

ETHICS COMMITTEE

DATE: May 7, 2009

CALLED TO ORDER: 5:32 p.m.

ADJOURNED: 8:17 p.m.

ATTENDANCE

ATTENDING MEMBERS

Ginny Cain, Chairwoman
José Evans
Robert Lutz
Brian Mahern
Mary Moriarty Adams
Kent Smith

ABSENT MEMBERS

AGENDA

PROPOSAL NO. 149, 2009 - adopts ethical standards for conduct by councillors, amending the council rules on conflicts of interest and voting, requiring ethics disclosure statement by councillors, certain council employees and candidates for city-county council, and amending Chapter 293 to conform to such changes
"Do Pass As Amended" Vote: 6-0

ETHICS COMMITTEE

The Ethics Committee of the City-County Council met on Thursday, May 7, 2009. Chairwoman Ginny Cain called the meeting to order at 5:32 p.m. with the following members present: José Evans, Robert Lutz, Brian Mahern, Mary Moriarty Adams and Kent Smith. General Counsel Robert G. Elrod represented Council staff.

Chairwoman Cain asked all members to introduce themselves and indicate which area of the County they represent.

PROPOSAL NO. 149, 2009 - adopts ethical standards for conduct by councillors, amending the council rules on conflicts of interest and voting, requiring ethics disclosure statement by councillors, certain council employees and candidates for city-county council, and amending Chapter 293 to conform to such changes

Chairwoman Cain stated that there was an article in *The Indianapolis Star* after the introduction of this proposal. In response to that article, she noted for the record that it is the committee's intention to make this an enduring document that will govern the present Council, as well as future Council bodies. She stated that she will read through the proposal, and if committee members have an issue with any proposed language, they should make those concerns known.

In reference to Sec. 151-1122 (1) (a), Councillor Moriarty Adams asked where the amount of \$5,000 came from. Mr. Elrod said that the amount in the original draft was \$1,000, but there was a different number in the disclosure language, and there seemed to be consensus during discussion that the number should be consistent. He said that the committee was searching for a minimalist number that would not be too cumbersome. Chairwoman Cain said that she believes that discussion took place in a sub-meeting with fewer members of this committee. The \$1,000 amount was in the original draft, but the members in that meeting felt that number might be too low. Mr. Elrod said that a per diem is allowed for committee meetings, chairmanships, and other offices, and he felt that in raising that number, they would not have to re-address those per diems if Council compensation was changed. He said that the limit for committee meetings for which Councillors are paid is 40 meetings per year, and if they were to raise that meeting amount to 50 meetings, it may raise the compensation for Council members up to \$500. That would be half of the \$1,000 amount allowed. He said that this could be considered a potential financial benefit. Chairwoman Cain clarified that according to Council Rules at this time, Councillors are only allowed to be paid for up to 40 committee meetings per year, and any meetings they attend in excess of that amount, they do not receive any pay for attending. Mr. Elrod said that this is correct.

Councillor Smith asked if there is a preference for another amount. Chairwoman Cain asked how often a Councillor has a substantial pecuniary benefit. Mr. Elrod said that it is very rare and he cannot really remember it happening in his 40 years working with the Council. This Council does not approve contracts like some smaller cities and towns, where that might be more of an issue. He said that he can think of some potential conflicts that could happen. He gave an example regarding a current proposal before the Council to purchase property owned by the Riviera Club. He said that purchasing this property for a city project could result in the city making an offer on an adjacent property owned by a Council member, and this might constitute a pecuniary benefit to the Councillor voting on that matter. Chairwoman Cain asked if a raise in salary might be another example. Mr. Elrod said that, typically, the salaries of the Council are part of the annual budget, but if the Council came back in the middle of the year raising the per diem for meeting attendance, that might be construed as additional benefit. He said that the law, however, requires that the Council set their own salary.

Councillor Mahern said that setting their own salary is a requirement for the Council body, and that includes either raising it or decreasing it. He said that even if a vote to lower the salary of the Council failed, that could seem like a pecuniary benefit to a Councillor who voted against the measure. This would seem to be an inherent conflict, and is not something done very frequently. However, it is still the expectation of the voters of this County that the Council make these types of financial decisions because it is their role. It would seem arbitrary to disallow Councillors to make those decisions. He asked if a pecuniary interest might also be construed with regard to benefits and retirement. Mr. Elrod said that in looking at the next paragraph in the same section, it is part of the budget and should not be separated out individually. Councillor Mahern said that this is the general role of the Council, and having an exception to that would not allow the Council to modify that compensation. Chairwoman Cain said that setting salaries and benefits would be part of the normal budget process and is therefore covered, but the number of meetings for which Councillors are paid might not be covered in that budget process. She said that she does feel there needs to be an amount set, but maybe it should be less than \$2,500.

Councillor Moriarty Adams asked if Council compensation is tied to the salary of the Mayor. Mr. Elrod said that it is set up that way right now, but does not have to be and can change at any time. The law states that the Council sets the salaries of elected officials, including their own. Currently, the base salary for Councillors is set at a percentage of the Mayor's salary, which is set as a fixed amount. Chairwoman Cain said that this ordinance is a product they want to endure and be usable for several years to come and not just specific to current circumstances.

