

City of San José Board of Fair Campaign and Political Practices

Chair—Adrian Gonzales
Vice Chair – Isabella Nyakundi
Member—Joe Lopez
Member—Louis Silver
Member – Daniel Damma

Mark Vanni, Senior Deputy City Attorney—Staff
Toni Taber, City Clerk—Staff
Joy Rodriguez, Assistant City Clerk—Staff

DRAFT MEETING MINUTES

October 13, 2021

5:30 p.m.

*** COVID-19 NOTICE ***

Consistent with the California Governor’s Executive Order No. N-29-20, City of San Jose’s Resolution No. 79485 and 80237, and the Santa Clara County Health Officer’s March 16, 2020 Shelter in Place Order, the Board of Fair Campaign and Political Practices meeting will not be physically open to the public and the Commissioners will be teleconferencing from remote locations.

I. Call to Order & Orders of the Day

Roll Call

PRESENT: Chair Adrian Gonzales, Vice Chair Isabella Nyakundi, Board Members Louis Silver and Joe Lopez

ABSENT: Board Member Daniel Damma

STAFF: Sr. Deputy City Attorney Mark Vanni, Assistant City Clerk Joy Rodriguez, City Clerk Toni Taber, Open Government Manager Jessica Lowry

OTHER: Ramona Giwargis and Josh Barousse from San José Spotlight; Members of the Public: Tran Nguyen, Scott Largent, Krista De La Torre, Jeffrey Buchanan, Lloyd Alaban, Nick, Blair Beekman.

The members of the San José Board of Fair Campaign and Political Practices convened virtually via remote teleconferencing at 5:34 p.m.

Action: Upon motion by Board Member Joe Lopez, seconded by Louis Silver, and carried unanimously, the Board approved the adoption of the October 13, 2021 agenda. (4-0-1. Absent: Damma).

II. Closed Session – None

III. Hearings

San José Spotlight Public Records Appeal

Discussion: Chair Adrian Gonzales opened the public hearing on a complaint filed with the Office of the City Clerk on July 26, 2021, appealing a decision of the Council’s Rules and Open Government Committee denying a Public Records Act request from San José

Spotlight. The request included all email, texts, and Slack or other messaging system communications between Mayor Sam Liccardo, Chief of Staff Jim Reed and any and all other Mayor's staff, consultants, lobbyists or associates related to Solutions San José over the past six months. He recapped the appeal process San José Spotlight presented to the Rules and Open Government Committee on June 23, 2021 and explained the process for today's hearing.

Senior Deputy City Attorney Mark Vanni presented the October 6, 2021 memorandum submitted by the City Attorney's Office, outlining the facts of the matter and the requirements of the attorney-client privilege.

At Board Member Louis Silver's request, Senior Deputy City Attorney Mark Vanni read the request aloud, verbatim and noted the Rules and Open Government Committee request that staff provide a privilege log (Attachment B).

Chair Adrian Gonzales noted that the appellant filed the complaint appealing the decision of the Rules and Open Government Committee using the power vested in the City Ordinance Code under Title 12 § 12.21.430 and stated that the ordinance code does not delineate any exceptions where or why the Board would not participate in the appeal process and questioned where certain authority comes accessing privileged communications. Open Government Manager Jessica Lowry responded that each department has records coordinators, each with their own internal process responsible for pulling their own records. Sr. Deputy City Attorney Mark Vanni clarified that transmitting the information for the purpose of determining whether a record is privileged doesn't necessarily break the client privilege. He also noted that city staff, under the city policy and Sunshine Resolution, lays out what the Open Government Manager, records coordinators as well as role of the City Attorney's Offices is in determining what records should and should not be disclosed.

Ramona Giwargis from San José Spotlight presented their case and asked the Board for direction and input regarding the denial of the public records and the records review process, explaining that a blanket denial was initially issued by City staff, citing attorney-client privilege. San Jose Spotlight then appealed to Rules and Open Government Committee which directed staff to conduct another review of communications and to produce a privilege log disclosing the names of the sender's, receivers, dates and times for the emails. This prompted San José Spotlight to elevate the request to the Board. Josh Barousse from San José Spotlight asked the Board to conduct an independent review of their request, including potentially involving Hanson Bridgett who is the retained independent evaluator.

Board Member Louis Silver questioned if the appellant asked to narrow the scope of the request, to which they replied in the affirmative. Board Member Joe Lopez asked about the general advice and legal advice presented to the appellant by the City Attorney's Office. Ramona Giwargis did a screen share of an email reply she received from City Attorney Nora Freeman, which stated she did not provide any advice to Solutions San José.

Chair Adrian opened the floor for public comment.

Public Comment: Scott Largent commented on the accessibility of the Board meeting and expressed appreciation to what San José Spotlight is doing.

