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

BEFORE THE CITY OF SAN DIEGO
ETHICS COMMISSION

In re the Matter of:  )  )
MYRTLE COLE,  )  )
 )  )
 )  )
 )  )
 )  )
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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, Myrtle Cole was a candidate for City Council District 4 in the March 26, 2013, special election. The Myrtle Cole for City Council 2013 committee (Identification No. 1354342) [Committee] was a campaign committee registered with the State of California established to support Ms. Cole’s candidacy for Council District 4. At all relevant times herein, the Committee was controlled by Ms. Cole within the meaning of the California Political Reform Act, California Government Code section 82016. Ms. Cole is referred to herein as “Respondent.”

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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 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 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 Committee was 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 prohibits City candidates from directly or indirectly soliciting campaign contributions from persons they know to be City employees. SDMC §27.2946. In order to avoid violations of this law, candidates are advised to comb their e-mail lists and remove those that end with a domain name associated with the City of San Diego or any of its agencies (e.g., sandiego.gov). This advice was provided during a January 24, 2013, candidate training for the District 4 special election, which the Respondent attended.

10. Respondent’s campaign fundraiser used the Committee’s e-mail account to send several different e-mails to more than 3,000 recipients. Three of these emails, which included solicitations for campaign contributions, were sent to City employees at their sandiego.gov email addresses, as follows:

- an e-mail dated February 7, 2013, was sent to the main office email accounts for Councilmembers David Alvarez, Marti Emerald, Bob Filner, and Todd Gloria;
- an e-mail dated February 15, 2013, was sent to Lynn Sharpe-Underwood, the Executive Director of the City’s Gang Commission, and Nathan Slegers, a Deputy City Attorney; and
- an e-mail dated February 25, 2013, was sent to Lynn Sharpe-Underwood.

Counts

Count 1 - Violation of SDMC section 27.2946

11. Respondent violated SDMC section 27.2946 when her campaign fundraiser sent three e-mails to the City employees identified above in Paragraph 10 that included solicitations for campaign contributions.

Factors in Aggravation

12. The prohibition on soliciting campaign contributions from City employees was adopted by the City in order to ensure that City employees do not feel pressured or obligated to make monetary contributions to candidates who have or could have some influence over the
terms of their employment. In this case, Respondent repeatedly solicited contributions from the Executive Director of the Gang Commission, a position that has historically worked very closely with the office of Council District 4, even after Respondent was notified of the Commission’s investigation.

Factors in Mitigation

13. Respondent has fully cooperated with the Ethics Commission’s investigation.

Conclusion

14. Respondent agrees to take necessary and prudent precautions to comply with all provisions of the Election Campaign Control Ordinance in the future.

15. Respondents acknowledge that the Ethics Commission may impose increased fines in connection with any future violations of the City’s campaign laws.

16. Respondent agrees to pay a fine in the amount of $500 for violating SDMC section 27.2946. This amount must be paid no later than May 10, 2013, by check or money order made payable to the City Treasurer. The submitted payment will be held pending Commission approval of this Stipulation and execution of the Decision and Order portion set forth below.

DATED:__________________  __________________________________________

STACEY FULHORST, Executive Director
ETHICS COMMISSION, Petitioner

DATED:__________________  __________________________________________

MYRTLE COLE, Respondent

DECISION AND ORDER

The Ethics Commission considered the above Stipulation at its meeting on __________, 2013. The Ethics Commission hereby approves the Stipulation and orders that, in accordance with the Stipulation, Respondent pay a fine in the amount of $500.

DATED:__________________  __________________________________________

CLYDE FULLER, Chair
SAN DIEGO ETHICS COMMISSION

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