



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 June 10, 2009

I CALL TO ORDER

The members of the San José Elections Commission convened at 5:36 p.m. in Room W-242 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 (via teleconference)

II APPROVAL OF MINUTES

The following minutes were approved:

- a. April 20, 2009
- b. April 30, 2009
- c. May 13, 2009

III REPORT OF THE CHAIR

No report.

IV REPORT OF THE CLERK/ATTORNEY

Document Filed: Correspondence from Linus Li of MGT of America dated April 17, 2009, regarding follow-up work proposed for the 2006-07 Election Cycle Analysis Report

City Clerk Lee Price provided a summary on the Request for Proposal received from MGT of America, Inc. on conducting additional work on the election cycle analysis and stated that due to the current budget situation the Elections Commission will need to postpone any additional consultant work. Commissioner Smith suggested that this item be tickled for further discussion after the next election cycle (2011).

V DISCUSSION ITEMS

- A. Consideration of a draft ordinance amending Titles 2 and 12 of the San José Municipal Code as it relates to the Elections Commission and Campaign Finance Regulations

Documents Filed: 1) Draft Ordinance amending Titles 2 and 12 of the San José Municipal Code; 2) Correspondence from James R. Sutton of the Sutton Law Firm dated May 28, 2009 regarding proposed changes to the City's campaign finance law; 3) Correspondence from Ash Pirayou with Rutan & Tucker, LLP; dated May 28, 2009; and 4) E-mail correspondence from Craig Dunkerley with California Clean Money Campaign dated June 9, 2009.

Senior Deputy City Attorney Lisa Herrick provided an in-depth overview of proposed changes to the campaign finance regulations and responded to questions from the Commission and public.

Public Comments: Bianca Pirayou voiced objections to suspending provisions in the ordinance (regarding contribution limits to independent committees) noting that these rules have been in place since the 1980's and are effective in limiting corruption. She suggested that Staff and the Commission look to federal law for guidance. Additionally, Ms. Pirayou voiced concerns about requiring independent committees to itemize contributions of less than \$100 and requested additional clarification about disclosure requirements in non-City election years.

Ash Pirayou also urged the Commission to look at contribution limits set forth in federal law and offered suggestions for clarification of fundraising disclosures.

Steve Preminger cautioned that requiring independent committees to itemize all contributions would be burdensome.

Bianca Pirayou commented on new provisions regarding electioneering communications and noted that the proposed new filing form for disclosing electioneering communications would present a burden to independent committees. She suggested that the existing FPPC filing form for reporting late independent expenditures (Form 496) is adequate.

Ash Pirayou urged the Commission to take more time to develop the recommendations and solicit public input.

Action: Upon motion by Commissioner Cosgrove, seconded by Commissioner Smith, and unanimously passed, the Commission continued this item to July 8th.

- B. Consideration of the complaint filed on May 18, 2009 by Commissioner Shepard

Document Filed: Report from Hanson Bridgett dated May 18, 2009 on the complaint filed by Commissioner Shepard against Councilmember Nora Campos

Independent Evaluator Mike Moyer provided a summary of his report and recommended that the complaint be dismissed without any further action.

Commissioner Shepard spoke to the merits of his complaint. He said that the Evaluator's report did not address possible violations of Resolution No. 72547 (Elections Commission Regulations) and questioned who – if not the Elections Commission - had jurisdiction to enforce the Regulations. He argued that SJMC Section 12.07.040(c) empowers the Commission to investigate complaints for the sole purpose of making recommendations to the City Council and urged the Commission to continue its investigation under SJMC Sections 12.02.010(d) and 12.04.040(c). He added that the Evaluator did not address the issue of a returned envelope (with a copy of the complaint) in the McEnery complaint and argued that the matter should be fully investigated.

Evaluator Moyer explained that provisions in the Code referenced by Commissioner Shepard are statements of intent and relevant to the purpose of the Elections Commission, however they do not set forth a standard for enforcement of the Regulations. He noted that there was not sufficient evidence in the Complaint to find a violation of the Municipal Code.

Commissioner Shepard suggested the Commission forward his complaint to the Mayor and City Council, form a subcommittee to look at how the Commission was misused, and further, determine how to recover fees from John Doe.

Public Comment: Tom McEnery urged the Commission to forward to the City Council a recommendation that would allow the Commission to have the ability to enforce all provisions of the Regulations.

Action: Upon motion by Commissioner Smith, seconded by Commissioner Cosgrove, the Commission dismissed the complaint and closed the file without further action. (3-2-0. Noes: Shepard and Louie)

Commissioner Shepard made a motion to forward his complaint to the City Council to agendize for discussion and action, as appropriate. The motion failed due to a lack of a second.

Action: By mutual consent, the Commission directed Staff to include in the draft ordinance the provisions of Section F9 of the Regulations.

- C. Update on the Requirements of the Ralph M. Brown Act, Open Government Reforms and Council Policy 0-36

Document Filed: Memorandum from City Attorney Rick Doyle dated June 3, 2009 regarding update on the requirements of the Ralph M. Brown Act, Open Government Reforms and Council Policy 0-36

Senior Deputy City Attorney Lisa Herrick summarized three major points outlined in the memo.

- D. Continued discussion on the status of Instant Run-Off Voting (*RECOMMEND DEFERRAL TO AUGUST, 12, 2009*)

New America Foundation Deputy Director Blair Bobier invited the Commission to attend a panel discussion on Instant Run-Off Voting at Martin Luther King, Jr. Library on June 11, 2009, at noon.

Public Comment: Terry Reilly spoke in opposition to Instant Run-Off Voting.

This item was deferred to August 12, 2009.

E. Status Report from Sub-Committee on the Elections Commission Procedures for Anonymous Complaints (*RECOMMEND DEFERRAL TO AUGUST 12, 2009*)

This item was deferred to August 12, 2009.

VI MEETING SCHEDULE AND AGENDA ITEMS

The next Regular meeting is scheduled for July 8, 2009, at 5:30 p.m. The following item will be placed on the agenda: 1) Continued discussion on the consideration of a draft ordinance amending Titles 2 and 12 of the San José Municipal Code as it relates to the Elections Commission and Campaign Finance Regulations.

VII PUBLIC COMMENTS

There were none.

VIII ADJOURNMENT

The meeting adjourned at 8:50 p.m.


FRED DE FUNIAK, CHAIR

ATTEST:


LEE PRICE, MMC
CITY CLERK and SECRETARY TO THE COMMISSION