



ANNUAL REPORT
2012

MISSION STATEMENT

To preserve public confidence in our City government through education, advice, and the prompt and fair enforcement of local governmental ethics laws.

DUTIES AND RESPONSIBILITIES

The City of San Diego Ethics Commission is responsible for monitoring, administering, and enforcing the City's governmental ethics laws; conducting audits and investigations; providing formal and informal advice to persons who fall within the jurisdiction of the Commission; conducting training sessions for the regulated community; and proposing governmental ethics law reforms.

Governmental ethics laws include the Ethics Ordinance, the Election Campaign Control Ordinance, and the Municipal Lobbying Ordinance. The Ethics Commission accepts complaints regarding alleged violations of laws within its jurisdiction, and protects individuals from retaliation for reporting violations. The Ethics Commission may impose fines up to \$5,000 for each violation of local governmental ethics laws.

Persons who fell within the jurisdiction of the Ethics Commission in 2012 include the following:

- Mayor, Councilmembers, City Attorney, and their respective staffs
- Unclassified managerial employees, including employees of City agencies who file Statements of Economic Interests
- City candidates, political committees, and campaign treasurers
- Members of boards & commissions who file Statements of Economic Interests
- Members of Project Area Committees
- Consultants who file Statements of Economic Interests
- Lobbyists

The Ethics Commission is an independent City department that does not report to the Mayor or City Council. Instead, Commission staff reports directly to the Ethics Commissioners, who are appointed by the Mayor and City Council to serve four-year terms.

2011 COMMISSIONERS AND STAFF

Chair

Clyde Fuller (re-elected June 14, 2012)

Vice Chair

William Howatt, Jr. (re-elected June 14, 2012)

Commissioners

W. Lee Biddle

Deborah Cochran

Faye Detsky-Weil

Clyde Fuller

William Howatt, Jr.

John O'Neill

Graydon "Bud" Wetzler

Staff

Stacey Fulhorst, Executive Director

Stephen Ross, Education Program Manager

Lauri Davis, Senior Investigator

Rosalba Gomez, Auditor

Jennifer Duarte, Administrative Aide

EDUCATION AND OUTREACH

The Commission continued to make education and outreach top priorities during 2012. Specifically, the Commission made the following efforts to educate City Officials regarding the various provisions of the City's Ethics Ordinance:

- The Commission staff conducted “refresher” training sessions on the Ethics Ordinance for the offices of Council Districts 4, 6, and 8.
- The staff also conducted live training sessions on the Ethics Ordinance for the offices of the newly-elected Mayor and Council Districts 5 and 7.
- The Commission staff conducted four live training sessions on the Ethics Ordinance for unclassified management employees of the City in January, April, July, and October.
- Following the elimination of redevelopment agencies, staff conducted a live training session for the staff of the Centre City Development Corporation concerning the City's post-employment lobbying restrictions on February 16, 2012.
- In addition, the Commission staff conducted a live training for the members of the Centre City Advisory Committee concerning the disclosure of economic interests and conflicts of interest in February of 2012.
- In October, the Commission staff conducted two live training sessions for the Housing Commission with emphasis given to the unique issues encountered by this agency.
- In November, the Commission staff conducted a live training for the Planning Commission with special emphasis on land use issues and recent guidance received from the Fair Political Practices Commission concerning Commissioner contacts with staff.
- The staff conducted training sessions concerning the City's post-employment lobbying restrictions for the staff of the outgoing Mayor on September 10, 2012, and for Council District 5 on November 28, 2012.

- Approximately 180 City Officials (primarily volunteer members of City boards and commissions) obtained training on the City's Ethics Ordinance via the Commission's on-line application.
- The Commission staff responded to approximately 250 requests for informal advice from City Officials regarding compliance with the City's Ethics Ordinance.
- The staff monitored changes to state ethics laws that impacted corresponding local laws, and notified City Officials about these changes.
- The Commission staff updated four previously-issued Fact Sheets concerning various provisions of the City's ethics laws.

In addition, the Commission undertook the following efforts to educate City candidates and their staffs, as well as political committees, on the City's campaign laws:

- The Commission staff conducted two training sessions for City candidates and their staffs on the City's campaign laws in January and March. These training sessions were designed to provide all candidates (including grass roots candidates without professional campaign consultants) with basic information on the City's campaign laws in clear and simple terminology.
- The staff responded to approximately 180 requests for informal assistance from City candidates and their staffs, as well as various political committees participating in City elections.
- The Commission staff updated five previously-issued Fact Sheets concerning various provisions of the City's campaign laws.

