

**SPECIAL MEETING MINUTES**

November 28, 2018

**I. Call to Order & Orders of the Day**

**Roll Call**

**PRESENT:** Chair Adrian Gonzales, Vice Chair Chris Peacock, and Board Member Madhavee Vemulapalli

**ABSENT:** Board Member Amarpal Randhawa

**STAFF:** Deputy City Attorney Mark Vanni, City Clerk Toni Taber, and Sr. Deputy City Clerk Cecilia McDaniel

**OTHER:** Independent Evaluator/Investigator Steven Miller and Attorney Jarett Yan

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**Call to Order**

The members of the San José Board of Fair Campaign and Political Practices convened at 5:46 p.m. in Room T-1734 of City Hall, 200 E. Santa Clara Street, CA 95113.

**Orders of the Day**

Action: Upon a motion by Chair Adrian Gonzales, seconded by Board Member Madhavee Vemulapalli and carried, the Board approved the adoption of the November 28, 2018 agenda with Item IV, V, and VI to be heard before Item III. (3-0-1. Absent: Randhawa)

**II. Closed Session – None.**

**III. Hearings – Conducted after Items IV, V, and VI**

- A. Continued hearing on Complaint filed by Robert Imhoff-Dousharm on August 10, 2018 against Re-Elect Magdalena Carrasco for City Council D5 2018 alleging violations of San José Municipal Code section 12.06.235 (Municipal Campaign & Officeholder Contributions) (Independent Investigator/Evaluator)

Document Filed: Report from Hanson Bridgett LLP dated October 1, 2018 regarding Robert Imhoff-Douharm v. Re-Elect Magdalena Carrasco for City Council D5 2018, Complaint Filed August 10, 2018.

Discussion: Chair Adrian Gonzales opened the continued public hearing. Omar Torres, Campaign Manager, was present for Respondent Re-Elect Magdalena Carrasco for City Council D5 2018. No representative for Complainant Robert Imhoff-Dousharm was present.

Chair Adrian Gonzales explained that the purpose of the continued hearing was to consider if Respondent made sufficient corrective action to cure the violations made, specifically Allegation 3 of the Complaint, to reduce the \$5,000 penalty imposed on Respondent at the October 10, 2018 hearing. Allegation 3 of the Complaint alleged that Respondent violated Section 12.06.235 because it did not obtain the address, occupation, and employer information from 33 contributors prior to depositing contributions into a campaign bank account. The Board found 96 contributions reported were missing the address, occupation, and/or employer information.

Chair Adrian Gonzales swore in Respondent Omar Torres for testimony. Respondent Omar Torres testified that the campaign worked with their accountant to amend the campaign statements with missing contributor information. City Clerk Toni Taber confirmed that all amendments were filed and that there were only a few contributions that still had partial contributor information or contained P.O. Boxes and not physical addresses.

Respondent Omar Torres confirmed that the campaign was unable to set up the PayPal donation portal to require contributor information, and every effort was made to retrieve the information (by email, phone calls, and various social media sites) after they were made aware of the oversight. Respondent Omar Torres informed the Board that obtaining the contributor information in a timely manner was difficult since the Vice Mayor's Office is extremely busy. Respondent Omar Torres works in Vice Mayor Magdalena Carrasco's Office as a Council Assistant and separately on Magdalena Carrasco's campaign committee as the Campaign Manager.

There was no public comment. Evaluator Steven Miller informed the Board that no additional contact has been made with the Respondent since the last hearing. Evaluator Steven Miller also indicated that it was initially difficult to reach Respondent Omar Torres or a representative of the Re-Elect Magdalena Carrasco for City Council D5 2018 committee, but that Respondent Omar Torres was responsive once reached. The Board discussed the matter.

Action: Chair Adrian Gonzales moved that the Board find that Respondent Re-Elect Magdalena Carrasco for D5 2018 committee made sufficient progress with their corrective action plan to reduce the penalty imposed with regard to Allegation 3. The Board will rescind its imposition of the \$5,000 penalty and instead impose a penalty of \$2,000 in accordance with San José Municipal Code Chapter 12.04. Chair Adrian Gonzales also moved to include Allegation 3 in the letter of reprimand from the Board to the Respondent which is to be drafted by the Chair and brought to the Board for approval at the next meeting. Board Member Madhavee Vemulapalli seconded the motion, which carried. (3-0-1. Absent: Randhawa.)

