

SPECIAL MEETING MINUTES

July 23, 2014

I. Call to Order & Orders of the Day

Roll Call

PRESENT: Chair Michael Smith, Vice Chair Rolanda Pierre Dixon, Commission Members Leon Louie, and Linda Edgeworth

ABSENT: Commissioner Chris Peacock

STAFF: Investigator/Evaluator Steven Miller (via teleconference), Deputy City Attorney Arlene Silva, City Clerk Toni Taber, Assistant City Clerk Tom Graves and Deputy City Clerk Cecilia McDaniel

OTHER: Danielle Reading, Court Reporter with Advantage Reporting Services

Call to Order

The members of the San José Ethics Commission convened at 5:31 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 Linda Edgeworth and carried, the Commission approved the adoption of the July 23, 2014 agenda. (4-0-1; Absent: Peacock.)

II. Closed Session - None

III. Hearings

- A. Hearing on Complaint filed by James Rowen against Silicon Valley Fraternal Order of Police Supporting Magdalena Carrasco and Opposing Xavier Campos for City Council 2014; Neighborhood Empowerment Coalition; Magdalena Carrasco; Bobby Lopez; John Shallman; and Gary Crummet alleging violations of Title 12 of the San Jose Municipal Code (Independent Investigator/Evaluator)

Document Filed: 1) Report from Hanson Bridgett LLP dated July 15, 2014 regarding James Rowen v. Silicon Fraternal Order of Police Supporting Magdalena Carrasco and Opposing Xavier Campos for City Council 2014, et al. Complaint filed June 18, 2014; 2) Complainant's Response; and 3) Evidence presented at hearing by Complainant.

Discussion: Chair Michael Smith summarized the hearing procedures and opened the public hearing. All members of the Commission were present except for Commissioner Chris Peacock. This complaint alleges a violation by Silicon Valley Fraternal Order of Police Supporting Magdalena Carrasco and Opposing Xavier Campos for City Council 2014; Neighborhood Empowerment Coalition; Magdalena Carrasco; Bobby Lopez; John Shallman; and Gary Crummet of Title 12 of the San Jose Municipal Code. Specifically, the allegation is that the committees involved coordinated an independent expenditure, that the Carrasco committee did not disclose it, and that the Neighborhood Empowerment Coalition did not properly disclose its funding, contributions or organization. Evaluator Steven Miller received a copy of the Complaint on June 18, 2014, and he notified the respondents on June 20, 2014 and June 23, 2014. The report and recommendations were received by the City Clerk on July 15, 2014, and copies were then distributed to the Respondents, Complainant, Commission Members, and posted to the City's website. Complainant James Rowen was present, however no Respondents were present.

Chair Michael Smith swore in Complainant James Rowen. Complainant Rowen then provided testimony regarding his complaint and submitted additional documentation into the record. Complainant Rowen informed the Commission of his concerns that Hanson Bridgett investigated and evaluated his complaint and did not disclose the fact that Kevin Heneghan is a partner at Hanson Bridgett and had prior relations with John Shallman and Gary Crummet who are both listed as Respondents in his complaint. Evaluator Steve Miller addressed Complainant James Rowen's concerns and assured Complainant Rowen that Hanson Bridgett always takes a unbiased, independent and neutral view of these matters and that they did their due diligence to investigate the potential conflict of interest. Hanson Bridgett found no conflict of interest but contacted the San Jose City Attorney's Office as well to get their opinion. City Attorney Arlene Silva informed the Commission that they hired an outside law firm, Alison Buchanan with Hoge Fenton, to investigate the matter and they also concluded that there was no conflict of interest. The Commission discussed and was satisfied with the conclusion of the Evaluator and City Attorney and concluded that there was no conflict.

The Evaluator presented the report and requested that the Commission adopt the Evaluator's opinion that the complaint fails to allege facts sufficient to demonstrate a potential violation of the Municipal Code and to approve the recommendation against conducting further investigation of the complaint. Complainant James Rowen provided further testimony (see attached transcript for complete testimony). The Commission discussed the details of the complaint and the report. Staff responded to Commission questions.

Action: Upon a motion by Chair Michael Smith, and seconded by Vice Chair Rolanda Pierre Dixon and carried, the Commission moved to adopt the Evaluator's report, approve the recommendation against conducting an investigation and close the file on this matter without further action. (4-0-1; 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 Louie	So certified
Commissioner Edgeworth	So certified
Commissioner Peacock	Absent

Action: Upon a motion Commissioner Linda Edgeworth, and seconded by Vice Chair Rolanda Pierre Dixon and carried, the Commission moved to direct the City Attorney to draft a Resolution on the Commission's Findings, and further, that the Commission authorizes the Chair to approve and sign the resolution. (4-0-1; Absent: Peacock.)

IV. Consent Calendar

A. Approve the Minutes of April 9, 2014 – Regular Meeting

Document Filed: Draft Ethics Commission minutes for the April 9, 2014 meeting.

Action: Upon a motion by Vice Chair Rolanda Pierre Dixon, and seconded by Commissioner Leon Louie and carried, the Commission approved the meeting minutes of April 9, 2014. (4-0-1; Absent: Peacock.)

B. Approve the Minutes of May 14, 2014 – Regular Meeting

Action: Minutes of May 14, 2014 were not drafted in time for meeting. Approval deferred to next meeting.

C. Approve the Minutes of June 11, 2014 – Regular Meeting

Document Filed: Draft Ethics Commission minutes for the June 11, 2014 meeting.

Action: Upon a motion by Vice Chair Rolanda Pierre Dixon, and seconded by Commissioner Leon Louie and carried, the Commission approved the meeting minutes of June 11, 2014. (4-0-1; Absent: Peacock.)

V. Reports

A. Chair - None

B. City Attorney - None

1. Legislative update

C. City Clerk - None

1. Legislative update
2. Status of compliance with Commission resolutions
3. Status report on filings (Form 700, Campaign Statements, Lobbyists)
4. Elections update

2. Status of compliance with Commission resolutions
 3. Status report on filings (Form 700, Campaign Statements, Lobbyists)
 4. Elections update
- D. Investigator/Evaluator - None

VI. Old Business – None.

VII. New Business – None.

VIII. Public Comment – None.

IX. Future Agenda Items and Adjournment

The next regular meeting is Wednesday, July 9, 2014 at 5:30 p.m. in City Hall, Wing Room 262.

The following agenda items will be discussed at the July 9, 2014 Ethics Commission meeting:

- Compliance Monitoring Schedule
- Gift Ordinance and Officeholder Reporting Requirements
- Regulations and Policies
- Approval of Meeting Minutes

The meeting was adjourned at approximately 6:21 p.m.



MICHAEL SMITH, CHAIR

ATTEST:
ETHICS COMMISSION SECRETARY



TONI J. TABER, CMC
CITY CLERK

Attachment: Transcript of Hearing dated July 23, 2014, Reported by Danielle Reading, CSR, License Number I0826, Advantage Reporting Services, No. 48177, pages 1 through 44.

