ANNUAL REPORT
2008

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.

2008 COMMISSIONERS AND STAFF

Chair
Guillermo Cabrera

Vice Chair
Richard Valdez (elected July 10, 2008)

Commissioners
Lee Biddle
Clyde Fuller
Krishna Haney
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
Angela Laurita, Training Aide

LETTER FROM THE CHAIRMAN AND EXECUTIVE DIRECTOR

January 2009

As expected, 2008 was a very busy year for the Commission staff with respect to education and outreach. The number of requests for informal advice increased dramatically to 830 in 2008, as compared to 475 in 2007. More than 250 of the requests received in 2008 were related to the City's new lobbying laws, which went into effect on January 1, 2008. Because the new laws substantially changed the lobbyist registration threshold as well as the quarterly disclosure requirements, the Commission staff spent a great deal of time conducting live training sessions, reviewing and revising educational materials, and answering questions from lobbyists and prospective lobbyists.

As far as the implementation of the new lobbying laws, the Commission was gratified to see that the new laws seem to be working as intended. Under the previous laws, the Commission found that many people who were paid to influence municipal decisions were able to avoid registration and disclosure requirements. Accordingly, the new laws were designed to ensure that the appropriate persons registered as lobbyists and disclosed their lobbying and related activities. The success of the new laws is reflected in the fact that Lobbying Firms and Organization Lobbyist have registered more than 500 lobbyists in 2008, as compared to 165 registered lobbyists 2007.

In addition to educational efforts associated with the new lobbying laws, the Commission staff provided live training and informal advice to a host of candidates and members of their campaign staffs in connection with the June primary and the November general elections. Because the June primary involved four open Council seats, there were a fairly high number of grassroots candidates who required staff assistance in order to understand and comply with the City's campaign laws.

In addition to education and outreach, 2008 was a busy year for the Commission in terms of legislative activities. During the first half of the year, the Commission focused its efforts on several key policy issues in the City's campaign laws. After careful consideration, the Commission proposed a series of amendments to increase contribution limits, require City candidates to file an additional pre-

election disclosure statement, require identification disclosures on calls made by candidates and political committees for both advocacy and polling purposes, and update the City's laws to recognize recent changes in state law associated with legal defense funds. The proposed changes were approved by the City Council in October of 2008, and will take effect on January 1, 2009.

During 2008, the Commission monitored the impact of the new lobbying laws and, in October of 2008, proposed a series of amendments designed to correct unintended consequences, and to clarify and simplify registration and disclosure requirements. Although the City Council's Rules Committee unanimously approved the proposed changes, the City Council was unable to docket the proposed changes before the end of the 2008 legislative season.

From an administrative perspective, 2008 involved the recruitment and hiring of several staff members, such that the Commission was fully staffed with eight employees by September. Unfortunately, due to a mid-year budget deficit that demanded sacrifices from all City departments, the Commission was required to eliminate the position of Training Aide. The loss of this position will have an adverse impact on the Commission's training programs, especially with respect to members of City boards and City consultants. The Commission is therefore hopeful that this position will be restored to the Commission's budget when the City's financial situation improves.

The Commission is very proud of the fact that its seven volunteer Commissioners and its seven paid staffers have continued to fulfill the Commission's duties and responsibilities in terms of education, advice, enforcement, audits, and legislative reforms, especially in light of the Commission's extremely limited staffing in comparison to comparable jurisdictions.

Sincerely,

Guillermo Cabrera
Chair

Stacey Fulhorst
Executive Director

EDUCATION AND OUTREACH

The Commission continued to make education and outreach top priorities during 2008. In particular, because changes to the City's lobbying laws that went into effect on January 1, 2008, dramatically changed the registration thresholds and disclosure requirements for lobbyists, the Commission staff continued its efforts to educate lobbyists about the details of the new laws. In addition to six live training sessions conducted in the fall of 2007, the Commission undertook the following during 2008:

- In January of 2008, the Commission staff conducted another live training session on the new lobbying laws for all types of organizations and lobbyists.

- In March of 2008, the Commission staff conducted specialized live training sessions for the members of the San Diego Association of Non-Profits and the Consulting Engineers and Land Surveyors of California.

- In June of 2008, the Commission Chairman and staff conducted a live training session for the members of the San Diego County Bar Association.

- Throughout the 2008 calendar year, the Commission staff promptly responded to more than 250 requests for informal advice and assistance concerning the City's new lobbying laws.

