

MEMORANDUM

August 21, 2018

To: City Council

From: Mayor Lisa Gillmor
Vice Mayor Kathy Watanabe

SUBJECT: Admonition of Councilmembers Kolstad and Mahan

We are providing this memo to serve as a discussion and recommendation for the admonition of Councilmembers Pat Kolstad and Patricia Mahan. We think it's helpful to understand the facts, the history, and the reasons that our community feels strongly that our admonition and censure policy should be applied because of the actions of these two councilmembers.

Facts and History

On May 15, 2018, our council adopted an Admonition and Censure Policy. We were compelled to do so because of the terrible accusations against former Councilmember Dominic Caserta. It was only then that we discovered the Santa Clara City Council had no official ability to disapprove of the conduct of a Mayor or Councilmember.

Mr. Caserta resigned before we could consider any action. With his council seat open, we quickly moved to fill his vacant seat following the requirements of our City Charter. After extensive community outreach, over two dozen individuals applied to fill the vacant council seat.

On June 12, 2018, we interviewed candidates in open session. After approximately six hours of statements by candidates followed up by a question-and-answer session in which all six remaining councilmembers participated, we did not fill the vacancy. Councilmembers Kolstad and Mahan revealed at approximately 1:30 a.m. that they did not wish to appoint anyone to the vacant seat. There were understandable frustrations and anger in the room. It was visibly expressed by Councilmembers, the public, and on

the faces of the candidates and their family members. One candidate, Dr. Mohammed Nadeem, published his feelings in an opinion piece entitled: "My Experience As a Council Candidate for the Caserta Vacancy Was Negative Because of Mahan and Kolstad." We've attached his statement.

In the following days, we began to hear many complaints in our community about the actions of Councilmembers Kolstad and Mahan. On June 17, 2018, Teresa Sulcer, a community leader and former Charter Review Commissioner, spoke at our council meeting and articulately expressed a desire for the two Councilmembers to be censured. She then published her statement for our community to read a few days later on SantaClaraNews.org. It is attached to this memo. She later changed her recommendation from censure to admonition.

On June 28, 2018, at our Council meeting during the open public session, numerous community leaders spoke out about how disappointed they were about the actions of Councilmembers Kolstad and Mahan. Among those who spoke were respected former Councilmember Keri Procnier McLain. Some residents suggested that censure or admonition would be appropriate.

On July 17, 2018, the Council decided that given strong community sentiment, it would be appropriate to agendize for discussion and action how Councilmembers Kolstad and Mahan actions may be sanctioned under our Admonition and Censure Policy. Again, our residents spoke out at the meeting about the desire for the community to see the Council take some action. One resident, Howard Myers, a Charter Review Commissioner, publicly spoke that evening and later published his strong arguments in SantaClaraNews.org. They are attached to this memo.

Recommendation

We recommend that Councilmembers Kolstad and Mahan be officially admonished by the City Council under our recently adopted council policy. That policy states:

Admonition

An admonition may typically 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, and that, if it occurs or is found to have occurred, could make a member subject to censure. An admonition may be issued in response to a particular

alleged action or actions, although it would not necessarily have to be triggered by such allegations. An admonition may be issued by the City Council prior to any findings of fact regarding allegations, and because it is a warning or reminder, would not necessarily require an investigation or separate hearings to determine whether the allegation is true. An admonition may also be treated as taking action to criticize a council member's conduct. The right to criticize is protected by the First Amendment, and may be done individually, or as a whole by motion.

We believe the actions on the morning of June 13, 2018, by Councilmembers Kolstad and Mahan were disrespectful to the candidates who wished to serve our city. They disappointed good people who wanted to help our city and their family and friends -- many who attended the meeting with a sense of hope and pride. Furthermore, the manner in which Councilmembers Kolstad and Mahan decided to express their desire to leave a council seat vacant after fully participating in the process was deceptive and perhaps even dishonest.

We are especially concerned about the chilling message Councilmembers Kolstad and Mahan have sent to our community. We, as a Council, had an opportunity -- perhaps duty -- to appoint a Councilmember from one of many communities who are unrepresented on our Council. Of the final six candidates, five of them were from communities of color. More significantly, all the candidates had excellent qualifications. They all had the potential to be outstanding public servants and community role models as an appointed member of our council. To reject all of them, as Councilmembers Kolstad and Mahan did, was a major lost opportunity for Santa Clara.

In conclusion, we believe it's important for Santa Clara residents to know that our Council has standards and policies that reflect the goodness of our community. We support open and honest debate, but should not tolerate deception or dishonesty. We seek participation from all members of our community and should not condone actions that discourage individuals from participating. If our Council cannot enforce these standards upon ourselves, we are derelict in our duty as public servants and we will send an unfortunate and discouraging message to residents of Santa Clara. For these reasons, we recommend Councilmembers Kolstad and Mahan be officially admonished by the City Council.

