THE CITY OF SAN DIEGO
ETHICS COMMISSION

2012 COMMITTEE MANUAL

Campaign Finance Information for the Following Committees Participating in City of San Diego Elections:

- Primarily Formed Recipient Committees
- City, County, and State General Purpose Recipient Committees
- City, County, and State Independent Expenditure Committees

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Table of Contents

Introduction ..... **Introduction - 1**
Chapter 1 - Campaign Committees Explained **1-1**
Recipient Committees 1-1
Primarily Formed Recipient Committees 1-1
General Purpose Recipient Committees 1-2
Independent Expenditure Committees 1-2
City of San Diego Independent Expenditure Committees 1-2
County Independent Expenditure Committees 1-3
State Independent Expenditure Committees 1-3
Considerations for Multi-Purpose Organizations 1-3
Considerations for Candidate-Controlled Committees 1-3
Considerations for Sponsored Committees 1-3
General Filing Notes 1-4
Flowchart: Types of Political Committees 1-4
Chapter 2 - "Candidate" Primarily Formed Recipient Committees **2-1**
Naming Requirements 2-1
Limits and Prohibitions 2-1
Checking Account 2-2
Recordkeeping 2-2
Filing Official 2-3
Typical Filings with the City Clerk 2-3
Campaign Statements 2-3
Form 410 Statement of Organization (initial) 2-4
Form 410 Statement of Organization (amendment) 2-4
Form 410 Statement of Organization (termination) 2-4
Form 425 Semi-Annual Statement of No Activity 2-5
Form 450 Recipient Committee Short Form (semi-annual and pre-election report) 2-5
Form 460 Recipient Committee Campaign Statement (semi-annual report) 2-5
Form 460 Recipient Committee Campaign Statement (pre-election report) 2-6
Form 460 Recipient Committee Campaign Statement (termination) 2-6
Form 465 Supplemental Independent Expenditure Report 2-7
Form 496 Independent Expenditure Report (late period) 2-8
Form 497 Late Contribution Report 2-8
Electronic Filing 2-9
Audits 2-10

Chapter 3 - "Ballot Measure" Primarily Formed Recipient Committees 3-1
Naming Requirements 3-1
Limits and Prohibitions 3-2
Checking Account 3-2
Recordkeeping 3-3
Filing Official 3-4
Typical Filings with the City Clerk 3-4
Campaign Statements 3-4
Form 410 Statement of Organization (initial) 3-4
Form 410 Statement of Organization (amendment) 3-5
Form 410 Statement of Organization (termination) 3-5
Form 425 Semi-Annual Statement of No Activity 3-5
Form 450 Recipient Committee Short Form (quarterly, semi-annual & pre-election report) 3-6
Form 460 Recipient Committee Campaign Statement (quarterly report) 3-6
Form 460 Recipient Committee Campaign Statement (semi-annual report) 3-7
Form 460 Recipient Committee Campaign Statement (pre-election report) 3-7
Form 460 Recipient Committee Campaign Statement (termination) 3-8
Form 465 Supplemental Independent Expenditure Report 3-8
Form 496 – Independent Expenditure Report (late period) 3-9
Form 497 Late Contribution Report 3-10
Electronic Filing 3-11
Audits 3-11
Chapter 4 - "City" General Purpose Recipient Committees 4-1
Naming Requirements 4-1
Limits and Prohibitions 4-1
Recordkeeping 4-2
Filing Official 4-3
Typical Filings with the City Clerk 4-3
Campaign Statements 4-3
Form 410 Statement of Organization (initial) 4-3
Form 410 Statement of Organization (amendment) 4-4
Form 410 Statement of Organization (termination) 4-4
Form 425 Semi-Annual Statement of No Activity 4-4
Form 450 Recipient Committee Short Form (semi-annual and pre-election report) 4-5
Form 460 Recipient Committee Campaign Statement (semi-annual report) 4-5
Form 460 Recipient Committee Campaign Statement (pre-election report) 4-5
Form 460 Recipient Committee Campaign Statement (termination) 4-7
Form 465 Supplemental Independent Expenditure Report 4-7

Form 496 Independent Expenditure Report (late period) 4-8
Form 497 Late Contribution Report 4-8
Electronic Filing 4-9
Chapter 5 - State and County General Purpose Recipient Committees 5-1
Limits and Prohibitions 5-1
Filing Official 5-2
Typical Filings with the City Clerk 5-2
Campaign Statements 5-2
Form 465 Supplemental Independent Expenditure Report 5-2
Form 496 Independent Expenditure Report (late period) 5-3
Electronic Filing 5-4
Chapter 6 - "City" Independent Expenditure Committees 6-1
Limits and Prohibitions 6-1
Filing Official 6-1
Typical Filings with the City Clerk 6-2
Campaign Statements 6-2
Form 461 Independent Expenditure Committee Campaign Statement (semi-annual report) 6-2
Form 461 Independent Expenditure Committee Campaign Statement (pre-election report) 6-3
Form 465 Supplemental Independent Expenditure Report 6-3
Form 496 Independent Expenditure Report (late period) 6-5
Form 497 Late Contribution Report 6-6
Electronic Filing 6-7
Chapter 7 - State & County Independent Expenditure Committees 7-1
Limits and Prohibitions 7-2
Filing Official 7-2
Typical Filings with the City Clerk 7-2
Campaign Statements 7-2
Form 465 Supplemental Independent Expenditure Report 7-2
Form 496 Independent Expenditure Report (late period) 7-3
Electronic Filing 7-4
Chapter 8 - Making Independent Expenditures in the City of San Diego 8-1
At the Behest 8-1
Limits on Contributions and Expenditures 8-3
Coordination Between Committees 8-3
Chapter 9 - Campaign Advertising and Advocacy in the City of San Diego 9-1
Mass Campaign Literature 9-1
Telephone Communications 9-1
Billboards 9-2

Mass Media Advertisement 9-3
Radio and Television Advertising 9-3
Electronic Advertising 9-3
Identification of $50,000 Donors 9-3

Introduction

This manual is designed to help political committees understand and comply with the City of San Diego's campaign laws. It is intended to serve as a supplement to the State of California Fair Political Practices Commission's [FPPC] Campaign Disclosure Manuals, which can be viewed online at the following address: http://www.fppc.ca.gov/index.php?id=505

This manual has been prepared specifically for committees that spend money to support or oppose City candidates and City ballot measures appearing on the June 5, 2012, primary election ballot and/or the November 6, 2012, general election ballot.

This manual is not designed for candidates. The Ethics Commission has prepared a separate 2012 Candidate Manual designed solely for candidates and their election committees. The candidate manual is available on the Commission's website.

This manual is also not designed for major donors (individuals and entities that make monetary or non-monetary contributions to candidates and committees totaling $10,000 or more in a calendar year). The City does not regulate major donors; contact the FPPC for assistance.

The majority of the state's campaign laws have been incorporated into the City's laws. This manual focuses on the particular rules and requirements that govern committees politically active in the City of San Diego, including City laws that are more stringent than the state's laws.

This manual is not meant to serve as a substitute for the actual provisions in state law (the Political Reform Act) or City law (the Election Campaign Control Ordinance).

As of this manual's date of publication, some of the City of San Diego's campaign laws are being litigated in a case entitled *Thalheimer v. City of San Diego*. For the latest updates on this litigation, and its impact on the City's campaign laws, you are encouraged to visit the campaign section of the Ethics Commission's website: http://www.sandiego.gov/ethics/documents/candidate.shtml. During the pendency of this case, certain provisions of the San Diego Municipal Code may not be enforced. Accordingly, you are welcome to contact Commission staff regarding any differences between the language of the Municipal Code and the guidance contained in this manual.

The City Clerk is the filing official for the City of San Diego and is responsible for administering the City's elections. Questions concerning filing procedures should be directed to the City Clerk as follows:

(619) 533-4025
www.sandiego.gov/city-clerk

Other requests for advice and assistance concerning the City's campaign laws, including questions concerning the contents of disclosure statements, should be directed to the Ethics Commission as follows:

(619) 533-3476
ethicscommission@sandiego.gov

Keep in mind that the Ethics Commission can only provide technical assistance to committees and their representatives in advance of any contemplated action. In other words, the Ethics Commission cannot help you after you have violated the City's campaign laws, so please be sure to

contact our office before you take the action in question.

Finally, please remember that your decision to participate in a City of San Diego election carries with it certain responsibilities. In particular, you are required to abide by state and local laws that regulate the conduct of political committees, which are explained in detail in the FPPC Manuals and in the various chapters in this manual. The failure to adhere to these laws could result in a variety of penalties, including but not limited to administrative fines imposed by the Ethics Commission in amounts up to $5,000 per violation.

Chapter 1
Campaign Committees Explained

Committees active in City of San Diego elections may take a number of different forms, depending on where their money comes from and how their money is spent. Entities that accept payments and use some or all of these payments for political purposes are considered "recipient committees" and can be either a "primarily formed recipient committee" or a "general purpose recipient committee."

On the other hand, an entity that spends its own money for political purposes without accepting payments from others is called an "independent expenditure committee."

Note: Although primarily formed recipient committees and general purpose recipient committees may make independent expenditures, they are not classified as "independent expenditure committees."

The rules defining the different types of committees are a matter of state law. The flowchart at the end of this chapter illustrates these rules, as described more fully below:

Recipient Committees

Whether a recipient committee is a "primarily formed recipient committee" or a "general purpose recipient committee" depends on where it spends its money for political purposes. Each type of recipient committee must count the contributions and expenditures it made to support or oppose candidates or measures during:

- The immediate preceding 24 months; or
- The period beginning January 1 of the most recent odd numbered year, through the end of the most recent calendar quarter. For example, a committee evaluating its activities on January 6, 2012, would review the period from January 1, 2011, through December 31, 2011.
- The committee must use the time period that most accurately reflects its current and upcoming activities.

Each committee must review its activity at the end of March, June, September, and December, and recalculate its designation based on the criteria set forth below. A new committee formed within six months of an election in connection with which it will make contributions or expenditures must review its activity at the end of each month. If a committee's status changes, it must file a Form 410 amendment within ten days.

Note: If a City recipient committee changes its status to a state or county committee in the middle of the year, it must continue filing a copy of its campaign statements with the City Clerk until the end of the calendar year.

Primarily Formed Recipient Committees

A committee is a City of San Diego primarily formed recipient committee if <u>more than 70%</u> of its contributions and expenditures are spent on: (1) a single City of San Diego candidate; (2) a single City of San Diego ballot measure; (3) a group of candidates running for office in the same City of San Diego election; or (4) two or more ballot measures being voted upon in the same City of San Diego election.

Primarily formed recipient committees are further divided depending on whether they are focused on candidates or ballot

measures in an upcoming election. A committee formed to support one or more candidates in the same election will be referred to as a candidate primarily formed recipient committee. These committees are discussed in greater detail in Chapter 2 of this manual. A committee that is formed to support one or more ballot measures in the same election is referred to as a ballot measure primarily formed recipient committee. These committees are discussed in greater detail in Chapter 3 of this manual.

