

MEETING MINUTES

May 14, 2014

I. Call to Order & Orders of the Day

Roll Call

PRESENT: Chair Michael Smith, Vice Chair Rolanda Pierre Dixon, Commission Members Leon Louie, Linda Edgeworth and Chris Peacock (arrived at 6:00 p.m. due to unresponsive elevators)

ABSENT: None

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

OTHER: Noelia Espinola, Court Reporter with Advantage Reporting Services

Call to Order

The members of the San José Ethics Commission convened at 5:34 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 Leon Louie and carried, the Commission approved the adoption of the May 14, 2014 agenda. (4-0-1; Absent: Peacock.)

II. Closed Session - None

III. Hearings

- A. Hearing on Complaint filed by Duc Lam on April 7, 2014 alleging violations of the San Jose Municipal Code by Can Le, candidate for Council District 7. (Independent Investigator/Evaluator)

Document Filed: Report from Hanson Bridgett LLP dated May 6, 2014 regarding Duc Lam v. Van Le, et al. Complaint filed April 7, 2014.

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 Van Le and Van Le for City Council 2014 Committee of Section 12.06.1010(A) of the San Jose

Municipal Code. Evaluator Steven Miller received a copy of the Complaint on April 7, 2014, and he notified the respondents on April 8, 2014. The report and recommendations were received by the City Clerk on May 7, 2014, 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. Mr. Roger Rickenberg was present to represent Van Le and her committee. The Evaluator presented the report, with the finding that a violation of the Municipal Code occurred. The Evaluator indicated that the Respondent conceded as much and has brought the lawn signs into compliance with the Code. Therefore, given the circumstances of this matter, it is the recommendation of the Evaluator that the Commission find that sufficient mitigating factors exist such that it should close the file and take no further action.

Mr. Roger Rickenberg informed the Commission that Ms. Van Le worked hard to correct the situation and thought that Evaluator Steve Miller's report covered the situation accurately.

The Commission discussed the details of the complaint and the report. Staff responded to Commission questions.

Action: Upon a motion by Vice Chair Rolanda Pierre Dixon, and seconded by Commissioner Leon Louie and carried, the Commission found that there was sufficient evidence to establish that a violation of the Municipal Code by Van Le and Van Le for City Council 2014 Committee occurred. (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

Discussion: With the affirmation that a violation of the Municipal Code occurred, the Commission discussed whether penalties should be imposed.

Action: Upon a motion by Commissioner Leon Louie, and seconded by Commissioner Edgeworth and carried, the Commission moved to impose no penalty on the Respondents. (4-0-1; Absent: Peacock).

Action: Upon a motion by Vice Chair Rolanda Pierre Dixon, and seconded by Chair Michael Smith 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.)

Action: Upon a motion by Commissioner Linda Edgeworth and seconded by Vice Chair Rolanda Pierre Dixon and carried; the Commission (based on the findings of mitigating circumstances, including the newness of the regulation, the attempt of the respondent to comply with state code, and the fact that remedial action was taken) moved to close the file in the matter with no further action. (4-0-1; Absent: Peacock.)

- B. Hearing on Complaint filed by Stephen Kline on April 8, 2014 alleging violations of the San Jose Municipal Code by Sam Liccardo and Neighbors for Sam Liccardo Committee. (Independent Investigator/Evaluator)

Document Filed: 1) Report from Hanson Bridgett dated May 6, 2014 regarding Stephen Kline v. Sam Liccardo, et al. Complaint filed April 8, 2014; 2) Letter from Sam Liccardo to the Ethics Commission dated May 13, 2014; and 3) Letter from attorney James Sutton to the Ethics Commission dated May 13, 2014.

Commissioner Chris Peacock arrived at 6:00 p.m.

Discussion: Chair Michael Smith opened the public hearing. All members of the Commission were present. This complaint alleges a violation by Sam Liccardo and Neighbors of Sam Liccardo Committee of Section 12.06.290 of the San Jose Municipal Code. The allegations are that the respondents solicited and accepted contributions outside the campaign contribution period; improperly spent candidate's personal funds without first depositing them into the campaign bank account; and did not report certain in-kind contributions. The City Clerk notified and provided a copy of the Complaint to the Evaluator on April 8, 2014, and the Evaluator notified and provided a copy of the Complaint to the Respondents on April 9, 2014. The Independent Evaluator's report and recommendations were submitted to the City Clerk on May 7, 2014, and copies were then provided to the Complainant, Respondents and Commission Members, and posted on the City's website. The Complainant was not present. Attorney James Sutton, Ms. Ragan Henninger and Ms. Vicki Day were present on behalf of Respondents. The Evaluator presented the report, with the finding that: 1) No violation of the San Jose Municipal Code took place with regard to Counts 1-8 and Count 12 of the Complaint; 2) Determined that there was insufficient cause on which to proceed with an investigation with Counts 9-11 of the Complaint; and 3) As additional facts were revealed during the investigation, that a violation of the San Jose Municipal Code occurred when the Respondent did not report in-kind contributions associated with their December 13, 2013 fundraiser. Evaluator Steven Miller recommended that the Commission close the file on the matter without taking further action and without imposition of a penalty because: 1) The Evaluator found no intent on Respondent's part to deceive or mislead; 2) Respondent cooperated fully with the investigation; 3) The violation is minor; and 4) Upon notice of the violation, the Respondent took corrective action by amending its campaign reports.

Attorney James Sutton, Ms. Ragan Henninger and Ms. Vicki Day provided testimony and answered Commission questions. See attached transcript for testimony. The Commission discussed the matter.

Action: Upon a motion by Vice Chair Rolanda Pierre Dixon, and seconded by Commissioner Leon Louie and carried unanimously, the Commission moved, with regards to Counts 1 through 8 and Count 12, to find that the Respondent and/or the Respondent's campaign committee did not violate Title 12 of the Municipal Code. (5-0.)

Motion: Vice Chair Rolanda Pierre Dixon moved, with regards to Counts 9 through 11, to find that no violation occurred because the preliminary review indicates that there was insufficient cause on which to proceed with the investigation. Commissioner Leon Louie seconded the motion. Evaluator Steven Miller reminded the Commission that their office did not investigate Counts 9 through 11 so they therefore could not reach a conclusion as to whether there was a violation or not.

Amended Motion: Chair Michael Smith requested to amend the motion to move to adopt the report relative to Counts 9 through 11 and approve the recommendation against conducting an investigation and close the file on the Counts without further action. Vice Chair Rolanda Pierre Dixon accepted the amendment. Commissioner Leon Louie seconded the amended motion.

Action: Commissioner Linda Edgeworth requested to further amend the motion to say that there was insufficient cause to pursue the investigation. Vice Chair Rolanda Pierre Dixon accepted the amendment. Commissioner Leon Louie seconded the amended motion. The motion carried unanimously. (5-0)

Action: Upon a motion by Vice Chair Rolanda Pierre Dixon, and seconded by Commissioner Linda Edgeworth and carried unanimously, the Commission found that a violation of the Municipal Code occurred with regard to the non-reporting of the in-kind contributions received during the December 15, 2013 fundraiser. (5-0.)

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	So certified

Motion: Commissioner Leon Louie moved that there be no penalty for the violation of the non-reporting of in-kind contributions received because: 1) the issue was corrected; and 2) there was no intent involved.

Amended Motion: Commissioner Linda Edgeworth requested to amend the motion to include that no further action be taken. Commissioner Leon Louie accepted the amendment. Commissioner Edgeworth seconded the amended motion.

Amended Motion: Chair Michael Smith requested to amend the motion to include that no penalty should be given because: 1) severity of the incident was low; 2) there does not appear to be any intention to conceal; 3) does not appear to be deliberate; 4) it is an isolate incident; 5) no prior record of a violation; 6) there was a high degree of cooperation; and 7) that corrective action was taken. Chair Michael Smith also added to close the file without taking further action.

Action: Commissioner Leon Louie accepted the amendment. The motion carried unanimously. (5-0)

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	So certified

Action: Upon a motion by Commissioner Linda Edgeworth, and seconded by Vice Chair Rolanda Pierre Dixon and carried unanimously, 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. (5-0.)

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: Approval of minutes for April 9, 2014 meeting deferred to the next meeting.

V. Reports

- A. Chair - None
B. City Attorney - None
1. Legislative update
C. City Clerk – City Clerk Toni Taber informed the Commission that Tom Graves, Assistant City Clerk, will take care of the Ethics Commission for Cecilia McDaniel when she is out on leave.
1. Legislative update – None.
2. Status of compliance with Commission resolutions – They are being drafted by the City Attorney's Office.

3. Status report on filings (Form 700, Campaign Statements, Lobbyists) – Assistant City Clerk Tom Graves reported that the Clerk’s Office is currently at 80% compliance with Form 700 filings and that a few hundred people still need to file. However, the majority of the outstanding filers are contractors with the City. The Conflict of Interest review is due again this year so the City Clerk’s Office will be busy working with other City departments to get this done. Assistant City Clerk Tom Graves also mentioned to the City Clerk’s Office will be redoing the lobbyist reporting form.
 4. Elections update – City Clerk Toni Taber reported that the election was coming up on June 3, 2014. The majority of the complaints (formal and informal) have been about sign disclosures or sign placement. There are also four Notices of Intent that have been filed with the Clerk’s Office for the November election.
- D. Investigator/Evaluator - None

VI. Old Business

- A. Status and possible action on revisions to Ethics Commission’s Resolution No. 75640 (City Attorney)

Discussion: City Attorney Arlene Silva informed the Commission that Resolution 76954 was passed by Council on April 15, 2014.

- B. Status and possible action on revisions to San Jose Municipal Code (SJMC) Chapter 12.04 (City Attorney)

Discussion: City Attorney Arlene Silva reported that the changes were passed through Ordinance 29398.

- C. Status, review and possible action on Gift Ordinance and Frequently Asked Questions Sheet (City Clerk)

Discussion: Deferred to next meeting agenda.

- D. Status, review and possible action on officeholder/candidate legal defense fund ordinance (City Attorney)

Discussion: Deferred to next meeting agenda.

- E. Status, review and possible action on draft Request for Qualifications and contract for Ethics Commission Evaluator/Investigator (City Clerk)

Discussion: City Clerk Toni Taber would like to extend the current contract which currently ends on January 1, 2015 by six months to June 30, 2015. This would allow the contract to end during in the middle of a non-election year which should reduce the disruption of any investigation of complaints. Evaluator Steven Miller, speaking on behalf Hansen Bridgett, informed the Commission that they would be pleased to extend the contract with the City by six months. City Clerk Toni Taber will work

with the City Attorney's Office to extend the contract and allocate the appropriate funds.

- F. Discussion and possible action on reporting requirements from staff to Commission regarding filings (City Clerk)

Discussion: City Clerk Toni Taber will try to create a report that she can generate to give to the Commission showing status of filings.

- G. Discussion and possible action on FY 2013-14 Annual Report and FY 2014-15 Workplan (Chair)

Documents Filed: 1) Draft FY 2013-14 Annual Report; and 2) Draft FY 2014-15 Workplan.

Discussion: Chair Michael Smith requested that Commissioners review the FY 2013-14 Annual Report and FY 2014-15 Workplan and send any revisions or comments to staff.

VII. New Business

- A. Discussion and possible action on revisions to the Ethics Commission Complaint Form (City Clerk)

Documents Filed: 1) Ethics Commission Complaint Form; and 2) Memo from Deputy City Attorney Arlene Silva.

Discussion: Deputy City Attorney Arlene Silva raised some concerns about this issue, and the Commission agreed to await Commissioner Edgeworth's return before taking up the matter.

- B. Discussion and action on scheduling a Special Ethics Commission meeting (City Clerk)

Discussion: No action taken.

VIII. Public Comment – None.

IX. Future Agenda Items and Adjournment

The next regular meeting is Wednesday, June 11, 2014 at 5:30 p.m. in City Hall, Wing Room 262.

The following agenda items will be discussed at the June 11, 2014 Ethics Commission meeting:

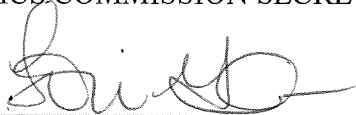
- Compliance Monitoring Schedule
- Gift Ordinance and Officeholder Reporting Requirements
- “Dark Money” (Old Business)
- Regulations and Policies

The meeting was adjourned at approximately 7:50 p.m.



MICHAEL SMITH, CHAIR

ATTEST:
ETHICS COMMISSION SECRETARY



TONI J. TABER, CMC
CITY CLERK

Attachment: Transcript of Hearing dated May 14, 2014, Reported by Noelia Espinola, CSR, License Number 8060, Advantage Reporting Services, No. 47751, pages 1 through 91.

