



Agenda

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ETHICS & CAMPAIGN REVIEW BOARD

Thursday, April 21, 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 – March 10, 2011
2. DISCUSSION MATTERS
 - a) Update on Council Revision of Ethics Ordinance and Ethics and Campaign Review Board Provisions.
3. ACTION ITEMS
 - a) Board Consideration of Complaint Case #2011-1.
4. BOARD MATTERS
5. DATE OF NEXT MEETING
6. PUBLIC COMMENT
7. ADJOURNMENT

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CITY OF SANTA FE
ETHICS AND CAMPAIGN REVIEW BOARD**

April 21, 2011

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| b) Approval of Agenda | Approved | 1 |
| c) Approval of Minutes – March 10, 2011 | Approved | |
| 2. DISCUSSION MATTERS | | |
| a) Update on Council Revision of Ethics Ordinance and Ethics and Campaign Review Board Provisions | Discussed | 2-5 |
| 3. ACTION ITEMS | | |
| a) Board Consideration of Complaint Case #2011-1 | Tabled | 5 |
| 4. BOARD MATTERS | Discussed | 5 |
| 5. DATE OF NEXT MEETING | May 12, 2011 | 5 |
| 6. PUBLIC COMMENTS | Discussed | 6 |
| 7. ADJOURNMENT | Adjourned at 4:35 p.m. | 6 |

CITY OF SANTA FE

ETHICS AND CAMPAIGN REVIEW BOARD

APRIL 21, 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 Councilor's Chambers, City Hall, 200 Lincoln Avenue, Santa Fe, New Mexico.

Roll call indicated the presence of a quorum:

Members Present:

Fred Rowe, Chair
Fred Friedman
Ruth Kovnat
Nancy Long (arrived later)
Patricio Larragoite
Rebecca Frenkel

Members Absent:

Staff Present:

Tina Dominguez, Assistant City Clerk
Melissa Byers, Legal Department

Others Present:

Karen Heldemeyer
Julie Ann Grimm,
Marilyn Banes
Fred Flatt
Charmaine Clair, Stenographer

b) APPROVAL OF AGENDA

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

c) APPROVAL OF MINUTES-

Minutes of March 10, 2011

Ms. Frenkel moved to approve the Minutes of March 10, 2011 as presented. Mr. Friedman seconded the motion and it passed by unanimous voice vote.

Chair Rowe recognized Karen Heldemeyer, the complainant in Case 200-1, Melissa Byers, legislative liaison, Tina Dominguez, Deputy Clerk and Marilyn Banes who were present.

DISCUSSION MATTERS

- a) Update on Council Revision of Ethics Ordinance and Ethics and Campaign Review Board Provisions

Chair Rowe asked Ms. Byers to provide a summary regarding the revisions made by City Council on March 30 in the ethics ordinance as well as the ordinance pertaining to the composition and the role of the Board.

Ms. Long entered the meeting at this time.

Ms. Byers said Ordinance 2011-08 was adopted on March 30, 2011. The ordinance amended sections of the Code of Ethics and Campaign Review Board ordinance and repealed the nepotism ordinance, which is now included in the Code of Ethics.

Ms. Byers presented an overview of the new, revised ordinance sections and disclosures, gifts and transactions and the ECRB membership and the resolution adopted with the ordinance. Changes were made to the following:

- New definitions include; *employer* in the case of a person employed by a governmental entity; *financial benefit*; *household* of an individual; *owner* of business and *subordinate* of a public official or a public employee.
- A Nepotism clause (1.7.7 F) is now in the Code of Ethics.
- 1-7.7-(G) Financial Dealing with Subordinates.
- (H) Improper Political Campaigning.
- (I) City Employment as a Political Reward.
- An Officer of Inspector General may be established by the Governing Body.
- Revisions were made regarding conflict of interest (L.) The definition of public official excludes the municipal judge because there is a judicial code of conduct to comply with.
- Public officials and department heads must disclose the name of their employers other than the City and any business which they own.
- 1.7.7 A-regarding Gifts and Transactions-improper gifts was clarified that travel and accommodations are gifts. There were exceptions; one was an occasional gift of \$50 valued in a manner consistent with IRS. Also a \$250 non pecuniary gift could be received by a public official or employee acting in their official capacity. Reporting requirements to the City Clerk must be followed for the amount and value of the gift and the name of the provider of the gift. The City Clerk should immediately post the report to the City's website.
- Misuse of the city resources remain the same except for a clause that was removed: "*and consistent with policies of the governing bodies*" and the use of City resources formally *I* is now paragraph E.
- (G) A supervisor cannot require an employee or subordinate to make a charitable contribution or purchase something.
- The \$100 in Honoraria (J) was deleted but officials or employees who give a speech could be reimbursed for meals or expenses with travel regarding the speech.

