



ANNUAL REPORT
2006

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, as well as the Election Campaign Control Ordinance, and the Municipal Lobbying Ordinance. The Ethics Commission accepts complaints regarding alleged violations of laws within its jurisdiction, and protects individuals from retaliation for reporting violations. The Ethics Commission may impose fines up to \$5,000 for each violation of local governmental ethics laws.

Persons who fall within the jurisdiction of the Ethics Commission include the following:

- Mayor, Councilmembers, City Attorney, and their respective staffs
- Unclassified City managers
- City candidates & campaign committees
- Members of boards & commissions who file Statements of Economic Interests
- Members of project area committees
- Consultants who file Statements of Economic Interests
- Lobbyists

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

The Ethics Commission is separate and distinct from the Office of Ethics and Integrity, a department that endeavors to strengthen the ethical climate at the City through a program based primarily on principles and values. The Office of Ethics and Integrity reports directly to the Mayor, and has jurisdiction over all City employees who work in departments under the Mayor. Although the Ethics Commission is not affiliated with the Office of Ethics and Integrity, the Commission staff works with this office as appropriate to achieve continuity between the City's ethics laws and the City's administrative policies and procedures, and to ensure that complaints are handled by the appropriate entity.

2006 COMMISSIONERS AND STAFF

Chair

Dorothy Leonard

Vice Chair

Gil Cabrera (elected July 13, 2006)

Commissioners

W. Lee Biddle

Charles H. Dick, Jr.

Karen Thomas-Stefano

Larry Westfall

(one vacancy)

Staff

Stacey Fulhorst, Executive Director

Cristie McGuire, General Counsel

Stephen Ross, Education Program Manager

Lauri Davis, Senior Investigator

Francisco Murillo, Auditor

Katherine Hunt, Executive Secretary

LETTER FROM THE CHAIR AND EXECUTIVE DIRECTOR

January 2007

The Ethics Commission marked its sixth year of service to the City of San Diego in 2006. As in the past, it was a year of dedication and hard work by the six volunteer Commissioners and the six staff members. After the turmoil created by the special elections that took place in 2005, the 2006 election season proved to be relatively quiet with candidates for each of the four City Council seats winning outright in the June primary election. This enabled the Commission and staff to focus on a variety of legislative reforms throughout the year.

The majority of the Commission's legislative work during 2006 involved the overhaul of the City's Lobbying Ordinance, which has not been amended since 1998. In order to obtain input from the public and the regulated community, the Commission conducted workshops on a variety of lobbying topics at every regularly-scheduled Commission meeting in 2006. The Commission spent a great deal of time discussing specific provisions in the City's laws in an effort to ensure that the appropriate persons will be required to register as lobbyists, and that they will be required to disclose a sufficient amount of information to the public. The Commission presented a package of proposed reforms to the City Council Rules Committee in October, and plans to return to the Rules Committee in January of 2007, at which time the Commission hopes the Committee will finalize the amendments and forward them to the full City Council.

The Commission's legislative efforts during 2006 also included significant changes to the Commission's Investigative and Enforcement Procedures. When the Commission was created in 2001, the procedures adopted by the City Council permitted the Commission to initiate investigations only in response to complaints received from outside parties (unless the Commission discovered an apparent violation during the course of an investigation or audit). After working with the procedures for four years, the Commission found that these restrictions were preventing the Commission from responding to potential violations of the City's governmental ethics laws. In addition, the procedures were enabling complainants to use the Commission for political purposes by making allegations against their political opponents with the knowledge that the Commission could not take any action to ensure that other appropriate parties were investigated for similar wrongdoing.

In November of 2006, the City Council approved changes to the Commission's Investigative and Enforcement Procedures that will permit the Commission to initiate its own complaints. This is a very important milestone in the evolution of the Ethics Commission, and will enable the Commission to promptly investigate apparent violations of the City's ethics laws. In addition, this change will allow the Commission to act independently to ensure that the City's laws are enforced in an even-handed, non-political manner. The changes approved by the City Council will also permit the Commission to accept anonymous complaints, which should encourage people to come forward with evidence of unlawful activities without fear of retaliation.

