

MEETING MINUTES

April 8, 2015

I. Call to Order & Orders of the Day

Roll Call

PRESENT: Chair Michael Smith, Vice Chair Rolanda Pierre Dixon, and Commission Member Madhavee Vemulapalli

ABSENT: Commission Member Chris Peacock

STAFF: Investigator/Evaluator Steven Miller, Deputy City Attorney Arlene Silva, City Clerk Toni Taber and Deputy City Clerk Cecilia McDaniel

OTHER: Noelia Espinola, Court Reporter with Advantage Reporting Services; Blair Beekman, Member of the Public; and Adrian Gonzales, Member of the Public

Call to Order

The members of the San José Ethics Commission convened at 5:36 p.m. in Room W-262 of City Hall, 200 E. Santa Clara Street, CA 95113.

Orders of the Day

Action: Upon a motion by Vice Chair Rolanda Pierre Dixon, and seconded by Commissioner Madhavee Vemulapalli and carried, the Commission approved the adoption of the April 8, 2015 agenda. (3-0-1; Absent: Peacock.)

II. Closed Session - None

III. Hearings

- A. Consolidated Hearing on Complaints filed by Troy Estes on March 9, 2015 alleging violations of the San José Municipal Code by Multiple Respondents. (Independent Investigator/Evaluator)

Document Filed: Report from Hanson Bridgett LLP dated April 1, 2015 regarding Troy Estes v. Multiple Parties, Complaints filed May 9, 2014.

Discussion: Chair Michael Smith summarized the hearing procedures and opened the public hearing. All members of the Commission were present except for Commissioner Peacock. Complainant Troy Estes filed seven complaints with the San Jose Ethics Commission alleging multiple violations of Title 12 of the San Jose City Municipal Code (SJMC) by a total of eight Respondent – some individuals are

Respondents to multiple complaints. The seven complaints all focus on Lan Diep's campaign for City Council District 4. Evaluator Steven Miller received a copy of the Complaints on March 9, 2015, and he notified the eight Respondents by March 12, 2015. The report and recommendations were received by the City Clerk on April 1, 2015, and copies were then distributed to the Respondents, Complainant, Commission Members, and posted to the City's website. Neither the Complainant nor the Respondents were present.

The Evaluator presented the report. The first complaint alleges impermissible coordination among several parties but identifies no specific expenditure, does not provide any details as to the nature of any coordination, and does not indicate how a violation of Title 12 has occurred. Based on the lack of evidence, the Evaluator did not find sufficient cause to investigate the complaint and recommends the Commission dismiss the complaint and take no further action. Evaluator Steven Miller indicated that the remaining six complaints allege that Crema Coffee donated office space, food, and beverages to the Lan Diep campaign. The complaints also allege that individual owners may have contributed in excess of the contribution limit to the Lan Diep campaign. The Evaluator investigated the remaining six complaints and found that no violations of the Municipal Code took place and recommended that the Commission close the files and take no further action. Evaluator Steve Miller responded to Commission questions. The Commission discussed the matter (see attached transcript for full discussion).

Action: Vice Chair Rolanda Pierre Dixon moved that the Commission find that there is insufficient evidence to find that there has been a violation and that the Commission dismiss the complaint alleging impermissible coordination without further action. Chair Michael Smith requested the motion be amended to indicate that there was insufficient cause to conduct an investigation and that the file be closed without further action. Vice Chair Rolanda Pierre Dixon accepted the amendment. Commissioner Madhavee Vemulapalli seconded the motion. On a call for the question, the motion carried. (3-0-1; Absent: Peacock.)

Action: Upon a motion by Chair Michael Smith, and seconded by Vice Chair Rolanda Pierre Dixon and carried, the Commission moved that the Commission find that there is sufficient evidence to establish that no violation has occurred and that the file in the matter be closed without further action regarding the six complaints having to do with in-kind contributions. (3-0-1; Absent: Peacock.)

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

Chair Smith	So certified
Vice Chair Pierre Dixon	So certified
Commissioner Madhavee Vemulapalli	So certified
Commissioner Peacock	Absent

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

IV. Consent Calendar

- A. Approve the Minutes of February 9, 2015 – Special Meeting
- B. Approve the Minutes of March 2, 2015 – Special Meeting

Documents Filed: Draft Ethics Commission minutes for the February 9, 2015 and March 2, 2015 special meetings.

Discussion: Commissioner Madhavee Vemulapalli informed the Commission that she reviewed the agenda, agenda materials, transcript and audio recording of the February 9, 2015 special meeting and is therefore able to approve the meeting minutes of the February 9, 2015 special meeting.

Action: Upon a motion by Chair Michael Smith, and seconded by Commissioner Rolanda Pierre Dixon and carried, the Commission approved the meeting minutes of February 9, 2015 and March 2, 2015. (3-0-1; Absent: Peacock.)

V. Reports

- A. Chair - None
- B. City Attorney
 - 1. Legislative update
 - 2. Update on Ethics Commission resolution backlog – Deputy City Attorney Arlene Silva is working with the Clerk's Office to send out outstanding resolutions.
- C. City Clerk - None
 - 1. Legislative update – None.
 - 2. Status of compliance with Commission resolutions
 - a) Email form Candidate Lan Diep providing proof of compliance

Document Filed: Email from Lan Diep dated April 8, 2015 addressed to Evaluator Steven Miller and Deputy City Clerk Cecilia McDaniel providing proof of compliance of Commission resolution.

Discussion: Chair Michael Smith requested that this item be added to the May agenda to review whether or not cases reviewed by the Ethics Commission are being treated in a consistent manner.

3. Status report on filings (Form 700, Campaign Statements, Lobbyists)

Discussion: City Clerk Toni Taber informed the Commission that the Clerk's Office has received the bulk of the Form 700s which were due on April 1, 2015. Deputy City Clerk Cecilia McDaniel indicated that the candidates for Council District 4 have been compliant in filing their campaign statements but that the Clerk's Office was waiting on amendments. The majority of the amendments requested were due to candidates not listing the addresses and occupations of contributors. The Commission requested that we look at allowing P.O. Boxes to be used on electioneering posters and flyers and about sending a FAQ sheet reminding candidates of the most common errors so that they can try to avoid making them.

4. Elections update

Discussion: City Clerk Toni Taber reported that the Santa Clara Registrar of Voters is 98% done counting ballots and the top three candidates are Tim Orozco, Manh Nguyen and Lan Diep. The Clerk's Office is working with the top three candidates to get their ballot designations, candidate statements and form 500s filed since the deadline is condensed. The Santa Clara Registrar of Voters indicated that they certify the results on April 15, 2015. The top two candidates will move on to the Runoff Election on June 23, 2015.

5. Update on the status of recruitment for open position on the Ethics Commission.

Discussion: City Clerk Toni Taber informed the Commission that the applicants will be interviewed by the Council on April 28, 2015 and will be given the oath immediately afterward so the Commission will have a new member by the next regularly scheduled meeting.

D. Investigator/Evaluator – None.

VI. Old Business

A. Status, review and possible action on Gift Ordinance and Frequently Asked Questions Sheet (City Attorney)

Action: Deferred to the meeting of August 12, 2015.

B. Review RFQ's received for Evaluator/Investigator (City Clerk)

1. Renne Sloan Holtzman Sakai LLP
2. Hanson Bridgett
3. Law Offices of Gary S. Winuk

Documents Filed: RFQ review chart, Proposal Evaluator Guidelines, Conflict of Interest Form, and Confidentiality Agreement and Conflict of Interest Disclosure.

Discussed: The Commission discussed the best way to evaluate the proposals received and determined that they would like the respondents invited to the May meeting to give presentations and answer Commission questions. City Clerk Toni Taber reviewed the chart and evaluator guide with the Commission and requested that the forms be returned by the May meeting. City Clerk Toni Taber requested that the Commissioners review the proposals on their own and come to the May meeting with their ratings. The Commissioners will have a chance to re-rank the respondents after the presentations and after Commission discussion at the May meeting.

C. Ethics Commission ad hoc subcommittee update (City Clerk)

Discussion: City Clerk Toni Taber reported that it would roughly cost \$5,000 per language to have a certified translation done of the Fair Political Practices Commission (FPPC) Campaign Disclosure Manual 2. City Clerk Taber is researching the possibility of cost sharing with the FPPC to get the translations done.

VII. New Business

A. Open Government training (City Attorney)

Discussion: Deputy City Attorney Arlene Silva informed the Commission that she gave Commissioner Madhavee Vemulapalli the new Commissioner orientation. Deputy City Attorney Arlene Silva will defer the training for the open government/sunshine appeals process for records requests to the June or July meeting.

VIII. Public Comment – Blair Beekman informed the Commission of his dislike of the City's drone program. Deputy City Attorney Arlene Silva informed Mr. Beekman that the drone program is not within the jurisdiction of the Ethics Commission and referred him to the Rules and Open Government Committee.

IX. Future Agenda Items and Adjournment

The next regular meeting is Wednesday, May 13, 2015 at 5:30 p.m. in City Hall, Wing Room 262.

The following agenda items will be discussed at the May 13, 2015 Ethics Commission meeting:

- Lan Diep's email
- 2015-16 Workplan and 2014-15 Annual Report
- Presentations re Evaluator/Investigator RFQ

The meeting was adjourned at approximately 6:52 p.m.



MICHAEL SMITH, CHAIR

ATTEST:
ETHICS COMMISSION SECRETARY



TONI J. TABER, CMC
CITY CLERK

Attachment: Transcript of Hearing dated April 8, 2015, Reported by Noelia Espinola, CSR, License Number 8060, Advantage Reporting Services, No. 49557, pages 1 through 25.

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

Taken On April 8, 2015

CITY OF SAN JOSE ETHICS COMMISSION

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CONDENSED TRANSCRIPT

Advantage Reporting

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

<p>CITY OF SAN JOSE ETHICS COMMISSION</p> <p>REPORTER'S TRANSCRIPT OF PROCEEDINGS</p> <p>Date: Wednesday, April 8, 2015 Time: 5:36 p.m. Location: San Jose City Hall 200 E. Santa Clara Street City Hall Wing - Room W262 San Jose, CA 95113</p> <p>Reported By: Noelia Espinola, CSR License Number #8060</p> <p>#49557</p>	<p>Page 3</p> <p>1 PROCEEDINGS</p> <p>2</p> <p>3 CHAIRMAN SMITH: Again, I may be a little</p> <p>4 discombobulated tonight because, as I explained before,</p> <p>5 I left part of my stuff at home and mixing and</p> <p>6 matching. So -- okay. Here we go.</p> <p>7 It is Wednesday, April 8th, 2015, and this</p> <p>8 hearing of the City of San Jose Ethics Commission is</p> <p>9 being held in Room W-262 of San Jose City Hall. All</p> <p>10 members of the Commission are present except Chris</p> <p>11 Peacock.</p> <p>12 The Commission will conduct a hearing on</p> <p>13 seven complaints filed with the City Clerk on March 9,</p> <p>14 2015, by Troy Estes, alleging that certain parties</p> <p>15 associated with the campaign of Lan Diep for City</p> <p>16 Council District 4 violated various sections of</p> <p>17 Chapter 12.06 of the San Jose Municipal Code. In</p> <p>18 summary, the allegations are that the respondent</p> <p>19 improperly coordinated and improperly handled in-kind</p> <p>20 contributions to the campaign. The City Clerk promptly</p> <p>21 notified and provided a copy of the complaint to the</p> <p>22 Independent Evaluator, and the Evaluator notified and</p> <p>23 provided a copy to the respondents by March 12th, 2015.</p> <p>24 Independent Evaluator's Report and Recommendations were</p> <p>25 submitted to the City Clerk on April 1st, 2015, and</p>
<p>Page 2</p> <p>1</p> <p>2 APPEARANCES</p> <p>3</p> <p>4 San Jose Elections MICHAEL SMITH, Chair Commission: ROLANDA PIERRE-DIXON, Vice-Chair MADHAVEE VEMULAPALLI</p> <p>5</p> <p>6</p> <p>7 Staff: ARLENE F. SILVA Deputy City Attorney</p> <p>8</p> <p>9 TONI TABER, City Clerk 10 CECILIA McDANIEL Deputy City Clerk</p> <p>11</p> <p>12 Independent HANSON BRIDGETT, LLP Evaluator: BY: STEVEN D. MILLER, Attorney at Law 13 425 Market Street 26th Floor 14 San Francisco, CA 94105 (415) 777-3200</p> <p>15</p> <p>16</p> <p>17 The Reporter: ADVANTAGE REPORTING SERVICES BY: NOELIA ESPINOLA, 18 CSR #8060 1083 Lincoln Avenue 19 San Jose, CA 95125 (408) 920-0222</p> <p>20</p> <p>21 --ooc--</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 4</p> <p>1 copies were then provided to the complainant,</p> <p>2 respondent and commission members and posted to the</p> <p>3 city web site with the agenda for tonight's hearing.</p> <p>4 I'm going to -- since there is -- oh, I was</p> <p>5 going to say "since there is no one here," but I'll go</p> <p>6 ahead.</p> <p>7 On April 15, 2014, the City Council adopted</p> <p>8 Resolution 76954, which establishes the Commission's</p> <p>9 regulations and procedures pertaining to investigation</p> <p>10 and hearing. All parties to these proceedings have</p> <p>11 been provided copies of the Resolution. The</p> <p>12 regulations and procedures have been adopted in order</p> <p>13 to ensure the fair, just and timely resolution of</p> <p>14 complaints before the Commission.</p> <p>15 This hearing is open to the public. It is</p> <p>16 being electronically recorded, and we have a court</p> <p>17 reporter to compile a transcript. The formal rules of</p> <p>18 evidence do not apply to this hearing, but all</p> <p>19 testimony will be under oath or affirmation. The</p> <p>20 complainant will be treated like any other witness in</p> <p>21 providing evidence. The Chair may compel the testimony</p> <p>22 of witnesses and may compel the production of relevant</p> <p>23 documents to the Evaluator by subpoena. Witnesses may</p> <p>24 be excluded at the discretion of the Commission.</p> <p>25 Commission members may ask questions of witnesses or</p>

