



**Minutes for Meeting of
Thursday, May 16, 2013**

Item 1: Call to Order

Commissioner Wetzler called the meeting to order at approximately 5:00 p.m. (Commissioner Wetzler chaired the meeting at the request of Commission Chair Fuller.)

Item 2: Roll Call

Present – Commissioners Lee Biddle, Deborah Cochran, Faye Detsky-Weil, John O’Neill, and Bud Wetzler

Excused – Commission Chair Fuller, Commission Vice Chair William Howatt

Staff – Executive Director Stacey Fulhorst, General Counsel Christina Cameron, Investigator Lauri Davis, Program Manager Steve Ross, and Administrative Aide Jennifer Duarte

Item 3: Approval of Commission Minutes

Approval of Ethics Commission Minutes of April 11, 2013

Motion: Approved
Moved/Seconded: O’Neill/Cochran
Vote: Carried Unanimously
Excused: Fuller, Howatt

Item 4: Non-Agenda Public Comment

None

Item 5: Commissioner Comment

None

Item 6: Executive Director Comment

Director Fulhorst reported the Fair Political Practices Commission has invited all the regulatory agencies in the state to attend a meeting in Sacramento on June 11, 2013, which she and Investigator Davis will attend. Representatives from the FPPC as well as the Ethics Commissions in San Francisco, Los Angeles, and Oakland will attend the meeting, which will include discussions concerning enforcement, legislation, and education.

Item 7: General Counsel Comment

None

Item-8: Proposed Amendments to Ethics Ordinance

Director Fulhorst explained that when Ethics Ordinance was first drafted and adopted in 2002 the goal was to incorporate a host of state laws into a local ordinance. Over the past ten years, the state has adopted many new regulations and statutes such that local law no longer mirrors state law. According to Ms. Fulhorst, the City never intended for its laws concerning gifts, conflicts of interest, or financial disclosures to be any different from state law.

Ms. Fulhorst related that, rather than to attempt to re-summarize current state law, the staff determined that it was preferable to simply incorporate by reference all of the relevant state regulations and statutes so that it is clear that the Municipal Code is meant to be harmonious with state law unless otherwise indicated. She noted that all of the proposed amendments reflected in the strike-out version of the ordinance are intended to ensure consistency with state law and reflect advice the staff is currently providing to City Officials; however, she pointed out that there is one exception that involves a recommended policy change. Specifically, based on previous input from the Commissioners over the years, staff has proposed expanding the law that prohibits City Officials from influencing a decision that involves the interests of a prospective future employer to include the prospective employer of a member of the official’s immediate family.

Commissioner O’Neill asked if “immediate family” was defined in the ordinance. Ms. Fulhorst responded that it is defined as “a spouse, registered domestic partner, or dependent child.”

Motion:	Approve Proposed Changes
Moved/Seconded:	O’Neill/Biddle
Vote:	Carried Unanimously
Excused:	Fuller, Howatt

Item 9: Proposed Amendments to Council Policy 000-04

Director Fulhorst explained that when the Ethics Commission was created in 2001, it was determined that the Commission should provide training to City Officials on a biennial basis. This training requirement was incorporated into the Council Policy, which provided that re-training should take place by March 31st (every two years).

The staff soon realized that, from a practical perspective, it is not feasible to train everyone in the first three months of the year. Additionally, the March 31st deadline doesn't make sense for an employee who starts at the City in October. The staff has therefore fulfilled the Commission's training obligations by maintaining a database of current officials and notifying them every two years that they are due for retraining. The proposed amendments would eliminate the March 31st training deadline and reflect the staff's current practices. In addition, because staff conducts live training sessions for unclassified managerial employees on a quarterly basis, the staff has recommended changing the deadline for initial training from 60 days to 90 days.

Motion: Approve Proposed Changes
Moved/Seconded: O'Neill/Detsky-Weil
Vote: Carried Unanimously
Excused: Fuller, Howatt

Item 10: Proposed Amendments to Campaign Laws Concerning Political Party Contributions

Director Fulhorst reminded the Commissioners that they considered the issues associated with political party contribution limits during two meetings in April of 2012, and that they received written and verbal input from UCSD Professor Thad Kousser concerning relevant benchmarks for potential contribution limits. The Commission ultimately concurred with Professor Kousser's recommendations to set new limits at \$3,000 per election for district candidates and \$12,000 per election for citywide candidates, with these limits serving as aggregate limits for contributions from all levels of a political party. Although these recommendations were docketed for City Council consideration in late 2012, they were withdrawn at the request of the City Attorney's Office to allow time for additional legal analysis.

The City Attorney's Office recently retained Rick Hasen, a UC Irvine professor and a nationally-recognized expert in the field of campaign finance law. Professor Hasen also served as co-counsel defending the City in the *Thalheimer* litigation. The City Attorney's Office also retained Professor Kousser and asked him to update his policy recommendations and benchmarks in light of new data from the 2012 election cycle. Professor Hasen prepared a report on May 1, 2013, addressing various legal issues associated with the Commission's proposals. Professor Kousser prepared an updated report on May 1, 2013, recommending limits of \$10,000 per election for district candidates and \$20,000 for citywide candidates. Both professors testified at the Rules Committee meeting on May 15, 2013. According to Professor Hasen, the revised limits recommended by Professor Kousser are more likely to be upheld by the District Court if challenged. He noted that the Court's rulings in the previous litigation indicate that the City should set limits between \$5,000 and \$20,000.

Professor Hasen also opined that the proposed aggregation of contributions for all levels of a political party is comparable to laws in place at the federal level as well as various states, and that it is likely constitutional. With respect to the City's attribution rules, Professor Hasen agreed with the Commission's conclusion that they are very difficult to enforce and he therefore recommended their repeal. Ms.

