

ALBANY CALIFORNIA



CITY OF ALBANY
1000 SAN PABLO AVENUE
ALBANY, CA 94706
www.AlbanyCA.org

November 16, 2020

MEMORANDUM

To: Albany City Council Members

From: Mayor Nick Pilch

Re: Recommended actions regarding a Council Member's disclosure of information from a closed session

RECOMMENDATION

That the Council:

1. Authorize the City Attorney to file a complaint with the Grand Jury; and
2. Pass a resolution of censure against Council Member Michael Barnes

BACKGROUND

It was revealed that Council Member Michael Barnes disclosed information from a City Council closed session to Kevin Shenkman, of the law firm Shenkman & Hughes. Mr. Shenkman has represented potential plaintiffs and plaintiffs in more actions under the California Voting Rights Act than any other attorney in the State.

This action violates the Brown Act.

DISCUSSION

The Council received a presentation from the Charter Review Committee raising the possibility Albany is in violation of the CVRA in early 2018. The Council received an analysis of historic election results by a member of the public indicating the City is in violation of the CVRA in February 2019. The Council placed proportional ranked choice voting on the ballot in mid June of 2020.

These actions have at least the appearance, if not the actual intent, of seeking to stymie the voters' opportunity to adopt proportional representation "in order to make Albany's elections more representative of the votes and preferences of its voters" as stated by the 2020 Measure BB ballot question. In addition the timing of his action suggests its purpose was not to resolve the potential CVRA violation because he would have acted in 2019 in that case. Rather it was to prevent the potential adoption of ranked choice at large.

Further, the action by Council Member Barnes violates the City Council Code of Ethics. The code of ethics states in part:

"...Build Teamwork...

...Give Political Assent; Do Not Misrepresent the Group. Accept the results of a Council vote and an election. Respect the decision of the group. ..."

Council Member Barnes took action on his own outside of any Council meetings, and without notification to the other Council Members.

Government Code section 54963 states that one of the remedies for the disclosure of information from a closed session is the filing of a complaint with the Grand Jury. The Mayor recommends that the City Council authorize the City Attorney to file the complaint.

It is furthermore recommended that the City Council pass a resolution of censure against Council Member Michael Barnes. The resolution is a formal statement of disapproval by the Council, but does not constitute any action beyond that.

SUSTAINABILITY CONSIDERATIONS

N/A

SOCIAL EQUITY AND INCLUSIVITY CONSIDERATIONS

Council Member Barnes' actions are contrary to social equity and inclusivity because they sought to place his judgement regarding how to resolve the potential CVRA violation above that of the Council and the voters.

CITY COUNCIL STRATEGIC PLAN INITIATIVES

The Strategic Plan Goal addressed by this item is Facilitate Government Accountability.

FINANCIAL CONSIDERATIONS

The financial consequences of the proposed action are minimal. They consist of the cost of the City Attorney's time to prepare the complaint. If the Grand Jury takes up the complaint there would likely be staff time required to collect and provide requested documents.

Attachments:

1. Resolution No. 2020-112

