



ANNUAL REPORT
2005

PURPOSE

To monitor, administer, and enforce the City's governmental ethics laws, propose new governmental ethics law reforms, conduct investigations, refer violations to appropriate enforcement agencies, audit disclosure statements, and advise and educate City officials and the public about governmental ethics laws.

MISSION STATEMENT

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

2005 COMMISSIONERS AND STAFF

Chair

Dorothy Leonard (elected July 14, 2005)

Vice Chair

Larry S. Westfall (elected July 14, 2005)

Commissioners

W. Lee Biddle (assumed office July 14, 2005)

Guillermo (“Gil”) Cabrera (assumed office July 14, 2005)

Charles H. Dick, Jr.

April R. Riel (term expired June 30, 2005)

Dorothy L.W. Smith (term expired June 30, 2005)

Karen Thomas-Stefano

Gregory Vega (term expired June 30, 2005)

Staff

Stacey Fulhorst, Executive Director

Cristie McGuire, General Counsel

Stephen Ross, Education Program Manager

Lauri Davis, Senior Investigator

DeeDee Alari, Financial Investigator

Katherine Hunt, Executive Secretary

LETTER FROM THE CHAIR AND EXECUTIVE DIRECTOR

January 2006

After the elections in March and November of 2004, and the City Council's approval of substantial changes to the City's campaign laws in August of 2004, the Commissioners and staff expected that 2005 would be a relatively quiet year that would allow for extensive work on the City's Municipal Lobbying Ordinance. As the year unfolded, however, it soon became clear that the Commission would be much busier than anticipated. In particular, Mayor Murphy's resignation in April, and the resignations of Councilmembers Inzunza and Zucchet in July, resulted in the City Council calling several special elections. Consequently, the Commission staff became inundated with requests for assistance from eleven Mayoral candidates and twenty-six City Council candidates.

With this increased workload, it became apparent that the part-time General Counsel hired by the Commission in December of 2004 would not be sufficient to replace the support previously provided by the City Attorney's Office (one dedicated Deputy City Attorney and one partially dedicated Legal Assistant). Accordingly, the Commission worked with the Personnel Department and Civil Service Commission to create and classify the position of Program Manager responsible for the Commission's education and technical assistance programs. The City Council approved this position in August, and the Commission subsequently hired Stephen Ross. As a former Legal Assistant with the Office of the City Attorney who provided support to the Commission since its inception in 2001, Mr. Ross was uniquely qualified to fill this position and was able to "hit the ground running."

Despite the additional work associated with the two special elections in 2005, the Commission was still able to accomplish the majority of its goals for the year. In particular, the Commission staff prepared a training program on the City's campaign laws for the candidates in the two special elections. This training was specifically designed to educate all candidates – including grass roots candidates who could not afford professional consultants - on the changes to the campaign laws that went into effect in January of 2005. In addition to candidate training, the Commission staff continued its educational efforts with respect to City Officials and the Ethics Ordinance. The Commission staff conducted ten training sessions

for elected officials and their staff, and six training sessions for unclassified City managers. The Commission was also able to finalize development of an on-line training program that will facilitate Ethics Ordinance training for members of City boards and commissions who are unable to attend live trainings.

The Commissioners and staff began work on the Lobbying Ordinance in early 2005. This work was soon interrupted, however, with the demands generated by the special elections. The Commission picked up its work on the Lobbying Ordinance in November and began holding workshops to receive input from the public and the regulated community. The Commission expects to continue this work in early 2006, and to present recommended changes to the Rules Committee in approximately June of 2006.

Although the Commission was unable to complete its work on the Lobbying Ordinance in 2005, the Commission was able to prepare additional recommended changes to the City's campaign laws concerning "electioneering communications," also known as "issues ads." The City Council unanimously approved these recommendations in November and, as a result, parties who disseminate "issues ads" within ninety days of a City election will have to include a "paid for by" disclosure on the advertisements, and will have to file disclosure reports with the Office of the City Clerk.

