



ANNUAL REPORT
2001 – 2002

PURPOSE

To monitor, administer, and enforce the City's governmental ethics laws, propose new governmental ethics law reforms, conduct investigations, refer violations to appropriate enforcement agencies, audit disclosure statements, and advise and educate City officials and the public about governmental ethics laws.

MISSION STATEMENT

To preserve public confidence in our City government through education, advice, and the prompt and fair enforcement of local governmental ethics laws.



From left to right: Executive Director Charles Walker, Commissioner Greg Vega, Commissioner April Riel, Chairperson Dorothy Leonard, Commissioner Dorothy Smith, Commissioner Lisa Foster, Attorney Rick Duvernay, Commissioner Chuck LaBella, and Vice-Chairperson Al Gaynor

2001-2002 COMMISSIONERS AND STAFF

Chair

Dorothy Leonard

Vice Chair

Al Gaynor

Commissioners

Lisa Foster

Charles La Bella

April Riel

Dorothy Smith

Gregory Vega

Staff

Charles Walker, Executive Director

Stacey Fulhorst, Investigator

Donnalee McCalla, Executive Secretary

Advisors

Rick Duvernay, Deputy City Attorney

Stephen Ross, Legal Assistant

LETTER FROM THE CHAIRPERSON

January 2003

Dear Mayor Murphy and Members of the City Council:

This first Annual Report of the City of San Diego Ethics Commission provides a snapshot of the work of the Commission and staff during the past 16 months. We believe we have accomplished a lot since our first Commission meeting on August 22, 2001. The seven volunteer members of the Ethics Commission spent countless hours preparing for and taking actions necessary to get the Commission “up and running.” We served on ad hoc subcommittees, hired an Executive Director, and worked with City staff to draft procedures and ordinances. We made numerous presentations to the City Council Committee on Rules, Finance and Intergovernmental Relations and to the full City Council. We participated on discussion panels, made presentations, and responded to media inquiries. In addition, we fulfilled our responsibilities relative to enforcement of the City’s governmental ethics laws.

We extend our thanks to the City Clerk, City Attorney, and City Manager for their assistance in ensuring we had the support necessary to enable us to make this new, independent commission, functional. We had excellent support from the Mayor’s office in moving our recommendations forward to the Committee on Rules, Finance and Intergovernmental Relations and to the full City Council. We had good dialogue with council members as we presented our recommendations for approval and we thank the 2000-2002 City Council for their support.

Our goals for 2003 include: (1) review and make recommendations for revisions to the City’s Election Campaign Control Ordinance and Municipal Lobbying Ordinance; (2) expand our education and training program to include volunteer boards and commissions; (3) begin random audits of campaign financial disclosure forms; and (4) hire a financial investigator and a clerical assistant to provide additional staff needed to become fully operational.

It has been a privilege for me to serve as Commission Chair and to be able to work with exceptionally talented and dedicated volunteers and staff. The Commission has worked diligently to meet the expectations of the City Council that created the Ethics Commission. As the City of San Diego’s first Ethics Commission we are committed to setting standards which will enable us, and future Commissions, to fulfill our mission of preserving public confidence in our City government through education, advice, and the prompt and fair enforcement of local governmental ethics laws.

Sincerely,

Dorothy Leonard
Chairperson

LETTER FROM THE EXECUTIVE DIRECTOR

January 2003

Now that a year has passed since my appointment to the position of Executive Director of the City's Ethics Commission, I find myself reflecting on the accomplishments of the past year and the challenges that lie ahead. My thoughts are shaped by thirty years of government employment which have given me the opportunity to closely participate in and observe the inner workings of local, state, and federal government. During my years of government service, I have learned to appreciate at least one thing: the public expects – demands actually – integrity, honesty, fairness, and accountability from its officials.

As the governing officials of the City of San Diego, you should be commended for having the courage to create an Ethics Commission. After all, the Commission is charged with ensuring ethical compliance from those that sit on the dais in Council Chambers. In creating the Commission, you chose not to select persons merely interested in maintaining the status quo, but instead had the mettle to appoint a group of strong-minded, principled citizens to the Commission, citizens who are not afraid to address the City's ethical concerns. Over this past year, the Commission, which consists of seven volunteers who have given generously of their time and expertise, has implemented enforcement procedures, drafted a tough but fair Ethics Ordinance, commenced an extensive education program, processed seventy complaints, drafted an Audit Manual, and commenced efforts to consider updates to the City's Election Campaign Control ordinance.

