



THE CITY OF SAN DIEGO

May 13, 2016

VIA REGULAR & ELECTRONIC MAIL

Councilmember David Alvarez  
David Alvarez for Mayor 2013  
202 "C" Street, 10<sup>th</sup> Floor  
San Diego, CA 92101

Re: David Alvarez for Mayor 2013 (ID# 1360332)

Dear Councilmember Alvarez:

The Ethics Commission audit of the above-referenced committee is now concluded, and the Final Audit Report is enclosed. This report was delivered to the Ethics Commission at its regularly-scheduled meeting held on May 12, 2016. Although the report reflects two material findings, the Commission does not believe that the findings warrant additional administrative remedies. In summary, the Commission determined that education was more appropriate than enforcement in this situation. As a result, the Commission voted to accept the report and take no further action.

Sincerely,

[REDACTED]

Rosalba Gomez  
Audit Program Manager

Enclosure

cc: Rita Copeland, Treasurer  
5429 Madison Avenue  
Sacramento, CA 95841

**Ethics Commission**

1010 Second Avenue, Suite 1530 • San Diego, CA 92101  
Tel (619) 533-3476 Fax (619) 533-3448





THE CITY OF SAN DIEGO

## FINAL AUDIT REPORT

March 28, 2016

Councilmember David Alvarez  
David Alvarez for Mayor 2013  
202 "C" Street, 10<sup>th</sup> Floor  
San Diego, CA 92101

Treasurer: Rita Copeland  
5429 Madison Avenue  
Sacramento, CA 95841

### SAN DIEGO ETHICS COMMISSION AUDIT REPORT: *David Alvarez for Mayor 2013*

#### I. Introduction

This Audit Report contains information pertaining to the audit of the committee, David Alvarez for Mayor 2013, Identification Number 1360332 ("the Committee") for the period from September 5, 2013, through October 30, 2014. The Committee was selected for audit by a designee of the City Clerk in a random drawing conducted at a public meeting of the Ethics Commission held on September 18, 2015. The audit was conducted to determine whether the Committee materially complied with the requirements and prohibitions imposed by the City of San Diego's Election Campaign Control Ordinance (San Diego Municipal Code Chapter 2, Article 7, Division 29).

During the period covered by the audit, the Committee reported total contributions of \$931,009.26 (inclusive of \$13,303.49 in non-monetary contributions) and total expenditures of \$925,366.66. Total cash contributions relative to total expenditures resulted in a \$7,660.89 differential that was reconciled by the Committee's miscellaneous increase to cash. **The audit revealed two material findings:**

- **the committee failed to comply with all aspects of the mass campaign literature "paid for by" disclosure requirements in San Diego Municipal Code section 27.2970; and**
- **the committee failed to comply with all aspects of the mass telephone communications "paid for by" disclosure requirements in San Diego Municipal Code section 27.2971.**

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## **II. Committee Information**

On September 18, 2013, the Committee filed a Statement of Organization with the San Diego City Clerk indicating that it qualified as a committee. The Committee was formed to support the election of David Alvarez for Mayor in the November 19, 2013, special Mayor primary election and the February 11, 2014, special Mayor run-off election. On November 10, 2014, the Committee filed a Statement of Termination indicating that its filing obligations were completed on October 30, 2014. The Committee's treasurer was Rita Copeland.

## **III. Audit Authority**

The Commission is mandated by San Diego Municipal Code section 26.0414 to audit campaign statements and other relevant documents to determine whether campaign committees comply with applicable requirements and prohibitions imposed by local law.

## **IV. Audit Scope and Procedures**

This audit was performed in accordance with generally accepted auditing standards. The audit involved a thorough review of the Committee's records for the time period covered by the audit. This review was conducted to determine:

1. Compliance with all disclosure requirements, pertaining to contributions, expenditures, accrued expenditures, and loans, including itemization when required;
2. Compliance with applicable filing deadlines;
3. Compliance with restrictions on contributions, loans and expenditures;
4. Accuracy of total reported receipts, disbursements and cash balances as compared to bank records; and
5. Compliance with all record-keeping requirements.

