THE CITY OF SAN DIEGO

December 20, 2005

Stephen J. Kaufman, Esq.
Kaufman Downing LLP
777 S. Figueroa Street, Suite 4050
Los Angeles, CA 90017

Re: Mike Aguirre for City Attorney

Dear Mr. Kaufman:

Enclosed please find a copy of the Final Audit Report and a copy of the fully-executed Stipulation in the above-referenced matter. Both documents were approved by the Ethics Commission on December 19, 2005. Thank you for your courtesy and cooperation during the course of the Commission's audit and investigation. If you have any questions, please contact me at your convenience.

Sincerely,

Stacey Fulhorst
Executive Director

Enclosures

THE CITY OF SAN DIEGO

FINAL AUDIT REPORT

December 19, 2005

City Attorney Mike Aguirre
Mike Aguirre for City Attorney
1200 Third Avenue, Suite 1620
San Diego, CA 92101

F. Laurence Scott, Jr., Treasurer
Mike Aguirre for City Attorney
330 Encinitas Blvd., Suite 101
Encinitas, CA 92024

Steve Gabrielson, Former Treasurer
Mike Aguirre for City Attorney
Haynie & Company
4910 Campus Drive
Newport Beach, CA 92660

SAN DIEGO ETHICS COMMISSION
AUDIT REPORT:
Mike Aguirre for City Attorney

I. Introduction

This Audit Report contains information pertaining to the audit of the committee Mike Aguirre for City Attorney, Identification Number 1254870 (the "Committee") for the period from January 1, 2003, through March 31, 2005. The audit was conducted to determine whether the Committee materially complied with the requirements and prohibitions imposed by the Political Reform Act ("the Act") (Government Code Section 81000, *et seq.*) and San Diego's Election Campaign Control Ordinance (San Diego Municipal Code Chapter 2, Article 7, Division 29). The Election Campaign Control Ordinance (ECCO) was amended on January 5, 2005. This Committee operated under the previous ECCO, therefore all Code references in this report relate to the provisions of ECCO effective prior to January 5, 2005.

During the period covered by the audit, the Committee reported total contributions of $199,100.38 (including $5,432.94 non-monetary contributions), total loans of $565,200.00 and total expenditures of $756,815.32. **The audit revealed six material findings: (1) the Committee violated San**

Diego Municipal Code section 27.2931 and Government Code section 84303 by failing to report thirty-seven payments made by an agent or independent contractor; (2) the Committee violated San Diego Municipal Code section 27.2944 by failing to report thirty-four accrued expenses; (3) the Committee violated San Diego Municipal Code section 27.2945 by failing to pay three vendors within ninety calendar days; (4) the Committee violated San Diego Municipal Code section 27.2947 by accepting six contributions from persons other than individuals; (5) the Committee violated San Diego Municipal Code section 27.2925 by failing to maintain complete accounting records; and (6) the Committee violated San Diego Municipal Code section 27.2940 and Government Code section 85201 by failing to deposit all personal funds into the Committee bank account prior to expenditure.

II. Committee Information

The Committee was formed to support the election of Mike Aguirre for City Attorney in the March 2, 2004, primary election and the November 2, 2004, general election. On May 7, 2003, Mr. Aguirre filed a Candidate Intention Statement with the San Diego City Clerk. On May 9, 2003, the Committee filed a Statement of Organization with the San Diego City Clerk indicating that it qualified as a committee. During the period covered by this audit, the Committee's treasurer was Steve Gabrielson. The Committee's current treasurer is F. Laurence Scott, Jr. The Committee has not terminated.

III. Audit Authority

The San Diego Ethics Commission (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 State and 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.

V. Summary of Applicable Law

San Diego Municipal Code section 27.2931 – Campaign Statement Disclosures

Each candidate and committee shall file campaign statements in the time and manner required by California Government Code sections 81000 et seq. Compliance with the disclosure requirements of California Government Code sections 81000 et seq. is deemed to be compliance with this section.

Government Code section 84303 – Expenditure by Agent or Independent Contractor

No expenditure of five hundred dollars ($500) or more shall be made, other than overhead or normal operating expenses, by an agent or independent contractor, including, but not limited to, an advertising agency, on behalf of or for the benefit of any candidate or committee unless it is reported by the candidate or committee as if the expenditure were made directly by the candidate or committee. The agent or independent contractor shall make known to the candidate or committee all information required to be reported by this section.

San Diego Municipal Code section 27.2944(b) – Payment and Disclosure of Payment for Goods and Services

(b) Every candidate and committee shall disclose expenditures in the same time and manner required by California Government Code section 84211. An expenditure which has been incurred but not paid during a reporting period shall be disclosed as an accrued expense.

