



Agenda

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ETHICS & CAMPAIGN REVIEW BOARD

Friday, September 2, 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 – August 12, 2011
2. DISCUSSION MATTERS
 - a) Report from Ad Hoc Committee on Development of Permanent ECRB Rules of Practice and Procedure.
3. ACTION ITEMS
 - a) Consideration of Subcommittee Recommendation Regarding 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

September 2, 2011

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**MINUTES OF THE
CITY OF SANTA FE**

ETHICS AND CAMPAIGN REVIEW BOARD

SEPTEMBER 2, 2011

1. PROCEDURES

a) Roll Call

A regular meeting of the City of Santa Fe Ethics and Campaign Review Board was called to order by Justin Miller, Chair 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:

Justin Miller, Chair
Tara Lujan
Tyler Atkins
Kristina Martinez

Members Absent:

Paul L. Biderman
Ruth Kovnat
Roderick Thompson, Vice Chair

Staff Present:

Yolanda Vigil, City Clerk
Geno Zamora, City Attorney
Mayor David Coss

Others Present:

Karen Heldmeyer
Jim Harrington, Common Cause
Julie Ann Grimm, Santa Fe New Mexican
Fred Flatt
Charmaine Clair, Stenographer

b) Approval of the Agenda

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

c) Approval of The Minutes- August 12, 2011

Mr. Atkins moved to approve the minutes of August 12, 2011 as presented. Ms. Martinez seconded the motion and it passed by unanimous voice vote.

2. DISCUSSION MATTERS

- a. Report from Ad Hoc Committee on Permanent ECRB Rules of Practice and Procedure

Mr. Atkins said he and Ms. Martinez and Ms. Kovnat couldn't find time to get together and would meet after this Board meeting. They would have recommendations at the next Board meeting.

3. ACTION ITEMS

- a. Consideration of Subcommittee Recommendation Regarding Complaint Case #2011-1

Chair Miller said before hearing from the subcommittee he wanted to inform the committee and the public that he would recuse himself from substantive voting matters on this complaint. Mr. Biderman and Ms. Kovnat also recused, leaving four members of the Board as a quorum to resolve issues in general.

Chair Miller said a majority of the three members present could also resolve substantive issues related to the complaint at this meeting. He said procedural matters would need to be discussed as the Board moved forward.

Chair Miller opened the floor to the Complaints Subcommittee to present their recommendation.

Ms. Martinez said the Complaints Subcommittee (Ms. Martinez, Mr. Atkins and Mr. Thompson) met and prepared a short memorandum that explained the recommendation. Copies were passed out as a subcommittee recommendation (Exhibit 1.)

Ms. Martinez said the subcommittee reviewed the complaint, the addendum to the complaint, the response from Councilor Wurzbarger and the response filed to her response. She said all exhibits, testimony and the various letters were taken into consideration.

Ms. Martinez said the Complaints Subcommittee recommended as outlined in the memorandum:

- 1) That the board finds the complaint as timely.
- 2) That the board finds the complaint is not frivolous.
- 3) That the board determines it has the jurisdiction to adjudicate the complaint.

Ms. Martinez said as to the substance of the complaint, the subcommittee had two recommendations:

- 1) As to the alleged violation of section 1-7.7 (I) Ordinance #2005-14 section 1:
The board should determine that the complaint failed, on its face, to set forth legally sufficient facts to state a claim for violation of that section.
- 2) As to the second part of the complaint the subcommittee recommended:
The Board makes the determination that on its face, the complaint sets forth legally sufficient facts to state a claim for violation of section 1-7.7 (C) (reporting requirements.)

Chair Miller said it would be helpful to discuss how the Board should proceed. He said they could vote on the recommendation before the end of the meeting.

Chair Miller outlined three avenues open to the Board for valid complaints:

- 1) To determine if further investigation was needed such as subpoenas or witnesses for testimony or documents.
- 2) The board could refer the matter to be heard by the Board or the Hearing Subcommittee; there is no Hearing Subcommittee.
- 3) Section E provides for settlement proceedings; a formal complaint alleging violation could be resolved by a voluntary stipulation on the part of the Respondent, if approved by the Board at a public meeting.

Chair Miller opened the discussion to the Board members.

Ms. Martinez said the Board could determine not to move forward on the first recommendation, since it failed to set forth sufficient facts.

She said as to the second part of the reporting violations; a procedure for those to be heard should be put in place. She thought an investigation would not be necessary because the Councilor admitted she had not met the reporting requirements. The Board could set procedures for a hearing where the Complainant and the Respondent could make their record and the Board could decide.

Ms. Lujan asked if the Board should first accept the Complaints Subcommittee recommendations.

Chair Miller said he first wanted to get a general sense of where the Board would go before they entertained a motion. He said Section D (5) said they "shall refer the matter through a public hearing by the Board or the Hearing Subcommittee" and there was no Hearing Subcommittee. He said the complaint should be referred for a Public Hearing by the Board. He suggested the Board would still need to have discussion and preparation as to what the hearing would entail.