Councillor Mahern asked if some language could be added to except out the "official compensation," which is the lawful duty of the Council to set for itself. He said that he

does not know of another instance where the Council should vote for anything of any pecuniary amount of benefit, and that amount should be set at \$0.

Councillor Smith said that he agrees with the salary compensation. However, some Councillors own their own businesses, and without having to always go outside of the County to do business, there might be conflicts. He gave an example of a Councillor, who, in the course of his business, might be looking at purchasing property in an area where he votes to approve tax increment financing (TIF) for that district. Or he might have a family member that is looking to purchase property in a TIF district, which the Councillor helped approve with his vote, even though that TIF district designation was the best decision for his constituents, as well. Restricting this amount to \$0 might prohibit a Council member from making a living, while still representing his or her constituents. Chairwoman Cain said that this example seems to encompass a broader scope of effect. Councillor Smith said that may be so, but it might still be financially beneficial to him and construed as a violation of the ethics law if this amount is set so low.

Councillor Evans said that there is a difference in a vote that "might" affect a Councillor, and one that is actual. Chairwoman Cain said that if everyone in the neighborhood is getting the benefit, then it is not just benefitting the Councillor. Councillor Smith said that not everyone in the neighborhood would necessarily receive any benefit from a TIF if they do not participate in it. He said that he does not want to prohibit Council members from making a decent living, since the Council position is only part-time. He added that they also do not want to make it more difficult for a family member, as well, to make a living.

Councillor Mahern said one of the first versions of the ordinance did not have the language in Sec. 151-1122 (b) (1) (a) differentiating between personal benefits and benefits conferred on the public as a whole. He said that this does not prevent an individual from pursuing any particular type of business. While there may be some reporting involved, if it is benefitting the whole County or a district, he believes that is covered and this is a reasonable interpretation. He said that he would not object to a small amount, but he believes the reason Councillor Smith is using as an example would probably involve higher amounts of pecuniary benefit and would be covered in this other language. He said that he does not think there would be many instances where this would apply.

Councillor Lutz said that he believes there should be some amount included, because they do not know what the future will bring. He said that he believes \$5,000 is too high, but he does not know what number is reasonable. He said that he thinks between \$500 and \$1,500 would be more accurate. He said that the definition of "public" does not necessarily mean the entire County and its residents. He said that when he votes on an

item, he is representing the best interests of the public in his district, which might not necessarily be the best interests of other citizens in other districts.

Mr. Elrod said that striking the word "general" from the last sentence of Sec. 151-1122 (b) (1) (a) and adding the word "generally" after conferred would make it more about how the benefits apply and not what the benefits are. He added that in dealing with the Council's own compensation, he would suggest that they change the paragraph following Sec. 151-1122 (b) (1) (b) to read: "A councillor, who is also an employee of the city or county or other agency whose budget is subject to approval by the city-county council, shall not be deemed to have an actual conflict of interest either (i) with respect to votes on budget or revenue proposals, unless the proposal pertains primarily to such employee or the employee's supervisor, or (ii) with respect to vote on proposals setting the compensation of councillors."

Chairwoman Cain asked what an acceptable amount would be for committee members in Sec. 151-1122 (b) (1) (a). Councillor Mahern said that there is a struggle to define what circumstances might come about, and that is why it is hard to determine this number. He said that removing the matter of compensation and public benefit, this number will still end up being arbitrary, and will still be too high in some people's opinions. Chairwoman Cain said that she feel this might occur more often with immediate family members, such as in the instance of a dependant child cutting lawns during the summer.

Councillor Lutz moved to change \$5,000 to \$1,000 in Sec. 151-1122 (b) (1) (a). He said that he agrees they are just picking an arbitrary number, and he feels this amount is reasonable. Councillor Mahern said that he feels there should be some sort of explanation as to the establishment of that \$1,000, as it leaves it open to the most negative of interpretations. He said that it would leave the public open to the idea that after a beneficial vote, a councillor could receive a \$999 check, and there would be nothing ethically wrong with this, according to these standards.

Chairwoman Cain asked if the amount could be \$0 for Councillors and \$1,000 for family members. Councillor Lutz said that he does not feel this would be consistent, because it would be a matter of money going into either the left or right pocket of Councillors, when it benefits an immediate family member. Councillor Smith agreed and said that he feels that the \$1,000 amount is too low. He said that if his son cut grass for \$10 an hour, 40 hours a week, over a 10-week summer period, he could earn \$4,000, which would be in excess of \$1,000. He said that a more reasonable amount to him would be \$2,500, as they could reach \$1,000 very quickly and it seems a little low.