In 2006, the Commission continued to expand its education programs. In particular, the Commission launched its on-line ethics training application, which is designed primarily for members of the City's boards and commissions who cannot attend live training sessions. Educational efforts also included the production and dissemination of numerous Fact Sheets on the City's gift laws and conflict of interest laws. Finally, the Commission expanded its live training program to include ethics training sessions for the board members and staff at several of the City's agencies, each of which was tailored to meet the needs of the specific agency.

In 2007, the Commission plans to continue to expand its live training program with additional ethics training sessions tailored for specific City boards and commissions. In addition, educational efforts in 2007 will include live training sessions and an assortment of fact sheets for lobbyists after the anticipated adoption of the proposed amendments to the City's lobbying laws. Finally, the Commission plans to work with the Office of the City Clerk to prepare and distribute a Candidate Manual for the 2008 election cycle.

The Commission is proud of its accomplishments during the past year, and appreciative of the continuing support of the City Council, both in terms of budgetary considerations and legislative reforms. We look forward to meeting the challenges presented in 2007.

Sincerely,

Dorothy Leonard
Chair

Stacey Fulhorst
Executive Director

ACTIVITIES AND ACCOMPLISHMENTS

Administrative

During the 2006 budget season, the Commission made a presentation to the City Council regarding the staff's workload and the need for additional staffing in order to accomplish the Commission's goals and objectives. The Council granted the Commission's request for two additional staff positions: a second investigator and a training officer. The Commission subsequently worked with the City's Personnel Department to appropriately classify these two positions. Once the classification process was completed in September, the Commission staff began recruitment efforts. The Commission hopes to fill both positions in the early part of 2007.

In addition, in April of 2006, the Commission's Auditor, DeeDee Alari, left the City to accept a position in the private sector. After several recruitment efforts, the Commission hired Francisco Murillo in November of 2006 to replace Ms. Alari. Mr. Murillo is a Certified Public Accountant with accounting and auditing experience in the private sector.

Legislative

The majority of the Commission's legislative work during 2006 concerned the overhaul of the City's Lobbying Ordinance. The Commission conducted thirteen public workshops during its meetings throughout the year, and addressed such topics as:

- persons who should register as lobbyists;
- activities that should be exempt from lobbying regulations; and
- information that lobbyists should disclose on registration forms and quarterly reports.

The Commission ultimately approved a package of proposed amendments in October, and made an initial presentation to the Rules Committee on October 25, 2006. As a result of input received from the Rules Committee, the Commission continued its work on the Lobbying Ordinance at Commission meetings in November and December. The Commission is scheduled to make a second presentation to the Rules Committee in January or February of 2007.

The Commission is hopeful that the proposed amendments to the Lobbying Ordinance will be approved by the Rules Committee in early 2007, and by the full City Council in the Spring of 2007. This will enable the Commission staff to prepare educational materials and conduct training sessions before the new laws take effect on January 1, 2008. The changes proposed by the Commission should ensure that the appropriate persons are registering as lobbyists, and that they are disclosing a sufficient amount of information to restore the public's trust in the lobbying process.

In addition to its extensive work on the Lobbying Ordinance, the Commission made presentations to the Rules Committee and the City Council in 2006 regarding proposed changes to the City's Ethics Ordinance. In particular, the Commission asked the City Council to amend the City's post-employment restrictions to delete the exemptions for communications relating to collective bargaining agreements. The proposed changes were approved by the Rules Committee in May, and by the City Council in September.

Also in 2006, the Commission worked on proposed changes to its own investigative and enforcement procedures. The proposed amendments were presented to the Rules Committee on September 20, 2006, and to the full City Council on November 13, 2006, at which time they were unanimously approved.

The updated procedures will enable the Commission to initiate its own investigations, and will also permit the Commission to accept anonymous complaints. These changes should result in the Commission's enforcement activities being more effective and even-handed. In addition, the changes will modify the Commissioner appointment process by expanding the previous requirement that at least one Commissioner be a former elected official (the new procedures will permit appointment of someone who has been a candidate for elective office, has served as a campaign treasurer, or has served as a high-ranking campaign official). These changes should enable the Mayor and City Council to fill the vacancy on the Commission that has existed for the past eighteen months.

During 2006, the Commission staff also worked with the City Attorney's Office and City Clerk's Office on updates to the Ethics Commission's Conflict of Interest Code. The changes were necessary to include new positions not previously designated, to update the duties of the designated positions, and to update the required filing categories for the designated positions. The amended Conflict of Interest Code was approved by the City Council on December 5, 2006.

