

MEETING MINUTES

December 14, 2016

I. Call to Order & Orders of the Day

Roll Call

PRESENT: Chair Michael Smith, Board Members Adrian Gonzales and Chris Peacock

ABSENT: Board Member Madhavee Vemulapalli

STAFF: Deputy City Attorney Mark Vanni, City Clerk Toni Taber, and Sr. Deputy City Clerk Cecilia McDaniel

OTHER: Steven Miller, Independent Investigator/Evaluator

Call to Order

The members of the San José Board of Fair Campaign and Political Practices convened at 5:49 p.m. in Room W-120 of City Hall, 200 E. Santa Clara Street, CA 95113.

Orders of the Day

Action: Upon motion by Board Member Adrian Gonzales, seconded by Chair Michael Smith and carried, the Board approved the adoption of the December 14, 2016 agenda with the Item V. (Consent Calendar) delayed until later in the meeting. (3-0-1. Absent: Vemulapalli.)

II. Closed Session – None.

III. Hearings

- A. Hearing on Complaint filed by Eric Emmanuele on October 28, 2016 against Josh Barousse alleging violations of the San José Municipal Code (Independent Investigator/Evaluator)

Documents Filed: 1) Report from Hanson Bridgett LLP dated December 6, 2016 regarding Eric Emmanuele v. Josh Barousse, Complaint filed October 28, 2016; and 2) Response to Complaint filed by Josh Barousse received by City Clerk's Office on November 21, 2016.

Discussion: Chair Michael Smith opened the public hearing. Evaluator Steven Miller summarized the Complaint and his recommendations to the Board. Complainant Eric Emmanuele was not present. Respondent Josh Barousse was present and provided testimony (after being sworn in by Chair Michael Smith) and responded to Board questions. Evaluator Steven Miller and Deputy City Attorney Mark Vanni responded to questions and clarified San José Municipal Code Sections 12.06.410 and 12.06.720.

Action: Chair Michael Smith moved that the Board find, based on a preponderance of the evidence from the entire record of the proceedings, that Respondent Josh Barousse violated San José Municipal Code Section 12.06.410 by the prohibited transfer of city campaign funds to other city and noncity campaign funds. Board Member Adrian Gonzales seconded the motion, which carried with a 3-0-1 vote. (Absent: Vemulapalli)

Action: Chair Michael Smith moved that the Board find that there was insufficient evidence to establish that Respondent Josh Barousse violated San José Municipal Code Section 12.06.720. Board Member Adrian Gonzales seconded the motion. Chair Michael Smith subsequently withdrew the motion after Board discussion.

Action: Board Member Adrian Gonzales moved that the Board find, based on a preponderance of the evidence from the entire record of the proceedings, that Respondent Josh Barousse violated San José Municipal Code Section 12.06.720 by the improper disposition of surplus campaign funds. Chair Michael Smith seconded the motion, which carried with a 3-0-1 vote. (Absent: Vemulapalli)

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

Action: Board Member Adrian Gonzales moved that the Board impose a civil penalty of \$500.00 (five hundred dollars) against Respondent Josh Barousse pursuant to Chapter 12.04 of the San José Municipal Code. Chair Michael Smith seconded the motion, which carried with a 3-0-1 vote. (Absent: Vemulapalli)

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

Action: Chair Michael Smith moved that the Board direct the City Clerk to deposit the check (in the amount of \$2,841.15) received from Respondent Josh Barousse (from the Fast Forward Committee bank account) into the City of San José's general fund. Board Member Adrian Gonzales seconded the motion, which carried with a 3-0-1 vote. (Absent: Vemulapalli)

Action: Upon a motion by Chair Michael Smith, and seconded by Board Member Chris Peacock and carried, moved that the Board direct the City Attorney to draft a Resolution with the Board's findings, and further, that the Board authorize the Chair to approve and sign the resolution. (3-0-1; Absent: Vemulapalli)

Chair Michael Smith declared the hearing on this matter closed.

IV. Public Record – None.

V. Consent Calendar

B. Approve the Minutes of November 9, 2016 – Regular Meeting

Documents Filed: Draft Minutes for the November 9, 2016 Regular Meeting.

Action: Upon motion by Chair Michael Smith, seconded by Board Member Adrian Gonzales and carried, the Board approved the meeting minutes of November 9, 2016. (3-0-1. Absent: Vemulapalli)

VI. Reports

A. Chair – None.

B. City Attorney –

1. Legislative update – None.
2. Status of outstanding Ethics Commission/BFCPP Resolutions – Deputy City Attorney Arlene Silva is working with staff on the backlog.
3. Election update – None.
4. Gift Ordinance update – Deputy City Attorney Mark Vanni to bring a draft Gift Ordinance for review by the Board at its January 11, 2017 meeting.

