

MEETING MINUTES

September 9, 2015

I. Call to Order & Orders of the Day

Roll Call

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

ABSENT: All Present.

STAFF: Deputy City Attorney Arlene Silva, City Clerk Toni Taber, Investigator/Evaluator Steven Miller and Deputy City Clerk Ruth Krantz.

OTHER: Caroline Lee, with Hanson Bridgett LLP; Noelia Espinola, Court Reporter with Advantage Reporting Service.

Call to Order

The members of the San José Ethics Commission convened at 5:34 p.m. in Room W-120 of City Hall, 200 E. Santa Clara Street, CA 95113.

Orders of the Day

Action: Upon motion by Commissioner Adrian Gonzales, seconded by Commissioner Madhavee Vemulapalli and carried unanimously, the Commission approved the adoption of the September 9, 2015 agenda. (5-0.)

II. Closed Session - None

III. Hearings

- A. Hearing on Complaint filed by William Bohrer against Tim Orozco and Neighbors for Tim Orozco for San José City Council District 4 2015 Committee filed July 23, 2015 alleging violations of Title 12 of the San Jose Municipal Code. (Independent Investigator/Evaluator)

Document Filed: (1) Report from Hanson Bridgett LLP dated August 24, 2015 regarding William Bohrer against Tim Orozco and Neighbors for Tim Orozco for San José City Council District 4 2015 Committee filed July 23, 2015 addressing alleged violations of Title 12.06.910-930 of the San José Municipal Code – Campaign Disclosure Violation. (2) Email from Tim Orozco for San José City Council to the San José Ethics Commission, dated September 8, 2015 providing a written response addressing the alleged violations of Title 12.

Discussion: Chair Michael Smith summarized the hearing procedures and opened the public hearing. All members of the Commission were present. On August 24, 2015 the Evaluator/Investigator submitted a Report to the Commission regarding the referenced complaint, concluding that the Respondent did not timely file Form 497s reporting Late Contributions required by both Title 12 and the Political Reform Act; additionally, the Respondent failed to report one Late Contribution.

Investigator/Evaluators Steven Miller and Caroline Lee of Hanson Bridgett LLP presented the report, indicating that the Commission was recently presented with a similar complaint against Manh Nguyen, alleging violations of the same section of the Municipal Code. It was noted that this analysis follows similar reasoning, suggesting that many, if not all, candidates over the past two years have failed to comply with Title 12's Late Contribution reporting requirements. Mr. Miller asked that the Commission indicate whether they would like to expand the scope of the investigation to include other potential Respondents to allow for more information about other candidates' compliance before considering imposing a civil penalty on the Respondent.

The Respondent Tim Orozco and Linda Perry, Treasurer for Tim Orozco for San José City Council District 4 2015 Committee were present for this hearing. The Complainant, William Bohrer, was not present.

Chair Michael Smith swore in Respondent Tim Orozco and Linda Perry. Mr. Orozco provided a general statement thanking the Commission for its thoughtful deliberations on the matter. Linda Perry testified that the campaign did not intentionally attempt to deceive or conceal information and provided responses to the complaint.

Discussion followed, and Vice Chair Rolanda Pierre Dixon opined that it is the candidates' responsibility to know the law.

Public Comment: David Wall expressed that all penalties should be rescinded.

Motion: Chair Michael Smith moved that the Commission find, based upon a preponderance of the evidence presented, a violation of San Jose Municipal Code Section 12.06.910-930 has occurred. Vice Chair Rolanda Pierre Dixon seconded the motion.

Action: On a call for the question, the motion carried. (4-1. Noes: Peacock.)

Each Commissioner certified that he or she personally heard the testimony at the hearing and reviewed all the evidence in the record.

Chair Smith	So certified
Vice Chair Pierre Dixon	So certified
Commissioner Vemulapalli	So certified
Commissioner Peacock	So certified
Commissioner Gonzales	So certified

City Clerk Toni Taber responded to questions and indicated that the FPPC gives the Ethics Commission authority to waive fines.

Motion: Chair Michael Smith moved that due to mitigating circumstances, no further action be taken. The motion failed for lack of a second.

Vice Chair Rolanda Pierre Dixon and Commissioner Chris Peacock offered support to exploring this issue on a case-by-case basis. Commissioner Adrian Gonzales further endorsed their stance offering his interpretation of Resolution 76954, Section F, Subsection 8, which indicates further investigation of those not identified in the original complaint.

The Commission deliberated. (A full transcript of the hearing is attached)

Motion: Commissioner Chris Peacock moved deferral of the penalty in this case with direction to the Evaluator to undertake a broader investigation pursued as fairly to the other candidates and as efficiently as possible. Vice Chair Rolanda Pierre Dixon seconded the motion.

Investigator/Evaluator Steve Miller indicated that procedurally, the Resolution indicates that "To the extent the information giving rise to the complaint relates to the circumstances of another complaint, the Evaluator shall reference this in the complaint and indicate that the complaint should be treated as an amendment of an existing complaint".

Action: On a call for the question, the motion carried, with his case continued to a future meeting of the Ethics Commission, and with direction to the Evaluator to continue further investigation. (5-0.)

Each Commissioner certified that he or she personally heard the testimony at the hearing and reviewed all the evidence in the record.

Chair Smith	So certified
Vice Chair Pierre Dixon	So certified
Commissioner Vemulapalli	So certified
Commissioner Peacock	So certified
Commissioner Gonzales	So certified

- B. Hearing on Complaint filed by Jeffery P. Bedolla on August 14, 2015 against Rick Doyle and Norm Mascarinas alleging violations of the San José Municipal Code. (Independent Investigator/Evaluator)

Document Filed: (1) Report from Hanson Bridgett LLP dated August 31, 2015 regarding– Violation of Title 12, Sections 12.12 of the San José Municipal Code – Lobbyist Violations and Other Back Room Deals; and (2) Letter from Jeff Bedolla, dated September 8, 2015, to the Office of the City Clerk.

Commissioner Chris Peacock left the meeting at 7:05 p.m.

Discussion: Chair Michael Smith summarized the hearing procedures and opened the public hearing. All members of the Commission with the exception of Commissioner Chris Peacock, were present. Chair Smith addressed the nature of the hearing, and questioned if this should be considered an allowable complaint. Steve Miller indicated that this complaint passed the screening process, since the written complaint form had a box checked alleging a violation of Title 12.12.

Investigator/Evaluator Caroline Lee presented the report, indicating that the Appellant's allegations that the Respondents violated lobbying rules set forth in Title 12 of the San José Municipal Code do not warrant an investigation by the Commission since the Complaint does not identify sufficient facts to conduct an investigation; therefore the Commission should dismiss the matter without taking further action.

Respondent Norm Mascarinas and Appellant Jeff Bedolla were present for this hearing.

Chair Michael Smith swore in Complainant Jeff Bedolla. Mr. Bedolla challenged the Evaluator's report, and complained that what occurred should be acknowledged so as to affirm ethical principles as the higher standard.

Chair Michael Smith swore in Kat Powell, who provided more information and offered her recollections from the Neighborhood Association Meeting attended by her and the Complainant.

The Respondent Norm Mascarinas did not offer testimony.

The Commission deliberated. (A full transcript of the hearing is attached)

Motion: Vice Chair Rolanda Pierre Dixon moved that the Commission adopt the Evaluator's recommendation to close the case without taking further action, as this case falls outside the purview of the Commission. Chair Michael Smith seconded the motion.

Action: On a call for the question, the Evaluator's recommendation was adopted, with the case closed and no further action to be taken. (4-0-1. Absent: Peacock.)

Each Commissioner certified that he or she personally heard the testimony at the hearing and reviewed the entire evidence in the record.

Chair Smith	So certified
Vice Chair Pierre Dixon	So certified
Commissioner Vemulapalli	So certified
Commissioner Peacock	Absent
Commissioner Gonzales	So certified

Action: Upon a motion by Vice Chair Rolanda Pierre Dixon, seconded by Chair Michael Smith and carried, the Commission moved to direct the City Attorney to draft a Resolution on the Commission's Findings, and further, that the Commission authorizes the Chair to approve and sign the resolution. (4-0-1. Absent: Peacock.)

IV. Public Record

- A. Letter from Jeff Bedolla dated August 22, 2015 re Denial of appeal of the Metro FOIA Public Records Request
- B. Letter from Jeff Bedolla dated September 8, 2015

Documents Filed: 1) Letter from Jeff Bedolla to City Clerk Toni Taber dated August 22, 2015 re The Denial of Appeal of the Metro FOIA Public Records Request; and 2) Letter from Jeff Bedolla to the City Clerk dated September 8, 2015.

Action: The Commission accepted and filed the public record.

V. Consent Calendar

- A. Approve the Minutes of June 10, 2015 – Regular Meeting
- B. Approve the Minutes of July 8, 2015 – Regular Meeting
- C. Approve the Minutes of August 12, 2015 – Regular Meeting

Action: Approval of the minutes was deferred to the next scheduled meeting of the Ethics Commission.

VI. Reports

- A. Chair – None.
- B. City Attorney – None.
 - 1. Legislative update
- C. City Clerk – None.
 - 1. Legislative update
 - 2. Status of compliance with Commission resolutions
 - 3. Status report on filings (Form 700, Campaign Statements, Lobbyists)
 - 4. Elections update

D. Investigator/Evaluator – None.

VII. Old 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)

Public Comments: David Wall, Martha O'Connell and Jonathan Padilla asked that the Commission dismiss charges, reasoning that the unique situation presented allows for leniency. Steven Duran offered a dissenting opinion, citing that ignorance of the law is no excuse. Jeff Bedolla urged Commissioners to 'follow their hearts'.

2. Depending on the outcome of item VII.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)

Discussion: Chair Michael Smith moved to initiate a hearing. The motion failed for lack of a second. The Commission entertained a willingness to reconsider, the facts being different than when the fine was first imposed. This item was tabled for a future meeting of the Ethics Commission.

- B. Discussion, review and possible action to request for revisions to the San José Municipal Code and Resolution 76954. (City Clerk)

Discussion: City Clerk Toni Taber discussed the Rules and Open Government Committee's recommendations and referred to the Late Contributions Notification memorandum she submitted to the Commission, dated August 5, 2015, as required by SJMC 12.06.920, summarizing some possible causes of noncompliance, and to propose potential actions to prevent such issues in the future. She recommended creation of an ad hoc committee to go over details and fine-tune wording, especially on the issue of voluntary expenditures. Chair Michael Smith and Commissioner Adrian Gonzales agreed to constitute the ad hoc committee along with Deputy City Attorney Arlene Silva.

Ms. Taber further reported that the Title 12 recommendations regarding Disclosure of Electioneering Communications, Duties of the City Clerk in Publishing Campaign Statement Information, Voluntary Spending Limits Program, and Late Contribution Disclosure requirements would be going to Council on October 6, 2015, and suggested a review of FPPC rules to compare alongside those of the City.

- C. Nomination and election of new Ethics Commission Chair and Vice Chair. (City Clerk)

Action: Deferred to the next meeting of the Ethics Commission.

D. Scheduling of Special Ethics Commission meeting if needed. (City Clerk) – None.

E. Discussion and possible action regarding ad hoc Subcommittee on community outreach. (City Clerk)

Action: Deferred to the next meeting of the Ethics Commission.

F. Discussion and possible action to change the regular meeting date, time and/or location of the Ethics Commission meetings. (Chair)

Action: Deferred to the next meeting of the Ethics Commission.

VIII. New Business

A. Discussion and possible creation of ad hoc Subcommittee re FPPC Forum. (City Clerk)

Discussion: City Clerk Toni Taber discussed an FPPC Forum that she has signed up for that is made up of representatives of other jurisdictions' Ethics Commissions, adding that she will keep the Commission updated on the activities of this forum.

IX. Public Comment - None

X. Future Agenda Items

- Gift Ordinance and FAQ
- Open Government Training

XI. Adjournment

The next regular meeting is October 14, 2015 at 5:30 p.m. in City Hall, pending coordination of a Special Meeting and/or hearing if needed.

The meeting was adjourned at 8:15 p.m.


MICHAEL SMITH, CHAIR

ATTEST:
ETHICS COMMISSION SECRETARY


TONI J. TABER, CMC
CITY CLERK

Attachment: Transcript of Hearing dated September 9, 2015, Reported by Noelia Espinola, CSR, License Number 8060, Advantage Reporting Services.

