



**Minutes for Meeting of
Thursday, July 10, 2008**

Item-1: Call to Order

Chairman Cabrera called the meeting to order at 5:00 p.m.

Item-2: Roll Call

Present – Chairman Guillermo Cabrera, Vice-Chair Lee Biddle, Commissioners Clyde Fuller, Krishna Haney, Dorothy Leonard, Richard Valdez, and Larry Westfall

Staff – Executive Director Stacey Fulhorst, General Counsel Alison Adema, Program Manager Steve Ross, Senior Investigator Lauri Davis, Investigator Kacy Green, Auditor Rosalba Gomez, and Executive Secretary Katherine Hunt

Item-3: Approval of Commission Minutes

Approval of Ethics Commission Minutes of June 12, 2008

Motion: Approve
Moved/Seconded: Leonard/Biddle
Vote: Carried Unanimously
Abstained: Valdez

Item-4: Non-Agenda Public Comment

None

Item-5: Commissioner Comment

Chairman Cabrera presented Ethics Commission Director Stacey Fulhorst with a service award pin for 10 years of employment with the City of San Diego and commended her on her service to the Ethics Commission.

Commissioner Valdez also thanked Director Fulhorst for her service to the Commission.

Chairman Cabrera reported that the Commission has asked the law firm of McDougal Love Eckis Smith Boehmer & Foley to provide outside counsel services to the Commission. He advised that the Commission was not able to retain the firm of Rattan and Tucker as previously planned due to difficulty in obtaining a conflict waiver.

Item-6: Executive Director Comment

Director Fulhorst commented on the services that Commission Program Manager Steve Ross provides to the Commission with respect to responding to voluminous requests for assistance from lobbyists and candidates during the first six months of 2008, drafting a lobbying manual, and maintaining the Commission's website.

Chairman Cabrera added that he has received very positive feedback regarding the outstanding service Steve provides to the Commission, particularly his assistance with respect to inquiries about the City's lobbying laws.

Item-7: General Counsel Comment

None

Item-8: Election of Chair and Vice Chair

Commissioner Leonard reported that the nominating committee has nominated Commissioner Cabrera to serve a second year as Commission Chair, and Commissioner Valdez to serve as Vice Chair.

Motion: Nominate Commissioner Cabrera as Chair and Commissioner Valdez as Vice Chair

Moved/Seconded: Leonard/Biddle

Vote: Carried Unanimously

Item-9: Proposed Amendments to the Election Campaign Control Ordinance

Additional Filing Requirement

Director Fulhorst reviewed the proposed change to add an additional filing requirement for City candidates:

- Currently, campaign activity that takes place during the last 16 days before an election is not disclosed to the public until after the election.

- Many candidates wait to accept contributions from individuals associated with special interests groups until the last 16 days before an election in order to avoid disclosure of these contributions until well after the election.
- An alternative proposal involving a 24-hour reporting requirement would be difficult for campaigns to comply with for numerous reasons including the need to obtain contributor information before contributions can be reported and deposited.

She explained that the proposal would require an additional filing on the last Friday before a Tuesday election, and would cover the period from the last campaign statement through the Thursday before the election. This proposal would result in the public receiving information regarding campaign activities during 12 of the 16 days before an election. She noted that the City of Los Angeles currently includes a similar filing requirement for its City candidates, and they report that candidates do not have any difficulty complying.

Chairman Cabrera indicated that there was consensus among the Commissioners to support the proposal for an additional filing requirement.

Legal Defense Funds

Director Fulhorst reported that the City sponsored an Assembly Bill last year that allowed local jurisdictions to establish separate bank accounts and committees for legal defense fund purposes. She advised that the Fair Political Practices Commission (FPPC) proposed a set of regulations for the new law that conflicted with the City's laws concerning legal defense funds. However, she explained that after Commission staff worked with the FPPC, the regulations were amended in such a way as to allow local jurisdictions to establish their own rules with respect to legal defense funds. She advised that the proposed amendments drafted by staff reflect the recently-adopted changes in state law with regard to a candidate's ability to maintain a legal defense fund committee separate from any campaign committees.

