

SAN JOSE ELECTIONS COMMISSION

Meeting Minutes

June 13, 2012

ROLL CALL

PRESENT: Chair Smith, Commission Members Edgeworth, Louie and Pierre-Dixon

ABSENT: Vice Chair Cosgrove

STAFF: Senior Deputy City Attorney Lisa Herrick, City Clerk Dennis Hawkins and
Deputy City Clerk Rebecca Hall

ORDER OF BUSINESS

I. CALL TO ORDER

The members of the San Jose Elections Commission convened at 5:39 p.m., in Room W-262 of City Hall, 200 E. Santa Clara Street, CA 95113.

II. ADOPTION OF AGENDA

Upon motion by Commissioner Pierre Dixon, seconded by Commissioner Louie, the Commission unanimously adopted the Agenda for June 13, 2012.

III. PUBLIC COMMENT

None.

IV. CLOSED SESSION

None.

V. APPROVAL OF MINUTES

A. February 15, 2012

Action: At the request of the City Clerk, the Commission agreed to defer the minutes from February 15, 2012.

B. May 9, 2012

Action: At the request of the City Clerk, the Commission agreed to defer the minutes from May 9, 2012.

VI. REPORTS

A. Chair - None

B. City Attorney - None

C. City Clerk – Clerk Hawkins stated that the Mayor’s Budget Message afforded additional funding to the Office of the City Clerk and proposed the restoration of one Analyst position, as well as one Staff Technician position.

D. Investigator/Evaluator – None

VII. ITEMS SCHEDULED FOR ACTION

A. Hearing on the complaint filed by Fred Bates on May 21, 2012 alleging violations of the San José Municipal Code by the City Attorney (Independent Investigator/Evaluator)

Documents Filed: (1) Memorandum with attachments from Hanson Bridgett LLP to the San Jose Elections Commission dated June 6, 2012 regarding an ethics violation complaint made by Fred Bates against the Office of the City Attorney. (2) Letter from Fred Bates to the San Jose Elections Commission dated June 10, 2012, regarding the findings and recommendations by Hanson Bridgett LLP.

Mike Moye, Partner from Hanson Bridgett, the Commission’s Independent Evaluator/Investigator presented and summarized their report.

Val Bates testified on behalf of her brother Fred Bates.

Public Comments: None.

The Commission deliberated.

Action: Upon motion by Commissioner Edgeworth, seconded by Commissioner Pierre Dixon, the Commission unanimously adopted the Evaluator’s recommendation that the matter is not within the jurisdiction of the Commission, and it will not refer the matter to another agency or official. Upon motion by Commissioner Pierre Dixon, seconded by Commissioner Edgeworth, the Commission requested that the City Attorney prepare a resolution and authorized the Chair to approve and sign the resolution.

Vote 4-0-1 (Vice-Chair Cosgrove Absent)

<u>Roll Call Vote</u>	<u>Vote Certified</u>
Chair Smith - aye	Commissioner Edgeworth - aye
Commissioner Pierre-Dixon - aye	Commissioner Louie - aye
Commissioner Edgeworth - aye	Commissioner Pierre-Dixon - aye
Commissioner Louie – aye	Chair Smith – aye
Vice-Chair Cosgrove - absent	Vice-Chair Cosgrove - absent

B. Hearing on the complaint filed by Ron Vogel on May 29, 2012 alleging violations of San José Municipal Code by Councilmember Kansen Chu, candidate for Council District 4 (Independent Investigator/Evaluator)

Documents Filed: (1) Memorandum with attachments from Hanson Bridgett LLP, dated June 6, 2012 regarding an election sign violation complaint from Ron Vogel against Councilmember Chu. (2) Written statement by Ron Vogel dated June 12, 2012.

Mike Moye, Partner from Hanson Bridgett, the Commission's Independent Evaluator/Investigator presented and summarized their report.

Public Comments: None.

The Commission deliberated.

