

February 8, 2019

Councilmember Georgette Gomez
Gomez for City Council 2016
202 "C" Street, 10th Floor
San Diego, CA 92101

Re: Gomez for City Council 2016 (ID# 1377434)

Dear Councilmember Gomez:

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 February 7, 2019. Although the report reflects four 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.

Sincerely,

[REDACTED]

Rosalba Gomez
Audit Program Manager

Enclosure

cc: Lilia Escalante, Treasurer
1364 S. 38th Street
San Diego, CA 92113

FINAL AUDIT REPORT

January 14, 2019

Councilmember Georgette Gomez
Gomez for City Council 2016
202 “C” Street, 10th Floor
San Diego, CA 92101

Treasurer: Lilia Escalante
1364 S. 38th Street
San Diego, CA 92113

SAN DIEGO ETHICS COMMISSION AUDIT REPORT: *Gomez for City Council 2016*

I. Introduction

This Audit Report contains information pertaining to the audit of the committee, Gomez for City Council 2016, Identification Number 1377434 (“the Committee”) for the period from May 7, 2015, through July 25, 2018. 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 14, 2017. 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) has been amended on several occasions; all Municipal Code references in this report relate to the provisions of ECCO that were in effect at the time of the actions described herein.

During the period covered by the audit, the Committee reported total contributions of \$213,647.00 (inclusive of \$2,540.00 in non-monetary contributions) and total expenditures of \$326,442.18. Total cash contributions relative to total expenditures resulted in a \$112,795.18 differential that was reconciled by the Committee’s miscellaneous increase to cash (payments made by the San Diego County Democratic Party to reimburse the Committee for costs associated with member communications)¹. **The audit revealed four material findings:**

- **the committee failed to pay one vendor within 180 calendar days in violation of San Diego Municipal Code section 27.2960; and**

¹ Under state law, payments made by organizations to communicate with their members are not considered “contributions” or “expenditures” and may therefore be coordinated with candidates.

- **the committee failed to include identification disclosures on three telephone communications in violation of San Diego Municipal Code section 27.2971.**

II. Committee Information

On June 16, 2015, 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 Georgette Gomez for Council District 9 in the June 7, 2016, primary election and November 8, 2016, general election. On August 23, 2018, the Committee filed a Statement of Termination indicating that its filing obligations were completed on July 25, 2018. The Committee's treasurer was Lilia Escalante.

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 27.2903 – Definitions

Contribution has the same meaning as that term is defined in California Government Code section 82015 and is subject to the inclusions and exceptions contained in title 2, section 18215 of the California Code of Regulations, except as modified by the following provisions. In the event of any conflict between the state law definition and the following provisions, the following provisions shall control:

- (a) contribution includes any forgiveness of a debt or other obligation to pay for goods or services rendered, or reduction of the amount of a debt or other obligation to pay for goods or services rendered, unless it is clear from the circumstances that the amount of the reduction was reasonably based on a good faith dispute. A good faith dispute shall be presumed if the

candidate or committee produces:

- (1) evidence that the candidate or committee protested the payment of a bill no later than 30 calendar days after the last calendar day of the month in which the goods were delivered or the services were rendered; and
- (2) evidence that the protest was based on the quality or quantity of goods delivered or services rendered.

...

Section 27.2935 - Contribution Limitations

- (a) It is unlawful for an individual to make, or for a candidate or controlled committee to solicit or accept, a contribution that would cause the total amount contributed by that individual to the candidate and the candidate's controlled committee to exceed \$500 for any single election for a City Council district office, or to exceed \$1,000 for any single election for the office of Mayor or City Attorney.

...

Section 27.2960 – Extensions of Vendor Credit

- (a) A candidate or controlled committee for elective City office that accepts goods or services for political purposes on credit under subsection (a), shall pay for those goods or services in full no later than 180 calendar days after receipt of a bill or invoice and in no event later than 180 calendar days after the last calendar day of the month in which the goods were delivered or the services were rendered, unless it is clear from the circumstances that the failure to pay is reasonably based on a good faith dispute. For purposes of this subsection, a good faith dispute shall be presumed if the candidate or controlled committee produces the following:

- (1) evidence that the candidate or controlled committee protested the payment of a bill no later than 30 calendar days after the last calendar day of the month in which the goods were delivered or the services were rendered; and
- (2) evidence that the protest was based on the quality or quantity of goods delivered or services rendered.

