



**Minutes for Meeting of
Thursday, April 13, 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., Karen Thomas-Stefano, Gil Cabrera 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

Item-3: Approval of Commission Minutes

Approval of Ethics Commission Minutes for March 9, 2006

Motion: Approve
Moved/Seconded: Cabrera/Biddle
Vote: Unanimous
Abstained: Dick/Stefano

Approval of Ethics Commission Minutes for March 20, 2006

Commissioner Dick commented regarding the March 20 minutes and explained that his comments regarding Item 7 which read “that including all the exemptions may result in the ordinance overreaching” needed to be corrected to read “that including all the exemptions may be an indication that the ordinance is overreaching.”

Motion: Approve as Amended
Moved/Seconded: Dick/Stefano
Vote: Unanimous

Item-4: Non-Agenda Public Comment

None

Item-5: Commissioner Comment

None

Item-6: Executive Director Comment

Director Fulhorst advised members of the public that headphones are available for the hearing impaired with 24 hours notice. She also commented on the FY07 budget process. She pointed out that other Ethics Commissions have much larger budgets and staff.

Item-7 General Counsel Comment

None

Item-8 Proposed Amendments to Municipal Lobbying Ordinance

Chairwoman Leonard explained that staff created a draft strikeout version of the ordinance because of the confusion over the proposed changes at the last meeting. She advised that for discussion purposes, the Commission would only consider the sections on definitions, exceptions and contacts. She reviewed the proposed changes made by staff which include a new definition of Business Lobbyist, relocating certain exceptions, and a new section for contacts.

Director Fulhorst reported that the staff met with several City officials regarding the proposed contact thresholds. The City officials explained that it would be difficult to determine how the proposed thresholds would affect them because of the variable nature of contacts made with Council staff members.

Mel Shapiro commented with regard to the noticing of Item 8 on the agenda.

Mitch Berner commented regarding the new definition of Business Lobbyist and suggested that the 30 day threshold for reporting contacts be on an annual basis beginning in January. He also noticed that planning groups were not listed within the ordinance definitions for a contact. In addition, he suggested that the threshold for Expenditure Lobbyist be on an annual basis as well.

Director Fulhorst reported on the duties of those City Boards and Commissions whose members are required to disclose their economic interests. She advised that the definition of City Official had been revised to complement the definition in the

Ethics Ordinance which includes only those board and commission members who disclose their economic interests. She explained that the purpose of this change was to limit the number of officials who would have to be considered as contacts.

Mitch Berner suggested having all the rules for contacts in one document.

Rebecca Michael commented that the limited definition of City Official was an improvement to the ordinance. In addition, she suggested that an individual meeting with a City Official who is accompanied by a contract lobbyist should be exempt from the contact rules.

Commissioner Cabrera commented that raising the level of the type of public official that would trigger a contact may resolve the possibility of too many people being required to register.

Director Fulhorst suggested exempting those individuals who accompany a registered lobbyist to a meeting and instead require that the lobbyist disclose the identity of all persons present at the meeting.

Chairwoman Leonard commented that the idea of revising the ordinance was to have something that was enforceable. She pointed out that after the draft changes are implemented, if someone believes an individual should register, they have recourse through the Ethics Commission by filing a complaint.

Director Fulhorst suggested that, if the Commission decides to exempt individuals who accompany a contract lobbyist, they should add this provision to the exceptions section and address contents of lobbyist disclosure reports at a later meeting. She explained that the section regarding the number of contacts is designed for in-house lobbyists.

Chairwoman Leonard asked if the Commissioners had any suggestions or comments regarding the proposed changes to the new definitions, specifically Business Lobbyists.

Commissioner Cabrera commented that the concept of the contacts within the new definition of Business Lobbyists would be difficult to enforce when the rules regulating contacts were applied.

Director Fulhorst expressed her opinion the alternatives to the proposed contacts rule could be problematic to enforce because they involve such variables as compensation received by in-house lobbyists for specific activities, obtaining employee compensation records, and/or determining time spent on lobbying activity.

Commissioner Cabrera commented that as long as part of an employee's job description includes lobbying, it shouldn't matter at what level they're compensated

Director Fulhorst explained that the purpose of the proposed contacts threshold was to eliminate the inclusion of sole proprietors and small business owners who may contact City officials in isolated instances.

