

MEETING MINUTES

November 19, 2015

I. Call to Order & Orders of the Day

Roll Call

PRESENT: Chair Michael Smith, Vice Chair Rolanda Pierre Dixon, and Commission Members Madhavee Vemulapalli, Adrian Gonzales and Chris Peacock

ABSENT: None

STAFF: Investigator/Evaluator Steven Miller, Investigator/Evaluator Caroline Lee, Deputy City Attorney Arlene Silva, City Clerk Toni Taber and Deputy City Clerk Cecilia McDaniel

OTHER: Katherine Chok, Court Reporter with Advantage Reporting Services

Call to Order

The members of the San José Ethics Commission convened at 5:32 p.m. in Rooms W-118 & W-119 of City Hall, 200 E. Santa Clara Street, CA 95113.

Orders of the Day

Action: Upon a motion by Vice Chair Rolanda Pierre Dixon, and seconded by Commissioner Madhavee Vemulapalli and carried unanimously, the Commission approved the adoption of the November 19, 2015 agenda. (5-0)

II. Closed Session - None

III. Hearings

- A. Hearing on Complaint filed by Steven D. Miller on October 9, 2015 against multiple respondents alleging violations of the San Jose Municipal Code (Independent Investigator/Evaluator)

Documents Filed: 1) Report from Hanson Bridgett LLP dated November 12, 2015 regarding Steven D. Miller v. Paul Fong, et al., Complaint filed October 9, 2015; 2) Reponse by Respondent Van Le dated November 17, 2015; 2) Responses by Respondent Donald P. Gagliardi dated November 18-19, 2015; 4) Response by Respondent Dave Cortese dated November 18, 2015; and 5) Response by Respondent Donald Rocha date November 19, 2015.

Discussion: Chair Michael Smith informed the Commissioners that copies of City

Council Resolution No. 76954 had not yet been provided to Respondents, and pursuant to San Jose Municipal Code section 12.04.100(B), “no finding of violation shall be made unless the person alleged to have committed the violation has been notified of the alleged violation and provided a copy of the regulations and procedures of the [ethics] commission.” The Commission discussed options on how to proceed. Staff answered Commissioner's questions.

Action: Chair Michael Smith moved that the Commission take initial testimony from the Respondents and members of the public at this time, but then continue the hearing until a later date, at which point Respondents will have been provided copies of Resolution No. 76954. Commissioner Adrian Gonzales seconded the motion. On a call for the question, the motion carried unanimously. (5-0)

Discussion: Chair Michael Smith opened the public hearing and summarized the hearing procedures. Respondents Don Gagliardi and Kathy Sutherland were present, and were individually sworn in by Chair Michael Smith to provide testimony. However, both Respondents expressed their concerns about providing testimony rather than comments at this point since the hearing will be continued at a later date. See attached transcript for full discussion and testimony provided at the hearing. Commissioners discussed possible dates for continuation of the hearing, tentatively chose December 16, 2015 and requested that staff send a Doodle request to Commissioners to confirm. Respondent Raul Peralez subsequently arrived and also provided testimony after being sworn in by Chair Michael Smith. Chair Michael Smith then declared that the hearing was continued to a future date.

- B. Continuation of hearing on Complaint filed by William Bohrer on July 23, 2015 against Tim Orozco and Neighbors for Tim Orozco for San Jose City Council District 4 2015 Committee alleging violations of San Jose Municipal Code (Independent Investigator/Evaluator)

Documents Filed: 1) Report from Hanson Bridgett LLP dated August 24, 2015 regarding William Bohrer v. Tim Orozco and Neighbors for Tim Orozco for San Jose City Council District 4 2015 Committee, Complaint filed July 23, 2015; and 2) Response by Respondent Tim Orozco dated September 8, 2015.

Discussion: Chair Michael Smith opened the continuation of the hearing. The Commission discussed the different options on how to proceed with the continuation of this hearing. Respondent Tim Orozco and Linda Perry, treasurer of his campaign committee, were present. Respondent Tim Orozco was sworn in to provide testimony. He requested that the matter be dismissed and expressed his concerns with the lengthy process and delayed resolution of this matter. Deputy City Attorney Arlene Silva advised that because the amended complaint discussed in the previous hearing is based upon Bohrer's complaint, the proper procedure would be to rescind the findings made by the Commission under Bohrer's complaint so that it would put both the original and amended complaints on the same level at the next continuation of the hearing. This would also allow the City Clerk's Office to serve all parties with the

Commission's regulations and procedures (City Council Resolution No. 76954).

Action: Chair Michael Smith moved to rescind the finding from the September 9, 2015 Ethics Commission hearing that there was a violation of section 12.06.910 of the San Jose Municipal Code by Tim Orozco and Tim Orozco for San Jose City Council District 4 2015. Vice Chair Rolanda Pierre Dixon seconded the motion. On a call for the question, the motion carried unanimously. (5-0). Chair Michael Smith then declared that the hearing was continued to a future date.

The hearings closed at 6:14 p.m.

IV. Public Record - None

V. Consent Calendar

- A. Approve the Minutes of July 8, 2015 – Regular Meeting
- B. Approve the Minutes of August 12, 2015 – Regular Meeting
- C. Approve the Minutes of September 9, 2015 – Regular Meeting
- D. Approve the Minutes of October 14, 2015 – Regular Meeting

Documents Filed: Draft Ethics Commission meeting minutes for: July 8, 2015; August 12, 2015; September 9, 2015; and October 12, 2015.

