

RULES AND PUBLIC POLICY COMMITTEE

DATE: March 10, 2009

CALLED TO ORDER: 5:39 p.m.

ADJOURNED: 7:08 p.m.

ATTENDANCE

ATTENDING MEMBERS

Robert Lutz, Chairman
Bob Cockrum
Monroe Gray
Barbara Malone
Angela Mansfield
Marilyn Pfisterer
Lincoln Plowman
Joanne Sanders

ABSENT MEMBERS

AGENDA

PROPOSAL NO. 142, 2008 - provides for the registration with the city controller of lobbyists and lobbying activity with respect to the City and County
"Amended and Postponed" until March 31, 2009 Vote: 8-0

PROPOSAL NO. 63, 2009 - amends the Code with respect to the council rules on adjournment motions recognizing deceased persons
"Do Pass" Vote: 3-5

PROPOSAL NO. 87, 2009 - regards the spending of Federal Economic Recovery Funds
"Do Pass As Amended" Vote: 8-0

RULES AND PUBLIC POLICY COMMITTEE

The Rules and Public Policy Committee of the City-County Council met on Tuesday, March 10, 2009. Chairman Robert Lutz called the meeting to order at 5:39 p.m. with the following members present: Bob Cockrum, Monroe Gray, Barbara Malone, Angela Mansfield, Marilyn Pfisterer, Lincoln Plowman and Joanne Sanders. General Counsel Robert Elrod represented Council staff. Councillors Ed Coleman and William Oliver were also in attendance.

Chairman Lutz asked Councillors to introduce themselves and indicate which area of the County they represent.

PROPOSAL NO. 142, 2008 - provides for the registration with the city controller of lobbyists and lobbying activity with respect to the City and County

John Cochran, Special Counsel to the Mayor, stated that this proposal has been pending for 10 months; and during that time, they have tried to address concerns from lobbyists and Council members. As a result, the proposal has been through several draft versions. The proposal is aimed at creating a more transparent government with regard to lobbying activity. He said that they have consulted with the group that helped the Governor with his regulations regarding lobbying, and have taken into consideration the scope of this proposal (how many lobbyists will be affected), the cost, and the amount of time lobbyists will need to become familiar with these new requirements. They have determined that the model the state has provided is most appropriate. Many lobbyists are already familiar with the way that system works; it targets individual lobbyists, instead of lobbying firms, and has not been shown to be overly burdensome. Mr. Cochran provided a red-lined version of the proposal that points out specific changes (attached as Exhibit A). The proposal requires three things of lobbyists: 1) that they file an annual report (with a filing fee of \$100) beginning January 15, 2011, 2) that they file a registration statement within 15 days of any communication regarding lobbying activity with an official or agency, and 3) that they update their annual statement within 15 days of any change in lobbying activities or communications. Mr. Cochran explained the definitions of "lobbyists" and "lobbying activity" as outlined in the proposal, and indicated exemptions. He described what is included in the annual report, as per the proposal, and what is involved with a registration statement.

Councillor Pfisterer referred to page five of the proposal in Sec. 909-102 and asked why "persons barred from lobbying" was stricken. Mr. Cochran said that this was in response to questions raised by two different Councillors. Chairman Lutz stated that he was one of these Councillors. He explained that the way the ordinance was formerly written, a person who had been released from prison 366 days ago could lobby, but a

person who had been released 364 days ago could not. He said that he feels if a person has been incarcerated and paid their debt to society, they should be allowed to try to start over, even if they face other obstacles. He said that, particularly in light of the effort to get ex-offenders back into the mainstream, this did not seem to be helpful language. Councillor Pfisterer said that she fully supports that reasoning.

Mr. Cochran stated that the enforcement will work like other Code violations, where the Controller is charged with enforcing, issuing citations, and providing the opportunity for a hearing. The maximum civil penalty is \$250 for the first violation, and any offender can request a hearing or appeal a citation. Section 2 of the proposal incorporates changes to the ethics ordinance that would need to be made based on passage of the proposal. The amendment changes effective dates of filing an annual report to 2011, and changes the maximum fine to \$250, instead of \$100.