During 2005, the Commissioners and staff also completed extensive proposed revisions to the Commission's Audit Manual. These changes, which were approved by the City Council in April, will result in the Commission auditing thirteen candidate committees and three ballot measure committees from the 2004 election cycle.

Although 2005 brought a conclusion to the terms of three of our original Commissioners: April Riel, Dorothy Smith, and Gregory Vega, we are pleased to welcome new Commissioners Lee Biddle and Gil Cabrera, both of whom bring unique experience and a continued level of professionalism to the Commission. We are hopeful that the Mayor and City Council will find a qualified candidate to fill our remaining vacancy in early 2006.

Sincerely,

Dorothy Leonard
Chair

Stacey Fulhorst
Executive Director

HISTORY AND START-UP MILESTONES

The City Council approved the establishment of an Ethics Commission with the adoption of Ordinance O-18945 on June 5, 2001. The Mayor subsequently nominated seven members to the Commission from a pool of nominees submitted by City Councilmembers and the City Attorney. These initial appointments were confirmed by the City Council on August 7, and the Commissioners were sworn in at the first meeting of the Commission on August 22, 2001.

On November 5, 2001, the City Council approved a Commission recommendation for a City Charter amendment granting the Commission subpoena power. Voters approved this City Charter amendment in the March 2002 election.

The City Council approved investigative and enforcement procedures for the Commission on February 11, 2002, and the Commission began accepting complaints on March 14, 2002, concerning violations of the City's Election Campaign Control Ordinance [ECCO] and the City's Lobbying Ordinance.

On April 29, 2002, the City Council adopted the Ethics Ordinance. The Commission began accepting complaints alleging violations of this ordinance on May 29, 2002.

On September 24, 2002, the City Council approved a revision of Council Policy 000-04, making an ethics orientation program mandatory for individuals who fall within the Commission's jurisdiction, and requiring the completion of a biennial refresher and continuing education program.

The Commission's Audit Manual was initially approved by the City Council on February 10, 2003. Subsequent amendments were approved on September 9, 2003, and April 18, 2005.

On June 29, 2004, the City Council approved a Commission recommendation for a City Charter amendment permitting the Commission to retain legal counsel independent of the City Attorney's Office. Voters approved this Charter amendment in the November 2004 election.

On August 2, 2004, the City Council approved a complete overhaul of the City's Election Campaign Control Ordinance. The majority of the amendments took effect on January 5, 2005.

ACTIVITIES AND ACCOMPLISHMENTS

Administrative

In March of 2005, the Commission's Executive Secretary, Janet MacFarlane, retired after over thirty years of service to the City of San Diego. In May of 2005, the Commission hired Katherine Hunt, a long-time City employee with extensive experience at the City Clerk's Office, as the Commission's new Executive Secretary.

In addition, during 2005, the Commission staff worked with the Personnel Department and Civil Service Commission to create and classify the position of Program Manager responsible for administering the Commission's education and technical assistance programs. The creation of this position was necessitated by the approval of Proposition E in the November 2004 general election, which requires the Commission to obtain legal counsel independent of the City Attorney's Office. Although the Commission hired Cristie McGuire to serve as its part-time legal counsel in December of 2004, the Commission soon realized that this position would not be sufficient to compensate for the loss of services provided previously by a Deputy City Attorney and a Legal Assistant from the City Attorney's Office.

After the Program Manager position was created and approved by the City Council in August, the Commission hired Stephen Ross to fill this position. Mr. Ross previously served as a Legal Assistant in the City Attorney's Office, and provided support to the Ethics Commission since its inception in 2001. Because of his longtime support of the Commission, including his involvement in drafting all of the Commission's procedures and ordinances, he is uniquely qualified to administer the Commission's education and technical assistance programs.