General Purpose Recipient Committees

A recipient committee that is not a primarily formed recipient committee is a "general purpose recipient committee." These committees are typically not limited to a single election. They are ongoing in nature and generally support a variety of candidates and ballot measures, often in multiple jurisdictions.

General purpose recipient committees must identify the jurisdiction in which they will make most of their contributions and expenditures. At the time of registration, a committee must declare whether it is a state, county, or city committee. Its status may change, depending on whether it continues to make more than 50% of its contributions or expenditures on candidates or measures to be voted on in that jurisdiction.

Example: *Revolt Against Taxes was formed in 2004 as a County of San Diego general purpose recipient committee. When reviewing the contributions and expenditures it made over the previous two years, it determined that 60% of those payments were made for the purpose of opposing City of San Diego ballot measures. Revolt Against Taxes will file a Form 410 amendment to redesignate itself as a City of San Diego general purpose recipient committee.*

City general purpose recipient committees are discussed in greater detail in Chapter 4 of this manual. County and state general purpose recipient committees are discussed in greater detail in Chapter 5 of this manual.

Independent Expenditure Committees

An independent expenditure committee is an individual or entity (e.g., corporation, firm, business, or proprietorship) that makes one or more independent expenditures totaling $1,000 or more in a calendar year. An "independent expenditure committee" is not a "recipient" committee; it does not accept payments from others to fund its political activities.

Example: *Access Builders is a local developer opposed to a City of San Diego ballot measure that would impact affordable housing requirements. It spends $1,500 on billboards opposing the measure. It has become an independent expenditure committee.*

Independent expenditure committees qualify anew as a committee each year. For purposes of determining its jurisdiction, an independent expenditure committee counts contributions and expenditures made to support or oppose candidates or measures during the current calendar year, and calculates the percentage semi-annually at the end of June and December. Depending on the calculation, an independent expenditure committee will fall within one of these three categories:

City of San Diego Independent Expenditure Committees

If <u>50 percent or more</u> of a committee's contributions and expenditures are made to support or oppose <u>City of San Diego candidates and/or ballot measures</u>, then it is a City of San Diego independent expenditure committee. These types of committees are discussed in greater detail in Chapter 6.

County Independent Expenditure Committees

If 50 percent or more of a committee's contributions and expenditures are made to support or oppose candidates or ballot measures voted on in a single county, or in more than one jurisdiction within one county, then it is a county independent expenditure committee (unless its activities are all on one city, in which case it is a city committee). These types of committees are discussed in greater detail in Chapter 7.

State Independent Expenditure Committees

If 50 percent or more of a committee's contributions and expenditures are made to support or oppose candidates or ballot measures voted on in state elections, or in more than one county, then it is a state independent expenditure committee. These committees, along with county independent expenditure committees, are discussed in greater detail in Chapter 7.

Considerations for Multi-Purpose Organizations

An entity established for purposes other than making contributions or independent expenditures may not consider itself a political committee. If, however, such an entity decides to get involved in a political campaign, it may nevertheless qualify as a recipient committee. For example, a nonprofit organization created to support union activities may qualify as a recipient committee if it makes political expenditures using dues, donations, or similar payments.

State law (FPPC Regulation 18215) establishes a rule that these types of organizations must follow when determining whether or not they qualify as recipient committees. A multi-purpose organization that uses payments from its members or donors to make campaign contributions or political expenditures totaling $1,000 or more has essentially put its members and donors on notice that some or all of their funds will be used for political purposes. If the organization makes another campaign contribution or political expenditure in California in the next four years, it will become a recipient committee with disclosure obligations.

Contact the Ethics Commission for additional assistance determining whether a multi-purpose entity has become a political committee.

Considerations for Candidate-Controlled Committees

A candidate "controls" a committee when he or she exercises significant influence over the actions and decisions of the committee, or participates in the committee's decisions regarding expenditures. Candidate-controlled committees are often subject to rules and filing requirements that are different from those imposed on other committees. For example, a ballot measure committee that is not candidate-controlled has only two pre-election filing requirements, while a similar committee that is candidate-controlled must file three pre-election statements. In addition, any committee that is controlled by a candidate must include the candidate's last name in the committee's name. The particular rules and filing requirements applicable to candidate-controlled committees are discussed later in this manual,

Considerations for Sponsored Committees

When an entity is largely responsible for funding the operations of a committee or controls the administrative aspects of a committee, that entity may be the committee's "sponsor." When an entity sponsors a committee, it must be identified in the committee's name for purposes of filing campaign statements and making disclosures on campaign advertisements.

A “sponsor" of a committee means any entity (individual, business, organization, etc.) to whom any of the following applies:

- The committee receives 80 percent or more of its contributions either from the entity or from the entity’s members, officers, employees or shareholders;
- The entity collects contributions for the committee by use of payroll deductions or dues from its members, officers or employees;
- The entity provides, alone or in combination with other organizations, all or nearly all of the administrative services for the committee; or
- The entity sets, alone or in combination with other organizations, the policies for soliciting contributions or making expenditures of committee funds.

If a committee is a sponsored committee, it must include the name of its sponsor in the name of the committee. If the sponsored committee has more than one sponsor and the sponsors are members of an industry or other identifiable group, the name of the committee must include a term identifying that industry or group.

NOTE: If a committee is controlled by a candidate, it cannot also be “sponsored.”

Contact the Ethics Commission for additional assistance regarding the requirements applicable to sponsored committees.

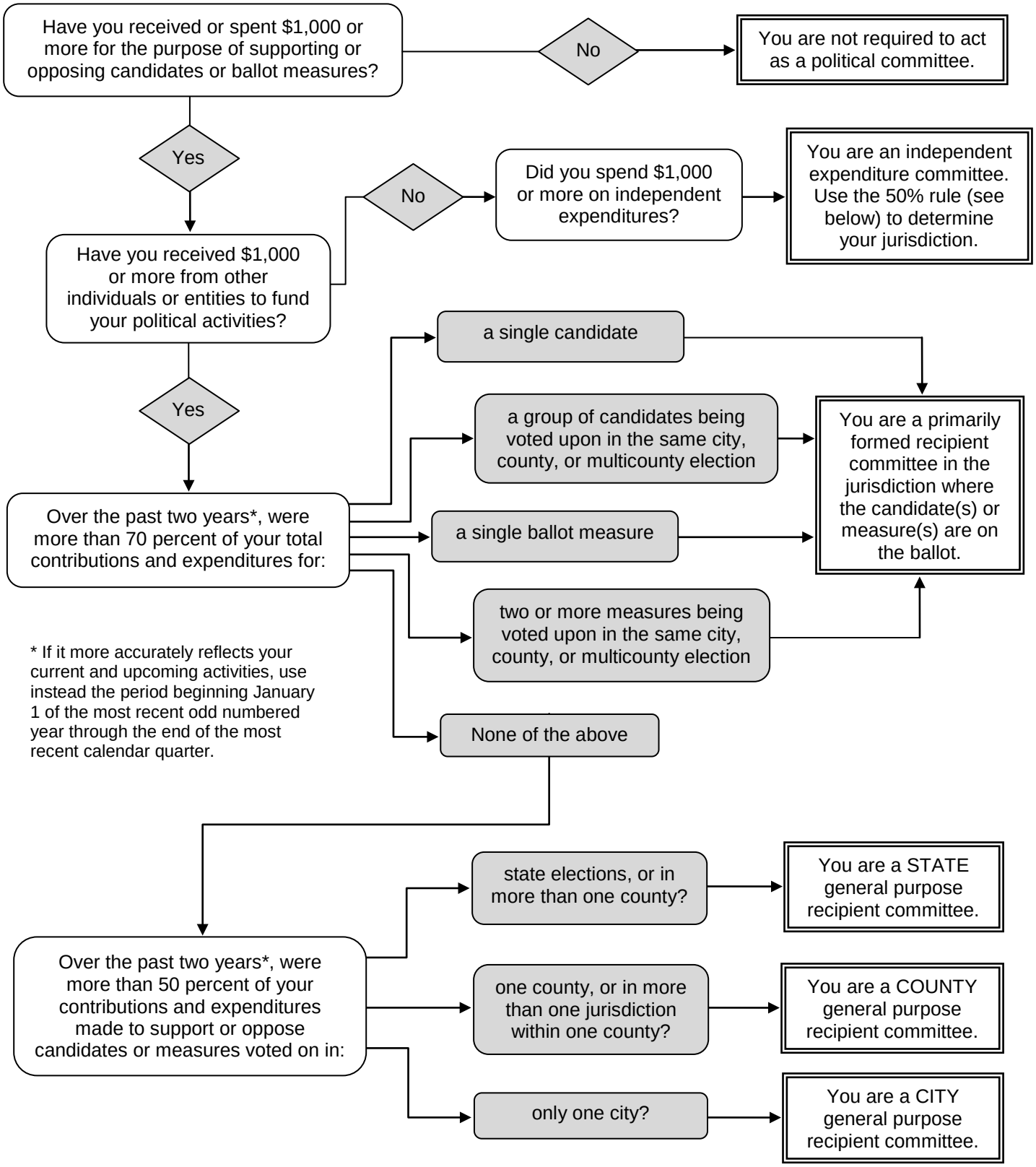
General Filing Notes

Keep in mind that although this manual focuses on campaign statements that are filed with the San Diego City Clerk, committees may also have reporting obligations with other filing officials in California. For example, all recipient committees must file a Statement of Organization (Form 410) with the Secretary of State. In addition, when a City of San Diego committee spends money on independent expenditures in other jurisdictions, it must file disclosure statements with the filing official in that jurisdiction.

Committees should also be mindful of the following rules:

- If a campaign statement is sent by first-class mail, it is considered filed on the date of the postmark.
- Deadlines that fall on a Saturday, Sunday, or an official City holiday are extended to the next business day. Note, however, that this rule does not apply to 24-hour reports (Forms 496 and 497, and certain amendments to the Form 410 within 16 days of an election).
- Only 24 hour reports (see previous bullet) may be filed by fax.
- Campaign statements may be filed at any time prior to the deadline so long as they include all required information.
- City of San Diego primarily formed committees must file campaign statements electronically if they spend $10,000 or more on City elections.

Flowchart: Types of Political Committees



Chapter 2
"Candidate" Primarily Formed Recipient Committees

This chapter focuses on recipient committees that are primarily formed to support or oppose one or more candidates for elective office in the City of San Diego (i.e., Mayor, Councilmember, City Attorney).

A committee is a City "candidate" primarily formed recipient committee if it spends more than 70 percent of its total contributions and expenditures on (1) a single City candidate (or against that candidate's opponents); or (2) a group of candidates being voted upon in the same City election.

Note that this type of committee is not controlled by a candidate. See the Ethics Commission's candidate manual for information regarding committees controlled by candidates for the purpose of seeking elective office.

This type of committee needn't spend all of its funds on the candidate for which it was primarily formed. It can also support other candidates and measures. Substantial payments for other purposes may, however, cause the committee's status and/or jurisdiction to change.