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

Taken on July 23, 2014

CITY OF SAN JOSE ETHICS COMMISSION

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CONDENSED TRANSCRIPT

Advantage Reporting

ARS

Services, LLC

1083 Lincoln Ave.
San Jose, CA 95125
Phone 408-920-0222
Fax 408-920-0188

REPORTER'S TRANSCRIPT OF PROCEEDINGS

<p>CITY OF SAN JOSE ETHICS COMMISSION</p> <p>REPORTER'S TRANSCRIPT OF PROCEEDINGS</p> <p>Date: Wednesday, July 23, 2014 Time: 5:33 p.m. Location: City of San Jose City Clerk's Office 200 East Santa Clara Street City Hall Wing - Room W-262 San Jose, CA 95113 Reported By: Danielle Reading, CSR License Number #10826</p> <p>#48177</p>	<p>Page 3</p> <p>1 PROCEEDINGS 2 3 CHAIRMAN SMITH: It is Wednesday, 4 July 23rd, 2014, and this hearing of the City of 5 San Jose Ethics Commission is being held in 6 Room W-262 of San Jose City Hall. All members of 7 the Commission are present except for Commissioner 8 Peacock. 9 The Commission will conduct a hearing on a 10 complaint filed with the City Clerk on June 18th, 11 2014, by James Rowen, alleging that the Silicon 12 Valley Fraternal Order of Police Supporting 13 Magdalena Carrasco and Opposing Xavier Campos for 14 City Council 2014 -- that's all one committee -- 15 the Neighborhood Empowerment Coalition and the 16 individuals Magdalena Carrasco, Bobby Lopez, John 17 Shallman and Gary Crummitt violated Title 12 of the 18 San Jose Municipal Code. Specifically, the 19 allegation is that the committees involved 20 coordinated an independent expenditure, and that 21 the Carrasco committee did not disclose it, and 22 that the Neighborhood Empowerment Coalition did not 23 properly disclose its funding, contributions or 24 organization. 25 The City Clerk notified and provided a</p>
<p>Page 2</p> <p>1 2 APPEARANCES 3 4 San Jose Elections Commission: MICHAEL SMITH, Chair ROLANDA PIERRE-DIXON, Vice-Chair 5 LINDA EDGEWORTH, Commissioner LEON LOUIE, Commissioner 6 7 Staff: ARLENE F. SILVA, Deputy City Attorney 8 9 TONI TABER, City Clerk 10 TOM GRAVES, Assistant City Clerk 11 12 CECILIA MC DANIEL, Deputy City Clerk 13 14 Investigator/ Evaluator (telephonically): STEVEN D. MILLER, ESQ. 15 16 The Reporter: ADVANTAGE REPORTING SERVICES BY: DANIELLE READING, 17 CSR #10826 1083 Lincoln Avenue 18 San Jose, CA 95125 (408) 920-0222 19 20 --o0o-- 21 22 23 24 25</p>	<p>Page 4</p> <p>1 copy of the complaint to the Independent Evaluator 2 on June 18th, 2014, and the Evaluator notified and 3 provided a copy to the Respondents on June 20th and 4 June 23rd, 2014. The Independent Evaluator's 5 Report and Recommendations were submitted to the 6 City Clerk on July 15th, 2014, and copies were then 7 provided to the Complainant, Respondents and the 8 Commission members and posted to the City website 9 with the agenda for tonight's meeting. 10 On April 15th, 2014, the City Council 11 adopted Resolution 76954, which establishes the 12 Commission's regulations and procedures pertaining 13 to investigations and hearings. All parties to 14 these proceedings have been provided copies of the 15 resolution. The regulations and procedures have 16 been adopted in order to ensure the fair, just and 17 timely resolution of complaints before the 18 Commission. 19 This hearing is open to the public. It is 20 being electronically recorded, and we have a court 21 reporter with us to compile a transcript. 22 The formal rules of evidence do not apply 23 to this hearing, but all testimony will be under 24 oath or affirmation. The Complainant will be 25 treated like any other witness in providing</p>

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1 evidence. The Chair may compel the testimony of
2 witnesses and may compel the production of relevant
3 documents to the Evaluator by subpoena. Witnesses
4 may be excluded at the discretion of the
5 Commission. Commission members may ask questions
6 of witnesses or the Evaluator when recognized by
7 the Chair.

8 At this time I would like to have James
9 Rowen, the Complainant, and the Respondents or
10 their representatives identify themselves for the
11 record.

12 You are James Rowen?

13 MR. ROWEN: Yes, I am.

14 CHAIRMAN SMITH: Okay. Thank you.

15 Also, I would like to identify City staff
16 and representatives of Hanson Bridgett, the
17 Commission's Independent Evaluator, who are
18 present. And we have Arlene Silva, Deputy City
19 Attorney; Toni Taber, City Clerk.

20 MS. MC DANIEL: Cecilia McDaniel.

21 CHAIRMAN SMITH: Cecilia McDaniel. My
22 mind is going. Deputy --

23 MS. MC DANIEL: City Clerk.

24 CHAIRMAN SMITH: -- City Clerk. And Tom
25 Graves, Assistant City Clerk.

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1 comment specifically on this memo, because we want
2 to address this issue of potential conflicts of
3 interest before we get into actually hearing the
4 report itself.

5 So, Mr. Rowen, would you raise your right
6 hand -- please state your name for the record and
7 raise your right hand.

8 MR. ROWEN: James Rowen.

9 CHAIRMAN SMITH: Do you swear that the
10 testimony that you are about to give is the truth,
11 the whole truth and nothing but the truth?

12 MR. ROWEN: Yes, I do.

13 CHAIRMAN SMITH: If you'd like to go ahead
14 and proceed.

15 MR. ROWEN: In the chair?

16 CHAIRMAN SMITH: Yeah, if you could sit up
17 here in this chair, that would be easier for
18 recording and for Mr. Miller to hear also.

19 MR. ROWEN: All right. Would you like to
20 begin on that item first?

21 CHAIRMAN SMITH: Yes. Yeah, we'll come
22 back to the complaint itself. We want to talk
23 about this issue first.

24 MR. ROWEN: Okay. I have a concern
25 regarding the fact that Mr. Miller's law firm,

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1 And, let's see. Okay. I'm going to take
2 this out of the normal order. I'll explain why in
3 a minute -- well, I don't need to explain why.
4 Normally we take statements from the Respondent
5 first -- actually, there's no reason not to,
6 because the Respondent isn't here.

7 Under the Commission's regulations and
8 procedures, the Respondent may submit a written
9 response to the Report and Recommendations. The
10 response may contain legal arguments, a summary of
11 evidence and any mitigating or exculpatory
12 information.

13 We have not received a written response
14 from the Respondents. Is that correct?

15 MS. MC DANIEL: Correct.

16 MS. TABER: Correct.

17 CHAIRMAN SMITH: That's my understanding.

18 And also, the Complainant or any
19 interested party may also submit a brief or written
20 argument. And in that case the document that we
21 just distributed a few minutes ago was submitted by
22 Mr. Rowen. And -- okay. So everybody -- and
23 everybody has a copy of that. Okay.

