



**Minutes for Meeting of
Thursday, March 11, 2010**

Item-1: Call to Order

Chairman Valdez called the meeting to order at 5:10 p.m.

Item-2: Roll Call

Present – Chairman Richard Valdez, (Vice Chair Clyde Fuller present by teleconference during Closed Session only), Commissioners Lee Biddle, Guillermo Cabrera (arrived at 5:13 p.m.), 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 Kathy Hunt

Excused – Clyde Fuller (from Open Session)

Item-3: Approval of Commission Minutes

Approval of Ethics Commission Minutes of February 11, 2010

Motion: Approve
Moved/Seconded: Leonard/Westfall
Vote: Carried Unanimously
Excused: Fuller

Item-4: Non-Agenda Public Comment

Robert Rynearson referred to a February 8, 2010, Union Tribune article and commented that he disagrees with Director Fulhorst's remarks that the Commission staff offered to assist the FreePB.org campaign committee during the investigation.

Item-5: Commissioner Comment

Commissioner Cabrera announced that he was resigning from the Ethics Commission at a previous Commission meeting. He noted that since this was his last Commission meeting, there were several comments that he'd like to make with respect to Ethics Commission matters.

He stated that he was not commenting on any specific matter, but was instead referring generally to recent public criticism of the Commission and its staff by people who are involved in pending enforcement matters. He commented that such behavior is inappropriate and does not serve anyone's interests since it would be equally inappropriate for the Commission to respond to such criticisms during a pending investigation because it might encourage others to use such criticism as a defense tactic in the future.

He addressed the matter of anonymous complaints received by the Commission and stated that the current law is designed to protect the identity of complainants, regardless of whether they are anonymous. Therefore, people who comment publicly about "anonymous complaints" have no basis to know whether the complaints were anonymous since that information is not released. He stated that for obvious reasons, he recommends that the law not be changed.

In addition, he offered the following recommendations:

- The City should adopt the new appointment process recommended by Councilmembers Frye and DeMaio, although he does not agree with the City Attorney's opinion that the proposed changes would require a City Charter amendment.
- The Commissioners should review the staff's investigative files and make a public finding regarding the staff's handling of the matters.
- The Commission should have an option of having Commission hearings conducted by Administrative Law Judges, with recommendations forwarded to the Commission for final approval. He noted that this option would discourage procedural shenanigans, reinforce the independence of the process, and alleviate the burden on volunteer Commissioners.
- He proposed the appointment of one Commissioner to serve as a referee for settlement purposes when the Commission Chair deems it appropriate.

Finally, he thanked the Commission members and staff for their service and hard work and added that he would miss them all.

Chairman Valdez announced that, after much thought, he has made the decision to resign from the Ethics Commission and noted that he will be leaving on June 30, 2010, at the latest. He noted that serving on the Commission is a major time commitment and commended the other Commissioners on their ability to serve so many years.

Item-6: Executive Director Comment

Director Fulhorst presented an award to Commissioner Cabrera for his outstanding service to the Ethics Commission during his term as a Commissioner. She commented that Commissioner Cabrera served as the Commission Chair for two of the five years that he served. She also noted that he was instrumental in the Commission's overhaul of the City's lobbying laws.

Chairman Valdez thanked Commissioner Cabrera for serving as a role model and leader for him, as well as for the rest of the Commission.

The other Commissioners thanked Commissioner Cabrera for his service and noted that he will be missed.

Director Fulhorst reminded the Commission members that Statements of Economic Interests are due April 1, 2010. She indicated that departing Commissioners may combine their leaving office statements with their annual statement.

Item-7: General Counsel Comment

Alison Adema commented that she learned from Commissioner Cabrera and was happy to have worked with him during his term.

Item-8: Contribution Limits for Political Parties in City Candidate Elections

Director Fulhorst reported on the *Thalheimer v. City of San Diego* lawsuit, which challenged various provisions of the City of San Diego's campaign laws. She advised that the United States District Court issued a ruling on the preliminary injunction filed by the plaintiffs.

She explained that as part of the ruling, the Court decided that political parties should be allowed to make contributions to City candidates. However, she explained that the Court stayed the implementation of the Order to allow time for the City to set an appropriate amount.

She stated that the Court's Order implied that the existing \$500 individual contribution limit was not the appropriate amount for political parties. She explained that, in directing the City to set a contribution limit for political parties, the Court asked the City to balance the need for political parties to help elect candidates with the need to prevent the appearance of corruption that could result if individuals were permitted to use the political parties as a conduit to avoid contribution limits.

Director Fulhorst noted that staff compiled reference materials for the Commission's consideration reflecting contribution limits in other cities, the State of California, a comparison chart of all 50 states, and federal elections.

She noted that, in the event the ruling on the preliminary injunction becomes permanent, staff will include language that provides for indexing of the finalized contribution amount.