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<p>1 the Evaluator when recognized by the Chair. 2 At this time I would like to have the 3 complainant, Troy Estes, and the respondents, Duc Lam, 4 Dung Tran, San Jose Silicon Valley Chamber of Commerce, 5 California Apartment Association, Santa Clara County 6 Association of Realtors, Lan Dlep, Lan Dlep for San 7 Jose City Council District 4 2016, Dinh Bul and Crema 8 Coffee Company, or their representatives, identify 9 themselves for the record. 10 Are you here to represent any of the above? 11 UNIDENTIFIED SPEAKER: No. 12 CHAIRMAN SMITH: So there is no one here who 13 is a party to the complaint. 14 Also, I'd like to have city staff and 15 representative of Hanson Bridgett, the Commission's 16 Independent Evaluator, please identify themselves for 17 the record. 18 MR. MILLER: Steven Miller from Hanson 19 Bridgett. 20 MS. SILVA: Arlene Silva, Deputy City 21 Attorney. 22 MS. TABER: Toni Taber, City Clerk. 23 CHAIRMAN SMITH: And Cecilia McDaniel, Deputy 24 City Clerk. 25 MS. McDANIEL: Yes. Cecilia McDaniel, Deputy</p>	<p>1 There were seven complaints filed by the same 2 person against multiple respondents, as you indicated, 3 different respondents overlapping with different 4 complaints. But we have -- so I'll go through -- as I 5 was about to -- as I will explain, we ended up 6 consolidating our analysis into roughly two areas, 7 treating the first complaint separately from the other 8 six. 9 So I'll start with just the first complaint, 10 which alleges, in its entirety, coordination between 11 all of the eight respondents that you just mentioned 12 and says that -- coordination between Silicon Valley 13 Chamber of Commerce, the California Apartment 14 Association, the Santa Clara County Association of 15 Realtors and Lan Dlep and his campaign for City Council 16 through conduits of Duc Lam, Dung Tran and additional 17 individuals "who have been the inside source of 18 information." There was no identification of the 19 nature of the coordination. Coordination occurs when a 20 particular expenditure that otherwise would be 21 independent of a candidate, through coordination with 22 that candidate, actually should be treated under the 23 law as a contribution to the candidate rather than an 24 independent expenditure. 25 And the Commission has always set a</p>
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<p>1 City Clerk. Sorry. I guess I'll pay attention next 2 time. 3 CHAIRMAN SMITH: I know what I read isn't 4 very interesting. 5 Okay. Under the Commission's regulations and 6 procedures, the respondent may submit a written 7 response to the Report and Recommendations. 8 I don't believe we've received anything from 9 any of the respondents, have we? 10 MS. TABER: Not on this one. 11 CHAIRMAN SMITH: Not on this one. 12 And the complainant or any other interested 13 party may also submit a brief or written argument. 14 And, again, I don't believe we've received 15 one. 16 Okay. Okay. So at this time I'll recognize 17 Steve Miller from the Hanson Bridgett law firm to 18 present the Independent Evaluator's Report and 19 Recommendations. 20 MR. MILLER: Thank you. 21 Good evening, Commissioners. So, under the 22 Commission's rules, our first step when receiving 23 complaints from the City Clerk's office is to conduct a 24 preliminary evaluation to determine if sufficient cause 25 exists under the rules to warrant an investigation.</p>	<p>1 relatively high bar for the sufficiency of a complaint. 2 This complaint gave us nothing to investigate, no -- 3 identified no facts that, if true, would have 4 constituted a violation of the Municipal Code. 5 And so we determined not to conduct an 6 investigation of any kind. And our recommendation is 7 that you accept our recommendation that the complaint, 8 as stated, does not warrant an investigation. 9 CHAIRMAN SMITH: Thank you. If I can make a 10 slight correction. It's not all of the people I 11 mentioned before. 12 MR. MILLER: Crema Coffee is not among the 13 respondents. 14 CHAIRMAN SMITH: And Dinh Bui is not on that 15 one either, I believe. 16 MR. MILLER: Thank you for the correction. I 17 believe Dinh Bui is a respondent. It's only Crema 18 Coffee that is not a respondent. But thank you for the 19 correction. 20 We then started to apply the same sufficiency 21 standards, one by one, to the other complaints. But we 22 quickly became a little tangled because there were some 23 facts alleged in one complaint that seemed to us to 24 pertain more to the violation alleged in a different 25 complaint. And so, in an effort to be fair to the</p>

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1 complainant and not hold the complainant to a technical
2 standard of legal perfection, it seemed to us to make
3 more sense to view the remaining six complaints as a
4 whole and that in many respects they were alleging
5 similar facts. And so that's how we proceeded.

6 And when you view them as a whole, there --
7 it did seem to us that there were facts that met the
8 sufficiency standard. In other words, facts that, if
9 true, would constitute -- or could constitute a
10 violation of the Municipal Code.

11 Specifically, the complaints alleged --
12 again, I'm now speaking of these six complaints as one
13 whole. They allege that the Crema Coffee, a coffee
14 shop in San Jose, donated office space as well as food
15 and beverages to the Lan Diep campaign. And if that
16 fact is true, Lan Diep's 465 filing does not indicate
17 the receipt of any in-kind contribution. And so the
18 receipt of free office space, free food and drink --
19 the failure to disclose those would be a violation by
20 the Lan Diep campaign.

21 Further, the campaign -- the complaints
22 allege that Crema Coffee's owners individually
23 contributed the maximum amounts required -- allowed by
24 the Code and that, therefore, under the aggregation
25 rules, which I'll explain in a moment -- or, rather,

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1 will explain why I don't really need to explain -- but
2 under the aggregation rules the contributions of an
3 entity are considered together with a contribution of
4 the owner of that entity for purposes of the maximum
5 contribution limit. And the complaint alleges --
6 again, in pieces -- that these in-kind contributions of
7 office space, food and drink puts the owners of Crema
8 Coffee over the contribution limit because they also
9 made individual contributions. And that would be a
10 violation both by the campaign that received the
11 contribution and the entity or the person that makes
12 the contributions under the Code.

