



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle, City Attorney
Lee Price, MMC, City Clerk

SUBJECT: REVISIONS RELATED TO
ANONYMOUS COMPLAINTS
TO THE SAN JOSE ELECTIONS
COMMISSION

DATE: January 14, 2010

RECOMMENDATION

As directed by the City Council on December 15, 2009, approve revisions related to anonymous complaints to City Council Resolution No. 75173, which sets forth the regulations and procedures for the San Jose Elections Commission's investigations and hearings.

BACKGROUND

On December 15, 2009, the City Council considered the Mayor's Biennial Ethics Review of the Ethics Ordinances. Among other things, the Council approved the Mayor's recommendation to direct the City Attorney to return to the Council with a resolution prohibiting anonymous written complaints and limiting the finding of "good cause" for anonymous tip line complaints to the following circumstances:

1. A City or Redevelopment Agency employee who is not protected by the Civil Service system making a complaint about a supervisor in his or her chain of command; or
2. A private sector employee making a complaint about his or her employer.

In addition, the Council referred to the Elections Commission and the people who participated in the Mayor's Ethics Review Panel on October 13, 2009, whether the phrase "good cause" should include those who can demonstrate a substantial vulnerability to retaliation by the person who is the subject of the complaint and review and determine what additional situations would constitute "good cause" for providing anonymous tip line complaints for inclusion in the regulations. Staff will return to Council with a recommendation after this referral has been completed.

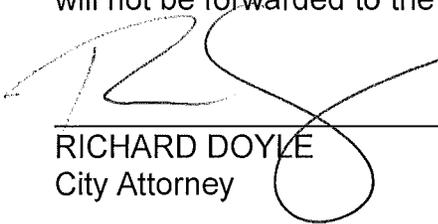
ANALYSIS

The proposed resolution requires that complaints filed with the Commission be signed by the Complainant. (See Page 2, Section B(3).) No written complaint may be filed

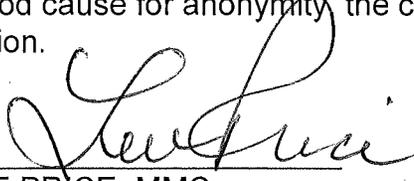
anonymously. (See Page 4, Sections E(3) and (4).) Anonymous complaints may only be submitted by calling the "Elections Commission Anonymous Complaint Hotline" and good cause for anonymity must be stated, which is limited to (a) a City or Redevelopment Agency employee who is not protected by the Civil Service system making a complaint about a supervisor in his or her chain of command; or (b) a private sector employee making a complaint about his or her employer. (See Pages 4 and 5, Section E(6).) The Chair of the Commission, or the Vice-Chair, if the Chair is not available, will assess whether there is good cause for anonymity. (See Pages 4 and 5, Section E(6).) If the Commissioner reviewing the call determines the Complainant has good cause for anonymity, the complaint will be forwarded promptly to the Evaluator by the City Clerk. If the Commissioner reviewing the call determines that the Complainant does not have good cause for anonymity, the complaint will not be forwarded to the Evaluator. (See Pages 4 and 5, Section E(6).)

CONCLUSION

The proposed resolution does not permit written complaints to be filed anonymously. Anonymous complaints may only be submitted by calling the "Elections Commission Anonymous Complaint Hotline." Good cause for anonymity must be stated, and is limited to two circumstances: (a) a City or Redevelopment Agency employee who is not protected by the Civil Service system making a complaint about a supervisor in his or her chain of command; or (b) a private sector employee making a complaint about his or her employer. The Chair or Vice-Chair will assess whether good cause exists. Unless the reviewing Commissioner determines the Complainant has good cause for anonymity, the complaint will not be forwarded to the Evaluator for investigation.



RICHARD DOYLE
City Attorney



LEE PRICE, MMC
City Clerk

For questions please contact Lee Price, City Clerk, at (408) 535-1260