



**Minutes for Meeting of
Thursday, July 12, 2018**

Item 1: Call to Order

Commission Chair Cochran called the meeting to order at 5:00 p.m.

Item 2: Roll Call

Present – Commission Chair Deborah Cochran, Commission Vice Chair Sid Voorakkara, and Commissioners Bill Baber, Fred Kosmo, Alex Kreit, Joe Leventhal, and Dave Potter

Staff – Executive Director Stacey Fulhorst, General Counsel Christina Cameron, Education Program Manager Stephen Ross, Investigative Program Manager Kristina Gagné, Audit Program Manager Rosalba Gomez, and Program Coordinator Victoria Velasquez

Item 3: Approval of Commission Minutes of June 14, 2018

Motion:	Approve Minutes
Moved/Seconded:	Potter/Kosmo
Vote:	Carried Unanimously
Abstained:	Kreit

Item 4: Non-Agenda Public Comment

None

Item 5: Commissioner Comment

None

Item 6: Executive Director Comment

Ms. Fulhorst provided the Commissioners with an update regarding the CalAccess Replacement System.

She also reported that she recently gave a presentation to the California Political Attorneys Association with Assemblymember Nathan Fletcher, who expressed interest in establishing a San Diego County Ethics Commission if he is elected to the County Board of Supervisors.

Item 7: General Counsel Comment

None

**Items 8,
9 and 10: Presentation of Final Audit Reports Regarding:**

Coastal Communities for a Fair Economy supporting Ray Ellis for Council 2016 sponsored by and w/major funding from San Diego Regional Chamber of Commerce PAC and the Lincoln Club of San Diego County;

Ray Ellis for Council 2016 Committee; and

San Diegans for Safe Neighborhoods Supporting Robert Hickey for City Attorney 2016 sponsored by and with major funding from the San Diego Regional Chamber of Commerce Political Action Committee and the Lincoln Club of San Diego County

Motion: Accept Audit Reports
Moved/Seconded: Leventhal/Baber
Vote: Carried Unanimously

Item 11: Discussion and Possible Action Regarding Proposed Amendments to Election Campaign Control Ordinance

Commission Chair Cochran thanked the staff, General Counsel, and the members of the subcommittee (Commissioners Baber and Kosmo) for their time reviewing the issue.

Commissioner Baber explained that the subcommittee met several times with staff and John Nienstedt, the principal of Competitive Edge Research & Communication, to discuss the issue and after much debate, they reached a consensus concerning proposed amendments to address Mr. Nienstedt's concerns regarding the application of electioneering communication disclosure rules to tracking polls.

By way of background, Ms. Fulhorst explained that the term “electioneering communications” (commonly referred to as “issue ads”) are disseminated within 90 days of an election that mention a candidate in the election but don’t mention the election itself; instead, they mention an issue and a candidate’s actions or positions on the issue.

Ms. Fulhorst provided a recap of the subcommittee’s discussions with Mr. Nienstedt wherein he explained that during the few months prior to an election, he frequently has clients that hire him to conduct a tracking poll. While it’s clear there is no advocacy involved in such polls, he is required to include a “paid for by” disclosure during the calls because they mention a City candidate. If the people who work for him are aware of who is paying for the survey, they can be unconsciously influenced in how they record the information and it could taint the polling results.

Ms. Fulhorst informed the Commission that the amendments proposed by the subcommittee would limit the “paid for by” disclosure requirement for live telephone calls to 500 or more calls made per day during the 90-day period prior to an election, while maintaining the 500 calls per election threshold for recorded calls (robocalls). She explained that the subcommittee wanted to ensure that the disclosure requirement would be retained for the majority of issue ads. In addition, she reported that the subcommittee considered the cost involved in retaining a professional pollster and concluded it is unlikely that someone would pay for live calls in order to disseminate an issue ad.

Commissioner Kosmo mentioned that he enjoyed the process and found it very insightful. He opined that there is a legitimate public interest in honest polling and communications concerning issues of public interest.

Commissioner Leventhal expressed concern that the proposed amendment would allow a campaign to make 499 live calls per day during the 90-day pre-election period without a “paid for by” disclosure. Commissioner Baber responded to Commissioner Leventhal by explaining that this would be an inefficient use of campaign resources in his view. Commissioner Leventhal also asked if the proposal would apply to live calls made by volunteers, and Ms. Fulhorst confirmed that it would. She added that the subcommittee was aware of this possible downside, but noted that the Commission could revisit the issue should it turn out to be a problem.

Commissioner Voorakkara asked for clarification regarding what is considered a completed call for purposes of the disclosure requirement. Mr. Nienstedt responded by explaining that his company may have to place 20,000 calls to complete 500 calls. He added that Ethics Commission audits and investigations have required production of his company’s invoices and survey scripts, and the Commission staff has never questioned the number of completed calls referenced in the invoices.

Mr. Nienstedt commented that he appreciated the subcommittee's efforts and supports the proposal before the Commission.

Motion: Approve Proposed Amendments
Moved/Seconded: Baber/Kosmo
Vote: Carried Unanimously

Item 12: Proposed Amendments to Ethics Ordinance and Municipal Lobbying Ordinance

Ms. Fulhorst explained that the two amendments reflected in the backup materials are recommendations from City Attorney Mara Elliott, who has asked the Commission to review them as a professional courtesy. She added that a Commission vote is not required; instead, she would convey any concerns or objections to the City Attorney. With regard to the Lobbying Ordinance, Ms. Fulhorst clarified that subsection (f) is the addition proposed by the City Attorney and that subsection (g) currently exists and was accidentally underlined in the strike-out.

After discussing the proposed amendments and generally expressing support for them, the Commission asked Ms. Fulhorst to pass on the following suggestions concerning the Lobbying Ordinance proposal: include the definition of "confidential information" from the Ethics Ordinance; consider expanding the prohibition to information received from any City employee instead of limiting it to "City Officials"; consider adding the word "knowingly" before "receive"; and consider removing "receive" and focusing on the use or disclosure of confidential information.

Item 13: Adjourn to Closed Session

Commission Chair Cochran adjourned the meeting to closed session at approximately 5:45 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

Commission Chair Cochran called the meeting back into open session at approximately 6:40 p.m.

Reporting Results of Closed Session Meeting of July 12, 2018

Ms. Cameron reported the results of the closed session meeting of July 12, 2018:

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

Case No. 2018-19 – Paid for by – Telephone Communications

Motion: Dismiss
Moved/Seconded: Kosmo/Potter
Vote: Carried Unanimously

Case No. 2018-24 – Deposit of Contribution

Motion: Dismiss
Moved/Seconded: Kosmo/Leventhal
Vote: Carried Unanimously

Case No. 2018-26 – Paid for by – Billboards and Large Ads

Motion: Authorize Investigation
Moved/Seconded: Leventhal/Potter
Vote: Carried Unanimously

Case No. 2018-28 – Failure to Timely File Campaign Statements

Motion: Authorize Investigation
Moved/Seconded: Kosmo/Leventhal
Vote: Carried Unanimously

Item-2: Public Employee Performance Evaluation

No Reportable Action

Adjournment

The meeting adjourned at approximately 6:45 p.m.

[REDACTED]

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Deborah Cochran, Chair
Ethics Commission

Victoria Velasquez, Program Coordinator
Ethics Commission

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

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