



**Minutes for Meeting of
Thursday, May 10, 2007**

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 Gil Cabrera, Commissioners Charles H. Dick, Jr., Karen Thomas-Stefano (Commissioner Biddle arrived at 5:07)

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

Excused – Commissioner Larry Westfall

**Item-3: Approval of Commission Minutes
(Please note this item was taken out of order after Item 6 in order to allow a voting quorum)**

Approval of Ethics Commission Minutes of March 8, 2007

Motion: Approve
Moved/Seconded: Stefano/Biddle
Vote: Carried Unanimously
Abstained: Dick
Excused: Westfall

Item-4: Non-Agenda Public Comment

None

Item-5: Commissioner Comment

Chairwoman Leonard commented on the letter the City Clerk sent in response to her comments made at the March 8, 2007, Commission meeting regarding statements of economic interest and noticing procedures.

Chairwoman Leonard commented on the Council budget hearings and reported that the Council indicated they supported the Ethics Commission's proposed budget and that they did not require a staff presentation.

Item-6: Executive Director Comment

Director Fulhorst thanked Chairwoman Dorothy Leonard and Vice-Chair Gil Cabrera for attending the Commission's budget hearing. She advised that Budget Committee Chair Toni Atkins indicated that the Councilmembers recognized the Commission's efforts and supported the proposed Commission's budget.

Director Fulhorst reported on the following:

- Candidate Manual Prepared by Staff

The intent is for the manual to supplement the manual produced by the FPPC for local candidates.

- Upcoming Commission Vacancies

There will be four commissioner vacancies as of July 1. The Mayor's Office distributed a memo on April 17, 2007, requesting nominations in order to fill the vacancies. Commissioners Charles H. Dick, Jr., and Karen Thomas-Stefano's terms expire June 30. Although Commissioner Westfall's term also expires June 30, he has agreed to serve a second term if re-nominated.

- Collection of Stipulation Fine

The City Treasurer's collection unit successfully collected a fine imposed by the Commission against Dorothy James in the amount of \$440.00 including penalties.

Item-7: General Counsel Comment

None

Item-8: Proposed Amendments to the Municipal Lobbying Ordinance

Director Fulhorst reported on the status of the proposed amendments. She advised that the Council Rules Committee unanimously voted to approve the proposed changes and to forward them on to the full City Council. She noted that there were two issues raised by the Committee members regarding the definition of "City Official" to be considered by the Commission. One issue, raised by Councilmember Frye, was whether the definition includes all positions used by the Mayor under the new strong mayor form of government. Staff conducted some additional research and identified the following four additional job titles used by high-level unclassified employees: Council Representative, Management Assistant to City Manager, Financial Operations Manager, and Budget/Legislative Analyst. She recommended that the Commission include an "Alternative A" with the proposed draft ordinance to reflect the inclusion of these additional positions in the definition of "City Official."

Commissioner Cabrera asked if it would be possible for the Commission to update the list of positions without requiring Council approval.

Director Fulhorst responded that adding any new position to the definition would require amending the ordinance which would require Council approval.

Director Fulhorst reported on the second issue raised at the Rules Committee hearing. She referred to Council President Peters' question about whether the definition of City Official should include all board and commission members required to file statements of economic interests, or whether some seemingly lower-level boards should be excluded. She advised that in response, staff prepared a list of the boards and commissions with a description of their general duties. She added that the staff recommendation was not to exclude any of the boards or commissions since the City Council (when they decided that the members of these boards should have SEI filing responsibilities) had already made a determination that the members have significant decision making authority.

Chairwoman Leonard added that the Council can always reconsider the SEI filing requirements of a particular board or commission if they have any concerns with a particular board or commission being included in the definition of City Official.

Commissioner Cabrera suggested providing the Council with the total number of City boards and commissions whose members are required to file SEIs.

Motion: Approve Staff Recommendations

Moved/Seconded: Cabrera/Biddle

Vote: Carried Unanimously

Excused: Westfall

Item-9: Presentation of Final Audit Report Regarding the Audit of the Phil Thalheimer for City Council Committee from the 2004 Election Cycle

Commission Auditor Francisco Murillo reported on the audit of the Phil Thalheimer for City Council Committee and advised that there were no material findings.

Motion: Accept report
Moved/Seconded: Dick/Cabrera
Vote: Carried Unanimously
Excused: Westfall

Item-10: Status of Campaign and Lobbyist Audits

Commission Auditor Francisco Murillo reported on the schedule of pending and completed audits from the 2004 election cycle.

Director Fulhorst added that staff anticipates completion of the audits from the last election cycle before the random audit drawing for the next election cycle scheduled in September.

Item-11: Proposed Amendments to the California Political Reform Act

Director Fulhorst reported on the following State legislation involving proposed changes to the Political Reform Act:

Assembly Bill 1430

Director Fulhorst reported on a bill proposed by Assembly Member Garrick. She explained that the legislation intends to prohibit local jurisdictions from: restricting the sources of payments to a committee for member communications; limiting payments to a political party committee for member communications; and limiting the scope of payments considered related to a member communication.