Action: Upon motion by Commissioner Pierre Dixon, seconded by Commissioner Louie, the Commission unanimously adopted the Evaluator's recommendation that an investigation is not warranted under Title 12 and the matter be closed. It was noted that the City Clerk referred the matter to the Department of Planning, Building and Code Enforcement. Upon motion by Commissioner Pierre Dixon, seconded by Commissioner Edgeworth, the Commission requested that the City Attorney prepare a resolution and authorized the Chair to approve and sign the resolution.

Vote 4-0-1 (Vice-Chair Cosgrove Absent)

<u>Roll Call Vote</u>	<u>Vote Certified</u>
Chair Smith - aye	Commissioner Edgeworth - aye
Commissioner Pierre-Dixon - aye	Commissioner Louie - aye
Commissioner Edgeworth - aye	Commissioner Pierre-Dixon - aye
Commissioner Louie - aye	Chair Smith - aye
Vice-Chair Cosgrove - absent	Vice-Chair Cosgrove - absent

- C. Hearing on the complaint filed by Jon Nguyen on May 18, 2012 alleging violations of San José Municipal Code Title 12 by Councilmember Kansen Chu, candidate for Council District 4 (Independent Investigator/Evaluator)

Documents Filed: Memorandum with attachments from Hanson Bridgett LLP, dated June 7, 2012 regarding a violations of Municipal Code (Campaign Contributions) complaint from Jon Nguyen against Councilmember Chu.

Mike Moye, Partner from Hanson Bridgett, the Commission's Independent Evaluator/Investigator presented and summarized their report.

Councilmember Kansen Chu testified.

Public Comments: None

The Commission deliberated.

Action: The commissioners took action on the complaint with four (4) motions.

(1) Upon motion by Commissioner Edgeworth, seconded by Commissioner Pierre Dixon, the Commission unanimously adopted the Evaluator's

recommendation that the Chu campaign violated San Jose Municipal Code Section 12.06.1010, when mailing a flyer and posting campaign signs that did not contain the required disclosures.

Vote 4-0-1 (Vice-Chair Cosgrove Absent)

<u>Roll Call Vote</u>	<u>Vote Certified</u>
Chair Smith - aye	Commissioner Edgeworth - aye
Commissioner Pierre-Dixon - aye	Commissioner Louie - aye
Commissioner Edgeworth - aye	Commissioner Pierre-Dixon - aye
Commissioner Louie - aye	Chair Smith - aye
Vice-Chair Cosgrove - absent	Vice-Chair Cosgrove - absent

(2) Upon motion by Commissioner Edgeworth, seconded by Commissioner Pierre Dixon, the commission unanimously adopted the Evaluator's recommendation that the Chu campaign violated Municipal Code Section 12.06.410, in making contributions to other candidates and committees; however, the violations have been corrected, which is reflected on an amended Form 460 filed with the City Clerk.

Vote 4-0-1 (Vice-Chair Cosgrove Absent)

<u>Roll Call Vote</u>	<u>Vote Certified</u>
Chair Smith - aye	Commissioner Edgeworth - aye
Commissioner Pierre-Dixon - aye	Commissioner Louie - aye
Commissioner Edgeworth - aye	Commissioner Pierre-Dixon - aye
Commissioner Louie - aye	Chair Smith - aye
Vice-Chair Cosgrove - absent	Vice-Chair Cosgrove - absent

(3) Upon motion by Commissioner Pierre Dixon, seconded by Commissioner Edgeworth, the Commission adopts the Evaluator's recommendation that the evidence is insufficient to sustain the remaining allegations that Councilmember Chu violated the restriction on electioneering communications with respect to the City-sponsored Resource Fair on May 20, the City-sponsored Family Day event on April 28, and the privately funded Art and Wine festival, and that there was no misuse of City funds.

