



**Minutes for Meeting of
Thursday, September 14, 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 Gil Cabrera, Commissioners Larry Westfall and Lee Biddle

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

Excused – Commissioners Charles H. Dick, Jr., Karen Thomas-Stefano

Item-3: Approval of Commission Minutes

Approval of Ethics Commission Minutes of July 13, 2006

Motion: Approve
Moved/Seconded: Cabrera/Westfall
Vote: Unanimous
Excused: Dick/Stefano

Approval of Ethics Commission Minutes of August 10, 2006

Motion: To File Minutes
Moved/Seconded: Biddle/Cabrera
Vote: Unanimous
Excused: Dick/Stefano

tem-4: Non-Agenda Public Comment

None

Item-5: Commissioner Comment

Chairwoman Leonard thanked Vice-Chair Cabrera for chairing the August meeting.

Item-6: Executive Director Comment

Director Fulhorst provided an update on the status the two new staff positions that were recently added to the Commission's budget. She reported that City Personnel had completed the classification of the new positions and that staff can now begin recruitment efforts to fill these positions (a second investigator and a training officer). In addition, Personnel has reclassified the Commission's Financial Investigator position to the Accountant series. The staff hopes that this change will result in a greater pool of experienced applicants to fill the current vacancy.

Item-7: General Counsel Comment

None

Item-8: Proposed Amendments to Municipal Lobbying Ordinance

Chairwoman Leonard indicated that the Commission needed to consider Options 1 through 5 as outlined in the documents prepared by staff, and provide direction to staff on the proposed options for defining Organization Lobbyists.

Simon Mayeski provided comments as outlined in a letter submitted to the Commission.

Chairwoman Leonard indicated that a threshold based on a number of contacts within a 30 day timeframe would be the best solution and suggested that the 30 days be consecutive.

Director Fulhorst addressed the difficulties involved in trying to establish a registration threshold for organization lobbyists.

Chairwoman Leonard suggested that the number of employees as mentioned in Item D under Option 1 should correspond to the Municipal Code, which specifies that a small business has 12 or fewer employees and a large business has 13 or more employees.

Directed Fulhorst advised that according to staff research, the large businesses with 13 or more employees make up only 7 ½ % of the total businesses licensed with the City of San Diego. She pointed out that there would only be a small number of businesses that would be regulated by the proposed change.

Commissioner Cabrera expressed concern regarding the ability to enforce a registration threshold based on a number of contacts. He expressed his support for a threshold that would capture paid lobbyists and suggested Option 4 with the following provisions: a one dollar threshold; a distinction between large and small businesses; and an exemption for business owners.

Chairwoman Leonard agreed that establishing a one dollar threshold would eliminate the current problems with enforcement.

Commissioner Biddle expressed concerned that a one dollar threshold may still inappropriately regulate small businesses, and he provided an example concerning a car dealership. He also pointed out that establishing a 12 employee limit may exclude entities such as developers who do not have many employees.

Director Fulhorst clarified that the regulation of lobbying activities is limited to attempts to influence municipal decisions. She pointed out that it may be difficult for small business owners to identify what is, and what is not, a municipal decision.

Commissioner Cabrera commented that even with a one dollar threshold, there would be drafting issues regarding application to small businesses.

Director Fulhorst explained that staff intends to undertake extensive efforts to educate the regulated community after the City Council has considered the Commission's recommended changes. These educational efforts will include fact sheets for Council staff to disseminate to persons who contact their offices.

Chairwoman Leonard reminded the Commissioners that, for discussion purposes, a draft of the definition of contacts was distributed at the August meeting

Commissioner Biddle suggested using a combination of contacts and compensation for establishing a threshold. He commented that the number of contacts needs to be a significant number if used with a dollar threshold.

Director Fulhorst commented that a contacts threshold would be more enforceable than a compensation threshold due to the difficulty involved in calculating time spent and compensation paid for lobbying activities. She added that a contacts threshold is also a more equitable system because it is based on actual lobbying activities as opposed to the amount of compensation a lobbyist earns.

Commissioner Biddle suggested the Commission consider using the San Francisco model which is a contacts threshold of 25 contacts within a two month period.

Director Fulhorst pointed out that it is likely that San Francisco used the State's former contact threshold, and that the Commission might consider whether the City of San Diego with eight councilmembers should have the same number of contacts

as the state previously used for the state legislature. She added that the State ultimately changed its threshold from contacts to compensation.

Commissioner Cabrera asked if staff would be capable of determining how many contacts had occurred.