24 Now -- okay. Now what I'm going to take
25 out of order is I'm going to ask Mr. Rowen to

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1 Hanson Bridgett, conducted the evaluation of my
2 complaint and had not disclosed a prior
3 relationship with one of the partners of the firm,
4 a man named Kevin Heneghan, who not only, as I put
5 in my document, had a prior business relationship
6 with John Shallman regarding the Michela Alioto
7 campaign, was the general counsel for the Michela
8 Alioto campaign and appeared before the ethics
9 commission in San Francisco for the Michela Alioto
10 campaign but, in my opinion, had direct
11 coordination with that campaign, which owed
12 Mr. Shallman quite a bit of money.

13 Mr. Heneghan also has an indirect
14 relationship with Gary Crummitt in that
15 Mr. Heneghan represented numerous firms in San
16 Diego --

17 CHAIRMAN SMITH: Is this something --

18 MR. ROWEN: -- as a lobbyist. Gary
19 Crummitt, who is a Complainant, also represents
20 numerous elected officials in San Diego.

21 And I have the Minutes from the L.A. --
22 Los Angeles City Attorneys Association of June
23 10th, 2013, where it was noted that The Sutton Law
24 Firm, which was Kevin Heneghan's former employer,
25 had a conflict because of the Trutanich election.

2 (Pages 5 to 8)

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<p>1 The Trutanich election was conducted in Los 2 Angeles, and the consultant for that was John 3 Shallman. 4 Interestingly, the firm that was hired 5 instead of The Sutton Law Firm was Reed Davidson. 6 Reed Davidson is a law firm that Gary Crummitt is 7 employed with. 8 So I'm very curious as to why Hanson 9 Bridgett never disclosed -- because the state bar 10 does talk about the fact that business 11 relationships with attorneys is a matter of ethical 12 issue -- why it was never even brought up. 13 I can remember hearing and reading cases 14 before the United States Supreme Court where judges 15 all the time say, I had a prior association with 16 this guy. I had a prior association with that guy. 17 So I'm wondering why that was never disclosed. 18 CHAIRMAN SMITH: Okay. Steve Miller from 19 Hanson Bridgett, would you like to address that? 20 MR. MILLER: Yes, I would. Thank you for 21 the opportunity. 22 Can everybody hear me okay? 23 CHAIRMAN SMITH: Yes. 24 MS. MC DANIEL: Yes. 25 COMMISSIONER PIERRE-DIXON: Yes.</p>	<p>1 So I have a partner named Kevin Heneghan. 2 Kevin joined Hanson Bridgett in 2011. At his 3 former firm he worked for a candidate who was 4 running for a number of offices, including most 5 recently the supervisor -- for supervisor in San 6 Francisco. 7 After Kevin Heneghan left his former firm 8 and joined Hanson Bridgett in 2011, that candidate 9 for supervisor ran for mayor in San Francisco. Her 10 mayoral campaign committee was not represented by 11 what was now Kevin Heneghan's former firm. That 12 mayoral campaign committee made some -- reported 13 making some payments to Mr. Shallman. Again, this 14 is not a client of Kevin Heneghan's former firm and 15 after Kevin had left the firm, in any event. 16 The only reason we know these facts is 17 because after receiving Mr. Rowen's voicemail, we 18 spent a -- quite a bit of time looking on the 19 Secretary of State's website to find Form 460 20 disclosure forms. We have no firsthand knowledge 21 of any of the facts I just related to you. 22 Kevin Heneghan had no interaction or 23 involvement with Mr. Shallman in any form at his 24 former firm and certainly not now in his current 25 role at Hanson Bridgett.</p>
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<p>1 COMMISSIONER EDGEWORTH: Yes. 2 MR. MILLER: So we know -- Hanson 3 Bridgett, we know how important it is to the 4 Commission that we have an unbiased, independent, 5 neutral view of these matters. And we certainly 6 care a great deal about that issue as well. 7 When -- and so I want to share with you the 8 following in that context. 9 John Shallman, who is a Respondent of this 10 complaint, is not now, has never been, a client of 11 Hanson Bridgett. We, of course, checked this 12 before we began our work on this matter. We at 13 Hanson Bridgett have no relationship with 14 Mr. Shallman -- business, legal or otherwise. And 15 a standard part of our work is to investigate those 16 types of conflicts. 17 Last -- excuse me. Not yesterday evening. 18 Monday evening I got a voicemail from Mr. Rowen 19 suggesting -- alleging a bias along the lines of 20 what he just mentioned. And I understand he also 21 left a voicemail for my partner, Joan Cassman. 22 So as soon as we got this voicemail we did 23 some extra digging. And I can share with you the 24 following, you know, facts that are beyond dispute 25 and verifiably true.</p>	<p>1 After Kevin joined Hanson Bridgett in 2 2011, we did some more due diligence. And I want 3 to share a fact, just for the interest of 4 disclosure. Mr. Rowen hasn't even brought this up. 5 So I believe in early 2013 Kevin Heneghan provided 6 some legal services to a candidate in Los Angeles, 7 and that candidate reported making some payments to 8 Shallman's consulting group. Shallman had no role 9 in hiring Kevin. Kevin had no role in hiring 10 Shallman. Kevin Heneghan had no business dealings 11 or strategic planning or any role in dealing with 12 Mr. Shallman at any time. He just had a client who 13 turned out to have hired a -- or, let's say, made 14 payments to a political consultant. 15 Kevin cannot remember yesterday, when 16 asked -- he may have been on a phone call that 17 Mr. Shallman might have also been on. But he has 18 no direct recollection of that. In any event, 19 though, his interactions were completely limited. 20 When -- after we did our -- did the 21 diligence I just described, immediately got on the 22 phone to your City Attorney and notified the City 23 Attorney, as we always do whenever anything comes 24 up that could compromise our independence. And I 25 think it's the City Attorney's role, really, to</p>