Refer to the rules in Chapter 1 for determining whether a committee is, or is not, a primarily formed recipient committee, i.e., whether it has reached the 70% threshold. Keep in mind that the committee must recalculate the applicable percentage quarterly at the end of March, June, September, and December. A new committee formed within six months of an election in connection with which the committee makes contributions and expenditures must calculate the percentage at the end of each month.

Naming Requirements

The name of a committee primarily formed to support or oppose one or more City candidates must include the last name of each candidate whom the committee supports or opposes, along with the office sought and year of the election. In addition, a sponsored committee must contain the name of its sponsor.

Example: *A committee is primarily formed to support Betty Azul for City Attorney in the June 2012 election. It obtains nearly all of its funding from the Mid-City Bar Association. When it files its Form 410 Statement of Organization, it identifies itself as "Responsible Lawyers United to Support Azul for City Attorney 2012, sponsored by the Mid-City Bar Association."*

Limits and Prohibitions

The City's campaign laws do not impose on primarily formed recipient committees any limits on the sources or amounts of contributions they receive. For example, such committees may receive a $5,000 contribution from a business entity and use those funds to make an independent expenditure supporting a City candidate.

NOTE: These committees must be careful when accepting contributions from candidate-controlled committees, which are prohibited under state law from making contributions to other committees for the purpose of making independent expenditures supporting or opposing a candidate.

Primarily formed recipient committees may not make a contribution directly to a City candidate. Nor may they make expenditures at the request, suggestion, or direction of, or in cooperation, consultation, concert or coordination with, a City

candidate. Such expenditures are not considered "independent"; they would instead be treated as an unlawful in-kind (non-monetary) contribution to the candidate.

Checking Account

All City of San Diego primarily formed recipient committees must open a campaign checking account at a financial institution that has a branch office in the City of San Diego. All contributions must be deposited into this account, and all expenditures must be made from this account. In addition:

- a committee has "received" a contribution whenever any representative of the committee (i.e. treasurer or fundraiser) takes possession of the contribution.

- once the committee receives a contribution, it must be deposited into the committee's bank account within 30 business days; see the "Recordkeeping" section below for information that must be obtained from the contributor before a contribution is deposited.

- if a contribution is not deposited within 30 business days, it must be returned to the contributor as soon as possible, but no later than 35 business days after receipt.

Recordkeeping

Primarily formed recipient committees are required to maintain records associated with all contributions received and all expenditures made by their committees for a period of four years. In particular, committees must maintain the following records:

- for contributions made via check, credit card, or electronic payment, copies of the written instrument, credit card receipt, and/or transaction records, as well as deposit slips;

- for cash contributions, a notation that cash was received, and a legible photocopy of the bank deposit slip showing that the cash contribution was deposited into the campaign contribution checking account;

- if a contribution is something other than money, a description of what was contributed, a reasonable good faith estimate of the monetary value of the contribution, and the basis for the estimate;

- for each check drawn on the campaign checking account, the canceled check, the bank statement showing the payment, the name of the payee of each check, an itemized record of the goods or services for which each check was issued, and legible photocopies or originals of any invoices, bills, or other supporting documents for which funds were disbursed.

In addition, the City of San Diego has more stringent laws than the State of California when it comes to records associated with contributors. In particular, unlike state law, local law requires that primarily formed recipient committees obtain all of the following information <u>before</u> a contribution may be deposited:

- the contributor's full name; and

- the contributor's street address (business addresses are permitted but <u>not</u> post office boxes); and

- the contributor's occupation and employer (if the contributor has given the committee a total of $100 or more). If a contributor is self-employed, the

committee must obtain the name of the business.

This requirement applies to all contributions, whether they are made via cash, check, or credit card.

Although the City's laws do not expressly require that committees obtain contributor information directly from the contributor, the Ethics Commission strongly encourages them to do so to avoid obtaining inaccurate information. If you choose to obtain the required information from other sources (e.g., the host of a fundraiser or a campaign statement filed by another committee), you do so at your own risk. Remember that the failure to disclose accurate contributor information could result in an Ethics Commission fine.

Committee representatives must produce copies of records associated with campaign contributions and expenditures to the Ethics Commission upon request. In addition, if requested, committees must provide the Ethics Commission with written authorization to obtain records pertaining to their campaign bank accounts.

Filing Official

The San Diego City Clerk is the primary filling official for the committee. Nearly all of the committee's campaign statements will be filed solely with the City Clerk. One exception is the Statement of Organization (Form 410), which is filed with the Secretary of State (and a copy filed with the City Clerk). In addition, if the committee makes independent expenditures in another jurisdiction, it may have to file reports with the filing official in that jurisdiction.

Typical Filings with the City Clerk

Form 410 – upon qualifying as a committee

Form 410 – amendments to committee information

Form 460 – semi-annual activity

Form 460 – pre-election activity

Form 465 – independent expenditures made

Form 496 – late period independent expenditures made

Form 497 – late period contributions received

From 410 – termination of committee

Form 460 – termination of committee

Example: *A committee is formed to support Salvador Bunuel for Mayor in the 2012 election cycle. On June 14, 2011, within ten days of raising $1,000, it files a Form 410 with the Secretary of State (copy with the City Clerk). It will also file:*

- ✓ *a Form 460 semi-annual statement by July 31, 2011, reporting its activities through the end of June;*
- ✓ *another Form 460 semi-annual statement by January 31, 2012, reporting its activities from July 1, 2011, through December 31, 2011;*
- ✓ *three pre-election Forms 460 in the first six months of 2012 leading up to the primary election, each of which will be accompanied with a Form 465 if the committee made independent expenditures during the pre-election periods.*

If it makes independent expenditures during the 16 day "late period" prior to the election, it will report those expenditures within 24 hours using the Form 496. If it receives contributions of $1,000 or more during that 16 day period, it will report them within 24 hours on the Form 497. After the election, if Salvador Bunuel doesn't prevail or proceed to the general election in November, the committee will file a Form 410 termination statement with the Secretary of State (copy with the City Clerk) and a Form 460 termination statement with the City Clerk.

Campaign Statements

The following are the general filing rules applicable to primarily formed recipient committees formed to support or oppose a City candidate.

Form 410 Statement of Organization (initial)

Basic Rule: An entity must file this form when it becomes a primarily formed recipient committee (by receiving $1,000 in contributions).

Committees state their official name on the Form 410. As indicated above, the name must include the last name(s) of the candidate(s) supported or opposed, the office sought, and the year of the election. It must also state whether the committee supports or opposes the candidate. If the committee is sponsored by another entity, the sponsor's name must appear within the committee's name.

When to File: The Form 410 must be filed within 10 days of the committee receiving $1,000 or more.

The Form 410 may be filed prior to raising $1,000, but must be amended within 10 days of reaching the $1,000 threshold to indicate the date the entity qualified as a committee.

An entity may become qualified as a committee at any time regardless of the proximity to the date of an election.

Where to File: Original and one copy with the Secretary of State, and one copy with the City Clerk.

Form 410 Statement of Organization (amendment)

Basic Rule: A primarily formed recipient committees must file an amendment when there is any change to the information contained on its Form 410.

When to File: The Form 410 must be filed within 10 days of any change to the information on the form.

Example: *A committee is formed to support a City candidate in the primary election. Several months into its existence, it changes its treasurer. It has ten days to file an amendment to disclose the new treasurer's name.*

Where to File: Original and one copy with the Secretary of State, and one copy with the City Clerk

If, during the 16 days prior to an election in which the committee is required to file pre-election statements, a change occurs in the name of the committee, the treasurer, or other principal officers, an amendment must be filed with the Secretary of State and the City Clerk within 24 hours of the change. The amendment must be sent by fax, online transmission, guaranteed overnight delivery, or personal delivery.

Form 410 Statement of Organization (termination)

Basic Rule: Primarily formed recipient committees file this report as part of terminating the committee.

When to File: A primarily formed committee may terminate at any time, so long as all the following circumstances are present:

- it is no longer receiving contributions or making expenditures;
- it does not anticipate receiving contributions, repayments of outstanding loans, or any other receipts, and does not anticipate making expenditures in the future;
- it has eliminated, or has no intention or ability to discharge, its debts, loans received, and other obligations;

- it has no campaign funds; and,
- it has filed all required campaign statements disclosing all reportable transactions.

Where to File: Original and one copy with the Secretary of State, and one copy with the City Clerk.

Form 425 Semi-Annual Statement of No Activity

Basic Rule: Primarily formed recipient committees may use this form as a semi-annual statement if they have no financial activity during the reporting period. It is to be used only by recipient committees that have not received any contributions and not made any expenditures during the six-month period covered by a semi-annual statement.

When to File: On a semi-annual basis in lieu of filing the Form 460, but only if the committee had no activity during reporting period.

Where to File: The Form 425 is filed with the City Clerk.

Form 450 Recipient Committee Short Form (semi-annual and pre-election report)

Basic Rule: Primarily formed recipient committees may use this form as a semi-annual or pre-election statement if they have limited financial activity during the reporting period. The Form 450 is for use by a recipient committee if the committee: (1) has not received a contribution that must be itemized (a cumulative amount of $100 or more from a single source); (2) has not received any other payment of $100 or more (miscellaneous increases to cash); (3) has no outstanding loans made or received; and (4) has no accrued expenses (unpaid bills).

When to File: On a semi-annual or pre-election basis in lieu of filing the Form 460, but only if the primarily formed recipient committee had very limited activity during reporting period.

Where to File: The Form 450 is filed with the City Clerk.

Form 460 Recipient Committee Campaign Statement (semi-annual report)

Basic Rule: Primarily formed recipient committees file semi-annual reports until they terminate.

This form is commonly filed by campaign committees to provide a comprehensively accounting of the committee's activities during the reporting period.

When to File: As a general rule, the semi-annual Form 460 is due no later than July 31, covering the period January 1 through June 30, and no later than January 31, covering the period July 1 through December 31. The reporting period will change, however, if the committee is also filing pre-election reports. The reporting period begins on the day following the last day covered by the previous Form 460.

Example: *A committee supporting Glenda Goodwich for Mayor filed its third pre-election Form 460 covering the period from May 20, 2012, through May 31, 2012. The committee's semi-annual Form 460 will cover the period from June 1, 2012, through June 30, 2012.*

If the committee is filing its first campaign statement, the reporting period begins with January 1 of the current calendar year.

Where to File: The semi-annual Form 460 is filed with the City Clerk.

Form 460 Recipient Committee Campaign Statement (pre-election report)

Basic Rule: Primarily formed recipient committees must file pre-election reports (regardless of the level of their financial activity) if the candidate(s) they are formed to support or oppose is/are being voted on in the upcoming election.

Example: *A committee is formed to support Brian Griffin for City Council in the June 5, 2010, primary election. It must file three pre-election Form 460s in the months leading up to the June election.*

Example: *Brian Griffin lost in the primary and will not appear on the ballot for the November 6, 2010, general election. The committee primarily formed to support Griffin is not required to file any pre-election Form 460s prior to the November election. Note, however, that it will continue to file semi-annual Form 460s until it terminates.*

When to File: The Form 460 pre-election report must be filed no later than the three pre-election deadlines.

