AGENDA SECTION: OTHER BUSINESS
AGENDA ITEM #8
REPORT # 12- 9

STAFF REPORT
COUNCIL MEETING DATE:
January 23, 2012

ITEM FOR COUNCIL CONSIDERATION:

City Council Options regarding the conduct of Councilmember Armendariz.

City Manager _____ **City Attorney** _____
Dave Durflinger Peter Brown

ACTION ITEM X ; NON-ACTION ITEM ___

STAFF RECOMMENDATION: Consider the options provided and take any related action as determined appropriate.

I. BACKGROUND/DISCUSSION:

The City Council has requested an opportunity to provide a formal, public response related to the conduct of Councilmember Armendariz, including conduct that led to his arrest on December 2, 2011, on charges of driving under the influence.

The City Council has authority as a local legislative body to take actions as a body, including making statements and requests related to its members, and to change or limit responsibilities and activities of its members related to the conduct of City business.

The City Council does not have authority to remove an elected Councilmember from his or her elected office. Only the electorate, i.e., City of Carpinteria voters, have that authority through the recall process (discussed in the Legal section of this report).

At its regular meeting of January 9, 2012, the City Council specifically requested that it have the opportunity to consider taking action to censure, to make one or more requests or recommendations, and to reconsider the committee

assignments of Councilmember Armendariz. Conduct of City Councilmembers is addressed through the City's Municipal Code, as it relates to participating in City Council meetings, and through the City's Code of Ethics, Resolution No. 5007, (attached).The Mayor and Councilmember Stein have assisted staff in developing a draft Resolution (attached) for the City Council's consideration.. Adoption of the Resolution would serve, in part, as a public reprimand in response to the conduct of Councilmember Armendariz. The Resolution also includes actions that the City Council may deem necessary and appropriate in response to the conduct of Councilmember Armendariz.

The following is a discussion of public censure and other actions included in the proposed Resolution:

Censure: According to Webster's Dictionary, a censure is "an official reprimand, as by a legislative body of one of its members." Staff believes that a censure can be stated orally by a councilmember and proposed in a motion, or provided as a written document and included in a motion. There is no requirement for what is included in a censure; however, typically such statements include findings of fact and related conclusions and consequences.

Request/Recommendation: Either as a conclusion to be included in a censure or as an independent statement, the City Council may make a request of one of its members, including asking for that member's voluntary resignation from the City Council.

Assignments: After each Municipal Election the City Council votes to assign its members various responsibilities, including service on committees. Notice of the current list of assignments is included on each City Council regular meeting agenda. Assignments are made through nomination by the Mayor and confirmation by majority vote of the City Council. Examples of assignments that are made by the City Council include assignments to represent the City on:

1. Regional Agencies and Committees
2. Joint and Special Committees
3. Ad Hoc Committees

Since City Council member assignments are made at the discretion of the City Council, such assignments can be changed at any time at the discretion of the City Council.

Councilmember Armendariz currently represents the City on the Board of Directors of the Santa Barbara County Association of Governments (SBCAG), is the alternate to the California Joint Powers Association, is one of two representatives to the School District and Fire Board Joint Committees, and is one of two representatives on the Ad Hoc Transportation Committee. Should the Council act to remove Councilmember Armendariz from these assignments, Mayor Clark, as alternate, would immediately fill the City's position on the SBCAG Board while the Council could reassign the other committee positions or

leave them vacant until new assignments are made after the November 2012 municipal election.

Councilmember Activities. Activities of City Council members can include attending public events, meetings, conferences and seminars, and travelling to and from events and meetings. The City Council has the authority to establish limits on the activities of any of its members, should it determine that such limits are appropriate. Such limits could include precluding a Council member from representing the City at public events and meetings. The City Council may also preclude one of its members from driving to and/or from any public meetings, including City Council meetings, at which that member is participating officially as a City Council member or otherwise representing the City.

II. LEGAL:

Because members of the public have asked questions about recall proceedings and vacancy of office matters, these subjects are discussed below, as well as other topics germane to this report.

1. Recall Procedure

Elections Code sections 11000 et seq. contains the rules for the recall of elective officers of cities.

Proceedings for a recall may be commenced against any elective officer, except if the officer's term of office will terminate within 6 months or less from the date when the proceedings are commenced. (Elections Code § 11006-11007.) A term of office is considered to extend until a successor for the office is elected and qualified. (Gov't Code § 36503.) To commence the recall proceedings, a notice of intention must be served upon the officer, and then filed within 7 days with the elections official, and then published. (Elections Code § 11021-11022.) The officer then has the opportunity to file an answer with the elections official within 7 days after the filing of notice of intention. (Elections Code § 11023.)