SantaClaraNews.org

**Guest Opinion: My Experience As a Council Candidate for the Caserta
Vacancy Was Negative Because of Mahan and Kolstad**

July 7, 2018

By Dr. Mohammed Nadeem

Last month, I respectfully submitted my letter of interest for appointment to the vacant City Council seat. With less than five months remaining on the term, all I wanted to do was my best — to serve Santa Clarans. Humility, plus an opportunity to heal and apply my judgment and common sense as best as I would, have been my operating principles.

On June 12, the Council had a chance to choose from over 20 total applicants and appoint any of the final five top-ranked candidates: Eversley Forte, Hosam Haggag, Suds Jain, Kevin Park, and myself — all qualified candidates who represent groups not currently represented on the council.

Mayor Lisa Gillmor, Vice Mayor Kathy Watanabe, Councilmembers Debi Davis and Teresa O'Neill all were willing to vote to appoint a candidate. And they voted for each of the final five candidates in succession. However, after several hours of interviews, questioning, and multiple rounds of ranking candidates, two council members, Patricia Mahan, and Pat Kolstad voted for none. I felt betrayed and disgusted by their petty and dirty politics. My time wasted.

The night of the Council interviews was the night of the end of Ramadan nightly prayer called “Khatam” at the Muslim Community Association (MCA) and not only I missed that, but I also missed the much-revered celebration with my family and friends.

Measure Q, passed in 2016 gave full authority to a Council supermajority to make appointments in the case of a vacancy. But Councilmembers Mahan and Kolstad wouldn't even vote for a qualified candidate. It was uncivilized and appalling because

the council had a chance to do the right thing and didn't after seven hours of theatrics. Indeed it was not a fine example of democracy.

Over the years, as leaders of the City, we failed to address a demographic representation issue. With Hon. Judge Thomas Kuhnle's CVRA decision pending with potentially \$2-\$3 million in costs to the City, and forced community outreach and a short timeline on a redistricting process, we find ourselves vulnerable because of self-inflicted wounds. Council Members Mahan and Kolstad could have potentially lessened the City's financial burden and avoided this by making a good faith effort of filling the vacant council seat.

Mayor Gillmor recently said in an interview with the *Mercury News*[June 28] that: "The goal is to diversify our Council." In hindsight, there was a significant opportunity to diversify the council, and two Council members blocked that from happening – with no compelling reasoning.

Now we face inevitable changes to our city's election system without much notice or input from residents because of a tight District mapping schedule and even narrower November 2018 council candidate application and fundraising timeline.

As proud Santa Clarans, together we shall permanently improve the City's fiscal health, image, and reputation.

SantaClaraNews.org

Guest Opinion: Censure Mahan and Kolstad

June 19, 2018

By Teresa Sulcer

This is an open letter to the Santa Clara City Council:

I am writing to express my disappointment at what happened at last week's Council meeting because of the actions of Councilmembers **Pat Kostad** and **Patty Mahan**.

On Tuesday night there was a terrible lost opportunity to show vision and leadership and to make room on the City of Santa Clara Council – for a new member who would bring diversity of opinion, background and expertise to our City government.

Any one of the final candidates would have made an excellent addition to our Council, and would clearly reflect the wishes of the electorate. They all have a history of being active members of the Community and have devoted countless volunteer hours to bettering our City, its democracy and our way of life (I refer to their bios and personal statements).

In the case of three of the candidates, the people of Santa Clara are well acquainted with them as they had run for City Council in previous elections. In 2016 one of the candidates received a mere 4% fewer votes than Council Member Mahan. In 2014, one candidate received only 10% fewer votes than Council Member Kolstad.

At the start of the Council meeting all of you took an oath to act in the best interests of the City and its residents. Then you all voted to accept the process put forward by the City Clerk on how the appointment would be conducted. And yet, when the time came to follow through on this, Councilmembers Kolstad and Mahan reneged on their duty and their oaths and refused to participate.

Councilmember Mahan read her prepared statement at 1:30 am – after most of the public had already left – while trying to persuade people that her decision was not pre-planned. Had she announced this earlier, concerned citizens would have had the opportunity to address this abdication of duty.

Councilmember Kolstad didn't even bother to justify his actions.

We have seven seats on our City Council for a reason. The City is best represented and protected when all the Council seats are occupied. Diversity of opinion, knowledge, backgrounds and interests are what create a robust and healthy environment for governing. A full Council is the best way to represent our diverse City and is required by our City charter.

