

MEETING MINUTES

December 12, 2018

I. Call to Order & Orders of the Day

Roll Call

PRESENT: Chair Adrian Gonzales, Vice Chair Chris Peacock, and Board Members Amarpal Randhawa and Madhavee Vemulapalli

ABSENT: None

STAFF: Deputy City Attorney Mark Vanni, Sr. Deputy City Clerk Cecilia McDaniel and Deputy City Clerk Ruth Krantz.

OTHER: None

Call to Order

The members of the San José Board of Fair Campaign and Political Practices convened at 5:41 p.m. in Room T-1446 of City Hall, 200 E. Santa Clara Street, CA 95113.

Orders of the Day

Action: Upon motion by Board Member Madhavee Vemulapalli, seconded by Board Member Amarpal Randhawa and carried, the Board approved the adoption of the December 12, 2018 agenda. (4-0.)

II. Closed Session – None.

III. Hearings

- A. Continued hearing on Complaint filed by Mimi Dang on May 14, 2018 against Le Pham and CM California Magazine, et al. alleging violations of San José Municipal Code section 12.06.910 and 12.06.915, and including Respondents, Omar Vasquez and Omar Vasquez for San José City Council 2018 D7; Hoang “Chris” Le and Chris Le for San José City Council D7 2018; Jonathan Fleming and Neighbors for Jonathan Fleming for San José City Council District 7, 2018; and Thomas Duong and Thomas Duong for City Council D7 2018 (Independent Investigator/Evaluator)

Documents Filed: (1) Report from Hanson Bridgett LLP dated July 3, 2018, regarding Complaint filed by Mimi Dang on May 14, 2018 against Le Pham and CM California Magazine; (2) Supplemental Report from Hanson Bridgett LLP dated November 21, 2018; (3) Second Supplemental Report from Hanson Bridgett LLP dated December 4, 2018; (4) Response to 2nd Supplemental Report to the San José Board of Fair Campaign and Political Practices from CM Magazine, dated December 11, 2018.

Discussion: Chair Adrian Gonzales opened the continued public hearing. Chris Le and Respondent Le Pham were present and declined to offer testimony. No representative for Complainant Mimi Dang was present.

During the last meeting the Board held November 28, 2018, Evaluator Steven Miller summarized the Complaint and his Supplemental Report for the Board. Chair Adrian Gonzales explained that the purpose of the continued hearing was to review the final summary review so the Board may provide a final determination.

There was no public comment. Evaluator Steven Miller informed the Board that there are 12 Communications that the Board could reasonably determine constitute Independent Expenditures. Under Title 12, once the \$1,000 threshold in independent expenditures is reached, it is necessary to form an Independent Expenditure Committee, which the Respondent failed to do. The Evaluator reviewed the following Exhibits: 17, 19, 22, 18, 24, 29, 30, 31, 40, 42, 44, 47, 48, 49 and two new exhibits, pages 353/40-42 and pages 357/8, identifying responses as prepared by the Respondent in the "Response to 2nd Supplemental Report" from CM Magazine, dated December 11, 2018. Evaluator Steven Miller indicated that it is likely that other such cases may appear before the Board and recommended some sort of corrective action that others may align their business practices with Title 12.

Evaluator Steven Miller continued his recommendation that all allegations against other Respondents, Omar Vasquez and Omar Vasquez for San José City Council 2018 D7; Hoang "Chris" Le and Chris Le for San José City Council D7 2018; Jonathan Fleming and Neighbors for Jonathan Fleming for San José City Council District 7, 2018; and Thomas Duong and Thomas Duong for City Council D7 2018, be dismissed.

The Board recessed from 6:39 p.m. to 6:43 p.m.

Motion: Vice Chair Chris Peacock moved that, due to insufficient evidence the complaint against Omar Vasquez and Omar Vasquez for San José City Council 2018 D7; Hoang "Chris" Le and Chris Le for San José City Council D7 2018; Jonathan Fleming and Neighbors for Jonathan Fleming for San José City Council District 7, 2018; and Thomas Duong and Thomas Duong for City Council D7 2018, be dismissed. Board Member Madhavee Vemulapalli seconded the motion. Board Member Amarpal Randhawa abstained due to missing the November 2018 meeting of the Board.

