
SPECIAL MEETING MINUTES

September 10, 2014

I. Call to Order & Orders of the Day

Roll Call

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

ABSENT: None

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

OTHER: Noelia Espinola, Court Reporter with Advantage Reporting Service

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 Commissioner Leon Louie, and seconded by Commissioner Rolanda Pierre-Dixon and carried, the Commission approved the adoption of the September 10, 2014 agenda. (5-0.)

II. Closed Session - None

III. Hearings

- A. Hearing on Complaint filed by Ragan Henninger on August 11, 2014 alleging violations of Title 12 of the San Jose Municipal Code by Dave Cortese for Mayor 2014 (Independent Investigator/Evaluator)

Document Filed: (1) Report from Hanson Bridgett LLP dated September 2, 2014 regarding– Violation of Title 12.06.510 of the San José Municipal Code – Acceptance of Contributions before the Filing of Form 500, Complaint filed August 11, 2014; (2) Supplement to September 2, 2014 Report on Henninger Complaint from Hanson Bridgett LLP dated September 3, 2014.

Discussion: Chair Michael Smith summarized the hearing procedures and opened the public hearing. All members of the Commission were present. This complaint alleges a violation by Dave Cortese for Mayor 2014.

Specifically, the Complaint alleges two related violations of the Municipal Code: First, alleging the Respondent violated Section 12.06.510 for accepting contributions beginning on June 4, 2014 but did not file the Form 500 until June 17, 2014. Secondly, the Complaint asserts that Mr. Cortese filed an amended Form 500 on July 25, 2014, changing his position from participation in the VEL program to non-participation. The Complaint alleges that Respondent therefore violated Section 12.06.510 with regard to all contributions received before July 25, 2014. The Complainant was not present. James Harrison from Remcho, Johansen & Purcell representing the Respondent Dave Cortese for Mayor 2014 was present .

The Evaluator presented the report and requested that the Commission adopt the Evaluator's opinion that with regard to the amended filing of the Form 500 and contributions received beginning June 17, 2014, no violation of the Municipal Code has occurred, and that the Commission take no further action on this part of the Complaint. However, the Evaluator has concluded that with regard to the pre-June 17, 2014 contributions, a violation of the Municipal Code has occurred. The Respondent has expressed his intention to return the 18 contributions received before the June 17, 2014 filing of the Form 500. His return of these contributions does not erase the violation but is relevant to the Commissioners' actions in this regard.

The Commission discussed the details of the complaint and the report. Staff responded to Commission questions regarding altering language in Title 12 of the San José Municipal Code to accommodate late filing of Form 500's.

Chair Michael Smith swore in Respondent's representative James Harrison from Remcho, Johansen & Purcell. He provided testimony regarding the alleged violations, commenting that the contributions were received, unsolicited, during the time Mr. Cortese was taking a break from campaign activities after the primary election, and they have since been returned. Mr. Harrison responded to questions from the Commission.

Commission deliberation followed (refer to the Reporter's Transcript of Proceedings #48384)

Motion: Chair Michael Smith moved that, in regard to the first violation, based upon a preponderance of the evidence presented, a violation of San José Municipal Code Section 12.06.510 has occurred with regard to contributions prior to June 17, 2014. The motion was seconded by Vice Chair Rolanda Pierre Dixon.

Action: On a call for the question, the motion carried unanimously regarding the first violation, determining that a violation of the Municipal Code has occurred with regard to contributions prior to June 17, 2014. (5-0.)

Motion: Chair Michael Smith moved that, in regard to the second violation, due to mitigating circumstances, there is sufficient evidence to establish that no violation has occurred, and that the file in this matter be closed without further action. The matter in question is the contributions received between June 17 and July 25, 2014. The motion was seconded by Vice Chair Rolanda Pierre Dixon.

Action: On a call for the question, the motion carried unanimously, determining that no violation of the Municipal Code has occurred in reference to the contributions received between June 17 and July 25, 2014. (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 Chair Michael Smith, seconded by Chair Leon Louie and carried unanimously, the Commission moved that due to mitigating circumstances the file in this matter be closed without further action. (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 Chair Michael Smith, seconded by Commissioner Linda Edgeworth 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. (5-0.)

IV. Consent Calendar

A. Approve the Minutes of May 14, 2014 Regular Meeting

Document Filed: Draft Ethics Commission minutes for the May 14, 2014 Regular Meeting.

Action: Upon a motion by Vice Chair Rolanda Pierre Dixon, and seconded by Commissioner Leon Louie and carried, the Commission approved the meeting minutes of May 14, 2014. (5-0.)

- B. Approve the Minutes of July 23, 2014 Special Meeting.

Document Filed: Draft Ethics Commission minutes for the July 23, 2014 Special Meeting.

Action: Upon a motion by Vice Chair Rolanda Pierre Dixon, and seconded by Commissioner Leon Louie and carried, the Commission approved the meeting minutes of July 23, 2014. (5-0.)

V. Reports

- A. Chair - None
- B. City Attorney –Commented that the agenda item on Legal Defense Fund has been dropped as it is considered not a priority within the workload.
1. Legislative update
- C. City Clerk - None
1. Legislative update
 2. Status of compliance with Commission resolutions
 3. Status report on filings (Form 700, Campaign Statements, Lobbyists)
Per City Clerk Tony Taber, Assistant City Clerk Tom Graves is taking over the Lobbyist Reports and Form 700's during a personnel transition. We have an 81% compliance rate with timely filing of form 700's. Since contractors make up the biggest part of those not in compliance, a new procedure is in place whereby contractors do not get paid until they file. This was a recommendation by City Auditor. Additionally noted, the Neighborhood Empowerment Coalition does not have to file with the City unless they have contributed directly to one of the candidates. To date, they are in full compliance.
 4. Elections update - None
- D. Investigator/Evaluator - None

VI. Old Business

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

Discussion: City Clerk Toni Taber reported that the Gift Ordinance did not get voted on during the Council Priority Setting Session held September 9, 2014, indicating it is not at the top of the Council's priority list.

Action: Item deferred to next meeting scheduled for November 12, 2014.

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

Discussion: City Clerk Toni Taber discussed pulling items on Netfile and the need for training.

Action: No action was taken.

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

Documents Filed: (1) FY 2013-14 Annual Report and (2) FY 2014-15 Workplan, both dated June 11, 2014.

Discussion: City Clerk Toni Taber reported that the Rules and Open Government Committee approved the Ethic's Commission Annual Report and Work Plan at their August 13, 2014 meeting.

Action: No action taken.

- D. Discussion and possible action on "Dark money" issue, regulations and policies. (City Clerk)

Discussion: Deputy City Attorney Arlene Silva indicated that the State has yet to act on this. We can move on the disclosure end of this, but there is nothing else that the Commission can do at this time.

Action: No action taken.

VII. New Business

- A. Discussion and possible action on Open Government Legislation and the effects it will have on the Ethics Commission. (City Attorney)
1. Open Government (Item 3.3 on the 8/26/14 Council Agenda)
 2. Absention/Appearance of Bias (Item 3.4 on the 8/26/14 Council Agenda)

Documents Filed: Memorandum from City Attorney Richard Doyle, dated September 3, 2014, regarding Open Government and Appearance of Impartiality Ordinance.

Discussion: Deputy City Attorney Arlene Silva referenced City Attorney Richard Doyle's memorandum of September 3, 2014 and updated Commissioners on the final adoption of the Title 12 amendment which went before Council on September 9, 2014. She outlined the three areas offering changes relating to the duties and responsibilities of the Ethics Commission.

VII. New Business (Cont'd.)

Public Comment: Bob Brownstein expressed appreciation for the Ethics Commission, and posed questions to the Deputy City Attorney. He recommended systematizing procedures forms, thereby enabling individuals to understand the complaints violations process and to increase transparency.

City Clerk Toni Taber mentioned that calendar posting requirements will need to be looked into to assure they meet compliance standards.

Action: No action taken.

VIII. Public Comment – None.

IX. Future Agenda Items and Adjournment

The next regular meeting is October 8, 2014 at 5:30 p.m. in City Hall, Wing Room 262.

The following agenda items will be discussed at the October 8, 2014 Ethics Commission meeting:

- Gift Ordinance and FAQs
- Reporting requirements from Staff regarding filings
- Open Government Legislation
- Approval of Meeting Minutes
- Extension of current Contract for Evaluator/Investigator and RFQ for new contract commencing July 1, 2015
- Changes to Form 500 form/instructions and possible changes to SJMC

The meeting was adjourned at approximately 7:16 p.m.



MICHAEL SMITH, CHAIR

ATTEST:
ETHICS COMMISSION SECRETARY



TONI J. TABER, CMC
CITY CLERK

Ethics Commission
Meeting Minutes page 7
September 10, 2014

Attachment: Transcript of Hearing dated September 10, 2014, Reported by Noelia
Espinola, CSR, License Number 8060, Advantage Reporting Services, No. 48384, pages
1 through 41.

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

Taken on September 10, 2014

CITY OF SAN JOSE ETHICS COMMISSION

PAGE 1 TO PAGE 41

CONDENSED TRANSCRIPT

Advantage Reporting

ARS

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

<p>CITY OF SAN JOSE ETHICS COMMISSION</p> <p>REPORTER'S TRANSCRIPT OF PROCEEDINGS</p> <p>Date: Wednesday, September 10, 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>#48384</p>	<p>Page 3</p> <p>1 PROCEEDINGS 2 3 CHAIRMAN SMITH: For those who wonder what 4 I'm doing up here, just to make sure that we touch all 5 the bases and do things right, I have a little script 6 that I follow so I don't mess up the process. 7 Okay. It is Wednesday, September 10, 2014, 8 and this hearing of the City of San Jose Ethics 9 Commission is being held in Room W262 of San Jose City 10 Hall. All members of the Commission are present. 11 The Commission will conduct a hearing on a 12 complaint filed with the City Clerk on August 11, 2014, 13 by Ragan -- is it Henninger or Henninger 14 (pronunciation)? Does anybody know? 15 MS. TABER: Henninger. I've always said 16 "Henninger." 17 CHAIRMAN SMITH: Okay. I'll assume it is 18 Henninger. -- alleging that the David Cortese For 19 Mayor 2014 Committee violated Section 12.06.510 of the 20 San Jose Municipal Code. Specifically, the allegation 21 is that the Committee accepted contributions before 22 filing City of San Jose Form 500, which is the 23 Expenditure Ceiling Statement, and accepted additional 24 contributions before filing an amended Form 500. 25 The City Clerk notified and provided a copy</p>
<p>Page 2</p> <p>1 2 APPEARANCES 3 4 San Jose Elections Commission: MICHAEL SMITH, Chair ROLANDA PIERRE-DIXON, Vice-Chair 5 LEON LOUIE CHRIS PEACOCK LINDA EDGEWORTH 6 7 Staff: ARLENE F. SILVA Deputy City Attorney 8 TONI TABER, City Clerk 9 10 TOM GRAVES, Assistant City Clerk 11 12 The Reporter: ADVANTAGE REPORTING SERVICES 13 BY: NOELIA ESPINOLA, CSR #8060 14 1083 Lincoln Avenue San Jose, CA 95125 15 (408) 920-0222 16 17 --o0o-- 18 19 20 21 22 23 24 25</p>	<p>Page 4</p> <p>1 of the complaint to the Independent Evaluator on 2 August 11, 2014, and the Evaluator notified and 3 provided a copy to the respondent on August 12, 2014. 4 The Independent Evaluator's Report and Recommendations 5 were submitted to the City Clerk on September 2nd, 6 2014, and a supplement to the Report and 7 Recommendations was submitted to the City Clerk on 8 September 3rd, 2014. Copies were then provided to the 9 complainant, respondent and Commission members and 10 posted to the City web site with the agenda for 11 tonight's hearing. 12 On April 15th, 2014, the City Council adopted 13 Resolution 76954, which establishes the Commission's 14 regulations and procedures pertaining to investigations 15 and hearings. All parties to these proceedings have 16 been provided copies of the Resolution. The 17 regulations and procedures have been adopted in order 18 to ensure the fair, just and timely resolution of 19 complaints before the Commission. 20 This hearing is open to the public. It is 21 being electronically recorded, and we have a court 22 reporter with us to compile a transcript. The formal 23 rules of evidence do not apply to this hearing, but all 24 testimony will be under oath or affirmation. The 25 complainant will be treated like any other witness in</p>

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 5

1 providing evidence. The Chair may compel the testimony
2 of witnesses and may compel the production of relevant
3 documents to the Evaluator by subpoena. Witnesses may
4 be excluded at the discretion of the Commission.

