



Agenda

CITY CLERK'S OFFICE

DATE 7-8-11 TIME 3:04

SERVED BY _____

RECEIVED BY _____

ETHICS & CAMPAIGN REVIEW BOARD

Thursday, July 14, 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 – May 19, 2011
February 25, 2010
2. DISCUSSION MATTERS
 - a) July 13, 2011 - City Council Action Regarding Ethics and Campaign Review Board.
 - b) Ethics and Campaign Review Board Parliamentarian's Advisory Memorandum – June 14, 2011.
 - c) City Attorney's Opinion Letter – June 28, 2011.
3. ACTION ITEMS
 - a) Transition to Successor Ethics and Campaign Review Board
4. BOARD MATTERS
5. PUBLIC COMMENT
6. ADJOURNMENT

Persons with disabilities in need of accommodations, contact the City Clerk's office at 955-6520, five (5) working days prior to meeting date.

INDEX OF
CITY OF SANTA FE
ETHICS AND CAMPAIGN REVIEW BOARD

July 14, 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 – May 19, 2011 and February 25, 2010	Approved	1-2
2. DISCUSSION MATTERS		
a) July 13, 2011 - City Council Action Regarding Ethics and Campaign Review Board	Discussed	2
b) Ethics and Campaign Review Board Parliamentarian's Advisory Memo – June 14, 2011.	Discussed	2
c) City Attorney's Opinion Letter – June 28, 2011	Discussed	3-4
3. ACTION ITEMS		
a) Transition to Successor Ethics and Campaign Review Board	Discussed	4-5
4. BOARD MATTERS	Discussed	5
5. DATE OF NEXT MEETING	Not Discussed	5
6. PUBLIC COMMENTS	Discussed	6
7. ADJOURNMENT	Adjourned at 4:45 p.m.	6

**MINUTES OF THE
CITY OF SANTA FE**

ETHICS AND CAMPAIGN REVIEW BOARD

JULY 14, 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
Patricio Larragoite

Members Absent:

Rebecca Frenkel (excused)

Staff Present:

Yolanda Vigil, City Clerk
Melissa Byers, Legal Department
Gino Zamora, City Attorney

Others Present:

Karen Heldmeyer
Jim Harrington, Common Cause
Karl Sommer, Attorney
Charmaine Clair, Stenographer

Chair Rowe recognized Gino Zamora, the City Attorney, Yolanda Vigil, the City Clerk and others in attendance.

b) APPROVAL OF AGENDA

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

c) APPROVAL OF MINUTES- May 2011 and February 2010

Minutes of May 19, 2011

Ms. Kovnat moved to approve the Minutes of May 19, 2011 as presented. Ms. Long seconded the motion and it passed by unanimous voice vote.

Minutes of February 25, 2010

Ms. Long moved to approve the minutes of February 25, 2010. Mr. Friedman seconded the motion and it passed by unanimous voice vote.

DISCUSSION MATTERS

- a) July 13, 2011 - City Council Action Regarding Ethics and Campaign Review Board.

Chair Rowe said the members of the new board were approved unanimously by City Council the previous evening. He asked Ms. Vigil to summarize the appointments.

Ms. Vigil said the City Council's nominees in the packet were appointed with a July 15, 2011 term effective date.

Chair Rowe noted that six of the seven new members were highly qualified lawyers with impressive resumes. He said that could reflect the dedication for fairness and due process to prevail with the next board. He was delighted Ms. Kovnat was reappointed and would continue the continuity between the old and the new ECRB Board.

Chair Rowe thanked Mr. Zamora for facilitating such a qualified board.

- b) Ethics and Campaign Review Board Parliamentarian's Advisory Memorandum – June 14, 2011

Chair Rowe said in a previous meeting the Board referred the pending complaint case #2011-1 to the Complaint Subcommittee. He said due to the legal question regarding the 2 to 1 vote to refer the complaint to the subcommittee, the parliamentarian was requested to provide a summarization of the opinion.

Ms. Long summarized that though she wasn't present at the June 19, 2011 meeting she had read the minutes and had concerns. The first concern was that recused Board members would vote on motions that they had recused from. Secondly, there was enabling legislation that at least two of the board members should be attorneys licensed to practice in the state and with the recusals there were no attorneys that would be working on the complaint.

