



THE CITY OF SAN DIEGO

August 10, 2012

Mr. Michael Zucchet
Protect Neighborhood Services Now
9620 Chesapeake Drive, Suite 203
San Diego, CA 92123

Re: Ethics Commission Audit of Protect Neighborhood Services Now, Sponsored by
San Diego Municipal Employees Association (ID # 1326869)

Dear Mr. Zucchet,

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 August 9, 2012. Although the report reflects two material findings, the Commission does not believe that the findings warrant additional administrative remedies. In summary, the Commission determined that education was more appropriate than enforcement in this situation. As a result, the Commission voted to accept the report and take no further action.

If you have any questions concerning the foregoing, please contact me at your convenience.

Sincerely,

[REDACTED]

Rosalba Gomez
Ethics Commission Auditor

Enclosure

cc: Ms. Nancy R. Haley, Treasurer
Jim Sutton, Esq.



Ethics Commission

1010 Second Avenue, Suite 1530 • San Diego, CA 92101
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THE CITY OF SAN DIEGO

FINAL AUDIT REPORT

August 6, 2012

Mr. Michael Zucchet
Protect Neighborhood Services Now,
Sponsored by San Diego Municipal Employees Association
9620 Chesapeake Drive, Suite 203
San Diego, CA 92123

Treasurer: Nancy R. Haley
Scott & Cronin, LLP
330 Encinitas Blvd., Suite 101
Encinitas, CA 92024

SAN DIEGO ETHICS COMMISSION AUDIT REPORT:

Protect Neighborhood Services Now, Sponsored by San Diego Municipal Employees Association

I. Introduction

This Audit Report contains information pertaining to the audit of the committee, Protect Neighborhood Services Now, Sponsored by San Diego Municipal Employees Association¹, Identification Number 1326869 ("the Committee") for the period from April 15, 2010, through December 31, 2011. 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 23, 2011. 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).

During the period covered by the audit, the Committee reported total contributions of \$276,010.00 and total expenditures of \$152,857.23. The monetary difference \$123,152.77 represents the cash on hand. **The audit revealed two material findings:**

- **The committee failed to timely file a paper copy of a pre-election campaign statement in violation of San Diego Municipal Code section 27.2930.**

¹ From its inception through the June 2010 primary election, the Committee was named Protect Neighborhood Services Now, Sponsored by San Diego Municipal Employees Association supporting Wayne, Young, Faulconer, Alvarez for City Council 2010. After the June 2010 primary election, the Committee's name was changed to Protect Neighborhood Services Now, Sponsored by San Diego Municipal Employees Association supporting Wayne, Alvarez for City Council 2010.



Ethics Commission

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- **The committee failed to timely file a pre-election campaign statement online in violation of San Diego Municipal Code section 27.2931.**

II. Committee Information

On May 3, 2010, 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 Kevin Faulconer, Tony Young, David Alvarez, and Howard Wayne for City Council in the June 8, 2010, primary election, and David Alvarez and Howard Wayne for City Council in the November 2, 2010, general election. The Committee has not terminated. (On July 13, 2011, the Committee was re-designated as a City general purpose committee.) The Committee's treasurer is Nancy R. Haley of Scott & Cronin, LLP.

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

Section 27.2930 – Base Level of Campaign Statements and Disclosures

Each candidate and committee shall file campaign statements in the time and manner required by California Government Code sections 81000 et seq. and title 2 of the California Code of Regulations...

California Government Code Section 84200.5 – Preelection Statements

In addition to the campaign statements required by Section 84200, elected officers, candidates, and committees shall file preelection statements as follows:

- (a) During an even-numbered year, all candidates for elective state office being voted upon in the statewide direct primary election or the statewide general election, their controlled committees, and committees primarily formed to support or oppose an elected state officer or a state candidate being voted upon, shall file the applicable preelection statements specified in Section 84200.7 or 84200.8. All elected state officers who, during the applicable reporting period covered by Section 84200.7 or 84200.8, contribute to any committee required to report receipts, expenditures, or contributions pursuant to this title, or make an independent expenditure, shall file the applicable preelection statements specified in Section 84200.7 or 84200.8. However, a candidate who is not being voted upon in the November election, his or her controlled committee, and any committee primarily formed to support or oppose that candidate is not required to file statements in connection with the November election pursuant to subdivision (b) of Section 84200.7 unless, during the reporting periods covered by Section 84200.7, the candidate, his or her controlled committee, or any committee primarily formed to support or oppose that candidate contributes to any committee required to report receipts, expenditures, or contributions pursuant to this title or makes independent expenditures.

