STACEY FULHORST, Executive Director  
City of San Diego Ethics Commission  
1010 Second Avenue, Suite 1530  
San Diego, CA  92101  
Telephone: (619) 533-3476  
Facsimile: (619) 533-3448

Petitioner

BEFORE THE CITY OF SAN DIEGO  
ETHICS COMMISSION  

In re the Matter of:  
COMMUNITY COALITION FOR MYRTLE  
COLE FOR CITY COUNCIL 2013; and  
AMERICAN FEDERATION OF STATE,  
COUNTY AND MUNICIPAL EMPLOYEES  
DISTRICT 36,  

Respondents.  

Case No.:  2013-13

STIPULATION, DECISION, AND ORDER

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 Election Campaign Control Ordinance [ECCO], SDMC section 27.2901, et seq.

2. At all times mentioned herein, American Federation of State, County, and Municipal Employees District Council 36 [AFSCME 36] represented the interests of various local affiliated unions, including Local 127 in San Diego, and was the sponsor of Community Coalition for Myrtle Cole for City Council 2013 [CCMC] (registered with the State of
California, Identification No. 1356242). CCMC was formed to support the candidacy of Myrtle Cole in the special election on March 26, 2013. AFSCME 36 and CCMC are collectively referred to herein as “Respondents.”

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 Respondents’ liability.

5. Respondents understand and knowingly and voluntarily waive 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. Respondents agree to hold the City of San Diego harmless from any and all claims or damages resulting from the Commission’s investigation, this stipulated agreement, or any matter reasonably related thereto. Respondents further agree 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. Respondents acknowledge 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. Respondents further agree that in the event the Ethics Commission rejects the Stipulation and a full evidentiary hearing before the Ethics Commission

///

STIPULATION, DECISION, AND ORDER
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 CCMC was formed for the purpose of supporting a City candidate, Respondents are required to comply with the provisions in ECCO.

9. ECCO requires committees to file campaign statements in the time and manner required by California Government Code section 81000, *et seq.* and the regulations adopted by the Fair Political Practices Commission [FPPC]. It is unlawful under ECCO to fail to comply with the disclosure requirements of ECCO and state law. SDMC § 27.2930(j).

10. California Government Code section 84101 requires the filing of a Statement of Organization [Form 410] within 10 days after qualification as a committee, and Government Code section 84102 requires the filing of an amended Form 410 within 10 days of any change in information contained therein. The Form 410 must be filed with the Secretary of State and with the local filing officer where the committee will be required to file campaign statements.

11. According to SDMC section 27.2903, a committee is “sponsored” by another entity if any of the following criteria apply: the committee receives 80% or more of its contributions either from the entity or from the entity’s members; the entity collects contributions for the committee by use of dues from its members; the entity (alone or with other entities) provides administrative services for the committee; or the entity (alone or with other entities) sets the committee’s policies for soliciting contributions or making expenditures. ECCO requires sponsored committees participating in City elections to adhere to the reporting obligations set forth in FPPC Regulation 18419. SDMC § 27.2930(i). Regulation 18419 requires a committee that is sponsored by another entity to include the name of the sponsor in the name of the committee, and to identify the sponsor and the sponsor’s industry group or affiliation on the committee’s Form 410.

12. Any committee that made independent expenditures totaling $1,000 or more to support or oppose a City candidate in the 90 day period preceding the special election on March

///
26, 2013, was required to file a Late Independent Expenditure Report [Form 496] within 24
hours with the City Clerk. Cal. Gov’t Code §§ 82036.5, 84204.

13. In addition to the above filing requirements, ECCO mandates that all committees
that pay for mass campaign literature (200 substantially similar pieces of campaign literature) for
the purpose of supporting or opposing a City candidate or measure include the words “paid for
by” followed by the name and address of the committee. SDMC § 27.2970. This disclosure
must be made in a typeface that is easily legible, contrasts with the background, and is no less
than 12 points in size. Id.

14. A summary of the campaign activities of the Respondents and their vendors is as
follows:

(a) Adam Acosta, Assistant Executive Director of AFSCME 36, retained John
Piotrowski, principal of New Nations Strategies, to establish and operate an independent
expenditure committee to support Myrtle Cole’s candidacy in the March 26, 2013, special
election.

(b) John Piotrowski served as the treasurer for CCMC and prepared and filed the
committee’s campaign statements. New Nations Strategies was paid $1,500 by AFSCME 36 for
work provided to CCMC, including voter data analysis, accounting, filing paperwork, filing
costs, and travel.

(c) Marcos Cardenas, the Business Representative for AFSCME 36, worked with
Mr. Acosta on the fundraising and political strategy for CCMC.

