MINUTES

ETHICS REVIEW COMMISSION MEETING
DECEMBER 1, 2010
5TH FLOOR AMERICAS CONFERENCE ROOM - 5:00 P.M.

MEMBERS PRESENT
Maxey Scherr, Mayoral
Francisco Ortega, District #1
Paula Villalobos-Jimenez, District #3
Paul Harrington, District #6
Alexander Neill, District #7

MEMBERS ABSENT
Raymond Rodriguez, District #2
Andre Ewing, District #4
Rodney Hansen, District #5
Gracia Sandoval, 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 5:09 p.m.

II. APPROVAL OF MINUTES FOR SEPTEMBER 29, 2010.

Vice-Chair Harrington moved to approve the minutes of September 29, 2010. Mr. Ortega seconded motion, all in favor and the motion passed unanimously.

III. DISCUSSION AND ACTION ON THE STATUS OF APPOINTMENTS TO THE ETHICS REVIEW COMMISSION.

Ms. Hengen reported to the commission that some of the terms will be up on February 20, 2011: Ray Rodriguez, Rodney Hansen, Gracia Sandoval and Andre Ewing. Mr. Rodriguez, Mr. Hansen, and Ms. Sandoval are eligible for reappointment. Mr. Ewing's term will be termed out. No further action taken on this item.

IV. DISCUSSION AND ACTION ON MAKING A REPORT TO THE CITY COUNCIL REGARDING THE ETHICS REVIEW COMMISSION'S RESEARCH INTO A POTENTIAL AMENDMENT TO THE CAMPAIGN FINANCE PORTION OF THE ETHICS ORDINANCE TO RESTRICT THE TIME PERIOD FOR MAKING CAMPAIGN CONTRIBUTIONS.

Ms. Hengen explained that the Commission has had a number of meetings discussing issues and potential amendments to the campaign finance provisions of the Ethics Ordinance and after careful review and consideration of the issues involved, the

Commission determined that it would not recommend any change to the ordinance. At the previous meeting the Commission expressed that they would want to provide a report to City Council summarizing the research and advising City Council that the Commission would not make any recommendations at this time. Ms. Hengen prepared a report for review by the commission and provided members with copies of the report.

Ms. Hengen made a correction to the report correcting the date that the commission voted to withdraw its recommendation. Date on the report is corrected to reflect the date of September 29, 2010.

Mr. Ortega moved to approve the report with the correction as noted. Ms. Scherr seconded motion, all in favor and the motion passed unanimously.

V. DISCUSSION AND ACTION ON MAKING RECOMMENDATIONS TO THE CITY COUNCIL REGARDING ADDING PROVISIONS TO THE ETHICS ORDINANCE RELATING TO THE AWARDING OF DISCRETIONARY CONTRACTS.

Ms. Hengen provided members with a draft of a history of the proposals reference the awarding of discretionary contracts. Ms. Hengen gave a brief explanation reporting that most contracts that the City enters into are regulated by State Law. The State Law governs the competitive process by which contracts are awarded. There are contracts for which this regulation does not apply, for example contracts under $50,000, sole source contracts, and various other types of contracts, also known as discretionary contracts, where the City does not have to go through a competitive process. However, Houston, Dallas and San Antonio are cities that do have regulations relating to the awarding of discretionary contracts.

Ms. Hengen gave background information explaining that back in 2001 she prepared a memo to the Commission regarding the subject of discretionary contracts. The Commission began considering the topic in 2001 and potential provisions were drafted by the Commission. In 2002 the provisions were presented to the Legislative Review Committee along with a total re-write of the Ethics Ordinance. The Legislative Review Committee at that time consisted of members Paul Escobar, Jan Sumrall and Luis Sarinana. When the Legislative Review Committee looked at the draft of the proposed complete re-write of the Ethics Ordinance and the discretionary contract issue, they declined to move forward with the discretionary contracts provision, but the Legislative Review Committee did moved forward with the rest of the re-write of the Ethics Ordinance.

Mr. Ortega asked a question reference discretionary contracts and asked what makes a discretionary contract. Ms. Hengen explained that the City has an administrative process for discretionary contracts between $3,000 and $50,000. Prior to 2004 when the City operated under a strong Mayor form of government, the purchasing policy actually went to the City Council and the Council approved them. Every purchasing policy was actually approved by the City Council. Presently the Council has set forth certain items that they want to review, for example, different policies and procedures if contracts are

going over $500,000. The detail of Council approval of the policies is significantly less. Rather than approve every detail of the purchasing policy, they will approve wide policies and then delegate the details to the City Manager who then can delegate the details.

Vice-Chair Harrington commented and presented questions regarding the determination of the allocation of funds and formal disbursement of funds. Chair Neil commented that the goal of the Commission is not to make the process so burdensome that it would make enforcement of the policy difficult or impossible. In response to Vice-Chair Harrington's question, Ms. Hengen explained that the City does have an attorney who reviews every sole source letter.

Ms. Hengen advised the commission that she would meet with the new purchasing manager to see where he stands in the process as far as developing procedures. Ms. Hengen suggested that a presentation could be scheduled for the new purchasing manager to attend one of the commission meetings to talk about what procedures he is trying to develop. No action taken on this item.

