



City of San José Board of Fair Campaign and Political Practices

Chair—Adrian Gonzales
Vice Chair— Louis Silver
Member— Tom Pavel
Member— Baltazar Lopez
Member— Vacant

Matthew Tolany, Deputy City Attorney—Staff
Toni Taber, City Clerk—Staff
Joy Rodriguez, Assistant City Clerk—Staff
Megan Roche, Deputy City Clerk—Staff

DRAFT MEETING Minutes
December 8, 2022
5:30 p.m.

I. Call to Order & Orders of the Day

Roll Call

PRESENT: Chair Adrian Gonzales, Vice Chair Louis Silver, Board Member Tom Pavel

ABSENT: Board Member Baltazar Lopez

STAFF: Deputy City Attorney Matthew Tolnay, City Clerk Toni Taber, Assistant City Clerk Joy Rodriguez, Deputy City Clerk Megan Roche

The members of the San José Board of Fair Campaign and Political Practices convened virtually via remote teleconferencing at 5:33 p.m.

Action: Upon motion by Vice Chair Louis Silver, seconded by Board Member Tom Pavel, and carried unanimously, the Board approved the Orders of the Day. (3-0-1; Absent: Lopez.)

II. Closed Session – None

III. Hearings

- A. Hearing on Complaint filed by Frances Herbert on October 17, 2022 against the California Real Estate Independent Expenditure Committee - California Association of Realtors, alleging violations of San José Municipal Code Section 12.06 - Municipal Campaign & Officeholder Contributions, Section 12.06.910.

Chair Adrian Gonzales opened the hearing and introduced the complaint. The City Clerk's office confirmed that no written testimonies were submitted on behalf of the respondents nor complainant. The Independent Investigator/Evaluator Steven D. Miller explained the process of investigating the complaint and summarized the reasoning for the recommendation provided by Hanson Bridgett LLP. Steven D. Miller and the City Clerk answered questions from Board Members.

Action: Upon motion by Vice Chair Louis Silver, seconded by Board Member Tom Pavel, and carried unanimously, the Board accepted the recommendation from the Independent Investigator/Evaluator, finding that the Board has sufficient evidence to

establish that no violation occurred. Each present Board Member certified the decision and the hearing was closed at 5:59 p.m. (3-0-1; Absent: Lopez.)

- B. Hearing on Complaint filed by Joseph Barco on November 1, 2022 against Irene Smith for San José City Council D3 2022, alleging violations of San José Municipal Code Section 12.06 - Municipal Campaign & Officeholder Contributions, Section 12.06.1010A.

Chair Adrian Gonzales opened the hearing and introduced the complaint. The City Clerk's office confirmed that written testimonies were submitted on behalf of both the respondent and complainant. The Independent Investigator/Evaluator Steven D. Miller explained the process of investigating the complaint and summarized the reasoning for the recommendation provided by Hanson Bridgett LLP. Steven D. Miller answered questions from the Board. Irene Smith provided sworn testimony on behalf of the Respondent. Joseph Barco provided sworn testimony on behalf of the Complainant and responded to questions from the Board.

Action: Upon motion by Board Member Tom Pavel, seconded by Vice Chair Louis Silver, and carried unanimously, the Board accepted the recommendation from the Independent Investigator/Evaluator, finding that the Board has sufficient evidence to establish that no violation occurred. Each present Board Member certified the decision and the hearing was closed at 6:20 p.m. (3-0-1; Absent: Lopez.)

IV. Public Record – None

V. Consent Calendar

Action: Upon motion by Vice Chair Louis Silver, seconded by Board Member Pavel, and carried unanimously, the Board approved the Minutes of the November 10, 2022 Regular Meeting. (3-0-1; Absent: Lopez.)

VI. Reports

A. Chair – None provided.

B. City Attorney – Deputy City Attorney Matthew Tolnay noted two emails received in November 2022 regarding campaign guidance and answered questions from the Board.

C. City Clerk – City Clerk Toni Taber noted that a memorandum from Councilmember Maya Esparza, titled San José Elected Official Political Fundraising and Independent Expenditure Involvement Ordinance ([ROGC 22-506](#)), is expected to be discussed by the City Council in January. City Clerk Taber also noted that the City Council is accepting applications to fill the unanticipated vacancies for City Council Districts 8 and 10.

Discussion: Board Member Tom Pavel asked the City Clerk how Councilmember Esparza's memo can be joined with the current work the BFCPP is completing on the topic. City Clerk Taber advised that the subcommittee's report can be attached

as an exhibit to the item when it is heard by the City Council. Chair Gonzales requested an update on the Board's expenditures; the City Clerk confirmed that an updated expense sheet will be shared once final invoices are received.

D. Investigator/Evaluator – No report.

VII. Old Business

A. Discussion and possible action on biennial review of [San Jose Municipal Code Title 12](#), City Council [Resolution 79187](#) and other administrative policies, including Complaint Intake Process. Suggested Revisions to the SJMC Title 12 and Resolution 79187 (Chair Adrian Gonzales/City Attorney)

Discussion: City Clerk Toni Taber noted that the target completion date for the Biennial Review Matrix is February 2023. The Board directed the addition of topics 1-5 from the Ad Hoc Subcommittee's November report to the Biennial Review Matrix.

Action: Chair Adrian Gonzales made a motion, which was seconded by Vice Chair Louis Silver, to direct the City Attorney's office to draft language to incorporate a requirement that candidates include a disclaimer at the end of editorials and commentaries describing that the opinions are their own.

Action: Chair Adrian Gonzales rescinded his motion, directed the item to be added to the Biennial Review Matrix, and referred the item to the Ad Hoc Subcommittee for further analysis.

Action: Upon motion by Chair Adrian Gonzales, seconded by Vice Chair Louis Silver, and carried unanimously, the Board directed the City Attorney's office to draft language to add a clause to Resolution 79187 to create a way for complainants to revoke their complaints. The topic was also directed to be added to the Biennial Review Matrix. (3-0-1; Absent: Lopez.)

B. Status update on collaboration with Charter Review Commission. (Chair Adrian Gonzales)

Discussion: Chair Adrian Gonzales announced that Measure I passed and the BFCPP will be protected in the City Charter. The Board directed this item to be removed from future agendas.

C. Status update on collaboration with [Code for San José: Open Disclosure](#).

Discussion: Chair Adrian Gonzales stated that he will meet with new project managers from Code for San José and will provide an update after the meeting occurs.

D. Scheduling of Special Board meeting if needed.

Discussion: Assistant City Clerk Joy Rodriguez stated that there is no need for a

special meeting.

- E. Discussion and possible action on report from Ad Hoc Subcommittee for Officeholder Accounts and Officeholder-Controlled Committees. (Board Member Tom Pavel and Board Member Baltazar Lopez)

Discussion: Board Member Tom Pavel provided an update on the subcommittee's work. The subcommittee will follow up with Deputy City Attorney Matthew Tolnay to discuss language for implementation.

VIII. New Business– None

IX. Public Comment – None

X. Meeting Schedule and Agenda Items

The next regular meeting is scheduled for January 12, 2022 at 5:30 p.m. via remote teleconferencing.

XI. Adjournment

Upon motion by Vice Chair Louis Silver, seconded by Board Member Tom Pavel, and carried unanimously, the Board approved to adjourn at 7:00 p.m. (3-0-1; Absent: Lopez.)

ADRIAN GONZALES, CHAIR

ATTEST:
BOARD OF FAIR CAMPAIGN POLITICAL PRACTICES SECRETARY

TONI J. TABER, CMC
CITY CLERK