

SPECIAL MEETING MINUTES

October 10, 2018

I. Call to Order & Orders of the Day

Roll Call

PRESENT: Chair Adrian Gonzales, Vice Chair Chris Peacock, and Board Members Madhavee Vemulapalli and Amarpal Randhawa

ABSENT: None

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

OTHER: Independent Evaluator/Investigator Steven Miller and Attorney Katherine McGrath

Call to Order

The members of the San José Board of Fair Campaign and Political Practices convened at 5:35 p.m. in Room T-1446 of City Hall, 200 E. Santa Clara Street, CA 95113.

Orders of the Day

Action: Upon a motion by Board Member Amarpal Randhawa, seconded by Board Member Madhavee Vemulapalli and carried, the Board approved the adoption of the October 10, 2018 agenda. (4-0.)

II. Closed Session – None.

III. Hearings –

- A. Hearings on Complaints filed by Robert Imhoff-Dousharm on August 10, 2018 against Re-Elect Magdalena Carrasco for City Council D5 2018 alleging violations of San José Municipal Code sections 12.06.215, 12.06.235, 12.06.290, and 12.06.910 (Municipal Campaign & Officeholder Contributions) (Independent Investigator/Evaluator)

Documents Filed: 1) Report from Hanson Bridgett LLP dated October 1, 2018 regarding Robert Imhoff-Dousharm v. Re-Elect Magdalena Carrasco for City Council D5 2018, Complaint Filed August 10, 2018; 2) Document titled “Facts about Candidate and Treasurer” drafted by Complainant Robert Imhoff-Dousharm; and 3) Letter dated August 10, 2018 from the Fair Political Practices Commission to Complainant Robert Imhoff-Dousharm re: FPPC File No. 17/1432: Friends of Magdalena G. Carrasco for East Side Union High School Board of Trustees 2012 (ID# 1353110) and Re-Elect Magdalena Carrasco for City Council D5 2018 (ID#

1400557) with enclosed warning letter.

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

There was no public comment. Evaluator Steven Miller summarized the Complaint to the Board and reported that Complainant Robert Imhoff filed four separate Complaints on the same day against the same Respondent, but in the interest of efficiency, consolidated their findings in one report.

Specifically, the Complaints allege five separate violations of the San José Municipal Code (SJMC):

Allegation 1: The Complaints allege that Respondent violated SJMC §12.06.215's contribution limit because it received over \$600.00 from a single individual.

Allegation 2: The Complaints allege that Respondent violated SJMC §12.06.910's requirement regarding "late contributions" because it did not file a Form 497 within 24 hours of receiving a contribution exceeding \$1,000 in the aggregate on June 4, 2018.

Allegation 3: The Complaints allege that Respondent violated SJMC §12.06.235 because it failed to obtain the address, occupation, and employer information from 33 contributors prior to depositing contributions into a campaign bank account.

Allegation 4: The Complaints allege that Respondent violated SJMC §12.06.290 because it accepted campaign contributions or deposited campaign contributions into a campaign bank account after the contribution period ended at 11:59 p.m. on June 4, 2018.

Allegation 5: The Complaints allege that Respondent violated SJMC §12.06.910 because it did not file an amended Statement of Organization within 10 days or receiving \$2,000 or more into its campaign account.

Evaluator Steven Miller summarized his report recommendations to the Board then responded to Board questions.

No representative for Respondent was present so no testimony was given on behalf of Respondent Re-Elect Magdalena Carrasco for City Council D5 2018. Chair Adrian Gonzales swore in Complainant Robert Imhoff and allotted 10 minutes for testimony given the number of Complaints filed and the number of violations alleged. Complainant Robert Imhoff submitted the following into evidence: 1) Document titled "Facts about Candidate and Treasurer" drafted by Complainant Robert Imhoff-Dousharm; and 2) Letter dated August 10, 2018 from the Fair Political Practices Commission to Complainant Robert Imhoff-Dousharm re: FPPC File No. 17/1432: Friends of Magdalena G. Carrasco for East Side Union High School Board of

Trustees 2012 (ID# 1353110) and Re-Elect Magdalena Carrasco for City Council D5 2018 (ID# 1400557) with enclosed warning letter.

