



**MONTCLAIR CITY COUNCIL MEETING
7:00 P.M.
APRIL 4, 2022**

CONSIDER ADOPTION OF 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

CONSIDER ADOPTION OF RESOLUTION NO. 22-3344 CENSURING COUNCIL MEMBER BENJAMIN LOPEZ AND RATIFYING ACTIONS TAKEN, AND RECOMMENDED BY THE CITY MANAGER.

Why consideration of a Resolution of Censure?

- On two separate occasions in 2021, allegations were made by certain employees of the City that Council Member Benjamin Lopez interacted with them in an inappropriate manner.
- Upon filing of the allegations by employees, the City Manager:
 - Implemented measures to protect employees from further harassment, discrimination, bullying and retaliation; and
 - Requested City Council approval of an agreement to hire an independent workplace investigator to investigate the allegations.

CONSIDER ADOPTION OF RESOLUTION NO. 22-3344 CENSURING COUNCIL MEMBER BENJAMIN LOPEZ AND RATIFYING ACTIONS TAKEN, AND RECOMMENDED BY THE CITY MANAGER.

Why consideration of a Resolution of Censure?

- At its meeting of August 2, 2021, the City Council approved Agreement No. 21-47 with EXTTI for professional workplace services in expert testimony, training, and investigations.
 - The EXTTI investigator, an independent workplace investigator — certified by the Association of Workplace Investigators — conducted an investigation into the allegations.

CONSIDER ADOPTION OF RESOLUTION NO. 22-3344 CENSURING COUNCIL MEMBER BENJAMIN LOPEZ AND RATIFYING ACTIONS TAKEN, AND RECOMMENDED BY THE CITY MANAGER.

Why consideration of a Resolution of Censure?

- At a Special Meeting of the City Council on March 1, 2022, the City Council, in Closed Session, received an oral presentation regarding the investigation conducted by the independent workplace investigator.
- The independent workplace investigation sustained allegations that Council Member Lopez, as a private individual acting outside the course and scope of his duties, responsibilities and performance as a member of the Montclair City Council, did:
 - Conduct an extended conversation with one employee of the City about the employee's sexual orientation; and
 - Intentionally hide his identity from another employee of the City when he and the employee communicated on social media dating sites, and that their communication included sharing both sexually explicit content and photographs.

CONSIDER ADOPTION OF RESOLUTION NO. 22-3344 CENSURING COUNCIL MEMBER BENJAMIN LOPEZ AND RATIFYING ACTIONS TAKEN, AND RECOMMENDED BY THE CITY MANAGER.

Why consideration of a Resolution of Censure?

- At the March 1, 2022, Closed Session the City Council also received information regarding the filing of separate, verified complaints in lawsuits brought by the same employees, also against Council Member Lopez, containing allegations of discrimination based on:
 - Sexual orientation; and
 - Unlawful sexual harassment.

CONSIDER ADOPTION OF RESOLUTION NO. 22-3344 CENSURING COUNCIL MEMBER BENJAMIN LOPEZ AND RATIFYING ACTIONS TAKEN, AND RECOMMENDED BY THE CITY MANAGER.

Why consideration of a Resolution of Censure?

- At the March 7, 2022, meeting of the City Council, a motion was made and adopted to place on the March 21, 2022, City Council agenda a discussion to consider censuring Council Member Lopez.
- At the March 21, 2022, meeting of the City Council, following discussion to consider censuring Council Member Lopez, a motion was made and adopted to place on the April 4, 2022, City Council agenda, for City Council consideration, a resolution censuring Council Member Lopez and ratifying actions taken, and recommended by the City Manager.

CONSIDER ADOPTION OF RESOLUTION NO. 22-3344 CENSURING COUNCIL MEMBER BENJAMIN LOPEZ AND RATIFYING ACTIONS TAKEN, AND RECOMMENDED BY THE CITY MANAGER.

What is provided for in Resolution No. 22-3344?

- Specifies the duty of the City Council to residents and employees to ensure that local, state and federal laws, as well as the rules, regulations and polices of the City are complied with.
- Recognizes that effective governance requires:
 - Confidence in the integrity, dignity, competence, professionalism, and appropriate decorum and behavior of elected and appointed leaders, and
 - Fair, respectful, courteous and dignified treatment of employees and members of the public.
- Affirms that elected representatives shall demonstrate the highest level of professionalism, and not behave in a manner that is detrimental or adverse to the interests of the City.

CONSIDER ADOPTION OF RESOLUTION NO. 22-3344 CENSURING COUNCIL MEMBER BENJAMIN LOPEZ AND RATIFYING ACTIONS TAKEN, AND RECOMMENDED BY THE CITY MANAGER.