Simon Mayeski of Common Cause read a prepared statement that supported applying the same contribution limits to political parties as those applied to individual contributors. He added that, if the Court has indicated that \$500 is insufficient, then Common Cause would support a \$1,000 limit.

The Commission's discussion of proposed contribution limits for political parties included the following comments by Commissioners:

Commissioner Biddle commented that he does not understand why the courts have determined that contribution limits should be higher for political parties than for individual contributors.

Commissioner Westfall expressed concern as to why political parties need to participate in non-partisan elections. He also point out that the limits set by other cities seemed to amount to a multiplier of ten times the individual contribution limit.

Chairman Valdez referred to Commissioner Westfall's comment regarding using a multiplier of ten to set a limit and indicated that it may be a means for establishing a limit for political party contributions to City of San Diego candidates.

Commissioner Biddle expressed concern with using this method for setting a limit. He suggested asking the Court to explain why the current limit of \$500 for individuals would not be an appropriate limit for political parties in the City's non-partisan elections.

Commissioner Cabrera expressed concern that courts are allowing more money to come into the political process. He believes it encourages the public perception that moneyed interests control the political process. Although he expressed his opinion that allowing political parties to make contributions to City candidates will not move the political system in the right direction, he recommended a limit of \$1,000.

Commissioner Leonard commented that she would recommend a limit of \$500 to \$1,000 to the City Council.

Director Fulhorst advised that any recommendation made by the Commission will need to be docketed for the consideration by the Rules Committee and/or the City Council.

Motion: to recommend to the City Council that the contribution limit for political parties be set at \$1,000.

Moved/Seconded: Cabrera/Leonard

Vote: Passed 4/1 with Westfall voting nay

Excused: Fuller

Item-9: Presentation of Final Audit Report of Steve Francis for Mayor Committee

Commission Auditor Rosalba Gomez presented the Final Audit Report and advised that there were no material findings.

Motion: Accept Report
Moved/Seconded: Leonard/Cabrera
Vote: Carried Unanimously
Excused: Fuller

Item-10: Presentation of Final Audit Report of April Boling for City Council Committee

Commission Auditor Rosalba Gomez presented the Final Audit Report and advised that there were no material findings.

Motion: Accept Report
Moved/Seconded: Leonard/Biddle
Vote: Carried Unanimously
Excused: Fuller

Public Comment – Closed Session Agenda Item 7

Bruce Henderson commented that the Ethics Commission's activities have resulted in having a chilling effect on participatory democracy in the community and that something needs to be done to resolve this.

In connection with the Commission's performance evaluation of Executive Director Stacey Fulhorst, Robert Otilie commented critically on how investigations are conducted under her supervision.

Simon Mayeski spoke in support of Director Fulhorst in connection with her performance evaluation.

Item-11: Adjournment to Closed Session

Chairman Valdez adjourned the meeting to Closed Session at approximately 6:05 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 7:50 p.m.

Reporting Results of Closed Session Meeting of March 11, 2010

Chairman Valdez reported the results of the Closed Session Meeting of March 11, 2010.

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

Case No. 2010-07 - In Re: - Alleged Failure to Timely File Lobbying Quarterly Disclosure Report

Motion: Initiate Investigation

Vote: Carried Unanimously

Case No. 2010-08 – In Re: - Alleged Failure to Timely Pay Vendor Debt

Motion: Initiate Investigation

Vote: Carried Unanimously

Case Re: 2010-09 - Alleged Acceptance of Unlawful Contributions

Item Withdrawn from Agenda

Case Re: - 2010-10 - Alleged Acceptance of Unlawful Contributions

Item Withdrawn from Agenda

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

Case No. 2009-75 – In Re: Alleged Contribution in Excess of Limit

Motion: Dismiss

Vote: Carried Unanimously

Case No. 2010-02 – In Re: Alleged Acceptance of Contribution in Excess of Limit and Contribution from an Organization

Motion: Dismiss

Vote: Carried Unanimously

Case No. 2010-03 – In Re: Alleged Failure to Include “Paid for by” Disclosure on Mass Campaign Literature

Motion: Dismiss

Vote: Carried Unanimously

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

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

No Reportable Action

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

Case No. 2008-64 – In Re: San Diego Safe Beaches - Alleged Failure to File Campaign Statements

No Reportable Action

Item-5: Conference with Legal Counsel (1 potential matter)

Case No. 2009-98 – In Re: Todd Cardiff - Alleged Failure to timely file Lobbying Disclosure Report

No Reportable Action

Item-6: Conference with Legal Counsel (1 potential matter)

Case No. 2008-73 – In Re: Marti Emerald - Alleged Failure to Disclose Accrued Expenses

Motion: Direct Executive Director to set hearing date within San Diego Municipal Code timeframes

Vote: Carried Unanimously

Recused: Cabrera

Item-7: Personnel Matter – Evaluation of Performance

No Reportable Action

Adjournment

The meeting adjourned at approximately 7:55 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.