

ELECTIONS COMMISSION
Meeting Minutes
November 14, 2012

ROLL CALL

PRESENT: Chair Michael Smith, Vice-Chair Erica Cosgrove, Commission Members Linda Edgeworth and Rolanda Pierre-Dixon

ABSENT: Commissioner Leon Louie

STAFF: City Clerk Dennis Hawkins, Deputy City Attorney Sandra Lee, and Deputy City Clerk Cecilia McDaniel

ORDER OF BUSINESS

I. Call to Order

The members of the San Jose Elections Commission convened at 5:45 p.m. in Room W-262 of City Hall, 200 E. Santa Clara Street, CA 95113.

II. Adoption of the Agenda

Action: Upon a motion by Commissioner Rolanda Pierre-Dixon, and seconded by Commissioner Linda Edgeworth, the Commission approved to reorder the agenda to hear items VII.A. and VII.B. first. The Commission adopted the November 14, 2012 Agenda as revised. Vote (4-0-1; Louie absent)

VII. Items Scheduled for Action

- A. Request for an extension of time to complete investigations.

Document Filed: Memorandum to Dennis Hawkins, Sandra Lee and Steven D. Miller from Joan L. Cassman dated November 7, 2012 regarding Extension Request/Status Report.

Discussion: Joan Cassman, Partner with Hanson Bridgett LLP, the Commission's Independent Investigator/Evaluator, participating in the meeting via telephone, explained the process and reason for requesting an extension.

Commissioners discussed the complaint procedures to amend an existing complaint in order to add new respondents versus the filing of a new matter. Investigator Cassman will review and report back to the Commission. In response to Commission questions, the City Clerk indicated that Deputy City Attorney Sandra Lee informed the Commission that there was no formal action required of the Commission itself since the Chair has the authority to grant time extensions, and the Investigator/Evaluator had met their responsibilities by providing the status report. The City Clerk Hawkins indicated that staff would look into scheduling a special Commission meeting the first week of December, if needed.

Action: As requested in the Memorandum, Chair Smith approved time extension to complete the investigations and to submit the required Reports and Recommendations to November 28, 2012.

- B. Discussion and action to grant subpoena power to the Independent Evaluator/Investigator to exercise in consultation with the Commission Chair.

Discussion: Investigator Cassman updated the Commission on the status of the investigation. Ms. Cassman sent out requests to the witnesses seeking an interview and/or information regarding the investigation. Some of the witnesses have obtained attorneys. Ms. Cassman believes that having subpoena power would expedite the investigation.

Upon request for information from the Commissioners, Deputy City Attorney Sandra Lee cited San Jose Municipal Code section 12.04.085 which gives the Chair the power to grant subpoena power after consultation with the Investigator and only after “a finding by the commission that the information or testimony is essential for a determination and material to its duties and/or exercise of its powers and that good faith efforts to acquire relevant information have failed.”

The Commissioners asked if the Investigator has exhausted all avenues in their attempts to contact the witnesses. Ms. Lee clarified that the Commission must know that the information that would be obtained after issuance of a subpoena would be pertinent to the investigation. Investigator Cassman indicated that she could not say that they have made every attempt possible to contact witnesses. Investigator Cassman recommended that this section of Title 12 be amended since it is hard to keep the investigation confidential while meeting the standard of finding to issue a subpoena.

The Commissioners agreed that they could not grant subpoena power to the Investigator at this time but were open to having a special meeting in the following weeks to satisfy the “finding” requirement of Title 12. Commissioner Edgeworth requested that the Investigator keep a log of their efforts to contact the witnesses.

City Clerk Dennis Hawkins will schedule special meeting if needed.

Action: No action taken.

III. Public Comment

None.

IV. Closed Session

None.

V. Approval of Minutes

A. October 10, 2012

Discussion: Chair Smith suggested that approval of minutes of the October 10 meeting be deferred if Commissioner were unable to review minutes. Commissioners indicated that they reviewed the minutes and were fine except that the word "Committee" on page 3 under section VII.C. needed to be changed to "Commission."

Chair Smith requested staff to post the minutes of October 12, 2011 and April 11, 2012. Both have been reviewed and approved by the Chair and the City Clerk.

Action: Upon motion by Commissioner Cosgrove, and seconded by Commissioner Pierre-Dixon, the Commission approved the meeting minutes from October 10, 2012 as corrected. Vote (3-0-2; Louie absent; Edgeworth abstained)

VI. Reports

A. Chair Smith – None

B. City Attorney

Deputy City Attorney Sandra Lee informed the Commission that it is a pleasure to be supporting the Elections Commission and that she looked forward to supporting the Commission next year.

C. City Clerk

City Clerk Dennis Hawkins informed the Commission that Deputy City Clerk Tamara Davis has left the City to accept a fellowship in Washington D.C. with the Brookings Institute. City Clerk Hawkins informed the Commission that Deputy City Clerks Kathy Carrillo and Cecilia McDaniel would be staffing the Elections Commission.

