

ELECTIONS COMMISSION

Meeting Minutes

March 13, 2013

ROLL CALL

PRESENT: Chair Michael Smith, Commission Members Leon Louie, Linda Edgeworth, and Chris Peacock

ABSENT: Commissioner Rolanda Pierre-Dixon

STAFF: Independent Evaluator Carol Stevens, Acting City Clerk Toni Taber, Sr. Deputy City Attorney Sandra Lee, and Deputy City Clerks Anthony Smith and Cecilia McDaniel

OTHER: Noelia Espinola, Court Reporter with Advantage Reporting Services

ORDER OF BUSINESS

I. CALL TO ORDER

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

II. ADOPTION OF THE AGENDA

Action: Upon a motion by Commissioner Linda Edgeworth, and seconded by Commissioner Leon Louie, the Commission approved the adoption of the March 13, 2013 agenda. Vote (4-0-1; Commissioner Pierre-Dixon absent).

III. PUBLIC COMMENT – None

IV. CLOSED SESSION – None

V. APPROVAL OF MINUTES

A. January 9, 2013 – Regular Meeting

Documents Filed: Draft Elections Commission minutes for January 9, 2012.

Discussion: None.

Action: Upon a motion by Commissioner Leon Louie, and seconded by Commissioner Linda Edgeworth, the Commission approved the meeting minutes from January 9, 2013. Vote (4-0-1; Commissioner Pierre-Dixon absent).

VI. REPORTS

- A. Chair – None
- B. City Attorney – None
- C. City Clerk – None
- D. Investigator/Evaluator – None

VII. ITEMS SCHEDULED FOR ACTION

- A. Hearing on complaint filed by Tam Nguyen on January 9, 2013 alleging violations fo the San Jose Municipal Code by Dennis Hawkins, et al.

Document Filed:

1) Report made by M. Carol Stevens and Janet Cory Sommer with Burke, Williams & Sorensen, LLP to the San Jose Elections Commission dated February 19, 2013 regarding the Tam Nguyen v. Dennis Hawkins, et al. complaint filed on January 9, 2013.

Discussion: Chair Michael Smith opened the public hearings and noted that neither complainant nor respondents were present. Sr. Deputy City Attorney Sandra Lee informed the Commission that she spoke with Respondents Joan Cassman and Steven Miller and was asked to inform the Commission that said Respondents agreed with the recommendations of Independent Evaluators Carol Stevens and Janet Cory Sommer and did not feel the need to submit a supplemental response.

Chair Michael Smith informed the Commission that since the Commission's normal Investigators/Evaluators were a party to the current complaint, an Independent Evaluator was hired to evaluate the current complaint. Chair Michael Smith introduced Independent Evaluator Carol Stevens and summarized the hearing procedures. Independent Evaluator Carol Stevens reviewed her findings with the Commission and recommended dismissal of the Complaint.

The Commission deliberated. See attached transcript for full deliberation.

Public Comment: None.

Action: Upon a motion by Commissioner Linda Edgeworth, seconded by Commission Leon Louie, the Commission moved to: accept the Evaluator's Report; conduct no further investigation on this matter on the basis that 1) the issue is outside the jurisdiction of this Commission, 2) there were no statement of facts relative to any violations that would be under the jurisdiction of this Commission, and 3) this matter has already been adequately held at the last Elections Commission hearing in Report 3 of the Daley v. Jimmy Nguyen complaint; and to close the file. Vote (4-0-1; Commissioner Pierre-Dixon absent).

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

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|---------------------------|--------------|
| Chair Smith | So certified |
| Commissioner Edgeworth | So certified |
| Commissioner Louie | So certified |
| Commissioner Peacock | So certified |
| Commissioner Pierre-Dixon | Absent |

Action: Upon a motion by Commissioner Linda Edgeworth, seconded by Commissioner Leon Louie, the Commission directed the City Attorney to draft a resolution of the Commission's findings and authorize the Chair to approve and sign the resolution. Vote (4-0-1; Commissioner Pierre-Dixon absent).

