

**ELECTIONS COMMISSION**

Meeting Minutes  
January 12, 2011

**ROLL CALL**

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

ABSENT: Cosgrove

STAFF: Senior Deputy City Attorney Lisa Herrick, Evaluator Joan Cassman, and Deputy City Clerk Nora Pimentel

**ORDER OF BUSINESS**

**I. Call to Order**

Meeting was called to order by Chair de Funiak at 5:31 p.m. in Room W-242 of City Hall, 200 E. Santa Clara Street, CA 95113.

**II. Closed Session**

None

**III. Approval of Minutes**

There were none.

**IV. Report of the Chair**

Chair de Funiak inquired about the status of the Elections Commission recruitment. Deputy City Clerk Nora Pimentel briefly reviewed the process. Chair de Funiak distributed to the Commission an article from a Vietnamese-American newspaper for their review. He proceeded to ask for a moment of silence for those people killed and in Arizona.

**V. Reports of the Clerk/Attorney**

There was no report.

## **VI. Report of the Evaluator**

Evaluator Joan Cassman summarized the Independent Evaluator's Second Supplemental Memorandum.

## **VII. Hearing on Complaint**

- A. Continue Hearing on the complaint filed on October 7, 2010 by Thomas Nguyen alleging violations of the San Jose Municipal Code campaign finance regulations.

Documents Filed: Second Supplemental Memorandum with additional attachments from Hanson Bridgett LLP to Elections Commission dated January 7, 2011.

Chair de Funiak, provided the public an opportunity to speak. Public Comment was presented by Robert Sandoval, Charlie Ly. (See attached January 12, 2011 transcript for complete comments reported by Noelia Espinola, CSR, License Number 8060, Advantage Reporting Service).

Action: Upon motion by Commissioner Smith, seconded by Commissioner Shepard, the Commission unanimously adopted the Evaluator's Five Recommendations from the November 8, 2010 report and the Evaluator's recommendation relative to the newsletters from the January 7, 2011 report. (Vote 4-0)

Each Commissioner certified that he or she personally heard the testimony at the hearing and reviewed the entire evidence in the record.

Action: Upon motion by Commissioner Louie, seconded by Commissioner Shepard, the Commission directed the City Attorney to prepare a resolution reflecting the findings and recommendations of the Commission. (Vote 4-0)

## **VIII. Discussion Items**

There were none.

## **IX. Meeting Schedule and Agenda Items**

The next regular meeting is Wednesday, February 9, 2011. Agenda item to include discussion regarding FY 2011-2012 Election Commission Workplan.

## **X. Public Comment**

Thomas Nguyen thanked the Commission for their investigation.

## **XI. Adjournment**

The meeting was adjourned at approximately 6:14 p.m.

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FRED DE FUNIAK, CHAIR

ATTEST:

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NORA PIMENTEL, CMC  
DEPUTY CITY CLERK and SECRETARY TO THE COMMISSION

Attachment: Transcript of Hearings dated January 12, 2011, Reported by Noelia Espinola,  
CSR, License Number 8060. Advantage Reporting Services

SAN JOSE ELECTIONS  
COMMISSION  
REGULAR MEETING

Date: Wednesday, January 12, 2011  
Time: 5:31 p.m.  
Location: SAN JOSE CITY HALL  
200 East Santa Clara Street  
Second Floor Wing  
San Jose, CA 95113  
Reported By: Noelia Espinola, CSR  
License Number #8060

#38128

Advantage *ARs* Reporting  
Services, LLC

1083 Lincoln Avenue, San Jose, California 95125, Telephone (408) 920-0222, Fax (408) 920-0188

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A P P E A R A N C E S

San Jose Elections Commission: FRED de FUNIAK, Chair  
MICHAEL SMITH, Vice Chair  
LEON LOUIE  
BOB SHEPARD

Office of the City Attorney: Lisa Herrick

The Reporter: ADVANTAGE REPORTING SERVICES  
BY: NOELIA ESPINOLA,  
CSR #8060  
1083 Lincoln Avenue  
San Jose, CA 95125  
(408) 920-0222

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SAN JOSE ELECTIONS COMMISSION REGULAR MEETING

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2 APPEARANCES  
3 San Jose Elections FRED de FUNIAK, Chair  
4 Commission: MICHAEL SMITH, Vice Chair  
5 LEON LOUIE  
6 BOB SHEPARD

