



Agenda

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PUBLIC STUDY SESSION
OF THE
GOVERNING BODY

Tuesday, November 9, 2010
5:30 p.m.
City Council Chambers

- 1) CALL TO ORDER
- 2) ROLL CALL
- 3) APPROVAL OF AGENDA
- 4) OVERVIEW OF CURRENT CODES AND COMMITTEES
 - a) Code of Ethics
 - b) Campaign Code
 - c) Ethics and Campaign Review Board
 - d) Ethics and Rules Committee
- 5) PUBLIC COMMENT
- 6) COMMUNICATIONS FROM THE GOVERNING BODY
- 7) ADJOURN

SUMMARY INDEX
OF THE
STUDY SESSION OF THE GOVERNING BODY
Santa Fe, New Mexico
November 9, 2010

<u>ITEM</u>	<u>ACTION</u>	<u>PAGE #</u>
CALL TO ORDER AND ROLL CALL	Quorum	1
APPROVAL OF AGENDA	Approved	1
OVERVIEW OF CURRENT CODES AND COMMITTEES		
CODE OF ETHICS	Presentation	2
CAMPAIGN CODE	Presentation	2
ETHICS AND CAMPAIGN REVIEW BOARD	Presentation	2
ETHICS AND RULES COMMITTEE	Presentation	3
DISCUSSION BY THE GOVERNING BODY	Discussion	3-5
PUBLIC COMMENT		5-10
COMMUNICATIONS FROM THE GOVERNING BODY	Information/discussion	10-18
ADJOURN		18

**MINUTES OF THE
STUDY SESSION
OF THE
GOVERNING BODY
Santa Fe, New Mexico
Tuesday, November 9, 2010**

1. CALL TO ORDER AND ROLL CALL

A Study Session of the Governing Body of the City of Santa Fe, New Mexico, was called to order by Mayor David Coss, on November 9, 2010, at approximately 5:30 p.m., in the City Hall Council Chambers. Roll call indicated the presence of a quorum, as follows:

Governing Body Members Present

Mayor David Coss
Councilor Rebecca Wurzbarger, Mayor Pro-Tem
Councilor Patti J. Bushee
Councilor Christopher Calvert
Councilor Miguel Chavez,
Councilor Carmichael A. Dominguez
Councilor Rosemary Romero
Councilor Ronald S. Trujillo

Members Excused

Councilor Matthew E. Ortiz

Others Attending

Robert Romero, City Manager
Geno Zamora, City Attorney
Yolanda Y. Vigil, City Clerk
Melessia Helberg, Council Stenographer

3. APPROVAL OF AGENDA

MOTION: Councilor Wurzbarger moved, seconded by Councilor Chavez, to approve the agenda as published.

VOTE: The motion was approved on a voice vote, with Councilors Bushee, Calvert, Chavez, Dominguez, Romero, Trujillo and Wurzbarger voting in favor of the motion and none against.

4. OVERVIEW OF CURRENT CODES AND COMMITTEES

a) CODE OF ETHICS

A copy of a power point presentation "Ethics and Campaign Ordinances," for the City Council Study Session of November 9, 2010, is incorporated herewith to these minutes as Exhibit "1."

Adrian Terry, Assistant City Attorney, presented information from Exhibit "1, and reviewed the contents of the Code of Ethics and Campaign Code which are in the Council packet. Please see these documents for specifics of this presentation,

Mr. Terry stressed that the Code of Ethics is applicable to elected officials and for the most part to public employees. He said there is a process for disclosure and for recusal when there is a conflict.

b) CAMPAIGN CODE

Please see item 4(a) above.

c) ETHICS AND CAMPAIGN REVIEW BOARD

Mr. Terry said the purpose of the Ethics and Campaign Review Board (ECRB), purpose is to enforce the Code of Ethics and the Campaign Code. The ECRB is complaint driven, so if there are no pending issues, there may not be much action by the ECRB.

Mr. Terry said the ECRB is responsible for providing advisory opinions in relation to the two ordinances; periodic review of the ordinances to see if any changes are necessary regarding changes in legislation or problematic sections; and provide recommendations to the City Council.

Mr. Terry said the ECRB has the authority to conduct audits and perform investigations, many of which are related to complaints which arise under the two Codes. He said audits generally are related to the Campaign Code, and investigations to the Code of Ethics.

Mr. Terry said if the ECRB receives a complaint, it investigates and can institute an investigation to get any needed information. One of the most important things the ECRB does is that it hears complaints and makes determinations about what the appropriate outcome should be, based on the rules prescribed by the Code of Ethics or the Campaign Code. Consequently, the ECRB adjudicates these complaints, brings them to final resolution, and make a recommendation to the City Council for remedial action, if necessary.

d) ETHICS AND RULES COMMITTEE

Mr. Terry said the Ethics and Rules Committee is a standing committee with some overlap of the ECRB, but there are distinct functions between the two bodies. The Ethics and Rules Committee is more advisory in nature and may review any number of matters in various categories of proposals which come before the City Council. It typically provides review of information related to campaigns, elections, ethics and open government compliance such as the Open Meetings Act.

Mr. Terry said the duties of the Committee are to make recommendations to the Governing Body about the matters which come before it, as well as to perform an annual review of the Code of Ethics. He said the Code of Ethics talks about ethical behavior, conflicts of interests, campaign practices.

