THE CITY OF SAN DIEGO

November 9, 2007

Ben Hueso
1976 Harrison Avenue
San Diego, CA 92113

Beth Reno
2915 Laurel Street
San Diego, CA 92104

James R. Sutton
The Sutton Law Firm
150 Post Street, Suite 405
San Francisco, Ca 94108

Re: Ethics Commission Case No. 2006-16

Dear Councilmember Hueso, Ms. Reno, and Mr. Sutton:

Enclosed please find a copy of the fully-executed Stipulation in the above-referenced matter, which was approved by the Ethics Commission on November 8, 2007. In addition, I have enclosed copies of the Final Audit Reports for the Friends of Ben Hueso Committee and the Committee to Re-Elect Ben Hueso, which were accepted by the Commission on November 8, 2007. If you have any questions, please contact me at your convenience. Thank you for your courtesy and cooperation during the course of the Commission's investigation.

Sincerely,

Stacey Fulhorst
Executive Director

THE CITY OF SAN DIEGO

FINAL AUDIT REPORT

November 5, 2007

Councilmember Ben Hueso
Friends of Ben Hueso
c/o Beth Reno, Treasurer
2915 Laurel Street
San Diego, CA 92104

SAN DIEGO ETHICS COMMISSION AUDIT REPORT:
Friends of Ben Hueso

I. Introduction

This report contains information pertaining to the audit of the Friends of Ben Hueso Committee [Committee], identification number 1278883. This audit covers the period beginning August 2, 2005, and ending March 31, 2006[1]. The Committee was selected for audit during a random drawing conducted at the Ethics Commission meeting held on September 13, 2007. At the time the Committee was selected, it was the subject of an Ethics Commission investigative audit. Therefore, when the Committee was selected, the scope of the investigative audit was expanded to that of a compliance audit, as outlined in the Ethics Commission audit manual.

The audit was conducted to determine whether the Committee materially complied with the requirements and prohibitions imposed by the City of San Diego's Election Campaign Control Ordinance [ECCO] (San Diego Municipal Code [SDMC] Chapter 2, Article 7, Division 29).

During the period covered by the audit, the Committee reported total contributions of $122,432.00 from 553 contributors and total expenditures of $123,243.51. The difference, $811.51, represents miscellaneous increases to cash and other adjustments. The audit revealed seven material findings with regard to the Committee: (1) the Committee violated SDMC section 27.2930 by failing to disclose accrued expenses on its campaign statements on three occasions; and (2) the Committee violated SDMC section 27.2935 when it accepted and deposited contributions in excess of the limit from four individuals.

II. Committee information

The Committee was formed to support the election of Ben Hueso for Council District 8 in the November 8, 2005, special election and the January 10, 2006, special run-off election. On

[1] The Committee terminated on March 31, 2006.

August 2, 2005, Ben Hueso filed a Candidate Intention Statement (Form 501) with the City Clerk. On August 5, 2005, the Committee filed a Statement of Organization (Form 410) with the City Clerk. Although the Committee did not file a subsequent Form 410 to indicate when it qualified as a committee, the audit revealed that it qualified on August 8, 2005.

B.D. Howard served as the Committee's treasurer beginning on August 5, 2005. On January 27, 2006, the Committee filed an amended Statement of Organization (Form 410) naming Beth Reno treasurer. The Committee was terminated on March 31, 2006, according to the Campaign Statement (Form 460) filed with the City Clerk on May 18, 2006.

III. Audit authority

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 local law.

IV. Audit scope and procedures

This audit was performed in accordance with generally accepted auditing standards and the guidelines set forth in the Ethics Commission Audit Manual. 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 restrictions on contributions, loans, and expenditures;
3. Accuracy of total reported receipts, disbursements, and cash balances as compared to bank records; and
4. Compliance with all record-keeping requirements.

V. Applicable law

SDMC §27.2930 – Base Level of Campaign Statements and Disclosures

Each *candidate* and *committee* shall file campaign statements in the time and manner required by California Government Code sections 81000 *et seq.* and title 2 of the California Code of Regulations with the following additional requirements:

...

(h) It is unlawful to fail to comply with the disclosure requirements of California Government Code sections 81000 *et seq.*, the disclosure requirements of title 2 of the California Code of Regulations, and the additional requirements of this section.

SDMC section 27.2930 incorporates the following regulations of the California Fair Political

Practices Commission [FPPC]:

FPPC Regulation 18421.6 (a) and (b) – Reporting Accrued Expenses

(a) Accrued expenses (excluding loans) owed by a recipient committee which remain outstanding shall be reported on each campaign statement until extinguished.

(b) An accrued expense (excluding a loan) shall be reported as of the date on which the goods or services are received, except that any obligation incurred for a regularly recurring administrative overhead expense (e.g., rent, utilities, phones, campaign workers' salary) shall not be reported as an accrued expense before the payment due date. If the exact amount of a debt or obligation is not known, the report shall state that the amount reported is an estimate. Once the exact amount is determined, the committee shall either amend the report(s) containing the estimate or indicate the correct amount on the report for the reporting period in which such amount is determined.

