



Town of Windsor
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Frequently Asked Questions Re: Town Council Vacancy/Censure/Etc.

April 21, 2021

Q: How can the office of Mayor of Windsor be vacated?

A: Under California law, an office is vacated in various ways, including the following:

1. The death of the incumbent.
2. An adjudication declaring that the incumbent is physically or mentally incapacitated due to disease, illness, or accident, and that there is reasonable cause to believe that the incumbent will not be able to perform the duties of his or her office for the remainder of his or her term.
3. Resignation.
4. Removal from office by a recall election.
5. Absence from the state without the permission required by law beyond the period allowed by law.
6. Ceasing to discharge the duties of his or her office for the period of three consecutive months, except when prevented by sickness, or when absent from the state with the permission required by law.
7. Conviction of a felony or of any offense involving a violation of his or her official duties.
8. If a town Councilmember is absent without permission from all regular town council meetings for 60 days consecutively from the last regular meeting he or she attended.

Q: If there is a vacancy in the office of Mayor, how would it be filled?

A: If the office of Mayor becomes vacant, the Town Council can fill it in various ways: select a sitting Councilmember to become Mayor, which would then create a vacancy in a Councilmember seat; engage in a broader type of recruitment seeking applications from interested members of the community; or calling a special election to fill the seat.

Q: In light of Mayor Foppoli's statement indicating that he intends to step back from an active role in Town governance and not attend and preside over Town Council meetings, can the Mayor stay in office if he does not perform some or all of the official duties?

A: Yes. California law allows for the Vice Mayor to serve as Mayor Pro Tempore if the Mayor is absent or unable to preside over a Town Council meeting. However, presiding over Town meetings is only part of the duties of Mayor. The Town understands from the Mayor's statement that he still intends to perform other official duties and does not intend to resign or vacate his office.

Q: Can the Town Council prevent the Mayor from presiding over Town Council meetings?

A: No. One of the powers explicitly granted to the Mayor by California law is the power to preside at meetings of the Council. As has been done here, the Mayor may delegate this power temporarily to the Vice Mayor. Unlike other powers granted to the Mayor, the law does not contemplate that the Council may select another member to preside over meetings.

Q: Can the Town Council prevent the Mayor from performing his duties for three months as noted in Government Code section 1770 and force him to vacate his office?

A: No. The Town Council does not have the authority to prevent the Mayor from performing all of his duties, and the Mayor has the discretion to decide if he will be present to preside over Town Council meetings.

Q: What has the Town Council done to respond to the serious allegations against Mayor Foppoli?

A: At its meeting on April 14, 2021, the Town Council adopted a motion demanding that Mayor Foppoli resign. However, because Mayor Foppoli is directly elected by the Windsor voters, he cannot be removed or forced to resign by the Town Council. The Town Council also intends to consider adopting policies and procedures pertaining to misconduct of the Mayor and Councilmembers.

Q: What more can the Town Council do to respond to the allegations against Mayor Foppoli?

A: In addition to the motion passed at the April 14, 2021 Council meeting demanding that Mayor Foppoli resign, the Town Council may:

1. Limit some of the Mayor's official duties, including the duty to sign certain documents. This action must be taken by Ordinance which requires a minimum of 3 votes of the Council.
2. Consider censuring the Mayor if it finds that the Mayor has committed a serious violation of law or Town policy. The act of censure would be taken by resolution which requires a minimum of three votes of the Town Council.
3. Send a letter to the District Attorney requesting that office to consider instituting a Grand Jury process prescribed in Government Code section 3060 (see below). In this case, the Town understands that the District Attorney may refer its role under the law to the State Attorney General's office.

Resolutions or ordinances pertaining to the Mayor's current circumstances will require an affirmative vote of three Councilmembers to pass. A fourth Councilmember will be seated on the Town Council to fill the current vacancy following the May 4, 2021 special election.

Q: What is the process for the Town Council to censure the Mayor?

A: Censure is an act by the Town Council of official reprimand or condemnation concerning the Mayor or a Councilmember. Case law provides guidance on the censure process and clarifies that it must include certain elements. First, the Council must base the censure on substantiated findings of a violation of law or Town policy. Because the Town Council does not have adopted standards of conduct or other formal policies that would be relevant to the current allegations against Mayor Foppoli, a censure action by the Council would need to rely on findings of a violation of law. Second, the censured individual is required to receive reasonable notice and an opportunity to be heard.

Q: What is the effect of a censure of the Mayor?

A: There are no specific penalties associated with a censure action, and the Town Council may consider the imposition of penalties within its authority, although the censure action alone does have punitive effect. A censure does not result in removal from office.

Q: Would the Town's business continue to be conducted if the Mayor is censured?

A: Business will continue as usual if the Mayor is censured.

Q: Is there a Grand Jury process that could be invoked to consider allegations of misconduct against Mayor Foppoli?

A: Government Code section 3060 provides that the County Grand Jury may vote to present accusations against a town officer for willful or corrupt misconduct in office. The accusation would then be served upon the defendant, who must appear in Superior Court to answer the accusation. If the defendant denies the charges, the defendant is tried, and a conviction results in a court pronouncement of removal.

Q: If the Mayor resigns, can the Town Council continue to hold meetings and conduct official business?

A: For the Town Council to hold a meeting and conduct official Town business, a quorum of the five-member Town Council must be present. This means that three members must be in attendance. There are currently four members on the Town Council since a vacancy was created when Mayor Foppoli was directly elected as mayor. A special election will take place on May 4, 2021 to fill that Council vacancy. The person holding the seat of mayor is not required to be present at a meeting to form a quorum; only three members of the full Council are required to be present.

If the Mayor were to resign before the Council swears in the person elected on May 4, 2021, then all three remaining members of the Council must be present and able to vote in order for an official meeting to be held or business to be conducted.

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