



**Minutes for Meeting of
Thursday, May 8, 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, 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

Excused – Commissioner Krishna Haney

Item-3: Approval of Commission Minutes

Approval of Ethics Commission Minutes of April 10, 2008

Motion: Approve

Moved/Seconded: Leonard/Valdez

Vote: Carried Unanimously

Abstained: Fuller

Excused: Haney

Item-4: Non-Agenda Public Comment

Simon Mayeski commented regarding the status of the formation of a public campaign financing ad hoc subcommittee and asked whether it would be meeting this month.

Chairman Cabrera responded that the members were appointed to an ad hoc subcommittee at the last Commission meeting.

Director Fulhorst added that the ad hoc subcommittee meetings are not open to the public. She explained that the ad hoc subcommittee's report to the Commission will be docketed for a regular commission meeting that is open to the public.

Item-5: Commissioner Comment

Commissioner Westfall commented that it has been his experience that government of all types, given free reign, will seek to grow and obtain more and more power over the lives of the public. In the four plus years that he has served on this Commission this has been the case mostly due to the fact that the Commission had just been established and needed to do so in order to fulfill its mandate under the Municipal Code.

He expressed concern that the Commission may be extending its influence to such an extent that the Commission risks becoming part of the problem, and he expressed his view that the Commission is in danger of becoming relevant to those who seek office only as a cost of doing business. He pointed out that there are not enough qualified campaign treasurers to meet the needs of all those wishing to run for office. He expressed doubts as to the ability of even the best treasurers to comply with the Commission's rules. He mentioned that fines are levied after the completion of a campaign, and he suggested that it would be very prudent to factor in an estimated Ethics Commission fine as a normal expense.

He has also noted while serving on other volunteer boards that the public does not participate very well in the process. He pointed out that the Commission rarely has more than a few observers and commentators attending meetings. He noted that Common Cause and Mel Shapiro attend almost all of the Commission's meetings, but expressed his view that neither represents a significant portion of the voters in San Diego.

As the Commission goes forward with the ongoing review of the Election Campaign Control Ordinance (ECCO), he would like to recommend to the Chair that some Commission time and discussion be devoted to the practical impact of the Commission's rules and procedures on candidates for office and whether the rules actually impede non-incumbents from running for office. He would like to know why more people are not willing to serve as campaign treasurers. Finally, he added that the Commission needs to find ways to get more public input in the mix of the Commission's various discussions.

Chairman Cabrera indicated that he would communicate with staff regarding Commissioner Westfall's concerns.

Item-6: Executive Director Comment

Director Fulhorst reported that she is scheduled to teach a course for the University of California San Diego extension program this summer that is designed for people interested in various campaign professions, particularly campaign treasurers.

Director Fulhorst noted that the new Commission Auditor was in attendance. Senior Investigator Laurie Davis introduced Rosie Gomez and commented on her previous experience.

Item-7: General Counsel Comment

None

Item-8: Proposed Amendments to Election Campaign Control Ordinance (ECCO) and Lobbying Ordinance

Chairman Cabrera advised that during the course of the meeting, the Commission would need to finalize its recommendations for the proposed changes in order to comply with the recommended timeline for approval of the proposed amendments.

Director Fulhorst reported that the Rules Committee has docketed the matter of proposed changes to ECCO for the June 11, 2008, meeting. She noted that several new additions have been added to the draft changes since the Commission reviewed proposed housekeeping amendments at the last meeting, including adding the recommended contribution limit of \$750. She reported that another change was made in response to “push polls” that have occurred during the current election cycle. Because these calls are arguably not made for the purpose of expressly supporting or opposing a City candidate, the current disclosure rules don’t apply to them. Accordingly, the staff has proposed new language that would clarify that all candidates and committees that make 500 or more calls must include an identification disclosure. She added that other proposed changes regarding telephone communications are intended to bring the Commission’s laws into conformance with state law.

Commissioner Valdez asked when, during the course of a call, the disclosure information should be provided.