Director Fulhorst reported that, in addition to the changes concerning separate legal defense fund committees, staff has submitted policy modifications for the Commission's consideration as follows:

- Possible changes to the contribution limit for legal defense funds which is currently set at \$250.
- Eliminating the exclusivity provision in order to allow candidates the option of either raising campaign contributions or creating a legal defense fund in order to pay legal costs.

- Allowing funds to be transferred from one legal defense fund to another when a legal matter has concluded without requiring the campaign to attribute the contributions to a particular contributor.
- Incorporating changes that would align the City's laws with the State's concerning extending the time limit for terminating legal defense fund committees. The proposed provision would allow the Commission's Executive Director to extend the termination date past the six month limit for good cause.

With respect to contribution limits, Director Fulhorst commented that the Commission may wish to explore changes to the current limits for legal defense funds in response to the Commission's recent recommended changes concerning campaign contribution limits.

Commissioner Haney asked when the \$250 contribution limit for legal defense funds was established.

Director Fulhorst responded that it was set in 2004.

Chairman Cabrera suggested adding consumer price indexing to the current limit of \$250.

Commissioner Leonard supported increasing the limit to \$500 with indexing.

Commissioner Biddle indicated that having a different contribution limit for legal defense funds may cause confusion.

Commissioner Westfall asked how many legal defense fund committees have been opened by candidates.

Director Fulhorst referred to legal defense funds established by previous Mayoral candidates Dick Murphy and Donna Frye. She explained that the current law requires candidates to file a Statement of Purpose identifying the purpose for the legal defense fund, and pointed out that many candidates are reluctant to do this because it reveals to the public and campaign opponents that the candidate is the subject of an investigation. She advised that the staff has recommended removing the exclusivity provision so that candidates are permitted to solicit and use campaign contributions to pay legal fees instead of creating a legal defense fund.

Commissioner Valdez commented that he supports increasing legal defense fund contribution limits to the same amount as campaign contribution limits.

The Commission discussed the matter of allowing funds to be transferred from one legal defense fund to another after a matter has been concluded and decided that it would be appropriate to keep in place the current requirement that transfers be subject to attribution and contribution limits.

Chairman Cabrera indicated that the consensus of the Commission was as follows: legal defense fund contribution limits should correspond with campaign contribution limits, which include indexing, the exclusivity provision should be lifted, and the transfers of legal defense funds should continue to be subject to attribution and contribution limits.

Chairman Cabrera referred to the termination of legal defense funds and asked whether the Fair Political Practices Commission's Executive Director was given guidelines in order to establish a basis for granting an extension for the termination of legal defense fund accounts.

Director Fulhorst responded that she does not believe the FPPC has any such guidelines.

Chairman Cabrera recommended adding a provision that will include reporting the extensions granted to the Commission.

Telephone Communications

Director Fulhorst referred to previous amendments that were approved by the Commission and the City Council Rules Committee and were intended to bring the City's laws into conformance with state law regarding campaign telephone communications. She advised that since then, staff has added a definition for "mass telephone communications," and noted that this defined term does not mirror state law in that it is not limited to calls that are similar in nature. She explained that regulating only calls that are similar in nature would require the Commission to evaluate various phone scripts to determine if they are similar in nature. As a result, the definition proposed by staff would clarify that the law applies to advocacy calls and polling calls, but not to calls made to vendors or campaign staff.

Evan McLaughlin commented on potential problems that may arise if the identification disclosure is required for parties conducting polls. Specifically, he noted that the disclosure could affect the polling results.

Chairman Cabrera suggested that making the disclosure at the end of the poll should alleviate Mr. McLaughlin's concerns.

Director Fulhorst confirmed that the disclosure can be made at the end of a call, and noted that neither the current nor the proposed language specifies when the disclosure needs to take place.

Commissioner Biddle questioned how campaigns would track the number of advocacy and polling calls made and when disclosure would need to be made during a polling call.

Director Fulhorst explained that campaigns typically use lists to make advocacy or polling calls and can therefore anticipate how many calls they will be making. She reported that staff has advised candidates and committees that they must include the identification disclosure once they know they are going to meet and/or exceed the 500-call threshold. In other words, if a candidate hires a company to call 1,000 people, every one of the 1,000 calls must include the required disclosure.

