



DATE: June 12, 2018

CATEGORY: New Business

DEPT.: City Attorney's Office

TITLE: **Procedure for Admonishment, Sanction, and Removal of Advisory Body and Rental Housing Committee Members**

RECOMMENDATION

Adopt a Resolution Amending the Code of Conduct to Include a Procedure for Admonishment, Sanction, and Removal of Advisory Body and Rental Housing Committee Members, to be read in title only, further reading waived.

BACKGROUND

The City of Mountain View does not have a formal procedure regarding the discipline, including the removal, of members of its advisory bodies or the Rental Housing Committee ("RHC"), all of whom are appointed by the City Council. At its November 28, 2017 meeting, the Council Procedures Committee ("CPC") discussed the City Council's authority to remove members appointed to the RHC and the process for doing so. The CPC also discussed whether such a procedure should apply to advisory bodies. City Council Policy K-2 authorizes the City Council to remove members from advisory bodies but does not include a procedure. The CPC directed the City Attorney's Office to draft a procedure regarding the removal of members of advisory bodies and the RHC. On April 17, 2018, the CPC reviewed the draft procedure, made a few modifications, and voted unanimously to recommend the proposed amendments to the City Council Code of Conduct ("Code of Conduct").

ANALYSIS

The proposed procedure would be added to the Code of Conduct and include removal and alternatives of admonishment and sanction. Members of the advisory bodies and the RHC are subject to the Code of Conduct. The proposed procedure was developed, in part, by researching other jurisdictions' admonition, sanction, and censure provisions, though such examples were limited. Removal policies and procedures were even more difficult to locate.

The proposed procedure is modeled on the current enforcement provisions in the Code of Conduct that apply to the City Council. It provides a process for the City Council to either admonish, sanction, or ultimately remove members of City commissions, boards, and committees and the RHC for violations of law, City policies, or the Code of Conduct. Under the draft procedure, two Councilmembers must initiate any action.

If requested by two Councilmembers, a complaint would be forwarded to the Mayor, who would work with the City Manager and City Attorney to address the alleged violation or violations. Upon receipt of a complaint, the Mayor, City Manager, and City Attorney would meet to determine whether the complaint can be resolved informally or if the alleged violation(s) requires further investigation. If the complaint is minor in nature and does not require further investigation, the Mayor and either the City Manager or City Attorney may contact the individual members of the advisory body or the RHC and advise the member of the concern and seek to resolve the matter.

If the Mayor, City Manager, and City Attorney conclude that the alleged violation(s) may warrant further action, it is proposed that the Mayor shall convene a special ad hoc committee consisting of the Mayor (who shall serve as Chair), Vice Mayor, and most recent Mayor, who will meet with the City Manager and City Attorney and appropriate staff and/or witness(es) to determine how the matter may proceed. The ad hoc committee, after meeting and investigating the matter as appropriate, shall make a recommendation to the City Council regarding whether an admonishment, sanction, or removal is warranted or if no further action should be taken.

OVERVIEW OF PROCEDURE

The procedure provides a number of tools to address violations of City policy or law by a member of an advisory body or the RHC.

Admonishment

In general, an admonition is provided to an entire committee, board, or commission as a reminder that a particular type of behavior or action is a violation of law, policy, or the Code of Conduct. Because an admonition is a warning or reminder, it is not considered a punishment and would not necessarily require an investigation or hearing to determine whether the allegation is true. An admonition may be issued by the City Council prior to any findings of fact.

Sanction

A sanction is the next level of action in the procedure. The City Council could issue a sanction to a particular member of an advisory body or the RHC based on a particular set of facts. Like an admonition, a sanction is a warning or reminder that a particular action or actions violates the law, City policy, or the Code of Conduct, but such violation is not considered by the City Council to rise to the level requiring removal. Similarly, a sanction is not discipline and may be issued upon the City Council's review and consideration of a written allegation of a policy violation. A separate hearing and investigation are not necessarily required. However, the member of an advisory body or the RHC would have the opportunity to provide a written response to the allegation for the City Council's consideration prior to the imposition of a sanction.

Under the proposed procedure, an admonishment and sanction will only require one public meeting. During such meeting, the City Council will receive the recommendation of the ad hoc committee and decide, by a majority vote, whether or not to proceed with the recommended admonishment or sanction. An admonition or sanction would be implemented by a letter from the City Council.

Removal

As the appointing body, the City Council has the authority to remove members it appoints under the general principle that an appointive legislative body has removal powers. Removal is a severe form of punishment. Due process is required to remove a member of an advisory body or the RHC, meaning the City must provide notice to the member identifying the basis of the recommendation of removal by the ad hoc committee and a hearing prior to removal.

Hearing Process for Removal

The proposed procedure outlines a two-step process for removal. At the first public meeting, the City Council will receive the ad hoc committee's report and recommendation. A majority of the City Council will decide whether to accept the recommendation and proceed with a hearing. If the City Council accepts the recommendation of the ad hoc committee, the matter will be set for a public hearing at least fourteen (14) days from the meeting at which the City Council received the ad hoc committee's recommendation in order to give the subject member of the advisory body or the RHC adequate time to review the allegations and evidence against him or her and to prepare a defense.

The second public meeting would serve as the removal hearing. The member of the advisory body or the RHC will be provided the opportunity to present evidence. The hearing is informal and the rules of evidence and judicial procedures do not apply. At a removal hearing, the member of the advisory body or the RHC could question witnesses. After the hearing, the City Council may, by an affirmative vote of at least four (4) members, remove the member of the advisory body or the RHC if it finds substantial evidence supports the allegations of misconduct giving rise to the removal. If the City Council finds that the conduct does not warrant removal, the City Council may take another action such as an admonition or sanction. The decision to remove a member of the advisory body or the RHC is memorialized by findings adopted in a resolution of removal.

FISCAL IMPACT – None.

ALTERNATIVES

1. Do not establish a process for admonishing, sanctioning, or removing advisory bodies or Rental Housing Committee members.
2. Modify and adopt a process for admonishing, sanctioning, or removing advisory bodies or Rental Housing Committee members.
3. Provide other direction to staff.

PUBLIC NOTICING – Agenda posting.

Prepared by:

Jannie L. Quinn
City Attorney

Leslie Jensen
Senior Deputy City Attorney

JLQ-LJ/KB/2/CAM
015-06-12-18CR-E

- Attachments: 1. Resolution
2. Proposed Procedure – Code of Conduct