Action: Upon a motion by Chair Michael Smith, seconded by Commissioner Adrian Gonzales and carried unanimously, the Commission approved the meeting minutes of July 8, 2015, September 9, 2015 and October 14, 2015. (5-0)

Action: Upon a motion by Chair Michael Smith, seconded by Commissioner Adrian Gonzales and carried, the Commission approved the meeting minutes of August 12, 2015 (Vice Chair Rolanda Pierre Dixon was absent at this meeting). (4-1; Abstained: Pierre Dixon)

VI. Reports

- A. Chair – None
- B. City Attorney – None
 - 1. Legislative update
- C. City Clerk
 - 1. Legislative update – None
 - 2. Status of compliance with Commission resolutions – None
 - 3. Status report on filings (Form 700, Campaign Statements, Lobbyists) – Completing audit of lobbyist reports.
 - 4. Elections update – First day for candidates to come to office to pull nomination papers is February 16, 2016. The contribution limit for candidates is \$600.
 - 5. Update on FPPC Forum – None
- D. Investigator/Evaluator – None

VII. Old Business

- A. Discussion and possible action regarding revisions to Resolution 76954. (City Attorney)

Document Filed: Draft revisions to City Council Resolution 76954.

Discussion: Deputy City Attorney Arlene Silva informed the Commission that the changes are anticipated to go before the City Council for approval on December 15, 2015.

Action: Upon a motion by Commissioner Adrian Gonzales, seconded by Vice Chair Rolanda Pierre Dixon and carried unanimously, the Commission moved to adopt the draft Resolution with amendments and to allow staff to work with the ad hoc committee to finalize for submission to the City Council for approval. (5-0)

- B. Discussion and possible action regarding ad hoc subcommittee on community outreach. (City Clerk)

Action: Deferred to next meeting.

- C. Scheduling of Special Ethics Commission meeting if needed. (City Clerk)

Action: The Commission discussed possible dates for a Special Ethics Commission meeting, tentatively agreed on December 16, 2016 and directed staff to send Commission members a Doodle request to confirm the date.

VIII. New Business

- A. 1. Discussion and possible action to rescind or amend the penalty imposed on July 8, 2015 in the complaint filed on June 5, 2015 by Tom Cochran against Manh Nguyen and Manh Nguyen for San Jose Council D4 2015. (Chair)

Documents Filed: 1) Memo from City Clerk Toni Taber to the Ethics Commission re Request to Add Item to Agenda dated November 12, 2015; 2) Ethics Commission Resolution 2015-13 Imposing Fine on Manh Nguyen; and 3) Warning letter from the Fair Political Practices Commission to Manh Nguyen and Manh Nguyen for San Jose City Council D4 2015 dated September 1, 2015.

Discussion: Chair Michael Smith discussed options with the Commission and indicated that he would like the matter deferred to the meeting when hearings are held on the other complaints regarding reporting of late contributions. Commissioner Adrian Gonzales read the warning letter from the Fair Political Practices Commission addressed to Manh Nguyen to the Commission and the public. Commissioner Gonzales expressed his concerns that the City Attorney's Office accepted Manh Nguyen's claim against the City of San Jose stemming from the imposition of the \$10,000 civil penalty by the San Jose Ethics Commission. Deputy City Attorney Arlene Silva responded to Commissioner Adrian Gonzales' concerns. Jonathan

Padilla provided public comment and expressed his feelings regarding the Commission and the process.

Action: The Commission discussed and agreed to defer this matter to a future meeting.

2. Depending on the outcome of item VIII.A.1., Hearing to rescind or amend the penalty imposed on July 8, 2016 in the complaint filed on June 5, 2015 by Tom Cochran against Manh Nguyen and Manh Nguyen for San Jose Council D4 2015. (Chair)

Action: No action taken since item VIII.A.1. was deferred.

Court Reporter left at 6:28 p.m.

Vice Chair Rolanda Pierre Dixon left at 6:47 p.m.

- B. Review, discussion and possible action (including forming an ad hoc committee) on referral to Ethics Commission by Councilmember Charles “Chappie” Jones to compare rules of other Cities and determine if additional changes are recommended regarding the length of the campaign contribution period. (City Attorney)

Discussion: The Commission discussed the referral by Councilmember Charles Jones and how to respond. The referral was received on October 6, 2015 and a response should be given within 120 calendar days.

Action: Upon a motion by Chair Michael Smith, seconded by Commissioner Adrian Gonzales and carried, the Commission moved to expand the responsibility of the ad hoc committee on potential for organizing statewide forum of Ethics Commissions to include the referral by Councilmember Charles Jones. (4-0-1; Absent: Pierre Dixon)

- C. Discussion and possible action regarding ad hoc committee on potential for organizing statewide forum of Ethics Commissions regarding campaign finance laws. (City Clerk)

Discussion: Commissioner Adrian Gonzales would like to work with staff to send a survey to other cities to check their local campaign finance laws and interest in joining a statewide forum. Commissioner Gonzales will add the deferral from Councilmember Charles Jones to the list of tasks.

- D. Discussion of letter from City Attorney Richard Doyle to Manh Nguyen dated November 4, 2015 re Claim Against the City of San Jose.

Document Filed: Letter form City Attorney Richard Doyle to Manh Nguyen dated November 4, 2015 re claim against the City of San Jose.

Action: No action taken.

IX. Public Comment

Kathy Sutherland requested that the Commission convey the seriousness of the matter to the candidates. Don Gagliardi asked the Commission to subpoena witnesses and dedicate more time for the hearings. Jonathan Padilla reminded the Commission that Evaluator Steven Miller filed the complaint. Tim Orozco noted that William Bohrer was not present at this meeting or the last.

