

RESOLUTION NO.

**RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF SAN CLEMENTE, CALIFORNIA, CENSURING
MAYOR PRO TEM LAURA FERGUSON FOR
UNACCEPTABLE CONDUCT**

WHEREAS, the City Council of the City of San Clemente has a duty to the residents of San Clemente and to the San Clemente employees to ensure that the laws of the State of California and the City of San Clemente, and the rules, regulations and policies of the City of San Clemente are followed by all members of the City Council, and that members of the City Council demonstrate the highest level of professionalism and respect while acting in the course and scope of their office; and

WHEREAS, complaints were made by another member of the City Council that Mayor Pro Tem Laura Ferguson (“Mayor Pro Tem Ferguson”) has demonstrated a pattern of disregard for the laws and policies that apply to and govern City business; and

WHEREAS, on November 23, 2020, pursuant to notice duly given to Mayor Pro Tem Ferguson, the San Clemente City Council conducted a hearing regarding a possible censure of Mayor Pro Tem Ferguson for such violation of laws and policies; and

WHEREAS, at such hearing, the City Council duly considered the evidence and comments presented by members of the Council, the comments and response by Mayor Pro Tem Ferguson, and comments by the public, and

WHEREAS, Mayor Pro Tem Ferguson’s violation of laws and policies, as more particularly set forth below, has brought disrepute to the City of San Clemente, caused embarrassment and humiliation to current and former City employees, jeopardized the City’s position with respect to threatened and pending claims and litigation, and created a risk of exposure to liability for unfair labor practices; and

WHEREAS, the City Council does not condone or approve this type of conduct and behavior and finds it necessary and prudent to declare its strong disapproval of such conduct; and

WHEREAS, the City Council further determines that adoption of this Resolution is necessary to affirm that such conduct will not be tolerated and prevent such conduct from being repeated.

NOW, THEREFORE, IT IS HEREBY RESOLVED by the City Council of the City of San Clemente, California, as follows:

Section 1. The City Council finds that the Recitals set forth above are true and correct.

Section 2. The City Council finds that Mayor Pro Tem Ferguson engaged in the following conduct in violation of State law, the San Clemente Municipal Code, and San Clemente City Council Policy No. 1201-11, dated May 19, 2020:¹

A. Mayor Pro Tem Ferguson interfered with the powers and duties of the City Manager as the administrative head the City and responsible for the efficient administration of all the affairs of the City, as set forth in San Clemente Municipal Code, Chapter 2.08, Section 2.08.080 by, among other things:

1. ~~Suggesting to the Attempting to influence the~~ City Manager's decision to terminate ~~at that the~~ public contract with Rod's Tree Service for tree trimming ~~continue in effect after the City Council decided not to renew or extend it.~~

Finding of fact:

~~1. Exhibit A1 correspondence to Erik Sund dated September 20, 2020. (Excluding "Subject", which was generated by third party and excluding attachments from third party.)~~

2. Ordering Criticizing the City Manager to remove for erecting a fence to address the COVID crisis in the City, the placement of which order was within the City Manager's Authority and consistent with Council's last directive, and attempting to influence him, through public pressure, to reverse that order Council directive.

Finding of fact:

Was ordering the fence required? Was Council's directive clear? Record would need Council directive; A2 expresses disappointment with decision, which is protected.

~~2.~~

B. Mayor Pro Tem Ferguson interfered with the exclusive duties and responsibilities of the City Manager as set forth in the San Clemente Municipal Code, Chapter 2.08, Section 2.08.090 relating to the appointment and supervision of public employees by, among other things:

1. Questioning and challenging the City Manager's decision to hire a recruiter to fill the open position of Deputy Public Works Manager

~~• B1 is protected.~~

2. Publicly criticizing the Assistant City Manager who reports directly to the City Manager and accusing him of falsely impersonating as a city council member.

Finding of fact:

~~2. Exhibit B2, to show May 28, 2019 publication of criticism and accusation of Assistant City Manager outside chain of command disciplinary proceedings (excluding criticism of City Manager Makshanoff and correspondence to him dated May 27, 2019).~~

3. Questioning and challenging the City Manager's decisions regarding recruitment for particular subordinate positions that the City Manager determined were necessary for the efficient operation of the City, including a management analyst in the City Manager's Department, a

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¹ Letter refer to Exhibits.

City Planner, an Assistant City Manager, and Department Directors.
[Would need additional information about undue pressure or diversion of effort from duties to Council.]

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C. Mayor Pro Tem Ferguson disclosed confidential information from closed sessions in violation of the City Council Policy No. 1201-11, dated May 19, 2020 and the Brown Act, Government Code Section 54953 by disclosing vote counts on matters discussed in closed session, such as the recruitment for a permanent City Manager.

[Council would need to affirm that deliberations/direction related to privacy interests of candidate(s)]

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D. Mayor Pro Tem Ferguson interfered with the City's duty to cooperate with the California Joint Powers Insurance Authority ("CJPIA") in connection with personnel claims made against the City and tendered to the CJPIA, thereby jeopardizing the City's coverage by, among other things:

1. Publishing (not releasing upon request) ~~Disclosing~~ information regarding a claim made by the former City Manager.

Finding of fact:

- Public announcement at City Council meeting.
- D1 (September 4, 2020 publication, excluding letter to editor and related correspondence).
- ~~Council's understanding of CJPIA's memorandum of coverage~~

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2. Making direct contact with opposing counsel in pending litigation for which the CJPIA was providing a defense on behalf of the City.