She provided information regarding the increased use of member communications in City elections and noted the potential for candidates to use political parties as a conduit for large contributions. She pointed out that the state currently has a \$25,000 per-contributor limit for member communications by political parties that are coordinated with a state candidate, and added that AB 1430 is designed to eliminate any contributor limits at the local level despite the existing \$25,000 limit at the state level. She commented that the bill will likely move to the full Assembly within the next several weeks. She advised that the

staff recommendation was for the Ethics Commission to send a letter to the Mayor and Council urging them to oppose the bill.

Mel Shapiro commented that with respect to Assembly Bill 1430, he endorsed the staff recommendation. He added that money that is spent by political parties on City elections is not reported to the City Clerk.

Director Fulhorst responded to Mr. Shapiro's comments by explaining that, in general, the political parties are required to disclose their member communications at the local level when they support local candidates. However, the filing requirements vary when a local election calls a special election that does not coincide with a statewide election. She added that the means by which member communications are reported continues to be a matter that needs to be addressed via state law or regulation.

Chairwoman Leonard suggested that the Commission include a two part motion to include a letter to the Mayor and City Council requesting that they oppose AB 1430, and to give direction to staff to develop a plan to oppose the legislation including but not limiting it to contacts with state legislators and other government agencies and organizations.

Commissioner Stefano questioned whether there it was appropriate for staff to contact other public interest organizations.

Ms. McGuire expressed her opinion that there was no inherent conflict

After some discussion, the consensus of the Commission was to direct the staff to ask the Mayor and Council to oppose the legislation, and to ask the City's Intergovernmental Relations staff to handle the lobbying efforts in Sacramento.

Motion: Send letter to Mayor and City Council requesting they oppose AB 1430
Moved/Seconded: Cabrera/Dick
Vote: Carried Unanimously
Excused: Westfall

Director Fulhorst commented that she was advised by Intergovernmental Relations staff that they would need City Council direction to work with the Ethics Commission staff on opposing AB 1430. She indicated that staff should know by the June Commission meeting whether the City Council will support this matter.

Chairwoman Leonard pointed out that this particular Assembly bill will require passage by a two-thirds vote in the State legislature.

Commissioner Biddle requested clarification as to what the second motion would entail with regard to working with Intergovernmental Relations staff.

Director Fulhorst explained that staff would only provide support and the Intergovernmental Relations staff would take the lead and handle lobbying efforts.

Commissioner Dick expressed his view that staff should be able to provide support to the Intergovernmental Relations staff without a directive from the Commission to do so.

Motion: For staff to work with Intergovernmental Relations if the City Council agrees to oppose AB 1430

Moved/Seconded: Cabrera/Biddle

Motion failed by the following vote: Yeas-Cabrera, Biddle, Leonard;

Nays-Dick, Stefano,

Excused: Westfall

Chairwoman Leonard indicated that the record should reflect the fact that the motion failed because the Commission did not want to set the precedent of requiring Commission approval for staff to provide support.

Director Fulhorst advised that staff will report back to the Commission on this legislation at the June meeting.

Assembly Bill 1441

Director Fulhorst provided a report on Assembly Bill 1441, which would allow local candidates and officeholders to create and maintain a separate account for legal defense fund purposes and which would, in turn, eliminate the current situation involving the co-mingling of campaign funds and legal defense funds.

She noted that she has discussed this bill with the Los Angeles and San Francisco Ethics Commissions. She reported that the Los Angeles Ethics Commission will support the bill if it is amended to clarify the following: that local jurisdiction's may impose their own filing requirements; that local jurisdictions may establish their own permissible uses of excess funds; and that local jurisdictions may permit the use of legal defense funds to pay administrative fines. She advised that the City's Intergovernmental Relations staff recommended against any amendments at this time because they would entail pulling the bill from the consent agendas.

Chairwoman Leonard recommended supporting the bill without amendments to prevent impeding the bill's progress through the legislature.

Commissioner Cabrera pointed out that the City Council requested this legislation and suggested accepting the Intergovernmental Relations Analysts' recommendations.

The consensus of the Commission was that a motion was not required because they were not directing the staff to support any amendments to the bill.

Item-12: Request from Councilmember Madaffer Regarding Expansion of Ethics Commission's Jurisdiction

Director Fulhorst addressed a request from Councilmember Madaffer that the Commission consider expanding its jurisdiction to include members of the classified service who file SEIs. She explained that the issue came up recently when the Commission staff provided SEI training for unclassified employees and Councilmember Madaffer's office expressed concern that classified employees were not receiving similar training.

She reported there are approximately 1086 unclassified employees and 750 classified employees that file SEIs. She pointed out that including the classified employees within the Commission's jurisdiction may necessitate adding additional resources to the Commission staff. She added that this proposal will likely need to be addressed during the City's meet and confer process with the labor unions. She commented that the matter to be decided by the Commission was whether from a policy perspective, it would be appropriate to include the classified employees. She noted that if the Commission was in favor, the meet and confer issues would be referred to the City Council and Labor Relations officials.