X. Future Agenda Items and Adjournment

The next special meeting is tentatively scheduled for Wednesday, December 16, 2015 at 5:30 p.m. in City Hall, TBD.

The following agenda items will be discussed at the next Ethics Commission meeting:

- Continuation of Hearing for Complaint filed by William Bohrer on July 23, 2015
- Continuation of Hearing for Amended Bohrer Complaint filed on October 9, 2015
- Discussion and possible action/hearing to rescind or amend the penalty imposed on July 8, 2015 in the complaint filed on June 5, 2015 by Tom Cochran against Manh Nguyen and Manh Nguyen for San Jose Council D4 2015
- Gift Ordinance and FAQ
- Nomination and election of officers
- Approval of minutes
- Open Government Training

The meeting was adjourned at approximately 7:06 p.m.

MICHAEL SMITH, CHAIR

ATTEST:
ETHICS COMMISSION SECRETARY

TONI J. TABER, CMC
CITY CLERK

Attachment: Transcript of Hearing dated November 19, 2015, Reported by Katherine Chok, CSR, License Number 9209, Advantage Reporting Services, No. 50761, pages 1 through 32.

SAN JOSE ETHICS COMMISSION

CITY OF SAN JOSE
ETHICS COMMISSION

**CERTIFIED
TRANSCRIPT**

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Date: Thursday, November 19, 2015
Time: 5:35 p.m.
Reported by: Katherine Chok, CSR No. 9209
Location: San Jose City Hall
200 E. Santa Clara Street
Wing Room 118-120
San Jose, CA 95113

#50761

Advantage *ARs* Reporting
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San Jose Elections Commission: MICHAEL SMITH, Chair
ROLANDA PIERRE-DIXON,
Vice-Chair
CHRIS PEACOCK
MADHAVEE VEMULAPALLI
ADRIAN GONZALES

Staff: ARLENE F. SILVA,
Deputy City Attorney
TONI TABER, City Clerk
CECILIA McDANIEL,
Deputy City Clerk

Independent Investigator
Evaluator: HANSON BRIDGETT, LLP
BY: STEVEN D. MILLER,
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P R O C E E D I N G S

CHAIRMAN SMITH: It is Thursday, November 19, 2015, and this hearing of the City of San Jose Ethics Commission is being held in rooms W118 and 119.

All members of the commission are present.

I'm going to go through this little bit of preliminary stuff to set the stage, and then we'll decide where to go from there.

The Commission will conduct a hearing on a complaint filed with the City Clerk on October 9, 2015 by the independent Evaluator, Steven Miller, alleging that Paul Fong, Charles Jones, Bob Levy, Xavier Campos, Magdalena Carrasco, Donald Rocha, Lois Wilco-Owens, Donald Gagliardi, Paul Peralez, Kathy Sutherland, Van Le, Buu Thai, David Cortese, Rose Herrera, Sam Liccardo, Madison Nguyen, Pierluigi Olivero, Lan Diep and Bhupindar Dhillon violated sections 12.06.910 of the San Jose Municipal Code.

Specifically the allegation is that Respondents failed to file Form 497s, reporting late contributions received during the statutorily required "late contribution" period immediately

1 proceeding the June 3, 2014, November 4, 2014 and/or
2 April 7, 2015 elections.

3 The Evaluator notified and provided a copy
4 of the complaint to the Respondents on October 12,
5 2015. The Independent Evaluator's Report and
6 Recommendations were submitted to the City Clerk on
7 November 12, 2015, and copies were then provided to
8 the Respondents and Commission members and posted at
9 the City website with the agenda for tonight's
10 hearing.

11 For the benefit of the court reporter I'm
12 going to give you this before you leave with all of
13 those names and things.

14 Okay. So at this point, before I go any
15 farther, I think I'll open it to discussion as to how
16 the commission would like to proceed.

17 MS. PIERRE-DIXON: I certainly would like
18 to hear from the public speakers that are here today.

19 CHAIRMAN SMITH: What about hearing from
20 the Evaluator?

21 MS. PIERRE-DIXON: If we have the time.

22 CHAIRMAN SMITH: The normal procedure is we
23 hear from the Evaluator first, and then we take the
24 public comment, although I guess we can change that.

25 Mr. Gonzales.

1 MR. GONZALES: I believe that when the
2 Commission is making its findings it is important to
3 have all of the facts fresh and presented at the time
4 of that decision.

5 But I understand that individuals have
6 taken their time out of their schedules to come this
7 evening. So I'm supportive of allowing public
8 comment to occur now as they may not be able to come
9 next time if we postpone this.

10 But I really prefer that we delay
11 discussion and presentation of the Evaluator's report
12 until the next meeting.

13 CHAIRMAN SMITH: Okay. Do we need a motion
14 on that?

15 MS. SILVA: Sure.

16 CHAIRMAN SMITH: Okay, so I would be
17 supportive of that as well. So if somebody would
18 like to make a motion to that effect? I'll make a
19 motion, make it easier. I would move that we
20 continue the hearing as far as hearing comments from
21 Respondents and members of the public and that we
22 then suspend the hearing until a later date, at which
23 point Respondents will have been provided copies of
24 Resolution 76954.

25 MR. GONZALES: Second.

1 MS. SILVA: Continue the hearing, not
2 suspend it.

3 CHAIRMAN SMITH: I'm sorry, continue the
4 hearing, not suspend, thank you. So do I have a
5 second?

6 MR. GONZALES: Second.

7 CHAIRMAN SMITH: Any discussion?

8 MR. PEACOCK: Just one point. I realize
9 the world does not revolve around my schedule. As I
10 notified you and the Clerk a couple of weeks, ago at
11 the next scheduled meeting, I have to heart out about
12 an hour into it. I would only be able to be here
13 about an hour at that point.

