



# Memorandum

**TO:** Mayor and City Council  
**SUBJECT:** Council Censure Policy

**FROM:** Chuck Reed  
**DATE:** October 7, 2004

The Council Censure Policy should not keep the Council from taking prompt action to clear up a cloud of suspicion when a Councilmember has been accused of improper behavior. If it does, the policy should be changed. However, a censure action regarding Councilmember Gregory would not be inconsistent with Council Policy 0-28 because there are no criminal charges pending against Councilmember Gregory, and we do not have to determine if he violated the law.

## **RECOMMENDATION:**

The Council should take the following actions:

- a. Agendize a public hearing re censure regarding allegations made against Councilmember Gregory, which, if true, would be a serious violation of our Code of Ethics. (Policy 0-4)
- b. If the Council does not wish to consider censure at this time, agendize a public hearing on a Resolution of Condemnation, which meant to express strong disapproval, but is not punitive.(Policy 0-28)
- c. Whether or not the Council considers censure or condemnation, the Council should make clear that the following actions violate our standards for ethical conduct, whether or not the actions are legal:
  - Soliciting a gift or exerting pressure to encourage a gift in any amount.
  - Accepting gifts in excess of city or state law.
  - Creating a conflict of interest by accepting a gift in excess of state law.
  - Failing to report gifts as required by state law.
  - Participating in Council deliberations on matters affecting someone who has made a gift in excess of city or state law.

## **BACKGROUND:**

Councilmember Gregory has been accused of violating city and state gift laws by accepting gifts in excess of the limits. He has not explained his actions to the Council, except to say at a press conference that he did not violate the law. However, he has not denied that he accepted the gifts.

Councilmember Gregory's failure to explain himself and the Council's failure to take some action to get the facts has created a public impression that the Council tolerates the alleged behavior. Actions may be legal and, yet, are unethical. We should not give the impression that we have a standard that implies that any behavior is OK unless it is illegal.

These allegations are being investigated by the District Attorney, and I filed a complaint with the San Jose Elections Commission over four months ago asking for an investigation. I had hoped that would give us some answers by now. However, the Elections Commission has been waiting for the District Attorney to act, so we still know little about the circumstances of the allegations. We do not know how long it will take for the District Attorney to act or whether or not he will act. We do not have to wait for the DA. Nor should we wait any longer.

We do not need to determine whether or not Councilmember Gregory broke the law. We do need to determine if he violated our ethical standards, whether or not the acts were illegal. The longer we wait without doing so, the more it seems we do not care.

A hearing regarding censure would allow the Council to hear directly from Councilmember Gregory about the circumstances around the events in question. If he has been wrongfully accused, no further action would be necessary by the Council.

The Council Censure Policy (Policy 0-28) states: "In order to ensure the right to a fair jury trial, the City Council shall not impose 'censure' on any of its members for the violation of any law while criminal charges are pending." However, that does not mean the Council cannot take action in response to the allegations of misconduct by Councilmember Gregory. Breaches of council policies do not carry a criminal penalty and are not subject to criminal prosecution.

Policy 0-28 specifies that "censure is an appropriate punitive measure when the violation of law or policy is deemed by the City Council to be a serious offense."

Councilmember Gregory's actions appear to have violated our Code of Ethics, which are contained in Council Policy 0-4:

**"The citizens of San Jose expect and must receive the highest standards of ethics from all those in public service, regardless of personal consideration."** (Council Policy 0-4)

The allegations about the actions of Councilmember Gregory raise serious questions about his behavior, and it is our obligation to say whether or not he violated our standards. The best way to do that is to proceed with a hearing and get the facts. We can do so and be consistent with Council Policy 0-28. Even if it were not consistent, council policies are not ordinances, and the Council may take action, whether or not the action is consistent with a council policy.

Chuck Reed  
Councilmember

cc: Lee Price, City Clerk