Chairman Lutz asked what changes will affect the ethics code. Mr. Cochran said that changes will be needed to include lobbyists as those who have business relationships that may need to comply with gift requirements and ethics form filing. Chairman Lutz asked if there are any substantive changes to the ethics code. Mr. Cochran said that there are not. He added that these items were included in the original ethics ordinance, but were taken out when the proposals were separated into two ordinances.

Councillor Gray asked how many people this proposal will affect. Mr. Cochran said that these regulations will capture a fraction of those, probably less than half, that are captured already by the state requirements. Councillor Gray asked if he is a zoning lawyer and is representing someone in a zoning case, if he would have to sign up to be a lobbyist. Mr. Cochran said that in this instance, he would be explicitly exempted from the definition of a lobbyist, according to this proposal. Councillor Gray said that he cannot think of much work that goes on at the city level that requires a lobbyist. Mr. Cochran said that this covers everything else that is not exempted and insures full transparency. Councillor Gray referred to the fee and asked if the City expects to make any money off this process. Mr. Cochran said that this fee simply covers the cost of administering the ordinance and regulation. Councillor Gray asked if Mr. Cochran had conversations with any Democrat members of the Council regarding this ordinance. Mr. Cochran said that he has had communication with both Councillors Mansfield and Sanders regarding the proposal since its introduction. Councillor Gray asked if Councillors Mansfield and Sanders were contacted regarding these proposed amendments. Mr. Cochran said that they were not, because this amendment was prepared over the weekend, and he only spoke with the sponsor of the proposal, Chairman Lutz, regarding changes he would like to see incorporated. Councillor Gray said that it seems to be just a "feel-good" proposal and does not really affect anything.

Councillor Plowman stated that he felt the proposal was a tough read in the beginning as introduced. He added that there are many lobbying scenarios that could take place with local government, such as with telecommunications, construction downtown,

developers bidding on city projects, etc. He said that it is appropriate to tighten up the rules on these types of activities.

Chairman Lutz said that it would be impossible to really say how many people this would affect, because they never know what projects or activities will take place. He said that when the proposal was first introduced, he spoke with Councillors Sanders and Mansfield. He added that he did not know originally if this was something they even needed to bother with and if it was just adding another burden on taxpayers. However, he does believe this adds a layer of transparency and will be beneficial. He said that the original ordinance proposed that every time a lobbyist had contact with the City, they had to file a registration and pay a fee. He said that he was opposed to this, as it did seem to place an undue burden on lobbyists. Chairman Lutz said that because this amendment did not get distributed earlier, he would not be opposed to postponing the proposal to the next meeting if members feel they need more time to digest the new language.

Councillor Sanders said that she feels a postponement would be appropriate. She said that since the effective date is not until January 1, 2010, it does not seem to be time-sensitive, and a postponement would give members more time to read through it. Councillor Sanders moved, seconded by Councillor Gray, to "Postpone" Proposal No. 142, 2008 until March 31, 2009.

Councillor Cockrum asked if the committee should first amend the proposal and accept the substitute version, so that when it is heard again, it will be the amended version before the committee. Chairman Lutz agreed that this would be appropriate. Councillor Sanders said that she will withdraw her motion to postpone to allow for a motion to amend first. Councillor Gray also withdrew his second.

Councillor Cockrum moved, seconded by Councillor Plowman, to "Amend" Proposal No. 142, 2008 as per the substitute version offered by Mr. Cochran (Exhibit A). The motion carried by a vote of 8-0.

Councillor Cockrum said that he would also like to clarify that the effective date is actually 2011 for annual reports and payment of fees, even though the effective date of the ordinance is January, 2010. Mr. Cochran confirmed that lobbyists will be required to start filing registrations in 2010, but their first fees and report filings will not be required until 2011.

Councillor Pfisterer asked if they cannot then be fined until 2011. Mr. Cochran said that a lobbyist could still be fined if they do not file a registration statement, but an annual report does not need to be filed and no annual fee will be assessed until 2011. Chairman Lutz said that it makes sense to him that the annual report not be required until 2011, in order to record activity and communications that took place in 2010.

Councillor Pfisterer asked for confirmation that this is not something confined to Indianapolis or Indiana, but that they are enacting ethics and lobbying regulations all across the nation. Mr. Cochran confirmed that, although it might not be taking place in all states or have this exact language, many cities across the country have enacted ethics ordinances such as this one.