Complainant Robert Imhoff provided testimony and summarized the documents he provided to the Board as evidence. Complainant Robert Imhoff informed the Board that Vice Mayor Magdalena Carrasco has a history of violating state and county rules and that this information should be considered when the Board deliberates on this matter. Complainant Robert Imhoff also wanted it noted that no representative for Respondent Re-Elect Magdalena Carrasco for City Council D5 2018 appeared at the hearing. The Board discussed the matter.

Action: Chair Adrian Gonzales moved that the Board finds sufficient evidence to establish that Respondent violated SJMC Sections 12.06.215, 12.06.235, and 12.06.910 as set forth in Allegations 1, 2, 3, and 5; and finds insufficient evidence to establish that Respondent violated SJMC Section 12.06.290 as set forth in Allegation 4. Board Member Madhavee Vemulapalli seconded the motion, which carried. (4-0.)

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

Discussion: The Board discussed how much to penalize the Respondent for violations of the San José Municipal Code. When asked about cooperation from the Respondent, Evaluator Steven Miller informed the Board that the Campaign Manager for Respondent, Omar Torres, was cooperative once he was able to be reached. Evaluator Steven Miller informed the Board that Omar Torres blamed bad advice from the City Clerk's Office for the Respondent's violation of SJMC §12.06.910 by filing their Form 497 late (Allegation 2). Omar Torres indicated that he received the advice by email, but was unable to provide proof. Evaluator Steven Miller reported that he does not believe the City Clerk's Office gave bad advice, and to the contrary, the City Clerk's Office provided emails and copies of receipts signed by Candidate Magdalena Carrasco properly advising Respondent of the deadline to file the Form 497. Evaluator Steven Miller informed the Board that Omar Torres is also an elected official and has experience working with campaigns.

In trying to determine the appropriate fine, Chair Adrian Gonzales gave an example of a fine issued by the Fair Political Practices Commission (FPPC) to a candidate for the Elk Grove City Council who had 2 violations: 1) incorrect date of loans; and 2) failed to disclose the occupation and person information for many contributors (totaling in \$4,000 of contributions received). The FPPC fined the candidate \$2,000. Chair Adrian Gonzales felt that there are similar issues with this matter.

Evaluator Steven Miller responded to Board questions. In response, Evaluator Steven Miller indicated that he did not find that the missing information would have prevented the contribution nor does he believe that not obtaining the contributor information to be intentional. Evaluator Steven Miller found the explanation that the online program Respondent used to obtain donations did not allow them to request the contributor information; given by Respondent's Campaign Manager, Omar Torres; to be

acceptable. In response to questions from the Board, Attorney Katherine McGrath confirmed there were a total of 96 contributions with missing contributor information.

Complainant Robert Imhoff commented that how the Respondent enters the data into the efilng system will prove their intent.

Action: Chair Adrian Gonzales moved that the Board recess for a 5-minute break. Board Member Madhavee Vemulapalli seconded the motion, which carried. (4-0.)

The Board reconvened at 7:34 p.m.

The Board continued their discussion on fines.

Action: Chair Adrian Gonzales moved that the Board impose a \$1,000 penalty on Respondent for violation of SJMC §12.06.910 as set forth in Allegation 2. Vice Chair Chris Peacock seconded the motion, which carried. (4-0.)

Action: Chair Adrian Gonzales moved that the Board impose no penalty on Respondent for violations of SJMC §§12.06.215 and 12.06.910 as set forth in Allegations 1 and 5; but instead, issue a public statement of reprimand stressing the importance of complying with the rules. Chair Adrian Gonzales to work with staff to draft the letter of reprimand and come back to the Board to approve. Board Member Madhavee Vemulapalli seconded the motion, which carried. (4-0.)

