

**Report of the Chairman
Regarding the Conduct of Commissioner Dan Schmidt
and Proposed Censure
for Consideration by the Board of Harbor Commissioners**

Introduction

Within the Board of Harbor Commissioners, each Commissioner is obligated to carry out their duties in accordance with California law, the public trust, and the standards of integrity necessary to maintain confidence in the District's operations. A resolution of censure is one of the tools available to the Board to address conduct that affects the Board's ability to function effectively and to maintain the public's trust in its governance.

Unlike removal from office, which may occur only through recall or statutory disqualification, censure is an internal governance measure that conveys the Board's determination that certain conduct is inconsistent with the responsibilities of public office. A censure does not limit a Commissioner's voting rights or participation in Board business. Its purpose is to reaffirm the standards of conduct required of those who serve in positions of public authority and to protect the integrity of the Board's decision-making processes.

The authority to issue a censure arises from several longstanding principles of California public law. The Board is responsible for ensuring that its members act in a manner consistent with applicable legal and ethical requirements. As a deliberative body, the Board may determine that certain conduct impairs its ability to function effectively or undermines public trust in its work. The Board also retains the right to express collective disapproval where doing so is necessary to protect institutional integrity.

Censure is not a statement about policy disagreements or differences in judgment, which are expected in any representative body. Rather, censure is reserved for circumstances in which conduct has had a demonstrable impact on the Board's ability to carry out its responsibilities or has affected the public's confidence in the fairness and reliability of District governance.

In preparing this report, care has been taken to distinguish between legitimate disagreement, which is an essential part of democratic decision-making, and conduct that has implications for the Board's functioning or the public's trust. The basis for consideration of censure is not speculation or political difference, but conduct that has been documented in the course of Board proceedings or publicly observable actions. The purpose of this report is to provide a clear and structured basis for the Board's deliberation, to reaffirm the standards associated with public office, and to support the continued integrity and effectiveness of Harbor District governance.

Avoiding Dissemination of Sensitive Information

This report does not include a detailed account of the specific statements or events that contribute to the findings below. This approach is intentional. Several of the matters addressed involve confidential discussions, personnel-related communications, attorney-client communications, and information that, if repeated in a public document, could create additional operational or legal challenges for the District.

The relevant circumstances are already well known to the Commissioners. Restating those details in this report would not advance the purpose of the censure process and may risk re-circulating information that should not be amplified further. The function of this report is therefore to outline the general bases on which the Board may consider censure, rather than to restate or publicize the underlying material.

Basis for Censure #1: Conflict of Interest and the Appearance of Nepotism

Public officials in California are required to avoid not only actual conflicts of interest, but also circumstances that create a reasonable appearance of personal or familial favoritism. This principle is well-established in both statute and case law. Public office is a public trust; decisions must be made solely in the interest of the community and not influenced, or reasonably perceived to be influenced, by private relationships. Unfortunately, Commissioner Schmidt advocated very stridently that his brother be hired as an executive employee of the District, and this resulted in a situation that reasonably created the appearance of nepotism and raised conflict-of-interest concerns. Public trust requires that appointments of this nature be free from any perception of familial influence.

California's conflict-of-interest rules operate on two interrelated levels:

- Government Code §1090, which prohibits public officials from participating in the making of contracts in which they have a financial interest; and
- The common-law conflict-of-interest doctrine, which forbids officials from using their position to secure benefits for relatives or associates, and requires public officials to avoid conduct that creates the appearance that decisions are being influenced by personal relationships rather than objective merit.

It is true that §1090 focuses on financial interest. However, California courts and the Fair Political Practices Commission consistently hold that public trust is damaged even when a financial benefit is only potential, indirect, or perceived, and even when the relative in question is qualified. The standard is not merely whether the relative is capable; the standard is whether the public can reasonably trust the integrity of the process.