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

Taken On May 14, 2014

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 style="text-align: center;">REPORTER'S TRANSCRIPT OF PROCEEDINGS</p> <p>Date: Wednesday, May 14, 2014 Time: 5:33 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>#47751</p>	<p style="text-align: right;">Page 3</p> <p style="text-align: center;">INDEX OF WITNESSES</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 80%;"></td> <td style="text-align: right;">Page</td> <td></td> </tr> <tr> <td>JIM SUTTON</td> <td style="text-align: right;">62</td> <td></td> </tr> <tr> <td>REGAN HENNINGER</td> <td></td> <td style="text-align: right;">66</td> </tr> <tr> <td>VICKI DAY</td> <td style="text-align: right;">70</td> <td></td> </tr> </table> <p style="text-align: center;">--o0o--</p>		Page		JIM SUTTON	62		REGAN HENNINGER		66	VICKI DAY	70	
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JIM SUTTON	62												
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<p style="text-align: center;">Page 2</p> <p style="text-align: center;">APPEARANCES</p> <p>San Jose Elections Commission: MICHAEL SMITH, Chair ROLANDA PIERRE-DIXON, Vice-Chair</p> <p>LEON LOUIE LINDA EDGEWORTH CHRIS PEACOCK</p> <p>Staff: ARLENE F. SILVA Deputy City Attorney TONI TABER, Acting City Clerk</p> <p>CECILIA McDANIEL, Deputy City Clerk TOM GRAVES, Assistant City Clerk</p> <p>The Reporter: ADVANTAGE REPORTING SERVICES BY: NOELIA ESPINOLA, CSR #8060 1083 Lincoln Avenue San Jose, CA 95125 (408) 920-0222</p> <p style="text-align: center;">--o0o--</p>	<p style="text-align: center;">Page 4</p> <p style="text-align: center;">PROCEEDINGS</p> <p>CHAIRMAN SMITH: I'll call us to order. Orders of the day means we need to have a motion to approve the agenda. So if someone can make the move.</p> <p>COMMISSIONER PIERRE-DIXON: I would so move. This is Rolanda Pierre-Dixon.</p> <p>COMMISSIONER LOUIE: I'll second.</p> <p>CHAIRMAN SMITH: Okay. Any discussion? (No response.)</p> <p>CHAIRMAN SMITH: No? All in favor? (All Commissioners present responded Aye.)</p> <p>CHAIRMAN SMITH: Any opposed? (No response.)</p> <p>CHAIRMAN SMITH: Okay. Unanimous, with one missing.</p> <p>Since we're recording, I'll mention that Commissioner Peacock is not here at the moment, but I'm told he's in traffic and he's on the way. But we do have a quorum, so we're going to proceed. Because we have a lot to do tonight, and we can't afford to wait.</p> <p>Okay. The first -- closed session -- there is no closed session.</p> <p>The next item after that is the hearing on the complaint filed by Duc Lam, alleging violations of</p>												

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1 the Municipal Code by Van Le.
2 And let me go into that, just by explanation
3 for what I'm doing up here. We learned awhile ago that
4 in order to make sure that we dot all the I's and
5 crossed all the T's and don't miss anything and do it
6 fairly and -- et cetera and kind of explain what's
7 going on, that I prepare a little script. And so
8 you'll see me up here fumbling with this thing, and
9 occasionally I will be reading from it. Because there
10 are certain things -- just to make sure everybody is on
11 the same page as to what we're doing.
12 So, by the way, it doesn't look like anybody
13 associated what that complaint is here. Oh, they are.
14 Okay. But the complainant and respondent are not. Do
15 we know, are they coming?
16 Okay. We don't need them.
17 MR. RICKENBERG: The candidate is not coming.
18 I'm coming on her behalf.
19 CHAIRMAN SMITH: Okay. Good to know. Okay.
20 We'll get started.
21 It is Wednesday, May 14th, 2014, and this
22 hearing of the City of San Jose Elections -- it still
23 says "Elections" -- Ethics Commission is being held in
24 Room W-262 of the San Jose City Hall. All members of
25 the Commission are present except for Commissioner

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1 Peacock, who we will anticipate will be here shortly.
2 The Commission will conduct a hearing on a
3 complaint filed on April 7, 2014, by Duc Lam, alleging
4 that Van Le and the Van Le for City Council 2014
5 Committee violated Section 12.06.1010(A) of the San
6 Jose Municipal Code. Specifically, the allegation is
7 that disclosure statements on the respondent's lawn
8 signs did not comply with requirements for font size
9 and content.
10 This hearing is open to the public. It is
11 being electronically recorded, and we have a court
12 reporter with us to compile a transcript.
13 At this time I would like to have Duc Lam,
14 the complainant, and Van Le, the respondent, or their
15 representatives, identify themselves for the record.
16 Okay. So you're here to represent. And
17 could you state your name, please.
18 MR. RICKENBERG: I'm Roger Rickenberg. I'm a
19 volunteer on the Van Le campaign.
20 CHAIRMAN SMITH: Okay. Thank you.
21 And, I guess, also I'll have Staff and
22 representative of Hanson Bridgett, who is our
23 Independent Evaluator, identify themselves for the
24 record, please.
25 MR. MILLER: Steven Miller.

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1 CHAIRMAN SMITH: From Hanson Bridgett.
2 MR. MILLER: Hanson Bridgett.
3 MS. SILVA: Arlene Silva, Deputy City
4 Attorney.
5 MS. TABER: Toni Taber, City Clerk.
6 CHAIRMAN SMITH: Okay. Our court reporter.
7 And over here.
8 MS. McDANIEL: Cecilia McDaniel with the City
9 Clerk's office.
10 MR. GRAVES: Tom Graves, Assistant City
11 Clerk.
12 CHAIRMAN SMITH: Thank you.
13 Okay. Before we proceed, I would like to
14 briefly go over the Commission's process for handling
15 complaints.
16 On October -- on April 15, 2014, the City
17 Council adopted Resolution 76954, which establishes the
18 Commission's regulations and procedures pertaining to
19 investigations and hearings. All parties to these
20 proceedings have been provided copies of the
21 Resolution. The regulations and procedures have been
22 adopted in order to ensure the fair, just and timely
23 resolution of complaints before the Commission.
24 All complaints are filed with the City Clerk,
25 who acts as Secretary to the Commission. Upon receipt

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1 of the complaint, the City Clerk notifies and provides
2 a copy of the complaint to the Independent Evaluator.
3 In this case, that was done on April 7, 2014. The City
4 Clerk also notifies the commission members that a
5 complaint has been filed but does not provide a copy of
6 the complaint to the Commission.
7 Upon receipt of the complaint, the Evaluator
8 notifies the respondents of the allegations and
9 provides the respondents with a complete copy of the
10 complaint, unless the Evaluator determines that a delay
11 is necessary so as to not compromise the investigation.
12 In this case, the Evaluator notified the respondents on
13 April 8, 2014.
14 The Evaluator reviews every complaint to
15 determine whether sufficient cause exists to conduct a
16 preliminary investigation. Sufficient cause exists
17 when a complaint identifies specific facts, which, if
18 proven, would be a violation of the Municipal Code.
19 If sufficient cause is found by the
20 Evaluator, they will conduct an investigation. The
21 investigation must include an interview with
22 Respondents and may also include an interview with the
23 complainant and any witnesses, as well as the review of
24 documents or other evidence.
25 When concluded, the Evaluator prepares a

2 (Pages 5 to 8)

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<p style="text-align: center;">Page 9</p> <p>1 written report and recommendations. The report 2 includes a summary of city law and evidence gathered 3 during the investigation, including any exculpatory and 4 mitigating information. The Evaluator may consider all 5 relevant facts and evidence, including hearsay 6 evidence. The report shall state whether the Evaluator 7 concludes that Respondents did or did not violate city 8 law. Recommendations may include actions to be taken 9 by the Commission or further investigation to be 10 conducted by the Evaluator. 11 The report and recommendations were submitted 12 to the City Clerk by Hanson Bridgett on May 6, 2014, 13 and copies were then provided to the complainant, 14 respondents, and commission members and posted to the 15 city website with the agenda for tonight's meeting. 16 The formal rules of evidence do not apply to 17 this hearing, but all testimony will be under oath or 18 affirmation. The complainant will be treated like any 19 other witness in providing evidence. The Chair may 20 compel the testimony of witnesses and may compel the 21 production of relevant documents to the Evaluator by 22 subpoena. The use of subpoena powers may be used as a 23 last resort, after good faith efforts to acquire the 24 relevant information have failed and upon a finding 25 that the information or testimony is essential for a</p>	<p style="text-align: center;">Page 11</p> <p>1 The complainant or any interested person may 2 also submit a brief or written argument 24 hours before 3 the Commission convenes to hear the complaint, if 4 possible. The brief or written argument must be 5 simultaneously provided to the respondents. 6 In this case, I don't believe we received 7 anything further from the complainant either. 8 MS. McDANIEL: Huh-uh. 9 CHAIRMAN SMITH: Okay. The Commission's 10 regulations and procedures allow for the Independent 11 Evaluator to present the report and recommendations. 12 At this time I will recognize Steven Miller from the 13 Hanson Bridgett law firm to present the report. The 14 recommendations will be presented separately. 15 MR. MILLER: Thank you, Mr. Smith. Good 16 evening, Commissioners. 17 I'd like to start with a little apology. I 18 just noticed, sitting here, that our report is dated 19 May 6th, 2013, and that's obviously a typo. But, for 20 the record, we need to make sure that everybody knows 21 it's 2014. I think I'll have to make the same apology 22 for our second complaint too, which seems to be a year 23 off. 24 CHAIRMAN SMITH: Are you still writing checks 25 that say "2013"?</p>
<p style="text-align: center;">Page 10</p> <p>1 determination in the matter. Witnesses may be excluded 2 at the discretion of the Commission. Commission 3 members may ask questions of witnesses or the 4 Evaluator, when recognized by the Chair. 5 Under the Commission's regulations and 6 procedures, the respondents may submit a written 7 response to the report and recommendations. The 8 response may contain legal arguments, a summary of 9 evidence, and any mitigating or exculpatory 10 information. The respondents must deliver the response 11 and eight copies to the City Clerk 24 hours in advance 12 of the Commission hearing, if possible. The 13 respondents may appear before the Commission personally 14 or be represented by counsel or any other person. 15 In this case, I believe we did not receive a 16 written response from the respondent. Is that correct? 17 MS. McDANIEL: For the respondent -- well, 18 she -- she did do a response that's included in the -- 19 like to the initial complaint that he included in his 20 letter. 21 CHAIRMAN SMITH: Okay. But as far as -- 22 MS. McDANIEL: But as far as actual response 23 to the report, no. 24 CHAIRMAN SMITH: To the report, no. Okay. 25 Okay. So we have received no response.</p>	<p style="text-align: center;">Page 12</p> <p>1 MR. MILLER: Yeah, believe it or not. Yeah, 2 to the extent I write checks at all. 3 VICE-CHAIR PIERRE-DIXON: It seems to be 4 correct in the body, though. 5 MR. MILLER: Thank you. I'm in the right 6 year. 7 So, as Chairman Smith has indicated, this 8 complaint -- the issues concern disclaimer requirements 9 added recently to the Municipal Code. Disclaimer 10 requirements for any electioneering communication, 11 which is broadly defined to include any communication 12 disseminated close to an election, within 90 days of 13 the election, and identifies a specific candidate. And 14 these new disclaimer requirements, I just point out, 15 are different from the state law requirements. 16 And the complaint alleges that Van Le put up 17 lawn signs that did not include the correct disclaimer, 18 as per the new requirements. 19 It was a relatively straightforward 20 investigation. Revealed that -- the complainant was 21 extremely cooperative in revealing that, yes, in fact, 22 the lawn signs had a disclaimer that was -- that 23 followed the state requirements but not the new city 24 requirements. The complainant made efforts to comply 25 and, at significant expense, reprinted stickers and</p>

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1 affixed them to the lawn signs to bring them into
2 compliance.
3 The complainant pointed out what I find also
4 to be true, even --
5 VICE-CHAIR PIERRE-DIXON: The complainant or
6 respondent?
7 MR. MILLER: Excuse me. The respondent. The
8 respondent.
9 VICE-CHAIR PIERRE-DIXON: Thank you.
10 MR. MILLER: Thank you.
11 So the respondent pointed out what I find
12 also to be true just on the drive here, that there
13 appear to be other candidates who are having difficulty
14 complying with these rules. And I've noticed numerous
15 signs and ads that may not follow the exact rules, and
16 I know the City Clerk has been doing yeoman efforts of
17 outreach to try and make sure that candidates
18 understand the rules. But only Van Le, for our
19 purposes, has been the subject of a complaint.
20 As I say, she has addressed the problem and
21 has fixed it. And so our recommendation is that while
22 undisputable that there was a violation, there are
23 mitigating circumstances that would indicate, if you so
24 decide, no need to take further action.
25 CHAIRMAN SMITH: Okay.

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1 MR. MILLER: Short and sweet.
2 CHAIRMAN SMITH: Okay.
3 MR. MILLER: At least short.
4 CHAIRMAN SMITH: Any questions for the -- for
5 the Evaluator?
6 No. Okay.
7 COMMISSIONER EDGEWORTH: I guess I do have a
8 question for the Evaluator, Mr. Chairman.
9 CHAIRMAN SMITH: Go ahead.
10 COMMISSIONER EDGEWORTH: I think that the
11 stickers and the second run at the stickers to solve
12 the mailing address problem, as opposed to the physical
13 address problem, were taken care of.
14 Did Hanson Bridgett make any request or
15 recommendation regarding not just future posters that
16 were distributed or put up or campaign signs put up but
17 those that had already been put up, to make sure that
18 they were rectified?
19 MR. MILLER: Yes. As I hope our report
20 indicates, the respondent took efforts to track down
21 all lawn signs that had already been put up.
22 COMMISSIONER EDGEWORTH: Yeah.
23 MR. MILLER: There were some that Respondent
24 was unable to find, that weren't where they were
25 originally had been located or had -- you know, left

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1 the control of the candidate.
2 COMMISSIONER EDGEWORTH: Okay. I just wanted
3 to bring that out.
4 MR. MILLER: But there was -- it was not just
5 a prospective corrective action but also to address
6 those signs that had already been put up. Thank you
7 for the question.
8 COMMISSIONER EDGEWORTH: Thank you.
9 CHAIRMAN SMITH: Okay. Thank you.
10 Did you wish to speak on behalf of the
11 respondent, Van Le, or --
12 MR. RICKENBERG: I think Mr. Miller's report
13 has covered the situation well. I know Van Le worked
14 hard to correct the situation, so I don't really have
15 anything to add.
16 CHAIRMAN SMITH: Okay. Are there any -- if
17 there's questions, I'll ask him to take an oath. But
18 otherwise --
19 VICE-CHAIR PIERRE-DIXON: No.
20 CHAIRMAN SMITH: No questions. Okay. Thank
21 you.
22 Then the complainant is not with us. So --
23 and there's no representative of the complainant, I
24 don't believe. So we have no comments from the
25 complainant.

