THE CITY OF SAN DIEGO
ETHICS COMMISSION

Minutes for Meeting of
Thursday, June 10, 2010

Item-1: Call to Order

Acting Chairman Fuller called the meeting to order at 5:00 p.m.

Item-2: Roll Call

Present – Acting Commission Chair Clyde Fuller, Lee Biddle, John O'Neill, Larry Westfall and Bud Wetzler

Staff – Executive Director Stacey Fulhorst, General Counsel Alison Adema, Program Manager Steve Ross, Senior Investigator Lauri Davis, Auditor Rosalba Gomez and Executive Secretary Kathy Hunt

Excused – Dorothy Leonard

Item-3: Approval of Commission Minutes

Approval of Ethics Commission Minutes of May 13, 2010

Motion: Approve
Moved/Seconded: O'Neill/Wetzler
Vote: Carried Unanimously
Excused: Dorothy Leonard

Item-4: Non-Agenda Public Comment

None

Item-5: Commissioner Comment

None

Item-6: Executive Director Comment

Director Fulhorst provided an update on the City's response to the recent County Grand Jury Report concerning the Ethics Commission. The Grand Jury's recommendations were as follows:

- Place a measure on the ballot for a Charter amendment to establish the Commission as a permanent body. Under current law, the Commission can be eliminated by ordinance.

- Change the name of the Ethics Commission to prevent unintended negative consequences that can occur as a result of people paying routine minimal fines. Director Fulhorst noted that she advised the Independent Budget Analyst's staff that the Commission would be receptive to the name change for the reason noted by the Grand Jury.

- Amend the Municipal Code to allow the issuance of witness subpoenas during an investigation.

- Docket for discussion the process for appointing new commissioners. Director Fulhorst explained that changes were previously suggested by Councilmembers Carl DeMaio and Donna Frye to include a panel of retired judges. After several legal issues were resolved with the City Attorney's office, there has been no movement on this issue.

- Appoint and reappoint commissioners to ensure that the Ethics Commission is able to carry out its duties and responsibilities.

Director Fulhorst explained that the Ethics Commission does not have an official role in preparing the responses to the Grand Jury Report. Instead, the response is drafted by the Independent Budget Analyst and approved by the City Council.

With respect to current vacancies on the Commission, she noted that the Mayor's office has requested nominations and expects to forward appointments to the City Council in the near future.

She reported the Rules Commission will be considering the Independent Budget Analyst's draft response to the Grand Jury's recommendations at its June 30, 2010, meeting.

Item-7: General Counsel Comment

None

Item-8: Impacts of Recent Litigation on Election Campaign Control Ordinance

Director Fulhorst explained that there are two policy issues that have arisen in light of the pending litigation concerning the City's campaign laws. The first involves the application of contribution limits and source prohibitions to political parties that make

independent expenditures supporting or opposing City candidates. She explained that a recent court ruling in the litigation prohibits the City from enforcing contribution limits and source prohibitions on committees that make only independent expenditures in support of or in opposition to City candidates. In other words, the court ruled that if a committee's campaign activities are limited to independent expenditures, it may accept unlimited contributions from any type of contributor.

She further explained that another aspect of the recent court ruling permits political parties to make contributions to directly to City candidates, subject to the $1,000 contribution limit subsequently adopted by City Council. Therefore, a question has arisen as to whether the source and amount restrictions in SDMC section 27.2936 should apply to a political party that chooses to make a contribution to a City candidate. In other words, if a political party's campaign activities are not restricted to the making of independent expenditures, should it be permitted to receive unlimited contributions from any type of contributor?

Director Fulhorst noted that one of the important to consider limiting contributions to a political party that in turn makes contributions to City candidates is to ensure that the political party cannot be used as a conduit to circumvent the $500 contribution limit to City candidates. However, she noted that in light of the $1,000 contribution limit for political parties, the risks of circumvention appear to be nominal. She added that the plaintiffs in the litigation are challenging the $1,000 limit for political parties, and suggested that the Commission might want to reconsider this issue if and when this contribution limit is increased.

Commissioner Westfall commented that although he and Commissioner Fuller supported eliminating campaign contribution limits, he believes that the provisions in the Municipal Code concerning campaign contribution limits need to be enforced.

Commissioner O'Neill proposed a motion to follow the staff's recommendation to not apply the restrictions in Municipal Code section 27.2936 to political parties that make independent expenditures.

Commissioners Westfall and Fuller asked whether the issue would be considered unsettled without further clarification from the court. General Counsel Adema responded that she does not believe an additional court ruling is necessary.

Commissioner Biddle suggested that the Commission should indicate that its advice on this issue is temporary in light of the ongoing litigation.

Commissioner O'Neill clarified that his motion was based on current circumstances, and that if circumstances change and the court issues additional rulings concerning the $1,000 contribution limit for political parties, the Commission should revisit the matter.

