



**Minutes for Meeting of  
Thursday, October 12, 2006**

**Item-1: Call to Order**

Chairwoman Leonard called the meeting to order at 5:10 p.m.

**Item-2: Roll Call**

Present – Chairwoman Dorothy Leonard, Vice-Chair Gil Cabrera, Commissioners Karen Thomas-Stefano 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 Larry Westfall and Charles H. Dick, Jr.

**Item-3: Approval of Commission Minutes**

**Approval of Ethics Commission Minutes of September 14, 2006**

Chairwoman Leonard advised that approval of the September 14, 2006, minutes will be moved to the November meeting due to lack of a quorum.

**Approval of Ethics Commission Minutes of September 18, 2006**

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

**Item-4: Non-Agenda Public Comment**

Carl DeMaio commented regarding the matter of the Ethics Commission having authority to initiate investigations.

**Item-5: Commissioner Comment**

None

**Item-6: Executive Director Comment**

Director Fulhorst provided a report on the September 20, 2006, Rules Committee hearing on proposed changes to the Commission's Investigative and Enforcement Procedures. She advised that the Rules Committee unanimously supported the proposed change to allow the Ethics Commission to self-generate complaints. She reported that following Committee discussion, the Committee members recommended forwarding the proposed changes to the City Council for consideration. She explained that there were several changes made by the Rules Committee to the Ethics Commission appointment process that comprised of: a prohibition against candidates who ran against current elected officials; expanded selection for qualified nominees to include registered voters from the County of San Diego; and a prohibition from Commissioners publicly supporting or opposing city ballot measures. She advised that the Rules Committee voted to forward the draft changes to the Council meeting of November 14, 2006.

Chairwoman Leonard noted that there was an exception from the ballot measure prohibition when it involved a ballot measure that originated from the Ethics Commission

**Item-7 General Counsel Comment**

Ms. McGuire briefed the Commission on the Lincoln Club lawsuit filed against the City in 2005. The lawsuit challenged two sections of the City's Election Campaign Control Ordinance concerning contribution limits and contributions from organizations. She advised that on September 22, 2006, Judge Burns issued an opinion finding that neither the Lincoln Club nor the City were entitled to win their motion for a summary judgment. Judge Burns determined that he required further briefing from both the Lincoln Club and the City to decide whether or not that the City's legislative record adequately supported the City Council adoption of this municipal code section. The judge refrained from deciding the constitutionality of section 27.2936 at this time and will decide the issue only after further briefing and trail. Judge Burns upheld section 27.2950 concerning the ban on organizational contributions and found that it is not unconstitutional. He therefore granted the City's motion for summary judgment and denied the Lincoln Club's motion for partial summary judgment.

Commissioner Cabrera requested a copy of the court's ruling.

## **Item-8: Proposed Amendments to Municipal Lobbying Ordinance**

Kevin Heneghan commented on the latest version of the language for the exception of experts.

Carl DeMaio addressed the Commission regarding recommendations as presented in a memo regarding ex parte communications.

In response to Mr. DeMaio's comments, Director Fulhorst reported that the Commission sent a memo to Council in June, 2006 on Ex-Parte Communications with a recommendation to not include it within the Lobbying Ordinance.

Pam Wilson representing the law firm of Wertz, McDade, Wallace, Moot and Brower commented with regard to a letter submitted by the firm with recommended changes to the draft ordinance. In addition, she commented that the ordinance language includes the use of both the terms business and calendar days and recommended that the Commission use only one of these.

In response to the Commission's recommendation, Director Fulhorst advised that staff would change all reference to "days" to "calendar days" to maintain consistency throughout the ordinance.

Chairwoman Leonard commented that the Commission had previously discussed most of the sections addressed in Ms. Wilson's letter in great detail. She advised that the Commission would not consider each issue individually unless discussion was specifically requested by a Commissioner on a particular section mentioned in the letter.

Director Fulhorst provided an overview of the latest revisions as recommended by the Commission to the draft lobbying ordinance. She added that she would mention the sections of the draft addressed by Ms. Wilson's recommendations that the Commission concurred with. She also indicated that her explanation of the revision to the section concerning exceptions for experts would address Mr. Heneghan's questions.

