

Monday, October 29, 2014

San Jose Ethics Commission
C/O Cecilia McDaniel
Office of the City Clerk
200 E. Santa Clara Street, Wing, 2nd floor
San Jose, CA 95113

Dear Commissioners,

This complaint alleges that Sam Liccardo and the Neighbors for Sam Liccardo for Mayor 2014 violated Title 12 of the San José City Municipal Code ("Municipal Code") by not reporting the use of Councilmember Nguyen's email contact list as an in-kind contribution.

Municipal Code section 12.06.050's broad definition of "contribution" includes, "any payment, loan, ... or an enforceable promise to make a payment except to the extent that full and adequate consideration is received, or it is clear from the surrounding circumstances that the contribution is not made for political purposes."¹ The Municipal Code's definition of "contribution" is interpreted in accordance with the applicable provisions of the state's Political Reform Act and the regulations of the Fair Political Practices Commission (FPPC).² State law defines "contribution" as, among other things, "... a transfer ... of ... anything of value, whether tangible or intangible."³

Several advice letters from the FPPC have stated that mailing lists have value and that the transfer of such lists for political purposes constitutes an in-kind contribution. In one letter, the FPPC determined that the receipt of a mailing list by the campaign committee for a current city councilmember running for mayor is an in-kind contribution.⁴ The FPPC has concluded that the amount of such in-kind contributions is the fair market value of the list, which is the amount it would cost the committee to purchase a similar list on the open market.⁵ Based on a quick review of prices advertised online, a campaign email list is typically valued between 8 to 15 cents per contact.

Title 12 of the Municipal Code also requires all candidates to file cumulative itemized campaign statements, disclosing all contributions, including nonmonetary contributions, accepted during the campaign contribution collection periods.⁶

On October 1, Sam Liccardo distributed a mass email to an undisclosed number of recipients from his sam@liccardoformayor.com email address. I have enclosed a redacted copy of that email. The bottom of the email message included the name and office address of Councilmember Madison Nguyen, clearly indicating that the email addresses used in the distribution of the email came from Ms. Nguyen's contact list. The email's message called on recipients to join Councilmember Nguyen in support of Mr. Liccardo's candidacy for Mayor of

¹ According to the FPPC Regulation 18215, a payment is made for political purposes if it is: "(1) For the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates."

² San Jose Municipal Code Section 12.06.010

³ Political Reform Act Sections 82015 and 82044

⁴ FPPC No. I-00-147

⁵ FPPC No. A-97-107

⁶ San Jose Municipal Code Section 12.06.910.B

San José. As such, the transfer of Councilmember Nguyen's contact list to Mr. Liccardo was an attempt to influence support among potential voters for his campaign and constituted an in-kind contribution made for political purposes, as defined under Municipal Code section 12.06.050.

A review of public reports filed by the Liccardo campaign for the last three filing periods showed no reference to any payment or in-kind contribution made by Councilmember Nguyen for the transfer of her contact list to the Liccardo campaign, as required by Municipal Code section 12.06.910. Additionally, a recent Evaluator's report revealed that the Liccardo campaign failed to report in-kind contributions associated with a December 2013 fundraising event. While the report concluded that the campaign's failure to disclose the in-kind contribution was likely an oversight, any additional violations of section 12.06.910 by Mr. Liccardo should be considered as having the intent to hide the contributions or deceive or mislead the public.

Depending on the number of contacts in the list provided by Councilmember Nguyen, Mr. Liccardo may have also exceeded the campaign contribution limit, in violation of Municipal Code Section 12.06.210.⁷

Lastly, the office address listed in the email's message references San José City Hall, revealing that the contact list used by Mr. Liccardo extended from Ms. Nguyen in her capacity as a San José City Councilmember. The misuse of such public funds for political purposes undermines the spirit of Title 12 of the Municipal Code and its intent to preserve the integrity of the City's elections. Furthermore, the impropriety violates Government Code section 8314's ban on the use of public resources for campaign activity.

The allegations contained in this complaint are important because they involve the integrity of the City's elections. I request that the Ethics Commission act quickly to resolve these issues.

Sincerely,

A handwritten signature in blue ink, appearing to read "Carol Garcia". The signature is fluid and cursive, with the first name "Carol" and last name "Garcia" clearly distinguishable.

⁷ As per San Jose Municipal Code Section 12.06.210, the total campaign contribution made by any person to any mayoral candidate, adjusted for inflation, may not exceed \$1,100 for a general election.