FPPC Regulation 18533(a) – Contributions from Joint Checking Accounts

(a) A contribution made from a checking account by a check bearing the printed name of more than one individual shall be attributed to the individual whose name is printed on the check and who signs the check, unless an accompanying document directs otherwise. The document shall indicate the amount to be attributed to each contributing individual and shall be signed by each contributing individual whose name is printed on the check. If each individual whose name is printed on the check signs the check, the contribution shall be attributed equally to each individual, unless an accompanying document signed by each individual directs otherwise. If the name of the individual who signs the check is not printed on the check, an accompanying document, signed by the contributing individuals, shall state to whom the contribution is attributed.

SDMC §27.2935(a) – Contribution Limitations

(a) It is unlawful for an individual to make to any *candidate* or *committee* supporting or opposing a *candidate,* or for any *candidate* or *committee* supporting or opposing a *candidate* to solicit or accept, a *contribution* that would cause the total amount contributed by that individual to support or oppose the *candidate* to exceed $250 for any single *election* if the *candidate* is seeking *City Council* district office, or to exceed $300 for any single *election* if the *candidate* is seeking the office of the Mayor or City Attorney.

VI. Material findings

A. Violations of SDMC section 27.2930 – Base Level of Campaign Statements and Disclosures

The Committee failed to report accrued expenses on three occasions as follows:

Payee	Invoice date	Amount	Payment date	Reporting period ending date
Political Data, Inc.	08/10/2005	$ 1,323.06	11/9/2005	09/24/2005 10/22/2005
Four Square Productions [1]	10/31/2005	537.28	12/23/2005	11/26/2005
[1] Balance on invoice #21794.				

In the Committee's response dated November 1, 2007, they noted that they did not receive the vendor invoices in time to disclose the above listed expenditures; however, they did report these as payments on subsequent campaign statements. The Committee indicated that they will be filing amended campaign statements in the near future for each of the above listed reporting periods to include all of these previously undisclosed accrued expenses.

B. Violations of SDMC section 27.2935 – Contribution Limitations

The Committee accepted and deposited contributions from four individuals, each in excess of the $250.00 limit for the special run-off election as follows:

	Contributor	Cumulative contributions	Excess contribution
1	James E. Schneider	$ 500.00	$ 250.00
2	Robert P. Headland	375.00	125.00
3	David C. Nielsen	375.00	125.00
4	Jerry A. Snow	350.00	100.00
	Total excess contributions		$ 600.00

1. On December 19, 2005, the Committee deposited a $500.00 contribution drawn off the joint checking account belonging to James and Candice Schneider. The check was signed by Mr. Schneider and accompanied by a document indicating that the contribution should be equally attributed to James and Candice Schneider. However, since neither the check nor the accompanying document was signed by Candice Schneider, as required by FPPC Regulation 18533(a), the full amount of the $500.00 contribution must be attributed to Mr. Schneider, resulting in an excess contribution of $250.00.

   The Committee's written response dated November 1, 2007, included a recently obtained letter from Candice Schneider indicating her intent to make a contribution. This letter supports the Committee's original disclosure. It also asserts that the error was not a misattribution resulting from an acceptance of a contribution from James Schneider over the $250.00 limit, but was instead a failure to obtain confirmation at the time the contribution was made.

2. The Committee accepted and deposited two contributions totaling $375.00 from Robert Headland for the special run-off election. One check for $250.00 was received on November 23, 2005, and the other check for $125.00 was received on February 8, 2006.

3. The Committee accepted and deposited two contributions totaling $375.00 from David Nielsen for the special run-off election. One check for $250.00 was received on December 6, 2005, and the other check for $125.00 was received on February 9, 2006.

4. The Committee accepted and deposited two contributions totaling $350.00 from Jerry Snow. One check for $100.00 was received on December 19, 2005, and the other check for $250.00 was received on January 31, 2006. The first check was coded for the January 10, 2006, special run-off election. Although the second check was coded for the November 8, 2005, special election, the Committee had already paid all of its debts associated with the special election at the time this contribution was accepted. Consequently, the funds were spent on expenses associated with the special run-off election, and must therefore be aggregated with the first $100.00 contribution which was coded and used for the special run-off election, resulting in an excess contribution of $100.00.

VII. Conclusion

Through the examination of the Committee's records and campaign disclosure statements, the Auditor verified that the Committee timely disclosed all contributions received and all expenditures made, and that the Committee maintained all necessary documentation regarding contributions and expenditures in accordance with disclosure and record-keeping provisions of ECCO, with the following exceptions:

The audit revealed seven material findings with regard to the Committee: (1) the Committee violated SDMC section 27.2930 by failing to disclose accrued expenses on its campaign statements on three occasions; and (2) the Committee violated SDMC section 27.2935 when it accepted and deposited contributions in excess of the limit set forth by this section from four individuals.

_____ _____

Francisco Murillo, CPA
Auditor

Date

_____ _____

Lauri Davis
Senior Investigator

Date