



Agenda

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ETHICS & CAMPAIGN REVIEW BOARD

Thursday, July 28, 2011

4:00 p.m.

City Council Chambers

City Hall, 200 Lincoln Avenue

1. PROCEDURES
 - a) Roll Call
 - b) Election of Chair
 - c) Election of Vice-Chair
 - d) Approval of Agenda
 - e) Determination of Terms
2. DISCUSSION MATTERS
 - a) Ethics Ordinance #2011-8
 - b) Pending Complaint #2011-1
(No Discussion of Substance of Complaint)
3. ACTION ITEMS
 - a) Scheduling of Pending Complaint 2011-1
 - b) Date of Next Meeting
4. BOARD MATTERS
5. PUBLIC COMMENT
6. ADJOURNMENT

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CITY OF SANTA FE
ETHICS AND CAMPAIGN REVIEW BOARD

July 28, 2011

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**MINUTES OF THE
CITY OF SANTA FE**

ETHICS AND CAMPAIGN REVIEW BOARD

JULY 28, 2011

1. PROCEDURES

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 in the City Councilor's Chambers, City Hall, 200 Lincoln Avenue, Santa Fe, New Mexico.

Roll call indicated the presence of a quorum as follows:

Members Present:

Paul L. Biderman
Ruth Kovnat
Tara Lujan
Kristina Martinez
Justin Miller
Roderick Thompson
Tyler Atkins

Members Absent:

Staff Present:

Yolanda Vigil, City Clerk
Gino Zamora, City Attorney

Others Present:

Fred Flatt
Julie Ann Grimm, the New Mexican
Patricio Larragoite
Fred Rowe
Charmaine Clair, Stenographer

City clerk Yolanda Vigil said the first order of business was the election of the chair.

b) Election of Chair

Ms. Kovnat moved to nominate Justin Miller as the chair of the Ethics and Campaign Review Board (ECRB.) Ms. Martinez seconded the motion.

Ms. Kovnat, who was asked to temporarily chair the meeting, asked if there were other nominations. There were none.

Mr. Thompson moved to close the nominations. Ms. Lujan seconded the motion.

Mr. Miller accepted the nomination as chair of the Ethics and Campaign Review Board.

The motion passed by unanimous voice vote.

c) Election of Vice Chair

Mr. Thompson nominated himself as vice chair. Ms. Kovnat seconded the motion.

Ms. Lujan nominated Ms. Kovnat as vice chair. Mr. Thompson seconded the motion.

Mr. Thompson said Ms. Kovnat's experience from the last board would serve the new board better. Ms. Kovnat disagreed. She deferred to Mr. Thompson and said new leadership was desirable.

The motion to approve Roderick Thompson as vice chair was passed by unanimous voice vote.

Ms. Vigil asked that the Board members introduce themselves.

Paul Biderman said he retired as a research faculty member at the School of Law. He was Director of the Institute of Public Law and has over 40 years as a lawyer. He noted his ethics related work as the founder of the Judicial Education Center in the Institute of Public Law and said he has trained judges, did on line publishing and was appointed to the Supreme Court committee on the Code of Judicial Conduct to help write opinions in response to inquiries from judges about judicial ethics.

Mr. Biderman said he has taught ethics for state government agencies as well as municipal leagues, the Association of Counties and the MFA (Mortgage Finance Authority) and taught ethics for a public law class. His background includes a position as Secretary of Energy and Minerals and the Assistant to the Attorney General.

Justin Miller said he was an attorney in Santa Fe and prior to that served as Chief Counsel in Governor Richardson's office until the change in administration.

Roderick Thompson said he is a solo practitioner for criminal defense. He worked for the New Mexico Public Defender and the District Attorney's Office in Santa Fe. Originally from Detroit, he went to Tulane for his law degree and has been in Santa Fe since 2006.

Ruth Kovnat said she recently retired from the faculty of the University of New Mexico Law School and she served on the board of the previous ECRB.

Tyler Atkins said he was a trial lawyer in his fourth year. He said he was happy to be nominated and to serve on the Board.

Kristina Martinez said she was an attorney in Santa Fe. She was born and raised in Santa Fe.

Tara Lujan said she volunteers with various nonprofits. She currently chairs a committee for voter registration for Santa Fe County. She was born and raised in Santa Fe.

Gino Zamora said he was the city attorney and his office provides legal advice to the Board in its official duties. He said at a chair's request a city attorney could be present if needed for a meeting or issue, for pending complaints, advice on procedure or for monitoring.

Yolanda Vigil said she was the city clerk and the Board's staff liaison.

Mr. Biderman asked that Fred Rowe be recognized because of his role in the board.