14 MS. TABER: I was also going to request
15 that we schedule a special meeting for week of
16 December 17th or later due to your conflict for one,
17 and a conflict in my office as well.

18 CHAIRMAN SMITH: We can address that later.
19 But, yes, I was hoping maybe we could have a special
20 meeting earlier.

21 When is the next scheduled meeting? I don't
22 remember the date.

23 MS. TABER: The 9th. And we have
24 Thanksgiving weekend.

25 CHAIRMAN SMITH: Well that's a problem. I

1 hate to keep putting this off and putting this off.

2 MR. GONZALES: Can we do a special meeting
3 the first week of December?

4 MS. TABER: We can't because of
5 Thanksgiving holiday. It's hard to publish the
6 agenda, plus we need to give them the Resolution and
7 enough time to read the Resolution.

8 MR. GONZALES: Well, the 9th.

9 MS. TABER: The 9th --

10 CHAIRMAN SMITH: Let's address that later
11 in the meeting. We have a space there, later on the
12 agenda to talk about special meetings.

13 So we have a motion and a second. All in
14 favor?

15 (All Commissioners responded Aye.)

16 CHAIRMAN SMITH: Okay. So it's unanimous.

17 So with that -- let me just for the benefit
18 of the audience, a couple of things let me go
19 through.

20 On April 15, 2014, the City Council adopted
21 resolution 7694 - 76954, which establishes the
22 Commission's regulations and procedures pertaining to
23 investigations and hearings. All parties to these
24 proceedings and procedures have been provided copies
25 of the Resolution. The regulations and procedures

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1 have been adopted in order to insure the fair, just
2 and timely resolution of complaints.

3 This hearing is open to the public. It is
4 being electronically recorded, and we have a court
5 reporter with us to compile a transcript. The formal
6 rules of evidence do not apply to this hearing, but
7 all testimony will be under oath or affirmation.

8 The Chair may compel the testimony of
9 witnesses and may compel the testimony of relevant
10 documents to the Evaluator by subpoena. Witnesses
11 may be excluded at the discretion of the Commission.
12 Commission members may ask questions of witnesses or
13 the Evaluator when recognized by the Chair.

14 So at this time -- first of all, could any
15 Respondents or representatives of respondents, please
16 identify themselves. Just stick your hand up. And
17 so could you just tell me who you are?

18 MR. GAGLIARDI: I'm Don Gagliardi.

19 MS. SUTHERLAND: I'm Kathy Sutherland.

20 MR. OROZCO: Tim Orozco.

21 MS. PERRY: Linda Perry.

22 CHAIRMAN SMITH: Okay. So at this point, I
23 would first offer the opportunity if any of the
24 Respondents would like to make comments.

25 And I have here yellow cards from Don

1 Gagliardi and Kathy Sutherland.

2 So, Mr. Gagliardi, if you would come
3 forward, please. Do we have a mic or anything?

4 MS. McDANIEL: I don't.

5 CHAIRMAN SMITH: Use the one on the end
6 here. So people can hear.

7 If you would raise your right hand and
8 repeat after me, please. Do you swear that the
9 testimony you are about to give is the truth, the
10 whole truth, and nothing but the truth?

11 MR. GAGLIARDI: I do. I will however say
12 that it is not my intention to give testimony here
13 today. Because it's my understanding that the
14 testimony will be provided at a future date when the
15 requirement of the rules and regulation will have
16 been provided.

17 I'd like to just speak to the point that
18 the chairman mentioned, which is the Commission has
19 the opportunity to simply dismiss the charges as to
20 everyone tonight and there is no need to take
21 testimony to do that and I would urge the Commission
22 to do that.

23 The Mercury News has weighed in on this.
24 It's a matter of public concern right now. I've read
25 the Evaluator's report; it's not surprising. All of

1 us were misled by the Clerk, Toni Taber. She has
2 indicated nobody should be fined. The City Attorney
3 has indicated that he's not going to insist that Mr.
4 Manh Nguyen be fined.

5 So I view this as entirely empty and
6 beaurocratic exercise. And you've been given an
7 opportunity as Commission tonight to put this to bed
8 without sullyng anyone's reputation. And I would
9 urge the Commission to take that opportunity to do
10 it. Because I just got a look at these rules and
11 regulations this afternoon and it's not clear to me
12 -- and I've had very little opportunity to review
13 them -- that they are entirely kosher with the United
14 States Constitution.

15 Giving us three days, three business days
16 when we're entitled to an attorney, when testimony is
17 being taken under oath with a stenographer, and when
18 the potential penalties, in my case, \$90,000 by my
19 count, \$5,000 per violation for 14 violations,
20 suggest that due process requires something more than
21 these rules sand regulations.

22 Those are facial problems. There is a
23 procedural problem not providing me or the other
24 candidates these rules, but there remains facial
25 problems. And I now must consider whether I'm going

1 to go hire an attorney to represent me to defend me
2 in the context of this quasi criminal proceeding.

3 I also need to determine whether it's fair
4 for me to be participating in that proceeding with 20
5 other people and have an Evaluator's report that
6 lumps me together with 20 other people. I don't
7 think that's fair. But that's my own supposition
8 formulated on the fly. I may want to consult
9 counsel.

