



ANNUAL REPORT
2004

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.

2004 COMMISSIONERS AND STAFF

Chair

Dorothy L.W. Smith (re-elected June 10, 2004)

Vice Chair

Dorothy Leonard (elected June 10, 2004)

Commissioners

Charles H. Dick, Jr.

April Riel

Karen Thomas-Stefano

Gregory Vega

Larry S. Westfall

Staff

Stacey Fulhorst, Executive Director

Lauri Davis, Senior Investigator

DeeDee Alari, Financial Investigator

Janet MacFarlane, Executive Secretary

Advisors

Dave James, Deputy City Attorney

Stephen Ross, Legal Assistant

LETTER FROM THE CHAIRPERSON

January 2005

Dear Mayor Murphy and Members of the City Council:

The Ethics Commission is grateful for the continued support and cooperation that have been provided by you and the staff members of your offices during the past year. We appreciate your support of Ethics Commission goals and the roles each one of you played in amending the Election Campaign Control Ordinance (ECCO) and in promoting the success of the Charter Amendment ballot proposal. After a thorough deliberative process, we now have an improved ECCO which better meets the needs of candidates, election committees, the public, and the Ethics Commission. We also now have the authority to hire independent counsel which will reduce conflict of interest concerns in regard to the Commission's legal representation.

We are also deeply indebted to the Office of the City Attorney and particularly to Rick Duvernay, Steve Ross, and Dave James, who provided outstanding legal advice and assistance to the Ethics Commission from 2001 through 2004. The Office of the City Clerk, which has partnered with the Commission since its inception, continues to provide invaluable support and assistance in implementing Commission goals.

Stacey Fulhorst, Executive Director of the Ethics Commission, has now completed her first full year as the administrator of the Commission. Her term has been characterized by energy, initiative, productivity, creativity, diligence, positive relations, and expert management, research, and follow-through. With minimal staff, she has selected and hired required personnel, expanded the physical space to accommodate staff, and has created an efficient, productive, pleasant, and smoothly run office. In addition, she has done an excellent job of maintaining and fostering positive relationships with appropriate city, county, state, media, and other offices to further Ethics Commission goals. She has remained keenly aware of the City's financial crisis and has developed and implemented a cost-effective budget which has resulted in savings that will enhance the fulfillment of the Commission's future financial needs.

The Commission's 2004 goals have either been fully achieved or are nearing completion.

The Commission has developed an effective, cost saving, in-house educational program. The online recertification program will be completed early in 2005, and the online filing program will be completed by mid-year 2005. A number of letters of advice and educational fact sheets have been posted on the Commission's website. Our Executive Secretary, Janet MacFarlane, has been instrumental in establishing "interested persons" e-mail lists, which have enabled the Commission to distribute information to the regulated community expeditiously. As a result of the Commission's educational program and the due diligence of our Senior Investigator, Lauri Davis, in investigating complaints and implementing enforcement actions, we have seen a marked decrease in violations relating to filings of Statements of Economic Interests.

In addition to the revamping of the Election Campaign Control Ordinance, other major achievements include the completion of audits of the campaign committees randomly selected from the 2002 election campaign, as well as the overwhelming 77% approval of the Charter Amendment ballot proposal which has enabled the Ethics Commission to hire its own independent General Counsel.

The Ethics Commission is proud of the progress we have made during the past year. We have been pleased to welcome Larry Westfall as a Commissioner, Dee Dee Alari, Financial Investigator, and Cristie McGuire, General Counsel. It has been my honor to serve as Chairperson of the Ethics Commission and to work with Vice-Chairpersons April Riel from 2003 to 2004 and Dorothy Leonard from 2004 to the present. The aforementioned Commissioners, along with Gregory Vega, Charles H. Dick, and Karen Thomas-Stefano provide outstanding volunteer service to the Commission, the City, and especially the citizens of San Diego.

