1	STACEY FULHORST, Executive Director City of San Diego Ethics Commission 1010 Second Avenue, Suite 1530		
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3	San Diego, CA 92101 Telephone: (619) 533-3476		
4	Facsimile: (619) 533-3448		
5	Petitioner		
6			
7	BEFORE THE CITY OF SAN DIEGO		
8	ETHICS COMMISSION		
9			
10	In re the Matter of:) Case No.: 2008-30	
11	MICHAEL MUELLER,) STIPULATION, DECISION, AND ORDER	
12	Respondent.) ORDER)	
13) _)	
14	STIPULATION		
15	THE PARTIES STIPULATE AS FOLLOWS:		
16	Petitioner Stacey Fulhorst is the Executive Director of the City of San Diego Ethics		
17	Commission [Ethics Commission]. The Ethics Commission is charged with a duty to administer,		
18	implement, and enforce local governmental ethics laws contained in the San Diego Municipal		
19	Code [SDMC] relating to, among other things, the filing of Statements of Economic Interests		
20	[SEIs] as required by the City's Ethics Ordinan	ce.	
21	2. At all times mentioned herein, Michael Mueller was a member of the College		
22	Community Project Area Committee [CCPAC]. Mueller is referred to herein as "Respondent."		
23	3. This Stipulation will be submitted	for consideration by the Ethics Commission at its	
24	next scheduled meeting, and the agreements co	ntained herein are contingent upon the approval	
25	of the Stipulation and the accompanying Decision and Order by the Ethics Commission.		
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27	1//		
28	111		
	-1- STIPULATION, DECISION, AND ORDER		
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- 4. This Stipulation resolves all factual and legal issues raised in this case by the Ethics Commission without the necessity of holding an administrative hearing to determine Respondent's liability.
- 5. Respondent understands and knowingly and voluntarily waives any and all procedural rights under the SDMC, including, but not limited to, a determination of probable cause, the issuance and receipt of an administrative complaint, the right to appear personally in any administrative hearing held concerning this case, the right to confront and cross-examine witnesses testifying at a hearing, the right to subpoena witnesses to testify at a hearing, and the right to have the Ethics Commission or an impartial hearing officer hear this case. Respondent agrees to hold the City of San Diego harmless from any and all claims or damages resulting from the Commission's investigation or this stipulated agreement, or any matter reasonably related thereto. Respondent further agrees that the terms of this Stipulation constitute compliance with the provisions of SDMC section 26.0450 in that the Stipulation includes a recitation of facts, a reference to each violation, and an order.
- 6. Respondent acknowledges that this Stipulation is not binding upon any other law enforcement or government agency and does not preclude the Ethics Commission from referring this case to, cooperating with, or assisting any other law enforcement or government agency with regard to this or any other related matters.
- 7. The parties agree that in the event the Ethics Commission refuses to accept this Stipulation, it shall become null and void. Respondent further agrees that in the event the Ethics Commission rejects the Stipulation and a full evidentiary hearing before the Ethics Commission becomes necessary, no member of the Ethics Commission or its staff shall be disqualified because of prior consideration of this Stipulation.

Summary of Law and Facts

8. As a member of the CCPAC, Respondent is a "Local Code Filer" as that term is defined by SDMC section 27.3503, and is required to file SEIs in the time and manner set forth in SDMC section 27.3510.

- 9. SDMC section 27.3510 requires Local Code Filers to file an annual SEI on or before April 1 of each year covering the period from January 1 through December 31 of the previous calendar year. In addition, SDMC section 27.3510 requires Local Code Filers to disclose their economic interests pursuant to the applicable Conflict of Interest Code adopted by the City Council. The CCPAC is subject to the Conflict of Interest Code for Redevelopment Agency Project Area Committees. According to this Conflict of Interest Code, Respondent is required to disclose income from business entities engaged in property development or construction within the College Community Redevelopment Project Area.
- 10. During the 2007 calendar year, Respondent was employed by Midwest General, Inc., as a Project Engineer, and received more than \$500 in income. Midwest General is a construction and development services company doing business within the College Community Redevelopment Project Area.
- 11. Respondent filed his annual SEI for calendar year 2007 on July 15, 2008, approximately fifteen weeks late.
- 12. Respondent reported on his annual SEI for 2007 that he had no reportable interests to disclose. Specifically, Respondent failed to disclose income he received from Midwest General, Inc. during the 2007 calendar year.

Counts

Counts 1 and 2 – Violations of SDMC section 27.3510

- 13. Respondent failed to timely file his annual SEI for calendar year 2007 as a member of the CCPAC, as required by SDMC section 27.3510. Despite the fact that his annual SEI was due on April 1, 2008, Respondent did not file it until July 17, 2008, approximately fifteen weeks late.
- 14. Respondent failed to disclose his economic interests in accordance with SDMC section 27.3510. Specifically, on his annual SEI for 2007, Respondent failed to disclose income of \$500 or more from Midwest General, an entity that was engaged in construction and development in the College Community Redevelopment Project Area and was therefore a reportable source of income pursuant to the applicable Conflict of Interest Code.

1	<u>Factors in Aggravation</u>		
2	15. The City Clerk sent Respondent numerous letters regarding his filing		
3	responsibilities, both before and after the filing deadline for his 2007 annual SEI. Despite these		
4	efforts by the City Clerk, Respondent failed to timely file his 2007 annual SEI.		
5	16. Respondent has a prior history of not timely filing SEIs. In particular, as a		
6	member of the CCPAC, Respondent entered into a stipulation with the Ethics Commission on		
7	November 9, 2006, and paid a \$200 fine associated with the late filing of his 2005 annual SEI.		
8	<u>Conclusion</u>		
9	17. Respondent agrees to pay a fine in the amount of \$2,000 for violating SDMC		
10	section 27.3510. This fine will be waived, however, if Respondent appears with Ethics		
11	Commission staff at the meetings of five different Project Area Committees prior to September		
12	1, 2009, to speak to committee members about the importance of adhering to the provisions of		
13	the City's Ethics Ordinance, including the timely filing of SEIs and the accurate disclosure of		
14	economic interests.		
15	18. Respondent agrees that if he fails to satisfy the condition set forth in paragraph 17		
16	prior to September 1, 2009, he will pay the \$2,000 fine no later than September 30, 2009, by		
17	check or money order made payable to the City Treasurer. Respondent acknowledges that if the		
18	fine is not timely paid in full, the Commission may refer the collection of the fine to the City		
19	Treasurer's Collection Division, which may pursue any or all available legal remedies to recover		
20	late penalties, interest, and costs, in addition to seeking the outstanding balance owed.		
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22	DATED:		
23	STACEY FULHORST, Executive Director ETHICS COMMISSION, Petitioner		
24	ETTICS COMMISSION, Feddolei		
25	DATED:		
26	MICHAEL MUELLER, Respondent		
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	-4- STIPULATION DECISION AND ORDER		

DECISION AND ORDER The Ethics Commission considered the above Stipulation at its meeting on ______, 2009. The Ethics Commission hereby approves the Stipulation and agrees to waive the \$2,000 fine if Respondent satisfies the conditions set forth in paragraph 17. Alternatively, if Respondent fails to satisfy the conditions set forth in paragraph 17, the Ethics Commission orders that Respondent pay a fine in the amount of \$2,000 on or before September 30, 2009. DATED:_____ Guillermo Cabrera, Chair SAN DIEGO ETHICS COMMISSION