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CITY OF OAKLAND



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**TO:** Oakland City Council

**FROM:** Councilmember Noel Gallo

**DATE:** September 26, 2013

**RE: PROPOSED CENSURE POLICY**

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Colleagues –

I hereby submit for your consideration a proposed Oakland City Council Censure Policy. It is essential for effective City Government that City officials and the City Council understand the roles of their prospective offices and their inter-relationships with others. Many of the conflicts in Oakland City Government, as evidenced by the City Council meeting of July 25, 2013, are the result of confusion as to the roles and consequent overstepping of the boundaries between the respective roles.

I respectfully request that we all work together to develop a censure policy for the Oakland City Council.

Sincerely,

Councilmember Noel Gallo

## **BACKGROUND:**

The City of Oakland has a strong commitment to ethics. Charter Section 202 specifies that "There is hereby established a Public Ethics Commission which shall be responsible for responding to issues with regard to compliance by the City of Oakland, its elected officials, officers, employees, boards and commissions with regard to compliance with City regulations and policies intended to assure fairness, openness, honesty and integrity in City government..." 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 discipline its own members for violations 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 any of its members who violate state or federal laws, City ordinances or policies.

## **CODE OF CONDUCT: RESOLUTION NO. 82580**

Each member of the City Council has a duty to:

1. Respect and adhere to the American ideals of government, the rule of law, the principles of public administration and high ethical conduct in the performance of public duties.
2. Represent and work for the common good of the City and not for any private interest.
3. Refrain from accepting gifts or favors or promises for future benefits which might compromise or tend to impair independence of judgment or action.
4. Provide fair and equal treatment for all persons and matters coming before the Council.
5. Learn and study the background and purposes of important items of business before voting.
6. Faithfully perform all duties of office.
7. Refrain from disclosing any information received confidentially concerning the business of the City, or received during any closed session of the Council held pursuant to state law.
8. Decline any employment incompatible with public duty

9. Refrain from abusive conduct, personal charges or verbal attacks upon the character, motives, ethics or morals of other members of the Council, staff or public, or other personal comments not germane to the issues before the Council.
10. Listen courteously and attentively to all public discussions at Council meetings and avoid interrupting other speakers, including other Council members, except as may be permitted by established Rules of Order.
11. Faithfully attend all sessions of the Council unless to do so because of disability or some other compelling reason.
12. Maintain the highest standard of public conduct by refusing to condone breaches of public trust or improper attempts to influence legislation, and by being willing to censure any member who willfully violates the rules of conduct contained in this Code of Ethics.

#### **CENSURE POLICY:**

It is the Policy of the City Council that all 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 determine the effectiveness of the City Council as a whole. Such conduct is deemed to be 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 censure the rights 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 conclusion 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 specifics 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 City Council President. If the Council President is the subject of the request the Committee shall be formed by the Vice President.
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 the 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 approval by a two-thirds vote of the Council.