Mr. Terry said the ECRB is a quasi judicial/adjudicatory body, complaint driven which makes determinations about what happens in relation to the two ordinance. He said the Ethics and Rules Committee primarily is an advisory body which reviews various pieces of action which comes before the City and makes recommendations to the Governing Body, as well as periodically reviewing the Code of Ethics.

The Governing Body asked questions, commented and made suggestions as follows:

- Councilor Dominguez said Mr. Terry spoke about distinct functions between the ECRB and Ethics and Rules, and asked him to talk about those functions.

Mr. Terry said the key distinctions between the two bodies is that Ethics and Review Committee will review proposals that come to that body in the same way any other body might discuss those proposals and make recommendations to other Committees and the Council as those move through the process. He said the ECRB may have the same advisory role, but it is an adjudicatory body, holds hearings and generally is complaint driven. The ECRB enabling legislation provides it will meet at least 4 times a year to discuss business. He said part of this is to stay on top of campaign issues. Otherwise, it will meet when a complaint is received. The ECRB will convene a subcommittee to review the sufficiency of the complaint, and thereafter take the appropriate steps.

- Councilor Dominguez asked Mr. Terry if he has an opinion as to whether the adjudicating body should be a separate entity than a recommending body.

Mr. Terry said, "No, I don't think so. I think the only difference that I'm able to determine, based on the ordinances, is that the ECRB does have membership qualifications. And part of those membership qualifications is to make sure there are a certain number of attorneys on the Board who are familiar with quasi judicial proceedings, so they can conduct a hearing and the investigatory process as it should go."

- Councilor Dominguez asked Mr. Terry, in terms of making a recommendation on a policy and actually adjudicating or hearing the intent of that policy, if he thinks there needs to be a distinction between these two.

Mr. Terry said, "No, I don't."

- Councilor Chavez said, with regard to the comment that the ECRB is complaint-driven, you could say that about 90% of our ordinances. They're all complaint driven, so this isn't any different from most. He said the one area they overlap is in the periodic review of the Ethics and Campaign Code. The ECRB does a periodic review and the Ethics and Rules Committee reviews the Ethics Code on an annual basis. He asked when those were reviewed.

Mr. Terry said he doesn't know. He has attended the most recent meetings of both committees and those ordinances have been included in the packet and have been topics of discussion.

- Councilor Chavez asked if the one year review timeline has come and gone.

Councilor Dominguez said the Ethics and Rules Committee did review it a few months ago. However, we never made the Committee recommendation because of things that have happened.

- Yolanda Vigil said it is to be reviewed no later than June 30th of each year. The Ethics and Rules Committee did review it timely this year.

- Councilor Chavez asked if the ECRB reviewed both ordinances as well.

Ms. Vigil said the enabling legislation for the ECRB doesn't provide it has to review those by a certain date. She said after the 2010 election the ECRB did review and are making recommendations on the Campaign Code.

- Councilor Chavez said in the materials presented to us there is a bullet point which reads that there is a periodic review of the Ethics and Campaign Codes. There is another bullet point for the Ethics and Rules Committee to annually review the Ethics Code. There seems to be some overlap on these two points and asked if we are holding to the annual review in both areas.

Geno Zamora said under the ECRB enabling legislation, Section 6-16.2, Powers and Duties provides as follows: "D. The board shall periodically review and recommend changes for improving the Code of Ethics or the Campaign Code within six months following an election." He said the ECRB has this duty also, but it is a different time frame.

Councilor Chavez said in a sense we're already doing this now, and doesn't know whether or not it coincides with the annual review, saying he is just raising that question..

- Councilor Romero said one of the things Mr. Terry didn't include in the differences between the two committees is that the Council adopted a Resolution providing that the Ethics and Rules

Committee is responsible for Districting, which needs to be considered as we discuss the two bodies. Secondly, one of the statements was "members shall be qualified by training and experience and have the ability to exercise sound and practical judgment regarding those powers and duties of the committee," noting it actually is a Board. She asked if the majority of the members of the ECRB are lawyers.

Mr. Terry said he is uncertain but he thinks 2-3 of the members are attorneys.

Councilor Chavez said it provides that there shall be at least two attorneys.

- Councilor Romero said the appointments to the Ethics and Rules Committee are made by the Governing Body and there is no judgment on their qualifications, saying she is seeing Mr. Zamora nodding that this is correct. She wants to be sure that everyone understands that this is a major difference between the two.
- Councilor Romero asked Mr. Terry if he made a scan of other cities, and if it is common practice to have this kind of setup.
- Mr. Terry said he isn't certain, saying he hasn't conducted comprehensive research of other public bodies. The only experience he has, for the most part, is with State government, noting certain public bodies have codes of conduct and other don't, but the standards of behavior are the same, regardless, and there are certain statutory requirements with which they must comply regardless of whether it is in writing in a code that is easy for people to pick up and carry.

5. PUBLIC COMMENT

Mayor Coss gave each person four (4) minutes to speak to this issue.

A copy of League of Women Voters of Santa Fe County "Ethics Code/LWV Positions," submitted for the record by Jody Larsen, is incorporated herewith to these minutes as Exhibit "2."