General Counsel Robert Elrod said that the amendments to sections of the ethics ordinance with regard to definitions might need to go into effect now instead of 2010, because they conflict with the existing code. Mr. Cochran said that the current ethics ordinance stays in place until the effective date of this ordinance on January 1, 2010. Mr. Elrod said that lobbying activity would not be defined then until 2010. Mr. Cochran said that until this proposal goes into effect to regulate lobbying efforts, lobbying does not necessarily need to be defined.

Councillor Sanders moved, seconded by Councillor Gray, to "Postpone" Proposal No. 142, 2008 until March 31, 2009.

Councillor Plowman asked if a further delay will affect the time frame of this proposal. Mr. Cochran said that as long as he can get a commitment to take a vote on this proposal at the next committee hearing, he is fine with a postponement. He added that if committee members have any questions or comments regarding the proposal in the meantime, they should contact him and he would be glad to discuss it with them.

The motion to "Postpone" Proposal No. 142, 2008 until March 31, 2009 carried by a vote of 8-0.

Councillor Gray asked who is lobbying on behalf of the City at the state level. Mr. Cochran said that he is one person who is doing so, but he can get Councillors a list, as this information is also available to the public.

PROPOSAL NO. 63, 2009 - amends the Code with respect to the council rules on adjournment motions recognizing deceased persons

Councillor Coleman said that he offered this proposal because it seemed some political gamemanship was being played. He said that the adjournment motions have been read by the minority leader for 40 years, and he felt that some respect should be given to the minority leader to continue. He said that while he understands the Code states that this duty is at the will and pleasure of the president to assign, he felt it was being used as a political game, instead of adhering to tradition. He said the minority party should be given the respect they deserve, since it is one of the few things they are able to do in a meeting.

Chairman Lutz said that he is not sure the impetus behind the change was a political game and feels that Councillor Coleman referring to it that way is frankly offensive and

disrespectful to the president of the Council; and he would appreciate it if Councillor Coleman would refrain from continuing to make such comments.

Councillor Pfisterer said that assigning this duty to the minority leader has simply been tradition, but the president has always had the prerogative to call upon whomever he wishes. She asked if Councillor Coleman has thought this proposal through as to how future presidents, whoever they may be, would feel about that discretion being taken away. Councillor Coleman said that he has thought it through and is why he wanted to offer the proposal, so that this assignment would not bounce back and forth and would, instead, stay the same.

Chairman Lutz said that this is the reason the Council has a president; to make simple procedural decisions.

Councillor Plowman moved, seconded by Councillor Pfisterer, to "Table" Proposal No. 63, 2009. The motion failed by a vote of 4-4, with Councillors Malone, Sanders, Gray, and Mansfield casting the negative votes.

Councillor Sanders said that she appreciates that Councillor Coleman took on this issue. While the decision to change who reads adjournment motions is not against the rules, as the rules are very clear that the president has this discretion; she feels it should have been left as it was, since the minority leader has traditionally performed this task. She said that she supports the proposal.

Councillor Cockrum said that, as president, he was simply responding to a request when he made this change, and he was trying to keep the balance as equal as he could. He added that, personally, he has no strong feelings one way or the other.

Councillor Pfisterer said that it seems there are many more important things to be spending time on than this issue. She said that the families of those people being recognized do not have a preference as to who is reading the name of their loved ones, and she thinks it is important to recognize the authority of the president to assign this simple task.

Councillor Malone asked for consent to explain her vote on the motion to table the proposal. Consent was given. Councillor Malone said that she would rather vote the matter up or down and get it off the table and move on, and that is why she opposed the motion to table.

Councillor Coleman said that this proposal was not done in malice, and was simply an attempt at uniformity. He said that if members think this issue is a waste of time, he apologizes, but he did try to call it up on the Council floor so that it could be dealt with quickly, but that effort failed. Chairman Lutz said that if the proposal had been heard on the Council floor, it would have excluded the public from being allowed input, and the committee is the proper venue for hearing proposals that make changes in the Code.

Councillor Oliver said that he has been on the Council for five years, and under each former president, it has been the minority leader that was called upon to read adjournment motions. He said that he simply accepted that this was the way it was, and when it was changed, that thought process shifted into another arena as to why it was changed. He said that this change is not fruitful.

