



Date: July 7, 2022

To: Honorable Mayor and Council Members

From: James Sanchez, Interim City Attorney

Subject: Planning Commission Appointment of Mr. Ron Patrick

This memorandum provides you background on your July 5, 2022 action to place the 030 request on this agenda for possible action.

Background

Mr. Ron Patrick, was appointed by the Council to serve on the Planning Commission at the June 6, 2022 Council meeting. At the request of Councilmember Becker, City staff investigated whether Mr. Patrick was an actual Santa Clara resident, as Mr. Becker remembered that Mr. Patrick was recently living in Mountain View. The City Clerk's Office verified with the registrar of voters that Mr. Patrick changed his voter registration to a Santa Clara address, 5191 Lafayette Street, on May 3, 2022.

The property Mr. Patrick listed as his residence, 5191 Lafayette, is an industrial building constructed in 1979, and it is also the location of Mr. Patrick's business. Although this property was previously zoned Light Industrial, in 2018 the City Council rezoned 5191 Lafayette to Transit Neighborhood (TN) as part of the Tasman East Specific Plan. Multifamily residential uses are a permitted use in the TN zoning. SCCC § 18.25.030(a). That being said, no modifications have been made to the industrial building to convert it to a residential use (such as a kitchen, or a bedroom with a window). In addition, the use of the building for one "dwelling unit" would also not comply with the minimum density for residential units on the site, which is 60 dwelling units per acre. SCCC § 18.25.060(b). The property is 0.51 acres in area, and so a residential development on the site would need a minimum of 31 units in order to comply with the zoning. As such, the use of the property for a single dwelling violates the zoning ordinance.

The Finance Department verified that the property is using City utilities (electric, water), so it is likely occupied in some fashion. However, the establishment of a residential use on the property is also a violation of the California Building Code, as Mr. Patrick has not secured a residential certificate of occupancy. After consulting with the Building

Division and Fire Department, it was determined that a B-2 (business) certificate of occupancy was issued in 1979. An application to change the occupancy to S-3 (storage) was received in 2008, but the application was never completed. There has never been an application to change the occupancy to a residential use. As such, Mr. Patrick could be cited for occupying the property illegally.

Nevertheless, Mr. Patrick's illegal residential occupancy of the Lafayette Street property does not, by itself, disqualify him from being a Planning Commissioner (if he is in fact living there). In order to serve as a Planning Commissioner, the City Charter only requires that an individual be a "qualified elector" of the City, Charter § 1006, and an "elector" is a U.S. Citizen who is a resident of an election precinct on or before the day of an election, Elec. Code § 321(a). A "residence," in turn, is a person's domicile, which in turn is the place where his or her habitation is fixed, where the person has the intention of remaining, and whenever absent, has the intention of returning. Elec. Code § 349.

A court of appeal interpreted these statutes in a 1985 case, holding that unhoused persons who were camping in a city park could register to vote using the park as their home address, even though a city ordinance prohibited camping in the park. *Collier v. Menzel*, 176 Cal. App. 3d 24, 32 (1985) Consequently, the fact that Mr. Patrick's use of the industrial building at 5191 Lafayette for his residence does not bar him from being registered to vote there, and as a registered voter, he is a qualified elector who can serve as a Planning Commissioner.

Director of Community Development Andrew Crabtree raised some of the zoning and building code issues with Mr. Patrick on June 13. In response, Mr. Patrick indicated he would provide Mr. Crabtree with an alternate address. On June 14, Mr. Patrick sent Mr. Crabtree an email with the subject line "Ron Patrick stays here," and the content of the message was "4666 Armour Dr. Santa Clara, CA 95054." Mr. Patrick did not provide any further details about how often he stays at 4666 Armour Dr. or how long he has been staying there. The Armour Drive address contains a single-family home, is zoned R1-6L (Single Family Residential), and has a General Plan designation of Very Low Density Residential. Again, for any property to qualify as his residence, his habitation must be fixed at that location, and Mr. Patrick must have the intention of remaining, and whenever absent, the intention of returning. At the July 5 Council meeting Mr. Patrick publicly represented to the Council his intent to maintain a city of Santa Clara residency.