B. Election of Commission Chair and Vice-Chair.

Discussion: Chair Michael Smith requested nominations for Chair and Vice-Chair.

Action: Commissioner Leon Louie nominated current Chair Michael Smith to serve a second term as Chair. Chair Michael Smith accepted the nomination. On a vote by the Commission, Chair Michael Smith was reappointed to Chair of the Elections Commission. Vote (4-0-1; Commissioner Pierre-Dixon absent).

Commissioner Linda Edgeworth nominated Commissioner Rolanda Pierre-Dixon to the position of Vice-Chair. Chair Michael Smith with permission from Commissioner Rolanda Pierre-Dixon, accepted the nomination. On a vote by the Commission, Commissioner Rolanda Pierre-Dixon was appointed to Vice-Chair of the Elections Commission. Vote (4-0-1; Vice-Chair Pierre-Dixon absent).

C. Discussion and action on scheduling a Special Elections Commission meeting. (City Clerk)

Discussion: The Commission discussed timeline and determined that no special Elections Commission meeting needed to be scheduled.

Action: No action taken.

D. Discussion and action on utilizing SurveyMonkey to complete stakeholder outreach with regard to Title 12 amendments.

Document Filed: Proposed questions drafted by the Office of the City Clerk for review by the Elections Commission to be posted on SurveyMonkey to solicit input from stakeholders with regard to Title 12 amendments.

Discussion: Acting City Clerk reviewed the proposed questions with the Commission and indicated that the questions were derived from the Title 12 Chart listed under Item VIII.A. The Commission provided the Acting City Clerk with feedback. The Acting

City Clerk answered Commission questions.

Deputy City Clerk Anthony Smith informed the Commission that he will create the questionnaire on SurveyMonkey and will work with the Title 12 amendment sub-committee to finalize the questionnaire before sending it to the stakeholders.

Action: Upon a motion by Commissioner Chris Peacock, seconded by Commissioner Linda Edgeworth, the Commission directed the City Clerk's Office to utilize SurveyMonkey to solicit input from stakeholders with regard to Title 12 amendments and to work with the Title 12 amendment sub-committee to finalize the survey questions. Vote (4-0-1; Vice-Chair Pierre-Dixon absent).

VIII. ITEMS SCHEDULED FOR INFORMATION OR DISCUSSION

- A. Review suggested Title 12 amendments chart.

Document Filed: Chart drafted by Acting City Clerk Toni Taber regarding the potential items for discussion regarding changes to Title 12 of the Municipal Code.

Discussion: Acting City Clerk Toni Taber reviewed the chart with the Commission with the proposed SurveyMonkey questionnaire and requested feedback. Acting City Clerk Toni Taber also informed the Commission that the chart would be used at the March 28, 2013 Stakeholder Outreach meeting.

- B. Report from Elections Commission Title 12 amendment sub-committee. (Chair)

Discussion: Nothing to report.

- C. Status of compliance with Commission resolutions. (City Clerk)

Discussion: Acting City Clerk Toni Taber gave a status on the public statement to be issued to the Silicon Valley Association of Republican Women. The Commission discussed the matter and requested that staff review the recording to make sure that the statement is distributed as indicated in the motion by the Commission. Acting City Clerk Toni Taber informed the Commission that the public statement and letter would be sent out once the motion made is confirmed.

- D. Status of proposed changes to the Gift Ordinance. (City Attorney)

Discussion: Sr. Deputy City Attorney Sandra Lee informed the Commission that the 2012 Fair Political Practices Commission changes have been included in the draft Gift Ordinance. Changes to the Gift Ordinance will be discussed at the March 28, 2013 Stakeholder meeting. The City Attorney's Office will wait for feedback from the March 28, 2013 before proceeding with any additional changes.

IX. MEETING SCHEDULE AND AGENDA ITEMS

- A. The next Special Meeting for stakeholder outreach is Thursday, March 28, 2013 at 5:30 p.m. in City Hall, Wing Rooms 118-120.