7 Office of the City  
8 Attorney: Lisa Herrick

9 The Reporter: ADVANTAGE REPORTING SERVICES  
10 BY: NOELIA ESPINOLA,  
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1 PROCEEDINGS:  
2 CHAIRMAN de FUNIAK: I'm going to call the  
3 meeting to order. Time is 5:31. There is no closed  
4 session, no minutes to approve.  
5 Under report of the chair, just a couple of  
6 quick items.  
7 Nora, do we know anything about filling the  
8 position that will become open on March 1st? Or also  
9 two commissioners who need to re-up, and we need to  
10 move that process to make sure that they don't lapse.  
11 MS. PIMENTEL: So we have received the  
12 application from the incumbents. We haven't received  
13 any applications to fill your seat. It is -- the  
14 recruitment has been opened, and the deadline is  
15 February 4th. We've distributed the advertisement to  
16 the various distributions, the 18th floor, the Council  
17 offices. So, so far, that's the recruitment -- status  
18 on the recruitment process.  
19 CHAIRMAN de FUNIAK: And how about  
20 Commissioner Louie and Shepard, who need to be approved  
21 again?  
22 MS. PIMENTEL: Right.  
23 CHAIRMAN de FUNIAK: I don't want to have a  
24 similar situation where they don't get approved. And,  
25 in my case, get a phone call saying, You're temporarily

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1 not a member of the Commission.  
2 MS. PIMENTEL: So we have -- once the closing  
3 date of the recruitment, their applications would go up  
4 to the Council offices for their indications of  
5 interest to be interviewed. And if it was unanimous,  
6 then they wouldn't have to go through the interview  
7 process.  
8 And, of course, if we had other  
9 applications -- if it went smoothly, then everybody  
10 would go through the interview process for  
11 February 25th. That's the date that's been slated --  
12 or February 22nd, for the tentative interviews.  
13 CHAIRMAN de FUNIAK: Okay. Thank you.  
14 And second under report of the chair, I've  
15 handed out an article from a Vietnamese-American  
16 newspaper. I've got extra copies if you would -- each  
17 of you would like one.  
18 I will just say very briefly: It -- it's an  
19 article that quotes Minh Duong. I'm not going to go  
20 through the whole article, but he says, essentially,  
21 that at our meeting, when we heard a complaint against  
22 him, that the Commission vindicated him. I was going  
23 to comment on that, but I'm choosing not to because of  
24 the events in Arizona. I'll just let you read it  
25 and -- I'll let you read it and draw your own

