THE CITY OF SAN DIEGO
ETHICS COMMISSION

Minutes for Meeting of
Thursday, May 11, 2006

Item-1: Call to Order

Chairwoman Leonard called the meeting to order at 5:00 p.m.

Item-2: Roll Call

Present – Chairwoman Dorothy Leonard, Vice-Chair Larry Westfall, Commissioners Charles H. Dick, Jr., Gil Cabrera and Lee Biddle

Present by Teleconference: Commissioner Karen Thomas-Stefano

Staff – Executive Director Stacey Fulhorst, General Counsel Cristie C. McGuire, Senior Investigator Lauri Davis, Program Manager Steve Ross and Executive Secretary Katherine Hunt

Item-3: Approval of Commission Minutes

Approval of Ethics Commission Minutes for April 13, 2006

Motion: Approve
Moved/Seconded: Biddle/Westfall
Passed by the following vote: Leonard-yea, Dick-yea, Westfall-yea, Cabrera-yea, Biddle-yea, Stefano-yea

Item-4: Non-Agenda Public Comment

None

Item-5: Commissioner Comment

Chairwoman Leonard commented regarding the Mayor's response to her letter regarding the 2007 Fiscal Year budget process. In addition, she commended

Director Fulhorst on the outstanding presentation given at the Council Budget Hearings.

Commissioner Cabrera also commended the Director on the presentation and thanked the Commission staff for their work.

Commissioner Westfall commended staff on how they presented the differences between the Ethics Commission and the Mayor's Office of Ethics Integrity on the Commission's website.

Chairwoman Leonard advised that the Ethics Commission has now been included on the City's website under city departments.

Item-6: Executive Director Comment

Director Fulhorst reported that Council President Peter's budget recommendations include the two additional positions requested by the Commission. She congratulated the Commission Chair on receiving the LEAD San Diego Visionary Award for quality of life for service to San Diego.

Item-7 General Counsel Comment

None

Item-8 Proposed Amendments to Municipal Lobbying Ordinance

Director Fulhorst explained the table provided by staff which reflects provisions in place in San Diego and other California jurisdictions regarding the contents of registration and quarterly report forms.

Chairwoman Leonard suggested that the Commission discuss the disclosure categories reflected in the staff chart one at a time.

<u>Name of Client</u>

Director Fulhorst explained that the current City law requires lobbyists to report all lobbying activity after qualifying as lobbyists, regardless of whether compensation is received for certain activities. She pointed out that none of the other jurisdictions studied restrict the definition of lobbying to only compensated activity. She advised that staff does not recommend any changes to existing law.

Commissioners Cabrera and Leonard both agreed that the law should remain unchanged with respect to the disclosure of uncompensated lobbying activity.

James Sutton commented that local lobbyists do not feel they should have to disclose uncompensated lobbying activity and pointed out that the City Clerk's brochure does not indicate that this is required.

Commissioner Westfall commented that he interprets the current code section referred to by Mr. Sutton to require all lobbying activity be reported once the financial threshold is met.

James Sutton commented that the laws in other jurisdictions do not include language that states a lobbyist must register pro-bono clients after the financial threshold is reached. He expressed his opinion that such a requirement would have to be applied across the board (not only to registered lobbyists) and added that it could raise legal questions.

Activity Expenses

Director Fulhorst advised that staff does not recommend any changes to the existing law.

Chairwoman Leonard questioned in what manner the lobbyist would report these expenses.

Director Fulhorst explained the current law and pointed out that this is a policy issue which the Commission may change.

None of the Commissioners indicated any changes needed to be made to the existing law.

Compensation Received or Promised

Director Fulhorst explained that the current law requires lobbyists to disclose compensation received from clients by checking a box indicating various dollar ranges. She advised that the staff recommendation is for contract lobbyists to be required to disclose a specific amount of money received from a client. She also recommended using the City of Los Angeles and San Francisco as an example by requiring business lobbyists to disclose the total payments they've made to their staff for lobbying activity.