D. Investigator/Evaluator – None

VII. Items Scheduled for Action (cont.)

- C. Discussion and action on identification of possible areas of concern found through compliance monitoring with regard to campaign and ethics regulations and other required disclosures per 2012-13 work plan.

Discussion: The City Clerk indicated that they are compiling the forms and documents that need to be reviewed and discussed by the Commission. He stated the list of items will be presented at the next meeting for discussion and input. He noted the Council needs to take action by September 2013 in order for the changes to be in effect for the 2014 election cycle which begins in December 2013.

Chair Michael Smith noted that there are two components of this task of updating Title 12: compliance monitoring (reviewing disclosure forms in two phases to be completed in September and March) and analyzing the cumulative results from the investigations and identify possible areas of concern (to be completed in January). The Commission is to then combine the overall results and send to Council in April for action by May. Chair Smith indicated that the Evaluator may have other suggestions as well and requested that the item be placed on the agenda for the next meeting.

Action: No action taken.

VIII. Items Scheduled for Information or Discussion

- A. Discussion concerning Council-sponsored City special events.

City Clerk Dennis Hawkins informed the Commission that the City has a procedure and process in place for Council districts to designate an event as City-sponsored. The Council Office or City Clerk's Office writes a memo to the Rules and Open Government Committee identifying the event; co-sponsors, if any; and which departments are involved, if any.. Additionally, the Council office needs to indicate if they are planning any fundraising activity for the event, and if so, must comply with the City's normal procedures for reporting and collecting those donations. The City Clerk's office follows up and ensures the money is deposited in the City's general accounts. The City Clerk's office then appropriates the funds to the Council offices to pay for the event. Additionally, the Council office must design any flyer or advertising within the City design standards, and the City Clerk's office reviews all flyers and ads to ensure compliance.

City Clerk Hawkins stated there were complaints in the spring regarding the timing of events before the election and use of funds. The current policy does not address timing; however, the Council Expenditure Reimbursement Policy does indicate that Councilmembers cannot do surveys or similar activities within a certain time frame when they are on the ballot. The City Clerk's office tries to make sure the Council Office follows the policies and procedures, and keep track of who has been donating funds and where the funds are being spent.

Mr. Hawkins indicated that the City Clerk is working on a Special Events Policy which requires that the Special Events Memo must be completed 45 or 30 days prior to the event so there would be that pre-event transparency. The policy has not been implemented yet because there was some concern from the Councilmembers that the policy would reduce the number of community based events that they would be able to do because of the timing.

Commissioners discussed issues and pondered drafting a recommendation to the Rules and Open Government Committee regarding concerns with Council sponsored events.

B. Status of proposed changes to the Gift Ordinance.

Deputy City Attorney Sandra Lee reported that former Senior Deputy City Attorney Lisa Herrick was able to put together a draft of the Gift Ordinance incorporating the changes made. However, the City Attorney's Office is currently in transition and is short staffed. They are in the process of recruiting more attorneys so progression on the Gift Ordinance will be delayed to the beginning of next year when additional staff members are hired. The City Attorney's Office has a back log of items that need to be worked on. Ms. Lee indicated that she would be able to provide status in January or February of 2013.

C. 2012 Elections Update

City Clerk Dennis Hawkins reported that Councilmember Rose Herrera was re-elected to District 8 and Johnny Khamis was elected to representative for District 10. Councilmember-Elect Khamis will assume office on January 1, 2013. Mr. Hawkins indicated that City Clerk's office is working on the transition of District 10 to ensure the office has a smooth change-over. He noted the Minimum Wage Ordinance passed and the Cardroom Initiative did not.

The City Clerk's Office is in the process of compiling total expenditures for all of the elections to present to the Commission. The Commission will be able to compare costs between elections and between candidate controlled expenditures and independent expenditures.

The Registrar of Voters has 28 days from the date of the election to certify the results so it has to be done by December 4th. Mr. Hawkins anticipates being able to certify the election results on the December 11th Council agenda.

D. Review and discuss provisions of Municipal Code Title 12 and Title 23 – Placement of signs on private property.

City Clerk Dennis Hawkins indicated that this item relates item VII.C. The majority of campaign issues dealt with in 2012 were regarding sign issues. Code Enforcement and the City Clerk's Office worked well together to ensure the process was as smooth as possible.

Mr. Hawkins indicated that there were some issues and the City Clerk's Office needs to go through and work on with regard to the Sign Ordinance such as the disclosures that need to be on the sign, the size of the font and other changes that need to be made to the Municipal Code.

- E. Status of compliance with Commission resolution re: Silicon Valley Association of Republican Women.

City Clerk Dennis Hawkins informed the Commission that the resolution was fully-executed but a certified copy with a letter was never sent to the Republican Women. We provided a copy of the final resolution but never a formal certified copy, and we do not have a record of it being sent. Mr. Hawkins will send a certified letter to the Respondent with a certified copy of the resolution and make sure they comply with the resolution.

