



**Minutes for Meeting of
Thursday, August 11, 2011**

Item 1: Call to Order

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

Item 2: Roll Call

Present – Commission Chair Clyde Fuller, Vice Chair William Howatt, Commissioners Lee Biddle, Faye Detsky-Weil, John O’Neill, Larry Westfall, and Bud Wetzler

Staff – Executive Director Stacey Fulhorst, General Counsel Christina Cameron, Program Manager Steve Ross, Auditor Rosalba Gomez, and Executive Secretary AvéMaria Perkins

Item 3: Approval of Commission Minutes

Approval of Ethics Commission Minutes of July 14, 2011

Motion: Approve
Moved/Seconded: Westfall/Detsky-Weil
Vote: Carried Unanimously
Abstained: Howatt & O’Neill

Item 4: Non-Agenda Public Comment

Eugene Davidovich commented on the complaints he submitted to the Ethics Commission on July 11, 2011 regarding alleged violations of the Election Campaign Control Ordinance by Safe Beaches.Org, Save Pacific Beach, Safe Beaches of San Diego Yes on D, and Safe Beaches Educational Foundation. He stated that he received five letters from the Commission’s General Counsel on August 3, 2011, indicating that the complaints did not warrant an investigation. He expressed his disagreement with this

determination, and provided several reasons why he believes his complaints merit investigation. He also expressed his opinion that there is an appearance of a conflict of interest for the General Counsel, and suggested that she recuse herself from these matters.

Commission Chair Fuller advised Mr. Davidovich that the Commissioners annually review all the complaints dismissed during the preliminary review period.

Item 5: Commissioner Comment

None

Item 6: Executive Director Comment

Director Fulhorst provided the following updates:

- She and Steve Ross have been working closely with the City Attorney's Office concerning proposed revisions to the Council Policy that addresses the terms of board and commission members. The City Attorney's Office has agreed to recommend the addition of some language that would clarify that serving less than half a term does not count toward the current two-term limit. She mentioned that this approach would be harmonious with the manner in which the City addresses the terms of elected officials, as Commissioner Biddle previously suggested. Director Fulhorst added that Rules Committee consideration of the proposed amendment is tentatively scheduled for September 13, 2011, and that she plans to be present to explain why the Commission supports the clarification regarding the two-term limit.
- The audit drawing for the 2010 election cycle will take place at the Commission's September meeting. She explained that, in accordance with the Audit Manual which is approved by the City Council, candidate and ballot measure committees will go into three different pools based on financial activity: (1) \$10,000 to \$49,999; (2) \$50,000 to \$99,999; and (3) \$100,000 and up. The City Clerk's Office will conduct the random drawing, and will select 50% of the committees in the lower two tiers of financial activity and 75% of committees with financial activity of \$100,000 or more. She mentioned that the timing of the drawing is ideal in light of the fact that the Commission's Auditor is currently finishing the audits from the 2008 election cycle.

Director Fulhorst noted that for the first time the audits will include primarily formed recipient committees. These are not the main candidate or ballot measure committees, but are committees formed primarily for the purpose of supporting or opposing one or more City candidates or City ballot measures. She mentioned that there are also a handful of City general purpose recipient committees that were active in the 2010 election

cycle, but that she does not believe they have sufficient financial activity to qualify for the audit pools. According to Director Fulhorst, City general purpose committees are those that are not formed primarily to support City candidates or City ballot measures. She explained that these types of committees were not active in City elections when the Audit Manual was last amended; as a result, the Audit Manual does specifically contemplate their existence. She added that, based on the current definitions in the Audit Manual, a City general purpose committee could qualify for an audit pool if it spent \$10,000 or more to support City candidates. On the other hand, she noted that a City general purpose committee could not qualify for an audit pool if it spent \$10,000 or more on City ballot measure. She advised that the staff will monitor the activity of City general purpose committees in the 2012 election. If there are numerous committees actively supporting City candidates and measures, the Commission might consider proposing amendments to the Audit Manual to expressly include them in the audit program.

Commissioner O'Neill asked if there is a bright-line test for determining whether a committee is a general purpose committee or a primarily formed committee.

Director Fulhorst responded the California Fair Political Practices Commission has adopted a very detailed regulation that sets forth specific criteria for making this determination.

Commission Chair Fuller asked if the Commission should wait and monitor the activity level of City general purpose committees or move forward now with proposed amendments to the Audit Manual.

Director Fulhorst expressed her view that the Commission should wait and see if proposed amendments are warranted. She noted that there were not many City general purpose committees active in the 2010 election, and that most general purpose committees are County or State committees because they operate in a variety of jurisdictions outside the City of San Diego. Director Fulhorst added that the notion of expanding the Commission's audit program would likely be a contentious issue; therefore, she advised against any proposed amendments until there is sufficient evidence to demonstrate that there is an issue that needs to be addressed.