Assuming all of the above factors, Mr. Patrick is able to serve as a Planning Commissioner, whether he is living (illegally) at 5191 Lafayette or (legally) at 4666 Armour. Accordingly, the Council may choose to take no action, and allow Mr. Patrick to serve out his term on the Commission. Nevertheless, given the irregularities

described above, the Council's appointment power also includes the ability to remove Mr. Patrick from the position.

We include a copy of the City Policy and Procedure Manual 032 regarding Complaints of City Boards and Commissions for your consideration.

Options

- 1. Determine the staff investigation sufficiently provided evidence of irregularities regarding Mr. Patrick's residency and take action in accordance with Policy 032, copy attached (up to and including removal).**
- 2. Determine that Mr. Patrick remain as a Planning Commissioner and take no further action.**
- 3. Direct staff to conduct further investigation.**
- 4. If Mr. Patrick is removed, there should be an action to appoint a new Commissioner.**

Thank you,

James Sanchez
Interim City Attorney



REVIEW OF CONCERNS/COMPLAINTS REGARDING CITY BOARD/COMMISSIONS

POLICY

The City of Santa Clara believes that “decision-makers must be independent, impartial, and accountable to the people they serve.”¹ The City’s Code of Ethics and Values lists the ethics and values-based standards the City has agreed will guide the decisions and conduct of everyone who participates in the City’s government. Because we seek public confidence in the City’s services and public trust of its decision-makers, we hold ourselves accountable to “meet the most demanding ethical standards and demonstrate the highest levels of achievement in following this code.”

Although the City Charter allows the Council to remove a Commissioner with no cause, the Council has created the following process, which provides guidelines the Council may choose to use to resolve a problem/complaint. The policy is based on a recommendation from the Ethics Ordinance Committee. It is consistent with the Code of Ethics and Values, in terms of fairness and respect towards the individual. It preserves the Council-granted Charter authority of removal, but also provides optional courses of action.

PROCEDURE

The Charter of the City of Santa Clara provides for the removal of a City Commissioner by a vote of four City Council members. No cause has to be given. The action to remove a Commissioner would be an agendaized City Council action item.

When a concern/complaint is received regarding a City Board Member/Commissioner, it is referred to the City Manager for review and follow-up. If possible, it is preferable to resolve a concern through open communication channels at the staff level. Complainants are encouraged to solve the problem informally prior to registering a formal complaint.

The City Manager has several options for handling a concern/complaint:

1. The first step is to verify the information. If not verified, the complainant is informed and no further action taken. If initially verified, the City Manager conducts an investigation/review of situation in consultation with the City Attorney, where appropriate. The individual who is the subject of the complaint will be notified unless criminal or legal nature precludes notification. Issues that relate to the jurisdiction of the Fair

¹ From the Preamble of *The Code of Ethics and Values*, City of Santa Clara, 2001



REVIEW OF CONCERNS/COMPLAINTS REGARDING CITY BOARD/COMMISSIONS (cont.)

Political Practices Commission (FPPC) are not covered by this policy. City Attorney has existing procedures to handle FPPC and Election Code issues.

2. The following options are available for resolving complaints:
 - ◆ The City Manager can choose to handle concern/complaint directly, or consult with the Mayor.
 - ◆ The City Manager can choose to conduct further research; provide information and discussion of alternatives with Mayor.
 - ◆ Consult with Santa Clara University Markkula Center for Applied Ethics, or outside ethics experts.
 - ◆ Refer the issue/complaint to the Mayor and/or City Council.
 - ◆ Refer the concern/complaint to the Chairperson of the specific Board/Commission with the Chair reporting back to the City Manager.
 - ◆ Refer the issue/complaint to the City Council Commission Review Committee.
 - ◆ If legal issues are involved, the concern/complaint is referred to City Attorney.
3. Depending on nature of concern/complaint, and factual information, range of actions/options are available including any one (or combination of) these actions:
 - ◆ No action based on unsubstantiated/Unfounded complaint;
 - ◆ Discussion between Mayor and Commissioner; City Manager and Commissioner or discussion between Commission Chair and Commissioner;
 - ◆ Verbal counseling by Mayor with Commissioner;
 - ◆ Letter to Commissioner from Mayor;
 - ◆ Refer issue to Commission Review Committee; Committee meets and reviews facts; may make advisory recommendation to Council, or refer to City Manager and City Attorney for follow-up; and