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1 Anyone else wish to say anything regarding
2 this complaint?
3 VICE-CHAIR PIERRE-DIXON: No.
4 CHAIRMAN SMITH: If not, okay. We go to the
5 recommendations.
6 And, I guess, if I can summarize, your
7 recommendation is that there was a violation, but you
8 would recommend that there were mitigating
9 circumstances so there's not --
10 MR. MILLER: That's exactly --
11 CHAIRMAN SMITH: -- a penalty.
12 MR. MILLER: I apologize. I jumped the gun
13 on the recommendation.
14 CHAIRMAN SMITH: That's okay.
15 MR. MILLER: Yes. To me, I think the
16 mitigating circumstances that we found are not only the
17 corrective actions at some expense taken by the
18 respondent but also the newness of the rules themselves
19 and the fact that there appear to be other candidates
20 who are addressing their problems in an informal
21 fashion, working with the City Clerk, but not the
22 subject of a formal complaint.
23 Ordinarily -- maybe I shouldn't say
24 "ordinarily." But it is within the Evaluator's
25 authority that during an investigation, when we notice

4 (Pages 13 to 16)

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<p>1 a problem that may not have been raised in a complaint, 2 we have the authority to file a complaint on our own 3 and start an investigation. We chose not to do so 4 here, for the other signs we saw with flawed 5 disclaimers, because we understood there to be this 6 ongoing education outreach effort from the City Clerk's 7 office. But, from a fairness perspective, a decision 8 of the Commission to impose a penalty might make me 9 regret that I did not similarly file complaints against 10 other folks.</p> <p>11 CHAIRMAN SMITH: Okay. I guess we need to -- 12 just a moment. We need to treat the question whether 13 there's a violation and what, if any, penalty there 14 might be as a separate item. So we'll do the violation 15 first.</p> <p>16 Having said that, is your comment --</p> <p>17 COMMISSIONER LOUIE: Just curious. What -- 18 do you have a percentage of how many you saw -- 19 50 percent of them that you saw were also in violation? 20 Just a curiosity.</p> <p>21 MR. MILLER: Well, I have a very small sample 22 size because I didn't see everything, but I have yet to 23 see a sign that was compliant.</p> <p>24 CHAIRMAN SMITH: I would tend to agree. I 25 walk my dogs around the neighborhood, and I've seen --</p>	<p>1 And, fourth, we may find that, on the 2 preponderance of the evidence from the entire record 3 and proceedings, that a violation has occurred.</p> <p>4 Open the floor to Commission discussion on 5 the case. We need to make a finding for each 6 respondent for each potential violation. The findings 7 may be made by separate motion, one for each 8 respondent, and/or one for each potential violation or 9 Commission may act in one motion.</p> <p>10 Now, I believe in this case, strictly 11 speaking, there were two respondents that was against 12 the candidate and the candidate committee. I think 13 that's -- as I recall, that's the way --</p> <p>14 MR. MILLER: That is what the complaints 15 specified.</p> <p>16 CHAIRMAN SMITH: But we could do one 17 motion --</p> <p>18 COMMISSIONER EDGEWORTH: To cover --</p> <p>19 CHAIRMAN SMITH: -- to cover everything as --</p> <p>20 MR. MILLER: Probably a question for your 21 City Attorney. I would think the answer is yes.</p> <p>22 CHAIRMAN SMITH: Yeah, that's --</p> <p>23 MS. SILVA: Whatever the pleasure of the 24 Commission is.</p> <p>25 CHAIRMAN SMITH: Yeah, I think that's the way</p>
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<p>1 well, my -- I'm in District 6, so there's no district 2 election but mayoral. And until recently, when I saw 3 somebody put a sticker on one, I hadn't seen one that 4 complied either. And these are mayoral candidates.</p> <p>5 MR. MILLER: This goes for advertisements as 6 well as lawn signs.</p> <p>7 CHAIRMAN SMITH: Oh, really? Well, certainly 8 the lawn signs. I don't remember what the previous 9 requirement was for the lawn signs exactly.</p> <p>10 MS. SILVA: Twelve point.</p> <p>11 CHAIRMAN SMITH: Oh, okay. So that's why 12 they're all 12. Okay.</p> <p>13 Okay. So I guess the first matter is -- now 14 it's time for the Commission to make its decision. We 15 have following the options. We may find that further 16 investigation is necessary. If so, we would direct the 17 Evaluator to conduct further investigation and report 18 back.</p> <p>19 Second, we may find that there is sufficient 20 evidence to establish that no violation occurred. If 21 so, we would make that finding and announce that fact.</p> <p>22 Third option, we may find that there is 23 insufficient evidence to establish that a violation has 24 occurred. If so, we would make that finding and 25 announce that fact.</p>	<p>1 the rules are.</p> <p>2 So any discussion or would someone like to 3 make a motion?</p> <p>4 VICE-CHAIR PIERRE-DIXON: I think that we 5 should make a motion to conclude that, in fact, there 6 was a violation of the Municipal Code by the candidate 7 and the candidate's organization --</p> <p>8 CHAIRMAN SMITH: Committee.</p> <p>9 VICE-CHAIR PIERRE-DIXON: Committee. And 10 that would be my motion.</p> <p>11 CHAIRMAN SMITH: Thank you.</p> <p>12 COMMISSIONER LOUIE: I would second that.</p> <p>13 CHAIRMAN SMITH: Any discussion?</p> <p>14 Okay. And we also have -- probably not 15 relevant in this case. We could go so far as to -- as 16 far as the number of violations. I think one violation 17 is appropriate personally. But you could -- you know, 18 like if there's -- if this were a case of contributions 19 and there were six contributions, you could say there 20 is six violations. Or in this case we can say there is 21 one violation for each one --</p> <p>22 VICE-CHAIR PIERRE-DIXON: No.</p> <p>23 CHAIRMAN SMITH: Anyway, I agree -- 24 personally agree with the motion. I would support it. 25 Any other discussion?</p>

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1 Okay. So the motion is the finding that
2 there is a violation by the candidate and the candidate
3 committee. All in favor?
4 (All Commissioners present responded Aye.)
5 CHAIRMAN SMITH: Any opposed?
6 (No response.)
7 CHAIRMAN SMITH: So, again, it's
8 four-nothing, with one missing.
9 Okay. Oh, and upon -- at this point, then, I
10 must ask each Commission member to certify that you
11 have heard or read the testimony at the hearing and
12 have reviewed all of the evidence and records by
13 affirming "so certified."
14 Commissioner Louie?
15 COMMISSIONER LOUIE: So certified.
16 CHAIRMAN SMITH: Commissioner Pierre-Dixon?
17 VICE-CHAIR PIERRE-DIXON: So certified.
18 CHAIRMAN SMITH: Commissioner Edgeworth?
19 COMMISSIONER EDGEWORTH: So certified.
20 CHAIRMAN SMITH: And me, so certified.
21 Okay. Now we move on to penalties. If the
22 Commission finds that a violation has occurred, it must
23 consider imposing penalties.
24 The Commission may -- we have four options,
25 and this is and/or. Find mitigating circumstances and

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1 take no further action; second, issue a public
2 statement or reprimand; third, require a corrective
3 action by a particular deadline and/or, four, impose a
4 civil penalty in accordance with Chapter 12.04 of the
5 Municipal Code. Civil penalties are imposed by
6 resolution of the Commission, except as otherwise
7 specified in Title 12. The Commission may impose
8 penalties of up to \$5,000 for each violation or three
9 times the amount which the person or respondent failed
10 to report properly or unlawfully contributed, expended,
11 gave or received, whichever is greater.
12 The affirmative votes of at least three
13 commission members are required to impose orders of
14 penalties for violation. In addition, in order to vote
15 to impose any order or penalty for a violation, every
16 commission member must certify that he or she has heard
17 or read the testimony at the hearing and reviewed all
18 the evidence in the record.
19 In determining if penalties should be imposed
20 for violations of Title 12 and the amount of such
21 penalties, the Commission shall consider all relevant
22 circumstances surrounding the case, including severity
23 of the violation, the presence or absence of any
24 intention to conceal, conceive or mislead; whether the
25 violation was deliberate, negligent or inadvertent;

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1 whether the violation was an isolated incident or
2 pervasive enough to indicate a pattern of disregard for
3 this chapter; whether the respondent has a prior record
4 of violations of city law relative to campaign finance,
5 lobbying, conflicts of interest or government ethics;
6 the degree to which the respondent cooperated with the
7 investigation; and, lastly, whether or not corrective
8 actions were taken, if appropriate and in accordance
9 with the provision of this chapter.
10 Is there a motion regarding penalties?
11 COMMISSIONER LOUIE: I'll create a motion. I
12 think that first item you mentioned, I don't see any
13 reason there should be any penalty.
14 CHAIRMAN SMITH: Okay. So the motion is for
15 no penalty. Okay. Do we have a second?
16 COMMISSIONER EDGEWORTH: Second.
17 CHAIRMAN SMITH: And, again, I would support
18 that, for all the reasons we discussed. Particularly
19 the fact that almost every other candidate in every
20 other election in the City going on right now has done
21 the exact same thing, and to single out one person just
22 doesn't seem right.
23 VICE-CHAIR PIERRE-DIXON: I would like to
24 add, however, that one of the mitigating circumstances
25 I find is that the candidate did, in fact, attempt to

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1 at least follow state law in reference to how the sign
2 should be registered. So at least there was some
3 information for the public at large as to who these
4 signs belong to. So I find that as also a mitigating
5 circumstance.
6 CHAIRMAN SMITH: And they fixed the problem.
7 COMMISSIONER PIERRE-DIXON: And fixed the
8 problem.
9 CHAIRMAN SMITH: Okay. Any other -- okay.
10 So we'll take a vote on that motion that there be no
11 penalty.
12 All in favor?
13 (All Commissioners present responded Aye.)
14 CHAIRMAN SMITH: Any opposed?
15 (No response.)
16 CHAIRMAN SMITH: So it's four-nothing.
17 Again, with one missing.
18 And again we go through the certification.
19 I'd ask you to certify that you have heard or read the
20 testimony at the hearing and have reviewed all the
21 evidence in the record by saying "so certified."
22 Commissioner Louie?
23 COMMISSIONER LOUIE: So certified.
24 CHAIRMAN SMITH: Commissioner Pierre-Dixon?
25 VICE-CHAIR PIERRE-DIXON: So certified.

6 (Pages 21 to 24)

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<p>1 CHAIRMAN SMITH: Commissioner Edgeworth?</p> <p>2 COMMISSIONER EDGEWORTH: So certified.</p> <p>3 CHAIRMAN SMITH: And me, so certified.</p> <p>4 And we also may refer the matter to other</p> <p>5 government agencies or officials if we determine that</p> <p>6 the agency or official may be -- may more appropriately</p> <p>7 resolve the allegations in the complaint or enforce the</p> <p>8 applicable provisions of the law. A copy of all</p> <p>9 information gathered must be sent to the City Clerk's</p> <p>10 office or City Attorney's office from -- by the City</p> <p>11 Attorney -- Clerk's office or City Attorney's office to</p> <p>12 the agency or official, together with a referral.</p> <p>13 I don't think we have anything to do here.</p> <p>14 But -- unless somebody thinks otherwise. This is all</p> <p>15 in terms of San Jose, and we found a violation with no</p> <p>16 penalty.</p> <p>17 VICE-CHAIR PIERRE-DIXON: I think we</p> <p>18 understand that the Clerk has talked with the other</p> <p>19 candidates and brought them up to speed on what's</p> <p>20 required, and I'm satisfied with that.</p> <p>21 CHAIRMAN SMITH: Have we -- just out of</p> <p>22 curiosity -- well, maybe a little more than curiosity.</p> <p>23 Have we identified -- are you confident that we have</p> <p>24 identified all the candidates for the various offices</p> <p>25 who are having problems with this particular --</p>	<p>1 COMMISSIONER EDGEWORTH: I just wanted to ask</p> <p>2 the City Clerk: Can we assume that you're also working</p> <p>3 with the other departments, like enforcement, that are</p> <p>4 involved, that they can also be cognizant?</p> <p>5 MS. TABER: Code enforcement, yeah. Exactly.</p> <p>6 CHAIRMAN SMITH: As I recall, this -- the</p> <p>7 business -- this being a new requirement was emphasized</p> <p>8 in the training --</p> <p>9 MS. TABER: Yes.</p> <p>10 CHAIRMAN SMITH: -- that we did for</p> <p>11 candidates. And from what you said, you have contacted</p> <p>12 all the candidates that you've heard issues about,</p> <p>13 concerns, complaints. But have you gone out with a</p> <p>14 general thing to all the candidates, saying, Oh, by the</p> <p>15 way, we're having issues --</p> <p>16 MS. TABER: No.</p> <p>17 CHAIRMAN SMITH: Okay. You don't think</p> <p>18 that's necessary? You're getting the ones --</p> <p>19 MS. TABER: Let's do that. We can do that</p> <p>20 tomorrow. I'll just take my -- my standard language.</p> <p>21 Because I have e-mailed candidates about it, so I can</p> <p>22 easily send out a mass e-mail to everybody, just as a</p> <p>23 reminder.</p> <p>24 CHAIRMAN SMITH: Okay.</p> <p>25 One last item on this complaint before we</p>
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<p>1 MS. TABER: No. Every single one I've been</p> <p>2 contacted about, that -- I have called those</p> <p>3 candidates. But I don't -- not all candidates are</p> <p>4 doing signs. Some signs, if they're doing them, we may</p> <p>5 not have heard of them or seen them. Every candidate</p> <p>6 has been contacted, you know, with the new information.</p> <p>7 Those who we've received a call about -- we received</p> <p>8 several -- you know, another department receives -- oh,</p> <p>9 we got a call. So then we call the candidate. And</p> <p>10 every -- every single candidate we've talked to or</p> <p>11 candidate team that we've talked to has fixed the</p> <p>12 problem. They have immediately gone out, started</p> <p>13 putting stickers and labels. One candidate reordered</p> <p>14 signs and removed the old. So they have all been</p> <p>15 complying when we've requested it.</p> <p>16 CHAIRMAN SMITH: At least to the best of</p> <p>17 their ability.</p> <p>18 MS. TABER: Yeah, to the best of my</p> <p>19 knowledge.</p> <p>20 CHAIRMAN SMITH: I can tell you at least a</p> <p>21 couple of signs in my area that haven't been fixed,</p> <p>22 even though I have been told that that candidate has --</p> <p>23 MS. TABER: After the meeting, you tell me</p> <p>24 the names, and I'll call.</p> <p>25 CHAIRMAN SMITH: Okay. Yes.</p>	<p>1 close the hearing. At this time, I would entertain a</p> <p>2 motion that the Commission direct the City Attorney to</p> <p>3 draft a resolution of the Commission's findings and</p> <p>4 penalties -- in this case, there is none -- and that</p> <p>5 the Commission authorizes the Chair to approve and sign</p> <p>6 the resolution.</p> <p>7 VICE-CHAIR PIERRE-DIXON: I would make that</p> <p>8 motion at this time.</p> <p>9 COMMISSIONER EDGEWORTH: I have a question.</p> <p>10 VICE-CHAIR PIERRE-DIXON: Yeah.</p> <p>11 COMMISSIONER EDGEWORTH: I don't recall we</p> <p>12 actually specifically made a motion that no further</p> <p>13 action would be taken. You talked about mitigating</p> <p>14 circumstances, but we never took that next step to</p> <p>15 close it.</p> <p>16 CHAIRMAN SMITH: We took --</p> <p>17 COMMISSIONER EDGEWORTH: Maybe she could read</p> <p>18 back the --</p> <p>19 CHAIRMAN SMITH: We took a vote on the</p> <p>20 penalties. We took a vote on the motion and --</p> <p>21 MS. TABER: You didn't take a vote. You took</p> <p>22 a motion -- yeah, a motion to vote on the penalties.</p> <p>23 CHAIRMAN SMITH: And we did a --</p> <p>24 COMMISSIONER EDGEWORTH: But not to take no</p> <p>25 further action.</p>