5 Commission members may ask questions of witnesses or
6 the Evaluator when recognized by the Chair.

7 At this time I would like to have the
8 complainant, Ragan Henninger, and the respondents or
9 their representatives identify themselves for the
10 record.

11 Is there anyone here representing the
12 complainant? No? And the respondent?

13 MR. HARRISON: Good evening, everyone. James
14 Harrison from Remcho, Johansen & Purcell representing
15 Supervisor Cortese.

16 CHAIRMAN SMITH: Okay. Thank you. Anyone
17 else?

18 You're the official representative?

19 MR. HARRISON: I'm it.

20 CHAIRMAN SMITH: You're it. Okay.

21 I would also like to have city staff and
22 representatives of Hanson Bridgett, the Commission's
23 Independent Evaluator, please identify themselves for
24 the record.

25 MR. MILLER: Steven Miller from Hanson

Page 7

1 was -- so we all have that as part of the Report.

2 COMMISSIONER PIERRE-DIXON: Uh-huh, yes.

3 CHAIRMAN SMITH: Okay. The complainant or
4 any interested party may also submit a brief or written
5 argument. Do we have anything else? Anything from the
6 complainant or anyone else?

7 Okay. Commission's regulations and
8 procedures allow for the Independent Evaluator to
9 present the Report and Recommendations. At this time
10 I'll recognize Steve Miller from the Hanson Bridgett
11 law firm to present the Report. The Recommendation
12 will be provided separately.

13 You're on.

14 MR. MILLER: Thank you. Good evening,
15 Commissioners.

16 So this complaint centers on the rule in
17 Municipal Code Section 12.06.510. And as a little
18 aside, I'll just mention that there is one place in the
19 Report that refers to Section .210, and there's a typo
20 that I apologize for. It's 12.06.510. And that's the
21 rule that requires candidates to file the Form 500
22 indicating whether they will participate in the
23 voluntary expenditure limits program, and they must
24 file that prior to accepting campaign contributions.

25 The wrinkle that is present here, that I call

Page 6

1 Bridgett.

2 MS. SILVA: Arlene Silva, deputy city
3 attorney.

4 MS. TABER: Toni Taber, city clerk.

5 MR. GRAVES: Tom Graves, assistant city
6 clerk.

7 CHAIRMAN SMITH: Thank you.

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

13 I don't believe we received a written
14 response. Have we?

15 MR. HARRISON: Nothing beyond what's attached
16 as Exhibit H to the Evaluator's Report.

17 CHAIRMAN SMITH: Okay. That was the --
18 copies of the checks?

19 MR. HARRISON: As well as an e-mail --

20 CHAIRMAN SMITH: Oh, an e-mail. Okay.
21 Right.

22 COMMISSIONER EDGEWORTH: August 26th.

23 MR. HARRISON -- about -- it expressed our
24 legal position.

25 CHAIRMAN SMITH: Okay. Right. So that

Page 8

1 to your attention, is that the respondent filed the
2 Form 500 on June 17th, 2014, opting into the voluntary
3 expenditure limits program I'll call the VEL program.
4 That was 13 days after the commencement of the campaign
5 contribution period on June 4th.

6 And then on July 25th the respondent filed an
7 amended Form 500, opting out of the VEL program. And
8 there ensued a court action to clarify whether the City
9 could or must accept that amended Form 500 filing. And
10 the ruling of the Court was, yes, the City must accept
11 that Form 500 -- amended Form 500 filing on July 25th.

12 So the question is -- what the Court did not
13 say was what the implications were of that amended
14 filing. So the question presented in the complaint is,
15 were contributions accepted by the campaign between the
16 beginning of the campaign period on June 4th and the
17 first filing of the Form 500 on June 17th impermissibly
18 in violation of the municipal code. And the second
19 question is, did -- is there a different calculus
20 necessary once the amended filing on -- it was on
21 July 25th, or were all contributions prior to that
22 July 25th date similarly impermissible.

23 And I think the answer we presented in our
24 Report has two parts. The first answer is a relatively
25 straightforward one, which is the candidate -- the

2 (Pages 5 to 8)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

<p style="text-align: center;">Page 9</p> <p>1 respondent filed the Form 500, opting into the program 2 on June 17th. Contributions accepted before that date 3 were in violation of the Municipal Code. And I don't 4 believe there's a dispute -- I think Respondent 5 acknowledges that that is the case. There may be some 6 mitigating factors that we can discuss when we get to 7 recommendations. But there's really no question, in 8 the Evaluator's mind, but that a violation occurred 9 with regard to contributions before June 17th.</p> <p>10 I think the -- what happens after June 17th, 11 as I hope the Report indicates, is not as clear. The 12 Code just simply does not contemplate a filing of an 13 amended Form 500. And the plain language of the code 14 section says that once you file, you can accept 15 contributions. And under that plain language, the 16 respondent filed on June 17th and could accept 17 contributions thereafter.</p> <p>18 The complainant asserts that that conclusion 19 frustrates the purpose of the Code and identifies that 20 purpose as making sure that contributors have complete 21 information before they make contributions and that the 22 filing -- any contributor, before the amended Form 500 23 filing, therefore had either incomplete or incorrect 24 information and made their contributions under false 25 pretenses.</p>	<p style="text-align: center;">Page 11</p> <p>1 I think I'll pause there for a minute and see 2 if you have any questions. Just to recap, we're 3 concluding that there was no violation of the Municipal 4 Code from June 17th onwards but that the contributions 5 accepted before June 17th do constitute a violation of 6 12.06.510.</p> <p>7 CHAIRMAN SMITH: Questions? 8 COMMISSIONER PIERRE-DIXON: No, I don't have 9 any.</p> <p>10 CHAIRMAN SMITH: If not, I have one. 11 MR. MILLER: Yes, sir.</p> <p>12 CHAIRMAN SMITH: Doesn't really relate to the 13 decision we have to make, but one thing that I found 14 confusing was the court order. As I read the court 15 order, the sole basis for it was the fact that the City 16 Clerk, according to the Court, sent an e-mail on 17 July 18th, I believe it was, inviting the candidate to 18 submit an amended one. But I never saw the e-mail in 19 question or any other information on that. So I don't 20 know who the right person to ask is.</p> <p>21 But it sounded like a unique circumstance, 22 and it sounded like if this happened again and if 23 somebody went to court again, they might not get the 24 same decision, depending on whether there was a magic 25 e-mail. Can you -- maybe the City Clerk can</p>
<p style="text-align: center;">Page 10</p> <p>1 The respondent has suggested that informing 2 contributors of a candidate's participation in the VEL 3 program is, in fact, not the purpose of that code 4 section but, rather, the purpose of the code section is 5 to inform voters at the time they cast their ballot, 6 not contributors at the time they make a contribution. 7 And Respondent points to some legislative history in 8 support of that position.</p> <p>9 Our view is, frankly, that it's not the 10 Evaluator's job to decide which of those purposes was 11 in the minds of the City Council when they enacted this 12 Code. Both Complainant's and Respondent's theories are 13 reasonable ones, and they're not mutually exclusive. 14 They might both be purposes of the Code. But it's 15 impossible for me to be able to say to you tonight, 16 This is what the Code means, based on the analysis that 17 we've done. Rather, we discussed that given -- we 18 discussed that the Code is inherently ambiguous and 19 does not contemplate the filing of an amended Form 500. 20 And in those circumstances our guide should be the 21 plain language of the ordinance, which says once you 22 file a Form 500, you may accept contributions.</p> <p>23 And so our conclusion is that there is no 24 further violations of that code section after the 25 June 17th filing.</p>	<p style="text-align: center;">Page 12</p> <p>1 eliminate --</p> <p>2 MS. TABER: Yes, we did send -- we did send 3 an e-mail out. The Code says that they must file a 4 form. So we have it on our list that we have to 5 collect the form.</p> <p>6 We routinely accept forms late. Form 700s 7 are often turned in late. Campaign statements are 8 often turned in late. Lobbyist forms are often turned 9 in late. In this case, you know, we were advised, 10 Well, you can't accept them late. But, you know, in 11 our -- in all of our other practices with forms, if 12 they need to turn it in, they need to turn it in even 13 if it's late.</p> <p>14 So we do think that when we come back and 15 look at the Title 12 we need to have language in there 16 that says, you know, this form can't be submitted late. 17 Because it was -- we only had, I think, one person who 18 hadn't turned the form in. So it was a form letter 19 that we sent out with a mail merge. And, you know, it 20 said, If you haven't already submitted this, you need 21 to submit it.</p> <p>22 And then each one said whether or not it was 23 complete. So the merge for Supervisor Cortese said 24 completed on this date. For Liccardo, it was completed 25 on this date. For Jones, completed on this date. But</p>

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 13

1 there was one person who hadn't completed it. That's
2 why we included that paragraph.
3 In hindsight, we know -- now we know we're
4 not supposed to accept those late, even though we
5 accept all these other forms late. This one, on the
6 advice of the attorneys, we can't accept it late
7 because there's no provision in there that allows for
8 us to accept it late. Whereas the Form 700s, FPPC has
9 language and all of these other things sort of have
10 language that allows us to accept them late. So that
11 was sort of our error. And so the courts use that as
12 well. We said he could turn in an amended. So...
13 CHAIRMAN SMITH: Okay. So that's an item, as
14 indicated in the Report, we want to -- we want to add
15 to -- I think we've been calling it "Cecilia's list,"
16 even though Cecilia isn't here tonight. But something
17 to look at next time we all --
18 MS. TABER: Yeah, we do that for every
19 election. We start the list on things.
20 CHAIRMAN SMITH: Okay. Good. So I got us a
21 little off track. I apologize. But that was something
22 that had me scratching my head. Why would we invite
23 him to --
24 MS. TABER: Yeah.
25 CHAIRMAN SMITH: Okay. You have -- oh,