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

Taken On September 9, 2015

CITY OF SAN JOSE ETHICS COMMISSION

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CONDENSED TRANSCRIPT

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ARS

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

<p>CITY OF SAN JOSE ETHICS COMMISSION</p> <p>REPORTER'S TRANSCRIPT OF PROCEEDINGS</p> <p>Date: Wednesday, September 9, 2015 Time: 5:35 p.m. Location: San Jose City Hall 200 E. Santa Clara Street Wing - Room 120 San Jose, CA 95113</p> <p>Reported By: Noelia Espinola, CSR License Number #8060</p> <p>#50369</p>	<p>Page 3</p> <p>1 PROCEEDINGS 2 3 So it is Wednesday, September 9th, 2015, and 4 this hearing of the City of San Jose Ethics Commission 5 is being held in Room W-120 of San Jose City Hall. All 6 members of the Commission are present. 7 The Commission will conduct a hearing on a 8 complaint filed with the City Clerk on July 23rd, 2015, 9 by William Bohrer, alleging that Tim Orozco and the 10 Neighbors for Tim Orozco for San Jose City Council 11 District 4 2015 Committee violated Section 12.06.910 of 12 the San Jose Municipal Code. Specifically, the 13 allegation is that Respondents failed to file Late 14 Contribution Reports (Form 497s) with the San Jose City 15 Clerk as required. The City Clerk promptly notified 16 and provided a copy of the complaint to the Independent 17 Evaluator, and the Evaluator notified and provided a 18 copy to the respondents on July 24th, 2015. The 19 Independent Evaluator's Report and Recommendations were 20 submitted to the City Clerk on August 24th, 2015, and 21 copies were then provided to the complainant, 22 respondent and commission members and posted to the 23 city web site with the agenda for tonight's hearing. 24 On April 15th, 2014, the City Council adopted 25 Resolution 76954, which establishes the Commission's</p>
<p>Page 2</p> <p>1 2 3 APPEARANCES 4 San Jose Elections Commission: MICHAEL SMITH, Chair ROLANDA PIERRE-DIXON, 5 Vice-Chair CHRIS PEACOCK 6 MADHAVEE VEMULAPALLI ADRIAN GONZALES 7 8 Staff: ARLENE F. SILVA, 9 Deputy City Attorney 10 TONI TABER, City Clerk 11 12 RUTH KRANTZ, Deputy City Clerk 13 14 Independent Investigator/Evaluator: HANSON BRIDGETT, LLP BY: STEVEN D. MILLER, 15 CAROLINE LEE, Attorneys at Law 16 425 Market Street 26th Floor San Francisco, CA 94105 17 (415) 777-3200 18 19 The Reporter: ADVANTAGE REPORTING SERVICES 20 BY: NOELIA ESPINOLA, CSR #8060 21 1083 Lincoln Avenue San Jose, CA 95125 (408) 920-0222 22 23 -o0o- 24 25</p>	<p>Page 4</p> <p>1 regulations and procedures pertaining to investigations 2 and hearings. All parties to these proceedings have 3 been provided copies of the Resolution. The 4 regulations and procedures have been adopted in order 5 to ensure the fair, just and timely resolution of 6 complaints before the Commission. 7 This hearing is open to the public. It is 8 being electronically recorded, and we have a court 9 reporter to compile a transcript. The formal rules of 10 evidence do not apply to this hearing, but all 11 testimony will be under oath or affirmation. The 12 complainant will be treated like any other witness in 13 providing evidence. The Chair may compel the testimony 14 of witnesses and may compel the production of relevant 15 documents to the Evaluator by subpoena. Witnesses may 16 be excluded at the discretion of the Commission. 17 Commission members may ask questions of witnesses or 18 the Evaluator when recognized by the Chair. 19 At this time I would like to have the complainant, 20 William Bohrer, and the respondents, Tim Orozco and the 21 Neighbors for Tim Orozco for San Jose City Council 22 District 4 2015 Committee, or their representatives, 23 identify themselves for the record. 24 So are any of those parties present? 25 MS. PERRY: I'm Linda Perry. I'm treasurer</p>

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1 for Tim Orozco for San Jose City Council District 4.
2 CHAIRMAN SMITH: That's a mouthful.
3 MS. PERRY: Yes.
4 MR. OROZCO: My name is Tim Orozco, former
5 candidate for San Jose City Council District 4.
6 CHAIRMAN SMITH: Thank you.
7 And I would also like to have city staff and
8 representatives of Hanson Bridgett, the Commission's
9 Independent Evaluator, please identify themselves for
10 the record. If we can start --
11 MS. LEE: I'm Caroline Lee from Hanson
12 Bridgett.
13 MR. MILLER: And Steven Miller from Hanson
14 Bridgett.
15 MS. TABER: Toni Taber, City Clerk.
16 MS. SILVA: Deputy City Attorney, Arlene
17 Silva.
18 MS. KRANTZ: Ruth Krantz, Deputy City Clerk.
19 CHAIRMAN SMITH: Thank you.
20 Under the Commission's regulations and
21 procedures, the respondents may submit a written
22 response to the Report and Recommendations. The
23 response may contain legal arguments, a summary of
24 evidence and any mitigating or exculpatory information.
25 As of now, we've received a response from the

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1 Tim Orozco -- I'll just say "the Tim Orozco committee."
2 Do all of the commissioners and staff have a copy that
3 was e-mailed to us this afternoon?
4 And has the complainant -- oh, the
5 complainant is not here. So we don't know if he was
6 provided a copy or not.
7 The complainant or any other interested
8 person may also submit a brief or written argument.
9 As of this time we've received no written
10 arguments from the complainant or anyone else, that I'm
11 aware of. Is that correct?
12 MS. KRANTZ: We haven't.
13 CHAIRMAN SMITH: Okay. Thank you.
14 Okay. So at this time I'll recognize Steve
15 Miller from the Hanson Bridgett law firm to present the
16 Independent Evaluator's Report and Recommendations.
17 MR. MILLER: Good evening, Commissioners.
18 Thank you very much.
19 So I'll try to be brief. This is, in some
20 respects, a repeat of a complaint that was filed and
21 considered by you a few months ago that I understand is
22 possibly on the agenda for rehearing. But I think it's
23 helpful, just to frame the conversation, to just go
24 over a few quick basics.
25 Title 12 and the Political Reform Act both

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1 include the concept of a late contribution, which is a
2 contribution that is received too late to be included
3 in what otherwise would be a periodic disclosure and
4 reporting of contributions that all candidates for city
5 offices must make.
6 Title 12 and the Political Reform Act used to
7 have the same requirement for disclosure and
8 definitions of late contributions, but those
9 definitions diverged, although Title 12 requires all
10 candidates to report late contributions received, both
11 under the Political Reform Act's definition and rules
12 regarding late contributions and Title 12's definitions
13 and requirements for late contributions.
14 And the differences are that Title 12
15 requires contributions to be disclosed within 24 hours
16 if the contribution is over 25 -- excuse me -- \$250 in
17 the aggregate and was received after the last ordinary
18 reporting deadline, which is 60 days before the
19 election. And the Political Reform Act's rules require
20 disclosure of all contributions over a thousand dollars
21 in the aggregate that are received 90 days before the
22 election.
23 So two different timelines. Two different
24 dollar thresholds. Both of which are required by
25 Title 12 to be followed.

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1 The complaint here discusses the Tim Orozco
2 campaign earlier this year. And, as our report
3 indicates, the respondent, prior to the 11th -- to the
4 April 7th election -- in the 16-day period for late
5 contributions under Title 12, the respondent received
6 ten contributions that were -- that he was tardy, he
7 was late, in reporting late contributions, did not
8 report those late contributions until August, after the
9 election was over.
10 And with regards to the June 23rd election,
11 the respondent received 22 late contributions for which
12 he filed seven tardy Late Contribution Reports. And,
13 in addition, there was one late contribution under the
14 more expansive definition from the Political Reform Act
15 in the form of a loan, and Title 12 defines "late
16 contributions" to include loans. And so that loan was
17 also not reported on a Late Contribution Report, which
18 constitutes an additional violation.
19 So there is really little question, from
20 reading just the letter of Title 12, that these
21 contributions, seven -- ten late contributions
22 constituting seven Late Contribution Reports for the
23 April 11 -- April 7th election and 22 late
24 contributions resulting in seven tardy Late
25 Contribution Reports for the June 23rd election plus

2 (Pages 5 to 8)

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1 one loan for which there was no Late Contribution
2 Report ever filed.

3 I thought it would be helpful, to illustrate
4 the confusion that is apparent and is understandable
5 regarding the interplays between Title 12 and the
6 Political Reform Act, to go through one -- one
7 contribution -- actually, I guess it will be two
8 contributions -- to demonstrate not only the confusion
9 that exists with regards to this rule but also, I
10 think, in general -- for this particular respondent,
11 the general confusion that I think is illustrated by
12 the tables and reports that we filed.

13 So you have before you a series of tables
14 that show all contributions. And if you would indulge
15 me, for I think it won't be more than one minute.

16 In Table 1, you'll see a contribution made on
17 April 2nd from the Teamsters DRIVE Committee in the
18 amount of \$500. That April 2nd contribution, because
19 it was more than \$250 and within 16 days of the
20 election, needed to be filed as -- on a Form 497 as a
21 late contribution and was not. And that's why it's on
22 Table 1, because it constitutes a violation of
23 Title 12.

24 If you'll turn the page, you'll see that on
25 June 16th the respondent received a second contribution

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1 from the same source, the Teamsters DRIVE Committee,
2 also in the amount of \$500. The respondent, on that
3 same day, filed a Late Contribution Report, Form 497.

4 However, what I believe the respondent was
5 trying to do at that point was to comply with the
6 Political Reform Act's requirement that contributions
7 of a thousand dollars be reported, and the respondent
8 was counting the first \$500 contribution from April 2nd
9 plus the second \$500 from June 16th, for a total of a
10 thousand dollars. However, because the respondent only
11 reported one of those two contributions, that report
12 would nonetheless constitute a violation because it
13 didn't report both contributions.

14 However, the FPPC does not ask candidates to
15 aggregate contributions from two separate elections.
16 So there was actually no requirement in this case that
17 the candidate file -- the Political Reform Act, of
18 course -- the candidate actually did.

19 Double, however, in trying to comply with the
20 Political Reform Act but in failing to comply with the
21 Political Reform Act for a requirement that did not
22 even exist under the Political Reform Act, the
23 respondent ended up complying with Title 12 because
24 this \$500 contribution, in fact, was reported as a late
25 contribution immediately upon receipt.

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1 And then, to make matters even more
2 confusing, on August the 2nd the candidate amended that
3 flawed but inadvertently compliant Form 497 to add a
4 second late contribution, turning what otherwise would
5 have been a flawed but compliant report into a flawed
6 but noncompliant report.

7 So I hope that that has demonstrated -- if
8 that hasn't tied your brain up in knots, it's not for
9 my lack of trying. And I think it demonstrates both
10 the complicated interplay of the rules, that is
11 difficult to follow, but I think also demonstrates for
12 this particular respondent a difficulty in untangling
13 what was -- took a complicated set of rules and perhaps
14 made things more complicated than they actually ended
15 up needing to be.

16 But I do think that our report has untangled
17 for you all of the contributions received during the
18 various late contribution periods. And we've provided
19 for you the exact number of contributions that needed
20 to be reported in dollar value and the number of
21 reports and, hence, the number of violations.

22 I -- I would also like to discuss with you
23 the respondent's reaction to our finding, which I
24 shared with the respondent and the respondent's
25 treasurer, both of whom are here. And they were very

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1 helpful and very cooperative. And we had a couple of
2 interviews together.

3 And I can share that with you as well as
4 discuss what's been much in the media about possible
5 violations by other candidates. But if you prefer that
6 we stop there for a moment -- maybe at least I'll pause
7 for questions.

8 CHAIRMAN SMITH: Pause for questions, yeah,
9 because I think we should do the rest.

10 MR. MILLER: Sure.

11 CHAIRMAN SMITH: Questions?

12 COMMISSIONER PEACOCK: This is less of a
13 question. Just sort of a request.

14 I just want to say, at the appropriate
15 time -- and your spaghetti junction of stuff here
16 further underscores where I'm going. I was going to
17 suggest that we -- we postpone consideration of this
18 complaint and, potentially, any others right now and
19 direct the firm, the Evaluator, to do just a
20 comprehensive summary of the facts. You know, sort of
21 overall situation. A lot of that is here. But just
22 something that pulls it all together and says, Here is
23 what all is going on.

