

MEETING MINUTES

November 12, 2014

I. Call to Order & Orders of the Day

Roll Call

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

ABSENT: All Present.

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

OTHER: Noelia Espinola , Court Reporter with Advantage Reporting Services

Call to Order

The members of the San José Ethics Commission convened at 5:37 p.m. in Room W-262 of City Hall, 200 E. Santa Clara Street, CA 95113.

Orders of the Day

Action: Upon motion by Vice Chair Rolanda Pierre Dixon, seconded by Commissioner Leon Louie and carried unanimously, the Commission approved the adoption of the November 12, 2014 agenda. (5-0.)

II. Closed Session - None

III. Hearings

- A. Hearing on Complaint filed by Long Nguyen against Maya Esparza alleging violations of Title 12 of the San Jose Municipal Code (Independent Investigator/Evaluator)

Document Filed: Report from Hanson Bridgett LLP dated November 4, 2014 regarding Long Nguyen vs Maya Esparza addressing the alleged violation of Title 12.06.101 of the San José Municipal Code – Disclosure of Electioneering Communications; complaint filed October 14, 2014.

Discussion: Chair Michael Smith summarized the hearing procedures and opened the public hearing. All members of the Commission were present, with Commissioner Edgeworth recused. This complaint alleges a violation by Maya Esparza; Complainant Long Nguyen alleges that the Respondent violated Section

12.06.1010.A of the San José Municipal Code, which requires that a lawn sign like the one at issue include a disclaimer that states “paid for by” immediately followed by the name, street address, and city of the candidate or committee that paid for the lawn sign. The Complainant alleges that Respondent’s lawn sign was insufficient in that it did not include a street address or city, but only included the Respondent’s FPPC identification number. In addition, the Complaint alleged “unfair” violations of unspecified sections of Title 12 relating to improper placement of the Respondent’s lawn signs on top of her opponent’s signs.

Complainant Long Nguyen, Respondent Maya Esparza, witnesses nor members of the public were present for this hearing.

The Evaluator Steve Miller presented his report, addressing his conclusion that the first allegation constitutes a violation of the Municipal Code, in that the disclaimer on the lawn sign did not include the correct information required by Title 12. Upon notification of the complaint, Respondent took prompt action to remedy any violation. Therefore, it is the recommendation of the Evaluator that the Commission find that sufficient mitigating factors exist in the first matter, such that it should close the file and take no further action. With regard to the second allegation, it was concluded that despite the Complainant’s reference to a violation of Title 12, the allegations of improper placement are outside the jurisdiction of the Ethics Commission, and therefore outside the authority of the Commission to investigate.

Staff responded to Commission questions.

Motion: Chair Michael Smith moved that, based upon a preponderance of the evidence, a violation has occurred with regard to use of the proper "paid for by" disclaimer. Vice Chair Rolanda Pierre Dixon seconded the motion.

Action: On a call for the question, the motion carried unanimously indicating concurrence with the Evaluator’s report that a violation of the Municipal Code has occurred. (4-0-0-1. Recused: Edgeworth.)

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	Recused
Commissioner Peacock	So certified

Motion: Vice Chair Rolanda Pierre Dixon moved that due to sufficient mitigating circumstances, no penalties be imposed or further action taken. Commissioner Leon Louie seconded the motion.

Amended Motion: Chair Michael Smith requested to amend the motion to include that the file be closed. Commissioner Leon Louie and Vice Chair Rolanda Pierre Dixon approved the amended motion.

Action: On a call for the question, the Evaluator's report was adopted, finding that due to sufficient mitigating circumstances no penalties be imposed, no further action taken and the file be closed. (4-0-0-1. Recused: Edgeworth.)

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	Recused
Commissioner Peacock	So certified

Action: Upon motion by Vice Chair Rolanda Pierre Dixon, seconded by Commissioner Leon Louie 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. (4-0-0-1. Recused: Edgeworth.)

IV. Consent Calendar

- A. Approve the Minutes of September 10, 2014 – Regular Meeting
Deferred to December 10, 2014
- B. Approve the Minutes of October 8, 2014 – Special Meeting

Documents Filed: Draft Ethics Commission minutes for the October 8, 2014 meeting.

