

ELECTIONS COMMISSION

Meeting Minutes

May 9, 2012

ROLL CALL

PRESENT: Chair Smith, Vice-Chair Cosgrove, Commissioners Louie and Pierre Dixon. Commissioner Edgeworth participated via teleconference from Golden Tulip Hotel, 14 Abovian St, Room 407, Yerevan, Armenia. Hanson Bridgett representatives Mike Moye and Kevin Heneghan participated via teleconference.

ABSENT: None

STAFF: City Clerk Dennis Hawkins, Senior Deputy City Attorney Lisa Herrick, and Deputy City Clerk Tamara Davis

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 the Agenda

Upon motion by Commissioner Pierre-Dixon, and seconded by Commissioner Louie the Commission approved the adoption of the May 9, 2012 Agenda. Vote (5-0)

III. Public Comment

James Rowen suggested that City campaign candidates who have Campaign websites should also use the City website to post their campaign information.

Terry Reilly expressed his opinion the candidates are appropriately using websites for campaign purposes.

IV. Closed Session

None.

V. Approval of Minutes

A. April 11, 2012

Action: Upon motion by Vice-Chair Cosgrove, and seconded by Commissioner Pierre-Dixon the Commission unanimously approved the April 11, 2012 minutes. Vote (5-0)

VI. Reports

- A. Chair Smith shared with the Commission that the Elections Commission Workplan was reviewed and approved as submitted to the Rules and Open Government Committee.
- B. City Attorney - None
- C. City Clerk - None
- D. Investigator/Evaluator - None

VII. Items Scheduled for Action

- A. Hearing on the complaint filed by Tracey Jacobs on March 28, 2012 alleging violations of San José Municipal Code Title 12 by Councilmember Pierluigi Oliverio, candidate for Council District 6 (Independent Investigator/Evaluator)

The Complainant, Tracey Jacobs, was present. The Respondent, Councilmember Oliverio, filed a written statement.

Document Filed: Memorandum from Hanson Bridgett LLP to the San Jose Elections Commission dated May 3, 2012 regarding Citizen Complaint by Tracey Jacobs alleging campaign violations by Councilmember Pierluigi Oliverio.

The Commission Chair reviewed the Hearing procedure. The City Clerk, Dennis Hawkins, informed the Commission that he emailed the written response to all parties.

Kevin Heneghan of Hanson Bridgett LLC presented and reviewed their report.

Commission discussion ensued and Mr. Heneghan responded to Commission questions and comments.

The Complainant Tracey Ann Jacobs was present. Ms. Jacobs addressed the Commission and presented her observations and opinions.

Commissioner comments and questions continued.

Public Comments: Terry Reilly discussed online posts from Tracey Jacobs and stated he believes they demonstrate her bias against Councilmember Oliverio. Mr. Reilly does not believe this issue should have been brought before the Elections Commission.

James Rowen expressed his opinion that Terry Reilly is a supporter of Councilmember Oliverio, and is attacking the complainant.

Recommendations: Hanson Bridgett LLC recommended that the Commission find that Councilmember Oliverio did not violate Title 12 of the Municipal Code and close the file without further action.

Action: Upon motion by Vice-Chair Cosgrove, and seconded by Commissioner Louie, the Commission unanimously approved recommendations from Hanson Bridgett and determined that sufficient evidence existed to establish that no violation occurred and to close the file with no further action. . (Vote 5-0)

Action: The Commission approved a motion to direct the City Attorney to draft a resolution and authorized the Commission Chair to approve the resolution. (Vote 5-0)

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

- B. Hearing on the complaint filed by James Rowen on April 9, 2012 alleging various violations by Victor Ajlouny, consultant; San Jose for Fiscal Reform, Yes on Measure B committee, et al (Independent Investigator/Evaluator)

Document filed: Memorandum from Hanson Bridgett LLP to the San Jose Elections Commission dated May 3, 2012 regarding Citizen Complaint by James Rowen alleging Ethics Violations.

The Complainant, James Rowen, was present. The Respondent, Victor Ajlouny, filed a written statement.

Kevin Heneghan presented and summarized the report and findings of the Independent Evaluator. Mr. Heneghan stated that the alleged violation is not within the scope of Title 12. Furthermore, the Commission does not have jurisdiction over the complaint because the alleged incidents took place in the City of Milpitas.

James Rowen presented his observations and opinions to the Commission.

Commission questions and comments ensued with staff responding as appropriate.

Public Comment: Tracey Jacobs stated her opinions.

Recommendation: Hanson Bridgett LLC recommended that the Commission find that the complaint does not cite a complaint/violation under Title 12.

