



Agenda

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ETHICS & CAMPAIGN REVIEW BOARD

Thursday, February 17, 2011

4:00 p.m.

City Council Chambers

City Hall, 200 Lincoln Avenue

1. PROCEDURES
 - a) Roll Call
 - b) Approval of Agenda
 - c) Approval of Minutes – November 18, 2010
2. DISCUSSION MATTERS
 - a) Update on Governing Body Consideration of Revised Code of Ethics and the Ethics and Campaign Review Board.
3. ACTION ITEMS
 - a) Board Consideration of Request by John B. Hiatt, Esq. for Advisory Opinion.
4. BOARD MATTERS
5. DATE OF NEXT MEETING
6. PUBLIC COMMENT
7. ADJOURNMENT

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INDEX OF
CITY OF SANTA FE
ETHICS AND CAMPAIGN REVIEW BOARD

February 17, 2011

<u>ITEM</u>	<u>ACTION TAKEN</u>	<u>PAGE(S)</u>
1. PROCEDURES		
a) Roll Call	Quorum	1
b) Approval of Agenda	Approved	1
c) Approval of Minutes – November 18, 2010	Approved	1
2. DISCUSSION MATTERS		
a) Update on Governing Body Consideration of Revised Code of Ethics and the Ethics and Campaign Review Board.	Discussed	2-3
3. ACTION ITEMS		
a) Board Consideration of Request by John B. Hiatt, Esq. for Advisory Opinion.	Discussed	3-5
4. BOARD MATTERS	Not Discussed	5
5. DATE OF NEXT MEETING	March 3, 2011	5
6. PUBLIC COMMENTS	None	5
7. ADJOURNMENT	Adjourned at 4:47 p.m.	6

**MINUTES OF THE
CITY OF SANTA FE**

ETHICS AND CAMPAIGN REVIEW BOARD

FEBRUARY 17, 2011

a) ROLL CALL

A regular meeting of the City of Santa Fe Ethics and Campaign Review Board was called to order on this date at approximately 4:00 pm, by Chairman Fred Rowe in the City Council Chambers, 1st floor, City Hall, 200 Lincoln Avenue, Santa Fe, New Mexico.

Roll call indicated the presence of a quorum:

Members Present:

Fred Rowe, Chair
Nancy Long
Fred Friedman
Rebecca Frenkel

Members Absent:

Ruth Kovnat (excused)
Patricio Larragoite

Staff Present:

Jeanie Price, Legal Department
Yolanda Vigil, City Clerk

Others Present:

John Hiatt, Esq.
Jim Harrington, Common Cause
Charmaine Clair, Stenographer

b) APPROVAL OF AGENDA

Mr. Friedman moved to approve the Agenda as presented. Ms. Frenkel seconded the motion and it passed by unanimous voice vote.

c) APPROVAL OF MINUTES-

Minutes of November 18, 2010

Mr. Friedman moved to approve the Minutes of November 18, 2010 for discussion. Ms. Long seconded the motion.

The motion to approve the Minutes of November was held until the end of the agenda.

The minutes were approved by unanimous voice vote at the end of the meeting.

D. DISCUSSION MATTERS

- a) Update on Governing Body Consideration of Revised Code Of Ethics and the Ethics and Campaign Review Board.

Chair Rowe said an amendment of the Code of Ethics was considered and related to matters to the composition and role of the Board. He said Jeanie Price was present and had prepared a summary and matrix to explain the various proposals and how they relate to each other and how they relate to the Ethics Code and the Board.

He requested Ms. Price give a summary, particularly of items related to the Code of Ethics and the Board.

Ms. Price said City Council agreed on a bill that would be published by the City Clerk for a public hearing on March 30. City Council also thought there should be a second opportunity for public comment and a second meeting was scheduled March 9. The bill is posted on the City website and was in the Board's packet.

Ms. Price said at the last study session City Council reviewed the bill with recommendations from the public and Staff. She said the bill was built from the Citizen's group, who provided a lot of the commentary.