- B. The next Regular Meeting is Wednesday, April 10, 2013 at 5:30 p.m. in City Hall, Wing Room 262.

The following agenda items will be discussed at the April 10, 2013 Elections Commission meeting:

- Proposed Title 12 Amendments – Sorted by work load type of change needed (ordinance, resolution, council policy, etc.)
- Outcome from Stakeholder meeting
- Status of Commission resolutions
- Status of proposed changes to the Gift Ordinance

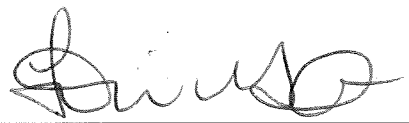
X. ADJOURNMENT

The meeting was adjourned at approximately 6:45 p.m.



MICHAEL SMITH, CHAIR

ATTEST:
ELECTIONS COMMISSION SECRETARY



TONI J. TABER, CMC
ACTING CITY CLERK

Attachment: Transcript of Hearings dated March 13, 2013, Reported by Noelia Espinola, CSR, License Number 8060, Advantage Reporting Services, No. 41408, pages 1 through 12.

SAN JOSE ELECTIONS
COMMISSION
SPECIAL MEETING

**CERTIFIED
TRANSCRIPT**

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Date: Wednesday, March 13, 2013

Time: 5:41 p.m.

Location: San Jose City Hall
200 E. Santa Clara Street
City Hall Wing - Room W262
San Jose, CA 95113

Reported By: Noelia Espinola, CSR
License Number #8060

#44870

Advantage *ARs* Reporting
Services, LLC

1083 Lincoln Avenue, San Jose, California 95125, Telephone (408) 920-0222, Fax (408) 920-0188

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A P P E A R A N C E S

San Jose Elections Commission: MICHAEL SMITH, Chair
 LEON LOUIE
 LINDA EDGEWORTH
 CHRIS PEACOCK

Staff: SANDRA LEE,
 Senior Deputy City Attorney

 TONI TABER,
 Acting City Clerk

 CECILIA McDANIEL,
 Deputy City Clerk

The Reporter: ADVANTAGE REPORTING SERVICES
 BY: NOELIA ESPINOLA,
 CSR #8060
 1083 Lincoln Avenue
 San Jose, CA 95125
 (408) 920-0222

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1 P R O C E E D I N G

2 CHAIRPERSON SMITH: It is Wednesday,
3 March 13th, 2013, and this hearing of the City of San
4 Jose Elections Commission is being held in Room W-262
5 of the San Jose City Hall. All members of the
6 Commission are present except Commissioner
7 Pierre-Dixon.

8 The Commission will conduct a hearing on a
9 complaint filed on January 9th, 2013, by Tam Nguyen,
10 Tho Nguyentan and Thien Huynh, alleging that Dennis
11 Hawkins, Joan Cassman and Steven Miller have violated
12 Title 12 of the San Jose Municipal Code. Specifically,
13 the allegation is that the respondents conspired to
14 file a fraudulent and unlawful complaint without
15 sufficient cause required by Section 12.04.080 of the
16 Municipal Code.

17 This hearing is open to the public, being
18 electronically recorded. And we have a court reporter
19 to compile a transcript.

20 I believe neither Complainants nor
21 Respondents are here. Or we would ask them to identify
22 themselves.

23 Because representatives of the Commission's
24 Independent Evaluator -- that's Joan Cassman and Steve
25 Miller from Hanson Bridgett --

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1 MS. LEE: I'm sorry. I just wanted to let
2 you know that I did speak to the Evaluators -- I don't
3 know if this is the time.

4 CHAIRPERSON SMITH: Go ahead. Go ahead.

5 MS. LEE: Okay. I did speak to them, and
6 they asked me to convey that they felt that there was
7 no need for them to prepare a further response. They
8 had, I think, addressed these issues in other filings,
9 and they felt that the Report comprehensively and
10 accurately covers the issues. And they support the
11 recommendation.