Most sincerely yours,

Dorothy L. W. Smith
Chairperson

LETTER FROM THE EXECUTIVE DIRECTOR

January 2005

It is difficult to believe that a year has passed since my appointment as Executive Director. The rapid passing of time is undoubtedly due in large part to the many activities and accomplishments of the past year.

When the Commission considered me for the Executive Director position, I indicated that my top priority would be education and outreach. During the past year, we have issued seven Fact Sheets designed to provide the public and the regulated community with information concerning local campaign laws in straightforward, layman's terms. In addition, we have developed "interested persons" e-mail lists in order to disseminate information rapidly. We have continued our training program by providing six live training sessions for unclassified City employees. In addition, we have worked with San Diego Data Processing Corporation on the development of an on-line recertification program which will be implemented in early 2005. We have issued eleven formal advisory opinions and responded to numerous requests for informal verbal advice. I believe these educational efforts have worked as intended in that they have resulted in fewer enforcement actions arising from unknowing violations of local governmental ethics laws.

In addition, I am very pleased to report that the Commission's goals for 2004 with respect to the audit program have been met. We have hired an extremely competent Financial Investigator, and the audits of committees from the 2002 election cycle have been completed. As a result of this process, I have realized the invaluable role that audits play in connection with the education and enforcement objectives of the Commission. It is generally accepted that one of the primary purposes of campaign regulations is to ensure disclosure of information regarding campaign activities to the public. It therefore follows that the auditing of these disclosures is imperative in order to verify the accuracy of information provided to the public.

Another major accomplishment during 2004 was the City Council's adoption of a host of amendments to the City's Election Campaign Control Ordinance. In

August, the City Council unanimously approved the changes recommended by the Commission. These recommendations resulted from two years' of work by the Commissioners and staff, and reflect countless hours of time spent discussing and debating the various provisions. The resulting ordinance constitutes a vast improvement that will further the Commission's goal of reinforcing public trust in local government.

During the past year, the Commissioners and staff worked closely with the Office of the City Clerk on a financially feasible system for the electronic filing of campaign statements. The Assistant City Clerk ultimately identified a vendor willing to host the on-line filing system at a reasonable annual fee. The Commission staff subsequently worked with this vendor and the Clerk's staff on the specific requirements for the application. The system should be implemented in mid-2005. The Commission hopes that the program will ultimately be expanded to include electronic filing of lobbyist disclosure reports and Statements of Economic Interests.

Finally, during 2004, the Commission recommended a ballot measure to amend the City Charter to enable the Commission to obtain legal advice independent of the City Attorney's Office. Although the Commissioners and staff remain grateful for the invaluable assistance provided by the advisors in the City Attorney's Office, ongoing conflict of interest concerns necessitated this change. The fact that the ballot measure was unanimously supported by the City Council, the City Attorney, and both City Attorney candidates is a reflection of their commitment to an independent and effective Ethics Commission.

In closing, it is truly an honor and a privilege to serve as the Commission's Executive Director. I am proud of the Commission's accomplishments and I am optimistic about the work that lies ahead. I am also confident that the caliber and commitment of the Commissioners and the Commission staff will ensure that the Commission continues to meet the needs of the public and the regulated community.

Sincerely,

Stacey Fulhorst
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. These initial 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.

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.

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.

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.

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.

The Commission's Audit Manual was approved by the City Council on February 10, 2003.

On June 29, 2004, the City Council approved a Commission recommendation for a City Charter amendment permitting the Commission to retain legal counsel independent of the City Attorney's Office. Voters approved this Charter amendment in the November 2004 election.

On August 2, 2004, the City Council approved a complete overhaul of the City's Election Campaign Control Ordinance. The majority of the amendments will take effect on January 5, 2005.

ACTIVITIES AND ACCOMPLISHMENTS

Administrative

During 2004, the Commission staff worked with the Personnel Department to create and classify the position of Financial Investigator. In June, the Commission hired DeeDee Alari, a six-year City employee with extensive auditing experience. As a result of the City's budgetary constraints, the Financial Investigator was hired on a three-quarter time basis; however, the Commission anticipates that this will change to full time in the next fiscal year (beginning in July, 2005).