A copy of the "Code of Judicial Conduct," 2006 by the State of New Mexico, submitted for the record by Judge Ann Yalman, is incorporated herewith to these minutes as Exhibit "3."

A copy of a Memo to the Governing Body: Ethics Up!, the statement for the record, submitted for the record by Marilyn Bayne, is incorporated herewith to these minutes as Exhibit "4."

A copy of a proposed Ordinance amending the Code of Ethics, proposed by a community group, entered for the record by Marilyn Bayne, is incorporated herewith to these minutes as Exhibit "5."

A copy of the City of Espanola Code of Ethics Ordinance, submitted for the record by former Mayor Joseph Maestas, is incorporated herewith to these minutes as Exhibit "6."

Jody Larsen, League of Women Voters, provided copies of the League's position on this issue. Ms. Larsen read the League's position into the record, urging the City Council to remedy the deficiencies in the Ethics and Campaign Codes, noting at this time they cannot endorse or specifically comment on any proposed ordinance changes and resolutions in the area of ethics, but they do have general positions on some important aspects of ethics. Please see Exhibit "2" for the text of this written statement from the League of Women Voters of Santa Fe County.

Judge Ann Yalman , 441 Calle La Paz, said she is speaking as a member of the public and as a person to whom these Codes may/do apply. She said there is a Code of Judicial Conduct which governs the Municipal Judge and other judges. She provided the Governing Body with copies of the Code of Judicial Conduct. She said whatever is imposed by the City would be over and above this Code. She said she is providing this Code to inform the Governing Body that it exists and that it might be helpful to see another Code of Ethics which has been imposed on someone in a slightly different position. She said it has some overlap she believes would be helpful for the Councilors to look at. She said the **Municipal Court** has adopted a Judicial Employee Code of Conduct which they basically took from the State Judicial Employee Code of Conduct, noting that employees in a Municipal Court are in a slightly different position in terms of impropriety than others. She didn't bring a copy because it applies to the employees and not the public officials.

Judge Yalman said there has been thought of public funding for election of public officials, and believes the Judge, in particular, is a position where there should be public funding as opposed to collecting money from "people who usually end up in front of you."

Marilyn Bayne, 622½ B, Canyon Road. Ms. Bayne said a lot of people are very concerned about ethics reform, and a lot of people couldn't be here this evening because they are at the County on another public matter. She said it is a busy week for community volunteer organizations and people serving on public boards and commissions. She said their message to the City is Ethics Up!. She said there are serious deficiencies in the Ethics Code, and overall they feel "what we have is not good enough." Mr. Bayne then read a prepared statement into the record. Please see Exhibit "4" for the text of this statement.

Lynn Canning, 1202 Apache Avenue, Ms. Canning noted the proposed Ordinance revision isn't perfect, but it is a good start for a discussion by the City Council and the Community. She said, "We feel as though the community also has a responsibility in terms of helping to create and maintain an ethical environment. So we aren't saying this is the 'be all end all', but we wanted to get this on the table for an open discussion that we hope you will address as a committee of the whole, including the entire Council, because it matters to all of you. And it matters to all of us to have this conversation in public and review your Code, and hopefully have staff look at some of these proposed changes and compare them and bring them back to you at another meeting."

Councilor Bushee asked for a draft copy of the Ordinance which they can review while they are talking to the Council.

Ms. Bayne said there is a draft, but that will be distributed after this presentation.

Ms. Canning then continued reading the statement for the record which was started by Marilyn Bayne. Please see Exhibit "4" for specifics of this presentation.

Ms. Canning highlighted the changes in the ordinance saying it creates an "ethics officer" from among the ECRB to receive anonymous complaints. She asked the Governing Body to expedite review of the Ordinance, and to please do this in public meetings. She said rather than sending this through the committee process or to a task force, they believe the work should be done by the Governing Body as a whole in public meetings, and the community will be as helpful as we can which will allow us to get ethics reform sooner and result in a new and improved Ethics Code.

Ms. Bayne distributed copies of the proposed Ordinance to the Governing Body and for the public record.

James Harrington, 1588 Cerro Gordo Road, State Chair of Common Cause. He said he has worked on these issues for the City for several years. He said he wants to comment on the process of legislation in this area, having been involved in it for 8 or 9 years. He has discerned a pattern in how we've fallen short over and over, despite a lot of effort by the Council and a lot of good people. He said you usually start with a good draft of a piece of legislation which fixes an ethics problem(s) which comes from the City Attorney, noting Common Cause has proposed several as well as others in the community. He said then begins the "meat grinder" process, and this is where the legislation goes astray and ends up with contradictions and ambiguities which is the current problem in the Code. He said normally happens in one of two places, and sometimes both. The first is in the committee process, particularly in the Ethics and Rules Committee, which he believes has made a lot of mistakes in fouling up legislation and introducing problems, which sometimes are straightened out at the Council level, or lately in the ECRB. Sometimes, it ends up in the ordinance.

Mr. Harrington said the other place where mistakes occur are at the last minute at the Council level when the Council makes last minute amendments. He said he doesn't think a genius could get it right with only 3 minutes of debate, and it is amended without input from the public and it "comes out of the hip pocket that night," without analysis by the City Attorney's office. He believes this has contributed to some of the "mess" that's in the Code.