Councillor Lutz said the example of receiving a \$999 check after a vote would be considered a bribe and is simply illegal, and not just a matter of ethics. He said that if his son was working for someone full-time and getting a salary for 40 hours of work a

week, then this would not apply. Chairwoman Cain reiterated that these types of conflicts are extremely rare. Mr. Elrod said that there is only one time he can think of that something like this was alleged. It was an instance where a spouse of a Councillor had a business that sold equipment to the County for criminal justice. The Councillor's spouse had a franchise with a company that produced this particular item for the entire County and State. There was a proposal to approve a federal grant appropriation to buy this equipment. In this instance, it was likely that the Councillor's spouse would get this contract, because they were the only company producing the equipment that was needed. However, at that point, this would have been much more than \$1,000 or even \$5,000 in pecuniary benefit, and the Councillor would have been disqualified from voting. He said that he believes the Councillor did recuse himself from voting. He added that these are the kind of instances that might occur. If a dollar amount is included, then a Councillor can easily determine whether or not they should debate or vote on the matter. With no amount limit, some members of the Council, media or public might look around to find something later to bring up as unethical. He said that in some instances where the pecuniary benefit is so small and insignificant, the Councillor may not even be aware of it.

Councillor Moriarty Adams seconded the motion to change the amount from \$5,000 to \$1,000. She added that putting this amount in the ordinance would still not preclude a spouse or child from doing a summer job, but the Councillor simply would not be able to vote on one item that might come up, and the measure would still probably pass. Chairwoman Cain said that putting in a dollar amount is really probably more for the picky stuff of which a Councillor may not even be aware. Mr. Elrod said that it is more likely to come up after the fact rather than before, and he does not think the Council really wants to deal with those kind of petty complaints.

Councillor Mahern said that he does not necessarily have a problem with an arbitrary number of \$1,000, but it should be the same in other areas like Councillor employment, and it would be his desire to change the number in those areas, also.

The motion to change "\$5,000" to "\$1,000" in Sec. 151-1122 (b) (1) (a) carried by a vote of 4-2, with Councillors Evans and Smith casting the negative votes.

Councillor Moriarty Adams moved, seconded by Councillor Evans, to further "Amend" Proposal No. 149, 2009 as per Mr. Elrod's suggestions in Sec. 151-1122 (b) (1) (a) removing "general" and inserting "generally" and the substitute language in the paragraph following Sec. 151-1122 (b) (1) (b). The motion carried by a vote of 6-0.

Chairwoman Cain continued reading through the proposal and asked if there are any questions or concerns regarding the rest of Sec. 151-1122. Councillor Lutz said that sub-item (b) (2) does not exclude the Councillor from contributing to the debate, even though they may have disclosed a conflict. He said that there may be times he feels the

need to recuse himself from the vote when he knows there is a conflict, but still feels his constituents should have the benefit of his arguments on their behalf. The weight of those arguments can then be weighed on their own merits with the conflict out in the open. He asked Mr. Elrod for input on this paragraph. Mr. Elrod said that to be consistent, once an interest is disclosed, the Councillor should probably be barred from further debate. He said he believes the normal rule is that a person is disqualified from debate if they cannot vote.

Councillor Mahern said that this may apply more to a situation where a 16-year-old child might receive some benefit and the Councillor does not know about it. He said that maybe additional language should be added to stipulate "knowingly," as he sees the \$1,000 amount being added to cover instances where a person may not know a conflict exists. Mr. Elrod said that if a Councillor discloses the conflict, then it is known and apparent. Councillor Mahern said that he believes this language is speaking to conflicts that are known and maybe it should instead cover instances where the conflict is not known.

Councillor Evans said that he is confused, because it is clear that if a Councillor recuses himself from voting, he acknowledges a possible conflict exists. He said that he understands the need to represent constituents, but still believes the Councillor who discloses a conflict should not debate on the issue. He said that he believes constituents will understand and prefer that a Councillor with a conflict not participate in influencing the vote. Councillor Lutz said that he can understand and agree with that argument and asked if some language can be added in item (3) under subsection (b) to disqualify the Councillor from debate. Mr. Elrod suggested they add the words "and thereafter not participate in the debate" at the end of the paragraph in sub-item (b) (2).

Councillor Lutz moved, seconded by Councillor Evans, to "Amend" Proposal No. 149, 2009 as per Mr. Elrod's suggestion. The motion carried by a vote of 6-0.

Councillor Evans referred to sub-item (c) (2) and said that where there is simply an appearance of a conflict and the abstention is voluntary, then debate is still allowed. Chairwoman Cain said that this is correct.

Councillor Mahern asked in what instance a person might say they have a conflict and still participate in the debate. Councillor Lutz said that he might represent a client who represents a governmental unit bringing bonding to the Council for approval. He would disclose that relationship and not vote, but still ask the Council to support the matter going forward. He said that the matter did not make him any money in his law practice, but it was enough of an issue that the relationship should be disclosed and he should refrain from voting. Councillor Mahern said that it does not make sense that a person could not vote themselves, but could still influence the outcome of the vote. Mr. Elrod said that the difference is that the Councillor in this instance could legitimately vote, but

simply chose not to. They are not disqualified from voting but simply prefer not to vote. Councillor Mahern said that he does not understand why a person would remove themselves from voting because of a conflict, even voluntarily, and yet still attempt to influence the outcome of the vote. Chairwoman Cain said that members of the Council can then weigh that conflict against the Councillor's remarks. She said that another situation may arise because she sits on the board for the Indianapolis Zoo. Although she would not receive any money from any deal benefitting the Zoo, she still supports the initiatives of the Zoo and would like to speak to that, even though she has a relationship with them. Councillor Mahern said that he opposes that idea. He said that if a person discloses what they believe to be a conflict of interest and removes themselves from their official duty to vote, then they should also remove themselves from influencing the vote and debating the issue. He said that a person cannot be conflicted yet feel there is no impropriety simply because they drew attention to the affiliation. He said that they cannot have it both ways.

