

11/1/2021

To:

Office of the Merced City Manager

678 West 18th Street

Merced, CA 95340

Office of the Merced City Attorney

678 West 18th Street

Merced, CA 95340

Dear Mayor, City Council Members, City Manager, and City Attorney,

With great disappointment, we must formally write to you to complain of the ongoing disrespectful, and in some cases illegal, behavior displayed by some members of the Merced City Council.

As citizens of the City of Merced, we expect the elected representatives of our community to hold the highest regard for all of the community, not just an individual district or special interests. The behavior of our elected officials should be, as required in the Charter, above reproach. The behavior of elected officials is not just a matter of common courtesy and social expectation but also a matter of municipal law, to which elected officials are bound when they take office. Our elected officials owe all citizens due consideration and respectful discourse in the performance of their position of authority over our community. Lately, we have repeatedly seen that Councilmember Bertha Perez does not respect the position she holds nor the obligation for which she is sworn.

Although without meaningful penalty, censure is an important signal from fellow council members that one of their peers has failed to perform to the minimum standards of their office or has explicitly violated provisions of the position under the law. In support of the Censure of Councilmember Perez, we must formally provide the following complaints:

Misuse of City Seal and Willful Misconduct in Office

Violations of Merced Municipal Code 1.08.030(A) and California Government Code Subsection 8314(a)

On 4/26/2021, Councilmember Bertha Perez appeared before the Atwater City Council and specifically announced herself to be "Bertha Perez, City Council Merced district number 3," expressly stating representation of the City of Merced. During this presentation, Councilmember Perez wore a black cloth mask with the Merced City emblem on it as well. The purpose of her comments was to threaten the Atwater Mayor that she would organize to unseat him and any others who opposed her position that day. Her public statements culminated with, "with these organizing skills I have learned, if you don't correct your behavior I will use to organize everyone out of office if I have to..."

Before her presence at this meeting, she made the following statements on social media platform Facebook, "Fuck that mayor Yeah I said it just wait till tonight". She later commented additional vulgarities to the Fresno Bee during an interview after the attack brought media attention, further damaging the reputation and position of the Merced Community among our peers.

On 9/16/2021, Councilmember Bertha Perez was arrested in connection with a protest against a landlord on private property in the city of San Francisco. During this protest, including the time during which she was arrested, Councilmember Perez wore a black cloth mask with the emblem of the City of Merced in full display.

It is both inappropriate and illegal, per Merced Municipal Code and California Government Code, for a council member to present themselves on behalf of the City of Merced without authorization or to utilize a replication of a city emblem for personal politics or personal gain.

Willful Misconduct in Office

Disturbing complaints of personal attacks on Merced citizens were filed on 9/20/2021 by Tim Razzari and Terry Ruscoe. Upon inspection of these complaints, there appears to be sufficient further evidence that Councilmember Bertha Perez sought to levy personal attacks on Merced Citizens under the color of authority as a Merced City Councilmember. In both complaints, there is evidence both in writing and according to multiple witnesses that Councilmember Perez identified herself as a Merced Councilmember while verbally and in print launching vulgar attacks on Merced residents.

Each of these complaints is just a further example that Councilmember Perez has a pattern of seeking to leverage her position of authority with the City of Merced to her personal advantage when advocating on political issues or in personal vendettas against anyone that disagrees with her or her personal politics.

Disorderly Conduct Violations of Resolution 2018-78 City Council Code of Conduct as authorized and enforced by City Charter Article IV Sec 410(B)

Section 4 – Ethics (4) Conduct of Members and Section 16 – Rights and Duties of Members (5)

Record of Fact: Recorded Public Meetings of the City Council on 9/7/2021 and 9/20/2021

This section requires conduct to be “above reproach and avoid even the appearance of impropriety” and that “members shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of other members of the Council, Boards, Committees and Commissions, the staff or public.”

The two complaints on record for consideration during today’s meeting, combined with Councilmember Perez’s tirade against Atwater Mayor Paul Creighton, are among the most egregious violations of this section but most certainly not the only ones.

Section 4 – Ethics (1) Act in the Public Interest

Record of Fact: Recorded Public Meetings of the City Council on 9/7/2021 and 9/20/2021

Councilmember Perez has affirmed in numerous statements that she has personal bias and prejudice against multiple subsets of the Merced citizenry who “has not been impacted in the way we have.” She has repeatedly stated that she affirmatively supports special interests as the focus of her representation, as opposed to the public interest, after a thoughtful deliberation and consideration of the facts as required by the Charter. Councilmember Perez has displayed little to no interest in finding collaborative solutions to important city policy. She has instead repeatedly declared intent to implement her personal beliefs and politics into local policy without concern for understanding the issues at hand and consideration of the impact to all parties in either the short or long-term.

Select statements include as follows:

On 9/7/2021, Councilmember Perez stated, “The people that do want this to pass have not been impacted the way that we, that I, have been impacted. So it makes it hard for me to believe that it’s going to benefit anyone but themselves.” This statement, combined with her line of questioning to staff, displayed that she had no understanding of the issue at hand other than to state the incredibly obvious that each party advocates on their own behalf. This statement is true of all parties who have a position on a policy or community need, and highlights the lack of consideration for public interest.

Councilmember Perez’s lack of clarity on political advocacy and elected responsibilities was further compounded with other comments, including, “Today there are more people here that don’t want this policy passed than those that want it.” This comment further demonstrates a concept that Councilmember Perez has often claimed as her basis for decision making, voting in

favor of whoever shows up in the greatest number or speaks the loudest. This untenable way of evaluating important political issues and legislative policy all but guarantees that thoughtful and informed municipal planning will never happen.