Legislative

The City Council initially approved the Ethics Commission Audit Manual in February of 2003. In accordance with this Manual, the Commission selected two candidate committees and two ballot measure committees for audit at random drawings. The Commission's Financial Investigator, hired in June of 2004, subsequently completed three of these four audits (one of the candidate committees was not audited because the relevant records were involved in a Federal criminal investigation that resulted in the elected official's resignation from office).

As a result of the Commission's experience with the first round of audits from the 2002 election cycle, as well as the host of amendments to the City's campaign laws approved in August of 2004, the Commission created an ad hoc committee in December of 2004 to review the Audit Manual and consider proposed amendments. The amendments were subsequently presented to the City Council Committee on Rules, Finance, and Intergovernmental Relations on April 6, 2005, and were ultimately approved by the City Council on April 18, 2005.

The most important change to the Commission's Audit Manual was the substantial increase in the number of campaign audits for each election cycle. The Commission recommended this increase because of the importance of assuring the public that the information provided on campaign disclosure statements is accurate and complete. Instead of auditing only two candidate committees and two ballot measure committees, the Commission will now audit 75% of all candidate and ballot measure committees that raise over \$100,000, and 50% of all candidate and ballot measure committees that raise over \$10,000. For the 2004 election cycle, this will result in audits of thirteen candidate committees and three ballot measure committees.

In addition to the Audit Manual, the Commission also returned to the City Council during 2005 with proposed amendments to the Election Campaign Control Ordinance. Although the City Council approved a substantial overhaul of the City's campaign laws in August of 2004, the Commission's experience during the November 2004 general election and the July 2005 special election resulted in the need for additional updates and improvements. In particular, the Commission recognized the need to locally regulate the production and dissemination of "electioneering communications." These communications, also known as "issues ads," are campaign advertisements that do not expressly support or oppose City

candidates, but are distributed shortly before a City election for the purpose of influencing the election by portraying candidates in a positive or negative light.

The amendments proposed by the Commission and approved by the City Council in November of 2005 will generally require any person who distributes “issues ads” within 90 days of a City election to include a “paid for by” disclosure on the communication, and to file a report with the City Clerk within 24 hours. The report must disclose the amount of the payment, and the name, address, occupation and employer of the person distributing the communication, as well as the identity of any person who contributed \$100 or more toward the communication.

The changes to the City’s campaign laws proposed by the Commission and approved by the City Council also included amendments to the provisions concerning campaign advertisements that expressly support or oppose City candidates or measures. These changes will ensure that both candidates and committees paying for independent expenditures adhere to the same set of rules and include a “paid for by” disclosure on all forms of campaign advertising. Finally, the changes proposed by the Commission and approved by the City Council included a variety of housekeeping amendments designed to clarify the original legislative intent behind several provisions.

In addition, the Commission continued its work with respect to the review and possible amendment of the City’s Municipal Lobbying Ordinance. The Commission held public workshops at its regularly-scheduled meetings in November and December of 2005, and received extensive input from members of the public and the regulated community regarding the following issues: the identity of persons who should register as lobbyists, the information that should be provided on registration and quarterly disclosure reports, and the amount of registration fees. The Commission plans to continue working on the Lobbying Ordinance throughout the first half of 2006, and to propose amendments to the City Council Committee on Rules, Finance, and Intergovernmental Relations in mid-2006.

Education and Outreach

The Commission continued to make education and outreach top priorities during 2005. In particular, the Commission's efforts included the following:

