



**ANNUAL REPORT**  
**2009**

## 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 fall within the jurisdiction of the Ethics Commission 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.

## 2009 COMMISSIONERS AND STAFF

### **Chair**

Richard Valdez  
(elected July 9, 2009)

### **Vice Chair**

Clyde Fuller (elected July 9, 2009)

### **Commissioners**

Lee Biddle  
Guillermo Cabrera  
Krishna Haney (resigned September 23, 2009)  
Dorothy Leonard  
Larry Westfall

### **Staff**

Stacey Fulhorst, Executive Director  
Alison Adema, General Counsel  
Stephen Ross, Education Program Manager  
Lauri Davis, Senior Investigator  
Kacy Green, Investigator  
Rosalba Gomez, Auditor  
Katherine Hunt, Executive Secretary

## EDUCATION AND OUTREACH

The Commission continued to make education and outreach top priorities during 2009. Specifically, the Commission made the following efforts to educate City Officials regarding the various provisions of the City's Ethics Ordinance:

- From January through April, the Commission staff conducted live training sessions on the Ethics Ordinance for the offices of Council Districts 1, 2, 3, and 6, as well as the City Attorney's Office.
- In March of 2009, the Commission staff conducted a live training session on Statements of Economic Interests for the Mayor's Office.
- During 2009, the Commission staff conducted three live training sessions on the Ethics Ordinance for unclassified management employees of the City.
- In May of 2009, the Commission staff conducted a live training for the members of the Historical Resources Board with emphasis given to the unique issues encountered by this board.
- In May of 2009, the Commission staff conducted a live training session for the board members and staff of the Southeastern Economic Development Corporation. This training was tailored to reflect the duties and responsibilities of this agency.
- In November of 2009, the Commission staff conducted a live training session for the Salary Setting Commission concerning Statements of Economic Interests.
- During 2009, the Commission staff conducted trainings at five redevelopment project area committees concerning disclosure of economic interests and conflicts of interest.
- During the past year, the Commission staff responded to approximately 300 requests for informal advice from City Officials regarding compliance with the City's Ethics Ordinance.
- The Commission staff updated ten previously-issued Fact Sheets concerning various provisions of the City's Ethics Ordinance.

- The Commission staff prepared and distributed two formal advice letters concerning provisions in the Ethics Ordinance.

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 live training sessions for City candidates and their staffs on the City's campaign laws in July and October. 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 Commission staff updated the Commission's Candidate Manual for the 2010 elections.
- Throughout the year, the Commission staff responded to 115 requests for informal assistance from City candidates and their staffs, as well as various political committees participating in City elections.
- The Commission staff updated nine previously-issued Fact Sheets concerning various provisions of the City's campaign laws.

During 2009, the Commission made the following efforts to educate lobbying firms and organizations on the City's lobbying laws:

- In December of 2009, the Commission staff conducted a live training on the lobbying laws for the Labor Council and its affiliated labor entities.
- The Commission staff updated the Commission's Lobbying Manual to reflect amendments that will go into effect on January 1, 2010.
- The Commission staff updated the "Frequently Asked Questions" on the Commission's website to reflect amendments that will take effect on January 1, 2010.

- The Commission staff updated the lobbyist registration and disclosure forms, including the accompanying instruction pages, to reflect amendments that will go into effect on January 1, 2010.
- Throughout the year, the commission staff responded to approximately 140 requests for informal advice and assistance concerning the City's lobbying laws.
- The Commission staff prepared a new Bulletin entitled "What's New in 2010," and updated five previously-issued Fact Sheets in connection with the amendments that will take effect on January 1, 2010.

