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# CITY OF OAKLAND

## CITY ATTORNEY'S OFFICE

### MEMORANDUM

TO: Councilmember Noel Gallo  
City Council 

FROM: Doryanna Moreno, Chief Assistant City Attorney

DATE: November 20, 2013

RE: Censure Policy and Procedures

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Enclosed is a draft resolution amending Resolution No. 82580, which codifies the Council's Rules of Procedure and Code of Conduct/Ethics.

Per our discussion, scheduling of this item will enable the Council to finalize policy and procedures at the Council's December 10<sup>th</sup> meeting.

Due to the holidays next week, the item must be scheduled by the Rules Committee no later than 4:00 pm Tuesday, November 26<sup>th</sup> to be included on the Council agenda of December 10<sup>th</sup>.

The draft shows:

- Underscored text - new text to be added to the Council Rules/Code of Conduct/Ethics, and
- Highlighted text - revised text by the Rules Committee at its October 31<sup>st</sup> meeting.

Enclosure

OFFICE OF THE CITY CLERK  
OAKLAND

Approved as to Form and Legality

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City Attorney's Office

# OAKLAND CITY COUNCIL

# DRAFT

Resolution No. \_\_\_\_\_ C.M.S

INTRODUCED BY COUNCILMEMBER NOEL GALLO

## RESOLUTION AMENDING THE COUNCIL'S RULES OF PROCEDURES CURRENTLY SET FORTH IN RESOLUTION NO. 82580 C.M.S. TO ADD A COUNCIL CENSURE POLICY AND PROCEDURES

**WHEREAS**, the Oakland City Council has adopted a Code of Ethics for council member conduct codified in, the Council's Rules of Procedures, Resolution No. 82580 C.M.S., *Code of Conduct*; and

**WHEREAS**, the City of Oakland and the City Council have a strong commitment to the Oakland Charter, legislation, ethical and council policies and procedures; and

**WHEREAS**, the Council's Code of Conduct, **Rule 12**, authorizes the City Council to censure any member "who willfully violates the rules of conduct" contained in the Code of Ethics; and

**WHEREAS**, the City Council wishes to adopt a censure policy and procedures for the conduct of such proceedings; now, therefore, be it

**RESOLVED:** That Resolution No. 82580 C.M.S., passed March 2, 2010, is hereby amended to add the following Censure Policy and Procedures:

### OAKLAND CITY COUNCIL CENSURE POLICY AND PROCEDURES

#### BACKGROUND:

The City of Oakland and the City Council have a strong commitment to the Oakland Charter, legislation, ethical and council policies and procedures. The City Council has the power to censure one of its members for violations of these laws, policies and procedures. The Council's Code of Conduct, which is part of the Council's Rules of Procedure, states that the City Council may censure any member "who willfully violates the rules of conduct contained in this Code of Ethics." (City Council Resolution No.82580, Code of Conduct No. 12, see also, Sunshine

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Ordinance. Oakland Municipal Code section 220.170 (censure for release of confidential information.) Moreover, censure is an inherent power of a legislative body that follows Robert's Rules of Order. (Roberts, p. 627-28, Section 61.) In order to be able to censure a Council member, the City Council must adopt a fair policy and procedure for the process.

### PURPOSE:

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

### **COUNCIL CODE OF CONDUCT**

The Council's Code of Conduct, which is part of the Council's Rules of Procedure codified in Resolution No. 82580 C.M.S., provides as follows:

"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.

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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, the City Charter, City legislation and City Council policies. Violation of such law or policy can subject the City to liability, affect the City's budget, resources, plans and timelines, injures the good name of the City and undermines the effectiveness of the City Council as a whole. Such conduct is deemed to be subject to City Council Censure.

Censure is a formal resolution of the City Council officially reprimanding one of its members. Censure serves to formally put a censured councilmember on notice of the Council's disapprobation of conduct that has violated laws or policies, but carries no fine or suspension of the rights of the member as an elected official. 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, officials, employees or public. However, nothing herein shall be construed to prohibit the City Council from collectively expressing their strong disapproval of such remarks.

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 to schedule a "censure" hearing must be submitted to the Rules Committee in writing by a member of the Council.
  - a. The scheduling request must contain a brief description of the specific charges on which the proposed censure is based in the title of the item.
  - b. A censure resolution setting forth specific charges and grounds for censure must be submitted to the City Clerk with the scheduling request at least forty eight (48) hours prior to the Rules Committee meeting at which it will be considered for scheduling.
  - e. The City Clerk shall serve copies of the scheduling request and the censure resolution on the accused councilmember at least twenty-four (24) hours prior to the Rules Committee meeting at which it will be considered for scheduling. The City Clerk shall deliver the scheduling request and censure resolution to the council office of the accused member, subject to execution of a proof of service.
2. The Rules Committee shall:
  - a. Schedule the matter for public hearing; or
  - b. Refer the matter to the City Administrator for further investigation by an independent investigator, in consultation with the City Attorney, prior to scheduling the matter; or
  - e. Not schedule the matter for public hearing.
3. Censure matters set for public hearing must be scheduled at least 10 calendar days in advance of the hearing date to give the accused member adequate time to prepare a defense.
4. The Rules Committee action approving scheduling of the item is subject to confirmation by the City Council at the next Council meeting. The City Clerk shall include an item on the next Council meeting agenda for a Council vote to confirm the scheduling of the censure hearing. If the Council confirmation is scheduled on the same day as the hearing, the Council vote confirming scheduling shall occur

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- first.
4. The councilmember seeking censure of another councilmember is responsible for preparing and submitting to the City Clerk a censure resolution and report supporting censure in time for publication with the 10-day agenda packet for the meeting at which the matter will be heard. The City Clerk shall, at least 10 calendar days before the hearing, deliver copies of the resolution, report and other agenda materials to the council office of the accused member, subject to execution of a proof of service.
  5. The accused member is responsible for preparing and submitting to the City Clerk for the agenda packet, reports, documents or other information opposing censure in time for the three (3) day supplemental agenda.
  6. At the hearing, the member of the Council subject to the censure proceeding shall have the opportunity to rebut the allegations in the censure resolution and to question any known accusers if they agree to be questioned. Notwithstanding the foregoing, identities of persons who provided statements or information in confidence shall remain confidential. This includes, but is not limited to, persons who provided statements or information through a whistleblower program of the federal or state government or City of Oakland. The member subject to the charges may be represented and may have the representative speak or question on his or her behalf.
  7. A decision to censure requires ~~five (5) or a two-thirds (2/3)~~ votes of the Council adopting a resolution: 1) finding there is substantial evidence in the record to support the specific charges alleged, and 2) approving a censure resolution.

Doc # 1262123

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF AND  
PRESIDENT KERNIGHAN

NOES -  
ABSENT -  
ABSTENTION -

ATTEST:

\_\_\_\_\_  
LATONDA SIMMONS  
City Clerk and Clerk of the Council of the City of  
Oakland, California