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

Action: Upon a motion by Vice Chair Chris Peacock, and seconded by Board Member Madhavee Vemulapalli and carried, 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. (3-0-1. Absent: Randhawa.)  
Chair Adrian Gonzales declared the hearing on this matter closed at 6:20 p.m.

- B. 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 (Reporting Requirements for Independent Committees) (Independent Investigator/Evaluator)

Documents Filed: 1) Report from Hanson Bridgett, LLP dated July 3, 2018 regarding Mimi Dang v. Le Pham and CM California Magazine, Complaint Filed May 14, 2018; 2) Supplemental Report from Hanson Bridgett, LLP dated November 21, 2018 regarding Mimi Dang v. Le Pham and CM California Magazine, Complaint Filed May 14, 2018, as amended on July 19, 2018; and 3) Additional exhibits provided by Independent Evaluator Steven Miller to his Supplemental Report (Issue 353, pgs. 40, 42 and Issue 357, pg. 8).

Discussion: Chair Adrian Gonzales opened the continued public hearing. No representative for Complainant Mimi Dang was present. Respondents Le Pham (present to represent self and CM California Magazine), Omar Vasquez, and Chris Le were present. Respondents Thomas Duong (moved to Southern California) and Jonathan Fleming (Grandmother passed away) were not present. There was no public comment.

Chair Adrian Gonzales stated for the record that Respondent Le Pham was served with a subpoena to appear before the Board to give testimony, respond to Board questions, and produce documents in response to allegations made by Complainant Mimi Dang.

Evaluator Steven Miller summarized the Complaint and his Supplemental Report for the Board. Evaluator Steven Miller reported that Respondent Le Pham made independent expenditures and should have opened an independent expenditure committee, but failed to do so.

Chair Adrian Gonzales swore in Respondent Le Pham to give testimony and answer Board questions. Respondent Le Pham testified that he cooperated with the investigation by providing documents. Respondent Le Pham declined to answer any further questions or provide additional documents citing the U.S. Constitution, including, but not limited to the Federal Reporter Shield Law. Chair Adrian Gonzales requested that Evaluator Steven Miller proceed with questioning Respondent Le Pham. When Evaluator Steven Miller requested clarification on Respondent Le Pham's testimony regarding declining to answer any further questions, Respondent Le Pham again declined to answer further questions citing the U.S. Constitution and the Federal Reporter Shield Law. Respondent Le Pham then left the hearing.

Chair Adrian Gonzales swore in Respondent Omar Vasquez to give testimony and answer Board questions. Respondent Omar Vasquez testified that his campaign committee claimed all expenditures and confirmed that he only paid for advertising in CM California Magazine. Respondent Omar Vasquez expressed concern that a

complaint was filed against him since he tried to follow all of the rules. Respondent Omar Vasquez explained that he raised a little over \$15,000 from individuals in San José only and he did not accept funds from special interests. When asked by the Board, Respondent Omar Vasquez confirmed that he only paid for advertising with CM California Magazine. Evaluator Steven Miller confirmed that no violation was made by Respondent Omar Vasquez.

Chair Adrian Gonzales swore in Respondent Chris Le to give testimony and answer Board questions. Respondent Chris Le testified that his campaign committee reported every dollar they spent properly. Respondent Chris Le stated that he does not, nor does his committee, have any control over the content published in CM California Magazine. Respondent Chris Le confirmed that many of the pictures printed in CM California Magazine were taken from Facebook without his knowledge. Evaluator Steven Miller reported that Respondent Chris Le fully cooperated with his investigation, but the Board would need to determine whether Respondent Chris Le purchased print advertising or purchased magazines. Evaluator Steven Miller displayed ads in CM California Magazine for review by the Board and Respondent Chris Le. Respondent Chris Le confirmed that he purchased the ads in Issues 351 and 354, but did not purchase ads in Issues 352, 353, 356, and 357 in which the content was taken from his Facebook page.

