



# Memorandum

**TO:** City Council

**FROM:** Mayor Ron Gonzales

**SUBJECT:** Censure Policy and Procedure

**DATE:** October 15, 2004

Approved:

Date:

10/15/04

## RECOMMENDATION

I recommend that:

- The City Council focus its discussion of censure only on the issues associated with Council Policy 0-28, and as appropriate provide direction to the City Attorney for preparing specific amendments to bring back for Council approval. I have attached questions to assist this discussion by Council (Attachment A).
- Approve the attached resolution regarding ethical standards, due process, and public confidence (Attachment B).

## BACKGROUND

Next week the Council will review our current policy and procedure regarding censure of a city councilmember. Councilmember Yeager, as chair of the Blue Ribbon Task Force on Ethics and Lobbying, and I together asked to put this item on our agenda. Councilmembers Reed and Cortese also have provided memos to the Council regarding both the general issue of our policy and the specific matter of allegations regarding Councilmember Gregory that have triggered the question of censure.

At this time no councilmember has requested that a formal censure process to begin. Under the current policy any councilmember can initiate a censure process by submitting a written request to the Rules Committee with specific charges on which the censure would be based. Until that occurs and the matter comes before us, it is not appropriate for the Council to consider specific allegations regarding a member of Council.

## DISCUSSION

I write this so that the City Council can be clear about what we are attempting to accomplish with our review of the existing censure policy adopted in 1994 and therefore prevent the potential confusion that will likely occur if we discuss both general and specific issues at the same time.

Censure is a very serious action for the City Council to formally express our deep concerns about the actions of a colleague that violate our ethical, legal, or policy principles and betray the public's trust. Although only the voters can unseat a councilmember whose behavior is not acceptable to the public, we as a council do have a profound obligation to voice our disapproval when a colleague clearly breaches the high standards of conduct we all expect from our elected officials.

At the same time, we also must respect the fundamental tenets of justice, fairness, and due process that guide all our governmental institutions. Many of these are embedded in the Constitution, and others are woven into the fabric of American life through our common experience. These same principles are wisely reflected in our current censure policy. The policy notes that:

- **First Amendment rights of free speech** of councilmembers are not a matter for censure, although councilmembers individually or collectively can condemn or express their strong disapprobation of remarks made by a councilmember.
- **Due process, similar to that in the Bill of Rights**, is outlined in the policy. This requires us to have a written articulation of specific charges on which a proposed censure would be based, provide adequate time to notify the councilmember subject to those charges, provide an ad hoc Council committee investigation if necessary, provide sufficient time for the councilmember prepare a defense, and allow the councilmember to question accusers and be represented in a forum open to the public.
- **Fairness** is specifically mentioned to ensure that a censure process would not interfere with an individual's right to an unprejudiced jury trial if a criminal proceeding is involved.

Clearly censure is not regarded lightly by the policy or by the City Council. The current policy spells out a deliberate process that prevents a rush to judgment while recognizing the Council's obligation to vigorously maintain the highest standards of ethics so that we prevent erosion of the Council's overall effectiveness and earn the public's confidence in the integrity of their elected officials. As we have experienced in our nation in the past, whether red scares in the early 20<sup>th</sup> century, the McCarthy era of the 1950s, or the excesses of special prosecutors during the Clinton presidency, we always must deliberate with care when we consider passing our collective judgment based on rumors or mere allegations because it will affect the personal and professional reputations of human beings.

The news media and others have made allegations about potential violations of the City's ordinances regulating gifts, conflicts of interest, and reporting by Councilmember Gregory. This has raised serious questions about what we as a Council must do to uphold our standards of conduct for councilmembers. At this time, however, the District Attorney is investigating the matter, and we do not have information from that inquiry that we would need to make a fair judgment.

We urge the District Attorney to complete his inquiry as soon as possible so that we can consider appropriate action. We respect the effort and time to conduct such investigations, but it is urgent that we conclude this issue quickly to retain the public's confidence. If the District Attorney finds there are adequate grounds to move forward with criminal proceedings, however, then our current policy precludes us from immediately undertaking a censure process for the very legitimate reason of fairness.

If we learn as a result of the District Attorney's work or from other facts that come to light that our ethical, legal, or policy principles have been violated, then the City Council must act without hesitation to express our strong disapproval through censure. The current policy provides the means for that to occur, and Council can consider specific charges when a councilmember brings them forward to the Rules Committee.

In the meantime, if Councilmember Gregory can provide the Council with information that can clear up these allegations, then the matter of censure may no longer be relevant.

### CONCLUSION

I am deeply dismayed by the allegations of improper conduct that have raised about one of our colleagues because they have created a cloud over the entire Council that must be cleared up to restore and maintain the public's trust. As we proceed with our discussion of the current censure policy, however, our objective should be to amend the policy to find a practical balance between the urgency with which we must address allegations of illegal or unethical conduct while maintaining a process that respects the rights of an individual without unfair rush to judgment.

**Attachment A: *Questions for guiding Council discussion of the censure policy:***

I have listed a number of questions here to guide our discussion of the censure policy on Tuesday and to help develop any amendments to it that might be needed. These are not exhaustive, but provide the approach I believe we should take to make sure our existing policy continues to be clear, effective, and appropriate to meet our needs to protect high ethical standards and to meet the public's expectations for the integrity of elected officials.

1. What is the proper relationship between a criminal inquiry by the District Attorney's Office and a Council censure proceeding?
2. What is the practical difference between "censure" as a punitive action and "condemnation" that is not punitive?
3. What are other issues of conduct, in addition to matters of violation of law and policy, that would warrant censure?
4. What would be considered suitable evidence and what factual material would be needed to sustain a decision to censure?
5. What are the powers of the Council to require witnesses to appear and testify in a censure proceeding?

**Attachment B**

RESOLUTION

WHEREAS: Censure is a very serious method for the City Council to formally express our deep concerns about the actions of a colleague that violate our ethical, legal, or policy principles and betray the public's trust; and

WHEREAS: The current Council censure policy spells out a deliberate process that balances the Council's obligation to vigorously uphold the highest standards of ethical conduct with fundamental issues of fairness and due process to protect the rights of individual councilmembers; and

WHEREAS: We always must deliberate with care when we consider passing our collective judgment based on rumors or mere allegations because it will affect the personal and professional reputations of human beings; and.

WHEREAS: The City Council must strongly express its deep disapproval when a colleague clearly breaches the high standards of conduct we and the public expect from public officials; and

WHEREAS: Recent allegations about the conduct of Councilmember Gregory and potential violations of the City's ordinances regulating gifts, conflicts of interest, and disclosure have raised serious questions of ethical behavior and Council censure; and

WHEREAS: While the District Attorney is currently investigating these allegations, we do not have information from that inquiry that we would need to make a fair judgment regarding potential censure;

NOW, THEREFORE, be it resolved by the City Council of San Jose that:

1. Because of the urgency to quickly retain the public's confidence, we respectfully urge the District Attorney to complete his inquiry as soon as possible and provide the Council with information about its status so that we can consider appropriate actions including possible censure; and
2. If we learn as a result of the District Attorney's efforts or from other facts that come to light that ethical, legal, or policy principles have been violated, then the City Council will act without hesitation to begin a censure process to express our strong disapproval.

Approved on October 19, 2004.

AYES:

NAYES: