

SPECIAL MEETING MINUTES

March 25, 2015

I. Call to Order & Orders of the Day

Roll Call

PRESENT: Chair Michael Smith, Vice Chair Rolanda Pierre Dixon and Commissioner Madhavee Vemulapalli.

ABSENT: Commissioner Chris Peacock (Unable to attend due to scheduling conflict).

STAFF: Deputy City Attorney Arlene Silva, Investigator/Evaluator Steven Miller and Deputy City Clerk Ruth Krantz.

OTHER: Nina Pavone, Court Reporter with Advantage Reporting Service.

Call to Order

The members of the San José Ethics Commission convened at 5:33 p.m. in Room W-262 of City Hall, 200 E. Santa Clara Street, CA 95113.

Orders of the Day

Action: Upon motion by Vice Chair Rolanda Pierre Dixon, seconded by Commissioner Madhavee Vemulapalli and carried unanimously, the Commission approved the adoption of the March 2, 2015 agenda. (3-0-1. Absent: Peacock.)

II. Closed Session - None

III. Hearings

- A. Continuation of hearing on Complaint filed by Bui Dinh against Supervisor Dave Cortese filed October 14, 2014 and subsequently amended to include Councilmember Tam Nguyen, alleging violations of Title 12 of the San Jose Municipal Code. (Independent Investigator/Evaluator)

Document Filed: Second supplemental report from Hanson Bridgett LLP dated March 18, 2015 regarding Bui Dinh against Dave Cortese and Dave Cortese for Mayor 2014 Committee and Tam Nguyen, addressing the alleged violation of Title 12.06.910 of the San José Municipal Code – Coordination and Failure to Report Expenditure Made at Behest of Candidate, and providing a sworn statement from The-Vu Nguyen.

Discussion: Chair Michael Smith summarized the hearing procedures. He opened the public hearing and indicated that the newest member of the Commission, Madhavee Vemulapalli, having read previous reports and correspondence and having reviewed transcripts of previous sessions of this hearing, was adequately versed and eligible to vote on this matter. All members of the Commission were present except for Commissioner Chris Peacock. At the Ethics Commission hearing on March 2, 2015 this hearing was continued to allow the Investigator/Evaluator to obtain a sworn written statement from The-Vu Nguyen, a witness mentioned in earlier reports.

Complainant Bui Dinh was present, but provided no testimony. The respondent was not present for this hearing.

Hanson Bridgett LLP Investigator/Evaluator Steven Miller indicated that the sworn written statement from The-Vu Nguyen had been provided and that it did not alter fundamental conclusions regarding coordination expressed in earlier reports.

The Commission deliberated. (A full transcript of the hearing is attached)

Motion: Chair Michael Smith moved that the Commission finds, based upon a preponderance of the evidence presented, a violation of San Jose Municipal Code Section 12.06.910 has occurred in the case of Dave Cortese. Vice Chair Rolanda Pierre Dixon seconded the motion.

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 Councilmember Dave Cortese. (3-0-1. Absent: Peacock.)

Each Commissioner certified that he or she personally heard or read the testimony at the hearing and reviewed all the evidence in the record.

Chair Smith	So certified
Vice Chair Pierre Dixon	So certified
Commissioner Vemulapalli	So certified
Commissioner Peacock	Absent

Motion: Chair Michael Smith moved that, due to sufficient mitigating circumstances, no penalties be imposed and the file in this matter be closed without further action. Vice Chair Rolanda Pierre Dixon seconded the motion.

Action: On a call for the question, the motion carried. (3-0-1. Absent: Peacock.)

Each Commissioner certified that he or she personally heard or read the testimony at the hearing and reviewed all the evidence in the record.

Chair Smith	So certified
Vice Chair Pierre Dixon	So certified
Commissioner Vemulapalli	So certified
Commissioner Peacock	Absent

Action: Upon a motion by Vice Chair Rolanda Pierre Dixon , seconded by Commissioner Madhavee Vemulapalli and carried, the Commission moved to direct the City Attorney to draft a Resolution on the Commission’s Findings, and further, that the Commission authorizes the Chair to approve and sign the resolution. (3-0-1. Absent: Peacock.)

- B. Complaint filed on February 18, 2015 by Bui Dinh against Manh Nguyen and Manh Nguyen for San José Council D4 2015 Committee alleging violations of Title 12 of the San Jose Municipal Code. (Independent Investigator/Evaluator)

Document Filed: Report from Hanson Bridgett LLP dated March 18, 2015 regarding Violation of Title 12.06.1010 of the San José Municipal Code – Disclosure of Electioneering Communications.

Discussion: Chair Michael Smith summarized the hearing procedures and opened the public hearing. All members of the Commission but Commissioner Chris Peacock were present.

Investigator/Evaluator Steven Miller presented the report, indicating that the disclaimer presented on the Respondent’s lawn signs did not include the information required by Title 12, resulting in a violation of the Municipal Code; however, upon notification of the Complaint, the Respondent took prompt action to remedy any violation.

Chair Michael Smith swore in the Respondent’s representative, Campaign Manager Peter Allen. Mr. Allen indicated that corrective action is being taken, with stickers purchased and being affixed to lawn signs not in compliance. Mr. Allen recommended to the Commission that either the rules be changed or electioneers be better educated on this part of the Municipal Code.

The Complainant, Bui Dinh, was present but did not make a statement.

The Commission deliberated. (A full transcript of the hearing is attached)

Motion: Vice Chair Rolanda Pierre Dixon moved that, due to a preponderance of evidence, a violation has occurred. Chair Michael Smith seconded the motion.

Action: On a call for the question, the motion carried. (3-0-1. Absent: Peacock.)

Each Commissioner certified that he or she personally heard the testimony at the hearing and reviewed all the evidence in the record.

Chair Smith	So certified
Vice Chair Pierre Dixon	So certified
Commissioner Vemulapalli	So certified
Commissioner Peacock	Absent

Motion: Vice Chair Rolanda Pierre Dixon moved that due to sufficient mitigating circumstances, no penalties be imposed and the file in this matter be closed without further action. The motion was seconded by Chair Michael Smith.

Action: On a call for the question, the motion carried. (3-0-1. Absent: Peacock.)

Each Commissioner certified that he or she personally heard the testimony at the hearing and reviewed all the evidence in the record.

Chair Smith	So certified
Vice Chair Pierre Dixon	So certified
Commissioner Vemulapalli	So certified
Commissioner Peacock	Absent

Action: Upon a motion by Chair Michael Smith, seconded by Vice Chair Rolanda Pierre Dixon and carried, the Commission moved to direct the City Attorney to draft a Resolution on the Commission's Findings, and further, that the Commission authorizes the Chair to approve and sign the resolution. (3-0-1. Absent: Peacock.)

- C. Complaint filed on February 23, 2015 by Bui Dinh against Manh Nguyen, Candidate for San José Council D4 and Vietnam Liberty News Committee alleging violations of Title 12 of the San Jose Municipal Code. (Independent Investigator/Evaluator)

Document Filed: Report from Hanson Bridgett LLP dated March 18, 2015 regarding Violation of Title 12.06.1010 of the San José Municipal Code – Disclosure of Electioneering Communications.

Discussion: Chair Michael Smith summarized the hearing procedures and opened the public hearing. All members of the Commission but Commissioner Chris Peacock were present.

Investigator/Evaluator Steven Miller presented the report and indicated that by failing to include a disclaimer on a broadcast on his radio station and in a reprint in his newspaper, the sole owner of the news media outlets, the Respondent Manh Nguyen violated the Municipal Code.

Chair Michael Smith swore in the Respondent's representative, Campaign Manager Peter Allen. Mr. Allen accepted the findings of the report, indicating that Vietnam Liberty News has subsequently included a disclaimer for all news articles related to the District 4 race. He added that this particular section of the Code should be reviewed to allow for clarity and for freedom of the press.

The Complainant, Bui Dinh, was present but did not make a statement.

The Commission deliberated. (A full transcript of the hearing is attached)

Motion: Vice Chair Rolanda Pierre Dixon moved that, due to a preponderance of evidence, a violation has occurred. Commissioner Madhavee Vemulapalli seconded the motion.

Action: On a call for the question, the motion carried. (3-0-1. Absent: Peacock.)

Each Commissioner certified that he or she personally heard the testimony at the hearing and reviewed all the evidence in the record.

Chair Smith	So certified
Vice Chair Pierre Dixon	So certified
Commissioner Vemulapalli	So certified
Commissioner Peacock	Absent

Motion: Vice Chair Rolanda Pierre Dixon moved that due to sufficient mitigating circumstances, no penalties be imposed, no further action taken and the file closed. Chair Michael Smith seconded the motion.

Action: On a call for the question, the motion carried. (3-0-1. Absent: Peacock.)

Each Commissioner certified that he or she personally heard the testimony at the hearing and reviewed all the evidence in the record.

Chair Smith	So certified
Vice Chair Pierre Dixon	So certified
Commissioner Vemulapalli	So certified
Commissioner Peacock	Absent

Action: Upon a motion by Chair Michael Smith, seconded by Vice Chair Rolanda Pierre Dixon and carried, the Commission moved to direct the City Attorney to draft a Resolution on the Commission's Findings, and further, that the Commission authorizes the Chair to approve and sign the resolution. (3-0-1; Absent: Peacock.)

- D. Complaint filed by Karin Cogbill on March 2, 2015, alleging violations of San José Municipal Code by Manh Nguyen for San José Council D4 2015 (Independent Investigator/Evaluator)

Document Filed: Report from Hanson Bridgett LLP dated March 18, 2015 regarding Violation of Title 12.06.510.A of the San José Municipal Code – Participation in Voluntary Campaign Expenditure Limits Program.

Discussion: Chair Michael Smith summarized the hearing procedures and opened the public hearing. All members of the Commission but Commissioner Peacock were present.

Investigator/Evaluator Steven Miller presented the report, indicating that by accepting contributions before filing the required Form 500, the Respondent violated the Municipal Code.

Chair Michael Smith swore in the Respondent's representative, Campaign Manager Peter Allen. Mr. Allen alleged that the Respondent was misinformed regarding requirements to file a Form 500 by the Office of the City Clerk.

The Complainant, Karin Cogbill was not present, but the candidate she filed on behalf of, Lan Diep, was present.

Chair Michael Smith swore in Lan Diep. Mr. Diep indicated he felt it was disingenuous that Manh Nguyen would rely solely on the City Clerk's recommendation regarding the Form 500.

The Commission discussed the issues of information provided to the Respondent and concluded that further investigation is necessary to examine the role of the Clerk's Office in this allegation.

Investigator/Evaluator Steven Miller opined that confusion of the law does not excuse noncompliance with the law.

Motion: Vice Chair Rolanda Pierre Dixon moved that, due to a lack of information regarding the City Clerk's role in this issue, further investigation be initiated to evaluate the interactions between the candidate and the City Clerk's office. Commissioner Madhavee Vemulapalli seconded the motion.

Action: On a call for the question, the motion carried, with the hearing suspended to a future meeting whereby the Evaluator/Investigator may provide a report as requested by the Commission. (3-0-1. Absent: Peacock.)

- E. Complaint filed by Daniel Bogert on March 4, 2015 against Lan Diep for San José City Council D4 (Independent Investigator/Evaluator)

Document Filed: Report from Hanson Bridgett LLP dated March 18, 2015 regarding Violation of Title 12.06.510.A of the San José Municipal Code – Electioneering Communications Violation.

Discussion: Chair Michael Smith summarized the hearing procedures and opened the public hearing. All members of the Commission but Commissioner Chris Peacock were present.

Investigator/Evaluator Steven Miller presented the report, which concluded that the disclaimer on the Respondent's lawn sign did not include the information required by Title 12.

The Complainant, Daniel Bogert, was not present.

Chair Michael Smith swore in the Respondent, Lan Diep. Mr. Diep indicated that someone from the City Clerk's Office advised him that a P.O. Box would be sufficient on his signs

as he was not comfortable using his home address. He asked that the Commission consider the public safety issue of having to use a physical street address when it is their personal residence, and that it heightens the burden of the requirements to run for office.

Chair Michael Smith indicated that the Commission can not change requirements on it's own but can offer recommendations to the Council.

Chair Michael Smith swore in Duc Lam. Mr. Lam provided further information regarding the placement of the P.O. Box number on lawn signs and reiterated the Respondent's concern with safety.

The Commission deliberated. (A full transcript of the hearing is attached)

Motion: Commissioner Madhavee Vemulapalli moved that, due to a preponderance of evidence, a violation has occurred. Vice Chair Rolanda Pierre Dixon seconded the motion.

Action: On a call for the question, the motion carried. (3-0-1. Absent: Peacock.)

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

Chair Smith	So certified
Vice Chair Pierre Dixon	So certified
Commissioner Vemulapalli	So certified
Commissioner Peacock	Absent

Motion: Chair Michael Smith moved that due to sufficient mitigating circumstances, no penalties be imposed, and that the Respondent make a best effort to modify existing and future electioneering communications including lawn signs by April 8, 2015 and communicate completion to the Clerk's Office. Vice Chair Rolanda Pierre Dixon seconded the motion.

Action: On a call for the question, the motion carried. (3-0-1. Absent: Peacock.)

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

Chair Smith	So certified
Vice Chair Pierre Dixon	So certified
Commissioner Vemulapalli	So certified
Commissioner Peacock	Absent

Action: Upon a motion by Chair Michael Smith, seconded by Vice Chair Rolanda Pierre Dixon and carried, the Commission moved to direct the City Attorney to draft a Resolution on the Commission's Findings, and further, that the Commission authorizes the Chair to approve and sign the resolution. (3-0-1; Absent: Peacock.)

IV. Consent Calendar – None.

V. Reports – None.

VI. Old Business – None.

VII. New Business – None.

VIII. Public Comment

Former Chair of a predecessor to the Ethics Commission, Terry Reilly, indicated that he will look forward to discussing the outreach to ethnic and specialized media regarding campaign and ethics regulations and policies during the next regularly scheduled meeting of the Commission.

IX. Future Agenda Items and Adjournment

A specially scheduled meeting of the Ethics Commission will be arranged, with future agenda items to include:

- Ethics Commission ad hoc Subcommittee update
- Approval of Meeting Minutes
- Review RFQ's received for Evaluator/Investigator
- Open Government training
- Prioritization of concerns regarding campaign and ethics regulations and policies (May 2015 meeting)
- Preparation of Annual Report and Work Plan (May 2015 meeting)

The meeting was adjourned at 8:05 p.m.



MICHAEL SMITH, CHAIR

ATTEST:
ETHICS COMMISSION SECRETARY



TONI J. TABER, CMC
CITY CLERK

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

Taken On March 25, 2015

CITY OF SAN JOSE ETHICS COMMISSION

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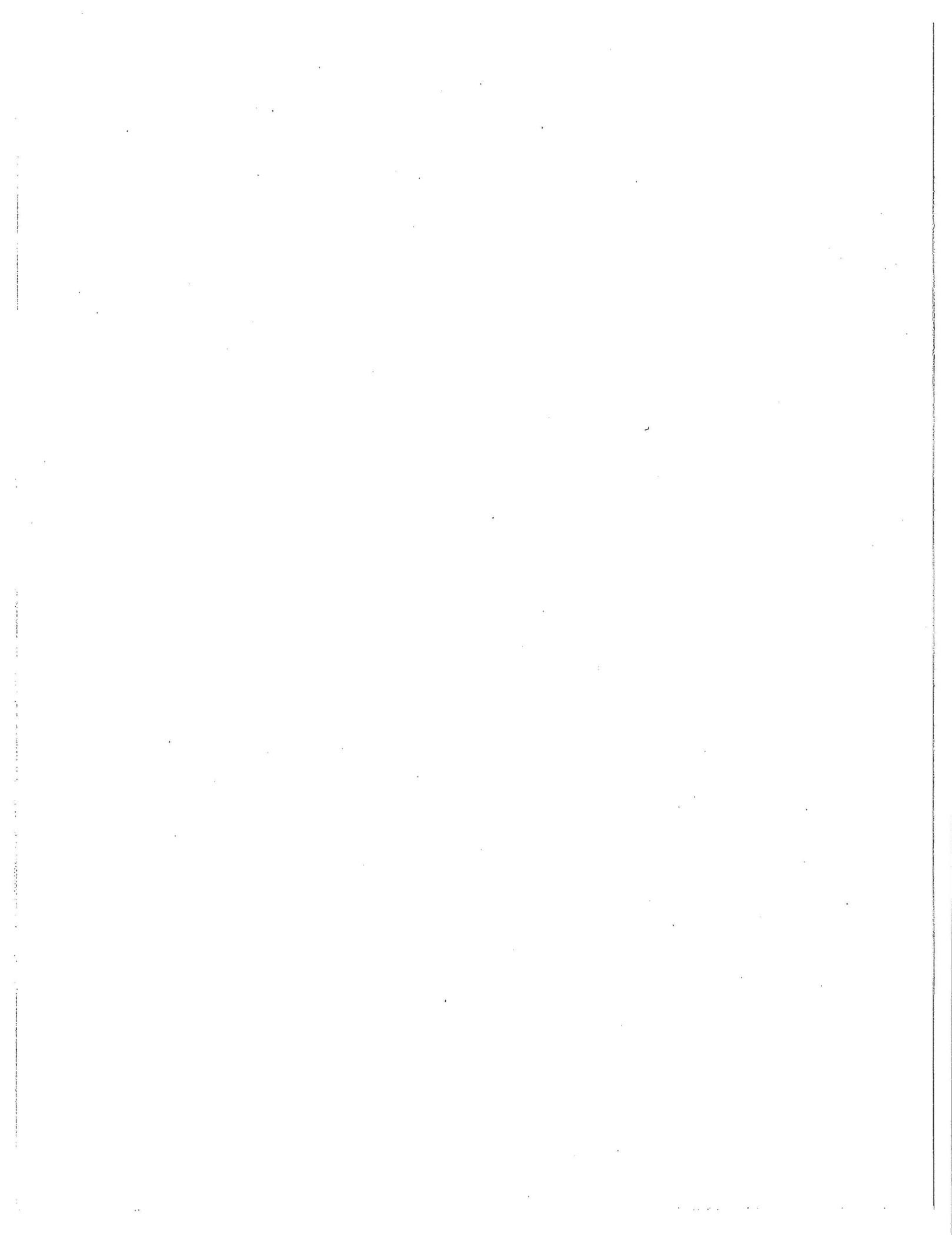
CONDENSED TRANSCRIPT