The detractors and supporters of the Commission all want the same thing: a fair, consistently enforced, set of laws that allow the public an opportunity to participate in government, require the disclosure of relevant financial interests, restrict gifts to officials, regulate conflicts of interest, and provide a level playing field for all candidates for public office. The Commission has taken its charge seriously; its interest is not in pleasing everyone, but in winning the confidence of the public. Rest assured that it is on the right track.

Over the past year, it has become clear to me that the people of San Diego have a genuine interest in reinforcing public trust in those seeking or holding public office. I am proud to be associated with the Ethics Commission's efforts to reach this goal. I am equally enthusiastic about the challenges we'll face in the future as we join forces with the San Diego community to improve the ethical foundation upon which our local government rests.

Sincerely,



Charles B. Walker
Executive Director

HISTORY AND START-UP MILESTONES

Under the leadership of Mayor Dick Murphy, the City Council approved the establishment of an Ethics Commission with the adoption of Ordinance O-18945 on June 5, 2001. The Mayor subsequently nominated seven members to the Commission from a pool of nominees submitted by City Councilmembers and the City Attorney. The appointments were confirmed by the City Council on August 7 and the Commissioners were sworn in at the first meeting of the Commission on August 22, 2001.

In creating the Commission, the City Council approved a start-up budget of \$300,000. To assist with the initial work of the Commission, the City Clerk approved a request for staff assistance from his office until such time as an Executive Director was hired. The City Attorney, in keeping with provisions of the ordinance which created the Commission, appointed a Deputy City Attorney to provide legal services to the Commission.

At its first meeting, the Commission established three ad hoc subcommittees to work on high priority matters. The Personnel ad hoc subcommittee was charged with leading the effort to hire an executive director. The Subpoena Power ad hoc subcommittee was responsible for making recommendations regarding ballot language to grant the Commission subpoena power. The Investigation and Enforcement Procedures ad hoc subcommittee worked closely with the City Attorney's office to draft investigation and enforcement procedures.

On November 5, 2001, the City Council approved a Commission recommendation for a City Charter amendment granting the Commission subpoena power. Voters approved this City Charter amendment in the March 2002 election.

Following the recommendation of the Commissioners, the City Council approved the appointment of Charles Walker as the Executive Director of the Commission. Mr. Walker took up this post on December 7, 2001. On February 19, 2002, the Commission hired an Executive Secretary, and on April 15, 2002, the Commission hired an Investigator.

The City Council approved investigative and enforcement procedures for the Commission on February 11, 2002, and the Commission began accepting complaints on March 14, 2002, concerning violations of the City's Election Campaign Control Ordinance [ECCO] and the City's Lobbying Ordinance.

The Commission approved its Mission Statement on April 25, 2002.

On April 29, 2002, the City Council adopted the Ethics Ordinance. The Commission began accepting complaints alleging violations of this ordinance on May 29, 2002.

In June of 2002, the Commission's first brochure, *A Basic Guide to Information Concerning the San Diego Ethics Commission Jurisdiction, Responsibilities, and Procedures* was published.

The Commission approved its Operating Policies which address the Commission's structure, officers, staff, consultants, committees, meetings, and standards of conduct on July 25, 2002.

On September 24, 2002, the City Council approved a revision of Council Policy 000-04, making an ethics orientation program mandatory for individuals who fall within the Commission's jurisdiction, and requiring the completion of a biennial refresher and continuing education program.

A proposed Audit Manual was approved by the Commission on October 24, 2002, and presented to the City Council's Committee on Rules, Finance and Intergovernmental Relations (Rules Committee) at a workshop on December 4, 2002. It is anticipated that a final Audit Manual will be approved by the City Council in February 2003.

The Commission began its review of the City's Election Campaign Control Ordinance (ECCO) at the November 7, 2002 meeting followed by a presentation by Robert Stern of the Center for Governmental Studies at the December 11, 2002 meeting. The Commission's review of ECCO will continue in 2003.

