EC 8/11/10
III. B

CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

ELECTIONS COMMISSION
Meeting Minutes
May 12, 2010

ROLL CALL

PRESENT: Chair de Funiak, Vice Chair Smith, Commission Members Cosgrove, Louie, and Shepard

ABSENT:

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

ORDER OF BUSINESS

I. Call to Order

The members of the San Jose Elections Commission convened at 5:30 p.m. in Room W-262 of City Hall, 200 E. Santa Clara Street, CA 95113.

II. Closed Session

None

III Approval of Minutes

Action: Upon motion by Commissioner Smith, seconded by Commissioner Shepard, and unanimously passed, the Regular Meeting Minutes of April 14, 2010. (Vote: 4-0-1 Commissioner DeFuniak abstained due to absence)

Upon motion by Commissioner Smith, seconded by Commissioner Louie, and unanimously passed, the Study Session Minutes of April 29, 2010. (Vote: 4-0-1 Commissioner Shepard abstained due to absence)

IV. Report of the Chair

None.

V. Reports of the Clerk/Attorney

A. Report on the 9th Circuit Court of Appeals Discussion in Long Beach Area Chamber of Commerce v. City of Long Beach

Senior Deputy City Attorney Lisa Herrick reported on the decision of the 9th Circuit Court of Appeals regarding limits on contributions to independent committees. She reported that the Long Beach Ordinance, which limited contributions to independent committees, was deemed unconstitutional and that Long Beach may petition the United States Supreme Court.

B. Status Report on Rules and Open Government Committee discussion about Elections Commission recommendations on referrals from the December 15, 2009 Mayor's Biennial Ethics Review.

City Clerk Lee Price reported that the Rules and Open Government Committee reviewed the status of the Elections Commission recommendations on the referrals. The Committee asked staff to return with additional information about thresholds in other municipalities that regulate lobbying by nonprofits. Staff agreed to share with the Commission when it is released to the Rules and Open Government Committee.

VI. Discussion Items

A. Continued discussion about the City Council Referral to consider whether the Voluntary Expenditure Limits should be adjusted.
Deferred to June 9, 2010

This item was deferred to June 9, 2010.

B. Receive the Subcommittee's report on "Pay to Play Regulations" for certain contractors.

Chair DeFuniak and Commissioner Shepard reported that they met with three of the four Councilmembers who authored a joint memo recommending analysis of "Pay to Play Regulations". The subcommittee concluded that the level of concern by those Councilmembers was not the same as it had been a year ago. Chair DeFuniak suggested that this item be placed on the June meeting agenda to formulate a recommendation to City Council.

Public Comment: Ben Field (South Bay Labor Council) expressed support for regulations to prohibit contributions by certain contractors. He asserted that there is a problem, as outlined in a letter he submitted to the Commission last month and indicated that there are numerous examples of campaign contributions by those who have submitted bids to the City.

C. Consider recommending to the City Council revisions to the Campaign Finance Ordinance.

Document Filed: Draft Campaign Finance Ordinance.

Senior Deputy City Attorney Lisa Herrick provided an overview of the draft ordinance and recommended an additional amendment as it relates to campaign disclosure requirements for independent committees.

Action: Upon motion by Commissioner Smith, seconded by Commissioner Shepard, and unanimously passed, the Commission agreed to recommend to the City Council that they adopt the ordinance with additional changes to address the topics discussed and any other changes that may be required for greater clarity. (Vote: 5-0)

D. Discuss and formulate a recommendation to the City Council about Instant Runoff Voting (IRV)

Documents Filed: (1) Email from Terry Reilly to City Clerk Lee Price dated May 11, 2010 regarding the continuing cost of RCV: $244,000. (2) Email from Steve Chessin to Elections Commission dated May 8, 2010 providing additional IRV data. (3) Letter from California Common Cause to Elections Commission dated May 5, 2010 in support of IRC as a prudent way of improving electoral systems in California's cities and counties. (4) Email from Blair Bobier to City Clerk Lee Price dated May 7, 2010 transmitting a NY Times article dated September 30, 2004. (5) Letter from Libertarian Party of Santa Clara County to Elections Commission dated May 10, 2010 in support of IRV. (6) Letter from Asian Americans for Community Involvement in support of IRV. (7) Letter from Terry Reilly to Elections Commission dated May 10, 2010 regarding San Francisco plurality elections. (8) Letter from Terry Reilly to Elections Commission dated May 10, 2010 regarding IRV in Burlington, VT. (9) Letter from Terry Reilly to Elections Commission dated May 7, 2010 forwarding an email from Pierce County Councilmember regarding IRV. (10) Letter from Terry Reilly to Elections Commission dated May 10, 2010 forwarding a NY Times article regarding San Francisco's election system.