Mr. Harrington said once again, we have a decent draft as a starting point, noting he was part of the process although there was input from many sources and they tried to take the best from all kinds of places. The core of the current Code basically is good. So, this legislation is before you once again, and although it's not perfect it is a good start. He thinks the trick now is not to repeat the past. He said the suggestion made by Ms. Canning and Ms. Bayne is good, which is for the Governing Body to handle this exclusively as a committee of the whole, don't send it to committees. Hopefully, if people on the Council

have ideas, they will introduce them the context of the hearing of a Committee of the whole, and not on the last night when it is being adopted, so there is an opportunity for the City Attorney to look at them. He said when the Council is finally agreed as a committee of the whole on the changes, then it should go to the Council for final adoption into law. He said if we follow this process we won't go astray as in the past, and we'll finally get it right.

Mayor Joseph Maestas, former Mayor of Espanola, 2304 Calle Brocha, Santa Fe, said he is here to share his experience in Espanola. He said they went through the same issue in Espanola, and they decided that ethics and accountability for governing officials has to be in the law to carry the force of law. They did national research to find ideal ethics ordinances. In 2007, they adopted a comprehensive ethics ordinance. It has many sections addressing disclosure, disqualification, contracts. He spoke about the process of dealing with complaints under the Espanola Ordinance. Once a complaint is filed, the Mayor appoints 3 City Councilors and the City Attorney as the investigating committee to review the complaint. If they felt it had merit, they would convene a citizen based ethics board, comprised of 5 citizens chosen at random from a pool of 18 people. He said each member of the governing body would appoint 2 people to the pool of active members who would serve when called upon. It is a citizen based process. It has been used several times and works, but needs some tweaking. The bottom line is this is very serious business, and this Governing Body has the responsibility to ensure that there is trust in government. He is offering Espanola's experience and Espanola's law as a reference as you move forward. He would be glad to share information with them. He is very proud of the Governing Body. He said home rule cities are the most participatory form of government, which is evident by the number of people who are involved in and curious about this issue. He said the law should be comprehensive, has the force of law and should involve the citizens where you can.

Signe Lindell, 147 Gonzales Road, said spending time working on ethics policy is a righteous task and the time for that task is now. She saw the proposed Code on Saturday, and she believes the proposal does all the work needed for progress, commenting we won't achieve perfection. She asked that we not drag our feet on progress. She said any code, any time, can be purposefully misinterpreted. She said we all know it's not ethical to steal from the City or to lie to the boss, a supervisor, a coworker or the public. She said the Code of Ethics should go beyond these givens. She said asking officials and employees to police themselves and each other, with no clear, set, safe process is a formula for mistrust, insincerity, betrayal and ultimately self-serving false accusations. She said protecting whistle-blowers seems like a "no brainer," in these times. Also having an ethics officer seems like a great idea.

Ms. Lindell said clear expectations, combined with clear process, will lead to a clear conscience for all of this. She said a breach in expectations leads to great cost in the community, as well as results in an unearned cloud on officials and employees. She said we've all heard stories of public officials and employees acting inappropriately, being on the take, doing favors for friends and family, and this hurts the community – not taking action hurts our community, and it is hard to determine the cost to the community. She said it can result in people becoming cynical, not voting, not volunteering and not wanting to serve the City on board and commission or not wanting to run for office. Although we don't know these costs, the community suffers.

Ms. Lindell said this is an opportunity to do better and she invites the Governing Body to see this as a positive opportunity, rather than just another task with which we are faced. The best way to avoid ethical dilemmas is to avoid their occurrence in the first place. She said practices such as developing Codes of Ethics and conduct are important, noting it minimizes the opportunities for unethical behavior. The time for this now. It isn't that hard. She hopes the Governing Body will grab this opportunity and serving the City will be easier.

Nicole De Jurnev, 201 Alamo Drive, said she would feel more comfortable if the Ethics Committee had nothing to do with the Governing Body and it would be a separate body. She was hesitant to speak this evening, because there are things she wants the Governing Body to approve in the future. It is an uncomfortable situation to have City Councilors on the Ethics Committee. It would be better if it were to be a separate body perhaps appointed, in part, by the public, but a safe place where you could make a complaint without fear of reprisal. She said, as a citizen of Santa Fe, she is enraged when she sees pounding headlines in the newspaper about corruption on the Council, and nobody does anything. She said we are paying salaries to "you guys" to act. She said if it isn't a separate Committee, we want the Governing Body to act, and not just sit there. She said everyone knows this is dishonest, and said, "Act for God's sake. Punish people who are behaving badly or stealing or destroying the trust we have in our government. We want to believe in you. We want to trust you. We want to feel that you are doing the best you can for us, and we want to feel we are doing the best we can for you, so that's mutual. We can disagree, but we lose all faith when we see money problems, and maybe they're not true. You need to take immediate steps. She doesn't want to see headlines week after week about this person or the other person being on the take or not following ethics. This is not right. So, immediate action should be taken on all things in the newspaper so we know things are being acted on." She said we don't to feel like it is the federal government. This is our City and we want that trust back. Please give it to us.