24 You know, we acted on good faith on another
25 case earlier. Things changed. Things changed again.

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1 And rather -- and I'm afraid that we're going to be
2 subjected to sort of a drip, drip, of "Well, what about
3 this one?" and "What about this one?"
4 And I think if we have one good big bundle
5 that just pulls it all together, that Hanson Bridgett
6 is very good at doing, that will then enable us to say,
7 Okay. We can compare apples to apples. We can say,
8 Here there may have been a problem; here there wasn't.
9 And maybe there were no problems at all. But that
10 would just avoid us having to have one more case come
11 in, one more case.
12 I don't know if this is the right time to
13 make that motion, but I did want to go ahead and just
14 sort of let people know where I would like this to go.
15 CHAIRMAN SMITH: Okay. Yeah, I think -- I
16 think when we get to the question of deciding is there
17 a violation or not, I think that's the point. But,
18 yeah I understand. I think we would all like to find a
19 way of keeping this from continuing forever. Maybe not
20 all. I certainly would like to. I can't speak for
21 anybody else.
22 Any other -- or do you have --
23 MR. MILLER: Well, I -- our report skirts on
24 this issue a little bit. Under the Municipal Code, we
25 do have the authority, as Evaluator, to open up

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1 complaints against other respondents if, in the course
2 of our investigation of Person X, we discover a
3 potential violation for Person Y. We find ourselves a
4 little bit in a difficult situation of being in that
5 position but of there being such a potentially large
6 number of respondents that we didn't want to launch
7 dozens of investigations without hearing more from the
8 Commission and getting some more direction from you as
9 to your desires in how we proceed. So I appreciate
10 your question.
11 CHAIRMAN SMITH: Other questions before we go
12 on?
13 Okay.
14 MR. MILLER: Okay. Again, I think the facts
15 all -- pretty much speak for themselves in terms of
16 contributions for which Late Contribution Reports were
17 not filed, in violation of the letter of Title 12. And
18 I don't believe that there is a dispute from the
19 respondent. The respondent -- I don't want to step on
20 the respondent's toes in case they want to speak as
21 well. But they were particularly -- I don't think
22 "passionate" is too strong a word -- about their desire
23 to comply with the rules, their frustration of what
24 they saw as overly complicated rules and their
25 frustration with unclear advice that they felt they got

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1 from the City Clerk.
2 From my perspective as Evaluator, I listened
3 to that and I tried to transmit that information to
4 you. But, applying the facts to the law, those are
5 issues that go to not whether or not there was a
6 violation but whether you may find there to be
7 mitigating circumstances or not.
8 But for sure -- and I read briefly the
9 submittal from Mr. Orozco that came in, I think, just
10 yesterday. And I think that comes across in that
11 submittal as well.
12 And then, finally, I would just say that it
13 seems to me -- not only would I appreciate direction in
14 terms of a desire of the Commission to perhaps consider
15 additional respondents and additional violations, but I
16 think the converse is also true. If the Commission
17 decides that it, as a -- as a blanket decision, does
18 not intend on applying its enforcement powers to
19 violations of this particular rule, that would be very
20 helpful to know as well so that if additional
21 complaints are filed, we can act accordingly and not
22 mount a lengthy and expensive and intricate
23 investigation, knowing that the Commission has already
24 forecast how it's going to rule on a particular item.
25 So I think, from my perspective, some more global

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1 discussion of the issue is going to be very helpful in
2 terms of how we do our job going forward.
3 CHAIRMAN SMITH: Any other questions before
4 we go --
5 MS. TABER: Can I speak?
6 CHAIRMAN SMITH: Oh, yes.
7 MS. TABER: I submitted a letter toward the
8 Item 3C, but I think it applies for this one. I think
9 there -- the -- clearly, my office gave incorrect
10 information in 2014. We never corrected that for 2015.
11 So any advice -- I did not give a lot of advice in
12 2015. That was delegated to my Assistant City Clerk.
13 But that does not mean I don't take responsibility for
14 advice given in 2015 because it was based on
15 information written in 2014. I feel that -- because
16 everybody failed because of my bad advice, I feel that
17 needs to be taken into consideration.
18 CHAIRMAN SMITH: Okay. Thank you.
19 At this time I would ask the respondent, Tim
20 Orozco, and the campaign committee, or their
21 representatives, to come forward, if they wish to, and
22 present any written or oral response.
23 And if you just state your name and raise
24 your right hand.
25 MR. OROZCO: Tim Orozco.

4 (Pages 13 to 16)

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<p>1 2 TIM OROZCO, 3 being first duly sworn by the Chairperson to tell the 4 truth, the whole truth and nothing but the truth, 5 testified as follows: 6 7 CHAIRMAN SMITH: Okay. 8 MR. OROZCO: Okay. I want to give just a 9 general statement this evening, and then after that I'm 10 going to allow my treasurer to speak to the specifics 11 on the alleged violations. 12 I do want to say, first of all, thank you so 13 much to the commissioners here, for your public 14 service. Thank you for being here this evening. 15 Giving up your evening to do this. Thank you, City 16 Clerk, for all that you do. I do appreciate what you 17 do. And, you know, the citizens of San Jose appreciate 18 what you're doing this evening. The public has a right 19 to expect integrity and ethical behavior from its 20 candidates and its public servants, and your thoughtful 21 deliberations and review of complaints on this 22 commission help ensure that the highest ethical 23 standards are upheld. 24 Throughout our campaign, my team was 25 committed to the highest standards of conduct, and</p>	<p>1 report, no -- in no way do we attempt to deceive or 2 conceal information, whatever. So I appreciate -- and 3 we had, I think, some good conversations around that 4 whole issue. 5 I did want to point out the scope of the 6 complaint -- the original complaint was only for the -- 7 he called it the primary, but, of course, it was the 8 special election. So one of the questions we have 9 is -- you know, it got expanded by the Independent 10 Evaluator. So, just in framing this all, the original 11 complaint was only for the -- excuse me -- special 12 election. 13 I guess in the beginning we really had 14 problems with the City Clerk's Office. And I know that 15 Ms. Taber was out for a while. So she was not in 16 direct control of things at that time. In fact, I was 17 really worried because we hadn't received our net file 18 I.D., after many attempts to get it, until 60 hours 19 before the filing on February 26th. So, you know, just 20 giving you -- giving you a framework. 21 Really, I asked Mr. Graves a lot of 22 questions. I tried to always have a relationship with 23 the City Clerk and the source of information. I kept 24 being pointed back to the states of interest in 25 candidates, which is Exhibit C. That only mentions the</p>
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<p>1 these standards included following all campaign 2 disclosure rules. We strongly believe in full 3 disclosure and transparency. And, to this end, we made 4 good faith efforts and did our due diligence to adhere 5 to both FPPC rules and the City's rules. We would do 6 nothing to violate the public trust. 7 Finally, so -- I want to let you know where 8 we're coming from with that statement. I want to thank 9 you for this deliberation tonight, to hear the 10 complaint of Mr. Bohrman. And -- Bohrer. And now I'd 11 like to allow Linda Perry to speak to those alleged 12 violations. 13 Thank you this evening for giving up your 14 time. 15 CHAIRMAN SMITH: So if you would state your 16 name and raise your right hand. 17 MS. PERRY: Linda Perry. 18 19 LINDA PERRY, 20 being first duly sworn by the Chairperson to tell the 21 truth, the whole truth and nothing but the truth, 22 testified as follows: 23 24 CHAIRMAN SMITH: Okay. Go ahead. 25 MS. PERRY: As Mr. Miller had said in the</p>	<p>1 24-hour period twice. The first one relating to -- it 2 was from December 13 through April 6th, and it clearly 3 states on that, as you can see, the end of that box, 4 "Council committees cannot accept more than \$500 per 5 person, so the 24-hour reporting does not apply to 6 Council committee." That was a clear statement. 7 Written statement. And I pursued that, and I said, Is 8 this indeed true? 9 Yes, that's right. 10 And that's been my experience in other 11 jurisdictions, to have a less-than-\$1,000 threshold. 12 There are no 497 reports. 13 What I would also like to point out is the 14 second item since, again, the words expanded beyond the 15 special election to the runoff. And that statement 16 is -- shows up on your calendar as May the 25th, 17 24-hour reporting period. May the 25th, number one, is 18 not 90 days backwards from the date of the election. 19 And it says "contributions in total, in the aggregate, 20 of \$1,000 or more." 21 So, again, as Mr. Miller explained, that was 22 the interpretation. I asked again, as I was also 23 asking for rules, Are we treating these as two separate 24 elections, \$500 maximum for each, special and the 25 runoff, or are they all being considered a lump sum and</p>

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1 aggregate, year to date? So, again, these are the
2 rules that I had in front of me when I was making my
3 reports.
4 I think -- I don't want to go through --
5 because you have this in front of you. I assume
6 everybody has read that. But, again, our intention was
7 to file and keep the public informed. I thoroughly
8 believe that as an individual. And I would do nothing
9 to violate that. But I was not made aware of the
10 Title 12 -- I confirmed and confirmed with City Clerk's
11 Office until -- it was the newspaper article, and it
12 happened on the 29th of July that I saw for the first
13 time the complete definition that was in the newspaper
14 article.
15 So I immediately amended the reports -- went
16 through all our materials and amended all of the
17 reports to reflect that again on August 2nd. And we
18 did that of our own accord. Not with any notice from
19 the City Clerk or not with any other prodding.
20 So I would be glad to answer any questions
21 you might have.
22 CHAIRMAN SMITH: Any questions?
23 COMMISSIONER PIERRE-DIXON: I have one
24 question. It's also been noted by Hanson Bridgett
25 there was never any report filed as to the \$2,175.

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1 What's the explanation for that?
2 MS. PERRY: Again, we have in the report, and
3 that's our Exhibit E. San Jose has a Form 502 which is
4 required to be filed. And, again, I have gone over
5 that with Mr. Graves, and he indicated that was all
6 that needed to be filed. And Ms. Taber remembers this.
7 We filed the 502 and 503 as he instructed us, with PDF
8 with electronic signatures. When she returned she had
9 me have the original signatures and send it certified
10 mail. Again, that instruction was wrong.
11 CHAIRMAN SMITH: Other questions?
12 COMMISSIONER PIERRE-DIXON: And this is the
13 first time you've been a treasurer for such an
14 election?
15 MS. PERRY: No.
16 COMMISSIONER PIERRE-DIXON: Thank you.
17 MS. PERRY: The first one in San Jose, yes.
18 CHAIRMAN SMITH: Thank you.
19 Okay. Is there any -- oh, I have speaker
20 cards. I have two people, I believe. Just a second
21 here. David Wall would like to speak regarding this.
22 MR. WALL: Excuse me. My name is David Wall.
23 I have an artificial knee.
24 CHAIRMAN SMITH: That's fine. You can stand.
25

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1 DAVID WALL,
2 being first duly sworn by the Chairperson to tell the
3 truth, the whole truth and nothing but the truth,
4 testified as follows:
5
6 MR. WALL: What we have here is a tragedy of
7 all proportions. Because of the errors made and
8 admitted to publicly and freely by our Office of the
9 City Clerk, you must take only one stance on all the
10 election matters, and that is to rescind all penalties.
11 If you don't, the cascading effects to the Attorney's
12 Office and other cost to city operations will be great.
13 There is no standing here. You take a
14 penalty for either case involved on your agenda
15 tonight. Nor is there any legitimate case to defer the
16 matter, save one. That one case is a pending audit of
17 the City Clerk's Office -- the auditor. The work
18 plan -- the auditor's work plan was modified today to
19 include this audit. So if you rescind everything, will
20 that prejudice the audit? Or if you defer it like you
21 want to, to wait until the audit is complete, does that
22 interfere materially with the political lives of the
23 affected? That is the decision that you have here
24 tonight.
25 From my position, there is only one course of

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1 action. There was material -- material errors made
2 with reliance issues that have brought us here today.
3 In other words, every candidate that relied upon the
4 City Clerk did so to their detriment and to their
5 peril.
6 Now, what we also have here is another
7 arising issue that has to be addressed is that the --
8 the battle of the forms. These things are getting to
9 be so complex that the common person running for
10 government, to participate in our great democracy, is
11 going to be deterred from doing so unless they have the
12 financial resources to hire competent counsel that has
13 a specialty in making sure none of these election
14 confusing, narrow points are violated.
15 And so, therefore, it would be my prayer
16 tonight to put this to rest for all of these elections
17 up through today, because there is no justice for these
18 people if you do anything but this. And that is --
19 it's not your fault. Okay? It just happened. And the
20 City Clerk has honestly and forthrightly come up and
21 admitted their fault.
22 It has now affected -- even the mayor, Mayor
23 Liccardo. I said, Look, you're an attorney. You even
24 had problems because of these reliance issues.
25 So you have a broad spectrum of educational

6 (Pages 21 to 24)

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1 people that are running for office, varying degrees of
2 financial power. And yet all of them seem to have
3 screwed it up.