It is disheartening and extremely disappointing that 2 members of our Council lacked this vision and leadership. As a consequence of this behavior I respectfully request that the Council immediately do the following –

1. Create a process for censure as soon as possible. As soon as this process is in place Council Members Mahan and Kolstad should be censured for their dereliction of duty by failing to participate in appointing a candidate to the vacant council seat after they voted to do so
2. Please put on the agenda for the next Council meeting an opportunity for the public to address Council Members Mahan and Kolstad to express our disappointment at this lack of leadership.
3. After every Council meeting there should be public access to the voting record of the meeting and a public profile of each Council member and their entire voting record for the duration of their term.

Santa Clara News.org

Guest Opinion: Mahan and Kolstad Misused Their Power in a Mean and Disrespectful Way

July 26, 2018

By Howard Myers

Editor's Note: On July 17, Howard Myers spoke to the Santa Clara City Council along with other residents. They recommended a "censure" of Councilwoman Patty Mahan and Councilman Pat Kolstad because of the way the two declined to vote for qualified candidates to replace disgraced former Councilman Dominic Caserta. After some discussion, the City Council decided to agendize for action on August 21 an "admonishment" of Mahan and Kolstad. It's possible for them to be censure at a later date if more information comes out. Myers slightly edited his comments from the council meeting and they are printed below.

Good evening Madam Mayor, council members and staff:

This isn't about different opinions.

Several years ago, I served on a Charter Review Committee that redefined the provision that allowed council members to select a replacement when there was a vacancy. I promoted a portion of this which required a super majority, thinking it would be important to have more unity than a simple majority might provide.

It never occurred to me it would be so misused.

It would be more understandable if the members had declared at the beginning of the meeting they would not be taking part in the vote for a replacement council member. Even without an explanation, it would have shown more respect for the applicants waiting, eager to serve their city.

There may be some rationale for choosing to not vote. There is a provision in the charter that allows 30 days to select a replacement or it goes vacant until the next election. So not voting, or voting no is not a crime.

But as for the motive, we are left guessing.

Many of us think this might have been intended to strike back at fellow council members over some disagreement.

If that's the case, you didn't strike at them, you struck at us the residents that you are sworn to serve.

You didn't just prevent a volunteer from serving, you reduced the number of council members available to serve us.

Regardless of the reason for not voting, waiting until the end of the night is unforgivable and showed a complete disregard for others.

It was mean and disrespectful.

It is appropriate for the council to vote to censure these two members. Not just a gesture of disagreement with what they did but to let us, the residents know you also take it seriously.

This isn't a matter of disagreeing or voting no. it is a matter of waiting until the end of the evening to say, "Oh, I'm not going to vote".

No, no, no. That's not good. If you had just said so at the beginning of the evening we wouldn't be here.

Some consideration please.

08/21/18

Item #3

Lynn Garcia

From: Mayor and Council
Subject: FW: Vote and Appeal

From: Marjorie Banko [<mailto:marjoriebanko@yahoo.com>]
Sent: Tuesday, August 21, 2018 11:25 AM
To: Mayor and Council
Subject: Vote and Appeal

Patty Mahan and Pat Kolstad were voted by residents to serve as council members because of their integrity and independent decision making that would always be the most beneficial for our City. Your behavior after the vote regarding Domic's empty seat was outrageous and very disappointing as well as exhibiting a most vicious, and UNETHICAL performance. Following that to have allowed the public to come to the podium and attack them was not called for. In the past such behaviors were harshly reprimanded or removed from the podium. But it appeared that this language was being encouraged by you. Remember when Kathy was appointed after approx. 16 or 17 other candidates applied and Kathy was the last one and no doubt the vote was premeditated. To look for shame, just look into your own mirrors.

What is the purpose of appealing the Judge's decision regarding the districts? Just another way to recklessly spend our money! Please reconsider your actions and hopefully you can do better in the future. Enough is Enough.

Sincerely,
Marjorie Banko

08/21/18

Item #3

Lynn Garcia

Subject: FW: PRINT FOR PMM! Letter regarding censure of Patty Mahan and Pat Kolstad

From: Mark and Kathy Kelsey [<mailto:ltmk@me.com>]
Sent: Sunday, August 19, 2018 6:45 PM
To: Mayor and Council
Subject: Letter regarding censure of Patty Mahan and Pat Kolstad

Dear Mayor, and City Council Members,

We know on August 21st, there will be a discussion of what happened when you tried to fill Domenic Caserta's vacancy. We will be glad to be there to speak out, but not sure where this will fall in the agenda, and we are unable to stay past 10pm.

Thus, we decided to write a letter.

We think that there are a lot of things that happen in the City, that we don't fully understand, because we don't have the entire picture. Especially when the 49ers are involved.