Michael Friestadt, 123 Calle Don Jose, District 1. Mr. Friestadt said he appreciates what this Governing Body is trying to do in terms of ethics. He is a former Democratic Precinct Committeeman for the City of Chicago and a government employee. He said he knows how it worked in Chicago years ago, and they just went along with it. However, the City of Chicago has made a lot of improvements in ethics and the way the City is run. He said the Ethics Code should protect the citizens, not the Councilors, employees and elected officials. He has no connection with the City and said he pays his taxes and parking tickets on time, and loves Santa Fe. He asked the Government to focus hard on this effort, noting it will be difficult. He said it should be as specific as possible as to what is a conflict of interest. He said we read the newspaper about someone who felt there was no conflict. He was disappointed with the turnout this evening. He said one City Councilor raised a complaint, but there wasn't much from anybody else. He appreciates the difficulty of the task, but he expects good ethics. He said the Governing Body owes the public the best you can. He appreciates Councilor Chavez's efforts, which are very significant, which is what we are looking for.

Karen Heldmeyer, 325 E. Berger, former Santa Fe City Councilor, said as the Councilors are aware, we are hearing from the public in the super market and elsewhere. What she hears the most is that

people have had it with ethical problems with the Council. People are discouraged, disgusted, and not just with what appears in the newspaper, because almost everyone has a story that hasn't appeared in the paper, that haven't gone to the ECRB and know there are significant problems. They are wondering what the Council is going to do about it, if anything. She said this isn't "nibbling around the edges, and changing a word here or a word there." It is taking a real close examination of what is acceptable and what isn't, in terms of behavior for elected officials, employees and other public officials. She said the people are waiting to see what you are going to do.

Councilor Heldmeyer said she has seen the proposed draft ordinance, and in some places it is stronger than the current Code, and several places it's weaker, and in a couple of places it's equally weak because it is using the same weak and hard to define language as current code. She appreciates their efforts to make it stronger, but if you use some of the things in the current Code which are weaker, it will just play into peoples' cynicism, and she knows because she is one of the most cynical people in town.

Councilor Heldmeyer said, with regard to the political angle, we saw in the election last week people being fed up, and ethics had a lot to do with it, and that "brush tarred people" who may have been perfectly ethical themselves, but were associated with those who weren't so ethical. She said saying to yourself that you don't do that doesn't matter. If people think that the group as a whole has problems, what you will see in the next election is "throw the bums out." She said you may wind up doing this and getting someone different, but not always better, and may not really reflect the wishes of the majority, but it will be different. She said, as Signe said, this is your moment. You've got to do something. And you've got to do something about the Code, and when strengthened, you've got to do something about enforcing it. That means giving the enforcing body the tools they need to do that. She said right now, what we have is a complaint-driven system where people may or not make complaints. If they do, they get hassled. She said a committee that is not allowed to do what they sometimes would like to do about ethics problems or campaign problems that they say. She said if you're going to do something, do something strong, bold and do it quickly.

The Public Comment was closed

6. COMMUNICATIONS FROM THE GOVERNING BODY

Mayor Coss expressed appreciation for the work of the people to bring this Ordinance to the City, so we're off to a good start.

The Governing Body commented, asked questions and made suggestions as follows:

- Councilor Chavez thanked the Governing Body in attendance and the public who were able to attend. He wanted to expanded on a concept mentioned earlier, noting we have busy lives and many couldn't attend the meeting. He would like to extend the public comment portion to permit

written comment, and comment via the web page, so we can keep the public involved at every level possible. Another suggestion was to continue to involve the public, so the written comment and comment via the web page will do this, but it does need to be timely, and noticed to the public so they can make time to do that.

- Mayor Coss asked Ms. Vigil if all of the material in the packet and the comment sheet are on the web page.

Ms. Vigil said the comment sheet is not on the web page, but that can be done.

Mayor Coss asked if there is a comment sheet this evening, and Ms. Vigil said no.

- Councilor Bushee thanked everyone for attending and for people who continue to ponder this issue. She really appreciated the written concrete suggestions which we can review thoroughly. She said Judge Yalman's Judicial Code of Ethics is a very tight standard, and believes we would have more recusals, or people thinking twice as to whether their decision would be affected under that standard. She said she found it interesting that there was a suggestion that "the judge may initiate or consider any *ex parte* communication when expressly allowed by law to do so."

Councilor Bushee said nobody really tackled the Campaign Code, and wishes we could have followed the wishes of the public to do public campaign reform, and would still like to do that because it will go a long way in removing campaign dollars from decision making. She did see something in the ordinance that they are tackling the idea that any campaign contribution of \$400 in the aggregate is the maximum contribution. However, that would mean we would have to change the Campaign Code as well.

Councilor Bushee said one of our colleagues did try to submit new ideas, but the majority were written by attorneys, Jim Harrington in particular who has been following this issue for a long time. However, she found that the lawyers tried to back away or weaken the Code to some degree because of a fear of crossing legal lines. This has been her frustration with regard to interpretations by various attorneys offices with whom she's served. She said conflict of interest extends far behind this Governing Body. She felt a recent Land Use Director had a direct conflict, in that he worked on something substantially, and then put it out to the public and "hung up a shingle on the same particular issue." She asked for an opinion from the City Attorney and was told it wasn't a problem. She wouldn't know how to take it to the existing ECRB.