- (b) During an even-numbered year, all candidates not specified in subdivision (a) who are being voted upon on the first Tuesday after the first Monday in June or November, their controlled committees, and committees primarily formed to support or oppose those candidates or a measure being voted upon on the first Tuesday after the first Monday in June or November of an even-numbered year shall file the preelection statements specified in subdivision (a) of Section 84200.7 in the case of a June election, or subdivision (b) of Section 84200.7 in the case of a November election.

....

California Government Code Section 84200.7 – Time for Filing Preelection Statements for Elections Held in June or November of an Even-Numbered Year

....

- (c) Preelection statements for the November election period shall be filed as follows:
 - (1) For the period ending September 30, a statement to be filed no later than October 5.

....

Section 27.2931 – Online Disclosure of Campaign Statements

....

- (b) Each candidate and committee that has received contributions or made expenditures of \$10,000 or more in connection with a City election shall use the City Clerk’s electronic filing system to file online each campaign statement required by section 27.2930. Once a candidate or committee is required to file campaign statements online, that candidate or committee shall

continue to file statements online until the committee has officially terminated.

.....

VI. Material Findings

Section 27.2930: Failure to Timely File a Paper Copy of a Campaign Statement

San Diego Municipal Code Section 27.2930 requires committees to file campaign statements in the time and manner required by California Government Code sections 81000 et. seq. and title 2 of the California Code of Regulations. California Government Code section 84200.5 requires committees to file campaign statements according to a schedule specified in Section 84200.7 for the November election period.

The Committee was primarily formed to support four candidates in the June 2012 primary election. Following the primary election in which two of these candidates won outright, the Committee planned to support the remaining two candidates as well as Proposition D (a temporary sales tax initiative). According to FPPC Regulation 18247.5, the Committee had two options after the June primary election: it could remain designated as a committee primarily formed to support City candidates, or it could re-designate itself as a City general purpose committee. The Committee opted to remain a primarily formed committee and, on September 27, 2010, it filed an amended Statement of Organization indicating that it was formed to support the remaining two candidates in the November 2010 general election.

As a committee primarily formed to support City candidates, the Committee was required to file a first pre-election statement on October 5, 2010, covering the period from July 1, 2010, through September 30, 2010. The Committee was also required to file a second pre-election statement on October 21, 2010, covering the period from October 1, 2010, through October 16, 2010. The Committee failed to file the first pre-election statement on or before October 5, 2010; however, on October 20, 2010, the Committee filed a paper copy of a campaign statement that incorrectly combined the first and second pre-election time periods thereby disclosing contributions and expenditures from July 1, 2010, through October 16, 2010.

At the post-audit conference held on July 23, 2012, the Committee's representatives pointed out that the Committee could have opted to re-designate itself as a general purpose committee after the June election, and therefore would not have been required to file a first pre-election statement on October 5, 2010 (because it did not make any contributions or independent expenditures during the reporting period). Moreover, the Committee pointed out that its activity during the first pre-election period consisted of payments for administrative expenses and receipt of un-itemized dues payments from the sponsor's members; as a result, the late filing of the first pre-election statement did not deprive the public of important information relevant to the November general election.

Section 27.2931: Failure to Timely File a Campaign Statement Online

San Diego Municipal Code section 27.2931 requires committees that receive contributions or make expenditures of \$10,000 or more in connection with a City election to use the City Clerk's electronic

filing system to file online each campaign statement in addition to a paper copy. In April 2010, the Committee received contributions in excess of \$10,000; thereafter, it was required to electronically file its campaign statements.

The Committee failed to timely file its first pre-election campaign statement online for the period covering July 1, 2010, through September 30, 2010. As noted above, this statement was due on October 5, 2010. The Committee's records indicate that it attempted to file this statement online on October 19, 2010, but the filing was rejected, apparently because the Committee had incorrectly combined the first and second pre-election reporting periods. Subsequently, on October 19, 2010, the Committee successfully filed its second pre-election campaign statement online covering the period from October 1, 2010, through October 16, 2010. The Committee did not file its first pre-election statement online until May 4, 2011, at which time it filed an amended campaign statement to coincide with a paper filing of the same amendment.

As noted above, the Committee's representatives pointed out that if the Committee had re-designated itself as a general purpose committee after the June primary election, it would not have had a first pre-election filing requirement. In addition, the Committee submitted that the public was not deprived of any important information because its activities were limited to administrative expenses and contributions from its sponsor during the reporting period.

VII. Conclusion

The audit revealed two material findings:

- **The committee failed to timely file a paper copy of a pre-election campaign statement in violation of San Diego Municipal Code section 27.2930.**
- **The committee failed to timely file a pre-election campaign statement online in violation of San Diego Municipal Code section 27.2931.**

[REDACTED]

Rosalba Gomez
Ethics Commission Auditor

Date

[REDACTED]

Lauri Davis
Ethics Commission Auditor

Date