10 So there are deep seated concerns here that
11 go way beyond whether there was failure to report
12 late filings. The issues here go very deeply. And
13 they have the potential to sully the reputations from
14 every one of us, from the mayor on down, to prevent
15 good people from running for office.

16 Those are things the Commission can take
17 into consideration tonight without taking testimony
18 under oath from anybody about what we did or did not
19 do during the course of our campaigns from more than
20 a year ago. You can consider that tonight.

21 What you know now and can take notice of as
22 a Commission without taking testimony is sufficient
23 to simply dismiss these charges, put this ridiculous
24 fiasco to bed and let us all get on with our lives
25 and I would urge you to do that.

1 CHAIRMAN SMITH: Okay. Kathy Sutherland.
2 If you would raise your hand, Miss
3 Sutherland.

4 The testimony you are about to give is the
5 truth, the whole truth and nothing but the truth?

6 MS. SUTHERLAND: Yes. I'm sorry I thought
7 you were telling me to wait for somebody.

8 I have a question. Is this testimony or
9 is this public comment? And if it is public comment
10 am I going to, when City Council allows public
11 comment in a meeting and then carries the item over
12 to the next meeting, they don't allow people who
13 commented the first time to comment the second time.

14 MS. TABER: Sometimes. Sometimes we do,
15 sometimes we don't. That's up to them.

16 MS. SUTHERLAND: So is this testimony or
17 public comment?

18 MS. PIERRE-DIXON: It's public comment.

19 CHAIRMAN SMITH: No, I would disagree. We
20 are hearing from a Respondent. This isn't public.
21 It's always been done, anything done in the course of
22 a hearing, we swear people in. That's the way it has
23 always been done. I'm not a lawyer, I don't play
24 well on television. But that's how --

25 MS. SILVA: This doesn't preclude you from

1 actually coming back at the next continuation to
2 actually come forward and speak on your behalf.
3 You're a Respondent.

4 MS. SUTHERLAND: So I will say what I was
5 going to say. But to let you know, I was not
6 prepared or understood that this would be testimony.
7 I thought it was public comment. And to me they are
8 two very, very different things.

9 I'm not a lawyer. But I can tell you that
10 I am uncomfortable with this because there are two
11 different benchmarks there. But I will say what I'm
12 going to say anyway. But I want to be on the record
13 as saying that I'm very, very uncomfortable with how
14 this is going forward.

15 What I'd like to say as a first time
16 candidate, I knew enough to be politically savvy to
17 hire a political consultant because I've seen enough
18 elections where the Elections Commissions was a place
19 where people like to make trouble.

20 I did. My compliance consultant did her
21 due diligence, had information, responses back from
22 the City Clerk that said it was not necessary for me
23 to do the late filings. I don't know what else I
24 could have done. And if I am found guilty by what is
25 no longer the Election's Commission, but the Ethics

1 Commission, I am being identified as unethical.

2 And as a neighborhood leader, a board
3 member on several non-profits, a community volunteer,
4 my reputation and my ethics are my key. And to be
5 identified as "unethical" is a harm to me personally,
6 especially when there was nothing I could have done
7 to have a of different outcome.

8 If you want neighborhood leaders to run for
9 City Council and you want that viewpoint on City
10 Council, you can't subject us to becoming unethical,
11 convicted of an ethical violation for something we
12 did not do, and there was no way to avoid it.

13 Um, what else did I want to say? I'm
14 sorry. Oh, if this had been the Elections
15 Commission, it would have been a different story.
16 Being charged by the Elections Commission, to me is
17 very different than being charged by the Ethics
18 Commission. And those words really do matter.

19 And so I would ask that you dismiss this.
20 And the thought that you can do a sleight of hand by
21 fining us, not taking our money, having the City
22 Attorney's office dismiss the fines, that doesn't do
23 it. I'm still convicted of being unethical. I take
24 that to heart. My reputation is everything and I
25 really do wish you would dismiss these charges for

1 everyone. We could not have done anything different.
2 We all tried to comply.

3 I do think there are circumstances that
4 are beyond our control, and if you do identify all 20
5 candidates as being unethical it's going to send a
6 shock wave to the other neighborhood leaders who are
7 saying, Do I want to work for this city? Do I want
8 to spend my time representing the best interests of
9 my neighborhood, my constituents, do I want to make a
10 personal sacrifice and try and make that personal
11 sacrifice by being elected to office when I could
12 ultimately have the identification of being
13 unethical.

14 So thank you very much. Thank you.

15 CHAIRMAN SMITH: Thank you.

16 Okay. That's all of the cards I have for
17 this particular agenda item.

18 She turned her card in for the next item on
19 the agenda. We do have, as was mentioned by both
20 speakers, we do have the option to dismiss the case.
21 If we were to want to entertain that, I think we
22 should hear from the Evaluator before we do that.
23 But that is an option, if people would like to
24 consider it. Any thoughts on that?

25 MS. PIERRE-DIXON: This is Commissioner

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1 Pierre-Dixon I certainly considered it, and as many
2 people stated today, they are not attorneys, and I am
3 an attorney. Because I am an attorney, I feel like
4 we have to all of the evidence in front of us before
5 we make any decision.

6 And the fact that many of the Respondents
7 or all of the Respondents did not receive all of the
8 information they should have, before we make the
9 decision that needs to be cured. I would hesitate to
10 dismiss it at this point because I think everything
11 should be clear on the table and on the record. So
12 I'm stating that as an attorney.