Page 14

1 another question.
2 COMMISSIONER EDGEWORTH: Well, I have a
3 question that I -- I can't find it right in front of me
4 right now. But it seems to me that this pledge relates
5 to expenditures, not to contributions.
6 MR. MILLER: That is correct.
7 COMMISSIONER EDGEWORTH: And so we don't even
8 know the expenditures until quite late in the process,
9 do we? I mean, their final report of all their
10 expenditures is after Election Day, right? So whether
11 it's notifying voters on the day whether they pledged
12 to stay under that limit or whether they should know
13 whether it's a contribution and, therefore, we limit
14 the contributions or you have a choice of whether you
15 want to contribute to someone who is not going to
16 pledge or is going to pledge, I -- I, frankly, think
17 it's a problem. I think it's -- it isn't clear. It
18 isn't very productive to go down that avenue, I don't
19 think, in terms of whether the purpose of it is to
20 notify contributors.
21 CHAIRMAN SMITH: The problem -- if you look
22 at the -- I think the legislative history, as explained
23 in the Report, is right on. I mean, I know this -- all
24 these changes were made during my term on the
25 Commission. And, you know, originally you could accept

Page 15

1 more -- a larger contribution if you accepted limits.
2 And that was the incentive. And because of court
3 actions and other things, that was taken away.
4 And there were some, I think including me,
5 who asked, Why are we even keeping the voluntary limit,
6 given that the only thing you get now is the gold star
7 in the voter pamphlet? But the intention, clearly,
8 originally, was having to do with the size of
9 contributions you could accept.
10 COMMISSIONER EDGEWORTH: I don't recall --
11 CHAIRMAN SMITH: Had nothing to do with
12 letting people know.
13 COMMISSIONER EDGEWORTH: Based on this
14 report, I can't remember what the total contributions
15 received had been, but it was well under the \$734,000
16 expenditure limit. So it seems --
17 MR. MILLER: I'm not sure -- to the extent
18 there's a question there, I don't disagree with you. I
19 was -- in presenting these different analyses of the
20 underlying purpose, I was reflecting what's set forth
21 in the complaint and the information received from the
22 respondent. Ultimately, I agree with you that the
23 language of the statute is -- of the ordinance is what
24 the language is.
25 You're right that the amount of contributions

Page 16

1 is quite small. I believe -- for the record, there
2 were 18 contributions before June 17th, totaling 9,825.
3 And after June 17th --
4 COMMISSIONER EDGEWORTH: Like 102,000, it
5 should be.
6 MR. MILLER: Exactly right. \$102,084 and
7 244 contributions.
8 COMMISSIONER EDGEWORTH: But the total
9 contributions, based on the Report -- documents that we
10 have before us is about a third, as I recall, of the
11 total expenditure limit.
12 MR. MILLER: I see your point. I think
13 you're right.
14 COMMISSIONER EDGEWORTH: Yeah.
15 CHAIRMAN SMITH: That's not the final
16 accounting, though.
17 COMMISSIONER EDGEWORTH: No, it's not the
18 final accounting. But --
19 CHAIRMAN SMITH: Yeah, okay.
20 Anything else?
21 So if you've got more or --
22 MR. MILLER: No, I think that's all I've got
23 in terms of the recommendations in terms of the
24 finding. I know you like to divide things up into that
25 and --

4 (Pages 13 to 16)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 17	Page 19
<p>1 CHAIRMAN SMITH: Right. Recommendations. 2 MR. MILLER: Recommendations as far as what 3 you do with that information. 4 CHAIRMAN SMITH: Okay. 5 MR. MILLER: But our recommendation would be 6 that you find a violation with regards to those 7 18 contributions for \$9,000 but not find any violation 8 after June 17th for the other 244 contributions. 9 CHAIRMAN SMITH: Okay. So, if you're done -- 10 okay. At this time I call upon representatives of the 11 respondent, the Dave Cortese For Mayor 2014 Committee, 12 to come forward and present any written or oral 13 response. 14 We would appreciate it if you would limit 15 your comments to ten minutes. 16 So, Mr. Harrison, you want to -- 17 MR. HARRISON: Yes, that should not be a 18 problem. Would you like me to -- 19 CHAIRMAN SMITH: Yeah, it's probably better 20 for recording otherwise -- 21 COMMISSIONER EDGEWORTH: We don't have a 22 recorder. 23 CHAIRMAN SMITH: It's over there. 24 COMMISSIONER EDGEWORTH: Oh, I didn't see it. 25 The chair is blocking it.</p>	<p>1 of those checks. 2 So I wanted to briefly discuss the question 3 of any public harm here. 4 And I think the conversation that 5 Commissioner Edgeworth began and Commissioner, you 6 know, Smith echoed as well really goes to the heart of 7 it. This ordinance was originally designed to enforce 8 what were then variable contribution limits. So in 9 1997, when the ordinance was first adopted, a candidate 10 who accepted the voluntary expenditure limit was 11 subject to a contribution limit that was three times as 12 high as a candidate who did not accept the limits. 13 So, naturally, in order to enforce that 14 differential contribution limit, the City had to know 15 whether a candidate had accepted the voluntary 16 expenditure limit or not. Because otherwise the City 17 wouldn't be able to tell whether a candidate was in 18 violation of the law or in compliance with the law. 19 As a result of several court cases over the 20 course of the last several years, the City Council 21 amended the ordinance in 2011, and it removed the 22 differential contribution limits. What remains as the 23 benefit for accepting the voluntary expenditure limit 24 is the printing of a diamond in the ballot pamphlet 25 materials, next to the candidate's name. That ballot</p>
Page 18	Page 20
<p>1 CHAIRMAN SMITH: Well, it's easier for us to 2 hear, too. 3 COMMISSIONER EDGEWORTH: Sorry. 4 CHAIRMAN SMITH: Okay. So if you would state 5 your name for the record and raise your right hand. 6 MR. HARRISON: James Harrison. 7 8 JAMES HARRISON, 9 being first duly sworn by the Chairman to tell the 10 truth, the whole truth and nothing but the truth, 11 testified as follows: 12 13 CHAIRMAN SMITH: Thank you. Okay. Go ahead. 14 MR. HARRISON: Thank you very much for 15 inviting me to talk with you tonight. I really just 16 wanted to make one brief comment with respect to the 17 contributions that were received between the period of 18 June 4th and June 17th. 19 As Mr. Miller said, the facts are 20 uncontroverted. Mr. Cortese received those 21 contributions, unsolicited, during that period of time 22 while he was taking a break from campaign activities 23 after the primary election. So he did not actively 24 engage or solicit those contributions. And he has 25 since returned them. You've been provided with copies</p>	<p>1 pamphlet, of course, is not mailed to voters until 2 right about now. And, as a result, the City doesn't 3 publicize whether a candidate has accepted voluntary 4 expenditure limits until that time. The forms are 5 available on the City's web site, as Mr. Miller noted. 6 But the act of a publication really occurs with the -- 7 with the printing and distribution of the ballot 8 pamphlet. 9 So the purpose of the prohibition on 10 accepting contributions before a candidate has 11 indicated whether or not he'll accept the voluntary 12 expenditure limits is no longer served. And if the 13 purpose is to notify the voters, then you don't really 14 need to know that until just before the ballot pamphlet 15 materials are printed. 16 So, from our perspective, there has been no 17 public harm here. The contributions have been 18 returned. The prohibition against accepting 19 contributions no longer serves a governmental interest, 20 let alone an important governmental interest. And, 21 therefore, we believe it would be inappropriate to 22 impose any fine on Mr. Cortese based on his inadvertent 23 receipt of these contributions during this brief period 24 of time while he was taking a break from campaign 25 activities.</p>

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 21

1 I'd be happy to answer any questions you
2 have.
3 CHAIRMAN SMITH: Questions?
4 Okay. I have one. I always have one.
5 I take it nobody noticed that those
6 unsolicited contributions had come in before the
7 Form 500 was filed? I mean, one could surmise that
8 somebody would have noticed and said, "Oops. These
9 have to be returned," rather than waiting for the
10 opponent to file a complaint and say, "These should be
11 returned."
12 MR. HARRISON: Yes, the campaign manager,
13 J.R. Starrett, did notice and recalls having
14 conversations with the City Clerk's office in which she
15 explained that Supervisor Cortese was not available to
16 sign the Form 500 immediately after the election
17 because he was taking a break from campaign activities
18 and that the campaign had received unsolicited
19 contributions.
20 He understood from those conversations that
21 as long as Supervisor Cortese filed the Form 500 as
22 soon as he returned to the campaign trail, that that
23 would be fine. Whether that advice was accurate or
24 not, that was his belief. And that's why the campaign
25 went ahead and deposited the contributions.

Page 22

1 Obviously, now we understand that the City
2 takes a different position. As a result, to avoid any
3 question about it, Supervisor -- Supervisor Cortese
4 made the decision simply to return the contributions to
5 avoid any question at all.
6 CHAIRMAN SMITH: Okay. Thank you.
7 Any other?
8 MS. TABER: I wanted to note that we -- I
9 think you briefly mentioned it. We don't publicize the
10 Form 500, but it does get posted to our net file
11 system. Usually within a day or two of receiving it.
12 Sometimes, depending on staffing, a little bit longer.
13 But I just want to make that clear.
14 CHAIRMAN SMITH: Okay. Commissioner Peacock,
15 you have a question?
16 COMMISSIONER PEACOCK: I want to ask,
17 Mr. Chairman: Do we have confirmation from the City
18 Clerk's office that that -- they agree with that
19 summary of the conversation that the campaign had with
20 someone in the clerk's office?
21 MS. TABER: Nobody in the clerk's office told
22 me about that conversation. It was not with me. I
23 don't think it was with Tom. So if it was one of my
24 other staff people, we'll have to make sure that
25 they're clear and they understand that. I don't know

Page 23

1 who they talked to.
2 CHAIRMAN SMITH: Commissioner Edgeworth.
3 COMMISSIONER EDGEWORTH: I just want to ask
4 if there was any technical issue related to the
5 amendment, first of all, being so late and the reason
6 for changing his mind. And how often can somebody
7 change their mind back and forth? But is there any
8 technical point, related to the amendment itself, that
9 talks about for a runoff election rather than for the
10 general election?
11 MS. SILVA: The ordinance actually -- it says
12 that it does not -- the voluntary expenditure limits
13 don't apply when it is a runoff.
14 COMMISSIONER EDGEWORTH: No, but the
15 application -- the amendment itself gives a runoff, and
16 it gives a date -- the date right after the Election
17 Day, I think, on the 4th of November. So it's a --
18 probably a typo -- it was handwritten. But probably
19 just a technical error. But I saw some reference that
20 it was an older form. But, as I -- as I recall it, it
21 says that he doesn't want to abide by the spending
22 limits for the runoff election. And I think the date
23 on the form itself is November 4th.
24 MS. SILVA: Are you talking about the date of
25 the election that he put down, June --