Councillor Mansfield moved, seconded by Councillor Gray, to send Proposal No. 63, 2009 to the full Council with a "Do Pass" recommendation. The motion failed by a vote of 3-5, with Councillors Cockrum, Lutz, Malone, Pfisterer and Plowman casting the negative votes.

Councillor Mansfield asked for consent to explain her vote. Consent was given. Councillor Mansfield said that she agrees with some of the comments that this assignment has been a matter of tradition. However, she knows that the Code gives this discretion to the president, and it concerns her that the president could completely shut out the minority party altogether. She said that there is value to having two parties recognized, and at the local level there should not be as much partisanship, as citizens' concerns are about streets, sidewalks, safety and a better community.

Chairman Lutz asked for consent to explain his vote. Consent was given. Chairman Lutz said that he is opposed to the proposal because he feels it is a matter of discretion for the president, of whichever party he or she may be; and for the rest of the body to micromanage simple procedures such as this seems inappropriate.

PROPOSAL NO. 87, 2009 - regards the spending of Federal Economic Recovery Funds

Councillor Sanders said that she offered this proposal because of the economic downturn, and she felt that this recovery funding should be used to support businesses and employees who keep the local economy going on a regular basis. She said that she sees this proposal as a win-win situation to give citizens an opportunity to earn a living and sustain their families and to allow employers to continue to operate and keep employees in business. She said that the City also benefits from this proposal, because if individual residents are earning a decent living, they are paying taxes, which in turn pay government employee salaries and provides services in the neighborhoods. She said that she agrees with Councillor Mansfield that local government is about sewage, streets and the quality of life in communities. Councillor Sanders said that she would like to see the spending of these dollars done in such a way as to stimulate the local economy. This proposal simply asks the administration to follow guidelines already established in the purchasing and bidding process, to insure that they buy locally, first within the City, the region, the state and then beyond if the goods and services cannot be found locally. She said that other countries are thinking about enforcing similar policies. She said that from the perspective of the worker, this region has been hardest hit by foreclosures, and this proposal will help to keep people in homes, kids in schools,

and families intact. Councillor Sanders said that this is a win-win proposal for employees, employers and local government. The State House passed this resolution just this afternoon, and Governor Mitch Daniels is trying to ensure that the State spends as much of the State's dollars in Indiana. She said that she feels strongly that Councillors should support this proposal, and they are simply asking purchasing to abide by guidelines that already exist.

Councillor Sanders moved, seconded by Councillor Mansfield, to send Proposal No. 87, 2009 to the full Council with a "Do Pass" recommendation.

Councillor Cockrum stated that he agrees with the intent of the proposal, but has a concern that if the federal government sends the money to local government, they may put restrictions on how that money is spent. This proposal does not allow any provision for the Controller to follow federal guidelines. He said that he would like to offer a friendly amendment and moved to "Amend" Proposal No. 87, 2009 to add the words "unless precluded by federal directive" to the end of Section 2.

Councillor Pfisterer seconded the motion and said that she is in total agreement, because there have been strings attached to federal dollars in the past and the City will not know what they have to work with until the money gets to them. She would hate to see their hands tied.

Councillor Plowman asked if the Controller has any problems with this proposal. Chairman Lutz stated that the Controller said that he could live with the proposal, as it does not really change current practice, but he had concerns about the same issue that Councillor Cockrum has addressed with his amendment and did not want spending held up because of restrictions on usage. Councillor Plowman asked then if the amendment makes the proposal more palatable. Chairman Lutz said that the Controller has indicated that he would be okay with the proposal with such an amendment. The goal of the Controller's Office is to put together a proposal for projects so that they are ready to move on them when the funds come in. Councillor Plowman said that he agrees these dollars should be spent locally, or at least American; and therefore, he supports the proposal as amended.

Councillor Mansfield said that if they are putting in a provision that the policy in place may not be followed, they probably need to include such waivers in Section 1 of the proposal, as well. She said that if they are not allowed to follow purchasing policies because of federal restrictions, they need to make it clear that the restrictions are the reason they are not following policy. Chairman Lutz asked if Councillor Mansfield wants them to hold up the expenditure of funds to get a waiver. Councillor Mansfield said that she does not want expenditure of funds held up, but wants the public to be made aware that they are not following policy due to a federal directive.

