



**Minutes for Meeting of
Thursday, June 8, 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 Karen Thomas-Stefano, Lee Biddle and Gil Cabrera

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

Excused – Commissioner Charles H. Dick, Jr.

Item-3: Approval of Commission Minutes

Approval of May 11, 2006, Ethics Commission Minutes

Motion: Approved
Moved/Seconded: Stefano/Cabrera
Vote: Unanimous
Excused: Dick

Item-4: Non-Agenda Public Comment

None

Item-5: Commissioner Comment

Commissioner Cabrera thanked the Commission's General Counsel for the report she provided on constitutional law in connection with the Lobbying Ordinance.

Item-6: Executive Director Comment

Director Fulhorst reported on the following updates:

- The Commission staff is issuing a new fact sheet for candidates with guidelines on post-election activities.
- Staff is continuing to expand live training sessions to include boards and commissions with training material tailored to the specific needs of certain boards and commissions. She added that training for Centre City Development Corporation is scheduled for July 12.
- The Mayor approved the Fiscal Year 2007 budget which includes two additional Ethics Commission staff positions.
- She has been working with City staff to obtain additional office space to accommodate the additional staff positions.
- Staff is attempting to fill the current auditor vacancy, although the City is experiencing difficulty attracting applicants in the mid-level professional range.

Item-7: General Counsel Comment

None

Item-8: Proposed Amendments to Municipal Lobbying Ordinance

Director Fulhorst presented the staff report on ex parte communications. She advised that the main issue before the Commission is whether to incorporate this into the City's Lobbying Ordinance or recommend its inclusion in some other City policy or procedure. She pointed out that no other jurisdictions include this issue within the lobbying laws. Director Fulhorst advised that all other jurisdictions have limited this matter to communications that involve quasi-judicial proceedings because communications that occur outside of this process could violate the due process rights of the parties involved. She reviewed the options for addressing ex parte communications within the Lobbying Ordinance and provided a summary of the information included in the staff report.

Mitch Berner expressed his concern that the implementation of additional regulations could harm the public good by preventing access to public officials. He suggested adding the regulations to the Lobbying Ordinance.

Jim Sutton commented that if the Commission's goal was to have complete disclosure of contacts with public officials, then he recommends disclosure of ex parte communications as an alternative to the Lobbying Ordinance, such that lobbyist registration and reporting requirements are eliminated. He added that reporting all communications could discourage officials from talking to people.

Director Fulhorst commented that penalties for lobbying ordinance violations include administrative fines up to \$5,000, as well as misdemeanor prosecution. She pointed out that including ex parte regulations within the ordinance would also subject violators to these same penalties.

Commissioner Biddle questioned whether the regulations in the Lobbying Ordinance should apply only to lobbyists or to a larger group.

Director Fulhorst indicated that one option would be to shorten the timeframe for lobbyists to disclose activities, including contacts with City Officials.

Chairwoman Leonard questioned whether the regulations should be part of the Lobbying Ordinance and if so how to control it.

Commissioner Cabrera suggested including it as a council policy or something broader.

Chairwoman Leonard expressed concern with limiting ex parte communications only to the Lobbying Ordinance. She commented that community planning groups should also be included within any proposed disclosure requirements.

Commissioner Stefano commented that it may be more appropriate to refer this matter to Council to have it included in policies and council procedures.

Motion: Refer the matter to the City Council as well as the City Attorney, with the Commission's recommendation to develop a Council Policy to address quasi-judicial matters.

Moved/Seconded: Stefano/Westfall

Vote: Unanimous

Excused: Dick

Lobbying Prohibitions

Director Fulhorst reported that possible prohibitions for registered lobbyists include: campaign contributions, campaign fundraising, campaign consulting, and gifts. She pointed out that a ban on campaign contributions would only apply to those individuals whom a lobbyist is attempting to influence. She advised that no other jurisdictions have a prohibition for campaign fundraising. She commented that San Francisco prohibits campaign consultants from lobbying officials who are former clients. She advised that the most common ban is on the giving of gifts. She also pointed out that most jurisdictions include a provision prohibiting lobbyists from acting as intermediaries in the giving of gifts.

Commissioner Cabrera questioned how it could be ascertained that a lobbyist was acting as an intermediary.

Director Fulhorst responded that state and local law require officials to disclose the identity of donors and intermediaries. She explained that City Officials have received training directing them to ascertain the identity of the true donor and the intermediary, and to disclose both. She added that in general other gift prohibitions are limited to situations in which lobbyists give gifts to those officials they are attempting to influence. She pointed out that San Diego County is the only jurisdiction that completely prohibits gifts. She commented that the purpose of the discussion was to receive input from the Commission regarding any activities that they believe should be prohibited so staff could conduct research regarding relevant legal issues and report back at the next meeting.