- The Commission staff updated two previously-issued Fact Sheets concerning various provisions of the Lobbying Ordinance.

In addition to our efforts with respect to the new lobbying laws, the Commission made the following efforts to educate City Officials regarding the various provisions of the City's Ethics Ordinance:

- From February through April, the Commission staff conducted live training sessions on the Ethics Ordinance for the offices of the Mayor and Council Districts 4 and 8.

- Throughout 2008, the Commission staff conducted four live training sessions on the Ethics Ordinance for unclassified management employees of the City.

- In March of 2008, the Commission staff conducted a live training session for City Officials concerning the disclosure of economic interests (annual Statements of Economic Interests are due on April 1 each year).

- In May of 2008, 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 August of 2008, the Commission staff conducted two live training sessions for the board members and staff of the San Diego Housing Commission. This training was tailored to reflect the unique characteristics of the agency.

- In October of 2008, the Commission staff conducted a live training session for the board members and staff of the Centre City Development Corporation. This training was also tailored to suit the type of work performed by this agency.

- In December of 2008, the Commission staff conducted live training sessions for the newly-elected Councilmembers and staffs in Council Districts 5 and 7.

- During the past year, the Commission staff promptly responded to approximately 330 requests for informal advice from City Officials regarding the various provisions in the City's Ethics Ordinance.

- Approximately 470 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 prepared and issued two new Fact Sheets concerning the provisions in the Ethics Ordinance that govern Future Employment and Post-Employment Lobbying Restrictions.

- The Commission staff updated four previously-issued Fact Sheets concerning various provisions of the City's Ethics Ordinance.

With respect to educating City candidates and their staffs on the various provisions of the City's campaign laws, the Commission staff undertook the following efforts:

- The Commission staff conducted a live training session for City candidates and their staffs on the City's campaign laws in January. This training session is 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 participated in the education of City candidates and campaign professionals via the Candidate School hosted by San Diego State University in February.

- Throughout the year, the Commission staff promptly responded to approximately 230 requests for informal assistance from City candidates and their staffs, as well as various political committees participating in City elections.

- The Commission staff prepared and issued a "Checklist for City Candidates" that sets forth the top ten most important rules for candidates to remember during an election.

- The Commission staff updated five previously-issued Fact Sheets concerning various provisions of the City's campaign laws.

In addition to the foregoing, the Commission staff prepared and distributed eight formal advice letters concerning provisions in the Ethics Ordinance, the Lobbying Ordinance, and the Election Campaign Control Ordinance. Finally, the Commission's outreach efforts during 2008 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 staff worked with the San Diego Data Processing Corporation to update the Commission's on-line ethics training application.

- 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.

- 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 2008 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 2009. However, in November of 2008, the Mayor and City Council confronted a mid-year budget deficit that required dramatic cutbacks throughout the City. As a result, the Ethics Commission's budget was reduced by ten percent, which necessitated the layoff of the Commission's Training Aide.

Although the elimination of the Training Aide position will have an adverse impact on the Commission's ability to carry out its duties and responsibilities with respect to education and outreach, the Commission recognized that the City's fiscal situation required sacrifices from all City departments. The limited staff remaining at the Commission will endeavor to minimize the adverse impacts of the proposed reductions during the 2009 calendar year.

LEGISLATIVE PROPOSALS

During the first half of 2008, the Commission focused its legislative efforts on several provisions in the City's campaign laws. Most importantly, the Commission devoted several meetings to workshop-type settings during which the Commission discussed the City's campaign contribution limits. The Commission heard a great deal of testimony concerning the City's contribution limits, which had only been increased nominally since the campaign laws were first enacted in 1973. The main issue before the Commission was how best to balance the City's interest in reducing the potentially corrupting impact of giving money to a candidate against a candidate's ability to amass the resources necessary for effective campaign advocacy.

In October of 2008, the Commission presented its proposed amendments to the City Council. Although the Council agreed with the recommendation to increase contribution limits, they ultimately decided to increase them to $500 per election for both district and citywide candidates, instead of the $1,000 limit recommended by the Commission. Additional changes recommended by the Commission and approved by the Council include the following:

- In order to ensure that voters have relevant information regarding campaign contributions received and expenditures made during the final weeks of the election, the City added a third pre-election campaign statement due on the Friday before a Tuesday election, covering the period through the Thursday before the election

- The City adopted several changes to the provisions related to telephone communications in order to ensure consistency with new state laws. The City also adopted a new law that requires an identification disclosure on polling calls in addition to advocacy calls made by a candidate or political committee. This change was recommended by the Commission after staff received a host of calls from members of the public concerning "push polls" that tested a series of negative messages about a City candidate but did not include a disclosure regarding the identity of the candidate or committee that paid for the call.