Commissioner Cabrera commented that he supported the staff recommendation.

James Sutton recommended keeping the current ranges for disclosure of compensation received. He also commented that the public is not interested in how much individual lobbyists are paid, and added that the Commission must show that there is a compelling governmental interest in this area.

Commissioner Cabrera questioned whether the Commission must establish a compelling governmental interest for every recommendation, and asked the Commission's General Counsel to advise the Commission in this area.

Ms. McGuire advised that she will provide a brief report for the next meeting on the constitutional issue related to the regulation of lobbying activities.

Simon Mayeski stated that he believes the public is interested in the amount of compensation received by lobbyists, and indicated his support for the staff recommendation regarding the disclosure of compensation.

Commissioner Stefano suggested keeping the ranges but breaking them down into narrower categories.

Commissioner Biddle agreed with Commissioner Stefano's recommendation.

Director Fulhorst suggested that the Commission consider requiring the disclosure of the specific amount of compensation, but rounded off to the nearest thousand.

Commissioner Stefano indicated her support for the Director's suggestion.

The other Commissioners also indicated support for this proposal.

Municipal Decisions Influenced

Director Fulhorst advised that staff does not recommend any changes to this section.

Identity of Individual or Department Contacted

Director Fulhorst advised the staff recommendation was to include disclosure by lobbyists of both the individuals and the agency or department contacted.

James Sutton commented that he does not support any change that would require identifying City officials by name. He suggested that this requirement might hinder citizens from contacting public officials and might also discourage officials from talking with members of the public. He proposed that the Commission implement the system that Los Angeles uses. He explained that they have an electronic filing report with a pull down menu which would allow the lobbyist to click on whatever office or department they contacted without revealing specific names.

Commissioner Westfall commented that he believes the public has a right to know the names of individuals a lobbyist has spoken with.

Commissioners Cabrera and Stefano agreed with the staff recommendation.

Commissioner Biddle commented that he believes the staff recommendation would be burdensome for lobbyists. He suggested that the Commission consider the requirements in the City of Los Angeles which only require disclosure of the agency or office contacted.

Chairwoman Leonard commented that she believes the public would be interested in knowing which public officials were contacted, especially higher level staff members.

Melvin Shapiro commented that disclosure of the identity of public officials contacted is important especially if they have received gifts.

Dates of Contacts and Methods of Contact

Director Fulhorst advised that staff does not recommend any changes to these ordinance sections.

Individuals Present at Meetings with Lobbyist

Director Fulhorst advised that an alternative to requiring registration by individuals who accompany a lobbyist, is to have the registered lobbyist disclose any individuals that were present at a meeting.

James Sutton commented that this may result in additional work for lobbyists to keep track of the names of all those who attend a meeting.

Chairwoman Leonard commented that her understanding was that this proposal would only include the individuals accompanying a lobbyist, and not all those present at the meeting.

Director Fulhorst asked if the Commission would like to exempt certain professions by making a distinction between those accompanying a lobbyist within a certain profession from others. She also pointed out that, as mentioned during previous discussions, the Commission could recommend that those accompanying a lobbyist do not need to register.

Commissioner Cabrera commented that the important information to disclose was the identity of the client and which lobbyist the client was paying to affect a particular decision.

Director Fulhorst pointed out that whatever changes were put in place needed to be enforceable with regard to administering sanctions.

Commissioner Dick commented that he believes the Commission should try to avoid overregulating by identifying the problems that require correction. He suggested keeping the reporting requirements as simple as possible. He added that the main focus of any required disclosure should be on those individuals that are paid to lobby.

Disclosure of Campaign Activities

Director Fulhorst commented that if the Commission is interested in having lobbyists disclose campaign activities that staff recommends keeping the procedure simple by

following the San Francisco model. She explained that San Francisco addresses reporting of fundraising activities along with campaign contributions by including disclosure of both within the same form. She pointed out that the disclosure of campaign contributions would be duplicative reporting because contributions are already disclosed on campaign disclosure reports.