Councillor Evans said that he disagrees with Councillor Mahern. He said that he personally serves on a couple of boards. If those organizations were to come before the Council, because he serves on those boards and supports their mission statement, he feels he should speak to the benefits of the matter, while he might not vote because of the relationship. He said that he does not receive any compensation for serving on that board, and that is the big difference. Chairwoman Cain added that there might be a matter where a Councillor is a professional in an area, such as engineering, where their expertise and background can contribute greatly to the debate and would be very helpful in the decision-making process. However, they may not vote because of a perceived conflict.

Councillor Lutz said that this is a matter of trying to avoid the appearance of an impropriety when there is not necessarily an impropriety present. He said that it is a situation where a person feels damned if they do and damned if they do not. Disclosure would be favored if there are no confidentiality issues, but the difference lies in the fact that there is simply an appearance of a conflict and not an actual conflict.

Councillor Smith moved, seconded by Councillor Evans, to keep Sec. 151-1122 (c) (2) as written. Councillor Mahern said that no motion is needed if no change is being suggested. He moved to "Amend" Proposal No. 149, 2009 to remove the amount of \$1,000 from Sec. 151-1122 (b) (1) (a) and strike the word "not" in Sec. 151-1122 (c) (2) in order to maintain a bright line for the public with regard to disclosure and ethics. The motion failed for lack of a second.

Councillor Mahern said that he would also like to move for an amendment regarding voting on matters that affect organizations or individuals who might have made political contributions to Councillors in excess of \$2,500. Chairwoman Cain said that this proposal does not include language about political contributions, as that is regulated by

the State, and is outside of the scope of this proposal. Councillor Mahern said that he believes it should be included in one of these two sections on actual or apparent conflicts of interest. He moved to add language that prohibits a Councillor from participation and debate on a matter that affects a campaign contributor who has contributed more than \$2,500 to that Councillor's campaign. Councillor Lutz said that he will second the motion so that the matter can be discussed, even though he is not sure it is appropriate or is part of the scope of this proposal. .

Mr. Elrod said that drafting such language would depend on what conflict Councillor Mahern is trying to determine, whether apparent or perceived. He asked if the conflict Councillor Mahern is trying to avoid is when a Councillor receives \$2,500 from someone as a campaign contribution, and a proposal is introduced to benefit the person making that contribution or where the person making the contribution is in favor of a certain proposal. Councillor Mahern said that he is referring to receiving contributions from someone who does business with the city. Mr. Elrod asked if he wants language added that only affects a proposal where it has to do with that person's particular business, or if that person is simply in favor of the proposal and wants it to be passed. Councillor Mahern said that he wants it to apply to situations where a proposal might confer a direct or pecuniary benefit to that donor, with no dollar amount limit, so that the Councillor could not participate in the debate or vote. He said that he is attempting to insure that there is "no pay for play."

Councillor Smith asked if the police union gave him a \$2,500 contribution, would that mean he could not vote on the police portion of the budget. Councillor Moriarty Adams said that if this were the case, their budget would not pass, because the police union donates to a lot of Councillors. Councillor Smith agreed and said that this is the point he is trying to make. He asked if a utility or organization treated all Councillors to dinner and a play, would this constitute an exclusion from voting on a matter concerning them. Councillor Lutz said that dinner and a play would not be a campaign contribution. Councillor Mahern said that he would be fine widening the scope to include such an instance as relayed by Councillor Smith. Mr. Elrod asked if a Councillor can then not vote on anything a campaign contributor is interested in. Councillor Mahern replied only if there is a pecuniary benefit to that person. He said that taking out the language of benefits in excess of \$1,000 would eliminate instances where that might occur. Chairwoman Cain asked if this would be construed as bribery, and said that as such, it is already prohibited. Councillor Mahern said that they are not preventing Councillors from voting, but simply attaching limitations for large donations in order to influence votes, which is improper.

Chairwoman Cain said that she feels this situation would already be covered with the political action report. Mr. Elrod said that it seems Councillor Mahern would be creating a new rule of a conflict of interest that makes it a conflict if any large donor gets a

benefit. Councillor Mahern said that if the Councillor receives a benefit, they are precluded from voting, and large donations are benefits.

Councillor Moriarty Adams stated that the Fraternal Order of Police (FOP) gives 18 of the 29 Councillors money. She asked if those 18 would then be unable to vote on the police budget, including the police contract.