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<p>1 advise you as to whether she thinks that those 2 facts are such that there is some appearance of 3 bias in the report that we have submitted to you. 4 I'm happy to answer any questions you 5 have, but I think that covers our -- you know, what 6 we've learned about a perceived relationship 7 between Kevin Heneghan and John Shallman. I hope 8 that summary is clear. 9 CHAIRMAN SMITH: No questions from me 10 about that one. From anyone else? 11 [No response.] 12 CHAIRMAN SMITH: Before we go on -- this 13 business about Mr. Crummitt is new, and you don't 14 have this -- 15 MR. MILLER: Thank you. I mean, I don't 16 know what it is that you are talking about. I 17 don't know what -- you know, I don't have any of 18 that information. So I can't say that we have done 19 due diligence. 20 CHAIRMAN SMITH: Right. 21 MR. MILLER: But we looked long and hard 22 at everything we could find. It sounds like 23 Mr. Rowen is suggesting that Kevin Heneghan had a 24 client who, independent of Kevin Heneghan's work, 25 hired a political consultant. And I can't really</p>	<p>1 that its because Mr. Heneghan and Shallman knew 2 each other? 3 MR. ROWEN: Mr. Shallman worked with 4 Mr. Trutanich. As a matter of fact, Mr. Trutanich 5 sued Mr. Shallman over issues. So his relationship 6 with the Trutanich campaign is quite public. 7 And The Sutton Law Firm, which is 8 Mr. Heneghan's former law firm, that -- was not 9 hired by the L.A. City Attorneys Association for 10 that -- for that reason. And Reed Davidson, 11 Mr. Gary Crummitt -- you know, it's interesting. A 12 large, expensive law firm does not do this due 13 diligence, yet a guy in living Richmond, 14 California -- 15 CHAIRMAN SMITH: I don't think its 16 necessary for you to cast aspersions based on 17 suppositions. 18 MR. ROWEN: -- in three minutes can find 19 all this out. 20 CHAIRMAN SMITH: Could you -- 21 MR. ROWEN: I'm just saying. I'm making a 22 comment. 23 CHAIRMAN SMITH: I don't think it 24 strengthens your case to make unsupported 25 allegations.</p>
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<p>1 comment on that because I don't know those facts, 2 but this strikes me as not -- not dissimilar to the 3 example that I just disclosed to you. 4 CHAIRMAN SMITH: Let me ask Mr. Rowen a 5 question. 6 As I understand it -- and, unfortunately, 7 you brought this to us at the last minute. And 8 it's some unrelated pieces of paper. But, as I 9 understand what I'm seeing here, Mr. Heneghan, when 10 he was working for The Sutton Law Firm, had a 11 potential conflict on a particular election. 12 MR. ROWEN: Yes. 13 CHAIRMAN SMITH: And, because of that, the 14 candidate in question hired Mr. Crummitt's firm 15 instead of Mr. Heneghan's firm. 16 MR. ROWEN: The L.A. City Attorneys 17 Association hired Mr. Crummitt's law firm instead 18 of Mr. Heneghan's law firm because they felt 19 that -- unlike Hanson Bridgett, the L.A. City 20 Attorneys Association seems to recognize that there 21 is a propensity of unethical conduct. And they 22 decided, because Mr. Heneghan and Mr. Shallman know 23 each other at the Trutanich campaign, that they 24 would want to get another firm to deal with that. 25 CHAIRMAN SMITH: Where does it say that</p>	<p>1 MR. ROWEN: I understand. You asked me 2 about why I submitted it at the last minute, and 3 that's why. 4 CHAIRMAN SMITH: You submitted it at the 5 last minute, I assume, because you just found it at 6 the last minute. 7 MR. ROWEN: Yes. 8 CHAIRMAN SMITH: Okay. 9 MS. SILVA: Mr. Chairman, can I ask a 10 question of Mr. Rowen relating to this? 11 CHAIRMAN SMITH: Yes. 12 MS. SILVA: When you say that -- when -- I 13 think you are looking at this piece of paper that 14 on the top of it says "Los Angeles City Attorneys 15 Association" -- 16 MR. ROWEN: Yes. 17 MS. SILVA: -- "Minutes - Board Meeting." 18 MR. ROWEN: Yes. 19 MS. SILVA: When you say that The Sutton 20 Law Firm was not -- all of these, the minutes -- 21 it's pertaining to issues with The Sutton Law Firm 22 on date -- the date is 2013; is that correct? 23 MR. ROWEN: Yes. Yes. 24 MS. SILVA: Mr. Heneghan no longer had 25 worked -- or -- yeah, Mr. Heneghan did not work for</p>

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<p>1 Sutton Law Firm. He left that law firm and joined 2 Hanson Bridgett in 2011. 3 MR. ROWEN: I understand that. But 4 it's -- what's interesting is, I think the 5 Trutanich election was in 2012. 6 CHAIRMAN SMITH: Which is after 7 Mr. Heneghan left. 8 MR. ROWEN: Which is after still, but -- 9 MS. SILVA: It's still after Mr. Heneghan 10 had left Mr. Sutton's law firm. 11 MR. ROWEN: Just as a comparison: I've 12 known judges that have recused themselves for 13 relationships they had 20 years prior. 14 CHAIRMAN SMITH: Well, this is saying -- I 15 think the question is based on the fact that 16 Kevin -- that this election was in 2012, and 17 Mr. Heneghan -- and the conflict identified at that 18 time. Mr. Heneghan had already left the law firm a 19 year earlier. 20 MR. ROWEN: But you are assuming that he 21 doesn't have any further relationship. 22 CHAIRMAN SMITH: I've seen no evidence 23 that he has a relationship. 24 And, City Attorney, do you want to. . . 25 MS. SILVA: So I'm basing the -- so, as</p>	<p>1 basically review the -- review what we have, the 2 facts before us, and found that there is no -- we 3 could not find evidence to show that there was a 4 personal relationship or any relationship between 5 Mr. Shallman and Mr. Heneghan. 6 And, therefore, based on that and based on 7 the advice or the opinion of the outside counsel, 8 who's an expert in ethics, and in reviewing the 9 professional rules of conduct, we find that there 10 is no conflict of interest relating to Mr. Heneghan 11 and some -- you know, the alleged relationship or 12 any sort of conflict between Hanson Bridgett doing 13 the investigation and this particular allegation of 14 a Title 12 violation before us today. 15 COMMISSIONER PIERRE-DIXON: Ms. Silva, can 16 we have the name, for the record, of the outside 17 counsel? 18 MS. SILVA: Yes. Her name is Alison -- 19 hang on for a second. Too many papers. . . The 20 law firm is Hoge Fenton. And her name is Alison -- 21 I apologize. 22 MS. TABER: It's always harder to find 23 something when you know people are waiting. 24 MS. SILVA: I know. 25 CHAIRMAN SMITH: If you can't find it --</p>
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<p>1 Mr. Miller had indicated, he contacted our offices 2 immediately after he had received a voicemail 3 message from Mr. Rowen on Monday. So he conducted 4 us on Tuesday, yesterday, in the morning. And 5 we -- and related to us the information he just 6 related to you today. 7 And then at 5:16 yesterday, the City 8 Clerk's office forwarded us the e-mail that has 9 been distributed to all of you today, that we -- 10 that the City Clerk received from Mr. Rowen, 11 pertaining to an allegation of a conflict of 12 interest by the independent investigator, Hanson 13 Bridgett, relating to investigating this alleged 14 violation of Title 12 in this case. 15 MR. ROWEN: I'm willing to move on on 16 this. 17 CHAIRMAN SMITH: Excuse me. Let her 18 finish, please. 19 MR. ROWEN: Okay. 20 MS. SILVA: So, you know, we did our due 21 diligence, and the City Clerk -- I'm sorry -- the 22 City Attorney's office then proceeded in doing an 23 independent investigation. 24 And we also contacted our conflicts 25 attorney, which is our outside counsel, to</p>	<p>1 MS. TABER: Is it Hoge Fenton Jones & 2 Appel? 3 COMMISSIONER PIERRE-DIXON: Appel 4 [pronunciation]. 5 MS. SILVA: Appel [pronunciation]. 6 I'm sorry. Alison, A-l-i-s-o-n, Buchanan, 7 B-u-c-h-a-n-a-n. 8 COMMISSIONER PIERRE-DIXON: Thank you. 9 MS. SILVA: And the firm is H-o-g-e, Hoge 10 Fenton, F-e-n-t-o-n. Sorry about that. I 11 apologize. 12 MR. ROWEN: That's okay. 13 CHAIRMAN SMITH: Okay. So I think we've 14 gotten an opinion from the City Clerk on this 15 issue, so I think we can proceed. Unless someone 16 has an objection on the issue. 17 COMMISSIONER EDGEWORTH: No. 18 CHAIRMAN SMITH: Okay. So, then, let's 19 back up and go back to a normal procedure. Normal 20 procedure is, at this point we hear from the 21 Independent Evaluator. And then once we've heard 22 from the Independent Evaluator, as far as their 23 report, we can hear from the Respondent and the 24 Complainant. So we'll hear from Mr. Miller, and 25 then we'll hear from Mr. Rowen.</p>

