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**BEFORE THE CITY OF SAN DIEGO**  
**ETHICS COMMISSION**

In re the Matter of: ) Case No.: 2010-42  
)  
) **ADMINISTRATIVE ENFORCEMENT**  
B.D. HOWARD ) **ORDER**  
)  
Respondent. ) [SDMC § 26.0439]  
)  
) **Date:** July 12, 2012  
) **Time:** 5:00 p.m.  
) **Location:** 202 C Street, 12th Floor  
) San Diego, CA 92101

Pursuant to San Diego Municipal Code [SDMC] section 26.0435 and the request of Respondent B.D. Howard [Respondent], the Ethics Commission appointed an Administrative Law Judge (“ALJ”) to serve as the Presiding Authority in Ethics Commission Case No. 2010-42. The Administrative Hearing took place on May 11, 2012, at which time ALJ Mary Agnes Matyszewski heard testimony and reviewed evidence relating to the allegations in the Final Administrative Complaint [Administrative Complaint] brought by Petitioner against Respondent. In accordance with SDMC section 26.0437, the ALJ issued a Proposed Decision on May 17, 2012. The Proposed Decision was received by the Ethics Commission’s Executive Director on May 24, 2012, and sent via overnight mail to the Respondent on June 1, 2012. In accordance with SDMC sections 26.0437 and 26.0438, the Ethics Commission deliberated in open session on July 12, 2012.

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1           The Administrative Complaint alleges that Respondent violated the Election Campaign  
2 Control Ordinance [ECCO] in connection with his candidacy for the Eighth District City  
3 Council seat in the June 8, 2010, primary election. After deliberating pursuant to SDMC  
4 section 26.0438 with regard to each violation alleged by Petitioner in the Administrative  
5 Complaint, and based on findings of fact, conclusions of law, and the entire record of the  
6 proceedings, the Ethics Commission found by the concurring votes of at least four  
7 Commissioners as set forth in the Ethics Commission Resolution dated July 13, 2012, that  
8 Petitioner established by a preponderance of the evidence that Respondent violated ECCO as set  
9 forth below.

10           Further, for each finding of a violation of ECCO, the Ethics Commission voted on the  
11 penalty to be imposed in consideration of all of the relevant circumstances, including, but not  
12 limited to: (1) the severity of the violation; (2) the presence or absence of any intention to  
13 conceal, deceive, or mislead; (3) whether the violation was deliberate, negligent, or inadvertent;  
14 (4) whether the Respondent demonstrated good faith by consulting the Commission staff for  
15 written advice that does not constitute a complete defense; (5) whether the violation was an  
16 isolated incident or part of a pattern, and whether the violator has a prior record of violations of  
17 governmental ethics laws; (6) the existence of any mitigating information; and (7) the degree to  
18 which the Respondent cooperated with Commission staff by providing full disclosure,  
19 remedying a violation, or assisting with the investigation. SDMC §26.0438(f). Based on the  
20 concurring votes of at least five Commissioners as set forth in the Ethics Commission  
21 Resolution dated July 13, 2012, the Ethics Commission imposed on Respondent the penalties  
22 set forth below for his violations of ECCO.

23   **Counts 1 and 2 – Violation of SDMC section 27.2930**

24           SDMC section 27.2930 requires candidates to file campaign statements in the time and  
25 manner required by California Government Code sections 81000 *et seq.* In addition to the two  
26 pre-election filings required by state law, SDMC section 27.2930(e) requires City candidates to  
27 file a third pre-election campaign statement on the Friday before the election, covering the  
28 period from the last campaign statement through the Thursday before the election. Government

1 Code section 84200 requires candidates to file semi-annual statements no later than July 31 for  
2 the period ending June 30, and no later than January 31, for the period ending December 31.

3 The Ethics Commission finds that Respondent committed two violations of SDMC  
4 section 27.2930 by failing to timely file two campaign statements. The Ethics Commission's  
5 specific findings and imposition of penalties on Counts 1 and 2 are as follows:

6 **Count 1** - Respondent failed to timely file a campaign statement covering the period  
7 from May 23, 2010, through June 3, 2010, and is ordered to pay a penalty in the amount of  
8 \$1,000.

9 **Count 2** - Respondent failed to file a campaign statement covering the period from July  
10 1, 2010, through December 31, 2010, and is ordered to pay a penalty in the amount of \$1,000.