Ms. Long said to a lesser extent she was concerned that the Subcommittee was the same as the Committee they would refer to. In addition she was concerned due to the number of recusals, to call a meeting to take action.

Mr. Larragoite said his concern was the parliamentarian, Ms. Long, could state an opinion on a case that she had recused herself from.

Chair Rowe and Ms. Long said they understood the concern.

c) City Attorney's Opinion Letter – June 28, 2011

Chair Rowe asked the City Attorney to summarize his opinion pertaining to that matter and his subsequent advice, in light of the participation of recused Board members in either the procedural or the merit aspects or both, of the pending complaint.

Mr. Zamora said he was requested through a series of emails on the question of what the Board members role was during a recusal. He said his response was an advisory opinion that the Board may or may not choose to disclose publicly. He summarized his advice and read from his email.

He clarified that a member's role was related to what the member's ability to participate after recusal and whether they might still participate in procedural matters regarding the subject from which they recused themselves. He said his advice was more parliamentarian; the Board should be consistent in the application.

Mr. Zamora said he could see inconsistencies on both sides. It was inconsistent if he was able to participate as parliamentarian but couldn't participate in procedural roles. Another position could be that the member couldn't participate as a parliamentarian but could procedurally. He said that was inconsistent. He advised the Board to pick a role and remain consistent.

Mr. Zamora said he went beyond in his advice to show that the recusals who participate could continue to present issues. The board should have a membership of nine under the ordinance and there could be someone that would contest two members coming to the conclusion. In addition there were six members that had problems with quorum and if only two members were present, it wouldn't present a majority of quorum. He said it could be a snowball of confusion and issues.

Mr. Zamora said the gist of his advice was consistency in the roles of the recused members and close examination of whether two members were sufficient to make a decision and if that would open the Board's decision to being contested.

Chair Rowe said he appreciated the care and thoroughness with which Mr. Zamora addressed the matter. He said he indicated to the City Clerk that the Board would waive the privilege and thought the other Board members would not object and that his decision could be a matter of public record.

Chair Rowe said the question of consistency was a legitimate point. The recused Board members voted to refer the issue to a Subcommittee and the recused parliamentarian addressed the legal issues however the matter was moot due to the developments of the incoming Board effective the next day. He said the current Board's decision wouldn't affect any proceedings by that group.

Chair Rowe said secondarily, the City Attorney had expressed concern that a board of nine members that now has six sitting members and only two members to determine a case of this importance would not be a wise course.

Chair Rowe said what the Board currently discussed would only be a part of the historic record but he believed the discussion should be held as a matter of public record. He asked Board members for their comments and questions.

Mr. Friedman said as one of the two board members ready to act on the matter, the experience was frustrating. He said the case was introduced in March and almost half a year has gone by and it was extremely frustrating and not something he wanted to continue.

Ms. Kovnat said at the last meeting she made a motion that failed to table the matter in order to avoid the complainant having to file a new complaint. Her question was if the complainant would have to re-file.

Mr. Zamora said the complaint is currently pending and was properly filed and procedures were filed for responses etc. He said he could see nothing to trigger the filing of a new complaint.

Chair Rowe said it could be the first order of business for the new board. He said the recusal situation might be ameliorated by the Mayor now appointing the Board with the consent of the City Council.

Mr. Larragoite said it was important to have the day's discussion in the record of both the parliamentarian and the legal counsel. He said wouldn't want to further frustrate the complainee and complainor based on a decision made by two board members that could be challenged and further complicate the issue. He said further commentary on the case should be handed off to the next Board in fairness of the complainee and complainor. He thanked Mr. Zamora and Ms. Long and said he appreciated their opinions.

Chair Rowe agreed. He said that was appropriate and consistent with the advice from Mr. Zamora.

Mr. Zamora said Chair Rowe mentioned the change of ordinance and that it might help to minimize the conflict. He said a specific provision in the last sentence provided boundaries to avoid conflicts; 6-16.1 B (4) stated "no member of the board shall make a contribution to or participate in the campaign of any candidate for the elective of this board or office."

Mr. Larragoite said he was glad that was part of the new ordinance but he was unsure of the vetting process for the new members; if they had made contributions to City Councilors or the Mayor. He said that issue should be discussed and vetted.

Mr. Zamora said the language stated "once appointed, a member shall not participate" and would be from this point forward.