Financial Interdependence and Shared Business Interests

Government Code §1090 prohibits a public official from participating in the making of contracts in which the official holds a direct or indirect financial interest. The prohibition applies not only

where the official would receive compensation personally, but also where the official and another individual share a mutual financial interest, such as joint ownership of a business enterprise. In such circumstances, a financial benefit to one party operates as a foreseeable financial benefit to both, because revenue, capital, expenses, and economic advantage are shared within the joint business relationship.

Commissioner Schmidt and his brother are joint owners of *The Triplicate*, a commercial enterprise. The brother's appointment to a compensated executive position within the Harbor District would provide him with a new source of income, which could reasonably be expected to support or subsidize his ongoing participation in the joint business venture. This relationship creates a shared financial interest as understood under §1090 and associated conflict-of-interest doctrines. Even if no actual transfer of funds were ever made, the reasonable foreseeability of financial interdependence is sufficient to trigger the statutory concern.

The issue, therefore, is not the personal character of the applicant, nor any judgment of competency, but the structural risk that public resources could indirectly support or stabilize a jointly held private business. This circumstance heightens the appearance of conflict already present due to the familial relationship, and underscores why the law requires recusal and abstention in such matters. The Board has a duty to avoid decisions that may compromise, or reasonably appear to compromise, the financial neutrality of its hiring and contracting processes. This financial interdependence provides an additional and substantial basis for concern regarding the propriety of Commissioner Schmidt's advocacy.

Commissioner Schmidt argued publicly on October 8, 2025 that nepotism laws apply only when an unqualified person is hired instead of a more qualified applicant, suggesting that if the relative is qualified, the concern does not apply. This is not correct as a matter of law or ethics. Nepotism is not defined solely by the qualifications of the relative. It is defined by the use of official influence to advance the interests of a family member, and by the resulting erosion of public confidence in the impartiality of government decision-making.

Even the perception that a Commissioner is advocating for the preferential treatment of a family member can:

- Undermine confidence in the fairness of hiring and contracting processes;
- Discourage other qualified applicants from applying;
- Create internal workplace divisions and morale issues for staff; and
- Diminish public trust in the independence and integrity of the Board.

For these reasons, most public agencies, including special districts, either prohibit relatives of sitting board members from being considered for executive or supervisory roles, or require complete recusal and non-participation by the Commissioner whose relative is under consideration. In this instance, Commissioner Schmidt did not recuse himself from the discussion, but instead advocated affirmatively for his brother's appointment, including doing so publicly. The Board declined to take that action, but the advocacy itself gave rise to the appearance of nepotism, which the Board has a responsibility to address.

The issue here is therefore not the personal character or abilities of the proposed individual, Commissioner Schmidt's brother, nor any judgment of Commissioner Schmidt's sincerity. The issue is the erosion of the public trust when a Commissioner uses his position to advance the appointment of an immediate family member to a leadership role within the District. The standard the Board must uphold is institutional integrity, not personal preference or loyalty.

For these reasons, Commissioner Schmidt's advocacy on behalf of his brother constitutes conduct inconsistent with the ethical and legal expectations of public office, and forms a valid and substantial basis for censure.

Basis for Censure #2: Disclosure of Confidential Information from Closed Session

California's open meeting law, the Ralph M. Brown Act, is founded on the principle that the public's business must be conducted openly and transparently. At the same time, the Legislature has recognized that there are limited circumstances in which a public agency must be able to deliberate confidentially, and this is true particularly in matters involving litigation, personnel, real property negotiations, or other legally sensitive subjects. To balance these interests, the Brown Act expressly authorizes Closed Session discussions for defined purposes, while simultaneously imposing strict limits on the disclosure of those discussions.

Government Code §54963 governs the confidentiality of Closed Session. It provides that a person who is privy to Closed Session deliberations, whether a Commissioner, legal counsel, or staff, may not disclose confidential information acquired in that setting unless the agency, as a body, authorizes disclosure. The statute protects not only the substance of decisions but also the direction, strategy, concerns, legal advice, negotiation posture, and any other information conveyed during the session.