4 And so, therefore, like I said today, ask the
5 Clerk for the rules packet -- if you haven't already
6 been given the rules packet for today. Look at the
7 transcripts from today's meeting. But, as far as I'm
8 concerned, you defer this. You have Mr. Manh, for
9 example, \$10,000. There's a clock ticking with
10 interest and penalties. And who knows -- I don't know
11 how much Mr. Orozco was on the hook for. Or anybody
12 else, for that matter.

13 But what I'm concerned with, is the fact our
14 beleaguered City Attorney's Office is going to have to
15 hire more attorneys to deal with this issue. Not only
16 that. Office of City Manager and other cascading
17 offices in the City.

18 So, obviously, people rely to their
19 detriment. I don't see how you can choose any other
20 course of action but tonight rescind all matters or
21 defer it, predicated on this pending audit by the city
22 auditors on the Office of the City Clerk.

23 And, with that, I thank you.

24 CHAIRMAN SMITH: Thank you.
25 Anyone else wish to speak?

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1 and then, maybe as part of this hearing a little later
2 on, we can direct the Evaluator to do something else or
3 we can make a statement about what part it would be or
4 whatever. But, like I said, my preference would be to
5 make a finding on this one and then decide what we want
6 to do about the larger problem.

7 Other comments or somebody want to make a
8 motion?

9 No comments?

10 COMMISSIONER VEMULAPALLI: I have one
11 comment. If we have to include the other candidates,
12 we have to include the people who won the election and
13 the people who lost the election also.

14 CHAIRMAN SMITH: That is correct.

15 Okay. I will make a motion on --

16 COMMISSIONER PEACOCK: Just to elaborate a
17 little more on what I was saying. And I think we're
18 basically in the same place here. My concern is that
19 we just be able to look at it in as comprehensive a way
20 as we can and start everybody out on as even a footing
21 as possible. And -- and I certainly wouldn't want the
22 sort of -- any sort of further look by the Evaluators
23 to come across now as now we're investigating 30
24 people. But it's more let's see what -- see as much as
25 we can, what the facts are.

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1 Okay. It's now time for us to make a
2 decision on this complaint. We have three, four -- we
3 have options. Four options. We may find further
4 investigation is necessary. If so, we would direct the
5 Evaluator to conduct further investigation and report
6 back. We may find that there is sufficient evidence to
7 establish that no violations occurred. We may find
8 that there is insufficient evidence to establish that a
9 violation has occurred. Or we may find, based on a
10 preponderance of the evidence from the entire record of
11 the proceeding, that a violation has occurred.

12 I'll open the floor to discussion on the
13 case. We need to make a finding for each respondent
14 for each potential violation, and we can do this by
15 separate motion or one motion. And this is purely the
16 question of is there or isn't there a violation.
17 Penalties is a separate step if we find a violation.

18 To the point that was made previously by
19 Commissioner Peacock, here's my own feeling. I think
20 we need to do these in a consistent way. And I think
21 it would be ideal to do them all at once. But the only
22 way we can do them all at once is to defer the two that
23 are before us tonight. And I don't think that's really
24 fair to those two people, personally. So my personal
25 preference would be to take care of these two tonight

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1 Because you do have -- there are some
2 slightly varying circumstances out there. We had, you
3 know, candidates who didn't file appropriately or
4 timely at things. We had one who did. And we had some
5 who voted on the actual law behind this, some -- and
6 maybe they knew more or not. We -- you know, did
7 everyone get the information -- go by the information
8 from the City Clerk's Office? Did others not?

9 But I'm not saying we get too far down in the
10 weeds. I'm just think that the more we can look at
11 these on as even a playing field as possible, I think,
12 would be helpful.

13 Because at the heart of this is there was, I
14 think, the good intention of the law, which was to say
15 the public needs to have this information. As a result
16 of -- I guess the mess we're in shows that the public
17 was deprived of that information at the time it was
18 helpful. So the more we can, one, try to just get it
19 all taken care of in one good, fair way of doing it.
20 And perhaps even learn from it so we can kind of help
21 the people -- public actually get that information
22 going forward, I think would be useful. I think it is
23 fair to say, given this discussion and what has
24 happened, candidates will know about the requirements,
25 going forward. But still the more we can do to support

7 (Pages 25 to 28)

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1 the underlying premise is the goal of the law, as I
2 understand it.
3 CHAIRMAN SMITH: I would mention, going
4 forward, just quickly, that later on the agenda, after
5 all of these hearings are done, we have an effort to
6 make recommendations to counsel for revisions to
7 Title 12. And this topic of late contributions is one
8 of those items. We don't know exactly what it's going
9 to be. But the recommendation is that we want to try
10 to clean up this mess so it's not quite so confusing to
11 people.

12 I guess I'll make a motion, and we'll see
13 where it goes from there. I would move that we find,
14 based on a preponderance of the evidence from the
15 entire record of the proceeding, that -- I don't know.
16 What's the number? Fifteen?

17 MR. MILLER: I'm not sure. The number of
18 what?

19 CHAIRMAN SMITH: Violations.

20 COMMISSIONER PIERRE-DIXON: Fourteen late.

21 MR. MILLER: So there were 14 late
22 contribution reports after the time -- or 14 late
23 contribution reports and one late contribution that was
24 not reported also.

25 CHAIRMAN SMITH: So 15 -- 15 individual

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1 violations.

2 So if someone would like to second that.

3 COMMISSIONER GONZALES: I'll second.

4 CHAIRMAN SMITH: Thank you.

5 Okay. Discussion?

6 Okay. Let's take a vote, then. All in favor
7 of the motion?

8 (Four Commissioners responded Aye.)

9 CHAIRMAN SMITH: Any opposed?

10 (Commissioner Peacock raises his hand.)

11 CHAIRMAN SMITH: One. Okay. Passes 4 to 1,
12 Commissioner Peacock dissenting.

13 Okay. Now, before -- let's see. Do we want
14 to do penalties? Let's go on and do penalties, and
15 then we can talk about this broader thing.

16 COMMISSIONER PIERRE-DIXON: I think that the
17 discussion will be what interests me.

18 CHAIRMAN SMITH: Okay. Now, penalties. If
19 we find a violation, which we have, we must consider
20 imposing orders of penalties. And we had four options
21 again. We can find mitigating circumstances and take
22 no further action, we can issue a public statement or
23 reprimand, we can require corrective action by a
24 deadline and/or we can impose a civil penalty in
25 accordance with Chapter 12.04 of the Municipal Code.

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1 Civil penalties are imposed by resolution of
2 the Commission. Except as otherwise specified, the
3 Commission may impose penalties of up to \$5,000 for
4 each violation or three times the amount which the
5 person or respondent failed to report properly or
6 unlawfully contributed, expended, gave or received,
7 whichever is greater.

8 There is also -- I don't have it here. But
9 there is also a requirement in the case of late
10 contributions, if -- if a financial penalty is imposed,
11 it must be at least \$1,000.

12 The affirmative votes of at least three
13 commission members are required to impose further
14 penalties for a violation. In addition, in order to
15 vote or impose any order of penalty for a violation,
16 every commission member must certify that he or she has
17 heard or read the testimony at the hearing and has
18 reviewed all the evidence in the record.

19 So -- and in determining if penalties should
20 be imposed for violations of Title 12 and the amount,
21 we -- let's consider all relevant circumstances,
22 including severity of the violation; the presence or
23 absence of intention to conceal, deceive or mislead;
24 whether the violation was deliberate, negligent or
25 inadvertent; whether the violation was an isolated

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1 incident or pervasive enough to indicate a pattern of
2 disregard; whether the respondent has a prior record of
3 violations of city law; the degree to which the
4 respondent cooperated with the investigation; and
5 whether or not corrective actions were taken, if
6 appropriate, in accordance with the provisions of this
7 Chapter.

8 Having said all of that, my personal
9 recommendation would be that we impose no penalty,
10 given all of the information that we've discussed,
11 including the recommendation from the City Clerk.
12 Not a scientific term.

13 Other opinions or would somebody would like
14 to make a motion?

15 MS. TABER: Can I say something?

16 I just wanted to point out, although this
17 doesn't apply to the Ethics Commission, the FPPC does
18 give the filing officer, whether it's county or city,
19 authority to waive a fine if it's determined the late
20 filing is not willful. If this complaint came to me
21 and not to you, I would find it was not willful. I
22 wouldn't fine the person.

23 I just wanted to express that. But that does
24 not apply to you.

25 CHAIRMAN SMITH: Other discussion?

8 (Pages 29 to 32)

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<p style="text-align: center;">Page 33</p> <p>1 COMMISSIONER PIERRE-DIXON: Mitigating 2 circumstances. I think we certainly had more 3 mitigators than I think we had. And so, in looking at 4 all of that, I can see not imposing a fine. 5 However, it truly concerns me when those that 6 are running for public office do not know the rules and 7 regulations for themselves. And also have others who 8 work in positions where they're required to know what 9 the law requires. And especially when they've done it 10 more than one time, whether it's a different county, 11 state or whatever. All of these things are very 12 confusing. All of them are very difficult. It 13 requires you to sit down and go through them page by 14 page and truly understand what is going on, and make 15 sure every dollar is accounted for and accounted for on 16 time. 17 So I really have some concerns around this, 18 so I cannot just let that go by. I think we have 19 enough litigators here to say that perhaps a fine is 20 not warranted. But I'm very concerned that a lot of 21 people are using the excuses of perhaps bad 22 information, to make up for the fact that they are not 23 doing what they need to do as far as campaigns and 24 running the campaign. 25 CHAIRMAN SMITH: Okay.</p>	<p style="text-align: center;">Page 35</p> <p>1 meeting that summarizes all the candidates, the 2 contributions that should have been reported -- were 3 they or weren't they -- and come back to us with that. 4 And the problem -- and if we could get that 5 and we can come up with findings on all of those 6 people, that would eliminate the problem that is 7 hanging over people's heads now is all it takes is for 8 somebody out there, Mr. X, to file a complaint that 9 says Sam Liccardo didn't file a contribution report, to 10 use the mayor as an example. I don't think any of us 11 want that hanging over us for the next four years. 12 Somebody can just come in at any time and file a 13 complaint. 14 But the only way that we can stop that -- 15 having to process those complaints is like if we were 16 to investigate all 30 of them fully. And I was 17 thinking maybe we can do a short form of that. But the 18 concern that was expressed was, well, there's due 19 process rights that the county -- if there's going to 20 be even a simple investigation, they have the right to 21 be interviewed. They have the right to see the 22 complaint. And we very quickly get into what you want 23 is effort. 24 So another option might be if we were to go 25 and do and do these two tonight and then make a</p>
<p style="text-align: center;">Page 34</p> <p>1 COMMISSIONER PEACOCK: Mr. Chairman, I guess 2 this sort of underscores what my earlier theme is. 3 Because now we're in a position of saying Councilman 4 Nguyen is in this bucket; Mr. Orozco is in this bucket. 5 What about all the others? 6 And I guess -- I guess it's impossible to 7 make your motion also include a -- the broader look 8 that I was asking for. Otherwise, you now have -- 9 there are people's reputations at stake here. And we 10 could have somebody who is in one bucket now and then 11 now saying -- we're on the record as saying they made 12 violations. There are, what, 28 others who may be 13 similarly situated, and they weren't -- they would have 14 a -- a clean record. 15 And so how do we -- I'm not looking to 16 besmirch anyone's record. I'm looking at how we can 17 treat everybody equally, you know, given the facts and 18 given the sort of -- look at the facts as they come in. 19 CHAIRMAN SMITH: Yeah. And unless we do -- 20 it's my understanding that -- I discussed a little bit 21 with the Evaluator before. If we can do a -- I don't 22 want to say "quick and dirty," but I will. But a 23 relatively simple, straightforward look at all 24 30 candidates. Basically validate the table that was 25 in -- the City Clerk supplemental memo from the last</p>	<p style="text-align: center;">Page 36</p> <p>1 statement, I guess, as part of one of these hearings 2 that -- say, for example, we do what I hope we will do, 3 which is to not fine any of these candidates anything. 4 We would make a statement that we intend to do the 5 exact same thing if any additional complaints on this 6 matter, for these elections, were filed. And if 7 somebody wants to file a complaint, they can file it. 8 But we are going to -- you know, I don't think there 9 will be any incentive for anybody at that, because 10 there is not going to be penalties imposed. 11 So I think we can do -- does that 12 characterize what we were discussing? 13 MR. MILLER: I think it does. Although just 14 reflecting back, what I'm hearing is I heard 15 Commissioner Pierre-Dixon describe what she saw as a 16 difference in the circumstances that we're mitigating 17 here compared to another example. And Commissioner 18 Peacock described some candidates might have different 19 levels of professionalism, might have more or less 20 knowledge of the rules. It may be difficult to lump 21 everybody in the same category because of the 22 differences that various commissioners may attach to 23 different sets of circumstances. 24 COMMISSIONER PIERRE-DIXON: And, you know, 25 I'm not going to say this is not a quagmire, because it</p>

