

From: [Mary Ann Schatz](#)
To: [Public Comment](#)
Subject: Public Comment Item #8, October 12
Date: Monday, October 11, 2021 1:40:12 PM

To the Los Altos City Council,

I am shocked and saddened to learn that some Los Altos City Council members want to approve a censure policy so they can formally censure other members of our duly elected city council. What a waste of time, energy, talent, and the good will and reputation of our town. You were each elected by enough Los Altos citizens to put you on the City Council, and we citizens expect each one of you to conduct the business of our city in a respectful & cooperative manner.

You are teaching the young people in our town that you expect to get your way by threatening any opposing views. This is not how Los Altos citizens expect or want business in our town to be transacted. Please consider voting for a policy of respect & cooperation, rather than reproach and censure.

Mary Ann Schatz , long time citizen of Los Altos.

From: [Phan Truong](#)
To: [Public Comment](#)
Subject: Public Comment Item #8, October 12, 2021
Date: Monday, October 11, 2021 6:02:59 PM

NO TO A CENSURE POLICY in LOS ALTOS

Who would decide what actions deserve censure? Council Members?

The Council Norms already provide Standards of Behavior. If a Council Member violates those Norms, remind them what is considered acceptable and move on.

If any official violates the law, we have other remedies for that.

To serve the City of Los Altos, The council members should work together; instead of trying to censure one another.

This makes the council work environment more divided and not productive.

Phan Truong

From: [Randall Lowe](#)
To: [Public Comment](#)
Subject: Public Comment Agenda Item 08 - October 12th, 2021
Date: Monday, October 11, 2021 6:55:34 PM

To the City Council and the General Public.

I'm sure that there will be people writing in calling for the outright disregard of a censure policy in Los Altos, given the shadow of the Moos debacle back in May, and some potential implications that a censure proposal being brought up now may ensue.

While I'm against the draft proposal as written and, if this was going for a formal vote on 10/12, I would say NO, I am not wholly against a censure procedure in Los Altos.

Censure procedures are meant to be used when a City Official performs egregious behavior that warrants severe disciplinary action. To me, the censure is by far the most severe disciplinary action that a City Official can face before a Public Vote / a Forced Dismissal.

It is however, very critical, to understand the rationale on why the proposal is just now being drafted up, rather than further in the past. Who is supporting the drafting of the proposal, and their recent actions in City Government, as well as those that either declined to support, or straight up are against such censure procedure, and their actions.

My grievances, with the current proposal at hand are as follows:

1. The current proposal makes it explicit that it will take "three (3) Councilmembers" to request discussion of the Formal Censure/Admonition action, and the same amount to agendize the formal public hearing. While 3 is the minimum required to get a Majority in the current City Council, why make it explicitly 3?

The city of Santa Clara has a formal censure policy as well, but it simply states "The Council may request a formal censure action be placed on a Council Agenda." and "Upon hearing the testimony, the Council may take action by resolution setting forth its findings and stating the terms of the censure." [1]. In my interpretation, "The Council" refers to a majority of the entire council, regardless of size.

In the case of possible growth of the City Council, such a policy should have been originally drafted with "a majority of the Councilmembers" instead of the explicit "three (3) Councilmembers". This would remove the necessity to revisit this censure policy for a procedural change in the case more council members were added. While I do not attempt to presume or assume any Member's behavior in this statement, it does seem strange that the explicit number of three was mentioned here.

2. In the proposal as written, the council sets a 10 minute time limit for either side to make their case. Due to the process of getting to the formal procedure in the first place, we already know that 3/5 members must support the procedure. In the worst case scenario, the council member who the proposed censure would be against, would not be able to speak their side at all until this time.

The City of Santa Clara does NOT set a time limit in the document for the testimony. So I must ask the question, why would such a time limit be necessary for the council members who requested the formal censure, and MORE IMPORTANTLY: The proposed censured

Council Member may not be able to get their entire story across in the strict 10 minute time limit in the worst case scenario, thus limiting their speech.

The proposed solution would be to remove the mention of a time limit entirely. This would preclude the city from any restriction on speech claims from a now censured council member, since they would have had all the time necessary to make their case.

3. While it has not been made clear in the draft policy as written, I wish to get this part in writing in the policy itself. Mayor Filgor has mentioned to the Los Altos Town Crier that (the policy) "cannot be used to censure any council member for past violations of the policies, norms, or laws, and the policy requires that a council member receive multiple warnings before they could be censured or admonished" [2].