Action: Upon a motion by Chair Michael Smith, and seconded by Commissioner Leon Louie and carried, the Commission approved the meeting minutes of October 8, 2014. (4-0-0-1. Recused: Edgeworth)

V. Reports

- A. Chair –Chair Smith reported that three complaints were filed on October 14, 2014; one hearing will be held tonight. The Evaluator has asked that an extension be granted for the other two, as witnesses were not available until after the election. Timing will probably require these hearings be held after the December meeting, with another open investigation to be considered within the next month. A discussion regarding what recourse we have, above and beyond issuance of a subpoena, when someone tries to stall the hearing before an investigation was recommended for a future discussion.

- B. City Attorney – None
 - 1. Legislative update
- C. City Clerk – Assistant City Clerk Tom Graves offered that Mayor and open Council seats have been decided. Determination on handling Councilmember Chu's vacancy will be decided at the Council meeting of December 2, 2014.
 - 1. Legislative update – None
 - 2. Status of compliance with Commission resolutions – None
 - 3. Status report on filings (Form 700, Campaign Statements, Lobbyists) -
City Clerk Toni Taber offered that campaign statements are not ready since it is too soon after the election, but the candidates 2nd pre-election filings were on time. Lobbyists is a work in progress, but compliance looks good thus far. The ad required by MC 12.06.920 that lists total campaign contributions and expenditures has been run.
 - 4. Elections update – City Clerk Toni Taber commented that an official resignation from Kansen Chu is required. The Council will either do an appointment or more likely a special election, at a cost of \$630,000 per election per district.
- D. Investigator/Evaluator – None

VI. Old Business

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

Action: Item deferred to next meeting scheduled for December 10, 2014.

- B. Discussion, review and possible action on Open Government Legislation and the effects it will have on the Ethics Commission (City Attorney)

Documents Filed: Ordinances 29460 and 29461.

Discussion: Deputy City Attorney Arlene Silva offered that this could be added to the standing items for continued discussion regarding potential amendments to the ordinance or resolution in more clearly defining new additions to Title 12.

- C. Status, discussion and possible action on extension of current contract for Independent Evaluator/Investigator and RFQ for new contract commencing July 1, 2015 (City Clerk/City Attorney)

Discussion: Deputy City Attorney Arlene Silva noted that she will be communicating with Hanson Bridget and drafting an amendment to extend the contract to June 30, 2015, which will need final approval by the City Council in December 2014.

Deputy City Attorney Arlene Silva indicated some changes will be required in both formatting and content of the RFQ/s.

Commissioner Chris Peacock and Vice Chair Rolanda Pierre Dixon indicated that for the sake of competition and having open options, three RFQ's, one for the Evaluator, one for the Investigator and a combined RFQ for the Evaluator/Investigator be considered.

Chair Smith and Commissioners Leon Louie and Linda Edgeworth spoke to the merits of providing a single RFQ that would combine the requirements of the Evaluator and Investigator.

Motion: Commissioner Chris Peacock moved approval of seeking three RFQ's. Vice Chair Rolanda Pierre Dixon seconded the motion.

Action: On a call for the question, the motion failed. (2-3. Noes: Edgeworth, Louie, Smith.)

Motion: Commissioner Leon Louie moved approval of a single Evaluator/Investigator RFQ. Commissioner Linda Edgeworth seconded the motion.

Action: On a call for the question, the action to approve a single Evaluator/Investigator RFQ was approved. (3-2. Noes: Pierre Dixon, Peacock.)

Commissioners requested that this RFQ offer enhanced clarity and less general information, including greater delineation in functions and roles of the Evaluator/Investigator. It should indicate the Evaluator/Investigator's need to do more than just evaluate complaints, but to conduct full-on investigations and either independently hire or have investigators in their firm to follow up on minute details and to further demonstrate their understanding of the deadlines involved. Commissioners were asked to provide Ruth Krantz of the Clerk's Office with any additional suggestions which will be forwarded on to Deputy City Attorney Arlene Silva.