Simon Mayeski recommended that the Commission adopt language to effect the following changes: to prohibit lobbyists from soliciting, arranging, or delivering contributions to elected officials; to prohibit lobbyists from serving on campaign committees and political action committees aimed at electing City Officials; and to ban gifts exceeding \$10.00 in value to City Officials. In addition, he added that the disclosure of contributions made to elected officials by lobbyists should be required whenever any of the following occur: when the total of campaign contributions exceeds \$100 in a quarter; when lobbyists or lobbying firms hold campaign fundraising events that produce \$500 or more in contributions; when a campaign fundraising solicitation attempt is made by lobbyists or lobbying firms by mail, telephone or email and results in more than \$500 in contributions being raised; and when the total of contributions to independent expenditure organizations by a lobbyist or lobbying firm exceeds \$100 in a given quarter.

Jim Sutton questioned what percentage of contributions raised by candidates comes from lobbyists. He added that this information can be found on campaign disclosure reports. He also questioned why the Commission was singling out lobbyist contributions and fundraising activities, considering that there are other special interests groups involved. He added that the Commission should consider adopting regulations similar to state law. He commented that low contribution limits solve any problems that the public might have regarding disclosure issues. He continued that most gift interactions involve working lunches and dinners. He added that the Ethics Commission's audits of lobbyist disclosure reports indicate that gifts are not an issue.

Commissioner Westfall stated that he concurs that contribution limits are low enough and don't need to be banned. Regarding the gift ban, he questioned if perhaps all the parties involved would be better served by a complete ban similar to that in effect in San Diego County. He also expressed his opinion that fundraising activities should be disclosed.

Commissioner Cabrera concurred that there is no need to ban contributions. He added, however, that a campaign fundraising ban should be considered by the Commission and could be accomplished within the parameters of the General Counsel's memorandum. He added that this is a matter which involves the most public concern regarding the influence that lobbyists exert over public officials. He

continued that the Commission should consider banning fundraising if staff can develop language that is narrowly tailored and will pass constitutional muster. He commented that it is not clear as to whether the campaign consulting issue is a problem in San Diego. With regard to the gift ban, Commissioner Cabrera commented that the intermediary aspect could be a problem. He pointed out that gifts distributed through a lobbyist who is an intermediary could add up to a substantial amount and could appear improper. He added that completely banning gifts would eliminate any appearance of impropriety.

Commissioner Stefano agreed that a ban on contributions shouldn't be included. She added that staff needs to analyze fundraising issues to address the constitutional concerns. She also agreed that a gift ban should be included in the ordinance.

Commissioner Biddle agreed that a ban on contributions is unnecessary. He commented that information regarding fundraising activities is already available to the public on campaign statements.

Commissioner Westfall questioned where this information is available.

Commissioner Biddle responded that campaign statements are available in the City Clerk's Office. He also mentioned that campaign statements for state filers are readily accessible on the Secretary of State's website.

Director Fulhorst reported that City Clerk will be attending the July meeting to report on lobbyist fees and the new system for on-line filing of campaign disclosure statements which will go into effect this July. She explained that the City Clerk's on-line system will have many of the same features as the Secretary of State's website with regard to search capabilities.

Commissioner Westfall commented that the average person would have difficulty finding information on fundraising activities by lobbyists in campaign statements. He suggested that staff consider the Los Angeles model with regard to disclosure of fundraising activities.

Commissioner Biddle commented that in order to connect contributions with a particular lobbyist, the reported information for fundraising activities would need to be in a more searchable format.

Commissioner Westfall commented that he believes the public would want to know which lobbyists have sufficient clout to raise large sums for campaigns.

Commissioner Cabrera pointed out that providing accessibility to this information does not affect the influence that lobbyists exert. He noted that a serious fundraiser or lobbyist would still have access that the average person does not. He questioned many people are actually checking for this information, and added that since campaign treasurers can track funds raised by individuals, then the City should

be able to as well. He suggested that if staff can find a way to draft a fundraising ban that is constitutionally sound then it should be prohibited. He added that this is an evil that does need a solution. He reported that, according to most polls, the vast majority of citizens would agree with this.

Mitch Berner commented on access to information with regard to in-kind contributions. Although the City Clerk's Office has dates of in-kind contributions, he believes there should be an alternative way to look for dates of fundraisers. He added that a fundraising event can be presumed if there are many contribution checks received on one date.