Councillor Evans said even if he receives a large donation from an organization or individual, this does not mean he is going to follow everything that donor wants him to do or vote how the donor tells him to. He said that Councillors' campaign contributions are public record, and he feels political standards governing campaign contributions are already set up and do not need to be addressed with this proposal.

Councillor Lutz said that he seconded the motion only because he felt more discussion was needed regarding a campaign contributor receiving a direct benefit from a vote due to their contribution. He asked Councillor Mahern exactly what his full motion is. Councillor Mahern said that in order to keep a bright line, he feels he must continue to remain consistent. The committee did not support his push for a zero dollar amount in Sec. 151-1122 (b) (1) (a) or consider his language regarding disqualification for debate, but he feels \$2,500 is a high enough amount that the Councillor should easily be able to keep track of legislation that affects these donors. He said that in order to increase the public's confidence in government and to keep a bright line in conduct, they need to inform donors that they should not interfere with the ability of Councillors to advocate on their behalf. Chairwoman Cain said that she understands what Councillor Mahern is attempting to do, but he is referring to a political arena, and this section of the proposal deals with the Council's duty and employment arena. She said that political contributions are a separate reporting mechanism.

Mr. Elrod said that this proposal already covers benefits to a spouse and children, and now Councillor Mahern wants to add donors to that coverage. He said that campaign contribution amounts and disclosures are limited and regulated by state campaign election laws. Councillor Mahern asked if there is anything in state law to prohibit adopting an amendment to this proposal to add coverage and language of this sort. Mr. Elrod said that there is no law against it, but the problem would be in coming up with language to do what Councillor Mahern wants done this evening without further research and extensive discussion. He said he would imagine a significant time would need to be spent drafting that language to take into account all the unanswered questions. He said that they would have to look at contributions from individuals, firms, collections of contributors, and how contributions are accumulated. He said that if ten individuals in one law firm or lobbying group give a Councillor individual checks for \$250, that might be considered a \$2,500 contribution. He said that many more aspects need to be taken into account in drafting such language, such as individual checks, group checks and contributions at different times within the same calendar year.

Councillor Evans said that there are many organizations which might give this type of money to a campaign, and it is already a matter of disclosure and public record. He said that he feels the committee would be opening a can of worms to include this amendment.

Councillor Mahern said that to him it seems to be a common sense amendment to a proposal designed to heighten the public's awareness. He said that there is nothing to prevent the committee from adding this language, as it is more straightforward than adopting an arbitrary dollar amount in Sec. 151-1122. He re-stated his previous motion and stated that he would like to add a new item (c) under Sec. 151-1122 (b) (1) to read: "confer a direct material or pecuniary benefit upon the donor of \$2,500 or more to that Councillor's campaign funds." Councillor Mahern's motion failed by a vote of 3-3, with Councillors Cain, Evans and Smith casting the negative votes.

Mr. Elrod suggested that in Sec. 151-1123 (b) and (c) the word "disclosure" be added in all instances where "ethics statement" is referenced, to read "ethics disclosure statement." Councillor Moriarty Adams moved, seconded by Councillor Lutz, to "Amend" Proposal No. 149, 2009 as per Mr. Elrod's suggestion. The motion carried by a vote of 6-0.

Councillor Mahern moved to strike the words "in excess of \$5,000" from Sec. 151-1123 (c) (2). Chairwoman Cain asked if this is in relation only to the Councillor. Councillor Mahern said that this section and this particular motion only applies to the Councillor, but his intent would be to eliminate any dollar amount reference.

Councillor Lutz asked how employers is defined, especially with respect to those who might be self-employed. Mr. Elrod stated that in a case of self-employment, the Councillor would be their own employer. He said that as the proposal is currently written, it would be anyone paying the Councillor more than \$5,000, or if amended, it would be anyone paying the Councillor any amount for employment. Chairwoman Cain asked how much money an individual needs to make in order to pay taxes. She said that possibly the amount could coincide with that. Mr. Elrod said that paying taxes depends on many other factors, such as age, dependency, blindness, and whether it refers to state or federal taxes, but the amount could be anywhere between \$7,000 and \$14,000.

Councillor Smith seconded Councillor Mahern's motion.

Councillor Moriarty Adams asked for further clarification and if this refers to any employment. Mr. Elrod said that this would include part-time employment or anything the Councillor gets compensated for. If the Councillor is retired, but paints houses, they would have to list those employers who hire them to paint their house.

Councillor Mahern said that it is a simple matter of letting the public know where Councillors receive compensation, and he feels they are obligated to provide that information.

Councillor Evans stated that in the case of self-employment, the Councillor would have to state the nature of their business.

Councillor Lutz asked if any volunteer work for an organization or entity would have to be disclosed. Mr. Elrod said that they are not getting paid any compensation for volunteer work, and therefore would not have to disclose such.

The motion to strike the words "in excess of \$5,000" from Sec. 151-1123 (c) (2) carried by a vote of 6-0.

Councillor Mahern moved to strike the words "in excess of \$5,000" from Sec. 151-1123 (c) (3).

