



DISCUSSION ITEM

Agenda Item # 8

AGENDA REPORT SUMMARY

Meeting Date: October 12, 2021

Subject: Censure Policy

Prepared by: Jolie Houston, City Attorney

Reviewed by: Jon Maginot, Deputy City Manager

Approved by: Gabriel Engeland, City Manager

Attachment(s):

1. Censure Policy

Initiated by:

At its August 24, 2021 meeting, the City Council requested a Censure Policy for its review.

Previous Council Consideration:

None.

Fiscal Impact:

None.

Environmental Review:

Not applicable.

Policy Question(s) for Council Consideration:

- Does the City Council wish to adopt a Censure Policy?

Summary:

If adopted, the Censure Policy would apply only to the City of Los Altos (City) Mayor, Vice Mayor, and City Councilmembers serving on the Los Altos City Council for improper conduct that could result in admonition or censure.

Staff Recommendation:

None.



Subject: Censure Policy

Purpose

It is the policy of the Council that all its members shall abide by federal and state law, City ordinances, and City policies, including the Council Norms and Procedures (Law or Policy). Violations of such Law or Policy tend to undermine the effectiveness of the Council as a whole and foster distrust from the public.

Adoption of the Censure Policy would provide the Council and members of the public fair and adequate notice of the process and procedures for censuring, admonishing, and addressing situations when a Councilmember may have violated any Law or Policy.

The Town of Los Gatos and the cities of Santa Clara and Stockton have adopted censure policies. Some of these policies contain very detailed and complicated procedures. The attached Censure Policy considered these policies and was drafted to reflect the Council's direction.

Background

On August 24, 2021, Councilmember Weinberg, with support from Councilmember Meadows and Mayor Fligor, requested a future agenda item to discuss development of a policy on censuring, admonishing, and addressing situations when a Councilmember may have violated any Law or Policy.

Discussion/Analysis

If the Censure Policy is adopted and depending on the circumstances of any alleged violation(s) of Law or Policy, the Council may initiate an investigation of the allegations prior to the filing of a request for any of the actions described in the attached Censure Policy. As stated in the Censure Policy, an investigation, however, is not required.

If adopted, the Censure Policy would be effective on the date of adoption by the City Council and shall not be applied retroactively to any conduct occurring before its effective date.

Nothing in the Censure Policy precludes individual Councilmembers from making public statements regarding such alleged conduct. While the Council has broad discretion in deciding certain actions it may choose to take in response to violations of Law or Policy, which would not require the Council to adopt policy, including but not limited to voting to remove a Councilmember from a Committee or Board, or a vote of no confidence in a particular Councilmember, the attached Censure Policy provides definitions and procedures related to two types of actions: admonition and censure.



Subject: Censure Policy

The Council shall only admonish or censure a Councilmember pursuant to the Censure Policy if a Councilmember has violated the Law or Policy more than two times and the Councilmember has been publicly warned about such violations by another Councilmember or Councilmembers(s) and the Councilmember that received the warning continues to violate the Law or Policy.

Recommendation

Since this is a Council policy decision, the City Attorney does not have a recommendation.

ATTACHMENT 1**CENSURE POLICY****PURPOSE**

This policy applies only to the City of Los Altos (City) Mayor, Vice Mayor, and City Councilmembers serving on the Los Altos City Council (“Council”) for improper conduct that could result in admonition or censure.

This policy shall be effective on the date of adoption by the City Council (“Effective Date”) and shall not be applied retroactively to any conduct occurring before the Effective Date.

Any disciplinary action taken by the Council under this policy shall be a final action and is not subject to an appeal or reconsideration.

POLICY

It is the policy of the Council that all its members shall abide by federal and state law, City ordinances, and City policies, including the Council Norms and Procedures (hereinafter referred to as Law or Policy). Violations of such Law or Policy tend to undermine the effectiveness of the Council as a whole and foster distrust from the public.

Depending on the circumstances of alleged violations of Law or Policy, the Council may initiate an investigation of the allegations prior to the filing of a request for any of the actions described in this policy. An investigation, however, is not required.

