

## Gautho, Julia

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**From:** Kevin Maguire <kmaguire831@gmail.com>  
**Sent:** Tuesday, September 23, 2025 4:09 PM  
**To:** Clarke, Joe; Westman, Susan; Margaux Morgan; Gerry Jensen; City Clerk; Melinda Orbach; City Council  
**Cc:** Goldstein, Jamie (jgoldstein@ci.capitola.ca.us); Samantha Zutler; Concerned Citizens Of Capitola  
**Subject:** [PDF] 9.25.2025 City Council Meeting Agenda Item 9 B: Code of Conduct Complaint - Amendment to Code of Conduct Complaint Against Councilmember Orbach  
**Attachments:** Amendment to Code of Conduct Complaint Against Councilmember Orbach.pdf

### Amendment to Code of Conduct Complaint Against Councilmember Orbach

**Filed by:** Kevin Maguire

**Date:** September 20, 2025

#### Background

On June 12, 2025, I filed a formal Code of Conduct complaint regarding Councilmember Melinda Orbach's remarks of April 17, 2025, and her subsequent doubling down on June 26, 2025. Upon further review of the City Council & Commissioner Code of Conduct (Administrative Policy I-42), I am amending my complaint to highlight additional violations and to address new misconduct that occurred on June 26—just two hours after Councilmember Orbach emailed me about mediation through the Conflict Resolution Center (CRC).

That same evening, she used the dais to reaffirm her accusations as both her **"truth"** and **"facts."** In then in the same breath she also called this a **"misunderstandings"**

6.26.2025 Councilmember Orbach " earlier today I sent an email to this individual advocating for a newkind of conversation one guided by experienced facilitators who can help us move beyond our **misunderstandings"**

Since then, the harm has been compounded by political allies submitting letters repeating the same falsehoods—many from individuals outside Capitola and using near-identical language. This complaint is not about political differences. It is about an elected official's **abuse of power, misuse of the dais, and violation of the City's own Code of Conduct.**

#### Original Attack – April 17, 2025

During a public meeting, Councilmember Orbach accused me of:

- "wandering around a council member's neighborhood asking where they live,"
- "engaging in physically threatening behavior that extends past politics to our homes and our families," and

- “showing up to someone’s work and trying to get them fired.”

These are some of the most serious accusations a public official can make against a private citizen. **No police complaint, no report, no investigation, and no evidence** exists to support them.

**The facts:** I was canvassing with other residents ahead of the Measure L vote. A witness confirms I did not “wander the neighborhood asking where Melinda lives.” I handed out flyers, as others did. At one point, I asked a gentleman if he knew anything about Measure L, Park Avenue and the Rail Trail plans. He said he did not. I asked him if he knew Councilmember Orbach and if he would pass along a flyer; he agreed. That was the extent of it.

Councilmember Orbach’s residence was public knowledge. She has described her perspective as representing the **extreme east side of Capitola**, publicly posted on social media during her campaign, and had a large campaign sign at her residence. To claim I was trying to uncover something hidden is **false and slanderous**.

Ironically, she framed her remarks as a call for “civil discourse,” while engaging in the very toxic conduct the Code forbids: personal charges, verbal attacks, and reckless misuse of office.

### **Continued Misconduct – June 26, 2025**

After two months to reflect, Councilmember Orbach stated she “did not mischaracterize” me and described her earlier remarks as both her “truth” and “facts.” This is not a clarification; it is an **escalation**. After ample time to correct the record, she doubled down, leaving the harm ongoing.

On the **same day**, hours before the meeting, she emailed me about CRC mediation—then publicly repeated the same attacks that evening. This sequence shows the outreach was **not genuine** but intended for **optics**.

### **Rejected Mediation & Good-Faith Efforts (April–May 2025)**

- I contacted the Police Chief to check if any complaint or investigation existed. **There were none.** The Chief offered to mediate. **I accepted.** Councilmember Orbach rejected/ignored it.
- I met with the Mayor for over an hour. He offered to help restore civility and mediate. **I accepted.** Councilmember Orbach rejected/ignored it.
- Only two months later (June 26) did she send a single email about mediation—**then contradicted it at the dais** that night.

**Contemporaneous records exist:** Text exchanges with Chief Ryan (May 2 and May 8) and Mayor Clarke confirming I sought a peaceful apology/mediation, and logistics texts with my canvassing partner confirming broad route-planning (not “wandering” or “targeting”).

### **July 24 Code of Conduct Discussion – Orbach’s Own Standard**

At the July 24 discussion of Policy I-42, Councilmember Orbach argued there must be a way to “legitimize whether it’s truly a complaint” and to dismiss unsupported complaints within 30–45 days. By her **own standard of legitimacy**, this complaint qualifies: the City’s video record shows her making false

statements of fact from the dais and later doubling down. This is not policy disagreement—it is **documented misconduct**.

### **Bad-Faith Use of “Mediation” & Optics**

- After April 17, I accepted mediation facilitated by the Mayor and Police Chief; Councilmember Orbach **rejected** those opportunities.
- On **May 5, 2025**, my canvassing partner met with Councilmember Orbach at her request. His contemporaneous message afterward stated: **“The only reason Melinda agreed to meet was to check the box... just able to tell Chief Ryan she met with me.”** This reflects **performative engagement**, not accountability.
- On June 26, she emailed about CRC, then **doubled down** hours later from the dais.

