



**Minutes for Meeting of  
Thursday, June 12, 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 (arrived at 5:07 p.m.), Commissioners Clyde Fuller, Krishna Haney, Dorothy Leonard and Larry Westfall

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

Excused – Commissioner Richard Valdez

**Item-3: Approval of Commission Minutes**

**Approval of Ethics Commission Minutes of May 8, 2008**

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

**Approval of Ethics Commission Minutes of May 30, 2008**

Motion: Approve  
Moved/Seconded: Leonard/Fuller  
Vote: Carried Unanimously

Abstained: Haney  
Excused: Valdez/Biddle

**Item-4: Non-Agenda Public Comment**

None

**Item-5: Commissioner Comment**

Commissioner Westfall referred to the recent election and commented that the outcome seemed to indicate that there isn't any evidence to support the notion that money will purchase a local elected office.

Chairman Cabrera pointed out that well-funded candidates generally do well with respect to achieving elected office, but agreed that self-financed candidates generally do not prevail.

Chairman Cabrera provided an update on the following matters:

- The firm of Rattan and Tucker is being considered for retention by the Commission to provide outside legal services in connection with Commission hearings. A request for a conflicts waiver for the firm is being docketed for Council approval.
- The Rules Committee approved and forwarded the Commission's recommendations for amendments to the Election Campaign Control Ordinance to the full City Council. With respect to the recommended increase in contribution limits, there was support by some members to increase the limits to \$1,000 by phasing it in over one or more election cycles. However, the Rules Committee ultimately decided to forward the proposal to increase contribution limits without a recommendation to the full City Council for further deliberations.

**Item-6: Executive Director Comment**

None

**Item-7: General Counsel Comment**

None

**Item-8: Proposed Amendments to Ethics Commission's Investigative and Enforcement Procedures**

Director Fulhorst presented the staff report outlining proposed changes to the Commission's procedures. She explained that the proposed changes are recommended because the procedures have not been updated since they were

implemented in 2001. She noted that proposed changes to sections that address administrative hearings would require corresponding changes to the Commission's Hearing Procedures. She added that staff would attempt to streamline the hearing procedures that are included within the Municipal Code and instead have more detailed procedures set forth in the Hearing Procedures.

Director Fulhorst reviewed the staff recommendations as follows:

## A. Appointment and Qualification of Commissioners

### A1. Election of Chairperson

Staff recommends changing the election of a new Commission Chairperson to the last Commission meeting in June instead of the first meeting in July.

Commissioner Leonard suggested that staff include language clarifying that the election of the Chair takes place in June with the term beginning July 1.

The Commission generally expressed consensus in support of this recommended change.

### A2. Seeking Elective Office

Staff questioned whether the Commission was interested in proposing modifications to the current prohibition on former Commissioners becoming candidates for city, county, state, or federal elective office within one year of serving on the Commission.

Commission discussion indicated a consensus to leave the procedures unchanged with the exception of clarifying that elective city office includes any city in the County of San Diego.

### A3. Commissioner Qualifications – Housekeeping Amendment

Staff recommended streamlining efforts designed to reduce redundancies in several subsections.

The Commission generally expressed consensus in support of this recommended change.

## B. Witness Testimony

### B1. Prohibition on Providing False Evidence

Changes proposed by staff include a provision that would make it unlawful for any witness to provide false information or documentation during an investigation or hearing.

Chairman Cabrera asked whether the Commission should also propose a provision that requires witnesses to cooperate with Commission investigations.

Director Fulhorst responded that clarification of the Commission's subpoena powers should resolve any issues related to witness cooperation.

## C. Probable Cause and Administrative Hearings

### C1. Probable Cause Determination

Staff proposed changing the procedures to allow the Presiding Authority to make a probable cause determination instead of requiring the participation of the entire Commission.

The Commission generally expressed consensus in support of this recommended change.

### C2. Subcommittee for Pre-Hearing Matters

Staff recommended updates to codify the existing practice whereby the Presiding Authority appoints an ad hoc subcommittee for pre-hearing matters.

The Commission generally expressed consensus in support of this recommended change.

### C3. Probable Cause Hearings in Public

The change proposed by staff would require that any request from the respondent to hold a Probable Cause Hearing in public be made in writing to eliminate the potential for miscommunications.

The Commission generally expressed consensus in support of this recommended change and directed the staff to add a clause to require the written notice no later than one week before the scheduled hearing date.

### C4. Probable Cause Hearing – Evidentiary Standards

The staff recommended incorporating by reference the evidentiary guidelines currently included in the section applicable to Administrative Hearings into the section concerning Probable Cause Hearings.

The Commission generally expressed consensus in support of this recommended change.

## D. Subpoenas

### D1. Subpoenas of Witnesses During Investigation

Staff recommended revisions that would clarify that, as reflected in the City Charter amendments approved by the voters in 2002, the Commission may issue witness subpoenas in connection with investigations in addition to hearings.

The Commission generally expressed consensus in support of this recommended change.

### D2. Issuance of Investigative Subpoenas

The staff suggested that the Commission might want to consider changes that would allow the Executive Director, Commission Chair, or Vice Chair to approve investigative subpoenas.

Commissioner Leonard recalled there was a representation made to the voters at the time of the ballot measure in 2002 that the Commissioners would oversee the issuance of subpoenas. Accordingly, she indicated that she would not support this proposed change.

Commissioner Fuller agreed that the procedures should not be changed.