- D2 letter to Council and staff
- Council's understanding of CJPIA's memorandum of coverage

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E. Mayor Pro Tem Ferguson attempted to direct the conduct of the City Manager, without the authority of the City Council, and, thereafter, made complaints of employee insubordination by the City Manager to the City's Human Resources Manager outside the City Council evaluation process for his failure to follow Mayor Pro Tem Ferguson's direction. Mayor Pro Tem Ferguson knows, or should know, that the Human Resources Manager has no authority with respect to the performance of the City Manager, who reports directly to the City Council.

Finding of fact:

- E (excluding input to City Manager re timing and substance of agenda item; including unilateral directive to Human Resources)

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F. Mayor Pro Tem Ferguson engaged in public criticism of the City Manager regarding a lawful activity and the Assistant City Manager in an effort to embarrass and humiliate himthem, rather than utilize appropriate procedures to address perceived performance issues that are designed to protect the due process rights of public employees. If Mayor Pro Tem Ferguson had sa criticism of the City Manager, she should seek

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an opinion from counsel or staff as to the propriety of the activity and raise that in a closed session to discuss the City Manager's performance. If Mayor Pro Tem Ferguson has a criticism of any other City employee, she should address that directly and confidentially with the City Manager in order to protect that employee's privacy rights and avoid hostile workplace environment.

F. Finding of Fact:

- F5 Correspondence dated November 11, 2019

G. Mayor Pro Tem Ferguson attempted to engage in serial meetings with members of the City Council in violation of the Brown Act by i) requesting that her email communications be circulated to the entire council for consideration of the information contained therein, which information related to City business, and ii) by requesting that the City Manager "poll" other City Council members to ascertain their position on a matter of City business, and in particular, whether the Council Members agreed with Mayor Pro Tem Ferguson, thereby constituting a majority consensus.

Finding of Fact: G (excluding communication with constituent [depending on Council agenda policy in place at time and whether "cc" constituted "deliberation" on City business])

G.
H. Mayor Pro Tem Ferguson publicly questioned the endorsement of a political candidate by represented City employees, thereby risking the City's compliance with its labor relations obligations under the Meyers-Milias-Brown Act ("MMBA"). Such action required the City Attorney to send correspondence to the Orange County Employees Association ("OCEA") to the OCEA and the San Clemente City Employees Association that the City of San Clemente respects the rights of its employees to organize and endorse candidates, that Mayor Pro Tem Ferguson's act was not an official act of the City, and that the City is committed to compliance with the MMBA.

Finding of Fact:

- H (communication to Association members outside Meyers-Milias-Brown Act channels and meet and confer process, not communication with constituents)

H.
I. Mayor Pro Tem Ferguson disclosed information to the media regarding a public opinion poll that was protected from disclosure by the City Council's deliberative process privilege and attorney work product without authority of the majority of council. Mayor Pro Tem Ferguson was aware of the City Council's desire to maintain the confidentiality of this information, but nevertheless, made a unilateral decision to disclose it.

Finding of Fact:

- I (release of homeless poll data to San Clemente Times during pendency of homeless litigation and settlement discussions)

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~~I.~~
J. Mayor Pro Tem Ferguson ~~attempted to unilaterally directed that items be added to the e~~ City Council Agenda ~~over the City Manager's objection~~ in violation of City Council Policy No. 1201-11, dated May 19, 2020, ~~by demanding that requires that there be concurrence ("in conference") of City Manager for agenda items:~~

~~Finding of Fact:
Council Policy 1201-11~~

~~J. J (October 6, 2020 correspondence matters be placed on the agenda in contravention of the provisions of that policy.~~

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Section 2: The City Council finds that this conduct, in addition to being improper, unprofessional and unacceptable, Mayor Pro Tem Ferguson was acting solely as an individual, without any authorization or ratification by the City Council and contrary to the legitimate interests of the City.

Section 3: The City Council hereby censures Mayor Pro Tem Ferguson for the conduct described herein and expresses the strongest possible disapproval and disavowal thereof.

Section 4: The City Council regards Mayor Pro Tem Ferguson's behavior, except while sitting with and as a member of the City Council, to be outside the course and scope of her performance as a member of the City Council.

Section 5: The City Council declares that Mayor Pro Tem Ferguson is not authorized by this City Council to represent, take action, or speak for or on behalf of the City Council under any circumstances or with any person, agency, or entity, including but not limited to employees of the City with respect to any matter which she otherwise represents to be the official position of the City Council, where a majority of the City Council has not otherwise taken an official position on such matter or matters.

Section 6: The City Council respectfully but earnestly requests and expects Mayor Pro Tem Ferguson to cease and desist from any improper and unprofessional conduct toward employees of the City. If Mayor Pro Tem Ferguson has any concern regarding the performance of the City Manager, she is expected to address such concerns privately with the City Manager or in a closed session convened to address the City Manager's performance. If Mayor Pro Tem Ferguson has any concern regarding the performance of any other City employee, she is expected to address such concerns privately with the City Manager.

Section 7: The City Manager is hereby directed to immediately notify the City Council if Mayor Pro Tem Ferguson engages in future conduct that is proscribed by this resolution.

Section 8: It is the intent of the City Council, in the event of future improper and unprofessional conduct by Mayor Pro Tem Ferguson in violation of the terms of this Resolution, to pursue any and all legal remedies available by law to prohibit such conduct.

PASSED, APPROVED, AND ADOPTED this 23rd day of November, 2020.

MAYOR Pro Tem of the City of San
Clemente, California

STATE OF CALIFORNIA)
COUNTY OF ORANGE)
CITY OF SAN CLEMENTE)

I, JOANNE BAADE, City Clerk of the City of San Clemente, California, do hereby certify that Resolution No. _____ was adopted at a regular meeting of the City Council of the City of San Clemente held on the 23rd day of November, 2020, by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this _____ day of _____, _____.

CITY CLERK of the City of
San Clemente, California

Approved as to form:

City Attorney