13 CHAIRMAN SMITH: Okay.

14 MS. PIERRE-DIXON: But I understand what
15 you're saying.

16 CHAIRMAN SMITH: Are there any other
17 comments?

18 MR. PEACOCK: I would support what Miss
19 Pierre-Dixon said. I think that as fair as people
20 point out, reputations are at stake. Reputations are
21 important. And so is the importance of sort of
22 following our responsibility to hear everything out.

23 So without saying what we will end up doing,
24 I think as you said, it is important to fulfill our
25 responsibilities to go through everything as we

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1 should.

2 CHAIRMAN SMITH: Okay. So in that case, I
3 think it would be appropriate to continue the hearing
4 at this point. Stop what we're doing and continue it
5 at a subsequent meeting, which we will determine
6 later.

7 MS. PIERRE-DIXON: Well, I'd like to be
8 able to pick a date, since we do have guests here
9 that may want to return.

10 CHAIRMAN SMITH: We could tentatively pick
11 one, but I don't have my calendar with me. But we'll
12 see.

13 Do we have a suggestion? I would like to
14 do it before the next regularly scheduled meeting. I
15 would like to do it as soon as possible. But I do
16 recognize the logistics issues with Thanksgiving.

17 MS. SILVA: Also, I'd like to emphasize
18 that the Clerk's office would have to -- we have to
19 work with the Clerk's office because they have to,
20 the logistics of serving all of the parties, the
21 required documents.

22 MR. GAGLIARDI: We can't hear you in the
23 back.

24 MS. SILVA: I'm referring the Commission to
25 actually have the consideration of the City Clerk's

17

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1 office in scheduling this to make sure they are able
2 to timely serve all of the necessary documents; i.e,
3 procedures and regulations in a timely manner before
4 the meeting that will be scheduled or the continuance
5 of this hearing.

6 CHAIRMAN SMITH: I guess I'll ask City
7 Clerk. What would you -- for starting point, what
8 would you suggest for a meeting date? You mentioned
9 after the -- I don't want to get too close to
10 Christmas either.

11 MS. TABER: The 17th for me is perfect.
12 That's a Thursday, but it's after the 9th. I'm very
13 sensitive on the 9th. Mr. Peacock let us know a long
14 time ago that the 9th was a bad day for him. These
15 people have already suffered at the hand of the City
16 Clerk's office.

17 I don't want them to suffer for the lack of
18 a commissioner that has to leave in the middle of
19 their hearing. I don't think it's appropriate to
20 have it on the 9th, and that's not a criticism saying
21 you have to leave, but I mean you have a conflict,
22 you let us know about.

23 I feel the Evaluator, you know, you don't
24 want to hear his testimony today. So therefore on
25 the 9th, it's going to be a long meeting because

1 that's going to be a long report.

2 We have the holidays on the 25th. The
3 regulations. How long do you want to give them to
4 read the regulations?

5 Mr. Gagliardi already stated he felt he
6 would like to consult on the regulations. So do we
7 give them three days, do we give them a week? How
8 long do you want them to be able to review the legal
9 language of the regulations? I mean if you feel it's
10 important enough to put off the hearing of the
11 Evaluator so they can read the regulations, so I feel
12 we need to give them a chance to actually read the
13 regulations.

14 CHAIRMAN SMITH: Does anyone have a
15 conflict with the 17th?

16 MR. PEACOCK: Fortunately, I do too.
17 Here's a question. On the 9th, would it be
18 permissible or logistical to have an afternoon
19 meeting or do we have to have it at night?

20 MS. TABER: Well, the Respondents all work.
21 5:30 is already early for some of them.

22 MR. GONZALES: What about the 10th, the day
23 after?

24 CHAIRMAN SMITH: I think I'm okay on the
25 10th. Let me --

1 MS. VEMULAPALLI: I may not be able to
2 come, 10th of December; right?

3 MS. PIERRE-DIXON: It's a Thursday.

4 MS. VEMULAPALLI: My daughter's birthday.

5 MS. PIERRE-DIXON: Well, there is the 11th,
6 that's a Friday.

7 CHAIRMAN SMITH: I can't make it on the
8 11th.

9 MS. VEMULAPALLI: Tuesday? 15th, 16th.

10 MR. PEACOCK: 15th, 16th will work okay.

11 MS. TABER: The 15th is a Council meeting.

12 MR. PEACOCK: 16th, I believe, is okay.

13 MS. PIERRE-DIXON: 16th?

14 CHAIRMAN SMITH: I think it's okay. I
15 don't know. It's probably okay. We could
16 tentatively say the 16th. Do you have a problem?

17 MR. MILLER: I cannot be here on the 16th.
18 But I can make sure that Ms. Lee is prepared and be
19 here.

20 MS. TABER: We can also hear the report.

21 MR. MILLER: It's the one day between now
22 and March I'm not available. If it's really the only
23 day I would hate to be the problem.

24 MS. PIERRE-DIXON: Okay. 16?

25 CHAIRMAN SMITH: Everybody else seems to be

20

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1 okay. So let's tentatively say the 16th. Last time
2 we thought we had a date and then problems showed up.
3 So I think maybe we ought to do Doodle with staff and
4 commissioners and be sure everybody checks their
5 calendars at home.

6 MS. PIERRE-DIXON: We'll let you know as
7 soon as possible.

8 MR. GAGLIARDI: You have 20 Respondents.
9 Are our calendars not important?

10 MS. PIERRE-DIXON: Are you available?

11 MR. GAGLIARDI: It's just your bureaucratic
12 convenience? I'm available on the 16th. I don't
13 know if the Mayor is.

