



Memorandum

TO: MAYOR AND CITY COUNCIL

FROM: Toni J. Taber, CMC
City Clerk

SUBJECT: SEE BELOW

DATE: October 24, 2017

SUBJECT

Actions related to Board of Fair Campaign and Political Practices Recommended Revisions to Title 12 and San José City Council Resolution 77879.

RECOMMENDATION

- a) Approve an ordinance amending Section 12.06.910 of Chapter 12.06 of Title 12 of the San José Municipal Code to require Independent Committees to complete the "Per Election to Date" column of the Form 460 when reporting contributions and expenditures, and repealing Section 12.06.920, which requires the City Clerk to publish a report before an election with the total amount of contributions and expenditures made by each candidate and candidate controlled committee, and the total independent expenditures made by each independent committee.
- b) Adopt a resolution amending the regulation and procedures of the San José Ethics Commission, to set forth the current investigation and hearing procedures for the San José Board of Fair Campaign and Political Practices, and repealing Council Resolution No. 77879.

BACKGROUND

On October 11, 2017 the Rules and Open Government Committee reviewed the Board of Fair Campaign and Political Practices ("Board") recommended changes to Title 12 and the Board's Resolution. Pursuant to the City of San José Municipal Code Section 12.04.070(C), the Board performs a biennial review of Title 12 and the Resolution that governs the regulations and procedures of the Board for investigations and hearings. Currently, City Council Resolution 77879 governs the regulations and procedures for the Board.

The review is based upon issues that the City encountered during the recent 2016 Election cycle, complaints filed with the Board, and issues raised by the public, staff, and the City

Council. In addition, the Board made recommendations based on their guiding resolution and administrative practices.

The Board, at its September 13, 2017 meeting, approved a transmittal letter and table of topics to be forwarded to the Rules and Open Government Committee for feedback and direction on the issues that are included in the table. The Rules and Open Government Committee accepted some of items for Council consideration.

After the October 11, 2017 Rules and Open Government Committee meeting, staff began drafting the proposed amendments to Title 12 and the proposed changes to the Board Resolution to bring to City Council on October 24, 2017 so the amendments to Title 12 and Board Resolution, if approved by Council, could be in place by December 7, 2017, the opening of the campaign contribution period for the June 2018 Primary Election.

ANALYSIS

The Rules and Open Government Committee elected to accept Board recommendations on the items in the following table of topics with some modifications. On item 3, the Board elected to keep the press release required under Section 12.06.290 regarding publishing campaign statements and direct the Clerk to reach out to organizations to create a transparency portal. However, after the Board met, the Clerk discovered that the current campaign system, as well as other competing campaign systems, have the ability to post detailed contribution data through the public access portal.

Based on the level of detail available, and the time and cost of publishing a press release, the Rules and Open Government Committee chose to recommend removing this requirement from Title 12.

The Committee also chose to not move forward with items 9-12 of the Board's recommendations.

EVALUATION AND FOLLOW-UP

The City Clerk's Office will work with the City Attorney's Office to implement the changes made to the ordinance in time for the opening of the campaign contribution period. The next biannual review of Title 12 is scheduled for 2019, although if any urgent matters become apparent prior to that timeframe, the City Clerk's Office will bring those forward off schedule.

October 24, 2017

Subject: SJMC Title 12 and City Council Resolution 77879 Recommended Revisions

Page 3

PUBLIC OUTREACH

This memorandum will be posted on the City Council meeting agenda for October 24, 2017.

COORDINATION

This memo was coordinated with the Office of the City Attorney.

COMMISSION RECOMMENDATION/INPUT

The items included in the attached table were recommended by the Board at its September 13, 2017 meeting.

CEQA

CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities.

A handwritten signature in black ink, appearing to read "Toni J. Taber", with a long horizontal flourish extending to the right.