Commissioner Cabrera commented that he agreed with the suggestion for an annual threshold.

Commissioner Stefano asked if the staff used language from other jurisdictions to draft the section on contacts.

Director Fulhorst explained there are currently no other jurisdictions that use a number of contacts threshold. She added that other jurisdictions do little enforcement of business lobbyist activities because of the problems associated with determining how much time is actually spent on lobbying. She advised that the staff used some regulations formerly employed by the Fair Political Practices Commission as a model when drafting the contacts language.

Commissioner Dick suggested including language that exempts businesses that employ less than five employees within the definition of Business Lobbyist. He commented that the contact rules are complicated and that individuals receiving any type of compensation for making any type of contact on behalf of someone else should report that information even if it's the first contact.

Commissioner Cabrera agreed that an exemption for sole proprietor businesses is desirable, and suggested that this is a drafting issue for staff.

Director Fulhorst suggested that the Commission could consider two different ways to exempt small businesses: one approach would be to describe the type and size of a business, and another would be to exempt the owner of the business regardless of the size.

Commissioner Cabrera suggested using the number of employees as a means for determining exemptions.

Commissioner Biddle suggested maintaining the contacts threshold in order to allow business owners to have access to public officials without having to register, regardless of the size of the business. He pointed out that the intent of the ordinance shouldn't violate personal freedom of speech.

Commissioner Cabrera commented that there is a point at which a company reaches a certain size where it wields a level of influence with public officials that the average citizen doesn't have. He stated that it is at this level that he believes registration should be required.

Chairwoman Leonard advised that after staff incorporates the Commission's suggestions the definition of Business Lobbyists will read as follows: "Business Lobbyist means any business or organization of 25 or more employees regardless of whether or not operated for profit, that provides compensation to one or more employees who have a contact with one or more City Officials within a calendar year for the purposes of lobbying on behalf of the business lobbyist. Employees of a business lobbyist include, but are not limited to, the owners, officers and employees of a business or organization."

Commissioner Cabrera confirmed that this proposed language reflects the Commission's intent at this time, with the possible discussion at a later date of whether or not to delete the term "owner."

Commissioner Biddle suggested leaving the number of contacts as is in the draft prepared by staff.

Commissioner Stefano commented that she believes the contacts section as currently written requires further drafting.

Commissioner Westfall commented that he believes the Commission will have to revisit this and other issues after they discuss the contents of lobbyist registration and disclosure forms. He also pointed out that the current proposed ordinance does not include a section that would require disclosure by lobbyists of those officials they've communicated with.

Chairwoman Leonard summarized the course of action as follows: have staff make changes to the draft as directed by the Commission; have the Commission consider the ordinance in its entirety and make any additional changes; and then forward the matter to the Rules Committee.

In addition, she advised that her understanding of the Commission's intent regarding the proposed changes to the Business Lobbyist definition is to add the requirement of 25 or more employees and leave the staff's recommendation of 5 contacts within the period of 30 consecutive calendar days.

Director Fulhorst pointed out that in general, most lobbying occurs during the two weeks before an item is docketed for City Council consideration.

Chairwoman Leonard pointed out that, under the current proposal, the definition of City Official no longer includes classified staff. She added that, with regard to the new definitions of contact and expenditure lobbyists, her understanding is that the Commission intends to leave these definitions unchanged in the draft at this time.

Commissioner Dick questioned why the term contract lobbyists wasn't included within the new definition of lobbyists.

Program Manager Steve Ross explained that contract lobbyists work for a lobbying firm and the lobbying firm would be required to register according to the proposed draft. He pointed out that even an individual contract lobbyist is considered a firm.

Chairwoman Leonard commented regarding the proposed exceptions and advised that there were few changes from the existing ordinance. She asked if the Commission would like to discuss any changes to the contacts section.

Chairwoman Leonard indicated that further discussion regarding lobbying contacts will be added to the schedule for the June meeting. She added that the contents of Registration and Quarterly Report forms will be discussed at the next meeting in May.