San Diego Municipal Code Section 27.2945(a) and (d) – Extensions of Vendor Credit

(a) Vendors may extend credit to candidates or committees in the ordinary course of business in the same manner as extended to persons for other than political purposes.

(d) A candidate or committee that accepts goods or services for political purposes on credit under Section 27.2945(a), shall pay for those goods or services in full no later than ninety calendar days after receipt of a bill or invoice and in no event later than ninety calendar days after the last calendar day of the month in which the goods were delivered or the services were rendered.

San Diego Municipal Code Section 27.2946 – Continuing Violation

A candidate or committee treasurer violates Section 27.2945(b), (c) or (d) whenever the candidate or committee treasurer fails to pay any rent or for goods or services in full within the time periods set forth in Section 27.2945. Each and every calendar day any obligation remains partially or wholly unpaid after the time periods set forth in Section 27.2945 constitutes a separate violation.

San Diego Municipal Code section 27.2947(a) - Prohibition and Limits on Contributions from Organizations

(a) It is unlawful for a candidate, committee, committee treasurer or other person acting on behalf of a candidate or committee to accept a contribution from any person other than an individual.

San Diego Municipal Code section 27.2925(a)(3) and (b)(3) and (c)– Accounting

(a) In addition to any other requirements of this division, every candidate or committee establishing a campaign contribution checking account pursuant to this division shall maintain a record of each of the following:

(3) any contribution received by the candidate or committee and deposited into the campaign contribution checking account; and

(b) The records required by Section 27.2925(a) shall include, but not be limited to, all of the following:

(3) if the contribution is made by check, a legible photocopy of the check; and

(c) The records required by Section 27.2925 (a) and (b) shall be kept by the candidate or committee treasurer for a period of four years following the date that the campaign statement to which they relate is filed.

San Diego Municipal Code section 27.2940– Lawful Use of Campaign Funds by a Committee

Uses of campaign funds held by any committee formed in accordance with this division shall be governed by California Government Code sections 81000 et seq.

Government Code section 85201(d) and (e) – Campaign Bank Account

(d) Any personal funds which will be utilized to promote the election of the candidate shall be deposited in the account prior to expenditure.

(e) All campaign expenditures shall be made from the account.

VI. Material Findings

A. Violation of San Diego Municipal Code section 27.2931 – Campaign Statements and Disclosures and Government Code section 84303 – Expenditure by Agent or Independent Contractor

The Committee failed to disclose thirty-seven payments made by an agent or independent contractor as follows.

Period Ending		Name of Agent / Independent Contractor	Amount	Subvendor
1	09/30/03	Kennedy Communications	$ 3,213.00	Vanard Lithographers
2	02/14/04	Poste Haste	$ 11,419.13	USPS
3	02/14/04	The Campaign Group	$ 13,578.75	KFMB
4	02/14/04	The Campaign Group	$ 9,987.50	KGTV
5	02/14/04	The Campaign Group	$ 14,700.75	KNSD
6	02/14/04	The Campaign Group	$ 850.00	KSWB
7	02/14/04	The Campaign Group	$ 3,400.00	KUSI

8	02/14/04	John Kennedy	$ 13,903.25	American Printing & Mailing
9	02/14/04	Christopher Ward	$ 2,517.08	America's Campaign Store
10	02/14/04	Christopher Ward	$ 2,369.86	America's Campaign Store
11	06/30/04	Poste Haste	$ 939.26	USPS
12	06/30/04	The Campaign Group	$ 41,395.00	KFMB
13	06/30/04	The Campaign Group	$ 25,725.00	KGTV
14	06/30/04	The Campaign Group	$ 17,850.00	KNSD
15	06/30/04	The Campaign Group	$ 1,742.50	KSWB
16	06/30/04	The Campaign Group	$ 6,757.50	KUSI
17	06/30/04	John Kennedy	$ 4,079.85	American Printing & Mailing
18	06/30/04	Jeff Van Deerlin	$ 740.00	USPS
19	06/30/04	Christopher Ward	$ 1,257.00	USPS
20	09/30/04	Kennedy Communications	$ 6,950.00	Vanard Lithographers
21	09/30/04	Kennedy Communications	$ 9,270.00	Vanard Lithographers
22	09/30/04	Poste Haste	$ 542.50	USPS
23	09/30/04	Jeff Van Deerlin	$ 527.54	Kinkos
24	09/30/04	Jeff Van Deerlin	$ 524.81	Post Haste
25	09/30/04	Jeff Van Deerlin	$ 1,124.18	Post Haste
26	09/30/04	Jeff Van Deerlin	$ 589.84	Post Haste
27	09/30/04	Jeff Van Deerlin	$ 740.00	USPS
28	09/30/04	Jeff Van Deerlin	$ 740.00	USPS
29	10/16/04	Poste Haste	$ 7,237.47	USPS
30	10/16/04	The Campaign Group	$ 25,602.00	KFMB
31	10/16/04	The Campaign Group	$ 19,358.75	KGTV
32	10/16/04	The Campaign Group	$ 35,806.25	KNSD
33	10/16/04	The Campaign Group	$ 2,720.00	KSWB
34	10/16/04	The Campaign Group	$ 10,390.00	KUSI
35	10/16/04	Jeff Van Deerlin	$ 6,481.51	Post Haste
36	10/16/04	Jeff Van Deerlin	$ 6,201.81	Post Haste
37	12/31/04	Capital One	$ 5,074.15	Marketouch Media
Total			$ 316,306.24	