Finally, the Commission's education and outreach efforts during 2009 included the following:

- The Commission staff added a section to the "Frequently Asked Questions" portion of the Commission's website regarding "What to expect if your committee is selected for an audit."
- 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](http://www.sandiego.gov/ethics)) to provide the public with timely information regarding Commission meetings, legislative proposals, educational efforts, and enforcement activities.
- Throughout the past year, 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 2009 budget season, the Commission made a presentation to the City Council regarding the Commission's accomplishments within its existing budget. In accordance with the Commission's request, the City Council made no substantive changes to the Ethics Commission's budget for fiscal year 2010. However, in November of 2009, the Mayor and City Council decided to implement mid-year budget cuts and adopt an eighteen month budget covering the second half of fiscal year 2010 as well as fiscal year 2011. As a result, the Ethics Commission's staff was further reduced from seven positions to six, with the elimination of the Commission's second investigator position.

Although the Commission acknowledged that the City's dire financial situation necessitated cuts to all City departments, the Commission advised the Mayor and City Council that the elimination of the second investigator position will increase the amount of time that it takes the Commission staff to complete an investigation, and will very likely result in the inability of the Commission to investigate all of the complaints it receives each year. In other words, the ability of the Commission to promptly investigate alleged violations of the City's campaign laws, lobbying laws, and ethics laws will be seriously compromised.

Finally, in connection with budget deliberations and inquiries about whether any of the work performed by the Commission is duplicative of the work performed by other agencies, the Commission staff prepared two documents comparing the duties and responsibilities of the Commission with those of the Fair Political Practices Commission and those of the City Attorney's Office. The Commission staff also prepared a five-year history of the personnel budget for the Ethics Commission.

## LEGISLATIVE PROPOSALS

In September of 2009, the Commission presented proposed amendments to the City's lobbying laws to the Committee on Rules, Open Government and Intergovernmental Relations. These amendments were drafted in order to clarify, simplify, or otherwise improve the Lobbying Ordinance that went into effect in 2008. The proposals were approved by the City Council on December 9, 2009, and include the following:

- ✓ clarification that lobbying firms and organization lobbyists do not have to disclose the names of individuals who merely assist with lobbying efforts (e.g., secretaries, assistants), or those who solely monitor decisions or conduct research in connection with prospective lobbying;
- ✓ clarification that firms and organizations are only required to disclose the municipal decisions on which they actually lobbied during the reporting period, but not the decisions for which their activities were limited to monitoring or researching;
- ✓ clarification that lobbying firms need not disclose the names of their clients unless they have had an actual lobbying contact on the client's behalf;
- ✓ clarification that organization lobbyists must have at least one lobbying contact in a new calendar year in order to trigger the requirement that they renew their registrations;
- ✓ requirement that organization lobbyists amend their registration within 10 days of lobbying on municipal decisions not previously identified on their registration forms (this requirement already applied to lobbying firms);
- ✓ requirement that lobbyists who work on a contingency basis disclose this fact and also disclose the contingency fees they ultimately receive; and
- ✓ elimination of the requirement that organization lobbyists disclose lobbying and campaign activities of their uncompensated board members.

These new lobbying laws will go into effect on January 1, 2010.



In addition, in September of 2009, the Commission returned to the Rules Committee as directed by the City Council in 2008 in order to revisit the Commission's request for two amendments to its investigative and enforcement procedures: changes to its subpoena power to include witness subpoenas during investigations, and a new provision prohibiting witnesses from providing false evidence to the Commission. The Rules Committee declined to forward these proposals to the full City Council.

Finally, during 2009, the San Diego County Grand Jury recommended that the City Council place a measure on the ballot that would amend the City Charter to ensure that the Ethics Commission is annually funded and staffed at a minimal level. The City Council responded to the County Grand Jury by stating that it disagreed with the recommendation in light of the fact that there was no evidence to indicate that the Ethics Commission had been treated unfairly in the budgeting process. The Grand Jury also recommended that the City Council adopt an ordinance to provide for the Commission's issuance of witness subpoenas during investigations. As discussed above, the Rules Committee considered and rejected this proposal.