- During the month of January 2005, the Commission staff conducted nine re-certification training sessions on the Ethics Ordinance for the offices of the Mayor and the eight City Council Districts. In December of 2005, the Commission staff conducted an initial training for the office of the newly-elected Mayor.
- Throughout 2005, the Commission staff conducted six additional training sessions on the Ethics Ordinance for unclassified management employees of the City.
- The Commission staff hosted training sessions on the City's Election Campaign Control Ordinance for City candidates and their staff prior to the July and November special elections. These training sessions were specifically designed to provide all candidates – including grass roots candidates without professional campaign consultants – with basic information on the City's campaign laws in layman's terminology.
- The Commission staff worked extensively with the San Diego Data Processing Corporation to complete development of an on-line training program on the City's Ethics Ordinance. This on-line program was designed to facilitate re-certification for members of the City's boards and commissions who are not typically available for live training sessions, and for those individuals who have already received the initial live training.
- The Commission staff amended previously-issued Fact Sheets to reflect changes in the City's campaign laws concerning the solicitation and acceptance of contributions, mass mailings, telephone communications, contributions from trust accounts, independent expenditures and campaign advocacy, and legal defense funds. These fact sheets are designed to take the legalese out of the laws while providing substantive guidance to the public and regulated community.

- The Commission staff continued to disseminate information via two “interested persons” e-mail lists: one for campaign finance issues and one for lobbying issues. These lists have enabled the staff to efficiently communicate with the regulated community concerning proposed and enacted amendments to local laws, as well as guidelines and recommendations offered in the form of Fact Sheets and advice letters.
- The Commission issued five formal advice letters. These advice letters address provisions in both the Election Campaign Control Ordinance and the Ethics Ordinance.
- The number of requests for informal advice increased dramatically during 2005 in light of the two special elections held in July and November of 2005, and in light of the departure of many City Officials throughout the year. Many of the candidates for Mayor and City Council Districts 2 and 8 contacted Commission staff on a regular basis with questions concerning local campaign laws. These calls increased in frequency during the weeks leading up to each election. In addition, Commission staff received numerous requests for informal advice from former City Officials now working the private sector. These individuals sought assistance to ensure their compliance with the post-employment restrictions set forth in the City’s Ethics Ordinance.
- The Commission frequently updated its website (www.sandiego.gov/ethics) to provide the public with timely information regarding Commission meetings, agendas, minutes, laws, complaint procedures, press releases, stipulations, and frequently asked questions.
- Throughout the past year, the Executive Director made presentations to groups inside and outside the City concerning the laws within the jurisdiction of the Ethics Commission.

Electronic Filing

During 2005, Commission staff continued to work with the Office of the City Clerk regarding the development of an on-line filing system for campaign disclosure statements. Input received by the Commission indicates that an electronic filing system is critical to ensure prompt disclosure and to provide the public with efficient access to information regarding contributions and expenditures. The City Clerk's Office anticipates that this system will be available in mid-2006.

In addition, the Commission staff plans to work with the City Clerk's Office during 2006 on the expansion of this on-line filing system to include Statements of Economic Interests filed by City Officials, as well as Registration Forms and Quarterly Disclosure Reports filed by lobbyists.

AUDIT PROGRAM

As discussed above, the City Council approved amendments to the Commission's Audit Manual on April 18, 2005. Subsequently, on April 25, 2005, a random drawing was conducted and the following candidate-controlled committees were selected for audit:

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

Kathryn Burton for City Council
Taxpayers Against Recall Abuse (Scott Peters)
Friends of Bruce Williams

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

Howard Wayne for City Council

FINANCIAL ACTIVITY OF \$100,000 OR MORE:

Mike Aguirre for City Attorney
Friends of Toni Atkins
Deborah Berger for City Attorney
Peter Q. Davis for Mayor
Donna Frye for Mayor
Friends of Mayor Dick Murphy
San Diegans for Scott Peters 2004
San Diegans for Ron Roberts
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:

Neighborhoods for Accountable Government – A Committee Against Prop F

FINANCIAL ACTIVITY OF \$100,000 OR MORE:

No on Proposition J

Yes on Prop C, the Emergency Services Initiative

The audits of committees from the 2004 election cycle began in mid-2005. To date, the audits of the following committees have been completed and posted on the Commission's website:

Michael Aguirre for City Attorney

Kathryn Burton for City Council

Friends of Mayor Dick Murphy

Friends of Bruce Williams

The No on Proposition J Committee

In addition, during 2005, the Commission's Financial Investigator completed the audits of Lobbyist Disclosure Reports for calendar years 2002 and 2003. These Audit Reports are also posted on the Commission's website.

