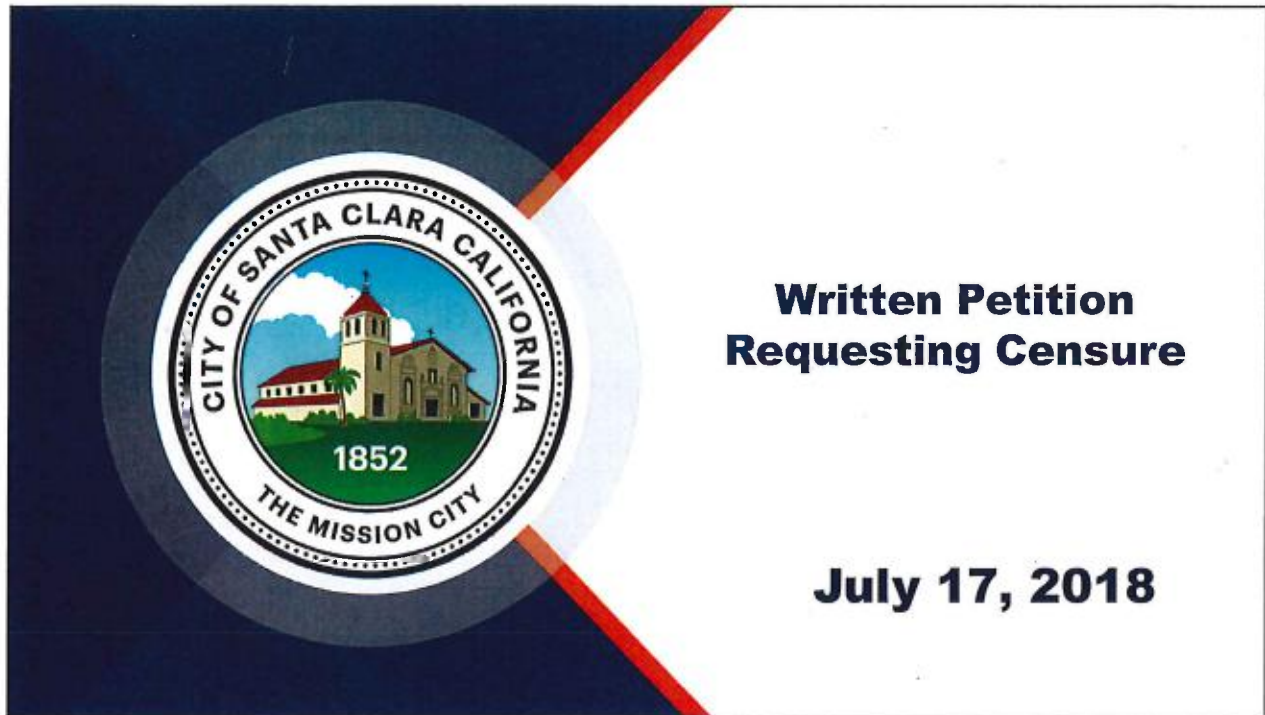



7/17/18

item 3





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

Admonition & Censure Policy

- On May 15, 2018, the City Council voted unanimously adopted an Admonition & Censure Policy (6-0).

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POST MEETING MATERIAL



Conflict of Interest

1. Given the direct reporting relationship, City Council Appointees, or their staff, should not be placed in a compromised position of being involved in any action that may lead to the discipline, investigation, or any other potentially punitive action (e.g., censure, admonition, etc.) against a Council Member.
2. The City Manager and City Attorney will remove themselves from any involvement in these procedures to ensure professional neutrality and to be free from any actions that may give rise to a conflict or compromised position.

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Admonition Process

1. **Informal Admonition:**
 - a. An individual Council Member can make an admonition at any Council meeting during the Public Presentations or Reports of Members and Special Committees portion of the meeting (Council Policy 047)
 - b. Any member(s) of the City Council or the public **may** submit, in writing to the City Clerk, a request for an admonition concerning an alleged violation of law or City policies by another member.