- The City implemented a series of changes to the provisions that address legal defense funds in order to recognize a recent change in state law that

permits local candidates to create separate committees and accounts for legal defense fund purposes.

These new campaign laws will go into effect on January 1, 2009.

As a result of litigation concerning the application of contribution limits to recall elections, the Ethics Commission worked with the City Attorney's office on amendments to the City's campaign laws intended to clarify that contribution limits apply to contributions made to support or oppose the recall of an individual holding elective City office, regardless of whether such contributions are made before, during, or after the circulation of a recall petition. These changes were ultimately approved by the City Council in May of 2008.

In addition, in early 2008, the Commission also proposed changes to the provisions in the City's Ethics Ordinance concerning future employment. Specifically, the Commission recommended changes to exempt public agencies from the prohibition on participating in municipal decisions that involve the interests of a prospective future employer. The Commission noted that an exemption for public agencies exists in other provisions of the Ethics Ordinance concerning disclosure of income, conflicts of interests, and post-employment activities. The Commission also recognized that the local law is based on a similar provision in state law that includes an exemption for public agencies. As a result, the Commission concluded that the exemption for public agencies was inadvertently omitted when the law was originally adopted in 2002. The City Council approved the recommended change in April of 2008.

During 2008, the Commission also worked on a series of proposed changes to the Commission's Investigative and Enforcement Procedures, which were originally adopted in 2002. In addition to several housekeeping amendments, the Commission ultimately recommended that its procedures be changed to prohibit the provision of false testimony to the Commission (during an investigation or at an administrative hearing) and to permit the Commission to subpoena witnesses during an investigation. The City Council considered the proposed changes in October of 2008 and decided to adopt only the housekeeping amendments proposed by the Commission.

Finally, during 2008, the Commission prepared several proposed changes to the City's new lobbying laws. Specifically, after monitoring the impact of the new laws that went into effect on January 1, 2008, the Commission recommended various amendments in order to correct unintended consequences, to clarify and/or

simplify several disclosure provisions, and to otherwise improve several other aspects of the new laws. The Commission presented its proposed changes to the City Council's Rules Committee on October 8, 2008, at which time the Committee members unanimously approved the proposed changes and forwarded them to the full City Council. Unfortunately, the City Council was unable to docket the proposed changes before the end of the legislative season.

AUDIT PROGRAM

On September 13, 2007, the Commission conducted a random drawing and the following candidate-controlled committees from the 2005-2006 election cycle were selected for audit:

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

Remy Bermudez for City Council
Remy Bermudez for City Council '06
Ian Trowbridge for City Council
Pat Zaharopoulous for City Council

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

Acle for City Council
Rich Grosch for City Council
Tony Young for City Council 2006

FINANCIAL ACTIVITY OF $100,000 OR MORE:

Friends of Kevin Faulconer
Donna Frye for Mayor 2005
Lorena Gonzalez for City Council
Friends of Ben Hueso
Committee to Re-Elect Ben Hueso
Ralph Inzunza for City Council
Votepickard.com (Lincoln Pickard)
Richard Rider for Mayor
Jerry Sanders for Mayor
Mike Shelby
Friends of Michael Zucchet 2006

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

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

Citizens Against Corruption: No on C
(November 7, 2006 Election)

FINANCIAL ACTIVITY OF $100,000 OR MORE:

San Diegans for City Hall Reform (in support of Propositions B & C, November 7, 2006 Election)

San Diegans for Mt. Soledad National War Memorial (in support for Prop A, July 26, 2005 Election)

The Ethics Commission staff began conducting the audits of candidate committees from the 2005-2006 election cycle shortly after the random drawing, and completed audits of the following committees during 2007:

Acle for City Council
Friends of Ben Hueso
Committee to Re-Elect Ben Hueso

During 2008, the Commission staff completed the audits for the following additional candidate committees from the 2005-2006 election cycle:

Remy Bermudez for City Council
Remy Bermudez for City Council -06
Friends of Kevin Faulconer
Donna Frye for Mayor
Rich Grosch for City Council
Jerry Sanders for Mayor
Tony Young for City Council

In addition, the Commission staff completed the audit of the following ballot measure committee from the 2005-2006 election cycle:

San Diegans for City Hall Reform (in support of Prop B & C, November 7, 2006 Election)

The Auditor also completed the only remaining audit from the 2004 election cycle, one that involved a candidate (Howard Wayne) who withdrew from the election before the primary. Because this candidate transferred all of his campaign funds from a state assembly race, it was time consuming for the candidate to locate records related to the original contributions. As a result, the audit was delayed while the candidate compiled the documents necessary to conduct the audit tests.