Finally, at the request of the City Council, the Commission staff began working on amendments to the state law that prohibits local candidates and officials from opening a second bank account for purposes of establishing and maintaining a legal defense fund. During 2007, the Commission staff plans to work with the League of California Cities, the Fair Political Practices Commission, and the City's representatives in Sacramento to ensure that the proposed changes are considered during the current legislative term.

Education and Outreach

The Commission continued to make education and outreach top priorities during 2006. In particular, the Commission's efforts included the following:

- In March and April, the Commission staff conducted live training sessions on the Ethics Ordinance for the offices of the Mayor, Council Districts 2 and 8, and the Office of the Independent Budget Analyst.
- Throughout 2006, the Commission staff conducted five live training sessions on the Ethics Ordinance for unclassified management employees of the City.
- The Commission staff conducted live training sessions for City candidates and their staff on the City's campaign laws prior to the June primary election. These training sessions are designed to provide all candidates (including grass roots candidates without professional campaign consultants) with basic information on the City's campaign laws in clear and simple terminology.
- The Commission staff conducted live training sessions for the board members and staff of the Centre City Development Corporation, the Housing Commission, the San Diego Data Processing Corporation, and the Historical Resources Board. Each of these trainings was tailored to reflect the unique characteristics of the particular agency.
- The Commission implemented its on-line ethics training application. This on-line training is designed primarily for volunteer members of City boards and commissions who are unable to attend a live training session. During 2006, approximately 250 City Officials received ethics training via this on-line system.
- The Commission prepared and disseminated ten Fact Sheets on various provisions of the Ethics Ordinance, including the acceptance of gifts and various types of conflicts of interest.

- The Commission overhauled and revised eight previously-issued Fact Sheets on the Election Campaign Control Ordinance. The majority of the revisions were necessitated by changes to local campaign laws that went into effect on January 11, 2006.
- The Commission staff continued to disseminate information to the public, the regulated community, City Officials, and the media, via two “interested persons” e-mail lists: one for campaign finance issues, and one for lobbying issues.
- The Commission prepared and distributed eleven formal advice letters concerning provisions in the Election Campaign Control Ordinance and the Ethics Ordinance.
- The Commission staff responded to almost 300 requests for informal advice throughout the year from members of the regulated community. These requests are generally in the form of telephone calls or e-mails, and allow candidates, lobbyists, and City Officials to obtain immediate assistance regarding various provisions of the City’s governmental ethics laws.
- The Commission frequently updated its website (www.sandiego.gov/ethics) to provide the public with timely information regarding Commission meetings, legislative proposals, educational efforts, and enforcement activities.
- Throughout the past year, the Executive Director made presentations to groups inside and outside the City concerning the role of the Ethics Commission and the laws within its jurisdiction.

Audit Program

On April 25, 2005, a random drawing was conducted and the following candidate-controlled committees from the 2004 election cycle were selected for audit:

Financial activity between \$10,000 and \$49,999:

Kathryn Burton for City Council
Taxpayers Against Recall Abuse (Scott Peters)
Friends of Bruce Williams

Financial activity between \$50,000 and \$99,999:

Howard Wayne for City Council

Financial activity of \$100,000 or more:

Mike Aguirre for City Attorney
Friends of Toni Atkins
Deborah Berger for City Attorney
Peter Q. Davis for Mayor
Donna Frye for Mayor
Friends of Mayor Dick Murphy
San Diegans for Scott Peters 2004
San Diegans for Ron Roberts
Phil Thalheimer for City Council

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

Financial activity between \$10,000 and \$49,999:

Neighborhoods for Accountable Government – A Committee Against Prop F

Financial activity of \$100,000 or more:

No on Proposition J
Yes on Prop C, the Emergency Services Initiative

During 2005, the Commission completed the audits of the following campaigns:

Michael Aguirre for City Attorney
Kathryn Burton for City Council
Friends of Mayor Dick Murphy
Friends of Bruce Williams
The No on Proposition J Committee

In addition, during 2005, the Commission's Auditor completed the audits of lobbyist disclosure reports for calendar years 2002 and 2003.

