

MEMORANDUM

TO: San Jose Elections Commission

FROM: Hanson Bridgett LLP

DATE: May 3, 2012

RE: Citizen Complaint

Complainant: **Tracey Jacobs**

Respondent: **Councilmember Pierluigi Oliverio**

Alleged Violations: **Campaign Violation**

Complaint Filed: **March 28, 2012**

I. INTRODUCTION

Pursuant to a complaint filed with the San Jose Elections Commission ("Commission") on March 28, 2012 ("Complaint"), we have conducted an investigation to determine whether Councilmember Pierluigi Oliverio violated Title 12 of the San Jose City Municipal Code ("Municipal Code").

As discussed below, we have determined that the evidence shows that Councilmember Oliverio did not violate any provision of Title 12 of the Municipal Code. We are recommending, therefore, that the Commission dismiss the Complaint and close its file in the matter.

II. COMPLAINT/ALLEGATIONS

A copy of the Complaint is attached as **Exhibit A**. The Complaint alleges that the Respondent violated the Municipal Code as follows:

- Respondent was campaigning during work hours;
- Respondent was passing out campaign literature and provided his official City of San Jose business card.

We contacted the Complainant to ascertain and clarify which provisions of the Municipal Code she was alleging had been violated by the Respondent and she indicated that she believed that by campaigning during work hours and using his official business card, the Respondent was improperly using City funds to support his re-election campaign.

III. JURISDICTION OVER THE COMPLAINT AND DETERMINATION AS TO CAUSE FOR INVESTIGATION

A. Evaluation of the Complaint

The Respondent was presented with a complete copy of the Complaint on April 5, 2012. **(Exhibit B)** Pursuant to a review of the Complaint and additional clarification from the Complainant, the Evaluator determined that the Complaint could allege violations of the Municipal Code or relevant state law. More specifically, the Complainant alleged that the Respondent was improperly using City resources to support his re-election campaign.

B. Conduct of the Investigation

Our investigation commenced with an interview of the Complainant. We then attempted to contact Tamberly Mott, a potential witness to the conduct in question. Ms. Mott was on vacation until May 1, 2012 and unreachable. Because of Ms. Mott's unavailability, we submitted a request to the City Clerk to extend the 30 day deadline set forth in Section H of City Council Resolution No. 75640. **(Exhibit C)**. This request for an extension was granted by Elections Commission Chair Michael Smith. Subsequently, we interviewed both Ms. Mott and the Respondent.

IV. SUMMARY OF RELEVANT FACTS

The evidence shows that at some point before March 18, 2012, Councilmember Oliverio stopped by Atria Willow Glenn, a senior care facility in San Jose where the Complainant lives. Though the Complainant alleged that Councilmember Oliverio was campaigning during his visit, the Complainant indicated that she did not personally see Councilmember Oliverio at the facility and, therefore, could not say whether the Councilmember was in fact campaigning during his visit. Our interviews with both the Respondent and Ms. Mott established and corroborated the following facts: (a) the Respondent was not campaigning during his visit, but merely stopped by to distribute flyers promoting City sponsored events being held at City Hall; and (b) the Respondent's re-election campaign was not discussed or mentioned during his visit.

V. LEGAL AUTHORITY

Relevant legal authority related to this investigation is found in the Municipal Code and the Political Reform Act:

A. Municipal Code

Municipal Code section 12.06.910 requires (in pertinent part) that each candidate file campaign disclosure reports with the City Clerk which "...show the total amount of contributions accepted and expenditures made, including independent expenditures." If the Respondent was using City funds to support his candidacy, he would have to disclose these transactions on his campaign disclosure reports.

B. The Political Reform Act

Government Code section 85300 states the following: "No public officer shall expend and no candidate shall accept any public moneys for the purpose of seeking elective office." If the Respondent was using City funds to support his candidacy, his conduct would have violated the Political Reform Act.

VI. FACTUAL FINDINGS AND ANALYSIS OF ISSUES

The facts in this matter are not in dispute. Though the Complainant alleged that Councilmember Oliverio was campaigning at Atria Willow Glenn, both the Councilmember and Ms. Mott stated that the Councilmember was not in fact campaigning, but rather was merely distributing flyers regarding City-sponsored events. As a result, there is no factual basis to conclude that the Respondent improperly misused City resources to support his re-election campaign or otherwise violated the Municipal Code or the Political Reform Act.

VII. CONCLUSIONS AND RECOMMENDATIONS

Based on the foregoing, we recommend that the Elections Commission:

- a. Find that Councilmember Oliverio did not violate any provision of Title 12 of the Municipal Code or state law; and,
- b. Close the file in this matter without further action.

