

ORDINANCE NUMBER O-18945 (NEW SERIES)

**JUN 5 2001**

ADOPTED ON \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER II, ARTICLE 6 OF THE SAN DIEGO MUNICIPAL CODE BY ADDING DIVISION 4, TITLED "ETHICS COMMISSION," AND BY ADDING SECTIONS 26.0401 TO 26.0415, ALL RELATING TO THE CITY OF SAN DIEGO ETHICS COMMISSION.

WHEREAS, the public's confidence in the City and its officials requires that City officials fulfill their duties faithfully and honestly, and in the public's interest, rather than for reasons of private gain or special interests; and

WHEREAS, there is a need to restore the public's confidence in the City and its officials; and

WHEREAS, in response to that need the Mayor and the City Attorney's Office have partnered to create a plan for a City Ethics Commission; and

WHEREAS, in order to assure the public that the City's officials are making the right decisions for the right reasons, the City needs an Ethics Commission to create a new City ethics code, investigate and enforce violations of the City's governmental ethics laws, impose penalties and sanctions for violations, provide training and advice to City officials on ethics issues, and refer criminal violations to appropriate enforcement agencies; NOW, THEREFORE,

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That Chapter II, Article 6, of the San Diego Municipal Code is hereby amended by adding Division 4, and by adding sections 26.0401 to 26.0415, to read as follows:

## **DIVISION 4**

### **Ethics Commission**

#### **§26.0401 Purpose and Intent**

It is the purpose and intent of the City Council to establish an Ethics Commission, which shall have the powers and duties set forth in this Division. The purposes of the Commission shall be to monitor, administer, and enforce the City's governmental ethics laws, propose new governmental ethics law reforms, conduct investigations, refer violations to appropriate enforcement agencies, audit disclosure statements, and advise and educate City officials and the public about governmental ethics laws.

#### **§26.0402 Definition of Governmental Ethics Laws**

For purposes of this Article, "governmental ethics laws" means state and local laws governing campaign contribution limits, campaign contribution disclosure, campaign expenditure disclosure, statements of economic interests, receipt and disclosure of gifts, conflicts of interest, lobbying registration and disclosure, and other matters proposed by the Commission and adopted by a majority of the City Council.

#### **§26.0403 Ethics Commission Established**

There is hereby created a City of San Diego Ethics Commission

consisting of seven (7) members, who shall serve without compensation.

**§26.0404 Appointment**

- (a) The Mayor shall appoint all seven members of the Commission from a pool of nominees submitted by the members of the City Council and City Attorney. The Mayor's appointments are subject to confirmation by a majority of the City Council.
- (b) The Commission shall reflect the diversity of the City which it serves. At least one of the members of the Commission shall be a person who has held elective governmental office and at least two of the members of the Commission shall be attorneys in good standing with the California Bar Association. No more than three members of the Commission shall be registered with the same political party.
- (c) The Mayor shall make the initial appointments to the Commission in the following manner. Each member of the City Council and the City Attorney shall nominate seven candidates, including at least one person who has held elective governmental office, at least two attorneys in good standing with the California Bar Association, and no more

than three persons registered with the same political party.

The members of the City Council and the City Attorney shall identify the requirements fulfilled by each of their nominees. The nominations shall reflect the diversity of the City. If the Mayor reasonably believes that the pool of nominees is not large enough, or does not provide nominees who meet the professional background or political party requirements of section 26.0404(b), the Mayor may call for additional nominees.

- (d) The Mayor shall fill any subsequent vacancies on the Commission in the following manner. When a vacancy occurs, the Mayor shall send a memorandum to the City Attorney and City Council stating the requirements for the vacant position. Each member of the City Council and the City Attorney shall nominate one candidate for each vacancy on the Commission. The nominations and appointments shall be made so that the requirements of section 26.0404(b) with respect to professional background and political party membership are maintained. If the Mayor reasonably believes that the pool of nominees is not large enough, or does not provide nominees who meet the professional background or political party requirements of

section.26.0404(b), the Mayor may call for additional nominees.

- (e) The Members of the Commission shall elect a Chairperson annually, on July 1, or as soon thereafter as possible. No person shall serve as Chairperson of the Commission for more than two consecutive one-year terms.

**§26.0405 Terms**

The members of the Commission shall serve four-year terms beginning on July 1 and ending on June 30. Three of the Mayor's initial seven appointees shall serve two-year terms. A member who has served two complete, consecutive four-year terms shall be ineligible for reappointment for four years after leaving office.