Director Fulhorst responded that verifying contacts can be accomplished by reviewing the records maintained by city officials and lobbyists. She explained that records such as emails, calendars and letters enable the staff to easily verify that a contact occurred. She pointed out that, in many cases, a contacts threshold would enable staff to determine whether the threshold was met by simply reviewing records maintained by City staff, without the need to obtain documents from lobbyists or other outside sources.

Commissioner Westfall asked how many complaints have been received by the Commission based on the alleged failure to register as a lobbyist.

Director Fulhorst responded there have been between five and ten complaints in a four year period.

Commissioner Cabrera expressed his support for a contacts-based threshold of approximately five contacts within a certain timeframe without exclusions for small business owners.

Director Fulhorst commented that definitions can be drafted into the ordinance to clarify what constitutes one occurrence of a lobbying contact.

Chairwoman Leonard commented that the Commission's discussion indicates support for Option 1, with five contacts as the threshold.

Commissioner Biddle commented that the definition of a contact needed to take into account whether multiple contacts with a City Official were for the same issue or matter. He added that five contacts within a certain time period may not allow this, and that ten may be preferable.

The Commissioners agreed with the suggestion of a threshold based on ten contacts within a sixty day period.

Director Fulhorst reiterated that the exact same letter sent to eight councilmembers would only count as one contact.

Chairwoman Leonard pointed out that the draft changes need to include a definition of "contact."

Director Fulhorst provided an overview of the proposed definition of “contact” and answered questions from the Commissioners.

Commissioner Westfall questioned if it was appropriate to include an extensive definition of “contact” within the Municipal Code.

Ms. McGuire discussed a variety of options, including the Commission adopting a regulation to set forth all the rules governing “contacts.”

Commission Cabrera recommended including a brief definition of “contact” within the Municipal Code, and providing additional information in a fact sheet.

Director Fulhorst pointed out that the authority to adopt additional rules and regulations is included within the Commission’s Enforcement and Investigative Procedures, subject to the approval of the City.

Ms. McGuire added that it could be forwarded to the City Council as a rule that corresponds with the ordinance but is not included within the municipal code.

The Commission discussed whether the proposed changes to the ordinance should include extensive rules regarding contacts.

The consensus of the Commission was that the contact language should be brief and concise, and that much of the proposed language was unnecessary. For example, Commissioner Cabrera pointed out that it should be apparent that meetings with multiple Council offices would constitute multiple “contacts” for purposes of the threshold.

In addition, the Commission agreed that any written statement submitted in connection with a docketed council item and copied to the City Clerk would be considered part of the public record and would therefore be exempt from the contact rules.

Director Fulhorst advised that staff will incorporate the contact rules into either the definitions section of the ordinance or include it in a separate section after simplifying them and eliminating unnecessary detail.

Kevin Henighan commented that he would respond to any questions from the Commission concerning the letter submitted by Jim Sutton.

The Commission reviewed the letter submitted by Jim Sutton regarding proposed changes to the Lobbying Ordinance. The following issues in the letter were addressed:

1. Exemption for Engineers and Architects – Sutton Recommendation: add planners, accountants and other “experts.”

Director Fulhorst reported that the latest draft now includes biologist, geologist or any other professional in the natural sciences in addition to architects and engineers.

Commissioner Biddle suggested using the State's language regarding "purely technical data or analysis" in lieu of attempting to identify specific professions to exempt.

Kevin Henighan commented regarding Commissioner Biddle's suggestion.

Chairwoman Leonard suggested revising the language to read "engineer, architect, biologists, geologists, or other experts providing purely technical data or analysis" and delete "other professionals in the natural sciences."

2. Exemption for Attorneys – Sutton Recommendation: exemption should cover more than litigation.

Director Fulhorst suggested including "administrative enforcement proceedings" which would not extend to quasi-judicial land use proceedings.

The Commission supported the staff's suggestion to include this change in the draft.

3. Contents of Quarterly Disclosure Reports – Sutton Recommendation: the law should not require disclosure of the names of City Officials or employees contacted by lobbyists.

Kevin Kenighan commented regarding the recommendation and mentioned the burden this may place on lobbyists.

Director Fulhorst pointed out that the current draft includes a revised definition of "City Official" which limits the scope to approximately 500 high level officials, and that this should simplify the proposed disclosures by lobbyists.

Commissioner Biddle supported Jim Sutton's recommendation.

Commissioners Cabrera and Westfall supported leaving the language unchanged.