Chairwoman Leonard asked if classified employees were added, would the Commission's jurisdiction only pertain to filing of SEIs.

Director Fulhorst responded that potentially all of the provisions of the Ethics Ordinance would apply to these classified employees, but that this would have to be addressed and negotiated during the meet and confer process.

Several Commissioners indicated that from a policy perspective they would support Councilmember Madaffer's proposal to add classified employees who file SEIs to the Commission's jurisdiction. However, in order to fully explore any potential problems, the consensus of the Commission was to continue the matter to the June meeting in order to afford the labor unions and the City's Labor Relations staff to address the Commission on this issue.

Item-13: Adjournment to Closed Session

Chairwoman Leonard adjourned the meeting to Closed Session at approximately 6:12 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 7:13 p.m.

Reporting Results of Closed Session Meeting of May 10, 2007

Chairperson Leonard reported the results of the Closed Session Meeting of May 10, 2007.

Item 1: Conference with Legal Counsel (28 potential matters)

Two items withdrawn

Case No. 2007-10 – In Re: -Alleged Contribution in Excess of Limit, Contribution from an Organization, and Contribution Made in Name of Another Person

Motion: Initiate Investigation
Vote: Carried Unanimously
Excused: Westfall

Case No. 2007-11 – In Re: Alleged Contribution from an Organization, Contribution Made in Name of Another Person

Motion: Initiate Investigation
Vote: Carried Unanimously
Excused: Westfall

Case No. 2007-12 – In Re: Alleged Acceptance of Improper Benefit

Motion: Initiate Investigation
Vote: Carried Unanimously
Excused: Westfall

Case 2007-24 – In Re: Alleged Failure to File Statement of Economic Interests

Motion: Recuse Commissioner Dick
Vote: Carried Unanimously

Abstained: Dick
Excused: Westfall

Motion: Dismiss
Vote: Carried Unanimously
Recused: Dick
Excused: Westfall

Cases 2007-15 through 2007-18, 2007-21 through 2007-23, 2007-25 through 2007-33, and 2007-35 – In Re: Alleged Failure to File Statement of Economic Interests

Motion: Dismiss
Vote: Carried Unanimously
Excused: Westfall

Cases 2007-13, 2007-19, 2007-20, 2007-34 – In Re: Alleged Failure to File Statement of Economic Interests

Motion: Recuse Commissioner Stefano
Vote: Carried Unanimously
Excused: Westfall
Abstained: Stefano

Motion: Dismiss
Vote: Carried Unanimously
Excused: Westfall
Recused: Stefano

Case No. 2007-36 – In Re: Alleged Participation in Municipal Decision Involving Economic Interests

Motion: Initiate Investigation
Moved/Seconded: Stefano/Cabrera
Vote: Carried Unanimously
Excused: Westfall

Item 2: Conference with Legal Counsel (30 potential matters)

Case No. 2005-81 – In Re: Alleged Failure to File Statement of Economic Interests

Motion: Recuse Commissioner Dick
Vote: Carried Unanimously

Abstained: Dick
Excused: Westfall

No Reportable Action

Case Numbers 2005-80, 2005-82 through 2005-97 – In Re: Alleged Failure to File Statement of Economic Interests

Motion: Dismiss
Vote: Unanimous
Excused: Westfall

Case No. 2005-98 – In Re: Alleged Failure to File Statement of Economic Interests

Motion: Recuse Commissioner Cabrera
Vote: Carried Unanimously
Abstained: Cabrera
Excused: Westfall

No Reportable Action

Case Numbers 2006-01 through 2006-05 - In Re: Alleged Failure to File Statement of Economic Interests

No Reportable Action

Case No. 2006-61- In Re: Alleged Retaliation for Reporting Violations

Motion: Dismiss
Vote: Unanimous
Excused: Westfall

Case No. 2006-62 – In Re: Gloria Tyler-Mallery – Alleged Failure to File Campaign Statements

Motion: Approve Stipulation
Vote: Unanimous
Excused: Westfall

Case No. 2006-69 - In Re: Alleged Failure to File Statement of Economic Interests

Motion: Dismiss
Vote: Unanimous

Excused: Westfall

Case No. 2007-03 – In Re: Alleged Failure to Disqualify from a Municipal Decision Affecting Economic Interests and Alleged Failure to Properly Disclose Economic Interests

No Reportable Action

Case No. 2007-04 – In Re: Alleged Failure to File Quarterly Lobbyists Disclosure Reports

Motion: Dismiss
Vote: Unanimous
Excused: Westfall

Case No. 2007-07 – In Re: Alleged Failure to File Quarterly Lobbyists Disclosure Reports

No Reportable Action

Adjournment

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

Dorothy Leonard, Chairwoman
Ethics Commission

Kathy Hunt, Executive Secretary
Ethics Commission

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