12 CHAIRPERSON SMITH: Thank you.

13 Okay. I was saying because the
14 representatives of our normal Independent Evaluator are
15 listed as respondents, it was necessary for the City to
16 contract with the firm of Burke, Williams & Sorensen,
17 LLP, to serve as Independent Evaluator for this
18 complaint.

19 At this time I would like to have
20 representatives of Burke, Williams & Sorensen please
21 identify themselves for the record.

22 MS. STEVENS: I'm Carol Stevens from Burke,
23 Williams & Sorensen.

24 CHAIRPERSON SMITH: Thank you.

25 I am going to skip over what I normally do,

1 which is briefly discuss the process for handling
2 complaints, because nobody really -- members of the
3 public here are really not familiar with that or
4 haven't seen it before. Except to note, as I indicated
5 before, the complaint was filed on January 9th. The
6 complaint -- let's see. The complaint was passed on to
7 the Independent Evaluator on January 18th, and the --
8 do I have that right? Let's see. I was going to say
9 the Evaluator notified the respondent on February 19th.
10 I believe that was actually January 19th is what is
11 said in the e-mail.

12 MS. STEVENS: Yes, that's right.

13 CHAIRPERSON SMITH: I just wrote that down
14 wrong. And those are required for procedure.

15 And then the Report and Recommendations were
16 submitted to the City Clerk on February 19th, and
17 copies of the Report were then provided to the
18 complainant, respondent and Commission members and
19 posed on the web site with the agenda.

20 I note that the formal rules of evidence do
21 not apply to this hearing, but all testimony will be
22 under oath or affirmation. And also note that the
23 Commission's regulations and procedures allow
24 respondents or complainants or other interested parties
25 to submit written responses to the Report and

1 Recommendations. None have been received at this time.

2 And -- okay. At this point, the Commission's
3 regulations and procedures allow for the Independent
4 Evaluator to present the Report and Recommendations.
5 At this time I will recognize Carol Stevens from the
6 Burke, Williams & Sorensen law firm to present the
7 Report.

8 MS. STEVENS: Thank you.

9 This -- while this complaint involved not
10 only that a report was filed and that the filed report
11 was not signed, it also alleged that the former City
12 Clerk, Dennis Hawkins, and your regular Evaluators
13 abused the power of their authority to harass,
14 intimidate, discriminate and injure Complainants and
15 waste city valuable resources.

16 The first question that we looked at is, is
17 this something that is within the jurisdiction of this
18 Commission and was there sufficient allegations that
19 the Commission's duties -- that something had been
20 violated?

21 And we found that -- three main points. The
22 complaint is outside the Elections Commission's
23 jurisdiction. The allegations of harassment do not
24 allege any violations of the Municipal Code over which
25 the Elections Commission has jurisdiction.

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1 Second, the complaint does not have facts
2 that demonstrate that there's a potential violation.
3 And that applies because, for example, if they had not
4 properly cited to where the violation came from in the
5 Code but they gave enough facts to demonstrate a
6 violation, we still would have recommended doing an
7 investigation.

8 And the third main point is that identical
9 allegations have already been addressed in prior
10 investigations. In the investigation that you -- I
11 believe you just had in your last meeting, Report
12 Number 3 and the responses to Report Number 3 covered
13 the identical facts.

14 So what your basic rules are, if any one of
15 these three factors exist, well, we really had to
16 recommend that no investigation be conducted. Those
17 three things are, again, the complaint about harassment
18 was outside the Elections Commission's jurisdiction
19 because it didn't allege any violation of the law in
20 the code sections that you enforce. It did not state
21 any facts that demonstrated a potential violation of
22 the Municipal Code or other law over which this
23 Commission has jurisdiction. And the identical
24 allegations were addressed very completely in a prior
25 Report that the Commission had considered.

