



**Minutes for Meeting of
Thursday, November 12, 2009**

Item-1: Call to Order

Chairman 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, Guillermo Cabrera, Dorothy Leonard, and Larry Westfall

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

Item-3: Approval of Commission Minutes

Approval of Ethics Commission Minutes of October 8, 2009

Motion: Approve
Moved/Seconded: Westfall/Cabrera
Vote: Carried Unanimously
Abstained: Leonard

Item-4: Non-Agenda Public Comment

None

Item-5: Commissioner Comment

None

Item-6: Executive Director Comment

Director Fulhorst reported that the City Council approved the proposed Lobbying Ordinance amendments, with one modification: they eliminated the requirement that organization lobbyists disclose the activities of their board members. She advised that the new laws will become effective January 1, 2010.

Chairman Valdez thanked the staff for their hard work on this matter.

Item-7: General Counsel Comment

None

Item-8: Proposed Amendments to Municipal Lobbying Ordinance

Chairman Valdez reiterated that the Rules Committee asked the Commission to consider excluding consultants retained by City departments and agencies from the public agency exemption in the Lobbying Ordinance. In response to the request, this matter was discussed at the October meeting and was continued to the November meeting in order to receive additional public input on the matter. Chairman Valdez added that the plan is for the Commission to finalize discussion regarding this matter at the December meeting.

Melvin Shapiro commented that he is in favor of requiring consultants who represent public agencies to register as lobbyists. He added that in his view it is appropriate to distinguish between staff and consultants.

Commissioner Cabrera commented that it would be helpful to have information regarding the typical number of lobbying contacts made by public agency consultants with City Officials. He noted that requiring consultants to complete lobbyist registration and disclosure forms could result in increased costs to public agencies.

Director Fulhorst offered to have staff send a communication to the Commission's Lobbying Interested Persons' list and request information regarding the number of lobbying contacts made by outside consultants, and whether it would be an added burden for them to disclose this information. She indicated that staff would report back to the Commission with information at the December meeting.

Item-9: Rules and Requirements for Probable Cause and Administrative Hearings

Chairman Valdez explained that he thought this matter was appropriate for discussion in light of the fact that the Commission has been noticing more hearings. He added that this is an opportunity for the Commissioners to share their expectations and to offer ideas on how to provide more uniformity with respect to preparation for hearings and how hearings are conducted. He noted that Attorney Lisa Foster was in attendance for the purpose of offering ideas and recommendations to the Commission regarding this matter.

Attorney Lisa Foster provided an overview, based on her experience, of the common characteristics of probable cause and administrative hearings and the procedures that are typically followed during a hearing. She suggested that the following information may be helpful to the Commission:

- The hearings should be an informal process that is not modeled after a courtroom proceeding.
- The hearings should be a process that does not require participants to be attorneys or judges.
- There should be as much consistency as possible between how different hearings are conducted.
- Due process should be the main focus of the hearing .
- The rules of evidence should be relaxed such that relevance serves as the primary evidentiary standard.
- It is appropriate to admit hearsay evidence, as long as it is supported by other information and serves as supplemental evidence. The Commission is allowed to receive a declaration or affidavit in lieu of live testimony from a witness with proper justification; however, the Commission should not base a finding solely on hearsay evidence. In other words, a declaration is sufficient for a probable cause determination in the event that a witness is out of state, is ill, or is otherwise unavailable. A declaration is not sufficient by itself to support a finding following an Administrative Hearing.
- It is not appropriate for a party to object to the presentation of evidence as long as it is relevant to the issue at hand.
- A Probable Cause Hearing should be an abbreviated process and should not involve presentation of all the evidence because it is not the process through which the Commission makes a finding regarding alleged violations. Instead, the purpose of a Probable Cause Hearing is to determine if there is a sufficient basis to proceed with an Administrative Hearing.
- There is a difference between the evidentiary thresholds applicable at a Probable Cause hearing and an Administrative Hearing. The thresholds are described in the Municipal Code.

There was discussion regarding procedures for admitting evidence, including hearsay evidence. Ms. Foster provided further clarification regarding the appropriate process for admitting evidence for Probable Cause and Administrative Hearings.