Chairwoman Leonard indicated that the consensus was not to make any changes to this section.

4. Annual Registration – Sutton Recommendation: have registration due on January 31 of every year, the same date that fourth quarter reports are due.

Director Fulhorst advised that staff recommends moving the provision that covers annual registration from its current location in the ordinance to the section on

registration requirements. She clarified that the ordinance states that registration will be in January of every year for continuously registered lobbyists.

Chairwoman Leonard noted that the information on annual registration will also be included in the materials that staff develops for lobbying education purposes.

5. Disclosure of Fundraising Activities – Sutton Recommendation: do not require disclosure of fundraising activities in past four years at time of registration.

Director Fulhorst explained that the proposed disclosure would only require the reporting of the elected city official's name if more than \$1,000 was raised. The amount raised or date of the fundraiser would not need to be reported.

The Commission discussed the issue of potential duplication with regard to the definitions of "Fundraising Activity" and "Obtaining Contributions."

Chairwoman Leonard commented regarding the definitions of "Fundraising Activity" and "Obtaining Contributions," and noted that staff would need to eliminate any language that would result in duplication.

7. Disclosure of Fundraising Activities – Sutton Recommendation: only require disclosure of fundraising activities when the lobbyist actually delivers the checks to the candidate.

Commissioner Westfall commented with regard to Mr. Sutton's letter, and explained that the City of Los Angeles uses the same language in their Ordinance for disclosure of fundraising activities. He noted that Los Angeles had conveyed to staff that there have not been any difficulties with the application of that particular section.

Director Fulhorst speculated that Mr. Sutton's comments may have been written before the section was revised and simplified into the current draft. In addition, she explained that as a result of the Commission's recommendations, staff would be streamlining the language regarding fundraising activities for the final draft.

Mr. Heneghan commented on potential difficulties with campaigns being able to determine where contributions came from when they are received from a fundraising event put on by a host committee versus an individual lobbyist. In addition, he mentioned that if three lobbyists host an event, there is the question of the amount that each lobbyist should report.

Director Fulhorst advised that in order to address these issues, staff had proposed that the disclosure forms include check off boxes that would reflect several ranges of dollar amounts for contributions obtained. She explained this would eliminate the need to disclose an exact amount.

Chairwoman Leonard pointed out that the public is mainly concerned with the amount of influence that fundraising may create.

In response to Mr. Henegan's comments, Commissioner Cabrera stated that the lobbyist should disclose the entire amount raised at the fundraising event if the lobbyist believed that he or she was receiving credit for this entire amount, regardless of the number of individuals involved.

Simon Mayeski commented with regard to lobbyists obtaining contributions by hosting a fundraising event.

Commissioner Biddle mentioned that fundraising information as well as information regarding campaign contributions received is available in the City Clerk's Office.

In response to Commissioner Biddle, Commissioner Westfall commented that the public should have easy access to information as to the lobbyists who raised significant campaign contributions for a candidate.

Director Fulhorst noted that the Commission's direction and advised that staff will streamline the definition of fundraising activity.

Director Fulhorst briefly reviewed the recommendations outlined under Item 8 in Mr. Sutton's letter.

Chairwoman Leonard commented on the definition of "activity expense" listed under 8H. She advised that staff had proposed some changes to the language of this section.

Director Fulhorst responded that staff proposed to change "required" to "requested."

Commissioner Biddle commented on expenditure lobbyists. He expressed his belief that the \$500 threshold was too low and suggested a \$3,200 threshold.

Chairwoman Leonard indicated that the threshold for expenditure lobbyists will be discussed at the next Commission meeting.

Item-9: Adjournment to Closed Session

Chairwoman Leonard adjourned the meeting to Closed Session at approximately 6:56 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 7:05 p.m.

Reporting Results of Closed Session Meeting of September 14, 2006

Chairwoman Leonard reported the results of the Closed Session Meeting of September 14, 2006.

Item 1 – Conference with Legal Counsel (1 Potential Matter)

Case No. 2006-59 – In Re: Alleged Violation Regarding Payment of Vendor Debt

Motion: Initiate Investigation

Moved/Seconded:

Vote: Unanimous

Excused: Dick/Stefano

Item 2 – Conference with Legal Counsel (4 Potential Matters)

(4 Items withdrawn)

Adjournment

The meeting adjourned at approximately 7:08 p.m.

Dorothy Leonard, Chairwoman
Ethics Commission

Kathy Hunt, Executive Secretary
Ethics Commission

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