Page 24

1 COMMISSIONER EDGEWORTH: Yeah, for the
2 runoff. He checked the box for the runoff, and it said
3 "November 4th."
4 CHAIRMAN SMITH: So the form may be --
5 COMMISSIONER EDGEWORTH: The form -- what I'm
6 saying is the form itself had errors on it or at least
7 misunderstandings on it or something confusing about
8 it, and was that ever raised or did it become an issue
9 or -- because the runoff election -- is it even
10 relevant? I mean --
11 CHAIRMAN SMITH: Well, according to the Code,
12 it is.
13 COMMISSIONER EDGEWORTH: Yeah, yeah.
14 CHAIRMAN SMITH: Contribution period starts
15 the day after the election and you have 14 days to file
16 the form.
17 COMMISSIONER EDGEWORTH: I have a -- it's
18 in -- it's in the packet.
19 CHAIRMAN SMITH: The form itself may have a
20 problem. That's a city form, not a state form. So we
21 can control this kind of problem.
22 COMMISSIONER EDGEWORTH: But I just wondered
23 if it came up or there was any discussion about it.
24 MR. MILLER: Certainly there was no
25 discussion with me about that. But you're right that

6 (Pages 21 to 24)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 25	Page 27
<p>1 the terminology for the November election is not 2 entirely consistent throughout the Code. 3 COMMISSIONER EDGEWORTH: This is the 4 amendment. It's supposed to be the amendment. Oops. 5 I knew that was going to happen. 6 MS. TABER: Sorry. I'll grab it. 7 Yeah, it's the opt-out language that she's 8 talking about. 9 MR. MILLER: I mean, I think the November 10 election -- it is, in the Code, technically referred to 11 as a runoff election. 12 CHAIRMAN SMITH: I think it says "runoff or 13 general election." 14 MS. TABER: Well, we do have -- that's 15 language -- the opt-out language, we've gone back and 16 forth. That's something that we've got on our list. 17 CHAIRMAN SMITH: Opt-out language on the form 18 or -- 19 MS. TABER: Yeah, on the form. 20 CHAIRMAN SMITH: Okay. In the Code -- 21 MS. TABER: What we changed in the Code the 22 last time, last year, was to require a separate form 23 for both. 24 CHAIRMAN SMITH: Right. 25 MS. TABER: So my argument is we shouldn't</p>	<p>1 Is there anyone else here this evening who 2 would like to speak to the Commission and provide 3 additional evidence or testimony on this matter? If 4 so, we would appreciate it if you could limit your 5 comments to five minutes. 6 Anyone? No. Okay. 7 Now we go back to Mr. Miller. If you would, 8 I guess, restate the recommendations before we take 9 action. 10 MR. MILLER: Sure. So the recommendation is 11 that you find a violation of the Municipal Code with 12 regards to the contributions accepted before the 13 June 17th filing of the Form 500 and that you not find 14 a violation of the Municipal Code with regard to 15 contributions accepted thereafter. 16 CHAIRMAN SMITH: Okay. Thank you. 17 Now it's time for the Commission to make its 18 decision. The Commission has the following options: 19 First, you may find that further 20 investigation is necessary. If so, we should direct 21 the Evaluator to conduct further investigation and 22 report back to the Commission. 23 Second, you 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>
Page 26	Page 28
<p>1 have the opt-out language on there because we want a 2 separate form for both elections. So this is 3 confusing. 4 CHAIRMAN SMITH: So, prior to that, you did 5 it once? That's all? 6 MS. TABER: Yeah, we had one form and that 7 they could amend after to opt out within like ten days. 8 CHAIRMAN SMITH: So when we fool around with 9 the Code, we should also do something with the form. 10 MS. TABER: Yeah. 11 CHAIRMAN SMITH: Okay. Anything else? 12 COMMISSIONER PIERRE-DIXON: My only 13 concern -- and this is Yolanda Pierre-Dixon -- is that 14 I know Supervisor Cortese has run in public elections 15 before and also with the City of San Jose; is that 16 correct? 17 MR. HARRISON: Yes, ma'am. 18 COMMISSIONER PIERRE-DIXON: Thank you. 19 That's all I have. 20 CHAIRMAN SMITH: Okay. Thank you. 21 MR. HARRISON: Thank you very much. 22 CHAIRMAN SMITH: Okay. Normally at this time 23 we call upon the complainant or their representative to 24 come forward, but there's no one here representing the 25 complainant, so we will go on.</p>	<p>1 Third, we may find that there is insufficient 2 evidence to establish that a violation has occurred. 3 If so, we should make that finding and announce that 4 fact. 5 Fourth, we may find that on the preponderance 6 of the evidence from the entire record of the 7 proceedings that a violation has occurred. 8 Open for the Commission discussion. We need 9 to make a finding for each potential violation. In 10 this case, there is two. The finding -- findings may 11 be made by separate motion or one for each potential 12 violation. 13 Discussion or motion? 14 COMMISSIONER PEACOCK: One quick 15 clarification as we discuss that. On the conclusions 16 and recommendations under B there's a reference -- it 17 says "because the campaign manager took time off." It 18 was actually the candidate who took time off, correct? 19 COMMISSIONER EDGEWORTH: They both did, I 20 think. 21 COMMISSIONER PEACOCK: Or is it both? 22 COMMISSIONER EDGEWORTH: They both -- 23 CHAIRMAN SMITH: That's true. It says in one 24 place "the candidate" and I think in another -- 25 COMMISSIONER PEACOCK: Well, I think the</p>

REPORTER'S TRANSCRIPT OF PROCEEDINGS

<p style="text-align: center;">Page 29</p> <p>1 candidate's statement said it was the --</p> <p>2 MR. MILLER: I think you're right. I think</p> <p>3 it sounds like --</p> <p>4 COMMISSIONER PEACOCK: It may be a small</p> <p>5 point, but I just want to make sure we're being</p> <p>6 accurate on this.</p> <p>7 MR. MILLER: Appreciate it.</p> <p>8 COMMISSIONER PEACOCK: Okay. So it was both</p> <p>9 or just --</p> <p>10 MR. MILLER: No, I believe -- what I heard is</p> <p>11 that the candidate took time off, and the campaign</p> <p>12 manager was still here on the phone with the City</p> <p>13 Clerk, supposedly -- allegedly accepting contributions</p> <p>14 during that time.</p> <p>15 COMMISSIONER PEACOCK: So, for the record, we</p> <p>16 may just want to --</p> <p>17 MR. MILLER: Can you tell me where that is?</p> <p>18 COMMISSIONER PIERRE-DIXON: Candidate is the</p> <p>19 same --</p> <p>20 COMMISSIONER PEACOCK: On -- on page -- your</p> <p>21 conclusions and recommendations under B on the last</p> <p>22 page.</p> <p>23 CHAIRMAN SMITH: Second line on B.</p> <p>24 COMMISSIONER PEACOCK: "We waited until</p> <p>25 June 17th to file because the campaign manager took</p>	<p style="text-align: center;">Page 31</p> <p>1 CHAIRMAN SMITH: Discussion?</p> <p>2 Okay. Let's vote. All in favor?</p> <p>3 (All Commissioners responded Aye.)</p> <p>4 CHAIRMAN SMITH: Any opposed?</p> <p>5 (No response.)</p> <p>6 CHAIRMAN SMITH: Okay. Okay. Now we'll go</p> <p>7 to the second motion before we do the certification.</p> <p>8 Since I'm on a roll, I'm just going to do the</p> <p>9 second one. And this gets into -- there's a subtle</p> <p>10 difference between the second and the third or the two</p> <p>11 examples that I've read, if anybody was paying close</p> <p>12 attention. I think the second one applies.</p> <p>13 So I move that the Elections Commission --</p> <p>14 oh, I still say "Elections Commission." I've got to</p> <p>15 fix this template. I move that the Ethics Commission</p> <p>16 finds there is sufficient evidence to establish that no</p> <p>17 violation has occurred and that the file in this matter</p> <p>18 be closed without further action. The matter in</p> <p>19 question is the contributions received between</p> <p>20 June 17th and July 25th.</p> <p>21 Somebody want to second that?</p> <p>22 COMMISSIONER PIERRE-DIXON: I would second</p> <p>23 that.</p> <p>24 CHAIRMAN SMITH: Okay. Discussion?</p> <p>25 Okay. All in favor?</p>
<p style="text-align: center;">Page 30</p> <p>1 some time off."</p> <p>2 MR. MILLER: Thank you. That's an error on</p> <p>3 my part.</p> <p>4 COMMISSIONER PEACOCK: Not trying to be picky</p> <p>5 here, but this --</p> <p>6 MR. MILLER: Picky is good. I apologize.</p> <p>7 COMMISSIONER PEACOCK: Okay.</p> <p>8 CHAIRMAN SMITH: Okay. I think it would</p> <p>9 probably be cleaner if we had separate motions. So if</p> <p>10 someone would like to make one. If not -- okay. I'll</p> <p>11 make one.</p> <p>12 COMMISSIONER PIERRE-DIXON: Go ahead.</p> <p>13 CHAIRMAN SMITH: And that -- we'll deal with</p> <p>14 the first one first.</p> <p>15 I move that the Election Commission finds</p> <p>16 that based upon a preponderance of the evidence</p> <p>17 presented that a violation of San Jose Municipal Code</p> <p>18 Section 12.06.510 has occurred with regard to</p> <p>19 contributions prior to June 17th.</p> <p>20 Anybody want to second?</p> <p>21 COMMISSIONER PIERRE-DIXON: I would second</p> <p>22 that.</p> <p>23 CHAIRMAN SMITH: Thank you.</p> <p>24 COMMISSIONER PIERRE-DIXON: Yolanda</p> <p>25 Pierre-Dixon.</p>	<p style="text-align: center;">Page 32</p> <p>1 (All Commissioners responded Aye.)</p> <p>2 CHAIRMAN SMITH: Any opposed?</p> <p>3 (No response.)</p> <p>4 CHAIRMAN SMITH: Okay.</p> <p>5 Now we move to certification. Upon adoption</p> <p>6 of the motion, the Chair must ask each commission</p> <p>7 member to certify that they have heard or read the</p> <p>8 testimony at the hearing and have reviewed all the</p> <p>9 evidence in the record by affirming "So certified."</p> <p>10 Commissioner Edgeworth.</p> <p>11 COMMISSIONER EDGEWORTH: Yes, I have.</p> <p>12 CHAIRMAN SMITH: Commissioner Peacock.</p> <p>13 COMMISSIONER PEACOCK: So certified.</p> <p>14 CHAIRMAN SMITH: Commissioner Pierre-Dixon.</p> <p>15 COMMISSIONER PIERRE-DIXON: So certified.</p> <p>16 CHAIRMAN SMITH: Commissioner Louie.</p> <p>17 COMMISSIONER LOUIE: So certified.</p> <p>18 CHAIRMAN SMITH: And me, Commissioner Smith,</p> <p>19 so certified.</p> <p>20 Okay. On the orders and penalties, if the</p> <p>21 Commission finds that a violation has occurred, it must</p> <p>22 consider imposing orders and/or penalties. The</p> <p>23 Commission may -- there's four options: Find</p> <p>24 mitigating circumstances and take no further action;</p> <p>25 issue a public statement or reprimand; require a</p>

