



CITY OF SAN JOSE, CALIFORNIA

200 East Santa Clara Street
Second Floor, City Hall Wing
San José, California 95113
Telephone (408) 535-1252
FAX (408) 292-6207

SAN JOSE ELECTIONS COMMISSION

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

SAN JOSE ELECTIONS COMMISSION MEETING MINUTES April 8, 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 Michelle Radcliffe
Evaluator Mike Moye

II APPROVAL OF MINUTES

City Clerk Lee Price reported that the Minutes for February 11, 2009 were revised to more accurately reflect comments made by Jay Ross of COMPAC.

Action: Upon motion by Commissioner Smith, seconded by Commissioner Shepard, and unanimously passed, the Commission approved the amended Minutes.

The Minutes of March 11, 2009, and March 25, 2009, were deferred to May 13, 2009.

III REPORT OF THE CHAIR

Documents Filed: 1) Memorandum from City Clerk Lee Price to Mayor Chuck Reed dated March 2, 2009 regarding Elections Commission referrals to the Mayor's Biennial Review Fall 2009; and 2) Memorandum from City Clerk Lee Price to the Mayor and City Council dated March 3, 2009 providing a status of City Council Referrals to the Elections Commission

Chair de Funiak stated, for the record, that copies of the City Clerk's memorandums to the Mayor and City Council had been circulated.

Chair de Funiak also stated that Item #5E will be heard before Item #5D.

IV REPORT OF THE CLERK/ATTORNEY

There was none.

V DISCUSSION ITEMS

A. Status on the Instant Run-Off Voting

This item was deferred to the May 13, 2009 meeting.

B. Status of Review of the Record on the COMPAC Complaint by Commissioners

Each Commissioner provided a status report of progress made in reviewing the Record. Commissioner Smith requested the City Attorney to provide an opinion to the Commission regarding the word "or" in Section 12.04.100(c) of the San José Municipal Code.

Public Comment: Complainant Steve Preminger pointed out that the previous Commission as well as the Independent Evaluator found that COMPAC violated the San José Municipal Code.

C. Sub-Committee Status Report on Additional Election Analysis by City Clerk and MGT of America, Inc.

Commissioner Smith reported that he and Senior Deputy City Attorney Lisa Herrick had a telephone conversation with representatives from MGT of America, Inc. MGT will provide a memo outlining a scope of work for further evaluation of the conclusions made in the 2006-07 election cycle analysis.

E. Consideration of Request by Kenneth Machado, Jr. 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

Documents Filed: 1) Correspondence from Kenneth J. Machado, Jr. dated January 16, 2009; 2) Correspondence from Mike Moye dated January 22, 2009; 3) Correspondence from Kenneth J. Machado, Jr. dated March 19, 2009; 4) Correspondence from James McMannis dated March 25, 2009; and 5) Supplemental Memorandum from Mike Moye dated April 7, 2009.

Tom McEnery stated he was withdrawing his request and would like the Commission to move forward with the process.

No action was taken.

D. Sub-Committee Status Report on the Elections Commission Procedures for Anonymous Complaints

Document Filed: Sub-Committee Report on anonymous complaints and suggestions for revisions to Resolution No. 72547 (the Regulations) on anonymous complaints

Commissioners Cosgrove and Shepard jointly summarized the subcommittee's research and analysis to date. Evaluator Mike Moye noted that the Regulations require that the independent evaluator maintain the confidentiality of the complaint. City Clerk Lee Price added that she is also obligated to keep the complaint confidential and summarized the Fair Political Practices Commission's process for receiving complaints.

Public Comment: Tom McEnery commended the Commissioners for their work and stated that the public as well as his family had a right to know if the complaint was from a genuine whistleblower or if it was from someone with a personal vendetta. Mr. McEnery stated there should be some

serious consequences for the coordination of filing the complaint and mailing out a copy of the complaint to Mr. McEnery's neighbors.

James McManis referenced the Evaluator's role in considering the merits of anonymous complaints. He argued that the Evaluator doesn't begin an investigation unless he concludes there are sufficient facts. Mr. McManis reiterated that the complaint is based on public records. He asserted that anonymity was not the issue in this case, but rather that the complaint was leaked.

Terry Riley, former Elections Commission member, provided a historical perspective on anonymous complaints and stated that in the past the Chair would review a complaint before forwarding it to the Evaluator.

Tom McEnery provided a scenario for the Commission's consideration in support of his concerns regarding the filing of well-funded anonymous complaints.

VII MEETING SCHEDULE AND AGENDA ITEMS

The next Regular meeting is scheduled for May 13, 2009 at 5:30 p.m. The following items were asked to be placed on the next agenda: 1) Status Update on Instant Run-off Voting (Deferred from April 8, 2009); 2) Subcommittee Status Report on Additional Election Analysis by City Clerk and MGT America (de Funiak/Smith); and 3) Subcommittee Status Report on the Elections Commission Procedures for Anonymous Complaints.

VIII PUBLIC COMMENTS

There were none

IX ADJOURNMENT

The meeting adjourned at 5:52 p.m. to 6:30 p.m. for the Elections Commission Study Session in Committee Rooms W118-119.

ATTEST:



LEE PRICE, MMC
CITY CLERK and SECRETARY TO THE COMMISSION



FRED DE FUNIAK, CHAIR