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

<p style="text-align: center;">CITY OF SAN JOSE ETHICS COMMISSION</p> <p style="text-align: center;">REPORTER'S TRANSCRIPT OF PROCEEDINGS</p> <p>Date: Wednesday, March 25, 2015 Time: 5:34 p.m. Location: San Jose City Hall 200 E. Santa Clara Street City Hall Wing - Room W262 San Jose, CA 95113</p> <p>Reported By: Noella Espinola, CSR License Number #8060</p> <p>#49487</p>	<p style="text-align: center;">Page 3</p> <p style="text-align: center;">P R O C E E D I N G S</p> <p>1</p> <p>2</p> <p>3 CHAIRMAN SMITH: The first one we're going to</p> <p>4 do is the continuation of the hearing from last time.</p> <p>5 So it is Wednesday, March 25th, 2015, and</p> <p>6 this hearing of the San Jose Ethics Commission is being</p> <p>7 held in Room W262 of San Jose City Hall. All members</p> <p>8 of the commission are present except Chris Peacock.</p> <p>9 Per procedure, new member Madhavee Vemulapalli is</p> <p>10 permitted to vote on commission decisions because she</p> <p>11 has reviewed the testimony at previous sessions of this</p> <p>12 hearing and has reviewed all the evidence in the</p> <p>13 record.</p> <p>14 And I have to say I really appreciate the</p> <p>15 effort you put into getting up to speed, because</p> <p>16 there's only three of us tonight and it takes three to</p> <p>17 make a decision. So it's much appreciated.</p> <p>18 The Commission will conduct a third</p> <p>19 continuation of a hearing on a complaint filed with the</p> <p>20 City Clerk on October 14th, 2014, by Bui Dinh alleging</p> <p>21 that Dave Cortese and the Dave Cortese for Mayor 2014</p> <p>22 Committee violated Section 12.06.910 of the San Jose</p> <p>23 Municipal Code. Specifically, the allegation was that</p> <p>24 the respondent failed to report as contributions</p> <p>25 certain expenditures allegedly made at the behest of</p>
<p style="text-align: center;">Page 2</p> <p>1</p> <p>2 style="text-align: center;">A P P E A R A N C E S</p> <p>3</p> <p>4 San Jose Elections MICHAEL SMITH, Chair Commission: ROLANDA PIERRE-DIXON, Vice-Chair MADHAVEE VEMULAPALLI</p> <p>5</p> <p>6</p> <p>7 Staff: ARLENE F. SILVA Deputy City Attorney</p> <p>8</p> <p>9 Ruth Krantz Deputy City Clerk</p> <p>10</p> <p>11 Independent HANSON BRIDGETT, LLP Evaluator: BY: STEVEN D. MILLER, Attorney at Law 425 Market Street 26th Floor San Francisco, CA 94105 (415) 777-3200</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16 The Reporter: ADVANTAGE REPORTING SERVICES BY: NOELIA ESPINOLA, CSR #8060 1083 Lincoln Avenue San Jose, CA 95125 (408) 920-0222</p> <p>17</p> <p>18</p> <p>19</p> <p>20 --o0o--</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: center;">Page 4</p> <p>1 the candidate.</p> <p>2 I'm going to go through this litany of where</p> <p>3 we've been on the previous hearing, just to properly</p> <p>4 set the stage so we can remember where we're at.</p> <p>5 The City Clerk notified and provided a copy</p> <p>6 of the complaint to the Independent Evaluator on</p> <p>7 October 14, 2014, and the Evaluator notified and</p> <p>8 provided a copy to the respondent on October 15, 2014.</p> <p>9 The Independent Evaluator's Report and Recommendations</p> <p>10 were submitted to the City Clerk on December 3rd, 2014,</p> <p>11 and copies were then provided to the complainant, the</p> <p>12 original respondent and commission members and posted</p> <p>13 at the city web site with the agenda for a hearing held</p> <p>14 on December 10th, 2014.</p> <p>15 At that hearing the Commission directed that</p> <p>16 the complaint be amended to include Tam Nguyen as an</p> <p>17 additional respondent and directed the Evaluator to</p> <p>18 conduct further investigation. The Evaluator</p> <p>19 subsequently notified and provided a copy of the</p> <p>20 complaint to the additional respondent on December 12,</p> <p>21 2014.</p> <p>22 The Independent Evaluator's Supplemental</p> <p>23 Report and Recommendations were submitted to the City</p> <p>24 Clerk on February 2nd, 2015, and copies were then</p> <p>25 provided to the complainant and the respondent -- the</p>

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1 respondents and commission members and posted to the
2 city web site with the agenda for a continuation of the
3 hearing on February 9th, 2015. At that time, however,
4 the Commission deferred the continuation of the hearing
5 until March 2nd, 2015, because the Evaluator's
6 Supplemental Report had not been delivered to the
7 respondent three business days in advance of the
8 hearing, as required by procedure.

9 At the continuation of the hearing on
10 March 2nd, 2015, the Commission found that a violation
11 had occurred in the case of Tam Nguyen but directed the
12 Evaluator to conduct further investigation regarding
13 Dave Cortese and the Dave Cortese for Mayor 2014
14 Committee.

15 The Independent Evaluator's second
16 Supplemental Report was submitted to the City Clerk on
17 March 18, 2015, and copies were then provided to the
18 complainant, the respondent and commission members and
19 posted to the city web site with the agenda for
20 tonight's hearing. And that's where we're at right
21 now.

22 I'll go through this one -- some of this
23 boilerplate stuff. I'm going to go through it one
24 time. We've got five hearings. I'm not going to do it
25 five times. But just to set the stage for everything

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1 or their representatives identify themselves for the
2 record.

3 Is there anyone for -- not for this bunch.

4 Okay.

5 And, again, I'm going to do this one time
6 only. If city staff and representatives of Hanson
7 Bridgett, the Commission's Independent Evaluator, would
8 please identify themselves for the record.

9 MR. MILLER: Steven Miller from Hanson
10 Bridgett.

11 MS. SILVA: Arlene Silva, Deputy City
12 Attorney.

13 MS. KRANTZ: Ruth Krantz, Deputy City Clerk.

14 CHAIRMAN SMITH: Thank you.

15 Under the Commission's regulations and
16 procedures, the respondent may submit a written
17 response to the Report and Recommendations. The
18 response may contain legal argument, summary of
19 evidence and any mitigating or exculpatory information.

20 As of now, the only response we've received
21 was the -- I guess it's an e-mail from Dave Cortese on
22 February 9th. And there's been nothing new since then
23 that I'm aware of. Is that right, since the last
24 meeting?

25 Okay. I guess the clerk's office would know

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1 that is to occur.

2 On April 15, 2014, the City Council adopted
3 Resolution 76954, which establishes the Commission's
4 regulations and procedures pertaining to investigations
5 and hearings. All parties to these proceedings have
6 been provided copies of the Resolution. The
7 regulations and procedures have been adopted in order
8 to ensure the fair, just and timely resolution of
9 complaints before the Commission.

10 This hearing is open to the public. It is
11 being electronically recorded, and we have a court
12 reporter with us to compile a transcript.

13 The formal rules of evidence do not apply to
14 this hearing, but all testimony will be under oath or
15 affirmation. The complainant will be treated like any
16 other witness in providing evidence. The Chair may
17 compel the testimony of witnesses and may compel the
18 production of relevant documents to the Evaluator by
19 subpoena. Witnesses may be excluded at the discretion
20 of the Commission. Commission members may ask
21 questions of witnesses or the Evaluator when recognized
22 by the Chair.

23 At this time I would like to have the
24 complainant, Bul Dinh, and the remaining respondent,
25 Dave Cortese and Dave Cortese for Mayor 2014 Committee,

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1 if there was.

2 COMMISSIONER VEMULAPALLI: There was one
3 March 2nd --

4 CHAIRMAN SMITH: Oh, maybe I got the date
5 wrong.

6 COMMISSIONER VEMULAPALLI: March 2nd.

7 CHAIRMAN SMITH: You're right. Okay. Yeah,
8 I didn't update it. You're right.

9 Yeah, there was a response from Dave Cortese
10 on February 9th which asked for a continuation. And
11 that's why we continued, because he didn't have enough
12 time. And then he subsequently submitted a second -- a
13 memo on March 2nd, which was the date of the last
14 hearing. Okay. Correct that.

15 Okay. And the complainant or any other
16 interested person may also submit a brief or written
17 argument.

18 And, as I understand it, we have received
19 nothing from anyone.

20 MS. KRANTZ: We have not.

21 CHAIRMAN SMITH: Okay. Let's make a note
22 here.

23 Okay. So turn it over to our Independent
24 Evaluator, Steve Miller. If you would --

25 MR. MILLER: Good evening. I will be brief.

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1 At your direction, we have secured for you a
2 sworn witness statement from a witness that was of
3 particular interest to commissioners at the last two
4 hearings on this matter. And that's attached to this
5 report.

6 I do feel compelled to say one thing -- and
7 that's the only thing I'll say -- which is that from a
8 legal perspective, the sworn statement that now you
9 have before you does not alter any of our conclusions.
10 And I want to explain why.

11 And I think the easiest way I can explain it
12 is through a hypothetical situation. If I am a
13 candidate and you, Chairman Smith, say to me, "I would
14 like to have a campaign rally for you next Saturday.
15 Would you attend and speak to the crowd?" and I say,
16 "Yes, I will be there" and then there is a campaign
17 rally and I do attend and I speak to the crowd, I
18 believe the law is clear that the expenses associated
19 with that campaign rally are treated as contributions
20 made at the behest of the candidate, because the --
21 my -- I'm the hypothetical candidate -- my attendance
22 was arranged and the campaign rally was held in
23 consultation with me. And under the FPPC regulations
24 that is sufficient to consider coordination to have
25 happened such that expenditures associated with the

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1 event are contributions treated as -- are treated as
2 contributions made.

3 The facts here, I think, are essentially the
4 same with regards to the invitation to attend the
5 event. There is no dispute but that the event
6 organizers invited the candidate and he accepted, and
7 the event organizers understood him to have accepted
8 and he understood that they knew that he was coming.
9 The only difference between my hypothetical -- to me,
10 it is not at all a close call, a close question,
11 legally speaking, as to whether or not coordination
12 happened such that expenditures should be treated as
13 contributions at the behest.

14 What is a closer call is that in the
15 hypothetical I gave you, I described a campaign rally.
16 And here we have an event that, as we have now
17 explained to you a number of times, was blurred and
18 ambiguous as to the nature of the event. In my view,
19 our initial -- our first two reports describe to you
20 the reasons why we came down on the side of treating
21 that event as a campaign event with respect to
22 Supervisor Cortese, not as a "Get Out the Vote" event.

23 And there were three chief facts associated
24 with that conclusion, none of which are altered by the
25 new sworn statements. And those facts, as you recall,

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1 are that the campaign event promoters did not invite
2 Mayor Liccardo. And, in fact, on the video that we
3 have discussed and in the news reporting, it was
4 acknowledged that they told the crowd that they were
5 not inviting Mayor Liccardo. Second fact is that
6 Supervisor Cortese's signs were both at the sides of
7 the stage but also on the proscenium, where only the
8 campaign organizers would have put signs. And the
9 third fact was the introduction that you heard on the
10 video, where he was introduced to the crowd in English
11 as the next mayor of the City of San Jose.

12 And I admit it is a close call as to whether
13 that is sufficient to characterize what was otherwise a
14 "Get Out the Vote" event as a campaign event. But our
15 conclusions to that effect are not altered by this
16 sworn statement, which has to do with the interactions
17 prior to the event.

18 And that's really all I will say. I don't
19 want to rehash everything we have already told you, and
20 I'm sure you would be happy if I did not do that.

21 CHAIRMAN SMITH: Okay. Questions?

22 COMMISSIONER VEMULAPALLI: I have one
23 question.

24 MR. MILLER: Yes.

25 COMMISSIONER VEMULAPALLI: The county

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1 supervisor's -- actually, let's see his name. Mr. --
2 what is his -- how do you pronounce it?

3 MR. MILLER: The-Vu Nguyen.

4 COMMISSIONER VEMULAPALLI: His name is on the
5 pamphlet -- the organizers committee. His name is on
6 the pamphlet on the latest committee. I was looking at
7 that.

8 CHAIRMAN SMITH: I believe it was another
9 member -- it was a member of Supervisor Cortese's
10 campaign staff who was listed as an organizer, wasn't
11 it? I was looking at the report today.

12 COMMISSIONER PIERRE-DIXON: I'm not -- I
13 don't think it was him, no.

14 CHAIRMAN SMITH: I don't believe it was.

15 COMMISSIONER VEMULAPALLI: What are the -- I
16 know one name I recognized, Mr. Luu. His name is on
17 the pamphlet. But I thought that there was another
18 name also on that.

19 MR. MILLER: I have to confess that I do not
20 recall. If you are looking at the -- our initial
21 report --

22 COMMISSIONER VEMULAPALLI: Yes.

23 MR. MILLER: It sounds like you have the
24 answer to your question, and I would not presume to
25 disagree with you. But I just don't recall.

3 (Pages 9 to 12)

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1 COMMISSIONER VEMULAPALLI: I just want
2 something before they said --
3 CHAIRMAN SMITH: Is there anything in the
4 pamphlet that shows the placard or whatever it was that
5 had the members of the organizing committee listed? I
6 don't remember seeing that.
7 MR. MILLER: Yes.
8 CHAIRMAN SMITH: Is that an exhibit?
9 MR. MILLER: It was an exhibit to the
10 complaint that you dismissed, and that's why I don't
11 have it with me. Because, as you recall, the original
12 complaint -- there were two complaints. One against
13 the Cortese campaign and the other against the event
14 organizers. And I apologize. I probably should have
15 brought that one with me. But it sounds like --
16 COMMISSIONER VEMULAPALLI: I have it.
17 MR. MILLER: You have it there.
18 COMMISSIONER VEMULAPALLI: If somebody can
19 tell me --
20 CHAIRMAN SMITH: It needs to be translated.
21 MR. MILLER: We did provide translation.
22 CHAIRMAN SMITH: It does look -- is the
23 translation in the package?
24 MR. MILLER: We translated everything that
25 was there.

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1 CHAIRMAN SMITH: It certainly looks like
2 "The-Vu Nguyen" to me. Do you know where it is?
3 MR. MILLER: May I --
4 CHAIRMAN SMITH: If you wouldn't mind coming
5 over.
6 MR. MILLER: Do you mind if I -- this is --
7 yes, same name.
8 COMMISSIONER VEMULAPALLI: Okay. Thank you.
9 MR. MILLER: Yes, you're right.
10 CHAIRMAN SMITH: I don't remember that being
11 pointed out in the report.
12 MR. MILLER: I really confess that I do not
13 recall.
14 CHAIRMAN SMITH: That's interesting.
15 Okay. Any other questions?
16 MR. MILLER: Very good catch.
17 CHAIRMAN SMITH: Yes. I'm glad you got that
18 second report. It would have gone unnoticed.
19 Okay. I guess, if there is no further
20 discussion, it's time to consider -- well, no. Let's
21 see. Neither the respondent nor the complainant is
22 here, unless somebody has come in. So, basically,
23 it's -- we have no further questions for the Evaluator.
24 Then -- now it's time for the Commission to make a
25 decision.

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1 Go ahead. Yes.
2 MS. SILVA: Could you ask -- there are
3 several individuals that walked in after we started the
4 hearing, and so maybe they are here for the -- for this
5 item.
6 CHAIRMAN SMITH: Oh, okay. I thought I
7 asked.
8 Is anyone here for this first hearing that
9 we're doing on the complaint against Supervisor
10 Cortese?
11 Yes. Could you identify yourself, please.
12 MR. DINH: Yeah, but I come by myself. I --
13 no comment on that one.
14 MR. MILLER: I think that is the complainant.
15 MR. DINH: My name is Bui Dinh, the one that
16 the respondent.
17 CHAIRMAN SMITH: Thank you. So I guess we
18 should note that the complainant is here, but he has no
19 comment to offer.
20 Thank you.
21 Okay. The three options we have. We may
22 find that further investigation is necessary. If so,
23 we would direct the Evaluator to conduct further
24 investigation and report back. I'm sorry. I said
25 "three." I meant four options. The second is we may

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1 find that there is sufficient evidence to establish
2 that no violation has occurred. The third, we may find
3 that there is insufficient evidence to establish a
4 violation has occurred. And the fourth is we may find,
5 based on a preponderance of the evidence from the
6 entire record of the proceedings, that a violation has
7 occurred.
8 The third one is sort of a middle ground.
9 Basically, there's not enough evidence to say whether
10 there is or isn't, whereas the second one says there's
11 no violation and the fourth one says there is.
12 So I'll open the floor to Commission
13 discussion. We need to make a finding for each
14 respondent, for each potential violation.
15 Now, in this case, we've already made --
16 reached a resolution with regard to Council Member
17 Nguyen, so we don't need to do anything further on
18 that. Right now we're only looking at -- well,
19 actually, officially, it's two respondents. Supervisor
20 Cortese and his campaign committee were both identified
21 as respondents. And, basically, we need to make a
22 determination of whether there is or is not a
23 violation. And that can be done in separate motions or
24 in a single motion. But if there is any discussion --
25 COMMISSIONER PIERRE-DIXON: Well, having

4 (Pages 13 to 16)

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<p>1 looked through everything several times, I think we're 2 at a point here where, whether it was a "Get Out the 3 Vote" or whether it was something different, it's very 4 muddy. And it's hard to determine. But I think, 5 taking into consideration the knowledge of Supervisor 6 Cortese, having run -- I believe he told us nine 7 different elections in the past and then also having 8 spoken to his calendaring person, Mr. Nguyen, I think 9 there is enough here to feel that there has been a 10 violation.</p> <p>11 However, I think there are a lot of 12 mitigating circumstances. And what I'm coming down on 13 is the amount of money that was involved. As we 14 determined, there was a number of other candidates that 15 were up for office that were there. And if you tried 16 to figure out the math, I think it was somewhere less 17 than a hundred dollars that would have had to have been 18 reported.</p> <p>19 So my feeling at this point is that there are 20 mitigating circumstances. We do find a violation but 21 take no further action.</p> <p>22 CHAIRMAN SMITH: Which would be a separate 23 motion, I guess.</p> <p>24 COMMISSIONER PIERRE-DIXON: Right.</p> <p>25 CHAIRMAN SMITH: And I would have to -- I</p>	<p>1 It.</p> <p>2 CHAIRMAN SMITH: Okay. Any -- any further 3 discussion?</p> <p>4 COMMISSIONER PIERRE-DIXON: No.</p> <p>5 CHAIRMAN SMITH: All in favor?</p> <p>6 (All Commissioners responded Aye.)</p> <p>7 CHAIRMAN SMITH: Any opposed?</p> <p>8 (No response.)</p> <p>9 CHAIRMAN SMITH: Okay. So that's unanimous. 10 And upon certification of the motion -- I'm 11 sorry. Upon adoption of the motion, the Chair must ask 12 each Commission member to certify that they have heard 13 or read the testimony at the hearing and reviewed all 14 the evidence in the record by affirming "so certified."</p> <p>15 Commissioner Vemulapalli?</p> <p>16 COMMISSIONER VEMULAPALLI: I read all the 17 material.</p> <p>18 CHAIRMAN SMITH: Okay. Commissioner 19 Pierre-Dixon?</p> <p>20 COMMISSIONER PIERRE-DIXON: I so certify.</p> <p>21 CHAIRMAN SMITH: And me, Commissioner Smith, 22 so certified.</p> <p>23 Okay. If the Commission finds that a 24 violation has occurred, it must consider imposing 25 orders and/or penalties.</p>
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<p>1 agree with you completely.</p> <p>2 Do you have any comment?</p> <p>3 COMMISSIONER VEMULAPALLI: No, I agree with 4 you completely. Because I went through the material 5 again and again a few times, and I see definitely there 6 is a violation. There is not clear-cut, but definitely 7 I feel there is a violation, especially when the member 8 ran previous times. And they know the procedure.</p> <p>9 And also Mr. Nguyen, he was working for the 10 member for the past 11 years. So he -- in one of the 11 reports, it's mentioned that you felt that he is 12 knowledgeable enough and he knows the difference 13 between campaign and the non-campaign.</p> <p>14 So I will vote with that. I definitely see 15 there is a violation.</p> <p>16 CHAIRMAN SMITH: Okay. So, basically, we 17 just need a motion. This will be regarding -- I'll 18 make the motion. The motion would be -- let me just 19 get it from here and make sure we get everything we 20 need to get. I move that the Ethics Commission find 21 that based on a preponderance of the evidence 22 presented, that a violation of San Jose Municipal Code 23 Section 12.06.910 has occurred.</p> <p>24 And if someone would like to second it.</p> <p>25 COMMISSIONER PIERRE-DIXON: I would second</p>	<p>1 And, again, we have options. We can find 2 mitigating circumstances and take no further action, we 3 can issue a public statement of reprimand, we can 4 require corrective action by a particular deadline 5 and/or we can impose a civil penalty in accordance with 6 Chapter 12.04 of the San Jose Municipal Code.</p> <p>7 I don't need -- and affirmative votes of at 8 least three commission members are required to impose 9 any order or penalty for a violation.</p> <p>10 Now, in this case I think we -- Council 11 Member Nguyen, we found a violation. We determined to 12 take no further action and close the file because of 13 mitigating factors. But in some discussions after the 14 meeting it kind of came up that we probably rushed just 15 a little and weren't really specific in the motion as 16 to what those mitigating factors are. So I think it 17 would be -- what's the word I want? I think we should 18 try to be a little more specific this time.</p> <p>19 The specific circumstances that could be 20 considered as mitigating factors would be the 21 following. There is seven of them. The severity of 22 the violation; the presence or absence of any intention 23 to conceal, deceive or mislead; whether the violation 24 was deliberate, negligent or inadvertent; whether the 25 violation was an isolated incident or pervasive enough</p>