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## **V. Summary of Applicable Law**

### **Section 27.2970 – Mass Campaign Literature**

- (a) It is unlawful for any candidate or committee to pay for mass campaign literature, other than a yard sign, for the purpose of supporting or opposing a City candidate or ballot measure unless each item of mass campaign literature includes the words “paid for by” immediately followed by the name, street address, and city of that candidate or committee in a typeface that is easily legible, contrasts with the background, and is no less than 12 points in size.
- (b) In addition to the requirements set forth in subsection (a) it is unlawful for any candidate or committee to send mass campaign literature through the mail for the purpose of supporting or opposing a City candidate or City measure unless the name, street address, and city of the candidate or committee are shown on the outside of each item of mass campaign literature, and on at least one of the inserts included within each piece of mail, in a typeface that is easily legible, contrasts with the background, and is no less than 12 points in size.

- (1) If the sender of the mass campaign literature is a single candidate or committee, the name, street address, and city of the candidate or committee need only be shown on the outside of each item being mailed.

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#### **Section 27.2971 – Telephone Communications**

- (a) It is unlawful for any candidate or committee to engage or hire others to engage in mass telephone communications unless the communications include a statement that the communications are “paid for by,” or are otherwise being made “on behalf of” immediately followed by the name of each candidate or committee that is paying for any of the resources used for the communications or that is otherwise authorizing the communication. For purposes of this subsection, “resources” include the purchase of a contact list, the development of a script, overhead expenses, and telephone charges. The type of disclosure required by this section shall be determined as follows:

- (1) A call is “paid for by” a candidate or committee when the candidate or committee pays directly for the call or pays another person to make the call on its behalf.

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#### **VI. Material Findings**

##### **Section 27.2970: Failure to Comply with all Aspects of the “Paid for By” Disclosure on Mass Campaign Literature**

SDMC Section 27.2970 requires committees that pay for mass campaign literature to include the words “paid for by” immediately followed by the name, street address, and city of the committee that paid for it. The “paid for by” disclosure must be made in a typeface is easily legible, contrasts with the background and is no less than 12 points in size in order to ensure that information regarding the person paying for the campaign advertisement is clearly visible and readily apparent to recipients. The Committee commissioned and distributed two pieces of mass campaign literature in the form of a mailer and postcard that each included a “paid for by” disclosure that did not comply with the ECCO.

The Committee retained Mission Control Inc. to produce and disburse two mass campaign literature pieces. On approximately October 21, 2013, the Committee distributed a mailer to approximately 47,000 city residents. The mailer’s “paid for by” disclosure was printed in a typeface color that did not contrast with the background of the piece, rendering it difficult to read. On approximately November 13, 2013, the Committee produced approximately 35,000 postcards but less than half were distributed to City residents. The postcard included a “paid for by” disclosure printed in 8 point type instead of the requisite 12 point type size. The Committee representatives relied on the campaign consultant Mission Control Inc. to comply with all the disclosure requirements when designing and printing the campaign literature. In addition, Mission Control Inc. acknowledged its mistake in failing to comply with all aspects of the “paid for by” disclosures.

**Section 27.2971: Failure to Comply with all Aspects of the “Paid for By” Disclosure in Mass Telephone Communications**

SDMC Section 27.2971 requires committees that pay for mass telephone communications to include the words “paid for by” immediately followed by the name of the committee that paid for it. The audit revealed that the Committee paid the San Diego County Democratic Party for a portion of the cost to conduct campaign robo calls to 38,252 households that did not include a complete “paid for by” disclosure. The robo call “paid for by” disclosure noted that the calls were paid by the San Diego County Democratic Party. However, the Committee’s name was not included in the “paid for by” disclosure as required by SDMC Section 27.2971. The failure to include a comprehensive “paid for by” disclosure deprived the public of information concerning the source of funding for the campaign communication.

At the post-audit conference held on March 23, 2016, the Committee representatives asserted that its disclosure omission was unintentional and that its overall actions evidence its intent to substantially comply with applicable regulations.

**VII. Conclusion**

Through the examination of the Committee’s records and campaign disclosure statements, the Auditor verified that the Committee timely disclosed all contributions received and all expenditures made, and that the Committee maintained all necessary documentation regarding contributions and expenditures in accordance with disclosure and record-keeping provisions of ECCO. **However, the audit revealed the following two material findings:**

- **the committee failed to comply with all aspects of the mass campaign literature “paid for by” disclosure requirements in San Diego Municipal Code section 27.2970; and**
- **the committee failed to comply with all aspects of the mass telephone communications “paid for by” disclosure requirements in San Diego Municipal Code section 27.2971.**

[REDACTED]

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Rosalba Gomez  
Audit Program Manager

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Date

[REDACTED]

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Stacey Fulhorst  
Executive Director

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Date