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1 appears to be. But I think part of our responsibility
2 is to look at each case, each person on an individual
3 basis. That's the way the law operates. And I don't
4 think there is any way to get around that. When
5 they're asking us to consider all of these things,
6 they're asking you to consider them in terms of that
7 individual person. The severity of the violation. The
8 presence or absence of intention to conceal, deceive or
9 mislead, et cetera, et cetera. Having looked at
10 individuals for each individual act. Some we may say
11 it looks like there was no intent there. There may
12 have been a violation and but we don't fine. On others
13 we may find that a fine needs to be imposed. So I
14 think we cannot -- I cannot support a blanket decision.
15 CHAIRMAN SMITH: That's fine.
16 COMMISSIONER PEACOCK: Just to underscore
17 that, I think incomplete information is what -- is
18 what, you know, helped dig this hole, get the City in
19 this ditch. And I think incomplete information -- or
20 let's just say making a blanket statement based on
21 incomplete information, I respectfully say, I don't
22 think is the way to go. I think we need to make it
23 involved, a more comprehensive effort. There's a lot
24 of -- range of things that could involve. But I think,
25 rather than saying, From here on we'll treat these a

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1 certain way -- I just don't -- I don't feel like it's
2 really being fair to the people out there.
3 CHAIRMAN SMITH: I guess the question is --
4 and I understand it. That makes sense. Would -- is
5 there anything that -- the thing that I worry --
6 there's, essentially, a statute of limitations of four
7 years. We can't investigate anything that is more than
8 four years old. If we address these two and leave the
9 other approximately 30 just laying there, that means
10 for the next four years people can just randomly pick
11 on one person and -- I don't know. To me, there's a
12 basic issue of fairness that these two just happened to
13 get picked. Maybe there's no way around it.
14 COMMISSIONER PIERRE-DIXON: I don't think
15 there is.
16 CHAIRMAN SMITH: I guess there's a question,
17 should we do anything at all? We could do a -- we
18 could ask for some sort of -- suggesting a
19 fact-gathering effort by the Evaluator, starting with
20 the information we got from the Clerk's Office and any
21 question in a certain direction. But it wouldn't be
22 anything actual.
23 In order to be actionable as far as finding
24 violation and all, there would have to be a formal
25 investigation, due process rights considering, and all

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1 of that. And we don't -- I don't think we want to
2 spend the kind of money that it would take to do that.
3 I think for 30-plus people it would be better spent
4 hiring additional staff in the Clerk's Office or some
5 other such thing. But --
6 COMMISSIONER PIERRE-DIXON: I just think we
7 have to take it on a case-by-case basis. If it comes
8 up during that time and having looked at 28 or 29, by
9 that time we get to Number 30, I'm sure we'll be well
10 versed in what we want to do. But I think each of them
11 has to be handled individually and come in as a
12 complaint, as is our charter. And that's the way we
13 have to operate.
14 CHAIRMAN SMITH: Okay.
15 COMMISSIONER VEMULAPALLI: But that will be,
16 again, cost for the City.
17 COMMISSIONER PEACOCK: My sense is we sort of
18 take the medicine now. Again, there are now two people
19 who are on the record as -- we're saying there were
20 violations. There are 28 or so others who -- some of
21 whom might not have and some who might have, in various
22 degrees. And I think had we had the information
23 today -- had we had today's information -- but had we
24 had complete information several weeks ago, those two
25 might not even have the violations that are out here.

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1 And I just think, will it cost some money?
2 Yes. Will it take some time? Yes. But I feel like we
3 did not cause this mess, but we can at least help clean
4 it up and, again, try to help learn from it and see
5 what can be done going forward.
6 CHAIRMAN SMITH: What would you propose --
7 how would you propose that we do that? A full
8 investigation of all the remaining ones or what?
9 COMMISSIONER PEACOCK: Well, again, if
10 "investigation" is a term that has to be used, I guess
11 that's what we use. I would think in terms of
12 something that sort of goes through and says -- and,
13 again, we do have some of that basic information
14 already to be validated by the investigator, to say,
15 Here are the -- on a candidate-by-candidate basis, say,
16 Here are the number, amount, whatever, of late filings
17 that happened.
18 I think it would be helpful to know, from
19 each of those, you know, the explanation for it. It
20 might be that in a hundred percent of the cases, they
21 say, We are relying on this information or not. But I
22 just do think it would be helpful to have that
23 comprehensive look at things. And then, if we decide
24 as a result there were violations but no fine or there
25 weren't violations, I think we can do that. But

10 (Pages 37 to 40)

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<p>1 otherwise I think we're just opening ourselves up to 2 further drip, drip, as well as -- as a fairness issue. 3 MS. TABER: Can I speak? 4 CHAIRMAN SMITH: Yes. 5 MS. TABER: I proactively sent an e-mail to 6 candidates in 2014 to reemphasize the FPPC regulation. 7 I did not tell them of the 250. Every single one of 8 them will have the same answer. They will say, I 9 received an e-mail from the City Clerk advising me to 10 follow the FPPC regulations for filing of a thousand or 11 more. 12 So I don't see how spending -- and this is, 13 you know, as a staff person. I don't see how spending 14 money to ask that question benefits. We know what the 15 problem is. We've got it on the work plan. We know 16 what we need to do to fix it. I don't feel taking the 17 information I gave you and getting more details about 18 it is going to change what we know needs to be fixed. 19 That's my personal. 20 COMMISSIONER VEMULAPALLI: I have one 21 question. So this is only one example. What happens 22 if City Clerk gives bad advice in another case? Then 23 how would we deal with it? 24 MS. TABER: In this case the advice was sent 25 to all candidates. It wasn't one staff person</p>	<p>1 to making motions. Second? 2 Okay. Somebody else want to try? That 3 motion dies. Somebody else want to try? 4 COMMISSIONER VEMULAPALLI: Minimum fine is a 5 thousand dollars? 6 CHAIRMAN SMITH: Yes. 7 COMMISSIONER VEMULAPALLI: Can we go less 8 than that? 9 CHAIRMAN SMITH: No. We're going to -- we're 10 hopefully going to fix that in Title 12. That's going 11 to be one of our recommendations to the City Council. 12 But as Title 12 stands right now, if we impose a 13 financial penalty, it has to be at least a thousand 14 dollars for Late Contribution Reports. That doesn't 15 apply to any other kind of complaints. 16 Well, somebody must have something since no 17 one is willing to second my motion. Somebody must have 18 a motion they'd like to make. 19 COMMISSIONER PIERRE-DIXON: Well, I am 20 certainly torn because I think there are mitigating 21 circumstances here, but I also think there is a 22 violation. And I'm feeling a \$1,000 fine would be 23 appropriate. That's pretty much where I'm at. 24 CHAIRMAN SMITH: Is that a motion? 25 COMMISSIONER PIERRE-DIXON: Not yet, no. I'm</p>
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<p>1 answering one question. It was one e-mail sent out to 2 30 candidates. So they will all say the same thing. I 3 mean, I'm saying you're going to ask the question, Why 4 did you do this? That's the answer they're going to 5 give. 6 COMMISSIONER PEACOCK: Chairman, if I'm not 7 mistaken, I believe at least one candidate actually did 8 file timely, correct? 9 CHAIRMAN SMITH: Yes, he did. 10 MS. TABER: But that was also a candidate who 11 tended to not open my e-mails. 12 CHAIRMAN SMITH: Okay. I guess -- can we 13 agree on whether we want to do anything with the 14 penalties on this case before we decide whether we're 15 going to do anything further? I think we need to 16 separate this out. 17 Let me make a motion. Or did I make a motion 18 already? Did I make a motion already? 19 COMMISSIONER PIERRE-DIXON: No. 20 MS. SILVA: Not for penalties. 21 CHAIRMAN SMITH: I would move that we find 22 mitigating circumstances and take no further action 23 with regard to this specific -- the complaint against 24 Tim Orozco and the Orozco campaign committee. 25 Anybody want to second it? I'm getting used</p>	<p>1 just putting it on the table for further discussion. 2 COMMISSIONER PEACOCK: Would you be open to 3 an amendment to your motion for your -- your 4 theoretical motion that says -- that directs the 5 Evaluator to take -- as I was discussing -- I was 6 describing? 7 COMMISSIONER PIERRE-DIXON: I have some 8 concerns with that because, again, I think about due 9 process and opening it up to all these different 10 candidates that did not receive complaints. That's my 11 fear on that. But I think if there is a complaint, 12 then, obviously, we have to take a look at it. So I'm 13 a little concerned about that. 14 CHAIRMAN SMITH: I tend to think -- now, like 15 I said, I didn't get a second. But I think that if we 16 end up finding no penalty in either one of these cases, 17 which is where I would like to go, that there's no 18 incentive for anybody to file any more complaints, 19 really. Unless they're trying to get somebody. And 20 since they know we're -- so far not imposing penalties, 21 I think there's not a whole lot of incentive. It's not 22 as though the election has not happened, but I think -- 23 like the elections are long since passed. 24 COMMISSIONER PIERRE-DIXON: But I think about 25 future elections, and I think about those that are</p>

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1 running and saying, well, we can come in and say, We
2 didn't understand. And not have any penalty.
3 CHAIRMAN SMITH: Yeah. I'm --
4 COMMISSIONER PIERRE-DIXON: So it has to be
5 understood that this is very, very important. The
6 public has a right to know where these monies are
7 coming from, when they're coming in, what time they're
8 coming in. You got a question about it, you should
9 report, period. Whether or not you talked with anyone
10 or not. Always err on the side of caution. My fear is
11 you then say no fine, and then next week they come
12 through, make a huge amount of mistakes and nothing is
13 going to happen.
14 CHAIRMAN SMITH: That's a danger. To me,
15 this is a very unique circumstance. We have had cases
16 in the past where people come in and say, I didn't
17 understand. I was told wrong. And that didn't deter
18 us -- when Council Member Nguyen came in and said that,
19 we fined him \$10,000. Now we know more information.
20 But we want to be careful of setting a
21 precedent. But, again, I think this is such a unique
22 circumstance. It's certainly not like something I've
23 ever seen, where you get 30 -- all but one candidate in
24 the years of election make the same mistake, and it's
25 acknowledged that the City Clerk's Office gave bad

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1 information contributing to that. And we all know that
2 the rules themselves are very confusing. That's not
3 much of a precedent.
4 COMMISSIONER PEACOCK: We're in a situation
5 now -- I'm sorry.
6 CHAIRMAN SMITH: Go ahead.
7 COMMISSIONER PEACOCK: In a situation now --
8 and I'm probably being Captain Obvious here -- that
9 we -- we know or at least we feel pretty confident that
10 there are some number of violations. All likelihood,
11 unintentional.
12 But just as Commissioner Pierre-Dixon says,
13 there are some things she says do warrant some sort of
14 penalty. And if that's appropriate, that should
15 happen. It just also seems that there may be other
16 appropriate penalties out there. There may be no other
17 penalties out there.
18 And I just think that if we're -- if we want
19 to try to treat everyone as fairly as we can -- you
20 can't go back in time, but, going forward, I think
21 we -- it's important. Might it cost some money? Might
22 it be extra work? Sure. I think it's important to
23 take a look.
24 I mean, my sense is that a lot of the
25 research has been done. It's a case of being validated