Action: Upon motion by Vice-Chair Cosgrove, and seconded by Commissioner Pierre-Dixon, the Commission unanimously approved adopting the recommendation of the independent evaluator, dismissing the complaint and closing the file without further action. (Vote 5-0)

Action: Upon motion by Commissioner Pierre-Dixon, and seconded by Vice-Chair Cosgrove, the Commission approved direction to the City Attorney to draft a resolution and authorization to the Commission Chair to approve the resolution. (Vote 5-0)

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

- C. Hearing on the complaint filed by Patricia Martinez-Roach on April 23, 2012 alleging various violations of San Jose Municipal Code Title 12 by Councilmember Herrera, candidate for Council District 8 (Independent Investigator/Evaluator)

Document filed: (1) Memorandum from Hanson Bridgett LLP to the San Jose Elections Commission dated May 3, 2012 regarding Complaint filed

by Patricia Martinez-Roach alleging Campaign Violations by Councilmember Rose Herrera; (2) Written response submitted by the Respondent, Councilmember Rose Herrera; (3) Statement by Patricia Martinez-Roach to the Elections Commission dated May 9, 2012 regarding Item VII. C of the Hanson Bridgett Memorandum, (4) ESTA Representative Assembly Meeting Minutes dated April 18, 2012, and (4) Emails from Wendy Stegeman to RoseforSanJose.com dated April 23, 2012 regarding campaign support.

The Complainant, Patricia Martinez-Roach, was present. The Respondent, Councilmember Herrera, provided a written response.

Kevin Heneghan of Hanson Bridgett LLC presented and reviewed their report and stated that the complaint does not specify the section of Title 12 that was violated.

Ms. Patricia Martinez-Roach read her letter to the Commission and summarized her observations and opinions.

The City Clerk, Dennis Hawkins, stated that he reviewed the SmartVoter website and it appeared that the endorsements were a roll over from Councilmember Herrera's 2008 Campaign. The City Clerk stated that he looked back at the end of the day, and the endorsements had been removed.

Commission questions and comments ensued.

Public Comment: Marisa Hanson, President of the East Side Union High School Teachers' Association, addressed the Commission and explained the Association's process for endorsing candidates and referenced various records.

Brian Wheatley, President of the Evergreen Teachers Association, summarized the endorsement process and position of his organization.

Hanson Bridgett LLC stated that the Complaint does not allege facts that would constitute a violation of any section of Title 12. The Complainant alleges that the Respondent violated the Code of Fair Campaign Practices provided for in California Elections Code section 20440. The acceptance of the oath is voluntary and can be rescinded at any time. This would not constitute a violation of any provisions of the Municipal Code or state law. The provisions of Title 12 do not address the type of conduct alleged by the Complaint.

Commission questions and discussion followed.

Hanson Bridgett LLC stated that these circumstances are not covered by Title 12 or any FPPC regulation.

The City Clerk clarified that the City does require a written verification of any endorsement referenced in any Candidate's Ballot Statements.

Recommendation: Hanson Bridget LLC recommended that the Commission determine that there was not sufficient cause to conduct an investigation and close the file without further action.

Action: Upon motion by Vice-Chair Cosgrove, and seconded by Commissioner Louie, the Commission adopted the recommendation of the Independent Evaluator, dismissed the complaint and closed the file without further action. The Commission approved. (Vote 4-1; Pierre Dixon - No)

<u>Roll Call Vote</u>	<u>Vote Certified</u>
Chair Smith - aye	Commissioner Edgeworth - aye
Commissioner Pierre-Dixon - no	Commissioner Louie - aye
Vice-Chair Cosgrove - aye	Commissioner Pierre-Dixon - aye
Commissioner Edgeworth - aye	Vice-Chair Cosgrove - aye
Commissioner Louie - aye	Chair Smith - aye

Action: Upon motion Vice-Chair Cosgrove, and seconded by Commissioner Louie, the Commission approved direction to the City Attorney to draft a resolution and authorization to the Chair to approve the resolution. (Vote 4-1)

<u>Roll Call Vote</u>	<u>Vote Certified</u>
Chair Smith - aye	Commissioner Edgeworth - No
Commissioner Pierre-Dixon - No	Commissioner Louie - aye
Vice-Chair Cosgrove - aye	Commissioner Pierre-Dixon - aye
Commissioner Edgeworth - aye	Vice-Chair Cosgrove - aye
Commissioner Louie - aye	Chair Smith - aye

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

The City Clerk will provide an update at the June meeting.

VIII. ITEMS SCHEDULED FOR INFORMATION OR DISCUSSION

- A. Status Report on 2012 Elections

The City Clerk informed the Commission that the Candidates have an additional campaign filing due on May 24, 2012. An update will be provided at the June meeting.

B. Status of proposed changes to the Gift Ordinance

Senior Deputy City Attorney Herrick informed the Commission that there have not been any new developments in the Gift Ordinance since the last meeting.

IX. MEETING SCHEDULE AND AGENDA ITEMS

The next Regular Meeting is Wednesday, June 13, 2012.

X. ADJOURNMENT

The meeting was adjourned at approximately 6:45 p.m.



MICHAEL SMITH, CHAIR

ATTEST:
ELECTIONS COMMISSION
DENNIS D. HAWKINS, CMC SECRETARY



Tamara Davis, Deputy City Clerk