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<p>1 So, Steve, you are on again. 2 MR. MILLER: Thank you very much. 3 Just a sound check: Everybody hear me 4 okay? 5 COMMISSIONER EDGEWORTH: Yes. 6 CHAIRMAN SMITH: Yes. 7 COMMISSIONER PIERRE-DIXON: Yes. 8 MR. MILLER: Okay. So pursuant to the 9 rules in the resolution that you referenced and the 10 Municipal Code, we investigate -- when given a 11 complaint, we first make a preliminary evaluation 12 to determine if sufficient cause exists for us to 13 investigate further. And under the code and the 14 resolution, sufficient cause exists only if a 15 complaint identifies specific facts in the 16 complaint which, if proven, would be a violation of 17 the Municipal Code. 18 So we looked carefully at the complaint 19 and identified two fundamental allegations, and 20 I'll take them in turn. The first appeared to us 21 to be the suggestion that there was improper 22 coordination between a candidate and an independent 23 committee. And the facts that were identified were 24 that the candidate in 2010 had paid an outside 25 political consultant \$2,900 and the independent</p>	<p>1 the candidate had reported a payment to the same 2 consultant. 3 CHAIRMAN SMITH: Right. Okay. There 4 don't appear to be any other questions, so proceed. 5 MR. MILLER: Okay. The second complaint 6 refers to a committee called the Neighborhood 7 Empowerment Coalition. And the complaint is that 8 this organization did not properly disclose its 9 funding and contributions or organization. 10 And the facts that are present in the 11 complaint are that -- there's an indication that 12 this organization has an FPPC ID number and a phone 13 number, and they show a report from the first 14 independent committee I referred to in the first 15 allegation -- that that independent committee had 16 received a contribution from the Neighborhood 17 Empowerment Coalition. 18 And, again, even if true, we find it hard 19 to identify a provision in the Municipal Code that 20 would be implicated by this issue. There's no 21 indication as to what disclosure statements are 22 missing. And in the absence of such information, 23 we didn't feel that it was within our duty -- our 24 ability, even -- under the resolution to 25 investigate further.</p>
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<p>1 committee had paid the same political consultant 2 \$2,449.61 four years later, in 2014. 3 The complaint also identified a blog or a 4 news posting of some sort in which candidate 5 Magdalena Carrasco denied having any connection to 6 this political consulting firm, Shallman & 7 Associates. 8 Based on that, we believe these facts do 9 not indicate any violation of the Municipal Code. 10 Even if true, there does not seem to be any 11 indication that would -- any evidence of a 12 violation of the code. 13 Maybe I'll pause there and see if there's 14 questions before turning to the second allegation. 15 Since I'm not in the room with you all, I want to 16 make sure I'm not going faster than you would 17 desire. 18 CHAIRMAN SMITH: Questions? 19 I think the key to what you said is that 20 in the one case there was a connection in 2010 and 21 in the other case there was a connection in 2014. 22 And there's no indication of how those two -- 23 MR. MILLER: There was no evidence of 24 coordination between the two beyond the fact that, 25 four years apart from each other, the committee and</p>	<p>1 And, therefore, for both of those 2 allegations, our fundamental conclusion is that our 3 preliminary evaluation indicates that sufficient 4 facts do not exist for us to conduct an 5 investigation. 6 CHAIRMAN SMITH: Okay. Questions? 7 COMMISSIONER EDGEWORTH: No. 8 CHAIRMAN SMITH: Okay. All righty. Thank 9 you. 10 Okay. Normally we would ask the 11 Respondent to make any statement they wish to make, 12 but there is no one here to represent the 13 Respondent. 14 So I'll call on Mr. Rowen to present any 15 written or oral response. And I've already sworn 16 you in, so that still applies. So go ahead. 17 MR. ROWEN: Thank you. 18 Interestingly, there is another article on 19 the issue of disclosure, which is entitled "Full 20 Disclosure of Political Donors is the Best Way to 21 Prevent Corruption." It's interesting that neither 22 the Commission nor the Evaluator seems to be rather 23 interested in that point of view. 24 CHAIRMAN SMITH: Please -- 25 MR. ROWEN: By the way, correction: The</p>