In order to accommodate the Financial Investigator, the Commission expanded its office space. The staff worked closely with the City Manager, the City's Real Estate Assets Department, and private contractors, in order to ensure that the expansion was both timely and cost-effective.

Finally, in connection with the ballot measure discussed in greater detail on page ten, the staff worked with the Personnel Department and the Civil Service Commission to create the position of Ethics Commission General Counsel. In December, the Commission hired Cristie McGuire, a former Deputy City Attorney with extensive experience involving campaign, lobbying, and conflict of interest laws.

Legislative

In September of 2002, the Ethics Commission formed an ad-hoc subcommittee to review the Election Campaign Control Ordinance [ECCO] and to consider proposed revisions and updates. During 2003, the subcommittee conducted many meetings to discuss changes required to reconcile ECCO with state law, as well as to propose policy changes and general clean-up. During 2004, the Commission made several presentations to the City Council Committee on Rules, Finance, and Intergovernmental Relations, and spent countless hours discussing proposed amendments at Commission meetings.

Ultimately, on August 2, 2004, following an extensive presentation, the City Council approved the amendments recommended by the Commission. These amendments include:

- an increase in contribution limits for Citywide races (from \$250 to \$300) and indexing of all contribution limits beginning in 2007;
- time limits on fundraising (12 months before the primary and 180 days after an election);
- candidate personal loan limits of \$100,000;
- an on-line filing requirement (when available) for candidates and committees who raise or spend more than \$10,000;
- a mechanism for creating and maintaining a legal defense fund with contribution limits of \$250 per individual per calendar year (not aggregated with campaign contribution limits);
- a requirement that candidates notify contributors that they may not be reimbursed for contributions; and
- a requirement that political advertisements include a “paid for by” disclosure in twelve-point type in contrasting ink.

The majority of these changes were to take effect on January 1, 2005; however, with the untimely death of Councilmember Lewis and the scheduling of a special

run-off election on January 4, 2005, the Commission returned to the City Council with a request to modify the effective date to January 5, 2005. This request was granted on November 8, 2004.

In addition, during 2004, the Commission continued its work with respect to the review and possible amendment of the City's Municipal Lobbying Ordinance. The Commissioners and staff reviewed legislative materials from several different jurisdictions, and met with the Executive Director of the Los Angeles Ethics Commission regarding changes recently implemented in Los Angeles. More extensive efforts concerning proposed amendments will be undertaken during 2005.

During the past year, the Commission recognized the conflict of interest concerns generated by the fact that the City Attorney's Office was required to provide advice to the Ethics Commission, as well as to individuals who fall within the Commission's jurisdiction. As a result, the Commission suggested a ballot measure to amend the City Charter and enable the Commission to obtain legal advice independent of the City Attorney's Office. The City Council approved the placement of this measure on the ballot on June 29, 2004.

The Commission staff subsequently worked with elected officials and various interested parties regarding the proposed measure. The ballot argument was ultimately signed by the Commission Chair, the Mayor, the City Attorney, and the two candidates for City Attorney. On November 2, 2004, the ballot measure was approved by the voters.

Finally, the Commission staff worked with the City Attorney and City Clerk to appropriately revise the Ethics Commission's Conflict of Interest Code to add a disclosure category for the new General Counsel position.

Education and Outreach

The Commission continued to make education and outreach top priorities throughout 2004. In particular, the Commission's efforts included the following:

- The Executive Director conducted six live training sessions for unclassified management employees of the City and various City agencies.
- The Commission staff worked extensively with the San Diego Data Processing Corporation [SDDPC] to prepare an on-line training program to facilitate re-certification for those individuals who have already received the initial training. This program should be implemented in early 2005, and will include the creation of a database to monitor the status of ethics training for all City Officials.
- The Commission staff and legal advisors prepared seven Fact Sheets to provide the general public and regulated community with information regarding the Election Campaign Control Ordinance. These Fact Sheets address fundraisers, the solicitation and acceptance of contributions, mass mailings, telephone communications, contributions from trust accounts, independent expenditures and campaign advocacy, and legal defense funds. These fact sheets are designed to enable the public to access information regarding the law in simple, straightforward, layman's terminology.
- The Commission staff developed two "interested persons" e-mail lists: one for campaign finance issues, and one for lobbying issues. These lists have enabled the staff to communicate more effectively with the regulated community concerning proposed and enacted amendments to local laws, as well as guidelines and recommendations offered in the form of Fact Sheets and advice letters.
- The Commission staff and legal advisors issued eleven formal advice letters. These advice letters address provisions in both the Election Campaign Control Ordinance and the Ethics Ordinance.

- The Commission staff provided informal verbal advice on numerous occasions to various individuals regarding the provisions of the Election Campaign Control Ordinance, the Ethics Ordinance, and the Lobbying Ordinance. In particular, the implementation of several changes to the Election Campaign Control Ordinance in October of 2004 (several weeks before the November 2004 general election) resulted in many requests for informal advice concerning political advertisements.
- The Commission continuously updated its website (www.sandiego.gov/ethics) to provide the public with timely information regarding Commission meetings, agendas, minutes, laws, complaint procedures, press releases, stipulations, and frequently asked questions.
- Throughout the past year, the Executive Director made presentations to numerous groups inside and outside the City concerning the laws within the jurisdiction of the Ethics Commission.

Electronic Filing

During 2004, the Commissioners and staff worked with the Office of the City Clerk to identify an affordable means to incorporate an electronic filing system for campaign statements. 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.

During this past year, the City Clerk's Office identified a vendor who agreed to host the City's online filing system for a reasonable annual fee. The Commission staff is currently working with the City Clerk's staff and this vendor regarding the requirements for the application.

The system should be available in mid-2005. The Commission is hopeful that the system will ultimately be expanded to include Lobbyist Disclosure Reports and Statements of Economic Interests.

AUDIT PROGRAM

The City Council approved the Commission's Audit Manual on February 10, 2003. Subsequently, on May 22, 2003, a random drawing was conducted and the following candidate controlled committees were selected for audit:

Re-Elect Donna Frye
Ralph Inzunza for City Council.

On October 9, 2003, a second random drawing was conducted for the purpose of selecting ballot measure committees for audit. At that time, the following committees were chosen:

San Diegans for the Protection of Responsible Beach Rights
Save Mission Bay, Save Our Parks

The audits began in June following the hiring of the Commission's Financial Investigator. (The audit of the Ralph Inzunza for City Council committee was placed on hold after the Commission learned that the relevant records are not available due to a pending Federal Court action.) The audit of the Re-Elect Donna Frye committee was completed in September, and the audits of the two ballot measure committees were completed in December. All three audits resulted in material findings. Accordingly, the reports have been posted on the Commission's website.

As a result of the Commission's experience auditing committees from the 2002 election cycle, as well as the recent amendments to the Election Campaign Control Ordinance, the Commission plans to propose necessary amendments to the Audit Manual in early 2005.

ENFORCEMENT – STATISTICS

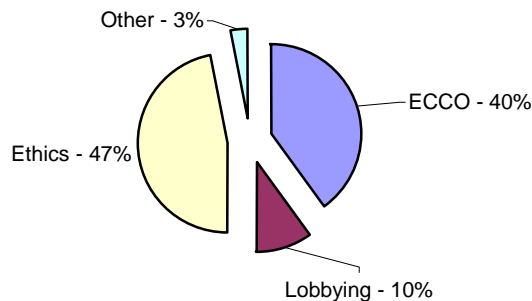
Number of Complaints

During 2004, 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. At the discretion of the Executive Director, some informal complaints and referrals from the City Clerk were processed as formal complaints and are included in the statistics below.

Types of Complaints

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

- twenty-eight complaints alleged a violation of the Election Campaign Control Ordinance;
- seven complaints alleged a violation of the Lobbying Ordinance;
- thirty-three complaints alleged a violation of the Ethics Ordinance; and
- two complaints alleged a violation of other laws (outside the jurisdiction of the Ethics Commission).



