

RESOLUTION NO. 22-3344

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY  
OF MONTCLAIR CENSURING MONTCLAIR CITY  
COUNCIL MEMBER BENJAMIN LOPEZ AND RATIFYING  
ACTIONS TAKEN AND RECOMMENDED BY THE CITY  
MANAGER**

**WHEREAS**, the City Council of the City of Montclair has a duty to the residents and employees of the City to ensure that the laws of the United States and State of California are followed and the rules, regulations, policies and ordinances of the City are complied with, and that this duty is primary in the area of employer/employee relations; and

**WHEREAS**, it is essential for the effective governance of the City of Montclair for the public to have confidence in the integrity, dignity, competence, professionalism, decorum and behavior of its elected and appointed leaders and their fair, respectful, courteous and dignified treatment and regard for employees of the City of Montclair and members of the public; and

**WHEREAS**, it is also essential that members of the City Council demonstrate the highest level of professionalism and respect while in office and not behave or perform in a manner that is detrimental to the City or adverse to the City's interests; and

**WHEREAS**, California law requires that, within six months of election or appointment, elected representatives, managers, and supervisory employees are to undergo specialized training on how to recognize, avoid, and prevent hostile work environments, harassment, discrimination and retaliation; furthermore, this training must be repeated at least every two years, and City records show that each member of the City Council has received the specialized training; and

**WHEREAS**, at its meeting of August 2, 2021, the City Council approved Agreement No. 21-47 with EXTTI, Inc. for professional workplace services in expert testimony, training, and investigations; and

**WHEREAS**, the independent investigator conducted an investigation into allegations made by certain employees of the City concerning alleged inappropriate interactions by Council Member Benjamin Lopez, as referenced herein; and

**WHEREAS**, on March 1, 2022, the Montclair City Council was made aware of two verified complaints in lawsuits filed by two employees against both Council Member Benjamin Lopez and the City of Montclair containing allegations of discrimination based on sexual orientation and unlawful sexual harassment against Council Member Benjamin Lopez; and

**WHEREAS**, at a March 1, 2022 special meeting that adjourned to closed session, the independent investigator provided the City Council with an oral presentation of the investigation and the findings reached by the independent investigator; and

**WHEREAS**, at the meeting on March 1, 2022, the Montclair City Council duly considered and weighed information and evidence received through the oral presentation of the independently conducted workplace investigation; and

**WHEREAS**, the workplace investigation sustained allegations that Council Member Benjamin Lopez, as a private individual and outside the course and scope of his duties, responsibilities, and performance as a member of the City Council, did (1) conduct an extended conversation with one employee about his sexual orientation; and (2) intentionally hide his identity from another employee when they communicated on social media dating sites, and that their communication included sharing sexually explicit content and photographs; and

**WHEREAS**, at the March 21, 2022, meeting of the City Council, discussion occurred to consider censuring Council Member Benjamin Lopez for certain conduct and behavior, and the City Council's discussion on censure included (1) the filing of complaints by certain employees; (2) information regarding the hiring of a workplace investigator; (3) actions taken by the City Manager to protect employees of the City of Montclair, including restrictions imposed on Council Member Lopez; (4) other prohibitions the City Council may consider imposing on Council Member Lopez; and (5) a discussion of the censure process; and

**WHEREAS**, at the March 21, 2022 meeting, the City Council did adopt a motion that a Resolution of Censure of City Council Member Benjamin Lopez be prepared for City Council consideration at the April 4, 2022, City Council meeting; and

**WHEREAS**, the City Council finds that the interaction that Council Member Benjamin Lopez had with certain employees was reprehensible, inappropriate, abusive, and disrespectful and has brought disrepute to the City of Montclair and the Montclair City Council; and

**WHEREAS**, the City Council does not condone or approve of the type of conduct and behavior exhibited by Council Member Benjamin Lopez, and finds it necessary and prudent to declare its strong disapproval of such conduct and behavior by censure; and

**WHEREAS**, an employer has a duty and obligation to prevent workplace conditions of harassment, discrimination, bullying and retaliation and the City of Montclair has a zero-tolerance policy against such behavior in the workplace; however, when such behavior reportedly originates with a member of a city council, state law provides no significant procedures for the discipline of a locally elected representative, effectively limiting a city council majority to censures, restrictions, and prohibitions that fall within the prerogative of the City Manager and the City Council majority; and

**WHEREAS**, in the matter before the City Council, and based on the nature of the allegations and findings reached by the investigator that sustained the allegations, together with the filing of two verified complaints in lawsuits by the same employees containing allegations of discrimination based on sexual orientation and unlawful sexual harassment against Council Member Benjamin Lopez, the City Council determines that there is sufficient cause to consider adoption of a Resolution of Censure; and

**WHEREAS**, the City Manager has the duty and responsibility to the City's employees to protect them from harassment, discrimination, bullying or retaliation, whether it is from a member of the public, another employee of the City, or from a member of the City Council; and

**WHEREAS**, the City Manager is also expected to take actions that, while respectful of free speech, legislative prerogatives, and the weighty duties and responsibilities of incumbent City Council members, are designed and intended to protect employees of the organization from harassment, discrimination, bullying and retaliation; and

**WHEREAS**, at the March 21, 2022, meeting of the City Council, the City Manager did enumerate the protective measures implemented upon notification by certain City employees of allegations of inappropriate interactions by Council Member Benjamin Lopez and, by reference to those protective measures, are incorporated herein; and

**WHEREAS**, on March 3, 2022, the City Manager provided Council Member Benjamin Lopez a documented set of "*Restrictions on Access to City Facilities and Prohibition Against Contact with City Employees*," a copy of which was transmitted to Council Member Benjamin Lopez via email and home delivery and, by reference to those documented set of restrictions issued, are incorporated herein; and

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

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Montclair, 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 Council Member Benjamin Lopez did engage in inappropriate interactions with certain employees of the City of Montclair.