For the June 5, 2012, primary election and the November 6, 2012, general election, the pre-election filing deadlines (and the applicable reporting periods) are set forth in the following chart.

2012 Primary Election

1st pre-election period
reporting period: 1/1/12 – 3/17/12
filing deadline: 3/22/12

2nd pre-election period
reporting period: 3/18/12 – 5/19/12
filing deadline: 5/24/12

3rd pre-election period
reporting period: 5/20/12 – 5/31/12
filing deadline: 6/1/12

2012 General Election

1st pre-election period
reporting period: 7/1/12 – 9/30/12
filing deadline: 10/5/12

2nd pre-election period
reporting period: 10/1/12 – 10/20/12
filing deadline: 10/25/12

3rd pre-election period
reporting period: 10/21/12 – 11/1/12
filing deadline: 11/2/12

Where to File: The pre-election Form 460 is filed with the City Clerk.

Form 460 Recipient Committee Campaign Statement (termination)

Basic Rule: Primarily formed recipient committees file this report as part of terminating the committee. It can be filed along with a Form 410 termination statement.

When to File: When the committee has stopped accepting contributions and making expenditures, and has a zero cash balance.

Where to File: The Form 460 is filed with the City Clerk.

Form 465 Supplemental Independent Expenditure Report

Basic Rule: A primarily formed recipient committee files a Form 465 if it makes independent expenditures totaling $1,000 or more in a calendar year to support or oppose a single candidate or a single measure, including the candidate(s) for which it was primarily formed.

The Form 465 is required to be filed in addition to any other pre-election, semi-annual, or late independent expenditure report required to be filed.

The filing requirement is not triggered until the primarily formed recipient committee has reached the $1,000 calendar year threshold for a single candidate or measure. For example, spending $900 on an independent expenditure supporting a candidate through the first pre-election period would not trigger the filing of a Form 465, but spending $100 on an independent expenditure for the same candidate during the second pre-election period would require filing a Form 465 that discloses both sets of independent expenditures.

If a communication lists more than one candidate or measure, the Form 465 is filed only if $1,000 or more was expended on each candidate or measure featured. A separate Form 465 must be filed for each candidate or measure supported or opposed.

When to File: The 465 is filed at the same time that the candidate supported or opposed by the independent expenditure files a Form 460 (except that a candidate's third pre-election report does not trigger the filing of a Form 465).

Example: *Primarily formed recipient committee Patriots for Palmer for Mayor 2012 makes a $1,200 independent expenditure during the first pre-election period. The committee will file a Form 465 by the first pre-election filing deadline (the same deadline applicable to Candidate Palmer's first pre-election Form 460).*

The "period covered" begins the day after the closing date of the most recent Form 465 filed related to the candidate supported or opposed. If no previous Form 465 has been filed, the reporting period begins on January 1 of the current calendar year.

If the independent expenditure is made during the 16 day period before the date of the election, the committee will file the Form 465 by the semi-annual filing deadline. (Such expenditures may also be subject to 24 hour reporting on a Late Independent Expenditure Report (Form 496); see next section). As stated above, primarily formed recipient committees do not file a Form 465 in connection with a candidate's third pre-election filing.

Example: *Primarily formed recipient committee Patriots for Palmer for Mayor 2012 also makes a $500 independent expenditure shortly before the election, after the closing date of the second pre-election period. The committee will file another Form 465 by the semi-annual filing deadline following the election. (If the committee's cumulative expenditures during this period reach $1,000, it will also file a Form 496 within 24 hours – see next section).*

Where to File: City Clerk. (If the committee spends $1,000 or more to support a candidate or measure in another jurisdiction, file a Form 465 with the filing official in that jurisdiction.)

Form 496 Independent Expenditure Report (late period)

Basic Rule: A primarily formed recipient committee files a Form 496 if it makes independent expenditures cumulatively totaling $1,000 or more to support or oppose a single candidate or a single measure during the late period (the 16 days prior to the election).

For the 2012 primary election, the late period is May 20, 2012 to June 4, 2012. For the 2012 general election, the late period is October 21, 2012 to November 5, 2012.

The Form 496 is filed in addition to any required pre-election or semi-annual campaign statements. Independent expenditures also must be disclosed on the committee's next campaign statement (Form 460), and on a Supplemental Independent Expenditure Report (Form 465).

The $1,000 threshold is cumulative. Any independent expenditure made during the late period, even if smaller than $1,000, must be reported on a Form 496 if the cumulative $1,000 threshold is ultimately reached during the late period.

When to File: Within 24 hours of making independent expenditures cumulatively totaling $1,000 or more to support or oppose a single candidate or a single ballot measure during the 16 days prior to the election.

An independent expenditure is made when a communication is made, or when a payment is made for the development, production, or dissemination of the communication, whichever is earlier.

NOTE: The Form 496 must be filed within 24 hours regardless of the day of the week. An independent expenditure made on a Friday, for example, must be reported by Saturday.

Where to File: City Clerk. (If the committee spends $1,000 or more during the late period to support a candidate or measure in another jurisdiction, file a Form 496 with the filing official in that jurisdiction.)

The Form 496 must be filed by fax, guaranteed overnight delivery, or personal delivery. Regular mail may not be used.

Form 497 Late Contribution Report

Basic Rule: This report is required when a primarily formed recipient committee receives or makes a contribution of $1,000 or more during the 16 day period prior to the election.

A late contribution is made on the date the contribution is mailed, delivered, or otherwise transmitted to a candidate or committee. A late contribution is received on the date the committee, or an agent of the committee, obtains possession or control of the check or non-monetary item that constitutes the contribution.

A primarily formed recipient committee must file a Form 497 if it:

- receives contributions aggregating $1,000 or more, from a single source during the 16 days prior to the election; or
- makes contributions aggregating $1,000 or more to a candidate in another jurisdiction or to another primarily formed recipient committee ("candidate"

or ballot measure") during the 16 days before the election; or

- makes a contribution or contributions totaling $1,000 or more to a state or county political party committee during the 16 days before a state election.

NOTE: Primarily formed recipient committees may not make contributions (in any amount) to City of San Diego candidates. Restrictions applicable to candidates in other jurisdictions are outside the scope of this manual.

When to File: The deadlines for filing the Form 497 depend on the type of contribution made, as follows:

Monetary contributions: The committee must file the Form 497 within 24 hours of making or receiving a $1,000 monetary contribution.

Non-monetary contributions: The committee must file the Form 497 within 24 hours of making a late $1,000 non-monetary contribution (and must also notify the recipient of the value of the late non-monetary contribution by personal delivery, fax, or guaranteed overnight mail; no particular form is required). It must file the Form 497 within 48 hours of receiving a late $1,000 non-monetary contribution.

NOTE: The Form 497 must be filed within 24/48 hours regardless of the day of the week. A monetary contribution received on a Friday, for example, must be reported by Saturday.

Where to File: City Clerk (the same filing official where the committee regularly files its Form 460s). Thus, the committee will file the Form 497 with the City Clerk, even if the late contribution is intended to support or oppose a County candidate or State measure. If the late contribution is made to another primarily formed recipient committee, the other committee must file its own Form 497 to report its receipt of the contribution.

The Form 497 must be filed by fax, guaranteed overnight delivery, or personal delivery. Regular mail may not be used.

NOTE: Committees making contributions to support candidates/measures other than the ones for which they were primarily formed may be required to change their committee type. See Chapter 1 for more information.

Electronic Filing

Every primarily formed recipient committee that has received contributions or made expenditures totaling $10,000 in connection with a City of San Diego election must file its campaign statements using the City Clerk's electronic filing system.

A committee that has reached the $10,000 threshold must continue to file electronically until it has terminated.

Committees that have not reached the $10,000 threshold may file electronically on a voluntary basis.

A committee filing electronically must continue to file paper copies of each campaign statement. The paper copy is considered the original campaign statement for audit and other legal purposes. The information on the paper copy must be the same as the information provided in the online filing.

NOTE: The paper copy requirement applies to all statements that are filed electronically (including Forms 496 and 497, even though these forms don't require a signature and can be filed by fax).

With the exception of the Form 410 and Form 425, all of the campaign statements discussed in this Chapter may be filed electronically. Contact the City Clerk's Office for additional information regarding its electronic filing system.

Audits

The San Diego Municipal Code authorizes the Ethics Commission to audit primarily formed recipient committees. Committees will be randomly selected for audit following each election cycle as follows:

- 75% of committees that raise or spend more than $100,000 will be audited;
- 50% of committees that raise or spend between $10,000 and $99,999 will be audited.

Committees that raise or spend less than $10,000 will not be placed in the pool for the random drawing.

In addition to the random audit drawing, the Ethics Commission may conduct an audit of a committee in connection with an ongoing investigation.

Chapter 3
"Ballot Measure" Primarily Formed Recipient Committees

This chapter focuses on recipient committees that are primarily formed to support or oppose one or more ballot measures in the City of San Diego.

A committee is a City "ballot measure" primarily formed recipient committee if it spends more than 70 percent of its total contributions and expenditures for or against (1) a single City ballot measure or (2) a group of City ballot measures being voted upon in the same City election.

NOTE: In addition to controlling his or her own candidate committee an elected City Official or City candidate may also control a "ballot measure" primarily formed recipient committee.

This type of committee needn't spend all of its funds on the measure(s) for which it was primarily formed. It can also support or oppose other measures. If the committee is not candidate-controlled, it can also support or oppose candidates. Substantial payments for other purposes may, however, cause the committee's status and/or jurisdiction to change.

Refer to the rules in Chapter 1 for determining whether a committee is, or is not, a primarily formed recipient committee, i.e., whether it has reached the 70% threshold. Keep in mind that the committee must recalculate the applicable percentage quarterly at the end of March, June, September, and December. A new committee formed within six months of an election in connection with which the committee makes contributions and expenditures must calculate the percentage at the end of each month.

Naming Requirements

The name of a committee primarily formed to support or oppose a City ballot measure must include the following:

(1) The name of any candidate controlling the committee;

(2) The name of any sponsoring entity;

(3) A word or a phrase that clearly identifies the economic interest of each individual or entity donating $50,000 or more to the committee if that economic interest is likely to be affected by the ballot measure. If there is no relevant economic interest, the committee name must instead use a word or phrase identifying the goal or purpose likely to be affected by the measure.

(4) The name of the common employer of the major donors of $50,000, if one exists;

(5) The names of candidates or their controlled committees if, as a group or individually, they are major contributors of $50,000 or more; and

(6) The measure's ballot letter and the committee's position on the measure (for or against), within 30 days of the designation of the alphabetical order of the propositions on the ballot.

Example: *A committee is primarily formed to oppose a downtown football stadium proposal that appears on the November 2012 ballot as Proposition F. The committee is not controlled by a candidate, but is sponsored by the Downtown Owners Association. It receives a $50,000 contribution from Progressive Industries, a company that owns a stadium in Los Angeles and is seeking to have the*

Chargers play in its facility. The committee identifies itself as "No on F, Stop the Stadium, sponsored by the Downtown Owners Association with support by a Los Angeles Stadium Owner."