**§26.0406 Qualification of Members**

Each member of the Commission shall comply with the following qualifications during his or her tenure on the Commission:

- (a) Each Commissioner shall be a qualified elector of the City of San Diego, and of high moral character and integrity.
- (b) No member of the Commission shall make a financial contribution to, or publicly support or oppose, a candidate for City office.
- (c) No member of the Commission shall become a candidate for elective governmental office during his

**§26.0408 Termination**

The City Council may remove a member of the Ethics Commission for cause by a vote of a majority of the members of the Council. Before the Council may remove a member of the Ethics Commission, written charges shall be made against the Commission member and an opportunity afforded for public hearing before the Council upon such charges.

**§26.0409 Quorum**

- (a) Except as provided in Section 26.0409(b), four members shall constitute a quorum, and the concurring vote of at least four members shall be required to take any action.
- (b) A vote to impose a sanction shall require the concurring vote of five members of the Commission. For purposes of this section, a sanction includes any civil fine or other penalty established by the City Council pursuant to Section 26.0414(f).

**§26.0410 Reimbursement for Expenses**

The members of the Commission shall be reimbursed for reasonable expenses incurred in the performance of their official duties, pursuant to City Administrative Regulations.

**§26.0411 Staff and Budget**

The Commission shall employ a staff consisting of no less than a full time executive director, a clerical assistant, and an investigator. The selection of an executive director shall be subject to confirmation by a majority of the City Council. The City Attorney shall provide legal services to the Commission, however, the Commission may hire outside counsel to advise the Commission and to take action as the Commission may direct on matters which directly involve the City Attorney, his or her office, a campaign for City Attorney, or other matter presenting a conflict of interest for the City Attorney, subject to City Council approval. The City Council shall appropriate a reasonable budget for the Commission.

**§26.0412 Conflict of Interest Code**

A conflict of interest code shall be adopted for the members and staff of the Ethics Commission, subject to City Council approval pursuant to Division 1, Article 6, Chapter II, of this Code. All members of the Commission shall be required to complete and file statements of economic interests in accordance with the conflict of interest code.

**§ 26.0413 Jurisdiction of the Ethics Commission**

(a) The authority of the Ethics Commission to conduct

investigations and take administrative enforcement actions shall extend to all elected officials of the City; all candidates for City office; all committees required to file any disclosure forms with the Office of the City Clerk pursuant to Division 29, Article 7, Chapter II of this Code; all unclassified employees of the City who are required to file conflict of interest disclosure forms pursuant to a conflict of interest code; all consultants to the City who are required to file conflict of interest disclosure forms pursuant to a conflict of interest code; all members of City boards and commissions who are required to file conflict of interest disclosure forms pursuant to a conflict of interest code; and all lobbyists registered with the City pursuant to Division 40, Article 7, Chapter II, of this Code.

- (b) The Ethics Commission's investigative and enforcement authority is limited to violations of governmental ethics laws, as defined by section 26.0402, which are not preempted by state or federal law.
- (c) The Ethics Commission shall have no jurisdiction over actions or events that occurred prior to July 1, 2001.

**§26.0414 Responsibilities and Duties of the Ethics Commission**

The Ethics Commission shall have the following responsibilities



and duties:

- (a) To provide training and education regarding governmental ethics laws to City officials and employees, and candidates for City office and their staffs.
- (b) To issue formal and informal advice and opinions to any person regarding the governmental ethics laws within the Commission's jurisdiction. The Commission shall have the right to issue either informal advice or formal opinions at its discretion in response to requests for advice. The Commission may seek advice and opinions from the Fair Political Practices Commission as it deems appropriate. Elected officials of the City and City department heads, including the City Manager, may require the Commission to issue a formal opinion in response to an inquiry, provided that sufficient information is provided to the Commission to enable the Commission to provide a formal opinion. No person who acts in good faith based upon a formal opinion issued to him or her by the Commission shall be subject to administrative penalties for so acting, provided that the material facts are as stated in the opinion request.

- (c) To review campaign, lobbying, and conflict of interest disclosure forms, and to propose procedures for conducting audits of campaign, lobbying, and conflict of interest disclosure forms, subject to City Council approval. The Office of the City Clerk shall continue to be the central filing office for all campaign, lobbying and conflict of interest disclosure forms which must be filed with the City.
- (d) To propose a formal complaint and investigation procedures for violations of the City's governmental ethics laws, subject to City Council approval. The procedures shall include reasonable safeguards for protecting candidates for elective office from frivolous complaints made during the last ninety days prior to an election, and shall provide procedural due process rights to individuals under investigation by the Commission. The Commission shall receive complaints from anyone wishing to report governmental ethics law violations, however, complainants must identify themselves to the Commission. The Commission shall not act on any complaint until the Commission's complaint and investigation procedures have been approved by the City Council. The approval of the Commission's procedures shall not be unreasonably

delayed by the City Council.