The intent of §54963 is clear:

- To preserve the District's legal and strategic position in pending or anticipated litigation;
- To allow Commissioners to discuss sensitive matters candidly and without fear of public misinterpretation;
- To protect the privacy rights of employees and applicants; and
- To prevent actions or statements that may expose the District to liability or weaken its bargaining position.

A breach of Closed Session confidentiality causes harm regardless of the speaker's intent. The statute does not require proof that a Commissioner meant to disclose confidential information or understood the implications. The harm lies in the act of disclosure itself, which can undermine the District's legal posture, impair negotiations, damage staff trust in the governance structure, and erode the integrity of the Board's deliberative process.

There have been multiple instances in which statements made by Commissioner Schmidt in public settings, including during Board meetings, have referenced or alluded to matters

discussed in Closed Session that had not been authorized for release. In some cases, these statements were made while offering context or explanation for a position taken in open session; in others, they were made in response to comments from members of the public. Whether intentional or inadvertent, these references conveyed information relating to the subject matter, tone, or strategic considerations discussed privately among the Board and counsel.

The concern here is not one of intent, but of foreseeable effect. When information associated with attorney–client privileged discussions, litigation strategy, or negotiation posture is referenced publicly, even indirectly or without specific detail, such statements may be understood by outside parties as indications of the District’s assessments, constraints, or priorities. This can place the District at a practical disadvantage in ongoing or anticipated negotiations or legal proceedings.

The resulting impacts are well recognized in public agency governance:

- The District’s negotiating position may be weakened if counterparties adjust their approach based on statements made in public settings;
- Litigation strategy may be compromised if opposing counsel becomes aware of internal evaluations or priorities;
- Staff and legal counsel may be less inclined to provide candid assessments in Closed Session if there is concern that internal discussion will be referenced publicly; and
- The Board’s ability to make informed decisions in a confidential environment may be diminished.

California law does not require proof of intent to create such disadvantages. The standard applicable to public officials is one of duty and care: Commissioners are expected to safeguard privileged and confidential information so that the District may operate effectively, defend its legal interests, and conduct negotiations on fair and stable terms.

Accordingly, the instances in which Closed Session subject matter was referenced publicly have had implications for the District’s legal posture, governance effectiveness, and public confidence in the confidentiality of Board deliberations. The Board has a responsibility to address such concerns to preserve the integrity of its decision-making processes. For these reasons, the Board may consider this conduct as a substantial and independent basis for censure.

Basis for Censure No. 3: Public Communications Without Adequate Factual Verification

The Crescent City Harbor District depends upon the public’s confidence in the integrity of its governance. That confidence requires that elected officials communicate responsibly and exercise due diligence when presenting information in public settings. Commissioners have both access to accurate information and a heightened responsibility to avoid disseminating statements about the District, its employees, or its contractors that have not been verified for accuracy and context. When assertions are made or repeated without taking reasonable steps

to confirm their basis, particularly where the relevant facts are readily ascertainable, the result is an erosion of public trust and impairment of the District's ability to operate effectively.

Commissioner Schmidt has, on multiple occasions, repeated and relied upon statements made by third parties concerning the Harbor District, its staff, and its contractors without first confirming their accuracy or obtaining clarifying context. These statements have been referenced during public meetings and through his role as publisher of *The Triplicate*. The concern is not disagreement or criticism, which are appropriate and expected in public governance, but the failure to exercise the due diligence required when conveying information from a position of authority.

As a sitting Commissioner, Mr. Schmidt has access to information regarding District operations and personnel matters that would enable him to verify the accuracy of claims prior to public presentation. When unverified statements are presented as factual, the effect is to create misunderstanding among the public, undermine confidence in the District's operations, and place staff and contractors in a position of defending against assertions that could have been clarified in advance.

California law distinguishes protected opinion from the presentation of factual assertions without sufficient basis. While this report does not assert or attempt to prove that any particular statement was materially false, the governing concern is that public communications by officials must reflect reasonable inquiry and care, particularly when the information concerns personnel, finances, or institutional integrity.

