

Memorandum

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**HANSON
BRIDGETT**
**MARCUS
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TO: San Jose Elections Commission

FROM: Hanson, Bridgett, Marcus, Vlahos & Rudy, LLP

DATE: December 8, 2004

RE: Citizen Complaint

Complainant: **Councilmember Chuck Reed**
Respondents: **Councilmember Terry Gregory**
Alleged Violations: **Receipt of Prohibited Gifts**
Complaint Filed: **May 28, 2004**

I. INTRODUCTION

Pursuant to a citizen complaint filed on May 28, 2004, we conducted an investigation to determine whether Councilmember Terry Gregory (“Gregory”) violated §12.08.010 of the San Jose City Municipal Code (“Municipal Code”) by accepting gifts that exceeded the limits of the Municipal Code. In the course of our investigation, we discovered evidence that Gregory may have violated §§12.06.290 and 12.06.910 by 1) accepting contributions after the deadline for accepting contributions; and 2) failing to report contributions as required by the Municipal Code.¹

II. EXECUTIVE SUMMARY

The evidence establishes several violations of the provisions of the Municipal Code limiting the acceptance of gifts by elected officials. The evidence shows that Gregory received 1) two gifts of wine for which no payment was made and 2) complimentary tickets to a baseball game. In addition, in the course of our investigation we uncovered evidence that Gregory accepted complimentary passes to golf tournaments and other entertainment events, although it is not clear if this evidence sustains a violation of the Code. Likewise, allegations arose that Gregory solicited and accepted contributions from companies conducting business in his District in violation of the Municipal Code. However, there is insufficient evidence regarding these activities to determine a violation of the Municipal Code within the jurisdiction of the Elections Commission.²

¹ The investigation was conducted pursuant to Municipal Code §12.04.080 and City Council Resolution No. 71737.

² As we have determined that no violation exists as to these companies and they did not engage in any improper activity, we have elected not to disclose the identities of the companies in this report and refer to them respectively as “Company A, Company B and Company C.”

The evidence also establishes that Gregory received 18 campaign contribution checks, totaling \$3430, dated between October 8 and December 22, 2002. The evidence indicates that 17 of these checks were received after the deadline set forth in the Municipal Code for receipt of campaign contributions. The evidence also establishes that the checks were not returned to the donors nor donated to the City as required by the Municipal Code. Moreover, the checks were not properly reported in required campaign disclosures.

III. COMPLAINT/ALLEGATIONS

The complaint in the matter was filed by Councilmember Chuck Reed.³ A copy of the complaint is attached as Exhibit A. The complaint alleged violations of the provisions of the Municipal Code limiting acceptance of gifts by elected officials and named Gregory as Respondent.

The articles that appeared in the San Jose Mercury News, upon which the complaint was based, alleged that Gregory had accepted several meals from local business people and had not paid for the meals or disclosed receipt of the meals. The articles also detailed an incident in which Gregory solicited and received a case of wine, valued at approximately \$1400, from a local merchant and an incident in which Gregory solicited and received from a local businessman four tickets to an Oakland A's baseball game. The newspaper articles stated that Gregory did not pay for any of the items that he allegedly received. The complaint restates the concerns and issues raised in the newspaper articles: that the items constituted improper gifts to Gregory under the Municipal Code.

Subsequently, we discovered evidence of additional potential violations of the Municipal Code gift provisions. A former employee alleged that Gregory had pressured three companies conducting business in District 7, Gregory's District, to contribute money or face the possibility that Gregory would interfere with their business plans. We also learned of additional instances in which Gregory was alleged to have received items of value in violation of the Municipal Code. The former employee also alleged that Gregory had received campaign contributions after the close of the campaign contribution period and that the contributions had not been reported.

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

Gregory was notified of the allegations and presented with a complete copy of the complaint on June 9, 2004. (Exhibit B) We requested Gregory's participation in our investigation and in response to this correspondence, we were advised that he was represented by counsel and that his counsel would review the matter. (Exhibit C(1))

³ The facts/events constituting the allegations of the complaint were described in three newspaper articles that were attached to the complaint.

Pursuant to our review of the complaint and the relevant statutory provisions, we determined that the complaint alleged a violation of the Municipal Code. Specifically, to the extent that Gregory received meals, wine, baseball tickets or similar items without paying for them, these items constituted gifts as defined by §12.08.020. Depending on the value of these items, receipt of same may have constituted a violation of the Municipal Code or failure to report receipt of these items would have constituted a violation of the Municipal Code (*see*, §§1.04.110, 1.08.030, and 12.02.010(D)) and City Council Resolution 70092.⁴

As to the allegation, later discovered, that Gregory had received campaign contributions that had not been reported, we determined that this information also presented a potential violation of the Municipal Code warranting investigation. If Gregory received contributions in the fifteen-day period prior to the election he was obligated to return them and he was obligated to report any campaign contributions that were not returned (*see* §§12.06.290 and 12.06.910). We also notified Gregory, through his counsel, of these additional allegations (*see* next section).

V. CONDUCT OF THE INVESTIGATION

A. The Investigation Was Delayed Due To A Concurrent Investigation Being Conducted By The District Attorney.

The investigation was initiated with a review of the complaint and applicable statutory provisions. Initially, we determined that the complainant's knowledge of the allegations was limited to the information in the newspaper articles and, as a result, concentrated on the witnesses and evidence identified in those articles. An initial interview with Craig Mann ("Mann"), Gregory's former Chief of Staff corroborated certain of the allegations. Thereafter, we sought to adduce other facts through interviews with other witnesses identified in the articles, but were unsuccessful in contacting those witnesses.⁵

As noted above we sought to speak with the Respondent. The Respondent expressed, through his attorney, his desire to cooperate with our investigation. However, at the time we commenced our investigation the Santa Clara County District Attorney also initiated an investigation into the matters raised by the newspaper articles underlying Councilmember Reed's complaint. Accordingly, Gregory declined to participate in our investigation and requested that our investigation be postponed (*see* Exhibit C(2)). The Elections Commission considered Gregory's request for postponement of the investigation and in its meeting on June 28, 2004

⁴ The allegation that Gregory solicited contributions from the three businesses fell into this category as well.

⁵ The newspaper articles identified John DiNapoli ("DiNapoli"), Dennis Fong ("Fong"), James Wong ("J. Wong") and Allan Wong ("A. Wong") as potential witnesses.

determined that the investigation of the complaint should be placed in abeyance pending completion of the District Attorney's investigation.⁶ (Exhibit D)

B. Once The Investigation Was Re-Initiated, Additional Allegations Of Misconduct Had Been Raised And Were Investigated Along With The Original Allegations Of The Complaint.

At the end of October, the Chair of the Elections Commission requested that we determine the status of the District Attorney's investigation and the possibility of resolving the Elections Commission complaint concerning Gregory. Although the District Attorney does not provide information or details concerning its investigation, we were able to determine that that investigation was ongoing. While the pendency of that investigation indicated it was unlikely Gregory would submit to an interview or provide information to our investigation, we re-initiated our investigation.

