

CITY OF SAN JOSE, CALIFORNIA

CITY COUNCIL POLICY

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APPROVED BY COUNCIL ACTION

November 8, 1994, Item 9c

BACKGROUND

The City of San Jose has a strong commitment to ethics. Charter Section 204 specifies that “The citizens of San Jose expect and must receive the highest standards of ethics from all of those in public service.” In order to be able to enforce conformance to its ethical policies as well as its ordinances, the City Council must have a procedure by which it can punish it’s own members for violation from its duly adopted ethical laws and policies.

PURPOSE

This Policy and Procedure is intended to provide the mechanism by which the City Council acting as whole, can discipline and punish any of its members who violate state or federal laws, City ordinances or policies.

POLICY

It is the Policy of the City Council that all of its members shall abide by federal and state law, City ordinances and City Council policies. Violation of such law or policy tends to injure the good name of the City and to undermine the effectiveness of the City Council as a whole. Such conduct is deemed to be a dereliction of duty.

Censure is a formal resolution of the City Council officially reprimanding one of its members. An official reprimand is a punitive action which serves as a penalty imposed for wrongdoing but carries no fine or suspension of the rights of the member as an elected official. It is distinguished from condemnation of the actions of a Council Member, which while expressing strong disapproval, is not a punishment. Censure is an appropriate punitive measure when the violation of law or policy is deemed by the City Council to be a serious offense.

In order to protect the overriding principle of freedom of speech, the City Council shall not impose “censure” on any of its members for the exercise of his or her First Amendment rights no matter how distasteful the expression was to the Council and the City. However, nothing herein shall be construed to prohibit the City Council from collectively condemning and expressing their strong disapprobation of such remarks.

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, when the criminal proceedings are final, the City Council need not be bound by the conclusions of the Court and may hold a “censure” hearing.

PROCEDURE

1. A request for a “censure” hearing must be submitted to the Rules Committee in writing by a member of the Council. The request must contain the specific charges on which the proposed censure is based.
2. A copy of the request for censure and the charges shall be served on the Council Member at least twenty-four (24) hours prior to the Rules Committee meeting at which it will be considered.
3. The Rules Committee shall determine that either:
 - 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.
4. This determination is subject to confirmation by the City Council as part of the rules report at the next Council meeting.
5. Further investigation, if required, shall be done by an *ad hoc* Committee appointed by the Mayor. If the Mayor is the subject of the request the Committee shall be formed by the Vice Mayor.
6. If the matter is set for public hearing, it must be set far enough in advance to give the accused member adequate time to prepare a defense.

7. At the hearing, the Member of Council subject to the request shall be given the opportunity to make an opening and closing statement and to question his or her accusers. The member subject to the charges may be represented and may have the representative speak or question on his or her behalf.
8. A decision to censure requires the adoption of a Resolution making findings with regard to the specific charges, based on substantial evidence, and approved by a two-thirds vote of the Council.