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# GILROY DISPATCH

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## Sex Harassment Firing Overturned

City may have to swallow large monetary settlement after a Superior Court judge orders Gilroy to reinstate building department supervisor and awards him back pay

■ **BY SERDAR TUMGOREN STAFF WRITER**

GILROY A senior building official fired from City Hall for sexual harassment has won a key court battle that could cost the City of Gilroy hundreds of thousands of dollars.

Two years after his dismissal, the city has been ordered to rehire Rex E. Wyatt, 48, and pay him lost wages and benefits. On Oct. 17, Santa Clara County Superior Court Judge Leslie Nichols also ordered the city to purge their personnel files of any mention of the investigation into sexual harassment and other charges that led to Wyatt's termination.

The decision frees Wyatt to seek damages from the city for alleged violations of his civil rights.

The court record containing 600-plus pages reveals a number of serious charges against City Hall leveled by Wyatt and others involved in the case. They include allegations of or reference to:

- missing documents that Wyatt claimed could have proven his innocence
- thousands of dollars in uncollected building permit fees
- a building permit changed after the date of issuance
- repeated errors in the handling of

permits by building department employees

Mayor Al Pinheiro declined to comment on the matter of missing documents since "it's all part of the legal process." City Administrator Jay Baksa said officials have addressed the other issues as part of a "performance audit" of the building department and other branches of the community development division.

Wyatt's termination resulted from a culmination of four decisions - by Community Development Director Wendie Rooney, the Gilroy Personnel Commission, Baksa and the City Council - that he had violated city regulations on sexual harassment and workplace discrimination.

In firing Wyatt on Oct. 9, 2003, Rooney's letter of termination informed him that he was being dismissed "based on the investigative findings that you made inappropriate sexually suggestive comments and improperly disclosed personal information to a subordinate, initiated unwelcome invitations to subordinate co-workers to meet for drinks, and established and maintained an intimidating work environment toward subordinate coworkers. Additionally... it is determined that you were not credible, or in the alternative, less than forthcoming during the investigative interview process."

### CHRONOLOGY OF EVENTS

- Sept. 10, 2001 - Rex Wyatt hired as Senior Building Official
- May 16, 2003 - Wyatt gives negative Employee Performance Appraisal to Permit Technician Carolyn Costa
- June 13, 2003 - Costa responds with memo asserting among other things sexual harassment and discrimination
- June 27, 2003 - Costa expands on claims in second memo
- July 2003 - City conducts two-week investigation of Wyatt
- Summer 2003 - Wyatt placed on administrative leave
- Oct. 9, 2003 - Community Development Director fires Wyatt for sexually suggestive comments, among other things
- Oct. 16, 2003 - Wyatt appeals termination to Personnel Commission
- April 12, 2004 - Personnel Commission upholds firing
- July 6, 2004 - City Council upholds decisions to fire Wyatt
- Sept. 29, 2004 - Wyatt sues city for wrongful termination
- Oct. 12, 2005 - Costa resigns from City Hall
- Oct. 17, 2005 - Judge reverses city decision, orders Wyatt reinstated

Judge Nichols ruled otherwise, saying that Wyatt "has carried his burden of convincing the court that the [city's] administrative findings are contrary to the weight of the evidence."

Wyatt did not return multiple calls for comment.

The ruling caused the City Council to hold an unprecedented and controversial secret closed session on Nov. 7 to discuss the case, according to multiple sources.

Wyatt can now move forward with the remainder of his lawsuit alleging that the city violated his civil rights, specifically the rights to due process, equal protection under the law, freedom of speech and freedom to petition.

A court trial could cost the city half a million dollars or more in damages and back pay and hundreds of lost hours in productivity, according to Nicholas Toghia, a lawyer with Opus Group LLC, a Los Angeles-based law firm that consults with human resources departments on workplace law.

"The city terminated (the, employee) ostensibly because he misbehaved on the job," Toghia said. "Now the superior court reversed the administrative findings, which means the man can proceed with

his suit. Wrongful termination will probably carry as much weight with a jury as a sexual harassment claim."

Baksa said the city had not ruled out fighting the remaining claims, but Steven Fink, the attorney representing Wyatt, said the two sides "are trying to make peace break out." Neither he nor any city officials would provide details on a possible settlement. The city's legal counsel in the matter, Ernest Malaspina, declined to comment on the possibility of a settlement.

Baksa, however, said "the thing about zero tolerance and sexual harassment is that there are no standards. Zero tolerance means none, zero, zippo ... As far as we're concerned as an organization, there's not just a little sexual harassment allowed ... This one is tough because this organization thought it was doing the right thing and trying to protect people."

The city hired Wyatt in September 2001 to oversee the processing of building plans prior to construction. In addition to handling "plan checks" on specific projects, Wyatt supervised employees responsible for ensuring that plans met city standards and that appropriate fees were collected.

In May 2003, Wyatt wrote a negative employee evaluation of Permit Technician Carolyn Costa, recommending she be passed over for a raise, according to court documents. Costa responded a month later with a seven-page memo defending her work and alleging that Wyatt created an intimidating work environment that included "comments of a sexual nature that make me uncomfortable."

She detailed those concerns in a second memo in July 2003. In the memo, Costa alleged that Wyatt asked her "to go out of town, on the weekend, without our `significant others.'.. I was afraid if I did not go out with him, he would hold it against me and punish me at work."

She also wrote that "Rex has shared intimate detail of all of his past relationships with women. He told me how he had an affair on one of his ex-wives."

Costa's claims triggered a two-week internal investigation that ultimately led to her boss's dismissal. Despite his repeated denial of the allegations, Rooney's decision to fire Wyatt was reaffirmed over the next nine months by the Personnel Commission, Baksa and the City Council. The seven-member body unanimously approved the termination behind closed doors on July 6, 2004.

In the wrongful termination suit filed two months later, Wyatt alleged that the city conducted a "seriously and prejudicially flawed" investigation and denied him the chance to adequately respond to the charges "before they escalated beyond the point of no return"

It further accuses city officials of failing to properly publish and educate employees on sexual harassment policies. It claims "there was no reasonable way" for Wyatt, or any other city employee, to defend themselves against an unwritten "zero tolerance/anything sexual policy" in which "anything sexual in any context constitutes harassment." Officials insist that policies are clearly defined in writing and employees are adequately trained in their application.

Costa, who resigned from City Hall on Oct. 12, five days before the judge's ruling, said she was unaware that her former boss had sued the city for wrongful termination and was seeking a settlement or court ordered damages. Wyatt's lawsuit questioned apparent inconsistencies in Costa's memos and her oral testimony before the Personnel Commission, but she stuck by her original claims.

"I think it's wrong that they would have to pay him anything," Costa said. "I disagree with that because what he did was wrong. I don't think he should get away with something that's wrong."

The two-page ruling does not delve into the finer points of the city's decision-making, but simply orders the city to reinstate Wyatt, pay him with interest for lost wages and benefits, and purge any mention of the matter from his personnel file at City Hall.

"I think the judge is saying that 'Whatever procedure you used, you haven't proven your claims,' Fink said of the city's handling of the case.

The city is not required to comply with the judge's order until the remaining civil rights complaints have run their course before a jury. City officials would not disclose if they plan to settle out of court or fight the additional charges.

Baksa did not expect council to discuss the matter before January.

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