



DISCUSSION

City of San Bernardino Request for Council Action

Date: April 17, 2024

To: Honorable Mayor and City Council Members

From: Charles A. Montoya, City Manager;

Department: City Manager's Office

Subject: **Discuss and Provide Direction on Whether to Pursue Censure of Council Member Kimberly Calvin**

Recommendation:

It is recommended that the Mayor and City Council, of the City of San Bernardino, California, discuss 1) whether to and the process for adopting a Resolution of Censure concerning Council Member Kimberly Calvin's alleged misconduct involving violations of policy, law and fiduciary duty; 2) whether to engage outside legal counsel and provide direction to staff and whether to appoint an ad hoc committee to schedule a hearing and consideration of final Resolution of Censure.

Executive Summary

A censure is an official reprimand or condemnation, typically adopted by resolution, representing a city council or public body's disapproval of specific behavior by an individual council member. While it doesn't impose penalties like fines or suspension, it serves to distance the agency from unacceptable behavior. If pursued, the council must adopt a resolution containing findings supporting the censure, a process that would be conducted by the council itself, potentially with guidance from legal counsel or an ad hoc committee.

Background

At the City Council Special Meeting on April 11, 2024, the Mayor and City Council directed the City Manager to place an item on the City Council agenda to discuss whether to pursue and the process for Censure of Council Member Kimberly Calvin.

Discussion

A censure is generally understood to be "an official reprimand or condemnation; an authoritative expression of disapproval or blame." (*Black's Law Dictionary* (10th ed. 2014).) The City Council has authority to censure an individual Council Member.

(*Braun v. City of Taft* (1984) 154 Cal.App.3d 332, 347-348.) A censure is generally adopted by resolution and represents the opinion of a city council or other public body, but does not levy a fine, suspension, or other penalty. While there is no statute directly addressing censure, many local legislative bodies have adopted resolutions condemning inappropriate behavior and violations of policies and laws. A censure is one way of distancing the public agency from bad behaviors that interfere with the agency's ability to conduct the public's business.

While censure does not remove an elected official from office, it may serve an important purpose by stating to the public that certain behavior is unacceptable to the other council members. It is a form of self-policing for elected officials.

An elected official who is subject to possible censure is entitled to due process with notice and an opportunity to be heard. This process must take place in open session as the California Attorney General has issued a written opinion concluding that complaints against elected officials may not be discussed in closed session. (61 Ops. Cal. Atty. Gen. 10 (1978).)

Therefore, if the City Council wishes to censure Council Member Calvin, the following process is recommended:

1. A censure discussion should be placed on the agenda for a City Council meeting. (This is being done with this agenda report).
2. The agenda item should outline reasons for the consideration of the censure and provide for notice to Council Member Calvin as to when the City Council intends to hear the matter.
3. The City Council should direct that Council Member Calvin receive individualized notice by mail.
4. The censure should be scheduled for deliberation in open session, and not in closed session. (61 Ops.Cal.Atty.Gen. 10 (1978).)
5. Council Member Calvin should be afforded an opportunity to be heard. However, formal rules of evidence do not apply, including the right to cross examination. (*Binkley v. City of Long Beach* (1993) 16 Cal.App.4th 1795, 1809.)
6. Like resolutions generally, the censure resolution must be adopted by a majority vote of the City Council.

Reasons for the consideration of a censure may include:

1. Illegal disclosure of closed session information in violation of the Brown Act.
2. Improper use of city email and city communications.

3. Improper interactions with City employees.

4. Breach of fiduciary duty.

If the City Council decides to proceed, it should be noted that the Council will need to adopt a resolution containing findings as to why the City Council believes a censure is appropriate. This process of identifying facts to support findings should be conducted by the City Council and not staff who have a responsibility to serve all elected officials equally. The Council Members may want to appoint an ad hoc committee and/or direct staff to engage special legal counsel to guide the Council and proceed with the Censure process should the Council decide to move in that direction.

2021-2025 Strategic Targets and Goals

Consideration of a censure of Council Member Calvin aligns with Key Target No.1e: Minimize risk and litigation exposure.

Fiscal Impact

There is no fiscal impact to the City for the review and consideration of a Censure Resolution.

Conclusion

It is recommended that the Mayor and City Council, of the City of San Bernardino, California, discuss 1) whether to and the process for adopting a Resolution of Censure concerning Council Member Kimberly Calvin's alleged misconduct involving violations of policy, law and fiduciary duty; 2) whether to engage outside legal counsel and provide direction to staff and whether to appoint an ad hoc committee to schedule a hearing and consideration of final Resolution of Censure.

Attachments

Ward:

All Wards

Synopsis of Previous Council Actions:

April 11, 2024

Mayor and City Council directed the City Manager to provide an overview of the process and sample resolution for Censure of Council Member Kimberly Calvin.