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Memorandum

To: Mayor and City Councilmembers
Cc: Kathleen Salguero Trepa, City Manager
From: City Attorney's Office
Date: May 1, 2023
Re: Council Action re Councilmember Arrest and Charges

Introduction

This memorandum considers possible options for Council action in light of the recent charges filed by the Yolo County District Attorney's Office against Councilmember Casavecchia.

As an initial matter, the law does not allow the City Council to remove someone from office who the people elected. This is especially true when a person has not been convicted. As a member of the City Council, Councilmember Casavecchia has the right to attend meetings and hold himself out as a Councilmember.

That being said, the following is a summary of actions the City Council can take in response to inappropriate behaviors or violations by a Councilmember of City or State laws. This memorandum also discusses the effect of a felony conviction on an elected office.

1. The Council May Censure a Member after Hearing and an Opportunity to be Heard

The City Council may adopt a resolution of censure, which is defined as the "formal resolution of a legislative, administrative or other body reprimanding a person, normally one of its own members, for specified conduct."¹ A resolution of censure is essentially a public statement repudiating certain behavior. While there is no statute directly addressing censure, many local legislative bodies have adopted resolutions condemning inappropriate behavior and violations and distancing the agency from that behavior.

Censure does not remove the Councilmember from office. However, it serves the purpose of stating to the public that certain behavior is unacceptable to the other Councilmembers. It is a

¹ Black's Law Dictionary.
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form of self-policing for elected officials. Since a resolution of censure is a statement which the majority of the City Council may adopt, the strength of the resolution depends on the credibility of the allegations and the motivation of the members proposing or advocating its adoption.

The City's Municipal Code does not provide an express process for censures, but if pursued, the official who is censured is entitled to due process, with notice and an opportunity to respond.² Before considering a resolution of censure, the Council should gather the facts (either through a formal or informal investigation), notify the member of the allegations against him or her, and grant the member an opportunity to answer the charges in open session. (*See* 61 Ops.Cal.Atty.Gen. 10 (1978).)

2. The Council May Adopt a Resolution Requesting Voluntary Resignation

Alternatively, the majority of the City Council, at an open and public meeting of the Council, could adopt a resolution requesting that a member resign. Such a request would not be binding on the Mayor, Councilmember or City. By itself, such an action does not require special notice to the offending member; however, notice may be required if the Council bases its request on alleged misconduct or inappropriate behavior of the respondent member.

3. Quo Warranto Application

The City Council can challenge the Councilmember's legal right to hold the office to which he was elected. The most common way to do this is to file an application for quo warranto. This action is to challenge the right of an individual to hold a public office. "Public office" refers to an office where the holder "exercises some of the sovereign powers of government." (*Stout v. Democratic County Central Com.* (1952) 40 Cal.2d 91.) Title to an office can only be challenged in a quo warranto action. (*Nielsen v. Gregory* (1923) 60 Cal.App. 574.) The appropriate remedy sought under a quo warranto action is the end of the authority unlawfully asserted.

Although the California Attorney General may bring quo warranto actions in its own right, such an action is usually filed and prosecuted by a third party who has sought the consent of the Attorney General. No person may bring a quo warranto action without the Attorney General's permission. (Code Civ. Proc., § 803.) The Attorney General will typically grant a request to sue in quo warranto if there is a substantial question of law or fact appropriate for judicial resolution and if the overall public interest would be served by such an action. (91 Ops.Cal.Atty.Gen. 25 (2008).) However, even though a quo warranto action is typically prosecuted by a third party, such a suit is always considered a public action and the Attorney General always retains overall control. (*People v. Petroleum Rectifying Co.* (1937) 21 Cal.App.2d 289.)

² *Little v. City of North Miami* (11th Cir. 1986) 805 F.2d 962, 969.



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In this particular case, the question is whether the Attorney General would authorize the City to file a lawsuit to remove Councilmember Casavecchia from office. The City would have to demonstrate that the Councilmember has forfeited his legal right to hold the office. State law provides that an elected official vacates his or her office if the official is convicted of a felony. (*See* Gov. Code, §§ 1770(h), 1770.2.) In the current situation, Councilmember Casavecchia has been arrested and charged, but he has not plead guilty and he has not been convicted.

4. Effect of Felony Conviction

As noted above, state law provides that a public official may not remain in office upon conviction of a felony and that the official is suspended immediately upon conviction. (Gov. Code, § 1770.2.) Moreover, the official’s conviction of a felony creates a vacancy in his or her office pursuant to Government Code section 1770(h), which states that “[a]n office becomes vacant on the happening of ... his or her conviction of a felony or of any offense involving a violation of his or her official duties.”

Section 1770(h) further provides that the official is deemed “convicted” when a trial court judgment is entered, meaning a judgment by the trial court either sentencing the official or otherwise upholding and implementing the plea, verdict, or finding. California courts and the California Attorney General have interpreted the term “conviction” in section 1770(h) to mean the judgment following a plea or verdict. (*Helena Rubenstein Internat. v. Younger* (1977) 71 Cal.App.3d 406, 411; 57 Ops.Cal.Atty.Gen. 374 (1974).) Therefore, a public office is not deemed vacant until the court has acted upon the plea or verdict by entering a judgment and sentencing the public official.

Conclusion

The City Council does not have the legal authority to remove Councilmember Casavecchia from office. While the Council can consider taking the foregoing actions as described above, it is important to remember that under the law, everyone is considered innocent until proven guilty and entitled to due process. In taking any action, it is important to balance these considerations while also allowing the legal process to proceed as it would for any other citizen.

If you have any questions regarding this matter, please contact our office.

[END OF MEMORANDUM]