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Page 25	Page 27
<p>1 consultant, John Shallman, who referred to himself 2 as Shallman Communications for Magdalena Carrasco 3 in 2010, also worked for Magdalena Carrasco in 4 2012, when she ran for the East Side Board. He 5 declined to identify his firm as Shallman 6 Communications when he worked for the independent 7 committee. He called it West Coast Public Affairs, 8 which is a public -- an entity that he controlled. 9 The Neighborhood Empowerment Coalition 10 mentioned in the complaint the -- Mr. Miller 11 identifies a phone number for that committee. That 12 is the same phone number as the treasurer of the 13 Silicon Valley Fraternal Order of Police. So 14 Mr. Crummitt actually controlled two different 15 committees, which I find interesting. 16 Mr. Crummitt has a long record, both in -- 17 MS. TABER: I'll take it. 18 MR. ROWEN: -- the state, the Ventura 19 County Ethics Committee and in the City of Walnut, 20 in forming committees at the last minute to hide 21 money and then use that committee to make the 22 majority of the donations. 23 So I'm curious to know if this commission 24 really wants to find out what donors are making 25 what contributions in political campaigns. It</p>	<p>1 measures in terms of what constitutes coordination. 2 Ballot measures are different than candidates. One 3 of the things they say that ballot measures do 4 sometimes is they come up with things like 5 fundraising strategies. Coming up with a 6 fundraising strategy is a way to coordinate. 7 I find it interesting that the major 8 client of John Shallman, who was the consultant for 9 the Silicon Valley Fraternal Order of Police, is 10 state senator Kevin de Leon, the former husband of 11 Magdalena Carrasco. Almost 60 percent of the 12 donors of Magdalena Carrasco's committee are 13 clients of John Shallman's consulting firm. 14 So it's interesting. Does this commission 15 really want a carpetbagging process of political 16 donations, when money down in Los Angeles can fund 17 political campaigns in San Jose? And none of 18 you -- as much as I respect all of you, and I do -- 19 I don't think you all should allow a committee to 20 form down in Los Angeles and give the bulk of its 21 money at the last minute, to where no one can tell 22 whether it's a mailer or not. 23 So, in conclusion -- because you've given 24 me a lot of time -- I would say that you have a 25 perfect example of an independent committee. And</p>
Page 26	Page 28
<p>1 seems that the fact that the Silicon Valley 2 Fraternal Order of Police, who neglected to file a 3 Form 462 -- a form I'm sure Mr. Miller is aware 4 of -- with the FPPC as an independent committee, 5 just went ahead on May 1st, formed a committee. 6 Refused to disclose its donors. And, by the way, I 7 think the City Clerk can verify that the Silicon 8 Valley Fraternal Order of Police -- or at least the 9 police group that Mr. Lopez used to be head of -- 10 failed to find disclosure agreements for that 11 committee as well. So it seems like we have a long 12 history of the actors involved in this not 13 disclosing contributions. 14 On May 1st they formed the committee 15 Silicon Valley Fraternal Order of Police. They 16 filed report after report after report with the 17 City Clerk's office and never disclosed who their 18 donors were. They just said, We're running up a 19 debt of \$39,000; we're running up a debt of 20 \$39,000; we're running up a debt of \$39,000. 21 And then, on June 1st, they come up with a 22 contribution from the Neighborhood Empowerment 23 Coalition, a group that has never disclosed any 24 donors at all, to fund the mailer. 25 Now, the FPPC regulations talk about</p>	<p>1 this commission made headlines six or seven years 2 ago by fining Mr. Voss and Mr. Ed McGovern for 3 coordinating an independent expenditure committee 4 because they used the same data person as the 5 independent committee, and that -- this commission 6 said that that was enough for coordination. 7 It seems that the donors, that the 8 consultants, that the people involved in the 9 campaigns -- seem in the law and in the FPPC -- and 10 Mr. Miller can correct me if I'm wrong -- it says 11 not only direct coordination but indirect 12 coordination. And I believe that this warrants -- 13 you can't fine someone today, but you can at least 14 investigate it. And I think that, in a sense, you 15 have enough to investigate. 16 CHAIRMAN SMITH: Questions? 17 Or, Mr. Miller, do you have any comment 18 you'd like to make before we ask questions? 19 MR. MILLER: No. Only to -- to repeat 20 that our duties are clearly spelled out in that we 21 are limited in what we can do to look beyond the 22 four corners of the complaint itself. 23 And in making our recommendations we are 24 not really offering an opinion one way or another 25 on much of what Mr. Rowen has just said. We are</p>

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1 only commenting on the specific facts identified in
2 the complaint.

3 CHAIRMAN SMITH: Okay. Thank you.
4 Questions from commissioners?

5 COMMISSIONER PIERRE-DIXON: My only
6 comment is that I would say a lot is being said
7 here today that is not within the four corners of
8 this complaint. I guess that's what Mr. Miller
9 stated. So I certainly have a problem with that.

10 The other thing is drawing a lot of
11 conclusions with very little facts. And the facts
12 that we have within this complaint tell us that
13 they are insufficient.

14 And that would be my comment.

15 CHAIRMAN SMITH: Okay. Thank you.

16 I guess one question that I would ask --
17 and I'm not sure who of -- somebody in the City
18 Staff probably -- has to do with the registration
19 of these committees, where they are registered and
20 what reports they are required to file and with
21 whom. The Fraternal Order of Police, that long
22 committee name -- are they a City?

23 Do you know, Cecilia?

24 MS. MC DANIEL: I don't know. They do
25 file with us reports.

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1 CHAIRMAN SMITH: Maybe, now that Toni is
2 back -- Toni, do you know? Is the Fraternal Order
3 of Police Supporting Magdalena Carrasco and
4 Opposing Xavier Campos 2014 registered with the
5 City or registered with the Secretary of State?

6 MS. TABER: They register with the
7 Secretary of State. They don't register with us.
8 They submit to us.

9 CHAIRMAN SMITH: Not register. Submit.
10 Okay. Oh, okay. They got an FPPC number --

11 COMMISSIONER EDGEWORTH: They're
12 registered to --

13 CHAIRMAN SMITH: -- but who do they submit
14 their 460s and all that stuff to?

15 MS. TABER: Us. They would submit it to
16 us.

17 CHAIRMAN SMITH: Okay. And what about the
18 Neighborhood -- whatever that other one is called?

19 MS. TABER: If it's a locally-formed -- if
20 it's a committee formed for local candidates or
21 ballot measures, they file with us.

22 CHAIRMAN SMITH: But you don't know
23 specifically about that one?

24 MS. TABER: I don't --

25 CHAIRMAN SMITH: Does anybody?

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1 MS. MC DANIEL: We can look it up.

2 MS. TABER: Yeah, I can look it up.

3 CHAIRMAN SMITH: But this --

4 MS. MC DANIEL: Are you talking about the
5 Neighbors for Magdalena Carrasco? That is a --

6 CHAIRMAN SMITH: The neighborhood --

7 MR. ROWEN: The Neighborhood Empowerment
8 Coalition.

9 CHAIRMAN SMITH: Neighborhood Empowerment
10 Coalition. They have an FPPC -- an FPPC number.
11 But . . .

12 MS. TABER: Let me look it up.

13 CHAIRMAN SMITH: Okay. So is the
14 Fraternal Order of Police committee -- I don't want
15 to repeat the whole thing again. But are they up
16 to date on their filings?

17 MS. MC DANIEL: I believe so.

18 MS. TABER: Those I remember seeing. The
19 Neighborhood Empowerment --

20 MS. MC DANIEL: We have a lot of them.

21 MS. TABER: -- I would have to -- that one
22 is not coming to the top of my head.

23 MR. ROWEN: I'm sorry. I can't hear you
24 correctly. Are you saying that you don't know
25 whether the Neighborhood Empowerment Coalition has

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1 filed with the City of San Jose?

2 MS. TABER: I'm just saying it doesn't pop
3 to my head. I'm looking it up right now.

4 MR. ROWEN: That was part of my complaint.

5 COMMISSIONER PIERRE-DIXON: We have to
6 look them up.

7 CHAIRMAN SMITH: Well, if they are not
8 locally formed, they don't have to file.

9 MS. TABER: Right. If they are not a
10 locally -- if they are not locally formed, they are
11 going to file with the County.

12 CHAIRMAN SMITH: Is it the County or the
13 State?

14 MS. TABER: Well, it really depends on
15 where they're formed.

16 CHAIRMAN SMITH: The allegation is being
17 made here that they are formed in Los Angeles. So
18 that might be Secretary of State.

19 MS. TABER: Yeah, it might be Secretary of
20 State. If they are -- if they are a statewide
21 committee, they would file their Form 460 with the
22 State. But they would still file -- is it a 465?

23 I can't remember -- I can't remember the form
24 numbers. But if they -- they still have to file, I
25 think it's a 465 with us.