The Commission staff anticipates completing the remaining audits from the 2005-2006 election cycle (eight candidate committees and one ballot measure committee) before September of 2009, at which time the Commission will conduct another random drawing to select committees from the 2008 election cycle for audit.

ENFORCEMENT – STATISTICS

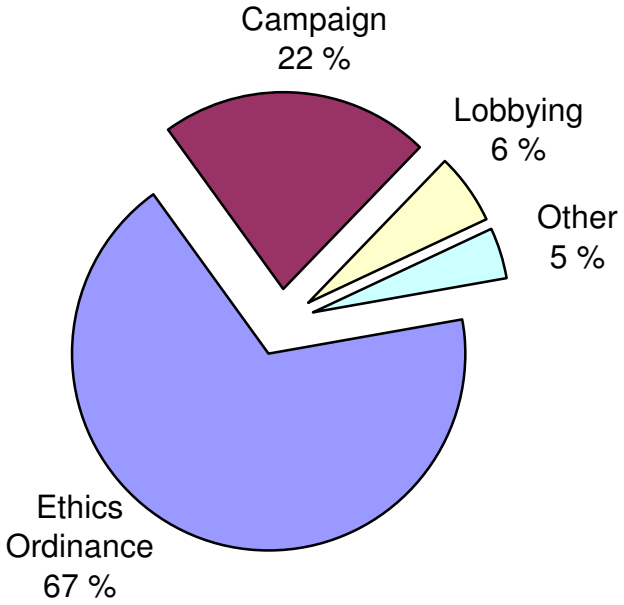
Number of Complaints

During 2008, the Ethics Commission processed a total of 81 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. Three complainants were anonymous.

Types of Complaints

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

- 18 complaints alleged a violation of the Election Campaign Control Ordinance;
- 5 complaints alleged a violation of the Lobbying Ordinance; and
- 54 complaints alleged a violation of the Ethics Ordinance; and
- 4 complaints alleged a violation outside of the Commission's jurisdiction.



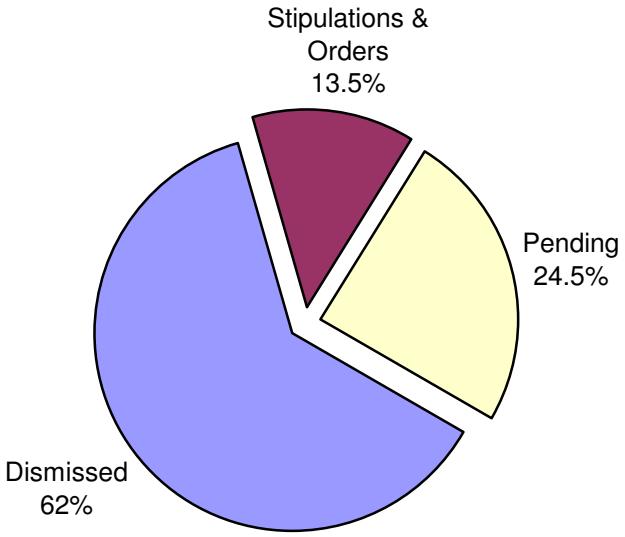
The 54 complaints alleging violations of the Ethics Ordinance can be broken down as follows:

- 27 complaints concerned the late filing of Statements of Economic Interests;
- 7 concerned the alleged failure to disclose specific economic interests;
- 6 complaints alleged the unlawful participation in municipal decisions that affected personal economic interests and/or incompatible activities;
- 5 complaints concerned the misuse of an official's position;
- 3 complaints alleged the receipt of gifts in excess of the City's gift limit;
- 5 complaints concerned alleged solicitation of campaign contributions from City employees; and
- 1 complaint involved alleged violations of the City's post-employment lobbying restrictions.

