



**Minutes for Meeting of
Thursday, July 13, 2006**

Item-1: Call to Order

Chairwoman Leonard called the meeting to order at 5:25 p.m.

Item-2: Roll Call

Present – Chairwoman Dorothy Leonard, Vice-Chair Larry Westfall, Commissioners Charles H. Dick, Jr., and Lee Biddle (Gil Cabrera left the meeting at 6:55 p.m.)

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

Excused – Karen Thomas-Stefano

Item-3: Reporting Results of Closed Session Meeting of July 13, 2006

Chairwoman Leonard reported the results of the Closed Session meeting of July 13, 2006:

Item 1: Conference with Legal Counsel (37 potential matters)

(One item withdrawn)

Cases No. 2006-18 through 2006-28, and 2006-30 through 2006-37 – In Re: Alleged Failure to File Statements of Economic Interests

Motion: Initiate Investigation
Moved/Seconded:
Vote: Unanimous
Excused: Stefano, Cabrera

Cases No. 2006-29, 2006-38, and 2006-39 – In Re: Alleged Failure to File Statements of Economic Interests

Motion: Dismiss
Moved/Seconded:
Vote: Unanimous
Excused: Stefano, Cabrera

Case No. 2006-40 – In Re: Alleged Participation in Municipal Decisions that Involve the Interests of a Future Employer

Motion: Initiate Investigation
Moved/Seconded:
Vote: Unanimous
Excused: Stefano, Cabrera

Commissioner Cabrera arrived at approximately 5:15 p.m.

Case No. 2006-42 – In Re: Alleged Failure to Properly Disclose Economic Interests

Motion: Recuse Chairwoman Leonard
Moved/Seconded:
Vote: Unanimous
Excused: Stefano

Motion: Initiate Investigation
Moved/Seconded:
Vote: Unanimous
Recused: Leonard
Excused: Stefano

Cases No. 2006-43 through 2006-53 - In Re: Alleged Failure to File Statements of Economic Interests

Motion: Initiate Investigation
Moved/Seconded:
Vote: Unanimous
Excused: Stefano

Case No. 2006-54 – In Re: Alleged Failure to File Statement of Economic Interests

Motion: Recuse Commissioner Westfall
Moved/Seconded:
Vote: Unanimous
Excused: Stefano

Motion: Initiate Investigation
Moved/Seconded:
Vote: Unanimous
Recused: Westfall
Excused: Stefano

Item 2: Conference with Legal Counsel (4 potential items)

(Four Items Withdrawn)

Item-4: Approval of Commission Minutes

Approval of June 8, 2006, Ethics Commission Minutes

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

Item-5: Non-Agenda Public Comment

James Hartline commented regarding the needle exchange program.

Item-6: Commissioner Comment

None

Item-7: Executive Director Comment

None

Item-8: General Counsel Comment

Ms. McGuire reported on the recent Supreme Court ruling in the case of *Sorrell v. Randell*. She explained that the court ruled that the State of Vermont's campaign contribution limits were invalid under the federal constitution. Although some of the limits discussed in the Vermont case are lower than San Diego's, some of the limits are comparable to the contribution limits in this City.

She explained that the court evaluated five distinct factors to determine whether the Vermont limits were invalid. The court emphasized that no one factor was determinative. She has examined San Diego's limits in light of the five factors articulated in this case. In her opinion, San Diego's contribution limits pass constitutional muster. She finds no need to recommend that the Commission take immediate action to review the City's contribution limits. She added that the matter may be docketed for a future meeting if the Commission would like a more detailed discussion of the case and its potential impact on the City's contribution limits.

