



**Minutes for Meeting of  
Thursday, December 10, 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, Auditor Rosalba Gomez and Executive Secretary Katherine Hunt

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

**Approval of Ethics Commission Minutes of November 12, 2009**

Motion: Approve

Moved/Seconded: Cabrera/Fuller

Vote: Carried Unanimously

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

Councilmember Marti Emerald addressed the Commission regarding the Commission's investigation of her election campaign committee. She stated that attempts have been made to settle the case during the last several months. She noted that her attorney, Bob Otilie, was in attendance and would comment in greater detail on this matter. She added that their goal is to resolve this matter and move forward.

Carol Mundell, treasurer to the Marti Emerald campaign committee, read a prepared statement concerning the investigation of the committee.

Attorney Bob Otilie commented that he represents the Marti Emerald Committee in connection with an ongoing investigation of the Committee by the Commission. He criticized the staff's handling of the investigation and distributed several documents to the Commission. He stated that his client Marti Emerald would like to waive the probable cause hearing and proceed directly to an administrative hearing in order to resolve the matter.

The following individuals who submitted public comment forms were called upon to speak and indicated that they did not wish to speak: Eric Horn, Jack Kerry and Tom Mundell.

Chairman Valdez clarified that the Commission would not be addressing any specific issues associated with the Marti Emerald investigation. He explained that Commission procedures do not allow the Commissioners to discuss a pending investigation during public session because the Commissioners will ultimately serve as the Presiding Authority at a probable cause hearing or administrative hearing. He also referred to correspondence sent directly to him by Mr. Otilie and explained that Commissioners are not permitted to have ex-parte communications with parties involved in a pending investigation.

Commissioner Cabrera also commented on Commission policies concerning communications with parties involved in a pending investigation.

Audie De Castro commented on Director Fulhorst's remarks made to the media concerning his suggestions, made on behalf of the Filipino Chamber of Commerce, to the Mayor and City Council regarding the Ethics Commission's budget.

**Item-5: Commissioner Comment**

None

**Item-6: Executive Director Comment**

None

**Item-7: General Counsel Comment**

None

**Item-8: Proposed Amendments to Municipal Lobbying Ordinance**

Chairman Valdez commented that this item was discussed at the October and November meetings, and reiterated that the Commission has been asked to consider whether consultants retained by City departments and agencies should

continue to be exempted from the Lobbying Ordinance. He noted that the Commission only received input from a few members of the public. He indicated that Director Fulhorst would report on various proposed options with respect to this matter.

Director Fulhorst noted that, during the Commission's review of the lobbying laws from 2006 to 2008, the Commission spent a great deal of time considering this issue. She pointed out that it would be difficult to exempt some consultants but not others (e.g., attorneys) in order to distinguish between lobbyists retained by agencies strictly for lobbying purposes and consultants retained for other purposes. In order for the Commission to respond back to the Rules Committee, the staff has proposed three options for the Commission's consideration:

1. Leave the ordinance unchanged. This option would indicate that the Commission believes there is not sufficient evidence to warrant a distinction between "in-house" lobbyists employed by the City or its agencies, and private consultants retained by the City or its agencies to perform similar work.
2. Modify the exemption such that it applies only to those employees who are on the City's or the agency's payroll, and not to private consultants.
3. Eliminate the exemption for private consultants unless they are required to file Statements of Economic Interests, since this filing requirement suggests that the consultant is serving in a staff capacity.

Commissioner Leonard requested clarification on what problem the Rules Committee was trying to resolve by asking the Commission to review this matter.

Director Fulhorst explained that the matter arose from comments made by Mel Shapiro at a Rules Committee meeting indicating that he believes outside consultants retained by public agencies, such as the consultant retained by CCDC concerning the construction of a new City Hall, should be required to file lobbyist disclosure reports.

Chairman Valdez indicated that he believes the ordinance should remain unchanged and explained his reasons for retaining the exemption for consultants who represent public agencies. He suggested that the Commission send a memo back to the Rules Committee once the Commission made a decision on the recommended response.

After Commission discussion, the consensus of the Commission was to agree with Chairman Valdez's recommendation to leave the current exemption unchanged.

Motion: Direct staff to report to the City Council Rules Committee that the Commission does not recommend any changes to the Lobbying Ordinance concerning the current exemption for consultants representing public agencies.

