



Ethics  
Commission

**ANNUAL REPORT**  
**2018**

## 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 Commission accepts complaints regarding alleged violations of laws within its jurisdiction and protects individuals from retaliation for reporting violations. The Commission may impose fines up to \$5,000 for each violation of local governmental ethics laws.

Persons who fell within the jurisdiction of the Commission in 2018 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 and commissions who file Statements of Economic Interests
- Consultants who file Statements of Economic Interests
- Lobbyists, Lobbying Firms, Organization Lobbyists, and Expenditure Lobbyists

The Commission is an independent City department that does not report to the Mayor or City Council. Instead, Commission staff reports directly to the Commissioners, who are appointed by the Mayor and City Council to serve four-year terms.

# 2018 COMMISSIONERS AND STAFF

## **Chair**

Deborah Cochran

## **Vice Chair**

Sid Voorakkara

## **Commissioners**

William Baber

Fred Kosmo

Alex Kreit

Joe Leventhal (left office on September 10, 2018)

David Potter

Sid Voorakkara

## **Staff**

Stacey Fulhorst, Executive Director

Rosalba Gomez, Audit Program Manager

Stephen Ross, Education Program Manager

Kristina Gagné, Investigative Program Manager

Victoria Velasquez, Program Coordinator

## **General Counsel**

Christina Cameron, Esq.

Devaney Pate Morris & Cameron LLP

## EDUCATION AND OUTREACH

The Commission continued to make education and outreach top priorities during 2018. Specifically, the Commission made the following efforts to educate City Officials regarding the various provisions of the City's Ethics Ordinance:

- The staff conducted four live training sessions on the Ethics Ordinance for unclassified management employees of the City in January, April, July, and October.
- In August, the staff conducted a live training for the Historical Resources Board with emphasis on land use issues related to the Board's jurisdiction.
- In November, the staff conducted a live training on conflict of interest laws for the Commission on Arts & Culture.
- In December, the staff conducted refresher training sessions on the Ethics Ordinance for the offices of Council Districts 6 and 9.
- Approximately 440 City Officials (primarily City consultants and volunteer members of City boards and commissions) obtained training on the City's Ethics Ordinance via the Commission's online program.
- The staff issued three formal advisory opinion and responded to approximately 220 requests for informal advice from City Officials regarding compliance with the City's Ethics Ordinance.
- The staff monitored changes to state ethics laws that impacted corresponding local laws and notified City Officials about these changes.
- The staff updated one previously-issued Fact Sheet concerning various provisions of the City's ethics laws.

In addition, the Commission undertook the following efforts to educate City candidates and political committees on the City's campaign laws:

- In March, the Commission staff conducted a training session for City candidates, treasurers, and campaign staffers involved in the 2018 election cycle (additional training sessions were provided during 2017).

- The staff responded to more than 100 requests for informal assistance from City candidates and treasurers, as well as various political committees participating in City elections.
- Commission staff prepared detailed charts summarizing the new advertising disclosure rules and updated the Campaign Manuals for candidates and political committees to reflect these new rules.
- The staff issued three new Fact Sheets concerning advertising disclosure rules and updated one previously-issued Fact Sheet applicable to ballot measure committees active during the signature gathering phase.

During 2018, the Commission made the following efforts to educate lobbying firms and organizations on the City's lobbying laws:

- Commission staff implemented a new voluntary online training system for registered lobbyists to remind them of key disclosure requirements associated with the filing of quarterly reports; approximately 20 lobbyists took advantage of this training opportunity.
- The staff conducted live training sessions on the City's lobbying laws for the Downtown San Diego Partnership and Unite Here Local 30.
- Commission staff responded to approximately 60 requests for informal advice and assistance concerning the City's lobbying laws.
- The staff periodically updated a list of candidates and committees active in the 2018 election cycle to assist lobbyists with the disclosure of campaign activities on their quarterly reports.

Finally, the Commission's education and outreach efforts during 2018 included the following:

- In light of recent amendments to the City's campaign laws (discussed in detail below), and in order to provide the public with information regarding the persons and entities largely funding the committees that support or oppose City candidates and measures, the Commission maintained a list on

its website of each committee's \$10,000+ donors, the amount contributed, and occupation and employer information when applicable.

- The Commission frequently updated its website ([www.sandiego.gov/ethics](http://www.sandiego.gov/ethics)) to provide the public with timely information regarding Commission meetings, legislative proposals, educational efforts, and enforcement activities.
- The Commission continued to disseminate information to the public, the regulated community, City Officials, and the media, via the Commission's Twitter account and three "interested persons" e-mail lists: one for campaign finance issues, one for ethics issues, and one for lobbying issues.
- The Executive Director made presentations to groups inside and outside the City concerning the role of the Commission and the laws within its jurisdiction.

