

1 STACEY FULHORST, Executive Director
City of San Diego Ethics Commission
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5 Petitioner

6
7 **BEFORE THE CITY OF SAN DIEGO**
8 **ETHICS COMMISSION**

9
10 In re the Matter of:) Case No.: 2010-07
11)
11 BARTELL & ASSOCIATES,) **STIPULATION, DECISION AND**
12) **ORDER**
12 Respondent.)
13)
13)

14 **STIPULATION**

15 **THE PARTIES STIPULATE AS FOLLOWS:**

16 1. Petitioner Stacey Fulhorst is the Executive Director of the City of San Diego
17 Ethics Commission [Ethics Commission]. The Ethics Commission is charged with a duty to
18 administer, implement, and enforce local governmental ethics laws contained in the San Diego
19 Municipal Code [SDMC] relating to, among other things, the provisions of the City's Municipal
20 Lobbying Ordinance [Lobbying Ordinance].

21 2. At all times mentioned herein, Respondent Bartell & Associates [Respondent] was
22 a registered lobbying firm. Respondent's principal, Jim Bartell, has been registered as a lobbyist
23 with the Office of the City Clerk since 1998.

24 3. This Stipulation, Decision and Order [Stipulation] will be submitted for
25 consideration by the Ethics Commission at its next scheduled meeting, and the agreements
26 contained herein are contingent upon the approval of the Stipulation and the accompanying
27 Decision and Order by the Ethics Commission.

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1 4. This Stipulation resolves all factual and legal issues raised in this matter by the
2 Ethics Commission without the necessity of holding an administrative hearing to determine the
3 Respondent's liability.

4 5. Respondent understands and knowingly and voluntarily waives any and all
5 procedural rights under the SDMC, including, but not limited to, a determination of probable
6 cause, the issuance and receipt of an administrative complaint, the right to appear personally in
7 any administrative hearing held in this matter, the right to confront and cross-examine witnesses
8 testifying at the hearing, the right to subpoena witnesses to testify at the hearing, and the right to
9 have the Ethics Commission or a volunteer hearing officer hear this matter. Respondent agrees
10 to hold the City of San Diego harmless from any and all claims or damages resulting from the
11 Commission's investigation or this stipulated agreement, or any matter reasonably related
12 thereto. Respondent further agrees that the terms of this Stipulation constitute compliance with
13 the provisions of SDMC section 26.0450 in that the Stipulation includes a recitation of facts, a
14 reference to each violation, and an order.

15 6. The Respondent acknowledges that this Stipulation is not binding upon any other
16 law enforcement or government agency and does not preclude the Ethics Commission from
17 cooperating with or assisting any other law enforcement or government agency with regard to
18 this or any other related matter.

19 7. The parties agree that in the event the Ethics Commission refuses to accept this
20 Stipulation, it shall become null and void. Respondent further agrees that in the event the Ethics
21 Commission rejects the Stipulation and a full evidentiary hearing before the City Ethics
22 Commission becomes necessary, no member of the Ethics Commission or its staff shall be
23 disqualified because of prior consideration of this Stipulation.

24 **Summary of Law and Facts**

25 8. The Lobbying Ordinance requires lobbying firms to register with the City Clerk
26 within ten calendar days of receiving or becoming entitled to receive any amount of
27 compensation to engage in lobbying and having at least one direct communication with a City
28 Official for the purpose of influencing a municipal decision. SDMC § 27.4007.

1 9. The Lobbying Ordinance requires registered lobbying firms to file quarterly
2 disclosure reports no later than the last day of the months of April, July, October, and January,
3 covering the preceding calendar quarter. SDMC §§ 27.4015, 27.4016.

4 10. Respondent registered as a lobbying firm for the 2009 calendar year on January 12,
5 2009.

6 11. Respondent failed to timely file a disclosure report for the fourth quarter of 2009.
7 Although this report was due on February 1, 2010 (January 31, 2010 fell on a Sunday), he did
8 not file it until April 6, 2010, and only after he was contacted by Commission staff. This
9 disclosure report revealed that, during the reporting period, Respondent's clients included
10 Village Lindo Paseo and Urban Housing Communities, and that the decisions its principal
11 influenced on behalf of these clients included a proposed project at 5565 – 5633 Lindo Paseo and
12 a mixed-use development at 4744 Market Street.