Respectfully submitted,



Joan M. Cassman
Kevin R. Heneghan

Memorandum To:
San Jose Elections Commission
May 3, 2012
Page 4

EXHIBITS TO EVALUATOR'S REPORT

- **Exhibit A** - Complaint, dated March 18, 2012, received by the City Clerk on March 28, 2012
- **Exhibit B** - Letter from Hanson Bridgett LLP, to Councilmember Pierluigi Oliverio dated April 5, 2012, re: Complaint
- **Exhibit C** - Request for Extension from Hanson Bridgett LLP, to the City Clerk, dated April 19, 2012

EXHIBIT A



CITY OF SAN JOSE
SAN JOSE ELECTIONS COMMISSION
COMPLAINT FORM

File this form with the Office of the City Clerk
200 East Santa Clara Street
San José, CA 95113

Telephone: 408-535-1260; Fax: 408-292-6207

Your Name* Tracey Jacobs

Address Atria Willow Glenn, 1660 Gatton Drive, #MO8 San Jose CA 95125

Telephone (Home) Area Code(408) 771-4989 (Work) Area Code () _____

Your name, address and phone number are required. If you wish to remain anonymous, you may call the Elections Commission Anonymous Complaint Hotline at 408-975-ANON (2666) Certain Restrictions apply.

1. Nature of Complaint

Campaign

Gift Ordinance

Lobbyist

Revolving Door

2. Who is the person or persons you are complaining about? (Please provide name(s) and address(es); business and residence, if known.)

Pierluigi Oliverio, City of San Jose, 200 West Santa Clara Street, San Jose, CA 95113

3. Describe complaint. State all facts as specifically as possible. (Attach additional pages as necessary.)

Pierluigi was campaigning at Atria Willow Glenn during work hours. Handed out campaign literature and when asked for a business card, provided a City of San Jose business card.

Spoke regarding sewers and animal control.

4. Names and Addresses of potential witnesses, if known:

Tamberly Mott, 408-266-7756, Engage Life Director at Atria Willow Glenn

I have enclosed her card.

5. Additional Information:

I am also enclosing informational literature given to Tamberly mott during his visit.

6. Documentation: Please attach copies of any available documentation regarding the violation.

VERIFICATION

I certify under penalty of perjury under the law of the State of California that the above statements are true and correct.

Executed 3/18/2012 at San Jose, California
(Date) (City and State)

Tracy Ann Jacobs
(Signature)

& CITY OF SAN JOSE COUNCILMEMBER PIERLUIGI OLIVERIO

A Documentary
on the most basic
service The City
provides . . .
Sewers.



CRAPSHOOT

DATE/TIME:
April 23, 2012
6:31 PM

LOCATION:
City Council Chambers
200 E. Santa Clara St.
San Jose, CA 95113

Please RSVP
(408) 535-4906 or
denelle.fedor@sanjoseca.gov
Seating is Limited



CITY OF SAN JOSE & COUNCILMEMBER PIERLUIGI OLIVERIO

Cats and Dogs become best friends, soul mates and family members. Attend a documentary on Cats and Dogs followed by a discussion about our Animal Care Services division.



DATE/TIME:
March 12th, 2012
6:31 PM

LOCATION:
City Council Chambers
200 E. Santa Clara St.
San Jose, CA 95113

Please RSVP
(408) 535-4906 or
denelle.fedor@sanjoseca.gov
Seating is Limited





TAMBERLY
MOTT, PHD
engage life director

ATRIA WILLOW GLEN

408.266.1660

fax 408.266.7756

1660 gaton drive

san jose, california 95125

tamberly.mott@atriaseniorliving.com

www.atriawillowglen.com



Pierluigi Oliverio

COUNCILMEMBER
COUNCIL DISTRICT 6

200 E. Santa Clara Street, 18th Floor
San José, CA 95113

tel (408) 535-4906
Pierluigi.Oliverio@SanJoseCA.gov
www.sanjoseca.gov/district6/

Printing provided by small business in District 6.

EXHIBIT B



JOAN L. CASSMAN
PARTNER
DIRECT DIAL (415) 995-5021
DIRECT FAX (415) 995-3414
E-MAIL jcassman@hansonbridgett.com

April 5, 2012

Councilmember Pierluigi Oliverio
City of San Jose
200 West Santa Clara Street
San Jose, CA 95113

Re: ***Complaint Before the City of San Jose Elections Commission***
Respondent: Councilmember Pierluigi Oliverio
Nature of Complaint: Campaign Violation
Complaint Filed: March 28, 2012
Complainant: Tracey Jacobs

Dear Councilmember Oliverio:

The City of San Jose has retained our firm pursuant to Chapter 12.04.080 of Title 12 of the San Jose Municipal Code to serve as Evaluator for the Elections Commission and we have been assigned the above-referenced complaint. A copy of the complaint is attached.

Pursuant to Resolution No. 75640, we are reviewing the Complaint to determine whether sufficient cause exists to conduct a preliminary investigation. If we determine that further investigation is appropriate, we will want to speak with you for further information.

Let me know if you have any questions and thank you for your cooperation.

Very truly yours,

A handwritten signature in black ink that reads "Joan L. Cassman amb".

