

May 13, 2009

Subject: Sub-Committee on Anonymous Complaints (Bob Shepard/Erica Cosgrove),
Suggestions for Revision to Resolution 72547

Ref: Sub-Committee Meeting with Lisa Herrick/Lee Price 5/4/09 and Sub-Committee
Meeting with Tom McEnery on 5/8/09

As a result of the above meetings and review of Resolution 72547 relating to Anonymous Complaints, Section E6, and related Sections F2 and F9 + other related sections, the Sub-committee has come to the following interim conclusions taking into account our recent experience regarding anonymous complaint associated with San Pedro Square anonymous allegations against Tom McEnery.

The Sub-Committee has weighed the importance of balancing the importance of Anonymous Complaints to protect a “Whistleblower” from fear of retaliation vs. ensuring that an anonymous complaint is “not” used as a political weapon to “disparage the reputation” of the subject of complaint whether it be a candidate for office, an incumbent elected official or a private citizen of San Jose.

The Sub-committee has determined after review of Resolution 72547 as well as input from referenced meetings that A) to ensure transparency, B) to minimize frivolous allegations, C) to protect the rights of both the complainant as well as the subject of complaint and D) to eliminate/minimize legal costs to the City of San Jose that we should not allow the submission of Anonymous Complaints.

In the political arena of Campaign Contribution/Lobbyist violations we believe it would be a unusual circumstance where fear of retribution, i.e. job loss, demotion, etc would come into play, However, we realize that there could be a legitimate concern to voice a complaint which requires a vehicle to maintain confidentiality of complainant, as well as to providing the Election Commission an opportunity to explore “Good Cause” for confidentiality. We believe a thorough review of “Good cause” should be made prior to a complaint being forwarded to evaluator for further investigation of substance of complaint.

Based on the above we recommend that any citizen desiring to make an anonymous complaint contact the City Clerk to verbalize their complaint and request an in person meeting with either A) Designated Election Commission Sub-Committee and City Clerk or Designated third party or B) Chair of Election Commission and City Clerk or Designated third party.

The purpose of this meeting would be strictly to understand and fully explore why complainant believes his or/her identity be confidential. The substance of complaint would not be subject of meeting as only “good cause” for confidentiality would be topic of meeting. If it is determined that there is good cause to maintain confidentiality the City Clerk will forward the complaint to Evaluator for assessment of facts. If Good cause for

confidentiality is not found then complainant may still have option of submitting complaint in a non-anonymous business as usual fashion.

Needless to say, the suggested changes will require multiple changes to Resolution 72547 which will require further review and consultation with Lisa Herrick and Lee Price.

Bob Shepard/Erica Cosgrove