Councillor Smith said that with three teenagers at home, they can run through jobs like water, and he feels this is a good amount to keep in this particular section. He said that he could live with adjusting it a little, but even part-time, three teenagers could easily make that amount of money, and he would oppose eliminating a dollar amount completely.

Councillor Evans asked why this paragraph is even included, as it seems to already be covered in Sec. 151-1122. Mr. Elrod said that Sec. 151-1122 deals with voting, and this section deals with disclosure. He said that some things might be important to know, but may not be relevant to voting.

Councillor Moriarty Adams stated that her husband has retired from the Indianapolis Metropolitan Police Department (IMPD). She asked if she would have to disclose that. Mr. Elrod said that retirement and pensions are not considered employment, but if her husband was continuing to do other work for IMPD, she would have to disclose that.

Councillor Mahern said that he did not support the \$1,000 amount for Sec. 151-1122, but if they are held to account for conflicts of interest for family members in voting, then they also need to report their compensation and direct pecuniary benefit. In order to maintain a bright line and the confidence of the public, these conflicts need to be disclosed. Chairwoman Cain asked if changing the amount to \$1,000 to be consistent with Sec. 151-1122 would be acceptable. Mr. Elrod said that Sec. 151-1122 has to do with voting and is totally different than this section on disclosure. Councillor Mahern said that knowing where someone is employed would help the Council to know where there might be a conflict of interest with regard to voting. Mr. Elrod said that he would

hope all Councillors know where their spouses work, and asked how much information they really want to disclose. He said that if someone's spouse was making \$500 a year doing side jobs for the County Assessor, there is really no reason to disclose that, but if they are making \$30,000, which is appropriated in the Assessor's budget, then that should be disclosed.

Councillor Evans said that his wife sells Mary Kay cosmetics and his kids sometimes run a kool-aid stand. He said that putting every little thing they earn into these disclosure forms seems senseless and cumbersome. He agreed that it needs to be a significant amount and does not think constituents are concerned about every little nickel and dime, but rather a substantial amount of money. Chairwoman Cain said that it is more about transparency than tediousness. She said that they need to be realistic and she believes the disclosure should be set higher for Councillors.

Councillor Mahern's motion failed for lack of a second.

Councillor Evans moved, seconded by Councillor Smith, to increase the amount in Sec. 151-1123 (c) (3) to \$7,500. The motion failed by a vote of 3-3, with Councillors Lutz, Mahern and Moriarty Adams casting the negative votes.

Councillor Mahern moved, seconded by Councillor Moriarty Adams, to strike the words "in excess of \$5,000" from Sec. 151-1123 (c) (4) (iii) in order to provide a bright line to the public. Councillor Mahern said that he believes the amount should be \$0.

Councillor Lutz said that he does not believe the amount should be \$0, and \$5,000 seems an appropriate number. He said that judges have to file disclosure forms for the State in excess of \$10,000. While some disclosure is needed, he does not think owning \$200 worth of stock in General Motors will make him vote one way or another on a matter. He said that he feels \$5,000 is a reasonable amount. He noted that there are two other qualifiers in this section, as the sub-objects are separated by the word "or" instead of "and."

Councillor Smith agreed with Councillor Lutz and said that his dependent children are being encouraged to invest their money and manage it well. While he wants disclosure, he feels they are trying to make it too tedious. He said that he does not want to limit the ordinance to this particular Council body and in so doing make policy that is extremely cumbersome and tedious for future Council bodies. He said that the more tedious they make the procedure, the more apt Councillors will be not to disclose, even by accident. He said that a reasonable standard is needed, and he feels \$5,000 is a reasonable amount. He added that decreasing the amount to \$1,000 would maybe discourage family members from engaging in investments which parents would otherwise encourage them to do. He said that it also might preclude family members from doing

business with the City or County, which seems a little unfair. Chairwoman Cain reiterated that this is a disclosure issue and not a voting issue.

Councillor Moriarty Adams said that she is fine in taking the amount to \$0 for Councillors, but is not comfortable doing so with spouses and children. She said that even though she seconded the motion, she is not wholly supportive.

Mr. Elrod said that the reason for a more substantial amount is that there are a number of public companies that do business with the City of Indianapolis. If a Councillor or family member owns any stock in any public company, and this amount is reduced to \$0, any Councillors with investments, pension plans, or IRAs, would have to do a search to find out if any of those companies are doing business with the City. He said that it is not always easy to find all those companies doing business with the City and County.

Councillor Mahern asked why it should not be a tedious effort. He said that he feels there should be an extensive accounting of relationships. He referred again to Sec. 151-1122 (b) (1) (a) and the lowering of the amount there to \$1,000. Mr. Elrod said that this section has nothing to do with disclosure and deals directly with a conflict of interest and a Councillor's vote producing a benefit. Councillor Mahern said that a vote could be taken to benefit a company in which someone owns stock. Mr. Elrod said that it is unlikely there would be any direct benefit to any Councillor as a shareholder from a Council vote, as they do not get any part of that direct money or pecuniary benefit paid to the company.