Deputy City Attorney Mark Vanni and Evaluator Steven Miller answered Board questions regarding behested payments. No testimony was given by Respondents Jonathan Fleming or Thomas Duong since neither were present. No testimony was given by Complainant Mimi Dang since Complainant was not present.

Evaluator Steven Miller explained that investigating this matter has been difficult because CM California Magazine does not have a set fee schedule and charged clients arbitrary amounts. Evaluator Steven Miller reported that Respondent Le Pham charged the Respondents in this matter anywhere from \$100 to \$2,600 for full page ads. Pursuant to state regulations, a discount provided to a candidate for a full page ad is considered a campaign contribution. Evaluator Steven Miller informed the Board that Respondent Le Pham sued Respondent Thomas Duong for payment of an ad published in CM Magazine Magazine (Issue 353, cover). Respondent Thomas Duong indicated in the suit that he did not want nor request that an ad be published. The suit was settled for an undisclosed amount.

Evaluator Steven Miller reported that the \$1,000 threshold in independent expenditures was reached so Respondent Le Pham should have created an independent expenditure committee and should have filed the required campaign statements and forms. Evaluator Steven Miller gave consideration to Respondent Le Pham with respect to his First Amendment Rights as a publisher of CM California Magazine.

Evaluator Steven Miller reviewed each exhibit contained in his Supplemental Report with the Board and explained how he classified each exhibit as either an editorial, a paid ad, or an independent expenditure. However, some exhibits were hard to classify because CM California Magazine is not consistent with formatting, the Table

of Contents for every magazine is the same no matter what was printed or the content of the magazine (even the page numbers are not consistent), and it has been hard to determine what payments for services were made to CM California Magazine.

Evaluator Steven Miller reported that Respondent Jonathan Fleming paid \$2,600 for an ad in CM California Magazine. Respondent Jonathan Fleming provided a copy of the signed contract as proof. Respondent Le Pham has denied the existence of the contract even though the contract has his signature. Evaluator Steven Miller counted eighteen independent expenditures made by Respondent Le Pham, or twelve independent expenditures if you exclude the magazine covers.

Evaluator Steven Miller informed the Board that no violations were made by the candidates and that the only issues identified were with Respondent Le Pham (and CM California Magazine). The Board discussed the matter.

Action: Chair Adrian Gonzales moved that the Board continue the hearing to the next meeting and direct the Evaluator Steven Miller to provide a final supplemental report with recommendations for review and approval by the Board. Board Member Madhavee Vemulapalli seconded the motion, which carried. (3-0-1. Absent: Randhawa.)

**IV. Public Record – None.**

**V. Consent Calendar**

A. Approve the Minutes of September 12, 2018 – Regular Meeting

Document Filed: Draft Minutes for the September 12, 2018 regular Board meeting.

Action: Upon a motion by Board Member Madhavee Vemulapalli, seconded by Vice Chair Chris Peacock and carried, the Board approved the Minutes of the September 12, 2018 Board meeting. (3-0-1. Absent: Randhawa.)

B. Approve the Minutes of October 10, 2018 – Regular Meeting

Action: The October 10, 2018 minutes were not drafted in time for meeting so approval deferred to next meeting.

**VI. Reports**

A. Chair – None.

B. City Attorney –

1. Legislative update – None.
2. Election update – Deputy City Attorney Mark Vanni informed the Board that the November 6, 2018 election results will be certified by City Council on December 11, 2018.

3. Campaign Guidance update – Deputy City Attorney Mark Vanni received two requests both seeking guidance on surplus campaign funds.