NOTE: If a ballot measure committee is controlled by a candidate, it cannot also be "sponsored."

Example: *Councilmember Akira creates and controls a committee to support Proposition B, a measure that would allow a hockey rink to be built in a City park. The committee receives a contribution of $100,000 from Greenery Builders. The committee is named "Say Hello to Hockey, Yes on Proposition B, Supported by Councilmember Akira and Members of the Building Industry."*

If a $50,000 donor's economic interests are not likely to be affected by the ballot measure, the committee's name should instead identify the goal or purpose likely to be affected by the measure.

Example: *Hotel owner John Birmingham donates $55,000 to a committee opposing Proposition C, a measure that would allow same-sex marriage in the City of San Diego. Birmingham is not one of the committee's sponsors. The measure is not likely to have an economic impact on Birmingham's hotel. Upon receiving the donation, the committee renames itself "Protect Marriage, No on C, Supported by Advocates of Traditional Marriage."*

NOTE: In the above three examples, the names of the stadium owner, builder, and hotel owner needn't be included in the committee's name (just their interests in the ballot measure). Their names may, however, be subject to disclosure on the committee's advertising. See Chapter 8, Identification of $50,000 Donors, for more information.

If there is more than one contributor of $50,000 or more, and all such contributors do not share the same economic interest or goal or purpose, the name or phrase must identify the various economic interests or goals or purposes that are likely to be affected by the ballot measure. The list must be in descending order based on the amount of contributions made by the donor to the committee.

Limits and Prohibitions

The City's campaign laws do not impose on primarily formed recipient committees any limits on the sources or amounts of contributions they receive. For example, such committees may receive a $5,000 contribution from a business entity and use those funds to make an independent expenditure supporting a City ballot measure.

In addition to supporting or opposing ballot measures, this type of committee may (unless it is candidate-controlled) make independent expenditures supporting candidates. Such committees may not, however, make a contribution directly to a City candidate. Nor may they make expenditures at the request, suggestion, or direction of, or in cooperation, consultation, concert or coordination with, a candidate. Such expenditures are not considered "independent"; they would instead be treated as an unlawful in-kind (non-monetary) contribution to the candidate.

As indicated above, a candidate-controlled ballot measure committee may not make contributions or expenditures to support any candidates.

Checking Account

All City of San Diego primarily formed recipient committees must open a campaign checking account at a financial institution that has a branch office in the City of San Diego. All contributions must

be deposited into this account, and all expenditures must be made from this account. In addition:

- a committee has "received" a contribution whenever any representative of the committee (i.e. treasurer or fundraiser) takes possession of the contribution.

- once the committee receives a contribution, it must be deposited into the committee's bank account within 30 business days; see the next section entitled "Recordkeeping" for information that must be obtained from the contributor before a contribution is deposited.

- if a contribution is not deposited within 30 business days, it must be returned to the contributor as soon as possible, but no later than 35 business days after receipt.

Recordkeeping

Primarily formed recipient committees are required to maintain records associated with all contributions received and all expenditures made by their committees for a period of four years. In particular, committees must maintain the following records:

- for contributions made via check, credit card, or electronic payment, copies of the written instrument, credit card receipt, and/or transaction records, as well as deposit slips;

- for cash contributions, a notation that cash was received, and a legible photocopy of the bank deposit slip showing that the cash contribution was deposited into the campaign contribution checking account;

- if a contribution is something other than money, a description of what was contributed, a reasonable good faith estimate of the monetary value of the contribution, and the basis for the estimate;

- for each check drawn on the campaign checking account, the canceled check, the bank statement showing the payment, the name of the payee of each check, an itemized record of the goods or services for which each check was issued, and legible photocopies or originals of any invoices, bills, or other supporting documents for which funds were disbursed.

In addition, the City of San Diego has more stringent laws than the State of California when it comes to records associated with contributors. In particular, unlike state law, local law requires that primarily formed recipient committees obtain all of the following information <u>before</u> a contribution may be deposited:

- the contributor's full name; and

- the contributor's street address (business addresses are permitted but <u>not</u> post office boxes); and

- the contributor's occupation and employer (if the contributor has given you a total of $100 or more). If a contributor is self-employed, candidates must obtain the name of the business.

This requirement applies to all contributions, whether they are made via cash, check, or credit card.

Although the City's laws do not expressly require that committees obtain contributor information directly from the contributor, the Ethics Commission strongly encourages them to do so to avoid obtaining inaccurate

information. If you choose to obtain the required information from other sources (e.g., the host of a fundraiser or a campaign statement filed by another committee), you do so at your own risk. Remember that the failure to disclose accurate contributor information could result in an Ethics Commission fine.

Committee representatives must produce copies of records associated with campaign contributions and expenditures to the Ethics Commission upon request. In addition, if requested, committees must provide the Ethics Commission with written authorization to obtain records pertaining to their campaign bank accounts.

Filing Official

The San Diego City Clerk is the primary filling official for the committee. Nearly all of the committee's campaign statements will be filed solely with the City Clerk. One exception is the Statement of Organization (Form 410), which is filed with the Secretary of State (and a copy filed with the City Clerk). In addition, if the committee makes independent expenditures in another jurisdiction, it may have to file reports with the filing official in that jurisdiction.

Typical Filings with the City Clerk

Form 410 – upon qualifying as a committee

Form 410 – amendments to committee information

Form 460 – quarterly activity

Form 460 – semi-annual activity

Form 460 – pre-election activity

Form 497 – late period contributions received

From 410 – termination of committee

Form 460 – termination of committee

Example: *A committee is formed to support Proposition C in the June 2012 election. On June 14, 2011, within ten days of raising $1,000, it files a Form 410 with the Secretary of State (copy with the City Clerk). It will also file:*

- ✓ *a Form 460 semi-annual statement by July 31, 2011, reporting its activities through the end of June;*
- ✓ *a Form 460 quarterly statement by October 31, covering the period between July 1, 2011, and September 30, 2011;*
- ✓ *another Form 460 semi-annual statement by January 31, 2012, reporting its activities from October 1, 2011, through December 31, 2011; and*
- ✓ *two pre-election Forms 460 in 2012 leading up to the June election.*

If it receives contributions of $1,000 or more from a single source during the 16 day period prior to the election, it will report those contributions within 24 hours on a Form 497. After the election, the committee will file a Form 410 termination statement with the Secretary of State (copy with the City Clerk) and a Form 460 termination statement with the City Clerk.

Campaign Statements

The following are the general filing rules applicable to primarily formed recipient committees formed to support or oppose a City ballot measure.

Form 410 Statement of Organization (initial)

Basic Rule: An entity must file this form when it becomes a primarily formed recipient committee (by receiving $1,000 in contributions).

When to File: The Form 410 must be filed within 10 days of the committee receiving $1,000 or more.

The Form 410 may be filed prior to raising $1,000, but must be amended within 10 days of reaching the $1,000 threshold to indicate the date the entity qualified as a committee.

Committees state their official name on the Form 410. As indicated earlier, the name must include the name of any controlling candidate or sponsor, the economic interest and common employer of $50,000 donors, and the alphabetical designation of the ballot measure, if known.

An entity may become qualified as a committee at any time regardless of the proximity to the date of an election.

Where to File: Original and one copy with the Secretary of State, and one copy with the City Clerk

Form 410 Statement of Organization (amendment)

Basic Rule: A primarily formed recipient committee must file an amendment when there is any change to the information contained on its Form 410.

When to File: The Form 410 must be filed within 10 days of any change to the information on the form.

Example: *A committee is formed to support Proposition B. Several weeks later, an individual donates $50,000 to the committee. Within ten days of receiving the contribution, the committee will file a Form 410 amendment to change its name to include the economic or other special interest of the $50,000 donor.*

Where to File: Original and one copy with the Secretary of State, and one copy with the City Clerk.

If, during the 16 days prior to an election in which the committee is required to file pre-election statements, a change occurs in the name of the committee, the treasurer, or other principal officers, an amendment must be filed with the Secretary of State and the City Clerk within 24 hours of the change.

The amendment must be sent by fax, online transmission, guaranteed overnight delivery, or personal delivery.

Form 410 Statement of Organization (termination)

Basic Rule: Primarily formed recipient committees file this report as part of terminating the committee.

When to File: A primarily formed committee may terminate at any time, so long as all the following circumstances are present:

- it is no longer receiving contributions or making expenditures;
- it does not anticipate receiving contributions, repayments of outstanding loans, or any other receipts, and does not anticipate making expenditures in the future;
- it has eliminated or has no intention or ability to discharge its debts, loans received, and other obligations;
- it has no campaign funds; and,
- it has filed all required campaign statements disclosing all reportable transactions.

Where to File: Original and one copy with the Secretary of State, and one copy with the City Clerk.

Form 425 Semi-Annual Statement of No Activity

Basic Rule: Primarily formed recipient committees may use this form as a semi-annual statement if they have no financial activity during the reporting period. It is to be used only by recipient committees that

have not received any contributions and not made any expenditures during the six-month period covered by a semi-annual statement.

When to File: On a semi-annual basis in lieu of filing the Form 460, but only if the primarily formed recipient committee had no activity during reporting period.

Where to File: The Form 425 is filed with the City Clerk.

Form 450 Recipient Committee Short Form (quarterly, semi-annual & pre-election report)

Basic Rule: Primarily formed recipient committees may use this form in lieu of a Form 460 if they have limited financial activity during the reporting period. The Form 450 is for use by a recipient committee if the committee: (1) has not received a contribution that must be itemized (a cumulative amount of $100 or more from a single source); (2) has not received any other payment of $100 or more (miscellaneous increases to cash); (3) has no outstanding loans made or received; and (4) has no accrued expenses (unpaid bills).

When to File: On a quarterly, semi-annual, or pre-election basis in lieu of filing the Form 460, but only if the primarily formed recipient committee had very limited activity during reporting period.

Where to File: The Form 450 is filed with the City Clerk

Form 460 Recipient Committee Campaign Statement (quarterly report)

Basic Rule: Primarily formed "ballot measure" recipient committees file quarterly reports prior to reaching the semi-annual period in which the applicable measure is on the ballot. After the election, a quarterly statement will be due only if the committee makes contributions or expenditures to support *another* measure.

If a committee fails to qualify a measure for the ballot, or the measure does not otherwise appear on a ballot, the committee must file quarterly until terminated.

NOTE: A quarterly statement (Form 450 or Form 460) must be filed regardless of whether the committee accepted contributions or made expenditures during the reporting period.

When to File: On a quarterly basis. Statements are due on or before April 30, covering the period January 1 through March 31, and on or before October 31, covering July 1 through September 30.

Thus, a committee formed in May of 2011 for a measure on the June 2012 ballot will file a quarterly statement by October 31, 2011, covering the period from July 1, 2011, through September 30, 2011. It will not file a quarterly report in April of 2012 because it will instead be filing pre-election reports.

Where to File: The quarterly Form 460 is filed with the City Clerk.

