

MINUTES

ETHICS REVIEW COMMISSION MEETING JUNE 23, 2011 9TH FLOOR CONFERENCE ROOM - 5:00 P.M.

MEMBERS PRESENT

Maxey Scherr, Mayoral (Arrived at 5:30 pm)
Francisco Ortega, District #1
Paula Villalobos-Jimenez, District #3
Julian Gonzalez Herrell, District #4
Rodney Hansen, District #5
Alexander Neill, District #7

MEMBERS ABSENT

Raymond Rodriguez, District #2
Paul Harrington, District #6
William H. Rivera, District #8

OTHERS PRESENT

Elaine S. Hengen, Senior Assistant City Attorney
Sandra Dunsavage, Recording Secretary

I. CALL TO ORDER .

Seeing a quorum, Chair Neill called the meeting to order at 5:10 p.m.

II. APPROVAL OF MINUTES FOR DECEMBER 1, 2010.

Mr. Ortega moved to approve the minutes of December 1, 2010. Mr. Gonzalez seconded motion, all in favor and the motion passed unanimously.

III. INTRODUCTION OF NEW COMMISSION MEMBERS AND DISCUSSION ON THE STATUS OF APPOINTMENTS.

Ms. Hengen introduced Mr. Julian Gonzalez Herrell to the commission who was appointed by Representative Robinson. Ms. Hengen advised the commission that Mr. Hanson has been reappointed to serve a second term by Representative Quintana. Representative O'Rourke appointed William Rivera. The last appointee is Ray Rodriguez who is eligible for reappointment. Mr. Rodriguez is Representative Byrd's appointee and action for this appointee is still pending. All of the positions are filled. No further action taken on this item.

IV. DISCUSSION AND ACTION TO ELECT THE CHAIR AND VICE-CHAIR.

This item is tabled to the next scheduled meeting.

V. DISCUSSION AND ACTION FOR THE CHAIR TO MAKE THE PANEL ASSIGNMENTS.

Panel assignments made as follows:

Panel 1: Alex Neill, Maxey Scherr, and Raymond Rodriguez

Panel 2: Paul Harrington, Paula Villalobos-Jimenez, and Julian Gonzalez-Herrell

Panel 3: Francisco Ortega, Rodney Hansen, and William Rivera

VI. DISCUSSION AND ACTION ON THE ANNUAL REPORT TO THE CITY COUNCIL FOR 2010.

Ms. Hengen provided members with a draft of the 2010 Annual Report. Annual Report includes membership and the work undertaken, 4 meetings held in 2010, throughout the year, the Commission worked on proposals regarding the campaign finance provisions in the Ethics Ordinance. Meetings held in January and December commission worked on changes to the gift provision, inconsistencies in the Ethics Ordinance and Lobbying Ordinance. A copy of the 2010 Annual Report is provided as an attachment to the minutes.

Ms. Villalobos-Jimenez made the motion that the 2010 Annual Report be adopted and presented to City Council. Mr. Ortega seconded, all in favor and the motion passed unanimously.

VII. DISCUSSION AND ACTION ON THE STATUS OF THE CITY ATTORNEY'S OFFICE'S PROCESSING OF COMPLAINTS FILED BY JIMMY JANACEK AND SUSIE BYRD.

Ms. Hengen reported an issue to the commission that was encountered with the complaints from Mr. Janacek and Ms. Byrd relating to the requirements that are written into the Ethics Ordinance with the manner in which complaints are supposed to be processed. Ms. Hengen explained to the commission that due to the nature of the complaints, she has not been able to make the deadlines that are set forth in the ordinance. The ordinance prescribes the procedure for filing a complaint and then it prescribes the procedure for reviewing the complaint and determining whether or not it is a complaint that should be presented to the Ethics Commission for its investigation and handling. Two different complaints were received regarding the same individual, Maria Teran, member of the Public Service Board. Each complaint sites a different section of the Ethics Ordinance and different facts alleging why there is purported to be a violation of the Ethics Ordinance. Under section 2.92.080, the process for filing a complaint is that complaints are filed at the City Clerk's Office, the complaints are then forwarded to the City Attorney's for a review to determine whether the matter is within the purview of the Ethics Review Commission. Then within 14 days of the filing of the complaint per subsection F, the City Attorney's Office shall provide a copy of the complaint, the ordinance, the rules of the ethics commission to the respondent and advise that they may within 7 days respond their sworn filing at the City Clerk. In this case, Ms. Teran is represented by Legal Counsel and at the request of Legal Counsel, the copies of the correspondence were sent to their firm.

