



**Minutes for Meeting of  
Thursday, February 12, 2015**

**Item 1: Call to Order**

Commission Chair O'Neill called the meeting to order at approximately 5:05 p.m.

**Item 2: Roll Call**

**Present** – Commission Chair John O'Neill, Commission Vice-Chair Clyde Fuller, Commissioners Deborah Cochran, Faye Detsky-Weil, Alex Kreit, Andrew Poat and Greg Zinser

(Commissioner Kreit arrived at 5:20 p.m.)

**Staff** – Executive Director Stacey Fulhorst, General Counsel Christina Cameron, Program Manager Steve Ross, Investigator Lauri Davis, and Administrative Aide Jennifer Blasier

**Item 3: Approval of Commission Minutes**

**Approval of Ethics Commission Minutes of December 11, 2014**

Motion:	Approve
Moved/Seconded:	Fuller/Cochran
Vote:	Carried Unanimously
Abstained:	Poat
Excused:	Kreit

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

None

**Item 5: Commissioner Comment**

None

**Item 6: Executive Director Comment**

Ms. Fulhorst reported that Councilmember Todd Gloria has asked the City Council Charter Review Committee to consider various reforms to the laws that govern the referendum process, including several issues that may fall within the Commission’s jurisdiction. Staff has met with Councilmember Gloria’s staff to review the issues that may necessitate changes to the City’s campaign laws, including the following: (1) expanding the requirement for “paid for by” disclosures on campaign advertisements to include petitions used to gather signatures, and (2) requiring the filing of additional campaign statements to ensure that contributor information is publically available during the signature-gathering phase.

Commissioner Poat expressed his view that many concerns are associated with paid signature gatherers and asked staff if there are any related best practices emerging throughout the country. Ms. Fulhorst noted that this issue would be more appropriately addressed in the Elections Code rather than the Election Campaign Control Ordinance; however, she pointed out that the practice of paying signature gatherers a specified amount per signature can incentivize them to be less than truthful, and advised that some states have adopted laws restricting the manner in which signature gatherers may be paid. In addition, she reported that the California legislature passed a law in 2011 banning payment per signature, but the law was vetoed by the Governor.

**Item 7: General Counsel Comment**

None

**Item 8: Proposed Amendments to the Election Campaign Control Ordinance and Municipal Lobbying Ordinance**

Ms. Fulhorst provided an overview of the staff memo concerning the provisions in the City’s campaign laws that enable City Officials and candidates to establish professional expense funds in order to raise money to pay attorney’s fees and related costs if they are the subject of a civil, criminal, or administrative proceeding related to an election or their official duties. In particular, she addressed the requirement that contributors to a professional expense committee submit a disclosure form identifying the matters that they have pending before the official who has established the fund, and explained that there is a need for clarification concerning various aspects of this disclosure requirement such as the nature of a “pending matter” and whether it is limited to financial interests, when a matter is deemed to be “pending,” and whether a lobbyist has an interest in a client’s pending matter.

Ms. Fulhorst reported that, for purposes of Commission discussion, Program Manager Steve Ross has drafted proposed amendments that are based on the financial conflict of interest guidelines in state law. She explained that the proposals would replace the term “pending matter” with “municipal decision,”

which would have the same defined criteria as the City's lobbying laws, and would clarify that a matter is "pending" if there is a realistic possibility of the decision being acted upon by the official who established the committee. In response to a question from Commission Chair O'Neill, she explained that the FPPC recently revised its regulations to clarify that the commonly-used phrase "reasonably foreseeable" means "realistic possibility."

Commission Chair O'Neill observed that the draft language refers to the possibility that a decision will be "acted upon by the applicable City Official or candidate," and questioned whether this should be expanded to include decisions that could be acted upon by the board, commission, or body on which the official sits. Mr. Ross responded that this modification could easily be implemented, and noted that it would capture a decision acted on by an official's board even if the official is disqualified from participating.

Although staff looked to the state's financial conflict of interest laws for guidance, Ms. Fulhorst noted that the proposed language is based on an overview of the significant financial interests addressed in state law. Because the state's guidelines concerning financial interests are fairly extensive and complex, she suggested it might be appropriate to simplify them to ensure that an unsophisticated contributor tasked with the completing the form is able to understand the nature of the requisite disclosure.

Commission Chair O'Neill suggested that the draft language concerning an "individual's" financial interest in a municipal decision be expanded to include the financial interests of the members of the individual's immediate family. Mr. Ross indicated that he would incorporate this change into the proposed amendments.

Commissioner Detsky-Weil asked about a situation involving a contributor who owns real property that is adjacent or close to property that is the subject of a municipal decision. Ms. Fulhorst responded that the state conflict laws associated with real property interests are fairly extensive but could be incorporated by reference. Commission Chair O'Neill suggested adding the following phrase to proposed section 27.2965(b)(2)(e)(1)(B)(iii): "...or is reasonably likely to be directly or substantially impacted by the decision." Commissioner Detsky-Weil questioned whether contributors would need guidance concerning the phrase "substantially impacted," and Ms. Fulhorst responded that the staff could advise them that the standard is one of a reasonable person exercising due diligence.