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<p style="text-align: center;">Page 5</p> <p>1 conclusions.</p> <p>2 And then I will just say briefly that as we</p> <p>3 speak, the President of the United States is in</p> <p>4 Arizona, trying to heal the huge wounds there. We're</p> <p>5 the Elections Commission of a major city in the United</p> <p>6 States. We're part of the political and electoral</p> <p>7 process. So what I'd like to do is just have a moment</p> <p>8 of silence for those people who were killed or wounded</p> <p>9 and their families and focus on that aspect of it and</p> <p>10 not any divisiveness. So a moment of silence, please.</p> <p>11 (Moment of Silence.)</p> <p>12 Okay. Thank you. Any reports from the clerk</p> <p>13 or attorney?</p> <p>14 MS. HERRICK: I don't have anything.</p> <p>15 CHAIRMAN de FUNIAK: Okay. So we have, then,</p> <p>16 one item on the agenda. It's listed as 2, but report</p> <p>17 from the evaluator. And then we will need to come to</p> <p>18 some conclusions. To see what we do with the</p> <p>19 complaint. So Joan?</p> <p>20 MS. CASSMAN: Thank you, Mr. Chair. And I</p> <p>21 apologize for sounding nasal. This cold weather has</p> <p>22 given me a cold. But we will get through this. And</p> <p>23 good thing it's a rather short report tonight.</p> <p>24 So we were last together on December 1st.</p> <p>25 And then -- and at that time we had presented to you</p>	<p style="text-align: center;">Page 7</p> <p>1 Nguyen. And they all do have places in the print where</p> <p>2 it does urge a vote "no" on March 3rd. And they all</p> <p>3 were produced by a Committee For Concerned Citizens.</p> <p>4 We call that the group "the CCC."</p> <p>5 So I think, understandably, the Commission</p> <p>6 felt that we should go back and investigate and make</p> <p>7 sure that these newsletters and the activity supporting</p> <p>8 these newsletters did not involve violations of the</p> <p>9 Municipal Code, and we did that. And our investigation</p> <p>10 really was relatively short. What we did was look at</p> <p>11 reports that had been filed with the city clerk and</p> <p>12 found that indeed there was a group called Committee</p> <p>13 For Concerned Citizens, and it is the group that is</p> <p>14 noted in these newsletters.</p> <p>15 And they did file, in November of 2008, an</p> <p>16 initial report, Form 410, advising that they were a</p> <p>17 primarily formed committee. If you look closely, I</p> <p>18 think there was some confusion when they filled it out,</p> <p>19 because they marked that they were both a primarily</p> <p>20 formed committee and a general purpose committee.</p> <p>21 But it's very clear what they were doing.</p> <p>22 And they were going on record, identifying themselves</p> <p>23 and the purpose for which they were establishing</p> <p>24 themselves. And that was to support Council Member</p> <p>25 Nguyen and to oppose the recall effort.</p>
<p style="text-align: center;">Page 6</p> <p>1 our written report on the complaint that's been filed</p> <p>2 by Thomas Nguyen against the various defendants that</p> <p>3 are noted on the paper. We had recommended to you that</p> <p>4 the radio ads and activity that was involved with a Que</p> <p>5 Huong radio station were not violations of the</p> <p>6 Municipal Code and should be dismissed. And the</p> <p>7 Commission had agreed with that conclusion and did, in</p> <p>8 fact, dismiss those allegations.</p> <p>9 With respect to newsletters, the Commission</p> <p>10 felt that there was still an open issue. During the</p> <p>11 course of the complaint investigation, a copy of one</p> <p>12 newsletter had been submitted to us. The newsletter</p> <p>13 was not the basis of the original complaint, but it did</p> <p>14 surface in the course of the investigation. And just</p> <p>15 in the form of a copy of one.</p> <p>16 And what did happen was more evidence was</p> <p>17 produced by the complainant at the hearing on</p> <p>18 December 1st. And he came in with what appeared to be</p> <p>19 color originals of not only the paper copy that we had</p> <p>20 received during the course of the investigation but two</p> <p>21 additional newsletters that looked very similar and</p> <p>22 that appeared to be printed, published, by a similar</p> <p>23 group for a similar purpose.</p> <p>24 And, indeed, they are similar. And they do,</p> <p>25 contentwise, seem to be supportive of Council Member</p>	<p style="text-align: center;">Page 8</p> <p>1 They went ahead and filed an amended -- and</p> <p>2 these are all in your exhibits. They went ahead in</p> <p>3 December 8th, the -- early December of 2008, filed an</p> <p>4 amended Form 410 providing a little clearer information</p> <p>5 as to what they were about and identifying Phi Tron as</p> <p>6 their treasurer.</p> <p>7 The -- then, in January, we found in the</p> <p>8 records that they filed a Form -- an activity --</p> <p>9 campaign activity report, Form 460. And that report</p> <p>10 reflects that they did receive a contribution in the</p> <p>11 amount of \$2,000 and that they did expend \$1900 of the</p> <p>12 2,000 they had received for the purpose of producing</p> <p>13 three newsletters. And those are the three newsletters</p> <p>14 that did surface at the hearing last month.</p> <p>15 We ended up taking the additional step of</p> <p>16 calling Ms. Tron and talking to her, just to confirm</p> <p>17 her recollection, you know, that she had signed those</p> <p>18 reports and that the reports were for tracking --</p> <p>19 properly tracking and complying with the reporting</p> <p>20 requirements relative to the campaign activity to</p> <p>21 support Council Member Nguyen and to oppose the recall,</p> <p>22 as reflected in these three newsletters.</p> <p>23 And she said, yes, that is the case and that</p> <p>24 the committee was responsible for producing the content</p> <p>25 and actually getting these published. So that pretty</p>

