

City of San José, California

COUNCIL POLICY

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EFFECTIVE DATE November 8, 1994	REVISED DATE November 30, 2004	
APPROVED BY COUNCIL ACTION		11/08/94 Item 9(C)

PURPOSE

This Policy applies only to the Mayor and City Council members, and amends and supersedes the original City Council Policy 0-28, the Censure Policy.

GUIDING PRINCIPLES

It is the Policy of the City Council that all of its members shall abide by federal and state law, City ordinances and City policies, including the Code of Ethics. 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.

Depending on the circumstances of alleged violations of law or policy, the Council may initiate an investigation of the allegations prior to the filing of a request for any of the actions described in this policy.

Nothing in this policy shall preclude individual Councilmembers from making public statements regarding such alleged conduct.

Considerations

In deciding whether or not to open an investigation, Council should consider:

- whether an investigation may compromise investigations regarding the same alleged actions, and, if the actions may result in criminal charges, whether the right of the accused Councilmember to a fair jury trial may be compromised by proceeding with an investigation;
- if persons involved in the allegations may choose to exercise their constitutional right against self-incrimination, which may limit the investigation's ability to present a full picture of alleged events;
- how to ensure that it ensures protection of the rights of those accused of violations of law or policy, those making such accusations, and those who have information regarding the accusations.

At any point during any of the processes described in this policy, the Council may refer the matter, as appropriate, to the Santa Clara County District Attorney or to the San José Elections Commission for investigation. Following such a referral, the Council may proceed with any actions it chooses to undertake under the provisions of this policy.

While the Council has broad discretion in deciding actions it may choose to take in response to violations of law or policy, this policy provides definitions and procedures related to three types of action: admonition, sanction, and censure.

DEFINITIONS

Admonition

This is the least severe form of action. An admonition may typically be directed to all members of the City Council, reminding them that a particular type of behavior is in violation of law or City policy, and that, if it occurs

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or is found to have occurred, could make a member subject to sanction or censure. An admonition may be issued in response to a particular alleged action or actions, although it would not necessarily have to be triggered by such allegations. An admonition may be issued by the City Council prior to any findings of fact regarding allegations, and because it is a warning or reminder, would not necessarily require an investigation or separate hearings to determine whether the allegation is true

Sanction

This is the next most severe form of action. Sanction should be directed to a particular member of the City Council based on a particular action (or set of actions) that is determined to be in violation of law or City policy, but is considered by the Council to be not sufficiently serious to require censure. A sanction is distinguished from censure in that it is not a punishment. A sanction may be issued based upon Council's review and consideration of a written allegation of a policy violation. The member accused of such violation will have an opportunity to provide a written response to the allegation. A sanction may be issued by the City Council and because it is not punishment or discipline, would not necessarily require an investigation or separate hearings.

Censure

Censure is the most severe form of action contemplated in this policy. Censure is a formal statement of the City Council officially reprimanding one of its members. It is a punitive action, which serves as a penalty imposed for wrongdoing, but it carries no fine or suspension of the rights of the member as an elected official. Censure should be used for cases in which the Council determines that the violation of law or policy is 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.

PROCEDURES

Investigation

1. Any member of the City Council may submit, in writing, an allegation concerning a violation of law or policy to the Rules Committee.
2. The Rules Committee shall determine whether to forward a recommendation to conduct an investigation to the full Council for consideration as part of the Rules Committee report agenda item at the appropriate subsequent Council meeting. Part of the determination should include allowing the Councilmember who is the subject of the allegation the opportunity to address the allegation in writing or by appearing at the Rules Committee meeting at which the allegation is discussed.
3. If the Council determines, by majority vote, that:
 - a. An investigation is warranted, it may designate a standing or special committee or one of its members, including the Mayor, to conduct the investigation. The Council may select an independent investigator to assist in conducting the investigation. The independent investigator would be managed by the committee or individual designated by Council to conduct the investigation.
 - b. An investigation is not warranted, an individual Councilmember is not precluded from submitting a request for admonition, sanction, or censure in accordance with the provisions of this policy.
4. In the course of the investigation, the individual or committee designated to manage it must determine the process by which statements are taken. A witness may choose to provide a signed declaration under penalty of perjury attesting to his or her knowledge of the facts surrounding the allegations. If a witness is unwilling to submit such a declaration, the Council may issue a subpoena to compel the witness' testimony, consistent with its subpoena power granted under the City Charter.

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5. At the conclusion of the investigation, the results shall be presented in writing to the full Council. Based on the results, any individual Council member may file a request for admonition, sanction, or censure.

Admonition

1. A request for an admonition must be submitted to the Rules Committee in writing by a member of the Council. The request should contain the specific language of the proposed admonition.
2. The Rules Committee shall determine whether to forward the proposed admonition to the full Council for consideration as part of the Rules Committee report agenda item at the appropriate subsequent Council meeting.
3. An admonition can be approved by a majority vote of the Council.

Sanction

1. A request for sanction must be submitted to the Rules Committee in writing by a member of the Council. The request should contain specific allegations of conduct in violation of federal or state law, City ordinances, and City policies, including the Code of Ethics.
2. A copy of the request for sanction shall be provided to the Council Member accused of the conduct by personal service 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. The proposed sanction should be forwarded to the City Council for consideration as part of the Rules Committee report agenda item at the appropriate subsequent Council meeting; or
 - b. An admonition, rather than sanction, should be recommended to the City Council for consideration; or
 - c. No action is required.
4. This determination is subject to confirmation by the City Council as part of the Rules Committee report at the next Council meeting.
5. A sanction is based on the Council's review of the written record and of the information provided as part of the public hearing of the issue as part of the Council meeting. A sanction action must be approved by a majority vote of the Council.

Censure

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 allegations of conduct in violation of federal or state law, City ordinances, and City policies, including the Code of Ethics, upon which the proposed censure is based.
2. A copy of the request for censure and the charges shall be served on the Council Member accused of the conduct by personal service 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 a separate public hearing; or
 - c. The recommended level of action is admonition or sanction, rather than censure; or
 - d. No action is required.
4. This determination is subject to confirmation by the City Council as part of the Rules Committee report at the next Council meeting.

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5. Depending on the determination of the Rules Committee and the confirmation of the City Council;

- a. If further investigation is required, it shall be done by an ad hoc committee appointed by the Mayor. If the Mayor is the subject of the charges, the committee shall be appointed by the Vice Mayor.

The following guidelines apply to ad hoc committee investigations:

- i) The committee may be staffed by administrative and legal staff.
 - ii) If authorized by City Council, the committee may subpoena witnesses and documents.
 - iii) In making a determination, the committee should determine if taking all the facts and evidence into consideration, there are reasonable grounds to believe or not believe that the conduct, violation, or offense occurred.
 - iv) The committee shall issue a final report and recommendations to the City Council. The final report shall be made available to the public.
- b. If a separate public hearing is set, it must be set far enough in advance to give the member of Council subject to the charges adequate time to prepare a defense, and that member 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. The Mayor, or Vice Mayor if the Mayor is the subject of the charges, would preside at the hearing. The rules of evidence shall not apply to the hearing, which is not a formal adversarial proceeding. The City Attorney or designee shall provide legal advice to the City Council during the hearing.

6. 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.