We attempted to contact Mann and Fong for additional information concerning the allegations. At about the time we renewed our investigation, Mann filed a Government Tort Claim with the City alleging that he had been wrongfully terminated from employment as Gregory's Chief of Staff due to his protesting of certain activities by Gregory. Mann's Tort Claim repeated several of the allegations that constituted the complaint in this matter and included new allegations of misconduct by Gregory (see Exhibit E). As the Tort Claim indicated Mann was represented by counsel, we contacted his attorney to arrange a further interview of Mann related to the allegations before the Elections Commission. After some discussion, Mann's attorney consented to an interview.

We also had information that indicated Fong was represented by counsel, so we contacted his attorney to arrange an interview. Fong's attorney subsequently responded to our request for an interview with Fong and arrangements were made to interview Fong. In the meantime, as a result of the second and subsequent interviews with Mann (and review of his Tort Claim), we conducted interviews with Tommy Fulcher, a Senior Vice President of Company A, Steve Hasse (City of San Jose Planning Director), Tia Williams (Treasurer for Gregory's City Council campaign), an in-house counsel for Company B⁷, and an in-house counsel for Company C.⁸

With respect to the allegation involving John DiNapoli, we contacted Mr. DiNapoli and were referred to his attorney. Through his attorney we were able to obtain information from Mr. DiNapoli related to the complaint.

⁶ Any evidence uncovered in our investigation would have been accessible by the District Attorney in the conduct of its investigation. As the District Attorney's investigation was focused on potential criminal violations, we were advised by Gregory's attorneys that he would assert his constitutional right to decline answering questions in our investigation.

⁷ From the Mann interview and Tort Claim, we sought to contact an employee of Company B. This employee is on maternity leave and inquiry was referred to Company B's attorneys.

⁸ Mann identified an employee of Company C as a potential witness. We contacted this employee and he referred the matter to Company C's attorneys.

In addition to witness interviews, we reviewed the following records:

- Statement of Economic Interest (FPPC Form 700) filed by Councilmember Terry Gregory (Exhibit F);
- Campaign Contribution Forms (Recipient Committee Campaign Statement - FPPC Form 460 (“Form 460”)) filed by the Terry Gregory for City Council Campaign (Exhibit G);
- Campaign contribution checks dated October 8 - December 22, 2002 (Exhibit H);
and
- Gregory’s 2003 Outlook calendar (Exhibit I).⁹

As the evidence we had obtained indicated potential violations of the Municipal Code, we again contacted Gregory, through his counsel, requesting the opportunity to interview him and to obtain his version of these events. While reiterating the desire to cooperate with the Elections Commission, Gregory declined to be interviewed or provide additional information on the grounds that the District Attorney’s investigation was still pending and participation in our investigation would interfere with his constitutional rights. (Exhibit J)

VI. FACTUAL SUMMARY

A. Gregory Received Several Meals Without Paying For His Share Of The Cost.

The allegations forming the basis for this complaint arose from a claim, reported in a series of newspaper articles (see Exhibit A), that Dennis Fong (“Fong”) a local businessman had paid for several meals with Gregory that occurred beginning in or about September 2003 and continued into early 2004. Fong stated that he was meeting with Gregory with respect to Fong’s interest in the Tropicana Shopping Center property and Gregory’s efforts to assist Fong in a dispute with the City involving those properties. Fong indicated the dinners occurred at several restaurants in San Jose, including the Dynasty Restaurant and Blowfish. Fong stated that in each of these dinner meetings he picked up the check, including the tip. Fong stated that he had

⁹ A representative of Company A stated that the company had a letter from Gregory requesting a donation to the District 7 Community Events account. Although Company A was quite cooperative in providing information to our investigation, the representative advised that a subpoena would be required to obtain a copy of this correspondence. As we determined that obtaining a copy of this correspondence would not advance the purposes of our investigation we did not pursue this issue. We did, however, request that Gregory’s office provide us with copies of any correspondence related to Company A and have reviewed that letter.

receipts totaling approximately \$475 for these meals.¹⁰ Fong also stated that there were other occasions that he met with Gregory to have coffee at Starbucks and in similar circumstances and on these occasions he also picked up the tab. Fong stated that whether in the dinner meetings or these less formal meetings, he never observed Gregory providing any payment.¹¹

B. On Two Occasions Gregory Received Wine From Dennis Fong's Business Without Paying For The Wine.

Fong stated that in early February 2004 Gregory visited his wine shop to pick up campaign contribution checks that Fong had solicited from business associates for Nancy Pyle's City Council candidacy at the request of Gregory. While waiting to attend a campaign event for Pyle, Fong and Gregory opened and shared a bottle of Opus One wine. Fong understood that Gregory was interested in and enjoyed better quality wines and on several occasions had made statements that struck Fong as indirect requests for Fong to provide him with wine.

Fong had two cases of the Opus One wine in his shop at the time he met with Gregory in February and after sharing a bottle, offered Gregory one of the two cases. Gregory did not request the wine, but Fong believed from the conversation that Gregory wanted the wine and would accept his offer. Gregory did accept the offer. Fong did not ask for payment and Gregory did not make an offer to pay for the wine. Fong stated that the retail price for the wine was approximately \$240 per bottle. Accordingly, the value of the case (six bottles) was \$1440.

In addition to describing this event from February 2004, Fong related that during the course of Gregory's campaign for City Council, Gregory had requested that Fong donate wine for a party hosted by his campaign. Fong did not have a specific date, but recalled that it was a party to celebrate Gregory's election victory that occurred in December 2002. Fong states that he donated five (5) cases of Australian Shiraz wine that retailed for \$6 to \$7 per bottle.¹² The total value was \$180-\$210.

¹⁰ A newspaper report indicated Fong had produced receipts to substantiate his claim that he had paid for the meals. Fong offered to provide copies of those receipts, but our interview occurred just before he was leaving to go out of town. He indicated he would provide us with copies of the receipts upon his return. We will report on documentation provided by Mr. Fong in a supplemental report.

¹¹ In the course of the investigation allegations similar to the free meals provided by Fong arose. With respect to an allegation concerning King Eggroll, Mann described an instance in which the owner of the restaurant provided food for a staff meeting and declined to charge for the meal. We also received information from Tommy Fulcher, a local community leader, of reports that he had received that Gregory had a reputation of soliciting free food at the City's golf course. We did not uncover evidence to substantiate this allegation and as we explain later in the report, it appears that Gregory on at least one occasion requested items at the golf course on a complimentary basis, but ultimately paid for the items that he received.

¹² Mann confirmed that wine for the election victory party had been donated by Fong.

C. Gregory Received Tickets To A Baseball Game Without Paying For The Tickets.

The newspaper story reporting Gregory's interactions with Fong also reported that Gregory had received tickets to an Oakland As baseball game without paying for the tickets. We contacted John DiNapoli ("DiNapoli") a local businessman described as having property interests in Gregory's district and Craig Mann, Gregory's former Chief of Staff, regarding the details of the exchange reported in the newspaper. DiNapoli and Mann confirmed the facts that had been reported in the newspaper:

- Gregory contacted DiNapoli to request tickets to an Oakland As baseball game and later, through his Chief of Staff Craig Mann, inquired on the status of the tickets;
- DiNapoli obtained four tickets to an Oakland As game and left them at his office for pick up;
- Mann picked up the tickets and gave them to Gregory;
- Mann did not leave payment for the tickets when he picked them up and did not receive money from Gregory to pay for the tickets; and
- DiNapoli did not receive payment from Gregory for the tickets.

