



**Minutes for Meeting of
Thursday, February 14, 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, and Executive Secretary Katherine Hunt

Item-3: Approval of Commission Minutes

Approval of Ethics Commission Minutes of January 10, 2008

Motion: Approve

Moved/Seconded: Fuller/Biddle

Vote: Carried Unanimously

Item-4: Non-Agenda Public Comment

None

Item-5: Commissioner Comment

Chairman Cabrera thanked Commissioners Haney and Valdez for serving as members of the presiding authority in connection with the Acle probable cause hearing.

Item-6: Executive Director Comment

Director Fulhorst commented that she was advised by the City’s Labor Relations Manager Scott Chadwick that the proposal to expand the Commission’s jurisdiction to cover classified employees who file Statements of Economic Interests was withdrawn from this year’s meet and confer process with labor unions. She was assured that it would be included in future labor negotiations.

Item-7: General Counsel Comment

None

Item-8: Proposed Amendments to the Ethics Ordinance

Director Fulhorst advised that the proposed change to the ordinance would address a provision concerning “future employment” that currently prohibits City Officials from participating in a decision that involves the interests of a prospective employer. She explained that the change would include an exemption for public agencies. She noted that the original intent of the Commission was to include an exemption for public agencies when the ordinance was adopted in 2002.

Motion: Approve and Forward to Rules Committee
Moved/Seconded: Haney/Leonard
Vote: Carried Unanimously

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

Chairman Cabrera recommended that the Commission discuss the proposals outlined in the staff memo and focus on the sections the Commissioners would like to address in-depth. He suggested that the Commission discuss the issues associated with eliminating contribution limits before addressing any proposals to increase them.

The following proposals were discussed:

Eliminating Contribution Limits

Commissioners Westfall and Fuller expressed support for having the Commission consider the possibility of eliminating contribution limits. Commissioner Westfall commented that he believes limits constitute a violation of free speech. He added that he would like to see evidence that having limits curbed actual corruption or affected the public’s perception of the appearance of corruption.

Commissioner Fuller expressed his view that imposing contribution limits doesn’t necessarily eliminate corruption and also results in an increase in independent expenditures.

Chairman Cabrera commented that he believes contribution limits should exist. He believes they eliminate the type of corruption that occurs when certain contributors have the means to buy influence by contributing large sums of money to candidates. He added that he believes limits have restrained this type of corruption.

Commissioner Leonard agreed that contribution limits are needed for the reasons mentioned by Chairman Cabrera. She also noted that not having limits may discourage smaller contributors from making contributions.

Commissioner Biddle commented that although he hasn't rejected the option of eliminating limits, he believes there are other ways to address the concerns mentioned.

Chairman Cabrera advised that he would not direct staff to pursue the issue of eliminating contribution limits because only three Commission members expressed support.

Increasing Contribution Limits

Chairman Cabrera commented on the issue of increasing contribution limits and asked if the Commissioners would like to share their views on the matter.

Commissioner Haney supported increasing the limit by adjusting it for inflation since the \$250 limit was first adopted in 1973.

Director Fulhorst pointed out that it was determined several years ago that the City's contribution limit if adjusted for inflation would be approximately \$1200.

Commissioner Leonard added that adjustments for inflation were added to the current ordinance two years ago. She noted that independent expenditures may be reduced by increasing contribution limits.

The Commission discussed possible increases to contribution limits and recommendations were made by the following members: Commissioner Leonard suggested \$500; Commissioner Valdez favored between \$500 and \$1,000; Chairman Cabrera supported \$750; and Commissioner Biddle recommended \$1,000 or more as well as basing the amount on increases in campaign expenses since 1973.

Commissioner Fuller indicated that he supported increasing the limits for inflation going back to 1973.

Commissioner Westfall opined that if the Commission did not adjust the contribution for inflation going back to 1973, the determination regarding contribution limits would seem arbitrary.

Commissioner Valdez suggested that the Commission take into consideration the ability of some people to contribute if contribution limits are raised.

Director Fulhorst noted that it would be difficult to gauge the limit that may prevent people from contributing. However, she advised that the Commission staff was made aware through conversations with a campaign staff member for a Council District 7 candidate that a little more than half the contributors making contributions to the campaign were contributing the maximum amount.

Commissioner Westfall suggested that the Commission propose changes that would include indexing in order to automatically adjust contribution limits for inflation and eliminate the need for future consideration of the matter by the Commission.

Director Fulhorst noted that, although indexing for inflation was added to the ordinance several years ago, the contribution limits were not adjusted for inflation going back to 1973.

Chairman Cabrera indicated that there was a consensus among four Commission members to increase the limits to more than \$500, and to make adjustments for inflation.

Chairman Cabrera advised there were two additional issues to be addressed concerning contribution limits: one issue was whether to make a distinction between City Council and City-wide races with respect to contribution limits; the second was whether to consider the option of eliminating contribution limits up to a specified amount raised by a candidate. He noted that the current limits make a distinction between District and City-wide races.

Commissioner Haney asked if data was available concerning the average amount given by contributors to a district race versus a City-wide race.

Chairman Cabrera agreed that receiving data from staff would be helpful.

Director Fulhorst explained that the benefit of information regarding individual contributions would be questionable because contributions less than \$100 are generally not itemized. She suggested that staff provide overall data of total contributions for the last three or four election cycles.

Commissioner Valdez indicated he favors keeping the limits the same for both District and City-wide races.