VI. DISCUSSION AND ACTION ON A PRESENTATION CONCERNING THE IMPLEMENTATION AND EFFECT OF THE AMENDMENTS TO THE ETHICS ORDINANCE THAT WERE ADOPTED APRIL 21, 2009, TO PARTICULARLY INCLUDE THE PROVISIONS REGARDING GIFTS.

Ms. Hengen provided members with a copy of a memo she prepared relating to the gift provisions in the Ethics Ordinance. Ms. Hengen explained that in the memo she summarized the issues the Commission had previously discussed and heard relating to the amendments to the section on gifts. Ms. Hengen gave background information reminding the commission that in April of 2009 a significant amendment was done and changes were made to the section of the Ethics Ordinance relating to gifts. As a result of the changes, it generated questions and new issues because the provisions were significantly different and far more restricted than they had previously been. Information pertaining to current issues and questions with regard to the new gift provisions are noted on page 3 of the report. Initially there were many questions ranging from 'What is a gift to the City?', 'What is a gift that I can take?', 'What becomes a political contribution?', etc. The State Ethics Commission drew further distinctions between gift to public officials or to elected officials versus what are actually campaign contributions or political contributions because under Texas Law an elected official or politician cannot accept a political contribution from a corporation. A copy of Ms. Hengen's memo is attached as part of the minutes.

Chair Neill commented that the fact that questions are being asked shows that the gift provision is working as a measure to keep people from doing things they shouldn't be doing.

Ms. Hengen suggested she would review the particular language for any items that are of significant occurrence. No action taken on this item.

VII. 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.

Ms. Hengen reported to the Commission that this item had been added to the agenda due to an issue that came up recently. The issue is a result of an appearance that was made before the City Council by an employee and the City Manager asked that this issue be looked into with regard to whether or not this type of appearance is appropriate under the ordinance. In looking at the issue it was determined that there were some issues with the language in general. In looking back at this provision, this is one of the provisions that contains some of the original language. The provision has to do with subsection 'O – 3'. Over time in starting with the original language of the ordinance from 1993 and then amending it in 2002, and then amending it again in 2009, the ordinance ended up with inconsistent provisions. It appears that the ordinance ended up with some more strict rules for former board members than we have for existing board members. It also appears that too broad of a prohibition was created on certain types of speech activities under the First Amendment, and did not tie them adequately to the requirements of the First Amendment. Also in adding provisions relating to restricting people from becoming registered lobbyists, this may have been placed in the wrong place in the ordinance. A provision was placed in the only penal section of the Ethics Ordinance that prohibits somebody from becoming a registered lobbyist, but nothing was placed in the Lobbyist Ordinance to prohibit them from registering. Therefore, we have a situation where someone comes in wanting to register as Lobbyist and in turn, the City takes the $100 payment and registers them, then the City turns around and says those who have been registered will be prosecuted for registering. In order to prohibit someone from being a registered lobbyist it requires going to 2.94 and then back, rather than make it a criminal violation under 2.92 to be a registered lobbyist.

Ms. Hengen further explained that she has been working on rewriting the provisions in 2.92.050-O and P and 2.92.060 to prepare a proper standard under the first amendment to address the First Amendment issues that apply to public employees who want to appear and speak before Council. One prospective area to address is the legal issue relating to employees and first amendment rights in order to clear up potential vague language in 2.92.060. In the case of former employees, public officials, board members in 2.92.060, the question is what is an appropriate period of time when applying restrictions. What are the necessary types of restrictions that should be in place and then how long should they be in place? With regard to the length of time, the closest analogy and rationale could be what is used for lawyers. The provision in the code of professional responsibility relating to conflicts of interests for lawyers, the restrictions for the issues for determining what is a conflict of interest a government lawyer who leads government service are much broader than a lawyer in private practice that leaves one firm and goes to another firm. The rules are different and conflicts of interest are more broadly defined.

The provision from 1993 to 2009 had referenced 12 months as the period of time where a former employee or former officer was de-barred from bringing anything before the City.

Once the amendment adding the lobbying provision was created, all the references to 12 months were taken out. The amendment then only prohibited someone from being a registered lobbyist for 24 months. The restrictions on employees and elected officials were all lumped together and an attempt to try and separate them out was done. Careful thought went into including very precise language for example, in 2.92.060 subsection "A" is limited in the draft addressing only the officers and prohibiting them from coming back to represent any other personal organization and formal or informal appearance before the city if the officer has received or shall receive compensation from the person or organization they are representing. There is also a limitation for board members which only applies to the boards that they are members of. Language was also added in order to make sure an employee, public official, board member, etc. is not restricted from applying for the same services, benefits, license or permits.

Motion made by Chair Neill to table Item #7 to the next meeting, seconded by Vice-Chair Harrington. All in favor and the motion passed unanimously.

VIII. SCHEDULING OF NEXT MEETING(S).

Ms. Hengen stated to the commission that she would send a reminder to Council members alerting them of vacancies that need to be filled because the Ethics Review Commission is working on a provision to amend and clarify language to the ordinance.

Chair Neill recommended setting a tentative date for scheduling of the next meeting. Tentative date for next meeting is Wednesday, March 16, 2011.

IX. ADJOURNMENT.

Motion made by Mr. Ortega and seconded by Ms. Maxey to adjourn the meeting. All in favor and motion passed unanimously. Meeting adjourned at 6:14 p.m.