Director Fulhorst responded that the existing laws do not specify a specific point in the conversation when disclosure must occur. Instead, the law only requires that disclosure occur at some point during the phone call.

Director Fulhorst reviewed new changes for the following code sections:

- Section 27.2903 – New definition for mass telephone communications
- Sections 27.2935 and 27.2936 – New recommended contribution limits
- Section 27.2937 – Change to reflect new indexing date of 2011

- Section 27.2971 – Changes to telephone communications
- Lobbying Ordinance Section 27.4002 – Increased fundraising activity threshold

Chairman Cabrera suggested that the Commission address any remaining changes that had not yet been discussed. He indicated that the issue of increasing contribution limits would be moved to the end of the discussion to allow sufficient time to address the matter. He commented that although the Commissioners had tentatively suggested a contribution limit of \$750, they needed to arrive at a final recommendation to forward to the Rules Committee.

The Commission addressed the following proposed changes:

- Mass Telephone Communications

Motion: Approve proposed changes
 Moved/Seconded: Valdez/Leonard
 Vote: Carried unanimously
 Excused: Haney

- Elimination of Member Communication Exemption

Director Fulhorst explained that the City's current law exempts member communications for non-political parties from disclosure requirements for telephone communications. She advised that the proposed change will bring the City's law into conformance with state law that currently does not exempt member communications.

Motion: Approve proposed changes
 Moved/Seconded: Leonard/Biddle
 Vote: Carried Unanimously
 Excused: Haney

Chairman Cabrera referred to the Commission's previous discussion regarding contribution limits. He indicated there was some discussion to increase the limit to \$750.

Commissioner Westfall commented that the Commission has been discussing campaign limits since at least the Commission's November 2007 meeting. He pointed out that the Commission doesn't know the basis for the original \$250 limit, but noted that it is clearly too low now based on the increasing costs of conducting campaigns. He expressed his view that some of the increased costs are probably related to the complex rules the Commission established and the lack of qualified campaign treasurers.

He also stated that the Commission hasn't heard from the people of the City on this issue nor from the political parties to which they voluntarily align themselves. In

November, the Commission heard from ten people who, with the exception of Mr. Shapiro and Common Cause, recommended the limits be eliminated. In December, the Commission heard from Professor Adams that “there isn’t any evidence to support the argument that contribution limits help or hinder self-financed candidates.” In spite of this, the Commission is proposing a change in the limit to an amount not based on any objective information. Commissioner Westfall questioned whether it is the role of seven people in a City of one million plus to subjectively set a campaign contribution limit.

He proposed making a motion for the Ethics Commission to recommend to the Rules Committee that contribution limits be suspended for at least one election cycle in order to determine the impact, if any, on City elections. This contemplates that all candidates report daily any contributions received during the last 30 days before an election.

Commissioner Fuller supported Commissioner Westfall’s suggestion to lift contribution limits as long as contributions are reported within 24 hours.

Chairman Cabrera indicated that he would not support the motion. He pointed out that there were reasons why this practice wasn’t successful before the contribution limits were implemented in 1970’s. One of the main reasons was that unlimited amounts of money coming from a small number of individuals funding candidates that ultimately became elected officials created an appearance of corruption. However, he indicated that he agrees that limits need to be raised to decrease the amount of time that candidates spend fundraising.

Motion: Recommend suspension of contribution limits for at least one election cycle and require 24-hour reporting in the last 30 days of an election

Moved/Seconded: Westfall/Fuller

Vote: Motion Failed 4/2 with Chairman Cabrera, Commissioners Biddle, Leonard and Valdez voting nay

Excused: Haney

Commissioner Westfall referred to previous Commission discussion regarding contribution limits and mentioned his difficulty accepting the Commission’s means of determining a limit. He suggested that the solution may be to increase limits to an amount based on inflation factors.

Commissioner Westfall made a motion to recommend that contribution limits be increased to \$1,200 and increased annually thereafter for the impact, if any, of inflation.

Commissioner Leonard indicated that she would second the motion if it was amended to include adjusting a contribution limit of \$1,200 biennially for inflation.