It should be the mission of all council members as our appointed representatives to perform the utmost due diligence in cooperation with city staff and make educated decisions on behalf of the entire community. Consideration given to public comment applies equally to all parties that may or may not be present at public meetings, given that a tiny fraction of the population is or can be present at the public meetings. Like all other elected positions, Council members are elected to make educated decisions while considering public input and relying on professional information from city staff. Council members are not elected to act as a direct conduit for votes from neither the masses nor the minority present at the meetings.

Impassioned speeches about a public need or want, without regard for financial or disparate impact to the community, should never be mistaken as a meaningful tool for public governance. While public comment, especially from an educated party with experience and data, should be considered, the quantity and passionate nature should not be the factual basis for which policy is formed.

Section 4 – Ethics (5) Conduct at Public Meetings

Record of Fact: Recorded Public Meetings of the City Council on 9/7/2021 and 9/20/2021

This section requires council members to have “prepared themselves for public issues, listen courteously and attentively to all public discussions before the body.”

Councilmember Bertha Perez was admittedly and blatantly unprepared for the staff presentation. Her line of questioning from staff clearly indicates that she did not meet her obligations to review the material in advance and perform her due diligence to cultivate an understanding of the decisions at hand. At one point, she made the statement, “it’s just that you didn’t provide all the stuff we thought that was going to come in the report.” In this context, the council member was unaware that the content she personally wished to see wasn’t present in the report until the staff presentation on the day of the meeting.

In addition to the meetings on 9/7/2021 and 9/20/2021, Councilmember Perez has repeatedly been recorded at council meetings laughing at and turning her back on members of the public during public comment when the individual’s perspective or opinion did not match her personal beliefs or biases. This section of the code of conduct explicitly states that councilmembers are to “listen courteously and attentively to all public discussion before the body.” This disorderly conduct and lack of respect for the public displayed in this way cannot be allowed to continue.

Section 4 – Ethics (6) Decisions Based on Merit

This section requires council members to “base their decisions on the merits and substance of the matter at hand” and “maintain an open mind until the conclusion of the hearing on the matter and shall base their decisions on the facts presented at the hearing and the law.”

Through her statements and questioning during the meeting, Councilmember Bertha Perez has signaled that she enters council meetings with a prepared personal agenda and with her mind made up before hearing any further input.

Her belligerent beratement of staff in tandem with another council member for not serving their personal desire for inclusionary zoning was incredibly clear. This private and self-serving narrative/expectation was all despite council direction against this specific topic at prior council meetings. Councilmember Perez is quoted as interrupting Councilmember Boyle to state, “I just gotta say something. I can’t be quiet... It seems like the only inclusionary zoning information was the kind that failed. We didn’t get any examples where it succeeds.” Almost immediately after this statement, Councilmember Perez instructed staff to “put in the parts where it succeeds.” Councilmember Perez’s insistence that city staff follows her explicit instructions speaks to her personal agenda/bias and to the appearance that she has reached a policy decision before the meeting.

Section 4 – Ethics (16) Positive Work Place Environment

Record of Fact: Recorded Public Meetings of the City Council on 9/7/2021 and 9/20/2021

This section states that members shall “in no way create the perception of inappropriate direction to staff” in order to “support the maintenance of a positive and constructive work place environment for City Employees.”

The tone, tenor, and content of what can only be described as a beratement of city staff at the City Council meeting on 9/7/2021 was wholly inappropriate. City staff does not serve at the pleasure of individual council members and should never be derided in such a way as to coerce them through hostile tones and statements to meet the demands of individual council members. The behavior of Councilmembers, including Councilmember Perez, during this meeting, was appalling and should be curtailed in the firmest manner possible.

The citizens of Merced are interested in the respectful treatment of our city staff and creating a hospitable environment in which we can retain top talent for the betterment of our community. More than one councilmember, including Councilmember Perez, seemed to lack a clear recollection of the vote that instructed city staff to present the information in item J1. Councilmember Perez is quoted as saying, “..it’s just that you didn’t provide all the stuff we thought was going to come in the report.”

Again, it must be made clear that City staff does not serve at the pleasure of individual council members and their personal agendas. City staff serves at the direction of the majority of the council’s elected body exclusively.

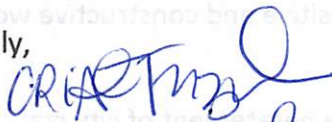
Conclusion

There appears to be a substantial misunderstanding of the body politic as it relates to the rights of legislators and citizens alike. It is never acceptable for a councilmember to levy their position of authority for personal or political gain; nor is it ever acceptable to use a municipal position of authority or influence over others to levy vulgar attacks on citizens, other politicians, or those who may have different views and opinions.

The Merced City Charter provides for the establishment and enforcement of appropriate behavior for our elected officials. Violation of these rules places council members at risk of both censure and declaration of disorderly conduct. Disorderly conduct makes that individual subject to eviction from proceedings and, in all cases, constitutes a misdemeanor. Under Section 12 Powers and Duties of Mayor as well as Resolution 2018-78 Section 18, the Mayor is charged with preserving and enforcing order and decorum during the proceedings. To date, there has been a lack of enforcement of these resolutions. We citizens of Merced implore the Mayor, and the City Council as a whole, to act in the interest of the people through the censure of Councilmember Bertha Perez and further, to enforce the Merced City Charter to create an unprejudiced, equal, fair, informed, and respectful forum for the democratic process.

We are proud to live in Merced and look forward to what Merced will grow into someday under the careful and calculated guidance of our City Council. However, we cannot and will not tolerate leadership that displays prejudiced and disrespectful behavior in the performance of their duties as an elected official.

Sincerely,


Criston Fernal 11-1-21