DiNapoli stated that the value of the tickets was approximately \$90. DiNapoli stated that this was the only request for tickets from Gregory.

D. Gregory Received Complimentary Admission Or Tickets To Local Community Events, Entertainment Events, And Golf Outings.

A review of Gregory's Outlook calendar indicates he planned to attend the following events. According to Mann, the entries from his Outlook calendar noted these items as events/activities for which Gregory received complimentary admission or was not required to pay for items or services that he received:¹³

- Tickets to Annual Silicon Valley Crime Stoppers Gala Recognition event
- Tickets to San Juan Batista Child Development Centers, Inc. - Spring Gala Charity Ball
- Tickets to Vision New America Annual Spring Gala Event
- Maranatha Christian Center 3rd annual Golf Tournament
- 11th Annual PAL Golf Classic
- 2nd Annual CBTU Golf Tournament
- CET Scholarship Golf Tournament

¹³ Except as noted, the events occurred in 2003 and Gregory did not report any of these items as gifts on the FFPC Form 700 that he filed for 2003.

- 2003 Awards Banquet Honoring Michael & Joan Hackworth
- 14th Annual Comcast San Jose Jazz Festival
- Round of golf at Cinnabar Hills Golf Course sponsored by Eric Brandenburg
- Santa Clara County Trial Lawyers Association Charity Golf Tournament
- 100 Black Men Annual Charity Golf Tournament
- Barbecue Pig Roast sponsored by John DiQuisto and Sal Rubino
- 21st Annual Compaq Barbecue
- Dinner with Vietnam Delegation sponsored by Victor Duong
- Tickets to *Buddy: The Buddy Holly Story*
- Crimestoppers Golf Tournament
- Round of golf at Cinnabar Hills Golf Course sponsored by Eric Brandenburg
- Franklin McKinney Education Fund Golf Tournament
- Inn Vision the Night Gala Benefiting homeless families and individuals
- 28th Annual President's Cup Golf Tournament
- Taste of the District
- San Jose Retired Employee's Assoc. Holiday Luncheon
- RFC Holiday Dinner
- AACI - The Sound of Silence
- Trial Lawyers Assoc. - 2003 Holiday Extravaganza
- Tickets to *Dreamgirls*, January 10, 2004
- S.C. County Assoc. of Realtors 2004 Inaugural Celebration
- 19th Annual Blue & Gold Wounded in Service Awards

(see Exhibit I)

E. Gregory Solicited Contributions From Three Companies Conducting Business in District 7.

As a result of the claim filed by Gregory's former Chief of Staff, we contacted three companies regarding a claim that Gregory had solicited contributions from them in violation of the Municipal Code.

1. Gregory demanded that Company A contribute to the District 7 Community Events Account.

In the first instance we spoke with a senior representative of Company A who related that a local manager had contacted the corporate headquarters as the result of contribution requests received from Gregory's staff. The senior representative indicated that Gregory's staff had requested that the local manager make a contribution to District 7 community activities. As the local manager had only a small budget for such activity, he offered the staff a small contribution, but was advised by Gregory's staff that a larger contribution was required. The manager ultimately made a contribution that exhausted most of his annual budget for community

contributions.¹⁴ When Gregory's staff demanded more, the local manager contacted a regional manager who raised the issue with the corporate headquarters.

The senior representative stated that he talked with Mann regarding the solicitation and was taken aback by the aggressive demands being made by Mann. In the course of this conversation, the senior representative made arrangements to travel to San Jose to meet with Gregory in person to discuss this matter. The senior representative had not encountered such tactics in other jurisdictions in which Company A operated and wished to determine if Mann was acting on his own or at the behest of Gregory. He also wished to make clear that although Company A supported community involvement, it would determine how and at what level it demonstrated that support. In the meeting with Gregory, the senior representative observed that initially Gregory was as aggressive as Mann in describing his view of Company A's community obligation. After the senior representative made clear that Company A would not be "bullied" and expressed concern over Gregory's approach, Gregory's tone appeared to change.

The senior representative denied receiving any express threats from Gregory if Company A did not cooperate with the demand, but perceived that Gregory was implying that his support for Company A would be tied to Company A's response to his requests. Ultimately Company A's contribution was limited to a \$500 gift card that was used to purchase supplies for a neighborhood clean-up campaign. The senior representative did not feel that there were any adverse or direct consequences as a result of the dispute with Gregory.

2. Gregory demanded that Company B make a contribution to support community activity in District 7.

In a second situation, Company B sought a permit to conduct business in a space that had been vacated by a similar business. Mann explained that Gregory was opposed to Company B taking over the space and made inquiries to the Planning Department as to steps that might be taken regarding the proposed permit. The Planning Director explained to Gregory that under the circumstances there was no course for objecting to Company B's plans. Mann stated that Gregory wanted the Planning Director to relay the message to Company B that he was not happy with their plans to initiate operations in the District.

Company B's representatives relate that their community relations manager approached Gregory to offer an "olive branch" and avoid a dispute over Company B's planned operations. The community relations manager explained that she met Gregory to explain Company B's business plans and to express Company B's interest in being a part of the community and willingness to assist with community projects. Company B states that in response to this gesture the notion of providing monetary support to a planned skate park was discussed. Company B's representative stated that Mann suggested a \$10,000 contribution for the park. Company B

¹⁴ The community event for which support was sought was a neighborhood clean-up campaign. Company A's contribution consisted of a gift card that permitted Gregory's staff to purchase items from the store and use them for the community event.

advised that that level of contribution was greater than it planned, but agreed to provide and did provide a contribution of \$5000 for the project.

Both the Planning Director and Company B denied that there had been any interference with Company B's permit request.

3. Gregory sought to have Company C make contributions to community projects in District 7.

In the final matter, Company C had proposed a General Plan amendment concerning property located within District 7. Gregory objected to Company C's plans from the outset and sought to have Company C's proposed amendment conform to his requirements. The primary change Gregory requested, adding a housing use for the property, was not consistent with Company C's plans or business interests and they declined to support his proposal.

Gregory took his objections to the Planning Director and the Planning Director sought to resolve Gregory's concerns by clarifying Company C's requirements. Gregory was not satisfied with the Planning Director's efforts and continued to seek changes from Company C. According to Mann, he was directed by Gregory to approach Company C and advise that Gregory would continue to oppose the proposed amendment when it came before the Planning Commission. Mann, at Gregory's direction, returned to Company C with a list of community projects that Company C could support to obtain Gregory's support when the matter came before the City Council.¹⁵ The amendment was not approved by the Planning Commission (despite the support of the Planning Director) and Company C advised Mann that it would not provide support to the projects described on the list. Nonetheless, the City Council approved the amendment.

F. Gregory Received Eighteen Campaign Contribution Checks After The Close Of The Campaign Contribution Period, But Did Not Report Receipt Of Those Checks On Its Disclosure Forms.