Nothing in this policy shall preclude individual Councilmembers from making public statements regarding such alleged conduct. While the Council has broad discretion in deciding certain actions it may choose to take in response to violations of Law or Policy, which would not require the Council to adopt policy, including but not limited to voting to remove a Councilmember from a Committee or Board, or a vote of no confidence in a particular Councilmember, this policy provides definitions and procedures related to two types of actions: admonition and censure.

The Council shall only admonish or censure a Councilmember pursuant to this policy if a Councilmember has violated the Law or Policy more than two times and the Councilmember has been publicly warned about such violations by another Councilmember or Councilmembers(s) and the Councilmember that received the warning continues to violate the Law or Policy.

Admonition

An admonition may be informal or formal and is typically directed to a member or members of the Council. An admonition may be issued in response to a particular alleged action or actions in violation of a Law or Policy. An informal admonition may be issued by the Council prior to any findings of fact regarding allegations, and because it is a warning or reminder, it would not require an investigation or separate hearings to determine whether the allegation is true. A formal admonition would follow a public hearing, as further described below. The Council recognizes the right to criticize is protected by the First Amendment, and may be done by an individual

ATTACHMENT 1

Councilmember, or by a Council motion and vote. A Mayor may from time to time remind Councilmembers to comply with any Law or Policy in order to conduct an orderly meeting. Such reminders by the Mayor are not an admonition.

Censure

Censure is an official reprimand or condemnation made by Council in response to specified conduct by one of its own members. Censure is disciplinary in nature and requires the formal adoption of a resolution setting forth the Councilmember's alleged violations of Law or Policy. Although not required, censure could involve an investigation and it must protect the due process rights of the Councilmember being investigated. Censure carries no fine or suspension of the rights of the Councilmember as an elected official, but a censure is a punitive action for a Councilmember's violations of Law or Policy.

PROCEDURE

Informal Admonition

An individual Councilmember can make an admonition at any Council meeting during the Public Presentations or Reports of Councilmembers portion of the meeting. The Councilmember making the informal admonition must first ask the Mayor to make the informal admonition and state on the record the basis for the informal admonition, including the previous two or more times that the Councilmember, who would be subject to the admonition, had been warned. After doing so, the Mayor must allow the Councilmember to make the informal admonition. If the Mayor would like to make an informal admonition, the Mayor is also required to state on the record the basis for the informal admonition.

Formal Admonition or Censure Public Hearing

At a public City Council Meeting, three (3) Councilmembers may request a discussion of a formal censure and/or formal admonition action be placed on a future meeting Council agenda. At the future meeting that the discussion is heard, a vote by three (3) or more Councilmembers is required to agendize a formal public hearing. The City Clerk shall provide a formal notice of the hearing to the Councilmember who is the subject of the action. The notice shall contain the specific allegations and/or charges on which the proposed action is based and the date and time that the matter will be heard. At the hearing, the Councilmembers who requested the hearing shall have a cumulative total time of no more than 10 minutes to state the reason(s) they are requesting the formal admonition or censure, and the Councilmember who is the subject of the action shall have up to 10 minutes to respond. Upon hearing the testimony, the Council may take action setting forth its findings and stating the terms of the disciplinary action.

Disciplinary Action.

ATTACHMENT 1

If, at the close of the hearing, a majority of the entire membership of the Council finds that the subject member's conduct violates any Law or Policy, the Council may take one or more of the following measures:

(1) Formal Admonition. A Formal Admonition can be in the form of a motion and vote, or an adopted Resolution, and can take any or all of the following forms:

- (a) The admonition is directed to one or all members of the Council, reminding them that a particular type of behavior is in violation of law or City policy; and/or
- (b) Direction is given to the subject Councilmember to correct the result of the particular behavior that violated Law or Policy; and/or
- (c) A reprimand is directed to the subject member of the Council based on a particular action (or set of actions) that is determined to be in violation of Law or Policy but is considered by the Council to be not sufficiently serious to require formal censure.

(2) Resolution of Censure. The Council may adopt a resolution of censure that clearly sets forth the facts supporting the allegations of misconduct giving rise to the censure. A resolution of censure requires a majority vote of the entire membership of the Council. A resolution of censure may include the imposition of certain actions against the Councilmember such as removal from a committee or Board.