This pattern violates **§6.1.2 – Avoiding Impropriety**, using the appearance of civility to shield retaliatory, defamatory conduct.

### **Misuse of Political Connections**

After my initial filing, a wave of support letters appeared repeating the same narrative. Many came from **non-Capitola residents** and used **identical phrasing** (“perceived harassment,” “felt intimidated,” “rooted in a mother’s instinct”), suggesting coordination rather than independent observation. None cites a complaint, report, or investigation. **Feelings are not facts**. Repeating them as accusations compounds harm, misleads the public, and makes writers complicit in perpetuating misuse of the dais.

Councilmember Orbach’s husband, Matt Orbach, submitted a second-hand account claiming that a neighbor felt “uncomfortable” and that I asked for details about where Councilmember Orbach lived. This statement is neither corroborated by the neighbor himself nor accurate. The neighbor’s own letter to the Council contains no factual account of our interaction; it instead repeats the same generalized narrative of “perceived harassment.”

The truth is straightforward: during canvassing, I briefly spoke with a gentleman in the neighborhood and offered him a flyer. I asked if he knew Councilmember Orbach and whether he would be willing to pass along the flyer. He agreed. The exchange was polite, productive, and genuine — the kind of neighborly interaction I would welcome again. At no point did I press for information about her specific residence or attempt to make the interaction uncomfortable.

By contrast, Matt Orbach’s retelling is second-hand, inconsistent with what actually occurred, and appears crafted to fit Councilmember Orbach’s narrative of harassment. This type of uncorroborated hearsay only compounds the reputational harm caused by the original false statements from the dais.

### **Violations of the Code of Conduct (Administrative Policy I-42)**

- **§5.1 – Decisions on the Merits:** Acted on feelings, not facts/evidence.
- **§5.3 – Consider All Sides:** Declared me guilty without due process or engagement.

- **§5.4 – Decorum:** Personal charges & verbal attacks against a resident.
- **§6.1.2 – Avoiding Impropriety:** Retaliation for political criticism/recall activity; performative “mediation” to mask misconduct.
- **§7.2.2 – Professional Conduct in Meetings:** Diverted City business for personal attacks.
- **§7.2.4 – Public Communication:** Failed to use tact and civility.
- **§8.3.1 – Oath of Office:** If she believed crimes occurred, her duty was to report to law enforcement—not use the dais for accusations.

## Legal & Constitutional Concerns

- **Slander per se (California law):** Public accusations of criminal/threatening conduct, made without evidence, that harm reputation.
- **Chilling effect on First Amendment activity:** Labeling lawful civic engagement (Nextdoor posts, canvassing) as “harassment” discourages participation.
- **City exposure:** If the Council declines to act, it risks appearing complicit in ongoing misuse of the dais.

## Pattern of Conduct

This is not a one-time lapse. It is a pattern: acting on feelings over facts; using the dais for personal attacks; rejecting genuine mediation; doubling down instead of correcting; mobilizing allies to repeat falsehoods.

## Requested Actions (Amended)

1. Adopt a **Resolution of Censure** against Councilmember Orbach.
2. **Remove** her from ceremonial roles and committee assignments until corrective steps are completed.
3. Require **mandatory training** in ethics, civility, and professional conduct.
4. Reaffirm that personal attacks from the dais are a **gross misuse of office** and direct presiding officers to immediately curtail such conduct.

## Closing

This is not about politics. My speech has been about policy. Councilmember Orbach’s remarks were **personal accusations**, broadcast as facts, **without evidence**. The harm was public; the accountability must be public. The Council’s duty is to enforce its Code of Conduct. To ignore these violations is to **condone** them.

**Respectfully submitted,**

Kevin Maguire

**Attachment A: Statement of Facts (Concise)**

1. **Canvassing (April 2025):** I canvassed neighborhoods with other residents to distribute flyers ahead of Measure L. This included areas near Councilmember Orbach's residence. We did not "wander" to identify her address; her residence was public knowledge from campaign displays and posts.
2. **Public Accusations (4/17):** From the dais, Councilmember Orbach accused me of "wandering," "physically threatening behavior," and "showing up at someone's work to get them fired." She named me directly.
3. **No Complaint/Investigation:** I checked with the Capitola Police Chief. No complaints or investigations existed.
4. **Good-Faith Mediation:** I accepted the Mayor's and the Police Chief's offers to mediate in April; Councilmember Orbach rejected or ignored both.
5. **Doubling Down (6/26):** After two months, she publicly reaffirmed her accusations as "truth" and "facts" the same evening she emailed me about CRC mediation.
6. **Witness & Records:** A canvassing partner confirms the flyer distribution was part of a broad neighborhood effort. Contemporaneous texts reflect general coordination of routes and timing; texts with the Police Chief and Mayor, and emails to the council reflect my immediate request for a peaceful apology/mediation starting in **April**
7. **Ongoing Harm:** Support letters (many from non-residents) repeat her narrative; media coverage has amplified it. The reputational harm continues.

I declare under penalty of perjury under the laws of the State of California that the foregoing facts are true and correct.

Executed on 9/19, 2025, in Capitola, California.

**Kevin Maguire**

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Kevin Maguire

Capitola Resident

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