Mr. Fred Rowe said he was there on behalf of the former board members to wish the new ECRB Board members the best and to offer the assistance of the previous board members. He said that was the last official action taken by the previous board and he would confirm the offer in writing now that a chair was elected.

d) Approval of Agenda

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

e) Determination of Terms

Ms. Vigil explained that new board members would draw by lot to determine their term of appointment. She said there were three 4 year terms, two 2 year terms and two 3 year terms.

The drawings were read into the record as the terms were drawn and are as follows:

Tara Lujan- three years

Christina Martinez- two years

Tyler Atkins- three years

Ruth Kovnat- four years

Roderick Thompson- four years

Justin Miller- two years

Paul Biderman- four years

Mr. Thompson said on the Board of Adjustments when a new Mayor or newly elected came in, traditionally the board resigned. He asked if that would be the same for the ECRB.

Ms. Vigil said she thought that was up to the incoming Mayor. She said members would continue to serve until replaced or asked to resign. She read in the code "members may be removed for just cause by a majority vote of the governing body" (6-16 E) to confirm that removal would be only for cause.

2. DISCUSSION MATTERS

a) Ethics Ordinance #2011-8

Mr. Zamora said he would provide a quick overview of the current ethics code passed in April 2011. He said the previous board identified that the code needed modernization and had gaps regarding reporting requirements and definitions of conflict. A comprehensive rewrite of the city ethics code took place and became effective in April 2011.

The revised code was reviewed with the new members. A summary follows:

1-7.2 Statement of Policy- explained the requirements of public officials and public employees; responsibility to the people and that decisions and policies should be without conflicts of interest.

1-7.3 Purpose of intent- to establish standards of ethical conduct for all public officials and employees of the city and the consequences for violation. Mr. Zamora explained that different terminology used such as public officials, governing body and employees, needed further clarification to hold accountable each level of different situations and groups within the city.

1-7.4- Informational about the roles in the governing body that at times could be advisory, legislative (advising or setting policy) where public input would be sought and quasi-judicial (a decision based on facts, briefs and arguments presented) where public input was inappropriate.

1-7.5-Definitions- conflict of interest was clarified and modified in the new code. The first component was to have a specific and identifiable prospect of pecuniary gain or loss. Definitions are given for employee, family of an individual, governing body, household, etc.

The code would apply to the Board members, their conduct and any matters brought before them from their appointment forward.

1-7.6-Disclosures -Code of Ethics disclosure; annual review and availability of the information by the city clerk made available to the public and updated every July.

1-7.7 A-Improper Gifts, Transactions, misrepresentation of private interests etc. Mr. Zamora read the definition on accountability and pointed out the different applications for different members within the organization.

Mr. Zamora read language on meals, gifts etc. not to exceed \$50 (consistent with IRS values) and subparagraph (a) of (1) that addressed different situations and subparagraph (b) relevancy to official duties. Examples of different events were given. The code has been provided to the city directors who have been educated and would in turn educate their employees that disclosure was needed if value was more than \$50.

Mr. Zamora said that *C-Representation of Private Interest* was important to clarify boundaries of various situations; what created conflict with private interest as a public employee and once the employee left what constituted a conflict. He said a former employer for a period of one year, could not do business with a private entity worked with while at the city.

Paragraph E was said to be important regarding city services or equipment and examples were given and paragraph F-*Nepotism*, the definition was read.

Mr. Zamora clarified Honoraria (paragraph J) and gave exceptions such as reasonable reimbursement for meals and lodging or actual travel expenses incurred in making a speech or rendering service. He provided examples.

Mr. Zamora said Section L (Conflicts of Interests) was a clarification of disclosures and when disclosures must be made.

Mr. Zamora said the Board could contact him with any questions.

b) Pending Complaint #2011-1 (No Discussion of Substance of Complaint)

Ms. Kovnat reiterated that she was recused on the complaint.

Mr. Zamora said no action was required and the discussion matter was only to inform the Board that a complaint was before them. He said the complaint was filed under the old ordinance and the actions subject to complaint were under the old ordinance. He said the old ordinance would be supplied to the Board members.

3. ACTION ITEMS

a) Scheduling of Pending Complaint 2011-1

Mr. Zamora said this item was to inform the Board about the complaint and it wasn't necessary to make decisions that day. He said the Board might want to study the old code and determine how to schedule the review and decision.

Ms. Kovnat said the previous board members developed a procedure and a process for handling complaints that was not included in the packet. She asked if copies could be supplied for the Board's consideration if they want to follow or alter those procedures.

Mr. Zamora said the procedure was a general policy he thought important for the Board to review. He said it could be something the Board would adopt for that complaint.