A blank copy of the recall petition must be filed with the elections official within 10 days of the answer to the notice of intention, or within 10 days of the expiration of the period given to answer. (*See* Elections Code § 11042.) Only after approval of the petition, may the proponents seek signatures.

The petition must then be filed with the elections official within a specified time period dependent upon population of electoral jurisdiction. For cities with between 5,000 and 10,000 registered voters, the time period is 90. To recall a city officer, the number of signatures required is equal to not less than 25% of registered voters in the electoral district, if there are less than 10,000 registered voters). (Elections Code § 11221.) Within 14 days of the governing body receiving a certified petition, an order to hold an election to determine whether the officer shall be recalled shall be issued, and the election shall take place not

less than 88 days and not more than 125 days after the order, but in any case shall be held on the same date as any regular or special election set to fall within this timeframe. (*Elections Code* §§ 11240-11242.) For all officers to be removed, a simple majority (i.e., 50% + 1) must vote "yes" on the recall. (Elections Code §§ 11348, 11349.)

2. Vacancy of Office

Under Government Code section 1770, an office becomes vacant upon the happening of several events, including resignation of the official (in writing and filed with the City Clerk) and upon conviction of a felony. (Gov't. Code § 1770.) An office can also become vacant through abandonment by words or acts indicating an intent to abandon the office, (*Walter v. Adams* (1952) 110 Cal.App.2d 484, 490), or through recall. (See discussion above.)

Within 60 days of a vacancy, the council must fill the seat through appointment or special election. (Gov't Code § 36512.)

3. Legal Requirements Related to Censure

A City Council may consider the acts of one of its members and censure a member. (*Braun v. City of Taft* (1984) 154 Cal.App.3d 332, 347-348.) The censure must be based on adequate findings and legally sufficient grounds

4. Restrictions on Councilmember Activities

A government may impose conditions upon a public employee if the restraint rationally relates to enhancement of public service, the benefits the public gains outweigh any right that is restricted, and no alternatives less subversive to any rights at issue are available. (*Norton v. City of Santa Ana* (1971) 15 Cal.App.3d 419, 425-426.) A city possesses the discretion to impose reasonable disciplinary measures on city employees. (*Cranston v. City of Richmond* (1985) 40 Cal.3d 755.)

III. ATTACHMENTS:

Draft Resolution No. 5358
Resolution No. 5007, City of Carpinteria Code of Ethics

RESOLUTION NO. 5358

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARPINTERIA, CALIFORNIA, CENSURING, REVOKING ASSIGNMENTS, RESTRICTING DRIVING ON CITY BUSINESS, AND REQUESTING THE RESIGNATION OF COUNCILMEMBER ARMENDARIZ

WHEREAS, the City of Carpinteria has determined that it is essential for the proper operation of the City for the public to have confidence in the integrity of its local government; and

WHEREAS, the City of Carpinteria has adopted a Code of Ethics policy through Resolution No. 5007, which establishes ethical standards of conduct for all City officials, including elected officials; and

WHEREAS, the City's Code of Ethics establishes that a City Councilmember's responsibilities include compliance with local, state and federal laws, and that a Councilmember's conduct in both his or her official and private affairs should be above reproach and avoid the appearance of impropriety; and

WHEREAS, On December 2, 2011, Councilmember Armendariz by his own admission was driving while under the influence of alcohol, was arrested, and has been charged with driving under the influence of alcohol, this being the second time that Councilmember Armendariz has been charged with this crime while serving as a City Councilmember; and

WHEREAS, It is the understanding of the City Council that Councilmember Armendariz has been intoxicated at public events in Santa Barbara County where other elected officials and members of the public witnessed this conduct; and

WHEREAS, While Councilmember Armendariz has expressed remorse over his conduct and has stated that he has a problem with consumption of alcohol, he has also stated that he likes to drink and cannot predict that he will not drink again; and

WHEREAS, the City's Code of Ethics states that a violation of any provisions of the policy should raise conscientious questions for the public official concerned as to whether voluntary resignation or other action, such as reprimand, formal censure, loss of seniority or committee assignment or budget restrictions, is necessary to promote the best interests of the City; and

WHEREAS, Councilmember Armendariz has not voluntarily offered any alterations related to his status and responsibilities as an elected official as a result of the conduct described above.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CARPINTERIA AS FOLLOWS:

SECTION 1:
The above recitals are true and correct and are incorporated herein as though set forth in full.

