



CITY OF SAN JOSÉ, CALIFORNIA

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SAN JOSÉ ELECTIONS COMMISSION

Thomas Mertens, Chair
Fred de Funiak, Vice Chair
Jang Badhesha
April Lin Walsh

SAN JOSÉ ELECTIONS COMMISSION MEETING MINUTES October 26, 2006

I CALL TO ORDER

The Members of the San José Elections Commission convened at 5:16 p.m. in Room W-242 of City Hall, 200 E. Santa Clara Street, San José, CA 95113.

PRESENT: COMMISSIONERS Badhesha, deFuniak, Walsh and Chair Mertens

ABSENT: COMMISSIONERS None

STAFF PRESENT: Assistant City Attorney George Rios
Senior Deputy City Attorney Norm Sato
Evaluator Steven Miller
City Clerk Lee Price
Deputy City Clerk Michelle Estabillo

II CLOSED SESSION

The Commission met in Closed Session to discuss:

A. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION PURSUANT TO GOVERNMENT CODE SECTION 54956.9 subsection (a):

Name of Case:

1. San José Silicon Valley Chamber of Commerce Political Action Committee, et al. v. City of San José and San José Elections Commission

III APPROVAL OF MINUTES

- A. Minutes of October 11, 2006 were approved.

IV REPORT OF THE CHAIR

- A. Update on the Elections Commission vacancy

Deputy City Clerk Michelle Estabillo noted that one application was received for the vacancy. Recruitment will continue until the November 3, 2006 deadline and Council interviews will be conducted on November 21, 2006.

V PUBLIC HEARINGS

- A. Hearing regarding complaints filed by Lance Burrow on October 3, 2006 alleging that the following political action committees violated San José Municipal Code campaign regulations:

- 1) Association of Retired San José Police & Firefighters Political Action Committee

Documents Filed: (1) Report of the Independent Evaluator regarding the complaint filed by Lance Burrow against the Association of Retired San José Police and Firefighters PAC, (2) Transcript of Hearing dated October 26, 2006. Reported by Noelia Espinola, CSR, License Number 8060. Advantage Reporting Services, No. 23886 Pages 3 through 5.

Evaluator Steve Miller provided a synopsis of the investigation and recommended that the Commission dismiss the complaint and close the file. (See transcript for complete report, questions and comments).

Action: Upon motion by Commissioner de Funiak, seconded by Commissioner Badhesha, the commission unanimously accepted the Investigator's recommendation of dismissing the complaint and found that the Association of Retired San José Police and Firefighters PAC did not violate San José Municipal Code campaign regulations.

2) UNITE HERE TIP State and Local Fund

Documents Filed: (1) Report of the Independent Evaluator regarding the complaint filed by Lance Burrow against UNITE HERE TIP State and Local Fund; (2) Transcript of Hearing dated October 26, 2006. Reported by Noelia Espinola, CSR, License Number 8060. Advantage Reporting Services, No. 23886 Pages 5 through 10.

Evaluator Steve Miller provided a synopsis of the investigation and recommended that the Commission dismiss the complaint and close the file. (See transcript for complete report, questions and comments).

Action: Upon motion by Commissioner de Funiak, seconded by Commissioner Badhesha, the commission unanimously accepted the Investigator's recommendation of dismissing the complaint and found that UNITE HERE TIP State and Local Fund did not violate San José Municipal Code campaign regulations.

3) International Brotherhood of Electrical Workers Committee on Political Education

Documents Filed: (1) Report of the Independent Evaluator regarding the complaint filed by Lance Burrow against International Brotherhood of Electrical Workers Committee on Political Education; (2) Transcript of Hearing dated October 26, 2006. Reported by Noelia Espinola, CSR, License Number 8060. Advantage Reporting Services, No. 23886 Pages 10 through 12.

Evaluator Steve Miller provided a synopsis of the investigation and recommended that the Commission dismiss the complaint and close the file. (See transcript for complete report, questions and comments).

Action: Upon motion by Commissioner de Funiak, seconded by Commissioner Badhesha, the commission unanimously accepted the Investigator's recommendation of dismissing the complaint and found that International Brotherhood of Electrical Workers Committee on Political Education did not violate San José Municipal Code campaign regulations.

4) Service Employees International Union Local 1000

Documents Filed: (1) Report of the Independent Evaluator regarding the complaint filed by Lance Burrow against Service Employees International Union Local 1000; (2) Transcript of Hearing dated October 26, 2006. Reported by Noelia Espinola, CSR, License Number 8060. Advantage Reporting Services, No. 23886 Pages 12 through 14.