- *Whistleblower (K)* includes protection for public officials or employees who have given evidence or participated in an investigation of the violation.
- Conflict of interest (L) clarified that (a) a member of the governmental body shall report if there is a conflict of interest to the governmental body at a public meeting. (b) The City Manager, City Attorney or City Clerk with a conflict of interest shall also report that to the governing body at a public meeting. A public employee shall report conflict of interest to the City Manager.

The ECRB membership (1-7.9) changes were reported as follows:

- There are seven members appointed by the Mayor with the advice and consent of the City Council. Board members would be selected from a list of eight names nominated by the First Judicial District Bar Association; four to be nominated by the Mayor with consent of City Council and three members at large.
- No member of the ECRB shall be a member of the Governing Body, the City Manager, the City Clerk, or a "public employee" or a member of the "family" of any of these persons.
- New members shall be appointed for staggered terms of four years beginning July 1, 2011 as outlined in the ordinance.
- Resolution 2011-23 was also adopted by City Council and amended City Personnel Rules and Regulations regarding nepotism and outside employment to ensure the rules were in compliance with reference to the Code of Ethics.

Ms. Byers said the new ECRB Board membership would be effective July 1, 2011; the ordinance was effective April 16, 2011.

Chair Rowe said as the ordinance provides, the Board would be comprised of 7 members as of July 2011 as opposed to the current 9 members and the quorum situation could change. He said composition of the Board as of July 11 was unknown and some of the current membership may not be reappointed.

He said technically the Board would sit until the appointment of the new members but the role of the Board in view of the ordinance adopted March 30, was uncertain at this stage.

Ms. Kovnat asked Chair Rowe to elaborate; she said she thought the Board would have their ordinary function until July.

Chair Rowe said if the ordinance stated effective April 16 that the Board should consist of seven members appointed by the Mayor and this board consists of nine members although not fully staffed, there was a lack of certainty as to the current status of the board, recognizing that the Board would continue to sit until its membership was replaced. He said that may or may not happen in July.

Mr. Larragoite confirmed that the vacancy component of the new ordinance was eluded to be the Mayor's appointment as opposed to City Council.

Ms. Frenkel said to comment on Chair Rowe's statements; the ordinance said that the new Board members would remain until replaced. She asked that Chair Rowe consult with the City Attorney to see if he had recommendations for them as a Board. She inferred from what was said that any decisions may or may not be valid decisions based on current status.

Mr. Larragoite agreed with Ms. Frenkel. He said he would have hoped that the City Attorney would have been present because the agenda had some fairly significant decisions that need to be made and if they are in a quasi-position the Board should know.

Chair Rowe said it was appropriate for the Board to consult with the City Attorney and that could be requested as soon as possible.

Ms. Kovnat clarified what the question would be that would be asked of the City Attorney. She said the new provisions were in effect as of April 16, 2011 and she would request answers to the questions (1) if the Board's action would be binding and (2) confirmation as to if the new provisions substantively of the ordinance, would be applied.

Chair Rowe said the request was pertinent and appropriate for a legal opinion.

Chair Rowe said the particular provision 1-7.7 I -which was referenced in the complaint, was amended by the new ordinance and changed to 1-7.7 E and the language changed because part of the previous language was cut. He asked Ms Byers to provide a comparison.

Ms. Heldemeyer said the language she cited (in her complaint) hadn't changed. She said the part of the ordinance she cited has a different number but the language was identical in the two.