Mr. Gonzalez commented on the stipulation that in order to file an ethics complaint an individual must state specific legal requirements or sections in order to bring concerns or actions before a governmental body and asked whether this stipulation is really necessary. Ms. Hengen explained that one of the provisions in the ethics ordinance is that if an ethics complaint merely states facts and a part of the code is not identified and it does not clearly fit within one of the standards of conduct, then that is when the matter can be referred to a panel. Under section G upon receipt of a complaint, within 20 days of the filing of the complaint the City Attorney's Office will do one of the following: Refer the matter to the Ethics Review Commission as a whole if appropriate, or in the event deficiencies in the complaint are identified that prevent the City Attorney's Office from making a meaningful review and determination regarding appropriate disposition of the complaint, the City Attorney's Office will notify the complainant requesting that additional information be provided within 15 days. This is what was done in both of these cases. Under section G-4, if complaints cannot be readily assigned to the commission because of deficiencies, complaints that lack specificity in identifying the alleged violation in this chapter and complaints that appear to have been frivolously filed may be referred to a panel of the commission. There is a mechanism for a potentially unclear complaint to be referred to a panel so that a panel can make a review for determination.

Ms. Hengen explained to the commission the situation in Mr. Janacek's case he is complaining that Ms. Teran had acted on a matter in which she had a financial interest and the reason being is that previously her company named Sierra Machinery had previously sold machinery to a corporation named Redcliff. The allegation was that she participates in giving Redcliff an award, then Redcliff will like her better and purchase more machinery from her in the future. Under subsection C the standards of conduct states that an officer shall not participate in making or influencing in a City Governmental decision or action in which they know they have any financial interest distinguishable from that of the public generally or from that of other city officers or employees generally. The issue in this situation is the fact that Redcliff's interest in continuing to purchase more machinery from Sierra Machinery and whether this constitutes a personal pecuniary interest in the transaction or in Redcliff. Ms. Hengen explained that she felt the complainant failed to include pertinent information in his complaint or any relevant public documents. Therefore, she requested a copy of the bid award showing the award to Redcliff. These documents were requested upon review of the complaint, however, the documents were only recently received two days ago from the Public Service Board. It took about 2 weeks to get the documents from the Public Service Board. The same situation is true with Ms. Byrd's complaint and why that has taken so long to process. Ms. Byrd made statements in her complaint that Ms. Teran took actions that resulted in an administrative policy that allowed staff members to administratively make decisions to procure equipment from TXMAS from the PSB. Ms. Hengen explained that in her complaint there was nothing to show if there was any actual board action that Ms. Teran participated in. Therefore, she contacted the Public Service Board requesting all board action relating to the point and time that the Public Service Board began authorized participation with the TXMAS and at what point did the Public Service Board approve any purchasing policies and whether Ms. Teran was on the board at the time that any of those actions occurred. These documents were requested upon review of the complaint, however, the documents were only recently received two days

ago from the Public Service Board. It took about 2 weeks to get these documents from the Public Service Board. There are publicly available documents which could have relevant information and Ms. Hengen felt she needed to obtain those documents prior to completing the processing of the complaints. In the interest of justice of processing the complaints, Ms. Hengen took steps to take the best action necessary in requesting publicly available relevant documents even though the ordinance does not allow for this process and does not have a timeline for this type of processing. In the event, the deadline was missed. Discussion was had among the members of the commission reference this issue and members were in agreement to take these issues into consideration. No action taken at this time.

VIII. DISCUSSION AND ACTION ON MAKING RECOMMENDATIONS TO THE CITY COUNCIL FOR AMENDMENTS TO THE ETHICS ORDINANCE, AS REQUESTED BY THE CITY COUNCIL ON MAY 24, 2011.