During 2012, the Commission made the following efforts to educate lobbying firms and organizations on the City's lobbying laws:

- The Commission staff responded to approximately 100 requests for informal advice and assistance concerning the City's lobbying laws.

Finally, the Commission's education and outreach efforts during 2012 included the following:

- The Commission continued to disseminate information to the public, the regulated community, City Officials, and the media, via three “interested persons” e-mail lists: one for campaign finance issues, one for ethics issues, and one for lobbying issues.
- The Commission frequently updated its website (www.sandiego.gov/ethics) to provide the public with timely information regarding Commission meetings, legislative proposals, educational efforts, and enforcement activities.
- The Executive Director made presentations to groups inside and outside the City concerning the role of the Ethics Commission and the laws within its jurisdiction.

ADMINISTRATIVE ACTIVITIES

During the 2012 budget season, the City Council approved the Ethics Commission's request to permanently re-allocate personnel funding for a full-time General Counsel to non-personnel professional services in order to pay for a part-time General Counsel as well as other enforcement- and hearing-related costs, including attorneys, administrative law judges, and court reporters. This re-allocation resulted in a net zero impact to the Commission's annual budget because the Executive Director and Education Program Manager absorbed some of the duties previously performed by a full-time General Counsel. The City Council did not make any other substantive changes to the Commission's budget for fiscal year 2013.

In May of 2012, the Commission filled its Administrative Aide II position, following a reclassification process conducted by the Personnel Department in 2011 (the position was initially classified in 2001 as an Executive Secretary).

LEGISLATIVE PROPOSALS

As discussed in greater detail below, the United States District Court issued what amounted to a final ruling in the *Thalheimer v. City of San Diego* litigation in January of 2012. As a result, the Ethics Commission prepared amendments to the Municipal Code to comply with the following aspects of the Court's ruling:

- Elimination of contribution limits and source prohibitions for committees that make independent expenditures to support and oppose City candidates;
- Clarification that the 12-month pre-election fundraising time period does not apply to candidates' personal funds.

The Commission also prepared recommendations concerning new contribution limits for political parties because the District Court struck down the prior limit of \$1,000. At the request of the City Attorney, City Council consideration of these issues was postponed until early 2013.

During the course of the Commission's deliberations concerning the litigation-related amendments, the Commission considered other changes suggested by the public, Commissioners, and staff, and ultimately decided to recommend additional policy and housekeeping amendments to the City's campaign and lobbying laws. The litigation and policy-related amendments were merged into a single ordinance and approved by the City Council on November 13, 2012 (with an effective date of January 1, 2013). A summary of the substantive amendments (not related to the litigation) is as follows:

- Contribution limits for citywide candidates (mayor and city attorney) will be increased from \$500 to \$1,000. The Commission recommended this increase because citywide campaigns are substantially more expensive than district campaigns, and because such an increase is consistent with limits in other comparable cities. The Commission noted that the increase will not create an appearance of corruption because a \$1,000 contribution in the context of the overall cost of a citywide campaign is no more significant than a \$500 contribution in the context of a district campaign.
- Contributions from sole proprietorships will be treated as contributions from individuals. The Commission noted that sole proprietorships are legally indistinguishable from the individuals who own and operate them, and that

many sole proprietors maintain only one bank account for both business and personal purposes (and were therefore previously prohibited from making a contribution to a City candidate).

- Laws requiring the identification of major donors will be expanded to include advertisements paid for by committees formed to support or oppose City candidates. In addition, the threshold for major donor disclosure will be lowered from \$50,000 to \$10,000, although advertisements will still include only the top two donors. The Commission recommended these changes to ensure that the public receives timely information about the major sources of funding to committees that spend money to influence City elections. In light of the Supreme Court ruling in *Citizens United*, the City is no longer permitted to impose contribution limits on these committees.
- Disclosures required on billboard advertisements will now apply to all large forms of advertising (30 square feet or larger) by political committees.
- Campaign activity disclosures for lobbying entities will be expanded to include contributions and fundraising for committees primarily formed to support or oppose City candidates.
- The third pre-election filing will be expanded to apply to ballot measure committees; however, the filing will be modified from a complete campaign statement [Form 460] to a contribution-only disclosure [Form 497] and the cutoff date will be moved from Thursday to Wednesday before the election.
- Paper filing of campaign and lobbying disclosures will be eliminated in light of mandatory electronic filing (although small grass-roots committees may continue to paper file).