Action: On a call for the question, the motion carried unanimously, indicating concurrence with the Evaluator's report that no violation of the Municipal Code has occurred in the case of Omar Vasquez and Omar Vasquez for San José City Council 2018 D7; Hoang "Chris" Le and Chris Le for San José City Council D7 2018; Jonathan Fleming and Neighbors for Jonathan Fleming for San José City Council District 7, 2018; and Thomas Duong and Thomas Duong for City Council D7 2018. (3-0-0-1. Abstain: Randhawa.)

Motion: Chair Adrian Gonzalez moved that the Board finds, based upon a preponderance of the evidence presented, that violations of San Jose Municipal Code Title 12, related to the twelve independent expenditures identified by the Evaluator has occurred in the case of Le Pham. Commissioner Chris Peacock seconded the motion. Board Member Amarpal Randhawa abstained.

Action: On a call for the question, the motion carried indicating concurrence with the Evaluator's report that a violation of the Municipal Code has occurred in the case of Le Pham that Respondent Le Pham was an Independent Expenditure Committee and that he committed six violations of Title 12, specifically Sections 12.06.910(D), 12.06.910(H), 12.06.915(A), 12.06.1010(A), 12.06.1010(D), and 12.06.1010(E), related to the twelve independent expenditures identified by the Evaluator. (3-0-0-1. Abstain: Randhawa.)

Each Board Member in attendance certified that he or she personally heard the testimony at the hearing and reviewed the entire evidence into the record.

Discussion ensued regarding penalties to be imposed and reduction of the fine if the Respondent complies with Title 12 in the timeframe required by the resolution.

Action: Chair Adrian Gonzalez moved that the The Board imposes a penalty of \$12,000 in accordance with Chapter 12.04. However, the penalty imposed by this Resolution will be reduced to \$6,000 if Respondent Le Pham takes corrective action within six weeks of the date of service of this Resolution by complying with the requirements of Title 12 for the twelve independent expenditures identified by the Evaluator. In accepting payment of the reduced fine, the City Clerk will determine whether Respondent has complied with Title 12 in the timeframe required by this Resolution. The motion was seconded by Board Member Madhavee Vemulapalli.

Each Board Member in attendance certified that he or she personally heard the testimony at the hearing and reviewed the entire evidence into the record.

Action: Upon motion by Vice Chair Chris Peacock, seconded by Board Member Madhavee Vemulapalli and carried unanimously, the Board moved to direct the City Attorney to draft a resolution on the Board's findings, and further, that the Board authorize the Chair to approve and sign the resolution. (3-0-0-1. Abstain: Randhawa.)

The hearing was closed at 7:50 p.m.

IV. Public Record – None.

V. Consent Calendar

- A. Approve the Minutes of October 10, 2018 – Regular Meeting
- B. Approve the Minutes of November 28, 2018 – Special Meeting

Action: The meeting minutes for October 10, 2018 and November 28, 2018 were not drafted in time and approval is deferred to the next meeting.

VI. Reports

- A. Chair - Chair Gonzalez noted the draft letter of reprimand for Magdalena Carrasco has been prepared and will be on the agenda for next month's meeting.
- B. City Attorney –
1. Legislative update – Deputy City Attorney, Mark Vanni offered an update on Supreme Court case involving campaign finance, Zimmerman vs the City of Austin, and indicated two more campaign finance issues from Alaska and Montana are working their way through the Supreme Court.
 2. Election update – None provided.
 3. Campaign Guidance update - None provided.
- C. City Clerk
1. Legislative update – Sr. Deputy City Clerk Cecilia McDaniel announced this would be her last meeting, and Deputy City Clerk Ruth Krantz will be staffing future meetings.
 2. Status report on filings (Form 700, Campaign Statements, Lobbyist) – None.
 - a) Form 700s
 - b) Lobbyists Forms
 - c) Campaign Statements – Staff noted that Campaign Statements are now linked.
 - d) Income & Time Disclosure Statement and Disclosure of Fundraising Report Forms
 3. Elections update

Documents Filed: Santa Clara County “Election Night Reporting” for Districts 7 and 9, and for Measures “S”, “T”, “U” and “V”.