- (e) To investigate and enforce violations of City governmental ethics laws, including referral to other enforcement agencies when appropriate. The Commission shall be empowered to subpoena documents and witnesses, subject to a City Charter amendment granting subpoena authority to the Commission. Subject to the California Public Records Act, no record or information contained in any investigation or investigative file shall be disclosed to any person other than a respondent or his or her representative, the City Attorney, a court, a law enforcement agency, or otherwise as necessary to the conduct of an investigation, prior to a final determination as to its merit.
- (f) To propose to the City Council, for its approval, an ordinance establishing civil fines or penalties for violations of the City's governmental ethics laws, which the Commission shall have the power to levy or impose, and the procedures therefore.
- (g) To undertake a review of the City's existing governmental ethics laws, and to propose updates to those laws to the

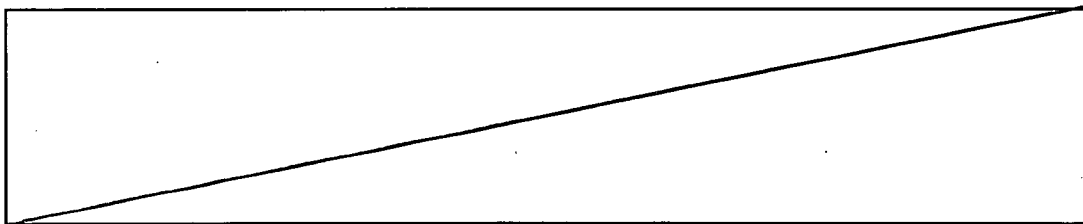
City Council for its approval.

- (h) To publish an annual report describing the activities of the Commission during the previous year, including the number of complaints handled and investigations conducted, the types of violations alleged, and the action taken in response to complaints received and investigations conducted.
- (i) To adopt additional rules and regulations, subject to approval of the City Council, to carry out the purposes of this Division.

**§26.0415 Interference With Complainants**

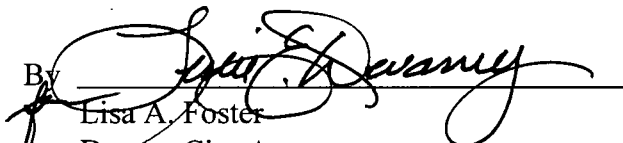
It is unlawful to use or threaten to use any official authority, including discipline or termination, to discourage, restrain or interfere with any person acting in good faith to make a complaint to the City Ethics Commission.

Section 2. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.



Section 3. That this ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: CASEY GWINN, City Attorney

By   
Lisa A. Foster  
Deputy City Attorney

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OLD LANGUAGE - STRUCK-OUT  
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**DIVISION 4**

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City office.

- (c) No member of the Commission shall become a candidate for elective governmental office during his or her tenure on the Commission, and for twelve months thereafter. Each prospective Commissioner shall sign a written declaration agreeing not to run for elective governmental office for at least twelve months after completion of service on the Commission, and waiving the legal right to challenge this provision.
- (d) No member of the Commission is permitted to act as a lobbyist required to register with the City pursuant to Division 40, Article 7, Chapter II of this Code.

**§26.0407 Failure to Comply With Qualifications**

Failure to comply with any of the qualifications listed in Section 26.0406 shall constitute an automatic resignation from the Commission. For purposes of Section 26.0406(c), a Commissioner becomes a candidate for City office upon filing a declaration of candidacy or filing a statement of organization for a candidate controlled committee, whichever occurs first. Whether a Commissioner has become a candidate for other elective governmental office for purposes of section 26.0406(c) shall be governed by the appropriate laws and regulations.

**§26.0408**

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**§26.0409**

**Quorum**

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(e) To investigate and enforce violations of City governmental ethics laws, including referral to other enforcement agencies when appropriate. The Commission shall be empowered to subpoena documents and witnesses, subject to a City Charter amendment granting subpoena authority to the Commission. The Commission shall establish an

expedited investigation process for complaints about candidates for City office which are made within the last thirty days before an election, subject to City Council approval. Subject to the California Public Records Act, no record or information contained in any investigation or investigative file shall be disclosed to any person other than a respondent or his or her representative, the City Attorney, a court, a law enforcement agency, or otherwise as necessary to the conduct of an investigation, prior to a final determination as to its merit.

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- (h) To publish an annual report describing the activities of the Commission during the previous year, including the number of complaints handled and investigations



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**§26:0415 Interference With Complainants**

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