The policy, as drafted, makes clear that the council member must be warned at least 2 times about inappropriate behavior publicly before a censure procedure can occur, something that instills some confidence in me. It also states that the policy "shall not be applied retroactively to any conduct occurring before the Effective Date".

However, based on what I've seen of the city council, I fear that a Council Member can get around this by just issuing the warnings after this policy gets applied. Thus, having the necessary warnings to call for a formal censure, if such Council Member wished for that.

To resolve this, it should be made explicit that any warnings issued about conduct in the past before the Effective Date should also not be considered for Censure / Formal Action. This also puts everyone on even ground, as everyone would have a clean slate for behavior before the Effective Date and applicable to Censure.

I've learned from this council that items passed in the past will be a template for the future.

If we are going to adopt a formal censure procedure in the City of Los Altos, we better do it right on our first go, or we will come to see side effects in the future as a result of bad policy.

--Randall Lowe
Los Altos, CA

Sources:

[1]: <https://www.santaclaraca.gov/home/showpublisheddocument/57775/636620765388100000>

[2]: https://www.losaltosonline.com/news/necessity-or-needless-public-shaming-la-council-to-consider-censure-policy/article_382dfaa0-27cb-11ec-ad5c-c701585a1be7.html

From: [Deb Skelton](#)
To: [Public Comment](#)
Subject: Public Comment #8, 10/12/21
Date: Monday, October 11, 2021 7:42:36 PM

Dear City Council Members,

Thank you for your work and endless hours as a member of The Los Altos City Council. I am writing to urge you to vote no on censuring council members.

Los Altos Town Crier Headline:

Necessity or needless public shaming? LA council to consider censure policy. (Bruce Barton, Los Altos Town Crier 10/7/2021)

The headline ripped my heart out. I don't like the look and feel of it. Life has become difficult for many. Now is not the time to ratchet up blame and find fault with others. I prefer the council work together to solve our City's problems, and navigate the uncertain road ahead. I want you to work together as a team. I urge you to vote no on censure.

Sincerely,
Debbie Skelton

From: [hai.nguyen](#)
To: [Public Comment](#)
Subject: PUBLIC COMMENT Item #8, October 12, 2021
Date: Monday, October 11, 2021 7:56:34 PM

Hi,

My name is Hai Nguyen. I lives in Los Altos area and would like to vote NO to a censure policy in Los Altos.

Thanks, Hai

From: [HMN982](#)
To: [Public Comment](#)
Subject: PUBLIC COMMENT Item #8, October 12, 2021
Date: Monday, October 11, 2021 9:47:00 PM

I disagree with the proposed censure policy.

From: [Marianne Hawkes](#)
To: [Marianne Hawkes](#); [Public Comment](#)
Subject: PUBLIC COMMENT Item #8 October 12, 2021
Date: Tuesday, October 12, 2021 1:06:46 AM

I want to express my concern about city council members enacting a policy to censure one another other. We have come to a place in our public and political life that is filled with a constant flow of rancor and enmity. There is a prevailing attitude throughout the country that every person has the right to “call out” other individuals in a very public way and on every possible occasion. The act of “calling out”, or censuring, is often accompanied by an undercurrent of moral superiority. Though the words of the censors may insist they have no intention to harm or shame the person being censured, that is exactly what occurs. People are injured; character is damaged; reputations are tarnished; a legacy of public service is destroyed. An official censure between council members creates rifts between people who should be functioning as a team. Nothing positive or helpful will come from censuring each other. Many residents of Los Altos prefer that the council unites in seeking solutions rather unites in seeking opportunities to censure. I respectfully request that the effort to create a censure policy be terminated. Marianne Hawkes

Date: 10/12/2021

To: The Honorable Members of the Los Altos City Council, the City Manager, the City Attorney

From: Jeanine Valadez

CC: The City Clerk

Subject: PUBLIC COMMENT – AGENDA ITEM #8 – 10/12/2021: Consider Draft City Council Censure Policy

Dear Councilmembers et al.,

I hereby submit this Public Comment in regards to Agenda Item #8 where the City Council will consider its current draft of a Censure Policy.

Moreover, I hereby disclose that I am a Parks and Recreation Commission (PARC) Commissioner, but am submitting this Comment as a private, 32-year-home-owning resident of Los Altos.

My Opinion in Summary:

I support the addition of an accountability policy (to be titled as the Council sees fit) that embodies and prescribes the conditions under which violations of State or Local Law or Policy shall be met with consequences as allowable by Law.