Item-13: Election of Chair and Vice Chair

Motion: Appoint Dorothy Leonard as Commission Chair and Gil Cabrera as Vice-Chair for the period from July, 2006 through June, 2007

Moved/Seconded: Westfall/Dick

Vote: Unanimous

Excused: Stefano

Item-9: Report from City Clerk Regarding On-Line Filing of Campaign Statements

Bonnie Stone, Deputy Director of Elections and Information Services of the City Clerk's Office presented a report to the Commission on the electronic filing program for campaign statements. She advised that the first test run will be for the semi-annual filing which is due by July 31, 2006. She mentioned that a training session was held in which five treasurers representing ten campaign committees attended. She reported that use of the system will ultimately be required for those candidates and committees that have received contributions or made expenditures of \$10,000 or more, per the Municipal Code. She added that the Clerk has established January 1, 2006, as the day from which contributions and expenditures must be counted to determine whether or not a committee has reached the \$10,000 threshold. She added that the system will provide improved customer service by enabling the City Clerk to post the filed statements on the

City's website for public access. In addition, she advised that the electronic filing will automate the administration of campaign disclosures, streamline the review process, and enhance the ability to address potential and actual violations of campaign laws.

Commissioner Biddle asked if other cities were using this system in addition to San Jose.

Ms. Stone responded that Santa Clara uses a similar system.

Director Fulhorst commented on the many benefits this will provide and commended the City Clerk's Office on developing a cost-effective system for the City.

Item-10: Proposed Amendments to Municipal Lobbying Ordinance, including Report from City Clerk Regarding Lobbyist Fees.

City Clerk Liz Maland reported that they are not ready to raise the fees at this time. She suggested removing the registration fees from the Lobbying Ordinance and including them within the City's Fee Schedule.

Director Fulhorst presented the staff report on the proposed prohibition on lobbying City Officials who were the subject of fundraising activities:

1. The proposal would not directly prevent lobbyists from fundraising. The proposed changes would only prohibit the lobbying of an elected official by a lobbyist who fundraised for that official over a certain financial threshold.
2. The proposal would not restrict a lobbyist's ability to speak at a public meeting or submit written comments that become part of the public record.
3. The proposed changes would apply to both in-house and contract lobbyists as well as their employees.
4. The term "candidate" has been defined to include individuals that are seeking City office and City officeholders who are seeking other elective offices.
5. The proposed ban would be limited in time to the elected official's term of office.
6. Staff drafted the definition of the term "fundraising activities" in a manner designed to avoid affecting any "grass roots" activities. For example, home or office fundraisers that cost less than \$500 would be excluded.

Director Fulhorst addressed the compelling governmental interests that are outlined in the staff report. She advised that the Commission may wish to include a “grandfather” clause such that the provision would apply to fundraising activities going forward from the effective date.

Pursuant to direction received at the last Commission meeting, Director Fulhorst consulted with staff at the Los Angeles Ethics Commission to learn about problems they are reportedly experiencing with the disclosure of fundraising activities by registered lobbyists. She reported that the staff is currently in the process of scheduling some public workshops to address this issue, and therefore they could not identify any particular problems at this time.

John McNab commented regarding individuals who engage in fundraising and then obtain City positions with policy setting responsibilities. He added that consideration of the ex parte communications issue is important.

James Hartline commented that elected officials should be restricted from joining clubs if lobbyists are also members.

Kevin Heneghan commented that he opposed the proposal for the reasons set forth in a letter submitted to the Commission. He commented that it would be beneficial to have a study to see if lobbyists are significant fundraisers.

Bill Daniel commented that the fundraising proposal was a step in the right direction.

Simon Mayeski commented that the terms within the staff proposal such as “rank and file employees,” “lower level employee,” and “without knowledge or direction of the company,” were too broad and needed to be more narrowly tailored and refined. He also suggested more narrowly defining the hierarchy of an organization’s rank and file employees. In addition, he suggested that it would be helpful to address the issue of a company’s knowledge and direction of their lower level employees to ensure that they are not encouraged or pressured to act as fundraising operatives for a company seeking to get around the lobbying ban. He also made comments in response to issues raised in the Sutton Law Firm letter submitted to the Commission regarding the staff proposal.

Jerry Butkiewicz commented that organized labor only participates in a political campaign after they receive the members’ approval in order to protect the members’ interests as well as the jobs of their members. He added that their members cannot afford to hire lobbyists and so expect their union leaders to represent them with elected officials. He expressed his opinion that the proposal would unfairly limit his members’ ability to participate in campaign and lobbying activities.

Chairwoman Leonard pointed out that the proposal doesn't preclude speaking at public meetings.

