



**Minutes for Meeting of Thursday,
February 9, 2006**

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 Larry Westfall, Commissioners Charles H. Dick, Jr., Lee Biddle, (Gil Cabrera arrived at 5:06 p.m. and Charles H. Dick, Jr. left the meeting at 8:00 p.m.)

Excused – Karen Thomas-Stefano

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

Item-3: Approval of Commission Minutes

Approval of December 19, 2005, Ethics Commission Minutes

Motion: Approve
Moved/Seconded: Dick/Westfall
Vote: Unanimous
Excused: Stefano, Cabrera

Approval of January 12, 2006, Ethics Commission Minutes

Motion: Approved
Moved/Seconded: Biddle/Dick
Vote: Unanimous
Excused: Stefano
Abstained: Cabrera

Item-4: Non-Agenda Public Comment

None

Item-5: Commissioner Comment

None

Item-6: Executive Director Comment

Director Fulhorst reported that there will be an Ethics Recertification training on Friday, February 10, 2006, and that training is being scheduled for the Mayor's new staff and Council Districts 2 and 8 in the near future. In addition, candidate training has been calendared for March.

Item-7: General Counsel Comment

Cristie McGuire commented on United State Superior Court Case "Wisconsin Right to Life, Inc. v. Federal Election Commission" and reported the following:

In a two page opinion issued on January 23, 2006, the United States Supreme Court stated that its 2003 McConnell opinion did not foreclose "as-applied" challenges to the Bipartisan Campaign Reform Act (BCRA) prohibition on electioneering communications. The Supreme Court found that the lower court had misinterpreted a footnote in the McConnell opinion. The Court specifically found that the language in the footnote did not preclude "as-applied" challenges to the prohibition on electioneering communications contained in the Bipartisan Campaign Reform Act.

This two-page opinion does not affect the validity of the City's recently adopted electioneering communication provision, which is modeled after the federal law. However, she advised she and the staff will continue to monitor this case and other post-McConnell cases and will keep the Commission informed.

Item-8: Proposed Amendments to Municipal Lobbying Ordinance

Director Fulhorst presented proposed language regarding the ordinance's purpose and intent to the Commission.

Commissioner Dick asked about the difference between private interests and government entities such as SDDPC, and suggested that the Commission may also want to address lobbying by public agencies.

Commissioner Cabrera referred to the clause of the proposed language "to avoid corruption and the appearance of corruption created by undisclosed lobbying

activities on behalf of private interests” and recommended that the word “undisclosed” be deleted from this section.

Director Fulhorst mentioned that she is unaware of any other jurisdictions that regulate lobbying by public or quasi-public entities whose officers file statements of economic interest. She added that, if the Commission would like to include these agencies within the ordinance, staff will do research on this issue and report back.

Commissioner Cabrera requested more information regarding the issue of public agencies. He recommended that disclosure be required at the point that these entities attempt to influence municipal decisions.

Director Fulhorst advised there is an exemption for public agencies throughout all the City’s governmental ethics laws because the law assumes that private interests are more adverse to the City than public interests.

Director Fulhorst presented the staff recommendations for the registration threshold as set forth in a chart distributed to the Commission and the public. Commissioners and members of the public commented as follows with respect to each issue:

Registration Threshold

Commissioner Cabrera commented that the proposed \$2,500 threshold amount would allow a great deal of lobbying activity before registration was required.

Mitch Berner reported that his hourly fee starts at \$125.00. He added that focusing on a specific amount of compensation could create loopholes for avoiding registration.

Director Fulhorst pointed out that was why staff recommended an additional threshold consisting of the number of contacts to be considered along with the compensation amount received by lobbyists.

John Dadian commented that he believes there should be a zero registration threshold because the problem with any threshold amount is that it depends on the honor system.

Commissioner Cabrera commented that he is concerned as to what the trigger would be with a zero threshold.

Director Fulhorst commented the threshold range can be any amount from \$1 to \$2,500. She added that a \$1 threshold does not create problems for

contract lobbyists, but will likely be overly inclusive for in-house lobbyists. She suggested that the Commission may want to recommend separate thresholds for contract lobbyists and in-house lobbyists.

Financial Registration Threshold Period

Commissioner Cabrera asked if a lobbyist is required to register if he/she earns less than the financial threshold in a calendar quarter.

Director Fulhorst responded that there was flexibility with the threshold amount and that the Commission may decide a lower amount will better meet the purpose of the ordinance.

Commissioner Dick commented that he believes the ordinance should require registration if lobbying is done on behalf of another person and not if it is in connection with a personal interest.

