

24. A Resolution of the City Council of the City of Victorville, California finding that certain actions taken and statements made by Councilmember Gomez on June 2, 2021, at Panera Bread Restaurant in Victorville were beyond the scope of her authority as a City Councilmember and were not representative of policies or positions of the Victorville City Council.

Recommendation:

Any action taken is at the discretion of the City Council.



Item Number: 1

City Council / Board of Directors

Written Communications

Meeting of: July 6, 2021

Submitted By:

Andre de Bortnowsky, City Attorney

Subject:

A Resolution of the City Council of the City of Victorville, California finding that certain actions taken and statements made by Councilmember Gomez on June 2, 2021, at Panera Bread Restaurant in Victorville were beyond the scope of her authority as a City Councilmember and were not representative of policies or positions of the Victorville City Council.

Recommendation:

Any action taken is at the discretion of the City Council.

Fiscal Impact:

There is no fiscal impact associated with this item.

Background:

During the Council meeting of June 15, 2021, the Council approved a request made by Councilmember Jones to place a matter on the meeting agenda for July 6, 2021. Authorization was given as follows:

1. that the City Council place on the July 6, 2021, agenda an action item wherein the Council consider adopting a Resolution drafted by the City Attorney to indicate that actions taken and statements made by Councilmember Gomez, related to an incident that occurred at Panera Bread on June 2, 2021, are repudiated as they were inconsistent with the City's adopted Policy and Procedures Manual as well as the approved City Council Norms.
2. that the City Council consider making a finding for inclusion in the Resolution to declare Councilmember Gomez's conduct, actions, and/or statements as having occurred unilaterally and outside the scope of her role and responsibilities as a City Council Member.

Discussion:

City Councilmembers do not forsake their First Amendment right to freedom of speech when taking the oath of office. It is not being suggested, therefore, that Councilmember Gomez be reprimanded for exercising her constitutional right. While Councilmembers are never obliged to surrender this freedom, they are, however, always duty-bound to comply with the City ordinances and policies. In connection with the events that occurred at Panera Bread Restaurant on June 2, 2021, whereby Councilmember Gomez frequently indicated that she was there as a Victorville City Councilmember, she violated the provisions of the City's adopted Policies and Procedures Manual, as well as the City's approved and adopted Norms. Furthermore, she was acting beyond the scope of her authority as a Councilmember.

- Attachments:**
- A. Provisions Violated in the City Council Policy and Procedures Manual
 - B. Resolution No. 21-068

ATTACHMENT A

PROVISIONS VIOLATED IN THE
CITY COUNCIL POLICY AND PROCEDURES MANUAL

City Council Policy, Chapter 2, Code of Ethics for Councilmembers, Section V(A)(1), Intent and Purpose.

[To ensure the effective functioning of democratic government, the City Council requires] Public officials, both elected and appointed, comply with both the letter and spirit of the laws and policies affecting the operations of government.

City Council Policy, Chapter 2, Code of Ethics for Councilmembers, Section V(A)(3), Intent and Purpose.

Public office be used for the public good, not for personal gain.

City Council Policy, Chapter 2, Code of Ethics for Councilmembers, Section V(B)(3), Councilmember Conduct.

The professional and personal conduct of Councilmembers must be above reproach and avoid the appearance of impropriety. While it is understood that Councilmembers enjoy First Amendment rights, they should practice civility and decorum in discussions and debate, and refrain from abusive conduct, personal charges, or verbal attacks upon the character or motives of other members of the Council, boards, commissions, staff, or the public that is intended to disrupt and not further the City's business.

City Council Policy, Chapter 2, Code of Ethics for Councilmembers, Section V(B)(8), Use of Title.

Councilmembers may use their title only when conducting official City business, for informational purposes, or as an indication of background and expertise. Individual Councilmembers must be careful not to: 1) exceed or appear to exceed his/her authority, 2) use his/her position to influence others unduly or, 3) use his/her title to improperly gain leverage or preferential treatment.

City Council Policy, Chapter 8, Speaking for "the City," Section V(B), Communication of Council Policy.

The Mayor and individual Councilmembers are not authorized to speak on behalf of the City or the City Council with regard to City or City Council policy or positions, except when such policy or position has been clearly established or when the Mayor or Councilmember has been designated by the City Council as a spokesperson on a given subject.