Form 460 Recipient Committee Campaign Statement (semi-annual report)

Basic Rule: Primarily formed recipient committees file semi-annual reports until they terminate.

When to File: As a general rule, the semi-annual Form 460 is due no later than July 31, covering the period January 1 through June 30, and no later than January 31, covering the period July 1 through December 31. The period covered will change, however, if the committee is also filing quarterly reports and pre-election reports. The reporting period begins on the day following the last day covered by the previous Form 460.

Example: *A committee supporting Proposition E filed a quarterly Form 460 covering the period from July 1, 2011, through September 30, 2011. The committee's final semi-annual Form 460 for 2011 will cover the period from October 1, 2011, through December 31, 2011.*

If the committee is filing its first campaign statement, the reporting period begins with January 1 of the current calendar year.

Where to File: The semi-annual Form 460 is filed with the City Clerk.

Form 460 Recipient Committee Campaign Statement (pre-election report)

Basic Rule: Primarily formed recipient committees must file pre-election reports (regardless of the level of their financial activity) if the ballot measure(s) they are formed to support or oppose is/are being voted on in the upcoming election.

Example: *A committee is formed in December of 2011 to oppose Proposition B in the June 2012 election. It must file pre-election Forms 460 in the months leading up to that election.*

When to File: Most ballot measure committees file a Form 460 pre-election report covering two pre-election reporting periods. Candidate-controlled committees, however, file pre-election reports covering three reporting periods.

For the June 5, 2012, primary election and the November 6, 2012, general election, the filing deadlines (and the applicable reporting periods) for committees not controlled by a candidate are set forth in the following chart.

Non-Controlled Committees

2012 Primary Election

1st pre-election period
reporting period: 1/1/12 – 3/17/12
filing deadline: 3/22/12

2nd pre-election period
reporting period: 3/18/12 – 5/19/12
filing deadline: 5/24/12

2012 General Election

1st pre-election period
reporting period: 7/1/12 – 9/30/12
filing deadline: 10/5/12

2nd pre-election period
reporting period: 10/1/12 – 10/20/12
filing deadline: 10/25/12

As stated above, candidate-controlled ballot measure committees must also file a third Form 460 pre-election report. For the June 5, 2012, primary election and the November 6, 2012, general election, the filing deadlines (and the applicable reporting periods) for candidate-controlled ballot measure committees are set forth in the following chart.

Candidate-Controlled Committees

2012 Primary Election

1st pre-election period
reporting period: 1/1/12 – 3/17/12
filing deadline: 3/22/12

2nd pre-election period
reporting period: 3/18/12 – 5/19/12
filing deadline: 5/24/12

3rd pre-election period
reporting period: 5/20/12 – 5/31/12
filing deadline: 6/1/12

2012 General Election

1st pre-election period
reporting period: 7/1/12 – 9/30/12
filing deadline: 10/5/12

2nd pre-election period
reporting period: 10/1/12 – 10/20/12
filing deadline: 10/25/12

3rd pre-election period
reporting period: 10/21/12 – 11/1/12
filing deadline: 11/2/12

Where to File: The pre-election Form 460 is filed with the City Clerk.

Form 460 Recipient Committee Campaign Statement (termination)

Basic Rule: Primarily formed recipient committees file this report as part of terminating the committee. It can be filed along with a Form 410 termination statement.

When to File: When the committee has stopped accepting contributions and making expenditures, and has a zero cash balance.

Where to File: The Form 460 is filed with the City Clerk.

Form 465 Supplemental Independent Expenditure Report

Basic Rule: A primarily formed "ballot measure" recipient committee does not typically file a Form 465. It will file this form only if it makes independent expenditures totaling $1,000 or more in a calendar year to support or oppose a single candidate or a single measure other than the measure(s) for which it was primarily formed.

The "period covered" begins the day after the closing date of the most recent Form 465 filed related to the candidate or measure supported or opposed. If no previous Form 465 has been filed, the reporting period begins on January 1 of the current calendar year.

If a communication lists more than one candidate or measure, the Form 465 is filed only if $1,000 or more was expended on each candidate or measure featured. A separate Form 465 must be filed for each candidate or measure supported or opposed.

When to File: The Form 465 is filed at the same time that the applicable candidate or ballot measure committee files a Form 460 (except that a candidate's third pre-election report does not trigger the filing of a Form 465).

Example: *Yes on B – Protect Our Neighborhoods is a committee formed to support a City ballot measure that would increase the transient occupancy tax. On February 24, 2012, it spends $1,500 on an independent expenditure supporting Tom Yorke for Mayor. When the committee files its first pre-*

election Form 460, it will also file a Form 465 to report the $1,500 expenditure it made to support a City candidate.

If the independent expenditure is made during the 16 day period before the date of the election, the committee will file a Late Independent Expenditure Report (Form 496) within 24 hours of making the expenditure, and then also report the independent expenditure on a Form 465 filed by the next the semi-annual filing deadline.

Example: *No on B – No Taxes No Way is a committee formed to oppose a City ballot measure that would increase the transient occupancy tax. On June 1, 2012, a few days before the election, it spends $2,500 on an independent expenditure supporting Rick Tyrese for Mayor. Because the expenditure was made after the closing date of the second pre-election period, the committee will report the expenditure on a Form 465 filed by the semi-annual filing deadline following the election. (It will also report the independent expenditure on a Form 496 within 24 hours.)*

Where to File: City Clerk, if the candidate or measure is a City of San Diego candidate or measure. If the committee spends $1,000 or more to support a candidate or measure in another jurisdiction, file the Form 465 with the filing official in that jurisdiction.

Form 496 – Independent Expenditure Report (late period)

Basic Rule: A primarily formed recipient committee does not typically file a Form 496. It files a Form 496 only when it makes independent expenditures totaling $1,000 or more to support or oppose a single candidate or a single measure other than the measure(s) for which it was primarily formed during the 16 day period prior to the election.

For the 2012 primary election, the late period is May 20, 2012, to June 4, 2012. For the 2012 general election, the late period is October 21, 2012, to November 5, 2012.

The Form 496 is filed in addition to any required pre-election or semi-annual campaign statements. Any independent expenditure reported on a Form 496 must also be disclosed on the committee's next campaign statement (Form 460), and on the Supplemental Independent Expenditure Report (Form 465).

The 1,000 threshold is cumulative. Any independent expenditure made during the late period, even if smaller than $1,000, must be reported on a Form 496 if the cumulative $1,000 threshold is ultimately reached during the late period.

When to File: Within 24 hours of making independent expenditures cumulatively totaling $1,000 or more to support or oppose a single candidate or a single ballot measure during the 16 days prior to the election.

An independent expenditure is made when a communication is made, or when a payment is made for the development, production, or dissemination of the communication, whichever is earlier.

Keep in mind that there is no Form 496 requirement for independent expenditures made to support or oppose the measure(s) for which the committee was primarily formed.

NOTE: The Form 496 must be filed within 24 hours regardless of the day of the week. An independent expenditure made on a Friday, for example, must be reported by Saturday.

Where to File: City Clerk, if the candidate or measure is a City of San Diego candidate or measure. If the committee spends $1,000 or more during the late period to support a candidate or measure in another jurisdiction, file the Form 496 with the filing official in that jurisdiction.

The Form 496 must be filed by fax, guaranteed overnight delivery, or personal delivery. Regular mail may not be used.

Form 497 Late Contribution Report

Basic Rule: This report is required when a primarily formed recipient committee receives or makes a contribution of $1,000 or more during the 16 day period prior to the election.

A late contribution is received on the date the committee, or an agent of the committee, obtains possession or control of the check or non-monetary item that constitutes the contribution. A late contribution is made on the date the contribution is mailed, delivered, or otherwise transmitted to a candidate or committee.

A primarily formed recipient committee must file a Form 497 if it:

(1) receives contributions aggregating $1,000 or more, from a single source during the 16 days prior to the election; or

(2) makes contributions aggregating $1,000 or more to a candidate in another jurisdiction or to another primarily formed recipient committee ("candidate" or ballot measure") during the 16 days before the election; or

(3) makes a contribution or contributions totaling $1,000 or more to a state or county political party committee during the 16 days before a state election.

NOTE: Primarily formed recipient committees may not make contributions (in any amount) to City of San Diego candidates. Restrictions applicable to candidates in other jurisdictions are outside the scope of this manual.

When to File: The deadlines for filing the Form 497 depend on the type of contribution made, as follows:

Monetary contributions: The committee must file the Form 497 within 24 hours of making or receiving a $1,000 monetary contribution.

Non-monetary contributions: The committee must file the Form 497 within 24 hours of making a late $1,000 non-monetary contribution (and must also notify the recipient of the value of the late non-monetary contribution by personal delivery, fax, or guaranteed overnight mail; no particular form is required). It must file the Form 497 within 48 hours of receiving a late $1,000 non-monetary contribution.

NOTE: The Form 497 must be filed within 24/48 hours regardless of the day of the week. A monetary contribution received on a Friday, for example, must be reported by Saturday.

Where to File: City Clerk (the same filing official where the committee regularly files its Form 460s). Thus, the committee will file the Form 497 with the City Clerk, even if the late contribution is intended to support or oppose a County candidate or State measure.

If the late contribution is made to another primarily formed recipient committee, the other committee must file its own Form 497 to report its receipt of the contribution.

NOTE: The Form 497 must be filed by fax, guaranteed overnight delivery, or personal delivery. Regular mail may not be used.

Committees making contributions to support candidates/measures other than the ones for which they were primarily formed may change their committee type. See Chapter 1 for more information.

Electronic Filing

Every City of San Diego primarily formed recipient committee that has received contributions or made expenditures totaling $10,000 in connection with a City of San Diego election must file its campaign statements using the City Clerk's electronic filing system.

A committee that has reached the $10,000 threshold must continue to file electronically until it has terminated.

Committees that have not reached the $10,000 threshold may file electronically on a voluntary basis.

A committee filing electronically must continue to file paper copies of each campaign statement. The paper copy is considered the original campaign statement for audit and other legal purposes. The information on the paper copy must be the same as the information provided in the online filing.

NOTE: The paper copy requirement applies to all statements that are filed electronically (including Forms 496 and 497, even though these forms don't require a signature and can be filed by fax).

With the exception of the Form 410 and Form 425, all of the campaign statements discussed in this Chapter may be filed electronically. Contact the City Clerk's Office for additional information regarding its electronic filing system.

Audits

The San Diego Municipal Code authorizes the Ethics Commission to audit primarily formed recipient committees. Committees will be randomly selected for audit following each election cycle as follows:

- 75% of committees that raise or spend more than $100,000 will be audited;
- 50% of committees that raise or spend between $10,000 and $99,999 will be audited.

Committees that raise or spend less than $10,000 will not be placed in the pool for the random drawing.

In addition to the random audit drawing, the Ethics Commission may exercise its discretion to conduct an audit of a committee in connection with an ongoing investigation.