Mr. Zamora said the Board has one action item and that could be to decide upon the recommendations of the subcommittee under 3 (a) or consider the recommendations as well as the procedures, to move forward. He said in setting the date of the next meeting and the contents of the next agenda the Board could decide if that would be a hearing or an organizational meeting for all parties and the Board to determine procedures.

Mr. Atkins moved that the Board accept the recommendation of the Complaints Subcommittee. Ms. Martinez seconded the motion and it passed by unanimous voice vote.

4. BOARD MATTERS

Chair Miller said before establishing the next meeting date he would open discussion on what that would involve.

Mr. Atkins said he agreed with Ms. Martinez that the complaint was simple and they had most if not all of the documentation needed. He asked that the Board continue with a hearing.

Chair Miller confirmed that Mr. Atkins referred to D (4) as to whether the Board would require further investigation of or the subpoena of witnesses, or documents. He said the Board should have a sense of how the hearing should be conducted and determine procedures. He said in the next meeting the Board should hear

from the Respondent and Complainant as to their needs; if they planned to present witnesses or other documentary evidence, so the Board could establish the process and procedures in the hearing.

Ms. Lujan asked to clarify that based on the subcommittee recommendations there was nothing further to add to the case.

Ms. Martinez said the documents that need to be considered were already in the record. She said she agreed it would be prudent to allow the Complainant and Respondent to discuss their needs and if given time to make a presentation and present evidence, the determination of the complaint could be dealt with easily.

Ms. Lujan asked if to set up the next meeting and know how the proceedings would be set up, was something normally done. She thought the complaint appeared simple and wasn't sure it was necessary.

Chair Miller said the Board had no model because the previous Board had never held a hearing. He asked Mr. Zamora if the city had a process for administrative or quasi-judicial hearings and if that was something that the Board could distribute or discuss with them.

Mr. Zamora said during his tenure there had not been a hearing by the ECRB and the Board was in a unique spot in their role. He said in the last determination made by the ECRB; the Respondent submitted a written waiver of the hearing. He said this is a simple complaint on its face, but the parties could have a different assessment of what sufficient time was for a hearing.

Chair Miller said he would feel more comfortable if the Board could tell the Respondent and Complainant the process and how much time they would have.

Ms. Martinez said that made sense to have another meeting to set procedure and allow the Complainant and the Respondent to tell what they need to present. She said the Board members who recused themselves from the substantive could participate in the procedural decisions and their insight of how the hearing should be conducted would be good.

Mr. Atkins said he wasn't sure there was a need for the extra meeting. He asked Mr. Zamora to confirm his understanding that the parties could bring any witnesses and they could speak at Public Comment.

Mr. Zamora said the agenda items called *public comments* were outside of the other agenda items. There could be opportunity for public comment within the hearing and it should be within the agenda item; the Board could not consider public comment that was separate from the agenda item.

Mr. Zamora said the Board had been diligent and aggressive in meeting to decide whether the matter would be heard. He said the Board shouldn't be concerned about the timing more than the process that would be used.

Ms. Lujan thought having input from the rest of the Board would be to their benefit and would make things go more smoothly.

Chair Miller asked if establishing the hearing procedures would fall to the Advisory Committee to come back to the Board with recommendations or he asked, if it made more sense for the Ad Hoc Committee. He said they

were already working on the rules of practice and procedures. Chair Miller asked if the Ad Hoc Committee would consider the hearing procedures and present their ideas to the larger Board for discussion.

Ms. Martinez said she wasn't sure there was a need to go to a second subcommittee since the Board was operating under the previous rules, if the Board's purpose was to hear the parties speak about their expectations. She said the parties could speak at the next meeting and the Board could set the procedures.

Chair Miller said there were questions the Board should have clarity on before the hearing: What kind of evidence does the board want to hear? What kind of rules of evidence would apply? What should the presentations entail; do the Complainant and Respondent get a specific amount of time to address the Board? Would public comment be a part of the hearing procedure or should that be taken after the hearing? Who would preside over the hearing? He assumed there would be a hearing officer and since he was recused, he wouldn't expect to be.

Chair Miller said they would have the Ad Hoc Committee provide general guidelines or draft procedures and the Board as a whole could discuss those at the next meeting. He said the committee should also consider how comment could be taken from the public and the Respondents.

5. DATE OF NEXT MEETING

The dates and availability of Board members and parties involved were discussed for the next meeting.

Mr. Atkins moved the Board meet to set procedures on Wednesday, September 28, or Thursday September 29, 2011. Ms. Martinez seconded the motion and the motion passed by unanimous voice vote.

6. PUBLIC COMMENT

Karen Heldmeyer said she wanted to clarify the discussion the Board had about the lack of reporting and the addendum. She said the information she received on an inspection of public records request was incomplete. She filed a complaint with a proviso that it could be put in once received.