14 CHAIRMAN SMITH: Well, there is only three
15 respondents out of 20 that are here.

16 MS. SUTHERLAND: Four.

17 CHAIRMAN SMITH: Well, three for this.

18 (Multiple people talking at once)

19 MR. GAGLIARDI: They may not know that.
20 Maybe that's why they are not here, because they
21 don't understand the gravity of the situation. Maybe
22 that's why they are not here.

23 I would suggest you ask when they are
24 available and you may consider having an individual
25 hearing from each of the 20 different people

1 individually.

2 MS. PIERRE-DIXON: I don't think that's
3 appropriate. There is a meeting that's set. Those
4 that are interested and concerned and present. For
5 those that present we should take into account what
6 their schedules are. I think that's fair.

7 CHAIRMAN SMITH: Okay. So we will check on
8 that. And with that, we are going to continue --
9 what's the word I want to use, I can't say suspend --
10 we'll continue this hearing tentatively on December
11 16th.

12 Council Member Peralez, did you wish to say
13 anything to the Commission? We allowed the other
14 Respondents who were here at the time to speak.

15 MR. PERALEZ: Yeah.

16 CHAIRMAN SMITH: If you wish to you can --

17 MR. PERALEZ: Yeah.

18 CHAIRMAN SMITH: So I will reopen.

19 MR. PERALEZ: Are you taking testimony on
20 this now?

21 CHAIRMAN SMITH: Yes. I just need you to
22 raise your hand. Do you swear the testimony you are
23 about to give is the truth, whole truth and nothing
24 but the truth?

25 MR. PERALEZ: Absolutely.

22

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1 CHAIRMAN SMITH: Okay.

2 MR. PERALEZ: Thank you for taking the
3 testimony, because the 16th, if that's the date that
4 its coming back up I'm not available, but maybe I can
5 submit something in writing if this doesn't seem to
6 be sufficient.

7 Essentially I'm here as well because this
8 is very important. I think it's not just important
9 for myself, it's important for any other election
10 moving forward. You know, first time candidate
11 myself coming into this, I depended a lot on the
12 advice of our clerk. And as she knows, I was in her
13 office a lot with my father who managed all of the
14 finances and all the rules and learned for himself
15 for the first time as well on campaigns, so we relied
16 very heavily on the expertise of others.

17 Certainly, I think on the simple matter of
18 ethics, I can tell you it should be cut and dried.
19 There was absolutely nothing unethical about the
20 omission or error in reporting in this regard. If
21 that was the case, I think certainly you might not
22 find as many subjects or individual subjected to have
23 made this error. As well as in looking through
24 common sense, this was certainly not an omission on
25 purpose, right?

1 So I think that the reality of the facts in
2 regard to what was missing, in regards to what was
3 not filed, certainly, there is an area there in
4 regards to the rules we have at the City.

5 When I was first questioned about it, I
6 said, if there was an error within the ruling that I
7 didn't follow, well then absolutely, I'm not going to
8 question or say that's not the case.

9 But the reason behind it or why it may have
10 happened, that I'd like to look into further.
11 Unfortunately for me, I didn't have the luxury to
12 maintain the E-mail account that I was paying for
13 while I was on the campaign. A number of these
14 e-mails and correspondence are long gone. There was
15 no need for me to continue paying for a Vote for
16 Peralez email address.

17 And so a lot of the correspondence which I
18 recall and my father at the time had a different
19 separate e-mail, he wasn't going to use his personal
20 e-mail was Treasurer@RobertoPeralez.com. And that's
21 no longer in existence. So a lot of these
22 correspondence as well don't exist any more. Maybe
23 somewhere in the cloud, but not where I'm educated
24 enough to go and find. And I do recall, and my
25 father does recall as treasurer as well, the

1 conversations we had back and forth with Toni,
2 because we were certainly curious about how and when
3 do we report, what should we report? I think maybe
4 Toni can attest, we were usually one of the first,
5 right on time, trying to make sure we were doing
6 things as perfectly by the book as we could.
7 Especially knowing this was the first time for me and
8 first time for my father.

9 So it was no surprise to find out there may
10 be some mistakes. But to question the ethics of
11 myself, my father, or quite frankly, any of the other
12 candidates is really misguided.

13 And I think to look at how do improve this
14 in the future would be a clarification of really the
15 rules and a clarification in some of these rules that
16 we at the City make a little bit more difficult and a
17 little different than what the State does, and it
18 does becomes difficult. It does become difficult for
19 first time candidates. And I think a colleague of
20 mine, council member Rocha submitted a letter here
21 the last hour here. I think the essence was we really
22 want to encourage people, community members like my
23 myself, first time candidates, to get involved.

24 When you read the headlines like \$10,000
25 fines, like council member Manh Nguyen was faced

1 with, those discourage people. It certainly
2 discourages me. And it frightened me a bit to know
3 that uh-oh, to tally up some of what this error would
4 cost, I don't make very much money anymore. I took
5 a pretty big pay cut from a police officer to be a
6 council member. I learned already how to adjust to
7 that. I'm not sitting on a bankroll where I can say,
8 all right, let me pay up these fines for an error,
9 but not necessarily an unethical decision.

10 So that's my testimony. Hopefully you can
11 take that into account. I'm sorry it's going to be
12 continued, I wish it could be resolved sooner. But
13 hopefully you'll get some more testimony as well,
14 probably at the next meeting.

15 CHAIRMAN SMITH: Thank you.

16 So now I will continue the hearing. Moving
17 on to the next item. The hearing on the continuation
18 of the hearing on complaint filed by William Bohrer
19 against Tim Orozco and Neighbors for Tim Orozco.