11 **Counts 3 through 6 – Violation of SDMC section 27.2930**

12 SDMC section 27.2930 requires City candidates to disclose all of the information  
13 required by state law on their campaign statements. With respect to expenditures, California  
14 Government Code section 84211 requires disclosure of the following information:

15 (e) The balance of cash and cash equivalents on hand at the beginning and the  
16 end of the period covered by the campaign statement.

17 . . . .

18 (i) The total amount of expenditures made during the period covered by the  
19 campaign statement to persons who have received one hundred dollars  
20 (\$100) or more.

21 (j) The total amount of expenditures made during the period covered by the  
22 campaign statement to persons who have received less than one hundred  
23 dollars (\$100).

24 (k) For each person to whom an expenditure of one hundred dollars (\$100) or  
25 more has been made during the period covered by the campaign statement,  
26 all of the following:

- 27 (1) His or her full name.  
28 (2) His or her street address.  
(3) The amount of each expenditure.

1 (4) A brief description of the consideration for which each expenditure  
2 was made.

3 The Ethics Commission finds that Respondent committed four violations of SDMC  
4 section 27.2930 by failing to accurately disclose information on four campaign statements. The  
5 Ethics Commission's specific findings and imposition of penalties on Counts 3 through 6 are as  
6 follows:

7 **Count 3** - Respondent failed to accurately disclose expenditures on the campaign  
8 statement covering the period from January 1, 2010, through March 17, 2010, and is ordered to  
9 pay a penalty in the amount of \$500.

10 **Count 4** - Respondent failed to accurately disclose expenditures on the campaign  
11 statement covering the period from March 18, 2010, through May 22, 2010, and is ordered to  
12 pay a penalty in the amount of \$1,000.

13 **Count 5** - Respondent failed to accurately disclose expenditures on the campaign  
14 statement covering the period from May 23, 2010, through June 3, 2010, and is ordered to pay a  
15 penalty in the amount of \$1,000.

16 **Count 6** - Respondent failed to accurately disclose expenditures and the ending cash  
17 balance on the campaign statement covering the period from June 4, 2010, through June 30,  
18 2010, and is ordered to pay a penalty in the amount of \$2,000.

19 **Count 7 - Violation of SDMC section 27.2925**

20 SDMC section 27.2925 requires candidates to maintain records in accordance with Fair  
21 Political Practices Commission Regulation 18401. With respect to expenditures, Regulation  
22 18401 requires candidates to maintain records that reflect the expenditure date, amount, payee,  
23 and a description of the goods or services for which the expenditure was made.

24 The Ethics Commission finds that Respondent violated SDMC section 27.2925 by  
25 failing to maintain copies of campaign-related records, and imposes a penalty on Count 7, as  
26 follows:

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1           **Count 7** - Respondent failed to maintain records that describe the nature of the goods or  
2 services associated with 39 expenditures totaling \$3,987.19, and is ordered to pay a penalty in  
3 the amount of \$2,500.

4                           **Counts 8 and 9 - Violations of SDMC section 27.2950**

5           SDMC section 27.2950 prohibits City candidates from accepting contributions from any  
6 person other than an individual.

7           The Ethics Commission finds that Respondent violated SDMC section 27.2950 by  
8 accepting two contributions from non-individuals. The Ethics Commission's specific findings  
9 and imposition of penalties on Counts 8 and 9 are as follows:

10           **Counts 8 and 9** - Respondent accepted two contributions from non-individuals on  
11 March 9, 2010, and May 26, 2010, and is ordered to pay a penalty in the amount of \$500.

12           Based on the findings set forth above and pursuant to SDMC section 26.0439, the Ethics  
13 Commission orders that Respondent:

- 14           (1) Cease and desist the violations of SDMC section 27.2930 by filing a campaign  
15 statement for the period from July 1, 2010, through December 31, 2010, as well as  
16 any other subsequent campaign statements necessary to terminate his committee,  
17 and by amending any previously-filed campaign statements so they are true and  
18 accurate; and
- 19           (2) Pay a monetary penalty in the amount of \$9,500 to the General Fund of the City of  
20 San Diego in accordance with the provisions of SDMC sections 26.0439(b)(3) and  
21 26.0440, within 90 days of the date this Order is served on Respondent.

22 **IT IS SO ORDERED.**

23 Dated: July 13, 2012

CITY OF SAN DIEGO ETHICS COMMISSION

24  
25 By \_\_\_\_\_  
Clyde Fuller, Chair