REPRESENTATIVE OF THE ETHICS COMMISSION

SHARON SPIVAK, Executive Director
City of San Diego Ethics Commission
451 A 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:
KELVIN BARRIOS,
Respondent.

Case Nos.: 2020-30

STIPULATION, DECISION, AND
ORDER

STIPULATION

THE PARTIES STIPULATE:

1. Petitioner Sharon Spivak 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 (Municipal Code and SDMC) relating to, among other things, the provisions of
   the City of San Diego Ethics Ordinance (Ethics Ordinance), San Diego Municipal Code sections
   27.3501, et seq.

2. At all times mentioned herein, Kelvin Barrios (Respondent) was an unclassified
   City employee working as a Council Representative for District 9 Councilmember and Council
   President Georgette Gomez.

3. This Stipulation will be submitted to the Ethics Commission for consideration at its
   next scheduled meeting. The agreements contained in this Stipulation are contingent upon the
   Ethics Commission’s approval of the Stipulation and the accompanying Decision and Order.
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 Municipal Code 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 Municipal Code 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 regarding 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. As an unclassified employee of the City of San Diego (City) who was required to file a Form 700 Statement of Economic Interests, Respondent was a “City Official” under the
definition provided in the Municipal Code and required to comply with the provisions of the
Ethics Ordinance. SDMC § 27.3503 (definition of “City Official,” subsection (c)).

10. A City Official, while employed by the City, is prohibited from receiving
compensation to engage in any other employment for compensation “which is inconsistent with,
incompatible with, in conflict with, or inimical to, his or her duties as a City Official.” SDMC
§ 27.3563. The Ethics Ordinance further states that, “Specifically, it is unlawful for any City
Official to receive compensation for performing any work, service, activity, or enterprise for
private gain or advantage if it involves: . . . (a) the consumption of time for which the City
Official is receiving compensation by the City; or . . . (f) a consumption of time that would
render the performance of his or her duties as a City Official less efficient.” SDMC § 27.3563(a)
and (f).

11. On December 12, 2016, Respondent began his paid, unclassified City employment
as a Council Representative for the District 9 Council office.

12. In December 2018, while still employed with the City in the District 9 Council
office, Respondent contacted the Laborers’ International Union of North America, Local 89
(LiUNA) regarding the possibility of employment with LiUNA. After a short negotiation period,
Respondent accepted a job with LiUNA as Policy and Community Engagement Director.
Paystubs from LiUNA confirm that Respondent was a compensated employee of LiUNA as of
January 7, 2019. On January 7, 2019, Respondent was still on the City payroll, continuing his
position with the District 9 Council office.

13. Respondent’s last day as a paid City employee was January 14, 2019. This fact has
been confirmed by City payroll records and by the Respondent.

14. During the period between January 7, 2019 and January 14, 2019 (the overlap
period), Respondent was employed by both the City and LiUNA and received compensation
from both. Respondent reported that he was expected to work at least 40 hours a week for
LiUNA, including during daytime working hours. During this same time, Respondent was also
expected to work at least 40 hours a week for the City. While his hours varied with the City, with
some of his work being performed in the evening, Respondent was expected to be available and
working for the City during daytime working hours.

15. Respondent used City leave time to take off one eight-hour period during the
overlap period, according to payroll records.

16. Payroll records confirm that the City paid Respondent approximately $855 for days
that he was simultaneously employed by LIUNA during the overlap period.

**Count**

**Count 1 – Violation of Municipal Code Section 27.3563**

17. As a City Official, Respondent violated Municipal Code section 27.3563 of the
Ethics Ordinance by working for, and receiving compensation from, an outside entity which
involved (1) the consumption of time for which Respondent was also receiving compensation
from the City, and (2) a consumption of time that rendered the performance of his duties as a
City Official less efficient, as described above in paragraphs 11-16.

**Factors in Mitigation**

18. Respondent fully cooperated with the Ethics Commission investigation.

**Conclusion**

19. Respondent is no longer a City Official and no longer employed by the City. To the
extent that any provisions of the City’s ethics laws continue to apply to him, and should he ever
return to City employment, he agrees to take necessary and prudent precautions to ensure
compliance with all provisions of the City’s ethics laws in the future.

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

21. Respondent agrees to pay a fine of $5,000 for the conduct detailed in this
Stipulation. This amount must be paid no later than December 6, 2021, by check or money order
payable to the City Treasurer and submitted to the Ethics Commission. The submitted payment
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will be held pending Ethics Commission approval of this Stipulation and the execution of the Decision and Order portion set forth below.

DATED: _______________  ______________________________________________

[REDACTED]

Sharon Spivak, Petitioner
SAN DIEGO ETHICS COMMISSION

DATED: _______________  ______________________________________________

[REDACTED]

Kelvin Barrios
RESPONDENT

DECISION AND ORDER

The Ethics Commission considered the above Stipulation at its meeting on December 16, 2021. The Ethics Commission hereby approves the Stipulation and orders that, in accordance with the Stipulation, Respondent pay a fine in the amount of $5,000.

DATED: _______________  ______________________________________________

[REDACTED]

Bill Baber, Chair
SAN DIEGO ETHICS COMMISSION