Chairman Cabrera noted that the staff's purpose in drafting the proposed changes was to avoid the filing of complaints resulting from push polls conducted by campaigns and to avoid the resulting situations in which the Commission is required to evaluate telephone scripts and determine whether calls were made for advocacy or true polling purposes.

Director Fulhorst clarified that the proposed provisions would apply to candidates and registered political committees.

Simon Mayeski commented regarding the 500 call limit.

Director Fulhorst pointed out that other jurisdictions use the same limit and noted that the 500 call limit was established to exclude "grass roots" campaign activity.

Motion: Approve staff recommendations except proposal for transfer of legal defense funds without attribution, and tie legal defense fund contribution limits to campaign contributions, which include indexing.

Moved/seconded: Haney/Fuller

Vote: Carried Unanimously

Item-10: Proposed Amendments to Ethics Commission's Investigative and Enforcement Procedures

Director Fulhorst reviewed draft changes made by staff in response to Commission direction given at the June meeting.

Chairman Cabrera asked if adding the word subpoenas to the provision regarding the authorization of subpoenas and subpoenas duces tecum in subsection 26.0445(b) resulted in authorizing the issuance of subpoenas for investigations.

Program Manager Steve Ross confirmed that the addition of the word subpoenas would allow witnesses to be subpoenaed during an investigation in addition to documents.

Motion: Approve draft changes

Moved/Seconded: Haney/Leonard

Vote: Carried Unanimously

Item-11: Presentation of Final Audit Report Regarding the Audit of the Jerry Sanders for Mayor Committee

Commission Auditor Rosalba Gomez presented the Final Audit Report for Commission acceptance.

Director Fulhorst commented that the audit report reflects the outstanding job that the Sanders for Mayor Committee treasurer and campaign staff did in the 2005 special election.

Motion: Accept report
Moved/Seconded: Westfall/Haney
Vote: Carried Unanimously

Item-12: Adoption of Commission Calendar for 2009

Adoption of the 2009 Ethics Commission Meeting Calendar

Commissioner Leonard reported that she will not be able to attend the January, 2009 meeting.

Motion: Approve calendar
Moved/Seconded: Valdez/Biddle
Vote: Carried Unanimously

Item-13: Adjournment to Closed Session

Chairman Cabrera adjourned the meeting to Closed Session at approximately 6:05 p.m. He stated the Commission would reconvene into Open Session following the conclusion of Closed Session in order to report any action taken during the closed session portion of the meeting.

Reconvene to Open Session

Chairman Cabrera called the meeting back into open session at approximately 6:30 p.m.

Reporting Results of Closed Session Meeting of July 10, 2008

Chairperson Cabrera reported the results of the Closed Session Meeting of July 10, 2008:

Item 1: Conference with Legal Counsel (5 potential matters)

Case No. 2007- 36 – In Re: Alleged Participation in Municipal Decision Involving Economic Interests

No Reportable Action

Case No. 2007-92 – In Re: Alleged Failure to Register as a Lobbyist

No Reportable Action

Case No. 2008-04 – In Re: Alleged Misuse of City Position and Resources

Motion: Dismiss

Vote: Motion carried 6/1 with Westfall voting nay

Case No. 2008-10 – In Re: Alleged Unlawful Solicitation of Campaign Contribution from City Employees and Acceptance of Campaign Contributions from an Organization

No Reportable Action

Case No. 2008-16 – In Re: Alleged Failure to Include “On Behalf Of” Disclosure for Telephone Communication

Motion: Dismiss

Vote: Carried Unanimously

Item 2: Conference with Legal Counsel (1 potential matter)

Case No. 2007-93 – In Re: Michael Aguirre - Alleged Unlawful Solicitation of Campaign Contributions from City Employees

No Reportable Action

Adjournment

The meeting adjourned at approximately 6:35 p.m.

Guillermo Cabrera, Commission Chair
Ethics Commission

Kathy Hunt, Executive Secretary
Ethics Commission

THIS INFORMATION WILL BE MADE AVAILABLE IN ALTERNATIVE FORMATS UPON REQUEST.