SAN JOSE ELECTIONS COMMISSION REGULAR MEETING

<p style="text-align: center;">Page 9</p> <p>1 much solves that mystery, in our view.                  2       There was a second piece. Charlie Ly came up                  3 to me after the hearing and handed me some newspapers                  4 and wanted us to look at those newspapers because they                  5 also included some expressed advocacy language. And                  6 what we did -- our research was right to the point on                  7 that particular piece. Because that is a regularly                  8 published newspaper and they have a business office.                  9 They publish every week. And there is an expressed                  10 exception in the law for a newspaper, and they are -- a                  11 regularly published newspaper, magazine or other                  12 periodical is not subject to the expenditure                  13 regulations under the Elections Code. So --                  14       CHAIRMAN de FUNIAK: So it's a nonissue for                  15 the Commission?                  16       MS. CASSMAN: That's really a nonissue for                  17 the Commission. And we included it because we wanted                  18 to be thorough. But it didn't -- it didn't come up,                  19 really, in the course. If you recall, you had pretty                  20 much closed your hearing when Charlie handed them to                  21 me. But I felt that I should include them because                  22 of --                  23       CHAIRMAN de FUNIAK: Okay.                  24       MS. CASSMAN: I believe he came up to you,                  25 Mr. Chair, and you said, Please give it to the</p>	<p style="text-align: center;">Page 11</p> <p>1 as I recall, it was that, and anything else went on                  2 hold until you can do your report. Am I understanding                  3 that correctly?                  4       Okay. So what we need to do is take action                  5 at some point on any of the recommendations that we                  6 have not yet taken action on.                  7       So that's where we are. We'll clarify that a                  8 little bit more. But what I want to do is give anybody                  9 in the audience a chance to speak to this issue.                  10       COMMISSIONER SMITH: Do we ask questions                  11 first?                  12       CHAIRMAN de FUNIAK: Yes. I'm sorry. We're                  13 going to get that chance.                  14       COMMISSIONER SMITH: Hear them first.                  15       CHAIRMAN de FUNIAK: I'd rather hear them                  16 first. You'll get that chance.                  17       COMMISSIONER SMITH: I always have a                  18 question.                  19       CHAIRMAN de FUNIAK: Gentlemen, do you have                  20 anything you'd like to say? I'll give you more than a                  21 couple of minutes. There are only three of you.                  22       MR. SANDOVAL: Robert Sandoval.                  23       CHAIRMAN de FUNIAK: Okay.                  24       MR. SANDOVAL: President of West Evergreen --                  25       CHAIRMAN de FUNIAK: I'm sorry. Can you come</p>
<p style="text-align: center;">Page 10</p> <p>1 investigator. And I just took them.                  2       CHAIRMAN de FUNIAK: Right.                  3       MS. CASSMAN: But the meeting was officially                  4 over at that point in time. But we thought we would                  5 include it even as a matter of education for us, to                  6 understand that a regularly published newspaper is --                  7 does not -- it's just not -- it doesn't constitute                  8 campaign activity, and it's not considered an                  9 expenditure.                  10       CHAIRMAN de FUNIAK: Okay. So --                  11       MS. CASSMAN: So our recommendation at this                  12 point -- I think we've chased down every issue that's                  13 come before us, and we think we would commend that you                  14 close this and dismiss this second allegation relative                  15 to the three newsletters.                  16       CHAIRMAN de FUNIAK: Okay. I'm going to give                  17 you gentlemen a chance to speak, if you wish to, in                  18 just a few seconds. But I want to make sure that I                  19 fully understand where we are.                  20       According to my notes and in agreement with                  21 what Joan said in her opening remarks, the issue                  22 concerning the radio station -- I'm going to note that                  23 it was moved, seconded, carried, that we dispense with                  24 that.                  25       And then we go to the newspaper issue. And,</p>	<p style="text-align: center;">Page 12</p> <p>1 up here and have a seat.                  2       COMMISSIONER SMITH: He doesn't have to be                  3 sworn in, does he?                  4       CHAIRMAN de FUNIAK: No.                  5       MS. HERRICK: No, just for the microphone                  6 purposes.                  7       MR. SANDOVAL: Robert Sandoval, president of                  8 West Evergreen, supporter of Madison Nguyen.                  9       I believe you people have done a tremendous                  10 job in trying to clarify these allegations on behalf of                  11 Madison Nguyen, and I'm glad the attorney took this                  12 case on and that you'll find that there was no                  13 troublesome violations on behalf of Madison or anyone                  14 in her group. And I'm sure that you people, you as                  15 commissioners, will render a very, very fair resolution                  16 and in her favor.                  17       Thank you.                  18       MR. LY: Mr. Chair --                  19       CHAIRMAN de FUNIAK: State your name for the                  20 record.                  21       MR. LY: My name is Charlie Ly. I used to be                  22 full-time volunteer support of Council Madison Nguyen.                  23 Yet today I come -- I want to thank for commissioner or                  24 member commissioner to work on this case.                  25       The newspaper -- they have two. One, the</p>