The motion to to strike the words "in excess of \$5,000" from Sec. 151-1123 (c) (4) (iii) failed by a vote of 2-4, with Councillors Cain, Evans, Lutz and Smith casting the negative votes.

Chairwoman Cain asked when the disclosure statement is needed. Mr. Elrod said that a draft of the statement has been attached to the committee agenda packets for this meeting (attached as Exhibit A). He said that some changes may need to be made to the statement due to some amendments this evening, but they need to get the ordinance approved by the full Council, hopefully at the next meeting, because waiting to finalize it until the June meeting would be cutting it close in getting the disclosure form approved in time for them to be filed.

[Clerk's Note: Chairwoman Cain called for a brief recess at 7:52 p.m. and resumed the meeting at 7:58 p.m.]

Chairwoman Cain continued with discussion beginning with Sec. 151-1124 on page 3 of the proposal.

Councillor Evans asked if Sec. 151-1125 (b) includes business cards. Mr. Elrod said that if they are not using them for campaigning purposes, this would not be included. Committee members agreed with this interpretation.

Mr. Elrod said that the rest of the proposal is mostly clean-up language to make the ordinance consistent with the Ethics Code recently passed. He said that the only substantive change is with regard to challenges on the bottom of page four and top of page five.

Councillor Lutz asked if the Councillor whose actions are being challenged can vote on the challenge. Mr. Elrod said that since the body is challenging that Councillor's right to vote, he believes they have a right to vote on that challenge. Otherwise, a member could take an individual out of the vote just by challenging their right to vote. He said that to make this clear, he would suggest they add a comma after "those present" and insert the words "including the councillor challenged."

Councillor Mahern said that this is a significant event and he hopes Councillors will look very carefully at denying a Councillor the right to cast a vote that they are duly elected to cast. He said that he believes it will be a very clear question as to when a conflict exists and believes colleagues will look at the issue in a fair matter, so that the outcome is not partisan, but instead ethical.

Councillor Lutz moved, seconded by Councillor Evans, to "Amend" Proposal No. 149, 2009 as per Mr. Elrod's suggestion. The motion carried by a vote of 6-0.

Councillor Mahern asked if it would be better to have a majority of the Council body as opposed to just those members present. Mr. Elrod said that this is a procedural vote, which is typically ruled by a majority of those present.

Mr. Elrod said that the rest of the proposal simply makes the Code correspond with what already passed, so that it is clear there are not two ethics provisions and that those things covered under one provision do not need to be re-stated in the other.

Councillor Lutz moved, seconded by Councillor Evans, to send Proposal No. 149, 2009 to the full Council with a "Do Pass As Amended" recommendation.

Councillor Mahern said that he will support the motion to send the proposal to Council, but he believes there will be additional debate and discussion on the Council floor. He said that he still has several concerns, and even though he voted to decrease the amount to \$1,000 in the conflict of interest section, he feels for consistency's sake, they need to send a clear message and create a bright line. He added that in order to do that, he believes more discussion is needed.

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The motion to send Proposal No. 149, 2009 to the full Council with a "Do Pass As Amended" recommendation carried by a vote of 6-0.

Chairwoman Cain asked if the committee needs to vote on the form at this time. Mr. Elrod said that the draft form was prepared in order for committee members to review and suggest changes. If the proposal passes the full Council, the language in the ordinance indicates that the Clerk, with the assistance of General Counsel, will design the form to be filed. He said that he tried to make the form very clear and numbered it along with the sections in the Code as per this proposal. He said that he also followed the lead of Corporation Counsel with the Ethics Forms, and indicated that if additional space is needed, that those filing use additional sheets of paper for further explanation.

Chairwoman Cain said that an Ethics Committee meeting was originally scheduled for May 21, 2009. She said that this meeting was added to the calendar in order to get the proposal before the Council in a more timely fashion. She asked if the committee will still need to meet on May 21, 2009. Mr. Elrod said that they would only need to meet if the proposal gets referred back to committee.

Councillor Mahern asked what date the next Council meeting is where this proposal will be heard. The Clerk advised that the next Council meeting is scheduled for Monday, May 18, 2009.

There being no further business, and upon motion duly made, the meeting was adjourned at 8:17 p.m.

Respectfully Submitted,

Ginny Cain, Chairwoman

GC/ag

**INDIANAPOLIS CITY-COUNTY COUNCIL
ETHICS DISCLOSURE STATEMENT**

Sec. 151-1123 of the Revised Code of the Consolidated City and County requires all Councillors and any declared candidate for City-County Council to file this statement. For the year 2009, the statement is due July 1, 2009. Thereafter, the statement is due February 1 or within 30 days of taking office. Candidates are required to file before or at the same time as filing a candidate's declaration or petition.

Failure to file this form in a timely manner may subject the councillor or candidate to sanctions by the Ethics Committee of the City-County Council.