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1 MS. TABER: Is that not the same thing?
2 COMMISSIONER EDGEWORTH: No. Because
3 remedial action has been taken already. We never
4 mentioned the word "remedial action" to take care of
5 it. And now we have to say that we'll take no further
6 action on it. I'm just asking him the questions.
7 MS. SILVA: And close the file.
8 COMMISSIONER EDGEWORTH: Oh, okay.
9 MS. SILVA: Separate motion to close the file
10 and no further action.
11 CHAIRMAN SMITH: We haven't done it since
12 I've been using these. Let's say that.
13 VICE-CHAIR PIERRE-DIXON: I don't have a
14 problem with that.
15 CHAIRMAN SMITH: Let me think about this a
16 second. Yeah, we do need to close the file.
17 COMMISSIONER EDGEWORTH: I'm just --
18 CHAIRMAN SMITH: Okay. So we can have a
19 motion to -- can we amend the motion and do the -- to
20 say to close the file, or do we need two separate
21 motions?
22 VICE-CHAIR PIERRE-DIXON: I think it needs to
23 be two separate motions. We need to do the action,
24 whatever the action is going to be. And then to close
25 the file after --

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1 CHAIRMAN SMITH: After the resolution?
2 VICE-CHAIR PIERRE-DIXON: Yes.
3 CHAIRMAN SMITH: Okay. That's fine. Okay.
4 MS. McDANIEL: Yeah, the one that you're
5 doing now was the one to close the file.
6 CHAIRMAN SMITH: That's what I thought.
7 That's why --
8 MS. McDANIEL: I thought it was combined into
9 one motion.
10 CHAIRMAN SMITH: But it doesn't say that.
11 You're right.
12 VICE-CHAIR PIERRE-DIXON: Okay.
13 COMMISSIONER EDGEWORTH: And I would like to
14 suggest there's a difference between imposing a penalty
15 and taking no further action.
16 VICE-CHAIR PIERRE-DIXON: Right.
17 CHAIRMAN SMITH: Yeah, it's sort of
18 indirectly covered because the penalty can include
19 corrective -- requirement for corrective action. If
20 you were listening when I read that part. And we also
21 said that we're not going to do a referral. That would
22 be the other -- in effect, we've sort of said no
23 action, but we can have a separate motion.
24 Anyway, we need a second for the motion on
25 the resolution. So if somebody would like to second

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1 that. I'll second it. That's easy.
2 Okay. So we have a motion and second on
3 directing the City Attorney to draft a resolution on
4 the findings and penalties and authorizing the Chair to
5 approve and sign it.
6 All in favor?
7 (All Commissioners present responded Aye.)
8 CHAIRMAN SMITH: Any opposed?
9 (No response.)
10 CHAIRMAN SMITH: Okay. And then, I guess,
11 we're saying we need a motion to close the file and
12 take no further action.
13 MS. SILVA: Correct.
14 CHAIRMAN SMITH: Okay. Somebody want to make
15 that?
16 COMMISSIONER EDGEWORTH: Based on the
17 findings of mitigating circumstances, including the
18 newness of the regulation, the attempt of the
19 respondent to comply with state -- with the state code,
20 and the fact that remedial action was taken, I
21 recommend that no further action be taken and the file
22 be closed.
23 VICE-CHAIR PIERRE-DIXON: I would second that
24 motion.
25 CHAIRMAN SMITH: Okay. Any discussion?

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1 Okay. All in favor?
2 (All Commissioners present responded Aye.)
3 CHAIRMAN SMITH: Any opposed?
4 (No response.)
5 CHAIRMAN SMITH: Okay. That's unanimous.
6 Four-zero and one missing. Okay. I'll have to fix my
7 template.
8 Okay. Now we move on to the second hearing.
9 This is the hearing of a complaint -- and I'm not going
10 to go through all the stuff I read last time, because
11 everybody who was here --
12 (Commissioner Peacock enters meeting.)
13 CHAIRMAN SMITH: Oh, you came at a good time.
14 We're starting the second hearing.
15 COMMISSIONER PEACOCK: My apologies. The
16 elevators aren't working. I was downstairs for
17 25 minutes and --
18 CHAIRMAN SMITH: Really?
19 COMMISSIONER PEACOCK: Yes.
20 CHAIRMAN SMITH: They were working. They
21 must have closed them after 5:00.
22 COMMISSIONER PEACOCK: And then building
23 security didn't work. I've been all over -- I've
24 gotten to know the building really well. This floor is
25 very well secured. My apologies for being late.

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<p style="text-align: center;">Page 33</p> <p>1 CHAIRMAN SMITH: Okay. We just finished the 2 hearing on the first, and we're on to the second one. 3 As I was saying, I'm not going to read all of 4 the stuff that I read up front again, because all the 5 same people are here. 6 But, anyway, this is a hearing on a complaint 7 filed on April 8, 2014, by Stephen Kline, alleging that 8 Sam Liccardo and Neighbors of Sam Liccardo Committee 9 violated Section 12.06.290 of the San Jose Municipal 10 Code. 11 Specifically, the allegations are that the 12 respondents solicited and accepted contributions 13 outside the campaign contribution period; improperly 14 spent candidate's personal funds without first 15 depositing them into the campaign bank account; and did 16 not report certain in-kind contributions. 17 Again, this hearing is open to the public, 18 being recorded, and we have a court reporter to compile 19 a transcript. 20 I'd like to know -- are the complainants -- I 21 know the -- I know the respondent is here. Is the 22 complainant here? I don't see the complainant here 23 either. Is there anyone representing -- I guess, 24 Mr. Sutton, you are representing Mr. Liccardo. Anyone 25 representing the complainant? Okay.</p>	<p style="text-align: center;">Page 35</p> <p>1 the independent evaluator to present their reports and 2 recommendations. And, again, I'll recognize Steven 3 Miller from Hanson Bridgett to present the report. And 4 we will -- again, we'll do the recommendations after 5 that. 6 MR. MILLER: Thank you again. And, again, an 7 apology for the wrong date on the front of the report. 8 So this complaint -- considerably more 9 complex than the first item on your agenda this 10 evening. A relatively large number of issues and quite 11 a large cast of characters. So my report will be a 12 little bit longer than the one I just gave you for the 13 first item. 14 And I think I'd like to -- the report 15 raises -- the complaint lists 12 allegations that it 16 refers to as counts, and for convenience I'll use that 17 term here as well. And I'm going to sort of organize 18 them a little differently, in a different order than 19 are raised in the complaint, but they'll be consistent 20 with the report that you have in front of you. 21 So, first, under our rules, we preliminarily 22 review complaints for sufficiency under the standard 23 that Chairman Smith mentioned at the beginning of this 24 meeting. And there were three counts that we 25 determined were -- presented insufficient facts towards</p>
<p style="text-align: center;">Page 34</p> <p>1 VICE-CHAIR PIERRE-DIXON: You can have him 2 identify himself on the record. 3 CHAIRMAN SMITH: Oh. 4 MR. SUTTON: Jim Sutton, representing 5 Counselman Liccardo in the Liccardo for Mayor campaign. 6 CHAIRMAN SMITH: Thank you. Okay. We've 7 gone over the process before. Okay. Do that again? 8 Okay. The first item: As of this time, 9 we've received a response from both the respondent and 10 his representative. Does everyone have a copy? 11 There's a memo dated a couple of days ago from 12 Mr. Liccardo. And one dated either yesterday or 13 today -- I've forgotten which -- from Mr. Sutton. 14 Dated yesterday. Has everybody got those two? 15 VICE-CHAIR PIERRE-DIXON: Yes. 16 COMMISSIONER EDGEWORTH: Yes. 17 CHAIRMAN SMITH: We got them by e-mail, and 18 they're in the -- near the back of the second package. 19 Okay. The complainant and any other 20 interested person may also submit a brief or written 21 argument. I don't believe any other -- we haven't 22 received any other written arguments, have we, Toni? 23 MS. TABER: No. 24 CHAIRMAN SMITH: No? Okay. 25 Okay. So, again, our regulations allow for</p>	<p style="text-align: center;">Page 36</p> <p>1 our continued investigation. The complaint alleged 2 that in three instances there were campaign events at 3 which there, quote, must have been in-kind 4 contributions that were not reported and suggested that 5 we investigate to find out whether, in fact, that were 6 true. But there was no evidence presented to suggest 7 why it is that there must have been -- no facts to 8 support the allegation at all. And so we -- our first 9 task was we determine that on those three counts, we 10 determine an insufficiency in facts and did not 11 investigate those three counts. 12 Mr. Smith, do you want me to stop after each 13 little subsection for discussion; or shall I continue 14 through the whole -- 15 CHAIRMAN SMITH: Whatever is easier for you. 16 MR. MILLER: Well, why don't I just continue. 17 If you all have questions, feel free to -- 18 VICE-CHAIR PIERRE-DIXON: We'll ask. 19 MR. MILLER: Don't be shy. 20 So that left nine counts. Six of them fall 21 within one category, which was perhaps the most 22 labor-intensive of our investigation. And it's also 23 the most intellectually challenging or complicated. It 24 involves the portion of the Title 12 -- that blackout 25 period for contributions that says you may not solicit</p>

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1 or accept contributions except during the campaign
2 contribution period of 180 days before the election,
3 which, for our purposes here, was December 5th, 2013.

4 And the question is, what kinds of activities
5 are permitted during that blackout period before
6 December 5th and what kinds of activities constitute
7 impermissible solicitation or acceptance of campaigns?
8 We are guided in our investigations by the City
9 Attorney's interpretation of Title 12. And there is a
10 very helpful memo from the City Attorney clarifying
11 that activities to plan a future fundraiser do not
12 constitute impermissible solicitation that would
13 violate the rule but that lining up a pledge of
14 financial support during the blackout period would
15 constitute impermissible solicitation of a
16 contribution.

17 As you may tell from discussing -- from just
18 hearing me say that, there are perhaps some niceties
19 that it's hard to draw a fine line. But, nonetheless,
20 we use that -- the City Attorney's guidance in our view
21 of the facts. And there were alleged -- really, three
22 types of activities that the complaint alleged fell on
23 the wrong side of that line between permissible
24 planning of a future fundraiser and impermissible
25 soliciting of a financial pledge.

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1 So the first is that at some point in
2 November of 2013, before the December 5th beginning of
3 the campaign period, the campaign posted on its web
4 site notice of what they called campaign events that,
5 in fact, were fundraiser events, although they were not
6 identified as such. There was no -- there was nothing
7 on the web postings beyond just a notice of the time
8 and the place of the event. There was a link that you
9 could click on and would take you to a web site that
10 would allow you to volunteer for the campaign. But
11 there was no way, from that posting, for someone even
12 to make a contribution before the December 5th date if
13 they even wanted to.

14 And so this seemed relatively straightforward
15 to us, that just the mere posting of a notice saying,
16 "Hey, there's going to be a campaign event in a month"
17 was on the side of the permitted planning for future
18 fundraising rather than actually soliciting a pledge.
19 And we found those activities to be not even really
20 coming close to a violation of the Municipal Code.

21 As an aside, I'll mention that the complaint
22 alleged that the campaign took those postings down in a
23 manner that suggested some form of cover-up, that the
24 campaign somehow thought that there was something
25 improper in that posting and that by taking them down,

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1 they were admitting some impropriety. And, in fact,
2 our investigation discovered that the web hosting tool
3 that the campaign used -- when you put something on the
4 web, you set a time for how long you want it up on the
5 web. And they put it -- when they established it in
6 November, they set it up so that it would automatically
7 come down when the event was done in December. So
8 there was no intent or not even any affirmative action
9 necessary to remove these postings.

10 The next category of activity -- I'm trying
11 to think which order to take it in. The next category
12 had to do with the activities by which the respondent
13 enlisted individuals to serve as cohosts for these
14 fundraising events. And the allegation implied -- it
15 didn't imply. The allegation stated that the whole
16 purpose of being a cohost for a campaign event is to
17 give money. And that, therefore, almost by definition,
18 when a candidate asks someone to be a cohost, he or she
19 is -- almost by definition is soliciting a financial
20 contribution.

21 So we spoke to a number of cohosts.
22 Actually, a few cohosts, unsolicited, contacted us.
23 They learned that there was a complaint out there. I
24 think, not through us but through some means --
25 CHAIRMAN SMITH: It was in the Mercury News.

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1 MR. MILLER: So -- and then at a certain
2 point, based on what we had learned, there were
3 90-some-odd folks who were listed as cohosts, and we
4 didn't think it would be an efficient use of your money
5 and our time to actually interview all of them. And so
6 we communicated with them all through e-mail via a
7 questionnaire. And we also spoke to the respondent at
8 great length about his interactions with the
9 individuals that he enlisted to serve as cohosts before
10 December 5th.

11 And what we learned -- what we heard from
12 everybody that we spoke to and from the questionnaires
13 is that the folks who were enlisted to serve as cohosts
14 understood their role not to be pledging financial
15 support but rather to guarantee or to work hard to get
16 maximum attendance at these fundraisers. And the
17 reason why there would be, in some cases, 20 cohosts
18 was that if each cohost brings ten other people, you'll
19 get a big turnout for these events.