Chapter 4
"City" General Purpose Recipient Committees

This chapter focuses on general purpose committees that spend most of their money on City of San Diego elections. A "City" general purpose committee is one that (a) makes contributions and/or expenditures to support or oppose candidates and/or measures voted on only in the City of San Diego that total more than 50 percent of the contributions and expenditures made by the committee; and (b) is not a state general purpose committee.

NOTE: When controlled by a candidate, such committees may only exist to support or oppose ballot measures – not candidates.

This type of committee needn't spend all of its funds on City of San Diego elections. It can also support candidates (unless the committee is candidate-controlled) and measures in other jurisdictions. Substantial payments in other jurisdictions may, however, cause the committee to become a state or county committee. In addition, a committee spending a particular percentage of its money to support or oppose a particular candidate or measure may become a primarily formed recipient committee. See Chapter 1 for more information.

Refer to the rules in Chapter 1 for determining whether a committee is, or is not, a general purpose recipient committee. Committees must recalculate the applicable percentage quarterly at the end of March, June, September, and December. A new committee formed within six months of an election in connection with which the committee makes contributions and expenditures must calculate the percentage at the end of each month.

Naming Requirements

The name of a general purpose recipient committee controlled by a candidate or elected officeholder must contain the candidate's or officeholder's last name. The name of a general purpose recipient committee that is sponsored must contain the name of the sponsoring entity.

Example: *A committee created to advance fiscal reforms in San Diego has all of its administrative services performed by The Tax Revolters, a local non-profit entity. Because it is a sponsored committee, it identifies itself as "The Tax Revolter's Political Action Committee."*

NOTE: If a general purpose recipient committee is controlled by a candidate (may only spend money on ballot measures), it cannot also be "sponsored."

Limits and Prohibitions

The City's campaign laws do not impose on general purpose recipient committees any limits on the sources or amounts of contributions they receive. For example, a general purpose recipient committee may receive a $5,000 contribution from a business entity and use those funds to make an independent expenditure supporting a City ballot measure or a City candidate.

NOTE: These committees must be careful when accepting contributions from candidate-controlled committees, which are prohibited under state law from making contributions to other committees for the purpose of making independent expenditures supporting or opposing a candidate.

City general purpose recipient committees may not make a contribution directly to a City candidate. Nor may they make expenditures at the request, suggestion, or direction of, or in cooperation, consultation, concert or coordination with, a City candidate. Such expenditures would not be considered "independent"; they would instead be treated as unlawful in-kind (non-monetary) contributions to the candidate.

NOTE: Committees that are membership organizations may coordinate "member communications" with candidates. Contact the Ethics Commission for additional information on this subject.

As indicated above, a candidate-controlled general purpose committee may not make contributions or expenditures to support any candidates.

Recordkeeping

City general purpose recipient committees are required to maintain records associated with all contributions received and all expenditures made by their committees for a period of four years. In particular, committees must maintain the following records:

- for contributions made via check, credit card, or electronic payment, copies of the written instrument, credit card receipt, and/or transaction records, as well as deposit slips;
- for cash contributions, a notation that cash was received, and a legible photocopy of the bank deposit slip showing that the cash contribution was deposited into the campaign contribution checking account;
- if a contribution is something other than money, a description of what was contributed, a reasonable good faith estimate of the monetary value of the contribution, and the basis for the estimate;
- for each check drawn on the campaign checking account, the canceled check, the bank statement showing the payment, the name of the payee of each check, an itemized record of the goods or services for which each check was issued, and legible photocopies or originals of any invoices, bills, or other supporting documents for which funds were disbursed.

In addition, the City of San Diego has more stringent laws than the State of California when it comes to records associated with contributors. In particular, unlike state law, local law requires that City general purpose recipient committees obtain all of the following information <u>before</u> a contribution may be deposited:

- the contributor's full name; and
- the contributor's street address (business addresses are permitted but not post office boxes); and
- the contributor's occupation and employer (if the contributor has given you a total of $100 or more). If a contributor is self-employed, candidates must obtain the name of the business.

This requirement applies to all contributions, whether they are made via cash, check, or credit card.

Although the City's laws do not expressly require that committees obtain contributor information directly from the contributor, the Ethics Commission strongly encourages them to do so to avoid obtaining inaccurate information. If you choose to obtain the required information from other sources (e.g., the host of a fundraiser or a campaign

statement filed by another committee), you do so at your own risk. Remember that the failure to disclose accurate contributor information could result in an Ethics Commission fine.

Committee representatives must produce copies of records associated with campaign contributions and expenditures to the Ethics Commission upon request. In addition, if requested, committees must provide the Ethics Commission with written authorization to obtain records pertaining to their campaign bank accounts.

Filing Official

The San Diego City Clerk is the primary filling official for this type of committee. Most of the committee's campaign statements will be filed solely with the City Clerk. One exception is the Statement of Organization (Form 410), which is filed with the Secretary of State (and a copy filed with the City Clerk). In addition, if the committee makes independent expenditures in another jurisdiction, it may have to file reports with the filing official in that jurisdiction.

Typical Filings with the City Clerk

Form 410 – upon qualifying as a committee

Form 410 – amendments to committee information

Form 460 – semi-annual activity

Form 460 – pre-election activity

Form 465 – independent expenditures made

Form 496 – late period independent expenditures made

Example: *A committee is formed to advance environmental reforms in San Diego. Within ten days of raising $1,000, it files a Form 410 with the Secretary of State (copy with the City Clerk). It files its Forms 460 with the City Clerk on a semi-annual basis while it solicits and accepts additional contributions. Early in 2012, it decides to support a City ballot measure, Proposition A, that will be placed on the June 2012 ballot. On April 12, it spends $2,000 to distribute door hangers supporting Proposition A. Because it spent $500 or more during a pre-election period, it will file a Form 460 pre-election report. Because it spent $1,000 or more to support a single measure, It will also file a Form 465. Both forms will be due to the City Clerk by the filing deadline for the second pre-election period. If the committee makes independent expenditures during the 16 day "late period" prior to the election, it will report those expenditures within 24 hours on a Form 496 filed with the City Clerk. After the election, the committee will continue to file semi-annual reports with the City Clerk.*

Campaign Statements

The following are the general filing rules applicable to City of San Diego general purpose recipient committees.

Form 410 Statement of Organization (initial)

<u>Basic Rule:</u> An entity must file this form when it qualifies as a committee (by receiving $1,000 in contributions).

The Form 410 is used to identify the committee's name, which must include the last name of any candidate controlling the committee, or the name of any entity sponsoring the committee.

<u>When to File:</u> The Form 410 must be filed within 10 days of the committee receiving contributions of $1,000 or more.

The Form 410 may be filed prior to raising $1,000, but must be amended within 10 days of reaching the $1,000 threshold to indicate the date the entity qualified as a committee.

An entity may become qualified as a committee at any time regardless of the proximity to the date of an election.

Where to File: Original and one copy with the Secretary of State, and one copy with the City Clerk

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Form 410 Statement of Organization (amendment)

Basic Rule: A City general purpose recipient committee must file an amendment when there is any change to the information contained on its Form 410.

When to File: The Form 410 must be filed within 10 days of any change to the information on the form.

Example: *The committee Friends of Open Space was not a sponsored committee when it was created, but several months into its existence it received a large contribution from Balboa Park Builders. The contribution represented 80% of all the contributions the committee received, and resulted in the developer becoming the "sponsor" of the committee. The committee has ten days to amend its Form 410 to indicate that it is sponsored by Balboa Park Builders.*

Where to File: Original and one copy with the Secretary of State, and one copy with the City Clerk

If, during the 16 days prior to an election, a change occurs in the name of the committee, the treasurer, or other principal officers, an amendment must be filed with the Secretary of State and the City Clerk within 24 hours of the change. The amendment must be sent by fax, online transmission, guaranteed overnight delivery, or personal delivery.

Form 410 Statement of Organization (termination)

Basic Rule: City general purpose recipient committees file this report as part of terminating the committee.

When to File: A City general purpose recipient committee may terminate at any time, so long as all the following circumstances are present:

- it is no longer receiving contributions or making expenditures;
- it does not anticipate receiving contributions, repayments of outstanding loans, or any other receipts, and does not anticipate making expenditures in the future;
- it has eliminated or has no intention or ability to discharge its debts, loans received, and other obligations;
- it has a zero cash balance; and,
- it has filed all required campaign statements disclosing all reportable transactions.

Where to File: The Form 460 is filed with the City Clerk.

Form 425 Semi-Annual Statement of No Activity

Basic Rule: City general purpose recipient committees may use this form as a semi-annual statement if they have no financial activity during the reporting period. It is to be used only by recipient committees that have not received any contributions and not made any expenditures during the six-month period covered by a semi-annual statement.

When to File: On a semi-annual basis in lieu of filing the Form 460, but only if the City general purpose recipient committees had no activity during the reporting period.

Where to File: The Form 425 is filed with the City Clerk.

Form 450 Recipient Committee Short Form (semi-annual and pre-election report)

Basic Rule: City general purpose recipient committees may use this form as a semi-annual or pre-election statement if they have limited financial activity during the reporting period. The Form 450 may be used by a recipient committee if the committee: (1) has not received a contribution that must be itemized (a cumulative amount of $100 or more from a single source); (2) has not received any other payment of $100 or more (miscellaneous increases to cash); (3) has no outstanding loans made or received; and (4) has no accrued expenses (unpaid bills).

When to File: On a semi-annual or pre-election basis in lieu of filing the Form 460, but only if the committee had very limited activity during reporting period.

Where to File: The Form 450 is filed with the City Clerk.

Form 460 Recipient Committee Campaign Statement (semi-annual report)

Basic Rule: City general purpose recipient committees file semi-annual reports until they terminate.

When to File: As a general rule, the semi-annual Form 460 is due no later than July 31, covering the period January 1 through June 30, and no later than January 31, covering the period July 1 through December 31. The period covered will change, however, if the committee is also filing pre-election reports. The reporting period begins on the day following the last day covered by the previous Form 460.

Example: *A City general purpose recipient committee filed its second pre-election Form 460 covering the period from March 18, 2012, through May 19, 2012. The committee's semi-annual Form 460 will cover the period from May 20, 2012, through June 30, 2012.*

If the committee is filing its first campaign statement, the reporting period begins with January 1 of the current calendar year.

Where to File: The semi-annual Form 460 is filed with the City Clerk.

Form 460 Recipient Committee Campaign Statement (pre-election report)

Basic Rule: City general purpose recipient committees must file pre-election reports if they make contributions or independent expenditures totaling $500 or more during the period covered by the pre-election statement.

Example: *On February 15, 2012, a City general purpose recipient committee spends $650 on yard signs to oppose Proposition E on the June 2012 ballot. It must file a Form 460 pre-election report with the City Clerk by March 22, 2012.*

When to File: Most City general purpose recipient committees file a Form 460 pre-election report covering two pre-election reporting periods. Candidate-controlled committees, however, file pre-election reports covering three reporting periods.

For the June 5, 2012, primary election and the November 6, 2012, general election, the filing deadlines (and the applicable reporting periods) are set forth in the following charts.