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<p>1 to indicate a pattern of disregard for this Chapter; 2 whether the respondent has a prior record of violations 3 of city law in relation to campaign finance, lobbying, 4 conflicts of interest or governmental ethics; the 5 degree to which the respondent cooperated with the 6 investigation; and whether or not corrective actions 7 were taken, if appropriate, in accordance with the 8 provisions of this Chapter. 9 My own feeling, I think the first six of the 10 seven apply. I don't -- there were no corrective 11 actions taken. In fact, Supervisor Cortese was here 12 last time and insisted that there was no violation. So 13 he has done nothing. 14 I guess I will offer a motion. I move that 15 the Ethics Commission find mitigating circumstances and 16 the file in this matter be closed without further 17 action. And those mitigating factors would include 18 severity of the violation; the absence of intention to 19 conceal, deceive or mislead. The fact that the 20 violation was probably inadvertent is probably the 21 best -- whether the -- it was -- appeared to be an 22 isolated incident. The respondent has no prior record 23 of violations of any city laws, as he pointed out when 24 he was here during this meeting. 25 And I'll leave it at that.</p>	<p>1 shall issue a decision by resolution. At this time I 2 would entertain a motion directing the city attorney to 3 draft a resolution of the Commission's findings -- and 4 that would be the finding both tonight and at the last 5 session -- and authorizing the Chair to approve and 6 sign the resolution. 7 So somebody would like to say "so moved"? 8 COMMISSIONER PIERRE-DIXON: So moved. 9 CHAIRMAN SMITH: Thank you. 10 And second? 11 COMMISSIONER VEMULAPALLI: Second. 12 CHAIRMAN SMITH: Thank you. 13 Okay. Any discussion? 14 All in favor? 15 (All Commissioners responded Aye.) 16 CHAIRMAN SMITH: Any opposed? 17 (No response.) 18 CHAIRMAN SMITH: Okay. So it's unanimous 19 again. 20 So this hearing is closed. 21 Now we move on to the next hearing. And 22 this -- okay. And I will briefly go over some of the 23 preliminary materials. 24 Again, it is Wednesday, March 25th, 2015, and 25 this hearing of the City of San Jose Ethics Commission</p>
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<p>1 COMMISSIONER PIERRE-DIXON: Okay. 2 CHAIRMAN SMITH: So do we have a second? 3 COMMISSIONER PIERRE-DIXON: I would second 4 that. 5 CHAIRMAN SMITH: Any discussion? 6 No. Okay. So all in favor? 7 (All Commissioners responded Aye.) 8 CHAIRMAN SMITH: Any opposed? 9 (No response.) 10 CHAIRMAN SMITH: Okay. It passes 11 unanimously. Thank you. 12 And then last -- oh, we need a certification 13 again that you've heard or read the testimony at the 14 hearing and reviewed all the evidence in the record. 15 Commissioner Vemulapalli, so certified? 16 COMMISSIONER VEMULAPALLI: So certified. 17 CHAIRMAN SMITH: Commissioner Pierre-Dixon? 18 COMMISSIONER PIERRE-DIXON: So certified. 19 CHAIRMAN SMITH: And me, Commissioner Smith, 20 so certified. 21 I don't think there is anything here that we 22 want to refer to another agency. That's the other 23 issue that we take up. 24 And then the last but not least, under the 25 Commission's regulations and procedures, the Commission</p>	<p>1 is being held in Room W262 of San Jose City Hall. All 2 members of the Commission are present except Chris 3 Peacock. 4 The Commission will conduct a hearing on a 5 complaint filed with the City Clerk on February 18, 6 2015, by Bui Dinh alleging that -- I don't know if this 7 pronunciation is right -- Manh Nguyen? Is that the 8 correct pronunciation? -- and the Manh Nguyen for San 9 Jose Council D4 2015 Committee violated 10 Section 12.06.1010(A) of the San Jose Municipal Code. 11 Specifically, the allegation is that Respondents 12 displayed lawn signs that did not contain the correct 13 "paid for by..." disclaimer. The City Clerk promptly 14 notified and provided a copy of the complaint to the 15 Independent Evaluator, and the Evaluator notified and 16 provided a copy to the respondents on February 19th, 17 2015. The Independent Evaluator's Report and 18 Recommendations were submitted to the City Clerk on 19 March 18th, 2015, and copies were then provided to the 20 complainant, respondent and commission members and 21 posted to the city web site with the agenda for 22 tonight's hearing. 23 Okay. At this time I would like to have the 24 complainant, Bui Dinh, and respondent, Manh Nguyen and 25 Manh Nguyen for San Jose Council D4 Committee -- 2015</p>

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<p>1 Committee, or their representatives identify themselves 2 for the record. 3 So we have the complainant there. Thank you. 4 And anyone else -- 5 MR. ALLEN: Peter Allen on behalf of Manh 6 Nguyen for Council. 7 CHAIRMAN SMITH: Okay. Thank you. 8 And under the Commission's regulations and 9 procedures, the respondent may submit a written 10 response to the Report and Recommendations. The 11 response may contain legal argument, summary of 12 evidence and any mitigating or exculpatory information. 13 I don't believe we received any? 14 MS KRANTZ: No. 15 CHAIRMAN SMITH: Okay. And the complainant 16 or any other interested person may also submit a brief 17 or written argument, and I don't believe we have 18 anything submitted in that case either. 19 Okay. In that case, we will go ahead to 20 Mr. Miller from Hanson Bridgett again to present the 21 Independent Evaluator's report. 22 MR. MILLER: Thank you. 23 This is not the first time the Commission has 24 considered a complaint alleging violations of the lawn 25 sign disclaimer rules, nor is it the last time because</p>	<p>1 two hundred and -- excuse me -- 250 signs that had not 2 yet been distributed. 3 But there is no dispute but that the signs, 4 as originally disseminated and attached to the 5 complaint, were not in compliance with the Municipal 6 Code. And there is some additional factors that maybe 7 you may consider mitigating factors, but I'll hold off 8 on those too. 9 CHAIRMAN SMITH: Okay. 10 MR. MILLER: So our conclusion is that the 11 facts in the complaint allege a violation of Municipal 12 Code and, indeed, we find a violation and recommend 13 that you do too. 14 CHAIRMAN SMITH: Okay. Then at this time I 15 would call upon the -- oh, I'm sorry. Any questions at 16 this time? 17 COMMISSIONER VEMULAPALLI: Yes. What about 18 the size of the -- 19 MR. MILLER: So the disclaimer 20 requirements -- there are four elements to what is 21 the -- to what is defined as an "electioneering 22 communication." And the disclaimer requirements are 23 different depending on -- some of them, the size 24 here -- the lawn sign was 18 inches by 24 inches, and 25 the size that the Code requires to have the "paid for</p>
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<p>1 there is another one on tonight's agenda, in fact. 2 This a new rule enacted as of November 2013. And under 3 the Code, after that date, an electioneering 4 communication -- which is defined, certainly, to 5 include a lawn sign like the one here -- must include a 6 disclaimer that says "paid for by..." followed by the 7 street address of the entity or person paying for the 8 lawn sign. 9 The facts here indicate that the 10 respondent -- and the facts are not disputed by the 11 respondent, who cooperated fully with our 12 investigation -- disseminated lawn signs that included 13 a P.O. box instead of the required -- the new 14 required -- now, a year and a half later. I'm not sure 15 at what point we stop calling it new, but different 16 requirement of the street address after the -- there's 17 no dispute as to that. I'm hesitating because I 18 suppose what I'm about to say has to go more with the 19 latter part of your discussion. 20 But, nevertheless, once notified of the 21 violation, Respondent produced stickers and proceeded 22 to try and locate as many signs as had been put out 23 already in the public and affix the stickers and 24 affixed the sticker to some of those -- I gather to 25 about 100 -- and affixed the compliance stickers to the</p>	<p>1 by..." disclaimer is 11 inches by 17 inches. So this 2 is larger than the Code's requirement. 3 COMMISSIONER VEMULAPALLI: Is there any 4 corrective action of the size by -- stickerwise -- 5 MR. MILLER: You mean the size of the 6 disclaimer? I'm sorry. I misunderstood you. 7 COMMISSIONER VEMULAPALLI: No, not size of 8 the disclaimer. The size of the -- you know, the lawn 9 signs. So it's supposed to be 11 inches high? 10 MR. MILLER: So when the lawn sign is greater 11 than 11 by 17, the disclaimer must be at a type face 12 that is easily legible, contrasted with the background, 13 and no smaller than 5 percent of the printable height 14 of the communication. 15 And you have, attached to your -- our report, 16 in Exhibit C, showing a photograph of the newly 17 compliant signs. And I -- my gifted mathematician of 18 an assistant has assured me that that sticker type face 19 meets that 5 percent requirement. 20 COMMISSIONER VEMULAPALLI: Okay. Thank you. 21 CHAIRMAN SMITH: Any other questions? 22 Okay. At this time I would call upon the 23 respondent, Manh Nguyen, and Manh Nguyen San Jose 24 Council D4 2015 Committee or their representative to 25 come forward and present a written or oral response.</p>

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<p>1 Did you wish to make any statement? 2 MR. ALLEN: Very briefly. Could I come to 3 the -- 4 CHAIRMAN SMITH: Sure. If you would please 5 state your name for the record and raise your right 6 hand. 7 8 PETER ALLEN, 9 being first duly sworn by the Chairman to tell the 10 truth, the whole truth and nothing but the truth, 11 testified as follows: 12 13 CHAIRMAN SMITH: Your name? 14 MR. ALLEN: My name is Peter Allen, 15 A-l-l-e-n. 16 CHAIRMAN SMITH: Okay. Have a seat. 17 MR. ALLEN: Very briefly. We are comfortable 18 with the report from Hanson Bridgett on this matter, 19 other than to say that -- to give an update to the 20 Commission that we originally produced about 750 of the 21 signs that were found to be noncompliant. And, to 22 date, by our estimate, we have applied the stickers to 23 over 500 of those signs, so more than two-thirds. 24 And we're making our best effort every day. 25 Our volunteers and our campaign team is out there every</p>	<p>1 So as soon as we were informed that we incorrectly 2 labeled them, we produced the stickers and were 3 correcting them within days of the report being issued 4 to us. 5 But, yes, we are well aware now. 6 COMMISSIONER VEMULAPALLI: Thank you. 7 CHAIRMAN SMITH: Thank you. 8 MR. ALLEN: Thank you very much. 9 CHAIRMAN SMITH: And I can't help myself from 10 saying that you were probably in the majority of the 11 campaigns that I've seen in this last election cycle. 12 Most of the campaigns seemed to have not followed that 13 particular -- and some of them had complaints filed, 14 and some of them just made a call to the City Clerk and 15 the City Clerk called and notified and we didn't have 16 to go through this. 17 MR. MILLER: As is mentioned in my report, 18 Respondent has submitted to me -- I didn't include it 19 for various reasons. I can describe. But I didn't 20 include it as an exhibit. But the respondent did send 21 me photographs of noncompliant lawn signs from all the 22 candidates in the upcoming April election. 23 CHAIRMAN SMITH: All of them? 24 MR. MILLER: All of them. 25 CHAIRMAN SMITH: Again. We went through this</p>
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<p>1 day, trying to identify signs that need the stickers. 2 I haven't seen, personally, any that haven't been 3 stickered in my travels through the district. 4 So I just wanted to give you a quick update 5 on our progress. And that's it. 6 CHAIRMAN SMITH: Hang on. Any questions? 7 COMMISSIONER PIERRE-DIXON: Tell us your 8 connection to the campaign. 9 MR. ALLEN: I'm sorry. I'm the campaign 10 manager. Thank you for clarifying. 11 COMMISSIONER PIERRE-DIXON: All right. Thank 12 you. 13 COMMISSIONER VEMULAPALLI: I have a question. 14 Why does the violation occur? I mean, don't they know 15 before that sign has to be like that? Didn't they read 16 the candidate instructions or something? 17 MR. ALLEN: Yes, I would not -- I would not 18 put -- if there was blame to be placed, I would not put 19 it on the candidate. I am a campaign professional, and 20 I've worked in San Jose elections for -- for a long 21 time. As you may know, the regulations around 22 electioneering signs and campaign signs have changed 23 quite a bit. Almost every election cycle. 24 And I simply was not aware of the address 25 requirement when we ordered the signs to begin with.</p>	<p>1 in November. We're going through it again. 2 Okay. Thank you. 3 And at this time I would call upon 4 Complainant or his representative to come forward and 5 present any written or oral response. 6 Did you wish to make a statement or not? 7 MR. DINH: No. 8 CHAIRMAN SMITH: All right. Thank you. 9 Okay. And is there anyone else -- any other 10 interested party who would like to make a statement to 11 the Commission? 12 If not, okay. Then I guess we're back to 13 Mr. Miller. I don't think there's anything. Do you 14 have anything else to add? 15 MR. MILLER: Well, our report -- in terms of 16 the finding of a violation? 17 CHAIRMAN SMITH: Finding of violation. 18 MR. MILLER: I have nothing else to add. 19 CHAIRMAN SMITH: Or the recommended action. 20 MR. MILLER: In terms of the recommended 21 action, we have recommended that you take no further 22 action as a result of mitigating circumstances as based 23 on our understanding of how you have considered these 24 complaints in the past. And in situations such as 25 this, there's been -- the list of seven items that you</p>

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<p>1 will go through. I'm anticipating what you will do 2 based on what you've done before. And we would support 3 a recommendation to close the file in the matter and 4 take no further action. 5 CHAIRMAN SMITH: Okay. Thank you. 6 Okay. So -- 7 MR. MILLER: Excuse me. If I can say one 8 more thing -- 9 CHAIRMAN SMITH: Yes. 10 MR. MILLER: -- which is, at the risk of 11 editorializing, it seems to me that either the rule 12 should be reconsidered or better efforts should be made 13 to educate candidates, because it perhaps may not be 14 the best use of the City's money for me to go out and 15 investigate those unfortunate folks who happen to have 16 complaints filed against them on these matters. 17 CHAIRMAN SMITH: Yeah, I couldn't agree with 18 you more, personally. This is one of my favorite 19 topics for when we talk about potential changes to the 20 Code or other matters. 21 COMMISSIONER VEMULAPALLI: Can I make a 22 question? 23 CHAIRMAN SMITH: Sure. 24 COMMISSIONER VEMULAPALLI: One thing I would 25 request is whoever is filling for the candidates, they</p>	<p>1 (All Commissioners responded Aye.) 2 CHAIRMAN SMITH: Any opposed? 3 (No response.) 4 CHAIRMAN SMITH: Okay. It's unanimous. 5 And, again, we do the certification. Ask 6 each commission member, have you heard or read the 7 testimony at the hearing and reviewed all the evidence 8 in the record, by affirming "so certified." 9 Commissioner Pierre-Dixon? 10 COMMISSIONER PIERRE-DIXON: So certified. 11 CHAIRMAN SMITH: Commissioner Vemulapalli? 12 COMMISSIONER VEMULAPALLI: So certified. 13 CHAIRMAN SMITH: And me, Commissioner Smith, 14 so certified. 15 Okay. Orders and penalties. We can -- 16 again, we can find mitigating circumstances and take no 17 action. That was the recommendation. We can also 18 issue -- as I said in previous hearing, we can issue a 19 public statement of reprimand, require corrective 20 action by a particular deadline and/or impose a 21 penalty. 22 My own feeling on this is that I agree with 23 the recommendation of the Evaluator. And this would be 24 consistent with previous cases that we've looked at on 25 this.</p>
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<p>1 should read the rules first. And then maybe the 2 elections application itself, make sure they have 3 marked that. Maybe city attorney can give them 4 explaining, Okay. These are the things you have to 5 follow. 6 So that's -- actually, when I was looking at 7 this one, that I felt that way. Because some of them 8 are, again, related to the campaign signs. 9 CHAIRMAN SMITH: Yes. 10 COMMISSIONER VEMULAPALLI: Otherwise, it's -- 11 personally, I don't feel put my home address on the 12 campaign lawn. 13 CHAIRMAN SMITH: I think that comes up in the 14 subsequent one. I certainly understand that. I 15 wouldn't want to do that either. 16 Okay. So, again, it's time for a decision. 17 We have the same four options. And rather than reading 18 them, would someone like to make a motion? 19 COMMISSIONER PIERRE-DIXON: Make a motion 20 that we find that, in fact, there has been a violation 21 of the Municipal Code. 22 CHAIRMAN SMITH: Okay. Thank you. I'll 23 second that. 24 And any discussion? 25 Okay. All in favor?</p>	<p>1 So -- do you want to make a motion? 2 COMMISSIONER PIERRE-DIXON: I can. I can 3 make a motion that we find that there are mitigating 4 circumstances and take no further action, that the 5 mitigating circumstances, I think, that are listed here 6 by Mr. Miller seem to be quite conclusive. The first 7 is that, in looking at the lawn sign disclaimers, 8 Section 1206.101(A) is still a relatively new 9 requirement. And I would say "new" even if it's a year 10 and a half. I think it becomes old when it's a decade, 11 and anything under that is usually fairly new for most 12 people. And different from both the legal requirements 13 and the Political Reform Act and the FPPC's 14 recommendation. 15 Second, the admittedly noncompliant 16 disclaimer on the respondent's lawn sign complies with 17 FPPC's recommendation and allows public access to 18 information regarding the source of funding of the lawn 19 sign. In other words, what we're really trying to get 20 to is that when the public looks at these signs, 21 they're aware of who is putting them out and who is 22 paying for them. And I think that we had -- at least 23 the letter if not the entire spirit of the law was 24 complied with, and the address was missing. 25 Third, when notified, the complainant -- the</p>

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1 respondent took prompt action to correct, and that is
2 very important. When notified, there wasn't a delay,
3 that they got busy right away and tried to correct.
4 And as our speaker -- I'm sorry. Mr. Allen?
5 MR. ALLEN: Yes.
6 COMMISSIONER PIERRE-DIXON: -- stated
7 tonight, that they were continuing to do so.
8 And that would be my recommendation.
9 CHAIRMAN SMITH: Okay. I'll second that.
10 And -- okay. Any discussion?
11 If not, all in favor?
12 (All Commissioners responded Aye.)
13 CHAIRMAN SMITH: Any opposed?
14 COMMISSIONER VEMULAPALLI: No.
15 CHAIRMAN SMITH: Okay. So it's unanimous
16 again.
17 And some days you'll have to remind me why we
18 do two certifications rather than just one. Anyway,
19 that's what it says. So we'll do another one.
20 MS. SILVA: Because it's in the resolution.
21 CHAIRMAN SMITH: Why?
22 MS. SILVA: It's in the resolution.
23 CHAIRMAN SMITH: Okay. We'll change the
24 resolution.
25 MS. SILVA: Okay.