What is provided for in Resolution No. 22-3344?

- Recites the City Council's hiring of an independent workplace investigator to conduct an investigation into allegations made by certain employees that Council Member Lopez engaged in inappropriate interactions.
- Recites the findings of the independent workplace investigator sustaining allegations that Council Member 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:
 - Conduct an extended conversation with one employee about his sexual orientation; and
 - 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.

CONSIDER ADOPTION OF RESOLUTION NO. 22-3344 CENSURING COUNCIL MEMBER BENJAMIN LOPEZ AND RATIFYING ACTIONS TAKEN, AND RECOMMENDED BY THE CITY MANAGER.

What is provided for in Resolution No. 22-3344?

- Makes a City Council finding that interactions Council Member Lopez had with certain employees were reprehensible, inappropriate, abusive and disrespectful, and have brought disrepute to the City of Montclair and Montclair City Council.
- Declares that the City Council does not condone or approve of the type of conduct and behavior exhibited by Council Member Lopez, and finds it necessary and prudent to declare its strong disapproval of such conduct and behavior.

CONSIDER ADOPTION OF RESOLUTION NO. 22-3344 CENSURING COUNCIL MEMBER BENJAMIN LOPEZ AND RATIFYING ACTIONS TAKEN, AND RECOMMENDED BY THE CITY MANAGER.

What is provided for in Resolution No. 22-3344?

- Declares that, based on the nature of employee allegations against Council Member Lopez and the findings reached by the independent workplace investigator sustaining the allegations, together with the filing of the two verified complaints in lawsuits by the same employees alleging unlawful sexual harassment and discrimination by Council Member Lopez based on sexual orientation, the City Council determines there is sufficient cause to censure Council Member Lopez.

CONSIDER ADOPTION OF RESOLUTION NO. 22-3344 CENSURING COUNCIL MEMBER BENJAMIN LOPEZ AND RATIFYING ACTIONS TAKEN, AND RECOMMENDED BY THE CITY MANAGER.

What is provided for in Resolution No. 22-3344?

- Incorporates, by reference, protective measures implemented by the City Manager, as enumerated at the March 21, 2022, meeting of the City Council.
- Incorporates, by reference, the March 3, 2022, notice to Council Member Lopez entitled, *“Restrictions on Access to City Facilities and Prohibition Against contact with City Employees.”*
- Declares that censure is necessary to affirm that the conduct, as described in Resolution No. 22-3344, will not be tolerated and shall be prevented from being repeated.

CONSIDER ADOPTION OF RESOLUTION NO. 22-3344 CENSURING COUNCIL MEMBER BENJAMIN LOPEZ AND RATIFYING ACTIONS TAKEN, AND RECOMMENDED BY THE CITY MANAGER.

What is provided for in Resolution No. 22-3344?

- Finds the recitals, as stated in Resolution No. 22-3344, to be true and correct.
- Finds that Council Member Lopez did engage in inappropriate interactions with certain employees of the City.
- Finds that Council Member Lopez, as a private individual acting outside the course and scope of his duties, responsibilities and performance as a member of the Montclair City Council, did engage in interactions with certain employees which were inappropriate, abusive and disrespectful, and by his conduct brought disrepute to the City of Montclair and Montclair City Council.

CONSIDER ADOPTION OF RESOLUTION NO. 22-3344 CENSURING COUNCIL MEMBER BENJAMIN LOPEZ AND RATIFYING ACTIONS TAKEN, AND RECOMMENDED BY THE CITY MANAGER.

What is provided for in Resolution No. 22-3344?

- Finds that Council Member Lopez' behavior and conduct, in addition to being improper, unprofessional, unacceptable and detrimental to the City, is reprehensible.
 - Further, that Council Member Lopez was acting solely as an individual without any authorization or ratification of his actions or behavior by the City Council, and that such conduct and behavior is contrary to the legitimate interests of the City of Montclair.

CONSIDER ADOPTION OF RESOLUTION NO. 22-3344 CENSURING COUNCIL MEMBER BENJAMIN LOPEZ AND RATIFYING ACTIONS TAKEN, AND RECOMMENDED BY THE CITY MANAGER.

What is provided for in Resolution No. 22-3344?

- **Ratifies the protective actions implemented and taken by the City Manager, and orders the following:**
 - That Council Member 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.
 - That Council Member 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.
 - That Council Member 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.

CONSIDER ADOPTION OF RESOLUTION NO. 22-3344 CENSURING COUNCIL MEMBER BENJAMIN LOPEZ AND RATIFYING ACTIONS TAKEN, AND RECOMMENDED BY THE CITY MANAGER.

What is provided for in Resolution No. 22-3344?