Item 9: Proposed Amendments to Ethics Ordinance

Director Fulhorst reported on the proposed amendments to the Ethics Ordinance regarding post-employment restrictions. She explained that Councilmember Frye asked Council President Peters to docket the issue for Rules Committee consideration. She advised that the issue to be considered was whether the post-employment restrictions in the Ethics Ordinance should include exemptions for decisions concerning collective bargaining agreements with the City's labor unions. She explained that, after receiving input from the Commission, staff will prepare a strikeout version of proposed changes for the May meeting. In addition, she reported that the State has passed SB 8 that requires all local elected officials to abide by the State's post-employment restrictions. As a result, staff will need to compare the City's ordinance with the new state law to ensure that the local law is not less restrictive than the state law. She pointed out that, although other jurisdictions have exceptions for collective bargaining agreements in the context of lobbying registration, they do not have similar exemptions for post employment regulations.

Chairwoman Leonard directed staff to prepare a draft strikeout reflecting the deletion of the exemption for collective bargaining agreements, and report back at the next meeting.

Director Fulhorst asked if any of the Commissioners had any concerns regarding the current exemption for attorneys involved in litigation with the City.

Commissioner Biddle commented this area is already regulated by rules of professional responsibility.

Item-10: Presentation of Final Audit Report Regarding the Audit of the Taxpayers Against Recall Abuse Committee from the 2004 Election Cycle

Director Fulhorst reported on the Final Audit Report for the Taxpayers Against Recall Abuse Committee. She noted that there were no material findings identified, and recommended that the Commission accept the report.

Motion: Accept Report

Moved: Westfall/Dick

Vote: Unanimous

Item-11: Adjournment to Closed Session

Chairwoman Leonard adjourned the meeting to Closed Session at approximately 6:30 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 7:00 p.m.

Reporting Results of Closed Session Meeting of April 13, 2006.

Chairwoman Leonard reported the results of the Closed Session Meeting of April 13, 2006.

Item 1: Conference with Legal Counsel (12 potential matters)

Case No. 2005-13 – In Re: Alleged Failure to Obtain Required Contributor Information

Motion: Dismiss

Moved/Seconded:

Vote: Unanimous

Recused: Dick

Case No. 2005-34 – In Re: Alleged Failure to Disqualify from a Municipal Decision Affecting Economic Interests

Motion: Recuse Commissioner Westfall

Moved/Seconded:

Vote: Unanimous

Abstained: Westfall

Motion: Dismiss
Moved/Seconded:
Vote: Unanimous
Recused: Westfall

Case No. 2006-06 – In re: Alleged Failure to Disclose Independent Expenditure and to Include “Paid for By” on Advertisement

Motion: Dismiss
Moved/Seconded:
Vote: Unanimous

Case No. 2006-14 – In re: Alleged Failure to Properly Disclose Economic Interests

Motion: Dismiss
Moved/Seconded:
Vote: Unanimous

Case No. 2005-45 – In re: Alleged Failure to File Statement of Economic Interests

Motion: Dismiss
Moved/Seconded:
Vote: Unanimous

Case No. 2005-49 – In re: Dorothy James - Alleged Failure to File Statement of Economic Interests

Motion: Approve Stipulation
Moved/Seconded:
Vote: Unanimous

Case No. 2005-50 – In re: Alleged Failure to File Economic Disclosure Report

Motion: Dismiss
Moved/Seconded:
Vote: Unanimous

Case No. 2005-51 – In re: Alleged Failure to File Statement of Economic Interests

Motion: Dismiss
Moved/Seconded:
Vote: Unanimous
Abstained: Westfall

Case No. 2005-54 – In re: William Munster - Alleged Failure to File Statement of Economic Interests

Motion: Approve Stipulation
Moved/Seconded:
Vote: Unanimous

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

No Reportable Action

Case No. 2004-64 – In re: Citizens for South Bay - Alleged Failure to Obtain Required Contributor Information

Motion: Approve Stipulation
Moved/Seconded:
Vote: Unanimous
Recused: Biddle

Case No. 2006-07 – In re: Republican Party of San Diego - Alleged Contributions in Excess of Limit and Contributions from Organizations

Motion: Approve Stipulation
Moved/Seconded:
Vote: Unanimous

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

San Diego Ethics Commission Audit Report: San Diegans for Scott Peters

Motion: Accept Report
Moved/Seconded:
Vote: Unanimous

Adjournment

The meeting adjourned at approximately 7:05 p.m.

Dorothy Leonard, Chairwoman
Ethics Commission

Kathy Hunt, Executive Secretary
Ethics Commission

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