The Commission staff plans to prepare and disseminate updated educational materials for candidates and committees early next year in connection with the 2013 Council District 4 special election cycle and the 2014 election cycle.

AUDIT PROGRAM

On September 23, 2011, the Ethics Commission conducted a random drawing of committees from the 2010 election cycle and selected the following candidate committees for audit:

FINANCIAL ACTIVITY BETWEEN \$10,000 AND \$49,000:

Brian “Barry” Pollard for City Council
Kim Tran for City Council 2010

FINANCIAL ACTIVITY BETWEEN \$50,000 AND \$99,999:

Steve Hadley for City Council 2010

FINANCIAL ACTIVITY OF \$100,000 OR MORE:

David Alvarez for Council 2010
Faulconer for Council 2010
Felipe Hueso for City Council 2010
Protect Neighborhood Services Now, sponsored by SDMEA, supporting
Faulconer, Young, Alvarez, Wayne for City Council 2010
Howard Wayne for Council 2010
Lorie Zapf for City Council 2010

In addition, the following ballot measure committees were chosen at the random drawing:

FINANCIAL ACTIVITY BETWEEN \$10,000 AND \$49,999:

Working Family Issues to support Prop D (November 2010 election)

FINANCIAL ACTIVITY BETWEEN \$50,000 AND \$99,999:

Coalition for Fair Employment in Construction (did not qualify for ballot)

FINANCIAL ACTIVITY OF \$100,000 OR MORE:

Protect Fire and Police Services, Yes on Prop D (November 2010 election)
San Diegans for Accountability at City Hall, Yes on D (June 2010 election)
San Diegans for Fair and Open City Contracting supported by the construction
industry (did not qualify for ballot)

In late 2011, the Commission's Auditor completed the following two audits from the 2010 election cycle:

Faulconer for Council 2010
Lorie Zapf for City Council 2010

In 2012, the Commission's Auditor completed the following additional audits of candidate committees:

David Alvarez for Council 2010
Steve Hadley for City Council 2010
Felipe Hueso for City Council 2010
Protect Neighborhood Services Now, sponsored by SDMEA, supporting
Faulconer, Young, Alvarez, Wayne for City Council 2010
Kim Tran for City Council 2010
Howard Wayne for Council 2010

In addition, the Auditor completed the audits of the following ballot measure committees:

Protect Fire and Police Services, Yes on D
Working Family Issues to support Prop D

The Commission anticipates completing the remaining audits from the 2010 election cycle (one candidate committee and three ballot measure committees) before September of 2013, at which time the Commission will conduct another random drawing to select committees from the 2012 election cycle for audit.

ENFORCEMENT – STATISTICS

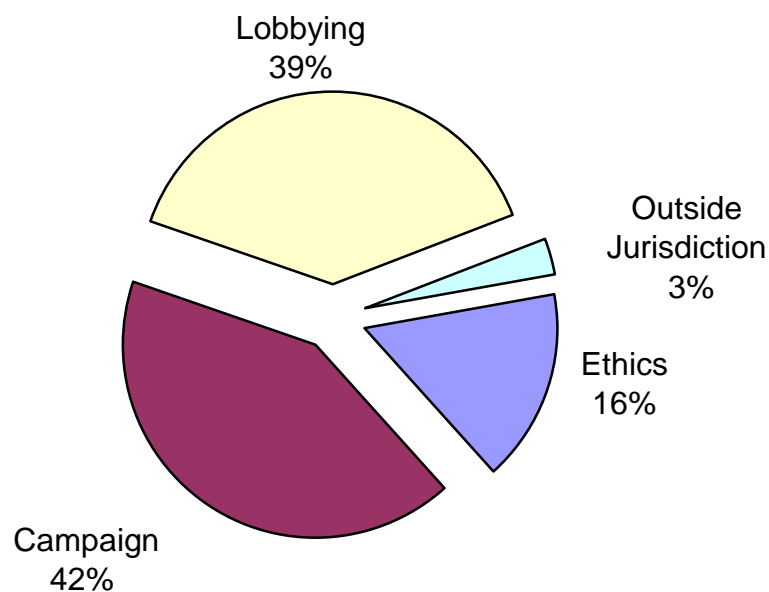
Number of Complaints

During 2012, the Ethics Commission processed a total of 64 complaints. These complaints were submitted by way of written complaint forms, letters, memos, and e-mails. They were presented by third parties and other governmental agencies, as well as Ethics Commissioners and Commission staff. Two of the complainants were anonymous.