Pamela Wilson commented that she was opposed to the proposal for the reasons outlined in a letter submitted to the Commission. She added that the City of Los Angeles found that only six percent of campaign contributions came from lobbyists and recommended that evidence be gathered in order to determine whether this is an issue in San Diego.

Chairwoman Leonard asked the Commission to provide direction to staff, keeping in mind the issues that were raised with regard to legalities. She noted that if referred to the Rules Committee, it would likely be sent back to the Commission with the Committee's recommendations. She proposed that one option may be for the Commission to direct staff to conduct additional research on the legality of the proposal in light of the public comment received, and then refer the proposal to the Rules Committee to receive input from the councilmembers since they would be affected by the proposal.

Commissioner Cabrera agreed that it was appropriate to include a grandfather clause within the proposal. He commented that the proposed changes will address the appearance of impropriety and will also cover the actual existence of preferential treatment. He noted that the prohibition would only be triggered by a significant amount of fundraising. He added that in his personal experience there is a connection between raising significant amounts of money for an elected official and obtaining access. He pointed out that these prohibitions would also help protect elected officials by clarifying when it is not appropriate to meet with a lobbyist. He expressed his opinion that the \$5,000 fundraising threshold is too high for district elections, but too low for citywide races.

Commissioner Dick commented that this proposal may discourage participation in government matters by citizens. He added that he would support a provision that would require disclosure of fundraising activities by lobbyists.

Commissioner Westfall agreed that the Commission should focus on disclosure rather than prohibitions as a means for regulating fundraising activities by lobbyists.

Commissioner Biddle commented that, instead of prohibitions, he recommended creating a system that required disclosure of all actions related to fundraising and influencing municipal decisions.

Chairwoman Leonard commented that she supported having more disclosure in lieu of the proposed prohibition. She indicated that there was not a consensus among the Commissioners to have staff pursue the matter of prohibitions related to fundraising activity.

Commissioner Cabrera asked about the access the public currently has to federal campaign contributions as well as other jurisdictions. He commented that disclosure will not accomplish the public policies regarding to access to elected officials.

Chairwoman Leonard suggested that the Commission's report to the Rules Committee include reference to the prohibition considered by the Commission in the event that the Councilmembers wish to pursue the issue.

Director Fulhorst advised that staff will prepare the first draft of an overall ordinance for the Commission's review at the August meeting. She noted that it may take the Commission several meetings to consider the draft before forwarding it to the Rules Committee. In response to Commissioner's Cabrera's question, she advised that staff has had experience accessing information regarding contributors at the federal and state levels and found the information to be very accessible.

Chairwoman Leonard concluded that the proposal regarding prohibitions associated with fundraising and lobbying should not be included in the draft ordinance, and that instead the draft should address disclosure of fundraising activities.

Item-11: Proposed Amendments to the Commission's Investigative and Enforcement Procedures

Commissioner Cabrera commented that he supports the staff's recommendations. He left the meeting at approximately 6:55 p.m.

Director Fulhorst reported that, in accordance with the Commission's direction to staff at the previous meeting, there were three changes made to the original recommendations. The first concerns the removal of the prohibition on receiving anonymous complaints. She commented that as long as a complainant provides facts to support an allegation, she believes the public would favor the Commission initiating action. The second change concerns the complete removal of the prohibition on self-generating complaints. She explained that the public is not aware that the Commission cannot generate a complaint, and expects that the Commission is taking action when a potential violation is publicized. She pointed out that this will also provide a more equitable means of enforcement of the ethics laws. In addition, she advised that removing the ban will align the Commission's procedures with those in place in other jurisdictions. The third change concerns the appointment of Commissioners. She explained that this change would expand the selection categories to include candidates for an elective office as well as those that have worked as a treasurer or other high level position in a campaign for elective governmental office.

Chairwoman Leonard recommended forwarding the proposed changes to the Rules Committee.

Motion: Forward Proposed Changes to Rules Committee

Moved/Seconded: Dick/Westfall

Vote: Unanimous

Excused: Stefano, Cabrera

Item-12: Adoption of Commission Calendar for 2007

Motion: Approve

Moved/Seconded: Biddle/Dick

Vote: Unanimous

Excused: Stefano, Cabrera

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.***