Moved/Seconded: Cabrera/Fuller  
Vote: Carried Unanimously

**Item-9: Presentation of Final Audit Report Regarding the Re-elect Mayor Sanders Committee**

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

Motion: Accept Report  
Moved/Seconded: Leonard/Westfall  
Vote: Carried Unanimously

**Item-10: Presentation of Final Audit Report Regarding the No on Proposition C – Neighborhoods for Honest Government Committee**

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

Motion: Accept Report  
Moved/Seconded: Westfall/Leonard  
Vote: Carried Unanimously

**Public Comment – Closed Session Agenda Item 6**

In connection with the Commission's performance evaluation of Executive Director Stacey Fulhorst, Robert Otilie commented critically on her performance.

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

Chairman Valdez adjourned the meeting to Closed Session at approximately 5:45 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 7:20 p.m.

**Reporting Results of Closed Session Meeting of December 10, 2009**

Chairman Valdez reported the results of the Closed Session Meeting of December 10, 2009.

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

**Case No. 2009- 98- In Re: - Alleged Failure to Timely File Lobbying Disclosure Report**

Motion: Initiate Investigation

Vote: Carried Unanimously

**Case No. 2009-99 – In Re: Alleged Failure to Timely File Lobbying Disclosure Report**

Motion: Initiate Investigation

Vote: Carried Unanimously

**Case No. 2009-100 – In Re: Alleged Failure to Timely File Lobbying Disclosure Report**

Motion: Initiate Investigation

Vote: Carried Unanimously

**Item-2: Conference with Legal Counsel** (7 potential matters)

**Case No. 2008-55 – In Re: Alleged Misuse of City Position**

Motion: Dismiss

Vote: Carried Unanimously

**Case No. 2008-64 – In Re: Alleged Failure to File Campaign Statements**

No Reportable Action

**Case No. 2008-71 – In Re: Alleged Failure to File Campaign Statements**

No Reportable Action

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

Motion: Accept Audit Report for Marti Emerald for San Diego Committee

Vote: Carried Unanimously

Motion: Accept Respondent's waiver of Probable Cause Hearing and Determination, and schedule the Administrative Hearing for February 25, 2010 at 9:00 a.m.

Vote: Carried Unanimously

**Case No. 2009-03 – In Re: Alleged Failure to Register as a Recipient Committee and File Campaign Statements**

Motion: Dismiss

Vote: Motion passed by a 5/1 Vote with Valdez voting nay

Recused: Fuller

**Case No. 2009-48 – In Re: Alleged Failure to File Campaign Statements**

No Reportable Action

**Case No. 2009-92 – In Re: Alleged Failure to Properly Disclose Information on Campaign Statements**

Motion: Dismiss

Vote: Carried Unanimously

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

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

Motion: Approve Stipulation

Vote: Carried Unanimously

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

**Nancy Graham, Case No. 2008-54 – In Re: Alleged Participation in Municipal Decision Affecting Economic Interests**

After each Commissioner having stated on the record that he or she personally heard or read the testimony and reviewed the evidence or otherwise reviewed the entire record, the Commission has determined that there is probable cause to believe that Respondent may have violated one or more governmental ethics laws, as reflected in Counts 1 through 34 of Petitioner's Draft Administrative Complaint, and that this matter shall be heard at a public Administrative Hearing to be held on March 4, 2010, at 9:00 a.m., and March 5, 2010 at 9:30 a.m. The Commission directs the Petitioner and Respondent to provide further briefing on whether the affiliated entities rule applies to the San Diego Ethics Ordinance and whether the acts constitute a single or multiple violation of San Diego Ethics Ordinance.

Motion: Finding of Finding Probable Cause and Scheduling Administrative Hearing

Vote: Motion passed by a 5/1 vote, with Cabrera voting nay

Respondent Nancy Graham, in her capacity as a City Official, is alleged to have violated SDMC section 27.3561 by participating on multiple occasions from March 16, 2006, through May 16, 2008, in municipal decisions that involved one of her economic interests. Respondent is presumed to be innocent unless and until such time that the allegations are proven to be a violation at the Administrative Hearing.

Motion: In connection with its probable cause determination, the Commission has authorized the issuance of a Final Administrative Complaint.

Vote: Carried Unanimously

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

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

No Reportable Action

**Item-6: Personnel Matter – Evaluation of Performance**

No Reportable Action

**Adjournment**

The meeting adjourned at approximately 7:35 p.m.

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Richard Valdez, Commission Chair  
Ethics Commission

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Katherine Hunt, Executive Secretary  
Ethics Commission

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