C. City Clerk

1. Legislative update

Documents Filed: Printouts from the League of California Cities City Clerk's New Law and Elections Seminar.

Discussion: City Clerk Toni Taber reviewed the printouts with the Board and called out a few interesting changes to the law effective January 1, 2017 (required to give double the time limit for public comment to speakers with translators; and a legislative body must publicly report any action taken and the vote or abstention on that action of each member present).

2. Status report on filings (Form 700, Campaign Statements, Lobbyist) – Form 700 training has been provided to department liaisons and Clerk's Office will be testing an e-filing system for lobbyists per direction from the Mayor.
3. Elections update – The City Council certified the elections results for November 8, 2016 Presidential General election. The District 8 ballot recount results from the Santa Clara County Registrar of Voters have been postponed to December 19, 2016.
4. Update on Board Expenditures

Document Filed: 1) Board Expenses FY 16-17 Spreadsheet from the City Clerk's Office; and 2) Hanson Bridgett Contract Expenses FY 16-17 Spreadsheet from City Attorney's Office.

Discussion: City Clerk Toni Taber reviewed the expenses with the Board and indicated that there were no additional expenditures since the last meeting.

Action: No action taken.

5. Board Recruitment

Document Filed: Recruitment flyer for the Board vacancies.

Discussion: City Clerk Toni Taber announced that only one application has been received and encouraged the Board Members to recruit individuals by word of mouth.

Action: Chair Michael Smith requested that former applicants be notified of the vacancy. City Clerk Toni Taber is also looking at other groups to send an application to (e.g. unsuccessful Council candidates).

D. Investigator/Evaluator – None.

VII. Old Business

A. Discussion and possible action on report from ad hoc subcommittee on referral from City Council to analyze ordinances 29792 and 29793. (Board Members Adrian Gonzales and Chris Peacock)

Discussion: Board Member Adrian Gonzales informed the Board of his conference call with Board Member Chris Peacock, Deputy City Attorney Mark Vanni and Sr. Deputy City Clerk Cecilia McDaniel to review City Council Ordinances 29792 and 29793. The key issues identified are: 1) possible abuse of Pro Bono legal services; 2) the prohibition of paying fines and penalties with the legal defense fund; and 3) clarity of language and continuity within Title 12. Deputy City Attorney Mark Vanni responded to Board questions. Chair Michael Smith asked if allowing campaign funds to be raised post-election to initiate legal action was an issue that should be considered. Board Member Adrian Gonzales reported that additional research is needed and that the ad hoc subcommittee will bring a draft recommendation for review by the Board at its January 11, 2017 meeting.

Action: No action taken.

B. Discussion and possible action on report from ad hoc committee on community outreach. (Board Member Chris Peacock)

Action: Item deferred to the January 11, 2017 meeting.

C. Scheduling of Special Ethics Commission meeting if needed. (City Clerk)

Action: No action taken.

VIII. New Business

A. Status of lobbyist ordinance. (City Attorney)

Discussion: Deputy City Attorney Mark Vanni reported that staff is working on a draft ordinance that will be brought before the Board for review in January or February 2017. Language is being added to allow for e-signature on lobbyist registration and reporting forms.

Action: No action taken.

B. Nomination and election of Vice Chair for the Board. (City Clerk)

Action: Chair Michael Smith nominated Board Member Adrian Gonzales for the position of Vice Chair of the Board. Board Member Adrian Gonzales accepted the nomination. Chair Michael Smith moved to appoint Board Member Adrian Gonzales to the position of Vice Chair of the Board. Board Member Chris Peacock seconded the motion, which carried with a 3-0-1 vote. (Absent: Vemulapalli)

IX. Public Comment – None.

X. Future Agenda Items

- Lobbyist Ordinance
- Gift Ordinance
- Draft recommendation by ad hoc subcommittee re Ordinances 29792 & 29793
- Draft brochure by ad hoc subcommittee re community outreach

XI. Adjournment

The next regular meeting schedule for January 11, 2017 at 5:30 p.m. in Room W-120.

The meeting was adjourned at 7:40 p.m.



MICHAEL SMITH, CHAIR

ATTEST:
BOARD OF FAIR CAMPAIGN AND POLITICAL PRACTICES SECRETARY



TONI J. TABER, CMC
CITY CLERK