13 And so we did proceed to investigate those
14 facts, in that order. We interviewed Mr. Diep himself,
15 who was very cooperative, and we interviewed Duc Lam,
16 who is the husband of the sole owner of Crema Coffee
17 and was made available to us as the representative
18 of -- excuse me -- Crema Coffee -- of Crema Coffee.

19 And what our investigation indicated to our
20 satisfaction was that, in fact, no in-kind
21 contributions were made. They did not provide office
22 space -- Crema Coffee did not provide office space to
23 Lan Diep and nor did Crema Coffee provide free food and
24 beverages to Lan Diep or his campaign, with the
25 exception of hosting a kickoff campaign fundraiser

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1 event. And the costs of that event are explicitly
2 exempted from the definition of "contribution" so long
3 as they are less than \$500, which they appear to be in
4 this case.

5 We found Mr. Diep and Mr. Lam to be entirely
6 credible, and their stories matched each other well,
7 without raising any suspicions. And we saw no need to
8 investigate and interview other witnesses, therefore.

9 So, based on that, we concluded that, in
10 fact, there were no in-kind contributions made, which
11 means that, in turn, number one, Lan Diep did not
12 commit any violations by failing to disclose such
13 in-kind contributions; and, number two, it is
14 unnecessary to consider whether those in-kind
15 contributions needed to be aggregated with individual
16 contributions because there were no in-kind
17 contributions.

18 So, for those reasons, we -- our
19 recommendation is that you find no violation of the
20 Municipal Code by any of the respondents for any of the
21 complaints.

22 I suppose I should add one more issue, which
23 is -- there is one more, technically -- an aspect of
24 the complaint we did not investigate, which is an
25 allegation that Crema Coffee and its owners failed to

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1 disclose contributions. Even had we found in-kind
2 contributions to have been made, which we did not,
3 there is no requirements on those making a contribution
4 that he reports those contributions. That's a
5 requirement that is imposed on the recipient.

6 And so, technically speaking, in our
7 recommendation to find no violation of the remaining
8 six, there is a small exception in that. To the extent
9 that there is a complaint alleging a failure by Crema
10 Coffee to disclose a contribution, our recommendation
11 is that you dismiss that without the need for further
12 investigation rather than find for a violation.

13 CHAIRMAN SMITH: Is that one part -- I don't
14 remember. Is that one part of a complaint or is that a
15 self-standing complaint itself?

16 MR. MILLER: It is both. And that would be
17 my answer to almost any question you ask me about which
18 complaint attaches to which facts. It's difficult.

19 CHAIRMAN SMITH: I'm thinking of the
20 mechanics of how we --

21 MR. MILLER: So I thought about this too.
22 And I think -- as indicated in our report, I think,
23 should you accept our recommendation, it could be that
24 the action that you would take would be to dismiss all
25 seven complaints and take no further action.

3 (Pages 9 to 12)

