or physical conduct towards an individual because of his/her protected class that has the purpose or effect of creating a hostile, intimidating, or offensive working environment. The conduct that occurred, while not on city property, did occur during an authorized work-related event and would constitute a violation of A.D. 2.05-8.

Councilmember Cunningham has acknowledged that his behavior and comments could be construed as violations of A.D. 2.05-8.

Recommendations

- That Administrative Directive 2.05-8, Discrimination/Harassment – Sexual Harassment be reviewed with all members of council office staffs, including councilmembers
- That Sexual Harassment training be conducted for all council offices
- That Mayor & Council develop and finalize a Code of Ethics Policy
- That the City Manager require all City employees, including those within the City Manager's Office, to review Administrative Directive 2.05-8 and further direct the OEOP to coordinate mandatory Sexual Harassment training throughout the organization on an on-going basis