THE CITY OF SAN DIEGO

September 11, 2009

Richard Rider
Richard Rider for Mayor
10969 Red Cedar Drive
San Diego, CA 92131

Subject: Ethics Commission Audit of Richard Rider for Mayor (ID # 1277232) and Ethics Commission Case No. 2009-58

Dear Mr. Rider:

The Ethics Commission audit of the Richard Rider for Mayor committee (ID #1277232) is now concluded. Enclosed are the Final Audit Report, reflecting material findings, and the fully executed Stipulation, Decision, and Order for the above-referenced case. The Final Audit Report and Stipulation were approved by the Commission at its meeting last night.

I appreciate your cooperation in resolving this matter. Please let me know if you have any questions.

Sincerely,

Alison Adema
General Counsel

Enclosures

cc: John Murphy

THE CITY OF SAN DIEGO

FINAL AUDIT REPORT

September 1, 2009

Richard Rider
Richard Rider for Mayor
10969 Red Cedar Drive
San Diego, CA 92131

Treasurers: John Murphy
733 Kline Street #303
La Jolla, CA 92037

SAN DIEGO ETHICS COMMISSION
AUDIT REPORT:
Richard Rider for Mayor

I. Introduction

This Audit Report contains information pertaining to the audit of the committee, Richard Rider for Mayor, Identification Number 1277232 ("the Committee") for the period from May 5, 2005, through December 31, 2005. 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 13, 2007. 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 (San Diego Municipal Code Chapter 2, Article 7, Division 29). The Election Campaign Control Ordinance (ECCO) was amended on January 1, 2009. This Committee operated under the previous ECCO, and therefore all Code references in this report relate to the provisions of ECCO that were in effect prior to January 1, 2009.

During the period covered by the audit, the Committee reported total contributions of $62,148.70 and total expenditures of $61,500.03. The difference, $648.67, represents miscellaneous adjustments. **The audit revealed twenty material findings:**

- **the Committee failed to report eight contributions in violation of San Diego Municipal Code section 27.2930;**
- **the Committee failed to report three campaign expenditures over $100 in violation of San Diego Municipal Code section 27.2930;**

- **the Committee failed to accurately report total campaign expenditures under $100 during two separate reporting periods in violation of San Diego Municipal Code section 27.2930;**

- **the Committee accepted and deposited three contributions in excess of the contribution limits in violation of San Diego Municipal Code section 27.2935; and**

- **the Committee accepted and deposited four contributions from persons other than individuals in violation of San Diego Municipal Code section 27.2950.**

II. Committee Information

On June 1, 2005, 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 election of Richard Rider for Mayor in the July 26, 2005, special mayoral election. It appears that the Committee intended to terminate when it filed a terminating Form 460 with the San Diego City Clerk on January 31, 2006. The Committee, however, failed to file a Statement of Termination with the Secretary of State and San Diego City Clerk. The Committee's treasurer was John Murphy.

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 27.2930 – Base Level 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: . . . .

Government Code section 84211 – Contents of Campaign Statements

Each campaign statement required by this article shall contain all of the following:

. . . .

(f) If the cumulative of contributions (including loans) received from a person is one hundred dollars ($100) or more and a contribution or loan has been received from that person during the period covered by the campaign statement, all of the following:
  (1) His or her full name.
  (2) His or her street address.
  (3) His or her occupation.
  (4) The name of his or her employer, or if self-employed, the name of the business.

. . . .

(i) The total amount of expenditures made during the period covered by the campaign statement to persons who have received one hundred dollars ($100) or more.

(j) The total amount of expenditures made during the period covered by the campaign statement to persons who have received less than one hundred dollars ($100).

. . . .

(k) For each person to whom an expenditure of one hundred dollars ($100) or more has been made during the period covered by the campaign statement, all of the following:
  (1) His or her full name.
  (2) His or her street address.
  (3) His or her occupation.
  (4) The name of his or her employer, or if self-employed, the name of the business.

. . . .

Title 2, section 18533(a) of the California Code of Regulations - 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.

San Diego Municipal Code section 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.

San Diego Municipal Code section 27.2950(a) – Prohibition and Limits on Contributions From Organizations

(a) It is unlawful for a candidate or controlled committee, or any treasurer thereof, or any other person acting on behalf of any candidate or controlled committee, to solicit or accept a contribution from any person other than an individual.

VI. Material Findings

A. Section 27.2930: Failure to Disclose Campaign Contributions and Expenditures

1. The Committee failed to disclose the receipt of eight contributions. In particular, the Committee accepted and deposited the following contributions but did not report them on its campaign statements:

Contributor Name	CK#	Check Date	Amount
Sidney Schipper	2014	05/23/05	$ 250.00
Sidney Schipper	2015	05/31/05	$ 50.00
Howard J. Blitz	2478	06/09/05	$ 100.00
Lynn Badler Warren	1097	06/10/05	$ 100.00
Sandra W. Lusink	2542	06/11/05	$ 100.00
Michael S. Hayden	1252	06/06/05	$ 100.00
Brian Holtz	20469192	06/09/05	$ 300.00
Patricia L. Rider	3063	05/24/05	$ 300.00
			$ 1,300.00

2. The Committee failed to disclose on campaign statements three expenditures made to persons who received $100 or more. In particular, the Committee was required disclose the payments by reporting the name and street address, city, state, and zip code of the payee or creditor, and the amount paid during the reporting period. The Committee failed to report the following expenditures:

Vendor	CK#	Amount	Reporting Period
Gallery Studio B Photo	1007	$141.15	01/01/05 - 06/11/05
Henry S. David	1049	$100.00	07/10/05 – 12/31/05
Winona Christenson	1050	$150.00	07/10/05 – 12/31/05
		$391.15	

3. The Committee failed to disclose on campaign statements the total of all payments of less than $100 during the reporting period. These were required to be reported as a lump sum of "unitemized" payments on Line 2 of the Schedule E Summary of the Form 460 campaign

statement. In particular, the Committee underreported its "unitemized" expenditures by a total of $140.49 in one reporting period, and by a total of $76.27 in another reporting period as follows:

Vendor	Reported Amount	Actual Amount	Difference	Reporting Period
Misc.	$ 137.89	$ 278.38	$ 140.49	06/12/05 – 07/09/05
Misc.	$ 190.71	$ 266.98	$ 76.27	07/10/05 – 12/31/05
TOTALS	$ 328.60	$ 545.36		

At the post-audit conference held on April 16, 2009, the Committee acknowledged its reporting mistakes but contended that its overall actions evidence its intent to substantially comply with applicable regulations. In addition, the Committee asserted that its reporting errors were unintentional and occurred as a result of a chaotic and condensed special election cycle and an inexperienced campaign staff.

B. Section 27.2935: Failure to Comply with Contribution Limits

The following contributions resulted in the acceptance of three contributions over the $300 limit:

Account Holders	CK#	Amount	Date	Signature
Patricia F. Rider	3064	$ 300.00	05/31/05	Patricia F. Rider
Thomas M. & Barbara Hohman	445	$ 600.00	05/25/05	Thomas Hohman
Michael L. Robertson & Leslie A. Burcham	557	$ 600.00	07/09/05	Leslie Burcham

The Committee reported receiving a $300 contribution from Patricia Rider on June 1, 2005 (check no. 3064 dated 5/31/05); however, the audit revealed that the Committee had received an earlier contribution (check no. #3063 dated 5/24/05) from Patricia Rider that was not aggregated or disclosed on any campaign statement. Thus, Ms. Rider made contributions to the Committee totaling $600, $300 in excess of the contribution limit. Internal records maintained by the Committee indicate that they relied on the memo section of the earlier check which had the name "Adam Schroeder" printed on it; however, the Committee did not maintain documents indicating that Mr. Schroeder was the true source of the funds.

With regard to a contribution drawn off of a joint checking account, title 2, section 18533(a) of the California Code of Regulations states that the contribution is attributed to the individual(s) whose name(s) appears on the check <u>and</u> to the individual(s) who signs the check. An exception is provided when the check is accompanied by a document indicating the amount to be attributed to each contributing individual and signed by each contributing individual whose name is printed on the check.

Contributions of $300 each were reported as coming from Thomas M. Hohman and Barbara L. Hohman; however, joint check no. 445 in the amount of $600 was signed solely by Thomas Hohman. The Committee did not obtain a second signature on the check or an accompanying document signed by Barbara Hohman and Thomas Holman stating that $300 should be attributed to Barbara Homan. Therefore, the $600 contribution is attributed solely to Thomas Hohman, $300 of which is in excess of the contribution limit.

Contributions of $300 each were reported from Michael Robertson and Leslie Burcham, based on joint check no. 557, which was signed solely by Leslie Burcham. The Committee did not obtain a second signature on the check or an accompanying document, signed by Michael Robertson and Leslie Burcham stating the amount to be attributed to each individual. Therefore, the $600 contribution is attributed solely to Leslie Burcham, $300 of which is in excess of the contribution limit.

At the post-audit conference the Committee asserted that the checks signed by Ms. Rider, Mr. Holman, and Ms. Burcham were not an acceptance of contributions over the limit, but failure to obtain supporting documentation of the contributors' intent at the time the contributions were made. The Committee provided a letter from Ms. Rider and her husband, Adam Schroeder, stating that the second $300 contribution (check no. #3064 dated 5/24/05) was from a joint checking account and should have been attributed to Mr. Schroeder. The Committee did not obtain similar documentation for the other contributions over the limit.

C. Section 27.2950: Failure to Comply with the Prohibition on Contributions from Organizations

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

Contributor Name	CK#	Check Date	Amount
Richard J. Senecal, Account: Software Consult, Self Employed	19782424	06/10/05	$ 300.00
Thomas G. Johnson, Auction Account	4230	07/08/05	$ 25.00
Dave Miller, Apartment Account	6210	07/16/05	$ 10.00
Lawrence Czoka dba Professional Music Preparation	8159	07/14/05	$ 25.00
			$ 360.00

At the post-audit conference the Committee noted it had practices in place to ensure that it did not accept business contributions and contended that the above contributions may have been from personal accounts; however, it did not provide any additional documentation to support that contention.

VII. Conclusion

The audit revealed twenty material findings: the Committee failed to report eight contributions in violation of San Diego Municipal Code section 27.2930; the Committee failed to report three campaign expenditures over $100 in violation of San Diego Municipal Code section 27.2930; the Committee failed to accurately report total campaign expenditures under $100 during two separate reporting periods in violation of San Diego Municipal Code section 27.2930; the committee accepted and deposited three contributions in excess of the contribution limits in violation of San Diego Municipal Code section 27.2935; and the Committee accepted and deposited four contributions from persons other than individuals in violation of San Diego Municipal Code section 27.2950.

_____ _____

Rosalba Gomez
Ethics Commission Auditor

Date

_____ _____

Lauri Davis
Ethics Commission Senior Investigator

Date