- D. Discussion, review and possible action on Form 500 language to ensure timely submittal

Documents Filed: Blank Form 500 and San José Municipal Code (SJMC) section 12.06.500 *et seq.*

Discussion: City Clerk Toni J. Taber offered that there is still considerable work to be done post mortem on the election. She highlighted some changes to be made on the current Form 500, including use of the term "I elect to opt out", which is not used in the ordinance; and the amendment section to read "amendment not to be submitted beyond 14 days after the election". Discussion followed regarding filer's use of the official website in downloading Form 500's, rather than unofficial forms

available on the internet, and the Clerk's Office carefully policing their acceptance. The potential for electronic filing in alleviating this issue was discussed with City Clerk Taber's suggestion on getting a quote from Netfile. She added that the recommended changes to the Form 500 should be available by the December 10, 2014 meeting.

VII. New Business – None

VIII. Public Comment – None

IX. Future Agenda Items and Adjournment

The next regular meeting is Wednesday, December 10, 2014 at 5:30 p.m. in City Hall, Wing Room 262.

- Establishment of an Ethics Commission ad hoc Subcommittee to explore opportunities for outreach to ethnic and specialized media regarding campaign and ethics regulations and policies per the Commission's FY2015 work plan
- Gift Ordinance and FAQs
- Open Government Legislation
- Approval of Meeting Minutes
- Contract and RFQ for Evaluator/Investigator
- Changes to Form 500 form/instructions and possible changes to SJMC

The meeting was adjourned at approximately 7:20 p.m.



MICHAEL SMITH, CHAIR

ATTEST:
ETHICS COMMISSION SECRETARY



TONI J. TABER, CMC
CITY CLERK

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

Taken On November 12, 2014

CITY OF SAN JOSE ETHICS COMMISSION

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CONDENSED TRANSCRIPT

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

<p style="text-align: center;">Page 1</p> <p>CITY OF SAN JOSE ETHICS COMMISSION</p> <p style="text-align: center;">REPORTER'S TRANSCRIPT OF PROCEEDINGS</p> <p>Date: Wednesday, November 12, 2014</p> <p>Time: 5:36 p.m.</p> <p>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 #48712</p>	<p style="text-align: center;">Page 3</p> <p style="text-align: center;">1 PROCEEDINGS</p> <p>2</p> <p>3 CHAIRMAN SMITH: We move into the hearing.</p> <p>4 We need to call Steve.</p> <p>5 (Brief recess.)</p> <p>6 CHAIRMAN SMITH: It is Wednesday,</p> <p>7 November 12th, 2014, and this hearing of the City of</p> <p>8 San Jose Ethics Commission is being held in Room W-262</p> <p>9 of San Jose City Hall. All members of the Commission</p> <p>10 are present, although I should mention I've been</p> <p>11 informed that Commissioner Edgeworth will be recusing</p> <p>12 herself from the participation in this hearing. So, in</p> <p>13 that case, my understanding is you can stay in the room</p> <p>14 with us and listen to the proceedings, but you can't</p> <p>15 ask questions, make statements or vote.</p> <p>16 COMMISSIONER EDGEWORTH: Yes.</p> <p>17 CHAIRMAN SMITH: The Commission will conduct</p> <p>18 a hearing on a complaint filed with the City Clerk on</p> <p>19 October 14th, 2014, by Long Nguyen alleging that Maya</p> <p>20 Esparza violated Section 12.06.1010(A) of the San Jose</p> <p>21 Municipal Code. Specifically, the allegation is that</p> <p>22 the Respondent's lawn signs did not contain the correct</p> <p>23 "paid for by..." disclaimer and were unfairly or</p> <p>24 improperly placed. The City Clerk notified and</p> <p>25 provided a copy of the complaint to the Independent</p>
<p style="text-align: center;">Page 2</p> <p>1</p> <p>2</p> <p>3 APPEARANCES</p> <p>4 San Jose Elections MICHAEL SMITH, Chair Commission: ROLANDA PIERRE-DIXON, Vice-Chair</p> <p>5 LEON LOUIE 6 CHRIS PEACOCK 7 LINDA EDGEWORTH</p> <p>8 Staff: ARLENE F. SILVA 9 Deputy City Attorney 10 TONI TABER, 11 City Clerk</p> <p>12 TOM GRAVES, 13 Assistant City Clerk 14 Ruth Krantz 15 Deputy City Clerk</p> <p>16 The Reporter: ADVANTAGE REPORTING SERVICES 17 BY: NOELIA ESPINOLA, 18 CSR #8060 19 1083 Lincoln Avenue 20 San Jose, CA 95125 21 (408) 920-0222</p> <p>22 --o0o--</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: center;">Page 4</p> <p>1 Evaluator on October 14, 2014, and the Evaluator</p> <p>2 notified and provided a copy to the respondent on</p> <p>3 October 15th, 2014. The Independent Evaluator's Report</p> <p>4 and Recommendations were submitted to the City Clerk on</p> <p>5 November 4th, 2014, and copies were then provided to</p> <p>6 the complainant, respondent, and Commission members and</p> <p>7 posted to the city web site with the agenda for</p> <p>8 tonight's hearing.</p> <p>9 Since there are no members of the public</p> <p>10 here, do you think I need to go through the boilerplate</p> <p>11 explanations that I normally go through?</p> <p>12 MS. SILVA: It's not necessary.</p> <p>13 CHAIRMAN SMITH: Okay. So I will skip over</p> <p>14 that stuff.</p> <p>15 The complainant and respondent are not here</p> <p>16 this evening, nor are there any members of the public</p> <p>17 here.</p> <p>18 I should identify, in addition to the</p> <p>19 Commission, the staff people who are here, if we can</p> <p>20 just go around and identify yourselves, please.</p> <p>21 MS. SILVA: Deputy City Attorney Arlene</p> <p>22 Silva.</p> <p>23 MS. TABER: City Clerk Toni Taber.</p> <p>24 MS. KRANTZ: Oh, Deputy City Clerk Ruth</p> <p>25 Krantz.</p>