SAN JOSE ELECTIONS COMMISSION REGULAR MEETING

<p style="text-align: center;">Page 13</p> <p>1 weekly Thang Bom. And then, close to the election,                  2 November, they come up another Thang Bom news. One                  3 they come up on Friday, and one they come up on                  4 Tuesday. And they all no -- advertise only attack                  5 Council Madison Nguyen.                  6 But after election, November 2nd, that's                  7 gone. And all the second news is gone. That's when                  8 they come out on purpose to support Madison Nguyen, the                  9 candidate.                  10 I think this one -- the first one, Thang Bom,                  11 they have business license. The one business license I                  12 give to you. And the second one, no business license.                  13 And then why did it come out on election and then after                  14 election, no more? That's what I want to ask                  15 commissioner and you to investigate some more.                  16 But okay. Now the election over. I think,                  17 Okay. Don't waste your time, don't waste the city                  18 money to investigate it. Because already recall City                  19 spent for half million dollar. Everything too much                  20 time. Because that group, they -- I think I can                  21 represent the people in -- that volunteer in the                  22 campaign to say "Thank you very much" for commissioner                  23 or member commissioner and city attorney and staff.                  24 Everything worked. I think case over. Let it go.                  25 Thank you very much.</p>	<p style="text-align: center;">Page 15</p> <p>1 wondering -- if that's the case, maybe that should at                  2 least be noted on there.                  3 MS. CASSMAN: Do you know -- you're saying                  4 the new -- the new regulations --                  5 COMMISSIONER SMITH: On the old ones -- we                  6 added some stuff, but I think in 2008 we still had a                  7 requirement.                  8 MS. CASSMAN: I thought the requirement at                  9 that time was just for a City Council seat or mayor.                  10 MS. HERRICK: Well, what happened -- that's                  11 an electioneering communication. So I actually don't                  12 recall when it went into effect. I can find -- I need                  13 to think about it.                  14 I actually think -- you know what? I                  15 actually think that it was -- I think we enacted that                  16 in --                  17 COMMISSIONER SMITH: We tweaked it a couple                  18 of times.                  19 MS. HERRICK: Well, we only tweaked it this                  20 past time.                  21 I think it went into effect in August of                  22 2009. We went to Council twice in 2009. In August we                  23 went with the electioneering communication piece. And                  24 then we went with some revisions to -- we went to the                  25 Council with revisions in December of 2010.</p>
<p style="text-align: center;">Page 14</p> <p>1 CHAIRMAN de FUNIAK: Thank you. Any other                  2 comment?                  3 UNIDENTIFIED SPEAKER: No.                  4 CHAIRMAN de FUNIAK: Okay. So,                  5 Commissioners, questions or comments for Ms. Cassman?                  6 COMMISSIONER SMITH: Yeah. I agree with your                  7 recommendation, though I got a question.                  8 MS. CASSMAN: Yes.                  9 COMMISSIONER SMITH: I believe there is a                  10 technical violation of those three newspapers, in that                  11 they don't meet the Municipal Code requirements as far                  12 as identifying who published them, the address and all                  13 of that other stuff that's supposed to be on political                  14 flyers. Because they really fall -- whatever the right                  15 term is, they really fall under that category. And it                  16 says "Committee of Concerned Citizens," but you had to                  17 go do some investigation to find out who they were,                  18 where they were and who their treasurer was, all that                  19 stuff that I believe the code says is supposed to be on                  20 the document itself.                  21 In fact, under the new regulations, it's                  22 supposed to be certain font size and all of that, which                  23 didn't apply in 2008.                  24 MS. HERRICK: Right.                  25 COMMISSIONER SMITH: But I'm just</p>	<p style="text-align: center;">Page 16</p> <p>1 COMMISSIONER SMITH: And that's when we did                  2 the font size and all that other stuff?                  3 MS. HERRICK: Correct. Or it could have been                  4 November 30th.                  5 MS. CASSMAN: We looked at that.                  6 COMMISSIONER SMITH: But at the time then                  7 there was no requirement?                  8 MS. HERRICK: I believe that's correct.                  9 COMMISSIONER SMITH: Okay.                  10 MS. HERRICK: But we did have the old                  11 Part 10, which was -- I think we called it -- it's not                  12 mass mailing but mailing -- or -- it was the old                  13 Part 10 that did have notice requirements in terms of                  14 requiring that we give -- that mailers, yard signs and                  15 the like give some of that "paid for by" information.                  16 And I would need to go back. I'm not sure I                  17 have it in this file, to look at what the old                  18 requirements were. That's something that if it was                  19 important to the Commission, we can certainly continue                  20 this hearing and look at that. Because that's                  21 something that we didn't discuss.                  22 COMMISSIONER SMITH: Yeah. I wouldn't                  23 propose changing the resolution. I think it just might                  24 be worth noting something. If, in fact, it's true                  25 that -- I mean, that's a good example of why that stuff</p>