Joan L. Cassman

JLC:amb

Attachment

cc: City of San Jose, City Clerk



CITY OF SAN JOSE
SAN JOSE ELECTIONS COMMISSION
COMPLAINT FORM

File this form with the Office of the City Clerk,
200 East Santa Clara Street, San José, CA 95113
Telephone: 408-535-1260; Fax: 408-292-6207

Your Name* Tracey Jacobs

Address Atria Willow Glenn, 1660 Gaton Drive, #MO8 San Jose CA 95125

Telephone (Home) Area Code (408) 771-4989 (Work) Area Code ()

Your name, address and phone number are required. If you wish to remain anonymous, you may call the Elections Commission Anonymous Complaint Hotline at 408-975-ANON (2666). Certain Restrictions apply.

1. Nature of Complaint

Campaign

Gift Ordinance

Lobbyist

Revolving Door

2. Who is the person or persons you are complaining about? (Please provide name(s) and address(es); business and residence, if known.)

Pierluigi Oliverio, City of San Jose, 200 West Santa Clara Street, San Jose, CA 95113

3. Describe complaint. State all facts as specifically as possible. (Attach additional pages as necessary.)

Pierluigi was campaigning at Atria Willow Glenn during work hours. Handed out campaign literature and when asked for a business card, provided a City of San Jose business card.

Spoke regarding sewers and animal control.

4. Names and Addresses of potential witnesses, if known:

Tamberly Mott, 408-266-7756, Engage Life Director at Atria Willow Glenn

I have enclosed her card.

5. Additional Information:

I am also enclosing informational literature given to Tamberly mott during his visit.

6. Documentation: Please attach copies of any available documentation regarding the violation.

VERIFICATION

I certify under penalty of perjury under the law of the State of California that the above statements are true and correct.

Executed 3/18/2012 at San Jose, California
(Date) (City and State)

Tracy Ann Jacobs
(Signature)



TAMBERLY
MOTT, PHD
engage life director

ATRIA WILLOW GLEN
408.266.1660
fax 408.266.7756
1660 gaton drive
san jose, california 95125

tamberly.mott@atriaseniorliving.com
www.atriawillowglen.com



Pierluigi Oliverio
COUNCILMEMBER
COUNCIL DISTRICT 6

200 E. Santa Clara Street, 18th Floor
San José, CA 95113
Printing provided by small business in District 6.

tel (408) 535-4906
Pierluigi.Oliverio@SanJoseCA.gov
www.sanjoseca.gov/district6/

CITY OF SAN JOSE & COUNCILMEMBER PIERLUIGI OLIVERIO

Cats and Dogs become best friends, soul mates and family members. Attend a documentary on Cats and Dogs followed by a discussion about our Animal Care Services division.



DATE/TIME:
March 12th, 2012
6:31 PM

LOCATION:
City Council Chambers
200 E. Santa Clara St.
San Jose, CA 95113



Please RSVP
(408) 535-4906 or
denelle.fedor@sanjoseca.gov
Seating is Limited



& CITY OF SAN JOSE COUNCILMEMBER PIERLUIGI OLIVERIO

A Documentary
on the most basic
service The City
provides . . .
Sewers.



CRAPSHOOT

DATE/TIME:

April 23, 2012

6:31 PM

LOCATION:

City Council Chambers

200 E. Santa Clara St.

San Jose, CA 95113

Please RSVP

(408) 535-4906 or
denelle.fedor@sanjoseca.gov
Seating is Limited

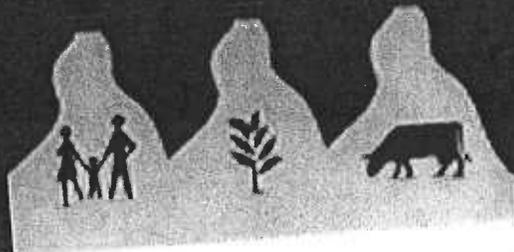


EXHIBIT C

Kevin R. Heneghan

From: Joan L. Cassman
Sent: Thursday, April 19, 2012 11:21 PM
To: 'Hawkins, Dennis (Clerk)'
Cc: Kevin R. Heneghan; Anna Barbour
Subject: San Jose Elections Commission-- Request for Extension re Complaint from Tracey Jacobs

Dear Dennis,

As we discussed, this email requests an extension of time to complete the Evaluator's Report in connection with the complaint filed by Tracey Jacobs on March 28, 2012. The 30 day deadline set forth in section H of City Council Resolution 75640 requires submission of the Evaluator's Report by April 27, 2012. We are requesting this extension due to the unavailability of the sole witness to the alleged conduct. The witness is on an extended vacation and will not be available until April 30th. We hope to speak with the witness when she returns on April 30th and anticipate that we will be able to complete the Evaluator's Report by May 3rd to allow the Elections Commission to consider the report at its regularly scheduled meeting on May 9th.

Accordingly, we request an extension of time until May 3rd to complete the Evaluator's Report.

If you or the Chair have any questions regarding this request or need additional information, please do not hesitate to contact me or in my absence, my partner, Kevin Heneghan.

Thank you. Joan