## LEGISLATIVE PROPOSALS

On January 1, 2018, new state laws governing campaign advertising disclosures went into effect. The new rules include detailed formatting requirements (e.g., background color, underlining, boxes around disclosures, the use of capital letters, etc.) for various types of advertising. Because local laws may not be less restrictive than comparable state laws, the City's campaign laws had to be amended to be in harmony with new state laws. Accordingly, the Commission proposed amendments to the City's laws to effectively incorporate the new state laws in place of previous advertising disclosure rules, with two additional local requirements:

- Continue to require inclusion of a "paid for by" disclosure on campaign advertisements disseminated by City candidates. State law does not impose such requirements on candidate flyers, door hangers, billboards, yard signs, posters, and Internet advertisements based on the rationale that voters can easily identify a campaign advertisement that is disseminated by a candidate. The Commission found no support for this rationale and therefore recommended that the City continue to apply advertising disclosure rules to all candidate advertisements.
- Continue the City's practice of requiring the disclosure of major donors of \$10,000 or more. New state laws require that committees primarily formed to support or oppose candidates or measures identify their top three donors of \$50,000 or more on their campaign advertisements. Since January of 2013, the City's campaign laws have required identification of the top two \$10,000 donors on campaign advertisements. In order to ensure that voters continue to receive information regarding donations that are large enough to impact City elections, the Commission proposed amending local laws to require committees to include a "funding details at" disclosure on their advertisements that points to a list of \$10,000+ donors maintained on the Commission's website.

Following review by the City Council's Rules Committee, the full City Council considered and approved the proposed amendments on May 15, 2018, such that the new advertising disclosure rules were in place for advertisements disseminated in connection with the November 2018 general election.

In addition to updating the City's campaign advertising rules, the Commission proposed amendments to the City's campaign laws to exempt live telephone calls made to less than 500 individuals or households per day from the disclosure requirements applicable to electioneering communications. An "electioneering communication" is any form of communication that mentions a City candidate but does not advocate for or against the election of the candidate, and is disseminated within 90 days of an election. It is commonly referred to as an "issue ad" because it does not mention the election despite referring to a candidate in the election.

The Commission was advised that the disclosure requirement was impeding the ability of professional pollsters to effectively conduct tracking polls during the months preceding an election. Specifically, if the individuals conducting a poll are aware of the identity of the person or entity paying for the survey, they could be unconsciously influenced in their gathering of responsive information, and potentially taint the poll results. Accordingly, the Commission recommended an amendment to exempt live telephone calls of less than 500 per day during the 90-day pre-election period from the "paid for by" disclosure requirements.

The proposed amendments were considered and approved by the City Council on November 15, 2018.



# AUDIT PROGRAM

On September 14, 2017, the Commission conducted a random drawing of committees from the 2016 election cycle and selected the following 20 candidate committees for audit:

- Anthony Bernal for City Council 2016
- Barbara Bry for City Council District 1 2016
- Jose Caballero for City Council District 7 2016
- Rafael Castellanos for City Attorney 2016
- Mara Elliot for San Diego City Attorney 2016
- Ray Ellis for Council 2016
- Coastal Communities for a Fair Economy supporting Ray Ellis for Council 2016 sponsored by and w/major funding from San Diego Regional Chamber of Commerce PAC and the Lincoln Club of San Diego County
- Neighborhoods, Not Stadiums. A Political Action Committee in support of Ray Ellis for Council 2016 sponsored by and/w major funding from the Lincoln Club of San Diego County
- Communities United for Tomorrow's Economy supporting the 2016 re-election of Mayor Faulconer, sponsored by and/w major funding from the Lincoln Club of San Diego County and the San Diego Regional Chamber of Commerce
- Flores for City Council 2016
- Urban Neighbors United supporting Ricardo Flores for City Council 2016 sponsored by and w/major funding from the San Diego Regional Chamber of Commerce PAC
- Gomez for City Council 2016
- Harris for Mayor 2016
- San Diegans for Safe Neighborhoods supporting Robert Hickey for City Attorney 2016 sponsored by and with major funding from the SD Regional Chamber of Commerce & the Lincoln Club of San Diego County

- Citizens Opposed to Hickey for City Attorney 2016, sponsored by International Brotherhood of Electrical Workers Local 569
- Bryan Pease for San Diego City Attorney 2016
- Sarah Saez for District 9 2016
- Lori Saldana for Mayor 2016
- Sherman for City Council 2016
- Chris Ward for City Council 2016