ACTION ITEMS

a) Transition to Successor Ethics and Campaign Review Board

Chair Rowe said one transition could be to disband and let the new board handle the responsibilities; another was for the current board, individually or collectively, to attend the organizing session of the new board to answer questions or comments on how they could improve on the existing Board's performance. He said another option was to have a social coffee etc. to exchange experiences and comments in the spirit of collegiality and good wishes.

Ms. Kovnat said since she would continue, her thought was that the new board could benefit from the experience of the current Board. She added they could also benefit by having two study sessions; one with Ms. Vigil on the campaign code and how that works and secondly with Mr. Zamora on the ethics code.

Ms. Kovnat said she hadn't thought about the process however thought nothing official could be done except have a party and invite the new board and ask how this Board could be helpful to them.

Mr. Zamora reminded the Board that a gathering of the majority of the new board members had to comply with the Open Meetings Act.

Ms. Kovnat suggested the Board write a letter that offered help in the transition if the new board wished.

Chair Rowe said with consensus of the current Board members he would send the incoming chairperson a letter that suggested the new board do what was appropriate and in their best interest to gain assistance, advice etc. from the current Board.

Ms. Long moved to adopt Ms. Kovnat's suggestion for the Board to write a letter to the new board to offer help in the transition. Mr. Friedman seconded the motion and it passed by unanimous voice vote.

BOARD MATTERS

Chair Rowe expressed the Board's appreciation to City Attorney, Gino Zamora for his advice and immense support to the Board, including the succession of a highly qualified new board. He thanked City Clerk Yolanda Vigil, for her function and wisdom and said the Board had benefited from that. He acknowledged the recorder, Charmaine Clair for her support in the minutes.

Chair Rowe also acknowledged Melissa Byers and Jeannie Price and thanked Jim Harrington, of Common Cause, who he said had been the Board's most conscientious observer and attended 70% of the Board meetings.

Ms. Kovnat thanked Chair Rowe for his selfless service to the City and the ECRB Board. She said his service has been remarkable and added that all of the Board members were amazing as well as past members of the ECRB that served.

Chair Rowe said he was pleased to accept the commendations on behalf of the entire Board. He said it was well-earned by both the immediate and past members of the Board that served since 2006. He said he would leave with happy memories and was pleased to retire from civic service and looked forward to being an observer of the Board's proceedings in the future.

DATE OF NEXT MEETING

Not discussed.

PUBLIC COMMENTS

Jim Harrington said he would reiterate what he had written for the New Mexican on Sunday with the intent to commend the Board for its six years of selfless and dedicated service. He said he would commend the entire Board and especially Chair Rowe who did a wonderful job of keeping the Board on the course to be fair in its deliberations.

Mr. Harrington said it was important for a board of this kind, called upon occasionally to judge the conduct of politicians and public officials, to achieve a reputation for fairness and to refuse to get involved in witch hunts and political attacks. He thought the Board had done that to an admirable degree. He said that had been even more remarkable in light of the frequent efforts to undermine the Board's reputation. He said he took heart that the efforts appeared to fail because so many able and qualified citizens were willing to apply for seats on the newly constituted board.

He applauded the Board.

Ms. Heldmeyer asked, given the discussion of the City Attorney's memo in response to questions about recusals, if that was in open record. Chair Rowe replied it was.

Ms. Heldmeyer thanked the members of the Board who took the issues seriously and conscientiously. She also thanked the press which she said covered what the Board was doing. She thought they had been conscientious as well. She said it would be interesting to have a board with six attorneys and her hope was they would understand complaints were brought by ordinary citizens and might not rise to the level of a legal brief. She said part of the role as members of the Board, is to help the average citizen bring forth a complaint without tying the complaint up in legalism.

ADJOURNMENT

There being no further matters to discuss and the agenda having been completed, the Chair adjourned the meeting at 4:45 p.m.

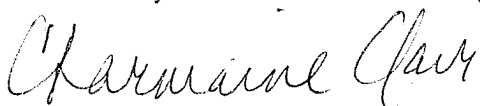
This is the last meeting of this board.

Approved by:

A handwritten signature in black ink, appearing to read "Fred Rowe", written over a horizontal line.

Fred Rowe, Chairman

Submitted by:

A handwritten signature in black ink, appearing to read "Charmaine Clair", written over a horizontal line.

Charmaine Clair, Stenographer