During 2006, the Commission anticipates completing the remainder of the 2004 campaign audits, as well as the audit of Lobbyist Quarterly Disclosure Reports for calendar year 2004.

ENFORCEMENT – STATISTICS

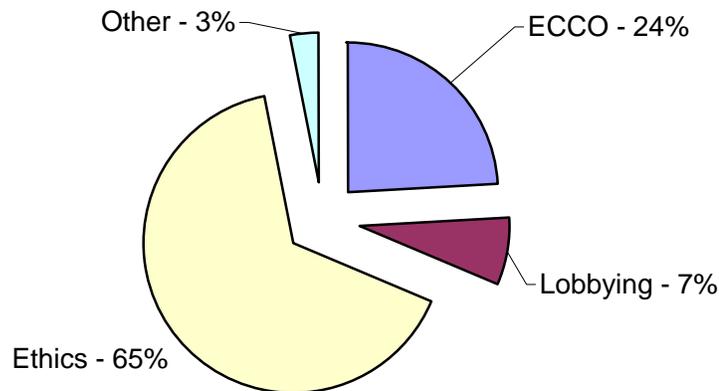
Number of Complaints

During 2005, the Ethics Commission received a total of ninety-eight complaints. Most of the complaints received were in the form of formal, written complaints signed under penalty of perjury. At the discretion of the Executive Director, some informal complaints and referrals from the City Clerk were processed as formal complaints and are included in the statistics below.

Types of Complaints

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

- twenty-four complaints alleged a violation of the Election Campaign Control Ordinance;
- seven complaints alleged a violation of the Lobbying Ordinance;
- sixty-four complaints alleged a violation of the Ethics Ordinance; and
- three complaints alleged a violation of other laws (outside the jurisdiction of the Ethics Commission).



The sixty-four complaints alleging violations of the Ethics Ordinance can be broken down as follows:

- fifty complaints concerned the late filing of Statements of Economic Interest;
- five concerned the alleged failure to disclose specific interests on Statements of Economic Interests;
- six complaints alleged participation in municipal decisions that affected personal economic interests or those of a future employer;
- one complaint concerned the disclosure of confidential information; and
- two complaints concerned the unlawful acceptance of gifts.

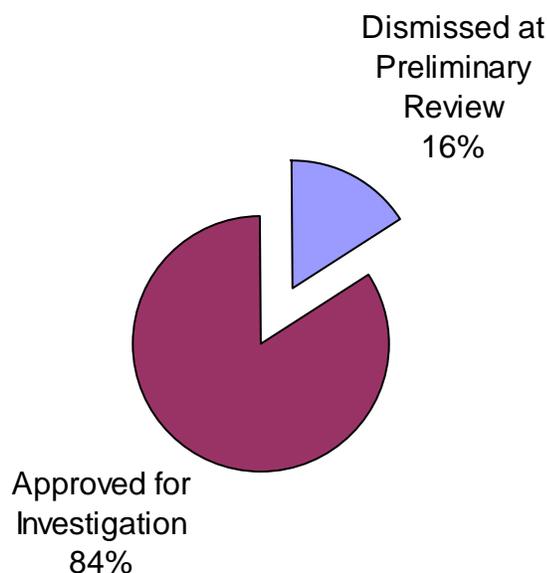
Preliminary Review

Commission procedures require that the Executive Director evaluate each incoming complaint in order to determine if the subject of the complaint falls within the jurisdiction of the Ethics Commission, if the matter is already being investigated by the Commission, if the complaint involves a matter previously disposed of by the Commission, or if the complaint is based on frivolous or absurd accusations.