Chairwoman Leonard reviewed the Commission's recommendations as follows:

- campaign contributions: to not require a prohibition;
- campaign fundraising: to direct staff to draft proposed language that would ban fundraising; if staff finds that this cannot be accomplished within the guidelines set forth in the General Counsel's memorandum, then the disclosure of fundraising activities should be required;
- campaign consultant ban: to not require a prohibition;
- gift ban: to recommend the same \$10.00 limit as the state.

Jim Sutton commented that at the last meeting the Commission decided to limit the disclosure of fundraising activities to bundled contributions.

Commissioner Cabrera disagreed that this was the Commission's previous decision.

Commissioner Westfall asked staff to investigate the reported problems that Los Angeles is experiencing with respect to the disclosure of fundraising activities.

Item-9: Proposed Amendments to the Commission's Investigative and Enforcement Procedures

Director Fulhorst advised there are two primary reasons for the proposed amendments. She explained that the first reason is to correct the discrepancy between the City Charter and the Municipal Code by updating the Municipal Code to reflect the approval of the 2004 ballot measure that established an independent counsel position for the Commission. She added that the second reason is to update the procedures to reflect the evolution of the Commission since its inception in 2001. She reported on the following proposed amendments:

Appointment of Commissioners

Director Fulhorst explained that the proposed change would expand this requirement to provide that at least one member of the Commission either held an elective office or was a candidate for an elective office.

Commissioner Cabrera questioned whether this should be expanded to include campaign consultants, treasurers and others that would have the required expertise.

Chairwoman Leonard commented that they would need to be retired to be considered.

Director Fulhorst advised that staff will incorporate this suggestion into the amendments to include other individuals with campaign experience.

Qualification of Members

Director Fulhorst advised that the proposed amendments to this section reflect suggested changes that were submitted to Mayor Dick Murphy in 2004. She explained that these changes address situations in which immediate removal may not be appropriate without some type of due process considerations.

Staff and Budget

Director Fulhorst advised that this change will update the Municipal Code with respect to the Commission's independent General Counsel position.

Jurisdiction of Ethics Commission

Director Fulhorst commented that the proposed changes are designed to clarify the original intent regarding the individuals and agencies that fall within the jurisdiction of the Commission.

Responsibilities and Duties of the Ethics Commission

Director Fulhorst advised that the proposed changes will reflect the Commission's accomplishments, such as the creation of an Audit Manual.

Interference with Complaints and Witnesses

Director Fulhorst advised that the proposed change would include protection for witnesses.

Filing of Complaints

Director Fulhorst advised that the San Diego Ethics Commission is the only Commission in a major city in California that is not allowed to initiate its own investigations. She explained that originally the Commission was set up to be complaint driven in order to prevent politically motivated enforcement actions. The Commission's experience, however, indicates that the current procedures make the Commission more susceptible to being used as a political tool. She explained that this proposed change would result in more equitable enforcement. She noted that it would enable the Commission to initiate complaints based on information contained

within public documents and media reports, provided that there is sufficient information to support an allegation. She pointed out that even now, all complaints are subject to a preliminary review, with staff making the determination as to whether there is sufficient information upon which to allege a violation. She added that the proposed changes would also enable the Commission to promptly respond to apparent violations instead of waiting to see if a complaint is filed.

Commissioner Westfall asked if staff knew how many instances there were in which a media report was filed and a complaint was not received.

Director Fulhorst responded there are probably only a few instances with respect to media reports. She pointed out, however, that it is fairly common for Commission staff to run across apparent violations on campaign statements that were not the subject of a complaint.

Commissioner Westfall expressed concern that by adopting these changes the Commission would feel obligated to investigate all violations. He also commented that the Commission might be criticized for not pursuing all violations and possibly be accused of having a political bias. In addition, he questioned if there would be sufficient staffing if this change was implemented.

Director Fulhorst pointed out that the Commission can choose to not investigate minor violations. She added that it would be the Commission's responsibility to review public filings and pursue enforcement actions in an even-handed manner. With respect to staff resources, Director Fulhorst indicated that she does not believe the proposed changes would generate that many more complaints. She added that the proposed changes are also important in light of the recent change in City government structure, and the fact that the City Clerk (who is the filing official) now reports directly to the City Council.

Commissioners Stefano and Cabrera agreed with the Director's proposed changes.

Commissioner Biddle indicated that although he is in favor of recommended changes 1 through 4 in the draft strike-out version of section 26.0421, he has concerns regarding item 5, which is enforcement action taken in response to media reports.