Additional Thresholds

Director Fulhorst explained that additional thresholds could include number of contacts, overall percentage of time spent lobbying, or total number of hours spent lobbying. She commented that the number of contacts threshold is the only effective option from an enforcement perspective.

Contingency Lobbying

Commissioner Cabrera commented that he would like to receive public comment from individuals that practice contingency lobbying.

Registration of Lobbying Firm

Director Fulhorst advised that currently the ordinance only requires registration of individual lobbyists. She explained that other jurisdictions have registration and disclosure requirements for lobbying firms and lobbyist employers. She added that the registration by lobbying firms and lobbyist employers would provide an overall profile of the firm's activities including gift disclosure.

Expenditure Lobbyists

Director Fulhorst pointed out that the current ordinance does not address indirect lobbying activities such as public relations, media outreach and other related activities.

Director Fulhorst commented on the Ex Parte Communications staff memo and explained the purpose of the memo was to introduce the issues that the Commission will need to consider in the future. She added that, if the Commission would like to consider inclusion of an ex parte communications disclosure requirement in the ordinance, then the issue will be docketed for discussion for another meeting.

Mel Shapiro commented regarding the staff report on Ex Parte Communications.

Kevin Heneghan recommended that the Commission specify what the trigger is for the ten day amendment to the registration form. He also suggested that any provision concerning expenditure lobbying be specific with regard to what expenditures would trigger the threshold.

Mitch Berner submitted a copy of the proposed purpose and intent language with a strikeout of recommended deletions and commented on the following lobbying ordinance issues:

- Registration Threshold: it should be close to zero for contract lobbyists, and triggers should include a verbal agreement to be paid, signing of a contract, or depositing of a check.
- Indexing Threshold: needs to be kept simple.
- Financial Registration Threshold Period: should be a fixed quarter.
- Additional Thresholds: additional threshold levels should be added for contract lobbyist.
- Reporting New Clients: a verbal or written agreement or delivery of payment should serve as a trigger to require reporting.
- Registration of Lobbying Firms: both the firm and the individual should be required to register.
- Expenditure Lobbyist: suggested the Commission accept the staff recommendation.

Commissioner Biddle suggested that the ordinance should focus on those individuals who earn a living from lobbying and not on those engaged in occasional lobbying activity. He added that the ordinance should make a distinction between the activity of private citizens and that of professional lobbyists.

Commissioner Cabrera recommended a financial registration threshold within the \$100.00 to \$200.00 range, and suggested lowering the number of contacts that staff recommended for an additional threshold. He also suggested that threshold time frame be changed from three months (currently a calendar quarter) to an annual time frame. In addition, He recommended lowering the financial threshold for expenditure lobbyists.

Commissioner Westfall suggested the inclusion of a provision that would require disclosure by public officials on any measure they voted on as to whom they communicated with prior to the decision.

Chairwoman Leonard agreed with the staff recommendations except for the \$2,500 registration threshold and suggested an amount in the range of \$100 to \$500. She also suggested that lobbying firms should register as well as expenditure lobbyists.

Director Fulhorst commented that staff will research options with regard to language that distinguishes between different types of in-house lobbyists, and will report back at the next Commission meeting. In addition, at the next meeting the Commission will address activities that should be exempt from regulation.

Item-9: Status of Campaign and Lobbyist Audits

Director Fulhorst presented the chart prepared by Auditor Dee Dee Alari reflecting the status of audits.

Item-10: Commission's Legislative Calendar for 2006

Motion: To Add March 20, 2006, Meeting Date to Legislative Calendar
Moved/Seconded: Cabrera/Biddle
Vote: Unanimous
Excused: Stefano

Item-11: Policy Regarding Release of Commission's Investigative Records to Other Law Enforcement Agencies

Director Fulhorst presented the staff report to the Commission.

Motion: To Accept Option B of Policy No. 4 of the Staff Recommendations
Moved/Seconded: Cabrera/Westfall
Vote: Unanimous
Excused: Stefano

Item-12: Adjournment to Closed Session

Chairwoman Leonard adjourned the meeting to Closed Session at Approximately 7:00 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 8:20 p.m.