....

Section 27.2971 – Telephone Communications

- (a) It is unlawful for any candidate or committee to engage or hire other to engage in mass telephone communications unless the communications include a statement that the communications are "paid for by," or are otherwise being made "on behalf of" immediately followed by the name of each candidate or committee that is paying for any of the resources used for the communications or that is otherwise authorizing the communication. For purposes of this subsection, "resources" include the purchase of a contact list, the development of a script, overhead expenses, and telephone charges. The type of disclosure required by this section shall be determined as follows:

....

- (3) Notwithstanding subsections (a)(1) and (a)(2), a call is made “on behalf of” a candidate or committee when it is made by a volunteer at the direction of the candidate or committee.

....

VI. Material Findings

Section 27.2960 – Extensions of Vendor Credit

SDMC Section 27.2960 requires candidate-controlled committees that accept goods or services on credit to pay the vendor within 180 calendar days after receiving an invoice or the goods/services. The purpose of requiring candidate-controlled committees to pay vendors in full is to avoid the possible circumvention of contribution limits and the prohibition on contributions from organizations. When a candidate fails to pay a vendor for campaign goods/services, the candidate effectively compels the vendor to make a nonmonetary contribution to the campaign.

The Committee reported the payment of \$3,529.41 to YuMe, Inc., for digital advertising services on the disclosure report covering the period from October 23, 2016 through December 31, 2016, which was filed on January 1, 2017. On March 28, 2018, the Committee filed an amendment to this campaign statement and withdrew the YuMe, Inc. expenditure. When asked about the reason for the removal of the expenditure, the Committee representative stated that the check was mailed to the vendor on December 26, 2016, but was not cashed by the time the Committee was winding down in late 2017.

In light of the foregoing, the audit found that the Committee failed to pay a vendor within 180 days. As a result, the Committee accepted a nonmonetary contribution as defined by SDMC section 27.2903 from a prohibited source (SDMC section 27.2950) that exceeded the \$500 contribution limit (SDMC section 27.2935).

At the post-audit conference held on January 10, 2019, Committee representatives pointed out that the Committee had sufficient cash on hand at the time it mailed the check to the vendor, and that the vendor failed to cash the check for approximately twelve months. The representatives suggested that these facts sufficiently demonstrate the Committee’s compliance with the City’s vendor debt laws. In fact, the Committee did not exercise reasonable due diligence to comply with this law; it knew that the vendor had not negotiated the check by the end of those twelve months, yet failed to make any additional efforts to ensure that the vendor was paid.

Section 27.2971 – Telephone Communications

SDMC Section 27.2971 requires committees that authorize volunteers to engage in mass telephone communications to include the words “on behalf of” immediately followed by the name of the committee that directed the communication. The audit review determined that Committee volunteers used nine separate telephone scripts that referred to the City Council candidacy of Georgette Gomez, and that three of these scripts did not include the requisite “on behalf of” disclosure, which in turn deprived the public of information concerning the source of the call.

At the post-audit conference held on January 10, 2019, the Committee representatives stated that the campaign volunteers were verbally instructed to identify themselves as volunteers of the Committee when reading the above-noted scripts, but acknowledged that the Committee does not have any documents to support this assertion.

VII. Conclusion

The audit revealed the following four material findings:

- **the committee failed to pay one vendor within 180 calendar days in violation of San Diego Municipal Code section 27.2960; and**
- **the committee failed to include identification disclosures on three campaign communications in violation of San Diego Municipal Code section 27.2971.**

[REDACTED]

Rosalba Gomez
Audit Program Manager

Date

[REDACTED]

Stacey Fulhorst
Executive Director

Date