When statements are made from someone who both (1) holds public office and (2) controls a platform for distributing information to the community, the consequences of insufficient verification are magnified. These consequences include loss of public confidence, harm to staff morale and professional reputation, damage to the District's credibility with external partners, and increased administrative and legal burdens on the agency.

The Board has an obligation to maintain standards of responsible communication necessary to ensure effective public governance. A pattern of public statements issued without adequate factual verification is inconsistent with the duties of a public official to act with fairness, accuracy, and responsibility on behalf of the institution. This conduct therefore constitutes a substantial basis for censure.

Basis for Censure No. 4: Public Contact with Recall Petition Signers and the Resulting Impact on Civic Participation

The Crescent City Harbor District is a public agency whose legitimacy depends on the public's confidence that individuals may participate in civic oversight, by speaking at meetings, signing petitions, or expressing criticism, without fear of personal pressure or unease. Protection of these rights is not only a matter of sound governance but is grounded in the California Constitution's guarantee of free expression and political participation. The recall process is one

such form of participation and is a lawful mechanism through which the public may hold elected officials accountable.

Commissioner Schmidt engaged in direct, in-person contact with individuals who had signed a recall petition concerning his position, including door-to-door visits to some petition signers. While such contact is not unlawful in itself, it can reasonably be perceived as exerting personal pressure when initiated by the subject of the petition, particularly where there is no prior relationship between the Commissioner and the individuals contacted. In this context, the concern is not Commissioner Schmidt's subjective intent, but rather the foreseeable effect such interactions may have on the willingness of community members to participate freely in civic processes.

Under standards of public office, perception and impact matter. A public official's communications and actions carry weight, even when delivered courteously, because the official holds institutional authority. When a petition signer is approached at their home by the official whose continued service the petition concerns, an ordinary person could reasonably experience discomfort or perceive the contact as discouraging further participation. The Board must consider this from the standpoint of maintaining a civic environment in which residents feel secure in engaging with their government.

The risk is one of a chilling effect: that other members of the public may hesitate to sign petitions, speak publicly, or participate in Harbor District business because they may fear personal follow-up or scrutiny. Such a dynamic would undermine the openness and fairness that are foundational to representative governance.

The issue here is therefore not whether any individual felt threatened, nor whether Commissioner Schmidt intended to influence participation. The relevant standard is whether the conduct could reasonably be perceived as discouraging public participation in a protected democratic process. Because the District must preserve conditions in which all residents feel free to engage, this conduct is inconsistent with the ethical responsibilities of holding public office and the Board's duty to safeguard public trust. It therefore provides an additional and independent basis for censure.

Conclusion

The Board is familiar with the specific circumstances that form the basis for this report. In keeping with principles of responsible governance, this document does not include a detailed public description of those circumstances. This approach is intentional. Several of the matters touch upon confidential discussions, attorney-client privileged information, personnel-related considerations, and communications involving private members of the community. Repeating such details in a public document could risk exposing sensitive information, create additional operational or legal complications for the District, or cause unnecessary discomfort to individuals who participated in civic processes.

The purpose of this report is therefore to describe the general bases for the Board's consideration of censure and to support informed deliberation, rather than to restate or publicly circulate the specifics of those events.

This censure is not about differences of opinion, personality, or policy preferences. Disagreement among commissioners is not only expected, but healthy. Nor does this report seek to silence a Commissioner, invalidate viewpoints, or restrict any member's right to participate fully in the governance of the District. Commissioner Schmidt will retain his office, his voting authority, and his full legal capacity to advocate for his positions on all matters before the Board.

Nonetheless, based on the grounds set forth in this report and the legal standards governing legislative censure, the Chair respectfully submits this matter to the Board for deliberation and possible censure in open session.

Submitted for consideration by the full Board,

Gerhard Weber
Board Chairman