During the first quarter of 2006, the Commission's Auditor completed the following additional campaign audits:

Peter Q. Davis for Mayor
Friends of Toni Atkins
San Diegans for Scott Peters
Taxpayers Against Recall Abuse

In addition, the Commission's Auditor completed the audits of lobbyist disclosure reports for calendar year 2005. All of these Audit Reports are posted on the Commission's website.

As discussed above, the Commission's auditing activities were temporarily put on hold in April when the Commission's Auditor left the City to take a job in the private sector. Now that a replacement Auditor has been hired, the audits of the remaining five candidate committees and two ballot measure committees from the 2004 election cycle will move forward and should be completed before the random drawing of committees from the 2005-2006 election cycles takes place in August of 2007.

ENFORCEMENT – STATISTICS

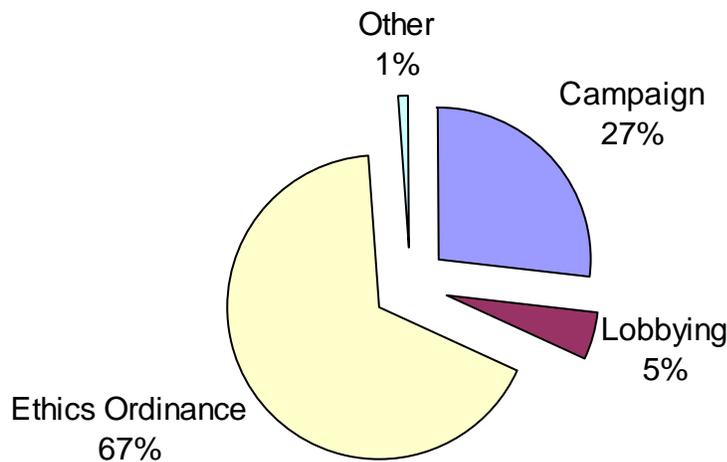
Number of Complaints

During 2006, the Ethics Commission received a total of seventy-eight complaints. Most of these complaints 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-one complaints alleged a violation of the Election Campaign Control Ordinance;
- four complaints alleged a violation of the Lobbying Ordinance;
- fifty-two complaints alleged a violation of the Ethics Ordinance; and
- one complaint alleged a violation of a law outside the jurisdiction of the Ethics Commission.



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

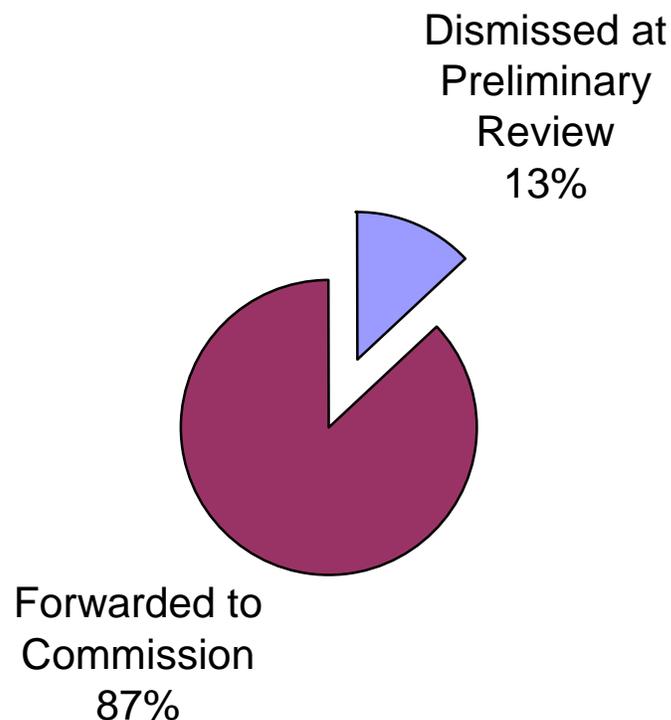
- forty-one complaints concerned the late filing of Statements of Economic Interests;
- three concerned the alleged failure to disclose specific economic interests;
- four complaints alleged the unlawful participation in municipal decisions that affected personal economic interests or those of a prospective future employer;
- two complaints concerned the disclosure of confidential information; and
- two complaints alleged retaliation for reporting illegal activities.

Preliminary Review

Commission procedures require that the Executive Director evaluate each 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 pure speculation.