Councillor Cockrum asked if Councillor Mansfield is proposing a further amendment to his friendly amendment. Councillor Mansfield said that she would like to do so, but

does not have anything prepared yet. She said that with lots of people out of work and under-employed, she wants it to be clear to the public that if they are not able to use these dollars locally, it is because the federal government told them they cannot. She said that this way, the public will know to lobby their Senators instead of blaming local officials whose hands are tied.

Councillor Malone said that she agrees with the overall tenor of the resolution, but would like the public to understand that the resolution is truly precatory, and basically indicates that the City will try and comply, but that the reality is that this proposal is not absolutely binding on purchasing and bidding procedures. She said that she does not want people to have the expectation that a bid might be granted or denied as a result of this resolution. The City is still relegated to the state bidding guidelines to be fiscally responsible, and she does not think a special resolution is binding on the City to the degree that some people think it might be.

Chairman Lutz said that he is not sure a resolution is binding either, but the Council cannot change State statute, so it might be the only option they have. Mr. Elrod said that the language "directs" the Controller to do certain things, so that is a technical question as to whether that is binding or not. Current restrictions in city ordinances about buying locally deal with supplies only, and not with contractual services; whereas, this proposal lumps goods and services together. State statute language regarding bidding for contractual services defines "locally" as the State of Indiana. The statute that governs the Council makes no distinction as to the binding nature of legislation that is referred to as either an ordinance or a resolution; therefore, with regards to enforceability, he does not think it makes a difference. Mr. Elrod said that, theoretically, both resolutions and ordinances are to be enforced.

Councillor Sanders said that she is not adverse to the friendly amendment, as she feels confident that there will not be anything in the federal guidelines that will restrict the City from spending these dollars locally. She added that she believes there will be language in that directive that requires them to actually buy American to the best of their ability. She said that she personally believes that they could purchase all goods and services locally exclusively and never affect the balance of trade, because that balance is so out of proportion. She said that she can support the friendly amendment and also understands Councillor Mansfield's comments and would entertain a further amendment to publicize any federal restrictions on funds that cannot be spent locally.

Chairman Lutz said that purchasing items "locally" can also be confusing, because a Toyota model car can be purchased from a local dealer, but is not made locally. Also, a pen, which may be manufactured in China, can be purchased from a local store or business. Councillor Sanders said that if she had her way, everything the City purchased would have a "Made in the U.S.A." tag on it, but she knows that is virtually impossible. However, she knows there are some goods still produced within state borders, and those businesses should be given preference. Services, for sure, can be obtained from local individuals and businesses. She said that she believes, to the best

of their ability, the City should make a concerted effort with these stimulus dollars to keep local people working and in their homes and employers in business. They can help do this by purchasing as local as possible; if not Indianapolis, then hopefully at least in Indiana.

Councillor Pfisterer said that she does not have a legal degree but wonders if the definition of “locally” in Section 2 should be changed to say the “purchase made locally” of products and services, instead of “purchase of local products and services.”

Councillor Mansfield moved to “Amend” Proposal No. 87, 2009 to add a sentence to the end of Section 2, following Councillor Cockrum’s previously offered amendment, to read: “If precluded by federal directive, the city county controller shall provide the city council councillors a list of the purchases of non-local products and services.”

Chairman Lutz asked how “non-local” would be defined in that instance. Councillor Sanders said that it might be better to just say “a list of products and services” instead of saying “non-local,” because she believes the federal directive will actually encourage spending these dollars locally.

Councillor Gray asked if the proposal can be postponed to get amendments right or if it needs to be acted on this evening. Councillor Sanders said that it needs to be acted on tonight.

Councillor Cockrum’s motion to “Amend” Proposal No. 87, 2009 to add the words “unless precluded by federal directive” to the end of Section 2 carried by a vote of 8-0.

