



**Minutes for Meeting of
Thursday, September 23, 2011**

Item 1: Call to Order

Commission Chair Fuller called the meeting to order at 10:00 a.m.

Item 2: Roll Call

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

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

Item 3: Random Drawing for Audit of 2010 Election Cycle.

Director Fulhorst explained the audit selection procedures as set forth in the Ethics Commission’s Audit Manual. She explained that the candidate and ballot measure committees from the 2010 election cycle are placed in pools based on financial activity. She introduced Denise Jenkins and Clarisa Santiago from the City Clerk’s Office and advised that they would conduct the random drawing based on a list of qualifying committees they prepared.

Candidate Committees Selected for Audit:

FINANCIAL ACTIVITY BETWEEN \$10,000 AND \$49,999:

- Kim Tran for Council 2010
- Brian “Barry” Pollard for City Council

FINANCIAL ACTIVITY BETWEEN \$50,000 AND \$99,999:

- Steve Hadley for City Council 2010

FINANCIAL ACTIVITY OF \$100,000 OR MORE:

- Howard Wayne for Council 2010
- Protect Neighborhood Services Now, sponsored by SDMEA, supporting Faulconer, Young, Alvarez, Wayne for City Council 2010
- Felipe Hueso for City Council 2010
- Lauri Zapf for City Council
- Faulconer for Council 2010
- David Alvarez for Council 2010

Ballot Measure Committees Selected for Audit:

FINANCIAL ACTIVITY BETWEEN \$10,000 AND \$49,999:

- Working Family Issues to Support Prop D

FINANCIAL ACTIVITY BETWEEN \$50,000 AND \$99,999:

- Coalition for Fair Employment and Construction

FINANCIAL ACTIVITY OF \$100,000 OR MORE:

- San Diegans for Fair and Open City Contracting supported by the construction industry
- Protect Fire and Police Services Yes on Prop D
- San Diegans for Accountability at City Hall, Yes on D

Item 4: Approval of Commission Minutes

Motion:	Approve with modification
Moved/Seconded	Howatt/Westfall
Vote:	Unanimous
Excused:	Detsky-Weil

Item 5: Non-Agenda Public Comment

None

Item 6: Commissioner Comment

In reference to the presentation made by Mr. Davidovich at the previous Ethics Commission meeting on August 11, 2011, Vice Chair Howatt commented that he reviewed the relevant materials and concurred with the resolution proposed.

Item 7: Executive Director Comment.

Director Fulhorst reported on the following matters:

- Rules Committee consideration of the proposed changes to Council Policy 000-13 (which addresses the service of the City’s board and commission members) was continued to September 28, 2011, at which time the City Attorney’s Office will be recommending language to clarify that service of less than one-half of one term does not count toward the two-term limit. She added that she will be present at the Rules Committee meeting and will update the Commissioners via email following the meeting.
- One of the campaign treasurers involved in a recent audit took the time to write an email to Lauri Davis praising the Ethics Commission’s Auditor, Rosie Gomez, for her respectful and patient demeanor during the audit process. Director Fulhorst noted that campaign audits can be very contentious and she thanked Ms. Gomez for her consistent professionalism.

Item 8: General Counsel Comment

None

Item 9: Presentation of Final Audit Report Regarding the Safe Beaches San Diego Yes on D Committee.

Motion:	Accept the Report
Moved/Seconded:	Westfall/O’Neill
Vote:	Unanimous
Excused:	Detsky-Weil

Item 10: Adoption of Commission Meeting Calendar for 2012.

Motion:	Approve
Moved/Seconded	Howatt/Wetzler
Vote:	Unanimous
Excused:	Detsky-Weil

Item 11: Requested Waiver of Attorney-Client Privilege.

Director Fulhorst related that the Commission’s General Counsel, Stutz Artiano Shinoff & Holtz, was selected through the City’s standard “RFP” process. When the firm was selected, the Commission was cognizant of the fact that the firm also provides legal services to the Southeastern Economic Development Corporation [SEDC] whose high level employees and board members fall within the jurisdiction of the Commission. In order to address

this apparent conflict, the Commission included language in the fee agreement with the Stutz firm that clarified that the firm would not provide legal services to the Commission with respect to any enforcement matter involving SEDC. She noted that the Commission also has an agreement with Lisa Foster at the McDougal Love Eckis Boehmer & Foley firm for outside counsel services.

Director Fulhorst explained that she recently received an inquiry from San Diego City Beat newspaper concerning the fact that the Stutz law firm provides legal services to both the Ethics Commission and SEDC. In response, she explained to the reporter that the Commission was aware of the situation and made it clear in the fee agreement with the Stutz firm that the firm would not work on any SEDC enforcement matters. The reporter then asked if the Commission would produce a copy of those sections of the fee agreement that corroborate this representation.