Ms. Price said the bill covers both the Code of Ethics changes and repeals the City's personnel rules about nepotism. She said it changes the ECRB composition to have two nominees from the bar and five other members nominated by five different nonprofit civic organizations. It was unknown who Council would want for the nonprofit organizations.

Chair Rowe said the bottom line was the ECRB would be reduced from nine members to seven members that would be appointed by the Mayor by consent of the City Council, based on the nominations by the civic groups.

Chair Rowe said two other points were; a separate resolution would abolish the Ethics and Rules Committee and the functions of that Committee would be appointed to the ECRB. He said there was also a provision regarding re-districting.

Ms. Vigil said redistricting would be done by the Governing Body and would not go through a committee.

Chair Rowe said the newly appointed ECRB under one version, would have one member act as a depository for complaints from the public. That member would educate the public member and present the complaint if valid, to the Board. The Board member would be recused from further action on that complaint and would be selected by his fellow Board members.

Ms. Frenkel said that was the first version.

Ms. Price read from the bill (page 17.) She said one member from the ECRB would be designated to serve as ethics officer. The ethics officer could at any time, make a motion to the Board for a reference to the City Attorney or investigation by the Board. She continued reading; the Officer would not be disqualified from participating in the case as a voting member of the Board once full disclosure was made to the full Board.

Chair Rowe said at that time the Board had not been asked to comment on the proposal in any regard and there was no indication which agencies would be asked to provide comment. He said currently any Board member was free to express their views.

Ms. Frenkel asked Ms. Price if the campaign finance part of the code would be the same.

Ms. Price said the ECRB would still have the review of public campaign finance. She said the codes had not changed but the ECRB responsibility over those subsumed.

Chair Rowe said the matrix was a master piece. He said he was hopeful it would serve as matrices and other important statutory and code amendments to be considered by City Council.

ACTION ITEMS

a) Board Consideration of Request by John B. Hiatt, Esq.

Chair Rowe said Mr. Hiatt was present and had served previously as the Land Use Director for Santa Fe. He said Mr. Hiatt requested the Board's opinion of a proposed consulting arrangement he considered in his private capacity. Mr. Hiatt's request was accompanied by a detailed document that described the matter.

Chair Rowe said Mr. Hiatt's question to the Board was whether his proposed arrangement was viable, particularly under the Code of Ethics, Section 1-7.7N. Chair Rowe said the code prescribes the action by any City official for an unspecified period of time for consulting on any City matter on which that person has acted.

Chair Rowe said on previous occasions, the Board has referred requests for advisory opinions to a subcommittee who would make a presentation to the Board.

Chair Rowe reviewed the options: the Board could directly make the requisite determinations and might decide that under the existing code, the arrangement wouldn't pass muster. The Board might ask additional questions; the Board might also determine that the proposed amendments to the Ethics Code would put a one year cap on the bar of doing what Mr. Hiatt proposed. Since it has been about a year and a half, the matter would become moot. The Board could defer consideration of the request until City Council had acted on the change, one way or the other.

Chair Rowe said also the Board could ask Mr. Hiatt to consider withdrawing or deferring his request if the likelihood of his proposal is negative and spare the Board rendering a negative opinion.

Ms. Frenkel asked to hear Mr. Hiatt's thoughts on the question.

Mr. Hiatt said he was asked by Beaver Toyota to be a consultant to move to their new site. He said he made a decision in his capacity as the Land Use Director, whether dirt should be taken from Wal-Mart and moved to Beaver Toyota property and spread around. He said Staff thought the dirt should be stockpiled until the Main building location was decided. He said because of additional expense Beaver Toyota decided to roll the dirt out.

Mr. Hiatt said his thought was Beaver Toyota knew where they wanted the site. He said he was willing to grant that knowing that if Staff later wanted the site to be different Toyota would have to move the dirt. He said that was exactly what happened.

Mr. Hiatt said looking at the ordinance and the possible conflict, he thought it best to ask ECRB for their opinion. He had mixed feelings about waiting for City Council to make their decision because he wouldn't be able to do anything.

Mr. Hiatt said the Board could eliminate his participation that related to the moving of the dirt or the site of the building, if his representation of Beaver Toyota gave the appearance he was rewarded for the decision he made years ago.