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1 MR. GRAVES: Assistant City Clerk Tom Graves.
2 CHAIRMAN SMITH: Thank you.
3 Under the Commission's regulations and
4 procedures, the respondent may submit a written
5 response to the Report and Recommendations. The
6 response may contain legal arguments, a summary of
7 evidence and any mitigating evidence or exculpatory
8 information.
9 I don't believe we received any written
10 response from the respondent; is that correct?
11 MS. TABER: That's correct.
12 CHAIRMAN SMITH: Okay. The complainant or
13 any interested party may also submit a brief or written
14 argument.
15 And I believe we also have not received any
16 written information from the complainant or anyone
17 else.
18 MS. TABER: Correct.
19 CHAIRMAN SMITH: Correct? Thank you. Okay.
20 The Commission's regulations and procedures
21 allow for the Independent Evaluator to present the
22 Report and Recommendations. At this time I will
23 recognize Steve Miller from the Hanson Bridgett law
24 firm to present the Report. The Recommendations will
25 be presented separately.

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1 You're on.
2 MR. MILLER: Very good. Let me know if you
3 can't hear me or if you want to interrupt me for a
4 question. I'll be quite brief.
5 This report is similar to one that we filed
6 in May of this year concerning Title 12's requirement
7 enacted one year ago that required electioneering
8 communications, like a lawn sign, to have a disclaimer
9 that reads "paid for by," followed by the name and the
10 city. This requirement in Title 12 is different from
11 state law, which has no such requirements, and also
12 different from the FPPC recommendations, which would be
13 for a lawn sign to include the name of the committee
14 and the FPPC committee identification number.
15 The complaint alleges that Maya Esparza's
16 lawn signs were noncompliant with Title 12 in that they
17 included the FPPC number but not the street address and
18 the city of the entity paying for the lawn sign. In
19 addition the complaint alleged that signs were
20 improperly and unfairly placed.
21 With regards to the second of those two
22 allegations, as per the Code and the Resolution, we
23 determined that to be outside the jurisdiction of the
24 Commission. And we are instructed in such instances to
25 refer that issue to the City Clerk for handling by the

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1 Public Works Department, and that is what we did.
2 And we focused our investigation only on the
3 first allegation. And that investigation revealed --
4 and Respondent does not dispute -- that a violation
5 occurred in that the signs did not include the correct
6 information in the disclaimer.
7 When notified of this, the respondent made
8 genuine, prompt and, in fact, repeated efforts to
9 become compliant and ultimately did so and provided us
10 evidence that she had gone out to locate as many of her
11 signs as she could and affixed stickers to them to
12 bring the signs into compliance.
13 Nevertheless, we determined that there is a
14 violation in that the signs were not in compliance
15 originally. And pause there, and we can talk about
16 recommendations. Thank you.
17 CHAIRMAN SMITH: Thank you. Any questions
18 from the Commission?
19 COMMISSIONER PIERRE-DIXON: No.
20 COMMISSIONER LOUIE: No.
21 CHAIRMAN SMITH: Okay. Since the respondent
22 is not here and the complainant is not here and no
23 members of the public are here, we are back to the
24 Evaluator. So I would once again call upon Steve
25 Miller to present the recommendations.