In 2006, the Commission processed the complaints it received as follows:

- ten complaints were dismissed by the Executive Director during the preliminary review period;
- sixty-four complaints were reviewed by the Executive Director during the preliminary review period and forwarded to the Commission for approval to commence a formal investigation; and
- four matters were brought to the attention of the Commission after the staff discovered apparent violations of governmental ethics laws during the course of an audit or investigation.



Investigations

Out of the sixty-eight matters submitted to the Commission during 2006, sixty-four were approved for formal investigations. These cases, together with the sixty-six cases approved for investigation but not resolved during 2005, and two matters approved for investigation but not resolved during 2004, resulted in the following disposition during the 2006 calendar year:

- sixty-five complaints were ultimately dismissed by the Commission after considering the results of staff investigation;
- twenty-five complaints resulted in stipulated settlement agreements; and
- forty-two investigations are currently pending.

ENFORCEMENT - STIPULATIONS

During 2006, the Commission entered into twenty-five stipulations in lieu of proceeding with administrative enforcement actions. Six of these stipulations concerned campaign activities:

- Mayoral candidate Peter Q. Davis agreed to pay a fine of \$2,500 for failing to report accrued expenses and payments to subvendors on campaign statements.
- The San Diego County Republican Central Committee paid a \$7,000 fine for mailing improper “member communications” in connection with the January 10, 2006, special election for City Council District 8.
- Nicholas Inzunza, the former Mayor of National City and the official who controlled the Citizens for South Bay Committee, agreed to pay a fine in the amount of \$2,000 for failing to obtain and disclose occupation and employer information for contributors, and for failing to include a proper sender identification and “paid for by” disclosure on a mass mailing (200 substantially similar pieces of campaign literature sent within a single calendar month).
- Sukut Construction, Inc. and its Division President, Mike Zanaboni, paid a \$5,000 fine for the company unlawfully reimbursing three employees for contributions to the Jerry Sanders for Mayor Committee.
- Grubb & Ellis/BRE Commercial and its President and CEO, John Frager, paid a \$3,000 fine for the company unlawfully paying for contributions made in the names of Frager and his spouse to the Jerry Sanders for Mayor Committee.
- Continuing the Republican Revolution agreed to pay a \$17,000 fine for distributing a campaign mailer that violated a variety of the City’s campaign laws. In particular, this entity used contributions from organizations and contributions that exceeded local limits to distribute a mailer that supported the candidacy of Jerry Sanders in the July 2005 special mayoral election. In addition, this entity failed to disclose its activities before the special election.

One of the stipulations executed during 2006 involved violations of the City's Lobbying Ordinance. In particular, Scott Maloni, a registered lobbyist, agreed to pay a \$950 fine for failing to disclose two clients on his quarterly disclosure reports.

Finally, the Commission entered into eighteen stipulations in 2006 concerning the requirement in the City's Ethics Ordinance that City Officials timely file Statements of Economic Interests. The officials who agreed to pay fines associated with the late filing of these forms are as follows:

- Timothy Bubnack, member of the Technology Fund Board
- Arturo Castro, member of the Building Appeals & Advisory Board
- Gregory De Pena, member of the Centre City Advisory Committee
- Amy Gonyeau, member of the City Heights Project Area Committee
- Marianne Greene, member of the City Heights Project Area Committee
- Dorothy James, member of the Housing Appeals and Advisory Board
- Paul Johnson, member of the Old Town San Diego Planned District Design Review Board
- Michael Mueller, member of the College Community Project Area Committee
- William Munster, member of the North Bay Project Area Committee
- Louis Myers, Program Manager, Development Services Department
- Andrea Oates, Member of the North Bay Project Area Committee
- George Ossavou, member of the City Heights Project Area Committee
- James Smith, member of the Central Imperial Project Area Committee
- Richard Stegner, member of the City Heights Project Area Committee
- Judith St. Leger, member of the Wetlands Advisory Board

- Michael Witkin, member of the Centre City Advisory Committee
- Mary Zoeller, member of the San Diego Data Processing Corporation Board (Ms. Zoeller entered into two stipulations during 2006)

The amount of the fines associated with late filing ranged from \$100 to \$1,500, depending upon the City Official's prior history of non-compliance.

During 2006, the Commission levied a total of \$43,750 in administrative fines. These fines are paid to the City of San Diego's General Fund.