REPORTER'S TRANSCRIPT OF PROCEEDINGS

<p style="text-align: center;">Page 33</p> <p>1 corrective action by a particular deadline; and/or -- 2 meaning you can do more than one of these -- impose a 3 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, which we just 19 did. 20 In determining if penalties should be imposed 21 for violations of Title 12 and the amount of such 22 penalties, the Commission shall consider all relevant 23 circumstances surrounding the case, including -- and 24 there's several of them: 25 One, the severity of the violation;</p>	<p style="text-align: center;">Page 35</p> <p>1 However, in reading the full record and the 2 statement by the candidate, which I can't deny happened 3 or our clerk can't deny happened, that someone told him 4 it would be fine to file it late puts me, I think, in a 5 circumstance where I have to say there are mitigating 6 circumstances and take no further action. But I'm 7 quite concerned when the rule of law is not adhered to, 8 especially with candidates who have been through this 9 process before. 10 CHAIRMAN SMITH: Any other comment or 11 discussion? 12 COMMISSIONER PEACOCK: One question. One of 13 the factors or one of the areas of consideration is any 14 prior violations. I'm not aware of any in this cycle. 15 But has there been any by the candidate in previous 16 elections? 17 CHAIRMAN SMITH: I've been here since 2007, 18 and I don't remember any. But I don't know -- when was 19 the -- when was -- when was the end of Supervisor 20 Cortese's term on City Council? Does anybody remember? 21 MS. McCABE: 2008. 22 CHAIRMAN SMITH: 2008. So there was a year. 23 I don't know if anybody -- I don't believe there were, 24 but I don't know for a fact. 25 MS. TABER: I don't know either.</p>
<p style="text-align: center;">Page 34</p> <p>1 Two, the presence or absence of any intention 2 to conceal, deceive or mislead; 3 Three, whether the violation was deliberate, 4 negligent or inadvertent; 5 Four, whether the violation was an isolated 6 incident or pervasive enough to indicate a pattern of 7 disregard for this Chapter; 8 Five, whether the respondent has a prior 9 record of violations of city law in relation to 10 campaign finance, lobbying, conflicts of interest or 11 governmental ethics; 12 Six, the degree to which the respondent 13 cooperated with the investigation; and 14 Seven, whether or not corrective actions were 15 taken, if appropriate, in accordance with the 16 provisions of this Chapter. 17 Is there a motion regarding orders and 18 penalties related to the findings? And this would 19 apply only to the first finding, because that was the 20 only one where we found a violation. 21 COMMISSIONER PIERRE-DIXON: I found myself 22 quite torn in reading this, because I know Supervisor 23 Cortese has been in public elections before and knows 24 the rules and circumstances. So I was very concerned 25 about this inability to get the form filed on time.</p>	<p style="text-align: center;">Page 36</p> <p>1 MR. MILLER: I have no knowledge of any. 2 CHAIRMAN SMITH: We'd have to go dig through 3 the files. 4 I did do a -- I did a survey a couple of 5 years ago of all complaints, going back to -- I don't 6 remember when it was. Very early in the process 7 because we were looking at response times. You know, 8 how long it had been taking for reports to be filed. 9 And -- offhand, I haven't -- I did that about a year 10 ago. Offhand, I don't remember seeing Supervisor 11 Cortese's name in there either. 12 But certainly I think the other -- as pointed 13 out in the Report, the -- there's no presence or 14 absence of any intention to conceal, deceive or 15 mislead. It appears that it was inadvertent or perhaps 16 negligent. That's kind of the quandary you're in. 17 COMMISSIONER PIERRE-DIXON: Right. 18 CHAIRMAN SMITH: Commissioner Pierre-Dixon is 19 in. It appears to be an isolated incident. It hasn't 20 happened multiple times. Not aware of any prior record 21 of violations. Candidate certainly cooperated with the 22 investigation, from what Mr. Miller has told us, and 23 corrective actions were taken. The money has been 24 returned. And we got that supplemental in 25 September 3rd, I think, that said that it had.</p>

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 37

1 In my mind, I think it's appropriate not to
2 impose a penalty.
3 COMMISSIONER EDGEWORTH: I would just like to
4 clarify something. And perhaps I'm incorrect and I
5 need clarification. But I don't know that there's an
6 established deadline for submitting the 500 form to
7 begin with. There's no deadline for that.
8 CHAIRMAN SMITH: Fourteen days.
9 COMMISSIONER EDGEWORTH: It's only the -- no,
10 that's for the amendment is 14 --
11 CHAIRMAN SMITH: Read the Code. Fourteen
12 days.
13 COMMISSIONER EDGEWORTH: Okay. Okay. I've
14 got them backwards. I don't --
15 MS. TABER: It says before you start raising
16 funds, up to 14 days after the election. So it is
17 14 days.
18 COMMISSIONER EDGEWORTH: Fourteen days for
19 what, though?
20 MS. TABER: To file the Form 500.
21 COMMISSIONER EDGEWORTH: Fourteen days from
22 what, though, is what I'm asking.
23 MS. TABER: Oh, from the --
24 CHAIRMAN SMITH: Beginning of the campaign
25 contribution --

Page 38

1 COMMISSIONER EDGEWORTH: Beginning of the
2 campaign period. Okay.
3 CHAIRMAN SMITH: Right. Which is the day
4 after the election.
5 COMMISSIONER EDGEWORTH: Okay. Okay. Sorry.
6 I just wanted to clarify, because I --
7 MS. TABER: Right.
8 CHAIRMAN SMITH: Okay. I guess -- does
9 anybody want to make a motion, or am I going to do it
10 again?
11 Okay. I don't see anybody jumping forward.
12 I move that the -- there it is again. I move that the
13 Ethics Commission finds mitigating circumstances and
14 the file on this matter be closed without further
15 action.
16 Do I have a second?
17 COMMISSIONER LOUIE: I'll second it.
18 CHAIRMAN SMITH: Any discussion?
19 Okay. All in favor of the motion?
20 (All Commissioners responded Aye.)
21 CHAIRMAN SMITH: Any opposed?
22 COMMISSIONER EDGEWORTH: Aye.
23 CHAIRMAN SMITH: Okay. So it's unanimous
24 again.
25 COMMISSIONER LOUIE: No. I'm sorry. I

Page 39

1 didn't know she --
2 CHAIRMAN SMITH: She said it late but she
3 said "Aye."
4 COMMISSIONER LOUIE: Oh, okay.
5 CHAIRMAN SMITH: I'm correct, right?
6 COMMISSIONER EDGEWORTH: Uh-huh.
7 CHAIRMAN SMITH: Okay. Okay. Upon adoption
8 of the motion, once again the Chair must ask each
9 commission member to certify that they have heard or
10 read the testimony at the hearing and have reviewed all
11 the evidence in the record by so affirming "So
12 certified."
13 Commissioner Edgeworth.
14 COMMISSIONER EDGEWORTH: So certify.
15 CHAIRMAN SMITH: Commissioner Peacock.
16 COMMISSIONER PEACOCK: So certify.
17 CHAIRMAN SMITH: Commissioner Pierre-Dixon.
18 COMMISSIONER PIERRE-DIXON: So certify.
19 CHAIRMAN SMITH: Commissioner Louie.
20 COMMISSIONER LOUIE: So certified.
21 CHAIRMAN SMITH: And me, Commissioner Smith,
22 so certified.
23 At any time the Evaluator or the Commission
24 may refer the matter to another governmental agency or
25 official if the Commission determines that the agency

Page 40

1 or official may more appropriately resolve the
2 allegations in the complaint or enforce the applicable
3 provisions of law. A copy of all information gathered
4 must be sent to the City Clerk's office or City
5 Attorney's office -- sent by the City Clerk's office or
6 City Attorney's office to the agency or official
7 together with a referral.
8 Is there any motion regarding referrals?
9 I wouldn't think there would be.
10 Okay. At this time I would entertain a
11 motion that the Commission directs the City Attorney to
12 draft a Resolution of the Commission's findings and
13 penalties and the Commission authorizes the Chair to
14 approve and sign the Resolution.
15 COMMISSIONER LOUIE: You're on a roll so...
16 COMMISSIONER EDGEWORTH: I would second.
17 CHAIRMAN SMITH: Thank you. Discussion?
18 All in favor?
19 (All Commissioners responded Aye.)
20 CHAIRMAN SMITH: Any opposed?
21 (No response.)
22 CHAIRMAN SMITH: Okay. This hearing is now
23 closed. Thank you all.
24 (Whereupon, Item III Hearings concluded at
25 6:12 p.m.)

10 (Pages 37 to 40)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Page 41

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I, NOELIA ESPINOLA, do hereby certify:

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

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

Dated: _____

NOELIA ESPINOLA, CSR #8060

A				
abide 23:21	2:12	30:20 31:11	available 20:5	20:23
able 10:15 19:17	advice 13:6	35:20,23 38:9	21:15	briefly 19:2 22:9
absence 34:1	21:23	38:11	avenue 2:14	
36:14	advised 12:9	apologize 7:20	14:18	C
accept 8:9,10	affirmation 4:24	13:21 30:6	avoid 22:2,5	C 2:2 3:1
9:14,16 10:22	affirmative	appears 36:15	aware 35:14	CA 1:15 2:14
12:6,10 13:4,5	33:12	36:19	36:20	calculus 8:19
13:6,8,10	affirming 32:9	applicable 40:2	Aye 31:3 32:1	call 7:25 8:3
14:25 15:9	39:11	application	38:20,22 39:3	17:10 26:23
19:12 20:11	agency 39:24,25	23:15	40:19	calling 13:15
accepted 3:21	40:6	applies 31:12		campaign 7:24
3:23 8:15 9:2	agenda 4:10	apply 4:23 23:13	B	8:4,15,16 12:7
11:5 15:1	ago 36:5,10	34:19	B 28:16 29:21,23	18:22 20:24
19:10,15 20:3	agree 15:22	appreciate	back 12:14 23:7	21:12,17,18,22
27:12,15	22:18	17:14 27:4	25:15 27:7,22	21:24 22:19
accepting 7:24	ahead 18:13	29:7	36:5	28:17 29:11,25
19:23 20:10,18	21:25 30:12	appropriate	backwards	34:10 37:24
29:13	allegation 3:20	34:15 37:1	37:14	38:2
accounting	allegations 40:2	appropriately	ballot 10:5	candidate 8:25
16:16,18	allegedly 29:13	40:1	19:24,25 20:7	11:17 19:9,12
accurate 21:23	alleging 3:18	approve 40:14	20:14	19:15,17 20:3
29:6	allow 7:8	April 4:12	based 10:16	20:10 28:18,24
acknowledges	allows 13:7,10	areas 35:13	15:13 16:9	29:11,18 35:2
9:5	ambiguous	argument 7:5	20:22 30:16	35:15 36:21
act 20:6	10:18	25:25	bases 3:5	candidates 7:21
action 8:8 27:9	amend 26:7	arguments 6:11	basis 11:15	35:8
31:18 32:24	amended 3:24	Arlene 2:7 6:2	began 19:5	candidate's 10:2
33:1 35:6	8:7,9,11,13,20	aside 7:18	beginning 8:16	19:25 29:1
38:15	9:13,22 10:19	asked 15:5	37:24 38:1	case 9:5 12:9
actions 15:3	11:18 13:12	asking 37:22	belief 21:24	28:10 33:23
34:14 36:23	19:21	asserts 9:18	believe 6:13 9:4	cases 19:19
actively 18:23	amendment	assistant 2:11	11:17 16:1	cast 10:5
activities 18:22	23:5,8,15 25:4	6:5	20:21 29:10	Cecilia 13:16
20:25 21:17	25:4 37:10	assume 3:17	35:23	Cecilia's 13:15
add 13:14	amount 15:25	attached 6:15	benefit 19:23	Ceiling 3:23
addition 33:14	33:8,21	attention 8:1	better 17:19	centers 7:16
additional 3:23	analyses 15:19	31:12	beyond 6:15	certainly 24:24
27:3	analysis 10:16	attorney 2:8 6:3	bit 22:12	36:12,21
adhered 35:7	and/or 32:22	40:11	blocking 17:25	certification
adopted 4:12,17	33:1	attorneys 13:6	box 24:2	31:7 32:5
19:9	announce 27:25	Attorney's 40:5	break 18:22	certified 32:9,13
adoption 32:5	28:3	40:6	20:24 21:17	32:15,17,19
39:7	answer 8:23,24	August 3:12 4:2	Bridgett 5:22	39:12,20,22
ADVANTAGE	21:1	4:3 6:22	6:1 7:10	certify 32:7
	anybody 3:14	authorizes 40:13	brief 7:4 18:16	33:16 39:9,14