Discussion: A discussion by the Board ensued. Sr. Deputy City Attorney Mark Vanni clarified the Hanson Bridgett is retained as evaluator for campaign finance complaints. He reiterated that the recommendation is to either deny the appeal or refer to the City Council. Chair Adrian Gonzales stated that there is no past experience that can be referred to. He also noted that this may be an opportunity to change policies and procedures concerning the Board.

Action: Upon motion by Board Member Joe Lopez, seconded by Board Member Louis Silver, it was decided to defer the matter until Hanson Bridgett gives the Board policy advice whether it's within the confines of the Board's powers. (4-0-1. Absent: Damma).

Action: Upon motion by Board Member Joe Lopez, seconded by Board Member Louis Silver, the Board determined to continue the hearing to the next meeting. (4-0-1. Absent: Damma).

IV. Public Record – None

V. Consent Calendar

Action: Upon motion by Board Member Louis Silver, seconded by Vice Chair Isabella Nyakundi, and carried unanimously, the Board approved the Minutes of the September 8, 2021 Regular Meeting. (4-0-1. Absent: Damma).

VI. Reports

A. Chair - None

B. City Attorney – Sr. Deputy City Attorney noted that the campaign finance contribution limit for the 2022 elections was \$700 for City Council Offices and \$1,400 for the Mayor's Office. He also stated that election fundraising will begin December 10, 2021 and will continue until the end of the elections.

C. City Clerk – City Clerk Toni Taber stated that Office of the City Clerk's website has updated the elections page. At this time, the Office of the City Clerk is also waiting for the cost estimates for candidate statements.

D. Investigator/Evaluator - None

VII. Old Business

A. Discussion and possible action on report from Ad Hoc Committee for Complaint Intake Process. (Chair Adrian Gonzales/City Attorney)

Discussion: Sr. Deputy City Attorney Mark Vanni stated that this might be the opportunity to update the resolution and regulations governing the board and for the

complaint intake process to be improved. Vice Chair Nyakundi concurred and opined that it would show the Board's authority as not just a rubberstamp. Sr. Deputy City Attorney clarified that the Board does have authority to levy fines, make statements on complaints related to campaign finance allegations of misconduct or failure to report something. Chair Adrian Gonzales stated that he would discontinue this Ad Hoc and incorporate it to the Annual Review as a subitem.

- B. Discussion and possible action on biennial review of San Jose Municipal Code Title 12, City Council Resolution 78390 and other administrative policies.

Suggested Revisions to the SJMC Title 12 and Resolution 78390 (City Clerk)

Discussion: Chair Adrian Gonzales noted to include the matrix and incorporate the complaint intake process link from the old report as well as feedback from Hanson Bridgett related to handling and managing complaints.

- C. Discussion of City Council Referral from July 28, 2020: proposed campaign finance and conflict of interest reforms, board and commission reforms, and lobbyist and contractor restrictions (Ad Hoc Status Update Report; Status update on the [audit](#) being conducted by [Hanson Bridgett](#)). (Chair Adrian Gonzales/City Attorney)

Discussion: Chair Adrian Gonzales noted he will look at Hanson Bridgett's report and will put together a summary assessment.

- D. Status update on ongoing work from the Campaign Finance Study Session from April 20, 2021. (City Clerk/City Attorney)

Discussion: Sr. Deputy City Attorney Mark Vanni noted the work is still in progress with a November 2021 target to put in the agenda. He recapped the recommendations and noted that one is to mirror the DISCLOSE Act.

Public Comment: Blair Beekman commented on the city charter process and how the timing of the mayoral election with the presidential election would bring in new money.

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

Discussion: Sr. Deputy City Attorney Mark Vanni noted that the Charter Review Commission would move forward with recommending to Council to have the mayoral election in the same cycle as the presidential election. If approved, it would then be part of a ballot measure.

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

Discussion: Chair Adrian Gonzales noted that he met with Code for San José staff and they're working on updating the website for the next election cycle. The Chair also received some questions which he would forward to Sr. Deputy City Attorney

Mark Vanni, City Clerk Toni Taber and Assistant City Clerk Joy Rodriguez for technical input.

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

No discussion.

VIII. New Business

IX. Public Comment

Blair Beekman commented on the future of the election process and accountability issues.

Krista Dela Torre expressed support to ban corporate special interests from donating or fundraising for candidates and to support the proposal to bring back an ordinance prohibiting foreign influence corporations from contributing to independent expenditure committees.

X. Meeting Schedule and Agenda Items

The next regular meeting is scheduled for November 10, 2021 at 5:30 p.m. via remote teleconferencing.

XI. Adjournment

Upon motion by Board Member Joe Lopez, seconded by Louis Silver and carried unanimously, the Board approved to adjourn at 7:12 p.m. (3-0-2. Absent Damma and Nyakundi).

ADRIAN GONZALES, CHAIR

ATTEST:

BOARD OF FAIR CAMPAIGN POLITICAL PRACTICES SECRETARY

TONI J. TABER, CMC
CITY CLERK