**SECTION 3.** The City Council finds that Council Member Benjamin Lopez, as a private individual and acting outside the course and scope of his duties, responsibilities and performance as a member of the City Council of the City of Montclair, did engage in interactions with certain employees of the City which were inappropriate, abusive and disrespectful, and by his conduct and behavior brought disrepute to the City of Montclair and to the Montclair City Council.

**SECTION 4.** The City Council finds that this behavior and conduct, in addition to being improper, unprofessional, unacceptable, and detrimental to the City of Montclair, is reprehensible and that Council Member Benjamin Lopez was acting solely as an individual without any authorization or ratification of his actions or behavior by the City

Council, and that such behavior was and is contrary to the legitimate interests of the City.

**SECTION 5.** The City Council hereby ratifies the protective actions implemented and taken by the City Manager and, further, the City Council hereby orders the following additional measures:

- a) That Council Member Benjamin Lopez is removed from all appointed City Council Committees; sub-committees of the City Council; City-sponsored committees including, but not limited to, social, event, recreation, and community-oriented committees; and inter-agency committees and boards involving City of Montclair representation.
- b) That Council Member Benjamin Lopez is prohibited from speaking on behalf of the City Council or representing the City in any capacity other than as authorized in the Montclair Municipal Code.
- c) That Council Member Benjamin Lopez shall refrain from one-on-one contact, either on a personal or professional level, with employees of the City of Montclair and shall be prohibited from participating in public safety ride-along events provided through the City's Code Enforcement, Police, Human Services and Fire Departments.
- d) That Council Member Benjamin Lopez is prohibited from overnight stays in public safety crew sleeping quarters.
- e) That Council Member Benjamin Lopez is prohibited from the use of any locker room or exercise facilities owned and operated by the City and available to, or designated for use by, employees of the City.
- f) That Council Member Benjamin Lopez' access to the City's universal Z-Drive where documents, photographs and communications between employees of the City are shared is removed. Any specific City-related document requiring Council Member Benjamin Lopez' attention will be forwarded to him by the City Manager, City Attorney or City Clerk under separate communication. The City Clerk is directed to arrange for the delivery of City Council agendas and other City-related documents requiring Council Member Benjamin Lopez' attention to his home, by email, or otherwise arrange for their pickup by Council Member Benjamin Lopez or his representative in a public area at City Hall.
- g) All interagency email and text communications from Council Member Benjamin Lopez shall be directed only to City Council colleagues, the City Attorney or the City Manager, and to the City Clerk for purposes of City Council agendas and elections. Notwithstanding the foregoing, any communications concerning this matter and the two lawsuits filed by the two employees shall be between Council Member Benjamin Lopez' legal counsel and the City's defense counsel.
- h) Except as otherwise provided herein, Council Member Benjamin Lopez is prohibited from engaging in communications in an official or personal capacity with any employee of the City of Montclair via electronic communications, social media, and written correspondence or other media.
- i) That Council Member Benjamin Lopez is prohibited from City-paid/non-paid travel to conferences, meetings, training and/or other events where representation of the City is involved; and paid or non-paid travel provided through other public or private entities where representation of the City of Montclair is involved.
- j) That Council Member Benjamin Lopez is required to attend City-approved sexual harassment prevention training, and other training as may be required by the City Manager. Training should occur within thirty (30) calendar days following adoption of this Resolution of Censure. Furthermore, such training shall be repeated annually, subject to scheduling by the City Manager.
- k) Other actions as may be considered and implemented, from time-to-time, as necessary to protect the employees of the City from harassment, discrimination, bullying, and/or retaliation.
- l) All ratified actions to remain in place until otherwise rescinded by the appropriate authority.

**SECTION 6.** The City Council hereby censures Council Member Benjamin Lopez for the behavior and conduct described herein, and expresses the strongest possible disapproval and disavowal thereof.

**SECTION 7.** The City Council determines that adoption of this Resolution of Censure is necessary to affirm that such behavior and conduct shall not be tolerated, and such behavior and conduct shall be prevented from being repeated.

**SECTION 8.** The City Council regards Council Member Benjamin Lopez' behavior and conduct to be outside the course and scope of his performance as a member of the City Council.

**SECTION 9.** The City Council declares that Council Member Benjamin Lopez shall comply with all restrictions imposed as enumerated herein, and as ratified and ordered by the City Council and to be enforced by the City Manager.

**SECTION 10.** The City Manager is hereby directed to immediately notify the City Council if Council Member Benjamin Lopez engages in future conduct that is/are proscribed by this Resolution of Censure.

**SECTION 11.** It is the intent of the City Council, in the event of future improper and unprofessional conduct by Council Member Benjamin Lopez in violation of the terms of this Resolution of Censure, to pursue all legal remedies available by law to prohibit such conduct.

**SECTION 12.** This Resolution of Censure shall take effect immediately upon its adoption.

**APPROVED AND ADOPTED** this XX day of XX, 2022.

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Mayor

**ATTEST:**

\_\_\_\_\_  
City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 22-3344 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council held on the XX day of XX, 2022, and that it was adopted by the following vote, to-wit:

AYES: XX  
NOES: XX  
ABSTAIN: XX  
ABSENT: XX

\_\_\_\_\_  
Andrea M. Myrick  
City Clerk