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1 CHAIRMAN SMITH: I'm getting off track here.
2 After you go through a few hearings, it begins to seem
3 kind of silly to do it twice. Anyway, we can do it
4 once.
5 Ask each Commission member to certify that
6 they've heard or read the testimony at the hearing and
7 reviewed all the evidence in the record by affirming
8 "so certified."
9 Commissioner Pierre-Dixon?
10 COMMISSIONER PIERRE-DIXON: So certified.
11 CHAIRMAN SMITH: Commissioner Vemulapalli?
12 COMMISSIONER VEMULAPALLI: So certified.
13 CHAIRMAN SMITH: Thank you. And me,
14 Commissioner Smith, so certified.
15 Given that we're closing the file on this
16 without action, I don't think there's any need to talk
17 about referrals to other enforcement agencies.
18 The last thing we need is -- I would
19 entertain a motion directing the City Attorney to draft
20 a resolution of the Commission's findings and penalties
21 and authorizing the Chair to approve and sign the
22 resolution.
23 So certified -- I mean, so moved?
24 COMMISSIONER PIERRE-DIXON: So moved.
25 CHAIRMAN SMITH: Would someone like to

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1 second?
2 COMMISSIONER PIERRE-DIXON: Second.
3 CHAIRMAN SMITH: Okay. Thank you.
4 Any discussion?
5 Okay. All in favor?
6 (All Commissioners responded Aye.)
7 CHAIRMAN SMITH: Any opposed?
8 (No response.)
9 CHAIRMAN SMITH: No. Okay. So that passes
10 unanimously.
11 So this hearing is closed.
12 Okay. Move on to the third one.
13 Again, it is Wednesday, March 25th, 2015, and
14 this hearing of the City of San Jose Ethics Commission
15 is being held in Room W262 of San Jose City Hall. All
16 members of the Commission are present except Chris
17 Peacock.
18 The Commission will conduct a hearing on a
19 complaint filed with the City Clerk on February 23rd,
20 2015, by Bui Dinh alleging that Manh Nguyen and Vietnam
21 Liberty News violated Section 12.06.1010 of the City
22 Municipal Code. Specifically, the allegation is that
23 the respondents published commentary, news stories and
24 interviews in newspapers and on radio programs without
25 including the "paid for by..." disclaimer required by

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1 the Municipal Code. The City Clerk promptly notified
2 and provided a copy of the complaint to the Independent
3 Evaluator, and the Evaluator notified and provided a
4 copy to the respondent on February 25, 2015. The
5 Independent Evaluator's Report and Recommendations were
6 submitted to the City Clerk on March 18th, 2015, and
7 copies were then provided to the complainant,
8 respondent and commission members and posted to the
9 city website with the agenda for tonight's hearing.
10 At this time I would like to have -- well,
11 we've already identified -- we have the same --
12 basically, the same complainant and respondent as the
13 last one. We have Mr. Allen here, representing the
14 respondent. And we have the complainant, Mr. Bui Dinh.
15 Is there anyone separately representing Vietnam Liberty
16 News?
17 MR. ALLEN: No, sir.
18 CHAIRMAN SMITH: Okay. Under the
19 Commission's regulations and procedures, the respondent
20 may submit a written response to the Report and
21 Recommendations. The response may contain legal
22 argument, a summary of evidence and any mitigating or
23 exculpatory information.
24 I don't believe -- Ruth, I don't believe
25 we've received any?

10 (Pages 37 to 40)

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<p>1 MS. KRANTZ: We have not.</p> <p>2 CHAIRMAN SMITH: And similarly, with the</p> <p>3 complainant or other parties, I don't think we've</p> <p>4 received anything.</p> <p>5 Okay. So we are back to Mr. Miller to</p> <p>6 present the Independent Evaluator's report.</p> <p>7 MR. MILLER: Okay. Thank you.</p> <p>8 This complaint presents unusual facts that I</p> <p>9 believe is the first time the -- facts like these have</p> <p>10 been presented to this Commission. So, with your</p> <p>11 indulgence, I'll spend a little more time explaining to</p> <p>12 the public and to you than I have on the earlier two</p> <p>13 complaints this evening.</p> <p>14 The complaint concerns the exact same</p> <p>15 disclosure requirement as the lawn sign issue that you</p> <p>16 just considered. But instead of a lawn sign, the</p> <p>17 communication at issue is a broadcast on the radio of</p> <p>18 an interview of a candidate by journalists and then the</p> <p>19 publication in a news magazine of the transcript of</p> <p>20 that interview. And both the radio station that</p> <p>21 broadcast the interview and the news magazine that</p> <p>22 printed the transcript are wholly owned and controlled</p> <p>23 by the candidate himself. And that last fact is the</p> <p>24 unusual fact that presents a wrinkle that this</p> <p>25 Commission has not considered before.</p>	<p>1 broadcast or otherwise published within 90 days of the</p> <p>2 election.</p> <p>3 The only one of those four elements that gave</p> <p>4 us a little bit of pause and that caused us to consult</p> <p>5 with the city attorney's office as to the proper</p> <p>6 interpretation of the Code is the "for which payment is</p> <p>7 made" element. Because one could say that an article</p> <p>8 in a news magazine -- payment is made not necessarily</p> <p>9 for the news magazine but for -- not necessarily for</p> <p>10 that article but for the news magazine as a whole. But</p> <p>11 the city attorney has confirmed our same common-sense</p> <p>12 reading that the "for which payment is made" element</p> <p>13 really should be read quite broadly.</p> <p>14 Consider, for example, a matter where the one</p> <p>15 candidate -- the candidate is mentioned in one-fourth</p> <p>16 of the matter. Just because there is three-fourths of</p> <p>17 the matter on something else doesn't mean that you</p> <p>18 don't say that there is payment made associated with</p> <p>19 the matter for that candidate. It may have something</p> <p>20 to do with how much the cost is and how we</p> <p>21 proportionally attribute the cost. But this complaint</p> <p>22 does not deal with disclosing the cost. It just</p> <p>23 considers the requirement for a disclaimer.</p> <p>24 So our first conclusion is that this radio</p> <p>25 broadcast and publication meets the definition of an</p>
<p>Page 42</p> <p>1 First, as a preliminary matter -- and this</p> <p>2 has come up before -- the complaint lists the newspaper</p> <p>3 and radio station -- or the entity that owns the</p> <p>4 newspaper and radio station as a respondent. But the</p> <p>5 obligation to comply with the disclaimer requirements</p> <p>6 is not on the news medium in the Code. It is on the</p> <p>7 candidate placing the communication. And so, as a</p> <p>8 preliminary matter, we determined not to investigate</p> <p>9 any role that the entity of the news media had, which</p> <p>10 is focused on the candidate. And our report indicates</p> <p>11 a recommendation that you dismiss the complaint as</p> <p>12 relating to the Vietnam Liberty News itself.</p> <p>13 So, putting that aside, then I think the</p> <p>14 analysis that we went through in our investigation is</p> <p>15 much the same as the lawn sign investigation, actually.</p> <p>16 And I'll go through it with you, and you'll see the</p> <p>17 wrinkle.</p> <p>18 The first step is to ask whether this</p> <p>19 communication is an electioneering communication, as</p> <p>20 defined by the Code. And the Code has four elements,</p> <p>21 all of which we think are met here. Must be a</p> <p>22 communication. It must -- for which there must be</p> <p>23 payment made. The communication must refer to a</p> <p>24 clearly identified candidate -- in this case, for City</p> <p>25 Council. And the communication must be disseminated,</p>	<p>Page 44</p> <p>1 "electioneering communication." That definition has</p> <p>2 nothing to do with content. And that is an interesting</p> <p>3 point I called to your attention. An electioneering</p> <p>4 communication could be both an advertisement and a news</p> <p>5 story.</p> <p>6 The four elements that I just mentioned do</p> <p>7 not address content. Where content comes into play is</p> <p>8 in the next step of the Municipal Code analysis, which</p> <p>9 says -- which provides the circumstances under which a</p> <p>10 disclaimer is to be -- is required. And the way the</p> <p>11 Code is set up, you have this broad definition of an</p> <p>12 "electioneering communication" followed by a list of a</p> <p>13 number of exceptions to the rule requiring a</p> <p>14 disclaimer.</p> <p>15 And one of those exceptions, which is one</p> <p>16 that has come before this Commission before, is that</p> <p>17 you do not -- a disclaimer is not required on news</p> <p>18 stories, commentaries, or editorials disseminated or</p> <p>19 broadcast or otherwise published by newspaper, radio</p> <p>20 station, television station, Internet site or any other</p> <p>21 recognized news media.</p> <p>22 Sorry. I said that quickly. Do you want me</p> <p>23 to say that again? Okay. You're good.</p> <p>24 However, that exemption itself has an</p> <p>25 exception, which is unless that news medium is owned or</p>

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1 controlled by the committee or, in this case, the
2 candidate. And that is, in fact, the case here. And
3 so I do not believe we can look to that exemption.
4 Therefore, a plain reading of the Municipal
5 Code would argue that any communication on a radio
6 station or magazine or newspaper, regardless of whether
7 it says "Vote for Nguyen" or whether it says Manh
8 Nguyen appeared yesterday at such and such a rally or
9 if it even says pol Manh Nguyen is running for City
10 Council, a purely factual statement like that -- under
11 the Municipal Code, any of those statements would be
12 considered an electioneering communication for which
13 the "paid for by..." disclaimer is required.
14 And, therefore, we find that the broadcast of
15 this interview and the publication of the transcript
16 both were required to have the disclaimer and, in fact,
17 they did not have the disclaimer. And that constitutes
18 a violation of the Code.
19 As I've indicated, the -- a logical extension
20 of that finding is that many -- what I'll call purely
21 news stories in a news medium controlled or owned by a
22 candidate would be -- would, under the Code, require a
23 "paid for by..." disclaimer. And the candidate -- the
24 respondent has expressed concern to me about that
25 interpretation of the rule. The respondents -- I want

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1 to be fair to respondents and make sure their position
2 is put forth. They've asserted -- and, I think,
3 reasonably -- that the listener or the reader may be
4 confused or the quality of news is diluted if a reader
5 sees a "paid for by..." disclaimer on a news story
6 saying "Manh Nguyen is running for City Council" and
7 then it says "Paid for by Manh Nguyen for City
8 Council." Well, what's a newspaper owner to do if its
9 readers don't know what the difference is between news
10 and not?
11 I think that is a policy question having to
12 do with the merits of the Code, as drafted, and is
13 beyond my scope, which is to apply the facts to the
14 Code. And if you do that, as I have done, I suggest
15 that you would conclude that the Code has been violated
16 over these circumstances.
17 If you like, I can talk a little bit about
18 how other cities treat this issue. And that may be
19 relevant to a discussion you may have in terms of
20 mitigating circumstances or a discussion at some other
21 point if you choose to make a recommendation to the
22 council to revise the Code.
23 But, as presently drafted, we've concluded
24 that this broadcast and publication both failed to
25 comply with the Municipal Code disclaimer.

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1 Maybe I'll pause there.
2 CHAIRMAN SMITH: I don't know if this is the
3 right time. I would be very interested in what other
4 cities do.
5 I -- as a somewhat longstanding member of the
6 Commission, I don't know if that particular exception
7 to the exception -- but I remember that section being
8 modified when I was in my very early days and in the
9 back of my head remember a discussion that it was done
10 purposely, that the idea that somebody who owns a
11 publication -- because the news media can selectively
12 cover things. They can't cover everything that
13 happens. They cover what they think their readers will
14 be interested in or whatever. And so you have
15 tremendous power as an owner of a news media outlet.
16 So I believe -- maybe it seems kind of silly,
17 to some people as we sit here now, and say everything
18 that mentions him in a publication that he's running
19 for office has to say "paid for by..." But I think
20 that was done purposely to sort of level the playing
21 field when somebody who owns media outlets is a
22 candidate and can use their editorial power to decide
23 to cover themselves rather than other candidates.
24 MR. MILLER: That is a perfectly reasonable
25 policy determination. I mean, the answer to your

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1 question is that -- two alternatives that I'm familiar
2 with are, one, not having the exception to the
3 exemption at all and saying news stories don't need a
4 disclaimer. And that does not address your concern as
5 to the editorial power of a newspaper owner. I have
6 also seen exemptions that focus more on the content and
7 require a disclaimer. The way they're usually phrased
8 is that the disclaimer is required when the
9 communication is required to be -- the cost of the
10 communication is required to be reported.
11 And what that ends up meaning, in practical
12 fact, is that if the communication promotes -- either
13 by express advocacy, the magic words, or something
14 close to that, promotes, opposes, supports, advocates
15 for a candidate -- PASO standard, people talk about --
16 such that the communication would need to -- the false
17 of the communication would need to be reported, then
18 that communication needs a disclaimer. So I've seen
19 that as well too. But those are sort of a more
20 content-based exemption.
21 CHAIRMAN SMITH: Okay.
22 MR. MILLER: And then one would have to get
23 into the question -- which I deliberately did not
24 address in this investigation, which is what is the
25 content of this interview? Is this an interview that

12 (Pages 45 to 48)

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<p>1 has news value or is it a campaign ad posing as an 2 interview? And -- 3 COMMISSIONER PIERRE-DIXON: Seemed to be 4 both, to me. 5 MR. MILLER: And -- I don't disagree with 6 you, but that -- you don't need to reach that decision 7 in order to apply the Code today. 8 CHAIRMAN SMITH: Right. 9 MR. MILLER: Although you might, if you had 10 to rule a PASO -- 11 CHAIRMAN SMITH: That could be a tough -- 12 MS. SILVA: But as written right now -- 13 CHAIRMAN SMITH: It doesn't matter what the 14 Code -- 15 MS. SILVA: It doesn't because it's plain 16 language. Its interpretation -- it doesn't go into 17 that -- reaches that portion. 18 CHAIRMAN SMITH: Okay. Any further questions 19 of Mr. Miller? 20 COMMISSIONER VEMULAPALLI: Is it this story 21 the news media is covering only -- several candidates 22 stories or other candidate only? 23 MR. MILLER: You mean does this particular 24 newspaper cover other candidates? 25 COMMISSIONER VEMULAPALLI: Yes.</p>	<p>1 probably, too. 2 COMMISSIONER VEMULAPALLI: My other question 3 is -- I agree with you, actually, especially newspaper 4 and radio. It is very powerful, and it will reach a 5 lot of people and can influence the people especially. 6 So whatever the cost of the communication, I feel it 7 should be treated as a campaign contribution, in my 8 opinion. Especially with this particular candidate. 9 CHAIRMAN SMITH: Okay. Questions -- 10 COMMISSIONER PIERRE-DIXON: No, I think it's 11 pretty straightforward. At least what I have read -- 12 CHAIRMAN SMITH: Okay. 13 COMMISSIONER PIERRE-DIXON: -- In terms of 14 the violation. 15 CHAIRMAN SMITH: Okay. All right. So, at 16 this point, then, I would call upon the respondent or 17 representative to come forward. 18 I assume Mr. Allen -- do I need to swear him 19 in again because this is a separate hearing, or does 20 the previous one count? 21 MR. ALLEN: I don't mind. 22 CHAIRMAN SMITH: Let's do it again. 23 MR. MILLER: He's swearing on his cell phone. 24 25 PETER ALLEN,</p>
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<p>1 MR. MILLER: So I will give you my answer, 2 but you may choose to ask the candidate respondent, who 3 is here too. 4 So the -- the issue of the magazine that I 5 reviewed, which is an annual -- so they have a weekly 6 newspaper, and this is an annual magazine associated 7 with that newspaper -- an annual issue of the magazine 8 associated with the newspaper published at the time of 9 the Lunar New Year. I saw numerous advertisements for 10 this candidate with disclaimers -- which, by the way, 11 were disclaimers that were similar to the lawn sign 12 disclaimers, in which they did not include the street 13 address. I saw no advertisements or news stories 14 for -- about other candidates. Although a caveat to 15 that is these are Vietnamese-language publications, and 16 so I may not be qualified to answer that question. 17 I do -- I do have a copy of the -- I believe 18 the entire magazine. It's very thick. I didn't 19 include it in my report, in part, because I didn't want 20 to require making so many copies of a -- but I have it 21 here. And if the Commission would like it, I'd be 22 happy to distribute it, although I'll defer to the city 23 attorney as to whether that imposes an obligation to 24 make multiple colored copies of a 250-page document. 25 CHAIRMAN SMITH: Posted to the web site,</p>	<p>1 being first duly sworn by the Chairman to tell the 2 truth, the whole truth and nothing but the truth, 3 testified as follows: 4 5 CHAIRMAN SMITH: And your name again. 6 MR. ALLEN: Peter Allen, campaign manager for 7 Manh Nguyen for San Jose Council D4 2015. 8 CHAIRMAN SMITH: Go ahead. 9 MR. ALLEN: Okay. Again, no substantive 10 complaints were confirmed by the report from Hanson 11 Bridgett after being alerted to the violation. And 12 after a more thorough review -- actually, with the help 13 of Mr. Miller -- of the Election Code and the exception 14 to the exemption, we realized that a violation has 15 indeed occurred. However, we have taken the action of 16 moving forward, expecting to hear some advice, 17 hopefully, from the Commission here. In anticipation 18 of this commission hearing, we have taken the steps of 19 including the disclaimer on any future news article 20 even remotely related to the District 4 race, whether 21 it includes Mr. Nguyen or not. And we've done that 22 simply to make sure that we're obeying the letter and 23 the spirit of the law. 24 And we completely agree, Mr. Chair, with your 25 take on why this is an important regulation. We do</p>

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1 feel that it could use some review.
2 And especially, Commissioner, to your point
3 earlier, clarification to the candidate, especially in
4 this unique situation, would be very helpful.
5 I will let you know that this is a very
6 unique situation, as you well know. We -- my candidate
7 and representatives of my candidate -- I was not
8 present for these conversations -- but had extensive
9 consultation with the clerk's office prior to filing
10 for this race -- and, by extension, with the city
11 attorney's office -- regarding this very matter. We
12 knew our candidate would be making many in-kind
13 donations from his business for advertising space in
14 his publication and on his radio show. It's actually a
15 show that he owns. Not a station. So we knew that
16 this would be -- we would want to take exhaustive steps
17 to document every single one of those in-kind
18 donations. And if you review our FPPC reports, you'll
19 find that we have taken exhaustive steps, to the point
20 of adding 30 pages to the -- each report simply to
21 document every single expenditure on behalf of the
22 campaign.
23 I will point out that Vietnam Liberty News,
24 the business in question, has published and broadcast
25 interviews of this type for almost 30 years. Usually

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1 It's Mr. Nguyen who is the interviewer and the
2 journalist. And this time, as he would say, the tables
3 are turned.
4 But we -- we feel that while we accept the
5 finding and we understand the Code and we've taken
6 corrective action, we do feel that it would be prudent
7 at some point to review this section of the Code and
8 see if there is any way there can be some clarity or
9 some sort of stipulation that will allow for the
10 freedom of the press, freedom of this information being
11 disseminated. We do feel that the disclaimer could sway
12 the reader into believing that the news was not
13 necessarily legitimate. We do believe it was. But, at
14 the same time, we do accept the finding. We do accept
15 the report, as stated.
16 That would be all I have to say, unless there
17 is any questions.
18 CHAIRMAN SMITH: Questions?
19 COMMISSIONER PIERRE-DIXON: There is that one
20 comment, having gone through everything, because I
21 wanted to be real clear on what occurred during the
22 actual interview process. And there was even a concern
23 by one of the interviewees that he should probably not
24 be doing this, that other candidates were not there.
25 And so I think there is clarity in terms of

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1 being able to understand, because you're in that unique
2 position of owning a newspaper and owning this program,
3 that this is going to fail, unfortunately, on your head
4 that you have to make this disclaimer at every turn,
5 because there's a question by that outside audience
6 about what really is going on there.
7 MR. ALLEN: As I said --
8 COMMISSIONER PIERRE-DIXON: So that would be
9 my only comment.
10 MR. ALLEN: Sorry. And, as I've said, we've
11 taken corrective action. From this point forward, we
12 will be including the disclaimer on everything related
13 to the campaign.
14 CHAIRMAN SMITH: Thank you.
15 MR. ALLEN: You're welcome. Thanks very
16 much.
17 CHAIRMAN SMITH: Any comments from the
18 complainant?
19 No. Okay.
20 Anyone else like to -- audience like to make
21 any comments on this case?
22 Yes, if you would come forward and state your
23 name, and I'll swear you in.
24 UNIDENTIFIED SPEAKER: I just have a question
25 really.