20 When we spoke to the candidate, he was
21 extraordinarily clear on the rule of the blackout
22 period and had prepared some talking points in his mind
23 and in writing -- written, actually, talking points to
24 use when he enlisted these cohosts to make sure that he
25 never asked them for financial support.

10 (Pages 37 to 40)

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<p>1 Our review of the campaign reports indicates 2 that not all cohosts actually contributed money. So 3 there is no one-on-one -- one-to-one lineup between 4 being a cohost and contributing money. 5 And based on those contributions -- those -- 6 excuse me -- those conversations with the cohosts, the 7 e-mail questionnaires, our conversation with the 8 respondent and our examination of the reports, we found 9 no evidence to support the allegation that there was 10 somehow, ipso facto, promised to pledge money simply by 11 virtue of agreeing to be a cohost. And, therefore, we 12 found that those conversations in the process of 13 enlisting a cohost was more properly on the side of the 14 permissible planning for a future fundraiser rather 15 than the prohibited soliciting of a financial pledge. 16 You know, one could imagine a conversation. 17 Mr. Smith, will you be a cohost? 18 Well, what does it mean to be a cohost? 19 I want you to give me -- to promise that you 20 will give me a hundred dollars next week. Promise 21 today that you'll give me a hundred dollars next week. 22 That kind of a conversation would have fallen 23 afoul under the City Attorney's guidelines, and that's 24 not the kind of conversation that we ever heard 25 anything like happening at all.</p>	<p>1 next month -- or next week, in this case. Here's why 2 the respondent is going to be a great guy or a great 3 mayor of San Jose, and please come and meet him. It 4 does use the word "fundraiser." 5 And, in fact, when we spoke to the 6 respondent, the respondent acknowledged unease about 7 that, to the point that the respondent -- before this 8 complaint was filed and we got involved, the respondent 9 had already refunded and returned contributions that 10 had been made associated with the sending of that 11 e-mail. 12 So in considering -- 13 CHAIRMAN SMITH: Yes, please. 14 VICE-CHAIR PIERRE-DIXON: And all of those 15 contributions that were made were made after the time 16 period? 17 MR. MILLER: That is correct. 18 VICE-CHAIR PIERRE-DIXON: Thank you. 19 MR. MILLER: There is nothing improper about 20 the contributions except that they were connected. 21 It's a little hard to exactly say which contributions 22 came because some people went to that fundraiser but 23 gave money a week later. Or some people didn't go at 24 all but may have been a recipient of that e-mail. 25 VICE-CHAIR PIERRE-DIXON: But it was all</p>
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<p>1 Let's see. Anything else on those 2 conversations? 3 So, again, we find that the enlisting of the 4 cohosts seemed okay. 5 Then there was one specific item that was a 6 little on the sensitive side that I'll mention 7 specifically. And it got some media attention when it 8 happened. Or a little after it happened. There is one 9 e-mail that was sent by one of the cohosts on 10 December 4th, which is one day before the 11 December 5th -- actually, I never was able to find out 12 the exact time of day on December 4th that e-mail was 13 sent. So it could have been 23 hours before the 14 deadline was over or 23 seconds before. I'm not sure. 15 I don't think it really matters for our purposes. It 16 was before December 5th. And that e-mail says, I'm -- 17 I'm hosting a fundraiser. And there is a suggestion 18 that the use of the word "fundraiser" in that sentence 19 transfers that e-mail from the planning of a future 20 event, which is permissible, to an impermissible 21 solicitation. 22 Other than that one word, "fundraiser," this 23 e-mail is -- there would be no question but that it is 24 just purely -- really no different from these web 25 postings. You know, so there's going to be this event</p>	<p>1 after December 5th? 2 MR. MILLER: But it was all after December 3 5th. 4 VICE-CHAIR PIERRE-DIXON: Thank you. 5 MR. MILLER: So you may recall that a year 6 and a half ago you were presented with a complaint 7 similarly about solicitation before the end of the 8 blackout period, with facts that really stand in quite 9 stark contrast to those here, where there was not just 10 "I'm having a fundraiser next week," but it was "I'm 11 having a fundraiser next week. It's going to cost you 12 \$25. Could you please pay me the money now" -- 13 VICE-CHAIR PIERRE-DIXON: Right. 14 MR. MILLER: -- "and I encourage you to pay 15 me the money as soon as possible." And they sent the 16 e-mail out a number of times and actually did collect 17 money beforehand. 18 And our view -- where we ended up coming down 19 on it is that the simple use of the word -- oh, one 20 more fact that we found extremely important is -- as 21 with the web postings, it said "We're hosting a 22 fundraiser," and there was an RSVP link. Had that RSVP 23 link linked to a page that said "Yes, I'm coming, and I 24 promise to give you a hundred dollars," we would 25 probably have a very different conclusion. But, in</p>

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1 fact, that RSVP link went, as with the web postings, to
2 a page where you could sign up to volunteer. And if
3 you wanted more information you could click again, and
4 you get to campaign web site. But the -- the credit
5 card processing engine could not accept contributions
6 nor did that RSVP link even direct you to a place where
7 there was any mention of a contribution.

8 So, absent that one word, "fundraiser," I
9 would not have spoken for the last three minutes. And
10 it didn't seem to us that that use of that word alone
11 was enough to convert a planning of a fundraiser into a
12 solicitation of a pledge.

13 VICE-CHAIR PIERRE-DIXON: Okay.

14 MR. MILLER: Without some form of really sort
15 of clear black line, such as the conversation that I
16 just made up between the two of us. Will you today
17 promise to give me money tomorrow? I think it will be
18 very hard to formulate any kind of rule that would
19 apply to a multitude of circumstances. And, in any
20 event, the one word, "fundraising," did not strike us
21 as being sufficient to tip the balance.

22 So we also find that e-mail. So we have the
23 web postings, we have the conversations with the
24 cohosts to be enlisted -- to the folks to be enlisted
25 as cohosts, and we have this December 4th e-mail. And

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1 I'm going to say \$3,000. It's not the exact right
2 number. But \$3,000 --

3 VICE-CHAIR PIERRE-DIXON: It's \$3,045.34.

4 MR. MILLER: Thank you. I'm still going to
5 say \$3,000.

6 VICE-CHAIR PIERRE-DIXON: But it's on the
7 record.

8 MR. MILLER: The \$3,000 was spent before --
9 during the blackout period before December 5th. The
10 definition of a contribution includes candidate
11 spending his own money. So one might say -- one might
12 conclude that, oh, he spent his own money. That was a
13 contribution before the December 5th deadline and,
14 therefore, it was an impermissibly early contribution.

15 The Municipal Code has other provisions that,
16 when read together, I think the City Attorney agreed
17 should be read so as not to apply the blackout period
18 to the candidate spending his own money. That rule is
19 not specifically stated nor is it specifically -- is
20 there specific guidance on point. There is specific
21 guidance on point, and there are specific provisions in
22 the rules concerning whether a candidate can loan money
23 to his own campaign during the -- outside the
24 contribution period, whether it can deposit money into
25 his account outside the blackout period.

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1 in no cases did we find that those amounted to
2 impermissible solicitations of financial pledges in
3 violation of the Municipal Code.

4 So that takes care of that -- our
5 investigation of six of the twelve counts. We already
6 spoke about three being we did not investigate. So now
7 we're up to nine. Maybe I will pause for a moment in
8 case someone has a question.

9 Okay. Next, there is the undisputed fact
10 that the candidate spent \$3,000 and some -- three and a
11 quarter -- 3,200. I forget the exact number. Around
12 \$3,000 of his own money without first depositing it
13 into his campaign bank account. That is not a
14 violation of Title 12. And it may implicate state law.
15 And, as you mentioned earlier, you do have the
16 authority to refer matters to other agencies when you
17 think that there is a need to do so. I'll point out
18 that there is already filed a complaint with the FPPC
19 on that matter. And we can talk about those actions
20 you might want to take later on. But that's one count,
21 which we also didn't -- basically, didn't investigate
22 because it doesn't allege a violation of Title 12.

23 However, the same facts could have given rise
24 to a level -- to a violation of Title 12. And so we
25 did look into it in the following way. The \$3,000 --

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1 But the unusual circumstances here of
2 spending money directly, it requires -- required some
3 thought and some interpretation. But I think -- our
4 conclusion is that the Municipal Code does not prevent
5 a candidate from spending his own money outside the
6 contribution period.

7 So that -- there's -- I've now addressed the
8 two counts that deal with the spending of this 3,000
9 and a few odd dollars' change.

10 There is one more count that alleged that the
11 candidate had a campaign kickoff event at which
12 discounted pricing on food and drink was provided. And
13 under the rules of a contribution, a discounted price
14 not generally available to the public, the difference
15 between that discounted price and the regular list
16 price would be reportable as a contribution.

17 In fact, our investigation found a very
18 reasonable explanation. The contract between the
19 campaign and the restaurant by which the restaurant
20 charged the pricing that it would charge anyone hosting
21 an event at their restaurant with no special pricing
22 for the public and charged the candidate a flat fee
23 depending on how many people would show up. I forget
24 exact number. But if a hundred people showed up, the
25 candidate would pay X dollars; and 200, Y dollars. As

12 (Pages 45 to 48)

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1 it turned out, so many people showed up that there was
2 actually no payment made to the restaurant, and there
3 was no discount offered and no reportable in-kind
4 contribution.

5 CHAIRMAN SMITH: And the reason for that was
6 because there was a cash bar, so the restaurant was
7 making their money off the cash bar. That's why they
8 gave the discount for the number of people.

9 MR. MILLER: Right. And they were making --
10 as well. They were -- they were making money from the
11 cash bar, at prices that they would charge -- that they
12 would charge anybody.

13 CHAIRMAN SMITH: Right. Right.

14 MR. MILLER: So that -- if my math is
15 correct, I think I've gone through the 12 counts in the
16 complaint.

17 During the course of our investigation, we --
18 in our conversations with cohosts about the six counts
19 regarding enlisting of cohosts, we did learn that a few
20 cohosts had provided food and drinks for the event.
21 And there is a rule -- it's not the simplest rule to
22 comply with always, but you are allowed -- a cohost may
23 spend \$500 for an event held in his own home, provided
24 that nobody else is spending any money. In this case,
25 Cohost A spent \$400, and Cohost B spent \$500. You will

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1 assume that's what is being talked about on Page 2,
2 where you say, "In the course of the investigation we
3 discovered facts concerning a possible violation of
4 Title 12 not raised in the complaint."

5 MR. MILLER: That's exactly right.

6 COMMISSIONER PEACOCK: And then in the
7 candidate's letter he says, "Second, during the course
8 of this review, we discovered one example of an
9 unreported in-kind contribution." Is that talking
10 about the same thing?

11 MR. MILLER: Yes. The reason why the
12 candidate discovered it is because we brought it to his
13 attention.

14 COMMISSIONER PEACOCK: You can see why -- I
15 was wondering who was the actual -- you were the
16 original discoverer, correct, it sounds like?

17 MR. MILLER: Yes. It was not hard to
18 discover. The guy called me on the phone and told me.

19 CHAIRMAN SMITH: I believe --

20 MR. MILLER: I wasn't out hunting for it.

21 CHAIRMAN SMITH: I believe the report
22 indicated that the campaign compliance person had
23 recognized early on and told the contribution people or
24 something, "This ought to be considered an in-kind
25 contribution" but that it went nowhere.

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1 correct me on the numbers, Ms. Pierre-Dixon, I'm sure.

2 VICE-CHAIR PIERRE-DIXON: I'm looking,
3 485.85 and then 400 by the other person.

4 MR. MILLER: Thank you.

5 The point being that the fact that both of
6 those folks paid means that the 500 exemption doesn't
7 apply to either of them, and both of those count as
8 contributions. They both reported that they had spent
9 that money to the appropriate campaign official, and it
10 sounds like there was just some mixup that it ended up
11 not getting reported.

12 When we pointed it out to the respondent, he
13 acknowledged that it was true and that there was just a
14 mixup. He didn't offer an explanation beyond just a
15 mistake was made. And, actually, literally seconds
16 before I filed my report to you, received a copy of an
17 amended campaign disclosure report showing that the
18 campaign had taken action to file an amended report
19 disclosing that \$885 of in-kind contribution.

20 So, in that one respect, I think we have
21 found that there was a violation and -- but the
22 candidate took some corrective action to file an
23 amended campaign report.

24 Yes, please.

25 COMMISSIONER PEACOCK: One question. I

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1 MR. MILLER: So --

2 CHAIRMAN SMITH: So it's like somebody in the
3 campaign knew about it, but it got ignored or lost
4 or --

5 MR. MILLER: So the person who was
6 responsible for the logistics of that particular event
7 had, by -- not by virtue of her position in the
8 campaign, but had a history of being an expert
9 compliance -- political compliance officer is what she
10 had done in the past. So she understood these rules as
11 well or better than I do. So when these two cohosts
12 told her that "here's the receipts for my food," she
13 understood that these -- that this \$500 exemption would
14 not apply.

15 And she told me that she reported that to the
16 appropriate people at the campaign. And the campaign
17 acknowledged that they didn't file a report. There was
18 some -- I don't know exactly -- I found nothing to
19 indicate that someone knew and deliberately decided not
20 to file a report. I accepted the candidate's
21 explanation that there was just a simple mistake.

22 CHAIRMAN SMITH: That was kind of my
23 question. That was really the only question I had from
24 the report -- which was an excellent report, as usual,
25 I thought -- was, did you at all pursue what happened

13 (Pages 49 to 52)

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1 to it? It was like, I sent it on, and nothing
2 happened. The person indicated that nothing happened.
3 I was kind of wondering, did you follow up to try to
4 find out what happened? Whether, in fact, it got lost
5 in somebody's inbox? Whether they decided, Nah, I
6 don't want to do it?

