



**Minutes for Meeting of  
Thursday, July 9, 2009**

**Item-1: Call to Order**

Chairman Richard Valdez called the meeting to order at 5:00 p.m.

**Item-2: Roll Call**

Present – Chairman Richard Valdez, Vice-Chair Clyde Fuller, Commissioners Lee Biddle, Gil Cabrera, Dorothy Leonard, and Larry Westfall

Staff – Executive Director Stacey Fulhorst, General Counsel Alison Adema, Program Manager Steve Ross, Senior Investigator Lauri Davis, Auditor Rosalba Gomez, and Executive Secretary Katherine Hunt

Excused - Commissioner Krishna Haney

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

**Approval of Ethics Commission Minutes of June 11, 2009.**

Motion: Approve

Moved/Seconded: Fuller/Cabrera

Vote: Carried Unanimously

Excused: Haney

Abstained: Biddle

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

Melvin Shapiro commented on the matter of retaliation against city employees reporting violations to the City Auditor's Hotline. He noted that retaliation may prevent employees from reporting complaints and violations. He believes the Ethics Commission should be involved in matters that involve retaliation since the Ethics Ordinance addresses this type of activity.

Tom Adler expressed his view that the current Lobbying Ordinance is not effective and that rules regarding ex-parte communications should be included for elected public officials as he noted in a letter distributed to the Commission.

Director Fulhorst provided an update on the proposal to require elected officials to disclose ex-parte communications. She explained that due to legal issues outside the Commission's purview, the Commission needs to obtain advice from the City Attorney's office. She noted that, although the Ethics Commission requested this advice in September of 2007, the Commission has not yet received a response. She indicated that the Commission plans to revisit this issue, and to decide whether to move forward with a recommendation to the City Council in the absence of an opinion from the City Attorney's office.

Mike Marrinan suggested that the Commission make a recommendation to the City Council to support a policy on ex-parte communications. He commented that he believes disclosure requirements should apply to elected City officials.

Commissioner Cabrera indicated that he would be interested in having the Commission consider the matter again after receiving a legal opinion. He clarified that any policy for "ex-parte communications" should not be considered a substitute for the Lobbying Ordinance. He recommended that, when the Commissioners discuss this matter in the future, they consider requiring the disclosure to be in writing in order to avoid lengthy verbal disclosures during public meetings.

**Item-5: Commissioner Comment**

Chairman Valdez thanked the former Commission Chair Gil Cabrera for his excellent service to the Commission during the past two years.

**Item-6: Executive Director Comment**

Director Fulhorst added her thanks to Commissioner Cabrera for his two years of service as the Commission Chair.

She reported that the matter of proposed amendments to the Commission's Investigative and Enforcement Procedures has been rescheduled to the Rules Committee meeting on July 29, 2009, in order to coordinate docketing this item at the same time as the City Council's response to the recent Grand Jury's Report concerning the Ethics Commission.

**Item-7: General Counsel Comment**

None

**Item-8: Presentation of Staff Report Regarding the Effects of New Lobbying Laws**

Director Fulhorst reported on the new lobbying laws that went into effect on January 1, 2008. She noted that the new laws are working as intended. Specifically, she pointed out that more lobbyists are registering under the new laws, and lobbyists are disclosing more information to the public.

She noted that, as a result of the extensive educational and outreach efforts by Commission staff, there was a very high level of awareness and compliance with the new laws.

Mel Shapiro commented that consultants should be subject to the same laws as lobbyists.

In response to Mr. Shapiro's comments, Director Fulhorst pointed out that there is an exemption in the lobbying laws for government agencies and for those individuals representing them.

#### **Item-9: Proposed Amendments to Municipal Lobbying Ordinance**

Director Fulhorst presented the staff report and provided an overview of the proposed changes, which include 2008 and 2009 proposed amendments. She commented that the proposed changes were suggested to ensure that the lobbying law requirements didn't become too onerous and operated as the Commission intended. She noted that changes approved by the Commission and the Rules Committee in 2008 were never docketed for City Council approval because of scheduling difficulties. She stated that the amendments will need to return to the Rules Committee because four Committee members are new Councilmembers. Finally, she explained that the additional changes proposed by staff in 2009 resulted from issues that came to light after the 2008 amendments were proposed.