Investigations

Out of the 81 complaints processed by the Commission during 2008, 63 were approved for formal investigations. These cases, together with the 19 cases approved for investigation but not resolved in previous years, resulted in the following disposition during the 2008 calendar year:

- 51 complaints were ultimately dismissed by the Commission after considering the results of staff investigation;
- 10 complaints resulted in stipulated settlement agreements;
- 1 complaint resulted in an Administrative Enforcement Order; and
- 20 investigations are currently pending.



ENFORCEMENT - STIPULATIONS

During 2008, the Commission entered into ten stipulations in lieu of proceeding with administrative enforcement actions.

Three of these stipulations concerned solicitation of campaign contributions from City employees, in violation of the City's Ethics Ordinance:

- Michael Aguirre, a candidate for re-election for City Attorney in the June 2008 primary election, agreed to pay a fine in the amount of $1,500 after his campaign consultant included 133 City employees in an e-mail list that was used to solicit campaign contributions from recipients.

- Carl DeMaio, a successful candidate for City Council District 5 in the June 2008 primary election, agreed to pay a fine in the amount of $1,500 after he included 90 City employees in an e-mail list that was used by a campaign staffer to invite recipients to a campaign fundraiser.

- Richard Geisler, a member of the Board of Directors of the Southeastern Economic Development Corporation [SEDC], agreed to pay a fine in the amount of $500 after he sent an e-mail to the Executive Director of SEDC inviting her to attend a campaign fundraiser for a City Council candidate.

Six of the stipulations executed during 2008 concerned the requirement in the City's Ethics Ordinance that City Officials file Statements of Economic Interests. The following six officials agreed to pay fines ranging from $200 to $1,000 in connection with their respective late filings, depending upon various factors in aggravation:

- Thomas Anglewicz, Consultant, Centre City Development Corporation
- Michelle Butler, member of the S.D. Regional Revolving Loan Fund
- Joan Edwards, Consultant, Environmental Services Department
- Bob Garcia, Deputy Director, General Services / Facilities Division
- Paul Johnson, member of Historical Resources Board and Old Town San Diego Planned District Advisory Board
- Louay Yousif, member of Centre City Advisory Committee

Finally, Howard Wayne, a former candidate for City Attorney in the 2004 election cycle, agreed to pay a fine in the amount of $1,000 for failing to maintain supportive documentation for 12 campaign expenditures.

During 2008, the Commission levied a total of $6,500 in administrative fines by way of the stipulated settlements discussed above. In addition, as discussed below, the Commission imposed a fine in the amount of $68,243 following an Administrative Hearing in a matter involving Luis Acle, a former candidate for City Council District 8. These fines are paid to the City of San Diego's General Fund.

ENFORCEMENT - HEARINGS

In July of 2008, the Ethics Commission held its first Administrative Hearing since the Commission's establishment in 2001. The hearing involved allegations that Luis Acle, a former candidate for City Council District 8 in the November 2005 special election and the January 2006 special runoff election, violated the City's campaign laws.

All seven Ethics Commissioners served as the Presiding Authority, and heard evidence presented by the Commission's Executive Director as the Petitioner, and Mr. Acle as the Respondent. The Petitioner was assisted by the Commission's General Counsel, and the Respondent was represented by attorney Carlos Castañeda. The Ethics Commissioners received legal advice from Sharon Marshall, Deputy City Attorney with the City of Chula Vista, who was retained specifically for purposes of the hearing.

After hearing testimony and reviewing evidence presented by both the Petitioner and the Respondent, the Presiding Authority deliberated on the individual charges and made the following findings:

- Respondent failed to pay 10 campaign debts within 180 days.
- Respondent failed to disclose 3 campaign contributions.
- Respondent failed to disclose 22 accrued expenses.
- Respondent failed to timely file 2 original campaign statements, and also failed to electronically file the same 2 campaign statements.
- Respondent accepted two cash contributions in the amount of $100 or more.
- Respondent failed to retain copies of campaign-related records.

Based on its findings, the Presiding Authority ordered the Respondent to remit payment to two campaign vendors, to file overdue campaign statements, to amend previously-filed campaign statements to include previously-omitted contributions and accrued expenses, and to pay a monetary penalty in the amount of $68,243.

The findings of the Presiding Authority were documented in a Resolution and an Administrative Enforcement Order. On October 21, 2008, Mr. Acle filed a Petition for Writ of Mandate with the San Diego Superior Court, appealing the Ethics Commission's Enforcement Order. This appeal is currently pending.