Rationale and Opinion (my comments tonight in the meeting will be an excerpt of the following):

1) Censure is Not Censorship

Claims cite First Amendment concerns as reasons for decrying accountability policies. However, such claims are naïve or untrue; indeed, both the Brown Act and judicial precedence protect 1st amendment rights of both public officials and members of the public. It is pretty evident in reading public comments that oppose accountability that many people are confusing “censure” with “censorship.” Quite simply, “censure” is an expression of formal disapproval for one’s conduct. Censure has nothing to do with squashing freedom of speech. In fact, this policy explicitly assures it in several sections. The fact is that Censure does not neuter debate, nor does it silence one’s voice.

2) Accountability Policy is Not Unusual; it is the Norm

Most cities have policies for holding elected and/ or appointed officials accountable to standards of conduct and comportment. These policies explicitly describe the consequences for breaking the rules.

Cities with censure policies span the large and small, the progressive and conservative, the rich and poor areas of our State: East Palo Alto, Laguna Beach, Los Gatos, Oakland, Palos Verdes, San Jose, Santa Clara, Santa Cruz, Stockton, and many others.

In fact, the Santa Cruz example is a recent case study (2018-present), where, having been without policies governing conduct and accountability, things got bad on the City Council (see Grand Jury Report dated June 25, 2020), resulting in recall(s). The Grand Jury “*examined the City Leadership and aspects of the City’s government*” to discern how things devolved. Their findings noted in many specific terms that it was the LACK – not presence -- of governing and accountability policies that was engendering and allowing disagreement, irritation, disrespect, and bad interactions to go unfettered amongst City

Councilmembers and between Councilmembers and City Staff in public meetings, on social media, in debates, and in written form. *Of the many findings the Grand Jury made, this one stands out given our context here today: "The City Council's conduct policy is insufficient to guide behavior and lacks enforcement provisions."*

In addition, the Santa Cruz Grand Jury's report included this attachment, Appendix B:

Appendix B

Key Attributes of Exceptional City Councils

The Institute for Local Government has developed a list of six key attributes of exceptional City Councils:[206]

- *Develop a sense of team—a partnership with the city manager to govern and manage the city;*
- *Have clear roles and responsibilities that are understood and adhered to;*
- *Honor the relationship with staff and each other;*
- *Routinely conduct effective meetings;*
- ***Hold themselves and the city accountable; and***
- *Have members who practice continuous personal learning and development.*

3) The Lack of Accountability Policy Exposes the City to Liability

Bad conduct by a public official towards a city employee, or a member of the public, or another councilmember, or in violation of Law or Policy, will expose the city agency, as co-defendant with the accused, to liability. This is a fact supported by an extensive body of legal precedence.

A city agency's exposure to liability also occurs when it can be shown that members of an elected or appointed body knew about misconduct by one or more other members and did nothing about it.

4) Elected Officials Can be Held Accountable

Opponents of an accountability policy claim that accountability cannot be rendered against an elected official, primarily because they are not employees. This is not strictly true. Just because an elected or appointed official is not an employee, they must still adhere to many standards of workplace conduct and comportment expected of regular wage-earning employees. In fact, our State Legislature has deemed this true in many of its policies for local agency governance.

(Note: This is also why Boards of Directors of Companies, while not strictly employees, fall under workplace conduct rules since they hire and fire certain corporate executives. This is also how a city agency can compel elected or appointed officials to wear masks, because, under OSHA, officials are present on workplace grounds when on the job, and it is OSHA's job to secure the workplace; indeed, if the City (Council) allows an elected official to skirt masking rules, the City is exposing the agency to liability.)

Moreover, under the Fair Employment and Housing Act (FEHA), elected public officials are considered "Supervisors" because they have the authority to hire and fire, and "Agents" in the employment context because they do the business of the City on the City's behalf. Both of these classifications confirm that

workplace conduct rules are legal and applicable and therefore enforceable by policy when made specific.

5) Accountability is Not Discipline

It is true, and I concede, that an elected official on a body (such as City Council) cannot be disciplined in the official sense of being fined, suspended, or fired by one or more fellow officials. This fact is precisely why the California League of Cities recommends that when accountability comes to bear, *“the safest approach”* is to 1) *“conduct an investigation,”* and then 2) take *“the option to censure the offending councilmember.”*

I was disappointed with the few legal analyses repeated in public comments against this policy because they were riddled with the use of the terms “may,” “likely intended,” and other assumed inferences with not a single reference to actual precedent-setting jurisprudence or legislative manifestation against the establishment of accountability policy (whether called censure, admonition, disapproval, disavowal, etc.).