7 MR. MILLER: So the short answer is no, for
8 the following reasons. I didn't look into it. One,
9 because the candidate assured me that they would take
10 prompt corrective action. The campaign's reporting --
11 campaign collected a lot of money and they spent a lot
12 of money, and their reporting is quite exhaustive. I
13 found no pattern of unreported expenses. You know, I
14 accepted the candidate's explanation that this was a
15 simple mistake of \$800 out of \$800,000 flowing through
16 their coffers, and I did not put on my Inspector Javert
17 hat to try to get to the bottom of what happened to
18 that money -- to that report. I would be happy to if
19 you so instruct.

20 CHAIRMAN SMITH: Commissioner Peacock.

21 COMMISSIONER PEACOCK: One quick follow-up.
22 So when the campaign's letter says, We discovered one
23 event, is that accurate to say that "we discovered"
24 referring to the campaign?

25 MR. MILLER: Well, I suppose they discovered

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1 I see an opportunity there to clear some things up.
2 MR. MILLER: I agree with you wholeheartedly
3 with regard to the second item you just mentioned,
4 which is that right now it is not overtly clear that --
5 whether or not the period -- the campaign blackout
6 period applies to the candidate's spending of his own
7 money.

8 Now, one way to solve that problem would be
9 to make that clear. But another way would be to mirror
10 state law and prohibit candidates from spending their
11 own money without first putting it into their campaign
12 bank account.

13 But --

14 CHAIRMAN SMITH: Okay.

15 MR. MILLER: -- in terms of your first
16 comment, which is should we -- should there be some
17 clarification in the code as to what constitutes
18 soliciting a contribution, in my personal view of
19 statutory interpretation, a term like "soliciting" --
20 it's very hard to define with specificity to apply to
21 every conceivable factual situation that you might ever
22 come up with, and that's why you need me and you need
23 your City Attorney. But you have a body of -- you
24 know, you have a City Attorney memo and now you'll have
25 this report, and you sort of develop a body of

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1 it because I brought it to their attention.

2 COMMISSIONER PEACOCK: Okay.

3 MR. MILLER: They did not independently
4 discover that they had forgotten to report this money.

5 And that, I think, concludes this report.

6 CHAIRMAN SMITH: Any other -- any questions
7 or comments?

8 I'm jumping the gun a little bit, but if I
9 don't ask it now, we may never ask it. One of the
10 things we want to do this year is what we did the last
11 election season, which is keep track of lessons learned
12 as regards to the Municipal Code. And once the
13 election is all over, pull together some
14 recommendations on how we might improve the code for
15 next time around. As you know, we just did that. We
16 just completed that a few months ago.

17 It seems to me, in reading your report, that
18 there's a couple of places regarding the blackout
19 period where the code could certainly be improved. I
20 don't see why we should have to rely on opinion letters
21 from the attorney's office, one in 1999 and one in
22 2014, in order for people to know that planning is okay
23 but implementing isn't, for example. Or the subtle
24 nuances about the use of the candidate's own personal
25 funds. I don't know. Any opinions to offer on that?

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1 interpretive guidance which is useful. I'm not sure,
2 off the top of my head, that I can think of a way to
3 define "solicitation" to capture precisely the nuances
4 of planning versus pledging.

5 CHAIRMAN SMITH: I guess another approach
6 might be to incorporate this situation or something
7 into some of the training or orientation that's given
8 to candidates and campaign treasurers at the beginning
9 of the -- you know, when they -- at the beginning of
10 the campaign. Other than trying to fix the rules,
11 provide some --

12 MR. MILLER: This particular candidate, in my
13 view, does not need that kind of training. He was
14 extraordinarily aware of this rule and took, in my
15 view, pretty impressive efforts to comply with the
16 rule.

17 CHAIRMAN SMITH: In this case, it would
18 appear it was the complainant -- whoever actually wrote
19 the complaint who were the people who didn't
20 understand. Not the candidate.

21 Okay. I have gotten us a little off track.

22 Yes.

23 COMMISSIONER EDGEWORTH: I'm kind of
24 curious -- I'm kind of thinking about the word
25 "fundraiser." And, yes, in this particular thing, the

14 (Pages 53 to 56)

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<p>1 campaign -- the candidate's campaign group were very 2 careful to talk to -- when they posted on Google, they 3 were all campaign events. And except for this cohost, 4 who used the word "fundraiser." Would we be talking a 5 different story if it said "fundraiser" in these 6 things? Does "fundraiser" -- is the word "fundraiser" 7 sufficient enough to imply that it is soliciting funds 8 just to operate the campaign, you know, and to support 9 the campaign? 10 MR. MILLER: So we wrestled with this -- 11 COMMISSIONER EDGEWORTH: Yes. 12 MR. MILLER: -- and ultimately determined -- 13 came to the conclusion that absent an express 14 solicitation of a pledge of support, just inviting 15 someone to a fundraiser, even if you baldly call it a 16 fundraiser, is not soliciting an actual pledge. It is 17 announcing that you will be soliciting a pledge at some 18 point in the future was where we came down on. In part 19 because that seemed just to make sense to us but also, 20 in part, because from a point of view of sort of 21 setting a rule that you can enforce in the future, 22 we're willing to say that the use of the word 23 "fundraiser" constitutes a pledge, you know. 24 I think one could imagine -- well, maybe I'll 25 put it this way. The line between permitted planning</p>	<p>1 Where we ended up is that you are not being solicited 2 at that moment. But I -- I -- we wrestled with it 3 quite deeply. 4 COMMISSIONER EDGEWORTH: I did notice the 5 reference to the 2012 case that we dealt with. And you 6 pointed out many of the specific differences between 7 that -- that case and this one. 8 And the other thing I recall about that case 9 is it also told people to whom to make out their checks 10 and, as a convenience, have them made out before, when 11 you get there -- 12 CHAIRMAN SMITH: Give us the check early. 13 COMMISSIONER EDGEWORTH: -- and date it -- 14 and date it on a certain date. You know, so it would 15 be -- 16 MR. MILLER: That was an easy one. 17 COMMISSIONER EDGEWORTH: So that would be -- 18 that was a no-brainer. But, I mean -- but -- I don't 19 know. I'll have to think about this "fundraiser" 20 thing. 21 CHAIRMAN SMITH: Commissioner Peacock? 22 COMMISSIONER PEACOCK: And just to follow up: 23 My sense is, in this case -- and I think what you're 24 saying also is the use of the word "fundraiser" was 25 maybe an inadvertent, incorrect word used by a campaign</p>
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<p>1 and impermissible solicitation, for the purposes of 2 enforcement, seem to us you would want to draw very 3 close to the solicitation side, not close to the 4 planning side, or else you would capture a lot of 5 activity that probably is okay. And -- 6 COMMISSIONER EDGEWORTH: And that's where I 7 have a little difficulty. 8 MR. MILLER: Okay. 9 COMMISSIONER EDGEWORTH: It seems to me, if 10 I'm invited to a fundraiser, I expect solicitation. 11 And I'm -- 12 MR. MILLER: I do -- 13 COMMISSIONER EDGEWORTH: I want to -- and 14 even if the word -- if the word "fundraiser" was used, 15 I find difficulty separating the fundraiser from the 16 solicitation, whether someone acts on the solicitation, 17 whether someone doesn't get the invitation and comes as 18 a date from somebody else, you know, from another 19 guest. Whether or not they actually contribute is 20 different. But somehow the word "fundraiser" says I'm 21 soliciting funds, to me. 22 MR. MILLER: Well, we wrestled with it. And 23 I appreciate your comments very much. I think what you 24 just said is exactly where we were, which is that when 25 you say the "fundraiser," you expect to be solicited.</p>	<p>1 volunteer? 2 COMMISSIONER EDGEWORTH: In this case. 3 COMMISSIONER PEACOCK: In this case. 4 MR. MILLER: Well, it is true that the cohost 5 said that the use of the word "fundraiser" was a 6 mistake and that he didn't mean to be a fundraiser. 7 COMMISSIONER PEACOCK: Right. 8 MR. MILLER: What, in fact, he meant and, in 9 fact, what the campaign entirely meant is, in my view, 10 a bit of a fiction, in that they said they weren't 11 fundraisers until December 5th, and then they became 12 fundraisers. 13 COMMISSIONER EDGEWORTH: Exactly. Exactly. 14 MR. MILLER: And also, for that reason, for 15 us, the use of the word "fundraiser" was not a magical 16 turning point, because they were fundraisers -- in our 17 view, they were fundraisers in November, when they 18 called them "campaign events." The distinction between 19 the two -- the use of the two words. 20 CHAIRMAN SMITH: But in this case, though, I 21 believe he returned the money -- 22 COMMISSIONER EDGEWORTH: Yeah. 23 CHAIRMAN SMITH: -- before the complaint was 24 filed. 25 MR. MILLER: That's correct.</p>

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1 CHAIRMAN SMITH: So something that was
2 corrected before the complaint was even filed I don't
3 think would count as a violation.
4 COMMISSIONER EDGEWORTH: As much as I was
5 responding to the issue of this case and what
6 prospective issues might come in the future, if people
7 say, We're going to have a fundraiser and so come to
8 our fundraiser -- I was also responding to your idea of
9 wanting to clarify some things in the -- in the
10 ordinances and in the regulations. Because, to me,
11 that's -- that --
12 CHAIRMAN SMITH: It's murky.
13 COMMISSIONER EDGEWORTH: It's murky. It's
14 very murky.
15 CHAIRMAN SMITH: Commissioner Pierre-Dixon,
16 you have a comment?
17 VICE-CHAIR PIERRE-DIXON: I think my own
18 comment was where I came down the side, it was the
19 inability to make that pledge or to give those funds.
20 If there had been a link of any type to payment, then I
21 think we would have a different story.
22 CHAIRMAN SMITH: Commissioner Louie?
23 COMMISSIONER LOUIE: No questions.
24 CHAIRMAN SMITH: Okay. Then we'll move on.
25 Then at this point, I guess -- Mr. Sutton, you wish to

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1 make any --
2 MR. SUTTON: I'll just be very brief.
3 CHAIRMAN SMITH: Okay. I need you to raise
4 your hand and...
5
6 JIM SUTTON,
7 being first duly sworn by the Chairperson to tell the
8 truth, the whole truth and nothing but the truth,
9 testified as follows:
10
11 MR. SUTTON: Again, I'm Jim Sutton, and I'm
12 the attorney who represents the Liccardo for Mayor
13 campaign.
14 So not only do we thank the Commissioners for
15 the time and effort that you're taking to look at this
16 matter but, of course, we thank the Evaluator and thank
17 him for the professionalism through the entire
18 investigation. We were able to provide him with all
19 the documents that he asked for, give him all the
20 information that he needed. We gave him the e-mail
21 addresses of the cohosts so he could contact all the
22 cohosts and helped them set up the interviews. And we,
23 again, appreciate his professionalism -- tough
24 professionalism but appreciate and certainly agree with
25 the results that he's reached in his report.

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1 And, obviously, most importantly, the core --
2 the core purpose of the complaint was about
3 pre-December 5th solicitation. And, of course, as we
4 knew all along, that did not happen.
5 Just two comments I want to make about your,
6 I think, very good point that the law is very murky and
7 there's not a lot of good guidance. The City of San
8 Diego has a -- it's a one-year ban but a very similar
9 ban. And they have an ethics commission that has put
10 out a relatively useful two-page summary of kind of dos
11 and don'ts for candidates that kind of -- exact same
12 situations that you've talked about here. They put out
13 this guidance. I'd be more than happy to send this to
14 the City Clerk. It's on the San Diego ethics
15 commission web site. Whether this is something that
16 should go into the wall or just be a document, I don't
17 know. But it is helpful.
18 The other thing about the December 4th e-mail
19 and this word "fundraiser" -- which, of course, I'll
20 just say, none of us were happy with. If you look
21 at -- I'm laughing. If you look and read the e-mail,
22 although I've yet to see a version of it that I can
23 read without glasses on -- it's a bit -- you know, it's
24 a copy of a copy of a copy. But if you read the entire
25 e-mail, you see it's not soliciting contributions.

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1 It's all about the candidate and why he would be a good
2 mayor. And then, as you mentioned, Commissioner, at
3 the end, the link is to the web site where it's RSVP
4 and not -- and not money. So the word really does
5 stand out and, you know, unfortunately for us.
6 So the -- first of all, I also want to
7 mention there is two other people from the Liccardo
8 campaign who I think would be very useful for you to
9 hear from tonight. Regan Henninger, who is the
10 campaign manager for the campaign. And then Vicki Day,
11 who is the volunteer who worked on the event and might
12 be able to give some more details about the in-kind
13 contributions.
14 So on that issue about the two in-kind
15 contributions that were discovered during the course of
16 the investigation -- and then, again, the campaign has
17 filed amendments to make certain that the public knows
18 about them. I'm going to let Vicki talk about some of
19 those details. But I think -- it might go without
20 saying, but I think it's important to note: In
21 addition to simply the number of transactions, this
22 was -- there is only six months in San Jose to raise a
23 lot of money, in very small increments. And so
24 December becomes a very busy time. There was a lot of
25 events the campaign was putting on, almost entirely by

16 (Pages 61 to 64)

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1 volunteers. So just the simple number of transactions,
2 number of events, and the fact that it was
3 volunteers -- as Vicki will explain, Vicki documented
4 the in-kinds. She put it on a piece of paper, put it
5 in a sealed envelope. I don't want to speak for her.
6 I believe she took it to the campaign headquarters.
7 Unfortunately, the campaign headquarters didn't get it
8 to their off-site professional treasurer, who had the
9 responsibility to input it into the database.

10 So that's really what Steve would have found
11 out if he would have done any -- well, I think he did
12 do other inquiry. But he would have found out that it
13 was just inadvertent.

14 CHAIRMAN SMITH: So where did it go, if I
15 might ask?

16 MR. SUTTON: I don't know.

17 CHAIRMAN SMITH: Well, Vicki will tell us.

18 MR. SUTTON: Yeah, I don't know that the
19 envelope has ever been found.

20 The envelope, just by the way, also included
21 the left-over nametags from the event. Right? Maybe
22 there was a sign-in sheet from the event. So then
23 there was a sheet of paper in there that had the
24 in-kind contribution information on there. And that
25 could be another reason why it didn't -- it didn't hit.