Toni J. Taber, CMC
City Clerk

cc: Dave Sykes, City Manager

Suggested Revisions to the San José Municipal Code Title 12 and Resolution 77879

#	TOPIC	ISSUE	FROM	BOARD RECOMMENDATION	TYPE	ROGC RECOMMENDATION
1	Reporting for General Purpose Committees	It is sometimes hard to tell how much contributors have given to a General Purpose Committee for each election. Revise SJMC 12.06.910 to include language requiring General Purpose Committees to fill out the "total per election" section on Form 460. May need to add a definition for General Purpose Committee in SMJC 12.06, Part 1.	City Clerk	Amend 12.06.910 to make "Per Election Date" column required for the City of San José.	ORD	Amend 12.06.910 to make "Per Election Date" column required for the City of San José.
2	Penalties for Candidates for Non-Compliance	Review whether additional penalties for non-filing candidates is necessary. Candidates may purposely file campaign forms late for strategic gain. Revise SJMC 12.06.910(G) to add or increase penalties for non-filing candidates	City Clerk/ City Auditor	Without evidence that the problem is prevalent, there is no need to have additional penalties. The City Clerk's Staff should report back to the Board if this becomes a larger problem in the future.	ORD	No Changes.
3	Publishing Campaign Statement Information	SJMC 12.06.920 requires the City Clerk to issue a press release and website posting containing information on campaign contributions and expenditures two days prior to a city council/mayoral election. This report is to be translated into languages designated by the SCC Registrar of Voters. The public has access to campaign statement filings at any time because the statements are electronically filed. Since there are so many absentee voters now, is it worth the efforts since many voters send in their vote by mail ballots so early. Title 12 indicates that the Clerk shall prepare the report 5 days before an election that contains data as of 7 days before the election to be published 2 days before the election. The timing does not work well since it takes time to pull the numbers, prepare the report, and send for translation. It is also very costly to have the report translated into 4 other languages within the given timeline.	City Clerk	Recommend keeping requirement until a more transparent solution can be found, and direct the City Clerk to reach out to organizations like Code for America to create a transparency portal for the City. See Open Disclosure California Project in Oakland as an example.	ORD	Remove this requirement from SJMC. Subsequent to the BFCPP recommendations, the City Clerk learned the public access portal for campaign statements allows the public to search through campaign statements and pull detailed data similar to the Open Disclosure California Project as the City of Oakland has.

Suggested Revisions to the San José Municipal Code Title 12 and Resolution 77879

#	TOPIC	ISSUE	FROM	BOARD RECOMMENDATION	TYPE	ROGC RECOMMENDATION
4	Amend Form 504	Clarify SJMC 12.06.930 (B) on when Form 504 can be filed. Revise language on Form 504 and in SJMC 12.06.930 (B) to indicate filing deadline as date before election.	City Clerk	Direct staff to administratively change the language on Form 504 to clarify deadline and to better educate candidates on deadlines.	ORD	Direct staff to administratively change the language on Form 504 to clarify deadline and to better educate candidates on deadlines.
5	Clarity of Language	Reso 77879, Sections J.3 and J.4, have similar language that may be viewed as redundant. Section J.3 may also use improper language that should be reviewed. Determine the intent of the language in Section J of Reso 77879 and revise as needed	City Attorney	Clarify language as proposed by City Attorney's Office to correct any perceived redundancy.	RESO	Clarify language as proposed by City Attorney's Office to correct any perceived redundancy.
6	Process for Hiring Alternate Evaluator	There is sometimes a need to hire an alternate evaluator when Hanson Bridgett has a conflict of interest. Add a process in Reso 77879 to 1) direct Hanson Bridgett to notify staff of the conflict; 2) permit the City Attorney to review potential conflicts, and 3) determine how and who would be hired as an alternate.	City Attorney	Direct Staff to develop a process in which an alternate evaluator is hired when conflicts arise.	RESO	Direct Staff to develop a process in which an alternate evaluator is hired when conflicts arise.
7	Complaint Intake Process	People file complaints that are outside the jurisdiction of Board and to not provide sufficient evidence. Using Board for PR. Reach out to other jurisdictions with Ethics Commission.	Chair	Direct City Clerk to reach out to other municipalities to see what their process is.	RESO	Direct City Clerk to reach out to other municipalities to see what their process is.
8	Public Education Campaign	People only file complaints for campaign finance issues and not for other issues under the jurisdiction of the Board. Developing educational materials and community partnerships.	Chair	Work with the City Clerk to develop educational materials.	ADMIN	Work with the City Clerk to develop educational materials.