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<p>1 CHAIRMAN SMITH: Well, except the first one 2 you didn't investigate. Well, okay -- it's dismissed 3 without investigation. 4 MR. MILLER: Yes. I mean, I guess I will 5 defer to your attorney as to what the proper wording 6 is. But from our perception -- 7 CHAIRMAN SMITH: Right. 8 MR. MILLER: -- at the end of the day, the 9 result is we found either no need to investigate 10 because there was not sufficiency in the complaint or 11 we found no violation. And all seven matters, 12 therefore, we're recommending you dismiss. Whether you 13 dismiss it before or after our investigation, I'm not 14 sure whether that's of import. 15 CHAIRMAN SMITH: Okay. I have a question. 16 But I'll defer if the others have questions first, and 17 then I'll ask mine. 18 Do either of you have any questions for 19 Mr. Miller? 20 COMMISSIONER PIERRE-DIXON: I do not. 21 COMMISSIONER VEMULAPALLI: I have one 22 question. In the complaint they mentioned that 23 additional information will be provided if needed. So 24 did you interview Mr. Troy Estes? 25 MR. MILLER: Thank you for the question.</p>	<p>1 complainants when, like any other witness, I think they 2 have information that is useful for me and not just to 3 call them as a matter of practice, unlike the 4 respondent, who the Code specifically requires be 5 interviewed -- and for good reasons. Has to do with 6 due process and opportunity to respond to the 7 complaint. 8 Does that answer your question? 9 COMMISSIONER VEMULAPALLI: Thank you. 10 CHAIRMAN SMITH: Okay. My question is kind 11 of a, maybe, technical point. The section -- and I 12 don't remember if it's Title 12 or if it's the FPPC 13 stuff. I think it is the FPPC stuff that says -- the 14 exception for the in-kind contribution when you have an 15 event in your home or office and spend less than \$500. 16 It specifically says "home or office." And a place of 17 business is not necessary, either. How important is 18 that word "office"? I'm assuming that we're saying 19 that Crema Coffee is the equivalent of their office. 20 But it's really not. 21 MR. MILLER: Well, so -- 22 CHAIRMAN SMITH: I'm kind of wondering what 23 the interpretation of that is. I think you reached the 24 right conclusion, but that wording makes me a little 25 nervous. It doesn't say "place of business" --</p>
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<p>1 I did not interview Mr. Estes. It has been 2 our practice that the complainant is required to 3 identify specific facts in his complaint. And it 4 seemed to me insufficient to say what I believe to have 5 been the case here, basically, which is, Hey, there's a 6 violation. If you want to know more about it, call me. 7 He could have put the additional facts in his 8 complaint. 9 We have, in the past, had a practice of 10 interviewing complainants as a matter of course. And 11 that is a practice that we have changed within the last 12 year, actually. Maybe year and a half. And I'll be 13 happy to explain why if you'd like. 14 CHAIRMAN SMITH: Why don't you. 15 MR. MILLER: First of all, we do interview 16 complainants when they are witnesses that require 17 investigation. But when there is an insufficiency of 18 evidence, it has been our experience that the purpose 19 of filing a complaint is, in some -- it's sometimes 20 linked to the political process. And calling a 21 complainant and saying, Hi. I'm from Hanson Bridgett. 22 I'm investigating this complaint. I then see an 23 article in the newspaper saying, Hanson Bridgett is 24 investigating this complaint. 25 And so it's been my practice just to call</p>	<p>1 MR. MILLER: There are copious FPPC guidance 2 letters, interpretations, applying the home office 3 exception to events held in banquet halls, rented 4 theater spaces. I'm unaware of a distinction being 5 made to apply an office only to an office in an office 6 building. This is their place of business. 7 CHAIRMAN SMITH: Correct. You're saying it's 8 been -- the definition has been broadened even more? 9 It doesn't have to be their place of business? It can 10 be somebody else's? 11 MR. MILLER: Well, no, it has to be -- if I 12 own a -- 13 CHAIRMAN SMITH: It's a banquet hall that's 14 owned by the person giving the event. 15 MR. MILLER: Absolutely. 16 CHAIRMAN SMITH: Okay. It's not I go rent 17 it. 18 MR. MILLER: No, the sole -- the only way 19 that the home office exclusion works is when it is the 20 occupant's home or office. 21 CHAIRMAN SMITH: Gotcha. 22 MR. MILLER: But I do believe that the 23 definition of "office" is not limited to a building 24 with a room with a desk in it. Although it's a fair 25 question.</p>

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<p>1 CHAIRMAN SMITH: It would seem they should, 2 next time, they revise that stuff, they should say 3 "home or place of business" or something, if that's the 4 way it's being interpreted. 5 MR. MILLER: I am now curious, and I will 6 check. But I think they have applied it broadly, 7 without being smart enough to think of the question 8 that you've asked. 9 CHAIRMAN SMITH: Well, that makes sense, I 10 think. But it's just the wording. 11 Okay. If there's nothing else -- and you 12 have nothing else at this point? 13 MR. MILLER: I have nothing else at this 14 point, unless there are questions. 15 CHAIRMAN SMITH: Okay. I guess we have no 16 more questions. 17 So, after that, we have an opportunity to 18 hear from the respondent -- respondents and from the 19 complainant. But since none of them are here, we have 20 nothing here. 21 Anyone else -- any other interested parties 22 wish to speak to the Commission on this case? 23 If not, thank you. We've gone through that. 24 I don't know that you want to state -- back 25 to Independent Evaluator, but since there's been</p>	<p>1 potential violation. Findings may be made by separate 2 motion -- one for each respondent, one for each 3 potential violation -- or we may have one motion. 4 I think I would suggest probably two motions, 5 because we've got -- as they were described to us, the 6 first case wasn't investigated and the other six that 7 were, even though there was that little exception in 8 there. 9 COMMISSIONER PIERRE-DIXON: All right. 10 CHAIRMAN SMITH: Any discussion, or are we 11 ready to -- are we ready to make a motion? 12 COMMISSIONER PIERRE-DIXON: I think we are. 13 CHAIRMAN SMITH: Okay. 14 COMMISSIONER PIERRE-DIXON: I think a 15 motion -- as to Complaint Number 1, I would say that 16 there is insufficiency of evidence to find that there's 17 been a violation, that no violation has occurred. I 18 recommend that we dismiss as to that and take no 19 further action as to Complaint 1. 20 CHAIRMAN SMITH: Okay. Don't -- that's the 21 one where -- we can't really say -- that one we didn't 22 even investigate. So wouldn't that be -- 23 COMMISSIONER PIERRE-DIXON: Insufficiency of 24 evidence in which to investigate? 25 CHAIRMAN SMITH: What I was going to</p>
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<p>1 nothing in the interim... 2 MR. MILLER: I have nothing further. 3 CHAIRMAN SMITH: Yeah, usually we offer the 4 second opportunity in case points have come up in 5 interviewing the complainant and the respondent. 6 Okay. So at this point it's time for the 7 Commission to make a decision. And we have -- well, 8 normally we talk about four options, but in this case 9 there's a fifth. First, the Commission may find that 10 further investigation is necessary. If so, it shall 11 state -- it shall direct the Evaluator to conduct 12 further investigations and report back to the 13 Commission. Second, the Commission may find that there 14 is sufficient evidence to establish that no violation 15 has occurred. Third, the Commission may find that 16 there is insufficient evidence to establish that a 17 violation has occurred. Fourth, Commission may find, 18 based on a preponderance of the evidence from the 19 entire record of the proceedings, that a violation has 20 occurred. And the fifth is we may adopt the 21 Evaluator's report, approve the recommendation against 22 conducting an investigation and close the file on this 23 matter without further action. 24 So I'll open the floor to discussion. We 25 need to have a finding for each respondent for each</p>	<p>1 suggest -- what I was going to suggest, that we find -- 2 okay. Insufficient cause to conduct an 3 investigation -- 4 COMMISSIONER PIERRE-DIXON: Right. 5 CHAIRMAN SMITH: -- and that the file be 6 closed without further action. I think that's how we 7 normally -- it's normally recommended that we deal with 8 those. Because we really didn't investigate. 9 COMMISSIONER PIERRE-DIXON: I will take that 10 further amendment. 11 CHAIRMAN SMITH: Thank you. 12 COMMISSIONER VEMULAPALLI: I second it. 13 CHAIRMAN SMITH: Okay. And that's the 14 first -- what we're calling the first complaint. 15 That's the one having to do with coordination amongst 16 the various parties. 17 So, if there's no further discussion, all in 18 favor? 19 (All Commissioners responded Aye.) 20 CHAIRMAN SMITH: Any opposed? 21 (No response.) 22 CHAIRMAN SMITH: Okay. It passes 23 unanimously. 24 Okay. And then the others -- I think what's 25 being recommended there is the case of -- there is</p>

