

April 18, 2022

Mr. Tommy Hough  
Tommy Hough for City Council 2018  
8357 Gold Coast Drive, Unit 7  
San Diego, CA 92126

SENT VIA E-MAIL

Re: Tommy Hough for City Council 2018 (ID # 1399902)

Dear Mr. Hough:

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 April 14, 2022.

Sincerely,

[REDACTED]

Rosalba Gomez  
Audit Program Manager

Enclosure

cc: Denise Lewis, Treasurer  
River City Business Services  
5429 Madison Avenue  
Sacramento, CA 95841

# FINAL AUDIT REPORT

April 5, 2022

Mr. Tommy Hough  
Tommy Hough for City Council 2018  
8357 Gold Coast Drive, Unit 7  
San Diego, CA 92126

Treasurer: Ms. Denise Lewis  
5429 Madison Avenue  
Sacramento, CA 95841

## **SAN DIEGO ETHICS COMMISSION AUDIT REPORT: *Tommy Hough for City Council 2018***

### **I. Introduction**

This Audit Report contains information pertaining to the audit of the committee, Tommy Hough for City Council 2018, Identification Number 1399902 (“the Committee”) for the period from October 31, 2017, through June 5, 2019. 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 12, 2019. 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 \$128,694.15 and total expenditures of \$161,982.24. Total cash contributions relative to total expenditures resulted in a \$33,288.09 differential that was reconciled by the Committee’s miscellaneous increase to cash. **The audit revealed two material findings:**

- **the committee failed to maintain records related to telephone communications in violation of San Diego Municipal Code section 27.2925.**
- **the committee failed to include a “paid for by” disclosure in telephone communications in violation of San Diego Municipal Code section 27.2971.**

## II. Committee Information

On November 14, 2017, 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 Tommy Hough for Council District 6 in the June 5, 2018 primary election and November 6, 2018, general election. On June 10, 2019, the Committee filed a Statement of Termination indicating that its filing obligations were completed on June 5, 2019. The Committee's treasurer was Denise Lewis of River City Business Services.

## 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

### Definitions

*Mass telephone communications* mean live or recorded telephone calls that are substantially similar in nature to 500 or more individuals or households for the purpose of (a) supporting or opposing a clearly identified candidate or a clearly identified measure; or (b) conducting a poll that mentions or refers to a clearly identified candidate or a clearly identified measure.

### Section 27.2925 – Accounting and Recordkeeping

.....

- (c) Every candidate or committee paying for campaign advertisements supporting or opposing one or more City candidates or City measures shall maintain records in accordance with the following requirements:

....

- (2) for *mass telephone communications* subject to section 27.2971, records that identify the date(s) the telephone calls were made and the number of calls made, as well as a transcript of the messages communicated and a copy of any recorded messages;

....

### **Section 27.2971 – Telephone Communications**

- (a) It is unlawful for any candidate or committee to engage or hire others to engage in mass telephone communications unless the communications include a statement that the communications are “paid for by,” “authorized by,” or are otherwise made 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 27.2925 - Telephone Communication Records**

Section 27.2925(c)(2) states that committees that use paid staff to engage in telephone communications supporting or opposing one or more City candidates or City measures shall maintain records that identify the date(s) the telephone calls were made; the number of calls made; the transcript of the messages communicated; and a copy of any recorded messages. The telephone communication records serve as evidence that a committee has complied with the requisite disclaimers and other requirements.

The Committee retained campaign consultants to conduct telephone banking. The Committee submitted copies of the three different scripts prepared by their consultants. According to information provided by Committee representatives, a mix of paid staff and volunteers were used

to make these telephone calls. The Committee reported that approximately 26,000 calls were made using both paid staff and volunteers. The Committee provided limited records that did not show the exact number of calls made, however, they supported the estimate provided by the Committee.

The Committee was unable to provide documentation that provided the exact number of calls made, the number of calls made using each script, or how many of the calls were made by paid staff as opposed to volunteers. The Committee failed to adhere to the telephone communication recordkeeping requirements.

(It is relevant to note that the Committee accepted responsibility for failing to maintain the requisite telephone communication records; see stipulation in Case No. 2021-12.)

### **Section 27.2971 – Telephone Communication Disclosure**

Section 27.2971 states that committees that use paid staff to engage in telephone communications must include “paid for by” language immediately followed by the name of the committee. Similarly, Section 27.2971 states that committees using volunteers to engage in telephone communications must include the words “on behalf of” immediately followed by the name of the committee.

The Committee retained campaign consultants to conduct telephone banking. The Committee submitted copies of the three different scripts prepared by their consultants. According to information provided by Committee representatives, a mix of paid staff and volunteers were used to make these telephone calls. The Committee reported that approximately 26,000 calls were made using both paid staff and volunteers. The three telephone communication scripts all included an “on behalf of” disclosure and none of the scripts contained the “paid for by” disclosure. The phone bank callers were instructed to read directly from the scripts. The “on behalf of” disclosure used in the scripts complied with the disclosure requirements for volunteers making calls. The Committee records reflect that it failed to include the “paid for by” in three scripts used by the phone banking paid staff.

(It is relevant to note that the Committee accepted responsibility for failing to include the requisite “paid for by” disclosure in the telephone communication scripts used by paid staff; see stipulation in Case No. 2021-12.)

## **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 committee failed to maintain records related to telephone communications in violation of San Diego Municipal Code section 27.2925.**

- **the committee failed to include a “paid for by” disclosure in telephone communications in violation of San Diego Municipal Code section 27.2971.**

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Rosalba Gomez  
Audit Program Manager

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Date

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Sharon Spivak  
Executive Director

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Date