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1 CHAIRMAN SMITH: Oh, go ahead and ask your
2 question.
3 UNIDENTIFIED SPEAKER: Just as a matter of
4 clarification. I'm curious: In the context of the
5 newspaper, I was looking for guidance from the
6 Commission. On a newspaper like, say, the Mercury or
7 Vietnam Liberty News, it's foldable. And it's not one
8 piece, not a yard sign. It's not a one-piece ad. You
9 know, continue on Page 2, continue on Page 4. And so
10 when you have a document that is on the front page and
11 it's newsworthy or a, you know, interview or a
12 transcript of an interview and it goes on from front
13 page to Page 2 or Page 9 and then Page 14. And at the
14 end of that, there is one-inch paragraph that says --
15 you know, final five sentences of the transcript, and
16 then it says paid for by so-and-so committee.
17 I'm -- that, to me, poses an interesting
18 question. And I have no opinion about that today, but
19 I think there should be some sort of clarification as
20 to the positioning of the disclaimer, either at the
21 beginning or somewhere else. I'm not sure where
22 exactly. But to bury the disclaimer in the middle of
23 the newspaper, I think, is not an adequate solution
24 either.
25 CHAIRMAN SMITH: Okay. That's something --

14 (Pages 53 to 56)

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<p>1 MR. ALLEN: If it's permissible, Mr. Chair, 2 the respondent would agree -- would actually second 3 that question. 4 CHAIRMAN SMITH: Yeah, I think -- we have a 5 list we've been keeping all year, and I think Arlene is 6 writing down right now. Just for you guys' 7 information, as we went through this election cycle, 8 we've been keeping a list of issues that have arisen 9 that may cause us to go look at the Code and look at 10 some other of our regulations and procedures. And in 11 May we're going to start re-looking at that list, 12 prioritizing issues -- 13 MS. SILVA: Actually, more after June if 14 there isn't enough -- 15 CHAIRMAN SMITH: That's true. We're going to 16 try to start in May, but maybe most of the action will 17 be in June. But, anyway, this year. 18 So these comments will factor in. And I 19 think, certainly, this is something we want to look at 20 and see if -- that's a good point you raise about 21 positioning, the matter of content. Those are all good 22 points that we probably ought to talk about. And we'll 23 probably have public hearings as well, depending. 24 That's what we did last time. 25 So, anyway -- okay. Anything else from</p>	<p>1 committee. Yeah, it's just the candidate. 2 COMMISSIONER PIERRE-DIXON: Just as to the 3 candidate. 4 CHAIRMAN SMITH: Okay. So do we have a 5 second? 6 COMMISSIONER VEMULAPALLI: I second. 7 CHAIRMAN SMITH: Okay. We have a second. 8 Okay. Any discussion on this motion? 9 If not, all in favor? 10 (All Commissioners responded Aye.) 11 CHAIRMAN SMITH: Any opposed? 12 (No response.) 13 CHAIRMAN SMITH: Okay. So it's unanimous. 14 And then I think a second motion would be 15 that as regards Respondent Vietnam Liberty News, 16 that -- let's see. We wouldn't say there is no 17 violation because we didn't really investigate it. We 18 would just say that -- 19 MR. MILLER: Are you looking at me? 20 CHAIRMAN SMITH: You were -- 21 MR. MILLER: Our recommendation is that we -- 22 you accept our determination that as a result of the 23 preliminary evaluation, no investigation is warranted 24 and that you close the file on the matter. 25 CHAIRMAN SMITH: So moved.</p>
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<p>1 others? 2 Okay. I don't think you have anything else 3 to add at this point? 4 MR. MILLER: No. 5 CHAIRMAN SMITH: Okay. So, again, it's time 6 to make a decision. We have the same options as 7 before. I think that -- I haven't heard anybody 8 arguing yet with the recommendation. So would someone 9 like to make a motion? 10 COMMISSIONER PIERRE-DIXON: I would make a 11 motion that we, in fact, conclude that a violation of 12 the Municipal Code has occurred, under these facts and 13 circumstances. 14 CHAIRMAN SMITH: And let me clarify the 15 motion. I believe that -- we probably need two 16 motions. I skipped some of my boilerplate here. 17 COMMISSIONER PIERRE-DIXON: Okay. 18 CHAIRMAN SMITH: But we have two respondents, 19 and I think we're going to have -- 20 COMMISSIONER PIERRE-DIXON: Only as -- only 21 as to the candidate -- 22 CHAIRMAN SMITH: Right. 23 COMMISSIONER PIERRE-DIXON: -- because I 24 understand that -- 25 CHAIRMAN SMITH: Right. The candidate's</p>	<p>1 COMMISSIONER PIERRE-DIXON: Second. 2 COMMISSIONER VEMULAPALLI: Second. 3 CHAIRMAN SMITH: That was good. 4 Okay. Any discussion? 5 Okay. If not, all in favor? 6 (All Commissioners responded Aye.) 7 CHAIRMAN SMITH: Any opposed? 8 (No response.) 9 CHAIRMAN SMITH: Okay. So that's unanimous. 10 So we're back to our old friend, 11 certification. So ask each commission member to 12 certify that they have heard or read the testimony at 13 the hearing and have reviewed all the evidence in the 14 record by affirming "so certified." 15 Commissioner Pierre-Dixon? 16 COMMISSIONER PIERRE-DIXON: So certified. 17 CHAIRMAN SMITH: Commissioner -- 18 COMMISSIONER VEMULAPALLI: So certified. 19 CHAIRMAN SMITH: Okay. Thank you. 20 Me, Commissioner Smith, so certified. 21 Okay. Now we're on to orders and penalties. 22 This would only apply to the candidate because -- and 23 that was the violation. 24 And do you want to make a motion at this time 25 again or -- I see you looking at your mitigating</p>

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1 factors.
2 COMMISSIONER PIERRE-DIXON: Sure. I would
3 suggest that the motion be that we find mitigating
4 circumstances and take no further action. That among
5 those mitigating circumstances is the fact the
6 respondent took considerable efforts to both include
7 disclaimers on what are clearly advertised in the
8 newspaper and radio broadcast and has further properly
9 disclosed on Form 450 numerous in-kind contributions
10 from his media company, which Mr. Allen also assured us
11 of.

12 Even though the definition of "electioneering
13 communication" is not perfectly suited to this unusual
14 situation, it certainly still applies. And there
15 should be some mitigation on that. I don't think the
16 candidate was as clear, what the requirements were.

17 And I don't think there was some -- a
18 nefarious purpose in terms of trying to get away with
19 something. I think that this was just a mistake that
20 was made.

21 That would be my mitigating circumstance.

22 CHAIRMAN SMITH: Okay. I'll second that.

23 COMMISSIONER VEMULAPALLI: Second.

24 CHAIRMAN SMITH: Any discussion?

25 If not, all in favor?

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1 (All Commissioners responded Aye.)

2 CHAIRMAN SMITH: Any opposed?

3 (No response.)

4 CHAIRMAN SMITH: Once again, unanimous.

5 Since there's only three of us, that's good.

6 Okay. So this hearing is closed.

7 Oh, no, I'm sorry. I take that back.

8 Resolution. I'm getting ahead of myself.

9 Oh, we got to certify. Yes, once again.

10 Okay. I would ask you to certify that you have read
11 and heard the testimony at the hearing and reviewed all
12 the evidence in the record.

13 Commissioner Pierre-Dixon?

14 COMMISSIONER PIERRE-DIXON: So certify.

15 CHAIRMAN SMITH: Commissioner Vemulapalli?

16 COMMISSIONER VEMULAPALLI: So certified.

17 CHAIRMAN SMITH: And me, Commissioner Smith,
18 so certified.

19 Okay. Now we need the resolution. I'll move
20 that we direct city attorney to draft a resolution of
21 the Commission's findings and penalties and authorize
22 the Chair to approve and sign the resolution.

23 Anyone want to second?

24 COMMISSIONER PIERRE-DIXON: Second.

25 CHAIRMAN SMITH: Thank you.

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1 Discussion?

2 All in favor?

3 (All Commissioners responded Aye.)

4 CHAIRMAN SMITH: Any opposed?

5 (No response.)

6 CHAIRMAN SMITH: Okay. That's unanimous.

7 And I will close this hearing. We're on to

8 Number 4.

9 Okay. Again, it is Wednesday, March 25th,

10 2015, and this hearing of the City of San Jose Ethics

11 Commission is being held in Room W262 of San Jose City

12 Hall. All members of the Commission are present except

13 Chris Peacock.

14 The Commission will conduct a hearing on a
15 complaint filed with the City Clerk on March 2nd, 2015,
16 by Karin Cogbill alleging that Manh Nguyen for San Jose
17 Council D4 -- just a second. Did I get this right?

18 Yes. I'm sorry -- that Manh Nguyen for San Jose

19 Council D4 2015 violated Section 12.06.510(A) of the

20 San Jose Municipal Code. Specifically, the allegation

21 is that the respondent accepted campaign contributions

22 before filing a statement with the City Clerk

23 indicating whether or not the candidate would

24 participate in the voluntary campaign expenditure

25 limits program. The City Clerk promptly notified and

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1 provided a copy of the complaint to the Independent
2 Evaluator, and the Evaluator notified and provided a
3 copy to the respondent on March 2nd, 2015. The
4 Independent Evaluator's Report and Recommendations were
5 submitted to the City Clerk on March 18th, 2015, and
6 copies were then provided to the complainant,
7 respondent and commission members and posted to the
8 city web site with the agenda for tonight's meeting.

9 At this time I would like to have the
10 complainant, Karin Cogbill -- I believe she's out of
11 town.

12 MS. KRANTZ: I believe so.

13 CHAIRMAN SMITH: Is there anyone here
14 representing her?

15 And again we have Mr. Allen representing Manh
16 Nguyen.

17 MR. MILLER: Hang on. I think maybe someone
18 raised their hand.

19 CHAIRMAN SMITH: Oh.

20 MR. DIEP: Karin was acting on behalf of my
21 campaign, so I guess I would be the representative.

22 CHAIRMAN SMITH: Okay. And you are?

23 MR. DIEP: I'm Lan Diep. Lan, L-a-n, is my
24 first name; D-l-e-p, last name.

25 CHAIRMAN SMITH: Okay. Thank you.

16 (Pages 61 to 64)

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<p>1 And under the Commission's regulations and 2 procedures, the respondent may submit a written 3 response to the Reports and Recommendations. 4 In this case I don't believe we have any 5 written response. Is that correct? 6 MS. KRANTZ: There was an e-mail from Kerin 7 Cogbill that was provided. 8 CHAIRMAN SMITH: Okay. That's the 9 complainant. But nothing from the -- 10 MS. KRANTZ: No. 11 CHAIRMAN SMITH: Okay. Then moving on to the 12 complainant. We do have an e-mail from the 13 complainant, which I believe everyone has a copy of. 14 We got that by e-mail. 15 COMMISSIONER PIERRE-DIXON: Right. 16 CHAIRMAN SMITH: Okay. 17 MR. ALLEN: Yes. 18 CHAIRMAN SMITH: Okay. And so we move on. 19 Recognize Mr. Miller again to present. 20 MR. MILLER: Okay, four out of five. On a 21 roll here. 22 As to the violation itself, the facts and the 23 analysis is very straightforward. There are a number 24 of facts that are unclear, ambiguous and perhaps even 25 disputed that may go to your finding of what action to</p>	<p>1 complied with the voluntary expenditure limits program 2 when, in fact, the candidate had not filed the required 3 form. 4 And the candidate -- the respondent is 5 concerned with and has sent letters in about that 6 action and about a press release that the City Clerk 7 put out about the ballot, which now is going to show 8 that the candidate has complied with the VEL program 9 when, in fact, that may not be true. 10 The City Clerk's office and the city 11 attorney's office do not necessarily agree with the 12 respondent's assertions that they were given advice 13 that there was no need to comply with this provision of 14 the Municipal Code. 15 I will say that the candidate handbook that 16 is given to candidates is a little bit internally 17 inconsistent in that there is one reference to the form 18 that indicates "optional," and it's not clear whether 19 that's optional to file the form or whether it's 20 optional to comply with the program, although later in 21 the handbook it is expressly clear that the form is 22 mandatory but the program itself is optional. 23 To add a further overlay to this, as we have 24 discussed in a prior hearing, the rules for this 25 voluntary expenditure limit program have changed over</p>
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<p>1 take. But Title 12.06.510 is crystal-clear that 2 candidates must, prior to accepting contributions, file 3 a form called a Form 500, certifying whether or not 4 they will participate in the voluntary campaign 5 expenditure on this program. It says -- It means what 6 it says. 7 And the undisputed facts here are that the 8 candidate accepted contributions before filing the 9 Form 500, as required by the Code. And it seems 10 indisputable to me that that constitutes a violation of 11 Title 12, and our recommendation is that you so find. 12 And the rest of the complexities -- perhaps 13 you want -- you can tell me whether you want me to get 14 into them now or later. 15 CHAIRMAN SMITH: Why don't you -- I think 16 now. 17 MR. MILLER: Okay. So the candidate has 18 asserted quite vigorously that he was told by the City 19 Clerk's office that he didn't need to file a Form 500. 20 He asserted that the City Clerk told him that the city 21 attorney told the City Clerk that he didn't need to 22 file the Form 500. The City Clerk then apparently -- 23 none of this has to do with the finding of the 24 violation. The City Clerk has apparently communicated 25 to the registrar of voters that the candidate has</p>	<p>1 time such that the only remaining impact of compliance 2 of the program is the diamond designation in the ballot 3 such that the purpose of requiring the Form 500 early, 4 before you even accept contributions -- you have 5 already indicated that you want to take another look at 6 that. Originally, the compliance with the program was 7 linked to a varying contribution limit. So it was 8 critical to get that information early because it would 9 affect the amount of contributions you could get. That 10 no longer being the case, the Commission has already, a 11 few months ago, indicated that it's considering making 12 a recommendation that the timing aspects be different. 13 I could go on about the complexities of 14 compliance with this rule and the facts as to what 15 happened with this particular respondent. But none of 16 that alters my fundamental recommendation that the Code 17 means what it says and says what it means, and a 18 violation occurred here, therefore. 19 CHAIRMAN SMITH: One question. And then we 20 can maybe come back to this. And, again, relates to 21 the possible mitigating factors. Is it alleged that 22 the City Clerk herself made statements that this was 23 optional or just that someone in her office made these 24 statements? To me, that's -- 25 MR. MILLER: Both.</p>

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<p>1 CHAIRMAN SMITH: Really? Wow. 2 COMMISSIONER PIERRE-DIXON: That's a problem. 3 CHAIRMAN SMITH: That's surprising. 4 COMMISSIONER VEMULAPALLI: Is this an e-mail 5 communication or is this a -- they communicated through 6 the e-mail or did they communicate through the phone? 7 MR. MILLER: I believe -- and you have the 8 respondent's representative here, who may be able to 9 shed light on it. What I was told was that they were 10 in-person discussions, not -- neither phone nor e-mail 11 but actually in person. If I've got that wrong, you 12 should -- 13 CHAIRMAN SMITH: Yeah, they'll have an 14 opportunity. 15 Okay. Any other questions -- 16 COMMISSIONER PIERRE-DIXON: No. 17 CHAIRMAN SMITH: -- of the -- okay. Thank 18 you. 19 Okay. At this time I would call upon the 20 respondent or their representative. And, again, that 21 would be Mr. Allen. So let's do it again. 22 MR. ALLEN: Bring my water this time. It's 23 going to take awhile. 24 25 PETER ALLEN,</p>	<p>1 Regarding the communications that were given 2 to us through the clerk's office related to the 3 requirement to file Form 500. When my candidate 4 initially met with the City Clerk's office, Mr. Tom 5 Graves, deputy clerk, as well as an employee of the 6 clerk's office named Anh Tranh, which I believe is 7 A-n-h, last name, T-r-a-n-h, who I believe is no longer 8 with the clerk's office -- both of these individuals 9 were sitting in consultation with my candidate and a 10 representative from our campaign. 11 Mr. Graves was asked directly by the 12 candidate and our representative if the Form 500 was 13 optional or required because, as Mr. Miller pointed 14 out, the candidate workbook is quite unclear on that 15 fact. 16 Mr. Graves stated to the candidate that the 17 form was optional. 18 Our candidate asked, Are you sure? 19 Mr. Graves responded, Yes, I am sure. It is 20 optional. 21 So we did not file the form. 22 Subsequently, when this -- when this 23 complaint was issued -- I'm sorry -- submitted, the 24 City Clerk, Ms. Toni Taber, sent an e-mail directly to 25 myself and to my candidate, which I have produced to</p>
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<p>1 being first duly sworn by the Chairman to tell the 2 truth, the whole truth and nothing but the truth, 3 testified as follows: 4 5 CHAIRMAN SMITH: Thank you. And state your 6 name again and say whatever you want to say. 7 MR. ALLEN: Peter Allen, A-l-l-e-n, campaign 8 manager, Manh Nguyen for San Jose Council D4 2016, FPPC 9 Number 1374285. 10 Commissioners, I thank you for hearing me 11 again. As Mr. Miller has pointed out, there are a 12 number of mitigating circumstances here. I'm going to 13 try very hard not to relate comments to the error that 14 was made in transmitting information to the registrar 15 of voters. I'm a campaign -- I have to speak fast. 16 I'm going to try very hard not to refer my comments to 17 the -- really, my comments to the error that was made 18 in transmitting information to the registrar of voters 19 regarding the timing designation because that is not 20 pertinent to the complaint. 21 However, I will point out, since I have this 22 opportunity, that it is very discouraging and 23 disappointing that this kind of error was made, 24 especially by the highest election officials in the 25 City of San Jose. That's all I'll say about that.</p>	<p>1 Mr. Miller to help in his report, in writing, which 2 clearly states that the clerk's office erred in alerting 3 my candidate or telling my candidate that the form is 4 optional and that they should have told him that it was 5 required at the time and gave us the option of filing 6 the form retroactively and took full responsibility and 7 blame for this error, in addition to the error in 8 transmitting the information to the registrar of 9 voters. 10 I would argue that this creates a significant 11 mitigating circumstance. Yes, the Code is very clear. 12 The elections handbook is, obviously, in conflict with 13 that. And when it comes to candidates for office and 14 really the public in general, I believe there should be 15 some expectation, if you're meeting with the highest 16 election official in the City, that the highest 17 election official in the City should have some -- not 18 "some" -- thorough knowledge of the election code and 19 the details contained therein. 20 Ms. Taber, in her e-mail to us, expressed 21 that it is her intent with every candidate to ensure a 22 smooth process, to ensure no harm is done to the 23 candidate. In this case she said -- she actually 24 states in writing that harm was done, and then she 25 apologized -- and she apologized for that harm.</p>

