



**Minutes for the Meeting of
Thursday, August 10, 2006**

Item-1: Call to Order

Vice-Chair Cabrera called the meeting to order at 5:15 p.m.

Item-2: Roll Call

Present – Vice-Chair Gil Cabrera, Commissioners Charles H. Dick, Jr., Larry Westfall and Lee Biddle. Commissioner Karen Thomas-Stefano arrived at 5:25 p.m.

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

Excused – Chairwoman Dorothy Leonard

Item-3: Approval of Commission Minutes

Approval of Ethics Commission Minutes for July 13, 2006

Vice-Chairperson Cabrera reported that approval of the minutes from the July 13, 2006, meeting would be rescheduled for the September meeting to meet quorum requirements.

Item-4: Non-Agenda Public Comment

Melvin Shapiro commented on City consultants filing statements of economic interests as detailed in a letter submitted to the Commission.

Item-5: Commissioner Comment

None

Item-6: Executive Director Comment

Director Fulhorst reported on the following:

City consultants filing statements of economic interests:

The issue of consultants not filing was brought to the attention of Department Directors by an Ethics Commission staff memo that was distributed in February. As a result, CCDC as well as the City's Metropolitan Wastewater Department have identified consultants required to file and have passed this information on to the City Clerk. The City Clerk is now in the process of notifying those individuals. Other departments are working with their City Attorney advisors to determine which consultants need to file.

Education Program:

More than two hundred City officials have received ethics training through the online training program in addition to member of five City boards and commissions. Live training continues with bi-monthly recertification training sessions scheduled for unclassified city managers. In addition, live trainings have been provided for CCDC and the Housing Commission staff with San Diego Data Processing Corporation scheduled for September.

Ethics Ordinance fact sheets:

The staff recently distributed fact sheets regarding tickets and invitations to events, and members of City boards and commissions representing clients before their respective commission or board. In addition, a conflict of interest booklet was recently completed consisting of six separate comprehensive fact sheets on different types of economic interests. Staff will also be distributing a fact sheet on gifts. Fact sheets scheduled for completion later this year include: post employment restrictions, incompatible activities and misuse of position, and soliciting campaign contributions from City employees.

Commissioner Stefano arrived at 5:25 p.m.

Upcoming legislative activity:

The City Council recently approved the proposed amendments to the Ethics Ordinance concerning post-employment lobbying activities. The changes will take effect thirty days after the second reading of the ordinance. The proposed changes to the Commission's Investigative and Enforcement Procedures are scheduled for the Rules Committee meeting of September 20. Proposed changes to the Lobbying Ordinance are tentatively scheduled for the Rules Committee meeting in October.

Miscellaneous:

The City Treasurer's Office recently reported that Gregory Diethrich (a respondent in a prior Ethics Commission investigation) had paid his fine in full as of May 30.

Item-7: General Counsel Comment

None

Item-8: Proposed Amendments to the Municipal Lobbying Ordinance

Director Fulhorst reported that staff prepared a draft strike-out ordinance as a result of a series of public workshops held by the Commission. She advised that the proposed amendments incorporate what the staff perceived to be the consensus of the Commission on a variety of issues, as well as input received from the public. She briefed the Commission on the following proposed changes:

Definitions:

The new definition of business lobbyist replaces the existing definition for in-house lobbyists. In response to the Commission's direction, staff found two instances in other sections of the Municipal Code where a small business is defined as one with less than twelve employees.

Other revised definitions include the following: City Official, compensation, contract lobbyists, expenditure lobbyist, and fundraising activity. The new definition of contract lobbyist will eliminate the need for a financial registration threshold. With respect to the term "fundraising activity," Director Fulhorst explained that the thresholds in the draft are lower than those previously discussed in the context of the proposed lobbying ban, because the draft changes now focus on disclosure in lieu of prohibitions.

Exceptions:

Existing exceptions have been combined into one section of the ordinance with some modifications. New exceptions have been added for communications in connection with an existing contract, and providing a response to a subpoena. An additional exception is proposed for architects and engineers with two options for the Commission to consider: one would exempt all communications by these professionals concerning their specialized knowledge, and the second would only exempt the communications if the architect or engineer were accompanied by a registered lobbyist.