With respect to a lobbyist's interest in a client's pending matter, Ms. Fulhorst reported that staff believes the simplest way to address this situation is to expand the disclosure requirements for lobbyists to include contributions made to professional expense committees, which would enable the public to view the lobbyists' contributions alongside their clients' pending matters. She noted that this additional disclosure for lobbyists would not negate the requirement that the lobbyists' clients file disclosure forms when making contributions to professional expense committees.

Ms. Fulhorst reported that the Commission received input on the proposed amendments via email from campaign treasurer April Boling. In response to Ms. Boling's concern that some of the phrases in the draft were subject to various interpretations, staff explained that the phrases are derived from state law and staff would look to FPPC advice letters for guidance.

She indicated that staff will incorporate the various suggestions into the draft language for the Commission to consider at its next meeting in March.

**Item 9: Proposed Amendments to the City Charter**

Ms. Fulhorst reported that the Charter Review Committee plans to consider a variety of "cleanup" issues and ultimately recommend a package of proposed amendments for voter approval. Because the Committee has solicited input regarding issues for potential consideration, she suggested the Commission might want to consider recommending a name change for the Commission, a suggestion that has been periodically made by respondents since the Commission's inception. She noted that the suggestion is usually made by individuals who commit relatively nominal violations such as late filing of disclosure statements; although they are willing to admit their mistakes, they are reluctant to pay an Ethics Commission fine for fear of being labeled "unethical." She explained that, because the Ethics Commission's subpoena power and independent counsel are codified in the City Charter, it would be highly desirable for any name change to be reflected in the Charter.

By way of background, Ms. Fulhorst recalled that the Mayor and Council recommended the name "Ethics Commission" when the Commission was created in 2001 because most other state and local agencies use this name. Although the City Council agreed with a name change recommendation made by the County Grand Jury in 2010, the Council suggested further analysis was appropriate and that analysis never took place.

To identify possible alternative names, she reviewed the names used by the state and local agencies that are members of the Council on Governmental Ethics Laws. Although most still use the name "Ethics Commission," other agency names include: Political Practices Commission, Public Integrity Commission, Office of Public Integrity, Governmental Ethics Commission, Government Accountability Commission, and Government Transparency and Campaign Finance Commission.

Commissioner Zinser commented that he would like the word "ethics" to remain somewhere in the Commission's name. He suggested Government Ethics Commission or Governmental Ethics and Campaign Finance Commission. He noted that, if the latter were chosen, respondents could be cited under "campaign finance" as opposed to "ethics."

Commissioner Kreit stated that he concurs with Commissioner Zinser, and noted that only a small percentage of Commission enforcement actions involve ethically questionable conduct. When the term "ethics violation" is used for all enforcement actions, he believes it detracts from the more serious violations. He stated that a name change could help distinguish between different types of violations, and he suggested Ethics and Political Practices as a possible alternative.

Commissioner Detsky-Weil expressed her view that a name change would create unnecessary complexity.

Commissioner Poat stated that he is in favor of exploring alternatives because the Commission regulates certain processes and failing to abide by some of these processes does not necessarily indicate unethical behavior. He indicated he prefers the name Political Practices Commission, which would be consistent with the name of the state agency (California Fair Political Practices Commission).

Commission Zinser suggested the name Governmental Ethics and Policy Compliance would be appropriate because some issues within the Commission's purview are ethics-related but the majority fall under policy compliance.

Ms. Fulhorst observed that the Commission was inclined to continue the discussion concerning a potential name change, and stated that she would ask the Charter Review Committee consultant if there is any applicable submission deadline.

**Item 10: Adjourn to Closed Session**

Commission Chair O'Neill adjourned the meeting to closed session at approximately 5:50 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 O'Neill called the meeting back into open session at approximately 6:40 p.m.

**Reporting Results of Closed Session Meeting of February 12, 2015:**

Ms. Cameron reported the results of the closed session meeting of February 12, 2015:

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

**Case No. 2012-57 - In Re: Contribution Limits: Individuals; Contributions from Organizations; Advertisements in Mass Media**

Motion: Dismiss  
Moved/Seconded: Fuller/Cochran  
Vote: Carried Unanimously  
Recused: Poat

**Case No. 2014-33 - In Re: Content of Campaign Statements; Filing of Campaign Statements**

Motion: Dismiss  
Moved/Seconded: Zinser/Fuller  
Vote: Carried Unanimously

**Case No. 2014-34 - In Re: Content of Campaign Statements; Filing of Campaign Statements**

Motion: Dismiss  
Moved/Seconded: Fuller/Kreit  
Vote: Carried Unanimously

**Case No. 2014-43 - In Re: Contribution Limits: Individuals**

No Reportable Action

**Adjournment**

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

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John O'Neill, Commission Chair  
Ethics Commission

[Redacted]

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Jennifer Blasier, Administrative Aide  
Ethics Commission

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