Commissioner Biddle commented on the fact that the Commission audits 75% of the committees that spent more than \$100,000, and asked whether this would result in a high volume of audits for the 2012 election cycle.

Director Fulhorst agreed that the audit volume will likely increase for the 2012 election cycle; however, she noted that the committees that spend \$100,000 or more typically employ professional treasurers who properly maintain records, making it easier for the staff to conduct audits. She

explained that the staff prioritizes the committees for audit such that she is confident the Commission's Auditor will be able to complete the audits of all candidates elected to office in 2012, as well as all committees that spent over \$100,000. She added that it is possible that some losing candidates who spent less than \$50,000 may not be audited due to the Commission's limited resources.

Commissioner Westfall commented that staff should promptly notify the smaller committees selected for audit to ensure that records are not destroyed before the Auditor commences these lower-priority audits.

Director Fulhorst responded that prompt notification of all committees selected for audit is part of the Auditor's standard procedures. She explained that shortly after the random drawing, all committees are notified that they have been selected, that it may be some time before they are contacted to produce records, and that they need to retain records for a period of four years.

- Director Fulhorst reported that the Ethics Commission will have the pleasure of welcoming the new FPPC Chairwoman, Ann Ravel, at the Commission's December meeting. She explained Ms. Ravel is making an effort to travel to the various agencies throughout the state.

Item 7: General Counsel Comment

Ms. Cameron provided an overview of the origin and evolution of the *Thalheimer, et al. v. City of San Diego* litigation. She explained that in December of 2009, the Plaintiffs' filed a complaint seeking a preliminary injunction to prevent the City from enforcing the following provisions of the City's campaign laws: (1) the \$500 contribution limit; (2) the ban on contributions from organizations; (3) the application of the contribution limit and source prohibition to committees that make independent expenditures; (4) the 12-month pre-election fundraising time limit.

According to Ms. Cameron, the District Court granted the Plaintiff's motion in part, such that the City is currently enjoined from enforcing the \$500 contribution limit or the ban on contributions from organizations on committees that make independent expenditures. With respect to contributions from organizations to City candidates, the District Court upheld the general ban but ruled that the City must permit political parties to make contributions to City candidates. The City Council subsequently adopted a \$1,000 contribution limit for political parties. With respect to the 12-month pre-election fundraising time limit, the Court ruled that the City must permit candidates to spend their own money more than 12 months before the primary election, but upheld the 12-month time limit with respect third party contributions. Finally, Ms. Cameron noted that the District Court upheld the City's \$500 contribution limit to candidates, as well as the recently-adopted \$1,000 contribution limit for contributions from political parties.

Ms. Cameron reported that both sides appealed the District Court's rulings to the Ninth Circuit Court of Appeals. In June of 2011, the Ninth Circuit issued an Order upholding the lower court's decision. The City is currently waiting to see if the Plaintiffs will seek review from the United States Supreme Court. If not, the matter will be returned to the District Court and the Plaintiffs will likely file a Motion for Summary Judgment.

Item 8: Adjourn to Closed Session.

Commission Chair Fuller adjourned the meeting to Closed Session at approximately 5:40 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

Commission Chair Fuller called the meeting back into open session at approximately 6:30 p.m.

Reporting Results of Closed Session Meeting of August 11, 2011

Ms. Cameron reported the results of the Closed Session Meeting of August 11, 2011:

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

Case No. 2011-60 - In Re: Alleged Failure to Properly File Campaign Statements and Alleged Failure to Include Proper Disclosure on Campaign Advertisements

Motion: Initiate Investigation
Vote: Carried Unanimously

Case No. 2011-61- In Re: Alleged Failure to Timely File Campaign Statements

Motion: Initiate Investigation
Vote: Carried Unanimously

Case No. 2011-62 - In Re: Alleged Acceptance of Contribution in Excess of Limit and Contribution from Organization

Motion: Initiate Investigation
Vote: Carried Unanimously

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

Case No. 2011-11 - In Re: Alleged Attempt to Influence Municipal Decision Involving Economic Interests

Motion: Dismiss
Vote: Carried Unanimously

Case No. 2011-34 - In Re: Alleged Violation of Vendor Debt Laws and Acceptance of Contribution from Organization

Motion: Dismiss
Vote: Carried Unanimously

Motion: Accept Final Audit Report
Vote: Unanimous

Case No. 2011-50 - In Re: Business Improvement District Council - Alleged Failure to Timely File Quarterly Disclosure Report

Motion: Approve Stipulation
Vote: Carried Unanimously

Adjournment

The meeting adjourned at approximately 6:35 p.m.

Clyde Fuller, Commission Chair
Ethics Commission

AveMaria Perkins, Executive Secretary
Ethics Commission

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