## AUDIT PROGRAM

During 2009, the Commission completed the remaining audits of candidate and ballot measure committees from the 2005-2006 election cycle, as follows:

Lorena Gonzalez for City Council  
Ralph Inzunza for City Council  
Votepickard.com (Lincoln Pickard)  
Richard Rider for Mayor  
Myke Shelby for Mayor  
Ian Trowbridge for City Council  
Zaharapoulos for City Council  
Friends of Michael Zucchet

Citizens Against Corruption  
San Diegans for the Mt. Soledad National War Memorial

On September 10, 2009, the Commission conducted a random drawing of committees from the 2008 election cycle, and selected the following committees for audit:

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

Gentry for City Attorney  
Friends of Bob Ilko  
Friends of David Tos

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

John Hartley for City Council

### FINANCIAL ACTIVITY OF \$100,000 OR MORE:

Re-elect City Attorney Mike Aguirre  
April Boling for City Council  
Reform City Hall with Carl DeMaio  
Marti Emerald for San Diego  
Steve Francis for Mayor  
Jan Goldsmith for City Attorney  
Brian Maienschein for City Attorney

Committee to Elect Marshall Merrifield  
Scott Peters for City Attorney  
Re-elect Mayor Sanders  
Phil Thalheimer for City Council

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

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

No on Proposition C – Neighborhoods for Honest Government (June 2008 election)

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

Save Mission Bay – Yes on C (November 2008 election)

FINANCIAL ACTIVITY OF \$100,000 OR MORE:

Yes on Propositions A, B & C Committee (June 2008 election)

Safe Beaches San Diego Yes on D (November 2008 election)

The Ethics Commission staff began conducting the audits of committees from the 2008 election cycle shortly after the random drawing, and completed audits of the following committees during 2009:

Re-elect Mayor Sanders Committee

Marti Emerald for San Diego Committee

No on Proposition C – Neighborhoods for Honest Government Committee

# ENFORCEMENT – STATISTICS

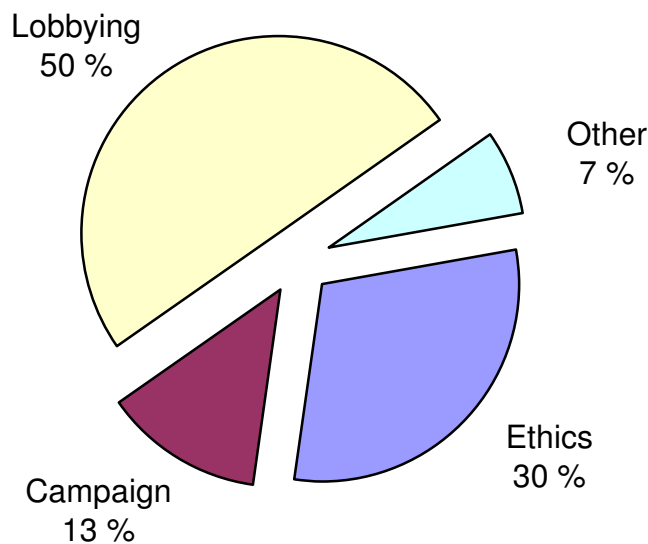
## *Number of Complaints*

During 2009, the Ethics Commission processed a total of 102 complaints. These complaints were submitted by way of written complaint forms, letters, memos, e-mails, and telephone. They were presented by third parties and other governmental agencies, as well as Ethics Commissioners and Commission staff. Four complainants were anonymous.

## *Types of Complaints*

Complaints received by the Ethics Commission in 2009 concern alleged violations of law as follows:

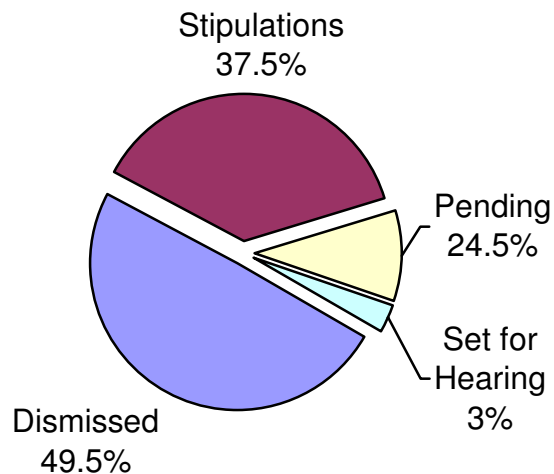
- 51 complaints alleged a violation of the Lobbying Ordinance;
- 33 complaints alleged a violation of the Ethics Ordinance;
- 13 complaints alleged a violation of the Election Campaign Control Ordinance; and
- 7 complaints alleged a violation outside of the Commission's jurisdiction.