Commissioner Stefano expressed that the new language added for the exception of experts was too vague.

Director Fulhorst responded that the language of "purely technical data or analysis" is based on State law and explained that the State provides a more detailed explanation of what purely technical data is through advice letters. She added that staff can add language to indicate that the section is intended to conform with State law and the FPPC regulations in order to use the guidelines established by the State.

Mr. Heneghan commented on the language "employed or retained by a lobbyist."

The Commission proposed that staff eliminate the language referred to by Mr. Heneghan in order for the section to more fully reflect the intent of the Commission.

Director Fulhorst commented on an additional Commission recommendation that would be added to the draft that would expand the litigation exemption to include administrative enforcement proceedings. She clarified that this exemption would not apply to quasi judicial land use proceedings and would only be for administrative enforcement proceedings such as the Ethics Commission or Civil Service Commission.

The Commission discussed reporting of activity expenses in connection with the proposed \$10.00 gift limit.

Chairwoman Leonard recommended deleting section 27.4014 for reporting of activity expenses paid to City officials. She advised that this section can be added back in at the direction of the Rules Committee members if they don't agree with the \$10.00 gift limit.

Director Fulhorst continued with the overview of the remaining proposed changes. She noted any proposed changes that corresponded with recommendations submitted by Ms. Michael's firm. She addressed the recommendation concerning Registration Forms and advised that staff proposed adding the language "to the best of my knowledge" for section 27.4009(b).

Commissioner Cabrera suggested alternative language be used.

Director Fulhorst responded that staff would incorporate the suggested language after conferring with Commissioners Cabrera and Stefano to confirm the accuracy of the recommended language.

Chairwoman Leonard indicated that as mentioned at the last meeting, the Commission would return to the discussion of expenditure lobbyists.

Commissioner Biddle questioned the need for including this definition and whether the threshold was too low.

Director Fulhorst cited a case that supported the staff's recommendation for adding the section in order to provide public disclosure. In addition, she advised that other jurisdictions include the category of expenditure lobbyists in their lobbying laws.

Chairwoman Leonard reiterated that the issues being raised are whether to keep the section in the ordinance, and if so whether to raise the threshold.

Commissioner Stefano expressed that the threshold amount should be closer to \$3,000.

The Commission discussed whether to leave the section in the ordinance and various threshold amounts. Following Commission discussion, the consensus of the Commission was to leave it in the ordinance and to establish a \$5,000 threshold amount in order to accomplish the Commission's goal.

Chairwoman Leonard asked the Commissioners if there were any further comments they'd like to make on the proposed changes.

Commissioner Biddle commented on Contents of Quarterly Disclosure Reports and expressed that it may be unnecessary to require reporting of the name of the city official contacted.

Motion: to approve the Draft Ordinance and forward to the Rules Committee with the following changes:

- (1) Section 27.4004(L) for Exceptions: eliminate the wording "employed or retained by a lobbyist"
- (2) Change all references to "days" in draft ordinance to "calendar days"
- (3) Delete section 27.4014 for reporting of activity expenses. To be added back in at the direction of the Rules Committee if they propose to eliminate the \$10.00 gift limit
- (4) Section 27.4009(b): Replace draft language "to the best of my knowledge" with the Commission's recommended language
- (5) Section 27.4002 for Expenditure Lobbyists: Change threshold amount to \$5,000

Moved/Seconded: Cabrera/Stefano

Vote: Unanimous

Excused: Dick/Westfall

Director Fulhorst advised that staff will have proposed disclosure forms for Commission review at the next meeting.

#### **Item 9: Release of Investigative Files – Ad Hoc Committee**

Chairwoman Leonard reported with respect to the Commission establishing an Ad Hoc Subcommittee for the purpose of reviewing requests for release of closed investigative files. She advised that the Commission had received the first request for release of closed investigative records since the Commission adopted a policy for the release of closed investigative records for the Commission's Operating Procedures. She quoted the section of the Commission's operating procedures that prescribed the course to be followed by the Commission in establishing an Ad Hoc Subcommittee.

Melvin Shapiro commented with regard to whether the ad hoc committee would comply with the Brown Act.