ALL QUESTIONS MUST BE ANSWERED COMPLETELY AND LEGIBLY

- 1. a. YOUR NAME _____
- b. YOUR RESIDENCE _____
- c. YOUR BUSINESS ADDRESS _____
- 2. a. DID YOU RECEIVE COMPENSATION FROM ANY EMPLOYER IN EXCESS OF \$5000.00? YES ___ NO ___

IF YES, THE NAME AND ADDRESS OF ALL SUCH EMPLOYERS

EMPLOYER'S NAME _____

EMPLOYER'S ADDRESS _____

EMPLOYER'S NAME _____

EMPLOYER'S ADDRESS _____

- b. WERE YOU SELF-EMPLOYED? YES ___ NO ___

IF YES, THE NATURE OF SUCH BUSINESS AND THE NAME UNDER WHICH CONDUCTED:

NATURE OF THE BUSINESS _____

NAME UNDER WHICH SUCH BUSINESS WAS CONDUCTED _____

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3. a. DURING THE PRIOR CALENDAR YEAR, DID YOUR SPOUSE RECEIVE COMPENSATION IN EXCESS OF \$5000.00 FROM AN EMPLOYER? YES ___
NO ___

IF YES, THE NAME AND ADDRESS OF SUCH EMPLOYER

EMPLOYER'S NAME _____

EMPLOYER'S ADDRESS _____

- b. DURING THE PRIOR CALENDAR YEAR, DID ANY OF YOUR DEPENDANT CHILDREN RECEIVE COMPENSATION IN EXCESS OF \$5000.00 FROM AN EMPLOYER? YES ___
NO ___

IF YES, THE NAME AND ADDRESS OF SUCH EMPLOYER

NAME OF DEPENDANT CHILD _____

EMPLOYER'S NAME _____

EMPLOYER'S ADDRESS _____

4. DID YOU, YOUR SPOUSE OR ANY OF YOUR DEPENDANT CHILDREN EITHER
(1) SERVE AS AN OFFICER,
(2) OWN AN EQUITY INTEREST OR INTEREST IN THE EARNINGS OR PROFITS THAT INDIVIDUALLY OR IN THE AGGREGATE EXCEEDS 10%, OR
(3) DIRECTLY OR INDIRECTLY RECEIVE COMPENSATION, IN AGGREGATE IN EXCESS OF \$5000.00 DURING THE PAST YEAR,
IN ANY BUSINESS YEAR THAT DID BUSINESS WITH OR SOLICITED BUSINESS WITH THE CITY OR COUNTY? YES ___ NO___

IF YES, THE NAME AND ADDRESSES OF SUCH BUSINESS ENTITIES

ENTITY'S NAME _____

ENTITY'S ADDRESS _____

5. DID YOU, YOUR SPOUSE, OR ANY DEPENDANT CHILD SERVE AS AN OFFICER OR BOARD MEMBER OF ANY ORGANIZATION THAT RECEIVED OR APPLIED FOR FUNDING FROM THE CITY OR COUNTY? YES ___ NO ___

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IF YES, THE NAME AND ADDRESS OF SUCH ORGANIZATION OR ORGANIZATIONS:

PERSON SERVING: COUNCILLOR ___ SPOUSE ___ DEPENDANT CHILD _____

NAME OF ORGANIZATION _____

ADDRESS OF ORGANIZATION _____

6. EXCEPT FOR CAMPAIGN DONATIONS , SUBJECT TO IC 3-9-2 AND REPORTED IN ACCORDANCE WITH LAW OR GIFTS FROM PERSONS INCLUDING FAMILY MEMBERS WITH WHOM YOU HAVE AN ON-GOING SOCIAL RELATIONSHIP NOT RELATED TO SERVICE ON THE COUNCIL WHICH ARE NOT SUBJECT TO REPORTING ON THIS FORM, DID YOU RECEIVE ANY GIFTS, OR OTHER ITEMS, VALUED OVER \$100, OR IN THE AGGREGATE OVER \$250, IN THE PRIOR YEAR FROM ANY PERSON OR FIRM THAT DOES BUSINESS WITH OR SEEKS TO DO BUSINESS WITH THE CITY OR COUNTY OR WHICH SEEKS TO INFLUENCE COUNCIL ACTION? YES ___ NO ___

IF YES, LIST THE NAMES OF SUCH PERSONS OR FIRMS

7. I ACKNOWLEDGE THAT IF ANY ITEMS REPORTED IN ITEMS 1 THROUGH 5 ABOVE THAT CHANGE DURING THE YEAR I WILL UPDATE SUCH INFORMATION WITHIN 45 DAYS OF THE CHANGE.

IF THE SPACE PROVIDED ON THIS FORM IS INADEQUATE, ADDITIONAL SHEETS MAY BE USED TO PROVIDE THE ADDITIONAL INFORMATION. ARE YOU ATTACHING ADDITIONAL SHEETS? YES ___ NO ___

IF YES, HOW MANY ADDITIONAL SHEETS ARE ATTACHED? _____

I AFFIRM UNDER PENALTIES FOR PERJURY THAT MY STATEMENTS ARE TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE.

COUNCILLOR

DATE

SIGN, DATE AND RETURN TO: CLERK OF THE COUNCIL, 241 CITY-COUNTY BLDG.