## *Investigations*

Out of the 102 complaints processed by the Commission during 2009, 84 were approved for formal investigations. These cases, together with the 17 cases approved for investigation but not resolved in the previous calendar year, resulted in the following disposition during 2009:

- 50 complaints were ultimately dismissed by the Commission after considering the results of staff investigation;
- 38 complaints resulted in stipulated settlement agreements;
- 1 complaint resulted in a finding of probable cause and is set for an Administrative Hearing in 2010;
- 2 complaints resulted in the Respondents waiving probable cause, and agreeing to set Administrative Hearings in 2010;
- 10 investigations are currently pending.



## ENFORCEMENT - STIPULATIONS

During 2009, the Commission entered into thirty-eight stipulated settlements in connection with violations of the City's campaign laws, lobbying laws, and ethics laws.

The majority of the stipulations approved by the Commission during the past year involved violations of the City's lobbying laws, and most of these arose out of the failure of lobbying firms and organization lobbyists to timely file their quarterly disclosure reports. The following lobbying firms and organization lobbyists paid fines ranging from \$100 to \$200 per late filing as part of the Commission's streamlined program for entities that registered for the first time in 2008 or 2009:

- Ace Parking
- Paula Avila
- Deborah Berger
- Bridge Housing Corporation
- Business Improvement District Council
- Todd Cardiff
- Cortes Communications
- Earth Media, Inc.
- Ek & Ek,
- Gerding/Edlen Development Company
- Julie Hamilton
- R. Laster Consulting Corp.
- National Electrical Contractors Association
- Pacific Beach Community Development Corp
- San Diego Association of Realtors
- UNITE HERE Local 30
- Wright & L'Estrange
- YWCA

The Commission entered into four additional stipulations with lobbying firms and organizations, as follows:

- Coast Law Group, an experienced lobbying firm, paid a \$500 fine for failing to timely file a quarterly disclosure report.
- Community Housing Works paid a \$1,500 fine for failing to timely register and failing to timely file two quarterly disclosure reports.
- Cornerstone Strategies, an experienced lobbying firm, paid a \$1,000 fine for failing to timely file a quarterly disclosure report and failing to disclose all of the required information on two quarterly disclosure reports.
- Gorton, Moore & Mulanix, a registered lobbying firm, paid a \$500 fine for failing to timely file two quarterly disclosure reports.
- Lancaster Consulting Corp., an experienced lobbying firm, paid a \$500 fine for failing to timely file a quarterly disclosure report.
- Lounsbery Ferguson Altona & Peak, an experienced lobbying firm, paid a \$500 fine for failing to timely file a quarterly disclosure report.
- Public Solutions, an experienced lobbying firm, agreed to pay a fine in the amount of \$4,500 for failing to timely file three quarterly disclosure reports. This stipulation was executed following a probable cause hearing, on the day the Commission was scheduled to make a probable cause determination.

Six of the stipulations accepted by the Commission during 2009 concerned violations of the City's campaign laws:

- Lorena Gonzalez, a candidate for City Council District 2 in the 2005-2006 special election, and her campaign treasurer Xavier Martinez, paid a fine in the amount of \$500 for failing to disclose expenditures totaling \$4,378.
- Eugene Heytow paid a fine in the amount of \$2,500 for failing to timely report an independent expenditure made in the form of a \$5,000 payment to a slate mailer organization in order to support a City candidate in the November 2008 election.