In April 2003, Gregory gave his Chief of Staff, Mann, thirteen checks that purported to be contributions to Gregory's election campaign. The eighteen checks, made out to "Terry Gregory for City Council" were as follows:

¹⁵ Mann related that the "list" of items was presented to Company C after the Planning Commission vote, but Company C's representative recalls that the request was made before that vote. The Planning Director confirms that a representative of Company C told him that Gregory had given him a "list" of community projects for which Company C's support was requested and appeared to be unsure of how to handle the matter. The Planning Director refused to advise Company C on Gregory's requests and did not accept any information concerning the "list." The Planning Director does not know how the issue of the "list" was resolved and did not observe any actions by Company C or Gregory that suggested that Company C had responded to Gregory's request.

<u>Donor</u>	<u>Date</u>	<u>Amount</u>
- Kennedy for Supervisor	10/08/02	\$250
- Stanley/Alma McKenzie	10/14/02	\$250
- Mary Doherty	10/14/02	\$250 ¹⁶
- Ponderosa Homes II, Inc.	10/15/02	\$250
- Antonio/Norma Cardenas	10/15/02	\$250
- Antonio/Norma Cardenas	10/15/02	\$250 ¹⁷
- Gordon Biersch Brewing Co.	10/17/02	\$250 ¹⁸
- Gordon Biersch Brewing Co.	10/17/02	\$250
- Flack + Kurtz, Inc.	10/17/02	\$250
- David Friedman/Paulette Meyer	10/17/02	\$250
- Yolanda Fuentes	10/18/02	\$250
- Philip/Cherie Stephens	10/19/02	\$10
- Thomasina Reed	10/19/02	\$100 ¹⁹
- Lou Correa for State Assembly	10/20/02	\$250
- Thakor/Vanleela Pandit	10/22/02	\$25
- Priti O'Shaugnessy		
- Roberta Nipper	10/22/02	\$20
- Barbaccia Properties	10/24/02	\$250
- AAMEA	12/20/02	\$25 ²⁰

Gregory instructed Mann to determine what should be done with the checks. Mann understood the directive to be a request to determine how the checks should be handled as they had been received “late” or perhaps had put the campaign over the contribution limit.²¹ Mann prepared a spreadsheet describing the checks and the contributors and requested that the campaign treasurer:

“scour (in stealth mode) the applicable City of SJ Campaign related ordinances and find out what the rules are about returning the \$3,430 worth of checks (see attachment) that were either late and/or in excess of the \$90k limit. We want to follow da’LAW. “

(Exhibit L)

Mann also drafted a proposed letter providing for return of the checks to the donors. The treasurer reported that the Municipal Code required that the checks should have been returned by

¹⁶ This check is made out to “Friends of Terry Gregory.”

¹⁷ These donors gave two checks (#10258 and #10260); each check appears to have a different signature.

¹⁸ Both of these checks are drawn on the “Brewery Account.”

¹⁹ The address on this check shows that the donor lives in Los Angeles.

²⁰ This check is made out to “Terry Gregory.”

²¹ For the November 2002 election, Gregory had subscribed to the voluntary spending limits.

October 24, 2002 and, therefore, should be returned to the donors now.²² Mann advised Gregory that the checks needed to be returned, but Gregory directed Mann to destroy the checks. Mann did not destroy the checks, but rather kept them and made copies of each.

On or about October 21, 2002, the Gregory campaign filed a Form 460 which detailed campaign contributions received between October 1 and October 19, 2002. This report listed the check dated October 8, 2002, but did not list the 12 checks dated between October 14 and October 19 (13 checks). (see Exhibit G(2)) On or about January 2, 2003, the Gregory campaign filed a Form 460 which detailed campaign contributions received between October 20 and December 31, 2002. This report did not list the five checks dated October 20 - December 22, 2002; in fact this report did not list any contributions. (see Exhibit G(3))

VII. LEGAL AUTHORITY

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

A. San Jose City Municipal Code

1. The Municipal Code contains the following provisions relevant to this investigation:

- a. **§1.04.110 Prohibited acts include causing, permitting or concealing.**

Whenever in this code any act or omission is made unlawful, it shall include causing, permitting, aiding, abetting, suffering or concealing the fact of such act or omission.

- b. **§1.08.030 Violation of administrative provisions.**

The violation of any administrative provisions of this code by any officer or employee of the city may be deemed a failure to perform the duties under, or observe the rules and regulations of, the department, office or board within the meaning of the civil service ordinances and rules and regulations of the city.

²² The exchange between Mann and the treasurer was by e-mail. Gregory subsequently directed them to "STOP THE PRESS This entire conversation should be taken off the Air. Please use your telephones." (Exhibits H and M)

c. §12.02.010 Intent.

A. This title is intended to implement Charter Section 607. It is a compilation of all city ordinances which directly regulate campaign conduct and ethics.

B. This title is intended to apply equally to the redevelopment agency of the city of San José and to any joint powers or other subsidiary agency of the city.

C. The provisions of this title are supplemented by city policies and administrative regulations. They are in addition to all applicable state and federal laws.

D. All city officials, including candidates for city office, members of all city and agency boards, commissions and committees, all city and agency employees and all persons doing business with the city or agency are expected to fully comply with all applicable provisions of this title as well as all other city ethics policies and regulations.

d. §12.02.080 Payment.

“Payment” means a payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible.

e. §12.02.100 Public official.

“Public official” means an elected or appointed officer or employee or officially designated representative, whether compensated or not, of the United States or any of its agencies, the state of California, any political subdivision of the state, including cities, counties, districts, or any public corporation, agency or commission.

f. §12.06.050 Contribution.

A. “Contribution” shall mean:

1. Any payment, loan, forgiveness or postponement of a loan, payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received, unless

it is clear from the surrounding circumstances that it is not made for political purposes.

2. An expenditure benefiting a candidate or committee made at the behest of a candidate, committee or elected officeholder is a contribution to the candidate, committee or elected officeholder unless full and adequate consideration is received for making the expenditure.

3. Contributions include the purchase of tickets for events such as dinners, luncheons, rallies and similar fund-raising events; the granting of discounts or rebates not extended to the public generally or the granting of discounts or rebates by television and radio stations and newspapers not extended on an equal basis to all candidates for the same office; the payment of compensation by any person for the personal services or expenses of any other person, if such services are rendered or expenses incurred on behalf of a candidate or committee without payment of full and adequate consideration; and the transfer of anything of value.

B. Volunteer personal services; payments made by an individual for his or her own travel expenses if such payments are made voluntarily without any understanding or agreement that they shall be directly or indirectly repaid to him or her; or independent expenditures made by independent committees are not deemed to be contributions for purposes of this chapter.

g. §12.06.210 Campaign contribution limitations.

A. The total campaign contribution made by any person to any councilmember, council candidate and any controlled committee of that candidate may not exceed:

1. One hundred dollars for the primary election;
2. One hundred dollars for the general election, if any;
3. One hundred dollars for any special election.

B. The total campaign contribution made by any person to any mayor, mayoral candidate and any controlled committee of the candidate may not exceed:

1. Two hundred fifty dollars for the primary election;
2. Two hundred fifty dollars for the general election, if any;
3. Two hundred fifty dollars for any special election.

