



## Legislation Text

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File #: 2023-0264, Version: 1

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**DATE:** October 10, 2023

**SUBJECT:**

**CENSURE OF COMMISSIONER SANDY NARANJO AND RELATED ACTIONS  
RESOLUTION OF THE BOARD OF PORT COMMISSIONERS (BOARD):**

- A) **CENSURING COMMISSIONER SANDY NARANJO FOR PERSONAL VIOLATIONS OF THE BROWN ACT AND FIDUCIARY DUTIES AND RELATED MISCONDUCT; REMOVING COMMISSIONER NARANJO FROM CURRENTLY HELD BOARD OFFICE AND DISTRICT INTERNAL AND EXTERNAL COMMITTEE ASSIGNMENTS; PROHIBITING COMMISSIONER NARANJO FROM HOLDING ANY FUTURE BOARD OFFICE OR DISTRICT INTERNAL OR EXTERNAL COMMITTEE ASSIGNMENTS; AND, FROM SPEAKING ALONE TO ANY DISTRICT EMPLOYEE IN HER SCOPE AND AUTHORITY AS A COMMISSIONER**
- B) **CONTINGENT UPON ADOPTION OF ITEM A), CONSIDERATION AND ELECTION OF OFFICERS TO VACANT OFFICER POSITIONS ON THE BOARD OF PORT COMMISSIONERS**

**EXECUTIVE SUMMARY:**

The proposed Resolution censuring Commissioner Naranjo addresses, among other things, various breaches of fiduciary duties along with violations of State law and District policy by Commissioner Sandy Naranjo. Such actions have exposed the District to potential legal liabilities, undermine the public's trust in its District representatives, and interfere with the District's ability to conduct the public's business. If adopted, Section A) of this Resolution would serve as a formal admonishment of Commissioner Naranjo's improper conduct, restrict her ability to serve in District leadership roles as a Commissioner, and regulate her conduct towards District employees, all in order to uphold the District's integrity and trust in its Commissioners, protect District employees, protect against Commissioner Naranjo's interference with the agency's ability to conduct the public's business, and limit legal liability for the District. Contingent upon Board approval of Section A), the Board will consider and elect officers to vacant positions on the Board.

**RECOMMENDATION:**

After review and consideration of the independent investigator's conclusions adopt Section A of the Resolution approving the censure of Commissioner Naranjo for personal violations of the Brown Act and fiduciary duties and related misconduct; removing Commissioner Naranjo from currently held Board of Port Commissioners (Board) office and District internal and external committee assignments; prohibiting Commissioner Naranjo from holding any future Board office or District internal or external committee assignments and from speaking alone to any District employee in

her scope and authority as a Commissioner.

Contingent upon Board approval of Section A) of the Resolution, the Board will consider and elect officers to vacant officer positions on the Board.

### **FISCAL IMPACT:**

This item has no fiscal impact.

### **COMPASS STRATEGIC GOALS:**

This agenda item supports the following Strategic Goal(s).

- A Port that the public understands and trusts.
- A Port that is a safe place to visit, work and play.
- A Port with an innovative and motivated workforce.

### **DISCUSSION:**

A censure is generally understood to be "an official reprimand or condemnation; an authoritative expression of disapproval or blame." (Black's Law Dictionary (10th ed. 2014).) The United States Supreme Court has long recognized the practice of censuring legislative body members, which has been more commonly observed at the state and local level, and as early as 1833. (Houston Community College System v. Wilson (2022) 142 S.Ct. 1253, 1259.)

Public officials have authority to censure an individual member of a legislative body. (Braun v. City of Taft (1984) 154 Cal.App.3d 332, 347-348.) A censure is generally adopted by resolution and represents the opinion of a public body. A censure is one approach of distancing the public agency from bad behaviors that interfere with the agency's ability to conduct the public's business and protect its employees and the public. While censure does not remove an appointed or elected official from office, it serves an important purpose by stating to the public that certain behavior(s) is unacceptable to the other legislative body's members. It is a form of self-policing for public officials.

Following a series of inappropriate behavior described more fully herein, the Board undertook an exhaustive attorney-client confidential personnel investigation<sup>1</sup> conducted by an independent third-party attorney located outside of the County of San Diego. The Board has agendaized this item on a special open session October 10, 2023, agenda to address misconduct by Commissioner Naranjo and the legal liability to the District such conduct has created. Based upon the following findings, the Board may find it necessary to protect employees of the District from such behavior, limit the legal liability of the District, and demonstrate to the public that improper behavior and misconduct by any District official will be addressed in an open and transparent manner to preserve the public's and employees' trust in the District and its Board.