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<p style="text-align: center;">Page 17</p> <p>1 should be on there.                  2 MS. CASSMAN: Yeah.                  3 COMMISSIONER SMITH: Because we had no idea                  4 that that was an electioneering communication and who                  5 it came from until you found the records and --                  6 MS. CASSMAN: Right. Right. I remember                  7 looking this up. And I -- there were, at the time,                  8 certain requirements for identification for City                  9 Council and mayor elections.                  10 COMMISSIONER SMITH: But because this was a                  11 recall --                  12 MS. CASSMAN: But this was a recall election.                  13 If you see my footnote at the bottom of Page 3, I tried                  14 to address that issue. And I think at the time -- I                  15 think you changed it since.                  16 MS. HERRICK: Right.                  17 MS. CASSMAN: I think I went back, and at the                  18 time it was a rather limited requirement as to what                  19 elections it applied -- that kind of disclosure applied                  20 to. And it only applied to City Council and mayor.                  21 COMMISSIONER SMITH: Now that you mention it,                  22 that may still be true.                  23 MS. CASSMAN: It may.                  24 MS. HERRICK: Well, we do talk about -- this                  25 section here -- if I may. I'm sorry. Mr. Chair.</p>	<p style="text-align: center;">Page 19</p> <p>1 recall election is a strange animal, where it's                  2 referred to as a ballot measure election.                  3 MS. CASSMAN: We were making that                  4 distinction. On a recall election, it doesn't really                  5 fit in either camp.                  6 MS. HERRICK: And particularly, I might say,                  7 the way we conduct recall elections. Because the way                  8 our charter works, we've got to have the recall                  9 election, and then separately we've got to have, then,                  10 an election to pick a candidate to be a successor if a                  11 recall is successful.                  12 COMMISSIONER SMITH: So are you saying --                  13 forget what it was in 2008, because we're not sure.                  14 But today, if there were a recall election, are you                  15 saying that you're not sure if anything requires an                  16 identification --                  17 MS. CASSMAN: Disclosure.                  18 COMMISSIONER SMITH: I think you said the                  19 Municipal Code doesn't but the FPPC regs might?                  20 MS. HERRICK: The FPPC would govern --                  21 COMMISSIONER SMITH: But, I mean, do they say                  22 anything about identification of --                  23 MS. HERRICK: In terms of notice or "paid for                  24 by," the Political Reform Act does have some                  25 requirements.</p>
<p style="text-align: center;">Page 18</p> <p>1 CHAIRMAN de FUNIAK: Go right ahead.                  2 MS. HERRICK: This actually is looking at our                  3 current -- our current --                  4 MS. CASSMAN: Code.                  5 MS. HERRICK: -- code, and it is using the                  6 phrase "electioneering communications."                  7 What I was going to say is, we talk about a                  8 clearly identified candidate for mayor or City Council.                  9 That's true. I think that that does -- because recall                  10 elections are characterized, really, as ballot measures                  11 rather than a candidate election. There is that                  12 distinction.                  13 And I think that it's true that we                  14 probably -- I shouldn't say "we probably." I believe                  15 that the City has always really regulated candidate                  16 elections rather than ballot measure elections.                  17 Of course, the Political Reform Act requires                  18 a whole bunch of stuff for ballot measure elections so                  19 that when we have city measures and committees are                  20 formed, there are requirements that they have to                  21 follow, similar. Filing a notice of intent, a                  22 Form 410, and then filing the Form 416s to make the                  23 campaign finance disclosures.                  24 But I think it is true that we basically                  25 regulate the candidate elections themselves. And the</p>	<p style="text-align: center;">Page 20</p> <p>1 COMMISSIONER SMITH: So it probably did in                  2 2008 as well?                  3 MS. HERRICK: I believe -- I would -- I                  4 believe so. I would say yes. And I'm not aware of any                  5 changes in the past couple of years.                  6 COMMISSIONER SMITH: Maybe -- rather than                  7 diverting us any further, maybe if I could --                  8 MS. CASSMAN: Get clarification?                  9 COMMISSIONER SMITH: Just maybe in a future                  10 meeting you could just report back to us on what                  11 combination of our Municipal Code and FPPC regs, what                  12 is required as far as "paid for," etc., for a recall --                  13 MS. HERRICK: For ballot measure elections.                  14 COMMISSIONER SMITH: For a ballot measure.                  15 And just make that an information item. I don't think                  16 it affects the disposition. It's just --                  17 MS. CASSMAN: Right.                  18 COMMISSIONER SMITH: -- kind of a nagging                  19 little thing.                  20 MS. CASSMAN: I think there is a looser                  21 standard for ballot --                  22 COMMISSIONER SMITH: Yes. Correct.                  23 MS. CASSMAN: -- for measures, and a recall                  24 is probably more of a measure.                  25 COMMISSIONER SMITH: Yeah, okay. That's all</p>

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1 I got.  
2 CHAIRMAN de FUNIAK: Okay. Any other  
3 questions, comments or concerns from the Commission?  
4 Okay. Then we need to take some action. I  
5 just want to -- again, for clarification, because I'm  
6 not quite sure how we want to craft a motion, but it  
7 seems to me that we've already taken care of the radio  
8 issue. We need to take care of all the other  
9 unresolved recommendations. But how specific do we  
10 need to get with that?  
11 COMMISSIONER SHEPARD: Can we just approve  
12 the report?  
13 COMMISSIONER LOUIE: That's what I was  
14 thinking.  
15 CHAIRMAN de FUNIAK: I guess that's what I'm  
16 asking.  
17 MS. HERRICK: I think that that would address  
18 the second piece of the complaint. And then you can  
19 adopt the recommendations, if that's your -- where  
20 you're going.  
21 CHAIRMAN de FUNIAK: Okay. The reason I'm a  
22 little bit concerned is that we have an initial report  
23 and then we have a follow-up report from December 1st  
24 and now we essentially have a third report. And so I  
25 don't want to -- I just don't want anything to slip