REPORTER'S TRANSCRIPT OF PROCEEDINGS

39:16,18 41:2 41:6 chair 2:4 5:1,6 17:25 32:6 39:8 40:13 Chairman 3:3 3:17 5:16,20 6:7,17,20,25 7:3 11:7,10,12 13:13,20,25 14:21 15:11 16:15,19 17:1 17:4,9,19,23 18:1,4,9,13 21:3 22:6,14 22:17 23:2 24:4,11,14,19 25:12,17,20,24 26:4,8,11,20 26:22 27:16 28:23 29:23 30:8,13,23 31:1,4,6,24 32:2,4,12,14 32:16,18 35:10 35:17,22 36:2 36:18 37:8,11 37:24 38:3,8 38:18,21,23 39:2,5,7,15,17 39:19,21 40:17 40:20,22 change 23:7 changed 25:21 changes 14:24 changing 23:6 Chapter 33:3 34:7,16 checked 24:2 checks 6:18 19:1 choice 14:14 CHRIS 2:5 circumstance 11:21 35:5 circumstances	10:20 32:24 33:23 34:24 35:6 38:13 city 1:1,13,14 2:8,9,11 3:8,9 3:12,22,25 4:5 4:7,10,12 5:21 6:2,4,5 8:8,10 10:11 11:15,25 19:14,16,20 20:2 21:14 22:1,17 24:20 26:15 29:12 34:9 35:20 40:4,4,5,6,11 City's 20:5 civil 33:3,5 Clara 1:13 clarification 28:15 37:5 clarify 8:8 37:4 38:6 cleaner 30:9 clear 9:11 14:17 22:13,25 clearly 15:7 clerk 2:9,11 3:12 3:25 4:5,7 6:4 6:6 11:16,25 29:13 35:3 clerk's 21:14 22:18,20,21 40:4,5 close 31:11 closed 31:18 38:14 40:23 code 3:20 7:17 8:18 9:3,12,13 9:19 10:3,4,12 10:14,16,18,24 11:4 12:3 24:11 25:2,10 25:20,21 26:9 27:11,14 30:17 33:4 37:11	collect 12:5 come 12:14 17:12 21:6 26:24 commencement 8:4 comment 18:16 35:10 comments 17:15 27:5 commission 1:2 2:4 3:9,10,11 4:9,19 5:4,5 14:25 27:2,17 27:18,22 28:8 30:15 31:13,14 31:15 32:6,21 32:23 33:6,7 33:13,16,22 38:13 39:9,23 39:25 40:11,13 Commissioner 6:22 7:2 11:8 14:2,7 15:10 15:13 16:4,8 16:14,17 17:21 17:24 18:3 19:5,5 22:14 22:16 23:2,3 23:14 24:1,5 24:13,17,22 25:3 26:12,18 28:14,19,21,22 28:25 29:4,8 29:15,18,20,24 30:4,7,12,21 30:24 31:22 32:10,11,12,13 32:14,15,16,17 32:18 34:21 35:12 36:17,18 37:3,9,13,18 37:21 38:1,5 38:17,22,25 39:4,6,13,14	39:15,16,17,18 39:19,20,21 40:15,16 Commissioners 7:15 31:3 32:1 38:20 40:19 Commission's 4:13 5:22 6:8 7:7 40:12 Committee 3:19 3:21 17:11 compel 5:1,2 compile 4:22 complainant 4:9 4:25 5:8,12 7:3 7:6 9:18 26:23 26:25 Complainant's 10:12 complaint 3:12 4:1 7:16 8:14 15:21 21:10 40:2 complaints 4:19 36:5 complete 9:20 12:23 completed 12:24 12:24,25 13:1 compliance 19:18 computerized 41:5 conceal 34:2 36:14 concern 26:13 concerned 34:24 35:7 concluded 40:24 concluding 11:3 conclusion 9:18 10:23 conclusions 28:15 29:21 conduct 3:11	27:21 confirmation 22:17 conflicts 34:10 confusing 11:14 24:7 26:3 consider 32:22 33:22 consideration 35:13 consistent 25:2 constitute 11:5 contain 6:11 contemplate 9:12 10:19 contribute 14:15 contributed 33:10 contribution 8:5 10:6 14:13 15:1 19:8,11 19:14,22 24:14 37:25 contributions 3:21,24 7:24 8:15,21 9:2,9 9:15,17,21,24 10:22 11:4 14:5,14 15:9 15:14,25 16:2 16:7,9 17:7,8 18:17,21,24 20:10,17,19,23 21:6,19,25 22:4 27:12,15 29:13 30:19 31:19 contributor 9:22 contributors 9:20 10:2,6 14:20 control 24:21 conversation 19:4 22:19,22 conversations
---	--	---	--	--

<p>21:14,20 cooperated 34:13 36:21 copies 4:8,16 6:18 18:25 copy 3:25 4:3 40:3 correct 14:6 26:16 28:18 39:5 corrective 33:1 34:14 36:23 Cortese 3:18 5:15 12:23 17:11 18:20 20:22 21:15,21 22:3 26:14 34:23 Cortese's 35:20 36:11 Council 4:12 10:11 19:20 35:20 couple 36:4 course 19:20 20:1 court 4:21 8:8 8:10,12 11:14 11:14,16,23 15:2 19:19 courts 13:11 CSR 1:17 2:13 41:11 cycle 35:14</p>	<p>22:11 23:17 24:15 38:3 days 8:4 24:15 26:7 37:8,12 37:16,17,18,21 deadline 33:1 37:6,7 deal 30:13 deceive 34:2 36:14 decide 10:10 decision 11:13 11:24 22:4 27:18 degree 34:12 deliberate 34:3 deny 35:2,3 depending 11:24 22:12 deposited 21:25 deputy 2:8 6:2 designed 19:7 determines 39:25 determining 33:20 diamond 19:24 difference 31:10 different 8:19 15:19 22:2 differential 19:14,22 dig 36:2 direct 27:20 direction 41:5 directs 40:11 disagree 15:18 discretion 5:4 discuss 9:6 19:2 28:15 discussed 10:17 10:18 discussion 24:23 24:25 28:8,13 31:1,24 35:11</p>	<p>38:18 40:17 dispute 9:4 disregard 34:7 distribution 20:7 divide 16:24 documents 5:3 16:9 doing 3:4 draft 40:12 duly 18:9</p> <hr/> <p style="text-align: center;">E</p> <p>E 1:13 2:2,2 3:1 3:1 early 36:6 easier 18:1 echoed 19:6 Edgeworth 2:6 6:22 14:2,7 15:10,13 16:4 16:8,14,17 17:21,24 18:3 19:5 23:2,3,14 24:1,5,13,17 24:22 25:3 28:19,22 32:10 32:11 37:3,9 37:13,18,21 38:1,5,22 39:6 39:13,14 40:16 either 9:23 35:25 36:11 election 13:19 14:10 18:23 21:16 23:9,10 23:16,22,25 24:9,15 25:1 25:10,11,13 30:15 37:16 38:4 elections 2:4 26:2,14 31:13 31:14 34:23 35:16</p>	<p>electronically 4:21 eliminate 12:1 enacted 10:11 enforce 19:7,13 40:2 engage 18:24 ensued 8:8 ensure 4:18 entertain 40:10 entire 28:6 entirely 25:2 error 13:11 23:19 30:2 errors 24:6 especially 35:8 Espinola 1:17 2:13 41:2,11 establish 27:24 28:2 31:16 established 37:6 establishes 4:13 ethics 1:2 3:8 31:15 34:11 38:13 Evaluator 4:1,2 5:3,6,23 7:8 27:21 39:23 Evaluator's 4:4 6:16 9:8 10:10 evening 5:13 7:14 27:1 evidence 4:23 5:1 6:12 27:3 27:24 28:2,6 30:16 31:16 32:9 33:18 39:11 Exactly 16:6 examples 31:11 excluded 5:4 exclusive 10:13 exculpatory 6:12 Exhibit 6:16</p>	<p>expended 33:10 expenditure 3:23 7:23 8:3 15:16 16:11 19:10,16,23 20:4,12 23:12 expenditures 14:5,8,10 explained 14:22 21:15 expressed 6:23 extent 15:17 e-mail 6:19,20 11:16,18,25 12:3</p> <hr/> <p style="text-align: center;">F</p> <p>F 2:7 fact 10:3 11:15 27:25 28:4 35:24 factors 9:6 35:13 facts 18:19 failed 33:9 fair 4:18 false 9:24 far 17:2 favor 31:2,25 38:19 40:18 file 7:21,24 9:14 10:22 12:3 21:10 22:10 24:15 29:25 31:17 35:4 37:20 38:14 filed 3:12 8:1,6 9:1,16 21:7,21 34:25 36:8 files 36:3 filing 3:22,24 8:9,11,14,17 8:20 9:12,22 9:23 10:19,25 27:13</p>
<hr/> <p style="text-align: center;">D</p> <p>D 3:1 date 1:11 8:22 9:2 12:24,25 12:25 23:16,16 23:22,24 Dated 41:10 Dave 17:11 David 3:18 day 14:10,11</p>				