Registration Threshold:

The existing monetary threshold was replaced by the definition of contract lobbyist (which includes a \$1 threshold) and a contact threshold for business lobbyists. The proposed changes are intended to eliminate the difficulty involved in determining the exact amount of time business lobbyists spend on lobbying activities (which is currently required in order to ascertain whether they meet the financial threshold).

Registration:

The proposed changes would eliminate the requirement for individual lobbyists to register. Instead, lobbying firms and business lobbyists would be required to register and disclose the activities of individual lobbyists. In addition, the proposed changes would require that filers amend their registration forms within ten days of any changes to the information on the forms.

Quarterly Disclosure Reports:

The proposed amendments address changes to the quarterly disclosure reports filed by lobbying firms, business lobbyists and expenditure lobbyists. The changes include the requirement that lobbyists amend their quarterly reports within ten days of discovering any incorrect information on the forms.

Gifts from Lobbyist:

Director Fulhorst explained the difference between activity expenses and gifts. Based on the Commission's recommendations, the proposed ordinance would include a ban on lobbyists giving any gifts with an aggregate value of \$10.00 or more in a calendar month, or serving as intermediaries in the giving of gifts valued at more than \$10.00.

Online Disclosure:

The draft includes a provision requiring the online filing of lobbyist registration forms and quarterly disclosure reports when the City has implemented an online filing system.

Jim Sutton suggested that staff release the final draft to organizations such as the California Political Attorneys Association in order to receive additional input. He commented that the term "organization lobbyist" may be a more appropriate term for business lobbyists. He commented on the definition of expenditure lobbyists and noted that it does not specify the types of expenditures included within the \$500.00 threshold. He also suggested that the definition of contract lobbyists is unnecessary.

Vice-Chairperson Cabrera asked Mr. Sutton to provide the information regarding the California Political Attorneys Association to Director Fulhorst.

Director Fulhorst advised that she will submit the draft ordinance to the California Political Attorneys Association for any comments or suggestions, and will report back at the next Commission meeting with any input received.

Simon Mayeski commented with respect to a letter submitted to the Commission. He added that he is in favor of option 2 with respect to the exceptions for architects and engineers.

In connection with Mr. Mayeski's comments concerning the number of contacts for business lobbyists, Director Fulhorst suggested that the Commission may wish to consider an "either/or" option, such as five contacts in a calendar month or a certain number of contacts in a calendar year.

Mitch Berner commented that requiring disclosure of fundraising activities and campaign contributions places an unfair burden on registered lobbyists. He disagreed with the recommendation that lobbyists report fundraising activities for the past four years at the time they register. He indicated that he supports Option 1 with respect to the exception for architects and engineers. He also commented that it may be useful for the Commission staff to review the City's business licensing information to see how many companies in San Diego employ twelve or more people.

Commissioner Stefano thanked members of the public for their input. With regard to the draft recommendations, she expressed her concern that the newly-defined term "hosting a campaign event" might be too vague to be enforceable. She proposed submitting a markup with her suggested edits to Commission staff.

Vice-Chairperson Cabrera indicated that, in order to comply with the Brown Act, other Commissioners should not also submit proposed edits to staff. He questioned whether it was necessary to include language regarding the hosting of campaign events, and suggested it was preferable to simply focus on the amount of contributions raised.

Commissioner Biddle indicated that he agrees with Commissioner Cabrera. He suggested eliminating the exemption for fundraisers that cost less than \$500, and pointed out that someone can raise a substantial amount of campaign contributions at such an event.

Commissioner Dick commented that he agrees with Commissioner Cabrera regarding the focus on contributions raised rather than fundraising activities. He added that he will not be able to attend the September or October Commission meetings, but expressed his objections to the current definition of business lobbyist. He suggested obtaining input on the proposed amendments from the California Political Attorneys Association as recommended by Mr. Sutton. He proposed replacing the term "business lobbyist" with "organization lobbyist." He also suggested increasing the number of employees of businesses that would be exempted from regulation.

Commissioner Stefano suggested that the Commission provide some background information to the Rules Committee for the more controversial items included in the draft amendments.