C. If the candidate voluntarily elects to participate in the voluntary campaign expenditure limitation program, the alternative campaign contribution limitations set forth in Part 5 shall apply in lieu of subsection A. and B.

h. §12.06.290 Campaign contribution collection period.

A. No person shall solicit or accept any campaign contribution or deposit any contributions for any campaign into any municipal campaign bank account except during the campaign contribution period.

B. The campaign contribution period for the primary municipal election for council or mayor shall:

1. Begin on the one hundred eightieth day before the primary municipal election.

2. End at 5:00 p.m. on the seventeenth day prior to the primary municipal election

C. The campaign contribution period for the run-off municipal election for council or mayor shall:

1. Begin on the day after the primary municipal election for that office.

2. End at 5:00 p.m. on the seventeenth day prior to a run-off municipal election for that office.

D. Any contribution which is received outside of the campaign contribution period for an election shall not be accepted or deposited but shall be returned to the contributor or donor within five business days.

i. §12.06.295 Deposit of personal funds into campaign bank accounts.

A. A candidate must disclose the source of all personal funds deposited into his or her campaign bank account. If the source of the funds is a loan to the candidate, the name and address of the lender and the terms of the loan must also be disclosed.

B. The information required by subsection A. must be reported, on a form provided by the city clerk, on or before the date of the next pre-election statement which must be filed after the funds are deposited into the campaign bank account.

j. §12.06.500 Voluntary campaign expenditure limits program.

Each candidate participating in the voluntary campaign expenditure limits program shall comply with and receive all the benefits of the provisions of this chapter.

k. §12.06.530 Expenditure limits.

A. The expenditure limits shall be set at:

1. Seventy five cents per resident of the city for candidates for the office of mayor; and

2. One dollar per resident of the district for candidates for council office.

B. The city council shall adopt an expenditure limits resolution, in advance of each election cycle, specifying the expenditure limits. The expenditure limits shall be based on census data supplied by the director of the department of planning, building and code enforcement for the city and each council district and adjusted by the percentage increase in residents as determined by population data provided by the state of California, department of finance, city/county population estimates.

C. No candidate who files an expenditure ceiling statement participating in the voluntary campaign expenditure limits program shall make any campaign expenditure above the limits set forth in the expenditure limits resolution.

D. The city council shall review the amount of the expenditure limits set forth in subsection A. above, nine months in advance of each election, to determine if any change is warranted.

l. §12.06.540 Campaign contribution limits.

Candidates who participate in the voluntary campaign expenditure limits program shall be entitled to collect contributions in the following amounts:

A. The total contributions per election made by any person to any council candidate participating in the voluntary campaign expenditure limits program or to the controlled committee of that candidate shall not exceed a total of more than two hundred fifty dollars in the aggregate.

B. The total contributions per election made by any person to any mayoral candidate participating in the voluntary campaign expenditure limits program or to the controlled committee of that candidate shall not exceed a total of more than five hundred dollars in the aggregate.

m. §12.06.910 Statements and reporting requirements.

A. Each candidate and each committee, except committees whose sole purpose is to support or oppose a ballot measure, shall file, as a public record with the city clerk, cumulative itemized reports at the times specified herein showing the total amounts of contributions accepted and expenditures made. The required statements may be completed on campaign statement forms required to be filed by the regulations of the fair political practices commission so long as such forms are completed in sufficient detail to comply with the requirements of this chapter. Such statements shall contain a declaration by the candidate or committee treasurer that the candidate or committee has neither accepted nor solicited any campaign contribution in excess of the limitations of this chapter.

B. The listing of contributions shall include all contributions accepted during the campaign contribution collection periods specified in this chapter including all amounts less than one hundred dollars.

C. The first and second campaign statements shall be filed at the times prescribed for pre-election statements by the Political Reform Act. The second statement shall in addition include all contributions accepted through the end of campaign contribution collection period specified in Section 12.06.290.

D. Thereafter, semi-annual statements shall be filed in the form and at the times required by the regulations of the fair political practices commission.

n. §12.08.010 Gifts prohibited.

A. No officer or designated employee of the city or its redevelopment agency shall accept any gift, directly or indirectly, from any person who is subject to the decision-making or recommending authority of such officer or employee, except as specifically provided in this chapter.

B. "Person subject to the decision-making or recommending authority" means any individual, firm or entity whose interest or whose employer's or client's interest:

1. Has been materially affected by the work of such officer or employee within the two years prior to the time the gift is given; or

2. In the future could reasonably be foreseen to be materially affected by the work of such officer or employee.

o. §12.08.020 Gift defined.

“Gift” means a voluntary transfer of any thing, service, payment or value to the extent that legal consideration of equal or greater value is not received.

A. As used in this chapter, the term “gift” includes:

1. Any rebate or discount in the price of any thing of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status, or unless the rebate or discount is made available to all officers and employees of the city and redevelopment agency on an equal basis.

2. An officer's or employee's community property interest, if any, in a gift received by that individual's spouse.

3. The provision of travel, including transportation, accommodations and food, except as expressly permitted pursuant to Section 12.08.030.

B. As used in this chapter, the term “gift” does not include:

1. Campaign contributions which otherwise comply with Title 12 of the Municipal Code and which are required to be reported under Chapter 4 of the Political Reform Act of 1974 as amended.

2. Any devise or inheritance.

p. §12.08.030 Gifts not prohibited.

This chapter does not prohibit those gifts which strictly fall within the exceptions enumerated herein:

A. Gifts less than fifteen dollars: Token gifts which have a value of no more than fifteen dollars, as long as the total value of all such token gifts received from any one donor do not exceed fifteen dollars in any calendar year.

B. Informational material: Informational material such as books, reports, pamphlets, calendars, or periodicals or reimbursement for any such expenses. Informational material does not include provision of educational trips including transportation, accommodation and food.

C. Hospitality: Gifts of hospitality involving food, beverages or lodging provided to any officer or designated employee by an individual in such individual's primary residence.

D. Reciprocal gifts: Gifts exchanged between any officer or designated employee and an individual other than a local governmental lobbyist on holidays, birthdays, or similar occasions. This exception shall not apply to the extent that the gift received by the officer or designated employee exceeds in value gifts that he or she has given to the donor.

E. Meals and beverages: Meals and beverages provided to an officer or employee in a business or social setting.

F. Honoraria and awards: Honoraria and awards. As used in this chapter, "honorarium" means a payment or gift for speaking at an event, participating in a panel or seminar, or engaging in any similar activity.

G. Panels and seminars: Free admission, food, beverages, and similar nominal benefits provided to an officer or employee at an event at which the officer or employee speaks, participates in a panel or seminar or performs a similar service, and reimbursement or advance for actual intrastate travel or for necessary accommodations provided directly in connection with such event.

H. Admission given by sponsor of an event: Admission to ceremonial, political, civic, cultural or community functions provided by a sponsor of the event for the personal use of the officer or employee.

I. Employment interview - government employer: Transportation, accommodation, food and directly related expenses advanced or reimbursed by a governmental agency in connection with an employment interview, when the interview is conducted at least one hundred fifty miles from San José and where the situs of the employment will be at least the same distance from the city.