SECTION 2:
Councilmember Armendariz' conduct has violated the City's Code of Ethics, was inappropriate and unacceptable for a public official representing the City of Carpinteria, and this Resolution serves as a formal statement of censure of Councilmember Armendariz' conduct as described above.

SECTION 3:
Councilmember Armendariz can no longer effectively represent the City of Carpinteria, and all assignments to regional agencies, standing committees, and ad hoc committees that were confirmed by a vote of the City Council on January 10, 2011, are hereby revoked.

SECTION 4:
Councilmember Armendariz is not authorized to drive a motor vehicle in the conduct of his role as an elected official for the City of Carpinteria, including travel to or from City Council meetings and to or from any other event or meeting where he may formally or informally represent the City of Carpinteria.

SECTION 5:
The City Council requests that Councilmember Armendariz voluntarily resign from the City Council.

PASSED, APPROVED AND ADOPTED this 23rd day of January, 2012 by the following called vote:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

_____
Mayor, City of Carpinteria

ATTEST:

_____
City Clerk, City of Carpinteria

I hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of the City of Carpinteria held the 23rd day of January, 2012.

_____

City Clerk, City of Carpinteria

APPROVED AS TO FORM:

_____

City Attorney, City of Carpinteria

RESOLUTION NO. 5007

A RESOLUTION OF THE CARPINTERIA CITY COUNCIL ADOPTING A REVISED CODE OF ETHICS FOR MUNICIPAL OFFICIALS AND EMPLOYEES OF THE CITY OF CARPINTERIA AND REPEALING RESOLUTION NO. 42

WHEREAS, the maintenance of high ethical standards is a prerequisite for trust in public institutions; and

WHEREAS, it is the intent of the officials and employees of the City of Carpinteria to demonstrate the highest ethical standard by policy and example; and

WHEREAS, it is the desire of the City Council to establish a formal ethics policy that will demonstrate and memorialize the ethical standards of the City;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Carpinteria that the following be, and hereby is, a "Code of Ethics" for the Public Service of the City of Carpinteria.

1. Declaration of Policy.

The proper operation of democratic government requires that public officials and employees be independent, impartial, and responsible to the people; that governmental decision and policy be made in the proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. In recognition of these goals, there is hereby established a Code of Ethics for all officials and employees, whether elected or appointed, paid or unpaid. The purpose of this Code is to establish ethical standards of conduct for all such officials and employees by setting forth those acts or actions that are incompatible with the best interests of the City. The provisions and purpose of this Code and such rules and regulations as may be established are hereby declared to be in the best interests of the City of Carpinteria.

2. Responsibilities of Public Office.

Public officials and employees are agents of public purpose and hold office for the benefit of the public. They are bound to uphold, carry out impartially, and comply with the letter and the spirit of the laws of the nation, state, and municipality and thus to foster respect for all government. These laws include, but are not limited to: the United States and California constitutions; the Carpinteria municipal code; the laws pertaining to conflicts of interest, election campaigns, financial disclosures, employer responsibilities and open processes of government; city ordinances and policies. They are bound to observe in their official acts the highest standards of morality and to discharge faithfully the duties of their office regardless of personal considerations, recognizing that the public interest must be their primary concern. Their conduct in both their official and private affairs should be above reproach and avoid the appearance of impropriety.

3. Dedicated Service.

All officials and employees of the municipality should encourage meaningful involvement of the public and be loyal to the policy objectives expressed by the electorate through the City Council and to programs developed to attain those objectives. All Councilmembers, appointive officials and employees shall prepare themselves for public issues presented at public meetings, listen courteously and attentively to all public discussions before the body, and focus on the business at hand. All officials and employees shall refrain from actions or behavior which interfere with the orderly conduct of meetings.

Appointive officials and employees should adhere to the rules of work and performance established as the standard for their positions by the appropriate authority.

Officials and employees should not exceed their authority or breach the law or ask others to do so, and they should work in full cooperation with other public officials and employees unless prohibited from so doing by law or by officially recognized confidentiality of their work.