ACTIVITIES AND ACCOMPLISHMENTS

Administrative

The initial efforts of Commissioners and staff involved a myriad of administrative tasks designed to get the Commission “up and running.” These activities included locating and building out office space, interviewing and hiring staff, and purchasing office equipment and furniture.

Operating Policies which address the Commission’s structure, officers, staff, consultants, committees, meetings, and standards of conduct were developed and approved by the Commission.

The Commission also approved its Hearing Procedures, which establish a set of guidelines to be followed in the event of a Probable Cause Hearing or Administrative Hearing. These procedures include such topics as pre-hearing conferences, disqualification of the presiding authority, subpoenas, discovery, evidence, ex parte communications, and default.

Legislative

In creating the Commission’s investigative and enforcement procedures, Commissioners and staff spent several months conferring with other agencies and discussing key issues such as procedural due process, subpoena power, confidentiality, immunity, the expeditious processing of complaints within ninety days of an election, and the imposition of penalties. The Commission made presentations to the City Council’s Rules Committee and invited comments and suggestions before the final procedures were approved by the full City Council in February 2002.

Early legislative efforts by the Commissioners and staff also included the development of the City’s Ethics Ordinance. Commissioners and staff spent many hours working to prepare an ordinance that encompassed such issues as gift limits, honoraria, loans, benefits received by family members, conflicts of interest, and misuse of position or resource. After the Commissioners voted to approve a draft of the ordinance, it was submitted to the City Council’s Rules Committee. Following a series of workshops, additional modifications and revisions were

incorporated and approved by the Commission, and brought back to the Rules Committee and the full City Council which gave it final approval in April 2002.

Education

The Commission began to develop its education program in early 2002. One of its first acts was to hire a consultant: Dr. Craig Dunn, a San Diego State University Business Ethics faculty member. Commissioners and staff worked with Dr. Dunn to develop a live training program for Councilmembers and their staffs, board and commission members, and unclassified managerial City employees. In September 2002, the City Council approved a revision of Council Policy 000-04, making an ethics orientation program mandatory for individuals who fall within the Commission's jurisdiction, and requiring the completion of a biennial refresher and continuing education program.

To date, nearly all councilmembers and their staffs have completed their live ethics orientation program. Training sessions will continue in early 2003 for board and commission members and unclassified managerial City employees.

The Commission staff is also currently working to develop an on-line training program to facilitate the biennial recertification requirement for individuals who fall within the jurisdiction of the Commission.

Outreach

In recognizing the importance of keeping the public aware of the function the Commission performs for the City, the Commission has spent considerable time and effort in outreach activities. The Commission has created and distributed an informational brochure containing an overview of Commission responsibilities and duties. It has developed an Internet web site to provide the public with information regarding Commission meetings, agendas, minutes, laws, complaint procedures, press releases, and frequently asked questions. Commission staff has also responded to several requests for formal advice, and posted responsive advisory letters on the Commission website. When complaints are resolved by stipulated settlement, the Commission posts the applicable stipulation on its web site for the public to view. The Commission website has become an important, and frequently accessed, resource for the public. It is located at: <http://www.sandiego.gov/ethics/>.

As part of a continuing effort to disseminate information regarding the Ethics Commission and the laws it enforces, the Executive Director has made numerous presentations to groups inside and outside the City, including:

- Ethics conference sponsored by Sullivan, Wertz, McDade & Wallace
- International Visitors Council of San Diego
- Purchasing Division, General Services Department
- Labor Advisory Committee
- Kiwanis Club
- County Bar Association
- Career Management Program Learning Group
- Audit and Payroll Specialists
- Academy 2000
- Information and Organizational Support Division, MWWD
- Association of Certified Fraud Examiners
- San Diego Data Processing Board of Directors
- San Diego Employer Advisory Council

In addition, Commissioners have participated in conferences, meetings and media interviews, and have made presentations to a variety of organizations.

Auditing

The City ordinance that created the Commission includes a duty to audit campaign committees and lobbyists. In February of 2002, work began on an Audit Manual to establish policies and procedures applicable to its auditing activities. In drafting the Audit Manual, the Commission reviewed audit procedures currently in use by the Fair Political Practices Commission and other ethics commissions in the state, and also met with representatives from the City Clerk's Office and the Office of the City Auditor. A draft Audit Manual was distributed to a number of campaign treasurers with experience in recent City of San Diego elections for the purpose of soliciting their comments and suggestions for improving the manual. After

receiving written comments and hearing public comments made at Commission meetings, the Commission incorporated many of the public's suggestions into a draft which was approved by the Commission in October. A workshop on the Commission's draft of the Audit Manual was held at the Rules Committee in early December, and a final Audit Manual is expected to be approved by the full City Council in February of 2003.