Councilor Bushee said it is important as to who the body is which has enforcement powers, but it is very important that body be distant from, and not connected to, the Governing Body, as well as that can be. She said appointments always run into politics along the line. She said education of employees and the Governing Body about these laws and how to comply is very important. She has served on various Committees during the years and tried to tighten the Ethics Code and to move it into a contemporary setting as other communities who are dealing with this. It always comes down to enforcement, who is going to enforce it and what penalties will apply. She said we adopt these things, but doesn't believe we have ever educated our employees about how to

comply, and taking a Christmas gift, for example, at Development Review and Permits. She said there is no one to enforce it, or to say that looks bad or could be undue influence and should stand out.

Councilor Bushee said she heard a reference to nepotism, noting we do have a Nepotism Ordinance. She doesn't know if we want to mix that with ethics, but we do need to "marry" campaign reform in whatever we do. She said it will be important for the body to be independent and enforce the ordinances, and remain independent.

- Councilor Bushee said she is unsure about the anonymous complaint provision until she sees what other communities are doing, because that can produce unintended consequences, and she wants the Council to look at that more closely. She said we have more to work with than in the past. She said she doesn't believe anyone is trying to drag their feet. She will focus on interpretation and enforcement as we move forward. She thanked the group for the suggestion, and the League of Women Voters for always being available as a sounding board, and hopes they will continue to participate. She said the studies haven't been done the League needs, but it is a little bit of "seat of the pants" at this point.

Councilor Bushee said she hopes everyone in attendance this evening would pursue this with the County, and should be done County-wide. She likes the pro-active nature of what has been presented this evening.

- Councilor Romero thanked the groups that put together a great starting point, and would like to get agreement from the other Councilors that we would continue to do our work as a committee of the whole and not send this matter to other commissions and boards. She wants the Council to deal with the issues as a committee. She would like to determine the public process for all of this. She said we have heard from the public, and has seen the great work which has come from the public, and wants to continue to involve the public in this process.

Councilor Romero would like to talk about what comes after this process. She said her direction to staff would be "to bring back what was already changed and had been proposed in 2008, but doesn't take effect until 2012, so we clear what are the codes we're working under and what goes into effect in 2012, because there are significant changes. I hope that we come up with a process and are clear, as a committee of the whole, on the process of redistricting which will be huge in the next couple of months as that process moves forward. And then, my last point is I would be willing to consider that the changes that I have proposed to resolution and ordinance changes, that kind of hit the wall, I hope... I would be willing to let go of those changes and look carefully at what's being proposed as the starting point, so that the changes I proposed would just go away. It could be incorporated, but I think there needs to be a starting point and I think it would muck things up to start what I had already thought was a good start. I think this is a great start and I would like to propose is that we use the current model, this model and look at a couple of other things that could be brought in and strengthened, if need be, but I think this is the starting point, and I would be willing to let go of what I had already proposed.

Councilor Bushee said, as a cosponsor on those ordinances, she doesn't want to throw anything out, but doesn't believe that was the place to start from. She said, "That was the body of work that I referenced that I thought weakened some of the existing Code by being very extra cautions, and thinks this is more closely modeled on the model codes that were reviewed and sent to everybody." She doesn't want to throw anything out just yet.

- Councilor Romero said, to be clear, with all due respect, a lot of the model code which was referenced and which we all received was included in our resolution/Code changes. That aside, I think we all got the model code which has been incorporated. She would like to use the current version of what has been presented as the starting point, using some of the old Code, commenting, "I am still willing to let go of some of the things we started, and use this as the starting point for discussion, looking at the existing Code."
- Councilor Chavez said this is a good starting point, but he sees two starting points. He said this is focusing on ethics, but there also needs to be revisions for the Campaign Code, so those need to be tracking at the same time, and both need work. He said the ethics questions got us to this point, but he agrees with Councilor Bushee. He said the reason he called for this meeting is so we could focus on both and do both at the same time. He said it has to be done in "lock step."
- Councilor Calvert said his personal preference is for a single body to act on these issues. He said as he reads the purpose and duties of the two bodies, he sees a lot of duplication, which results in a lot of confusion for the Council and the public. He said this body definitely needs to be independent of the Council. He said the phrase, "the fox guarding the hen house," comes to mind.

Councilor Calvert said the last consideration is cost, because there isn't a lot of money. We would do well to consolidate these two into one body for that reason, which is the last of the reasons he would cite.

Councilor Calvert said no matter how well the Code is written, a lot rests with the individuals governed by the Code and their intent and/or motivation. He said if someone wants to find a loophole or a way out, he is sure they can be creative and find that. Therefore, he believes it is incumbent on those of us governed by these Codes to look at it as well in the spirit in which it is given and try to work within those guidelines as well.

- Councilor Chavez said to follow up on Councilor Romero's suggestions as well as Councilor Calvert's, we are thinking about what is the next step. He asked if we bring it back to this body of the whole, or do we make it independent – what is the process. He said this is on this evening's agenda as a Study Session, so we have suggestions, models and draft versions of the Ethics Ordinance, but not much on the Campaign Code. He said the Ethics Ordinance, as drafted does touch on the Ethics Code just a little. He asked what would be involved in scheduling another study session with a list of items which would be action items, either moving on pieces of the draft ordinance, or waiting until the public and everyone has reviewed all the material, to make decisions on the whole package. He thinks Councilor Calvert is suggesting we peel apart one or two points.