(d) Chris Wilson, the principal of CRW Enterprises, served as a consultant to
CCMC. He was paid $3,612.51 by AFSCME Local 127 for labor consulting and field
coordination. Mr. Acosta represented that Wilson’s invoice was an unanticipated overcharge;
however this information could not be corroborated. Mr. Wilson retained fifteen individuals to
serve as canvassers in Council District 4 for CCMC. He prepared a walk script and campaign
literature in support of Myrtle Cole’s candidacy and provided these materials to the canvassers.
///
///
(e) Between March 22 and March 26, 2013, the canvassers walked “door to door” in Council District 4, reciting the walk script and distributing the campaign literature prepared by Mr. Wilson. The canvassers were paid a total of $8,889.38 by CCMC.

(f) Funding for CCMC to pay the canvassers came from two sources: a contribution from AFSCME 36 in the amount of $6,500 and a contribution from PowerPAC.org Voter Fund in the amount of $2,500.

15. The Commission’s investigation reveals that Respondent CCMC is sponsored by Respondent AFSCME 36. AFSCME 36 and its employees and agents were responsible for establishing CCMC and directing its activities, including setting its policies for soliciting contributions and making expenditures. Consequently, Respondent CCMC was required to include AFSCME 36 in its committee name, and to identify the name, address, and industry of AFSCME 36 on its Form 410.

16. On March 15, 2013, Respondents filed a Form 410 with the Secretary of State. Although Respondents were also required to promptly file this Form 410 with the City of San Diego, they delayed this filing until April 18, 2013, after they had received a committee identification number from the Secretary of State. Respondents failed to identify AFSCME 36 as the sponsor of CCMC on this Form 410, as well as on all subsequent campaign disclosure statements filed with the City Clerk.

17. On March 29, 2013, three days after the special election, Respondents filed a Form 496 with the City Clerk disclosing the $8,889.38 paid to canvassers. Respondents incorrectly disclosed the date of the expenditure as March 26, 2013, when in fact Respondents had reached the $1,000 filing threshold on March 23, 2013, necessitating the filing of an initial Form 496 on March 24, 2013, and subsequent Forms 496 on March 25 and 26, 2013.

18. As discussed above in Paragraphs 14(b) and (d), AFSCME 36 and AFSCME Local 127 made payments directly to CCMC vendors. These in-kind contributions to CCMC were never disclosed on campaign statements filed by CCMC with the City Clerk (although the payment by AFSCME 36 in the amount of $1,500 to New Nation Strategies was disclosed on a campaign statement filed by AFSCME 36 with the Secretary of State).
19. As discussed above in Paragraph 14(d), Respondents produced and distributed mass campaign literature that was distributed by canvassers to residents of Council District 4 between March 22 and 26, 2013. The “paid for by” disclosure printed on this literature did not include the full name of the committee as required by ECCO. In particular, the disclosure indicated that the literature was paid for CCMC but did not identify AFSCME 36 as the committee’s sponsor.

Counts

Counts 1 and 2 - Violation of SDMC section 27.2930

20. Respondents violated SDMC section 27.2930 by failing to identify AFSCME 36 as the sponsor of CCMC on campaign statements filed with the City Clerk, and by failing to disclose the in-kind contributions made by AFSCME 36 and AFSCME Local 127 totaling 5,112.51.

21. Respondents violated SDMC section 27.2930 by failing to timely file Forms 496 with the City Clerk disclosing independent expenditures made on March 23, 24, and 25, 2013. Respondents filed a Form 496 on March 29, five days late and three days after the special election.

Count 3 - Violation of SDMC section 27.2970

22. Respondents violated SDMC section 27.2970 by failing to identify AFSCME 36 as CCMC’s sponsor in the “paid for by” statement that the committee placed on its mass campaign literature.

Factors in Aggravation

23. During the course of the Commission’s investigation, Respondents’ vendors provided information about material facts that was ultimately contradicted by documentary evidence.

Conclusion

24. Respondents agree to take necessary and prudent precautions to ensure compliance with all provisions of ECCO in the future.

25. Respondents acknowledge that the Ethics Commission may impose increased fines in connection with any future violations of the City’s campaign laws.
26. Respondents agree to file amended campaign statements on or before November 22, 2013, to identify AFSCME 36 as the sponsor of CCMC, to disclose all in-kind contributions, and to disclose the correct dates of independent expenditures made by CCMC.

27. Respondents agree to pay a fine in the amount of $5,000 for violating SDMC sections 27.2930 and 27.2970. This amount must be paid no later than November 22, 2013, by check or money order payable to the City Treasurer. Respondent 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.

[REDACTED]

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

[REDACTED]

DATED:____________________  
ADAM ACOSTA, on behalf of Respondents

DECISION AND ORDER

The Ethics Commission considered the above Stipulation at its meeting on Nov. 14, 2013. The Ethics Commission hereby approves the Stipulation and orders that, in accordance with the Stipulation, Respondents pay a fine in the amount of $5,000.

[REDACTED]

DATED:____________________  
WILLIAM J. HOWATT, JR., Chair  
SAN DIEGO ETHICS COMMISSION