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1 through the cracks.  
2 MS. HERRICK: I think the motion could say  
3 that the Commission approves the recommendations of the  
4 report dated January 7, 2011. And then when I draft  
5 the resolution, obviously, I will then just refer to  
6 what you approved on December 1st as well as what the  
7 recommendations are from this January 7th report.  
8 COMMISSIONER de FUNIAK: Okay.  
9 MS. HERRICK: Not to put words in your mouth.  
10 But, if that's what you're inclined to do, that's a way  
11 you can do it.  
12 CHAIRMAN de FUNIAK: I'm asking  
13 specifically --  
14 MS. CASSMAN: You know what you could do. If  
15 you go back to our report of November 8th, we had five  
16 findings there. And the fourth finding -- we said that  
17 there was insufficient evidence, if you recall, at that  
18 point. And you said there was insufficient evidence to  
19 establish a violation of the Municipal Code relative to  
20 the newsletters.  
21 CHAIRMAN de FUNIAK: Yes.  
22 MS. CASSMAN: What we can now do is say that  
23 the evidence establishes that there is no violations.  
24 On that fourth one -- I think you adopted all the  
25 other -- you adopted all -- you adopted 1, 2, 3 and 5

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1 of our findings. So I -- maybe we can go back to that  
2 report, which had everything in it, and lock up this  
3 issue of the newsletters.  
4 COMMISSIONER SHEPARD: Isn't the newsletters  
5 covered in this discussion?  
6 MS. CASSMAN: Yeah, yeah, yeah.  
7 COMMISSIONER SHEPARD: So by approving the  
8 January 7th --  
9 MS. CASSMAN: By approving the --  
10 COMMISSIONER SHEPARD: -- report, you're  
11 effectively approving Point 4, right?  
12 MS. CASSMAN: Taking care of Number 4.  
13 Exactly.  
14 So, when you do your resolution, you might  
15 look at our report from the 8th and then just stick  
16 this in.  
17 MS. HERRICK: Okay.  
18 CHAIRMAN de FUNIAK: All right. In that  
19 case, I will entertain a motion to accept -- I'm still  
20 a little unclear. I wasn't sure that we adopted all  
21 the rest of the --  
22 COMMISSIONER SMITH: To cover -- to make  
23 sure, we could have a motion to accept all five  
24 recommendations from the letter of November -- whatever  
25 it was.

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1 CHAIRMAN de FUNIAK: Okay.  
2 COMMISSIONER SMITH: Even though we've  
3 already approved some of them, can we do it again?  
4 MS. CASSMAN: Do it again. We sure can.  
5 MS. HERRICK: Balance suspenders. Have at  
6 it.  
7 CHAIRMAN de FUNIAK: Okay. So I'll entertain  
8 a motion to that effect.  
9 COMMISSIONER SMITH: Okay. It was  
10 November -- what was the --  
11 MS. CASSMAN: November 8th -- November 8th  
12 was the date of our last report. And you met on  
13 December 1st.  
14 And with respect to -- and then with respect  
15 to the newsletters, you'll adopt the recommendation  
16 from the most recent report.  
17 COMMISSIONER SMITH: So it's the five  
18 recommendations in the memo of November 8th plus the  
19 recommendations relative to the newsletter from the  
20 memo of January 7th.  
21 MS. CASSMAN: Right.  
22 COMMISSIONER SHEPARD: Perfect.  
23 CHAIRMAN de FUNIAK: So moved.  
24 COMMISSIONER SMITH: So moved.  
25 CHAIRMAN de FUNIAK: Do we have a second?