Fulhorst referred to Professor Hasen's written report and quoted his rationale for repealing this law.

Ms. Fulhorst reported that the Rules Committee voted to forward the recommendations from Professors Kousser and Hasen, setting limits at \$10,000 and \$20,000, to the full City Council; however, the Committee asked the Commissioners to consider the reports recently prepared by the professors and advise the City Council if they agree with the updated recommendations concerning limits.

Simon Mayeski stated that he was present at the Rules Committee meeting and he urged the Commissioners to support the \$10,000 and \$20,000 limits. He expressed his opinion that the \$3,000 and \$12,000 limits could lead to a legal challenge and another period of time during which the City has no limits on contributions from political parties to City candidates.

Frances Barraza, Executive Director of the Republic Party of San Diego County, summarized a memorandum she submitted at the meeting which delineated the Republican Party's objections to the proposed limits.

Commissioner Biddle expressed his support for Professor Kousser's updated recommendations. He noted that he is still troubled by the fact that political parties are permitted to make contributions directly to City candidates while all other types of organizations are banned from doing so; however, he acknowledged that the City must comply with this aspect of the Court's ruling.

Commissioner O'Neill concurred with Commissioner Biddle's position. He explained that, although he believes the \$3,000/\$12,000 limits would have a reasonable chance of success if litigated, he understands that the two experts support the higher limits which would make it difficult for the City to defend the lower limits. He added that he would like to see the issue resolved and would like to avoid any additional litigation.

Commissioner Detsky-Weil agreed with both Commissioner Biddle and Commissioner O'Neill. She also noted that she would be open to considering a compromise between \$3,000/\$12,000 and \$10,000/\$20,000.

Commissioner Cochran expressed appreciation for the input from the public, and stated that she concurs with Professor Kousser's revised recommendations.

Motion:	Recommend Limits of \$10,000 (District) and \$20,000 (Citywide) for Political Party Contributions to City Candidates
Moved/Seconded:	O'Neill/Cochran
Vote:	Carried Unanimously
Excused:	Fuller, Howatt

Item 11: Appointment of Ad Hoc Committee to Nominate Officers at Commission Meeting on June 13, 2013

Motion: Approve Commissioners Biddle & Cochran to Serve on Ad Hoc Committee
Moved/Seconded: O'Neill/Detsky-Weil
Vote: Carried Unanimously
Excused: Fuller, Howatt

Item 12: Adjourn to Closed Session

Commissioner Wetzler adjourned the meeting to closed session at approximately 5:30 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

Commissioner Wetzler called the meeting back into open session at approximately 6:00 p.m.

Reporting Results of Closed Session Meeting of May 16, 2013:

Ms. Cameron reported the results of the closed session meeting of May 16, 2013:

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

Case No. 2013-15 - In Re: Alleged Making of Contribution in the Name of Another

Motion: Initiate Investigation
Moved/Seconded: Detsky-Weil/O'Neill
Vote: Carried Unanimously
Excused: Fuller, Howatt

Case No. 2013-16 - In Re: Alleged Making of Contribution in the Name of Another

Motion: Initiate Investigation
Moved/Seconded: Detsky-Weil/O'Neill
Vote: Carried Unanimously
Excused: Fuller, Howatt

Case No. 2013-17 - In Re: Alleged Making of Contribution in the Name of Another

Motion: Initiate Investigation
Moved/Seconded: Detsky-Weil/O'Neill
Vote: Carried Unanimously
Excused: Fuller, Howatt

Case No. 2013-20 - In Re: Alleged Failure to Register as Lobbying Firm

Motion: Initiate Investigation
Moved/Seconded: Cochran/Detsky-Weil
Vote: Carried Unanimously
Excused: Fuller, Howatt

Case No. 2013-21 - In Re: Alleged Failure to Timely Register as Organization Lobbyist

Motion: Initiate Investigation
Moved/Seconded: Detsky-Weil/O'Neill
Vote: Carried Unanimously
Excused: Fuller, Howatt

Item-2: Conference with Legal Counsel (5 potential matters)

Case No. 2012-52 – In Re: Alleged Misuse of City Resources

Motion: Dismiss
Moved/Seconded: Biddle/Cochran
Vote: Carried Unanimously
Excused: Fuller, Howatt

Case No. 2012-57 - In Re: Alleged Acceptance of Contribution in Excess of Limit and Contribution from Organization, and Failure to Properly File Campaign Statements

Motion: Expand Investigation
Moved/Seconded: O'Neill/Detsky-Weil
Vote: Carried Unanimously
Excused: Fuller, Howatt

Case No. 2013-05 - In Re: Alleged Failure of Registered Lobbying Firm to Disclose Campaign Activities

Motion: Approve Stipulation
Moved/Seconded: Cochran/Biddle
Vote: Carried Unanimously
Excused: Fuller, Howatt

Case No. 2013-07 - In Re: Alleged Contribution Solicitation from City Employees

Motion: Approve Stipulation
Moved/Seconded: Detsky-Weil/O'Neill
Vote: Carried Unanimously
Excused: Fuller, Howatt

Case No. 2013-10 - In Re: Alleged Contribution Solicitation from City Employees

Motion: Approve Stipulation
Moved/Seconded: O'Neill/Cochran
Vote: Carried Unanimously
Excused: Fuller, Howatt

Adjournment

The meeting adjourned at approximately 6:15 p.m.

[REDACTED]

Graydon Wetzler, Commissioner
Ethics Commission

[REDACTED]

Jennifer Duarte, Administrative Aide
Ethics Commission

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