Simon Mayeski made suggestions as set forth in a letter submitted to the Commission regarding campaign activity by lobbyists.

Melvin Shapiro commented that he believes the disclosure of campaign solicitations and fundraising are the most important and necessary amendments to the ordinance.

James Sutton commented that requiring the disclosure of fundraising activity can be problematic. He explained that it is difficult to determine why someone makes a campaign contribution and cautioned the Commission to beware of the phrase “at the behest of.” He added that this could involve legal issues concerning the first amendment rights of both the lobbyist and the donor. In addition, he commented that there are other organizations that engage in fundraising that is not disclosed. He added that he believes the proposal would exaggerate the influence that a lobbyist has as a fundraiser for a campaign when other groups may have more influence.

Director Fulhorst pointed out that campaign fundraising efforts can be verified through a campaign manager or treasurer.

Commissioner Dick commented that it would be beneficial to have disclosure by lobbyists of campaign fundraising efforts. He added that he is not concerned about the identity of the individual contributors, and suggested that the lobbyists simply disclose the total amount raised for a candidate.

Commissioner Cabrera agreed with Commissioner Dick that it was desirable to require the lobbyists to disclose the total amount in terms of fundraising activities. He added that he does not believe it is necessary to require the disclosure of individual contributions made by lobbyists as these are disclosed elsewhere.

Commissioner Biddle commented that most of the information regarding campaign and fundraising activity is already reported elsewhere within the public domain. He questioned whether the Commission would be able to take enforcement action with regard to these proposed reporting requirements.

Commissioner Stefano commented that she believed requiring disclosure of fundraising activities would be difficult to enforce.

Senior Investigator Lauri Davis commented that lobbyists that represent a client may solicit not only from the employees of the client, but also from subcontractors that do

business with the client. She pointed out that this information is not currently disclosed anywhere.

Commissioner Westfall commented that the disclosure of fundraising activity should be required. He pointed out that this information is not easily found anywhere else and that the total amount of the fundraising efforts should be disclosed.

Chairwoman Leonard directed staff to draft language to require lobbyists to disclose campaign fundraising totals, as well as individual contributions made by lobbyists.

Campaign Contributions to One Candidate At the Behest of Another

Director Fulhorst advised that staff does not recommend including this provision in the ordinance.

Charitable Contributions made at Behest of Elected Officer or Candidate

Director Fulhorst commented that if the Commission considers adding this requirement, it would need to ensure consistency with the Ethics Ordinance which specifically states that charitable contributions made at the behest of a City Official are not considered benefits to the official. She advised that staff does not recommend adding this provision.

Whether Lobbyist Worked as a Campaign Consultant

Director Fulhorst advised that staff has not made any recommendation on this issue.

James Sutton commented that officials may not be favorably disposed toward those individuals who served as their campaign consultants, and that this proposal may infringe on activities protected by the First Amendment.

Commissioner Biddle recommended that the Commission not include the disclosure of this activity on lobbyist forms because it is already included on campaign disclosure reports.

Employment of City Officials or Employees

Director Fulhorst advised that staff does not recommend adding this provision. She pointed out that the Ethics Ordinance already prohibits former City Officials from lobbying the City for one year.

Requiring Client Authorization

Director Fulhorst commented that, although other jurisdictions require lobbyists to obtain written authorizations from their clients, none could articulate the reasons for this requirement and Los Angeles plans to remove it in the future. In light of this information, the staff does not recommend including this requirement.

Expenditure Lobbyists

Director Fulhorst advised that if the Commission decided to include this provision that staff would recommend a reporting requirement similar to the City of Los Angeles and the State of California. She explained that these jurisdictions use a form which only requires the disclosure of basic information such as the identity of the organization and the decisions it is attempting to influence.

Commissioners Cabrera and Stefano indicated their support for the staff recommendation.