Councilor Calvert said no, he isn't saying that. However, he thinks we need to address both, but he would like to compartmentalize the review, because if we try to do them all together it will get all mushed up and it won't be well organized and thought out. He would like to begin with the Ethics Code, and once we think we have progress on that, then we can tackle the review of the Campaign Code. He does not think we should do them both together.

- Councilor Chavez said they need to be done in the same relative time frame.

Councilor Calvert said he understands, but he doesn't want to do them both at the same time. He said we should do them sequentially so we can give each Code our full attention.

- Councilor Chavez said there is another dimension to this which is the redistricting, and asked where that fits, commenting that there are different dimensions and he doesn't believe we can look at one dimension and not the other. He said they need to be separated, but still do them in some sort of sequence.
- Councilor Calvert said he wants the time to digest what has been presented this evening.
- Councilor Chavez likes combining the review boards which, for many reasons, makes more sense, so there are some things which are more doable than others.
- Councilor Wurzbarger said she wants to read this material. She believes it is very important to move forward from the perspective of comparison between the two, and what the different proposals are from the perspective of what are the goals. What is it we're trying to accomplish and not just the generic "let's be ethical," but what the issues are which need to be operationally define.

Councilor Wurzbarger said she agrees, personally, that there is a lack of clarity in the Code so people, for a variety of reasons, can interpret it any way they want. She said even if you seek guidance from the City Attorney, you can find yourself in a position that is contrary. She thinks this clarification needs to be provided.

Councilor Wurzbarger proposed that the Governing Body be given the chance to review the materials, and have another public meeting between now and the holidays. Then we can come back and focus on the advantages, disadvantages and unintended consequences in making this change. This is the analysis she wants from staff and the community. It's not just a matter of let's take this code and do this. She believes we need a framework for evaluating the changes we are making which would have to do with these kinds of questions. She would be happy to work with staff on formulating those, but we do need a little time. Councilor Wurzbarger thanked those who brought forward examples of what additional clarity might be.

- Councilor Dominguez said the public has spoken very clearly and the Governing Body has expressed its desire to move forward with this "in whatever form we are going to move forward." He thanked the members of the Ethics and Rules Committee which he has Chaired for the past 1½ years. He said that Committee has done a lot of work to get us to this point and established a

good foundation to take this to the next level. He said he wants to be sure that we value the work that Committee has done in the years past, leading to today, and hopefully in the future, depending on how things shake out.

Councilor Dominguez said it is important to have an Ethics Code to eliminate some of the misperceptions of the public, as well that we, as public officials, don't get us into the position where that perception could exist. He said we have to have good, strong ethics language and transparency, however this shakes out. He looks forward to the future discussions. He thanked the other members of the Governing Body who introduced legislation to strengthen the Code as it currently exists. He said the discussion at the Ethics and Rules Committee was fruitful. He said the Ethics and Rules Committee was committed, and was at the point of proposing language to the Governing Body which was intended to address some of this. He reiterated that he wants to ensure that some of the work done by the Ethics and Rules Committee in the past is not forgotten and that they are appreciated for that work.

- Councilor Trujillo said this is a good beginning, although he does have some questions, and looks forward to the discussion to see where we go from here.
- Councilor Wurzbarger said, with regard to a timeline and a meeting on this matter before the holidays, tomorrow she, along with Councilors Romero and Bushee, will be reintroducing the language change dealing with the issue of a quorum, which needs to be addressed soon. She said we need to give credence to that Committee [ECRB] in the proper way so that they can work with the people who show up.
- Councilor Romero said she hopes the public document which has been presented to the Governing Body is examined very closely by the Governing Body. She suggested directing staff to prepare a matrix of the existing Code and proposed changes, which explains the reason the changes were made, as the next starting point for discussions to keep the dialogue going. She would like to direct staff, Mr. Zamora, Ms. Price and Mr. Terry to prepare a matrix of the existing ordinances, proposed changes, the reason for the proposed changes, the benefits and such, which would allow us to have a more fruitful discussion.
- Councilor Bushee said there are several glaring areas in existing Code and in the proposed changes, and we need to avoid pitfalls. She said in the proposed Code it is an honor system in terms of reporting conflicts, which she believes is "lawyer caution fingerprints all over it," in her mind. She never signed onto that and doesn't want to. This is the reason that she doesn't want to start from the proposed ordinance, but she does want to see what is in it that might be worthwhile.

Councilor Bushee said, from experience, we can conclude that we need only one body, but we need a strong body with a very clear charge, and set of consequences which are enforceable. She said felt the impotence of the existing Board, and was getting emails from the ECRB asking her to file a complaint so they could tackle the issue. She didn't feel it was her place to file a

complaint, and felt it wasn't their place to contact her to try to get a complaint filed. She said this is the reason she feels we need an independent, strong group of individuals, and how they are appointed is critical and essential.

Councilor Bushee said another piece of this, which hasn't been discussed, is the City Attorney's Office as the educational and/or guidance part. She thought we had various opportunities to educate ourselves and our colleagues as to when we need to disclose a potential conflict. She was expecting our attorneys to step in and say, "This is appropriate now, or it is not appropriate." She is looking for all of these components – a strong, independent board, an educational piece, with the process very clearly spelled out. She said some of these things are in the Code. However, in reading the proposed Ordinance, there could be a "sticky wicket" with the provision that you can't consider someone for employment if they worked on, or contributed to, your campaign. She said this is a great and wonderful concept, but it would be very hard to prove, hard to enforce.