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1 So we feel that there are significant
2 mitigating circumstances that while there was a
3 violation, we have, in fact, filed a Form 500 now in
4 retrospect, not taking -- not accepting the limit,
5 which we intended to do to begin with.
6 And I'm sorry to step back for just a moment.
7 The reason why Mr. Graves told us that the form was
8 optional is because we expressed interest -- our
9 interest to not accept the voluntary spending limit to
10 him. After we noted that, he told us the form was not
11 optional. It was only required, from his -- from what
12 he said to us, if we were accepting the limit. So
13 there's that as well.
14 Now, granted, those are verbal
15 communications, but we have subsequent e-mail
16 communications from the clerk's office expressing that
17 the error was on their part.
18 That's pretty much all I can say about it.
19 I will point out, if I may, that this is not
20 the first time that I personally have experienced
21 negligence on behalf of the City Clerk's office with
22 regard to the campaign election code and the
23 stipulations therein. There was a question three years
24 ago regarding the signature threshold for an initiative
25 that I was working on, where we were communicated one

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1 number and it was actually three times that number.
2 I'm sure the Commission has heard of this issue.
3 CHAIRMAN SMITH: Yes.
4 MR. ALLEN: So it's -- to me and as well as
5 my candidate, this is very discouraging and very
6 disappointing on behalf -- if the public officials who
7 are charged with monitoring and administering our
8 elections aren't clear themselves on these issues.
9 And we do -- we do understand that the
10 clerk's office is not required to give -- it is not
11 legally required to provide factual information --
12 which I've been told before -- to the public, which I
13 also find very disturbing. But we do feel there's a
14 moral obligation and that we've met the spirit, at
15 least, of the law in this -- in this case.
16 So I would -- I do agree with the
17 Commissioner, your statement earlier, that I think more
18 education needs to be done for candidates on the part
19 of the clerk's office and the attorney's office with
20 regard to these matters, especially given the
21 complexity of the election code these days, especially
22 in San Jose, as it is -- as Mr. Miller pointed out,
23 there are many differences between the city election
24 code and the FPPC code as well, not to mention the
25 federal election code. So we do feel that some clarity

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1 is required here.
2 And I will point out that there was an issue,
3 as you well know, with both of the mayoral candidates
4 last year with this very issue. So it's obviously not
5 just our campaign that has had confusion regarding this
6 matter. And to have a legal analysis to go back and
7 check precedent of previous cases, as Ms. Cogbill
8 suggests in her e-mail, is, to be honest, financially
9 and timewise, not conducive to running a successful
10 campaign, I think, when you're looking at a campaign of
11 this size.
12 So we do accept the report, but we do find --
13 we do feel that there were several mitigating
14 circumstances in this case.
15 I'm happy to answer any questions.
16 CHAIRMAN SMITH: Questions?
17 I have one. Quick question.
18 MR. ALLEN: Sure.
19 CHAIRMAN SMITH: You had indicated that you
20 had a lot of experience in San Jose elections.
21 MR. ALLEN: Correct.
22 CHAIRMAN SMITH: Didn't you question the
23 candidate when they came back and told you what
24 Mr. Graves had apparently told them?
25 MR. ALLEN: Personally, I was -- I was

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1 actually not in the employ of the campaign when they
2 filed for office. It was actually just before I was
3 hired by the campaign. So, unfortunately, I'm having
4 to relay to you secondhand information.
5 CHAIRMAN SMITH: Okay. Thank you.
6 MR. ALLEN: You're welcome.
7 Any other questions?
8 CHAIRMAN SMITH: No.
9 MR. ALLEN: Thanks very much.
10 CHAIRMAN SMITH: Would the complainant's
11 representative wish to make a statement of any sort?
12 MR. DIEP: I can if you wish.
13 CHAIRMAN SMITH: You need to come up and be
14 sworn in. But it's up to you.
15 If you would raise your right hand.
16
17 LAN DIEP,
18 being first duly sworn by the Chairman to tell the
19 truth, the whole truth and nothing but the truth,
20 testified as follows:
21
22 CHAIRMAN SMITH: And if you would identify
23 yourself, please.
24 MR. DIEP: My name is Lan Diep, L-a-n,
25 D-e-l-p like Peter. And I'm also a candidate for -- in

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1 this race.

2 My statement -- I think Ms. Cogbill, in her
3 e-mail, summarizes my position. I would just add for
4 the record that I think it's -- through the course of
5 this campaign, Mr. Nguyen has -- his whole narrative is
6 he's been a journalist for 37 years. He's covered
7 politics and -- in San Jose, interviewed everyone from
8 the mayor down. And his qualifications is because --
9 he's qualified because he associates with these people.
10 His newspaper, his radio station -- he surely has
11 covered this issue with the Form 500 when it happened
12 in the context of the mayor race. And I think it's
13 just maybe disingenuous to say that he did not know and
14 he relied purely on the City -- or the City Clerk's
15 recommendation. I think, as a journalist, he has an
16 interest in this matter. He was actively involved in
17 the mayoral race. And I think that that's just
18 something to consider.

19 CHAIRMAN SMITH: Okay. Any questions?

20 COMMISSIONER VEMULAPALLI: No.

21 COMMISSIONER PIERRE-DIXON: No.

22 CHAIRMAN SMITH: Okay. Thank you.

23 And we are back to Mr. Miller, I believe.

24 MR. MILLER: I have nothing further to add.

25 CHAIRMAN SMITH: Oh, I'm sorry. I'm sorry.

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1 office. And at that time --

2 CHAIRMAN SMITH: Form 500 is after that?

3 MS. SILVA: The Form 500 and all the
4 information is included in the binder. It's an
5 information process. It's like they're pulling papers,
6 and the candidate statement and all of those required
7 are in that binder.

8 And you know, to -- I can't attest to what
9 exactly the process is that the clerk -- you know, but
10 that's -- that's usually how the process begins, where
11 you have an appointment with the City Clerk so that you
12 inform them of your intent to run and then the
13 documents that they need. And they discuss with you --
14 there's a checklist that she goes through.

15 UNIDENTIFIED SPEAKER: My question is, when
16 the candidate asks -- the question is, when the
17 candidate asks the clerk, "Should I fill this one or
18 not?" when it happen?

19 COMMISSIONER PIERRE-DIXON: It seems like,
20 according to the documentation, that this question was
21 asked prior to any fundraising. That's just my -- from
22 what I read here.

23 MS. SILVA: I'm sorry. I can't answer that.

24 That's a city --

25 CHAIRMAN SMITH: I think -- yeah, I think you

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1 Before I get to you, anyone else who is here have
2 anything they would like --

3 UNIDENTIFIED SPEAKER: I have a question.

4 CHAIRMAN SMITH: Okay.

5 UNIDENTIFIED SPEAKER: When do the candidate
6 accept the money and when do they see the clerk?

7 COMMISSIONER PIERRE-DIXON: They should see
8 the clerk before they begin accepting any money.

9 UNIDENTIFIED SPEAKER: When? Before
10 accepting or after?

11 CHAIRMAN SMITH: I don't know. I guess I
12 would suggest maybe you should consult with staff after
13 the meeting. I don't think that's something that we,
14 as a commission, can answer.

15 MS. SILVA: My understanding of the process
16 is -- and --

17 CHAIRMAN SMITH: Okay. If you got an answer,
18 go ahead.

19 MS. SILVA: Is Toni here?

20 My understanding is when they pull the papers
21 they have a meeting with the City Clerk, and they
22 discuss it and they're given the binder. At that point
23 I don't know exactly what the process is of what the
24 City Clerk -- at that point they give you the binder
25 with the important information regarding running for

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1 probably need to ask the clerk's office.

2 MS. SILVA: It's an election official
3 question that you need to ask.

4 CHAIRMAN SMITH: I'm sorry. Back to
5 Mr. Miller again.

6 MR. MILLER: Now I have -- I still have
7 nothing further to add on the issue of whether or not a
8 violation occurred.

9 CHAIRMAN SMITH: I have a question. Maybe
10 other commissioners here. The e-mail that Mr. Allen
11 mentioned. I don't -- there was so much to read. It
12 may have escaped from my memory. Was that e-mail from
13 Toni Taber in the package or did you see --

14 MR. MILLER: It's not.

15 CHAIRMAN SMITH: I don't remember seeing that
16 e-mail.

17 MR. MILLER: I'm a little reluctant to engage
18 in a response to Mr. Allen. I made a conscious
19 decision -- there is a dispute as to the conversations,
20 that he has reported his side of those conversations.
21 I'm not sure I agree with the characterization of the
22 e-mail that he has given to that e-mail.

23 I will be happy, at the pleasure of the
24 Commission, to -- as sometimes is necessary in
25 investigations, to assess the credibility of witnesses

20 (Pages 77 to 80)

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<p>1 who provide conflicting statements. 2 In this particular case, because that 3 credibility issue did not relate at all to the issue of 4 whether there was a violation and, moreover, the 5 written documentation in the candidate handbook itself 6 had a conflict and the fundamental purpose of the 7 Form 500 has already been called into question by the 8 Commission, I did not see a purpose -- I did not deem 9 it helpful to the Commission at this point to wade into 10 assessing the credibility of the circumstances 11 surrounding the communications between the folks. If 12 you direct me to, I will.</p> <p>13 CHAIRMAN SMITH: I guess I'm wondering. You 14 have the e-mail in question. We haven't seen it.</p> <p>15 MR. MILLER: I have an e-mail --</p> <p>16 CHAIRMAN SMITH: Would you characterize it 17 differently than Mr. Allen characterized it?</p> <p>18 MR. MILLER: The e-mail that I am aware of 19 has to do with communications that occurred in the 20 context of the submission of the information to the 21 registrar of voters.</p> <p>22 CHAIRMAN SMITH: Which was a different 23 matter.</p> <p>24 MR. MILLER: I may -- my recollection may be 25 different from Mr. Allen's or maybe there is an e-mail</p>	<p>1 whether there is mitigating circumstances as far as our 2 actions?</p> <p>3 COMMISSIONER VEMULAPALLI: Mitigating 4 circumstances. I feel there is a violation, but I 5 would like to see the circumstances.</p> <p>6 COMMISSIONER PIERRE-DIXON: And I think I'm 7 at a point where I'm concerned about misinformation. 8 Because people should be able to rely on professionals, 9 on the one hand; and, on the other hand, if they 10 covered elections and everything, then there is a real 11 question here about what was really told and not told. 12 So I think we're in a bit of a quandary.</p> <p>13 CHAIRMAN SMITH: Okay. So it sounds like we 14 could at least take the first step of whether or not 15 there was a violation. But then there is some 16 question -- or -- is there a question in your mind as 17 to whether there was a violation?</p> <p>18 COMMISSIONER PIERRE-DIXON: Yes.</p> <p>19 CHAIRMAN SMITH: Okay. I don't -- let's go 20 to the next step, and let's see where it leads us.</p> <p>21 COMMISSIONER VEMULAPALLI: Is there any way 22 Mr. Miller can ask the candidates and the City -- the 23 City Clerk to when exactly -- when he asked that 24 question? Before or after he accept contribution? We 25 need to know exactly when he asked that question --</p>
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<p>1 that I'm not recalling or maybe he's talking about -- 2 I'm not sure whether we're talking about the same 3 e-mail or not.</p> <p>4 CHAIRMAN SMITH: In any event, we haven't 5 seen --</p> <p>6 MR. MILLER: That is correct.</p> <p>7 CHAIRMAN SMITH: I didn't think it was, but I 8 wanted to be sure. Because my memory of big packages 9 is not perfect.</p> <p>10 MR. MILLER: It is not included in your 11 packet.</p> <p>12 CHAIRMAN SMITH: Okay. Good. Thank you. 13 Any other questions or are we ready to --</p> <p>14 COMMISSIONER VEMULAPALLI: I would like to -- 15 I need some more time to see -- I don't feel 16 comfortable. I have to look at it more to go. Is it 17 okay if I can --</p> <p>18 CHAIRMAN SMITH: Just -- you want to go 19 over --</p> <p>20 COMMISSIONER VEMULAPALLI: One more time.</p> <p>21 CHAIRMAN SMITH: Are you suggesting we defer 22 this to another meeting?</p> <p>23 COMMISSIONER VEMULAPALLI: Is it okay?</p> <p>24 CHAIRMAN SMITH: Okay. Let me ask this. Is 25 it with regard to whether there was a violation or</p>	<p>1 CHAIRMAN SMITH: Well, that's --</p> <p>2 COMMISSIONER VEMULAPALLI: -- to the City 3 Clerk.</p> <p>4 CHAIRMAN SMITH: That's a question that the 5 Commission can potentially ask Mr. Miller to look into.</p> <p>6 COMMISSIONER VEMULAPALLI: Okay.</p> <p>7 CHAIRMAN SMITH: But, yeah, let's go to that 8 next step here and see where it leads us.</p> <p>9 Okay. So the question is -- we have -- this 10 is double-sided because there is so much paper.</p> <p>11 COMMISSIONER PIERRE-DIXON: Right.</p> <p>12 CHAIRMAN SMITH: Okay. We have to make a 13 decision. We have four options. We can find that 14 further investigation is necessary. If so, we would 15 direct the Evaluator to conduct further investigation 16 and report back. And I would say we would have to be 17 very specific, if we were to do that, as to what 18 further investigation we need. We can find that there 19 was sufficient evidence to establish that no violation 20 has occurred. We may find that there is insufficient 21 evidence to establish that a violation has occurred. 22 We can find, based on a preponderance of the evidence 23 from the entire record of the proceeding, that a 24 violation has occurred.</p> <p>25 What I'm hearing from both of my fellow</p>

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1 commissioners is that there is some question, perhaps
2 additional information that you feel is necessary
3 before we make a determination. So maybe if you guys
4 could be more specific as to what you think you need.
5 COMMISSIONER PIERRE-DIXON: Well, my concern
6 is if you asked a specific question on a topic -- "Do I
7 need to file this piece of paper or not?" -- and you're
8 told "No," that's a problem. Regardless of what may be
9 in the written materials, you're talking to a
10 professional who is supposed to represent what is
11 known, and they're telling you something totally
12 different.
13 I see the characterization here, when I'm
14 looking in the report, that the -- let me see if I can
15 find that. "We find no evidence of any deliberate
16 attempt to violate the Municipal Code. To the
17 contrary, Respondent took great care in preparing the
18 various documents that needed to be filed with the City
19 Clerk to launch its candidacy. At a minimum, the
20 respondent was uninformed. He suggests he was
21 misinformed as to the requirement to file a Form 500.
22 Any confusion is, perhaps, understandable."
23 And that's where I have the problem. Because
24 if confusion is understandable, is there a violation or
25 not? Maybe there's not confusion of whether they need

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1 to file; maybe there's confusion of the timing or
2 something of that nature.
3 This goes to the real heart of it. Did this
4 person understand -- did Mr. Manh understand at the
5 time he was to file a Form 500 before he did anything?
6 And I don't think that's clearly stated here. If he
7 says, I had a two-part conversation where someone told
8 me I didn't need to file...
9 CHAIRMAN SMITH: There is something -- and I
10 don't remember if it's in the FPPC or in our own
11 procedures -- that talks about handling -- depending on
12 advice from elections officials and whether you can use
13 that -- the extent to which you can use that as a
14 justification for violating the rules. I don't know
15 where it is, but I know I've seen it.
16 MS. SILVA: I think what you're talking about
17 is 12.0. Are you talking about if there was a request
18 from a candidate for the -- to ask for an opinion
19 regarding what duties and requirements they need to do
20 to comply with Title 12?
21 CHAIRMAN SMITH: Something like that.
22 MS. SILVA: Okay.
23 MR. MILLER: It is -- it's -- I'm sorry. Go
24 ahead.
25 MS. SILVA: It's in the ordinance.

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1 MR. MILLER: 12.05.080.
2 MS. SILVA: 080. 12.05 --
3 CHAIRMAN SMITH: What does it say?
4 MS. SILVA: It's basically asking for --
5 MR. MILLER: It's right here.
6 While she's looking for that, I'll just say,
7 from my perspective and just so you know where I'm
8 coming from in conducting my evaluation, ignorance or
9 confusion of the law does not excuse compliance with
10 the law. It's sort of a fundamental principle. From
11 my perspective, if the President of the United States
12 had told the candidate, You don't need to comply with
13 that law, I'm still looking at the law. And I ask the
14 city attorney, What does the law require and did the
15 candidate comply with it? And the answer is no. Even
16 if they were told by the pope that they didn't have
17 to -- just cards on the table. That's the perspective
18 that I brought to my investigation.
19 I would treat that issue as a mitigating
20 circumstance. It could excuse the violation but not
21 eliminate the violation. That's just my perspective.
22 CHAIRMAN SMITH: That's how I tend to look at
23 it too.
24 MS. SILVA: And the reference that you're
25 talking about -- and I think -- just for context, I

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1 think it's better for me to read it as a whole. But I
2 just want to be clear that the city attorney's office
3 did not issue an opinion on this to the candidates of
4 this particular complaint. So we had no communications
5 with either Mr. Manh or the respondent or the
6 complainant with regards to this. There were
7 communications to us, but we did not issue an advice
8 pursuant to this section.
9 And this section I think you were referring
10 to is 12.05.080. It's "Formal Written Advice From City
11 Attorney. Any person may request the city attorney to
12 provide written advice with respect to the person's
13 duties under the provisions of Chapter 12.05 and
14 Chapter 12.06. The city attorney must provide the
15 advice within 21 working days of the request, provided
16 that the time may be extended for good cause. It shall
17 be a complete defense in any enforcement proceeding
18 before the Elections Commission, and evidence of good
19 faith conduct in any other civil or criminal
20 proceeding, if the requestor at least 21 working days
21 before the alleged violation, requested written advice
22 from the city attorney in good faith, disclosed
23 truthfully all the material facts, and committed the
24 acts complained of either in reliance upon the advice
25 or because of the failure of the city attorney to

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1 provide advice within 21 days of the request or such
2 later extended time."
3 And in no -- we do not issue an opinion here.
4 CHAIRMAN SMITH: But in the spirit of that --
5 let me ask the question. Does that mean that it's --
6 what was the term? It can be -- it can be -- what was
7 the word? If they relied upon this advice, it could be
8 used as -- let me borrow that.
9 Okay. If they request advice in good faith,
10 blah-blah-blah -- oh, "it shall be a complete defense
11 in any enforcement proceeding." What does that mean?
12 Does that mean --
13 COMMISSIONER PIERRE-DIXON: Complete defense.
14 CHAIRMAN SMITH: Does that mean it's a
15 defense against a violation or does that mean it's a
16 mitigating circumstance as far as the penalty?
17 COMMISSIONER PIERRE-DIXON: Defense against a
18 violation.
19 MS. SILVA: It's a defense against a
20 violation here. But I just --
21 CHAIRMAN SMITH: That doesn't apply.
22 MS. SILVA: I just want to clarify --
23 COMMISSIONER PIERRE-DIXON: They didn't make
24 the request to the city attorney.
25 MS. SILVA: It wasn't -- it wasn't an advice

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1 from our office. The way this is postured, it's not
2 coming from our office. So...
3 COMMISSIONER PIERRE-DIXON: Right. So the
4 term "ignorance of the law is no excuse" does not apply
5 when there is a request made to a city attorney and bad
6 information is given and the person relies on it. It's
7 complete defense.
8 MR. MILLER: That's correct.
9 COMMISSIONER PIERRE-DIXON: So that's what
10 that says. So my concern is, when you're speaking to a
11 public official who is knowledgeable about what is
12 required and told one thing and act on that thing, you
13 should not be held responsible.
14 CHAIRMAN SMITH: Then I guess we get to the
15 question of what was actually said.
16 COMMISSIONER PIERRE-DIXON: What was said.
17 CHAIRMAN SMITH: It's a "he said, he said"
18 sort of situation, it sounds like.
19 COMMISSIONER PIERRE-DIXON: Uh-huh.
20 CHAIRMAN SMITH: Let's go ahead. You have
21 that concern also, or you just want to study the thing
22 further --
23 COMMISSIONER VEMULAPALLI: I agree with her.
24 It's not a valid defense. There is a conflict -- a
25 conflict. Then it's not a violation if they're

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1 officially following that. But where do we get the
2 information?
3 CHAIRMAN SMITH: It sounds like -- I hate to
4 go there. I basically -- I take the -- I tend to agree
5 with Mr. Miller that ignorance of the law, regardless
6 of where you got the information, is not an excuse;
7 but, rather, is a mitigating factor. So my position
8 would be there's been a violation, but there's a
9 mitigating factor and there should be no penalties.
10 But 2 to 1 isn't going to solve anything.
11 COMMISSIONER PIERRE-DIXON: I would agree
12 with that principle if we were talking about something
13 that didn't require a certain form. There was some
14 piece of information in this huge packet that this
15 person was handed that they just didn't see or didn't
16 rely upon it or did something that they should not have
17 done in relation to this whole packet of information.
18 When a person asks a specific question: "Do
19 I file or not file this Form 500?" and are told "You
20 don't need to file it," from a person who is an
21 official, I'm sorry. That should be the end of that
22 conversation. Or that official says, I can't tell you.
23 Take a look at the handbook and draw your conclusions
24 from what's there. Because, obviously, you have to
25 rely on the notebook.