Chairman Lutz said that it seems Councillor Mansfield’s proposed amendment would be burdensome to the Controller’s Office. Councillor Mansfield said that it would pertain specifically to projects funded by stimulus dollars, and it seems it would be easy to list. Chairman Lutz said that he is not sure it would be easy to list, and he feels they are trying to make a very general proposal too specific. Councillor Mansfield said that she envisions the dollars will be spent the same way other Public Works projects are awarded and would come through a board, like any other expenditure. Chairman Lutz said that these dollars could come through the Department of Metropolitan Development or other agencies, as well, and may not necessarily be Public Works projects. Councillor Mansfield said that bids are generally awarded pursuant to a contract, and those contracts routinely list out products and services.

Councillor Cockrum said that it might be more helpful to require a list of restrictions and directives by the federal government instead of a list of products and services. Councillor Mansfield said that this would not show the impact. Chairman Lutz asked how seeing an impact makes a difference if the City is restricted. Councillor Mansfield said that hopefully, citizens can see how the federal government is impacting the local economy.

Councillor Malone said that there is already a list of contracts let by the City, and it should not be too hard to note those contracts that are directly receiving recovery fund monies.

Councillor Pfisterer said that the procurement process is already open to the public and the City does not yet know what reporting might be required by the federal government on these stimulus funds. She said that the City may already be required to report this spending to the federal government.

Chairman Lutz said that part of the problem lies in the fact that the City does not know what is coming along with these funds. In the past, there have always been strings attached to funds from the federal government, and until they receive that directive, they will not fully know how to proceed.

Councillor Sanders suggested that they proceed with the proposal as recently amended and then amend it in the future, if needed, as additional information is forthcoming.

Chairman Lutz called for public testimony at 6:57 p.m.

Gregory Mason, citizen, stated that he is in favor of the resolution. He added that the proposal was also submitted to the House of Representatives and passed unanimously and is now going before the Senate, and before Councils across the nation in an effort to stimulate the economy. He agreed that local government is in the business of sidewalks and sewers; yet, instead of buying manhole covers made of steel that is manufactured here in the State, they buy from China. This does not put a Hoosier or American back to work or retain their employment.

Brett Voorhies, United Steelworkers Union, stated that they have 15,000 members in the City of Indianapolis. He thanked the Council for hearing this proposal and said that it is not a political issue, but an American issue, and it should be a no-brainer that these dollars should be spent locally.

Cornell Burris, National Association for the Advancement of Colored People (NAACP) local chapter president, thanked the Council for addressing this issue and said that "Buy American" was tried in the past and worked; but this nation has gotten away from it because of a perceived deficit in trade. He urged the Council to pass the proposal to restore the country and bring back jobs.

Nancy Holle, Central Indiana Labor Council, stated that they have 40,000 union workers in Marion and surrounding counties. She said that this is about working families having a home, with the ability to provide food for their family and to feel a part of the community. She said that the City should spend this money the best way they can and spend it locally to put people in this community to work.

Allison Luthe, Central Indiana Jobs for Justice, stated that this proposal makes a strong statement to the community and says that this Council supports the City's workers.

Rennis Henderson, citizen, thanked the Council for supporting this bill and said that these funds will help to provide local jobs, which will in turn help families. He said that this is not a political issue, but is about helping people who are hurting economically in this community.

Liam Roche, resident at 233 East Street, said that he can look out his window and see construction workers, who are probably subcontracted, laying brick on a project across the street, yet driving vehicles with Michigan license plates. He said that it is important to include services in this provision, because there are local workers being laid off while out-of-state workers doing the same job are brought in to do their work.

Councillor Cockrum said that there was some concern as to why, as president, he referred this proposal to the Rules and Public Policy Committee, as opposed to hearing it as a Special Resolution on the Council floor. He said that he sent it to the committee that establishes public policy, so that there would be an opportunity for public input, which would not have been allowed on the Council floor.

Councillor Oliver said that he feels good that both parties worked together toward full support for this measure.

Chairman Lutz said that he supports any proposal that puts more money into the local economy, just as the Council voted a few weeks ago to return \$6 million of County Option Income Tax (COIT) money back into the community annually. He added that, hopefully, this measure will add to that support of the local economy.

Councillor Sanders moved, seconded by Councillor Plowman, to send Proposal No. 87, 2009 to the full Council with a "Do Pass As Amended" recommendation. The motion carried by a vote of 8-0.

There being no further business, and upon motion duly made, the meeting was adjourned at 7:08 p.m.

Respectfully Submitted,

Robert Lutz, Chairman