

RESOLUTION NO. 8703

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING A
CENSURE POLICY FOR THE CITY COUNCIL

WHEREAS, on May 16, 2017, the City Council of the City of Milpitas directed staff to draft a policy to allow for censure of members of the City Council and authorized more than four hours staff time to do so; and

WHEREAS, on August 1, 2017, the City Council considered, but did not adopt a proposed censure policy for the City Council; and

WHEREAS, on October 3, 2017, the City Council again considered a proposed censure policy and directed staff to return with a revised version of the policy to have the City Attorney appoint the ad hoc subcommittee charged with reviewing requests for censure, and to provide the City Council with other disciplinary options in addition to a formal resolution of censure.

WHEREAS, staff has drafted a revised censure policy as directed, a copy of which is attached hereto and incorporated herein as Exhibit A; and

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Council hereby approves the City of Milpitas Censure Policy, attached hereto as Exhibit A.

PASSED AND ADOPTED this 7th day of November, 2017, by the following vote:

AYES: (5) Mayor Tran, Vice Mayor Grilli, Councilmembers Barbadillo, Nuñez and Phan

NOES: (0) None


ABSENT: (0) None

ABSTAIN: (0) None

ATTEST:


Mary Lavelle, City Clerk

APPROVED:


Rich Tran, Mayor

APPROVED AS TO FORM:


Christopher J. Diaz, City Attorney

EXHIBIT A



CITY OF MILPITAS CENSURE POLICY

- (a) Purpose: This policy provides the mechanism by which the City Council, acting as a whole, may adopt a resolution of censure expressing the Council's disapproval of the conduct of a Councilmember if the Council finds, subject to the procedures set forth herein, that a Councilmember's conduct violates federal, state or local law, or any by-law, standing order, or policy of the City Council.
- (b) Request for Censure: A request for censure may be submitted by any Councilmember or the Mayor in writing to the City Clerk. The request must contain the specific charges on which the proposed censure is based.
- (c) Ad Hoc Committee Consideration: Upon receipt of a request for censure, the City Clerk shall forward the request to the City Attorney. The City Attorney shall appoint an ad hoc Committee of the Council to conduct preliminary review of the request. The ad hoc Committee shall not include the Councilmember making the request or the Councilmember who is the subject of the request.
- (1) The City Clerk shall deliver a copy of the request for censure and the charges to each member of the City Council at least 72 hours prior to the first meeting of the ad hoc Committee to give preliminary consideration to the request.
 - (2) At a meeting held no sooner than 72 hours of receipt by all Councilmembers of the above notice, the ad hoc Committee shall consider the request together with any evidence or testimony submitted by the Councilmember making the request and the Councilmember subject to the request, and shall determine whether:
 - (i) Further investigation of the charges is required; or
 - (ii) The charges should be forwarded to the Council for censure hearing; or
 - (iii) No action is required.
 - (3) If the ad hoc Committee determines that no further action should be taken with regard to the request, the Committee shall make such report to the Council at the earliest opportunity.
 - (4) If the Committee determines that further investigation is required, the Committee shall conduct an investigation and arrive at a recommendation regarding the request and report its conclusions, findings and a summary of its proceedings to the Council at its earliest opportunity.

(5) If the ad hoc Committee does not report its recommendations and findings to the Council within 30 days of the formation of the Committee, the matter shall automatically be sent to the Council for consideration.

(d) Council Consideration: Upon receipt of the report of the ad hoc Committee, or at the expiration of the time for the ad hoc Committee to report, the City Clerk shall place the matter on the Council's next agenda in order for the Council to receive the Committee report and determine whether a censure hearing is warranted. If the Council decides to set the matter for censure hearing, it shall schedule the hearing no sooner than two weeks after its determination to hear the matter. The Council shall not schedule the matter during any previously scheduled excused absence of the subject Councilmember. A Councilmember who is the subject of an alleged violation shall be ineligible to vote on any matter related to a disciplinary action including, but not limited to, agendizing the hearing and adopting a resolution of censure.

(1) Written notice of the hearing shall be delivered in person to the Councilmember subject to the censure hearing at least ten (10) days in advance of the scheduled hearing.

(2) At the censure hearing, the Councilmember who is the subject of the request for censure shall be given the opportunity to make an opening and a closing statement, to call witnesses on his or her behalf and to question his or her accusers. The subject Councilmember may be represented by a person or persons of his or her choice whether or not an attorney at law and may have that representative speak or question witnesses on his or her behalf. The questioning or cross-questioning of witness may be reasonably limited by the Mayor or Vice-Mayor if the Mayor is the subject of the censure. Testimony shall be taken only from witnesses having direct knowledge of facts or circumstances relevant to the specific charges under consideration. However, the rules of evidence and judicial procedure applicable in courts of law shall not be apply to this hearing, and the procedures shall be generally informal.

(e) Disciplinary Action. If, at the close of the censure hearing, a majority of the City Council finds that the subject member's conduct violates federal, state or local law, or any by-law, standing order, or policy of the City Council, the Council may take one or more of the following measures:

(1) Admonition. An admonition may be directed to all members of the City Council, reminding them that a particular type of behavior is in violation of law or City policy.

(2) Direction to Correct. The direction should be given to the subject Councilmember to correct the result of the particular behavior that violated law or City policy.

(3) Informal reprimand. The reprimand should be directed to the subject member of the City Council based on a particular action (or set of actions) that is determined to be in violation of law or City policy, but is considered by the Council to be not sufficiently serious to require formal censure.

(4) Resolution of Censure. The City Council may adopt a resolution of censure based on clear and convincing facts supporting the allegations of misconduct giving rise to the censure. A resolution of censure may include the imposition of sanctions against the Councilmember as a majority of the City Council deems appropriate. Such sanctions may include removal from a committee and restrictions on City-related travel privileges.