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1 MR. MILLER: Okay. Well, we recommend that
2 you find a violation but take no further action. We
3 think there is mitigating factors here, including the
4 promptness with which the respondents tried to remedy
5 the situation. The -- there was no intent to deceive
6 anybody. The signs did include FPPC committee number
7 such that the people could identify who they were. She
8 cooperated fully with our investigation.
9 There is a relatively new provision, and
10 there does seem to be quite a lot of confusion out
11 there in the community as to what the requirements are,
12 as evidenced by a number of other noncompliant lawn
13 signs that the respondents provided for us. She also
14 pointed out that campaign handbook has a section on
15 sign that does not includes this requirement, but the
16 signs are included in the ethics requirement.
17 So I think her confusion was, to some extent,
18 understandable. But it is really her job to know what
19 the rules are. And that's not an excuse; it's just an
20 explanation, from my perspective.
21 But, nonetheless, we think there is enough
22 mitigating factors here that we suggest that we find --
23 that you impose no penalties and close the file on this
24 matter without taking any further action.
25 CHAIRMAN SMITH: Okay. Any questions from

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<p style="text-align: center;">Page 9</p> <p>1 the Commission? Mr. Peacock. 2 COMMISSIONER PEACOCK: Regarding -- maybe I 3 should stand over here, where he can -- 4 CHAIRMAN SMITH: It might be easier. 5 COMMISSIONER PEACOCK: Just this is a 6 slightly broader question. Regarding the statement 7 that in the process you ran across other -- other 8 candidates' signs that were not compliant. This is a 9 minor thing, I realize. But do -- so that did not 10 warrant saying, Oh, there should be any communication 11 with those campaigns since their signs were out of 12 compliance? 13 MR. MILLER: We had no communications with 14 them. It is a thought that occurred to us. As is 15 often the case when investigating, we -- in the course 16 of our investigation, we discover another violation. 17 We have the power to begin parallel investigations. 18 In these circumstances, after discussions the 19 last time around on this issue, we thought it was 20 perhaps premature for us to, on our own, begin 21 investigating all of these folks. And so we did not 22 make any efforts in that regard. 23 I think next election, perhaps, the City 24 Clerk could make some outreach efforts or continue the 25 education on this new requirement. But we didn't</p>	<p style="text-align: center;">Page 11</p> <p>1 CHAIRMAN SMITH: -- without going through 2 complaint. So I presume the ones that were identified 3 in this complaint, did you have -- 4 MS. TABER: I have had contact with 5 several -- almost all of the campaigns, I've had some 6 sort of contact regarding the disclaimer. So Cortese's 7 office, Liccardo's office, Tam Nguyen's office. And I 8 can't remember the other two. 9 CHAIRMAN SMITH: Okay. 10 MS. TABER: Yes, I have had a lot of contact. 11 In most cases they order these labels, they put the 12 labels on, they show me a picture. Look. Here is what 13 it looks like. And I just mark it, like, done. 14 CHAIRMAN SMITH: Okay. Thank you. 15 Any other questions? 16 Okay. In that case, it's now time for us to 17 make our decision. 18 First of all, we have four options. We 19 can -- Commission may find that further investigation 20 is necessary. If so, we shall direct the Evaluator to 21 conduct further investigations and report back to the 22 Commission. 23 Second, we may find that there is sufficient 24 evidence to establish that no violation occurred. If 25 so, we make that finding and announce that fact.</p>
<p style="text-align: center;">Page 10</p> <p>1 investigate anybody else, if that was your question. 2 COMMISSIONER PEACOCK: Mr. Chairman, what we 3 may want to do is, going forward, is look and see if 4 there is some sort of threshold for when something that 5 is discovered in the process, whether it's just 6 consulting with the Chairman to see whether that merits 7 something or not. I mean, there is some things that 8 might be a serious violation that might be uncovered in 9 the process. But where is the line between those? And 10 I don't mean this was unserious, but something a little 11 more significant. 12 CHAIRMAN SMITH: Good point. 13 MR. MILLER: That is a good point. 14 CHAIRMAN SMITH: I think the other thing on 15 this one is -- I think we already put this on the list, 16 as I recall, Cecilia's list, last time around. Maybe 17 we should reconsider this requirement as to, you know, 18 why isn't it enough to have the name of the committee 19 and the FPPC number, which is what everybody seems to 20 be doing. 21 I guess a question to the City Clerk, kind of 22 a follow-up to Commissioner Peacock's question. I 23 believe, when you become aware of noncompliant signs, 24 you have communicated with the various committees -- 25 MS. TABER: Yes.</p>	<p style="text-align: center;">Page 12</p> <p>1 Third, we make -- the Commission may find 2 that there is insufficient evidence to establish that a 3 violation has occurred. If so, we make that finding 4 and announce that fact. 5 And, fourth, Commission may find that, on the 6 preponderance of the evidence from the entire record of 7 the proceedings, that a violation has occurred. 8 I'll open the floor to discussion. And we 9 need to make a finding for -- well, for each 10 respondent. In this case there is only one 11 respondent -- for each potential violation. And there 12 is only one potential violation. 13 The finding may be made by -- well, we don't 14 need to go into that. 15 So is there a motion for any finding by the 16 Commission? 17 If not, I'll offer a motion since I'm sitting 18 right by the phone here. I would move that the 19 Commission find that on the preponderance of the 20 evidence, from the entire record of the proceeding, 21 that a violation has occurred. 22 And I need a second. 23 COMMISSIONER PIERRE-DIXON: I will second. 24 This is Rolanda. 25 CHAIRMAN SMITH: Thank you.</p>