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1 by you.
2 MR. MILLER: So perhaps it would be
3 helpful -- if I might, Chairman.
4 CHAIRMAN SMITH: Sure.
5 MR. MILLER: If it is the direction of the
6 Commission to investigate further, it sounds like there
7 is some concern that that will cost huge sums of money
8 that would be wasted resources. Whether it's wasted
9 resources or not I'll leave to you. But I can talk
10 about the use of the money.
11 I think the bulk of the work will be
12 conducted by our compliance officer, who will just
13 comply -- who will just compile the numbers.
14 Essentially, the tables that you guys see in your
15 report here. That is a bit of a time-consuming process
16 but not a huge one and not one that involves lots of
17 lawyers being involved.
18 I do think, were I to be asked to investigate
19 it, that while I take into account the City Clerk's
20 comment that you'll get the same answer, I think there
21 may be more questions than just: Did you get an e-mail
22 from the City Clerk?
23 But I would propose, rather than conducting
24 however many separate investigations, something more
25 along the lines of a -- developing a questionnaire that

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1 would be sent to all people equally. And then,
2 depending on the responses to the questionnaire, there
3 may be a need for a follow-up. And certainly various
4 people may want to follow up more.
5 But I think there's a way to handle it. We
6 have -- in the past for you, when there have been
7 complaints involving large, large lists of witnesses,
8 we have not gone out and interviewed hundreds of
9 witnesses. But we can do a large investigation in a
10 relatively efficient fashion.
11 I don't know if that's useful information.
12 COMMISSIONER PIERRE-DIXON: Yes, very useful.
13 COMMISSIONER GONZALES: Mr. Chairman, so I
14 tend to agree with Commissioner Peacock regarding our
15 obligation, as the Ethics Commission, to look at each
16 case individually. And I think the language of Council
17 resolution which outlines our procedures supports the
18 solution as well.
19 We're spending a lot of time right now
20 discussing whether or not we should put a blanket
21 investigation or just do them one at a time. If anyone
22 after this can point me to any other direction which
23 says otherwise -- I think the Evaluator/Investigator
24 has the prerogative -- well, the obligation, rather,
25 that during this investigation, when evidence was

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<p>1 presented that indicated other individuals also 2 violated the law, he should have already filed separate 3 complaints for those individuals and began those 4 investigations. 5 When you look at the Council 6 Resolution 76954, Section F, "Review of Complaints By 7 Evaluator," Subsection 8. "In the event the Evaluator 8 uncovers facts and information in the course of an 9 investigation that may implicate possible violations of 10 the Ethics Ordinances by one or more persons or 11 entities who are not identified in the original 12 complaint, the Evaluator shall notify the Chair of the 13 discovery and shall file a complaint against the new 14 respondent(s) with the City." 15 And so I think this language of "shall," 16 "shall" -- which, in my interpretation of law, is often 17 something that you're going to do, you have to do when 18 it happens -- means that we shouldn't be having a 19 discussion of directing the Evaluator to investigate 20 because he should just be doing it already. 21 And so I really don't think that we need to 22 give you any more direction. And because it says the 23 Evaluator is supposed to file separate complaints, the 24 questions are already answered for us. We're going to 25 answer these complaints, and then we're going to move</p>	<p>1 Evaluator/Investigator can conduct his or her 2 investigations can give Mr. Miller and his team the 3 ability to try and be as economical as possible, 4 whether it means a survey method that you were talking 5 about. 6 CHAIRMAN SMITH: Yeah, I was thinking that 7 all day today, that we can do something like that. 8 But, then again, I talked to Steve, and the idea of due 9 process rights, et cetera, limits how economical you 10 can be. Maybe that's not a big deal. I don't know. 11 COMMISSIONER PEACOCK: So, Mr. Chairman, I 12 would move that we defer penalty in this case and 13 direct the Evaluator to undertake the review, 14 investigation, whatever the proper term is, and do it 15 in a way that he described, which to me seems like a 16 way that is as fair as possible and as efficient as 17 possible, you know, to the other candidates and, I 18 think, to the -- to the public that depends on the City 19 to provide relevant information in a timely way. 20 CHAIRMAN SMITH: Is that a motion? 21 COMMISSIONER PEACOCK: Yes. 22 COMMISSIONER PIERRE-DIXON: I would second 23 that. 24 CHAIRMAN SMITH: Is that investigation? 25 That's key. To include --</p>
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<p>1 forward once the Evaluator/Investigator complaints -- 2 finishes his investigations of the other violations. 3 That's my interpretation of our Resolution. 4 And if anyone else can point me to the Municipal Code 5 or other sections of the Resolution that would indicate 6 my interpretation is incorrect, I would encourage you 7 to do so. 8 MR. MILLER: I'll own that. I'll agree 9 that's what it says. And I thought long and hard about 10 it. I frankly was just unwilling to do that without 11 checking in without you all first because of the 12 magnitude here. But I agree that -- you say it's 13 "shall." Then that's what "shall" usually means. 14 CHAIRMAN SMITH: Then I think -- what -- the 15 way you approach this one is similar to the way we did 16 the one earlier this year regarding the "Get Out the 17 Vote" event that became a partisan event. You 18 identified another person similarly involved in 19 addition to the original respondent but didn't actually 20 expand the investigation until we concurred with that. 21 I just hate -- I just hate to think of doing 30 or 22 whatever the number is, investigations, full-blown 23 investigation. That -- there's got to be a better way. 24 COMMISSIONER GONZALES: I also think that the 25 ambiguity of the process by which the</p>	<p>1 COMMISSIONER PEACOCK: Investigation must be 2 used. Investigate. 3 CHAIRMAN SMITH: Because that's a whole -- 4 that's more than just validating the table from the 5 City Clerk. 6 COMMISSIONER PEACOCK: Right. 7 MS. SILVA: I just need a qualification. If 8 there's an investigation that will be done and then so 9 finds -- the Evaluator/Investigator finds that there is 10 enough here, is there going to be a complaint that is 11 going to be filed for each one of those? 12 COMMISSIONER GONZALES: That's what the 13 Resolution says. For each -- 14 MR. MILLER: Yes. 15 CHAIRMAN SMITH: But precedent is, I 16 believe -- at least on the one I'm thinking about 17 mentioned earlier, we did it under the banner of the 18 original complaint. We just expanded that complaint, 19 didn't we? 20 MR. MILLER: Whether -- 21 CHAIRMAN SMITH: Maybe we did it wrong. 22 MR. MILLER: The purpose of the filing of the 23 complaint is to provide notice to the respondent. 24 Whether the respondent is sent a copy of Complaint X 25 and says, New facts have come up and, pursuant to the</p>

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1 Resolution, we are now adding to Complaint X or whether
2 the respondent gets a new complaint, Y -- I will
3 consult with the city attorney, I suppose, as to what
4 is compliant with the rules.

5 But the crucial thing, to me, is they get a
6 copy of a complaint so that they understand what the
7 allegations are and then they have an opportunity to
8 respond to those allegations and participate in the
9 investigation.

10 CHAIRMAN SMITH: And proceed --

11 MS. SILVA: That's fine.

12 CHAIRMAN SMITH: And the way the procedure is
13 written you would be listed as the complainant?
14 Because the procedure says that --

15 MR. MILLER: I believe that's correct.

16 CHAIRMAN SMITH: Is that right?

17 MS. SILVA: That's correct.

18 MR. MILLER: I'm hesitating because we
19 changed this two years ago because of some similar
20 problem. So I'm not sure that I am actually -- I'm not
21 sure that I --

22 CHAIRMAN SMITH: We can work that out.
23 That's an administrative detail, I think.

24 MR. MILLER: Yes, it says "To the extent the
25 information giving rise relates to the circumstances of

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1 Okay. Discussion?

2 Okay. I'm thinking. All in favor?

3 (Four Commissioners responded Aye.)

4 COMMISSIONER PIERRE-DIXON: Opposed?

5 CHAIRMAN SMITH: I'm not sure. I'm really on
6 the fence here. I'll vote "Aye" also. With great
7 reluctance, but still.

8 Okay. So that is the motion. So, in that
9 case, we do need to do -- we need to go back because I
10 overlooked something. We didn't do certification on
11 the motion to find violations. So we do need to go
12 back.

13 So, upon option of that motion, I must ask
14 each commission member to certify that you have heard
15 or read the testimony at the hearing and have reviewed
16 all the evidence in the record by affirming "So
17 certified."

18 So Commissioner Vemulapalli?

19 COMMISSIONER VEMULAPALLI: So certified.

20 CHAIRMAN SMITH: Commissioner Peacock?

21 COMMISSIONER PEACOCK: So certified.

22 CHAIRMAN SMITH: Commissioner Pierre-Dixon?

23 COMMISSIONER PIERRE-DIXON: So certified.

24 CHAIRMAN SMITH: Commissioner Gonzales?

25 COMMISSIONER GONZALES: So certified.

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1 another complaint, the Evaluator shall reference this
2 in the complaint and indicate that the complaint should
3 be treated as an amendment of the existing complaint."

4 CHAIRMAN SMITH: Okay.

5 MR. MILLER: To me, that's a little bit more
6 that the world you seem to directing me to live in.

7 MS. SILVA: Which would be initiated by the
8 Evaluator pursuant to this.

9 MR. MILLER: Correct.

10 MS. SILVA: Because in the situation before
11 we changed this, the City Clerk filed at that time --

12 CHAIRMAN SMITH: A brand new complaint.

13 MS. SILVA: Yeah, the City Clerk then
14 initiated the complaint.

15 COMMISSIONER PIERRE-DIXON: Right.

16 CHAIRMAN SMITH: So this would be an
17 amendment.

18 MS. SILVA: It would be an amendment, and
19 pursuant to this section of the Resolution, the
20 Evaluator would be the main person.

21 CHAIRMAN SMITH: Okay. And so your motion
22 was to defer penalty on this?

23 COMMISSIONER PEACOCK: Yes.

24 CHAIRMAN SMITH: And undertake the broader
25 investigation.

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1 CHAIRMAN SMITH: And me, Commissioner Smith,
2 so certified.

