THE CITY OF SAN DIEGO

March 11, 2011

Mr. Brian K. Maienschein
Brian Maienschein for City Attorney
4699 Murphy Canyon Road
San Diego, CA 92123

Re: Ethics Commission Audit of Brian Maienschein for City Attorney (ID # 1303774)

Dear Mr. Maienschein,

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 held on March 10, 2011. Although the report reflects two material findings, the Commission does not believe that the findings warrant additional administrative remedies. In summary, the Commission determined that education was more appropriate than enforcement in this situation. As a result, the Commission voted to accept the report and take no further action.

If you have any questions concerning the foregoing, please contact me at your convenience.

Sincerely,

Rosalba Gomez
Ethics Commission Auditor

Enclosure

cc: William Baber, Treasurer

THE CITY OF SAN DIEGO

# FINAL AUDIT REPORT

March 10, 2011

Mr. Brian K. Maienschein
Brian Maienschein for City Attorney
4699 Murphy Canyon Road
San Diego, CA 92123

Treasurer: William Baber
8130 La Mesa Blvd., Suite 202
La Mesa, CA 91941

**SAN DIEGO ETHICS COMMISSION**
**AUDIT REPORT:**
***Brian Maienschein for City Attorney***

## I. Introduction

This Audit Report contains information pertaining to the audit of the committee, Brian Maienschein for City Attorney, Identification Number 1303774 ("the 2008 Committee") for the period from January 28, 2008, through June 30, 2010. The Committee was selected for audit by a designee of the City Clerk in a random drawing conducted at a public meeting of the Ethics Commission held on September 10, 2009.

The 2008 Committee created a Legal Defense Fund on or about October 30, 2008, which was included in this audit. In addition, the Commission's Audit Manual states that if a committee controlled by a candidate is selected for audit, then any other City of San Diego committees controlled by the same candidate during the audit period shall be included in the audit. Therefore, the audit included the Brian Maienschein for City Council committee, Identification Number 1235908 ("the 2004 Committee") for the period from January 28, 2008, through June 30, 2010.

The audit was conducted to determine whether the 2004 and 2008 Committees materially complied with the requirements and prohibitions imposed by the City of 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 2008 Committee reported total contributions of $325,898.00 (inclusive of $3,726.00 in non-monetary contributions) and total expenditures of $329,789.94. Total cash contributions relative to total expenditures resulted in a $7,617.94

monetary shortfall that was offset by the Committee's miscellaneous increase to cash. During the period covered by the audit, the 2004 Committee reported total contributions of $0.00 and total expenditures of $257,921.01. (The 2004 Committee had an initial cash balance of $262,717.08 as a result of contributions received in connection with the 2004 election cycle, which was prior to the commencement of the audit period.) **The audit revealed two material findings: the 2004 Committee violated San Diego Municipal Code section 27.2924 by making two impermissible transfers of surplus funds to the 2008 Committee.**

## II. Committee Information

On January 28, 2008, the 2008 Committee filed a Statement of Organization with the San Diego City Clerk indicating that it had not yet qualified as a committee. The 2008 Committee never filed an amended Statement of Organization to report the date that it qualified as a committee (received contributions totaling $1,000); however, the audit revealed that the 2008 Committee qualified on March 3, 2008. The 2008 Committee was formed to support the election of Brian Maienschein for City Attorney in the June 3, 2008, primary election. The 2008 Committee has not terminated. The 2008 Committee created a Legal Defense Fund on October 12, 2008. The Legal Defense Fund terminated on April 3, 2009. The Committee's treasurer is William Baber.

The 2004 Committee was formed to support the election of Brian Maienschein for Council District 5 in the March 2, 2004, primary election. The Committee has not terminated. The Committee's treasurer is William Baber.

## 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. 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 27.2924 - Surplus Campaign Funds

(a) Upon leaving any elected office, or at the end of the post-election reporting period following the defeat of a candidate for elective office, whichever occurs last, campaign funds under the control of a candidate shall be considered surplus campaign funds.

(b) After the failure of a recall petition or after the recall election, all remaining controlled committee campaign funds shall be considered surplus campaign funds.

(c) Surplus campaign funds shall be used only for the following purposes:

(1) To pay outstanding campaign debts, as long as such debts are paid within the 180-day period set forth in section 27.2960;

(2) To repay contributions;

(3) To make a donation to any bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, where no substantial part of the proceeds will have a material financial effect on the candidate, any member of his or her immediate family, or his or her campaign treasurer.

(4) To make a contribution to a political party committee, provided the campaign funds are not used to support or oppose candidates for elective City office. However, the campaign funds may be used by a political party committee to conduct partisan voter registration, partisan get-out-the-vote activities, and slate mailers.

(5) To make a contribution to support or oppose any candidate for federal office, any candidate for elective office in a state other than California, or any ballot measure.

(6) To pay for professional services reasonably required by the candidate or committee to assist in the performance of its administrative functions, including payment for attorney's fees for litigation that arises directly out of a candidate's activities or his or her status as a candidate, including, but not limited to, an action to enjoin defamation, defense of an action brought for a violation of state or local campaign, disclosure, or election laws, and an action from an election contest or recount.

## VI. Material Findings

### Violations of SDMC section 27.2924 - Surplus Campaign Funds

ECCO states that that the leftover funds or assets of a candidate-controlled committee will become surplus when the elected official leaves office. When leftover funds and assets become "surplus," they may be used only for the following purposes: to pay campaign debts; to repay contributors; to make contributions to bona fide tax-exempt nonprofit organizations; to make contributions to a political party committee (provided that the funds are not used to support or oppose City candidates); to make contributions to any candidate for federal or state office (other than California) or any ballot measure committee; or to pay for any professional fees, including attorney's fees. In December 2008, Councilmember Maienschein left his elected Council office and the 2004 Committee's leftover funds became "surplus" on January 1, 2009. In March 2009, the 2004

Committee made the following two transfers of leftover funds to the 2008 Committee:

| | | | |
|---|---|---|---|
| 03/09/09 | $ | 750.00 | City Council Transfer |
| 03/31/09 | $ | 1,393.00 | City Council Transfer |

SDMC section 27.2924 does not permit the use of surplus funds for this purpose.

During the course of the audit, the 2004 Committee treasurer explained that he did not understand that the rules regarding surplus funds took precedence over the rules that permit transfers between committees. In addition, he noted that the surplus funds rules permit the return of contributions to candidates such that he could have returned the contributions to the contributors and asked them to make new contributions to the 2008 City Attorney committee. He further noted that he obtained a "disclosure of pending matters" form (required for legal defense funds) from each of the contributors whose funds were transferred to the 2008 City Attorney committee in 2009. In other words, the contributors implicitly consented to their funds being used by the 2008 City Attorney committee. Finally, the treasurer pointed out that the transferred funds at issue ($2,143) amount to 0.65% of the overall funds spent by the 2008 City Attorney committee.

**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 2004 Committee violated San Diego Municipal Code section 27.2924 by making two impermissible transfers of surplus funds to the 2008 Committee.**

_____ _____

Rosalba Gomez — Date
Ethics Commission Auditor

_____ _____

Lauri Davis — Date
Ethics Commission Senior Investigator