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1 And any questions or comments or discussion?
2 If not, we'll call for a vote. All in favor?
3 (All Commissioners responded Aye.)
4 CHAIRMAN SMITH: Any opposed?
5 (No response.)
6 CHAIRMAN SMITH: So that's unanimous on the
7 four of us participating. Commissioner Edgeworth is
8 recused.
9 Upon adoption of the motion, the Chair must
10 ask each Commission member to certify that they have
11 heard or read the testimony at the hearing and have
12 reviewed all the evidence in the record by affirming
13 "So certified."
14 So Commissioner Peacock.
15 COMMISSIONER PEACOCK: So certified.
16 CHAIRMAN SMITH: Commissioner Pierre-Dixon.
17 COMMISSIONER PIERRE-DIXON: So certified.
18 CHAIRMAN SMITH: Commissioner Louie?
19 COMMISSIONER LOUIE: So certified.
20 CHAIRMAN SMITH: And me, Commissioner Smith,
21 so certified.
22 Given that we found a violation has occurred,
23 we must consider imposing orders and other penalties.
24 In this case, we may find mitigating circumstances and
25 take no further action; we may issue a public statement

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1 or reprimand; third, we may require a corrective action
2 by a particular deadline; and/or, fourth, we may impose
3 a civil penalty in accordance with Chapter 12.04 of the
4 San Jose Municipal Code.
5 Civil penalties are imposed by resolution of
6 the Commission. Except as otherwise specified in
7 Title 12, the Commission may impose penalties of up to
8 \$5,000 for each violation or three times the amount
9 which a person or respondent failed to report properly
10 or unlawfully contributed, expended, gave or received,
11 whichever is greater.
12 The affirmative votes of at least three
13 Commission members are required to impose orders and
14 penalties for a violation. In addition, in order to
15 vote to impose any order or penalty for a violation,
16 every Commission member must certify that he or she has
17 heard or read the testimony at the hearing and has
18 reviewed all 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 the
23 severity of the violations; the presence or absence of
24 any intention to conceal, deceive or mislead; whether
25 the 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 in relation to campaign
5 finance, lobbying, conflicts of interest or government
6 ethics; the degree to which the respondent cooperated
7 with the investigation; and whether or not corrective
8 actions were taken, if appropriate, in accordance with
9 the provisions of this Chapter.
10 Is there a motion regarding orders and
11 penalties related to the findings?
12 COMMISSIONER PIERRE-DIXON: I would make a
13 motion that there are, in fact, mitigating
14 circumstances and suggest that we take no further
15 action.
16 COMMISSIONER LOUIE: I second that.
17 CHAIRMAN SMITH: Okay. Thank you.
18 And any discussion on that motion?
19 Okay. If not -- let's see. Let me just hang
20 on a second before I call for a vote on that. I guess
21 take no further action -- that includes -- isn't there
22 something in here where we're supposed to close the
23 file? I'm not finding that in my -- in my notes.
24 So I think -- so the motion should be --
25 let's see. The motion was we find mitigating