Ms. Hengen reported to the commission that at the May 24, 2011 City Council Meeting, Representative Byrd placed an item on the City Council agenda proposing that “No officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, or shall be financially interested, directly or indirectly, in the sale to the City of any land, materials, supplies, or service, except on behalf of the City as an officer or employee.” Representative Byrd’s item proposes that this language be incorporated into the Ethics Ordinance. The proposed language is taken from the City of San Antonio’s Charter and Ethics Ordinance. This relates to a purchasing issue and the complaint filed against Maria Teran and the issue of entering into contracts. Representative Byrd has been advised that if she wished to move forward with incorporating this type of language into the ordinance it would actually have to go into the Charter because there is a provision under the State Law where all of the purchasing has to be done in accordance with the State Law provisions. There is a provision in the State Law that states that Charter provisions can be applied to the purchasing process. Representative Byrd is very interested in going forward with looking at a Charter amendment in order to add additional things to the ordinance and better regulate the issue of contracts. Along with this issue, Representative Byrd asked that the Ethics Commission make a review of the Ethics Ordinance and provide the Council with more input as to what kinds of things the Commission would like to see changed in order to make this a clear expectation. Ms. Hengen played the portion of the City Council Meeting for viewing by the commission rather than try and repeat what the City Council said. (What follows is the playing of the portion of the City Council Meeting of May 24, 2011 for item #12A.) Commission members were in agreement to take this into consideration for action at the next scheduled meeting. No action taken at this time.

IX. DISCUSSION AND ACTION REGARDING THE IMPLEMENTATION OF ORDINANCE NO. 17579, WHICH AMENDED THE ETHICS ORDINANCE ON JUNE 14, 2011 TO ADD PROVISIONS REQUIRING TRAINING ON THE ETHICS AND LOBBYING ORDINANCES FOR ALL OFFICERS AND EMPLOYEES.

Ms. Hengen provided members with a copy of Ordinance #017579 and explained that during one of the City Council Meetings, Representative Emma Acosta indicated that she is interested in going forward as soon as possible with amending the Ethics Ordinance to require periodic training for all City Employees and all Board and Commission members. Ms. Hengen explained that she and the City Attorney worked with her office and created Ordinance 017579. The model used for developing the training requirements are based on the provision in State Law requiring mandatory training for Elected Officials on open meetings and open records. The initial training on some of those provisions were crafted in similar language. The training requirement will not go into effect until January 2012 in order to have adequate time to prepare all the training. This training is not meant to be a one size fits all type of training. The training is supposed to be based on what the employee or the official needs to know. No action taken on this matter.

X. DISCUSSION AND ACTION ON A PRESENTATION CONCERNING THE IMPLEMENTATION AND EFFECT OF THE AMENDMENTS TO THE ETHICS ORDINANCE RELATING TO GIFTS THAT WERE ADOPTED APRIL 21, 2009.

Ms. Hengen provided members with a handout for this item and explained that this is a repeated item that was posted on the previous Ethics Review Commission agenda. Ms. Hengen reported to the commission that she wrote an article on accepting gifts for the City Manager's monthly Newsletter. Periodically the City Attorney's Office has written articles for this newsletter for purpose of explaining legal matters. No action taken on this matter.

XI. DISCUSSION AND ACTION ON RECOMMENDING AMENDMENTS TO THE PROVISIONS IN THE ETHICS ORDINANCE RELATING TO RESTRICTIONS ON APPEARANCES BEFORE THE CITY BY CURRENT AND FORMER OFFICERS AND EMPLOYEES. (TABLED FROM 12/1/2010)

This item is tabled to the next scheduled meeting.

XII. SCHEDULING OF NEXT MEETING(S).

Chair Neill asked in consideration of preparing the appropriate tasks, how much time would be needed. Commission members were in agreement to schedule the next meeting in 4 weeks.

XIII. ADJOURNMENT.

Motion made by Mr. Ortega and seconded by Ms. Villalobos-Jimenez to adjourn the meeting. All in favor and motion passed unanimously. Meeting adjourned at 6:43 p.m.