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<p>1 sufficient -- well, let's see. Sufficient evidence to 2 establish that no violation has occurred -- or 3 insufficient evidence. This is the fine difference 4 that an attorney can understand better than me. I 5 think we choose that there is sufficient evidence to 6 establish that no violation has occurred or there is 7 insufficient evidence to establish that a violation has 8 occurred. I think it's the latter. There's really no 9 evidence. We don't have concrete evidence. 10 Somebody on this side of the table want to 11 make a recommendation? 12 COMMISSIONER PIERRE-DIXON: Sufficient -- 13 MS. SILVA: I think it's the sufficient -- 14 the first one that -- 15 CHAIRMAN SMITH: Sufficient evidence to 16 establish that no violation has occurred? 17 COMMISSIONER PIERRE-DIXON: Right. 18 CHAIRMAN SMITH: Okay. And then if that -- 19 I'll go ahead and make the motion since I'm talking. 20 I move that the Ethics Commission find that 21 there is sufficient evidence to establish that no 22 violation has occurred and that the file in the matter 23 be closed without further action regarding the six 24 complaints having to do with in-kind contributions. 25 COMMISSIONER PIERRE-DIXON: Okay.</p>	<p>1 minutes, when we get to that. 2 COMMISSIONER VEMULAPALLI: Sorry. 3 CHAIRMAN SMITH: And me, Commissioner Smith, 4 so certified. 5 Okay. Be sure I don't forget anything. 6 Okay. We need to -- this is the part where I stumble 7 because I don't have everything I need. 8 Okay. There are no orders and penalties 9 because we found no violations. 10 So at this point we go to the resolution. 11 So, under the Commission's regulations and procedures, 12 the Commission shall issue a decision by resolution. 13 At this time I would entertain a motion 14 directing the City Attorney to draft a resolution of 15 the Commission's findings and penalties and authorizing 16 the Chair to approve and sign the resolution. 17 So moved. 18 And who seconded? 19 COMMISSIONER VEMULAPALLI: I second. 20 MS. McDANIEL: Who made the motion? 21 CHAIRMAN SMITH: I guess I did. I was either 22 prompting somebody else to say it -- we'll say I said 23 it. 24 Okay. And who seconded, officially? 25 Okay. Commissioner -- okay.</p>
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<p>1 CHAIRMAN SMITH: I think that covers all six, 2 right? 3 COMMISSIONER PIERRE-DIXON: I would second 4 it. 5 CHAIRMAN SMITH: Any discussion or question 6 or anything on this? 7 No. Okay. If not, then all in favor? 8 (All Commissioners responded Aye.) 9 CHAIRMAN SMITH: Any opposed? 10 (No response.) 11 CHAIRMAN SMITH: Okay. That also passes 12 unanimously. 13 And then we go to my favorite part. I have 14 to ask each commission member to certify that they have 15 heard or read the testimony at the hearing and have 16 reviewed all of the evidence in the record by affirming 17 "so certified." 18 Commissioner Pierre-Dixon? 19 COMMISSIONER PIERRE-DIXON: So certified. 20 COMMISSIONER VEMULAPALLI: So certified. 21 I have one -- 22 CHAIRMAN SMITH: Oh, yes. 23 COMMISSIONER VEMULAPALLI: On February 9th I 24 didn't attend in person, but I read the -- 25 CHAIRMAN SMITH: Oh, that will be the</p>	<p>1 And any discussion? 2 Okay. All in favor? 3 (All Commissioners responded Aye.) 4 CHAIRMAN SMITH: Any opposed? 5 (No response.) 6 CHAIRMAN SMITH: Okay. It passes 7 unanimously. 8 And if there is any question because it was 9 by motions rather than words, that was Commissioner 10 Vemulapalli who seconded that last motion. 11 Okay. And, with that, this hearing is now 12 closed. 13 (Whereupon, Item III Hearings concluded at 14 6:02 p.m.) 15 16 17 18 19 20 21 22 23 24 25</p>