The contents of the Resolution and its findings are based on the investigation and the impetus to censure Commissioner Naranjo includes, but is not limited to:

- Commissioner Naranjo breached her duty of care by levying serious allegations against a

District employee that, upon prudent or even minimal inquiry, would have readily been discredited as false. A duty of care is a requirement that all Commissioners serve the District with "reasonable care, skill and caution" as a prudent person acting in a like capacity would. Public Resources Code Section 6009.1(c)(1); *Tibble v. Edison Int'l*, 843 F.3d 1187, 1197 (9th Cir. 2016). Commissioner Naranjo's failure to execute her duty of care critically undermines the confidence and trust of the District's staff in the Board's leadership, exposes the District to legal liability and has the potential to compromise the integrity of the District.

- Commissioner Naranjo breached her duty of full disclosure and acted with an absence of transparency by withholding information from the Board regarding the bases and sources of her allegations against a District employee, thereby depriving the Board of material facts to determine their validity. The duty of full disclosure requires that all Commissioners disclose relevant information and documents regarding District matters in a timely manner. *Public Resources Code* §6009.1; *Gump v. Wells Fargo Bank Nat. Ass'n*, 192 Cal. App. 3d 222 (1987).
- Commissioner Naranjo refused to promptly and completely cooperate in the disclosure of her external financial engagements and by unnecessarily obstructing and delaying the District's ability to enter into contracts with assurance that such contracts would be enforceable. Commissioner Naranjo exacerbated her failure to cooperate by willfully abstaining from providing any rationale for her non-disclosure.
- Commissioner Naranjo breached her fiduciary duty of loyalty when the Commissioner acted in furtherance of her own personal self-interests in retaliating against a District employee for doing their job at the expense of the District's best interests. The duty of loyalty requires that Commissioners act in the best interests of the District rather than their own personal interests, and where the interests of the Commissioner and the District conflict, **take** appropriate action to protect the District. *Public Resources Code* § 6009.1. See also, Restatement (Third) of Trusts §78 (2007) (prohibiting fiduciaries from "engaging in transactions that involve self dealing or that otherwise involve or create a conflict between the trustee's fiduciary duties and personal interests."). Commissioner Naranjo violated her duty of loyalty by engaging in retaliatory conduct against a District employee, with reckless disregard for exposing the District to legal liability.
- Commissioner Naranjo's personal actions violated the Brown Act while simultaneously creating due process violations to the affected District employee.
- Commissioner Naranjo has participated in a pattern of ongoing retaliatory actions against a District employee. The Commissioner's actions have decreased productivity, morale and potential attrition, which in turn harms the District's operational capabilities, and impacts the public and District employees.
- None of the explanations Commissioner Naranjo provided were found credible, sincere, legitimate, or exculpatory.
- Overall, Commissioner Naranjo's actions appeared to further her own self interests at the District's expense in violation of her fiduciary duties as a Commissioner. Such actions

corrode the very underpinnings of fiduciary duties and trust while setting a dangerous precedent that can contribute to systemic ethical decay within the District and Board.

Such self-interested, reckless and potentially malicious behavior not only pose immediate legal risks but also have the potential to compromise the District's strategic objectives and erode the public's and employee trust in its leadership. Moreover, such actions are diverting essential resources away from the District's core functions, thereby impacting its ability to serve the public effectively.

In addition to admonishing Commissioner Naranjo for her inappropriate behavior, the Resolution also proposes to:

- Remove Commissioner Naranjo from the Commissioner's currently held District office and District committee assignments;
- Prohibit Commissioner Naranjo from holding any District office or committee assignments in the future; and
- Prohibit Commissioner Naranjo from speaking alone with any District employee in her scope and authority as a Commissioner. To institute this protective measure, should Commissioner Naranjo wish to meet or speak with a District employee, she shall text or email the District Executive Director/CEO *and* an attorney with the Office of the General Counsel, and any meeting or discussion will be arranged within a reasonable amount of time and with the attendance of at least two District employees.

A resolution of censure must be considered by the legislative body at an open public meeting. The subject member of the censure must be given notice of the censure, which Commissioner Naranjo has received. The subject member must be given an opportunity to be heard prior to a vote on the censure, which the Board intends to provide during its October 10, 2023, special open session meeting.

Should the Board approve the censure, and approve the removal of Commissioner Naranjo from her currently held District office, the Board shall consider and elect officers to vacant officer positions on the Board.

### **General Counsel's Comments:**

The Office of the General Counsel has retained and appointed Best Best & Krieger LLP as special counsel to provide legal advice regarding this matter. Best Best & Krieger LLP has reviewed this agenda and attachment(s), as presented to it, and approves the same as to form and legality.

### **Environmental Review:**

In accordance with the requirements of California Environmental Quality Act ("CEQA"), this activity is exempt pursuant to Section 15061(b)(3) of the State CEQA Guidelines (Title 14 of the California Code of Regulations).

**Diversity, Equity, and Inclusion Program:**

This agenda sheet has no direct DEi impact on District workforce or contract reporting at this time.

**PREPARED BY:**

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<sup>1</sup>This item and associated agenda sheet and resolution do not constitute a waiver of the attorney-client privilege outside what is disclosed in the materials.