Commissioners Biddle and Leonard supported having a distinction made between Council District and City-wide races with respect to contribution limits with higher contribution limits for City-wide races.

Commissioner Westfall asked if there was a way to determine how many contributors contribute the maximum amount.

Director Fulhorst responded that there is not a way to easily gather this information as it would involve a page-by-page review of campaign statements.

Chairman Cabrera indicated that he supports keeping the contribution limits the same for both Council District and City-wide races. He pointed out that candidates running in City-wide races have the opportunity to receive contributions from a greater number of contributors than Council District candidates.

Commissioner Fuller expressed his view that there are not eight times as many contributors to City-wide races as there are to District races. He commented that the same limited group of people make contributions to all races.

Chairman Cabrera asked if any of the Commissioners supported having a two-tiered system where limits are only imposed after a candidate receives a certain amount of money.

Commissioner Biddle commented that a two tiered system may serve a purpose in races against incumbents.

Director Fulhorst indicated that staff would obtain statistics on total contributions received in District and City-wide races in order to assist the Commission in their consideration of this matter.

Lifting Limits When an Opponent Spends Substantial Personal Funds

Chairman Cabrera referred to Commission Biddle's suggestion made at a previous meeting concerning lifting limits when an opponent spends substantial personal funds.

Commissioner Valdez suggested that the Commission hold off on this matter because it is currently being considered by the Supreme Court.

Director Fulhorst advised that the feedback staff has received from other cities is that it can be a difficult idea to implement and can be confusing for candidates.

Chairman Cabrera indicated that there was a lack of support from the Commission for the proposal.

Eliminating Ban on Contributions from Organizations

The Commission members shared the following comments: Commissioner Haney expressed interest in further exploration of the matter; Commissioners Leonard and Biddle pointed out that aggregation issues would need to be addressed; and Chairman Cabrera and Commissioner Valdez opposed lifting the ban.

Chairman Cabrera indicated there would be further discussion of the matter after staff gathered information from other jurisdictions regarding their handling of aggregation issues.

Public Campaign Financing

Simon Mayeski made comments regarding “Clean Elections” as presented in a letter submitted to the Commission.

Chairman Cabrera reiterated that any proposal for public financing must identify a funding source. He referred to a previous suggestion from Robert Stern that the City could attach a ten percent surcharge to fines in order to fund a public financing system, and noted that the data gathered by staff suggests the City collects approximately \$25 million each fiscal year in various fines.

Commissioners Haney and Biddle favored further Commission discussion on the proposal.

Commissioner Leonard expressed concern as to whether staff would have time to pursue this during an election year and whether the City Council would support the proposal.

Director Fulhorst advised that with respect to staff resources, she anticipated that staff will finish drafting the changes proposed by the Commission regarding contribution limits by early summer. She noted that combining these changes with a public financing proposal may result in the proposed changes not being finalized or considered by the City Council in this calendar year.

Commissioner Haney commented that the Commission’s consideration of contribution limits should include public financing.

Chairman Cabrera commented that he believes discussion of public financing would be complimentary to discussions on contribution limits. He suggested handling future consideration of public financing in a phased manner in order to not strain staff resources.

Director Fulhorst pointed out that any proposed changes to contribution limits would be subject to the customary City Council approval in order to be implemented, whereas a proposed public financing system would likely need to be placed on the ballot for voter approval. In addition, a public financing system could not be implemented until sufficient funds were allocated which could take several years. Because of the additional considerations associated with public financing, Director Fulhorst suggested that it might be preferable to handle it separately from the proposed changes to contribution limits.

Chairman Cabrera indicated that there was sufficient Commission interest to continue discussion of the proposal for public campaign financing and advised he would handle the scheduling for future Commission discussion of the matter.

Item-10: Adjournment to Closed Session

Chairman Cabrera adjourned the meeting to Closed Session at approximately 6:00 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 6:40 p.m.

Reporting Results of Closed Session Meeting of February 14, 2008

Chairman Cabrera reported the results of the Closed Session Meeting of February 14, 2008.

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

Case No. 2008-03 - In Re: Alleged Participation in Municipal Decision Affecting Economic Interests

Motion: Initiate Investigation

Vote: Carried Unanimously

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

Motion: Initiate Investigation

Vote: Carried Unanimously

Item 2: Conference with Legal Counsel (2 potential matters)

Case No. 2007-89 – In Re: Acceptance of Gift in Excess of Limit

No Reportable Action

Case No. 2008-02 – In Re: Alleged Failure to Timely File Lobbyist Disclosure Report

Motion: Dismiss

Vote: Carried Unanimously

Recused: Valdez

Item 3: Conference with Legal Counsel (1 potential matter)

Case No. 2006-59 – In Re: Luis Acle

The Commission determined that there is probable cause to believe that the respondent may have violated a governmental ethics law and that the matter shall be heard at a public administrative hearing.

A summary of the allegations is as follows: The Commission found that probable cause exists as to 42 counts of violating the City's campaign finance ordinance specifically relating to the repayment of campaign debts, the disclosure of campaign debts, the acceptance of cash contributions, and properly disclosing contributions.

The Commission noted that the respondent is presumed to be innocent unless and until such time that the allegations are proven to be a violation at the administrative hearing.

Motion: In connection with its probable cause determination, the Commission has authorized the issuance of a Final Administrative Complaint and scheduled an Administrative Hearing on May 9, 2008 at 9:00 a.m.

Vote: Carried Unanimously

Adjournment

The meeting adjourned at approximately 6:45 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.