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1 circumstances and -- oh, I'm sorry. Did you say the
2 file be closed?
3 COMMISSIONER PIERRE-DIXON: No, I did not. I
4 just said and take no further action. But I would
5 accept that friendly amendment to then move to close
6 the file.
7 CHAIRMAN SMITH: Okay. Thank you.
8 We find mitigating circumstances and the file
9 in this matter be closed without further action. Okay.
10 Good. And that's okay to Commissioner Louie who did
11 the second?
12 COMMISSIONER LOUIE: Yes, yes.
13 CHAIRMAN SMITH: Okay. Thank you.
14 So, if there's no discussion, all in favor?
15 (All Commissioners responded Aye.)
16 CHAIRMAN SMITH: Any opposed?
17 (No response.)
18 CHAIRMAN SMITH: Okay. So; again, it's all
19 in favor except Commissioner Edgeworth, who is recused.
20 Once again, I have to ask each commission
21 member to certify that they heard or read the testimony
22 at the hearing and have reviewed all the evidence in
23 the record by affirming "So certified."
24 So Commissioner Peacock.
25 COMMISSIONER PEACOCK: So certified.

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<p>1 CHAIRMAN SMITH: Commissioner Pierre-Dixon. 2 COMMISSIONER PIERRE-DIXON: So certified. 3 CHAIRMAN SMITH: Commission Louie. 4 COMMISSIONER LOUIE: So certified. 5 CHAIRMAN SMITH: And me, Commissioner Smith, 6 so certified. 7 We may also refer the matter to another 8 agency or official if we determine that that agency or 9 official may more appropriately resolve the 10 allegations. 11 I don't think we -- unless somebody feels 12 otherwise, I don't think we have a need to refer 13 anything. 14 COMMISSIONER PIERRE-DIXON: No. 15 CHAIRMAN SMITH: The one part -- I would 16 mention the one part of it concerning the placement of 17 the signs was already referred, I believe. Mr. Miller 18 indicated that he had sent that back to the City Clerk. 19 And I don't know if I've seen it, but did the Clerk's 20 office forward that on to Code Enforcement? 21 MS. TABER: Yes. 22 CHAIRMAN SMITH: So that particular referral 23 has already taken place. 24 Okay. At this time, I would entertain a 25 motion that the Commission directs the City Attorney to</p>	<p>1 2 I, NOELIA ESPINOLA, do hereby certify: 3 That said hearing was taken down by me at the 4 time and place therein named, and thereafter reduced to 5 computerized transcription under my direction. 6 I further certify that I am not interested in 7 the outcome of this hearing. 8 9 10 11 Dated: _____ 12 NOELIA ESPINOLA, CSR #8060 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p>Page 18</p> <p>1 draft a Resolution of the Commission's findings and 2 penalties and that the Commission authorizes the Chair 3 to approve and sign the Resolution. 4 COMMISSIONER PIERRE-DIXON: I would so move. 5 CHAIRMAN SMITH: Thank you. 6 COMMISSIONER LOUIE: I second. 7 CHAIRMAN SMITH: All right. Any discussion? 8 If not, all in favor? 9 (All Commissioners responded Aye.) 10 CHAIRMAN SMITH: Any opposed? 11 (No response.) 12 CHAIRMAN SMITH: Once again, it's four, zero 13 and one. And this hearing is now closed. 14 (Whereupon, the hearing concluded at 15 6:16 p.m.) 16 17 18 19 20 21 22 23 24 25</p>	

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