SAN JOSE
ELECTIONS COMMISSION
Fred de Funiak, Chair
Michael Smith, Vice Chair
Leon Louie
Robert Shepard
Erica Cosgrove

CITY OF SAN JOSE, CALIFORNIA

200 East Santa Clara Street
Second Floor, City Hall Wing
San José, California 95113
Telephone (408) 535-1252
FAX (408) 292-6207

SAN JOSE ELECTIONS COMMISSION
MEETING MINUTES
May 13, 2009

I CALL TO ORDER

The members of the San José Elections Commission convened at 5:32 p.m. in Room W-242 of City Hall, 200 E. Santa Clara Street, San José, CA 95113.

PRESENT: COMMISSIONERS: Cosgrove, Louie, Shepard, Smith, and de Funiak

ABSENT: COMMISSIONER: None

STAFF PRESENT: Senior Deputy City Attorney Lisa Herrick
City Clerk Lee Price
Deputy City Clerk Michelle Radcliffe

II APPROVAL OF MINUTES

The following minutes were approved:

a. March 11, 2009
b. March 25, 2009
c. April 8, 2009

III CLOSED SESSION

The Commission met in Closed Session to discuss:

A. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION PURSUANT TO GOVERNMENT CODE SECTION 54956.9 subsection (a):

Name of Case:

1. Ted Smith, an individual, v. City of San José and San José Elections Commission

IV REPORT OF THE CHAIR

Chair de Funiak thanked the Commission and staff for keeping their composure during the difficult work that has been done. Chair de Funiak also informed the Commission that the Mayor would be holding a community hearing on ethics and open government on June 24th, as part of the Biennial Review of the City's Ethics ordinances.

V REPORT OF THE CLERK/ATTORNEY

City Clerk Lee Price provided an overview of her recommendation to Council on imposing a $100 filing fee for filing an Election Commission complaint and requested feedback from the Commission. Generally, the Commission agreed that a filing fee could become a deterrent to the filing of a valid Complaint worthy of evaluating, that the fee would generate very little revenue, and be difficult to administer.

Motion: Upon motion by Commissioner Cosgrove, seconded by Commissioner Smith, and unanimously passed, the Commission recommended that the Elections Commission does not support imposing a $100 filing fee for filing a complaint. (5-0-0)

VI DISCUSSION ITEMS

A. Status on the Instant Run-Off Voting

Documents Filed: 1) Article from SFGate.com dated December 9, 2008 entitled "Report card for ranked-choice voting"; and 2) Essay from Blair Bobier, Deputy Director of the New America Foundation Political Reform Program

City Clerk Lee Price provided an overview of the articles submitted to the Commission and summarized the status of Instant Run-Off Voting in California. New America Foundation Deputy Director Blair Bobier summarized the costs and technology associated with Instant Run-Off Voting and stated that many other states and countries conduct elections through Instant Run-Off Voting. Questions followed.

Public Comments: Jim Stauffer spoke in support of the concept of Instant Run-Off Voting and urged the City of San José to make a recommendation to the County of Santa Clara to establish a plan.

Katy Solinski, California Common Cause, spoke in favor of Instant Run-Off Voting and urged for support in the City of San José.

Jody Hanson, San Jose/Silicon Valley Chamber of Commerce, spoke in favor of Instant Run-Off Voting.

Blair Bobier informed the Commission that New America Foundation and California Common Cause are co-sponsoring a forum on Instant Run-Off Voting on June 11th at Martin Luther King, Jr. Library at noon. He added that he will be forwarding information about the forum to the City Clerk.

Chair de Funiak indicated an interest in learning more about the status of certification by the Secretary of State and costs to conduct an election to amend the City's Charter to allow for Instant Runoff Voting. The matter was continued to the June meeting.

B. Status Report from Sub-Committee on the Elections Commission procedures for Anonymous Complaints

Documents Filed: 1) Memorandum from Sub-Committee (Cosgrove/Shepard) on suggestions for revisions to Resolution No. 72547 regarding anonymous complaints; and 2) Correspondence from William B. Barron dated May 5, 2009 regarding anonymous complaints

Commissioner Shepard provided a summary of the Sub-Committee report regarding Section E6 of the Regulations and stated that the Sub-Committee's recommendations were: 1) not to allow anonymous complaints; 2) consider a method for receiving a complaint from a true "whistleblower" and 3) provide for two types of complaints: informal and formal.

Public Comment: Steve Preminger stated he was "shocked" that the subcommittee met with Tom McEnery. He also stated that there needs to

be a process in place for whistleblower complaints and to protect the whistleblower from retaliation.

Ken Machado, Jr. expressed concerns about how the John Doe complaint was sent out to the public and urged the Commission to find out if City officials had any involvement.

Tom McEnery and Ross Signorino spoke against allowing anonymous complaints to be filed with the Elections Commission.

The Commission continued this matter to the next meeting.

C. Continued discussion on the City's campaign finance regulations relating to (1) contribution limits generally; (2) inflation adjustments on contribution limits; (3) limits on contributions to independent expenditure committees; (4) segregation of contributions to independent expenditure committees; and (5) disclosure of contributions to independent expenditure committees.

Chair de Funiak provided a brief introduction.

Public Comments: Bianca Pirayou stated that there are federal laws regarding independent expenditures and electioneering communications and urged the Commission to set out a plan for each type of communication, with appropriate thresholds to achieve disclosure.

Ash Pirayou urged the Commission to find a body of law that was simple and clear. He suggested that the City adopt federal regulations by reference and require that independent committees disclose activities six months prior to an election.

Action: Upon motion by Commissioner Cosgrove, seconded by Commissioner Smith, and unanimously passed, the Commission authorized the Sub-Committee to work with City Attorney and City Clerk to develop language that mirrors federal laws at it relates to contribution limits/thresholds with enhanced disclosure, as appropriate, to conduct outreach with stakeholders, and come back to the Commission on June 10, 2009.

VII MEETING SCHEDULE AND AGENDA ITEMS

The next Regular meeting is scheduled for June 10, 2009 at 5:30 p.m. The following items will be placed on the agenda: 1) continued discussion on the status of Instant Run-Off voting; 2) continued discussion on the status report from Sub-Committee on the Elections Commission procedures for anonymous

complaints; 3) continued discussion on the City's campaign finance regulations relating to i) contribution limits; ii) inflation adjustments on contribution limits; iii) limits on contributions to independent expenditure committees; iv) segregation of contributions to independent expenditure committees; and v) disclosure of contributions to independent expenditure committees; 4) discussion regarding the Confidentiality of Complaints filed with the Elections Commission; and 5) Sub-Committee status report on additional election analysis by City Clerk and MGT of America, Inc.

VIII PUBLIC COMMENTS

There were none

IX ADJOURNMENT

The meeting adjourned at 8:08 p.m.

FRED DE FUNIAK, CHAIR

ATTEST:

LEE PRICE, MMC
CITY CLERK and SECRETARY TO THE COMMISSION