City Council Policy, Chapter 2, Code of Ethics for Councilmembers, Section V (C), Norms and Protocols.

Norm 1: We conduct ourselves in a professional manner.

Norm 3: We value civil, intelligent public discourse.

Norm 5: We treat all members of the public with respect.

Norm 6: We understand our role in contributing to a positive workplace environment.

Norm 9: We know that a good working relationship between Councilmembers and with staff fosters good goal setting, policy making and service delivery.

Norm 10: We understand that the Council acts as a body, all members are equal, and policy direction is only given by a majority vote of the Council

Norm 13: We act with high integrity in all matters and follow our code of ethics.

ATTACHMENT B

RESOLUTION NO. 21-068

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VICTORVILLE, CALIFORNIA FINDING THAT CERTAIN ACTIONS TAKEN AND STATEMENTS MADE BY COUNCILMEMBER GOMEZ ON JUNE 2, 2021 AT PANERA BREAD RESTAURANT IN VICTORVILLE WERE BEYOND THE SCOPE OF HER AUTHORITY AS A CITY COUNCIL MEMBER AND WERE NOT REPRESENTATIVE OF POLICIES OR POSITIONS OF THE VICTORVILLE CITY COUNCIL.

WHEREAS, the City Council of the City of Victorville (the “City Council”) is proud to serve the citizens of this great City of Victorville (“City”); and

WHEREAS, on June 2nd, 2021, Councilmember Gomez interceded into a call for service and subsequent investigation by Victorville Police Department deputies at the Panera Bread Restaurant on Amargosa Road; and

WHEREAS, during the Police investigation as to the actions of a certain individual allegedly vaping in the restaurant, Councilmember Gomez intervened and on several occasions stated that she was a City Councilmember for the City of Victorville, in what appeared to be an attempt to influence the proceedings; and

WHEREAS, Councilmember Gomez broadcasted these events via social media and continued to identify herself as a Victorville Councilmember while questioning the actions of the deputies and thereafter disparaging the Victorville Police Department, calling the Police Department members of the “mafia”. Councilmember Gomez then went on to disparage several City employees, as well as employees of Panera Bread; and

WHEREAS, the continued use of her title as a Victorville Councilmember was clearly intended to portray a level of authority in order to influence the proceedings; and

WHEREAS, the City Council asserts that Councilmember Gomez’s actions and statements made in connection with the aforementioned events are inconsistent with the City Council Policy and Procedures Manual and agreed upon Norms; and

WHEREAS, Councilmember Gomez’s actions and statements made on June 2nd, 2021 were made in her capacity as a representative of the City Council body and she failed to explicitly state that her actions and statements made did not represent the opinion of the entire City Council as is required by the City Council Policy and Procedures Manual; and

WHEREAS, the City Council does not endorse or support Councilmember Gomez’s actions and statements made as described in the above Recitals.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF VICTORVILLE, CALIFORNIA, DOES HEREBY RESOLVE, DECLARE, FIND, DETERMINE AND ORDER AS FOLLOWS:

Section 1. That the Recitals set forth above are true and correct and are hereby incorporated in their entirety as part of this Resolution by this reference.

Section 2. That all Councilmembers should abide by the provisions of State Law, the City's Municipal Code, and the City Council Policy and Procedure Manual.

Section 3. That the actions taken and statements made by Councilmember Gomez as described in the Recitals hereof are violative of the City Council Policy and Procedures Manual, are inconsistent with the City's adopted and agreed upon Norms, and were not authorized by the City of Victorville.

Section 4. That the actions taken and statements made are in violation of the following provisions of the City's adopted Council Policy and Procedures Manual:

- Chapter 2, Sections V.A 1 and 3;
- Chapter 2, Sections V.B 3 and 8;
- Chapter 8, Section III.B; and
- Chapter 2, Section V.C. - the City's adopted Norms.

Section 5. That the City Council hereby finds that Councilmember Gomez's actions and statements on June 2nd, 2021 are not representative of the policies and positions of the Victorville City Council and further finds that she was acting beyond the scope of her authority;

Section 6. That the City Clerk shall certify to the passage and adoption of this Resolution.