<u>Roll Call Vote</u>	<u>Vote Certified</u>
Chair Smith - aye	Commissioner Edgeworth - aye
Commissioner Pierre-Dixon - aye	Commissioner Louie - aye
Commissioner Edgeworth - aye	Commissioner Pierre-Dixon - aye
Commissioner Louie – aye	Chair Smith – aye
Vice-Chair Cosgrove - absent	Vice-Chair Cosgrove - absent

(4) a. Upon motion by Commissioner Pierre Dixon, seconded by Commissioner Louie, the Commission unanimously agreed that there be no penalty imposed for the violations found and that the file be closed.
 Vote 4-0-1 (Vice-Chair Cosgrove Absent)

<u>Roll Call Vote</u>	<u>Vote Certified</u>
Chair Smith - aye	Commissioner Edgeworth - aye
Commissioner Pierre-Dixon - aye	Commissioner Louie - aye
Commissioner Edgeworth - aye	Commissioner Pierre-Dixon - aye
Commissioner Louie – aye	Chair Smith – aye
Vice-Chair Cosgrove - absent	Vice-Chair Cosgrove - absent

(4) b. Upon motion by Commissioner Edgeworth, seconded by Commissioner Pierre Dixon the commission requested the City Attorney prepare a resolution and authorized the Chair to approve and sign the resolution.
 Vote 4-0-1 (Vice-Chair Cosgrove Absent)

<u>Roll Call Vote</u>	<u>Vote Certified</u>
Chair Smith - aye	Commissioner Edgeworth - aye
Commissioner Pierre-Dixon - aye	Commissioner Louie - aye
Commissioner Edgeworth - aye	Commissioner Pierre-Dixon - aye
Commissioner Louie – aye	Chair Smith – aye
Vice-Chair Cosgrove - absent	Vice-Chair Cosgrove - absent

D. Continue discussion, review, and adoption of the draft of 2011/12 Annual Report

Action: Upon motion by Pierre Dixon, seconded by Commissioner Edgeworth the Commission unanimously adopted the 2011/2012 Annual Report with the proviso that the Chair is delegated authority to update item two (2) to reflect the disposition of the three complaints heard this evening.
 Vote 4-0-1 (Vice-Chair Cosgrove Absent)

E. Adoption of Fiscal Year 2012 – 2013 meeting schedule

Action: Upon motion by Commissioner Louie, seconded by Commissioner Edgeworth, the Commission unanimously approved to adopt the 2012-2013 meeting schedule.

Vote 4-0-1 (Vice-Chair Cosgrove Absent)

VIII. ITEMS SCHEDULED FOR INFORMATION OR DISCUSSION

A. Status Report on 2012 Elections

Documents Filed: None.

The City Clerk informed the Commissioners that Measure B (The Pension Modification Ballot Measure) passed. Clerk Hawkins announced that Councilmembers Kalra, Chu and Oliverio were all re-elected, while District 8 and 10 will both have a run-off election in November. He said the November ballot will be quite full carrying the Minimum Wage Initiative and potentially an initiative on Cardrooms that is presently attempting to qualify for the ballot. He stated that there may be additional measures on the ballot that will be discussed in August.

B. Status of proposed changes to the Gift Ordinance

Documents Filed: None.

Sr. Deputy City Attorney Herrick informed the Commission that she would be working on the Gift Ordinance in July and would report back to the Commission in August.

C. Discussion of Councilmember Chu's memo to the Rules and Open Government Committee regarding Electioneering Communications

Documents Filed: Memorandum from Councilmember Kansen Chu dated June 7, 2012 requesting the commission: (1) Consider removal of the disclosure of electioneering communications on all campaign related signs, buttons and garments and; (2) Review and update various provisions of Chapter 12.06.1000 of the San Jose Municipal Code relating to Electioneering Communications.

The City Clerk stated that the item was deferred until August 1, 2012, by the Rules Committee as the Committee felt it would be more appropriate to consider Councilmember Chu's Memo after this hearing took place.

IX. MEETING SCHEDULE AND AGENDA ITEMS

The next Regular Meeting is scheduled on Wednesday, July 11, 2012. The meeting will proceed unless cancelled by the Chair of the Commission.

X. ADJOURNMENT

The meeting was adjourned at 7:41 p.m.



MICHAEL SMITH, CHAIR

ATTEST:
ELECTIONS COMMISSION
DENNIS HAWKINS, CMC SECRETARY



Rebecca Hall, Deputy City Clerk