STACEY FULHORST, Executive Director
City of San Diego Ethics Commission
450 B Street, Suite 780
San Diego, CA 92101
Telephone: (619) 533-3476

Petitioner

BEFORE THE CITY OF SAN DIEGO
ETHICS COMMISSION

In re the Matter of: ROSS NAISMITH,
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 Election Campaign Control Ordinance [ECCO], SDMC section 27.2901, et seq.

2. Ross Naismith was, during all times mentioned herein, a candidate for City Council District 9 in the March 2020 primary election. The Ross Naismith for City Council 2020 committee (Identification No. 1423972) [Committee] is a campaign committee registered with the State of California established to support Mr. Naismith’s candidacy. At all relevant times herein, the Committee was controlled Mr. Naismith within the meaning of the California Political Reform Act, California Government Code section 82016. Mr. Naismith 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 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 agrees to hold the City of San Diego and the Ethics Commission harmless from any and all claims or damages resulting from the Commission’s investigation, this stipulated agreement, or any matter reasonably related thereto.

7. 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.

8. 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

9. Because Respondent’s Committee was formed to support a City of San Diego candidate, Respondent was required to comply with ECCO’s advertising disclosure provisions. In this regard, the Committee was required to clearly identify to the public that it was paying for the campaign advertisements it disseminated. SDMC § 27.2970.

10. ECCO requires all candidates who print and distribute campaign literature in support of their candidacies to include the words “Ad paid for by” followed by the name of the candidate’s committee. This disclosure must be printed in a typeface at least 10 points in size that contrasts with the background. The type size requirement ensures that the disclosure is clearly visible and readily apparent to members of the public. SDMC § 27.2970.

11. On October 10, 2019, Respondent sought and received advice from the Commission’s Education Program Manager, who informed Respondent that campaign business cards must include an “Ad paid for by” disclosure in 10-point type.

12. On October 15, 2019, Respondent paid for 250 business cards that were subsequently distributed in support of his candidacy. Although the business cards included the requisite disclosure, it was printed in a 4.5-point typeface.

13. On November 17, 2019, Respondent paid for an additional 2,000 business cards that were subsequently distributed in support of his candidacy. These business cards included an “Ad paid for by disclosure” printed in a 4.5-point typeface.

14. On November 19, 2019, Respondent paid for an additional 2,500 business cards that were subsequently distributed in support of his candidacy. These business cards included an “Ad paid for by disclosure” printed in a 4.5-point typeface.

Counts

Count 1 - Violations of SDMC section 27.2970

15. Respondent violated SDMC section 27.2970 by producing and disseminating 4,750 business cards that did not comply with the City’s advertising disclosure laws as described above in paragraphs 12 through 14.

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Factors in Mitigation

16. Respondent cooperated with the Ethics Commission investigation.

Conclusion

17. Respondent agrees to take necessary and prudent precautions to ensure compliance with all provisions of ECCO in the future.

18. Respondent acknowledges that the Ethics Commission may impose increased fines in connection with any future violations of the City’s campaign laws.

19. Respondent agrees to pay a fine in the amount of $250 for violating SDMC section 27.2970. This amount must be paid no later than June 26, 2020, by check or money order 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: __________________ [REDACTED]

Stacey Fulhorst, Petitioner
SAN DIEGO ETHICS COMMISSION

DATED: __________________ [REDACTED]

ROSS NAISMITH, Respondent

DECISION AND ORDER

The Ethics Commission considered the above Stipulation at its meeting on July 9, 2020. The Ethics Commission hereby approves the Stipulation and orders that, in accordance with the Stipulation, Respondent pay a fine in the amount of $250.

DATED: __________________ [REDACTED]

Sid Voorakkara, Chair
SAN DIEGO ETHICS COMMISSION