Director Fulhorst advised that, at the June meeting, the Commission will consider ex parte communications and that the staff will prepare a related report. In addition, she advised that the Commission will consider different types of prohibitions and provide the staff with direction on the prohibitions they would like researched for the July meeting. She also advised that the issue of lobbying fees is scheduled for July and that the City Clerk's Office will provide input on this issue at the meeting. She explained that the goal is to have a draft ordinance ready at the August meeting for the Commissioners' review.

Item-9: Proposed Amendments to the Ethics Ordinance

Director Fulhorst explained the draft strike-out ordinance prepared by staff in response to the direction received from the Commission at the April meeting concerning the post-employment restrictions. In particular, the strike-out reflects the removal of the exemption for collective bargaining agreements. In addition, the strike-out sets forth two different options designed to comply with the recently-adopted changes to state law (Senate Bill 8) that govern the post-employment activities of former elected officials and former city managers. Director Fulhorst reiterated that these changes are necessary because the new state law does not include several exemptions that currently exist in local law. Option A would delete the exemptions for all City Officials, while Option B would only delete the exemptions for former elected officials and former city managers. She proposed that the Commission forward both options to the Rules Committee.

Chairwoman Leonard asked if the new state law affects the City's Chief Operating Officer.

Director Fulhorst advised that it does not.

Motion: To Submit Proposed Changes to Rules Committee
Moved/Seconded: Dick/Cabrera
Passed by the following vote: Leonard-yea, Dick-yea, Westfall-yea, Cabrera-yea, Biddle-yea, Stefano-yea

Item-10: Request from Council President Peters Regarding Docketing Process

Director Fulhorst presented the staff report to the Commission. She proposed that staff work with Council President Peter's office to develop a disclosure form that will provide elected officials with key information used to identify conflicts of interest.

Commissioner Dick suggested that the disclosure form should be kept as simple as possible to avoid making the disclosure burdensome for the applicant.

Motion: To Approve Staff Recommendations
Moved/Seconded: Cabrera/Biddle
Passed by the following vote: Leonard-yea, Dick-yea, Westfall-yea, Cabrera-yea, Biddle-yea, Stefano-yea

Item-11: Adjournment to Closed Session

Chairwoman Leonard adjourned the meeting to Closed Session at approximately 6:50 p.m. She stated the Commission would reconvene into Open Session following the conclusion of Closed Session in order to report any action taken during the closed session portion of the meeting.

Reconvene to Open Session

Chairwoman Leonard called the meeting back into open session at approximately 7:16 p.m.

Reporting Results of Closed Session Meeting of May 11, 2006

Chairwoman Leonard reported the results of the Closed Session Meeting of May 11, 2006:

Item 1: Conference with Legal Counsel (3 potential matters)

(2 Items withdrawn)

Case No. 2006-15 – In Re: Alleged Violation of Provisions Concerning Disclosures Required on Campaign Advertisements

Motion: Dismiss
Moved/Seconded
Passed by the following vote: Leonard-yea, Dick-yea, Westfall-yea, Cabrera-yea, Biddle-yea, Stefano-yea

Item 2: Conference with Legal Counsel (4 potential matters)

(2 Items withdrawn)

Case No. 2005-02 – In Re: Scott Maloni – Alleged Violation of Disclosure Provisions in Lobbyist Laws

Motion: Approve Stipulation
Moved/Seconded
Passed by the following vote: Leonard-yea, Dick-yea, Westfall-yea, Cabrera-yea, Biddle-yea, Stefano-yea

Case No. 2005-61 – In Re: Alleged Failure to Timely File Statement of Economic Interests

Motion: Dismiss
Moved/Seconded
Passed by the following vote: Leonard-yea, Dick-yea, Westfall-yea, Cabrera-yea, Biddle-yea, Stefano-yea

Adjournment

The meeting adjourned at approximately 7:20 p.m.

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Dorothy Leonard, Chairwoman Ethics Commission	Kathy Hunt, Executive Secretary Ethics Commission

THIS INFORMATION WILL BE MADE AVAILABLE IN ALTERNATIVE FORMATS UPON REQUEST.