Commissioner Westfall amended the motion to set a contribution limit of \$1,200 and to adjust it biennially thereafter for inflation.

Commissioner Valdez commented that he still believes that a limit of \$1,200 is too high. He pointed out that a limit of \$1,200 would result in a greater divide between those individuals who are able to contribute a portion of the limit and those who have the means to give the full amount. However, he noted that the Commission has a responsibility to make a recommendation to forward to the City Council. He added that the amount that the Commission arrives at should represent, to the best of the Commission's ability, the various competing interests as expressed through public testimony at Commission public hearings. He indicated he believes that amount should be \$750.

Commissioner Biddle expressed his agreement with Commission Valdez's remarks. He added that small limits offer less of an opportunity for the appearance of corruption.

Commissioner Fuller stated he was in support of increasing the original \$250 limit to \$1,200 to adjust for inflation.

Chairman Cabrera commented that he would support a \$1,000 limit but not \$1,200. He indicated that his goal was to keep the limit within a range that prevents a small number of people having control over candidates, yet provides candidates the ability to raise sufficient money while spending less time fundraising. He noted that there are successful campaigns that have been funded entirely from small donations.

Commissioner Westfall advised that, in response to Commission discussion, he would amend his motion to recommend a limit of \$1,000 with adjustments made biannually for inflation.

Motion: Recommend a contribution limit of \$1,000 to be adjusted biennially for inflation

Moved/Seconded: Westfall/Leonard

Vote: Motion carried 4/2 with Commissioners Biddle and Valdez voting nay

Excused: Haney

In response to Chairman Cabrera's suggestion, the Commissioners indicated they would support rounding the biennial adjustment amount based on the Consumer Price Index to the nearest \$50.

Chairman Cabrera advised that staff has recommended updating the Lobbying Ordinance to adjust the fundraising threshold from \$1,000 to \$3,000 in order to correspond with a proposed threefold increase in contribution limits.

The Commission discussed the proposal to increase the limit to \$4,000 to reflect the Commission's recommendation to increase ECCO contribution limits fourfold to \$1,000.

Motion: Increase fundraising activity threshold to \$4,000
Moved/Seconded: Leonard/Fuller
Vote: Motion Carried 5/1 with Commissioner Valdez voting nay
Excused: Haney

Motion: Forward amendments to ECCO with latest approved changes to the Rules Committee
Moved/Seconded: Leonard/Fuller
Vote: Carried unanimously
Excused: Haney

Item-9: Report on Implementation of New Lobbying Laws

Director Fulhorst commented on the implementation of the new lobbying laws that became effective January 1, 2008. She explained that during the course of staff providing advice regarding the new laws, they noticed that it was possible to interpret the law to mean that lobbyists are required to disclose clients on disclosure reports even when the lobbyist did not make any lobbying contacts on behalf of the client. She noted that it was clear that the intent of the Commission and the City Council was to only require lobbyists to disclose clients if they have had at least one lobbying contact with a high level City Official on behalf of the client. She explained that this matter was docketed for Commission consideration to confirm that staff is interpreting the law within the legislative intent of the Commission. She noted that staff plans to report back to the Commission in the future with housekeeping amendments that will include proposed language to clarify this section.

Chairman Cabrera commented on the Commission's intent regarding the applicability of the new laws. He indicated that he agrees with staff that the Commission's original intent was for the law to only require lobbyists to disclose a client when a contact was made on the behalf of the client.

Item-10: Appointment of Ad Hoc Committee to Nominate Commission Officers at June 12, 2008, Commission Meeting

Agenda item regarding the appointment of Commissioners to serve on an ad hoc committee to nominate Commission officers.

Chairman Cabrera indicated that Commissioners Dorothy Leonard and Larry Westfall have agreed to serve on the nominating committee.

Motion: Appoint Commissioners Dorothy Leonard and Larry Westfall to ad hoc committee
Moved/Seconded: Valdez/Biddle
Vote: Carried Unanimously
Excused: Haney

Commissioner Leonard suggested amending the Municipal Code to change the election of new officers from the July meeting to the June meeting each year.