Ms. Martinez suggested setting a meeting to review the procedure to see if it should be adopted.

Chair Miller asked Ms. Kovnat to provide information on how the previous Board operated and complaints were handled.

Ms. Kovnat said the ordinance for ethics and campaign review contained a general procedure for board action on complaints. The previous board added detail to that and established a complaint subcommittee that consisted of three members of the board and a rule that at least two members were attorneys.

She said the complaint subcommittee's role was to determine the legal sufficiency of the complaint; if the complaint stated sufficient facts that were a claim under the standards of the Ethics Board. She said the complaint subcommittee would decide either to recommend a dismissal of the complaint because it was frivolous, didn't state a claim or was untimely; or recommend the Board proceed to hearing the complaint.

Mr. Zamora clarified that the ECRB ordinance indicated the powers and duties and the complaints and determination of legal sufficiency and setting of a hearing. He said that was followed by the conduct of investigations and the sanctions or appeals.

He said the April code provided clarification and direction regarding the complaint process. He said he would revise his suggestion to include not only a review of the old processes and procedures but a review of the procedures the Board would be bound by.

Mr. Zamora said 6-16.2, paragraph B addressed that the board would establish reasonable rules of practice and procedures which would not conflict with city code or other rules of practice and procedure. He said the board would evolve the rules.

Ms. Vigil said the previous ECRB adopted the Rules of Procedures and Organizations and she would e-mail those to the members to review as well as the old ordinance.

Mr. Biderman asked if the complaint pending was under the old procedures also.

Mr. Zamora said that was the Board's option whether to apply the rules that were in place. He recommended for consistency that the Board operate under the procedures in place at that time.

Mr. Biderman said the next step if they use the old procedures would be to appoint a committee to review the complaint as it applied to the old rules.

Ms. Martinez moved that a meeting be scheduled and that at the next meeting the Board discuss whether to adopt the old procedures for the pending complaint. Mr. Thompson seconded the motion.

The Board discussed the next meeting dates. Friday, August 12 at 4 p.m. was decided.

Mr. Thompson asked that a discussion of the regular meeting time be an agenda item.

Chair Miller said he would assume the agenda was set depending on what happened at the previous meeting. He clarified as chair he would work with Ms. Vigil on the agenda items and that members could contact him regarding things they want on the agenda. He asked members to think about what should be on the next meeting agenda.

Mr. Zamora explained that the ECRB Board tended to be complaint and election driven. He said there would be more meetings in the periods prior to elections and immediately afterward.

Ms. Vigil asked that for the next agenda, members contact Chair Miller. She said she would send an email list the following day. She said she would post the agendas, put them on the city website and e-mail the members a packet as well as provide a hard copy of the packet at the meeting.

The motion to meet to discuss the adoption of the previous procedures for the pending complaint was passed by unanimous voice vote.

b) Date of Next Meeting- Friday, August 12, 2011 at 4 p.m.

Chair Miller asked about the rules followed for the meeting procedures. He was told that Roberts Rules of Order and Rules of Procedures of Committees and Boards were followed and would be provided to the Board. The meetings were also subject to the Open Meetings Act.

4. BOARD MATTERS

There were none

5. PUBLIC COMMENTS

Mr. Larragoite, a former ECRB member, welcomed everyone. He recommended that the Board develop their own rules and processes. He said he saw the creation of the subcommittee as a flaw in the previous Board. His opinion was that if that was followed the Board should not allow the subcommittee members to vote on the substantive matters of the complaint because they would have too much information. He said that has a bias on the decision of the rest of the Board.

Mr. Fred Flatt, an ex-member of the previous board said the ECRB Board should be aware that subpoena power is available to them. He said the previous board failed to use it and it was an important tool.

Julie Ann Grimm with the Santa Fe New Mexican said the previous habit of the board was to gather around the table with member's backs to the audience. She thanked them for meeting in the manner they had and asked that they please continue to do that. She also asked that they please consider the use of a city space where the public could hear the Board members.

6. ADJOURNMENT

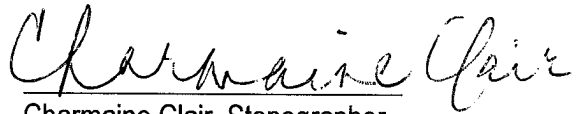
Mr. Thompson moved to adjourn the meeting. Mr. Atkins seconded the motion and it passed by unanimous voice vote.

There being no further matters to discuss and the agenda having been completed, the meeting adjourned at 5:18 p.m.

Approved by:

Justin Miller, Chair

Submitted by:


Charmaine Clair, Stenographer