We knew when watching the City Council meeting that night, that there was a strong possibility that no one would be approved. We could tell this from watching it on TV from home! That this was unexpected to you, was a surprise to us. The signals were pretty clear.

It really tells us that we have a dysfunctional city council. And having this hearing to admonish Mahan and Kolstad furthers wrecks havoc on the city council's ability to govern. We are afraid that the city council with these current members will never be able to work together as a cohesive group. Further, we were shocked that City Attorney Brian Doyle said: "I am ashamed to be working for you two." For him to say this in public will not help heal the situation. And was unprofessional.

We do believe that Councilmembers were in the right to not vote for a replacement for Mr. Caserta's seat. The argument that if a minority had been appointed to a seat, that we would not have to divide into districts, doesn't hold water. We have had opportunity to do this before. Previously when we replaced Mayor Gillmor's seat on the Council, the person that got the most letter recommendations was Kevin Park, a Korean (yes, we wrote one of those letters). At the time of the vote to replace Caserta, Measure A had not been voted on, and we did not know the ruling of the Judge. The November election is around the corner, we think that it made 100% sense to let this seat go up for a vote. Council members have the right to speak and vote independently.

To have this hearing on censure is not going to help matters at all. We do think that the City Council members that wanted to get an interim member appointed until November should not have been surprised that there was not consensus on this. If we could tell that is what was going to happen from watching it on TV, certainly those who were present could see it and a better solution could have been taken before 2am. It is obvious that the council is not able to work together.

By having this censure meeting, you are dragging things out, and not helping to heal the working relationships of the council, so that you can move forward.

Sincerely,

8-21-18

#3

Simrat Dhadli

From: Jennifer Yamaguma
Sent: Tuesday, August 21, 2018 11:21 AM
Subject: FW: City Council Meeting Agenda - Tuesday, August 21, 2018

Good morning, Mayor and Council,

A request has been made to continue item #3 on this evening's Council agenda (see below). This request will also be printed and placed at the dais as post meeting material.

Thank you,

J. Yamaguma

JENNIFER YAMAGUMA | Acting City Clerk
1500 Warburton Avenue | Santa Clara, CA 95050
D: 408.615.2212 | www.santaclaraca.gov



**City of
Santa Clara**
The Center of What's Possible

From: Deanna Santana
Sent: Tuesday, August 21, 2018 9:25 AM
To: jmcm manis@mcmanislaw.com
Cc: Jennifer Yamaguma
Subject: FW: City Council Meeting Agenda - Tuesday, August 21, 2018

Good Morning,

I returned your call this morning, given that I was fully booked through the evening. I do not have authority to continue the item, but I can submit your request for the City Council's consideration this evening which is the standard process used by Santa Clara. I am copying the City Clerk, Jennifer Yamaguma, so that she had advanced knowledge of a potential change to tonight's City Council Agenda.

Kindly advise if that is the process that you would like to use or if you will appear in person to state your request.

Thank you.

DEANNA J. SANTANA | City Manager
1500 Warburton Avenue | Santa Clara, CA 95050
D: 408.615.2210 | www.santaclaraca.gov



**City of
Santa Clara**
The Center of What's Possible

From: McManis, James [<mailto:jmcmanis@mcmanislaw.com>]
Sent: Monday, August 20, 2018 8:23 PM
To: Manager
Cc: Guyton Jinkerson
Subject: City Council Meeting Agenda - Tuesday, August 21, 2018

Dear Deanna,

Council Member Mahan has asked me to advise her regarding Public Hearing agenda item 3, "Action on Admonition of Council Members Kolstad and Mahan." I understand Council Member Kolstad has engaged attorney Guyton Jinkerson in that regard as well. I tried to reach you by telephone today, but I was told you were "unavailable" and invited to leave a voice mail, which I did. For whatever reason, I have not heard back from you, thus this email.

As I am sure you know, Section 908 of the City Charter **requires** the City Attorney *inter alia* to advise all City officers in all matters of law pertaining to their offices. Due to the unfortunate outburst of the City Attorney on June 12, 2018 ("... I am ashamed, ashamed to be working for the two of you"), he is unable ethically to fulfill his duty of advising Council Members Mahan and Kolstad in the matter of their "alleged" admonishment, thus requiring each of them to engage independent counsel.

In order to advise Council Member Mahan competently, I am requesting a 30-day continuance of Tuesday evening's public hearing. Frankly, Deanne, from what little I know at this time, this so-called admonishment proceeding has all the earmarks of an imminent train wreck for the City of Santa Clara, including possibly another lawsuit. I would sincerely like to avoid that outcome.

Since litigation in this matter may well be anticipated, I suggest you put my request for a continuance to the Council in closed session. I think we all have a shared interest in avoiding problems, rather than making new ones.

Very truly yours,

J.

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