On July 1, 2005, the Committee filed amended campaign statements for each of the above listed reporting periods to include these previously undisclosed subvendor payments.

At the post-audit conference, held on September 22, 2005, the Committee pointed out that all of the above listed expenditures were reported in a timely manner on the Committee's campaign statements, and that it was the subvendor portion only that was unintentionally omitted. The Committee also expressed its intent to fully disclose all activity.

B. Violation of San Diego Municipal Code section 27.2944 – Payment and Disclosure of Payment for Goods or Services

The Committee failed to disclose thirty-four accrued expenses as follows:

Period Ending		Payee	Amount	Check #
1	09/30/03	Lauri Keller	$3,547.11	147
2	12/31/03	Pomerado Publishing	$474.18	198
3	12/31/03	Tierra Times	$275.00	197
4	12/31/03	Lauri Keller	$2,590.83	200
5	12/31/03	Chris Ward	$2,089.75	183
6	12/31/03	Hi Sierra	$365.00	211
7	12/31/03	Kathleen Blavatt	$120.00	215
8	12/31/03	DeFrance Printing	$107.75	259
9	01/17/04	Hi Sierra	$365.00	211
10	01/17/04	Lauri Keller	$2,590.83	200
11	01/17/04	Kathleen Blavatt	$120.00	215
12	01/17/04	Chris Ward	$3,734.58	199
13	01/17/04	DeFrance Printing	$107.75	259
14	02/14/04	John Kennedy	$2,000.00	246
15	02/14/04	John Kennedy	$13,903.25	247
16	02/14/04	DeFrance Printing	$107.75	259
17	06/30/04	Marketouch Media	$100.70	296
18	06/30/04	Penn, Schoen & Berland	$1,007.45	343
19	06/30/04	Karen Goyette	$260.59	290
20	09/30/04	Elegent Events	$1,064.84	408
21	09/30/04	Hi Sierra	$365.00	393
22	09/30/04	Law Offices of Aguirre & Meyer	$498.86	340
23	09/30/04	Sullivan Wertz McDade & Wallace	$2,134.03	361
24	09/30/04	Karen Goyette	$4,000.00	400
25	09/30/04	Karen Goyette	$198.41	355
26	09/30/04	Gloria Johnson	$750.00	341
27	09/30/04	Jeff Van Deerlin	$2,184.11	339
28	10/16/04	Rancho Bernardo Sun	$381.48	398
29	10/16/04	SBC	$189.43	363
30	10/16/04	Jeff Van Deerlin	$1,047.63	391
31	10/16/04	Jeff Van Deerlin	$6,201.81	402
32	12/31/04	Planned Parenthood	$138.18	414
33	12/31/04	Voter Education Group	$1,500.00	343
34	12/31/04	Jeff Van Deerlin	$1,062.06	1001
Total			$55,583.36	

On July 1 and September 1, 2005, the Committee filed amended campaign statements for each of the above listed reporting periods to include all of these previously undisclosed accrued expenses.

At the post-audit conference the Committee explained that it did not receive vendor invoices in time to disclose five of the above listed expenditures (#'s 7, 8, 11, 13 and 16).

C. Violation of San Diego Municipal Code section 27.2945 – Extensions of Vendor Credit

The Committee failed to pay three vendors within ninety calendar days as follows:

Vendor	Invoice Date	Invoice Amount	Date Paid	Total Days	Days Late
Kathleen Blavatt	10/28/03	$120.00	02/12/04	107	17
DeFrance Printing	11/07/03	$107.75	04/23/04	168	78
Planned Parenthood	09/20/04	$138.18	01/21/05	123	33
Total		$365.93			

Per San Diego Municipal Code section 27.2946, each calendar day late constitutes a separate violation.