- F. Update regarding Board and Commission Structural Improvements, Consolidations, or Eliminations.

Chair Michael Smith commended City Clerk Dennis Hawkins on his presentation at Council. Mr. Hawkins reported that the City Council approved the name change of the Elections Commission to the Ethics Commission and to the changes that will need to be made to the San Jose Municipal Code. The City Clerk will present a phased-in approach due to the magnitude of the consolidation. For example, the Housing and Community Development Commission will be consolidated with the Advisory Commission on Rents and the Mobilehome Advisory Commission. Each of those Commissions has provisions in various parts of the Municipal Code, and need to be connected. This will take the most time to complete. Some of the easier changes will be eliminating the Small Business Development Commission. One of the issues that we will tackle first is the merger of the Library Commission with the Early Care and Education Commission primarily because they are both having quorum issues and could prove to be a good model on how we make consolidation work. Mr. Hawkins is drafting a work plan to take to Council to show how to phase the implementation of the project.

The Project Diversity Screening Committee is planning a retreat in January to retool and reinvigorate the Committee. They will be reviewing recruitment process to see how to become more efficient and timely to help fill vacancies.

The City Clerk's Office is looking at the City's budget and looking for ways to consolidate services. For example, the agendas, minutes and web postings would be consolidated in the Clerk's Office. However, how we get to this point will involve some work because it involves taking staff from different departments and redeploying them into the Clerk's Office or by other means that still needs to be worked out.

The Council also directed that the Neighborhoods Commission pilot be extended to June 30, 2013 so that is being reconstituted now. The Council will assess

whether or not the Neighborhoods Commission should be a permanent Commission in June 2013. They are currently at 30 members so if they stayed as a permanent Commission, they would need to reduce the number of members.

Chair Michael Smith wanted clarification that the only change to the Elections Commission was the name change. Mr. Hawkins confirmed that would be the only change, however, changes to Title 2 and Title 12 of the San Jose Municipal Code would need to be made to effectively change the name of the Commission. Chair Michael Smith informed the Commission that he wrote a letter to Council on his own behalf (not on behalf of the Commission) with his reasoning why he thought the Elections Commission name should be changed and why it should remain a five member Commission.

Mr. Hawkins also informed the Commission that the Council did not approve the recommended changes to the appointment process except for the Senior Commission. They want the Senior Commission to be appointed similarly to the Youth Commission where they are appointed by district. This is part of the challenge of the consolidations since the Senior Commission is currently a fifteen member Commission and needs to reduce to eleven members. The City Clerk is currently working on a memo on how to deal with these types of consolidations.

IX. Meeting Schedule and Agenda Items

The next Regular Meeting is scheduled on Wednesday, December 12, 2012. The meeting will proceed unless canceled by the Chair of the Commission. Commissioner Linda Edgeworth informed the Council that she will be on vacation through December 15, 2012 so would try to participate at the meeting telephonically.

The following agenda items will be discussed at the December 12, 2012, 2012 Elections Commission meeting:

- Compliance monitoring – Consideration of issues arising from prima facie review of campaign finance and other required disclosures per 2012-13 work plan
- Status of Commission resolution re: findings concerning the Silicon Valley Association of Republican Women
- Discussion concerning Council-sponsored City special events
- Status of proposed changes to the Gift Ordinance
- 2012 Elections update
- Boards and Commissions Structural Improvement Project Actions by the City Council from the October 23, 2012 City Council meeting

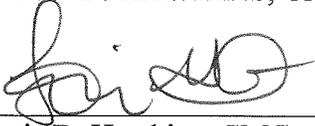
X. Adjournment

The meeting was adjourned at approximately 7:09 p.m.



MICHAEL SMITH, CHAIR

ATTEST:
ELECTIONS COMMISSION
DENNIS D. HAWKINS, CMC SECRETARY



Dennis D. Hawkins, CMC

for

EC Date: 11/14/12

Item: VII. A



Memorandum

TO: Dennis Hawkins, San José City Clerk
FROM: Joan L. Cassman, Evaluator for Elections Commission
DATE: November 7, 2012
RE: Request for Extension to Complete Investigations

Resolution No. 75640 enacted by the City Council of the City of San José sets forth the rules and procedures governing the San José Elections Commission investigations and hearings. Section H.1 in that Resolution requires the Evaluator to complete the investigation and to submit the final Report and Recommendations to the City Clerk within thirty (30) days after the Evaluator receives each complaint unless an extension has been requested and granted as provided in this Section.

Accordingly, I write to request such an extension relative to pending investigations. Please be assured that the Evaluator is moving forward with all due deliberate speed. Given the complexities that we have encountered and the Thanksgiving holiday ahead, our best projection is that it will take another three weeks to complete the investigation and submit the required reports and recommendations. Thus, we request an extension to November 28, 2012.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Joan L. Cassman", written over a horizontal line.

Joan L. Cassman

JLC:AMB