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1 And that's not what the person is telling us
2 happened. They're telling us that someone that they
3 trusted to know this information gave them a
4 misinforming as to what it was. Not once but twice.
5 CHAIRMAN SMITH: It sounds like where we're
6 at -- that the only way we're going to be able to
7 proceed here is to ask the evaluator to look further
8 into the interactions between the candidate and the
9 clerk's office as to what -- the credibility of
10 witnesses and all of that other stuff and come back
11 with additional information. Because I think the two
12 of you are indicating that you're not ready to come to
13 any conclusion without additional information.
14 COMMISSIONER VEMULAPALLI: I would like to
15 have written proof. Not like I talked to that person,
16 and he gave me that advice. I don't want that. I want
17 something in writing, I gave you this advice. Somebody
18 saying that.
19 CHAIRMAN SMITH: Yeah. Unfortunately, in
20 this case, it sounds like, depending on the -- the --
21 the e-mail that we heard about, it's going to be one
22 person describing their side of a conversation and
23 another person describing their side of a conversation.
24 COMMISSIONER PIERRE-DIXON: And then we have
25 to decide.

23 (Pages 89 to 92)

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1 MR. MILLER: For -- If -- assuming that you
2 want to go down that path, I wonder whether you want to
3 consider -- and I just -- I don't know the answer --
4 hearing from folks directly rather than having me
5 interview people and report back to you and having me
6 be the -- communicate to you my feelings as to who said
7 what, when and where. I certainly don't mean to shirk
8 my duties, but --

9 CHAIRMAN SMITH: I understand.

10 MR. MILLER: -- I wonder whether that might
11 be a more efficient and direct way for you to get the
12 information you're looking for.

13 COMMISSIONER PIERRE-DIXON: No. That's the
14 Evaluator's responsibility, to determine the
15 credibility of witnesses. When you do that evaluation
16 and do that investigation, we have to go by what you
17 feel. That's what we've been doing this whole time
18 we've been here. So no reason now to not have faith in
19 you at this time.

20 CHAIRMAN SMITH: Well, we might want to hear
21 from those people in addition.

22 COMMISSIONER PIERRE-DIXON: I don't need
23 that.

24 COMMISSIONER VEMULAPALLI: No.

25 CHAIRMAN SMITH: Okay. So Mr. Allen --

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1 further information so that we can continue. That's
2 our next regular meeting, in case anybody wondered
3 where I pulled that date from.

4 MR. MILLER: Could I ask for a two-minute
5 recess for me to consult with your city attorney on a
6 question related to the recommendation you'd like to
7 make?

8 CHAIRMAN SMITH: Sure. Absolutely. Yeah.

9 MR. MILLER: I apologize.

10 CHAIRMAN SMITH: No, that's fine.

11 MR. MILLER: We're doing pretty good. It's
12 only 7:30 and we've gone through four.

13 CHAIRMAN SMITH: All right. If anybody wants
14 to take a quick break, we'll reconvene here in a few
15 minutes.

16 (Recess taken.)

17 CHAIRMAN SMITH: Okay. Mr. Miller?

18 MR. MILLER: So thank you for the recess and
19 the opportunity to allow me to consult with your city
20 attorney. I have nothing to report about the -- from
21 that recess conversation except to request -- and the
22 city attorney, I think, has concurred -- that you state
23 again and be as clear and precise as you are
24 comfortable to be, what -- the direction you're giving
25 me, just to make sure that I understand it and adhere

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1 MR. ALLEN: I apologize, Mr. Chair. Would it
2 be at all appropriate -- I have the e-mail in question
3 in front of me right now. I obviously understand the
4 Commission doesn't have a hard copy in front of them.
5 I don't know if Mr. Miller does. But I am happy to
6 read it into the record if that makes any difference at
7 all. I understand by the confusion between Mr. Miller
8 and my interpretation of the e-mail.

9 COMMISSIONER PIERRE-DIXON: I would be a
10 little hesitant because Mr. Miller has seen some
11 e-mails. They may not be the same e-mails. I'm not
12 quite sure. I'm not saying you're making up anything,
13 but I think it needs to be a little more official than
14 that.

15 MR. ALLEN: Just thought that I would offer.

16 CHAIRMAN SMITH: I could go either way, but I
17 don't have a problem with what you're suggesting.

18 Okay. So I think where we're at -- the only
19 way we're going to get through this is to ask for a
20 limited further evaluation to more -- how do I put
21 it? -- to evaluate the interactions between the
22 candidate and the clerk's office and whatever
23 information there is regarding that -- those
24 discussions and any documentation associated with those
25 discussions and come back hopefully on April 8th with

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1 to it but don't depart from it.

2 CHAIRMAN SMITH: Okay.

3 MR. MILLER: It's an unusual circumstance we
4 find ourselves in.

5 CHAIRMAN SMITH: Yes.

6 COMMISSIONER PIERRE-DIXON: I think the
7 question I need answered is whether or not the
8 respondent in this case was told he did not have to
9 follow a Form 500 at any time by the clerk's office.
10 Period.

11 CHAIRMAN SMITH: And that's important to you
12 because you're feeling that -- if he was told this by a
13 public official, then you don't feel there was a
14 violation?

15 COMMISSIONER PIERRE-DIXON: I feel that a
16 person has a right to rely on the knowledge of the
17 person who is assigned that position and should be
18 protected from any ignorance of the law as a result.

19 MR. MILLER: So, just to make sure I got it,
20 you would like me to conduct some further investigation
21 to determine and advise you as to whether or not the
22 respondent was told by the City Clerk's office whether
23 he had to file the Form 500?

24 COMMISSIONER PIERRE-DIXON: Uh-huh, right.
25 That's my only question.

24 (Pages 93 to 96)

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<p>1 CHAIRMAN SMITH: Okay. I don't have 2 anything. Is that fine with you? 3 COMMISSIONER VEMULAPALLI: If possible, they 4 can get written proof. 5 MR. MILLER: Well, my report to you will be a 6 written report that will answer the question if the -- 7 It depends on whether or not there was written 8 communication or oral communication. 9 CHAIRMAN SMITH: I think that was the point. 10 She would prefer to see evidence of written direction 11 from the clerk's office or -- 12 MR. MILLER: I can't promise that -- 13 CHAIRMAN SMITH: Or if this e-mail really 14 does -- really is a written apology for having verbally 15 provided -- 16 COMMISSIONER PIERRE-DIXON: Wrong -- 17 CHAIRMAN SMITH: -- wrong information, that 18 would also be of interest. 19 MR. MILLER: I will provide you with whatever 20 written record exists and a report on whatever oral 21 discussions I find out about. Is that -- 22 COMMISSIONER PIERRE-DIXON: Perfect. 23 CHAIRMAN SMITH: Okay. And then before you 24 leave tonight, I want to talk to you a couple of 25 minutes about timing of reports. Because this may</p>	<p>1 meeting, at which time we will take it up again. 2 And now we're on to Number 5. Okay. 3 Once again, it is Wednesday, March 25th, 4 2015, and this hearing of the City of San Jose Ethics 5 Commission is being held in Room W262 of San Jose City 6 Hall. All members of the Commission are present except 7 Chris Peacock. 8 The Commission will conduct a hearing on a 9 complaint filed with the City Clerk on March 4th, 2015, 10 by Daniel Bogart alleging that Lan Diep -- is that 11 close? 12 MR. DIEP: Close enough. 13 CHAIRMAN SMITH: Close enough. -- for San 14 Jose City Council District 4 2015 violated 15 Section 12.06.1010(A) of the San Jose Municipal Code. 16 Specifically, the allegation is that the respondent 17 displayed lawn signs that did not contain the correct 18 "paid for by..." disclaimer. The City Clerk promptly 19 notified and provided a copy of the complaint to the 20 Independent Evaluator, and the Evaluator notified and 21 provided a copy to the respondent on March 4th, 2015. 22 The Independent Evaluator's Report and Recommendations 23 were submitted to the City Clerk on March 18th, 2015, 24 and copies were then provided to the complainant, 25 respondent and commission members and posted to the</p>
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<p>1 impact what you and I discussed earlier. Or do you 2 think it doesn't? 3 MR. MILLER: It most certainly does. 4 CHAIRMAN SMITH: Okay. So let's talk 5 afterwards. We won't have anything to do after the 6 hearing. 7 Okay. There's a question about -- for those 8 who are wondering what code we're talking, this has to 9 do with the timing of reports for future meetings. 10 Okay. So we had a motion, but we didn't have 11 a second and a vote on it, I believe. So do you want 12 to second the motion? This is the motion to ask for 13 any information. 14 COMMISSIONER VEMULAPALLI: Uh-huh. 15 CHAIRMAN SMITH: Okay. So we have a second 16 on the motion. 17 And further discussion? 18 COMMISSIONER PIERRE-DIXON: Huh-uh. 19 CHAIRMAN SMITH: I don't think so. 20 All in favor? 21 (All Commissioners responded Aye.) 22 CHAIRMAN SMITH: Opposed? 23 (No response.) 24 CHAIRMAN SMITH: Okay. So that's unanimous. 25 So I will suspend this hearing until a future</p>	<p>1 city web site with the agenda for tonight's meeting -- 2 tonight's hearing. 3 Okay. At this time, if you would like to 4 identify the complainant or respondent or their 5 representative, if they are present. If the 6 complainant is with us or representative of the 7 complainant. 8 And the respondent is here. Okay. Thank 9 you. 10 Okay. Under the Commission's regulations and 11 procedures, the respondent may submit a written 12 response to the Report and Recommendations. The 13 response may contain legal arguments, a summary of 14 evidence and any mitigating or exculpatory information. 15 I believe we have not received any written 16 response from the respondent. And, similarly, we 17 haven't received anything additional from the 18 complainant. 19 MS. KRANTZ: No. 20 CHAIRMAN SMITH: Okay. We're back to 21 Mr. Miller for the fifth time. 22 MR. MILLER: Okay. This is a lawn sign 23 disclaimer complaint similar to the ones we heard 24 earlier this evening. However, there are two 25 differences that I would like to call to your</p>

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1 attention, unless you want me to go through the litany
2 of the facts.
3 COMMISSIONER PIERRE-DIXON: No, that's fine.
4 MR. MILLER: Two things that are different.
5 One is that subsequent to my filing of this report, I
6 did have a conversation with the respondent, who has
7 corrected one of the facts in my report in a way that I
8 think is relevant to your consideration. I mentioned
9 in my report that the respondent had told me that he
10 was unaware of the disclaimer requirements when he
11 purchased the lawn signs. And apparently I misquoted or
12 misunderstood the respondent. And, in fact, the facts,
13 as the respondent has told me, are that he originally
14 had printed up lawn signs that included the compliant
15 disclaimer of the street address -- which in his case
16 was his home address, because he does not have a
17 campaign office -- and that after beginning to
18 distribute those signs, he thought -- he had some
19 concerns about disclosing his residence address. And
20 so, in fact, he then stopped distributing those signs
21 and printed up different signs that did not include his
22 street address.
23 So it's incorrect to say that he was unaware
24 of the Code. In fact, he was aware of it and chose to
25 produce signs that said something different.

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1 And the second fact that is different from
2 the other lawn -- the other lawn sign complaints we
3 have reported to you on, is consistent with the fact I
4 just mentioned to you, is that when notified of the
5 complaint, rather than take corrective action and put
6 stickers on, the respondent sent an e-mail and a
7 letter, both of which are in your report, both of which
8 assert that it would be unfair and unreasonable to
9 expect him to put his res- -- home address on the lawn
10 signs. And I don't want to put words into Respondent's
11 mouth, especially when he's here and especially since
12 his written statements are in the report. But he has
13 respectfully suggested that the requirement is not fair
14 to him and that he, rather than take corrective action
15 now, was going to wait until this hearing and find out
16 what the Commission's views on his perspective was.
17 So, with those two factors, the remainder of
18 my report is certainly accurate in that there were lawn
19 signs distributed that did not comply with Title 12
20 disclaimer requirements, and that would constitute a
21 violation of the Code.
22 CHAIRMAN SMITH: And I believe your
23 recommendation was --
24 MR. MILLER: I did not make a recommendation.
25 CHAIRMAN SMITH: That's right.

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1 MR. MILLER: I recommended that you find a
2 violation. But knowing the importance that the
3 Commission has placed on taking corrective actions,
4 I -- there are mitigating circumstances similar to
5 other lawn sign issues. But that one mitigating
6 circumstance is not present here.
7 Now there's an additional fact, which is that
8 the violation was not inadvertent. The violation was
9 done with knowledge of the Code.
10 And so, for both of those reasons, I am not
11 making a recommendation but allowing you to consider
12 how you would like to proceed.
13 CHAIRMAN SMITH: Okay. Questions from
14 either --
15 COMMISSIONER VEMULAPALLI: How many signs are
16 we talking about?
17 COMMISSIONER PIERRE-DIXON: 500?
18 MR. MILLER: So there were approximately 500
19 signs purchased. And as of the date of the report,
20 about 300 of them were distributed. I don't know how
21 many signs were originally produced and distributed
22 that included the residence address. And I don't know
23 whether, in the weeks since we filed our report, there
24 have been any more than 300 that were distributed. In
25 other words, I don't know whether the respondent

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1 stopped distributing reports [sic] after we filed our
2 complaint -- our report.
3 CHAIRMAN SMITH: So in a couple of minutes
4 we'll hear from the respondent, so you can ask him that
5 question if you want.
6 I guess -- I don't know when the proper time
7 to make this comment is, but I'll make it. Maybe a
8 little bit of history on how we got to where we got.
9 When these requirements were put in place,
10 there was a concern that I can remember, going back
11 quite some time, that, first of all, just putting the
12 FPPC number on the sign, which is -- well, there was
13 debate about should you have this on lawn signs or not,
14 because I guess the FPPC doesn't require it. We
15 require something. When disclaimers are required under
16 the FPPC laws, I believe all you have to do is give the
17 name of the committee and FPPC number. There was a
18 feeling in San Jose that not everybody knows, given an
19 FPPC number, how to find out -- if they want to know
20 who this really is, giving Joe Citizen an FPPC number
21 isn't necessarily going to help them because they don't
22 know that there's a web site or who you can call or
23 whatever. So the idea here was to provide information
24 that the average citizen could -- you know, could
25 readily use in determining who the source of this

26 (Pages 101 to 104)

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<p>1 campaign -- whatever -- the electioneering 2 communication is. 3 When it comes to the street address, I 4 believe, as I recall, that was a conscious decision 5 that because -- I can recall a case where there was a 6 name of a fictitious committee -- didn't really 7 exist -- that was put on a sign with a P.O. box. And 8 I'm searching my memory a little bit here. That's my 9 recollection. And so nobody could find who it really 10 was. There was a thought that if you tie it to an 11 address, it's harder to fake things with a street 12 address than it is with a P.O. box. I think that's how 13 we kind of got into this business of having a street 14 address. It was more concrete, more easy. The 15 campaign committee or whoever was more easily located 16 with a street address and couldn't hide behind a P.O. 17 box. 18 I don't know that it was envisioned -- I 19 don't remember any discussion about, Well, what if 20 somebody runs a campaign out of their house? I would 21 say I think it's certainly a legitimate concern. I 22 wouldn't want to be spreading campaign signs around the 23 city that had my home address. Who knows who's going 24 to see that and what they're going to want to do with 25 that information.</p>	<p>1 being first duly sworn by the Chairman to tell the 2 truth, the whole truth and nothing but the truth, 3 testified as follows: 4 5 CHAIRMAN SMITH: If you would identify 6 yourself. 7 MR. DIEP: My name is Lan Diep, L-a-n; last 8 name, D-i-e-p. 9 So to clarify for the record further, I began 10 printing -- I did read the Code. I read the whole 11 handbook. Because I am an attorney, and it's just my 12 personality. I can't recite the whole thing, but I did 13 read it for the highlights and at least once through. 14 I understood the street address requirement, and I did 15 start out complying with it. In early December I 16 printed not lawn signs but these -- like 17 18-by-12-inch -- this is my estimation. Not precise -- 18 but signs with the disclaimer with my address on them, 19 my home address. And I used these for my initial kind 20 of "I'm running for office" event. I also printed it 21 on a banner, which is also present in the room. And I 22 used that. And then I hand these out for pictures at 23 the -- my kickoff event, and then people started taking 24 them home. And I realized I just gave everybody my 25 home address.</p>
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<p>1 MS. SILVA: It was also tied into a request 2 by one of our council members in our work plan last 3 year or the year before when we actually changed this 4 in 2013, that recommendation or request. And the 5 council member wanted that to be included in the 6 campaign -- 7 CHAIRMAN SMITH: The street address? 8 MS. SILVA: Yes. 9 CHAIRMAN SMITH: Oh, I'd forgotten about 10 that. 11 MS. SILVA: And the idea was that if you saw 12 a lawn sign that didn't belong where it belonged, you 13 could actually go to an actual location to dump it at 14 somebody's -- at the address that was listed on the 15 sign itself, not a P.O. box. 16 CHAIRMAN SMITH: Okay. Additional 17 clarification. So there is some pluses and minuses 18 here, obviously. And we've already got on our list 19 reassessing this whole thing. I won't go on any more. 20 I thought that might be useful background on this. 21 With that, if the respondent -- if you would 22 like to speak to us, you may. I need to swear you in 23 again. So if you identify yourself again and... 24 25 LAN DIEP,</p>	<p>1 So I went to the City Clerk as -- when I got 2 the handbook and made the appointment and pulled 3 papers. This happened before I pulled papers. I went 4 and I asked the City Clerk -- not the City Clerk, Toni 5 Taber, but somebody in the office. You know, Hey, I 6 have this concern about my personal address, and I 7 don't feel comfortable disseminating it publicly. Do 8 you think a P.O. box would work? 9 And the response to me was, Yes, that should 10 work because anybody who is curious could go to the 11 City Clerk, and your address is on file. 12 So that was -- and I'm also -- I will be the 13 first to tell you that I agree with Mr. Miller that 14 ignorance of the law is no excuse. And I did not get 15 that in a writing -- communication in writing. It was 16 just kind of an oral thing, and I took it. And that 17 was bad on my part. 18 But I went back and I printed a second 19 version of these signs with the P.O. box. And then I 20 used the P.O. box for my yard signs thereafter, relying 21 on that. Perhaps, you know, foolishly on my part, but 22 that is what happened. 23 And I think that is not the crux of my 24 argument before this Commission, however. Even 25 understanding that I should not have relied on the City</p>

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1 Clerk's Information, I -- the crux of my argument is
2 that the Commission should consider the public safety
3 issue and also the, I think, chilling effect that is
4 posed by the requirement that you put a physical street
5 address. Because what that actually imposes is either
6 a candidate running for office must have a street
7 address to run for office to disclose their personal
8 residence. Alternatively, they must have the funds to
9 rent or purchase a campaign office, which is not
10 something that all candidates would have.