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1 testified as follows:

2

3 MS. HENNINGER: Would you like me here or --

4 CHAIRMAN SMITH: Whichever. Would it be
5 better for recording purposes if she came up?

6 MS. McDANIEL: The recorder will pick up the
7 entire room.

8 CHAIRMAN SMITH: Okay. Wherever you're
9 comfortable is fine.

10 MS. HENNINGER: I'll stay here. I have a
11 voice that carries, I think.

12 Again, my name is Regan Henninger. I'm the
13 campaign manager for Sam Liccardo for Mayor. I just
14 wanted to thank you, Chair Smith and the rest of your
15 Commissioners, for your time and efforts tonight and
16 also thank Mr. Smith for --

17 CHAIRMAN SMITH: Miller.

18 MS. HENNINGER: Miller. Thank you. I'm

19 sorry. -- for your time and very thorough due
20 diligence during this process. And I also just want to
21 note that I am here with my campaign treasurer, Dennis
22 Cunningham.

23 So I just would like to state for the record
24 how very seriously our campaign takes the law. And we
25 have gone through very extensive efforts to comply with

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1 And I think it's important to note that there
2 were other in-kind contributions the campaign received
3 which were reported. The campaign definitely had a
4 system in place to gather this information but just, I
5 think, in the rush of events in December -- and also
6 the beginning -- this was -- was it the second
7 fundraising event after December 5th? It was one of
8 the very first events. So, you know, maybe this wasn't
9 all -- were not working as perfectly as they would be
10 later on.

11 So we are -- again, thank the Commissioner
12 and thank the Evaluator for the thorough job. And we
13 certainly hope that you kind of take the Evaluator's
14 implicit or explicit recommendation and take no further
15 action on this matter.

16 CHAIRMAN SMITH: Thank you. Okay. I have
17 yellow cards from the other two.

18 So Regan Henninger. Henninger
19 (pronunciation). I'm sorry.

20 MS. HENNINGER: Henninger.

21 CHAIRMAN SMITH: If you would raise...

22
23 REGAN HENNINGER,
24 being first duly sworn by the Chairperson to tell the
25 truth, the whole truth and nothing but the truth,

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1 campaign regulations. And the many volunteers who work
2 on our campaign also go through great lengths to comply
3 with the law. And we also, I think, cooperated very
4 fully with the Evaluator to make sure that he had every
5 piece of information that he needed, in a timely
6 manner.

7 I just want to state how -- how extensive
8 we -- the extensive efforts we went to prior to
9 December 5th to ensure that we were not violating any
10 campaign regulations. We had a -- our attorney here,
11 Jim Sutton, draft scripts and talking points for the
12 candidate so that he was very clear in his
13 conversations with the December cohorts about what it
14 meant to host an event.

15 Just one brief point about the e-mail with
16 the F word, the "fundraising" word.

17 CHAIRMAN SMITH: The other F word.

18 MS. HENNINGER: I just want to state that the
19 campaign had a template e-mail that we asked cohorts to
20 use. And we very specifically asked that they do not
21 change the wording of that e-mail invitation.

22 Unfortunately, we had one cohort who did, as you can
23 see, change the wording of that e-mail.

24 But I -- I hope you all appreciate the
25 Evaluator, who went to great lengths to ensure that all

17 (Pages 65 to 68)

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1 12 of the allegations were very thoroughly explored and
2 evaluated. And we are certainly glad to hear that the
3 12 original allegations, that there was no violations
4 found.

5 So we thank you for your time. And, please,
6 I'm happy to answer any questions. Thank you.

7 CHAIRMAN SMITH: Thank you.
8 Questions?

9 I have one quickie. You mentioned the
10 talking points that were referenced in the report, the
11 talking points that were used for discussion with the
12 cohosts. Mr. Sutton actually prepared those?

13 MS. HENNINGER: He reviewed them -- we
14 prepared them, and then he reviewed them and made
15 remarks and changes.

16 CHAIRMAN SMITH: Okay. So you sent
17 Mr. Liccardo out with "This is what you're to say."
18 Just like you did with your volunteers or your --

19 MS. HENNINGER: Correct.

20 CHAIRMAN SMITH: -- your cohosts, you gave
21 him what he could say. Okay.

22 COMMISSIONER EDGEWORTH: We do the same
23 thing.

24 CHAIRMAN SMITH: I do the same thing. But
25 even then, I can mess up.

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1 So, you know, in the course of soliciting the
2 cohosts or asking people to serve as cohosts, Sam would
3 normally make that initial contribution and say, Vicki
4 will follow up with you and give you the details.

5 So we would line them up with a host. I
6 would usually have the conversations with them about,
7 Well, what does that mean? What do I have to do? You
8 have to invite people. And when you have time, you
9 need to follow up with a phone call. Get as many
10 people there as you can. That's all we ask.

11 So that was -- my role was to organize the
12 cohosts. Make sure that they were there.

13 As -- I attempted to attend all of the
14 events. I was out of town for part of them. I did
15 attend the one where we were missing the in-kind
16 contributions. I'm well aware that there were going to
17 be reportable in-kind contributions, because I knew
18 that both a host and a cohost were supplying materials
19 for the event. In that case and in other events that I
20 attended, I would keep -- not so many left-over
21 nametags. Sometimes if we had preregistered nametags,
22 a list of people that showed up, all of the checks and
23 all of the envelopes. It was my job, as people gave
24 this money that evening, to make sure that we had all
25 of the information that we needed to report -- the

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1 Okay. No other questions, then?
2 If not, Vicki Day. If you would raise your
3 right hand.

4
5 VICKI DAY,
6 being first duly sworn by the Chairperson to tell the
7 truth, the whole truth and nothing but the truth,
8 testified as follows:

9
10 CHAIRMAN SMITH: Thank you. Do you have any
11 statements you would like to make or questions?

12 MS. DAY: Well, yes. Fairly early on -- I
13 have a full-time job, so I was doing this as a
14 volunteer. And pretty early on Sam asked me if I would
15 take on the role of organizing the December event. I
16 had been a professional compliance officer for ten
17 years, so -- I'm not any longer, but that was my
18 previous life. So I am well aware of campaign rules
19 and regulations. And I would think probably that
20 that's probably why Sam asked me to fill that role.

21 And, actually, I think the way he put that to
22 me was, would I herd the cats. Because that's really
23 what the logistics of all the events are is herding
24 cats and getting people to show up at the right time
25 and at the right place.

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1 occupation, employer. If it's a company check, great.
2 Okay. So is that a sole proprietorship? Is that --
3 who owns the company and all of that kind of stuff.
4 And I would put all of that in one envelope, write the
5 event date on it, seal it and deliver it to the
6 campaign office.

7 On that occasion as well as a couple of
8 others where I knew that there was going to be in-kind,
9 I documented those. They went to the same envelope.
10 They were delivered to the campaign office. It's my
11 understanding that they were entered into the campaign
12 database, the campaign side, but not delivered -- those
13 two campaigns were not delivered to the compliance.
14 I'm not quite sure -- I can't take you all the way
15 there to say where it went, but I do know that it was
16 reported to the campaign. And somehow those two were
17 missed but others were not.

18 So I think that demonstrates, you know,
19 our -- our ability to know what needed to be reported
20 and what didn't and to make those efforts with that
21 information.

22 CHAIRMAN SMITH: Okay. So the envelope
23 didn't disappear; it's --

24 MS. DAY: No, because it had all the money in
25 it.

18 (Pages 69 to 72)

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<p>1 CHAIRMAN SMITH: Yeah, once you said that, I 2 figured all of it disappeared. 3 MS. DAY: No. 4 CHAIRMAN SMITH: And you said -- and the 5 information on those in-kind contributions was entered 6 in one database for the campaign but not transmitted to 7 the other side. So somebody forgot to make a phone 8 call or -- 9 MS. DAY: I think -- 10 CHAIRMAN SMITH: -- pass a piece of paper -- 11 MS. DAY: I think somehow the forms that we 12 entered into our database -- some of the forms didn't 13 make it to our professional accountant compliance 14 person so she could enter them. 15 CHAIRMAN SMITH: Is that the process where 16 you would enter the information from the form in your 17 office and then you would send that same physical form 18 to the other person? 19 MS. DAY: Yeah. 20 CHAIRMAN SMITH: That's where it fell apart, 21 apparently. It didn't get sent or got lost or it's 22 still in somebody's in basket or something. 23 Okay. Any other questions? Mr. Peacock? 24 COMMISSIONER PEACOCK: You said you had been 25 a compliance officer for ten years. Who are some of</p>	<p>1 With regards to the one in-kind contribution 2 that was not reportable -- not reported, we -- and I 3 think the respondent has acknowledged that that does 4 constitute a violation, and we make that same finding. 5 As far as a recommendation of what action to 6 take of your panoply of choices, I think, given, on 7 balance -- given the corrective action taken and the 8 magnitude of the lack thereof of the offense, there's 9 no question there was a mistake. And the question of 10 whether there is value in assessing a penalty for that 11 mistake is perhaps beyond the scope of the Evaluator's 12 duties. But our recommendation, nonetheless, is that, 13 on balance -- that you find a violation but take no 14 further action with regards to it. 15 CHAIRMAN SMITH: Okay. Thank you. 16 Okay. So it's time again for our decision. 17 We'll do this again in two separate pieces. First a 18 question about violations. And then if we find a 19 violation, we move on to penalty. 20 COMMISSIONER LOUIE: Could I ask for 21 clarification? 22 CHAIRMAN SMITH: Yes. 23 COMMISSIONER LOUIE: Did you mention -- you 24 said it was about an \$800 item. You said the total 25 contribution was 800,000 --</p>
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<p>1 the people or organizations you worked for? 2 MS. DAY: Zoe Lofgren, Mike Honda, Cindy 3 Chavez, Sam Liccardo. State candidates. Federal, 4 state, local, out of area. PAC, Political Action 5 Committee. 6 COMMISSIONER PEACOCK: Thank you. 7 CHAIRMAN SMITH: Any other -- okay. Thank 8 you. 9 Okay. We do not have anybody here 10 representing the complainant, so we have nothing there. 11 And the other person -- the only yellow cards I got are 12 the two people from the campaign who just spoke. 13 So unless there is somebody else out there 14 who would like to say something, I think we're ready to 15 move on to recommendations. So if you could just 16 summarize for us again what your bottom-line 17 recommendations are, and then we'll go forward. 18 MR. MILLER: Sure. So there were three 19 allegations that we did not investigate of the 20 remaining nine in the complaint. One we found was not 21 a violation of Title 12 -- would not constitute a 22 violation of Title 12. And of the remaining eight, we 23 found no violation after our investigation. So we 24 would recommend that you would find similarly. No 25 violations and take no action.</p>	<p>1 VICE-CHAIR PIERRE-DIXON: 790,000. 2 COMMISSIONER LOUIE: 800,000. So you're 3 talking about 1 percent here. I want to clarify that. 4 Thank you. 5 CHAIRMAN SMITH: Okay. So, again, we have 6 the same option -- same four options as before: That 7 further investigation is necessary; that we -- that 8 sufficient evidence -- that no violation occurred; 9 there's insufficient evidence to establish the 10 violations occurred; or, on the preponderance of the 11 evidence, that a violation has occurred. 12 So I'll open the floor to discussion. And, 13 again, we can have -- there are, again, two 14 respondents, both the candidate and the committee. 15 That's the way it was written, I believe. We can do 16 one motion that covers both -- covers everything if you 17 so desire. 18 So discussion or a motion. 19 VICE-CHAIR PIERRE-DIXON: I think we can do a 20 motion. 21 I would move at this time that with regard to 22 Counts 1 through 8 and Count 12, that we find that the 23 respondent did not -- the respondent and/or the 24 respondent's campaign committee did not violate 25 Title 12 of the Municipal Code.</p>

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1 I would like to take those one at a time.
2 Break them down.
3 CHAIRMAN SMITH: Oh, okay.
4 VICE-CHAIR PIERRE-DIXON: So that would be my
5 motion at this point.
6 CHAIRMAN SMITH: So that is --
7 VICE-CHAIR PIERRE-DIXON: One through eight
8 and Count 12.
9 CHAIRMAN SMITH: Okay. Do we have a second
10 for that?
11 COMMISSIONER LOUIE: Second.
12 CHAIRMAN SMITH: Okay. Any discussion?
13 If not, all in favor?
14 (All Commissioners responded Aye.)
15 CHAIRMAN SMITH: Any opposed?
16 (No response.)
17 CHAIRMAN SMITH: Okay. So it's unanimous.
18 Okay.
19 VICE-CHAIR PIERRE-DIXON: The second was --
20 and, again, going that there was no violation to
21 Counts 9 through 11, because the preliminary review
22 indicated insufficient cause on which to proceed with
23 the investigation. And I would find, then, that we
24 have no violations as to Counts 9 through 11.
25 CHAIRMAN SMITH: Okay. Second?