Simon Mayeski offered suggestions and comments regarding the proposed 2009 changes, including exemptions from gift reporting requirements.

Angelika Villagrana indicated that the Chamber of Commerce supports the 2008 proposed change to the definition of officer and thanked Commission Program Manager Steve Ross for all the assistance he provided to Chamber staff.

Director Fulhorst reviewed the 2009 staff recommended changes to the Lobbying Ordinance as follows:

Issue A - Definition of Chairperson: proposed change will define the chairperson as the person holding the highest position of authority on an organization's board of directors, including a person serving in a temporary capacity.

The Commission indicated support for the proposed change.

Issue B – Definition of "contribution": proposed change will state that the term "contribution" includes payments to a candidate's or elected official's professional expense committee.

The Commission indicated support for the proposed change.

Issue C – Definition of "gift": proposed change would clarify the exemption to the \$10 limit applicable to non-profit events. Staff drafted four options for the Commission's consideration.

After lengthy discussion, the consensus of the Commission was not to recommend any changes to the exemption for non-profit events, and instead to provide clarifications in a Commission fact sheet.

Issue D – Definition of “lobbyist”: proposed change would define a “lobbyist” as any person designated on a registration form as being authorized or expected to lobby. According to Ms. Fulhorst, the proposed change would clarify that disclosure requirements (such as campaign fundraising) apply to individuals who are identified on a registration form but have not yet engaged in lobbying.

The Commission indicated support for the proposed change (option 2).

Issue E – Registration Renewal (Meeting the Threshold): proposed change would clarify the registration threshold for Organization Lobbyists with respect to renewing registration in a new calendar year. Staff prepared three options for the Commission to consider.

The Commission indicated support for option 3, which specifies that contacts made in the prior calendar year will count toward the “10 contacts in 60 days” threshold only if the organization is continuing to lobby in the current calendar year.

Issue F – Registration Renewal (Reporting Contacts and Decisions): proposed change would clarify the requirements concerning the reporting of prior lobbying activities by Organization Lobbyists when they renew their registrations in a new calendar year. Staff prepared several options and recommended that the Commission choose the option that is consistent with the option selected in the previous issue.

The Commission indicated they supported option 1, which would require Organization Lobbyists to report all contacts made and decisions influenced in the previous 60 days, even if they took place in the prior calendar year.

Issue G – Contingency Fee Reporting: proposed change would require lobbying firms to check a box indicating that they lobbied on a contingency basis and to report compensation they became entitled to receive for contingency lobbying that took place in a prior calendar quarter.

The Commission indicated support for the proposed change.

Issue H – Cleanup Amendments

The Commission indicated support for the proposed changes.

Motion: To move forward with the 2008 proposed changes to the Lobbying Ordinance and to approve the 2009 staff proposals as follows: Issue A; Issue B; Issue C (option 1); Issue D (option 2); Issue E (option 3); Issue F (option 1); Issue G (both proposed changes); and Issue H.

Moved/Seconded: Cabrera/Westfall

Vote: Carried Unanimously

Excused: Haney

Commissioner Cabrera noted that he referred a matter to staff regarding concerns raised by the Center on Policy Initiatives and he asked if staff could report on how these concerns were addressed.

Director Fulhorst advised that the main issue involved an amendment previously approved by the Commission that would require lobbyists to amend their registration form within 10 days of any change to the information on the form. She commented that Murtaza Baxamusa with the Center on Policy Initiatives is concerned that his organization would have to frequently amend its registration forms in order to add new municipal decisions it was interested in influencing. She noted that Program Manager Steve Ross has explained to him that an organization is not required to amend its forms merely because it has an interest in a particular decision. Instead, Mr. Ross clarified that the organization would only be required to amend its registration form if it had a lobbying contact on a new municipal decision (not previously disclosed on its registration form).