13 12. Respondent's principal had his first contact (on behalf of a paying client) with a
14 City Official for the purpose of influencing a municipal decision in the 2010 calendar year on
15 March 3, 2010. Accordingly, Respondent was required to renew its registration on or before
16 March 15, 2010 (March 13, 2010, fell on a Saturday). Respondent filed its registration form for
17 the 2010 calendar year on April 6, 2010, but did not disclose any information concerning the
18 firm's clients on this form. On April 15, 2010, Respondent filed an amended registration form to
19 properly disclose information concerning its clients. In particular, this amended registration
20 form indicates that Respondent's clients include GRH, LLC, and 21 Mira Mesa, LLC, and that
21 Respondent intends to influence the following municipal decisions on behalf of its clients:
22 amendments to development agreements for the Gaslamp Renaissance Hotel, and construction of
23 three office buildings in Mira Mesa.

24 **Counts**

25 **Count 1 – Violation of SDMC section 27.4015 and 27.4016**

26 13. Respondent failed to timely file its quarterly disclosure report for the fourth
27 quarter of 2009 as required by SDMC sections 27.4015 and 27.4016. Respondent's quarterly

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1 disclosure report for the fourth quarter of 2009 was due on February 1, 2010, but Respondent did
2 not file it until April 6, 2010, sixty-four days late.

3 **Count 2 – Violation of SDMC section 27.4007**

4 14. Respondent failed to timely register for the 2010 calendar year. Respondent met
5 the registration threshold on March 3, 2010, but did not file a complete registration form until
6 April 15, 2010, thirty-one days late.

7 **Factors in Aggravation**

8 15. Respondent is an experienced lobbyist in the City of San Diego. There is,
9 therefore, a reasonable expectation that Respondent was aware of the registration and quarterly
10 filing requirements in the City’s Municipal Lobbying Ordinance.

11 16. Respondent and its principal have an extensive history of late filing, as follows:

<u>Calendar Quarter</u>	<u>Filing Deadline</u>	<u>Date Filed</u>	<u>Days Past Due</u>
1st quarter 2002	April 30, 2002	August 22, 2002	114
2nd quarter 2002	July 31, 2002	August 22, 2002	22
4th quarter 2002	January 31, 2003	February 4, 2003	4
1st quarter 2003	April 30, 2003	June 23, 2003	54
1st quarter 2005	April 30, 2005	October 18, 2005	171
2nd quarter 2006	July 31, 2006	August 11, 2006	11
4th quarter 2006	January 31, 2007	March 13, 2007	41
4th quarter 2007	January 31, 2008	February 12, 2008	12

21 17. The City Clerk sent Respondent numerous letters regarding its registration and
22 quarterly filing responsibilities, both before and after the filing deadlines. Despite these efforts
23 by the City Clerk, Respondent failed to timely file its 2009 fourth quarter disclosure report, and
24 failed to timely register as a lobbying firm in 2010.

25 18. Respondent’s failure to timely disclose its lobbying activities and renew its
26 registration resulted in the public and City Officials being deprived of timely information
27 concerning its principal’s compensated efforts to influence multiple municipal decisions on
28 behalf of the firm’s clients.

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Factors in Mitigation

19. Respondent's principal has cooperated fully with the Ethics Commission's investigation.

Conclusion

20. Respondent agrees to take necessary and prudent precautions to comply with all provisions of the Municipal Lobbying Ordinance in the future.

21. Respondent's principal, Jim Bartell, agrees to pay a fine in the amount of \$1,500. This amount must be paid to the City Treasurer no later than August 31, 2010, by check, money order, or credit card. Respondent's principal acknowledges that if the fine is not timely paid in full, the Commission may refer the collection of the fine to the City Treasurer's Collection Division, which may pursue any or all available legal remedies to recover late penalties, interest, and costs, in addition to seeking the outstanding balance owed.

DATED: _____

STACEY FULHORST, Executive Director
ETHICS COMMISSION, Petitioner

DATED: _____

JIM BARTELL, President
BARTELL & ASSOCIATES, Respondent

DECISION AND ORDER

The Ethics Commission has considered the above Stipulation at its meeting on July 8, 2010. The Ethics Commission hereby approves the Stipulation and orders that, in accordance with the Stipulation, Respondent pays a fine in the amount of \$1,500.

DATED: _____

LARRY WESTFALL, Chair
SAN DIEGO ETHICS COMMISSION