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1 COMMISSIONER LOUIE: Second.
2 CHAIRMAN SMITH: All right. Is there a
3 question?
4 COMMISSIONER EDGEWORTH: Could you just
5 review again? Because those are different counts. One
6 related to the fact that there is no -- it's not a
7 violation of the ordinance about the single bank
8 account rule.
9 MR. MILLER: That would have been Count 8.
10 CHAIRMAN SMITH: That's the one we already
11 voted on.
12 MR. MILLER: The three counts that I believe
13 you're talking about now are the three counts where the
14 complaint suggested that we investigate whether there
15 were unreported in-kind contributions made --
16 COMMISSIONER EDGEWORTH: Okay. I just want
17 to make sure.
18 VICE-CHAIR PIERRE-DIXON: Right. That's why
19 I tried to break them down. Because it was confusing.
20 MR. MILLER: We didn't investigate it. And
21 we did not even reach a conclusion as to whether there
22 was a violation or not.
23 CHAIRMAN SMITH: Yes. So in this case -- I
24 got to think about that. Yeah, that really falls into
25 the "no investigation" template, which is a totally

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1 different animal. In that case -- I didn't bring it
2 with me. Let me think. I think the motion would
3 actually be --
4 MS. SILVA: Do you need it, Mike?
5 CHAIRMAN SMITH: Do you have it with you?
6 MS. SILVA: Yes, I do.
7 CHAIRMAN SMITH: Let me see what we say on
8 it.
9 COMMISSIONER EDGEWORTH: Do we take the
10 recommendation?
11 CHAIRMAN SMITH: Yeah, I think what we're
12 really saying is there's no violation --
13 VICE-CHAIR PIERRE-DIXON: That's what my
14 motion was.
15 CHAIRMAN SMITH: I think we may need to
16 modify it. I didn't think to bring that with me. I'm
17 glad you have a copy of it.
18 MS. SILVA: It's the second part.
19 CHAIRMAN SMITH: Okay. Thank you.
20 MS. SILVA: Starting in the back.
21 CHAIRMAN SMITH: The one that still says
22 "Elections Commission." Oh, well.
23 Okay. I'll just take a minute here. In this
24 case -- okay. In this case, where the -- where the
25 Evaluator -- and I should have recognized this while I

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1 was putting stuff together. So I apologize for that.
2 I didn't catch that subtlety.
3 Okay. In this case, we have the following
4 options, where the Evaluator has recommended no
5 investigation. Either we may find that further
6 investigation is necessary, in which case we direct the
7 Evaluator to conduct further investigation and report
8 back. Or we may adopt the Evaluator's report, and we
9 may approve the recommendation against conducting an
10 investigation and close the file -- that's where close
11 the file comes in -- and close the file regarding these
12 counts without further action.
13 So I think -- could we modify your motion
14 accordingly?
15 VICE-CHAIR PIERRE-DIXON: Sure.
16 CHAIRMAN SMITH: So the motion would be that
17 you adopt the report relative to Counts --
18 VICE-CHAIR PIERRE-DIXON: Nine through
19 eleven.
20 CHAIRMAN SMITH: -- 9 through 11 and approve
21 the recommendation against conducting an investigation
22 and close the file on these counts without further
23 action.
24 VICE-CHAIR PIERRE-DIXON: And I would accept
25 that amendment.

20 (Pages 77 to 80)

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<p>1 CHAIRMAN SMITH: Thank you. 2 Do we have a second? 3 COMMISSIONER LOUIE: I would second that. 4 COMMISSIONER EDGEWORTH: I would prefer the 5 amendment just to say because there was insufficient 6 cause to pursue the investigation. 7 VICE-CHAIR PIERRE-DIXON: Fine. I would 8 accept that. 9 CHAIRMAN SMITH: Second? 10 COMMISSIONER LOUIE: I will second that 11 amendment, too. 12 CHAIRMAN SMITH: Okay. Any discussion 13 further? 14 If not, all in favor? 15 (All Commissioners responded Aye.) 16 CHAIRMAN SMITH: Any opposed? 17 (No response.) 18 CHAIRMAN SMITH: Okay. That's unanimous. 19 Okay. Now, we've gotten 1 through 8 -- 20 actually, we've gotten all 12. Now we got one to go. 21 VICE-CHAIR PIERRE-DIXON: Right. And that 22 concerns the additional facts that we revealed during 23 the investigation. And there, in fact, there was a 24 nonreporting of the in-kind contribution, which, in 25 fact, was a violation.</p>	<p>1 VICE-CHAIR PIERRE-DIXON: So certified. 2 CHAIRMAN SMITH: Commissioner Peacock? 3 COMMISSIONER PEACOCK: So certified. 4 CHAIRMAN SMITH: Commissioner Edgeworth? 5 COMMISSIONER EDGEWORTH: So certified. 6 CHAIRMAN SMITH: And me, so certified. 7 Okay. Now we move on to penalties. And this 8 would only apply to the additional situation -- 9 violation. And, again, here we have four options. We 10 can find mitigating circumstances and take no further 11 action, in which case I think we can use the same words 12 about close the file and take no further action; issue 13 a public statement of reprimand; require a corrective 14 action by a particular deadline and/or oppose a civil 15 penalty in accordance with Chapter 12.04 of the 16 Municipal Code. 17 So discussion or if someone would like to 18 make a motion? 19 We talked before -- I should mention, we 20 talked what the factors are there, having to do with 21 severity; presence or absence of intention to conceal, 22 deceive or mislead; whether it was deliberate, 23 negligent or inadvertent; whether it was an isolated 24 incident or pervasive enough to indicate a pattern of 25 disregard; whether there is a prior record of</p>
Page 82	Page 84
<p>1 So I think the fact that that was a violation 2 of the Municipal Code and -- I would ask that we make 3 that finding at this time. 4 CHAIRMAN SMITH: Okay. That there was a 5 violation -- 6 VICE-CHAIR PIERRE-DIXON: There was a 7 violation of the Municipal Code in reference to the 8 in-kind -- nonreporting of the in-kind contribution of 9 December 15th, 2013, fundraiser. 10 COMMISSIONER EDGEWORTH: Second. 11 CHAIRMAN SMITH: Any discussion? 12 Okay. All in favor? 13 (All Commissioners responded Aye.) 14 CHAIRMAN SMITH: Any opposed? 15 (No response.) 16 CHAIRMAN SMITH: Okay. Once again, 17 unanimous. 18 Okay. Now I believe we go on to the affirm 19 part. Let me see here. Yes. Okay. So I'll ask each 20 of you to affirm that you have heard or read the 21 testimony at the hearing and have reviewed all the 22 evidence in the record by affirming "so certified." 23 Commissioner Louie? 24 COMMISSIONER LOUIE: So certified. 25 CHAIRMAN SMITH: Commission Pierre-Dixon?</p>	<p>1 violations; the degree of cooperation with the 2 investigation and whether or not corrective actions 3 were taken. 4 COMMISSIONER LOUIE: I'd like to make a 5 motion that there be no penalty involved. The degree 6 of -- the facts that we just mentioned. Was less than 7 1 percent. It was corrected. There was no intent 8 involved. So that would be my motion. 9 CHAIRMAN SMITH: Okay. Second? 10 COMMISSIONER EDGEWORTH: That no further 11 action be taken. 12 COMMISSIONER LOUIE: No further action be 13 taken. 14 COMMISSIONER EDGEWORTH: Second. 15 COMMISSIONER LOUIE: Sorry. 16 CHAIRMAN SMITH: Okay. And I would add, I 17 think almost all of the seven things that I went 18 through apply in this case. Severity was low, does not 19 appear to be any intention to conceal, does not appear 20 to be deliberate. 21 COMMISSIONER EDGEWORTH: And repetitive. 22 CHAIRMAN SMITH: It's clearly an isolated 23 incident. There's no prior record of violation that 24 I'm aware of, anyway. And I've been here awhile. The 25 degree of cooperation, which was there. And corrective</p>

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1 actions were taken. So it's basically all seven
2 points.
3 VICE-CHAIR PIERRE-DIXON: I just have one
4 comment, which -- for me, I have to let you all know it
5 was a very close call. Because when you're dealing
6 with professional campaign, I expect that everything be
7 done professionally. And this is not excusable.
8 However, there are mitigating circumstances, and so
9 that's why I would agree that there be no penalty at
10 this time. But I take it very seriously, and I know
11 you do. As a campaign, it's something that has to be
12 watched very closely. And especially when you're
13 dealing -- it's not a matter of 800 for 790,000. It's
14 a matter of dealing with almost a million dollars and
15 making a mistake. Those folks that raise \$2,000 and
16 don't understand campaigning, that's one thing. But
17 for a person who is in politics and understands what it
18 is, that's a very important issue.
19 CHAIRMAN SMITH: Okay. Any other --
20 Mr. Peacock.
21 COMMISSIONER PEACOCK: Just one question,
22 Mr. Chairman. So -- and I'm very comfortable with
23 where we're going on this. By closing the file, if,
24 you know, in the hypothetical, it turned out to be a
25 whole -- there were a number of subsequent problems

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1 with in-kind contributions, would this then be part of
2 that pattern, or by closing the file does that mean
3 that it sort of didn't exist?
4 CHAIRMAN SMITH: No, it's still there. I
5 think it can be referenced.
6 COMMISSIONER PEACOCK: Okay.
7 CHAIRMAN SMITH: But depending --
8 COMMISSIONER PEACOCK: It's not like it's
9 sealed off in a lockbox somewhere?
10 CHAIRMAN SMITH: No, we don't take it out
11 back and blow it up.
12 COMMISSIONER PEACOCK: Gotcha.
13 CHAIRMAN SMITH: Any other -- if not -- so we
14 have a motion, basically, for no penalty.
15 MS. SILVA: Is the motion no further action
16 and closing?
17 CHAIRMAN SMITH: And -- yes. And no further
18 action and closing the file. I believe that was part
19 of it.
20 Commissioner Louie?
21 COMMISSIONER LOUIE: Yes.
22 MS. TABER: Did we direct a resolution to be
23 prepared?
24 CHAIRMAN SMITH: Pardon?
25 MS. TABER: Did we already direct a

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1 resolution to be prepared?
2 CHAIRMAN SMITH: Resolution will be the next.
3 I think that's a separate vote.
4 COMMISSIONER EDGEWORTH: I think that's the
5 proper order. We did the other one in reverse, but I
6 think this is the proper order.
7 MS. TABER: Okay.
8 COMMISSIONER EDGEWORTH: And then resolution.
9 MS. TABER: Okay.
10 MS. SILVA: Well, Mike's getting it all,
11 so --
12 CHAIRMAN SMITH: We're going to have to --
13 MS. SILVA: If he misses something, I'll
14 just --
15 CHAIRMAN SMITH: We're going to have to talk
16 after this meeting and make sure I get these things in
17 the template in the right order.
18 MS. SILVA: You're getting them all, though,
19 so it's okay.
20 CHAIRMAN SMITH: We're getting them, yeah.
21 We're getting them.
22 Okay. Anyway, so that's the motion. All in
23 favor?
24 (All Commissioners responded Aye.)
25 CHAIRMAN SMITH: Any opposed?

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1 (No response.)
2 CHAIRMAN SMITH: Okay. It's unanimous again.
3 Okay. Now, certification. Again, have you
4 certified that you have read or heard the testimony at
5 the hearing and reviewed all the evidence in the
6 record?
7 Commissioner Louie?
8 COMMISSIONER LOUIE: I so certify.
9 CHAIRMAN SMITH: Ms. Pierre-Dixon?
10 VICE-CHAIR PIERRE-DIXON: So certify.
11 CHAIRMAN SMITH: Mr. Peacock?
12 COMMISSIONER PEACOCK: So certify.
13 CHAIRMAN SMITH: Commissioner Edgeworth?
14 COMMISSIONER EDGEWORTH: So certify.
15 CHAIRMAN SMITH: And me, so certify.
16 Okay. One last -- no, two last steps. Okay.
17 I don't think -- there's a matter of referral. The --
18 there was the one situation which was potentially a
19 violation of state law, but this -- as I understand it,
20 this entire complaint was sent to the FPPC in parallel
21 with being sent to us.
22 MR. TABER: Yes.
23 CHAIRMAN SMITH: So -- as you mentioned,
24 there doesn't seem to be any need for us to do anything
25 on that matter of this -- the one bank account that was

22 (Pages 85 to 88)

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<p style="text-align: center;">Page 89</p> <p>1 the issue. Right?</p> <p>2 VICE-CHAIR PIERRE-DIXON: The personal</p> <p>3 payment --</p> <p>4 CHAIRMAN SMITH: But it was the fact that the</p> <p>5 state law requires -- what was the -- refresh my</p> <p>6 memory.</p> <p>7 COMMISSIONER EDGEWORTH: One bank account.</p> <p>8 MR. MILLER: Actually, the complaint uses the</p> <p>9 term "one bank account," which is perhaps not the right</p> <p>10 phrase. The "one bank account" rule refers to the fact</p> <p>11 that you must have one bank account as opposed to</p> <p>12 multiple bank accounts. The issue is spending money</p> <p>13 out of your pocket without first putting it into your</p> <p>14 campaign bank account.</p> <p>15 CHAIRMAN SMITH: That's right.</p> <p>16 MR. MILLER: It's the same statute as the</p> <p>17 "one bank account" rule but a different subsection.</p> <p>18 CHAIRMAN SMITH: Okay. So unless somebody</p> <p>19 sees the need to tell the FPPC what they already know,</p> <p>20 I think we can move on. And seeing nobody is anxious</p> <p>21 to do that.</p> <p>22 Okay. So the last thing we need is -- on</p> <p>23 this for the hearing is I need a motion -- or entertain</p> <p>24 a motion that the Commission direct the City Attorney</p> <p>25 to draft a resolution of the Commission's findings and</p>	<p style="text-align: center;">Page 91</p> <p>1</p> <p>2 I, NOELIA ESPINOLA, do hereby certify:</p> <p>3 That prior to being examined, the witnesses</p> <p>4 named in the foregoing meeting were duly sworn to</p> <p>5 testify as to the truth, the whole truth, and nothing</p> <p>6 but the truth;</p> <p>7 That said hearing was taken down by me at the</p> <p>8 time and place therein named, and thereafter reduced to</p> <p>9 computerized transcription under my direction.</p> <p>10 I further certify that I am not interested in</p> <p>11 the outcome of this hearing.</p> <p>12</p> <p>13</p> <p>14</p> <p>Dated: _____</p> <p>15 NOELIA ESPINOLA, CSR #8060</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: center;">Page 90</p> <p>1 penalties and that the Commission authorizes the Chair</p> <p>2 to approve its finding and resolution.</p> <p>3 COMMISSIONER EDGEWORTH: So moved.</p> <p>4 CHAIRMAN SMITH: Thank you.</p> <p>5 VICE-CHAIR PIERRE-DIXON: Second.</p> <p>6 CHAIRMAN SMITH: Okay. And discussion?</p> <p>7 No. Okay. All in favor?</p> <p>8 (All Commissioners responded Aye.)</p> <p>9 CHAIRMAN SMITH: Any opposed?</p> <p>10 (No response.)</p> <p>11 CHAIRMAN SMITH: Unanimous again.</p> <p>12 Now, we already closed the file and no</p> <p>13 further action. We don't need to do that again. Okay.</p> <p>14 Learn something new every day.</p> <p>15 Okay. So that ends the hearing. And we will</p> <p>16 thank you all for being here tonight, and we'll move on</p> <p>17 to other business, hopefully expeditiously.</p> <p>18 (Whereupon, Item III Hearings adjourned at</p> <p>19 7:09 p.m.)</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	

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