Types of Complaints

Complaints processed by the Ethics Commission in 2012 concern alleged violations of law as follows:

- 25 complaints alleged a violation of the Lobbying Ordinance;
- 10 complaints alleged a violation of the Ethics Ordinance;
- 27 complaints alleged a violation of the Election Campaign Control Ordinance; and
- 2 complaints alleged a violation outside of the Commission’s jurisdiction.

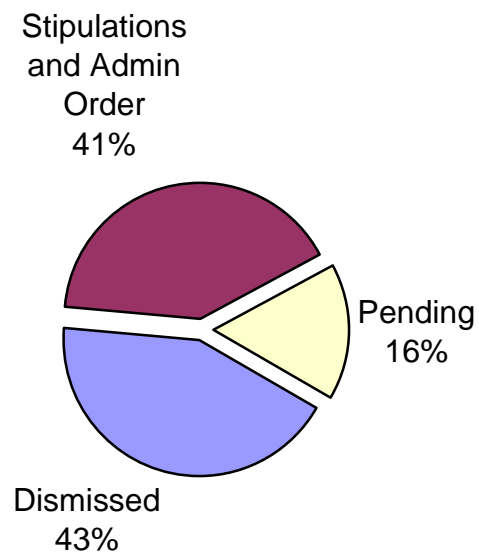


Investigations

Out of the 64 complaints processed by the Commission during 2012, 47 were approved for formal investigations.

These 47 cases, together with 14 cases approved for investigation but not resolved in previous years, resulted in the following disposition during 2012:

- 26 matters were ultimately dismissed by the Commission after considering the results of staff investigations;
- 24 matters resulted in stipulated settlement agreements;
- 1 matter resulted in an Administrative Enforcement Order;
- 10 investigations are currently pending.



ENFORCEMENT – STIPULATIONS

During 2012, the Commission entered into 24 stipulated settlements in connection with violations of the City’s campaign laws, lobbying laws, and ethics laws. Five of these stipulations concerned violations of the City’s campaign laws:

- The American Federation of Teachers Guild Local 1931 San Diego and Grossmont-Cuyamaca Community College Districts Committee on Political Education agreed to pay a \$3,000 fine for disseminating campaign literature that did not comply with the City’s “paid for by” disclosure requirements.
- The California Teamsters Public Affairs Council paid a \$500 fine for failing to timely disclose an independent expenditure.
- The San Diego City Fire Fighters, Local 145 PAC agreed to pay a \$1,500 fine as a result of the distribution of campaign mailers that did not include a proper “paid for by” disclosure.
- The following committees agreed to pay a \$4,000 fine in connection with the distribution of campaign literature that did not include a proper “paid for by” disclosure and the late filing of a campaign statement: San Diegans for Retirement Security – Oppose DeMaio for Mayor 2012; San Diego Can Do Better, No on Measure B for Retirement Fairness; American Federation of State, County and Municipal Employees AFL-CIO; AFSCME California People; and AFSCME Local 127.
- Too Extreme for San Diego – To Oppose Carl DeMaio for Mayor 2012, Sponsored by the San Diego and Imperial Counties Labor council AFL-CIO and San Diego and Imperial Counties Labor Council AFL-CIO paid a \$3,000 fine for disseminating campaign literature that did not include a proper “paid for by” disclosure.

Fifteen of the stipulations approved by the Commission during the past year involved the City’s lobbying laws. The following lobbying firms and organization lobbyists paid fines ranging from \$100 to \$500 in connection with the late filing of quarterly disclosure reports and registration amendments:

- Associated General Contractors
- Downtown San Diego Partnership
- Marston + Marston, Inc.
- Norton Moore & Adams, LLP.

In addition, the following lobbying firms and organization lobbyists paid fines ranging from \$500 to \$1,000 as a result of their failure to timely disclose campaign activities on their quarterly reports:

- Affirmed Housing Group
- Brownstein Hyatt Farber Schreck
- Downtown San Diego Partnership
- Hecht, Solberg, Robinson, Goldberg & Bagley, LLP
- Pardee Homes
- Peterson & Price
- Procopio, Cory, Hargreaves & Savitch, LLP
- Public Policy Strategies
- Seltzer, Caplan, McMahon & Vitek
- Sudberry Properties
- Urban Housing Partners

Finally, four of the stipulations approved by the Commission during 2012 concerned provisions in the City's Ethics Ordinance:

- Linda Bartz, a consultant to the Development Services Department, paid a \$200 fine in connection with the late filing of a Statement of Economic Interests.