At the post-audit conference the Committee explained that these three vendors did not submit invoices in a timely manner, as noted above in Finding B. The Committee also asserted that the amount is *de minimus* in light of total expenditures paid, and therefore should not be considered material.

D. Violation of San Diego Municipal Code section 27.2947 - Prohibition and Limits on Contributions from Organizations

The Committee accepted and deposited six contributions from persons other than individuals. In particular, the audit revealed six contributions drawn on business checking accounts as follows:

Pre-Printed Check Name	Check #	Amount
Richard J. Ramos, For UAL	1837	$50.00
The Law Offices of Arturo Zepeda	1453	$250.00
Law Offices of Raymond Buendia	1586	$100.00
Richard H. Miller, Jr., dba Lost Your Marbles Too	1581	$25.00
Reliance Financial Services, Ron Cota	6999	$50.00
Richard J. Ramos, for UAL	1907	$99.00
Total		$574.00

During the course of the audit, the Committee remitted $425.00 to the City Clerk as remedy for depositing the contributions from Arturo Zepeda, Raymond Buendia, Richard Miller and Ron Cota in error.

At the post-audit conference the Committee stated that it had reasonable procedures in place to identify contributions from non-individuals, and attempted to identify all contributions drawn on business checking accounts. The Committee asserted that the six violations listed above are *de minimus* in light of the Committee's overall activity.

E. Violation of San Diego Municipal Code section 27.2925 - Accounting

The Committee did not maintain complete accounting records. Specifically, the Committee did not maintain copies of 255 contributor checks. Duplicate copies were obtained from the bank in June 2005.

The Committee records were initially maintained by Treasurer Steve Gabrielson. When Scott & Cronin took over as Treasurer in February of 2005, the firm reviewed the few boxes of records provided by Gabrielson, and began to organize the records and obtain missing documents. The Committee was notified in a letter dated April 28, 2005, that it was selected for audit at the random drawing held April 25, 2005. An audit notification letter was sent on May 20, 2005, informing the Committee that the audit was commencing, and requesting Committee documentation be provided and an initial meeting be scheduled. In response, the current Committee treasurer contacted the Ethics Commission and asked for an additional month to complete the review of the prior treasurer's records, file necessary amendments, and obtain missing documentation. Although the Committee's bank statements and check registers were provided on June 3, 2005, the Committee declined to produce all remaining records until June 30, 2005.

At the post-audit conference, the Committee asserted that its bank, serving as the Committee's agent, maintained all check copies; therefore, the Committee was not required to maintain additional copies.

F. Violation of San Diego Municipal Code section 27.2940 – Lawful Use of Campaign Funds by a Committee and Government Code section 85201 – Campaign Bank Account

The Committee failed to deposit all personal funds into the bank account prior to expenditure. Specifically, the candidate used personal funds totaling $4,047.78 to make campaign related purchases as follows:

Description	Amount
Post Office Box Rental	$138.00
Supplies	$79.96
Stamps	$444.00
Stamps	$399.60
Stamps	$370.00
Stamps	$1,228.40
Supplies	$38.89
Factiva / Research Costs	$221.73
Cell Phone	$413.68
Cell Phone	$593.79
Kinkos / Copies	$119.73
Total	$4,047.78

The Committee reported these purchases as non-monetary contributions from the candidate.

At the post-audit conference, the Committee stated its intent was full disclosure, and that all items purchased with the candidate's personal funds were timely reported. The Committee also asserted that the amount is *de minimus* and therefore not material.

VII. Conclusion

Through the examination of the Committee's records and campaign disclosure statements, the Auditor verified that the Committee timely filed all campaign statements, and disclosed all contributions and loans received. **However, the audit revealed six material findings: (1) the Committee violated San Diego Municipal Code section 27.2931 and Government Code section 84303 by failing to report thirty-seven payments made by an agent or independent contractor; (2) the Committee violated San Diego Municipal Code section 27.2944 by failing to report thirty-four accrued expenses; (3) the Committee violated San Diego Municipal Code section 27.2945 by failing to pay three vendors within ninety calendar days; (4) the Committee violated San Diego Municipal Code section 27.2947 by accepting six contributions from persons other than individuals; (5) the Committee violated San Diego Municipal Code section 27.2925 by failing to maintain complete accounting records; and (6) the Committee violated San Diego Municipal Code section 27.2940 and Government Code section 85201 by failing to deposit all personal funds into the Committee bank account prior to expenditure.**

_____ _____

DeeDee Alari, CPA, CIA, CFE — Date
Financial Investigator

_____ _____

Lauri Davis — Date
Senior Investigator