In addition, the following 9 ballot measure committees were chosen at the random drawing:

- Citizens for Fair & Honest Elections-No on Measure K, a coalition of individuals/orgs supportive of fiscally prudent elections, funded by Lincoln Club of San Diego County and the San Diego Chamber of Commerce PAC
- Citizens for the Responsible Management of Major Tourism and Entertainment Resources-Yes on D Support by East Village property owners w/major funding from Ballpark Village LLC & Cory Briggs/Briggs Law Corp
- No Downtown Stadium-Jobs and Streets First! No on C with major funding from the San Diego Lodging Industry Association PAC
- Protect San Diego's Neighborhoods, a coalition of neighborhood residents, community planners, taxpayers, and small businesses major funding by Donahue Schriber
- Rebuild San Diego-Yes on H sponsored by the San Diego Regional Chamber of Commerce
- San Diegans for Full Voter Participation, Yes on K and L, sponsored by Community and Voters Rights Organizations
- San Diegans for Jobs and Sustainable Communities sponsored & funded by Kilroy Realty, LP
- Save San Diego High School – Yes on Measure I

- Vote Yes on C, with major funding by Chargers Football Company, LLC

During 2018, the Audit Program Manager completed the audits of 11 candidate committees:

- Anthony Bernal for City Council 2016
- Barbara Bry for City Council District 1 2016
- Mara Elliot for San Diego City Attorney 2016
- Ray Ellis for Council 2016
- Coastal Communities for a Fair Economy supporting Ray Ellis for Council 2016 sponsored by and w/major funding from San Diego Regional Chamber of Commerce PAC and the Lincoln Club of San Diego County
- Neighborhoods, Not Stadiums. A Political Action Committee in support of Ray Ellis for Council 2016 sponsored by and/w major funding from the Lincoln Club of San Diego County
- Communities United for Tomorrow's Economy supporting the 2016 re-election of Mayor Faulconer, sponsored by and/w major funding from the Lincoln Club of San Diego County and the San Diego Regional Chamber of Commerce
- Urban Neighbors United supporting Ricardo Flores for City Council 2016 sponsored by and w/major funding from the San Diego Regional Chamber of Commerce PAC
- San Diegans for Safe Neighborhoods supporting Robert Hickey for City Attorney 2016 sponsored by and with major funding from the SD Regional Chamber of Commerce & the Lincoln Club of San Diego County
- Sherman for City Council 2016
- Chris Ward for City Council 2016

In addition, the Audit Program Manager completed the audit of one ballot measure committee:

- Vote Yes on C, with major funding by Chargers Football Company, LLC

The Commission anticipates the audits of the remaining 9 candidate committees and 8 ballot measure committees will be completed before the September 2019 audit drawing of committees active in the 2018 election cycle.

# ENFORCEMENT – STATISTICS

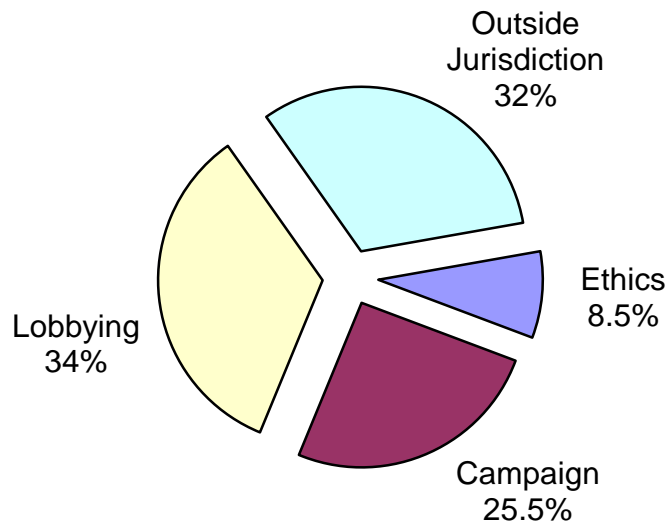
## *Number of Complaints*

During 2018, the Commission processed a total of 47 complaints. These complaints were submitted by way of written complaint forms, letters, memos, e-mails, and telephone calls. They were presented by third parties and other governmental agencies, as well as Commission staff. Two of the complainants were anonymous.