In 2005, the Commission processed the complaints it received as follows:

- sixteen complaints were dismissed by the Executive Director during the preliminary review period; and,
- seventy-four complaints were reviewed by the Executive Director during the preliminary review period and forwarded to the Commission for approval to commence a formal investigation.

In addition, the Commission authorized eight formal investigations as a result of apparent violations of governmental ethics laws discovered during the course of an audit or investigation.



Investigations

The eighty-two cases authorized for formal investigations during 2005, together with the eighteen cases approved for investigation but not resolved during 2004, have resulted in the following disposition during the 2005 calendar year:

- four cases were not authorized for investigation and were dismissed by the Commission;
- seventeen complaints were ultimately dismissed by the Commission following a staff report concerning the results of an investigation;
- eleven complaints resulted in stipulated settlement agreements; and
- sixty-eight formal investigations are currently pending.

ENFORCEMENT - STIPULATIONS

During 2005, the Commission entered into eleven stipulations in lieu of proceeding with administrative enforcement actions.

Eight of these stipulations concerned campaign activities:

- County Supervisor and former mayoral candidate Ron Roberts agreed to pay a fine of \$15,000 for failing to properly gather and disclose information regarding the occupations and employers of his contributors;
- City Attorney Michael Aguirre paid a \$9,000 fine for failing to disclose \$316,000 in subvendor payments (payments made by campaign consultants to campaign vendors) and \$55,000 in accrued expenses (campaign debts incurred but not paid by the end of a reporting period);
- Bruce Williams, a candidate for City Council District 4, paid a fine in the amount of \$4,500 for accepting three contributions from organizations, failing to disclose occupation and employer information for 25 contributors, and failing to disclose \$6,000 in subvendor payments.
- Bob Glaser, the individual who assumed the treasurer responsibilities for San Diegans for the Protection of Responsible Beach Rights (a committee formed to oppose a ballot measure designed to ban alcohol at Mission Beach) paid a fine of \$3,500 for failing to maintain adequate accounting records, failing to disclose \$20,000 in subvendor payments, and filing a campaign disclosure statement late.
- Byron Wear, a former City Councilmember and the individual who controlled the ballot measure committee known as Save Mission Bay Save Our Parks, and the committee's treasurer, Lawrence Scott, paid a fine in the amount of \$3,500 for failing to disclose that the committee was controlled by then-Councilmember Wear, for using ballot measure funds to pay a bill incurred by one of Wear's candidate committees, and for failing to pay two campaign debts within the requisite 90 day period (subsequent amendments to local law effective on January 5, 2005, extended this 90 day period to 180 days).

- Councilmember and former mayoral candidate Donna Frye paid a fine of \$3,000 for failing to adhere to the “paid for by” disclosure requirements on three campaign mailers.
- The Mt. Soledad Memorial Association paid a fine in the amount of \$1,500 for failing to disclose its activities in support of a ballot measure in the November 2004 general election (this entity had no prior history of participating in City elections); and
- The San Diegans for the Mt. Soledad National War Memorial paid a fine of \$1,000 for failing to adhere to the “paid for by” disclosure requirements on one campaign mailer.

In addition, three of these stipulations are associated with violations of the City’s Ethics Ordinance:

- David Allsbrook, the Manager of Contracting and Public Works with the Centre City Development Corporation, agreed to pay a fine of \$1,500 for failing to disclose income received by his spouse on his annual Statement of Economic Interests;
- Roger Talamantez, the former President and Chief Executive Officer of the San Diego Data Processing Corporation, paid a fine of \$500 for misusing his position by asking a subordinate to work with City Council staff to prioritize his request to underground the overhead utility lines on his residential street.
- Deputy City Manager Rey Arellano paid a fine of \$500 for failing to report gifts in the form of meals from San Diego Data Processing Corporation executives.

During 2005, the Commission levied a total of \$43,500 in administrative fines. These fines are paid to the City of San Diego’s General Fund.