She commented that, for appearance purposes, she did not consult with Ms. Cameron concerning this request; however, research conducted by Steve Ross indicates that the fee agreement is protected by the attorney-client privilege. She noted for the record that Commissioners O'Neill and Howatt indicated their concurrence with this conclusion. Therefore, in order for her to release the relevant portions of the fee agreement, the Commission would need to agree to waive the attorney-client privilege. Although the Commission has previously indicated it is opposed to waiving the attorney-client privilege, Director Fulhorst recommended approving the request in this particular situation.

Commission Chair Fuller asked whether it was possible to grant a partial waiver and whether this could result in a broader release than intended.

Vice Chair Howatt suggested that Director Fulhorst provide the portions of the fee agreement that she deemed appropriate to be released and give the Commission an opportunity to review them. In addition, he suggested the staff research the question raised by Commission Chair Fuller. He commented that he is not convinced that it is appropriate or necessary to provide any portion of the fee agreement. He noted that Director Fulhorst has an excellent reputation and suggested her verbal representation should suffice.

Director Fulhorst explained that any materials distributed to the Commissioners in connection with an open session item must also be provided to the public pursuant to the Brown Act. With respect to the partial waiver issue, she indicated that staff could conduct some additional research; however, she recalled that the Commission considered a different request for a partial waiver of the attorney-client privilege last year and the research conducted at that time indicated that it was viable to release only a portion of a document without opening the door to the release of the entire document.

Commissioner O'Neill indicated that he was inclined to approve the limited waiver under the circumstances, and that it would put to rest any suspicions of impropriety. He added that he was comfortable that it would be a limited waiver in response to the concern voiced by Commission Chair Fuller.

Commissioner Westfall asked how often the Commission has granted a waiver of the attorney-client privilege in the past.

Director Fulhorst responded that the Commission had never granted such a waiver.

Commissioner Westfall suggested that it could set a precedent if the Commission granted the request for a waiver in this situation.

Vice Chair Howatt expressed his concern that the Commission would be setting a precedent by waiving the attorney-client privilege. He added that the Commission considers very serious matters and that materials protected by the attorney-client privilege should remain confidential. Accordingly, he indicated that he was not in favor of granting the partial waiver.

Commissioner Wetzler commented that he concurred with Vice Chair Howatt, and that he agreed that Director Fulhorst's verbal representation to the reporter should suffice.

Commissioner Biddle commented that the Ethics Commission is a public agency that hired an attorney using taxpayer funds, and that therefore public interest in the fee agreement may be more important than the policies protected by the attorney-client privilege. On the other hand, he noted that the Commission has never waived the privilege in the past, and he indicated he didn't see any reason to start doing so. He suggested that, in order to corroborate the information provided by Director Fulhorst, the reporter could contact Ms. Cameron and ask her if she would provide legal services to the Commission in connection with an SEDC enforcement matter.

Commission Chair Fuller commented that he was reluctant to waive the privilege.

Director Fulhorst asked if the Commissioners would like staff to conduct additional research and bring the issue back at the next Commission meeting.

Commissioner O'Neill commented that he did not believe additional research would be helpful.

Motion:	Deny request for waiver of attorney-client privilege
Moved/Seconded:	Howatt/Wetzler
Vote:	Approved 5/1 with O'Neill voting Nay
Excused:	Detsky-Weil

Item 12: Adjourn to Closed Session.

Commission Chair Fuller adjourned the meeting to closed session at approximately 10:40 a.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 11:15 a.m.

Reporting Results of Closed Session Meeting of September 23, 2011

Ms. Cameron reported the results of the closed session meeting of September 23, 2011:

Item-1: Conference with Legal Counsel (10 potential matters)

Case Nos. 2011-63 through 2011-65 - In Re: Alleged Failure to Timely File Lobbyist Quarterly Disclosure Report

Motion: Initiate Investigation
Vote: Carried Unanimously
Excused: Detsky-Weil

Case No. 2011-66 - In Re: Alleged Use of City Resources for Campaign-Related Activities.

Motion: Initiate Investigation
Vote: Carried Unanimously
Excused: Detsky-Weil

Case No. 2011-67 - In Re: Alleged Failure to Include Proper Disclosure on Campaign Advertisements

Motion: Initiate Investigation
Vote: Carried Unanimously
Excused: Detsky-Weil

Case No. 2011-68 - In Re: Alleged Acceptance of Gifts in Excess of Annual Limit

Motion: Dismiss
Vote: Carried Unanimously
Excused: Detsky-Weil

Case Nos. 2011-69 and 2011-70 - In Re: Alleged Failure to Timely File Statements of Economic Interests

Motion: Dismiss
Vote: Carried Unanimously
Excused: Detsky-Weil

Case Nos. 2011-71 and 2011-72 - In Re: Alleged Failure to Timely File Statements of Economic Interests

Motion: Initiate Investigation
Vote: Carried Unanimously
Excused: Detsky-Weil

Adjournment

The meeting adjourned at approximately 11:20 a.m.

Clyde Fuller, Commission Chair
Ethics Commission

AveMaria Perkins, Executive Secretary
Ethics Commission

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