11 Or, thirdly, to go use a P.O. box that has a
12 dummy address capability that gives you a street
13 address to accept FedEx and UPS addresses, which you
14 cannot bring a yard sign to and dump but technically
15 complies with the requirement that you have a street
16 address. And I think that turns Title 12 into a farce,
17 if that is the route that most people would go, in
18 fact, purchase a P.O. box or rent a P.O. box but with
19 the feature that allows you to send UPS or FedEx
20 packages delivered to the post office there.

21 So that's just -- my argument is basically
22 the Commission consider it. And I think -- I'm not
23 sure it's in your power, but to strike it down or do
24 something.

25 And that, I guess, is the thrust of my

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1 a business address. I would be a little hesitant to
2 put my own home address on something, but to run for
3 public office is a high calling.

4 MR. DIEP: I would suggest, in response to
5 that, that -- technically, getting a P.O. box satisfies
6 the requirement but does not further the goal of having
7 a place where you can drop off, you know, improperly
8 placed lawn signs. So, I mean, you're still in a
9 quandary.

10 CHAIRMAN SMITH: Okay. Well, we are -- this
11 whole thing of these statements is something we're
12 going to take up. We do not have the power ourselves
13 to change these requirements. However, we do have the
14 power to make recommendations to council. And they
15 don't always follow what we recommend, but I would say
16 the majority of the time they do. Maybe with a few
17 tweaks here and there.

18 So whatever comes out of our deliberations, I
19 personally, I think, am an advocate of going back and
20 saying the FPPC language is enough, but I don't know.
21 We're going to have to hash that out. I can almost
22 guarantee we will be able to make some kind of
23 recommendation. Because this issue has come up in
24 several different forums quite a lot in the last year,
25 and I, for one, am quite tired of it.

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1 argument, that it heightens the burden or the
2 requirements to run for office, whereas in a -- you
3 know, city of San Jose, in a true democracy or in the
4 system that we have, somebody who is homeless,
5 without -- who could register to vote, should be able
6 to run. And so the requirement to have a physical
7 street address is actually onerous and overly
8 overburdensome than the purported stated requirements
9 to run for office, which is, right now, you be over 18,
10 you've lived in the district for X days, 30 days or so
11 on and so forth.

12 So I think, by enforcing this, technically
13 you actually heighten the burden of -- or heighten the
14 standard of running for office that the City actually
15 intends.

16 CHAIRMAN SMITH: Okay. Questions?

17 COMMISSIONER PIERRE-DIXON: No. You know, I
18 think it's a lofty ambition. But, at the same time, I
19 think people need to know who are behind these
20 candidates and who is providing the finances for these
21 things. And I think the public needs to know.
22 Unfortunately, that weighs on our privacy.

23 So my feeling would be that it should be made
24 a requirement but something where you can get a street
25 address from the post office that could be used or get

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1 But -- okay. Well, anyway, thank you for
2 your comments.

3 And if there's no other questions -- thank
4 you.

5 And we do not any other complainant here.
6 So -- anyone else in the audience wish to make a
7 statement on this complaint?

8 MR. LAM: Yes.

9 CHAIRMAN SMITH: If you want -- If you want
10 to come up, if you want to make a statement, then I'll
11 need to -- I'll need to swear you in and -- identify
12 yourself so --

13 MR. LAM: I'm Duc -- Duc Lam.

14 CHAIRMAN SMITH: Okay. Duc Lam.

15

16 DUC LAM,
17 being first duly sworn by the Chairman to tell the
18 truth, the whole truth and nothing but the truth,
19 testified as follows:

20

21 MR. LAM: Talking with Lan when we do a --
22 when we do a banner. So the first time we do banner, I
23 saw the street address on it. So the second time he
24 gave me the one without address. And I asked him, Are
25 you sure? Are you sure? I'm pretty sure that you need

28 (Pages 109 to 112)

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<p>1 street address. 2 He said, Yeah, I'm sure. 3 Are you sure? Who did you check? 4 He said, City Clerk. 5 So, after that, you know, we print out the 6 second one with a P.O. box number. And then, after 7 that, we print with the P.O. box on the lawn sign. And 8 after that -- and then we have a complaint. And then 9 he said, Here. We have a complaint. 10 I said, Well, now you have to actually go on 11 there and stick -- 12 COMMISSIONER PIERRE-DIXON: That's right. 13 MR. LAM: But I heard it -- he said he 14 concerned with safety. 15 So I said, That makes sense. And I ask him, 16 Make sure. 17 COMMISSIONER PIERRE-DIXON: Uh-huh. 18 MR. LAM: That's all I want to say. 19 COMMISSIONER PIERRE-DIXON: Thank you. 20 CHAIRMAN SMITH: Any questions? 21 Okay. Thank you. 22 Mr. Miller, do you have anything else to add 23 at this point? 24 MR. MILLER: I do not. 25 CHAIRMAN SMITH: Okay. So, once again, it's</p>	<p>1 CHAIRMAN SMITH: Okay. So we have a motion 2 that a violation has occurred. And any further 3 discussion? 4 If not, all in favor? 5 (All Commissioners responded Aye.) 6 CHAIRMAN SMITH: Any opposed? 7 (No response.) 8 CHAIRMAN SMITH: Okay. So it's unanimous. 9 And now the matter of what do we do with 10 that. And again we have our four options, which I'll 11 just quickly go over. We can find mitigating 12 circumstances and take no further action. We can issue 13 a public statement of reprimand. We can require 14 corrective action by a particular deadline and/or we 15 can impose -- oh, I'm sorry. Thank you. Back up. 16 Certification. I think we can do it once. 17 Okay. We need -- I need -- I need to ask the 18 commissioners to certify that you have heard or read 19 the testimony at the hearing and have reviewed all the 20 evidence in the record by affirming "so certified." 21 Commissioner Pierre-Dixon? 22 COMMISSIONER PIERRE-DIXON: So certified. 23 CHAIRMAN SMITH: Commissioner Vemulapalli? 24 COMMISSIONER VEMULAPALLI: So certified. 25 CHAIRMAN SMITH: And me, Commissioner Smith,</p>
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<p>1 time for a decision. We have our four options that I 2 have gone over a few times tonight. We can find 3 further investigation is necessary. We can find there 4 is sufficient evidence to establish that no violation 5 occurred. We can find that there is insufficient 6 evidence to establish that a violation has occurred. 7 Or we can find, based on a preponderance of the 8 evidence, that a violation has occurred. 9 So discussion? Motion? 10 COMMISSIONER VEMULAPALLI: I think the 11 violation has occurred. And I would like to have a 12 street address going to the -- his banners. Because 13 the reason is, the law is the law, and why do we change 14 it? It's better that we follow the law. 15 CHAIRMAN SMITH: Okay. So -- we need to -- 16 we need to separate -- well, actually, go ahead with 17 your comments, and then when it comes to a motion -- 18 COMMISSIONER PIERRE-DIXON: That's fine. You 19 want to separate the two -- 20 CHAIRMAN SMITH: We probably do need to 21 separate the -- is there a violation, and then we'll go 22 to what's the problem -- what's the action? 23 COMMISSIONER PIERRE-DIXON: Separating her 24 motion as to -- she concludes that there has been a 25 violation. I would second that.</p>	<p>1 so certified. 2 Okay. Now, mitigating circumstances or no 3 further action, issue a public statement of reprimand, 4 require a corrective action by a particular deadline 5 and/or impose a civil penalty in accordance with the 6 Chapter. 7 I think we have a disagreement here. I 8 understand -- I understand the feeling that the law is 9 the law, and we need to follow it. But I also really 10 hesitate to require somebody to put their street 11 address on signs that are going to be all over the 12 city. Especially on a heavily contested election with 13 however many candidates there are, and who knows who is 14 backing them. I wouldn't want to be responsible for 15 anything that might happen as a result of it. So 16 even -- 17 COMMISSIONER PIERRE-DIXON: Could they use a 18 post office box that gives you an address, since it 19 connects to the person that's the candidate? 20 MR. MILLER: So it is frequent, in 21 jurisdictions that have street address requirements -- 22 and San Jose is not the only one -- that you rent a 23 post office box, not from the post office but from a -- 24 you know, UPS store or Mailboxes U.S.A., in which case 25 you have a street address. As has been explained to</p>

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1 you, that is technical compliance with the statute.
2 But, yes, there -- that exists and is available.
3 CHAIRMAN SMITH: And the city --
4 MR. MILLER: That would satisfy the Code.
5 CHAIRMAN SMITH: The city attorney's office
6 would concur? To me, that would -- we get into this
7 question of strict reading of the words, and that
8 doesn't comply with strict reading of the word.
9 MS. SILVA: That would give -- that would
10 give you a street address. As Steve had indicated, if
11 you rented from a Mail Box Etc., it's not the post --
12 It's not the box that you get. You get the actual
13 location of that -- of that Mail Box Etc. business. It
14 wouldn't be the P.O. box. Because a P.O. box is a P.O.
15 box. It would be --
16 CHAIRMAN SMITH: Oh, it's like Mail Stop 2,
17 1375 San Carlos --
18 MS. SILVA: Correct.
19 CHAIRMAN SMITH: -- San Jose, California.
20 MS. SILVA: That would be a street address.
21 MR. DIEP: I would say that that, again, is
22 hiding. It's more hiding.
23 COMMISSIONER PIERRE-DIXON: No, but they can
24 find you, as opposed a post office box.
25 CHAIRMAN SMITH: Right. I would have to say

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1 that given that the law is the law and given that this
2 meets the law, it seems a whole lot better to me,
3 under -- today than to require you to change all of
4 your signs to put your street address on them -- I'm
5 sorry -- your home address on them.
6 So I guess I -- given that, what I would tend
7 to favor would be that we require that corrective
8 action and nothing else. No penalty.
9 COMMISSIONER PIERRE-DIXON: That's fine.
10 CHAIRMAN SMITH: That that would be
11 sufficient. And it could be done as a mail stop or
12 whatever the -- they don't call them P.O. boxes. What
13 do they call them?
14 MR. MILLER: It's just a street address. You
15 would require a street address. It's up to the
16 respondent to determine which street address.
17 CHAIRMAN SMITH: Okay. This is another
18 option for providing a street address. Okay. So you
19 rent a box for two months or something like that.
20 Okay. So I think -- somebody want to make a
21 motion?
22 MR. MILLER: If I could suggest that you
23 include in the motion you're about to make some kind of
24 a time period or best-efforts requirement. It is
25 sometimes -- if I'm a candidate and I put out a hundred

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1 signs, twenty of them may have been defaced or thrown
2 away or -- it's hard to require someone to do this to
3 perfection.
4 CHAIRMAN SMITH: Good point. So it would be
5 a best effort. So I guess the requirement would be --
6 let's see. We haven't done one of these motions in a
7 while. Let me see. What do we say?
8 Okay. I would move that the Ethics
9 Commission require the respondent to make a best effort
10 to modify existing and future campaign materials or --
11 no. What's the word? -- electioneering communications,
12 including lawn signs, to include a street address by no
13 later than -- what's reasonable?
14 COMMISSIONER PIERRE-DIXON: Thirty days from
15 the hearing.
16 CHAIRMAN SMITH: Okay. By no later than
17 30 days from today, which is going to be after -- so it
18 may not be an issue.
19 MR. MILLER: Do you want it to be reported
20 back to you to determine whether those best efforts
21 then have satisfied your desires, or are you -- is this
22 the end of it? You don't want to hear about it
23 anymore?
24 CHAIRMAN SMITH: Good point. Glad you're
25 here.

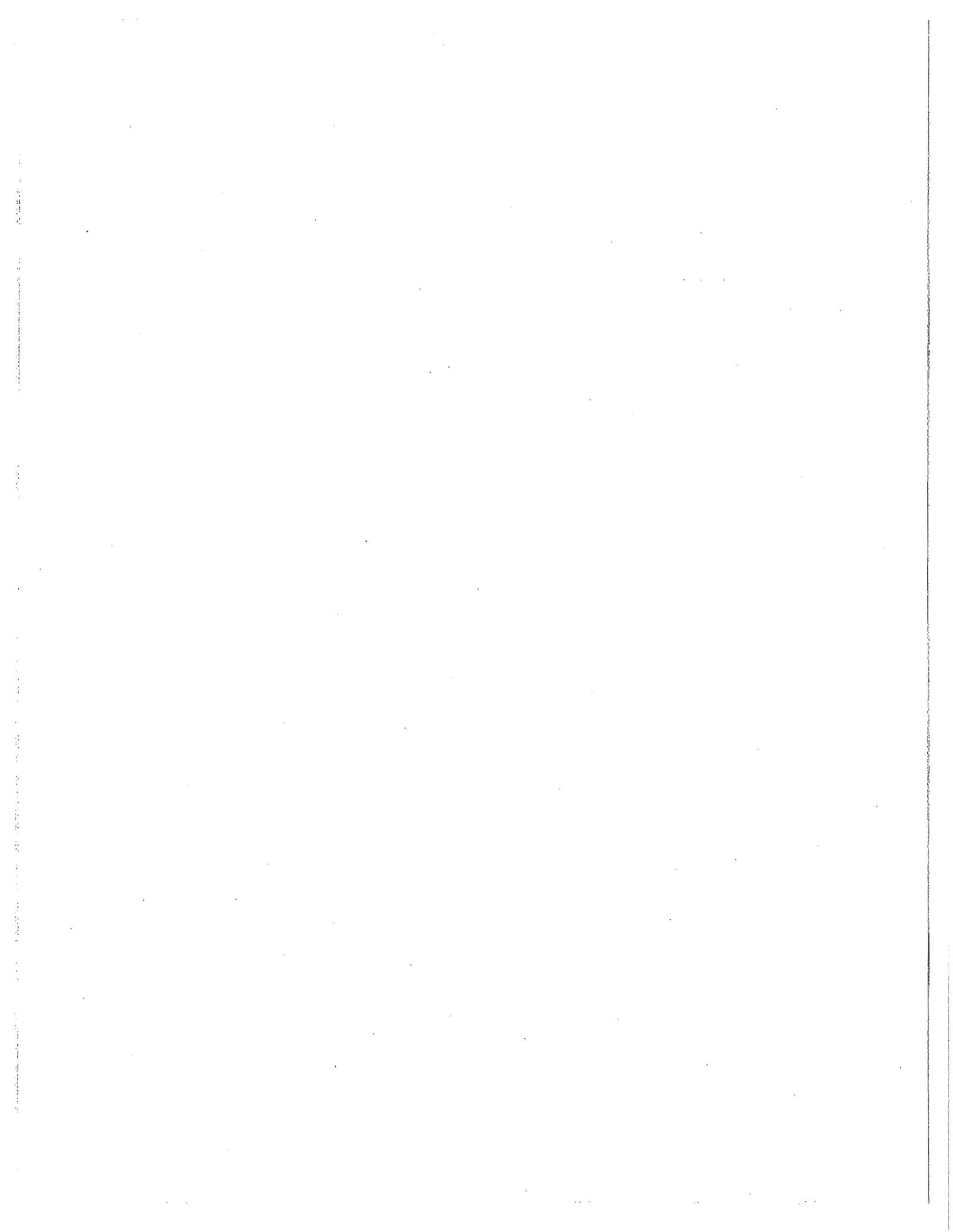
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1 Well, a couple of things come to mind. One
2 is we're having a meeting in two weeks.
3 MS. SILVA: Which is the day after the
4 election.
5 CHAIRMAN SMITH: Which is the day after the
6 election. And the day after the election, there may or
7 may not be any future campaign signs, depending on --
8 COMMISSIONER PIERRE-DIXON: Have faith.
9 CHAIRMAN SMITH: -- the results of the
10 election.
11 COMMISSIONER PIERRE-DIXON: Fourteen days, I
12 think, so at least we'll have an idea.
13 CHAIRMAN SMITH: Okay. So make a -- okay.
14 So we would say make a best effort to correct lawn --
15 electioneering communications, including lawn --
16 especially lawn signs -- well, including lawn signs, by
17 the date of the election. And to communicate to the
18 clerk's office by April 8th what has actually happened.
19 Because that's when we meet, and that's the day after
20 the election.
21 MR. DIEP: One clarification?
22 CHAIRMAN SMITH: Yes.
23 MR. DIEP: Commissioner Dixon said 30 days,
24 and then you said by the date of the election --
25 COMMISSIONER PIERRE-DIXON: No, we said we're

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<p>1 changing it. We're changing it. 2 CHAIRMAN SMITH: We changed. 3 COMMISSIONER PIERRE-DIXON: And it's 4 Pierre-Dixon. 5 CHAIRMAN SMITH: Given that we're right on 6 the election, the 30 days doesn't make a lot of sense. 7 So whatever you can do before the election. 8 And then certainly the -- my anticipation 9 would be that any stuff you do -- If this motion 10 passes -- it hasn't even been seconded yet. If this 11 motion passes, if indeed you do get through -- through 12 this election and you're one of the two in the runoff, 13 assuming there's a runoff, that anything that you do 14 for that would comply. 15 MR. MILLER: You can include that as a 16 motion. You could direct that any future lawn signs 17 distributed -- 18 CHAIRMAN SMITH: Okay. 19 MR. MILLER: -- including the ones that have 20 not yet been distributed to date, be compliant and that 21 best efforts be taken to bring the noncompliant signs 22 that have been distributed into compliance. 23 CHAIRMAN SMITH: So moved. I'll replace what 24 I just moved. 25 COMMISSIONER PIERRE-DIXON: Second.</p>	<p>1 (All Commissioners responded Aye.) 2 CHAIRMAN SMITH: Any opposed? 3 (No response.) 4 CHAIRMAN SMITH: Okay. It's unanimous again. 5 And I will declare this hearing closed. 6 (Whereupon, Item III Hearings concluded at 7 8:01 p.m.) 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
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<p>1 CHAIRMAN SMITH: And it's been seconded. 2 Any discussion? 3 COMMISSIONER VEMULAPALLI: No. 4 COMMISSIONER PIERRE-DIXON: No. 5 CHAIRMAN SMITH: All in favor? 6 (All Commissioners responded Aye.) 7 CHAIRMAN SMITH: Any opposed? 8 (No response.) 9 CHAIRMAN SMITH: Okay. It's unanimous. 10 We need to certify. I need to ask you to 11 certify that you have heard or read the testimony at 12 the hearing or reviewed all the evidence in the record 13 by affirming "so certified." 14 COMMISSIONER PIERRE-DIXON: So certified. 15 COMMISSIONER VEMULAPALLI: So certified. 16 CHAIRMAN SMITH: And me, Commissioner Smith, 17 so certified. 18 And, with that, I would move that we direct 19 the city attorney to draft a resolution of the 20 Commission's findings and penalties and authorize the 21 Chair to approve and sign the resolution. 22 Do I have a second? 23 COMMISSIONER PIERRE-DIXON: Second. 24 CHAIRMAN SMITH: Any discussion? 25 All in favor?</p>	<p>1 2 I, NOELIA ESPINOLA, do hereby certify: 3 That said hearing was taken down by me at the 4 time and place therein named, and thereafter reduced to 5 computerized transcription under my direction. 6 I further certify that I am not interested in 7 the outcome of this hearing. 8 9 10 11 Dated: _____ 12 NOELIA ESPINOLA, CSR #8060 13 14 15 16 17 18 19 20 21 22 23 24 25</p>



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