6 (Pages 21 to 24)

SAN JOSE ELECTIONS COMMISSION REGULAR MEETING

<p style="text-align: center;">Page 25</p> <p>1 COMMISSIONER SHEPARD: Second.  2 CHAIRMAN de FUNIAK: Move is seconded. Any  3 further discussion?  4 (No response.)  5 All in favor?  6 (All Commissioners responded Aye.)  7 All opposed?  8 (No response.)  9 Okay. That motion carries, four to nothing.  10 Thank you. Thank you, Joan.  11 MS. CASSMAN: You're welcome.  12 CHAIRMAN de FUNIAK: Now, just one other  13 quick item. We have no discussion items.  14 COMMISSIONER SMITH: We have to certify it,  15 don't we?  16 CHAIRMAN de FUNIAK: I'm sorry. Thank you.  17 I always forget that. So, yes, we need to certify that  18 we have --  19 MS. HERRICK: -- personally heard the  20 testimony at the hearing on the complaint and reviewed  21 the entire evidence in the record.  22 CHAIRMAN de FUNIAK: Okay.  23 COMMISSIONER SMITH: So certified.  24 COMMISSIONER SHEPARD: Certified.  25 COMMISSIONER LOUIE: Certified.</p>	<p style="text-align: center;">Page 27</p> <p>1 There was a motion and a second.  2 Okay. Any other type of business there that  3 I seem to forget here?  4 A question: We got a February meeting, which  5 will be my last one because I'm done on March 1st. So  6 I won't be here at the March meeting, which means at  7 some point officers need to be elected. Would we do  8 that prior to my exit or after my exit? We still have  9 a vice chair who takes over, so there's not a problem  10 there for lack of officers.  11 MS. HERRICK: I think it makes sense to do --  12 to elect officers once the new officers -- the new  13 commissioners are --  14 CHAIRMAN de FUNIAK: That's what I'm  15 thinking, yeah.  16 MS. HERRICK: -- sworn in at the March  17 meeting.  18 CHAIRMAN de FUNIAK: It gives me a vote,  19 which I wouldn't mind doing, but with really little  20 effect. A new commissioner really ought to have the  21 say so, is my thought.  22 So what that means, then, I guess, is that  23 for the March meeting, Commissioner Smith will run the  24 meeting. And then at whatever point we get a  25 commissioner, it's up to the Commission then to decide</p>
<p style="text-align: center;">Page 26</p> <p>1 CHAIRMAN de FUNIAK: So certified.  2 MS. HERRICK: And would you like to direct --  3 CHAIRMAN de FUNIAK: Yes, I would.  4 MS. HERRICK: -- the attorney to prepare a  5 resolution reflecting the findings and recommendations  6 of the Commission -- the findings of the Commission,  7 and then designate -- or delegate, rather, the review  8 and approval of the resolution to the chair?  9 CHAIRMAN de FUNIAK: I think that's a  10 wonderful recommendation on our part.  11 COMMISSIONER SHEPARD: Tremendous.  12 CHAIRMAN de FUNIAK: Thank you.  13 MS. HERRICK: You might want to maybe move  14 and second to have the resolution prepared.  15 CHAIRMAN de FUNIAK: Motion to do that.  16 COMMISSIONER LOUIE: I make a motion to do  17 that.  18 COMMISSIONER SHEPARD: Agreed. Second.  19 CHAIRMAN de FUNIAK: Okay. Any further  20 discussion?  21 (No response.)  22 All in favor?  23 (All Commissioners responded Aye.)  24 Any opposed?  25 (No response.)</p>	<p style="text-align: center;">Page 28</p> <p>1 what they want to do at that point.  2 MS. HERRICK: I think that's correct.  3 COMMISSIONER SHEPARD: So the March meeting  4 would be March 9th. So we would still, technically  5 speaking --  6 CHAIRMAN de FUNIAK: No. You're out  7 March 1st.  8 COMMISSIONER SHEPARD: Oh, I thought you said  9 March 11th.  10 MS. HERRICK: Excuse me. I just think we  11 might want to just -- we can go off the record, I  12 think --  13 COMMISSIONER SHEPARD: Yes.  14 MS. HERRICK: -- at this point, since we're  15 finished with --  16 COMMISSIONER SHEPARD: Oh, I thought it was  17 March 11th.  18 CHAIRMAN de FUNIAK: Okay.  19 COMMISSIONER SHEPARD: I said the date --  20 MS. HERRICK: Do you want -- I think that you  21 can go off the record, because the hearing part is  22 being transcribed. We record everything else. But  23 we'll give our kind, friendly court reporter a break  24 and not transcribe our logistical discussion.  25 CHAIRMAN de FUNIAK: All right. So we're off</p>

SAN JOSE ELECTIONS COMMISSION REGULAR MEETING

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1 the record. Thank you.  
2 (At 6:03 p.m. the meeting concluded.)  
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1  
2 I, NOELIA ESPINOLA, do hereby certify:  
3 That the foregoing meeting was taken down  
4 by me in shorthand, and thereafter reduced to  
5 computerized transcription under my direction.

6 And I hereby certify the foregoing transcript  
7 is a full, true and correct transcript of my shorthand  
8 notes so taken.

9 I further certify that I am not interested in  
10 the outcome of this meeting.  
11  
12

13 Dated: , 2011  
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17 NOELIA ESPINOLA, NO. 8060  
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