8 (Pages 29 to 32)

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<p>1 MR. GRAVES: It is 465. 2 MS. TABER: It is 465. 3 MR. GRAVES: Yes. 4 MR. ROWEN: Could I ask -- 5 MS. TABER: I'm looking it up right now. 6 MR. ROWEN: Yeah, that would be 7 interesting. I bet it doesn't. 8 CHAIRMAN SMITH: Okay. Any other 9 comments, questions or anything? 10 COMMISSIONER EDGEWORTH: I guess one -- 11 MR. MILLER: I have one comment, please, 12 I'd like to make. 13 CHAIRMAN SMITH: Okay. 14 MR. MILLER: Which is that the kind of 15 questions you are asking now are reasonable 16 questions that we -- 17 CHAIRMAN SMITH: That you what? 18 MS. TABER: Hello? 19 I think he hung up. The lights went out. 20 MS. MC DANIEL: The light went out? 21 MS. TABER: Yeah. 22 [Brief interruption.] 23 MR. MILLER: I'm not sure what happened. 24 CHAIRMAN SMITH: We lost you just as you 25 were about to make your point. So if you want to</p>	<p>1 COMMISSIONER EDGEWORTH: But you brought 2 up all these contributions from one organization to 3 another to another. In your mind, does a 4 contribution constitute coordination? 5 MR. ROWEN: Yes, because the person that 6 made the contribution is, one, a client of the 7 consultant that ran the committee. And I know, 8 from my own personal and professional experience, 9 that is done all the time. 10 And, number two, the majority of the 11 donors outside of San Jose are either employees of 12 Kevin de Leon, who is connected to Magdalena 13 Carrasco, or clients of John Shallman, who has 14 worked -- and there are two that have a personal 15 relationship with Magdalena Carrasco. 16 So maybe I'm naive, but I generally feel 17 that people make contributions to people they know. 18 COMMISSIONER EDGEWORTH: But that doesn't 19 necessarily, in my mind, constitute coordination of 20 these two groups. These contributions -- and you 21 haven't provided anything that showed that they 22 talked to each other or e-mail traffic about 23 gathering monies. 24 CHAIRMAN SMITH: That's the problem. 25 COMMISSIONER EDGEWORTH: There's nothing</p>
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<p>1 repeat what you were saying. 2 MR. MILLER: My point was that you are 3 asking very reasonable questions that, in our view, 4 as we thought about it, had we tried to answer 5 them, we would have been investigating this 6 complaint. For reasons I've already explained, we 7 thought that our duties were limited based on the 8 facts that were identified in the complaint. 9 COMMISSIONER SMITH: Gotcha. Okay. 10 MS. SILVA: Mike, I would just caution the 11 Commission to limit the scope. I mean, I know that 12 a lot of things are being brought up right now, but 13 we should limit the scope to within the complaint 14 and alleged allegation in the investigation. 15 CHAIRMAN SMITH: Okay. Very well. 16 MR. ROWEN: If there's no 465 being 17 filed -- 18 CHAIRMAN SMITH: Okay. All right. 19 Commissioner Edgeworth, you had a comment or a 20 question? 21 COMMISSIONER EDGEWORTH: Well, I was going 22 to -- I was going to ask a simple question, but I 23 realized there are two separate issues. One is 24 failure to disclose, and the other is coordination. 25 CHAIRMAN SMITH: Right.</p>	<p>1 like that to suggest coordination of them. I can 2 understand why you might suspect it. But without 3 evidence to demonstrate it, I'm not sure that I can 4 buy into that level of coordination. 5 MR. ROWEN: Which was why -- which was 6 probably why it was done this way to begin with. 7 COMMISSIONER EDGEWORTH: I want you to 8 understand, I am a very strong supporter of 9 disclosure. I'm very concerned about out-of-state 10 contributions affecting our -- our California 11 races, just as every American is about out-of-state 12 contributions coming through all kinds of 13 organizations. We're not helped by Supreme Court 14 rulings in that regard and the limits. But in 15 terms of the two allegations that you make in 16 your -- in your submission, that's what we have to 17 focus on. 18 MR. ROWEN: I made one allegation, that 19 the Neighborhood Empowerment Coalition had not 20 sufficiently filed paperwork. And forgive me for 21 continuing to obsess on this, because I know you 22 need to get going, I need to get going and my 23 nephew needs to get going. My apologies. But 24 by -- you know, I have a great deal of respect for 25 Ms. Taber's own admission: At least the</p>

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1 Neighborhood Empowerment Coalition did not file a
2 465.

3 CHAIRMAN SMITH: Well, just to clarify --
4 and we really shouldn't get into back-and-forth
5 with Mr. Rowen here. But to clarify -- somebody
6 tell me if I'm wrong. If they're statewide or a
7 countywide, they don't have to file with the City
8 Clerk.

9 MS. TABER: They don't have to file a
10 Form 460. That's the big one that has all of their
11 expenses. I'm looking up the Form 465 right now.

12 CHAIRMAN SMITH: 465 --

13 COMMISSIONER EDGEWORTH: 462?

14 MS. TABER: 465 is --

15 CHAIRMAN SMITH: -- is the contributions?

16 MS. TABER: That's where one of the larger
17 organizations reports to the local. So we receive
18 them all the time from, like, California

19 Apartment -- the California Apartment, because
20 they -- they're a statewide organization. And if
21 they give money to one of our local candidates --

22 CHAIRMAN SMITH: Then they have to.

23 MS. TABER: -- we usually get a 465. They
24 usually file a full 460 with us. They just do it
25 to, I think, everybody because it's easier for

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1 CHAIRMAN SMITH: Okay. Okay. Now it's
2 time for the Commission to make its decision. We
3 have two options. We may find that further
4 investigation is necessary, which, if so, we would
5 direct the Evaluator to conduct further
6 investigations and report back to the Commission.
7 Or, second, we may adopt the Evaluator's report,
8 approve the recommendation against conducting an
9 investigation and close the file and this matter
10 without further action.

11 And at this point I'll open the floor to
12 further discussion or a motion.

13 COMMISSIONER PIERRE-DIXON: Further
14 discussion.

15 CHAIRMAN SMITH: Okay. Anyone care to
16 make a motion?

17 Yes.

18 COMMISSIONER EDGEWORTH: I guess I'm a
19 little concerned about making a motion under the
20 narrow constraints that we have if there is a
21 question that further research has to be done that
22 the City Clerk can provide us.

23 MS. TABER: I'm reading it right now.

24 COMMISSIONER EDGEWORTH: Okay.

25 MS. SILVA: Hang on for a second. I just

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1 them.

2 But -- so that's what we would need to
3 look in, because the threshold for a 465 is \$1,000.
4 But when I'm dealing with statewide committees, I
5 always -- I have to pull out my manual. So I would
6 really -- to give good advice right now, I'd need
7 to pull out the Manual 2. And I think it's a
8 Manual -- there's another manual for statewide
9 independent expenditure committees. I'd need to
10 pull those and read through them.

11 But it is possible -- their 460 is
12 probably filed with the State or the County. They
13 probably should have filed a 465, but I would need
14 to research that further.