Conflict of Interest Codes

The Ethics Commission staff worked with the Office of the City Clerk and the Office of the City Attorney to update the conflict of interest codes utilized by all City Departments with respect to Statements of Economic Interests.

Electronic Filing

In partnership with the Office of the City Clerk, the staff of the Ethics Commission is working diligently to explore affordable ways in which the City might incorporate an electronic filing system for campaign reports. Input received by the Commission indicates that an electronic filing system is critical to ensure prompt disclosure and ease of accessibility to information regarding contributions and expenditures.

ECCO Update

Following the November 5, 2002, general election, the Commission began developing procedures to address possible amendments to the City's Election Campaign Control Ordinance. On December 11, 2002, Robert Stern of the Center for Governmental Studies made a presentation at an open meeting of the Commission. As a recognized expert on campaign finance reform, Mr. Stern provided an overview of the laws in other jurisdictions and offered suggestions for the citizens of San Diego to consider incorporating into local law. On January 11, 2003, the Commission will host a public forum concerning potential revisions to the City's campaign finance law. The Commission plans to continue these efforts throughout 2003, resulting in the submission of an amended ordinance to the City Council for its consideration.

ENFORCEMENT – STATISTICS

The Commission began receiving complaints alleging violations of the Election Campaign Control Ordinance (ECCO) and the Lobbying Ordinance on March 14, 2002, the date the Investigative and Enforcement Procedures became effective. Complaints alleging violations of the Ethics Ordinance have been accepted since May 29, 2002, the date the Ethics Ordinance became effective.

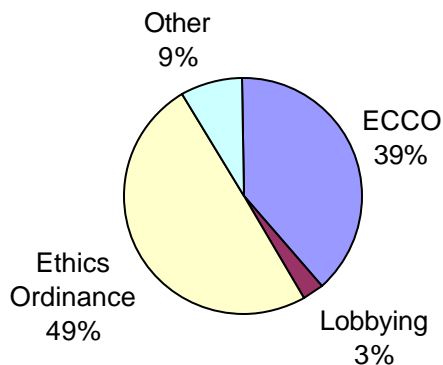
Number of Complaints

During 2002, the Ethics Commission received a total of seventy complaints. Most of the complaints received were in the form of formal, written complaints signed under penalty of perjury. The Commission also processed informal complaints and referrals from the City Clerk.

Types of Complaints

Complaints received by the Ethics Commission concern alleged violations of law as follows:

- twenty-seven complaints allege violations of the Election Campaign Control Ordinance;
- two complaints allege violations of the Lobbying Ordinance;
- thirty-five complaints allege violations of the Ethics Ordinance; and
- six complaints allege violations of other laws (outside the jurisdiction of the Ethics Commission).

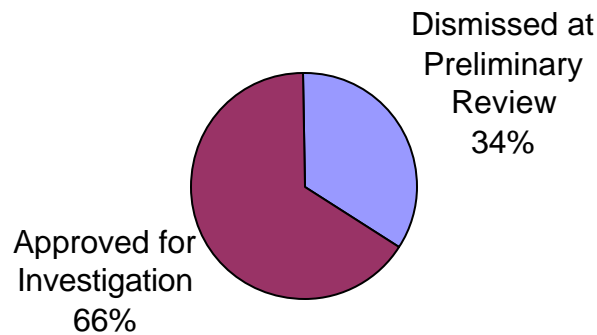


Preliminary Review

Commission procedures require that the Executive Director evaluate each incoming complaint in order to determine if the subject of the complaint falls within the jurisdiction of the Ethics Commission; if the matter is already being investigated by the Commission; if the complaint involves a previously disposed of matter; or if the complaint is based on frivolous or absurd accusations.

The Commission has processed the complaints received as follows:

- twenty-four complaints were dismissed by the Executive Director during the preliminary review period; and,
- forty-six complaints were submitted to the Commission for approval to commence a formal investigation.