3 Okay. And, with that -- let's see. We
4 deferred this till next time. We don't -- we would
5 defer doing a resolution also? We don't do a
6 resolution until we --

7 MS. SILVA: Correct.

8 CHAIRMAN SMITH: So I guess, then, this
9 hearing is closed, unless --

10 MS. SILVA: It wouldn't be closed. It would
11 be continued.

12 CHAIRMAN SMITH: I'm sorry. It is -- what's
13 the word I want?

14 MS. TABER: Continued.

15 MS. SILVA: Continued.

16 CHAIRMAN SMITH: Continued. It's to be
17 continued.

18 Okay. Now, the next item is --

19 MR. OROZCO: Can I get clarification?

20 CHAIRMAN SMITH: Yes.

21 MR. OROZCO: So what do you mean by
22 "deferral"? Is that a postponement of a penalty --

23 CHAIRMAN SMITH: Yes. Yes.

24 MR. OROZCO: -- so that there is still --

25 somewhere in the horizon, there could be a penalty at

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<p style="text-align: center;">Page 57</p> <p>1 some point?</p> <p>2 CHAIRMAN SMITH: Yes, that's possible.</p> <p>3 MR. OROZCO: And when would that be? Do you</p> <p>4 have a certain timeline?</p> <p>5 CHAIRMAN SMITH: Well, normally, when we</p> <p>6 don't have 30 complaints all at once, the Evaluator is</p> <p>7 given 30 days to complete an evaluation. But I think</p> <p>8 in this circumstance it might be grounds for asking --</p> <p>9 I would say it would be no more than -- certainly no</p> <p>10 less than a month from now.</p> <p>11 MR. OROZCO: Thank you.</p> <p>12 (Discussion off the record.)</p> <p>13 (Commissioner Peacock leaves the room.)</p> <p>14 CHAIRMAN SMITH: It is Wednesday,</p> <p>15 September 9, 2015, and this hearing of the City of San</p> <p>16 Jose Ethics Commission is being held in Room W-120 of</p> <p>17 San Jose City Hall. All members of the Commission are</p> <p>18 present except Commissioner Peacock.</p> <p>19 The Commission will conduct a hearing on a</p> <p>20 complaint filed with the City Clerk on August 14, 2015,</p> <p>21 by Jeffery P. Bedolla alleging that Rick Doyle and Norm</p> <p>22 Mascarinas violated the lobbying rules set forth in</p> <p>23 Title 12 of the San Jose Municipal Code. The City</p> <p>24 Clerk promptly notified and provided a copy of the</p> <p>25 complaint to the Independent Evaluator, and the</p>	<p style="text-align: center;">Page 59</p> <p>1 anything in writing from the respondent?</p> <p>2 Okay. We do have a written statement that we</p> <p>3 received late this afternoon from the complainant. You</p> <p>4 did get my e-mail, but it was part of your packet when</p> <p>5 you got here tonight.</p> <p>6 And at this point I would recognize Caroline</p> <p>7 Lee from Hanson Bridgett to present the Independent</p> <p>8 Evaluator's Report and Recommendations.</p> <p>9 MS. LEE: Thank you. Good evening.</p> <p>10 So I'm here to present the complaint of</p> <p>11 Mr. Bedolla alleging lobbying violations against</p> <p>12 respondents Rick Doyle and Norm Mascarinas. And I know</p> <p>13 the Commission takes seriously the sufficiency</p> <p>14 standard. In order for an evaluation to proceed into</p> <p>15 an investigation, the complaint must identify specific</p> <p>16 facts, if proven, would violate the Municipal Code.</p> <p>17 We have performed our preliminary evaluation</p> <p>18 and determined that there are not sufficient facts in</p> <p>19 order to warrant a further investigation. The --</p> <p>20 Title 12 regulates lobbyists. A lobbyist is someone</p> <p>21 who engages in lobbying activities, which is</p> <p>22 influencing or attempting to influence a city official</p> <p>23 or a city official with regard to legislative or</p> <p>24 administration action. Respondents here are city</p> <p>25 employees and cannot be lobbyists engaging in lobbyist</p>
<p style="text-align: center;">Page 58</p> <p>1 Evaluator notified and provided a copy to the</p> <p>2 respondents on August 17, 2015. The Independent</p> <p>3 Evaluator's Report and Recommendations were submitted</p> <p>4 to the City Clerk on August 31st, 2015, and copies were</p> <p>5 then provided to the complainant, respondent and</p> <p>6 commission members and posted to the city web site with</p> <p>7 the agenda for tonight's hearing.</p> <p>8 I'm going to skip over the boilerplate stuff</p> <p>9 because we just had another hearing and went over the</p> <p>10 regulations and that.</p> <p>11 At this time I would like to have the</p> <p>12 complainant, Jeffery Bedolla, and the respondents, Rick</p> <p>13 Doyle and Norm Mascarinas, or their representatives,</p> <p>14 identify themselves for the record.</p> <p>15 Mr. Bedolla, I know you're here.</p> <p>16 MR. BEDOLLA: Yes, sir.</p> <p>17 CHAIRMAN SMITH: The respondent?</p> <p>18 MR. MASCARINAS: Norm Mascarinas.</p> <p>19 CHAIRMAN SMITH: Oh, okay. Did I pronounce</p> <p>20 it right? Okay.</p> <p>21 And we've already identified city staff in</p> <p>22 the previous hearing.</p> <p>23 And we do have, in this case, the</p> <p>24 respondent -- we do not have a written response from</p> <p>25 the respondent. That's correct? We don't have</p>	<p style="text-align: center;">Page 60</p> <p>1 activities.</p> <p>2 The -- in addition, the event that took place</p> <p>3 was a back room deal or business deal, and that doesn't</p> <p>4 necessarily provide sufficient facts to elevate it to</p> <p>5 an administrative or legislative decision that the City</p> <p>6 made.</p> <p>7 There are certain rules within Title 12 that</p> <p>8 deal with the city officials. City officials may not</p> <p>9 suggest, advise or recommend to a person to obtain the</p> <p>10 services of a lobbyist. And, in addition, they -- if</p> <p>11 they have communications with the registered lobbyist,</p> <p>12 they must disclose those communications. Here there's</p> <p>13 no facts to suggest that any of those provisions in</p> <p>14 Title 12 were violated.</p> <p>15 So, as we stated in our complaint, we believe</p> <p>16 that this preliminary evaluation does not warrant</p> <p>17 further investigation.</p> <p>18 CHAIRMAN SMITH: Questions?</p> <p>19 I have -- and this did pass the screening</p> <p>20 that says it's an allowable complaint. I sort of</p> <p>21 wonder how it got through that screen. I mean, I</p> <p>22 didn't sit down and compare it, but there are certain</p> <p>23 kinds of things that it says in our procedure that we</p> <p>24 won't consider. And the idea that a complaint against</p> <p>25 city employees as lobbyists --</p>

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1 MR. MILLER: So the complaint checked the
2 right box.
3 CHAIRMAN SMITH: Okay.
4 MR. MILLER: I think getting past the
5 screening that you're describing is -- for instance, it
6 was a complaint alleging campaign sign placements.
7 That would go to the Department of Public Works, for
8 instance. But just on the face of the complaint, it
9 did check a box alleging a violation of Title 12.12.
10 CHAIRMAN SMITH: Okay. Other -- any other
11 questions? If not --
12 COMMISSIONER GONZALES: I do.
13 CHAIRMAN SMITH: Yes.
14 COMMISSIONER GONZALES: More about the
15 procedures of it, because I was wondering the same
16 thing. Just to clarify, it's my understanding that
17 when a complaint is filed, the City Clerk's Office
18 doesn't do any form of initial screening itself either?
19 MS. TABER: No, not allowed to.
20 COMMISSIONER GONZALES: Not allowed to?
21 MS. TABER: No. Once the complaint is on the
22 form, it goes to Hanson Bridgett. If somebody calls us
23 with a complaint that we can handle, we handle it. But
24 once it's filed officially, it goes through the
25 official process.

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1 CHAIRMAN SMITH: But if it's -- if they file
2 it and it's a campaign sign violation, who rejects
3 that?
4 MS. TABER: I haven't had one since we
5 revised the form.
6 CHAIRMAN SMITH: What if they did?
7 MS. TABER: If they did --
8 CHAIRMAN SMITH: Would it be you or Steve?
9 MS. TABER: If they did, I would tell them
10 that -- you know, I would look at the form and say,
11 This is a campaign sign violation. It's Code
12 Enforcement. It's not in our jurisdiction.
13 If they said, I still want to file with the
14 Ethics Commission, it would go to him. But if they
15 said "Oh," and they took it back and went to Code
16 Enforcement, it would go. But if they officially file
17 it, I'm going to send it to him. We just haven't --
18 since we revised the form, people are really clear that
19 that type of complaint doesn't go through us.
20 CHAIRMAN SMITH: If it was more than four
21 years old, that would go to Hanson Bridgett and they
22 would be the ones?
23 MS. TABER: Right.
24 MR. MILLER: For instance, you have received
25 complaints -- the City has received complaints alleging

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1 violations that, even if true, might rise to violations
2 of some law that's not within the Commission's
3 jurisdiction to consider. And those are similarly --
4 they do pass through the -- what you're describing as
5 the first screen before it gets to us.
6 CHAIRMAN SMITH: Right. And those are the
7 reports that -- relatively thin reports that say, This
8 really belongs to somebody else.
9 MR. MILLER: Yes.
10 CHAIRMAN SMITH: Okay. Anything else?
11 If not --
12 COMMISSIONER GONZALES: I do. I have more
13 questions.
14 So I understand some of the initial
15 allegations regarding back room deals or lobbying don't
16 align with potential violations of Title 12, but there
17 is one complaint which I wanted to inquire about a
18 little more, and that was -- in the actual complaint of
19 the complaint filed there is some discussion about
20 public records.
21 And first I wanted to ask, which I'm not sure
22 if this is part of the preliminary evaluation process,
23 was there an interview with the complainant?
24 MR. MILLER: There was not.
25 COMMISSIONER GONZALES: There was not. Okay.

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1 So to kind of dig in a little further --
2 because there is a portion of open government in
3 Title 12 about public records. I just want to clarify
4 for my own edification if this does fall under our
5 purview and should be something we do look into
6 further. But I'm not sure how, here in San Jose, these
7 neighborhood associations are governed and run. Do
8 they fall under some purview of the City here? Are
9 these organizations that are subject to public record
10 requests?
11 MS. TABER: There's a Neighborhoods
12 Commission. And I believe that associations may
13 register with the City. But the Neighborhoods
14 Commission is not --
15 MS. SILVA: -- overseen by the City.
16 MS. TABER: Well, the Neighborhoods
17 Commission is staffed by the City. But it's selected
18 by -- those representatives are selected by the
19 Neighborhoods Commission -- the neighborhood
20 associations come together in a caucus. They select
21 people to go on the Neighborhoods Commission. City has
22 jurisdiction over Neighborhoods Commission staffing.
23 But as far as neighborhood associations, I'm
24 not positive. I don't think we do anything other than
25 just sort of -- if they give us their information, we

16 (Pages 61 to 64)

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<p style="text-align: center;">Page 65</p> <p>1 keep it on a list. That's not done by my office. It's 2 in the City Manager's Office. But I don't think 3 they're under us. 4 MS. SILVA: And they register, I believe, 5 with the council member districts on where that 6 neighborhood association is located. But to the extent 7 to which we man or do anything with those entities, we 8 don't have control over them. 9 CHAIRMAN SMITH: I think -- like in my 10 neighborhood association, I think -- when we have a 11 board meeting, I believe that Pierluigi Oliverio, who 12 is our council member, sends somebody from his office. 13 Sometimes anyway. But I don't think they're subject to 14 any of this. 15 COMMISSIONER GONZALES: Okay. Okay. I have 16 no further questions. 17 CHAIRMAN SMITH: Okay. So, then, does -- 18 Mr. Mascarinas, do you care to say anything or are you 19 just here to observe? 20 MR. MASCARINAS: Okay. 21 CHAIRMAN SMITH: Okay. Mr. Bedolla, the 22 floor is yours. I need to swear you in. State your 23 name and raise your right hand. 24 MR. BEDOLLA: Jeff Bedolla. 25</p>	<p style="text-align: center;">Page 67</p> <p>1 But before this matter went before that 2 Council to consider it for approval or not, if they had 3 seen what transpired further back, it would have been 4 harder to go along with it. Okay? 5 And it's best not to accept the Independent 6 Evaluator report. Because, one, the general tenor -- 7 in my view, the general tenor of this whole matter has 8 being handled in an adversarial, legalistic way, which 9 I believe to be a lower level of ethics. Okay? 10 Number two, the report -- and this goes -- 11 you mentioned something about the neighborhood 12 association. The report materially misses on point 13 concerning the CPNA board meeting minutes. I think 14 they're relevant for the public record treatment 15 because City action resulted in part from them. 16 And the records of that meeting are available 17 from another source. As you mentioned, D6 18 Representative, Ms. Melrose Cacal was invited, and she 19 did attend. So she has -- she has notes. 20 My following speaker will speak a little bit 21 about what happened at that meeting. And I'll mention 22 that in my further remarks. 23 And since this meeting -- that meeting was 24 the crux of this whole matter. 25 This was my prepared remarks for today. I</p>
<p style="text-align: center;">Page 66</p> <p>1 JEFFERY BEDOLLA, 2 being first duly sworn by the Chairperson to tell the 3 truth, the whole truth and nothing but the truth, 4 testified as follows: 5 6 CHAIRMAN SMITH: Thank you. 7 Okay. And we ask you to keep it to a few 8 minutes, like five or so. 9 MR. BEDOLLA: Well, I have written notes. 10 May I go through them? 11 CHAIRMAN SMITH: Yeah, hopefully it's -- 12 MR. BEDOLLA: Well, how many minutes exactly 13 are you giving me? 14 MS. TABER: Five. I'm setting a five-minute 15 timer. That's how much appellants get. 16 MR. BEDOLLA: To me, an ethics inquiry is 17 deeper than a legal investigation. That's why you 18 stalled on the previous -- I made remarks of rules 19 today. Roughly what I said was is that regarding the 20 land deal, what seems important to me seemed like a 21 rounding error to others, I think. 22 And I believe in -- that it's okay for 23 everybody to stay with a position once they've taken 24 one rather than just compromising it. So I can 25 understand the resistance.</p>	<p style="text-align: center;">Page 68</p> <p>1 saw a novelty statue which set a law book on top of a 2 book of ethics. Ethics is the higher law. What 3 happened should be acknowledged -- what happened in all 4 of this -- so we can affirm ethical principles as the 5 higher standard. Not so that we can crucify ourselves 6 on it. 7 Okay. I would like to introduce my friend 8 Kat. She will be speaking. She's not coachable. We 9 had a cat. And we tried to be nice to her, and then 10 she was nice back. But she remains a cat. Charity has 11 its uses, as it does in situations like this large 12 situation. 13 Okay. There are red flag legal issues in 14 this case. Were the pediatrician easement and property 15 appraisal issues handled properly? I think such 16 matters can be regarded from an ethical standpoint 17 instead of a legal one. The Independent Evaluator's 18 report takes a legal approach again, and I think it is 19 in error materially where a matter of alleged 20 misconduct of the College Park Neighborhood Association 21 board meeting on August 27, 2012. That meeting was 22 before I knew about the proposed land deal. And I was 23 subjected to strong-arm tactics at that meeting, and 24 this is what led to all of this. Kat was with me 25 there, and she can say something about it.</p>

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1 As for the conclusion on that point, the
2 problem is that the alleged abuse rises to the level of
3 personal harassment, at the very least. And from an
4 ethical standpoint many of the situation calls for some
5 form of acknowledgment an impropriety occurred. In an
6 adversarial proceeding where such conduct was alleged,
7 the bar of credibility would be higher.