15 COMMISSIONER EDGEWORTH: Okay.

16 CHAIRMAN SMITH: Okay. Anything else?

17 If not, I guess we can go back --

18 Mr. Miller would you like to summarize your
19 recommendation for us before we --

20 MR. MILLER: Sure. My recommendation is
21 that you adopt our opinion that the complaint fails
22 to allege facts sufficient to demonstrate a
23 potential violation of the Municipal Code and
24 approve our recommendation against conducting a
25 further investigation of the complaint.

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1 want to state something. The investigation -- the
2 investigation that the investigator did was based
3 on an allegation that -- on the second portion of
4 it, whether -- it's not because somebody failed to
5 do a filing. It's an allegation that there was no
6 disclosure.

7 Is that what it is, Steve?

8 CHAIRMAN SMITH: That's what it says.

9 COMMISSIONER EDGEWORTH: Yes.

10 MS. SILVA: So it's not -- not we're not
11 looking into whether somebody didn't file a 465 or
12 a 460 with us and failed to do so, which is, you
13 know, not compliant with FPPC or anything like
14 that. That's not what we're looking at here. So I
15 think we're losing the nature of what the complaint
16 is.

17 CHAIRMAN SMITH: Okay.

18 MS. SILVA: And I -- you know, I just want
19 to clarify.

20 CHAIRMAN SMITH: We're chasing our tail.

21 COMMISSIONER EDGEWORTH: Except for the
22 reporting mechanism, what is disclosure? What is
23 the mechanism for disclosure without the reporting?

24 MS. SILVA: But that's -- well, good

25 question. I mean, that's not -- is that what the

10 (Pages 37 to 40)

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<p>1 complaint is? 2 COMMISSIONER EDGEWORTH: Failure to 3 disclose. 4 MS. TABER: It's two. The coordination -- 5 it's like there's two -- there's the contributions 6 made in coordination, and then Part 2 is 7 nondisclosure of contributions. 8 MS. SILVA: Yeah, but based on the 9 alleged -- 10 MR. MILLER: You know, one could have 11 asked us and the Complainant could have asked us to 12 look into all sorts of reasons -- all sorts of 13 issues of whether specific filings were made. You 14 know, it wouldn't be difficult to find out that the 15 Neighborhood Empowerment Coalition has filed its 16 Statement of Organization. It would not be 17 difficult to find out that it's filed a Late 18 Contribution Report reporting the contribution at 19 issue here. It would not be difficult to find out 20 whether it was due to file a quarterly statement 21 due on July 31st. 22 But none of those questions seemed to us 23 to require answers to address the issue -- the 24 preliminary issue of whether there were facts 25 identifying a violation of the Municipal Code. So</p>	<p>1 coordinating with the 2014 people is a stretch, in 2 my mind. 3 And so I think -- so I'm going to make a 4 motion that -- I move that we adopt the Evaluator's 5 report, approve the recommendation against 6 conducting an investigation and close the file on 7 this matter without further action. 8 COMMISSIONER PIERRE-DIXON: I would second 9 that. 10 CHAIRMAN SMITH: Thank you. 11 And I would comment that if we go this 12 route, there's nothing to prevent -- Mr. Rowen, if 13 you find additional substantive facts, other than 14 suppositions based on somebody knew somebody who 15 knew somebody else, you are welcome to submit 16 another complaint. But I think -- well, we need 17 to -- 18 MR. ROWEN: Could I request that I get a 19 copy of the letter the City Clerk is going to send 20 the Neighborhood Empowerment Coalition? 21 MS. TABER: Um-hum. It's public record. 22 CHAIRMAN SMITH: Anyway, we have a motion 23 and a second. Any discussion on the motion? 24 COMMISSIONER PIERRE-DIXON: No. 25 CHAIRMAN SMITH: Okay. So all in favor?</p>
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<p>1 that's where we found ourselves. And we didn't 2 think it was appropriate to do the kind of 3 investigation that now you are discussing. 4 It is certainly appropriate if you want to 5 direct us to continue to investigate or if someone 6 wants to come forward with another complaint, 7 alleging different facts, you know, that's another 8 matter. 9 CHAIRMAN SMITH: Yeah, I'm -- did you want 10 to offer something, or have you changed your mind? 11 MS. TABER: No. I mean, what we need to 12 do is send a letter to the Neighborhood Empowerment 13 Coalition, inform them that we notice that they've 14 donated money to our local campaign, and they need 15 to file a 465. That is separate from an 16 investigation issue, though. 17 CHAIRMAN SMITH: Right. Okay. 18 COMMISSIONER EDGEWORTH: Yeah. 19 CHAIRMAN SMITH: I'm inclined to -- I 20 think we should follow the recommendation of the 21 Evaluator. I think the complaint is making 22 allegations without any real substance. I mean, 23 saying that because somebody worked for a person in 24 2010 and 2012 and they are working for somebody 25 else in 2014 and, therefore, 2010, 2012 people are</p>	<p>1 [All Commissioners present responded Aye.] 2 CHAIRMAN SMITH: Any opposed? 3 [No response.] 4 CHAIRMAN SMITH: Okay. So it's 4-0-1. 5 Upon adoption of the motion, the Chair 6 must ask each commission member to certify that 7 they have heard or read the testimony at the 8 hearing and reviewed all the evidence in the record 9 by affirming "so certified." 10 Commissioner Edgeworth? 11 COMMISSIONER EDGEWORTH: I so certify. 12 CHAIRMAN SMITH: Commissioner 13 Pierre-Dixon? 14 COMMISSIONER PIERRE-DIXON: I so certify. 15 CHAIRMAN SMITH: Commissioner Louie? 16 COMMISSIONER LOUIE: I so certify. 17 CHAIRMAN SMITH: And I, Commissioner 18 Smith, so certified. 19 At this time I would entertain a motion 20 that the Commission direct the City Attorney to 21 draft a resolution of the Commission's findings and 22 the Commission authorizes the Chair to approve and 23 sign the resolution. 24 COMMISSIONER EDGEWORTH: I so move. 25 CHAIRMAN SMITH: Thank you.</p>

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1 COMMISSIONER PIERRE-DIXON: Second.
2 CHAIRMAN SMITH: Thank you.
3 Discussion?
4 [No response.]
5 CHAIRMAN SMITH: All in favor?
6 [All Commissioners present responded Aye.]
7 CHAIRMAN SMITH: Any opposed?
8 [No response.]
9 CHAIRMAN SMITH: Okay. So, again, it's
10 4-0-1.
11 And, with that, this hearing is now
12 closed.
13 [Hearing adjourned at 6:21 p.m.]
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1
2 I, DANIELLE READING, do hereby certify:
3 That said hearing was taken down by me in
4 shorthand, to the best of my ability, at the time
5 and place therein named, and thereafter reduced to
6 computerized transcription under my direction;
7 I hereby certify the foregoing transcript
8 is a full, true and correct transcript of my
9 shorthand notes so taken;
10 I further certify that I am not interested
11 in the outcome of this hearing.
12 Witness my hand this day of
13 , 2014.
14
15
16
17 DANIELLE READING
18 CSR #10826
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12 (Pages 45 to 46)

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