20 We could continue this one also or we
21 could -- and I think what I personally would favor
22 would be to reopen it, rescind the finding of a
23 violation from before, and continue it again and come
24 back next time so that we have a clean slate.

25 At that time we could choose to dismiss the

1 case or find a violation again, just as we could find
2 in the case of the first complaint.

3 But I think we have those two choices. And
4 before I really open --

5 MS. TABER: Can we also dismiss this one?

6 CHAIRMAN SMITH: We could, you're right.
7 I'm assuming since we chose not to dismiss the
8 previous one, we would choose not to dismiss this
9 one, but that is an option. And we have in fact have
10 heard all of the evidence on that one. That's true.
11 That would be a more viable option here than on the
12 first one where we haven't heard the testimony et
13 cetera.

14 But, yeah. So any thoughts before I really
15 officially open the thing up?

16 MS. PIERRE-DIXON: My preference would be
17 to handle it at the next hearing, along with the
18 others, once we have all of the information.

19 CHAIRMAN SMITH: Basically not doing
20 anything here tonight?

21 MS. PIERRE-DIXON: No.

22 MR. OROZCO: What additional information do
23 you need? My treasurer provided you and my campaign
24 manager a statement. This has been ongoing for two
25 months. The Evaluator has done a great job in

1 providing evidence. We know what the problem is. We
2 know what needs to be done to resolve it. We have
3 heard from the City Clerk's office.

4 What else -- you know, this is hanging over
5 my head. And every day I'm sleeping, thinking about
6 this. I can't move on to the next step, you know,
7 where I'm going forward until this is resolved.

8 So --

9 CHAIRMAN SMITH: I understand that, and
10 that is why I had hoped we could have the next
11 meeting as soon as possible. I think the problem we
12 have here is we have all of the information in your
13 case. Other than hearing the Evaluator's report, we
14 have all of the information in the other case. We
15 just haven't heard them verbally give us their input.
16 But we can't proceed because there was a procedural
17 violation.

18 MS. TABER: You can proceed if you dismiss.
19 You can't proceed with a finding.

20 CHAIRMAN SMITH: Right. I suspect that
21 there would be a concern about -- I think we want --
22 I'm judging that we want to look at the 20 there,
23 plus Mr. Orozco, all at one time and treat them
24 consistently and not make a decision, say, for
25 example, to dismiss one tonight and then wait a month

1 on the others. Commissioner Pierre-Dixon, did you
2 have a --

3 MS. SILVA: Because the amended complaint
4 is based upon Mr. Orozco's complaint, I think it
5 would be proper procedurally to actually rescind the
6 findings with Mr. Orozco's complaint. Because all of
7 this stems from Mr. Orozco's complaint. So it would
8 put the main complaint and the amended complaint on
9 the same level at the next continuance of the
10 hearing.

11 So that would be point procedurally. And
12 then the Clerk's office shall serve Mr. Orozco
13 similar to the other 20 members in the amended
14 complaint.

15 CHAIRMAN SMITH: That makes a lot of sense
16 to me. In fact, that's sort of what I was trying to
17 do before.

18 Tell you what. I'm going to open that
19 hearing and we can decide whether to do that or not.
20 I'm not going to read through all of the gobbledygook
21 other than to say -- and if you haven't been typing
22 you can start now.

23 It is Thursday, November 19, 2015, and this
24 hearing of the San Jose Ethics Commission is being
25 held in rooms W118 and 119 at San Jose City Hall.

29

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1 All members of the Commission are present.

2 Commission will continue a hearing on a
3 complaint filed with the City Clerk on July 23, 2015
4 by William Bohrer alleging that Tim Orozco and the
5 Neighbors for Tim Orozco for San Jose City Council,
6 District 4, 2015 Committee, violated section
7 12.06.910 San Jose Municipal Code.

8 Okay. Let me cut to the chase. I would
9 offer a motion that we rescind the finding from the
10 previous meeting that there was a violation of
11 section 12.06.910 of the Municipal Code.

12 And I would mention that my intent is to
13 rescind that, not necessarily to make it go away
14 permanently, but to rescind it so that we can go back
15 on a common basis with the other complaint, as was
16 described by the City Attorney earlier.

17 MS. PIERRE-DIXON: I would second.

18 CHAIRMAN SMITH: I'll take discussion.

19 MS. VEMULAPALLI: I agree with it. I have
20 second it.

21 CHAIRMAN SMITH: All in favor?

22 (All Commissioners responded Aye.)

23 CHAIRMAN SMITH: Any opposed?

24 So it's unanimous. Where we stand now both
25 with this complaint and the larger complaint, there

1 is no finding at this point. And we will come back
2 next time. And I think we're going to find a way out
3 of this without causing undue problems for anyone.
4 That is my hope and my desire.

5 But obviously that has to be an official
6 action to do that. So with that, we will continue
7 this hearing at the next meeting, which is
8 tentatively scheduled for December 16th.

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10 (Whereupon, the recorded portion of the
11 hearing was concluded at 6:14 p.m.)

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I, KATHERINE CHOK, C.S.R. #9209, a
Certified Shorthand Reporter for the State of
California, do hereby certify:

That the foregoing hearing was taken down
by me in shorthand at the time and place therein
named, and thereafter reduced to computerized
transcription under my direction and supervision. And
I hereby certify the foregoing transcript is a full,
true and correct transcript of my shorthand notes so
taken.

I further certify that I am not
interested in the outcome of this action.

Witness my hand this 5th day
of January, 2016.

Katherine Chok
KATHERINE CHOK,
CSR #9209
STATE OF CALIFORNIA