Councilor Bushee said we are seeing this at the State level. She said people who worked on the State campaigns, or ran for other offices, are bound to wind up in government, noting that happens at this level. It would be hard to say, "Well I put that person there because they worked really hard on my campaign, or I put that person there.... it's a great concept. I'm just saying how the heck to you make it enforceable."

- Councilor Chavez said he sees 4 documents, two more formal, and one is a draft ordinance from Espanola, and we need to look at all of these to see if there is anything which is relevant and makes sense to incorporate into the amendments. He sees that as more than one starting point. He encouraged the public to comment in writing to the City Clerk, or on the internet, and asked Ms. Vigil if people can submit written comments to her office.

Ms. Vigil said yes, and everything will be placed on the City's web page. She said her email address is yyvigil@santafenm.gov. The mailing address is P.O. Box 909, Santa Fe, New Mexico 87504. She asked Mayor Coss what deadline, if any, she needs to post for written comment.

Councilor Chavez asked if the deadline would coincide with the deadline on the web page as well.

Mayor Coss said there will be no deadline for now, because he believes the Council is moving toward taking legislative action, so the deadline wouldn't come until the public hearing is closed and we vote.

- Councilor Chavez would like to expand on this tomorrow on Communications from the Governing Body and do something on the ticker tape and public access.

Wrap-up

Councilor Dominguez said he has a procedural question with regard to the legislation going forward. He said there is an Ethics and Rules Committee that is made up of members from the public, some of whom are very passionate about this. He asked if we need to disregard that committee and have no legislation vetted through that Committee. He asked what is the message we need to give to that body of community members.

Mayor Coss said this goes to his final comments.

Mayor Coss said we now have a new version of the Ethics Ordinance, from the citizens group which none of us have seen, so that needs to be reviewed by the Governing Body and the attorneys. He agrees with a lot that's been said, but he said we have been asked to do this as a committee of the whole, and not to send this through the committee process, with which he agrees. He thinks we should stick with this as a committee of the whole.

Mayor Coss asked Robert Romero, Yolanda Vigil and Geno Zamora to look at the new submittal this evening, and how this would be included in a matrix to be prepared by Jeanne Price. He said he thinks we now handle this as a committee of the whole, and citizens should participate in this process through written or verbal comment to the Governing Body.

Mayor Coss said our Council meetings aren't as long as they once were when we had a lot of developments moving forward, so perhaps we might have time in regularly scheduled meetings to spend the time which is required on this effort.

Mayor said education is important for him to be so on and so forth. He said we do need to look to the City Attorney's training as part of Robert's ACT program.

Mayor Coss said we just appointed the Audit Committee as submitted by Judge Yalman, so things are moving forward.

Mayor Coss said he is "firmly in the camp" that we need an independent body "with teeth," or with a different body making recommendations to the Governing Body for appointment to this independent body, so it truly is an independent, non-political body.

Mayor Coss proposed that staff put everything in a matrix in a way we can have a few more meetings on this as a committee of the whole, provide more opportunity for written public comment, give everybody an opportunity to read the matrix and submit comments.

Councilor Chavez asked if the matrix should include the other documents which were provided this evening, and not just the proposed draft ordinance.

Councilor Romero said she is confused because we have the Judicial Code of Conduct, the Ethics Ordinance from Espanola, and the code proposed by the citizens group.

Councilor Chavez said then we should whittle it down to the League of Women Voters which he thinks is more relevant to the draft ordinance and the memorandum to the Governing Body.

Councilor Calvert said it would be helpful for staff to look at the different things which were submitted, then say "here is an element of the code, and this is how it's addressed here, here and here, and list the advantages or disadvantages of a code and what you would want in there. That's what I want."

Councilor Chavez said that also would include the public comment.

Mayor Coss suggested we let staff have a "crack" at this and report to the Council at the December Council meeting.

Mr. Zamora said what Councilor Calvert proposed will make a little more sense, and staff will track the existing codes, what amendments are specific to the existing code, and then, broadly, by category, where other outside information may plug in and provide some guidance to strengthen. He said would hate to add another code to the matrix, but he wants to advise the Governing Body and the public that the State Courts and Corrections Interim Legislative Committee adopted a committee proposal to make the State Governmental Conduct Act applicable to municipalities. He said this is a State statute, and we may look at that to see where we can get some strength from that.

Councilor Bushee asked if the ordinance on the quorum issue has been published.

Yolanda Vigil said it previously was on the agenda for a Request to Publish, but it was postponed, and it is on the Council Agenda tomorrow for a Request to Publish.

7. ADJOURN

The Study Session was adjourned at approximately 7:20 p.m.

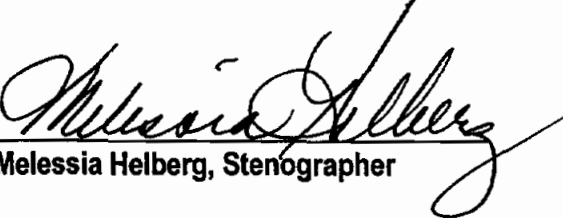
Approved by:

Mayor David Coss

ATTESTED TO:

Yolanda Y. Vigil, City Clerk

Respectfully submitted:


Melessia Helberg, Stenographer