C. City Clerk

1. Legislative update – None.
2. Status report on filings (Form 700, Campaign Statements, Lobbyist) – City Clerk Toni Taber reported that SouthTech Systems was sold to Granicus. The City uses SouthTech Systems for electronic filing of campaign statements and Form 700s. The City already uses Granicus for agenda creation and web casting. Chair Adrian Gonzales requested that each electronic filing portal be linked to the agenda for easy review by Board Members.
3. Elections update – City Clerk Toni Taber shared the unofficial election results with the Board (the Santa Clara County Registrar of Voters showed 99% ballots counted at time of report): Maya Esparza elected to the District 7 seat with 54% of the votes; Pam Foley elected to the District 9 seat with 50.8% of the votes; Measure S (Construction Contract Procurement Modernization) passed with 79.48% of the votes; Measure T (Disaster Preparedness, Public Safety, and Infrastructure Bond – Required at least 2/3 of votes to pass) passed with 70.9% of the votes; Measure U (Charter amendment relating to Mayor and City Councilmember salaries) passed with 85.9% of the votes; and Measure V (Affordable Housing Bond - Required at least 2/3 of votes to pass) did not pass with 63.9% of the votes.
4. Update on Board Expenditures

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

Discussion: The Board was provided the Hanson Bridgett FY 18-19 Contract Expense Spreadsheet from City Attorney's Office.

- D. Investigator/Evaluator – None.

**VII. Old Business**

- A. Discussion and possible action on report from Ad Hoc Committee for Public Education Campaign. (Chair Adrian Gonzales and Vice Chair Chris Peacock)

Action: Deferred to next meeting.

- B. Discussion and possible action on report from Ad Hoc Committee for Complaint Intake Process. (Chair Adrian Gonzales)

Action: Deferred to next meeting.

- C. Discussion and possible action on biennial review of San José Municipal Code Title 12, City Council Resolution 78390 and other administrative policies. (City Clerk)

Documents Filed: 1) City Council Resolution 78390; 2) San José Municipal Code Title 12; 3) Biennial Review Matrix; 4) Proposed City Council Resolution Changes Regulating BFCPP Procedures; and 5) SB 568 Preliminary Elections: Election Date.

Action: Deferred to next meeting.

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

Action: No action needed.

**VIII. New Business** – Heard before Item VII

- A. 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)

Documents Filed: 1) Memorandum from Vice Mayor Magdalena Carrasco, and Councilmembers Jones, Jimenez, and Rocha to the Honorable Mayor and Council dated September 27, 2018 regarding a Ballot Measure to Hold Mayoral Elections Concurrent with Presidential Election (CC 10/16/18 – Item 3.9; ROGC 10/3/18 – Item G.6); 2) Letters from the Public sent to Council (CC 1/16/18 – Item 3.9); and 3) Letters from the Public sent to the Board of Fair Campaign and Political Practices.

Public Comment: Andrew Boone, Kimi Lee with Bay Rising, Omar Vasquez, and Pastor Jethroe Moore II of the San Jose/Silicon Valley NAACP commented in support of holding the Mayoral Election concurrent with the Presidential Election.

Discussion: City Clerk Toni Taber discussed the item with the Board and explained that this was a referral from the City Council. Deputy City Attorney Mark Vanni responded to Board questions.

Action: Chair Adrian Gonzales created an Ad Hoc Committee to work with staff comprising of just the Chair himself. Chair Adrian Gonzales directed staff to come back to the Board with the following information: list of other cities that have switched their Mayoral elections to be concurrent with presidential elections; impact on off-year candidates; voter turnout for the last few decades; summary of any costs associated with moving election; and check on constituent's focus on local versus national issues during presidential election years.

**IX. Public Comment** – None.

**X. Future Agenda Items**

- Continued hearing on Mimi Dang Complaint
- Continued hearing on Robert Imhoff-Dousharm Complaint
- Mayoral Elections Concurrent with Presidential Elections

Board Member Chris Peacock left at 8:20 p.m.

**XI. Adjournment**

The next meeting is scheduled for December 12, 2018 at 5:30 p.m. in Room W-1446.

Due to lack of quorum, the Board adjourned the meeting at 8:20 p.m.

  
ADRIAN GONZALES, CHAIR

ATTEST:  
BOARD OF FAIR CAMPAIGN AND POLITICAL PRACTICES SECRETARY



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TONI J. TABER, CMC  
CITY CLERK

*Note: The audio recording for this meeting ended 1 hour and 2 minutes into the meeting.*