- Ratifies the protective actions implemented and taken by the City Manager, and orders the following:
 - That Council Member Lopez is prohibited from overnight stays in public safety crew sleeping quarters.
 - That Council Member 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.

CONSIDER ADOPTION OF RESOLUTION NO. 22-3344 CENSURING COUNCIL MEMBER BENJAMIN LOPEZ AND RATIFYING ACTIONS TAKEN, AND RECOMMENDED BY THE CITY MANAGER.

What is provided for in Resolution No. 22-3344?

- Ratifies the protective actions implemented and taken by the City Manager, and orders the following:
 - That Council Member 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 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 delivery of City Council agendas and other City-related documents requiring Council Member Lopez' attention to his home, by email, or otherwise arrange for their pickup by Council Member Lopez or his representative in a public area at City Hall.

CONSIDER ADOPTION OF RESOLUTION NO. 22-3344 CENSURING COUNCIL MEMBER BENJAMIN LOPEZ AND RATIFYING ACTIONS TAKEN, AND RECOMMENDED BY THE CITY MANAGER.

What is provided for in Resolution No. 22-3344?

- Ratifies the protective actions implemented and taken by the City Manager, and orders the following:
 - All interagency email and text communications from Council Member 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 Lopez' legal counsel and the City's defense counsel.
 - Except as otherwise provided for in Resolution No. 22-3344, Council Member 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.

CONSIDER ADOPTION OF RESOLUTION NO. 22-3344 CENSURING COUNCIL MEMBER BENJAMIN LOPEZ AND RATIFYING ACTIONS TAKEN, AND RECOMMENDED BY THE CITY MANAGER.

What is provided for in Resolution No. 22-3344?

- Ratifies the protective actions implemented and taken by the City Manager, and orders the following:
 - That Council Member 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.

CONSIDER ADOPTION OF RESOLUTION NO. 22-3344 CENSURING COUNCIL MEMBER BENJAMIN LOPEZ AND RATIFYING ACTIONS TAKEN, AND RECOMMENDED BY THE CITY MANAGER.

What is provided for in Resolution No. 22-3344?

- Ratifies the protective actions implemented and taken by the City Manager, and orders the following:
 - That Council Member 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 Resolution No. 22-3344. Furthermore, such training shall be repeated annually, subject to scheduling by the City Manager.
 - 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.
 - All ratified actions to remain in place until otherwise rescinded by the appropriate authority.

CONSIDER ADOPTION OF RESOLUTION NO. 22-3344 CENSURING COUNCIL MEMBER BENJAMIN LOPEZ AND RATIFYING ACTIONS OF THE CITY MANAGER TAKEN, AND RECOMMENDED BY THE CITY MANAGER.

What is provided for in Resolution No. 22-3344?

- By adoption of Resolution No. 22-3344, the City Council does censure Council Member Lopez for the behavior and conduct described in Resolution No. 22-3344, and the City Council expresses its strongest possible disapproval and disavowal thereof.
- By adoption of Resolution No. 22-3344, the City Council affirms that such behavior and conduct, as described in the Resolution, shall not be tolerated, and such behavior and conduct shall be prevented from being repeated.
- Finds that Council Member Lopez' behavior and conduct to be outside the course and scope of his performance as a member of the City Council.

CONSIDER ADOPTION OF RESOLUTION NO. 22-3344 CENSURING COUNCIL MEMBER BENJAMIN LOPEZ AND RATIFYING ACTIONS TAKEN, AND RECOMMENDED BY THE CITY MANAGER.

What is provided for in Resolution No. 22-3344?

- Declares that Council Member Lopez shall comply with all restrictions imposed as enumerated in Resolution No. 22-3344, and as ratified and ordered by the City Council, to be enforced by the City Manager.
- Directs the City Manager to immediately notify the City Council if Council Member Lopez engages in future conduct proscribed by Resolution No. 22-3344.
- Declares the intent of the City Council, in the event of future improper and unprofessional conduct by Council Member Lopez in violation of the provisions contained in Resolution No. 22-3344, to pursue all legal remedies available by law to prohibit such conduct and enforce compliance.
- Provides that Resolution No. 22-3344 takes effect immediately upon adoption.

CONSIDER ADOPTION OF RESOLUTION NO. 22-3344 CENSURING COUNCIL MEMBER BENJAMIN LOPEZ AND RATIFYING ACTIONS TAKEN, AND RECOMMENDED BY THE CITY MANAGER.

FISCAL IMPACT:

- Adoption of Resolution No. 22-3344 imposes no direct fiscal impact on the City's General Fund.

RECOMMENDATION:

- It is the prerogative of the City Council to consider adoption of Resolution No. 22-3344.

**END OF
PRESENTATION**