- International Association of Firefighters FIREPAC paid a fine in the amount of \$1,500 for failing to timely report an independent expenditure made in the form of a \$25,000 payment for radio advertising in order to support a City candidate in the November 2008 election.
- Robert Leman paid a fine in the amount of \$2,500 for failing to timely report an independent expenditure made in the form of a \$5,000 payment to a slate mailer organization in order to support a City candidate in the November 2008 election.
- Sherman Mendoza paid a fine in the amount of \$500 for failing to timely report an independent expenditure made in the form of a \$1,000 payment to a slate mailer organization in order to support a City candidate in the November 2008 election.
- Richard Rider, a candidate for Mayor in the 2005 special election, paid a \$250 fine for failing to report \$1,300 in contributions and \$391 in expenditures.

In addition, six of the stipulations accepted by the Commission during 2009 concerned the requirement in the City's Ethics Ordinance that City Officials file Statements of Economic Interests:

- Larry Arceneaux, a consultant to the Centre City Development Corporation, agreed to pay a fine in the amount of \$200 for failing to timely file his annual Statement of Economic Interests.
- Arturo Castro, a consultant to the Centre City Development Corporation, agreed to pay a fine in the amount of \$3,000 for failing to disclose six sources of income to his architectural firm and two sources of income to his property management company on his 2006 and 2007 annual Statements of Economic Interests.
- Daisy Gonzalez, a member of the City Heights Project Area Committee, agreed to pay a \$200 fine for failing to timely file her assuming office Statement of Economic Interests.



- Dorothy James, a member of the Housing Appeals & Advisory Board, agreed to pay a \$400 fine for failing to timely file her annual Statement of Economic Interests.
- Michael Mueller, a college student and member of the College Community Project Area Committee, agreed to pay a fine in the amount of \$2,000 for failing to timely file his 2007 annual Statement of Economic Interests, and for failing to disclose a source of income. The Commission agreed to waive the fine on the condition that Mr. Mueller assist Commission staff with trainings for various redevelopment project area committees.
- Anthony Sutton, a consultant to the Retirement Board, agreed to pay a fine in the amount of \$100 for failing to timely file his leaving office Statement of Economic Interest.

Finally, Stephen Whitburn, a candidate for Council District 3 in the 2008 election cycle, agreed to pay a fine in the amount of \$200 in connection with contribution solicitations that his campaign sent by e-mail to a master list that included five current City employees.

During 2009, the Commission levied a total of \$21,050 in administrative fines by way of the stipulated settlements discussed above. The stipulated settlements resolve all factual and legal issues without the necessity of holding an administrative hearing. The fines are paid to the City of San Diego's General Fund.

## ENFORCEMENT - HEARINGS

In November of 2009, the Ethics Commission held two Probable Cause Hearings. The first involved Public Solutions, a registered lobbying firm, and allegations that the firm had failed to file quarterly disclosure reports. Following the hearing, the parties entered into a stipulated settlement that was approved by the Commission the same day they were scheduled to make a probable cause determination. (Details of the stipulation are set forth above.)

The second hearing involved Nancy Graham, the former President and Chief Operating Officer of the Centre City Development Corporation, and allegations that Ms. Graham violated the City's conflict of interest laws when she influenced municipal decisions that were substantially likely to have a financial impact on her economic interests. In December, the Commission determined that probable cause existed to move forward on the thirty-four violations alleged by the Petitioner, and scheduled an Administrative Hearing in March of 2010.

In addition to the foregoing, two Respondents waived their rights to a Probable Cause Hearing and elected to proceed directly to an Administrative Hearing. Dante Dayacap, the former Director of Finance for the Southeastern Economic Development Corporation, allegedly violated the City's Ethics Ordinance by misusing his position to induce others to provide him with a private economic benefit. Mr. Dayacap waived the Probable Cause Hearing and determination, and agreed to schedule an Administrative Hearing in May or June of 2010. Marti Emerald, the Councilmember for Council District 7, allegedly violated the City's campaign laws by failing to timely disclose accrued expenses. The Commission accepted Councilmember Emerald's waiver of the Probable Cause Hearing and determination, and scheduled the Administrative Hearing in February of 2010.