Though not required for me to support the policy under review today, I do, however, support the addition of a third-party investigation. I believe it would lend indisputable credence to the process and relieve the City Council from the task of finding facts, searching for patterns, and being accused of political motives.

I do NOT support the addition of the following requirements to the policy for the stated reasons:

- a) Super-majority: this requirement is onerous and allows a single member to exonerate another member from censure for a pattern of violating policy; it is open to political exploitation; I do not agree with a mechanism that enables a single member to veto the rendering of 3 members.
- b) That the repeat violations must be exactly the same: this is virtually impossible to prove; the goal here is to admonish patterns of bad behavior, not to mince words and lexicon used to describe bad behavior in order to skirt rules of conduct. If a councilmember successively violates three separate norms, they should still be held accountable!
- c) Include members of the public or city staff in the adjudication process: The Norms and Procedures and any relevant accountability policy relate solely to the City Council. They themselves should be the adjudicators of the accountability. When you introduce other “judges,” you remove the self-disciplinary attributes of having Councilmembers decide the consequences of violations. As much as the offending Councilmember(s) should be held accountable, the entire City Council should also be held accountable for owning the decision to issue consequences.
- d) Appeal process: This policy is a means by which five colleagues who are public officials self-regulate. They alone should hold themselves accountable. Appeals invite a lengthy process that invites outside intervention and drags down the Council; moreover, an appeal to another authority intensifies the severity of the admonition or censure should the appeal be denied, as is typical. Losing an appeal robs the admonished Councilmember(s) an easy path to return to operation as usual, and frankly increases the odds that the Councilmember(s) will lose the Public Trust.

6) Persons of Color Want Accountability in Governance.

A few commenters have cited how this policy would silence minorities or “othered” voices. They claim this policy is an affront to social and racial equity. It is notable that none of these commenters are BIPOC. Their assertions are an inexcusable appropriation of the plight of underserved populations in our community.

As a Mexican-American and LGBTQ member of this community, I feel confident in saying this: It is the LACK of accountability that silences our voices. We rely on the Rule of Law to protect us. The Rule of Law is embodied in the standards to which the public must adhere, but also in the rules of conduct and comportment for law enforcement, city employees, and appointed/elected officials. These standards must be fair and visible. These standards mean nothing if they lack accountability and enforcement.

I immediately get suspicious of any person who fears accountability when they are doing a job. When people in power say, “trust me, we don’t need to add consequences to this bad behavior because I will never harm you,” I know that harm is coming. Don’t ask BIPOC to trust you freely; you have to earn our trust and explicit accountability is the bare minimum required on that journey.

And though I write this comment as a private resident, I will say, that, in any office I have ever held, whether for youth sports, community organizing, non-profits, educational endeavors, or, as a Los Altos Commissioner, I WANT to be held accountable to specific objective standards. I EXPECT consequences to be concrete and understood. And I take comfort in knowing that my colleagues in such endeavors are being held to the same objective standards.

7) Addendum: On the topic of Silencing BIPOC and Progressive Voices...

If I may shift away from the issue of Accountability Policy for a moment, I do maintain that there are other policies in our City that need to change. For example, the City silences BIPOC voices when its actions...

- a) disallow POC from other communities (since we have so few of our own) to place their art here;
- b) discourage BIPOC that work here, through differentiating policies, from participating in our programs, housing, and asset utilization;
- c) establish any policies that limit our ability to speak contemporaneously during Public Comment *before* decisions are rendered. (Note: Keep in mind that BIPOC may be disproportionately precluded from advanced methods of tuning in.) [Proviso: I do not include limitations on how long an individual may speak as unfair, as long as the rule applies to all.]

It is, at best, ironic and, at worst, a display of hypocrisy that a certain number of residents are disagreeing with a policy that enables accountable governance claiming it silences opinion and voice, as they themselves continue to cry for actual censorship by demanding that the Council smother the voices of members of the public during public meetings. I recall over the past 2 years with a great deal of sadness – notably any time a progressive issue came before the Council - their repeated demands that the City Council silence fellow community members for having opinions different than theirs. Even in public comment (for items not on the agenda) submitted for today’s meeting, someone has proposed

Prepared by Jeanine Valadez

policy changes that would silence voices! It is very important to me that the Council retain and amplify policy and procedures that will ensure that all in-meeting voices are heard before, not after, Council decisions are made. Just because Sunnyvale instituted an oppressive policy doesn't make it good policy.

Thank you for your time in reading this,

Jeanine Valadez

(Pardon any typos)