Director Fulhorst responded that the Brown Act allows an agency to use its discretion as to whether to hold ad hoc meetings in a closed or open session. She advised that the Commission had decided when formulating the operating procedures regarding release of Commission files, that they would not hold the ad hoc committee meetings in public to protect the integrity of another agency's investigation.

Chairwoman Leonard reported that she would be serving on the ad hoc subcommittee as well as Commissioners Biddle and Westfall.

**Item-10: Personnel Ad Hoc Committee**

Chairwoman Leonard reported on the formation of a personnel ad hoc subcommittee to prepare an annual performance evaluation for the Executive Director. She advised that it would consist of herself and Vice-Chair Cabrera. She added that a review would be completed for the Commission's consideration in Closed Session in late 2006 or early 2007.

**Item-11: Adjournment to Closed Session**

Chairwoman Leonard adjourned the meeting to Closed Session at approximately 6:37 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 7:18 p.m.

**Reporting Results of Closed Session Meeting of October 12, 2006**

Chairperson Leonard reported the results of the Closed Session Meeting of October 12, 2006.

**Item 1: Conference with Legal Counsel (7 potential matters)**

**Case No. 2006-61 – In Re: Alleged Retaliation for Reporting Illegal Activity**

Motion: Initiate Investigation  
Vote: Unanimous  
Excused: Dick/Westfall

**Case No. 2006-62 – In Re: Alleged Failure to Timely File Campaign Statements**

Motion: Initiate Investigation  
Vote: Unanimous  
Excused: Dick/Westfall

**Case No. 2006-63 – In Re: Alleged Failure to Timely File Campaign Statements**

Motion: Initiate Investigation  
Vote: Unanimous  
Excused: Dick/Westfall

**Case No. 2006-64 – In Re: Alleged Failure to Timely File Campaign Statements**

Motion: Initiate Investigation  
Moved/Seconded:  
Vote: Unanimous  
Excused: Dick/Westfall

**Case No. 2006-65 – In Re: Alleged Failure to Timely File Campaign Statements**

Motion: Initiate Investigation  
Moved/Seconded:  
Vote: Unanimous  
Excused: Dick/Westfall

**Case No. 2006-66 - In Re: Alleged Failure to Timely File Campaign Statements**

Motion: Initiate Investigation  
Moved/Seconded:  
Vote: Unanimous  
Excused: Dick/Westfall

**Case No. 2006-67 - In Re: Alleged Failure to Timely File Campaign Statements**

Motion: Initiate Investigation  
Moved/Seconded:  
Vote: Unanimous  
Excused: Dick/Westfall

**Item 2: Conference with Legal Counsel (35 potential matters)**

(10 Items withdrawn)

**Case No. 2006-13 – In Re: Alleged Failure to Disqualify from Municipal**

## **Decision Affecting Economic Interests**

Motion: Dismiss  
Vote: Unanimous  
Excused: Dick/Westfall

### **Case No. 2005-79 – In Re: Alleged Financial Interest in Contract and Alleged Failure to Disqualify from Decisions Involving Economic Interests**

Motion: Dismiss  
Vote: Unanimous  
Excused: Dick/Westfall

### **Case Nos. 2006-18 through 2006-22, 2006-26, 2006-30 through 2006-32, 2006-35, 2006-37, 2006-43 through 2006-48, 2006-50, 2006-51, 2006-53, and 2006-54 – In Re: Alleged Failure to Timely File Statement of Economic Interests**

Motion: Dismiss  
Vote: Unanimous  
Excused: Dick/Westfall

### **Case No. 2006-25 – In re: Michael Witkin - Alleged Failure to Timely File Statement of Economic Interests**

Motion: Order a Probable Cause Hearing and Authorize the Issuance of a Probable Cause Report and Draft Administrative Complaint.  
Vote: Unanimous  
Excused: Dick/Westfall

### **Case No. 2006-28 – In re: Mazda Mehrzad – Alleged Failure to Timely File Statement of Economic Interests**

Motion: Order a Probable Cause Hearing and Authorize the Issuance of a Probable Cause Report and Draft Administrative Complaint.  
Vote: Unanimous  
Excused: Dick/Westfall

## **Adjournment**

The meeting adjourned at approximately 7:22 p.m.

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Dorothy Leonard, Chairwoman

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Kathy Hunt, Executive Secretary



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