STACEY FULHORST, Executive Director
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Petitioner

BEFORE THE CITY OF SAN DIEGO
ETHICS COMMISSION

In re the Matter of: DONNA FRYE, Respondent.

STIPULATION

THE PARTIES STIPULATE AS FOLLOWS:

1. Petitioner Stacey Fulhorst is the Executive Director of the City of San Diego Ethics Commission [Ethics Commission]. The Ethics Commission is charged with a duty to administer, implement, and enforce local governmental ethics laws contained in the San Diego Municipal Code [SDMC] relating to, among other things, the provisions of the City’s Election Campaign Control Ordinance [ECCO].

2. At all times mentioned herein, Donna Frye [Frye] was the Councilmember for City Council District 6 in the City of San Diego, and a candidate for Mayor of the City of San Diego in the November 2, 2004, general election. The Donna Frye for Mayor committee is a campaign committee registered with the State of California (Identification No. 1270953) established to support Councilmember Frye’s bid for Mayor in the 2004 general election. At all relevant times herein, the committee was controlled by Councilmember Frye within the meaning of the California Political Reform Act, California Government Code section 82016. Councilmember Frye is referred to herein as “Respondent.”
3. This Stipulation will be submitted for consideration by the Ethics Commission at its next scheduled meeting, and the agreements contained herein are contingent upon the approval of the Stipulation and the accompanying Decision and Order by the Ethics Commission.

4. This Stipulation resolves all factual and legal issues raised in this matter 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 in this matter, the right to confront and cross-examine witnesses testifying at the hearing, the right to subpoena witnesses to testify at the hearing, and the right to have the Ethics Commission or an impartial hearing officer hear this matter. 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 matter to, cooperating with, or assisting any other law enforcement or government agency with regard to this or any other related matter.

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. Because the Donna Frye for Mayor committee is a committee formed for the purpose of supporting a candidate in a City of San Diego election, Respondent is required to comply with the provisions of ECCO.
9. ECCO, at SDMC section 27.2903, defines “mass mailing” as 200 or more substantially similar pieces of campaign literature sent within a single calendar month. SDMC section 27.2970 (formerly SDMC section 27.2955), states in part:

(a) It is unlawful for any candidate or committee to send a mass mailing for the purpose of supporting or opposing a City candidate or City measure unless:

(1) the name, street address, and city of the candidate or committee sending the mailing are shown on the outside of each piece of mail in the mass mailing in a typeface that is easily legible, contrasts with the background, and is no less than 12 points in size; and

(2) each mailing includes the words “paid for by” immediately followed by the name, street address, and city of that candidate or committee in a typeface that is easily legible, contrasts with the background, and is no less than 12 points in size.

10. After the requirements set forth in SDMC section 27.2970 (formerly SDMC section 27.2955) took effect on October 7, 2004, and prior to the November 2, 2004, general election, Respondent sent out three mass mailings supporting her candidacy for Mayor. Each of the mailings included the following statements:

• "Write in Donna Frye for Mayor" in approximately 40 point type size;

• "This is an unofficial, marked ballot prepared by the office of Donna Frye for Mayor" in approximately 17 point type size (this statement appeared next to an unofficial marked ballot);

• “Find out more at www.DonnaFryeforMayor.com or call me at (858) 569-8920" in approximately 15 point type size.

In addition, each of the three mailers included the requisite sender identification and "paid for by" disclosure. Although both disclosures appeared in an easily legible typeface and in a color that contrasts with the background, they did not appear in the mandatory 12-point type size. On one mailer, the sender identification appeared in 9-point type size, while the "paid for
by” disclosure appeared in 7-point type size. On the second and third mailers, the sender identification appeared in 9-point type size, and the "paid for by disclosure" appeared in 8-point type size.

Counts 1 through 3

Violations of SDMC section 27.2970

11. Respondent failed to properly identify the “sender” of three mass mailings in 12-point type size, as required by SDMC section 27.2970. Instead, the Respondent identified the Committee as the “sender” in 9-point type. In addition, Respondent failed to provide the “paid for by” disclosure in 12-point type size, as required by SDMC section 27.2970. One of the mailings distributed by Respondent included the “paid for by” disclosure in 7-point type, while the other two mailings included the “paid for by” disclosure in 8-point type.

Factors in Mitigation

12. Respondent has cooperated fully with the Ethics Commission investigation.

Factors in Aggravation

13. As a Councilmember, Respondent voted to approve a host of amendments to ECCO on August 2, 2004. Respondent was therefore well aware of the new requirements concerning mass mailings, and was also aware that the City Council voted to make this new provision effective on October 7, 2004.
14. Respondent agrees to pay a fine in the amount of $3,000 for violating SDMC section 27.2970. Respondent agrees to pay this amount no later than April 14, 2005.

15. This Stipulation shall not become effective until Respondent has provided to the Ethics Commission the amount set forth in paragraph 14, by check or money order made payable to the City Treasurer.

DATED: ________________
STACEY FULHORST, Executive Director
ETHICS COMMISSION, Petitioner

DATED: ________________
DONNA FRYE, Respondent

DECISION AND ORDER

The Ethics Commission considered the above Stipulation at its meeting on April 25, 2005. The Ethics Commission hereby approves the Stipulation and orders that, in accordance with the Stipulation, Respondent pay a fine in the amount of $3,000.

DATED: ________________
Dorothy L.W. Smith, Chair
SAN DIEGO ETHICS COMMISSION