J. Employment interview - private employer: Transportation, accommodation, food and directly related expenses incurred in connection with an employment interview and a bonafide prospect of employment, when the expenses are advanced or reimbursed to an officer or designated employee by a potential employer, provided that the officer or designated employee has not made or participated in the making of a governmental decision materially affecting the financial interest of the potential employer during the twelve months immediately preceding the time the expenses are incurred or the offer of employment is made, whichever is sooner.

K. Authorized travel: Transportation, accommodation, food and directly related expenses for any officer or designated employee which has been authorized by a majority of the council or agency board or which is pursuant to a written city or agency policy for intrastate or interstate travel regardless of the source of payment.

L. City or agency business: Transportation provided to an officer or designated employee by a contractor or other person doing business with the city or redevelopment agency, provided that such transportation is related to city or agency business which is within the scope of employment or the duties of such officer or designated employee, and further provided that such transportation is not in excess of one hundred twenty-five miles one way. Nothing in this subsection shall be interpreted to limit the council's or agency board's discretion to approve travel under subsection K. above.

M. Flowers: Flowers, plants or balloons which are given on ceremonial occasions, to express condolences or congratulations, or to commemorate special occasions.

N. Prizes: A prize awarded on the basis of chance, provided that there are at least one thousand participants eligible to win the prize, a majority of whom are not public officials or government employees.

q. §12.08.040 Acceptance of gifts.

A gift shall be deemed to have been accepted except where:

A. It is not used, and, within thirty days after receipt, is returned to the donor or delivered to a charitable organization without being claimed as a charitable contribution for tax purposes.

B. It is treated as and remains the property of the city or agency.

C. It is received by an officer or designated employee in his or her official capacity or as a representative of the city or agency, is reported to the city council or agency board, and the council or board approves the retention.

r. §12.08.050 Reporting gifts to spouse and children.

A. At the time of filing the annual disclosure statement required by the political reform act or any applicable conflict-of-interest code, each city and redevelopment agency officer and designated employee shall file a family gift report on a form to be provided by the city clerk.

B. The officer or designated employee shall indicate on such report any gifts known to have been accepted during the relevant reporting period by such officer's or employee's spouse and any dependent child where such gifts would have been prohibited to the officer or employee. The value of any such gift and the donor must be disclosed. If the officer or employee has no knowledge of any such gift having been received, the report shall so state

B. City Council Resolutions²³

The City Council has passed resolutions relevant to this investigation:

1. City Council Resolution No. 70092 provides in pertinent part:

Persons holding designated positions listed in the attached Appendix 1 and consultants who are required to disclose pursuant to Appendix II shall file statements of economic interest when so notified by the City Clerk or by the terms of an employee or consultant agreement with the City in accordance with the Political Reform Act.

Appendix I identifies certain positions as "Designated Officials or Employees." With respect to the City Council, "Councilmembers" and "Consultants or Assistants" are identified as designated employees.

2. City Council Resolution No. 71737 provides in pertinent part:

3. In determining if penalties should be imposed for violations of Chapter 12.06 of the Municipal Code and the amount of any such penalties, the Commission shall consider all relevant circumstances surrounding the case including:

- a. the severity of the violation;
- b. the presence or absence of any intention to conceal, deceive, or mislead;
- c. whether the violation was deliberate, negligent, or inadvertent;
- d. whether the violation was an isolated incident or pervasive enough to indicate a pattern of disregard for this Chapter;
- e. whether the Respondent has a prior record of violations of City law relating to campaign finance, lobbying, conflicts of interest, or governmental ethics;

²³ Copies of these resolutions are attached at **Exhibit K**.

- f. the degree to which the Respondent cooperated with the investigation;
- g. whether or not corrective actions were taken, if appropriate, in accordance with the provisions of this Chapter.

VIII. FACTUAL FINDINGS AND ANALYSIS OF ISSUES

The facts that we have been able to adduce in this matter appear to be largely undisputed.²⁴ We found substantial evidence to sustain many of the allegations raised by the complaint.

A. Did Gregory Receive Wine From Fong In Violation Of The Municipal Code?

Yes.

Fong stated that he gave Gregory a case of Opus One wine valued at \$240 per bottle of wine (6 bottles). Fong also stated that Gregory did not pay for the wine. In the newspaper article reporting this incident Gregory gives conflicting statements as to whether he received the case of wine from Fong, but those statements do not appear to contradict Fong's version of the incident. The Municipal Code prohibits receipt of any gift valued at more than \$15, an amount clearly exceeded in this instance (i.e., approximately \$1440).

With respect to Fong's claim that he provided wine to a campaign event, the evidence indicates this event occurred as reported by Fong. A review of the campaign's disclosures does not indicate that Fong received payment for the wine from campaign funds or that the wine was treated as a contribution to the campaign. Accordingly, the evidence establishes a second instance of Gregory receiving a gift in excess of the Municipal Code limit of \$15 (total value of the wine was between \$180 and \$210).

In the newspaper article reporting Fong's allegations, speculation is raised as to Fong's motives for making allegations against Gregory. According to Fong, though, he was approached by a reporter to confirm the story and did not go to the press on his own. On the other hand, Gregory acknowledged his relationship with Fong, but denied that he had received any wine from Fong without paying for it and that he did not remember getting wine from Fong on that date. However, despite Gregory's initial denial, when told that a video camera showed him placing an item in his car, he appeared to change his response and stated that he might have bought some wine from Fong but could not remember.

²⁴ We reiterate the fact that we have not had the opportunity to question Gregory, and certain of the other witnesses, regarding the matters that have been reported in the newspaper articles, the information provided to us by Mann, or the other facts that we have ascertained through third party interviews. We understand that Gregory may be able to provide information that clarifies or contradicts the points that are discussed in this section. However, the conclusions set forth below are based on the evidence that is currently available.

Clearly this allegation devolves upon the credibility of Fong and Gregory. Notwithstanding, the speculation that Fong had a motive to “get” Gregory because of Gregory’s unsuccessful assistance to Fong in the Tropicana Shopping Center dispute, Fong’s description of the event appears credible. Similarly, his description of the wine contributed to Gregory’s campaign is corroborated by Mann. Thus, we find that the evidence sustains the allegations of violation of Municipal Code §12.08.010.

B. Did Gregory Receive Tickets To A Baseball Game From John DiNapoli Without Paying The Value Of The Tickets In Violation Of The Municipal Code?

Yes.

DiNapoli stated that Gregory requested tickets to an Oakland As baseball game (valued at approximately \$90), that he obtained the requested tickets, and that he left the tickets at his office to be picked up. Mann stated that he picked up the tickets from DiNapoli and gave the tickets to Gregory. DiNapoli stated that he never received any payment from Gregory for the tickets.

We find no evidence to contradict the facts related by Mann and DiNapoli and no reason to question the veracity of the information they have provided. Consequently, we conclude that the evidence establishes a violation of Municipal Code §12.08.010.

C. Did Gregory Receive Other Gifts In Violation Of The Municipal Code?

Insufficient evidence.

The evidence indicates Gregory was provided complimentary admission to several events or participated in activities on a complimentary basis. Most of these events/activities were ceremonial, political, civic, cultural or community functions for which a sponsor provided admission; or were meals and beverages provided in a social or business setting. Thus, complimentary passes to these events do not constitute “gifts” under the Municipal Code (see §12.08.030(E) and (H)).

