THE CITY OF SAN DIEGO

September 10, 2004

Councilmember Donna Frye
Re-Elect Donna Frye (I.D. #1237821)
202 "C" Street, 10th Floor
San Diego, CA 92101

VIA HAND DELIVERY

Re: Ethics Commission Audit

Dear Councilmember Frye:

The Ethics Commission audit of the above-referenced committee is now concluded, and the Final Audit Report is enclosed. This report was delivered to the Ethics Commission at its regularly-scheduled meeting on September 9, 2004. Although the report reflects findings that are material as defined in the Ethics Commission Audit Manual, the Commission does not believe that the findings warrant additional administrative remedies. As a result, the Commission decided not to initiate an enforcement action based on the material findings in the report.

If you have any questions concerning the foregoing, please contact me at your convenience. Thank you for your assistance and cooperation during the course of the audit.

Sincerely,

Stacey Fulhorst
Executive Director

SF/s

Enclosure

THE CITY OF SAN DIEGO

FINAL AUDIT REPORT

September 9, 2004

Re-Elect Donna Frye (ID #1238921)
202 C Street, 10th Floor
San Diego, CA 92101

Treasurer:
Christopher Ward
c/o Donna Frye
202 "C" Street, 10th Floor
San Diego, CA 92101

SAN DIEGO ETHICS COMMISSION AUDIT REPORT:
Re-Elect Donna Frye

I. INTRODUCTION

This Audit Report contains information pertaining to the audit of the committee, Re-Elect Donna Frye, Identification Number 1237821 ("the Committee") for the period from July 1, 2001, through June 30, 2002. The Committee was selected for audit by the Ethics Commission at a random drawing conducted on May 22, 2003. 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).

During the period covered by the audit, the Committee reported total contributions of $83,529.29 from 861 contributors (including $1,934.03 in non-monetary contributions) and total expenditures of $81,595.26. **The audit revealed two material findings: (1) the Committee violated San Diego Municipal Code section 27.2941 by accepting five contributions that exceeded the contribution limits; and (2) the Committee violated San Diego Municipal Code section 27.2947 by accepting five contributions from persons other than individuals.**

II. Committee Information

On August 30, 2001, the Committee filed a Statement of Organization with the San Diego City Clerk indicating that it qualified as a committee. The Committee was formed to support the re-election of Donna Frye for Council District 6 in the March 5, 2002, election. On July 2, 2002, the Committee filed a Recipient Committee Statement of Termination indicating that its filing obligations were completed on June 30, 2002. The Committee's treasurer was Christopher Ward.

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 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. Summary of Applicable Law

San Diego Municipal Code section 27.2931 - 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. Compliance with the disclosure requirements of California Government Code sections 81000 et seq. is deemed to be compliance with this section.

San Diego Municipal Code section 27.2941(a) - Contribution Limits

It is unlawful for a candidate, committee supporting or opposing a candidate, or individual acting on behalf of a candidate or committee to solicit or accept from any other individual a contribution which will cause the total amount contributed by that other individual in support of or opposition to a candidate to exceed two hundred fifty dollars ($250) for any single election.

Title 2, section 18533(a) of the California Code of Regulations - Contributions from Joint Checking Accounts

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.

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

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.

VI. Material Findings

A. Violation of San Diego Municipal Code section 27.2941: Contribution Limits

The Committee accepted and deposited contributions in excess of $250 from five contributors. Each contribution was written on a joint checking account belonging to a husband and wife, and accompanied by a document indicating that the contribution should be split; however, neither the check nor the accompanying document was signed by both the husband and wife, per title 2, section 18533(a) of the California Code of Regulations.

Below is a summary of the contributions:

Contributor Name (Spouse)	Cumulative Contributions	Amount in Excess of Limit
Bo Lemler (Eva)	$500	$250
Judd Brown (Mary Ann)	$500	$250
Nora Jaffe (Alan)	$300	$50
Brian Martinet (Lindy)	$500	$250
Steve Hadley (Vicky)	$300	$50
Total	$2,100	$850

At the post-audit conference, the Committee agreed that each of the foregoing constituted a "technical" violation, but contended that the Committee's overall actions evidence an intent to substantially comply with applicable regulations. The Committee also pointed out that the $850 accepted in excess of the contribution limit is only 1% of total contributions received and that the five contributors represent less than .6% of all contributors.

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

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

Pre-Printed Check Name	Amount
Lafave & Rice, Attorneys at Law	$100
Steven M. Boudreau, A Professional Corporation – Gen'l Acct	$250
Kenneth M. Sigelman, A Professional Corporation – Gen'l Acct	$250
Hulburt & Bunn, L.L.P.	$100
Lafave & Rice, Attorneys at Law	$100
Total	$800

At the post-audit conference, the Committee admitted that the acceptance of the checks listed above constitute "technical" violations, but contended that the violations resulted from the Treasurer's mistaken belief that these particular businesses were sole proprietorships. The Committee pointed out that, prior to the issuance of an advice letter by the Ethics Commission on June 17, 2003, the City Clerk's Office provided information to candidates and committees indicating that contributions from sole proprietorships were acceptable.[1] The Committee also provided information regarding the Treasurer's procedures to verify that business checks were from sole proprietors, and contended that these procedures evidenced the Committee's intent to abide by the information received from the City Clerk.

At the post-audit conference, the Committee also pointed out that the $800 accepted from partnerships and corporations amounts to less than 1% of the total dollar amount of contributions received, and that the five contributors represent less than .6% of all contributors.

V. 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. **However, the audit revealed two material findings: (1) the Committee violated San Diego Municipal Code section 27.2941 by accepting five contributions that exceeded the contribution limits; and (2) the Committee violated San Diego Municipal Code section 27.2947 by accepting five contributions from persons other than individuals.**

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[1] Although the Ethics Commission has clarified that contributions from sole proprietorships are prohibited, the Commission has also indicated that it will not pursue administrative remedies concerning such contributions that were received prior to June 17, 2003. Because the Committee's audit period precedes this date, this report does not address the Committee's receipt of any contributions from sole proprietorships.

These conclusions are based on the guidelines set forth in the Ethics Commission Audit Manual. Although the subject contributions accepted by the Committee are not significant in terms of dollar amounts and percentages, they constitute violations of the two overriding regulatory concerns of the Ordinance: the limit on the amount of campaign contributions, and the prohibition of contributions from organizations.

_____ _____
Auditor's Name and Title Date

_____ _____
Audit Supervisor's Name and Title Date