REPORTER'S TRANSCRIPT OF PROCEEDINGS

16:18	26:24 38:11	guide 10:20	hope 9:11	information
finance 34:10	found 11:13			6:12 9:21,24
find 14:3 17:6,7	34:20,21	H	I	11:19 15:21
27:11,13,19,23	four 32:23 34:5	H 6:16	identifies 9:19	17:3 40:3
28:1,5 32:23	Fourteen 37:8	Hall 1:13,14	identify 5:9,23	informing 10:1
finding 16:24	37:11,18,21	3:10	III 40:24	inherently 10:18
27:25 28:3,9	Fourth 28:5	hand 18:5	immediately	insufficient 28:1
28:10 34:19	FPPC 13:8	handwritten	21:16	intention 15:7
findings 28:10	frankly 10:9	23:18	impermissible	34:1 36:14
34:18 40:12	14:16	Hanson 5:22,25	8:22	interest 20:19
finds 30:15	front 14:3	7:10	impermissibly	20:20 34:10
31:16 32:21	frustrates 9:19	happen 25:5	8:17	interested 7:4
38:13	full 35:1	happened 11:22	implications	41:6
fine 20:22 21:23	funds 37:16	35:2,3 36:20	8:13	investigation
35:4	further 10:24	happens 9:10	important 20:20	27:20,21 34:13
firm 7:11	27:19,21 31:18	happy 21:1	impose 20:22	36:22
first 8:17,24	32:24 35:6	harm 19:3 20:17	33:2,7,13,15	investigations
18:9 19:9 23:5	38:14 41:6	Harrison 5:13	37:2	4:14
27:19 30:14,14		5:14,19 6:15	imposed 33:5,20	invite 13:22
34:19	G	6:19,23 17:16	imposing 32:22	inviting 11:17
five 27:5 34:8	G 3:1	17:17 18:6,6,8	impossible	18:15
fix 31:15	gathered 40:3	18:14 21:12	10:15	isolated 34:5
follow 3:6	general 23:10	26:17,21	inability 34:25	36:19
following 27:18	25:13	head 13:22	inadvertent	issue 23:4 24:8
follows 18:11	given 10:17 15:6	hear 18:2	20:22 34:4	32:25
fool 26:8	gives 23:15,16	heard 29:10	36:15	item 13:13 40:24
form 3:22,24	go 14:18 18:13	32:7 33:17	inappropriate	
7:21 8:2,7,9,11	26:25 27:7	39:9	20:21	J
8:11,17 9:1,13	30:12 31:6	hearing 3:8,11	incentive 15:2	James 5:13 18:6
9:22 10:19,22	36:2	4:11,20,23	incident 34:6	18:8
12:4,5,6,16,18	goes 19:6	32:8 33:17	36:19	job 10:10
12:18 13:8	going 14:15,16	39:10 40:22	included 13:2	Johansen 5:14
21:7,16,21	25:5 31:8 36:5	41:3,7	including 15:4	Jones 12:25
22:10 23:20,23	38:9	hearings 4:15	33:23	Jose 1:1,13,15
24:4,5,6,16,19	gold 15:6	40:24	incomplete 9:23	2:4,14 3:8,9,20
24:20,20 25:17	good 5:13 7:14	heart 19:6	incorrect 9:23	3:22 26:15
25:19,22 26:2	13:20 30:6	held 3:9	37:4	30:17 33:4
26:6,9 27:13	governmental	Henninger 3:13	Independent 4:1	July 8:6,11,21
34:25 37:6,20	20:19,20 34:11	3:13,15,16,18	4:4 5:23 7:8	8:22 11:17
formal 4:22	39:24	5:8	indicate 34:6	31:20
forms 12:6,8,11	grab 25:6	he'll 20:11	indicated 13:14	jumping 38:11
13:5 20:4	Graves 2:10 6:5	high 19:12	20:11	June 8:2,5,16,17
forth 15:20 23:7	6:5	hindsight 13:3	indicates 9:11	9:2,9,10,16
25:16	greater 33:11	history 10:7	indicating 7:22	10:25 11:4,5
forward 17:12	guess 27:8 38:8	14:22	inform 10:5	16:2,3 17:8

18:18,18 23:25 27:13 29:25 30:19 31:20 J.R 21:13	Liccardo 12:24 License 1:18 limit 14:12,13 15:5,16 16:11 17:14 19:10,11 19:14,16,23 27:4 limits 7:23 8:3 15:1 19:8,12 19:22 20:4,12 23:12,22 Lincoln 2:14 LINDA 2:6 line 29:23 list 12:4 13:15 13:19 25:16 little 3:5 7:17 13:21 22:12 lobbying 34:10 Lobbyist 12:8 Location 1:13 long 21:21 36:8 longer 20:12,19 22:12 look 12:15 13:17 14:21 looking 36:7 Louie 2:5 32:16 32:17 38:17,25 39:4,19,20 40:15	17:11 ma'am 26:17 McCABE 35:21 mean 14:9,23 21:7 24:10 25:9 meaning 33:2 means 10:16 member 32:7 33:16 39:9 members 3:10 4:9 5:5 33:13 mention 7:18 mentioned 22:9 merge 12:19,23 mess 3:6 MICHAEL 2:4 Miller 5:25,25 7:10,14 11:11 14:6 15:17 16:6,12,22 17:2,5 18:19 20:5 24:24 25:9 27:7,10 29:2,7,10,17 30:2,6 36:1,22 mind 9:8 23:6,7 37:1 minds 10:11 minute 11:1 minutes 17:15 27:5 mislead 34:2 36:15 misunderstan... 24:7 mitigating 6:12 9:6 32:24 35:5 38:13 money 36:23 motion 28:11,13 31:7 32:6 34:17 38:9,19 39:8 40:8,11 motions 30:9	move 30:15 31:13,15 32:5 38:12,12 multiple 36:20 municipal 3:20 7:17 8:18 9:3 11:3 27:11,14 30:17 33:4 mutually 10:13	occurred 9:8 27:24 28:2,7 30:18 31:17 32:21 occurs 20:6 offhand 36:9,10 office 21:14 22:18,20,21 40:4,5,5,6 official 5:18 39:25 40:1,6 oh 6:20 13:25 17:24 31:14 37:23 39:4 okay 3:7,17 5:16 5:20 6:17,20 6:25 7:3,7 13:13,20,25 16:19 17:4,9 17:10 18:4,13 21:4 22:6,14 25:20 26:11,20 26:22 27:6,16 29:8 30:7,8,10 31:2,6,6,24,25 32:4,20 37:13 37:13 38:2,5,5 38:8,11,19,23 39:4,7,7 40:10 40:22 older 23:20 once 8:20 9:14 10:21 26:5 39:8 ones 10:13 onwards 11:4 Oops 21:8 25:4 open 4:20 28:8 opponent 21:10 opposed 31:4 32:2 38:21 40:20 opt 26:7 opting 8:2,7 9:1 options 27:18
<hr/> K <hr/> keeping 15:5 kind 24:21 36:16 knew 25:5 know 3:14 11:20 12:9,10,16,19 13:3,3 14:8,12 14:23,25 15:12 16:24 19:6,14 20:14 22:25 26:14 34:22 35:18,23,24,25 36:7 37:5 39:1 knowledge 36:1 knows 34:23	<hr/> L <hr/> language 9:13 9:15 10:21 12:15 13:9,10 15:23,24 25:7 25:15,15,17 26:1 larger 15:1 late 12:6,7,8,9 12:10,13,16 13:4,5,6,8,10 14:8 23:5 35:4 39:2 law 7:11 19:18 19:18 34:9 35:7 40:3 legal 6:11,24 legislative 10:7 14:22 LEON 2:5 letter 12:18 letting 15:12 Let's 31:2	<hr/> M <hr/> magic 11:24 mail 12:19 mailed 20:1 making 9:20 manager 21:12 28:17 29:12,25 materials 19:25 20:15 matter 27:3 31:17,18 38:14 39:24 Mayor 3:19	<hr/> N <hr/> N 2:2 3:1 name 18:5 19:25 36:11 named 41:4 naturally 19:13 necessary 8:20 27:20 need 12:12,12 12:15,20 20:14 28:8 37:5 negligent 34:4 36:16 net 22:10 never 11:18 Noelia 1:17 2:13 41:2,11 Normally 26:22 note 22:8 noted 20:5 notice 21:13 noticed 21:5,8 notified 3:25 4:2 notify 14:20 20:13 notifying 14:11 November 23:17 23:23 24:3 25:1,9 Number 1:18	<hr/> O <hr/> O 3:1 oath 4:24 Obviously 22:1

REPORTER'S TRANSCRIPT OF PROCEEDINGS

32:23 opt-out 25:7,15 25:17 26:1 oral 17:12 order 4:17 11:14 11:15 19:13 33:14,15 orders 32:20,22 33:13 34:17 ordinance 10:21 15:23 19:7,9 19:21 23:11 originally 14:25 15:8 19:7 outcome 41:7 oOo 2:17	33:14,20,22 34:18 40:13 penalty 33:3,15 37:2 people 15:12 22:24 period 8:5,16 18:17,21 20:23 24:14 38:2 person 11:20 12:17 13:1 33:9 perspective 20:16 pertaining 4:14 pervasive 34:6 phone 29:12 picky 30:4,6 Pierre-Dixon 2:4 7:2 11:8 26:12,13,18 29:18 30:12,21 30:24,25 31:22 32:14,15 34:21 36:17,18 39:17 39:18 place 7:18 28:24 41:4 plain 9:13,15 10:21 please 5:23 pledge 14:4,16 14:16 pledged 14:11 point 16:12 23:8 29:5 pointed 36:12 points 10:7 position 6:24 10:8 22:2 posted 4:10 22:10 potential 28:9 28:11 practices 12:11	preponderance 28:5 30:16 presence 34:1 36:13 present 3:10 7:9 7:11,25 17:12 presented 8:14 8:23 30:17 presenting 15:19 pretenses 9:25 previous 35:15 primary 18:23 printed 20:15 printing 19:24 20:7 prior 7:24 8:21 26:4 30:19 34:8 35:14 36:20 probably 17:19 23:18,18 30:9 problem 14:17 14:21 17:18 24:20,21 procedures 4:14 4:17 6:9 7:8 proceedings 1:8 4:15 28:7 process 3:6 14:8 35:9 36:6 production 5:2 productive 14:18 program 7:23 8:3,3,7 9:1 10:3 prohibition 20:9 20:18 pronunciation 3:14 properly 33:9 provide 27:2 provided 3:25 4:3,8,16 7:12	18:25 providing 5:1 provision 13:7 provisions 34:16 40:3 public 4:20 19:3 20:17 26:14 32:25 34:23 publication 20:6 publicize 20:3 22:9 Purcell 5:14 purpose 9:19,20 10:3,4 14:19 15:20 20:9,13 purposes 10:10 10:14 put 23:25 puts 35:4 p.m 1:12 40:25	35:1 really 9:7 11:12 18:15 19:6 20:6,13 reason 23:5 reasonable 10:13 recall 15:10 16:10 23:20 recalls 21:13 recap 11:2 receipt 20:23 received 6:13 15:15,21 18:17 18:20 21:18 31:19 33:10 receiving 22:11 recognize 7:10 recognized 5:6 recommendati... 7:11 17:5 27:10 recommendati... 4:4,7 6:10 7:9 9:7 16:23 17:1 17:2 27:8 28:16 29:21 record 5:10,24 16:1 18:5 28:6 29:15 32:9 33:18 34:9 35:1 36:20 39:11 recorded 4:21 recorder 17:22 recording 17:20 reduced 41:4 refer 39:24 reference 23:19 28:16 referral 40:7 referrals 40:8 referred 25:10 refers 7:19 reflecting 15:20
<hr/> <p style="text-align: center;">P</p> <hr/> P 2:2,2 3:1 packet 24:18 page 29:20,22 pamphlet 15:7 19:24 20:1,8 20:14 paragraph 13:2 part 7:1 30:3 participate 7:22 participation 10:2 particular 33:1 parties 4:15 parts 8:24 party 7:4 pattern 34:6 pause 11:1 paying 31:11 Peacock 2:5 22:14,16 28:14 28:21,25 29:4 29:8,15,20,24 30:4,7 32:12 32:13 35:12 39:15,16 penalties 32:20 32:22 33:5,7			<hr/> <p style="text-align: center;">Q</p> <hr/> quandary 36:16 question 8:12,14 8:19 9:7 11:19 14:1,3 15:18 19:2 22:3,5,15 31:19 35:12 questions 5:5 11:2,7 21:1,3 quick 28:14 quite 14:8 16:1 34:22 35:7	
			<hr/> <p style="text-align: center;">R</p> <hr/> R 2:2 3:1 Ragan 3:13 5:8 raise 18:5 raised 24:8 raising 37:15 read 11:14 31:11 32:7 33:17 37:11 39:10 reading 34:22	