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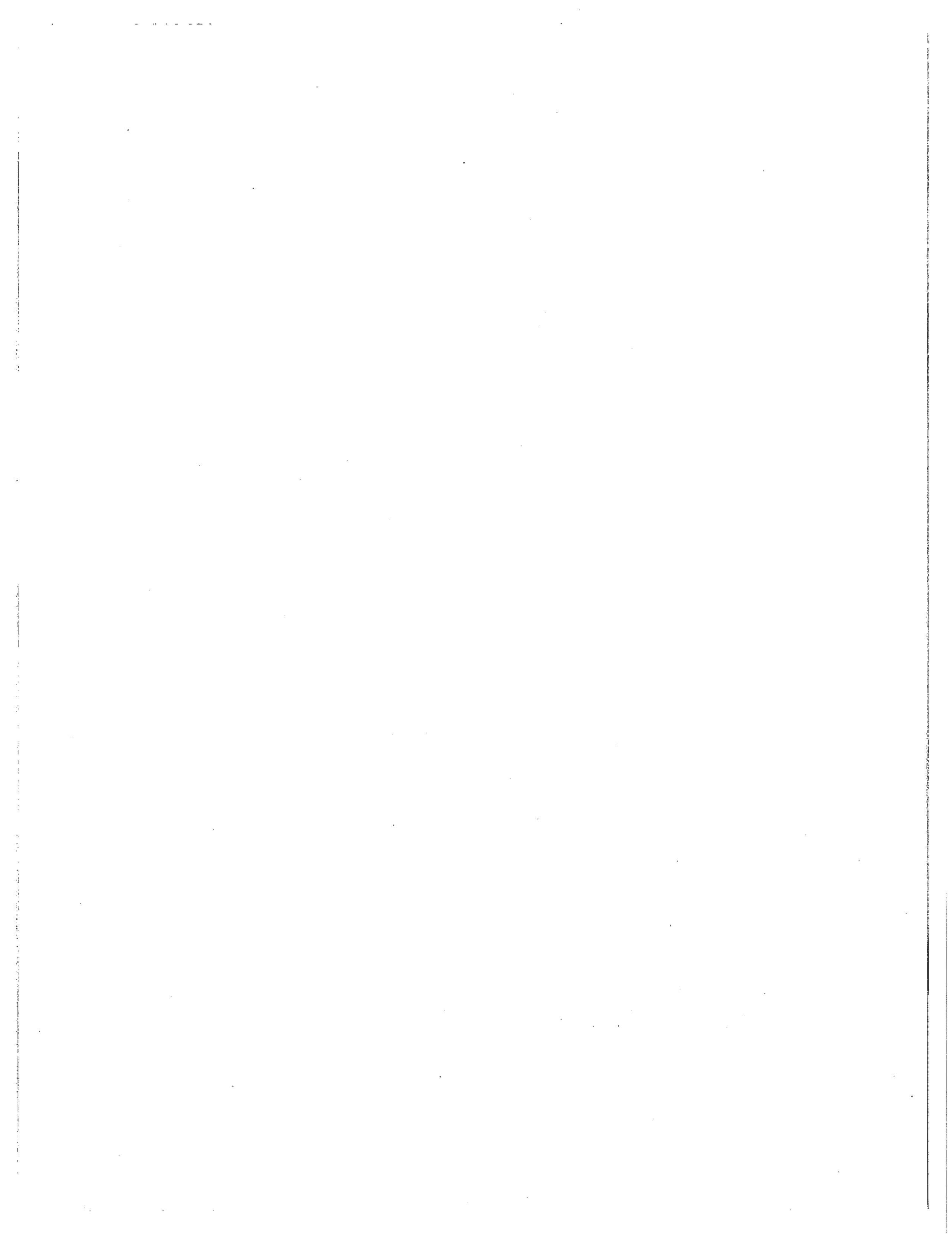
I, NOELIA ESPINOLA, do hereby certify:

That said hearing was taken down by me at the time and place therein named, and thereafter reduced to computerized transcription under my direction.

I further certify that I am not interested in the outcome of this hearing.

Dated: _____

NOELIA ESPINOLA, CSR #8060



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