Commissioner Cabrera added that if Item 5 were adopted, it should be expansive enough to cover all media sources such as the Voice of San Diego.

Commissioner Stefano commented that she is not concerned about the potential for criticism regarding the enforcement activities of the Commission. She added that she does not want the Commission to be limited as to which cases they can investigate because a small number of individuals may criticize the Commission. She recommended that the proposed changes be adopted because they are in best interests of the community.

Commissioner Westfall asked if the Commission staff would monitor all media sources to ensure that possible violations are not missed.

Director Fulhorst responded that whenever any media source reports on an alleged violation of local governmental ethics laws, the Commission staff is usually notified about the report.

Commissioner Biddle commented that if the Commission is going to consider option 5 involving apparent violations reported in the media, then the Commission should consider expanding option 5 to include apparent violations that are brought to the attention of the Executive Director, even if they are brought to the Director's attention anonymously.

Director Fulhorst pointed out that the current procedures prohibit the Commission from accepting anonymous complaints. She added that, in her experience, this has served as a deterrent in that some individuals will not file a complaint if they cannot do so anonymously, despite the assurances from staff that their identities will remain confidential.

Commissioner Leonard commented that Commissioner Biddle was actually suggesting a complete opening up of the process such that San Diego would be able to initiate its own complaints like they do at other Ethics Commissions.

Commissioner Biddle confirmed that it is his recommendation to only propose items 1 through 4, or open up the process completely instead of relying on media reports.

Commissioner Cabrera commented that it was appropriate for staff to propose an incremental approach to gradually open up the Commission's complaint process, but he pointed out that the Council has indicated it supports the commission's work and that it is therefore appropriate to ask the Council to completely open up the process to permit the Commission to initiate its own enforcement actions. He also expressed his opinion that anonymous complaints should be permitted.

Commissioners Stefano and Cabrera indicated that the decision of whether to generate a complaint should be left to the discretion of the Director.

Commissioner Biddle recommended either limiting the guidelines for initiating enforcement actions to items 1 through 4, or opening the procedures up to permit the Commission to consider any issue for potential enforcement.

Chairwoman Leonard suggested sending this section back to staff for further drafting to reflect the Commission's desire to lift the ban on anonymous contributions and to expand the ability of the Commission to initiate investigations without receipt of a complaint.

Preliminary Review

Director Fulhorst advised that the proposed changes would eliminate the requirement to notify a respondent that a complaint had been dismissed through a preliminary review because the matter was already the subject of an ongoing investigation.

Probable Cause Hearing

Director Fulhorst advised that this change would correct a drafting error and create consistency with other sections of the Investigative and Enforcement Procedures.

Subpoenas

Director Fulhorst advised that this change would clarify that the Commission would refer to the California Administrative Procedures Act for guidance.

Settlements

Director Fulhorst explained that the proposed changes would eliminate duplication with regard to procedures within the settlement process, and would make the procedures consistent with current practices.

Director Fulhorst commented that staff will have the requested changes ready for review and consideration at the July meeting.

Item-10: Appointment of Ad Hoc Committee to Nominate Commission Officers at July 13, 2006, Commission Meeting

Chairwoman Leonard reported that Commissioners Westfall and Biddle have agreed to serve on an ad hoc committee to nominate Commission officers for the next year at the July meeting.

Motion: To approve appointment of Commissioners Westfall and Biddle to serve on an ad hoc committee to nominate Commission officers for the next year

Moved/Seconded: Cabrera/Stefano

Vote: Unanimous

Excused: Dick

Item-11: Adjournment to Closed Session

Chairwoman Leonard adjourned the meeting to Closed Session at approximately 7:00 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 7:20 p.m.

Reporting Results of Closed Session Meeting of June 8, 2006

Chairwoman Leonard reported the results of the Closed Session Meeting of June 8, 2006.

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

Case No. 2006-16 – In Re: Alleged Violation of Contributions in Excess of Limit

Motion: Authorize Investigation

Moved/Seconded:

Vote: Unanimous

Excused: Dick

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

Case No. 2005-28 – In Re: Alleged Violation of Contributions in Excess of Limit and Failure to Disclose Intermediary

Motion: Dismiss

Moved/Seconded:

Vote: Unanimous

Excused: Dick

Case No. 2005-75 – In Re: Alleged Failure to Disclose “Paid for By” on Campaign Communication

Motion: Dismiss

Moved/Seconded:

Vote: Unanimous

Excused: Dick

Adjournment

The meeting adjourned at approximately 7:25 p.m.

Dorothy Leonard, Chairwoman
Ethics Commission

Kathy Hunt, Executive Secretary
Ethics Commission

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