Ms. Kovnat said her concern was if the Board applied relevant changes they would be retroactively applying law now to behavior that occurred prior. She said she wanted a full-blown opinion by the City Attorney.

Ms. Byers said she spoke with the City Attorney earlier in the week and explained that the complaint was filed before the ordinance and would fall under the old ordinance. She said she would ask him for an official opinion.

Chair Rowe said the complaint was filed but there had been pleadings after the complaint was filed; namely the response to the complaint, which was filed after the change of the ordinance. He said there was a response to the response which should be treated by the Board as a *reply* to the response. He said legally there should only be a response.

Ms. Byers compared Section I-the old Code of Ethics on page 114 I. She read: "no public official or public employee shall use city services, personnel or equipment for personal benefit, convenience or profit, except when such use is generally available to the public and when consistent with policies of the governing body."

She read the new ordinance on page 8, line 12 E "a public official or public employee shall not use city services, personnel or equipment for personal benefit, convenience or profit, except when such use is generally available to the public."

Ms. Byers explained "and when consistent with policies of the Governing Body" language was deleted that was in section I under the old provision.

Chair Rowe said as pointed out by Ms. Kovnat there was a question of which ordinance provision, old or new, applied to the action filed on March 28 and had been supplemented by later pleadings and attachment to pleadings; one that was filed that day and the previous day by the complainant. He said he stated that for the record and for purposes of accuracy before they proceed with Complaint Case 2011-1.

Ms. Frenkel asked why the Board should continue when so many concerns were raised about the legality. She said it wouldn't behoove them to move forward.

Ms. Long suggested the matter be tabled until the City Attorney's opinion was received.

Chair Rowe said if that was the wish of the Board they would not address any pending complaint until the opinion was received.

Mr. Friedman asked to hear the motion and the rationale to table the complaint.

Ms. Long said the rationale was to receive an opinion regarding the Board members' status in light of the effective date of the ordinance. She said there was nothing in the ordinance that provided for continuing membership by the existing Board and the issues raised by Ms. Kovnat regarding which ordinance language would be effective for this particular complaint considering its filing date and subsequent pleadings.

Ms. Long moved to table the complaint. Ms. Kovnat seconded the motion and it passed by unanimous voice vote.

ACTION ITEMS

- a) Board Consideration of Complaint Case #2011-1

This item was tabled.

BOARD MATTERS

Ms. Frenkel suggested a date for the next meeting be set and the City Attorney be asked to please reply to the Board's request by that date.

The Board discussed the next meeting date and decided on Thursday, May 12 and that they should request a reply from the City Attorney by Monday, May 9, 2011.

Ms. Frenkel moved that the Board request of the City Attorney, a reply to the questions submitted by the Board by Monday (9th) by 4 p.m. of the week of the next meeting on Thursday, May 12, 2011. Ms. Kovnat seconded the motion and it passed by unanimous voice vote.

DATE OF NEXT MEETING- Thursday, May 12, 2011

PUBLIC COMMENTS

Mr. Fred Flatt asked why the City Attorney wasn't present at the meetings. He said there always used to be an attorney present.

Chair Rowe said that was an appropriate question to ask the City Attorney. He said the Board welcomed the City Attorney when he or his delegate could attend.

Mr. Flatt said when the last ethics complaint was settled the City Attorney was said not to be here and was found in his office. He asked what was with that.

Ms. Frenkel said a request could be made for someone from the City Attorney's office to attend the meetings, if it was possible. She said it would facilitate the board moving along.

Chair Rowe agreed and said the request was appropriate in light of the City Attorney or his representative to respond to any inquiries pertaining to that opinion and otherwise.

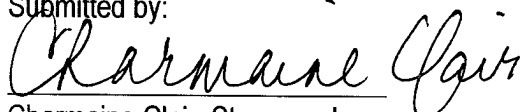
ADJOURNMENT

There being no further matters to discuss and the agenda having been completed, the meeting was adjourned at 4:35 p.m.

Approved by:

Fred Rowe, Chairman

Submitted by:


Charmaine Clair, Stenographer