#### **Item-10: Audit Materiality**

Director Fulhorst commented that staff felt it was appropriate to bring this matter to the Commission's attention before the next audit selection is held in September. She advised that the direction given to staff by the Commission when the audit program began was to document violations as "material" if they involved substantive provisions of local campaign laws even if the violations were not significant in terms of dollar amounts or percentages. She stated that the recommended approach emphasized education by publishing material findings when appropriate, but frequently did not involve any enforcement action. Ms. Fulhorst suggested that in light of the fact that the audit program has been in place for seven years and many campaign professionals have been educated on the City's laws, it may be appropriate to reconsider this approach.

April Boling expressed her belief that the Commission should reconsider its current practices with respect to audit materiality.

The Commissioners discussed the matter of audit materiality and made comments as follows: Commissioner Leonard agreed that the Commission should reconsider its approach; Commissioner Westfall added that materiality is subjective and expressed his opinion that it is not possible for treasurers to fully comply with the City's campaign laws; and Commissioner Cabrera noted that stressing insignificant violations diminishes the Commission's purpose.

Chairman Valdez recommended continuing the item for further discussion and requested that staff report back with examples of material findings.

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

Chairman Valdez adjourned the meeting to Closed Session at approximately 6:45 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**

Chairman Valdez called the meeting back into open session at approximately 7:18 p.m.

## **Reporting Results of Closed Session Meeting of July 9, 2009**

Chairman Valdez reported the results of the Closed Session Meeting of July 9, 2009, as follows:

### **Item-1: Conference with Legal Counsel** (22 potential matters)

#### **Case No. 2009-52 - In Re: Alleged Gifts to City Officials by Lobbyist in Excess of Limit**

Motion: Dismiss  
Vote: Carried Unanimously  
Excused: Haney

#### **Case No. 2009-54 – In Re: Alleged Failure to Timely File Lobbying Disclosure Reports**

Motion: Initiate Investigation  
Vote: Carried Unanimously  
Excused: Haney

#### **Case No. 2009-55 – In Re: Alleged Failure to Timely File Lobbying Disclosure Reports**

Motion: Dismiss  
Vote: Carried Unanimously  
Excused: Haney

#### **Case No. 2009-56 – In Re: Alleged Failure to Timely File Lobbying Disclosure Reports**

Motion: Initiate Investigation  
Vote: Carried Unanimously  
Excused: Haney

#### **Case No. 2009-57 – In Re: Alleged Failure to Timely File Lobbying Disclosure Reports**

Motion: Initiate Investigation  
Vote: Carried Unanimously  
Excused: Haney

**Case No. 2009-58 – In Re: Alleged Failure to Report Campaign Contributions and Expenditures, Acceptance of Contributions from Organizations**

Motion: Initiate Investigation  
Vote: Carried Unanimously  
Excused: Haney

**Case Nos. 2009-59 thru 2009-74 – In Re: Alleged Failure to Timely File Statements of Economic Interests**

Motion: Initiate Investigations  
Vote: Carried Unanimously  
Excused: Haney

**Item-2: Conference with Legal Counsel** (3 potential matters)

**Case No. 2008-75 – In Re: Lorena Gonzalez and Xavier Martinez - Alleged Failure to Disclose Expenditures**

Motion: Accept Final Audit Report  
Vote: Carried Unanimously  
Excused: Haney

Motion: Approve Stipulation  
Vote: Carried Unanimously  
Excused: Haney

**Case No. 2009-04 – In Re: Community Housing Works - Alleged Failure to Timely Register as Organization Lobbyist and File Quarterly Disclosure Reports**

Motion: Approve Stipulation  
Vote: Carried Unanimously  
Excused: Haney

**Case No. 2009-49 – In Re: Alleged Failure to Timely Pay Vendor Debt**

Motion: Dismiss  
Vote: Carried Unanimously  
Excused: Haney

**Item-3: Conference with Legal Counsel** (1 potential matter)

**San Diego Ethics Commission Audit Report: Votepickard.com Committee**

Motion: Accept Report  
Vote: Carried Unanimously  
Excused: Haney

**Item 4: Conference with Legal Counsel** (1 potential matter)

Luis Aclé v. City of San Diego Ethics Commission, San Diego Superior Court Case No. 37-2008-00094460-CU-WM-CTL)

No Reportable Action

**Adjournment**

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

---

Richard Valdez, Commission Chair  
Ethics Commission

---

Katherine Hunt, Executive Secretary  
Ethics Commission

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