Director Fulhorst indicated that staff will include this change with other housekeeping amendments for future approval.

Item-11: Creation of Pre-Qualified List for Petitioners at Hearings

Director Fulhorst commented on the Ethics Commission procedures regarding the process for appointing individuals to a pre-qualified list to serve as Petitioners at Probable Cause Hearings and Administrative Hearings. She suggested that the Commission appoint the Ethics Commission's General Counsel Alison Adema to the pre-qualified list.

Motion: Appoint General Counsel Alison Adema to pre-qualified list
Moved/Seconded: Biddle/Fuller
Vote: Carried Unanimously
Excused: Haney

Item-12: Adjournment to Closed Session

Chairman Cabrera adjourned the meeting to Closed Session at approximately 5:50 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 7:20 p.m.

Reporting Results of Closed Session Meeting of May 8, 2008

Chairman Cabrera reported the results of the Closed Session Meeting of May 8, 2008

Item 1: Conference with Legal Counsel (9 potential matters)

Case No. 2008-07 - In Re: Alleged Acceptance of Gift in Excess of Limit

Motion: Initiate Investigation
Vote: Carried Unanimously
Excused: Haney

Case No. 2008-11 – In Re: Alleged Use of City Equipment for Campaign-Related Activities

Motion: Dismiss
Vote: Carried Unanimously
Excused: Haney

Case No. 2008-12 – In Re: Alleged Lobbying of City Officials by Former City Official

Motion: Recuse Commission Chair Gil Cabrera
Vote: Carried Unanimously
Abstained: Cabrera
Excused: Haney

Motion: Recuse Commissioner Dorothy Leonard
Vote: Carried Unanimously
Abstained: Leonard
Excused: Haney

Motion: Initiate Investigation
Vote: Carried Unanimously
Recused: Cabrera/Leonard
Excused: Haney

Case No. 2008-14 – In Re: Alleged Acceptance of Gift in Excess of Limit

Motion: Initiate Investigation
Vote: Carried Unanimously
Excused: Haney

Case No. 2008-15 – In Re: Alleged Failure to Include “paid for by” Disclosure on Campaign Advertising

Motion: Initiate Investigation
Vote: Carried Unanimously
Excused: Haney

Case No. 2008-16 – In Re: Alleged Failure to Include “on behalf of” disclosure on Telephone Communication

Motion: Initiate Investigation
Vote: Carried Unanimously
Excused: Haney

Case No. 2008-17 – In Re: Alleged Failure to Include “on behalf of” disclosure on Telephone Communication

Motion: Initiate Investigation
Vote: Carried Unanimously
Excused: Haney

Case No. 2008-20 – In Re: Alleged Failure to Properly Disclose Economic Interests

Motion: Initiate Investigation
Vote: Carried Unanimously
Excused: Haney

Case No. 2008-21 – In Re: Alleged Failure to Properly Disclose Economic Interests

Motion: Initiate Investigation
Vote: Carried Unanimously
Excused: Haney

Item 2: Conference with Legal Counsel (7 potential matters)

One item withdrawn

Case No. 2007-73 – In Re: Alleged Failure to Disqualify from Municipal Decision Affecting Economic Interests

Motion: Dismiss
Vote: Carried Unanimously
Excused: Haney

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

No reportable action

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

Motion: Ordered a Probable Cause Hearing and Authorized the issuance of a Probable Cause Report and Draft Administrative Complaint. Hearing scheduled for July 25, at 9:00 a.m.

Vote: Carried Unanimously
Recused: Valdez
Excused: Haney

Case No. 2008-08 – In Re: Alleged Violation of Contribution Limits and Accepting Contribution from Organization

No Reportable Action

Case No. 2008-09 – In Re: Alleged Failure to Properly Disclose Economic Interests

Motion: Dismiss

Vote: Carried Unanimously

Excused: Haney

Case No. 2008-10 – In Re: Alleged Unlawful Solicitation of Campaign Contributions from City employees

No Reportable Action

Adjournment

The meeting adjourned at approximately 7:25 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.