On the other hand, the evidence indicates the following items are “gifts” and are not covered by the exception under §12.08.030(E) or (H):

- Round of golf at Cinnabar Hills Golf Course, June 13, 2003
- Tickets to *Buddy: The Buddy Holly Story*, September 13, 2003
- Round of golf at Cinnabar Hills Golf Course, September 19, 2003
- 28th Annual President’s Cup Golf Tournament, October 20, 2003
- Tickets to *Dreamgirls*, January 10, 2004

At this juncture there is insufficient evidence to determine whether Gregory actually attended these events. Mann states that it is likely that Gregory would have attended the events as it was his practice to list on his calendar those events that he anticipated actually attending.

D. Did Gregory Receive Campaign Contributions In Violation Of The Municipal Code?

Yes.

The statement by Mann establishes that Gregory received campaign contributions after October 19, 2002. The checks are dated between October 8 and December 22, 2002. Thirteen of the checks are dated prior to the campaign contribution cutoff, October 19, 2002 and five of the checks were dated after October 19, 2002. Although it is obvious that the latter five checks were received after the contribution deadline, the available evidence also indicates that the remaining twelve checks were received by Gregory after October 19, 2002.²⁵

The check dated October 19, 2002 was received from a donor from Los Angeles and it is unlikely the check was prepared on the 19th in Los Angeles and received in San Jose on the same day. Furthermore, Mann states that *all* of the checks were given to him by Gregory in April 2003 at the same time with a request to determine what should be done with the checks. Mann and the campaign treasurer, Williams, understood that the checks had been received after the contribution period ended.²⁶ Although it is possible that some of the checks were received before October 19, the weight of the evidence suggests otherwise. It seems only logical that if the 12 checks dated October 19 or before had been received before that date, they would have been deposited in the campaign's account. But the fact that they were never deposited and were kept by Gregory with checks received after the deadline leads to the conclusion that all of the checks were "late." On the other hand, even assuming that for some reason they had been timely received and simply not been deposited, the handling of the checks in April under the assumption that they were "late" contributions indicates *all* of them were received after October 19, 2002.

The evidence also clearly shows that the checks were never returned to the original donors. Mann provided copies of the checks and stated that the original checks had been turned over to the District Attorney. Although the District Attorney has not confirmed that it received the original of the checks, there is no evidence that suggests that Mann's statement on this point is not credible. Consequently, the evidence shows that these contributions were not returned to the donors.

With respect to the November 2002 election, Municipal Code §12.06.290 requires that campaign contributions received after October 19, 2002 were to be returned to the donors not later than

²⁵ One of the checks, dated October 8, 2002, was disclosed on the campaign's disclosure report, indicating the check was received before that report was filed on October 24, 2002 (covering the period through October 19, 2002).

²⁶ The e-mail exchange between Mann and Williams and Williams' statement corroborate the fact that these contributions were received as described by Mann.

October 24, 2002.²⁷ The foregoing facts demonstrate Gregory's failure to return the contributions received after October 19, 2002, a violation of Municipal Code §12.06.290.

In addition, in light of the two checks from Gordon Biersch, Gregory received a total contribution of \$500 from this one donor. As the maximum permissible contribution was \$250, the second check from Gordon Biersch constitutes an excess contribution that was not returned in violation of Municipal Code §12.06.540.

E. Did Gregory Fail To Report Campaign Contributions In Violation Of The Municipal Code?

Yes.

Municipal Code §12.06.910 requires that a candidate file a campaign finance disclosure statement at the end of the campaign contribution period (§12.06.910) disclosing all contributions received through that period. This form, Form 460, is to be filed with the City Clerk.

The City Clerk's file does not contain a disclosure report covering the period October 1-19, 2002.²⁸ Williams, the Gregory Campaign treasurer, recalled filing a report covering this period and that the report included all contributions received through October 19, 2002. She also stated that she filed this report with the City Clerk and the Santa Clara County Registrar. We contacted the County Registrar who provided a copy of a Form 460 for the Gregory Campaign covering the period October 1-19, 2002. Our review of this report indicates that only one of the checks identified in Exhibit H was reported as a contribution on this form. (see Exhibit G(2)) We also reviewed the Form 460 filed for the prior and subsequent reporting periods (October 20-December 31, 2002) and did not find that these checks were reported on the Form 460s filed before and after October 19, 2002. (see Exhibits G(1) and (2))

Accordingly, we find that the contributions identified in Exhibit H (except for the check dated October 8, 2002) were not disclosed as required by Municipal Code §12.06.910. Moreover, we find that the report filed on January 31, 2003 (Exhibit G(3)) contained inaccurate information. As of that time, Gregory knew that \$3180 had been contributed to his campaign, but the disclosure that he filed under penalty of perjury did not list those contribution checks.²⁹

²⁷ The Political Reform Act ("PRA") requires that candidates report "late" contributions to the FPPC on FPPC Form 461. As the Municipal Code does not contain a "late" contribution reporting requirement, we do not address whether Gregory's receipt of these contributions constitutes a violation of the PRA.

²⁸ The City Clerk's file contains a report through September 30, 2002. The next report in the file covers the period October 20, 2002 through December 31, 2002.

²⁹ The Gregory Campaign treasurer, Williams, also signed the disclosure report for October 20 - December 31, 2002. However, we find no evidence that Williams knew that Gregory had the unreported checks at the time she signed the report.

Finally, in light of our conclusion that Fong contributed wine to an event hosted by Gregory's campaign and that contribution was not reported on a Form 460 (and the fact that no payment was made for the wine), we also find a violation for failing to report this contribution.

F. Do The Meals/Beverages Paid For By Fong That Gregory Received Constitute A Violation Of The Municipal Code?

No.

Both Mann and Fong described a dinner at the Dynasty Restaurant to recognize Gregory's campaign victory that Gregory attended.³⁰ Mann stated that he stayed at the restaurant to the end of the evening and did not observe Gregory making any payment for his meal or beverages and also stated that he was never charged or made a payment for the food and beverages that he consumed at the dinner.

Fong described several occasions that he paid for meals that Gregory attended. Fong also stated that he has receipts that corroborate his statement.³¹ In the newspaper articles describing the meals, Gregory acknowledges participating in meals paid for by Fong. Gregory's explanation that he left "tips" in cash to cover his portion of the meals is contradicted by the receipts that show that Fong paid for the meals and left tips as well.

Although these facts are undisputed and demonstrate that Gregory received meals paid for by Fong, the meals were conducted in a business or social setting and, therefore, are not considered a "gift" under the Municipal Code. Section 12.08.030(E) provides that "[m]eals and beverages provided to an officer or employee in a business or social setting" are not gifts.³²

G. Did Gregory Receive Food/Services At The City's Golf Course Without Paying The Value Of The Food/Services In Violation Of The Municipal Code?

No.

Tommy Fulcher stated that he was informed that employees at the City's golf course had complained of instances in which Gregory would order/request food at the snack bar without paying for it. We contacted the food/beverage manager at the Los Lagos golf course who

³⁰ Gregory's Outlook calendar shows an entry for a dinner at the Dynasty Restaurant that corresponds with Mann's and Fong's statements.