Motion: To follow the staff's recommendation to not apply the restrictions in Municipal Code section 27.2936 to political parties that make independent expenditures at this time.

Moved/Seconded: O'Neill/Wetzler
Vote: Carried Unanimously
Excused: Leonard

Director Fulhorst noted that the second policy issue that has arisen in connection with the pending litigation is the issue of additional advertising disclosures on campaign advertisements that support or oppose City candidates. She explained that, in light of the court's ruling that committees making independent expenditures to support or oppose City candidates may accept unlimited contributions from individuals and non-individuals, staff has raised the issue of whether the City should expand its disclosure laws to require advertisements to include the identity of large contributions used to fund them. She pointed out that current law requires committees primarily formed to support City ballot measures to disclose on their campaign advertisements the identity of contributors who give $50,000 or more. She noted that this threshold was derived from state law.

Director Fulhorst suggested that advertising disclosures may be appropriate for committees that are primarily formed to support or oppose City candidates; however, she noted that in the City's history these types of committees are very rare. Alternatively, she indicated that requiring disclosures on advertisements commissioned by general purpose committees could be problematic because it can be very difficult to link a particular contribution to a specific advertisement if the committee is engaged in supporting or opposing many issues and candidates in various jurisdictions.

Commissioner Westfall indicated that he supports more disclosure.

Director Fulhorst stated that the staff is not seeking immediate direction on this issue, and that the Commission might want to consider it over the next several months. She added that the Commission might want to include this issue with other recommended changes that result from the litigation, and she noted that the litigation will probably not be concluded until later this year or early next year. In the meantime, she asked if any of the Commissioners would like any additional information to assist with the consideration of this issue.

Commissioner O'Neill requested that staff provide the historical background with respect to the state's $50,000 advertising disclosure threshold for committees that are primarily formed to support or oppose state ballot measures.

Item-9: Presentation of Final Audit Report of the Phil Thalheimer for City Council Committee

Commission Auditor Rosalba Gomez presented the Final Audit Report and advised that there were no material findings.

Motion: Accept Report
Moved/Seconded: Biddle/O'Neill
Vote: Carried Unanimously
Excused: Leonard

Item-10: Election of Chair and Vice Chair

Commissioners Biddle and Wetzler recommended the nomination of Commissioner Westfall to be the Chair and Commissioner Biddle to be the Vice-Chair for the one-year term beginning July 1, 2010.

Motion: Approve nominations
Moved/Seconded: Wetzler/O'Neill
Vote: Carried Unanimously
Excused: Leonard

Item-11: Adjournment to Closed Session

Acting Chairman Fuller adjourned the meeting to Closed Session at approximately 5:45 p.m. He 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

Acting Chairman Fuller called the meeting back into open session at approximately 6:40 pm.

Reporting Results of Closed Session Meeting of June 10, 2010

Acting Chairman Fuller reported the results of the Closed Session Meeting of June 10, 2010.

Item-1: Conference with Legal Counsel (23 potential matters)

Case Nos. 2010-12 through 2010-27 - In Re: Alleged Failure to Properly Disclose Information on Lobbying Registration Form

Motion: Dismiss
Vote: Carried Unanimously
Excused: Leonard

Case Nos. 2010-28 through 2010-32 – In Re: Alleged Failure to Properly Disclose Information on Lobbying Registration Form

Motion: Dismiss
Vote: Carried Unanimously
Excused: Leonard

Case No. 2010-33 – In Re: - Alleged Gift to City Official in Excess of Limit

Motion: Dismiss
Vote: Carried Unanimously
Excused: Leonard

Case No. 2010-39 – In Re: - Alleged Failure to Include "Paid for By" Disclosure on Campaign Literature

Motion: Initiate Investigation
Vote: Carried Unanimously
Excused: Leonard
Recused: O'Neill

Item-2: Conference with Legal Counsel (1 potential matter)

Case No. 2009-94 – In Re: - Alleged Failure to Disclose Campaign Contributions and Fundraising Activities

Motion: Dismiss
Vote: Carried Unanimously
Excused: Leonard
Recused: Biddle

Item-3: Conference with Legal Counsel (1 potential matter)

Case No. 2008-79 – In Re: - Dante Dayacap - Alleged Misuse of City Position

No Reportable Action

Item-4: Conference with Legal Counsel (1 potential matter)

Case No. 2008-64 – In Re: San Diego Safe Beaches Coalition and Jacob Pyle In Re: Alleged Failure to File Campaign Statements

No Reportable Action

Adjournment

The meeting adjourned at approximately 6:45 p.m.

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Clyde Fuller, Acting Commission Chair Ethics Commission	Katherine Hunt, Executive Secretary Ethics Commission

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