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Admonition Process (continued)

- 2. Noticing:** The City Clerk's publication, legal noticing and distribution of the City Council Agenda, and related staff reports/documents if available, shall serve as sufficient notice to the City Councilmember subjected to the allegations. "Nothing in the Policy shall preclude individual Councilmembers from making public statements regarding such alleged conduct."

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Admonition Process (continued)

3. Scheduling:

- (a) No scheduling is required.
- (b) If a member of the public or Council submits a request, the City Clerk shall place a Written Petition on an agenda at a regular City Council meeting as soon as available, per Council Policy 030.

4. Procedures:

- **Not Approved:** If the item is not approved for scheduling, the matter is closed and not appealable.
- **Approved:** The City Council may choose to issue an admonition prior to any findings of fact regarding allegations either verbally or by resolution, and because the admonition serves as a warning or reminder, the City Council is not required to conduct an investigation or separate hearing to determine whether the allegation is true.

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Censure Process

1. **Scheduling:** In this case, the City Clerk placed a Written Petition on an agenda at a regular City Council meeting as soon as available, per Council Policy 030.
2. **Procedures** -- City Council must establish procedures for ensuring due process. Council should establish its structure for completing this work for public disclosure and approval. Council should commission an independent consultant(s) to support Council with assembling materials needed to conduct a Censure Hearing. Separate work and findings is needed for each Councilmember. **This step may require multiple meetings and should be completed before any Censure Hearing.**

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Censure Process (continued)

3. **Noticing :** A copy of the complaint and request for censure shall be provided to the named Councilmember, as soon as possible following receipt, but in no event less than 72 hours prior to the item being considered by the Council.
4. **Censure Hearing** -- With procedures publicly approved, the Censure Hearing should be scheduled and required Noticing should be issued – **This step may require multiple meetings.**



Considerations

Council should decide on outside legal counsel and provide questions for analysis:

1. Can the Councilmembers subjected to the allegations participate in the vote on the process to establish procedures?
2. What conflicts of interest may exist?
3. Can the Councilmember subjected to the allegations participate in a vote of his/her Admonition or Censure?
4. Any additional legal analyses that surfaces during the process.





ADMONITION AND CENSURE POLICY

PURPOSE

This policy applies only to the Mayor and City Council members for improper conduct that may result in admonition or censure.

POLICY

It is the policy of the City Council that all of its members shall abide by federal and state law, City ordinances, and City policies, including the Code of Ethics and Values. Violations of such law or policy tends to injure the good name of the City and to undermine the effectiveness of the City Council as a whole.

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.

Nothing in this policy shall preclude individual Council Members from making public statements regarding such alleged conduct.

At any point during any of the processes described in this policy, the Council may refer the matter, as appropriate, to the Santa Clara County District Attorney for investigation. Following such a referral, the Council may proceed with any actions it chooses to undertake under the provisions of this policy. While the Council has broad discretion in deciding actions it may choose to take in response to violations of law or policy, this policy provides definitions and procedures related to two types of action: admonition and censure.

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.

Censure

Censure is an official reprimand or condemnation made by City Council in response to specified conduct by one of its own member. Censure is disciplinary in nature, and requires the formal adoption of a resolution setting forth the council member's alleged violations of law and/or

COUNCIL CONDUCT POLICY (cont.)

policies. Censure may require an investigation, and must protect the due process rights of the council member. Censure carries no fine or suspension of the rights of the council member as an elected official but a censure is a punitive action that serves as a punishment for wrongdoing.

PROCEDURE

Informal Admonition

An individual Council Member can make an admonition at any Council meeting during the Public Presentations or Reports of Members and Special Committees portion of the meeting.

Censure

The Council may request a formal censure action be placed on a Council agenda. The City Clerk shall provide notice of the possible censure to the Councilmember who is the subject of the action. The notice shall contain the specific charges on which the proposed censure is based and the date and time that the matter will be heard. Upon hearing the testimony, the Council may take action by resolution setting forth its findings and stating the terms of the censure.