

1 SHARON SPIVAK, Executive Director
City of San Diego Ethics Commission
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4

5 Petitioner
6

7 **BEFORE THE CITY OF SAN DIEGO**
8 **ETHICS COMMISSION**
9

10 In re the Matter of:) Case Nos.: 2020-30
11)
KELVIN BARRIOS,) **STIPULATION, DECISION, AND**
12) **ORDER**
Respondent.)
13)
14)

15 **STIPULATION**

16 **THE PARTIES STIPULATE:**

17 1. Petitioner Sharon Spivak is the Executive Director of the City of San Diego
18 Ethics Commission (Ethics Commission). The Ethics Commission is charged with a duty to
19 administer, implement, and enforce local governmental ethics laws contained in the San Diego
20 Municipal Code (Municipal Code and SDMC) relating to, among other things, the provisions of
21 the City of San Diego Ethics Ordinance (Ethics Ordinance), San Diego Municipal Code sections
22 27.3501, *et seq.*

23 2. At all times mentioned herein, Kelvin Barrios (Respondent) was an unclassified
24 City employee working as a Council Representative for District 9 Councilmember and Council
25 President Georgette Gomez.

26 3. This Stipulation will be submitted to the Ethics Commission for consideration at its
27 next scheduled meeting. The agreements contained in this Stipulation are contingent upon the
28 Ethics Commission's approval of the Stipulation and the accompanying Decision and Order.

1 definition provided in the Municipal Code and required to comply with the provisions of the
2 Ethics Ordinance. SDMC § 27.3503 (definition of “City Official,” subsection (c)).

3 10. A City Official, while employed by the City, is prohibited from receiving
4 compensation to engage in any other employment for compensation “which is inconsistent with,
5 incompatible with, in conflict with, or inimical to, his or her duties as a City Official.” SDMC
6 § 27.3563. The Ethics Ordinance further states that, “Specifically, it is unlawful for any City
7 Official to receive compensation for performing any work, service, activity, or enterprise for
8 private gain or advantage if it involves: . . . (a) the consumption of time for which the City
9 Official is receiving compensation by the City; or . . . (f) a consumption of time that would
10 render the performance of his or her duties as a City Official less efficient.” SDMC § 27.3563(a)
11 and (f).

12 11. On December 12, 2016, Respondent began his paid, unclassified City employment
13 as a Council Representative for the District 9 Council office.

14 12. In December 2018, while still employed with the City in the District 9 Council
15 office, Respondent contacted the Laborers’ International Union of North America, Local 89
16 (LiUNA) regarding the possibility of employment with LiUNA. After a short negotiation period,
17 Respondent accepted a job with LiUNA as Policy and Community Engagement Director.
18 Paystubs from LiUNA confirm that Respondent was a compensated employee of LiUNA as of
19 January 7, 2019. On January 7, 2019, Respondent was still on the City payroll, continuing his
20 position with the District 9 Council office.

21 13. Respondent’s last day as a paid City employee was January 14, 2019. This fact has
22 been confirmed by City payroll records and by the Respondent.

23 14. During the period between January 7, 2019 and January 14, 2019 (the overlap
24 period), Respondent was employed by both the City and LiUNA and received compensation
25 from both. Respondent reported that he was expected to work at least 40 hours a week for
26 LiUNA, including during daytime working hours. During this same time, Respondent was also
27 expected to work at least 40 hours a week for the City. While his hours varied with the City, with
28

1 some of his work being performed in the evening, Respondent was expected to be available and
2 working for the City during daytime working hours.

3 15. Respondent used City leave time to take off one eight-hour period during the
4 overlap period, according to payroll records.

5 16. Payroll records confirm that the City paid Respondent approximately \$855 for days
6 that he was simultaneously employed by LiUNA during the overlap period.

7 **Count**

8 **Count 1 – Violation of Municipal Code Section 27.3563**

9 17. As a City Official, Respondent violated Municipal Code section 27.3563 of the
10 Ethics Ordinance by working for, and receiving compensation from, an outside entity which
11 involved (1) the consumption of time for which Respondent was also receiving compensation
12 from the City, and (2) a consumption of time that rendered the performance of his duties as a
13 City Official less efficient, as described above in paragraphs 11-16.

14 **Factors in Mitigation**

15 18. Respondent fully cooperated with the Ethics Commission investigation.

16 **Conclusion**

17 19. Respondent is no longer a City Official and no longer employed by the City. To the
18 extent that any provisions of the City's ethics laws continue to apply to him, and should he ever
19 return to City employment, he agrees to take necessary and prudent precautions to ensure
20 compliance with all provisions of the City's ethics laws in the future.

21 20. Respondent acknowledges that the Ethics Commission may impose increased fines
22 in connection with any future violations of the City's campaign laws.

23 21. Respondent agrees to pay a fine of \$5,000 for the conduct detailed in this
24 Stipulation. This amount must be paid no later than December 6, 2021, by check or money order
25 payable to the City Treasurer and submitted to the Ethics Commission. The submitted payment

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1 will be held pending Ethics Commission approval of this Stipulation and the execution of the
2 Decision and Order portion set forth below.

3 [REDACTED]
4 DATED: _____
5 Sharon Spivak, Petitioner
6 SAN DIEGO ETHICS COMMISSION

6 [REDACTED]
7 DATED: _____
8 Kelvin Barrios
9 RESPONDENT

10 **DECISION AND ORDER**

11 The Ethics Commission considered the above Stipulation at its meeting on December 16,
12 2021. The Ethics Commission hereby approves the Stipulation and orders that, in accordance
13 with the Stipulation, Respondent pay a fine in the amount of \$5,000.

14 [REDACTED]
15 DATED: _____
16 Bill Baber, Chair
17 SAN DIEGO ETHICS COMMISSION