Discussion: Sr. Deputy City Clerk Cecilia McDaniel provided the election update.
 4. Update on Board Expenditures
 - a) Hanson Bridgett Contract Expenditures

Documents Filed: Hanson Bridgett FY 18-19 Contract Expense Spreadsheet from the City Attorney's Office.

Discussion: The Board was provided the expenditures list and associated costs.

5. Update on the status of the recruitment for open positions on the Board of Fair Campaign and Political Practices:

Discussion: Sr. Deputy City Clerk Cecilia McDaniel reminded Board Members that three seats will need to be filled and urged anyone who may be interested to reapply, noting that everyone but Vice Chair Chris Peacock is terming out.

6. Update on Board Expenditures

Document Filed: Hanson Bridgett Contract Expenses FY 17-18 Spreadsheet from City Attorney's Office.

- D. Investigator/Evaluator – None.

VII. Old Business

- A. Discussion and possible action to consider the benefits or implications for holding Mayoral Elections concurrent with Presidential Elections. (City Clerk)
[Referral from City Council on October 16, 2018 – Item 3.9]

Document Filed: (1) Memorandum from City Clerk Toni J. Taber, CMC, dated October 16, 2018, providing a recommendation to amend the City Charter. (2) Joint memorandum from Vice Mayor Carrasco and Councilmembers Jones, Jimenez and Rocha, dated September 27, 2018, recommending agendaizing the issue of a ballot measure to hold Mayoral Elections concurrent with Presidential Elections. (3) Letters and email correspondence from the public: Jerry Mungai, dated October 2, 2018, and Hopkins Carley, dated October 3, 2018, offering support.

Discussion: Deputy City Attorney, Mark Vanni outlined the proposal and indicated this would be on the ballot in 2020, indicating requirement of a ballot measure to change the election date.

Chair Adrian Gonzales requested data from the Clerk's office in order to provide an analysis of election type and turnout at the next meeting of the Board. Discussion followed on the cost implications and the need to compare with what other jurisdictions are doing.

Action: Continued to the next meeting of the Board.

- B. Discussion and possible action on biennial review of San Jose Municipal Code Title 12, City Council Resolution 78390 and other administrative policies. (City Clerk)
- C. Discussion and possible action on report from Ad Hoc Committee for Complaint Intake Process. (Chair Adrian Gonzales)
- D. Discussion and possible action on report from Ad Hoc Committee for Complaint Intake Process. (Chair Adrian Gonzales)

Action: Items continued to the next meeting of the Board.

- E. Scheduling of Special Board meeting if needed. (City Clerk)

Action: No action needed.

VIII. New Business

- A. Discussion and possible action for Request for Qualifications (RFQ) for the Board's Independent Evaluator contract commencing July 1, 2019. (City Clerk)
Draft RFQ for Independent Evaluator

Sr. Deputy City Clerk Cecilia McDaniel noted the RFQ presented based on last one submitted in 2015 and requested the Board review for possible changes. Any RFQ's received would need to be submitted by March 15, 2019.

Discussion followed regarding having one evaluator and one investigator, rather than combining the two.

Motion: Board Member Randhawa moved approval, authorizing the City Clerk to make small changes of a grammatical or technical nature to the existing Request for Qualifications and authorize submission. Board Member Vemulapalli seconded the motion.

Action: On a call for the question, the motion carried unanimously, with the City Clerk to make small changes of a grammatical or technical nature to the existing Request for Qualifications and allowing submission. (3-0-1. Absent: Peacock.)

IX. Public Comment – None.

X. Future Agenda Items – None.


XI. Adjournment

Action: Upon a motion by Board Member Amarpal Randhawa, seconded by Board Member Madhavee Vemulapalli and carried, the Board approved to adjourn the meeting at 8:30 p.m., next regular meeting is scheduled for January 9, 2019 at 5:30 p.m. in City Hall Wing Room W-120, pending coordination of a Special Meeting and/or hearing if needed.



ADRIAN GONZALES, CHAIR

ATTEST:
BOARD OF FAIR CAMPAIGN AND POLITICAL PRACTICES SECRETARY



TONI J. TABER, CMC
CITY CLERK