REVIEW OF CONCERNS/COMPLAINTS REGARDING CITY BOARD/COMMISSIONS (cont.)

- ◆ Refer to Mayor and/or City Council.
 - ◆ City Council may take action ranging from note and file to removal from Commission. (See attached memorandum to the Commission Review Committee from the City Attorney dated December 15, 1999.)
4. Follow-up response to complainant indicating City has taken appropriate action.

Reference:

- 1) ***Council-approved policy July 16, 2002***
- 2) ***Memo dated December 15, 1999 from City Attorney, "Levels of Expressions of Disapproval of a Public Official's Actions" (Attached)***

MEMORANDUM
City of Santa Clara, City Attorney's Office

DATE: DECEMBER 15, 1999

TO: COMMISSION REVIEW COMMITTEE MEMBERS

FROM: MICHAEL R. DOWNEY, CITY ATTORNEY

RE: LEVELS OF EXPRESSION OF DISAPPROVAL OF A PUBLIC OFFICIAL'S ACTIONS

1. **REMOVAL FROM OFFICE.**

The City Charter provides for the removal of a commissioner by a vote of four council members. No cause has to be given. It would be an agendized City Council action item.

§ 1002 Appointments; terms.

Except as otherwise provided in this article, the members of each of such boards or commissions shall be appointed, and **shall be subject to removal, by motion of the City Council adopted by at least four affirmative votes.** Except as otherwise provided in this article, the members of such boards and commissions shall serve for a term of four years and until their respective successors are appointed and qualified; provided, however, the members first appointed to those boards and commissions shall so classify themselves by lot that each succeeding July 1st the term of at least one of their number shall expire.

2. **CENSURE NOT A PREFERRED COURSE OF ACTION.**

Censure is "The formal resolution of a legislative, administrative, or other body reprimanding a person, normally one of its own member, for specified conduct." [Black's Law Dictionary (6th ed.).]

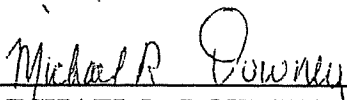
Censure carries with it legal ramifications of discipline that should be avoided. The issue of censure of a council member by fellow members of a city council appears to have been litigated only once in California. In Braun v. City of Taft (1984) 154 Cal.App.3d 332, 201 Cal.Rptr. 654 [council member attempted to get the court to set aside the council's resolution censuring him for unauthorized disclosure of personnel records], the court assumed that there is an inherent right to censure, but the court did not discuss the legal ramifications of censure.

Censure is considered by the Courts to be disciplinary in nature. The person being censured is entitled to procedural due process - the right to receive notice of the alleged violation and an

opportunity for a hearing to challenge the proposed action. In order for a violation to exist, there must be some standard in existence that defines what conduct will subject a violator to discipline.

3. ALTERNATIVE ACTIONS.

A majority of a city council quorum present may take action. If the recommended action is to criticize in some form, that criticism should not be designated "censure." An individual council member is entitled, under the First Amendment, to express his/her views on statements made by a fellow council member or on a perceived impropriety of a fellow council member. A majority of the council may do so in a concerted manner, such as, in a motion. If there is an expression of disapproval, it should use terms such as "admonish," "disapprove," "reprove," "criticize," or "condemn," and it should be made clear that the action is not discipline.


MICHAEL R. DOWNEY
City Attorney

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