Chair deFuniak expressed concern regarding the financial impacts, particularly with costs for conducting education and outreach associated with implementation. He stressed it would be very important to continue to educate the voters about how to use IRV and to have accurate data about how much money San Jose could actually save. He also noted that some local governments that have implemented IRV have become dissatisfied after a period of using it. The fact that the voting equipment used in Santa Clara County is not yet certified by the Secretary of State for IRV was also a concern.

Commissioner Shepard expressed adamant opposition to IRV, stating that he believes that implementing IRV in order to save money would be an assault on democracy. He added that the current system works and results in other states in which IRV has been implemented have been mixed.

Commissioner Cosgrove remarked that saving money on elections is an important and appropriate goal and spoke in favor of implementing IRV. She acknowledged that implementing any new program is challenging and agreed that educating the voters would be necessary.

Commissioner Louie said he does not believe that IRV is a radical or dangerous idea and was also in favor of implementing IRV. He observed that there are "pros" and "cons" to every electoral system implemented in the world. The benefits associated with IRV are that the City would save money on elections because runoff elections would not be necessary and voters could choose several preferred candidates rather than just one. In addition, candidates in City elections would campaign more cooperatively. Commissioner Louie also noted that the current ballot is complicated and questioned whether IRV would be any more complicated.

Vice Chair Smith explained that he was interested in eliminating runoff elections to save money but was concerned about the cost of implementing IRV in the short term, as well as the mixed results of its use to date in other jurisdictions. He suggested that although IRV seems to have promise as an electoral system, it would be premature to adopt it for use in San Jose at this time. Vice Chair Smith offered an alternative: change the requirement that candidates be elected by a majority of voters by permitting a candidate to be elected with 40% of the vote. This change would eliminate some runoff elections and associated costs, he concluded.

Public Comments:

Blair Bobier, Deputy Director of New America Foundation, and Steve Chessin, President of Californians for Electoral Reform, provided additional testimony in support of IRV elections in San Jose and proposed that voters be allowed to decide whether or not to implement IRV in San Jose in November 2010.

Terry Reilly reiterated concerns about voter confusion, education and outreach. He urged the Commission to find alternative solutions for saving election costs, such as lowering the majority vote threshold from 50% to 40% and all-mail ballot special elections.

Antonio Guerra, Mayor's Office, explained that the City Council in June may consider potential ballot measures for November and implored the Commission to come to a conclusion.

Motion: Upon motion by Commissioner Cosgrove, seconded by Commissioner Louie, that the Commission recommend to the City Council that the City of San Jose adopt IRV for elections. Chair DeFuniak indicated he was undecided and was inclined to abstain.

The Commission took a recess at 7:40 p.m. to allow staff to consult parliamentary rules of procedure to analyze the abstention of the Chair for reasons other than a conflict of interest. The Commission reconvened at 7:55 p.m. Staff advised that pursuant to Robert's Rules of Order, the abstention of the Chair, with two in favor of the motion

and two in opposition, would result in the motion being "lost". On the motion, Commissioners Louie and Cosgrove voted aye; Commissioners Smith and Shepard voted no; and Chair de Funiak abstained. Motion lost (failed) (Vote: 2:2:1).

Action: Upon motion by Commissioner Smith, seconded by Commissioner Shepard, the Commission agreed to recommend to the City Council that it consider other alternatives to IRV that would reduce the number of elections and result in a cost savings: such as (1) permitting a candidate to be elected with 40% of the vote and (2) allowing the Council to appoint candidates running unopposed. Motion passed (Vote: 5-0).

Senior Deputy City Attorney Lisa Herrick agreed to draft a memorandum from the Commission to the Rules and Open Government Committee summarizing the Commission's response to the Council's referral to the Commission to study IRV.

Additional Public Comments: Clark Williams remarked in surprise about the lack of attendance by Councilmembers and former candidates suggesting that the study lacks their perspective. He expressed the need for election reform particularly as it relates to special elections. Steve Chessin thanked the Elections Commission for their time spent studying IRV and urged them to consider IRV at least for special elections. Terry Reilly referenced two bills that were opposed by Secretary of State Debra Bowen because of concerns regarding voter education.

VII. Meeting Schedule and Agenda Items–The next Regular Meeting is scheduled for Wednesday, June 9, 2010.

The Commission agreed to consider at the next regular meeting the following items: (1) Continued discussion about the City Council Referral to consider whether the Voluntary Expenditure Limits should be adjusted; (2) Formulate a recommendation to the City Council regarding "Pay to Play Regulations" for certain contractors.

IX. Public Comment
There were none.

X. Adjournment

The meeting adjourned at approximately 8:00 p.m.

FRED DE FUNIAK, CHAIR

ATTEST:

LEE PRICE, MMC
CITY CLERK and SECRETARY TO THE COMMISSION