Chairman Cabrera commented that he would like to review the original information that was included in the voter pamphlet. He indicated that he would be receptive to having a smaller group authorized to approve subpoenas for the purpose of expediting investigations and to separate the full Commission from being involved in the details of an investigation. He indicated that he does not support having staff issue subpoenas without Commission involvement.

Commissioner Westfall supported giving the Commission Chair and Vice-Chair the authority to issue subpoenas.

Commissioner Biddle concurred with Commissioner Westfall.

Commissioner Haney supported further review of the matter.

Commissioner Leonard suggested the option of having a subcommittee approve investigative subpoenas rather than the Chair or Vice Chair in the event either one of them was unavailable.

Director Fulhorst commented that staff would research the information distributed to voters and report back with additional options.

### D3. Issuance of Hearing Subpoenas

Changes proposed by staff would streamline the current procedures to ensure that requests submitted by the petitioner and respondent are handled in the same manner.

The Commission generally expressed consensus in support of this recommended change.

#### D4. Objections to Investigative Subpoenas

The proposed changes would provide flexibility within the procedures by allowing the Commission the option of considering objections to a subpoena at a special meeting held within five days of receiving the objections, or considering the objections at its next regularly scheduled meeting. In addition, the proposed changes include language indicating that the subpoena shall be stayed pending the Commission's ruling on the objections.

The Commission generally expressed consensus in support of this recommended change.

#### D5. Objections to Hearing Subpoenas

Staff recommended retaining the current practice of responding within five days but adding a provision that would allow the Presiding Authority to delegate the matter to an ad hoc subcommittee for consideration.

The Commission generally expressed consensus in support of this recommended change.

#### D6. Service of Subpoenas

The recommended changes would clarify that subpoenas would only be served on all parties in connection with a Probable Cause Hearing or Administrative Hearing, and not in connection with an ongoing investigation.

#### E. Miscellaneous

Changes recommended by staff include clarification that documents can be served by certified or overnight mail to a person's attorney or designated agent, and that fully-executed stipulations are public documents. In addition, staff recommended minor clarifying language in the section concerning disclosure of Commission records.

Commissioner Leonard pointed out that the current City Council has some understanding regarding the Commission's procedures and asked what the timeframe was with regard to forwarding the proposed revisions for approval.

Director Fulhorst responded that if the Commission approved the draft changes submitted by staff at the next meeting, the changes could be forwarded to the Rules committee before the August recess or in September and forwarded on to the full Council for approval before the end of 2008.

**Item-9: Presentation of Final Audit Report Regarding the Audit of the Rich Grosch for City Council Committee**

Commission Auditor Rosie Gomez reported that the audit did not reveal any material findings.

Motion: Accept Report  
Moved/Seconded: Westfall/Haney  
Vote: Carried Unanimously  
Excused: Valdez

**Item-10: Adjournment to Closed Session**

Chairman Cabrera adjourned the meeting to Closed Session at approximately 5:40 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 June 12, 2008**

Chairperson Cabrera reported the results of the Closed Session Meeting of June 12, 2008.

**Item 1: Conference with Legal Counsel (25 potential matters)**

**Case No. 2008-18 - In Re: Alleged Failure to File Campaign Statements**

Motion: Initiate Investigation  
Vote: Carried Unanimously  
Excused: Valdez

**Case No. 2008-22 – In Re: Alleged Unlawful Solicitation of Campaign Contributions from City Employees**

Motion: Recuse Commissioner Haney  
Vote: Carried Unanimously  
Abstained: Haney  
Excused: Valdez

Motion: Initiate Investigation  
Vote: Carried Unanimously  
Excused: Valdez  
Recused: Haney

**Case No. 2008-23 – In Re: Alleged Failure to Properly Report Lobbying Activity on Quarterly Disclosure Report**

Motion: Initiate Investigation  
Vote: Carried Unanimously  
Excused: Valdez

**Case No. 2008-25 – In Re: Alleged Failure to Properly Deposit Campaign Contributions**

Motion: Initiate Investigation  
Vote: Carried Unanimously  
Excused: Valdez

**Case No. 2008-26 – In Re: Alleged Failure to Include “Paid for By” Disclosure on Campaign Literature**

Motion: Dismiss  
Vote: Carried Unanimously  
Excused: Valdez

**Cases 2008-27 through 2008-46 – In Re: Alleged Failure to File Statements of Economic Interests**

Motion: Initiate Investigations  
Vote: Carried Unanimously  
Excused: Valdez

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

One item withdrawn



**Case No. 2007-12- In Re: Alleged Failure to Properly Disclose Economic Interests**

No Reportable Action

**Case No. 2008-06- In Re: Alleged Acceptance of Gift in Excess of Limit**

Motion: Dismiss  
Vote: Carried Unanimously  
Excused: Valdez

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

Motion: Dismiss  
Vote: Carried Unanimously  
Excused: Valdez

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

No Reportable Action

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

Motion: Dismiss  
Vote: Carried Unanimously  
Excused: Valdez

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

Motion: Dismiss  
Vote: Carried Unanimously  
Excused: Valdez

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

**Case No. 2006-59 – In Re: Luis Acle - Alleged Failure to Timely Pay Vendors**

No Reportable Action

**Item 4: Conference with Legal Counsel** (1 potential matter)

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

No Reportable Action

### **Adjournment**

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

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Guillermo Cabrera, Commission Chair  
Ethics Commission

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Kathy Hunt, Executive Secretary  
Ethics Commission

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