Action: Chair Adrian Gonzales moved that the Board impose a penalty of \$5,000 for 96 violations of SJMC §12.06.235 as set forth in Allegation 3. However, the Board will consider a reduction of the penalty to \$2,000 if Respondent appears before the Board with a corrective action plan to show compliance with SJMC §12.06.235 or to explain why Respondent was unable to comply. The hearing on Allegation 3 is to be continued to the Board's November 2018 meeting, or as soon as the matter may be heard, for this purpose. Board Member Amarpal Randhawa seconded the motion, which carried. (4-0.)

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

Action: Upon a motion by Vice Chair Chris Peacock, and seconded by Chair Adrian Gonzales and carried, the Board moved to direct the City Attorney to draft a resolution on the Board's findings, and further, that the Board authorize the Chair to approve and sign the resolution. The letter of reprimand shall be included in the resolution. (4-0.) Chair Adrian Gonzales continued the hearing to November 2018, or as soon as the matter could be heard.

Vice Chair Chris Peacock left meeting at 8:27 p.m.

IV. Public Record – None.

V. Consent Calendar

- A. Approve the Minutes of July 16, 2018 – Special meeting
- B. Approve the Minutes of August 8, 2018 – Regular Meeting

Documents Filed: Draft Minutes for the July 16, 2018 and August 8, 2018 Board meetings.

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

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

Action: The September 12, 2018 minutes were not drafted in time for meeting so approval deferred to next meeting.

VI. Reports

- A. Chair – None.

- B. City Attorney –

- 1. Legislative update – Deputy City Attorney Mark Vanni informed the Board that the Fair Political Practices Commission has prohibited bitcoin contributions.
- 2. Election update – None.
- 3. Campaign Guidance update – Deputy City Attorney Mark Vanni received two requests: 1) seeking guidance on campaign signs; and 2) seeking clarification on the prohibition on receiving contributions from cardrooms. Chair Adrian Gonzales requested that this item in the future be linked to the City Attorney’s Campaign Guidance webpage for ease of review by the Board Members.

- C. City Clerk

- 1. Legislative update – City Clerk Toni Taber informed the Board that the City Council referred an item to the Board to analyze the pros and cons of moving the Mayoral Election to Presidential years. The referral will be added to the November agenda for Board discussion.
- 2. Status report on filings (Form 700, Campaign Statements, Lobbyist) – City Clerk Toni Taber reported that all candidates for the November runoff timely filed their 1st Pre-Election campaign statements.
- 3. Elections update – None.
- 4. Update on Board Expenditures

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

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

- D. Investigator/Evaluator – Evaluator Steven Miller updated the Board on the Minim Dang Complaint. Evaluator Steven Miller indicated that interviews with the witnesses are still being conducted.

VII. Old Business

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

Action: Chair Adrian Gonzales indicated that he is reviewing the draft brochure created by the City Clerk's intern, but would like the item deferred to the next meeting.

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

Action: Chair Adrian Gonzales reported that he is reviewing the research compiled by the City Clerk's Office intern, but would like the item deferred to the next meeting.

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

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

Action: Deferred to next meeting.

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

Action: No action needed.

VIII. New Business – None.

IX. Public Comment – None.


X. Future Agenda Items

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

XI. Adjournment

The next meeting is scheduled for November 14, 2018 at 5:30 p.m. in Room W-1446, pending coordination of a Special Meeting and/or hearing if needed. Board Member Amarpal Randhawa informed the Board that he may not be attending due to a work conflict on November 14, 2018.

Action: Upon a motion by Board Member Amarpal Randhawa, seconded by Board Member Madhavee Vemulapalli and carried, the Board approved to adjourn the meeting at 8:55 p.m. (3-0-1; Absent: Peacock.)


ADRIAN GONZALES, CHAIR

ATTEST:
BOARD OF FAIR CAMPAIGN AND POLITICAL PRACTICES SECRETARY



TONI J. TABER, CMC
CITY CLERK

Note: The audio recording for this meeting was recorded in two parts due to the recess by the Board.