Ms. Long asked if the site of the building would be moved. She was told that hadn't been decided.

Ms. Frenkel asked if Mr. Hiatt's role with Beaver Toyota was only to help them site their building.

Mr. Hiatt said it was to site the building and overcome objections Staff may have about the site of the building. He could appear before the City Council or various committees.

Chair Rowe said Mr. Hiatt raised one option; if this was the same matter. He said another option was since a one year cap would remove doubt and possibility of innuendo; there would be no issue.

Ms. Long asked what the effective date was if City Council acted on schedule. She was told March 30 was unlikely.

Ms. Frenkel said in addition a Board would have to be appointed and organize and take a position.

Ms. Long said that would make it about April and she assumed Mr. Hiatt's concern was that Beaver Toyota needs help now and couldn't wait until June or July and might go somewhere else.

Mr. Hiatt said whatever was done, the public needs to have confidence in appointed employees. He said if the Board decided he shouldn't represent Beaver that was fine. He preferred the Board decide now and he would live with the decision even if the rules change.

Ms. Frenkel said the Board shouldn't have influence on the last option. She said the ECRB was there to enforce the current code and Mr. Hiatt was owed an action on his request.

Ms. Long said Mr. Hiatt mentioned if moving of the dirt was related to the building process.

Mr. Hiatt said Beaver Toyota, in their Master Plan had sited the building. When they talked with the Land Use Staff, Staff reacted negatively. He said he hadn't participated in that meeting. He said it was a matter of negotiation to find out why Staff objected to the site and then see if there were other possibilities.

Ms. Frenkel asked if Staff had argued both sides in the initial decision and if he as the Director had made the decision. She was told he had.

Mr. Friedman asked if Mr. Hiatt could articulate the conflict that possibly exists.

Mr. Hiatt said the first conflict was the appearance of impropriety. He said his decision as a public official saved Beaver Toyota a quarter of \$1 million. He said to the general public the appearance could be that his decision was rewarded after he retired, for making a decision in their favor.

Mr. Hiatt said another was when he advises Beaver Toyota on their contact with the City on how to deal with Staff; he in essence, was fighting his own decision. He said he was in the position of helping Beaver Toyota attack a decision made by the City (one he made previously as the Director.)

Ms. Long said if the dirt issue was off the table, she wouldn't have a problem. She asked how easily Mr. Hiatt could separate the issue with the permits.

Mr. Hiatt said he thought once the site issue was passed a number of other things would come up.

Ms. Long said the code stated "as to any City matter" and she said this was a specific matter. She thought it would be difficult to answer the question that day.

Chair Rowe said the Subcommittee would be comprised of Ms. Long, Ms. Frenkel, and Mr. Friedman. Ms. Long was appointed the Chair of the Advisory Subcommittee.

The Board discussed when to meet. Ms. Long said she would send out an email.

Ms. Vigil brought up the issue that with four members, the Advisory Subcommittee would be a quorum based on the number of appointees of the ECRB.

Chair Rowe said the Subcommittee was for purposes of the Open Meeting Act and should not be a quorum of the ECRB. He said as Chair, he doesn't need to participate and the subcommittee would then be three.

BOARD MATTERS

Not discussed.

DATE OF NEXT MEETING

Thursday, March 3 was discussed as the next meeting date. Ms. Vigil would check on the location.

Chair Rowe said in the interim Ms. Vigil could advise the Board of any action by City Council on the one year cut off.

PUBLIC COMMENTS

There were none.

ADJOURNMENT

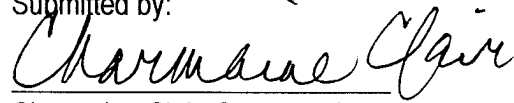
Ms. Long moved to adjourn.

There being no further matters to discuss and the agenda having been completed, the meeting was adjourned at 4:47 p.m.

Approved by:

Fred Rowe, Chairman

Submitted by:

A handwritten signature in cursive script, reading "Charmaine Clair". The signature is written in black ink and is positioned above a horizontal line.

Charmaine Clair, Stenographer