8 For an ethics inquiry, though, the first
9 question is whether such behavior actually occurred.
10 That sufficient evidence is considered to be lacking
11 doesn't affect the relevance of the concern.
12 Personally, too, I doubt whether the records of a
13 public meeting which had the effect of facilitating
14 city business are exempt from record-recording rules.
15 However, the point is moot anyway because Melrose being
16 present there.

17 Besides the fiduciary duty of City of San
18 Jose to the taxpaying public, another issue I wondered
19 about was Nora Campos's AB 191 bill. That bill was for
20 the purpose of putting teeth into the Brown Act. The
21 gist of it was that something done could be reversed if
22 it was found to have had a Brown Act in a location.
23 That bill was tabled, and I wondered why. I had been
24 in touch with state-elected officials such as Paul Fong
25 and Jim Beall concerning the Bellarmine land deal with

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1 the neighborhood prior to this, which the neighborhood
2 was not given the opportunity to discuss beforehand.

3 So now I have been holding steady with my
4 position, objecting to irregularities of process,
5 starting in my neighborhood and then widening out into
6 the city government and who knows what else. This is
7 called business as usual.

8 But why don't we use this situation wisely
9 and take a look at it? There couldn't be a better
10 opportunity.

11 The other day I came home after an absence to
12 find my personal effects at home had been disturbed and
13 information missing pertaining to this case. I
14 immediately filed a police report. I get the feeling
15 there are people concerned about this case. I don't
16 want to go down the legalistic road. My plea is for a
17 good old ethics inquiry that will allow for a good
18 outcome for all concerned.

19 And, finally, ethics is something you don't
20 get good at by accident. Okay? Ethics is not limited
21 to such picky considerations as we've heard. The
22 concept of "good" is not limited to avoidance of error.
23 Sorry. I didn't get all the helpful orienting
24 information that you gave at the outset.

25 I'm thinking it would be good, looking into

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1 the City of San Jose.

2 So I think that the CPNA board meeting is the
3 natural place to start in an investigation. And I
4 attended CPNA meetings prior to that land deal, and I
5 had paid attention to the neighborhood affairs for a
6 long time. Now my inquiries to these former board
7 members go unanswered. I'm interested in finding out
8 what happened. I have my own take on it, based on the
9 information I have. For example, Norm has mentioned,
10 in my simple way, because I received a PDF file from
11 his office that showed that Bellarmine and Emory Street
12 was masked and misrepresented --

13 CHAIRMAN SMITH: Can you wrap up, please.

14 MR. BEDOLLA: Do I have four years? Because
15 I'll reapply. Why don't you hear me now?

16 CHAIRMAN SMITH: How much more do you have?

17 MR. BEDOLLA: I'm almost at the end of this
18 sheet and a summary statement.

19 CHAIRMAN SMITH: I'll give you a couple --
20 two more minutes.

21 MR. BEDOLLA: Okay. Okay.

22 I was aware that the former CPNA president
23 has colluded with Bellarmine's representative and
24 presumably with City of San Jose officials for the
25 purpose of reaching agreements resulting in changes in

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1 this matter. Deferring and considering it is really
2 the same thing.

3 If I can be of help gathering relevant
4 information -- I'm one man. Okay? I've been engaged
5 in with this for years. Is more background needed?
6 I've tried to be reasonable, and I have not been able
7 to let go of this. Okay? That's a burden.

8 Finally, last thing. Mitigating
9 circumstances. Where irregularities occur, mitigating
10 circumstances always exist. But you have to find them
11 with facts. To not do so is participating as an actor
12 in the matter under consideration.

13 Ethics is an adventure discovery. How we
14 deal with ethics is ethics itself.

15 And last sentence: Ethics is an adventure of
16 discovery that we should want to make or enter upon.
17 It's been good for me.

18 CHAIRMAN SMITH: Okay. Thank you.

19 Any questions?

20 Okay. And then I believe -- we have an
21 opportunity for other interested persons to speak.

22 So if you would step forward and state your
23 name and raise your right hand.

24 MS. POWELL: Kat Powell.
25

18 (Pages 69 to 72)

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<p>1 KAT POWELL, 2 being first duly sworn by the Chairperson to tell the 3 truth, the whole truth and nothing but the truth, 4 testified as follows: 5 6 CHAIRMAN SMITH: Thank you. Five minutes, 7 please. 8 MS. POWELL: Okay. I was at the meeting that 9 Jeff Bedolla was discussing. And I think it was a 10 couple of years ago. I don't remember the exact date. 11 But they were discussing traffic safety issues. And it 12 was a neighborhood association meeting. 13 So the big item on the agenda was that they 14 were concerned about drive-through traffic where the 15 parents are dropping their kids off at Bellarmine. 16 Now, I believe they didn't want drive-through traffic 17 because it disturbs the neighborhood. Some of the 18 drivers were driving too fast. I -- I don't know -- I 19 have reports. Maybe it was the kids, the kids driving 20 too fast through the neighborhood. And it was 21 disturbing the neighbors. So it was a matter of 22 concern. 23 Now, Jeff was on the traffic safety 24 commission, I believe. He was serving as an officer, 25 and he was investigating whether they should allow the</p>	<p>1 MS. LEE: No. 2 CHAIRMAN SMITH: I think the basic issue here 3 is a matter of our scope of responsibility. And I 4 think perhaps there is some misunderstanding of it. 5 Basically, the way this commission is established is we 6 can look at those things that we're told we can look 7 at, and that's all we can look at. We can't look at 8 ethics in general, despite the name. We can look into 9 potential violations of certain specific sections of 10 Title 12, including the lobbying. But what our 11 Evaluator is telling us is that the facts, as presented 12 in this report, don't fit Title 12. It's not a 13 lobbying activity, basically, is what I'm 14 understanding. So I think that's the basis of the 15 report that we're getting. 16 In any event, now it's time for the 17 Commission to make its decision. We have two options. 18 We may find that further investigation is necessary. 19 If so, we direct the Evaluator to conduct further 20 investigation and report back to the Commission. Or we 21 may adopt the Evaluator's report, approve the 22 recommendation against conducting an investigation and 23 close the file in this matter without further action. 24 And I'll open the floor to discussion or a 25 motion.</p>
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<p>1 drive-through traffic or whether they should curtail 2 it. Actually, they had this -- I believe that this 3 street -- they actually had it blocked off. And 4 Bellarmine actually bought this parcel of land, 5 including this street, so that they could block it off 6 and build a wrestling facility, gym. 7 Well, I may have some of the facts a little 8 garbled because it's so long ago. And it really wasn't 9 something that I was considering. 10 But what happened at the meeting was there 11 was a discussion going on about traffic safety. And 12 then the issue came up about the Bellarmine issue, 13 about purchasing land. And Jeffery said something 14 that -- there was a person sitting next to Jeffery -- I 15 think his name was Tom Gorant [phonetic]? Am I 16 correct? And he seemed -- his voice seemed to change 17 tone, and I could detect some anger. And he had -- he 18 actually made -- I was taken aback. And I don't 19 believe he knew that I was with Jeffery at that time. 20 I mean, that's -- I don't know. That's -- 21 that's all I can provide right now, because I don't 22 remember exactly what he said. 23 CHAIRMAN SMITH: Okay. Okay. Thank you. 24 Any questions? 25 If not, any additional comments from --</p>	<p>1 COMMISSIONER PIERRE-DIXON: I think this does 2 fall outside our purview, and so I think that we cannot 3 take further action. 4 CHAIRMAN SMITH: Okay. So that's a motion to 5 that effect, that we approve the report? 6 COMMISSIONER PIERRE-DIXON: Yes. 7 CHAIRMAN SMITH: Okay. And close without 8 further action. 9 COMMISSIONER PIERRE-DIXON: Right. 10 CHAIRMAN SMITH: I'll second that. 11 Discussion of the motion? 12 If not, all in favor? 13 (All Commissioners responded Aye.) 14 CHAIRMAN SMITH: Opposed? 15 Aye. I mean opposed. I'm getting loopy. 16 Strike that. It is unanimous, 4 to zero. 17 Now, one thing I would -- well, let's do 18 certification and then another thing. So I need to ask 19 everybody to certify that you have read or heard the 20 testimony and reviewed all the evidence. 21 So Commissioner Vemulapalli? 22 COMMISSIONER VEMULAPALLI: So certified. 23 CHAIRMAN SMITH: Commissioner Pierre-Dixon? 24 COMMISSIONER PIERRE-DIXON: So certified. 25 CHAIRMAN SMITH: Commissioner Gonzales?</p>

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1 COMMISSIONER GONZALES: So certified.
2 CHAIRMAN SMITH: And me, Commissioner Smith,
3 so certified.
4 I guess my recommendation would be --
5 basically, we're not the proper body to look into this.
6 I'm not really sure who the proper -- what the proper
7 path is. We don't have any authority to look into this
8 matter that has been presented to us. I don't know who
9 is. Maybe the City Council. Maybe the Rules
10 Committee. I don't know. I don't even know if we
11 should give advice along those lines. But,
12 unfortunately, this isn't --
13 MR. BEDOLLA: Accepted.
14 CHAIRMAN SMITH: This isn't the place. We
15 don't have the authority. Even if we were all jumping
16 up and down and excited and we really want -- this is
17 wrong, we need to do something about it, we can't.
18 MR. BEDOLLA: I appreciate you putting it in
19 your window and accepting it. Thank you.
20 CHAIRMAN SMITH: Okay. So, with that -- oh,
21 we need a resolution. I need a motion on the
22 resolution.
23 Under the Commission's regulations and
24 procedures, the Commission shall issue a decision by
25 resolution. At this time I would entertain a motion

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1
2 I, NOELIA ESPINOLA, do hereby certify:
3 That said hearing was taken down by me at the
4 time and place therein named, and thereafter reduced to
5 computerized transcription under my direction.
6 I further certify that I am not interested in
7 the outcome of this hearing.
8
9
10

Dated: _____
NOELIA ESPINOLA, CSR #8060

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1 directing the City attorney to draft a resolution on
2 the Commission's findings and penalties and authorizing
3 the Chair to approve and sign the resolution.
4 I'll make the motion. So moved.
5 COMMISSIONER GONZALES: Second.
6 CHAIRMAN SMITH: Discussion?
7 All in favor?
8 (All Commissioners responded Aye.)
9 CHAIRMAN SMITH: Opposed?
10 (No response.)
11 CHAIRMAN SMITH: Okay. Passes unanimously.
12 And this hearing is now closed. Thank you
13 all.
14 (Whereupon, Item III Hearings concluded at
15 7:30 p.m.)
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