She asked the members of the Complaints Committee to raise their hands. She asked if all three members met.

Mr. Zamora explained this was the Public Comment period and a two-way discussion would be an exception and up to the Board to stand for questions.

Ms. Heldmeyer said to let the complaint drag on was an insult to the people of Santa Fe. She said there were problems with the other Board because so many recused and problems with this Board. She said Mr. Biderman said he would recuse himself from anything that involved anyone on the Governing Body and that meant the public wouldn't get a fair shake if a complaint involved the Governing Body.

Ms. Heldmeyer said for two of the three people left to come up with something that gives no explanation for the conclusion they reached for something with great public interest and is "timely and

not frivolous," is a disservice to the people of Santa Fe. Ms. Heldmeyer said in the past, complaints usually had an explanation of why they failed to be sufficient.

She said people expect more from the Board. She suggested when the Board worked on their procedures that they think about something more appropriate. She said the idea when the ECRB started was to be a citizen's body.

Jim Harrington, the state chair of Common Cause, New Mexico said he could not agree with Ms. Heldmeyer in her criticism of the previous Board. He said the Board wrestled with a very serious job and a complicated case.

He said he agreed the Board had not complied with section 6-16.4 of the ECRB in subsection C that stated "no complaint shall be dismissed without an evidentiary hearing or prior Board discussion in a public meeting of the reasons for the determination." He suggested it could be corrected by extending the hearing and engaging in additional discussion.

Mr. Harrington said the public is entitled to a statement either in the subcommittee report or in the discussion of the subcommittee members, of the reasons that part of the complaint failed to state a claim.

Mr. Atkins agreed that Mr. Harrington brought up a good point. Ms. Martinez also agreed. Mr. Atkins and Ms. Martinez agreed to address the point after Public Comment.

Fred Flatt said he was there for two things; he first wanted to apologize to Mr. Zamora. He said he chastised Mr. Zamora in a letter to the editor for not showing up for the ECRB meetings with the Matthew Ortiz issue. He said he submitted the piece prior to a meeting where Mr. Zamora divulged that he attended the meetings when invited.

Mr. Flatt asked if e-mails or correspondence between the chair and members of the Board was part of public record and if not, it should be. He said the previous ECRB chairperson had allegations of prejudicial remarks against Councilor Heldmeyer and those should be part of the hearing. He wanted to see all of the correspondence from the chairperson to other Board members because he thought there were important findings there.

Mayor Coss said he wanted to thank the Board for their service because it was a difficult one. He said he hoped the Board could fix the comments regarding "disservice to the public." He looked forward to having Mr. Zamora work with the Board. He said he was glad the Board would address some of the points well taken in the comments.

Chair Miller closed the Public Comment portion of the meeting. He opened the floor to Mr. Atkins for explanation of the subcommittee recommendations.

Mr. Atkins said he apologized and the Complaints Subcommittee had nothing to hide. He said they were all in agreement with the decision. He said the basis of their decision was that the complaint was based on the old code section 1-7.7 I and it stated "no public official or public employee shall use any city services, personnel or equipment for personal benefit, convenience or profit."

He said this was approached like a motion to dismiss where all of the facts were looked at and if there was a way to win based on the facts, would move forward. He said the subcommittee determined based on the facts, to look at only that portion of the law to determine if any city services, personnel or equipment was used for personal benefit, convenience or profit.

He said the subcommittee discussed that thoroughly and that was how they came to their decision.

Ms. Martinez offered to answer questions.

Mr. Zamora said he had difficulty regarding the ex-parte communication which was not posted on the agenda so all parties could be aware of the opportunity. He said Mr. Atkins explanation met the requirements of the ordinance.

Ms. Lujan said the Board discussed the dismissal of the first part of the complaint and she thought it prudent to have discussion on the acceptance on the second part of the complaint.

Ms. Martinez said the reason the subcommittee unanimously found the second part of the complaint (failure to report trips of value) on its face under section 1-7.7 C, reporting requirements, sufficient to state the claim was that Councilor Wurzburger had failed to report two trips. She said Councilor Wurzburger did not dispute that.

Mr. Fred Flatt asked to ask a question in relation to Ms. Martinez's offer to answer questions.

Chair Miller said at this point the Board had moved through the Public Comment portion. He said he would adjourn the meeting and hear Mr. Flatt's point privately.

6. ADJOURNMENT

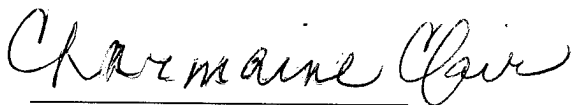
Mr. Atkins moved to adjourn the meeting. Ms. Lujan seconded the motion and it passed by unanimous voice vote.

There being no further matters to discuss and the agenda having been completed, the meeting adjourned at 5:24 p.m.

Approved by:

Justin Miller, Chair

Submitted by:



Charmaine Clair, Stenographer