



## CITY OF SAN JOSE, CALIFORNIA

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### SAN JOSE ELECTIONS COMMISSION

Fred de Funiak, Chair  
Michael Smith, Vice Chair  
Leon Louie  
Robert Shepard  
Erica Cosgrove

### SAN JOSE ELECTIONS COMMISSION MEETING MINUTES March 25, 2009

#### I CALL TO ORDER

The members of the San José Elections Commission convened at 5:31 p.m. in Room W-262 of City Hall, 200 E. Santa Clara Street, San José, CA 95113.

PRESENT: COMMISSIONERS: Cosgrove, Louie, Shepard, Smith, and de Funiak

ABSENT: COMMISSIONER: None

STAFF PRESENT: Senior Deputy City Attorney Lisa Herrick  
City Clerk Lee Price  
Deputy City Clerk Nora Pimentel

#### II ELECTION OF OFFICERS

Action: Upon motion Commissioner Smith, seconded by Commissioner Shepard, and unanimously passed, the Commission elected Chair de Funiak as Chair.

Action: Upon motion by Commissioner Shepard, seconded by Commissioner Cosgrove, and unanimously passed, the Commission elected Commissioner Smith as Vice Chair.

### III REPORT OF THE CHAIR

Chair de Funiak reported that the Record of the COMPAC complaint was delivered to each member and asked the members to read through the Record. Chair de Funiak reported that since the anonymous complaint was filed with the City Clerk's Office as well as in the public domain; he requested a copy of the complaint and has begun reading it. If other members chose to read the complaint, he cautioned them not to form opinions on the merits of the case. Chair de Funiak argued that since both sides were asking the Commission to make a decision on the issue of "good cause" for anonymous complaints, the Commission was at a disadvantage at making a decision if they did not know what the complaint was about. Additional discussion was held later on the agenda.

### IV REPORT OF THE CLERK/ATTORNEY

City Clerk Lee Price provided a status report on the Council Referrals and stated that they were forwarded to the Rules and Open Government Committee through the Public Record on March 11, 2009. City Clerk Price also reported that the Elections Commission referral on the two business day reporting requirement for lobbyists was forwarded to the Mayor's Biennial Review Board. Commissioner Smith requested copies of both memos be provided to the Commission.

### V DISCUSSION ITEMS

- A. Establish a subcommittee to consider procedures for anonymous complaints.

Commissioner Shepard and Commissioner Cosgrove agreed to serve as the sub-committee to consider procedures for anonymous complaints. Chair de Funiak suggested that the subcommittee look at sections E-6 and F-9 of the regulations, research standards of "good cause", and check with other cities on their practices.

Public Comment: Tom Mertens, former Chair of the Elections Commission, stated that section F-9 of the regulations was put into place so the Elections Commission could take action to reject a complaint that was filed and then later made public by the Complainant.

Discussion ensued. The Commission concurred that the subcommittee will review general procedures for anonymous complaints.

- B. Discussion on how to engage MGT of America, Inc. to follow up on identified concerns regarding the independent committee expenditures analysis in the 2006-07 election cycle analysis.

Commissioner Smith summarized his recommendations regarding the MGT of America, Inc. (MGT) analysis of the 2006-07 election cycle. Discussion followed on having MGT do follow up work. City Clerk Lee Price updated the Commission on the budget and stated that MGT has not been approached yet. Discussion ensued. Chair de Funiak and Commissioner Smith will meet with Senior Deputy City Attorney Lisa Herrick to develop a proposed scope for MGT.

- C. Receive status report from the subcommittee on Council Referral #2 regarding limits on contributions to independent expenditures and Council Referral #4b regarding re-initiating contribution limits on independent expenditures and discuss and provide direction to the subcommittee on contribution limits.

Documents Filed: Memorandum from Chair de Funiak and Commissioner Smith dated March 25, 2009 regarding independent expenditures.

Senior Deputy City Attorney Lisa Herrick outlined the issues raised during the meeting with the subcommittee regarding contribution limits for independent expenditures; disclosure of independent expenditures, and disclosure and regulations. Discussion ensued.

Public Comment: Antonio Guerra, Mayor's Office, stated that the Mayor was interested in a recommendation by June. City Clerk Lee Price proposed asking a research assistant to gather data from other cities.

No action was taken.

VII MEETING SCHEDULE AND AGENDA ITEMS

The next Regular meeting is scheduled for April 8, 2009 at 4:30 p.m. The Commission will enter into a Study Session from 6:30 p.m. -8:30 p.m. in Committee Room W118-119. The following items were asked to be placed on the next agenda: 1) Status Update on Instant Run-off Voting; 2) Status of Election Commission Member Review of the Record on the COMPAC Complaint; 3) Subcommittee Status Report on Additional Election Analysis by City Clerk and MGT America (de Funiak/Smith); 4) Subcommittee Status Report on the Elections Commission Procedures for Anonymous Complaints; 5) Consideration of the Request by Kenneth Machado on behalf of Tom McEnery as relates to the Anonymous Complaint filed by John Doe v. Tom McEnery, John McEnery IV and Urban Markets, LLC.

VIII PUBLIC COMMENTS

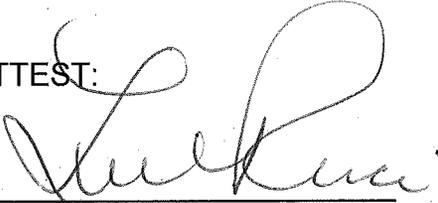
There were none

IX ADJOURNMENT

The meeting adjourned at 8:05 p.m.

  
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FRED DE FUNIAK, CHAIR

ATTEST:

  
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LEE PRICE, MMC  
CITY CLERK and SECRETARY TO THE COMMISSION