Evaluator Steve Miller provided a synopsis of the investigation and recommended that the Commission dismiss the complaint and close the file. (See transcript for complete report, questions and comments).

Action: Upon motion by Commissioner de Funiak, seconded by Commissioner Badhesha, the commission unanimously accepted the Investigator's recommendation of dismissing the complaint and found that Service Employees International Union Local 1000 did not violate San José Municipal Code campaign regulations.

B. Hearing on the Independent Evaluator's Report, Recommendation and Conclusion regarding a complaint filed by Sam T. Liccardo on October 16, 2006 alleging that Manny Diaz violated San José Municipal Code campaign regulations.

Documents Filed: (1) Report of the Independent Evaluator regarding the complaint filed by Sam Liccardo against Manny Diaz for City Council Campaign, Tom Saggau, Dustin DeRollo, Ash Pirayou, Bianca Pirayou, Saggau and DeRollo, LLC, Pirayou Properties, LLC; Gilmore Erickson, Northpoint Development; Jonathon Emami and Miro Design Group

Evaluator Steven Miller provided definitions of "majority ownership", "direct" and "control", as well as an overview of aggregation rules of the San José Municipal Code. Mr. Miller stated that based on the aggregation rules, Ash Pirayou, Bianca Pirayou, Tom Saggau and Dustin DeRollo did not violate San José Municipal Code. The Evaluator stated that since the contributors did not violate any regulations, the Manny Diaz for City Council Campaign did not violate any regulations as well. The Evaluator recommended that the Commission dismiss the complaint and close the file. (See transcript for complete report, questions and comments).

Action: Upon motion by Commissioner Walsh, seconded by Commissioner Badhesha, the commission unanimously accepted the Investigator's recommendation of dismissing the complaint and found that Tom Saggau, Dustin DeRollo, Ash Pirayou, Bianca Pirayou, Saggau and DeRollo, LLC, and Pirayou Properties did not violate San José

Municipal Code.

Action: Upon motion by Commissioner Walsh, seconded by Commissioner Badhessa, the commission unanimously accepted the Investigator's recommendation of dismissing the complaint and found that the Manny Diaz for City Council Campaign did not violate San José Municipal Code campaign regulations.

Action: Upon motion by Commissioner DeFuniak, seconded by Commissioner Walsh, the Commission found that the Manny Diaz for City Council Campaign did not violate San José Municipal Code campaign regulations.

Action: The Commission unanimously affirmed that they reviewed the entire record for each of the items under 5A and 5B. Upon motion by Commissioner Badhessa, seconded by Commissioner Walsh, the Commission unanimously directed Chair Mertens to work with the City Attorney's Office to prepare closing resolutions for each of the cases.

VI DISCUSSION ITEMS

- A. Continued discussion of potential referral from the City Council to the Elections Committee to review various provisions of Chapter 12.06 relating to Municipal Campaign Contributions

Documents Filed: (1) Memorandum from Councilmember Reed dated September 29, 2006 regarding independent expenditure committees.

City Clerk Price noted that this item, recommended by Councilmember Reed, was referred by the City Council on October 10, 2006, to the City Attorney's Office and to the Elections Commission. Brief discussion ensued and the Elections Commission mutually agreed to consider this matter at a future date given the Commission's current workload.

- B. Continued discussion regarding the proposal for public financing of city council and mayoral campaigns in San José

Chair Mertens provided an update on his interviews with unsuccessful candidates for public office and stated that there were three reasons given to support public financing. The three reasons were: 1) allows the candidate to get to know the voters; 2) allows a more diversified pool of candidates to run for office; and 3) mitigates the influence of wealthy, special interest groups. Chair Mertens noted that all interviewees felt that contributions by special interest groups will not disappear but may, instead, be spent on independent expenditures in support or defeat of

candidates. Discussion was also held about the public meetings scheduled for the week of November 13th.

VI MEETING SCHEDULE

The next meeting is scheduled for November 1, 2006 at 5:15 p.m.

VII PUBLIC COMMENT

Dustin DeRollo, co-owner of Saggau and DeRollo, LLC, read a statement of protest regarding the complaint filed against him, his partner and his wife.

Tom Saggau, co-owner of Saggau and DeRollo, LLC, read a statement of protest regarding the complaint filed against him, his partner and his wife.

Jay Rosenthal, representative of the Sam Liccardo's campaign, commented on the complaint filed by Sam Liccardo.

VIII ADJOURNMENT

The meeting was adjourned at 7:11 p.m.

THOMAS M. (TOM) MERTENS, CHAIR

ATTEST:

LEE PRICE, MMC
CITY CLERK and SECRETARY TO THE COMMISSION