



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: RICHARD DOYLE
City Attorney

SUBJECT: Censure Policy - Procedures

DATE: October 14, 2004

BACKGROUND

On October 19, 2004, the City Council will review and discuss the Censure Policy (Council Policy 0-28 attached). This memorandum will provide a summary of the Policy/Procedures and the requirements for imposing "censure" on a member of the City Council.

DISCUSSION

A. Censure Defined

Generally, "censure" has been defined as a form of punishment or discipline by the courts. Salkin v. California Dental Assn. 176 Cal.App.3d 1118 (1986). In order to be able to censure its own members, the Council must have a policy and procedures in place in order to ensure fair proceedings. The procedures in Council Policy 0-28 were implemented to provide such protections and fair proceedings.

B. Limitations on Imposing Censure

A policy which imposes punishment or discipline such as "censure" is subject to constitutional limitations. For example, "censure" may not be imposed for the exercise of First Amendment rights such as the freedom of speech. However, the City Council may as a legislative body, condemn and express strong disapproval of speech such as, for example, racial epithets.

Additionally, in order to ensure the right to a fair trial, the City Council should not impose "censure" on any of its members for the violation of a law while criminal charges are pending.

C. Procedures - Due Process

The procedures in the Censure Policy are intended to protect the due process rights of the person who is subject to censure.

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Under the current policy, a censure hearing can be invoked only upon written request of a member of the Council. The request must contain the specific charges on which the proposed censure is based. The procedures require that the censure hearing be considered by the Rules Committee which makes a recommendation to the City Council that:

- a. Further investigation of the charges is required; or
- b. The matter is to be set for public hearing; or
- c. No action is required.

Further investigation may be conducted by an *ad hoc* committee appointed by the Mayor. If the matter is set for public hearing, the member of the Council who is subject to the charges may be represented and may have the representative speak or ask questions on his or her behalf. The member should be given the opportunity to make an opening and closing statement.

If a decision by the Council is made to impose censure, then a Resolution should be adopted which makes findings with regard to the charges, based on the substantial evidence, and approved by two-thirds vote of the Council.

CONCLUSION

“Censure” is a form of punishment or discipline which requires a policy and procedures to ensure fair proceedings. The procedures in Council Policy 0-28 were implemented to provide such protections and fair proceedings

RICHARD DOYLE
City Attorney

Attachment

cc: Del Borgsdorf