4. Fair and Equal Treatment.

a. Use of Public Resources. No official or employee shall request or permit the use of City-owned vehicles, equipment, materials, property or resources for personal purposes or gain, except when such services are available to the public generally or are provided as municipal policy for the use of such official or employee in the conduct of official business.

b. Obligations to Citizens. No official or employee shall grant any special consideration, treatment, or advantage to any citizen or group of citizens beyond that which is available to every other citizen in the same circumstances. Officials and employees shall base their decisions on the merits and substance of the matter at hand, rather than on unrelated considerations.

5. Conflict of Interest.

No official or employee shall engage in any business or transaction, incur any obligation, or have a financial or other personal interest, direct or indirect, which is incompatible with the proper discharge of his official duties in the public interest or would tend to impair his independence of judgment or action in the performance of his official duties. A personal interest, as distinguished from a financial interest, includes an interest arising from blood or marriage relationships or close business or political association.

Specific conflicts of interest are enumerated below for the guidance of officials or employees, but do not provide an exclusive list:

a. Incompatible Employment. No official or employee shall engage in or accept other employment or render services for other interests when such employment or service is incompatible with the proper discharge of his official duties or would tend to impair his independence of judgment or action in the performance of his official duties.

b. Disclosure of Confidential Information. No official or employee shall, without proper legal authorization, disclose confidential information concerning the property, government, or affairs of the City. Nor shall he use such information to advance the financial or other personal interest of himself or others.

c. Gifts and Favors. No official or employee shall accept any valuable gift, whether in the form of service, loan, thing, or promise, from any person, firm, or corporation which to his knowledge is interested directly or indirectly in any manner whatsoever in business dealings with the City; nor shall any such official or employee (i) accept any gift, favor, or thing of value that may tend to influence him in the discharge of his duties, or (ii) grant in the discharge of his duties any improper favor, service, or thing of value.

d. Representing Private Interests Before City Agencies or Courts. No official or employee whose salary is paid in whole or in part by the City shall appear on behalf of private interests of third parties before any agency of the City. He shall not represent private interests of third parties in any action or proceeding against the interests of the City in any litigation to which the City is a party. However, it is understood that officials and employees enjoy First Amendment rights and therefore may represent their individual opinions and positions before the council so long as that person explicitly states that they do not represent the opinion of the entire council.

A councilmember may appear before City agencies on behalf of constituents in the course of his duties, as a representative of the electorate or in the performance of public or civic obligations. However, no official or employee shall accept or agree to accept a retainer or compensation that is contingent upon a specific action by a City agency.

f. Financial and Personal Interests. Officials and employees shall comply with the requirements of the Political Reform Act of 1974 (Government Code Section 81000 *et seq.*), the regulations of the Fair Political Practices Commission (2 Cal. Code of Regs. Section 18730, *et seq.*), any amendments thereto, and other applicable laws, relating to the disclosure of financial and personal interests and disqualification from making, participating in making, or influencing any governmental decision before the City.

6. Political Activity.

No appointive administrative official or employee in the administrative service shall use the prestige of his position on behalf of any political party.

No appointive administrative official or employee in the administrative service shall orally, by letter, or otherwise, solicit or be in any manner concerned in soliciting any assessment, subscription, or contribution to any political party; nor shall he be a party to such solicitation by others. Such appointed officials and employees shall not take an active part in political campaigns for candidates.

7. Applicability of Code.

When an official or employee has doubt as to the applicability of a provision of this Code to a particular situation, he should apply to the Carpinteria City Council or City Attorney for interpretation. The official or employee shall have the opportunity to present his interpretation of the facts at issue and of the applicable provision(s) of the Code before an advisory decision is made.

This Code shall be operative in all instances covered by its provisions except when superseded by an applicable law. However, the law sets only the minimum standard for ethical conduct; to the extent that this Code establishes additional or more stringent standards than that of the law, this Code shall be operative.

If any section, subsection, subdivision, sentence, clause, or portion of this Code, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Code.

8. Enforcement.

This Code is intended to be self-enforcing. It will be most effective when officials and employees are thoroughly familiar with its provisions and assure the ethical standards are understood and practiced so the public can have full confidence in the integrity of the government. Violation of any provisions of this Code should raise conscientious questions for the official or employee concerned as to whether voluntary resignation or other action, such as reprimand, formal censure, loss of seniority or committee assignment or budget restrictions, is necessary to promote the best interests of the City. Violation by a City employee may constitute a cause for suspension, removal from employment, or other disciplinary action.