Reporting Results of Closed Session Meeting of February 9, 2006

Chairwoman Leonard reported the results of the Closed Session meeting of February 9, 2006:

Item 2: Conference with Legal Counsel (36 potential matters)

Case No. 2004-64 - In re: Alleged Failure to Obtain and Report Contributor Information, and Alleged Improper Sender Identification and Paid for By Disclosure

Withdrawn from Agenda

Case No. 2005-02 – In Re: Alleged Failure to Register as a Lobbyist

No Reportable Action Taken

Case No. 2005-24 – In Re: Alleged Failure to File Campaign Statements

No Reportable Action Taken

Case No. 2005-37 - In re: Louis (“Jim”) Myers, Alleged Failure to File Statement of Economic Interests

Motion: Approve Stipulation

Moved/Seconded:

Vote: Unanimous

Excused: Stefano

Case No. 2005-43 - In re: Timothy Bubnack, Alleged Failure to File Statement of Economic Interests

Motion: Approve Stipulation
Moved/Seconded:
Vote: Unanimous
Excused: Stefano

Case No. 2005-47 - In re: Marianne Greene, Alleged Failure to File Statement of Economic Interests

Motion: Approve Stipulation
Moved/Seconded:
Vote: Unanimous
Excused: Stefano

Case No. 2005-55 - In re: Andrea Oates, Alleged Failure to File Statement of Economic Interests

Motion: Approve Stipulation
Moved/Seconded:
Vote: Unanimous
Excused: Stefano

Case No. 2005-56 - In re: George Ossavou, Alleged Failure to File Statement of Economic Interests

Motion: Approve Stipulation
Moved/Seconded:
Vote: Unanimous
Excused: Stefano

Case No. 2005-62 - In re: Mary Zoeller, Alleged Failure to File Statement of Economic Interests

Motion: Approve Stipulation
Moved/Seconded:
Vote: Unanimous
Excused: Stefano

Case No. 2005-76 - In re: Peter Q. Davis, Alleged Failure to Disclose Subvendor Payments and Accrued Expenses

Motion: Approve Stipulation

Moved/Seconded:

Vote: Unanimous

Excused: Stefano

Case No. 2006-07 – In Re: Alleged Contributions in Excess of Limit and Contributions from Organizations

No Reportable Action Taken

Commissioner Dick left the meeting at 8:00 p.m.

Case No. 2005-13 – In Re: Alleged Failure to Obtain and Report Contributor Information

Motion: Dismiss

Moved/Seconded:

Vote: Unanimous

Excused: Stefano/Dick

Case No. 2005-21 – In Re: Alleged Failure to Obtain and Report Contributor Information

Motion: Dismiss

Moved/Seconded:

Vote: Unanimous

Excused: Stefano/Dick

Case No. 2005-22 – In Re: Alleged Financial Interest in Contract and Failure to Disqualify from Municipal Decisions Affecting Economic Interests

Motion: Dismiss

Moved/Seconded:

Vote: Unanimous

Excused: Stefano/Dick

Case No. 2005-30 – In Re: Alleged Financial Interest in Contract

Motion: Dismiss
Moved/Seconded:
Vote: Unanimous
Excused: Stefano/Dick

**Case Nos. 2005-36, 2005-38 through 2005-42, 2005-44, 2005-46, 2005-48, 2005-52, 2005-53, and 2005-57 through 2005-60
In re: Alleged Failure to File Statement of Economic Interests**

Motion: Dismiss
Moved/Seconded:
Vote: Unanimous
Excused: Stefano/Dick

**Case Nos. 2005-45, 2005-49 through 2005-51, 2005-54, 2005-61
In re: Alleged Failure to File Statement of Economic Interests**

No Reportable Action Taken

Item 1: Conference with Legal Counsel (5 potential matters)

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

Withdrawn from Agenda

Case No. 2006-09 – In re: Alleged Contribution from Organization

Motion: Initiate Investigation
Moved/Seconded:
Vote: Unanimous
Excused: Stefano/Dick

Case No. 2006-10 – In re: Alleged Contribution from Organization

Motion: Initiate Investigation
Moved/Seconded:
Vote: Unanimous
Excused: Stefano/Dick

Case No. 2006-11 – In re: Alleged Failure to Obtain and Report Contributor Information

Motion: Initiate Investigation
Moved/Seconded:
Vote: Unanimous
Excused: Stefano/Dick

Case No. 2006-12 – In re: Alleged Failure to Register as Lobbyist

Motion: Initiate Investigation
Moved/Seconded:
Vote: Unanimous
Excused: Stefano/Dick

Item 3: Conference with Legal Counsel (1 Potential Matter)

San Diego Ethics Commission Audit Report: Peter Q. Davis for Mayor

Motion: Accept Report
Moved/Seconded:
Vote: Unanimous
Excused: Stefano/Dick

Item 4: Personnel Matter – Evaluation of Performance

No Reportable Action Taken

Adjournment

The meeting adjourned at approximately 8:25 p.m.

Dorothy Leonard, Chairwoman
Ethics Commission

Katherine Hunt, Executive Secretary
Ethics Commission

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