

February 6, 2001

REPORT TO THE COMMITTEE ON RULES, FINANCE
AND INTERGOVERNMENTAL RELATIONS

ENACTMENT OF AN ORDINANCE ESTABLISHING AN ETHICS COMMISSION
FOR THE CITY OF SAN DIEGO

INTRODUCTION

At the January 10, 2001 meeting of the Committee on Rules, Finance and Intergovernmental Relations, Mayor Dick Murphy presented a proposal for establishment of a City Ethics Commission. The Mayor's proposal included recommendations for the composition of the Commission, appointment process and terms, responsibilities and duties, qualifications, staff, and budget for the Commission. As a result of the January 10, 2001, Rules Committee meeting, additional input on the Mayor's Ethics Commission proposal has been received from a variety of sources, including citizens, public officials, and members of a past citizen's advisory committee on ethics.

DISCUSSION

Attached to this report is a draft ordinance prepared by this office for establishment of a City Ethics Commission. The draft ordinance contains provisions which are based on the proposal presented to the Rules Committee on January 10, 2001, with some modifications based on the feedback that has been received from officials and interested citizens. The following is a summary of the highlights of the draft ordinance, and the changes that have been made to the Mayor's original proposal.

1. Composition of the Commission. The Commission will consist of five unpaid members. Four of the members will be appointed by the Mayor, and one member will be appointed by the City Attorney, with all appointments subject to confirmation by the Council. The appointments must be made so that the Commission reflects the diversity of the community which it serves.

2. Terms. The Commissioners will serve four year terms, with the Mayor's initial appointees serving staggered terms ranging from one to four years. After a Commissioner has served two full, consecutive four year terms, the Commissioner will not be eligible for reappointment for four years after leaving office.

3. Responsibilities and Duties. The responsibilities of the Commission will include:

Auditing disclosure statements. The City Clerk will continue to be the central filing office.

Establishing a complaint procedure and telephone hot line for complaints regarding violations of ethics laws.

Issuance of advice and opinions in response to questions about governmental ethics. Formal opinions issued by the Commission will provide immunity against administrative enforcement by the Commission. Providing training and education to city employees and candidates for City office and their staffs regarding governmental ethics.

Investigating complaints and taking administrative enforcement action.

Drafting an ordinance, subject to Council approval, to establish civil fines for violations of City ethics laws, which could be levied by the Commission.

Drafting an ordinance, subject to Council approval, revising the City's existing Code of Ethics.

Referral of criminal violations to appropriate law enforcement agencies.

Creating an expedited investigation process for complaints about candidates for City office made in the last 30 days before an election.

4. Subpoena Power. It is the opinion of the City Attorney's office that the power to subpoena witnesses and documents cannot be granted to the Commission by ordinance, and will require a Charter amendment approved by a majority of the voters. Although the City Council has broad authority pursuant to San Diego Charter section 43 to establish boards and commissions, Charter section 43 does not give the Council the authority to grant subpoena power to a board or commission. The California Government Code requires city subpoenas to be issued by a legislative body, and requires that they be signed by the mayor and attested to by the city clerk. Cal. Gov't Code 37104, 37105. Express language in the Charter delegating this authority to the Ethics Commission is necessary to ensure that the Commission's subpoena power is not vulnerable to a legal challenge. *Brown v. City of Berkeley*, 57 Cal. App. 3d 223 (1976); *Dibb v. County of San Diego*, 8 Cal. 4th 1200 (1994). Other cities in California with ethics commissions, which have granted those Commissions subpoena power, including Los Angeles and San Francisco, have done so by Charter amendment. In order to proceed with the Mayor's recommendation to confer subpoena power on the Commission, a ballot measure seeking a Charter amendment will need to be submitted for the March 2002 general election.

5. Commissioner Qualifications. Commissioners will need to be qualified electors in the City, and during their tenure will be prohibited from running for City office, acting as a registered lobbyist, or contributing to or publically supporting or opposing a candidate for City office.

6. Commission Staff and Budget. The Commission's staff will consist of no less than a full time executive director, a clerical assistant, and an investigator. The City Attorney will provide legal services to the Commission, however, the Commission may hire outside counsel to provide legal services related to matters which pose a conflict of interest for the City Attorney, such as matters involving personnel of the City Attorney's Office, or an election campaign for City Attorney.

7. New Provisions. The draft ordinance contains several provisions which were not included in the Mayor's original proposal, including a provision regarding the filling of vacancies on the Commission, a quorum provision requiring 3 votes for most actions and 4 votes to impose sanctions, a provision allowing the Commissioners to be reimbursed for expenses incurred in the performance of their duties, and a provision setting forth the jurisdiction of the Commission.

CONCLUSION

A strong and impartial Ethics Commission with the powers, duties and responsibilities set forth in the Mayor's proposal would assist in building the public's confidence that our City officials are acting in the public's best interests. The draft ordinance attached to this report will establish the framework for such a Commission, allowing for further development of the Commission in the future through Charter amendment.

Respectfully submitted,

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City Attorney

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