Commissioner Biddle commented on the Ethics Commission's procedures which require the Commission to deliberate in open session after an administrative hearing.

Ms. Foster indicated that although this is not a common practice, the policy was likely created in order to provide transparency.

Chairman Valdez offered the following suggestions:

- The Presiding Authority should determine whether a pre-hearing conference should be scheduled.
- If it is determined that a pre-hearing conference is necessary, the Presiding Authority should schedule it as soon as possible after the witness and exhibit lists are exchanged.
- The Presiding Authority should receive both the witness lists and exhibit lists from the Petitioner and the Respondent.
- For Administrative Hearings, the Presiding Authority should determine whether it is necessary for the parties to provide anything in addition to hearing briefs.

After Commission discussion, the consensus of the Commission was to support the suggestions made by Chairman Valdez.

Item-10: Adjournment to Closed Session

Chairman Valdez adjourned the meeting to Closed Session at approximately 5:50 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 6:25 p.m.

Reporting Results of Closed Session Meeting of November 12, 2009

Chairman Valdez reported the results of the Closed Session Meeting of November 12, 2009.

Item-1: Conference with Legal Counsel (32 potential matters)

Case No. 2009-36 - In Re: Eugene Heytow - Alleged Failure to Timely File Campaign Statements

Motion: Approve Stipulation

Vote: Carried Unanimously

Case No. 2009-37 – In Re: Robert Lehman - Alleged Failure to Timely File Campaign Statements

Motion: Approve Stipulation
Vote: Carried Unanimously

Case No. 2009-38 – In Re: Sherman Mendoza - Alleged Failure to Timely File Campaign Statements

Motion: Approve Stipulation
Vote: Carried Unanimously

Case No. 2009-50 – In Re: Alleged Failure to Report Contributions, Acceptance of Contributions from an Organization, Acceptance of Contributions in Excess of Limit and Failure to Timely Pay Vendor Debt

Motion: Dismiss
Vote: Carried Unanimously

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

Motion: Dismiss
Vote: Carried Unanimously

Case Nos. 2009-59, 2009-60, 2009-62 thru 2009-65, 2009-67 thru 2009-74, 2009-76, 2009-78 thru 2009-80, 2009-82 thru 2009-85 – In Re: Alleged Failure to Timely File Statements of Economic Interests

Motion: Dismiss
Vote: Carried Unanimously

Case No. 2009-61 – In Re: Dorothy James - Alleged Failure to Timely File Statement of Economic Interests

Motion: Approve Stipulation
Vote: Carried Unanimously

Case No. 2009-66 – In Re: Larry Arceneaux - Alleged Failure to Timely File Statement of Economic Interests

Motion: Approve Stipulation
Vote: Carried Unanimously

Case No. 2009-77 – In Re: Daisy Gonzalez - Alleged Failure to Timely File Statement of Economic Interests

Motion: Approve Stipulation
Vote: Carried Unanimously

Case No. 2009-81 – In Re: Anthony Sutton - Alleged Failure to Timely File Statement of Economic Interests

Motion: Approve Stipulation

Vote: Carried Unanimously

Case No. 2009-86 – In Re: Alleged Misuse of City Position

Motion: Dismiss

Vote: Carried Unanimously

Item-2: Conference with Legal Counsel (1 potential matters)

Case No. 2008-79 – In Re: Dante Dayacap - Alleged Misuse of City Position

Motion: Approve Stipulation whereby Respondent waived Probable Cause Hearing and Determination, and Order that the setting of the Administrative Hearing be tolled until March 11, 2010, at which time the hearing shall be set within 90 days.

Moved/Seconded: Cabrera/Biddle

Vote: Carried Unanimously

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

Case No. 2008-54 – In Re: Nancy Graham – Alleged Participation in Municipal Decisions Involving Economic Interests

No Reportable Action

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

Case No. 2009-26 – In Re: Public Solutions - Alleged Failure to Timely File Lobbying Quarterly Disclosure Reports

No Reportable Action

Item 5: 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 6:30 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.