

# Memorandum

**TO:** Rules Committee

**FROM:** Mayor Ron Gonzales  
Councilmember Ken Yeager

**SUBJECT:** Council Review of  
Censure Policy

**DATE:** September 28, 2004

Approved

*Ken Yeager* *RD* *for* *RB*

Date

*9/28/04*

## RECOMMENDATION

That the Rules Committee add the review and discussion of Council Policy 0-28, which sets forth Council procedures regarding censure, to the City Council agenda for its meeting on October 12, 2004.

## BACKGROUND

Councilmember Cortese submitted a memo to Councilmember Yeager, Chair of the Blue Ribbon Task Force on Ethics and Lobbying, requesting that the Task Force undertake a review of the censure policy.

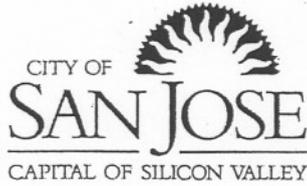
We believe that any review of the censure policy should involve every councilmember to allow the full Council the opportunity to provide direction to the City Attorney to prepare any modifications to the policy that might result. At its September 23 meeting, the Task Force approved Chair Yeager's recommendation to forward Councilmember Cortese's request to the Rules Committee for consideration of placement on a future Council agenda.

The censure policy adopted by the City Council in 1994 outlines a clear procedure and includes criteria for dealing with the potential censure of a councilmember. The policy underscores the seriousness and significance of a Council decision to censure one of our colleagues. It specifies steps that ensure a fair hearing, requires substantial evidence, and provides the subject of the charges an opportunity to defend.

At this point the Council would only be reviewing the current policy. A copy of the Censure Policy, Council Policy 0-28 is attached.

Consideration of censure is a serious matter for the City Council and a step that must be taken deliberately, carefully, and with the greatest respect for due process. We believe this is a cornerstone of our democratic society that is committed to fairness, protecting the integrity of government, ensuring high standards of conduct by public officials, and keeping the Council and individual councilmembers accountable to the people we represent.

cc: City Council  
City Clerk  
City Attorney



# Memorandum

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**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

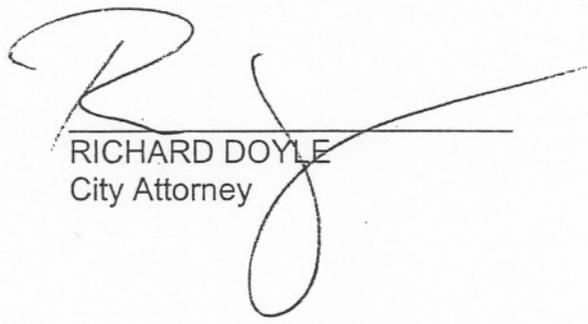
**FROM:** RICHARD DOYLE  
City Attorney

**SUBJECT:** Council Censure Policy

**DATE:** September 23, 2004

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Please find attached a copy of Council Policy 0-28, which sets forth the procedures Council is to follow with respect to censure.



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RICHARD DOYLE  
City Attorney

Attachment

cc: Del Borgsdorf

**CITY OF SAN JOSE, CALIFORNIA**

**CITY COUNCIL POLICY**

TITLE	PAGE	POLICY NUMBER
CENSURE POLICY	1 of 2	0-28
	EFFECTIVE DATE	REVISED DATE
	11/8/94	

**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 its 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.