1 And so we -- although the Report -- it takes
2 us quite a few pages and attachments to verify all of
3 this, essentially, that is it. Not only one. If just
4 one of those three things, would say there's no cause
5 for an investigation. All three existed.

6 So, for that reason, we did no investigation.
7 And then we wrote up a lot of stuff verifying all the
8 reasons why.

9 CHAIRPERSON SMITH: Okay. Thank you. Any
10 questions from Commission?

11 Okay. We do not have respondents or
12 complainants here to address the Commission. So at
13 this point we've heard the recommendation.

14 And now it's time for us to make the
15 decision. We have the following options: First of
16 all, the Commission may find that further investigation
17 is necessary. If so, it shall direct the Evaluator to
18 conduct further investigations and report back to the
19 Commission. Or, second, the Commission may adopt the
20 Evaluator's Report and approve the recommendation
21 against conducting an investigation and close the file
22 in this matter without further action.

23 And at this point I'll open the floor to
24 Commission discussion in this case. Any comments or
25 not? Somebody can certainly make a motion.

1 COMMISSIONER EDGEWORTH: I'll make a motion
2 to accept the Evaluator's Report and to conduct no
3 further investigation on this case, on the basis that
4 the issue is outside the jurisdiction of this
5 Commission, that there were no statement of facts
6 relative to any violations that would be under the
7 jurisdiction of this Commission and that this matter
8 has already been adequately held at the last Elections
9 Commission hearing in Report 3 of the daily case.

10 CHAIRPERSON SMITH: Okay.

11 Do we have a second?

12 COMMISSIONER LOUIE: Second.

13 CHAIRPERSON SMITH: And I would assume also
14 that that motion would include a closing of the file in
15 this matter?

16 COMMISSIONER EDGEWORTH: Yes.

17 CHAIRPERSON SMITH: We would need to add that
18 as part of -- we need to have that as part of the
19 motion, I believe.

20 Okay. So we have a motion and a second. Any
21 discussion?

22 Okay.. All in favor? .

23 (All Commissioners responded Aye.)

24 CHAIRPERSON SMITH: Any opposed?

25 (No response.)

1 CHAIRPERSON SMITH: Okay. Passes
2 unanimately.

3 One more thing -- two more things. Upon
4 adoption of the motion, the Chair must ask each
5 Commission member to certify that they have heard or
6 read the testimony at the hearing and have reviewed all
7 the evidence in the record by affirming "so certified."

8 Commissioner Peacock?

9 COMMISSIONER PEACOCK: Yes.

10 CHAIRPERSON SMITH: "So certified."

11 COMMISSIONER PEACOCK: So certified.

12 CHAIRPERSON SMITH: Commissioner Edgeworth?

13 COMMISSIONER EDGEWORTH: So certified.

14 CHAIRPERSON SMITH: Commissioner Louie?

15 COMMISSIONER LOUIE: So certified.

16 CHAIRPERSON SMITH: And Commissioner Smith,
17 so certified.

18 Okay. And then the last thing we need to
19 do is we need to -- I would entertain a motion that the
20 Commission direct the City Attorney to draft a
21 resolution of the committee's findings and that the
22 committee authorizes the Chair to approve and sign the
23 resolution.

24 Actually, if somebody could just say "so
25 moved."

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COMMISSIONER EDGEWORTH: So moved.

CHAIRPERSON SMITH: Thank you.

Do I have a second?

COMMISSIONER LOUIE: Second.

CHAIRPERSON SMITH: Okay. Any discussion on
that?

Okay. All in favor?

(All Commissioners responded Aye.)

CHAIRPERSON SMITH: Any opposed?

(No response.)

CHAIRPERSON SMITH: Passes unanimously.

With that, I will close the hearing.


(Whereupon, the meeting was adjourned at
5:51 p.m.)

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I, NOELIA ESPINOLA, do hereby certify:

That said meeting 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 meeting.

Dated: May 2, 2013 
NOELIA ESPINOLA, CSR #8060