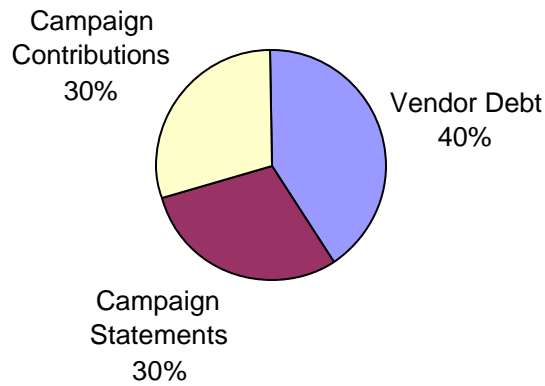


Investigations

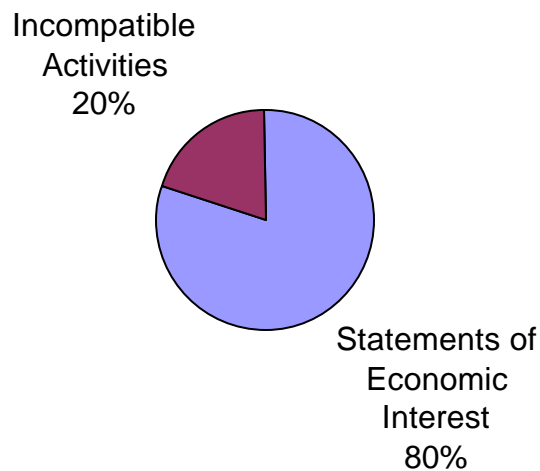
Investigations commenced by the Commission have resulted in the following disposition:

- thirty-three complaints have been dismissed by the Commission following a formal investigation;
- four complaints have resulted in stipulations; and,
- nine formal investigations are pending.

Complaints alleging violations of ECCO include eleven matters concerning the ninety-day vendor debt law, eight complaints regarding the content and filing of campaign statements, and eight complaints alleging the acceptance of illegal campaign contributions.



Complaints alleging violations of the Ethics Ordinance consisted of twenty-eight complaints concerning the filing of Statements of Economic Interests and seven complaints regarding incompatible activities and the misuse of a City position or resource.



Accelerated Review Period

Section 26.0422(c) of the Investigation and Enforcement Procedures provide for an accelerated preliminary review period of fifteen days for formal complaints received by the Commission within ninety calendar days of a municipal election alleging violations by a candidate seeking office in that election.

The commission received eight such formal complaints ninety days prior to the November general election, which were processed pursuant to the accelerated preliminary review provisions of Section 26.0422 (c). Of these eight complaints, three were dismissed by the Executive Director, and five were approved for investigation by the commissioners. Four of these investigations were dismissed by the commissioners at a special meeting prior to the general election. One of the investigations was dismissed by the commissioners after the general election.

These procedures were designed to prevent complainants from using the Commission as a political weapon to influence elections. In this election cycle, the procedures worked as intended.

ENFORCEMENT - STIPULATIONS

To date, the Commission has entered into four stipulations in lieu of proceeding with administrative enforcement actions. Three of the stipulations, entered into with the Lincoln Club of San Diego County, the League of Conservation Voters San Diego, and Firefighters Local 145, concern independent expenditures made in support of City of San Diego candidates for elective office. In accordance with these stipulations, the parties have agreed to segregate and disclose campaign contributions in a transparent manner designed to give the public confidence that political contributions are being collected and used in compliance with the City's Election Campaign Control Ordinance. In each of these instances, the Commissioners recognized the Respondent's attempts to comply with the spirit of local law. In addition, because the investigations brought to light the problems faced by committees attempting to comply with both ECCO and state campaign finance law, the Commissioners recognized a need to explore potential revisions to ECCO.

The fourth stipulation, entered into with former Councilmember Byron Wear, addresses a failure to pay debts accrued during Mr. Wear's March 2000 mayoral campaign within the time period proscribed by ECCO, as well as the settlement of a debt for less than the original contract price. The Wear for Mayor Committee reported the unpaid accrued expenses, as well as the settlement of vendor debt, on a campaign statement covering the period from July 1, 2001, through December 31, 2001. The Wear stipulation resulted in a fine.