



City Council Agenda Item

City Council Meeting Date: September 6, 2022

TO: Honorable Mayor and City Council Members

FROM: Jeff Malawy, City Attorney
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SUBJECT: City Council Consideration of Revisions to Policy Regarding Anonymous Code Enforcement Complaints and Public Disclosure of the Names of Persons Making Code Enforcement Complaints

Recommendation:

Staff recommends the City Council:

- 1) Consider the material presented in this staff report;
- 2) Adopt any desired revisions to the City's policy regarding anonymous code enforcement complaints and public disclosure of the names of code violation complainants; or
- 3) Provide alternate direction.

Background:

Per past City Council direction, last confirmed by the City Council on August 1, 2017, and reviewed by City Council on July 2, 2019, City staff investigate and pursue code enforcement for zoning or public nuisance violations only when a complaint form is received, and citizens wishing to submit a complaint form must sign the form and include their contact information.¹ The identity and contact information is used in case further information is needed by the City for its investigation.

Although name and contact information on the complaint form is required, City staff does not confirm the identity of the complainant upon accepting the complaint. Therefore, a citizen could, in theory, submit a complaint under a false name, effectively an anonymous complaint, and the complaint would still be investigated.

¹ The City also accepts code enforcement complaints on the City's online complaint form, provided the identity and contact information of the complainant is included with the complaint.

Staff also accepts complaints without a complaint form in emergency circumstances, when the violation concerns an immediate threat to the public health, safety, or welfare.

Prior to August 2019, the City's policy was to keep the names and contact information of all complainants confidential, as permitted by the Public Records Act, to prevent retaliation against complainants and to avoid making the public fearful of reporting code violations.

On August 20, 2019, the City Council adopted a new policy for disclosure of complainants' names when a request is made for the names. The new policy is a two-tiered system in which the names of complainants making complaints about "lower-level" code violations are publicly disclosed upon request, but names of complainants making complaints about serious or severe violations are not disclosed. Although some names are disclosed under the new policy, contact information is still held confidential.

Attached is a table showing the new policy adopted by City Council on August 20, 2019.

Discussion:

The City Council may adopt any desired revisions to the policy of requiring a name and contact information on a complaint form or the policy regarding disclosure of complainant names.

The City may, but is not legally mandated to, require a name and contact information on a complaint form. The City may, but is not legally mandated to, keep confidential the names of code enforcement complainants.

On this topic, the California Court of Appeal in *City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008 noted:

"[O]n the basis of human experience, ... it is likely that public disclosure of ... complainants' names, addresses and telephone numbers will have a chilling effect on the number of complaints made. Public disclosure will subject the complainants to the loss of confidentiality of their complaints, and also to direct contact by the media and by persons who wish to discourage complaints. It also may be presumed that a reduction in ... complaints will impede the City in its ability to comply with its [code enforcement] duties."

In applying the new policy over the past three years since its adoption, there have been a few instances where the City released the names of code enforcement complainants as required by the policy, when the City received a request for the names. City staff is not aware of any instances where such disclosure resulted in retaliation or harassment of the complainant.

As a final note, where code enforcement cases cannot be resolved informally or administratively, some will result in criminal or civil enforcement in court. In such cases the defendant has the right to all the evidence in the prosecution's possession regarding the case. Thus, the complaint and the identity of the complaining party will be produced if a case gets to court.

Fiscal Impact:

Fiscal impact of any changes to the policy is not likely to be significant.

Conclusion:

The City Council adopted a new policy regarding disclosure of the names of code enforcement complainants in August 2019. The City also requires a name and contact information on a complaint form for any code enforcement complaint. The City Council may adopt any changes it wishes to the policy.

Respectfully submitted,



Jeff Malawy, City Attorney

Attachment: Name Disclosure Policy adopted August 20, 2019