<p>regard 9:9 27:14 30:18 regarding 34:17 40:8 regards 17:6 27:12 regulations 4:14 4:17 6:8 7:7 relate 11:12 related 23:4,8 34:18 relates 14:4 relation 34:9 relatively 8:24 relevant 5:2 24:10 33:22 remains 19:22 Remcho 5:14 remember 15:14 35:18,20 36:6 36:10 removed 19:21 report 4:4,6 6:10,16 7:1,9 7:11,19 8:24 9:11 13:14 14:9,23 15:14 16:9 27:22 33:9 36:13 Reported 1:17 reporter 2:12 4:22 REPORTER'S 1:8 REPORTING 2:12 reports 36:8 representative 5:18 26:23 representatives 5:9,22 17:10 representing 5:11,14 26:24 reprimand 32:25</p>	<p>require 25:22 32:25 required 33:13 requires 7:21 resolution 4:13 4:16,18 33:5 40:12,14 resolve 40:1 respect 18:16 responded 31:3 32:1 38:20 40:19 respondent 4:3 4:9 5:12 6:9 8:1,6 9:1,4,16 10:1,7 15:22 17:11 33:9 34:8,12 respondents 5:8 Respondent's 10:12 response 6:10 6:11,14 17:13 31:5 32:3 36:7 40:21 restate 27:8 result 19:19 20:2 22:2 return 22:4 returned 18:25 20:18 21:9,11 21:22 36:24 reviewed 32:8 33:18 39:10 right 3:5 6:21,25 11:20 14:3,4 14:10,23 15:25 16:6,13 17:1 18:5 20:2 23:16 24:25 25:24 29:2 36:17 38:3,7 39:5 ROLANDA 2:4 roll 31:8 40:15</p>	<p>Room 1:14 3:9 routinely 12:6 rule 7:16,21 35:7 rules 4:23 34:24 ruling 8:10 run 26:14 runoff 23:9,13 23:15,22 24:2 24:2,9 25:11 25:12</p> <hr/> <p style="text-align: center;">S</p> <p>S 2:2 3:1 San 1:1,13,15 2:4,14 3:8,9,20 3:22 26:15 30:17 33:4 Santa 1:13 saw 11:18 23:19 saying 24:6 says 9:14 10:21 12:3,16 23:11 23:21 25:12 28:17,23 37:15 scratching 13:22 script 3:5 second 8:18 27:23 29:23 30:20,21 31:7 31:9,10,12,21 31:22 38:16,17 40:16 section 3:19 7:17,19 9:14 10:4,4,24 30:18 see 11:1 16:12 17:24 38:11 seeing 36:10 send 12:2,2 sent 11:16 12:19 40:4,5 separate 25:22 26:2 28:11</p>	<p>30:9 separately 7:12 September 1:11 3:7 4:5,8 36:25 served 20:12 serves 20:19 SERVICES 2:12 set 15:20 Seven 34:14 severity 33:25 sign 21:16 40:14 Silva 2:7 6:2,2 23:11,24 similarly 8:22 simply 9:12 22:4 sir 11:11 site 4:10 20:5 Six 34:12 size 15:8 small 16:1 29:4 Smith 2:4 3:3,17 5:16,20 6:7,17 6:20,25 7:3 11:7,10,12 13:13,20,25 14:21 15:11 16:15,19 17:1 17:4,9,19,23 18:1,4,13 19:6 21:3 22:6,14 23:2 24:4,11 24:14,19 25:12 25:17,20,24 26:4,8,11,20 26:22 27:16 28:23 29:23 30:8,13,23 31:1,4,6,24 32:2,4,12,14 32:16,18,18 35:10,17,22 36:2,18 37:8 37:11,24 38:3 38:8,18,21,23</p>	<p>39:2,5,7,15,17 39:19,21,21 40:17,20,22 sole 11:15 solicit 18:24 somebody 11:23 21:8 23:6 31:21 soon 21:22 sorry 18:3 25:6 38:5,25 sort 13:9,11 sounded 11:21 11:22 sounds 29:3 speak 27:2 Specifically 3:20 specified 33:6 spending 23:21 staff 2:7 5:21 22:24 staffing 22:12 star 15:6 Starrett 21:13 start 13:19 37:15 starts 24:14 state 18:4 24:20 statement 3:23 29:1 32:25 35:2 statements 12:7 statute 15:23 stay 14:12 Steve 7:10 Steven 5:25 straightforward 8:25 Street 1:13 subject 19:11 submit 6:9 7:4 11:18 12:21 submitted 4:5,7 12:16,20 submitting 37:6</p>
---	---	--	--	--

REPORTER'S TRANSCRIPT OF PROCEEDINGS

subpoena 5:3	talked 23:1	third 16:10 28:1	12:18	35:14 36:21
subtle 31:9	talking 23:24	31:10	two 8:24 22:11	voluntary 7:23
sufficient 27:23	25:8	three 19:11 33:8	28:10 31:10	8:2 15:5 19:10
31:16	talks 23:9	33:12 34:3	34:1	19:15,23 20:3
suggested 10:1	technical 23:4,8	time 1:12 5:7 7:9	typo 7:19 23:18	20:11 23:12
summary 6:11	23:19	10:5,6 13:17		vote 31:2 33:15
22:19	technically	17:10 18:21	U	voter 15:7
Supervisor 5:15	25:10	20:4,24 25:22	Uh-huh 7:2 39:6	voters 10:5
12:23 21:15,21	tell 18:9 19:17	26:22 27:17	Ultimately	14:11 20:1,13
22:3,3 26:14	29:17	28:17,18 29:11	15:22	votes 33:12
34:22 35:19	template 31:15	29:14 30:1	unanimous	
36:10	ten 17:15 26:7	34:25 39:23	38:23	W
supplement 4:6	term 14:24	40:10 41:4	uncontroverted	waited 29:24
supplemental	35:20	timely 4:18	18:20	waiting 21:9
36:24	terminology	times 19:11 33:8	underlying	want 13:14,14
support 10:8	25:1	36:7,20	15:20	14:15 17:16
supposed 13:4	terms 14:19	Title 12:15 33:7	understand 22:1	22:13,16 23:3
25:4	16:23,23	33:21	22:25	23:21 26:1
supposedly	testified 18:11	told 22:21 35:3	understood	29:5,16 30:20
29:13	testimony 4:24	36:22	21:20	31:21 38:9
sure 3:4 9:20	5:1 27:3 32:8	Tom 2:10 6:5	unique 11:21	wanted 18:16
15:17 22:24	33:17 39:10	22:23	unlawfully	19:2 22:8 38:6
27:10 29:5	Thank 5:16 6:7	Toni 2:9 6:4	33:10	web 4:10 20:5
surmise 21:7	7:14 18:13,14	tonight 10:15	unsolicited	Wednesday 1:11
surrounding	22:6 26:18,20	13:16 18:15	18:21 21:6,18	3:7
33:23	26:21 27:16	tonight's 4:11	use 13:11	went 11:23
survey 36:4	30:2,23 40:17	torn 34:22	Usually 22:11	21:25
sworn 18:9	40:23	total 15:14 16:8		we'll 22:24
system 22:11	theories 10:12	16:11	V	30:13 31:6
	thing 11:13 15:6	totaling 16:2	variable 19:8	we're 11:2 13:3
T	things 3:5 13:9	touch 3:4	VEL 8:3,7 10:2	29:5
Taber 2:9 3:15	13:19 15:3	track 13:21	Vice-Chair 2:4	we've 10:17
6:4,4 12:2	16:24	trail 21:22	view 10:9	13:15 25:15,16
13:18,24 22:8	think 8:23 9:4	transcript 1:8	violated 3:19	whichever 33:11
22:21 25:6,14	9:10 11:1	4:22	violation 8:18	Wing 1:14
25:19,21,25	12:14,17 13:15	transcription	9:3,8 11:3,5	witness 4:25
26:6,10 35:25	14:16,17,19,22	41:5	17:6,7 19:18	witnesses 5:2,3,5
37:15,20,23	15:4 16:12,22	treated 4:25	27:11,14,24	wonder 3:3
38:7	19:4 22:9,23	true 28:23	28:2,7,9,12	wondered 24:22
take 21:5 27:8	23:17,22 25:9	truth 18:10,10	30:17 31:17	wouldn't 19:17
32:24 35:6	25:12 28:20,24	18:10	32:21 33:8,14	40:9
taken 15:3 34:15	28:25 29:2,2	trying 30:4	33:15,25 34:3	wrinkle 7:25
36:23 41:3	30:8 31:12	turn 12:12,12	34:5,20	written 6:9,13
takes 22:2	35:4 36:12,25	13:12	violations 10:24	7:4 17:12
talk 18:15	37:1 40:9	turned 12:7,8,8	33:21 34:9	W262 1:14 3:9

Y	18th 11:17	95125 2:14	
yeah 13:18,24	1997 19:9		
16:14,19 17:19	2		
24:1,13,13	2nd 4:5		
25:7,19 26:6	200 1:13		
26:10	2007 35:17		
year 25:22 35:22	2008 35:21,22		
36:9	2011 19:21		
years 19:20 36:5	2014 1:11 3:7,12		
Yolanda 26:13	3:19 4:2,3,6,8		
30:24	4:12 8:2 17:11		
\$	210 7:19		
\$102,084 16:6	244 16:7 17:8		
\$5,000 33:8	25th 8:6,11,21		
\$734,000 15:15	8:22 31:20		
\$9,000 17:7	26th 6:22		
#	3		
#48384 1:25	3rd 4:8 36:25		
#8060 1:18 2:13	4		
41:11	4th 8:5,16 18:18		
1	23:17,23 24:3		
10 1:11 3:7	408 2:15		
102,000 16:4	5		
1083 2:14	5:33 1:12		
11 3:12 4:2	500 3:22,24 7:21		
12 4:3 12:15	8:2,7,9,11,11		
33:7,21	8:17 9:1,13,22		
12.04 33:3	10:19,22 21:7		
12.06.510 3:19	21:16,21 22:10		
7:17,20 11:6	27:13 37:6,20		
30:18	6		
13 8:4	6:12 40:25		
14 24:15 37:10	7		
37:16,17	700s 12:6 13:8		
15th 4:12	76954 4:13		
17th 8:2,17 9:2,9	9		
9:10,16 10:25	9,825 16:2		
11:4,5 16:2,3	920-0222 2:15		
17:8 18:18	95113 1:15		
27:13 29:25			
30:19 31:20			
18 16:2 17:7			