³¹ The newspaper reported that Fong provided copies of receipts totaling \$475 and in our interview Fong stated that he had receipts for the meals that he paid for. As of the time our report was prepared, we had not received copies of Fong's receipts. However, we will provide copies of those receipts in a supplemental report.

³² The evidence indicates that the value of the dinner/beverages that Gregory received on January 4, 2003 exceeded \$50 and the total value of meals that he received from Fong in 2003 exceeded \$400. None of these meals were reported by Gregory on his statement of economic interest (FPPC Form 700) These facts indicate a potential violation of state law.

indicated one report from an employee indicating Gregory had requested a complimentary item. However, when the employee advised Gregory that he would have to pay for the item, Gregory did so. The evidence does not indicate this was other than an isolated incident. The food and beverage manager confirmed that this was the only incident that had come to his attention.

Based on the foregoing, we do not find evidence of a violation of the Municipal Code.

H. Does Gregory Solicitation/Receipt Of Contributions To District 7 Community Events/Facilities Constitute A Violation Of The Municipal Code?

No.

The evidence shows that Gregory solicited/received contributions to District 7 community events/projects from Companies A and B. Statements by representatives of Company A indicate Gregory's staff contacted a local manager of Company A requesting a contribution to the District 7 Community Events fund to support a neighborhood clean-up project and that the local manager provided a \$500 gift card in response to this request. Representatives of Company B stated that they approached Gregory to offer their support to District 7 community needs and in response to that request Mann suggested a \$10,000 contribution to a planned skate park. Company B agreed to contribute and did contribute \$5,000 to the skate park. There is no evidence that Gregory obtained any personal benefit from these contributions.

The evidence shows that Gregory solicited contributions from Company C. However, there is no evidence that Company C responded to this request.

There is no evidence that the City's processes or policies were interfered with or adversely affected by these solicitations or contributions. Although there is evidence that Gregory opposed the business plans of Companies B and C and premised his solicitations to those companies on gaining his support for their business plans/operations, there is no evidence that Gregory improperly intervened on behalf of the companies because of their contributions or interfered with the companies' plans because they declined to contribute. The facts show that Company B's use permit was approved in accordance with City procedure; Company C's General Plan amendment proposal was processed and approved according to City policy and procedure.³³

The Municipal Code does not prohibit an elected official from requesting monetary or in-kind support of community/public projects.³⁴ Accordingly, Gregory's interactions with Companies A, B and C do not constitute a violation of the Municipal Code.

³³ Company A did not have any requests related to its business practices pending with any agency of the City. Company A denies any direct adverse consequences to its interests as a result of its dispute with Gregory over the size of its contribution.

³⁴ Municipal Code §12.08.030 provides that an item that might otherwise be considered an improper gift under the Municipal Code is not a gift if "[i]t is treated as and remains the property of the city or agency."

IX. CONCLUSIONS

Based on the foregoing, we conclude that:

- The evidence establishes that Gregory received two gifts of wine from Dennis Fong on two separate occasions, the value of which in each instance exceeded the limits under Municipal Code §12.08.030, in violation of Municipal Code §12.08.010.³⁵
- The evidence establishes that Gregory received a gift from John DiNapoli (baseball tickets), the value of which exceeded the limits under Municipal Code §12.08.030, in violation of Municipal Code §12.08.010.
- The evidence is inconclusive as to whether Gregory received gifts by accepting the items described in section VIIC above, the value of which each individually exceeded the limits under Municipal Code §12.08.030, in violation of Municipal Code §12.08.010.
- The evidence fails to establish a violation with respect to other meals that Gregory received.
- The evidence fails to establish that Gregory violated the Municipal Code in soliciting contributions to support District 7 community projects from Companies A, B, and C.
- The evidence establishes that Gregory violated the Municipal Code by not returning \$3180 worth of campaign contributions received after October 19, 2002.
- The evidence establishes that Gregory violated the Municipal Code §12.06.910 by not reporting \$3180 worth of campaign contributions.
- The evidence establishes that Gregory violated the Municipal Code §12.06.910 by not reporting a contribution of wine valued at \$180-\$210.

X. RECOMMENDATIONS

We recommend:

- that the Elections Commission assess a penalty pursuant to Municipal Code for the violations described above;

³⁵ The evidence also establishes that Gregory did not report these gifts on his Form 700 as required by state law (see also City Council Resolution No. 70092).

Memorandum To:
San Jose Ethics Board
December 8, 2004
Page 29

- that the Elections Commission refer the issue of Gregory's receipt of "late" contributions to the FPPC for further investigation;
- that the Elections Commission refer the issue of Gregory's receipt of gifts, as that term might be defined by state law, in violation of state law to the FPPC for further investigation;
- that the Elections Commission refer the issue of Gregory's failure to report the receipt of gifts in violation of state law to the FPPC for further investigation; and
- that the Elections Commission hold a hearing to consider the allegations against Gregory and to determine if additional evidence indicates that Gregory received complimentary items identified in section VIIC; and
- that the Elections Commission invite as witnesses the Respondent, Eric Brandenburg, Craig Mann, Tia Williams, Dennis Fong, Trang Nguyen, and John DiNapoli.

Respectfully submitted,

Joan L. Cassman

M. D. Moye

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Attachments to Report of Investigation

- **Exhibit A** - Citizen Complaint, dated May 28, 2004, including attachments
- **Exhibit B** - Letter from Hanson, Bridgett, Marcus, Vlahos & Rudy, LLP, to Councilmember T. Gregory, dated, June 9, 2004, re: Notification to Respondent
- **Exhibit C** -
 - (1) Letter from S. Manchester to Hanson, Bridgett, Marcus, Vlahos & Rudy, LLP, dated, June 14, 2004, re: Elections Commission Complaint
 - (2) Letter from J. Sutton to Hanson, Bridgett, Marcus, Vlahos & Rudy, LLP, dated, June 24, 2004, re: Elections Commission Complaint
- **Exhibit D** - Minutes of June 28, 2004 Elections Commission Meeting
- **Exhibit E** - Government Tort Claim Act claim filed by C. Mann on November 1, 2004
- **Exhibit F** - Statement of Economic Interest (FPPC Form 700), dated April 1, 2004
- **Exhibit G** - Recipient Committee Campaign Statements (FPPC Form 460) filed by the Terry Gregory for City Council Campaign
 - (1) Period: July 1, 2002 - September 30, 2002
 - (2) Period: October 1, 2002 - October 19, 2002
 - (3) Period: October 20, 2002 - December 31, 2002
- **Exhibit H** - Campaign contribution checks dated October 8 - December 22, 2002
- **Exhibit I** - Outlook Calendar excerpts
- **Exhibit J** - Letter from J. Sutton to Hanson, Bridgett, Marcus, Vlahos & Rudy, LLP, dated, December 2, 2004, re: Request for Interview

Memorandum To:
San Jose Ethics Board
December 8, 2004
Page 31

- **Exhibit K** -
 - (1) City Council Resolution No. 70092
 - (2) City Council Resolution No. 71737
- **Exhibit L** - E-mail Exchange Between C. Mann and T. Williams, dated, April 5, 2003,
re: Campaign Contributions