- Planning Commissioner Timothy Golba agreed to pay a fine of \$3,000 for failing to timely disclose sources of income to his architectural firm on his annual Statements of Economic Interests.
- Bertha Alicia Gonzalez, a member of the San Ysidro Redevelopment Project Area Committee, paid a \$200 fine as a result of the late filing of a Statement of Economic Interests.
- Planning Commissioner Robert Griswold agreed to pay a fine of \$1,000 in connection with the failure to timely disclose sources of income to his property management firm on his annual Statements of Economic Interests.

During 2012, the Commission levied a total of \$23,700 in administrative fines by way of the stipulations discussed above. In addition, as discussed below, the Commission imposed a fine of \$9,500 following an administrative hearing. All fines are paid to the City of San Diego's General Fund and are not credited to the Ethics Commission's operating budget.

ENFORCEMENT - HEARINGS

The Ethics Commission conducted one administrative hearing in 2012 involving B.D. Howard, a candidate for City Council District 8 in the primary election on June 8, 2010. At Mr. Howard's request, the Commission appointed a State of California Administrative Law Judge to preside over the hearing, which took place on May 11, 2012. Following the hearing, the Administrative Law Judge issued a proposed decision that was considered by the Ethics Commission on July 12, 2012. After reviewing the evidence and the proposed decision, the Commission issued an Administrative Enforcement Order that required Mr. Howard to pay a fine in the amount of \$9,500 in connection his failure to timely file campaign statements, failure to accurately disclose expenditures, failure to maintain campaign records, and acceptance of unlawful contributions from organizations.

On October 9, 2012, Mr. Howard filed a Petition for Writ of Administrative Mandamus with the San Diego Superior Court. The court hearing on this matter is expected to take place in 2013.

LITIGATION

Thalheimer, et al. v. City of San Diego

On December 21, 2009, the following Plaintiffs filed suit with the United States District Court (Case No. 09-CV-2862 IEG) to temporarily enjoin the City from enforcing various provisions of its campaign laws:

- 1) Phil Thalheimer
- 2) Associated Builders & Contractors, Inc. San Diego Chapter
- 3) Lincoln Club of San Diego County
- 4) Republican Party of San Diego
- 5) John Nienstadt, Jr.

Specifically, the Plaintiffs challenged the following laws:

- ✓ the \$500 contribution limit to City candidates;
- ✓ the ban on contributions from organizations to City candidates
- ✓ the application of the source and amount limits to contributions made to groups that solely engage in independent expenditure activity; and
- ✓ the 12-month pre-election fundraising time limit.

On January 20, 2012, the United States District Court issued what amounted to a final ruling in this litigation. The Court generally affirmed its previous rulings, except with regard to the City's contribution limit for political parties (discussed in greater detail below), as follows:

1. Candidates for elective City office are not prohibited from spending their own money prior to the 12-month pre-election fundraising period.
2. The 12-month pre-election fundraising period remains in effect for all contributions to City candidates from sources other than the candidate's personal funds.
3. The City's \$500 limit remains in place for individual contributions made directly to a City candidate.

4. Non-individual entities, other than political parties, are prohibited from contributing directly to a City candidate.
5. There are no limits or source prohibitions for contributions to committees making independent expenditures, i.e., expenditures that are not coordinated with a candidate. Individuals and non-individual entities (e.g., corporations, partnerships, sole proprietorships) may contribute unlimited amounts to committees making independent expenditures to support or oppose a City candidate.

With respect to contributions from political parties to City candidates, the Court struck down the City's \$1,000 limit and directed the City to set a new limit after balancing "(1) the need to allow individuals to participate in the political process by contributing to political parties that help elect candidates with (2) the need to prevent the use of political parties to circumvent contribution limits that apply to individuals." Although the Court struck down the City's \$1,000 contribution limit for political parties, it ruled that party contributions to candidates must comply with the City's attribution requirements in order to prevent circumvention of the City's individual contribution limits. In other words, a political party that makes a contribution to a City candidate may only use donations from individuals in amounts of \$500 or less to fund the contribution.

As discussed above, the Ethics Commission recommended amendments to the Municipal Code to comply with the Court's rulings. These recommendations were adopted by the City Council on November 13, 2012. The Commission also recommended new contribution limits for political parties and presented these recommendations to the Rules Committee on May 16, 2012; however, at the request of the City Attorney, City Council consideration of these issues was postponed until early 2013.