THE CARPINTERIA CITY COUNCIL hereby resolves that the revised Code of Ethics for Municipal Officials and Employees of the City of Carpinteria is hereby approved and adopted and that Resolution No. 42 is hereby repealed.

PASSED, APPROVED AND ADOPTED this10th day of July, 2006 by the following called vote:

AYES:	**COUNCILMEMBER:**	Ledbetter, Armendariz, Jordan, Gandrud, Stein
NOES:	**COUNCILMEMBER:**	None
ABSENT:	**COUNCILMEMBER:**	None

Mayor, City of Carpinteria

ATTEST:

City Clerk, City of Carpinteria

I hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of the City of Carpinteria held the 10th day of July, 2006.

City Clerk, City of Carpinteria

APPROVED AS TO FORM:

City Attorney, City of Carpinteria

Council Meeting of 1/23/12
Agenda Item # 8

The following is correspondence received from public.

madd™

Mothers Against Drunk Driving
California State Office
madd.org

4629 Whitney Avenue, Ste. 7
Sacramento, CA 95821

916.481.6233
916.485.9623 fax
888.919.6233 toll free

January 18, 2012

Mr. Dave Durflinger
City Manager
City of Carpinteria

Via email: daved@ci.carpinteria.ca.us

Dear Mr. Durflinger:

Mothers Against Drunk Driving (MADD) has recently received several phone calls from concerned citizens regarding drunk driving in your city and as we understand it, this topic is on the City Council's agenda for the meeting of January 23, 2012. Please allow me to submit this letter on behalf of MADD in hopes it might be read and made part of Public Record.

MADD's mission *is to stop drunk driving, support the victims of this violent crime, and prevent underage drinking.* Since its inception in 1980, MADD has worked to bring education and awareness to the public regarding the dangers of drunk driving. As a result of those efforts over the last 31 years, most will agree this violent crime is unacceptable and 100% preventable. Sadly however, it is obvious there is still a significant problem, there is still work to be done, and some still need the reminder.

Last year, drunk drivers killed 791 people and injured more than 20,000 on the California roadways. As staggering as those numbers are, we must remember that each one represents a person who leaves behind a loved one or someone whose life has been changed forever. Because of someone's very bad choice to drink and drive, parents have been forced to bury their children—and children to bury their parents. It strips thriving families of their health and livelihood. It crushes dreams. The reality is, the devastating impact of drunk driving is felt throughout an entire community and small communities, such as Carpinteria are not immune.

MADD believes that every drunk driver has the potential to take a life and we would like to encourage you to join us in sending a clear message that drunk driving will not be tolerated in Carpinteria. We believe every offense should be adjudicated with the best interests of justice and public safety in mind and that all persons convicted of drunk driving should face the consequences of their actions. With the strong voice of those who want a safer future, we will be able to eliminate drunk driving and lives will be saved.

Respectfully submitted,

Brenda Frachiseur

Brenda Frachiseur
Assistant State Executive Director
MADD California

CC: Carpinteria City Council Members

All Elected officals.
Dave, Duflinger city manager.
I would like a reply.

RECEIVED 1/19/12
JAN 19 2012
CITY OF CARPINTERIA

#1 If a city councilmember is married, and has been having a affair with a agent, employee, or representative of a company who has business, before the City of Carpinteria, and who, that was being pressured, to vote a certain way. Would that be a conflict? So that you and I are clear, Vons is the company. Joe is the Councilmember. This is very serious! Question number #2 If information is submitted to the city and that information is taken by theft, - My property (the photos) that were taken by Joe Jr. What can be done? Do I sign the theft charge? or do you? Many other items are on my mind and I have many questions. Please anyone answer these questions.

Very Concerned
Bill Connell

Mayor / City council / Dave Burgunger. 1/19/12

I have spoken with Joe this past week. At the end of our 30 minute conversation Joe pointed at his car and yelled to me "Look I'm still driving!" Joe stated "he is the BEST councilmen we have". He stated also that "Al Clark beats his wife" He also said I should offer a apology to him as the nude, semi nude photos were not on face book. The pictures were sent by cyber space ~~phone text~~ or sex texting as I believe it is called. Joe's point is taken I mistook cell phone photo as a face book photo. The most upsetting of all Joe stated to me the entire council should resign because all of them have done what he has. I would like to know if that is true. Has every council member had 2 DUI's crashed two cars and had a affair while married? Joe also stated, "What do you want me to do? Kill myself!" Something is very wrong here, can we all fix it? Bill Connell

[redacted]