Commissioner Westfall commented that he agrees with the first option with respect to the exception for architects and engineers. He added that he agrees there is no need for an exemption for fundraisers that cost less than \$500.

Vice-Chairperson Cabrera suggested only requiring disclosure of fundraising efforts that result in a certain level of contributions raised. He expressed his preference for option 1 with respect to the exception for architects and engineers. He indicated that he agrees with Commissioner Dick concerning the definition of business lobbyist, and questioned whether there is a way to identify those individuals in a company who are paid to lobby. He also asked for clarification on the proposed gift ban.

Commissioner Stefano suggested that the exceptions for newspapers and periodicals should include electronic media.

Director Fulhorst addressed the Commission's concerns regarding the current definition of business lobbyist, and suggested that they consider the broader policy issues rather than the specific language. If the Commission is concerned about inadvertently regulating limited contacts by employees of small business, she suggested the Commission consider an exemption for individuals who own 25% or more of a business entity, with the exception of instances in which the owners are lobbying in connection with a contract for their own business.

Commissioner Dick suggested focusing on the types of businesses that employ individuals to lobby on their behalf. He suggested that the exemption for small businesses should apply to those entities with fewer than twenty-five employees, and added that he believes the City should encourage participation in local government.

Vice-chairperson Cabrera suggested proposed language that would include individuals paid to lobby, create an exemption for owners addressing their own business interests, and establish a higher threshold to exempt small businesses.

Director Fulhorst noted that it appears that the consensus among the Commissioners is to increase the number of employees in relation to the exemption for small businesses.

Commissioner Biddle suggested that the Commission staff provide a few different options regarding the definition of business lobbyist at the next Commission meeting. He commented that he supports the first option with respect to the exception for engineers and architects, and he suggested that the Commission may wish to add other professions to this group. He reiterated his previously-expressed opinion that the \$10.00 gift threshold was unnecessary.

Director Fulhorst advised that in response to the Commission's suggestions, staff will report back at the next meeting with several options for the regulation of business lobbyists.

Item-9: Legislative Agenda for 2006-2007

Director Fulhorst presented the proposed legislative schedule for fiscal year 2006-2007. She advised that if changes to the Lobbying Ordinance are not finalized by end of the year, they can be implemented at the end of the first quarter of 2007.

Item-10: Adjournment to Closed Session

Vice-Chairperson Cabrera adjourned the meeting to Closed Session at approximately 6:43 p.m. He 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

Vice-Chairperson Cabrera called the meeting back into open session at approximately 7:15 p.m.

Reporting Results of Closed Session Meeting of August 10, 2006

Vice-Chairperson Cabrera reported the results of the Closed Session Meeting of August 10, 2006:

Item 1: Conference with Legal Counsel (3 potential items)

Case No. 2006-38 – In Re: Alleged Failure to File Statement of Economic Interests

Motion: Dismiss
Moved/Seconded:
Vote: Unanimous
Excused: Leonard

Case No. 2006-39 – In Re: Alleged Failure to File Statement of Economic Interests

Motion: Authorize Investigation
Moved/Seconded:
Vote: Unanimous
Excused: Leonard

Case No. 2006-57 – In Re: Alleged Failure to Properly Disclose Electioneering Communications

Motion: Authorize Investigation

Moved/Seconded:

Vote: Unanimous

Excused: Leonard

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

(One item withdrawn)

Case No. 2005-01 – In Re: Alleged Disclosure of Confidential Information

Motion: Dismiss

Moved/Seconded:

Vote: Unanimous

Excused: Leonard

Case No. 2005-71 - In Re: Alleged Failure to Register as a Lobbyist

Motion: Dismiss

Moved/Seconded:

Vote: Unanimous

Excused: Leonard

Case No. 2005-70 – In Re: Alleged Failure to Register as a Lobbyist

Motion: Recuse Commissioner Dick

Moved/Seconded:

Vote: Unanimous

Abstained: Dick

Excused: Leonard

Motion: Dismiss

Moved/Seconded:

Vote: Unanimous

Recused: Dick

Excused: Leonard

Adjournment

The meeting adjourned at approximately 7:20 p.m.

Gil Cabrera, Vice-Chairperson
Ethics Commission

Kathy Hunt, Executive Secretary
Ethics Commission

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