The thirty-three complaints alleging violations of the Ethics Ordinance can be broken down as follows:

- twenty-three complaints concerned the filing of Statements of Economic Interest;
- three complaints alleged participation in municipal decisions that affected personal economic interests;
- three complaints alleged misuse of position;
- three complaints concerned the disclosure of confidential information; and
- one complaint concerned the unlawful acceptance of gifts.

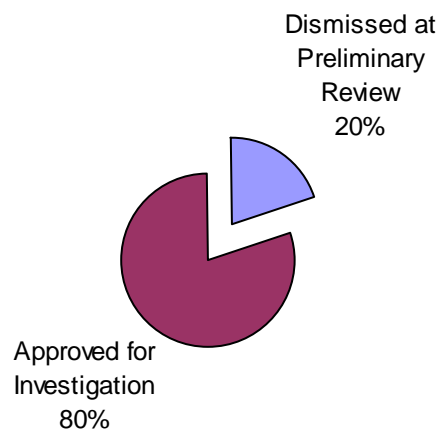
Preliminary Review

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 matter previously disposed of by the Commission, or if the complaint is based on frivolous or absurd accusations.

In 2004, the Commission processed the complaints it received as follows:

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

In addition, the Commission authorized two formal investigations as a result of material findings delineated in Final Audit Reports submitted by Commission staff.



Investigations

The fifty-six complaints submitted for formal investigation have resulted in the following disposition:

- two cases were not authorized for investigation and were dismissed by the Commission;
- twenty-three complaints were ultimately dismissed by the Commission following a staff report concerning the results of an investigation;
- thirteen complaints resulted in stipulated settlement agreements; and
- eighteen formal investigations are currently pending.

ENFORCEMENT - STIPULATIONS

During 2004, the Commission entered into thirteen stipulations in lieu of proceeding with administrative enforcement actions.

Six of these stipulations concerned the failure to timely file a Statement of Economic Interests [SEI] by the following City Officials:

- Leslie Sanguinetti, a member of the North Bay Project Area Committee;
- Aida Mancillas, a member of the Arts & Culture Commission;
- Charles Ambers, Jr., a member of the Old Town San Diego Planned District Design Review Board;
- Stephen Redfearn, a member of the Qualcomm Stadium Advisory Board;
- Kevin deFreitas, a member of the Centre City Advisory Committee; and
- Gregory Dietrich, a member of the City Heights Project Area Committee.

Each of these Respondents paid a fine in connection with the late filing of their respective Statements of Economic Interests.

In addition, the Commission entered into stipulations with registered lobbyists Kathleen McIntosh and Samuel Inzunza concerning their failures to timely file quarterly disclosure reports reflecting their lobbying activities. Both of these stipulations included the payment of a fine.

During the past year, the Commission also entered into four stipulations concerning campaign activities:

- Equity Residential Properties Management Corporation paid a fine after it reimbursed an employee for a contribution to a City candidate;

- Dwayne Crenshaw, a candidate in the 2002 District 4 City Council race, paid a fine after failing to timely file a semi-annual campaign statement;
- C. April Boling and the San Diego Police Officers Association Political Action Committee entered into a stipulation with the Commission after failing to timely file a Late Independent Expenditure Report and failing to timely disclose all independent expenditure activity (Boling paid the fine reflected in the stipulation); and
- C. April Boling and Dick Murphy entered into a stipulation with the Commission after failing to timely pay campaign vendors and failing to timely return improper contributions to contributors (Boling paid the fine reflected in the stipulation).

Finally, the Commission entered into a stipulation with Harold Sadler, the Chair of the Board of Directors of the Centre City Development Corporation. The Respondent paid a fine in connection with his failure to properly disclose his economic interests, and his failure to disqualify himself from municipal decisions when it was reasonably foreseeable that the decisions would have a material financial impact on his economic interests.

During 2004, the Commission collected a total of \$14,200 in administrative fines.