## *Types of Complaints*

Complaints processed by the Commission in 2018 concern alleged violations of law as follows:

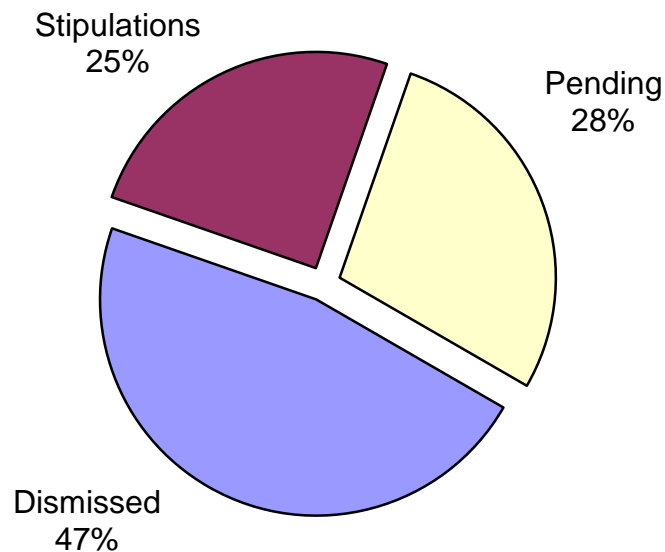
- 12 complaints alleged a violation of the Election Campaign Control Ordinance;
- 4 complaints alleged a violation of the Ethics Ordinance;
- 16 complaints alleged a violation of the Lobbying Ordinance; and
- 15 complaints alleged a violation outside of the Commission’s jurisdiction.



## *Investigations*

Out of the 47 complaints processed by the Commission during 2018, 27 were approved for investigation. These 27 cases, together with 5 cases approved for investigation but not resolved in previous years, resulted in the following disposition during 2018:

- 15 matters were ultimately dismissed by the Commission after considering the results of staff investigations;
- 8 matters resulted in stipulated settlement agreements; and
- 9 matters are currently pending.



## ENFORCEMENT – STIPULATIONS

During 2018, the Commission entered into 8 stipulated settlements. Three of these stipulations concerned violations of the City’s campaign laws:

- Councilmember Chris Cate, a candidate for re-election to Council District 6 in the June 2018 primary election, paid a fine of \$1,500 after he sent a campaign email that included a contribution solicitation to a list of recipients that included 60 City employees.
- Kevin Egger, a grassroots candidate for Council District 6 in the June 2018 primary election, paid a \$1,500 fine for failing to file any campaign disclosure statements before the election.
- Brian Pease, a candidate for City Council District 2 in the June 2018 primary election and the President of the APRL Fund (a 501(c)(4) non-profit formed to protect animals) paid a \$4,000 fine because the APRL Fund paid for a campaign poll commissioned by Mr. Pease, which constituted an unlawful in-kind contribution from an organization.

Two of the stipulations approved by the Commission during 2018 involved violations of the City’s ethics laws:

- Robert Chávez, a member of the City’s Park and Recreation Board, paid a \$3,000 fine for failing to disclose income received from Urban Corps on three Statements of Economic Interests. Urban Corps was a reportable source under the Board’s Conflict of Interest Code because it supplies services to the City’s Park and Recreation Department.
- Phil Rath, a member of the Civic San Diego Board of Directors, paid a fine of \$11,000 for failing to disclose his receipt of income from Affirmed Housing on two Statements of Economic Interests, and for participating in two Civic San Diego decisions that involved the financial interests of Affirmed Housing.

Three of the stipulations approved by the Commission during the past year involved the City’s lobbying laws. The first concerned a \$500 fine paid by Unite Here Local 30 for failing to timely file a quarterly disclosure report.

The two remaining stipulations were part of the Commission's "streamlined" program for minor disclosure violations involving the failure to disclose campaign contributions and the failure to provide specific information regarding the municipal decisions that were the subject of lobbying efforts:

- Kilroy Realty (\$500 fine)
- Southwest Strategies (\$200 fine)

During 2018, the Commission levied a total of \$22,200 in administrative fines by way of the stipulations discussed above. All fines are paid to the City of San Diego's General Fund and are not credited to the Commission's operating budget.



## ENFORCEMENT – HEARINGS

In April of 2016, following an Administrative Hearing, the Commission issued an Administrative Enforcement Order that requires Advantage Towing Company and Ayman Arekat to pay a \$128,000 fine for laundering campaign contributions through company employees to three different mayoral candidates in the 2012 election cycle.

On July 25, 2016, Advantage Towing and Mr. Arekat filed a Petition for Writ of Mandate with the San Diego Superior Court; however, they did not serve the City or the Commission until September 13, 2017. During 2018, the Commission prepared the administrative record and the Court set the hearing on the Writ for March 1, 2019.