Non-Controlled Committees

2012 Primary Election

1st pre-election period
reporting period: 1/1/12 – 3/17/12
filing deadline: 3/22/12

2nd pre-election period
reporting period: 3/18/12 – 5/19/12
filing deadline: 5/24/12

2012 General Election

1st pre-election period
reporting period: 7/1/12 – 9/30/12
filing deadline: 10/5/12

2nd pre-election period
reporting period: 10/1/12 – 10/20/12
filing deadline: 10/25/12

As stated earlier, candidate-controlled committees must also file a third Form 460 pre-election report. These committees are subject to the filing deadlines in the following chart.

Candidate-Controlled Committees

2012 Primary Election

1st pre-election period
reporting period: 1/1/12 – 3/17/12
filing deadline: 3/22/12

2nd pre-election period
reporting period: 3/18/12 – 5/19/12
filing deadline: 5/24/12

3rd pre-election period
reporting period: 5/20/12 – 5/31/12
filing deadline: 6/1/12

2012 General Election

1st pre-election period
reporting period: 7/1/12 – 9/30/12
filing deadline: 10/5/12

2nd pre-election period
reporting period: 10/1/12 – 10/20/12
filing deadline: 10/25/12

3rd pre-election period
reporting period: 10/21/12 – 11/1/12
filing deadline: 11/2/12

Where to File: The pre-election Form 460 is filed with the City Clerk.

Form 460 Recipient Committee Campaign Statement (termination)

Basic Rule: City general purpose recipient committees file this report as part of terminating the committee (along with a Form 410 termination statement).

When to File: When the committee has stopped accepting contributions and making expenditures, and has a zero cash balance.

Where to File: The Form 460 is filed with the City Clerk.

Form 465 Supplemental Independent Expenditure Report

Basic Rule: A City general purpose recipient committee files a Form 465 if it makes independent expenditures totaling $1,000 or more in a calendar year to support or oppose a single candidate or a single measure.

The Form 465 is required to be filed in addition to any other pre-election, semi-annual, or late independent expenditure report required to be filed.

The filing requirement is not triggered until the committee has reached the $1,000 calendar year threshold for a single candidate or measure. For example, spending $900 on an independent expenditure supporting a candidate through the first pre-election period would not trigger the filing of a Form 465, but spending $100 on an independent expenditure for the same candidate during the second pre-election period would require filing a Form 465 that discloses both sets of independent expenditures.

The "period covered" begins the day after the closing date of the most recent Form 465 filed related to the candidate or ballot measure supported or opposed. If no previous Form 465 has been filed, the reporting period begins on January 1 of the current calendar year.

If a communication lists more than one candidate or measure, the Form 465 is filed only if $1,000 or more was expended on any candidate or measure featured. A separate Form 465 must be filed for each candidate or measure supported or opposed.

When to File: The 465 is filed at the same time that the applicable candidate or ballot measure committee files a Form 460 (except that a candidate's third pre-election report does not trigger the filing of a Form 465).

Example: *Olive Dunham is running for Mayor in the June 2012 primary election. San Diego Coastal Club, a City of San Diego general purpose recipient committee, decides to support Dunham's mayoral efforts by purchasing a billboard advertisement during the second pre-election period. The committee will file a Form 465 by the second pre-election filing deadline.*

If the independent expenditure is made during the 16 day late period, the committee will file the Form 465 by the semi-annual filing deadline (and also report the expenditure on a Late Independent Expenditure Report (Form 496) within 24 hours of making the expenditure).

Example: *San Diego Coastal Club also makes a $1,200 independent expenditure to support Olive Durham a week before the election. The committee will file another Form 465 by the semi-annual filing deadline following the election (as well as a Form 496 within 24 hours; see below).*

City general purpose recipient committees do not file the Form 465 in connection with a candidate's third pre-election filing. Thus, a $1,000 payment for an independent expenditure during the candidate's third pre-election filing period is considered made during the 16 day late period, and is reported on a Form 465 filed by the semi-annual filing deadline (and on the Form 496 within 24 hours).

Where to File: City Clerk. (If the committee spends $1,000 or more to support a candidate or measure in another jurisdiction, file a Form 465 with the filing official in that jurisdiction.)

Form 496 Independent Expenditure Report (late period)

Basic Rule: A City general purpose recipient committee files a Form 496 if it makes independent expenditures cumulatively totaling $1,000 or more to support or oppose a single City of San Diego candidate or a single City of San Diego measure during the late period (the 16 days prior to the election).

For the 2012 primary election, the late period is May 20, 2012, to June 4, 2012. For the 2012 general election, the late period is October 21, 2012, to November 5, 2012.
The Form 496 is filed in addition to any required pre-election or semi-annual campaign statements. Independent expenditures also must be disclosed on the committee's next campaign statement (Form 460), and on the Supplemental Independent Expenditure Report (Form 465).

The 1,000 threshold is cumulative. Any independent expenditure made during the late period, even if smaller than $1,000, must be reported on a Form 496 if the cumulative $1,000 threshold is ultimately reached (for a single candidate or measure) during the late period.

When to File: Within 24 hours of making an independent expenditure cumulatively totaling $1,000 or more to support or oppose a single candidate or a single ballot measure during the 16 days prior to the candidate's or measure's election.

An independent expenditure is made when a communication is made, or when a payment is made for the development, production, or dissemination of the communication, whichever is earlier.

NOTE: The Form 496 must be filed within 24 hours regardless of the day of the week. An independent expenditure made on a Friday, for example, must be reported by Saturday.

Where to File: City Clerk. (If the committee spends $1,000 or more during the late period to support a candidate or measure in another jurisdiction, file a Form 496 with the filing official in that jurisdiction.)

NOTE: The Form 496 must be filed by fax, guaranteed overnight delivery, or personal delivery. Regular mail may not be used.

Form 497 Late Contribution Report

Basic Rule: A City of San Diego general purpose recipient committee must file a Form 497 if, during the

last 16 days before an election, it makes a contribution of $1,000 or more, or multiple contributions aggregating $1,000 or more, to a single candidate in another jurisdiction, a primarily formed recipient committee ("candidate" or "ballot measure"), or a political party.

A late contribution is made on the date the contribution is mailed, delivered, or otherwise transmitted to a candidate or committee.

NOTE: City general purpose recipient committees may not make contributions (in any amount) to City of San Diego candidates. Restrictions applicable to candidates in other jurisdictions are outside the scope of this manual.

Contributions made to another general purpose recipient committee do not trigger the filing of a Form 497 unless the other general purpose recipient committee is a political party.

A late contribution received by a City general purpose recipient committee does not trigger the filing of a Form 497.

When to File: The filing must take place within 24 hours of making the late contribution.

If it is a non-monetary contribution, the committee must also notify the recipient of the value of the contribution within 24 hours (no particular form must be used).

NOTE: The Form 497 must be filed within 24 hours regardless of the day of the week. A contribution made on a Friday, for example, must be reported by Saturday.

Where to File: City Clerk. The committee will file the Form 497 with the City Clerk, even if the late contribution is made to support or oppose a candidate or measure in another jurisdiction. If the late contribution is made to a primarily formed recipient committee, that committee must file its own Form 497 to report its receipt of the contribution.

NOTE: The Form 497 must be filed by fax, guaranteed overnight delivery, or personal delivery. Regular mail may not be used.

Electronic Filing

Every City general purpose recipient committee that has received contributions or made expenditures totaling $10,000 in connection with a City of San Diego election must file its campaign statements using the City Clerk's electronic filing system.

A committee that has reached the $10,000 threshold must continue to file electronically until it has terminated.

Committees that have not reached the $10,000 threshold may file electronically on a voluntary basis.

A committee filing electronically must continue to file paper copies of each campaign statement. The paper copy is considered the original campaign statement for audit and other legal purposes. The information on the paper copy must be the same as the information provided in the online filing.

NOTE: The paper copy requirement applies to all statements that are filed electronically (including Forms 496 and 497, even though these forms don't require a signature and can be filed by fax).

With the exception of the Form 410 and Form 425, all of the campaign statements discussed in this Chapter may be filed electronically. Contact the City Clerk's Office for additional information regarding its electronic filing system.

Chapter 5
State and County General Purpose Recipient Committees

This chapter focuses on general purpose recipient committees that spend most of their money in a jurisdiction other than the City of San Diego, but do participate to some extent in City of San Diego elections.

Because these committees file most of their campaign statements with filing officers in other jurisdictions (the Form 460 in particular), this chapter is not intended to provide comprehensive guidance regarding their overall filing obligations. Instead, it focuses on the rules and filing guidelines related to their participation in City of San Diego elections.

A state general purpose recipient committee is a committee that makes contributions or expenditures to support or oppose candidates or measures voted on in state elections (including making contributions to other state general purpose committees) or in more than one county, that total more than 50 percent of the contributions and expenditures made by the committee. All political party committees are state general purpose recipient committees.

A county general purpose recipient committee is a committee that (1) makes contributions or expenditures to support or oppose candidates or measures voted on in only one county, or in more than one jurisdiction within one county, including contributions to county general purpose committees in the same county, that total more than 50 percent of the contributions and expenditures made by the committee, and (2) is not a state or city general purpose committee.

NOTE: The rules in this chapter also apply to a city general purpose recipient committee in situations where the "city" is not the City of San Diego. Because such committees do not typically participate in City of San Diego elections, this chapter will discuss the applicable rules only in the context of state and county committees.

Refer to the rules in Chapter 1 for determining whether a committee is, or is not, a general purpose recipient committee. Keep in mind that each committee must recalculate the applicable percentage quarterly at the end of March, June, September, and December. A new committee formed within six months of an election in connection with which the committee makes contributions and expenditures must calculate the percentage at the end of each month.

Limits and Prohibitions

The City's campaign laws do not impose on general purpose recipient committees any limits on the sources or amounts of contributions they receive. For example, a general purpose recipient committee may receive a $5,000 contribution from a business entity and use those funds to make an independent expenditure supporting a City ballot measure or a City candidate.

NOTE: These committees must be careful when accepting contributions from candidate-controlled committees, which are prohibited under state law from making contributions to other committees for the purpose of making independent expenditures supporting or opposing a candidate.

General purpose recipient committees (other than political party committees) may not make a contribution directly to a City candidate. General purpose recipient committees (other than political party committees) may not make expenditures at the request, suggestion, or direction of, or in cooperation, consultation, concert or coordination with, a City candidate. Such expenditures would not be considered "independent"; they would instead be treated as an unlawful in-kind (non-monetary) contribution to the candidate. Political party committees are subject to a $1,000 limit when making contributions to City candidates.

NOTE: Committees that are membership organizations may coordinate "member communications" with candidates. Contact the Ethics Commission for additional information on this subject.

Filing Official

The San Diego City Clerk is not the primary filling official for this type of committee. Instead, these committees file most of their campaign statements with filing officers in their respective jurisdictions. Nevertheless, as indicated above, general purpose recipient committees must file some campaign statements with the City Clerk when participating in City of San Diego elections. In particular, they are required to file a Form 465 with the City Clerk if they spend $1,000 or more to support or oppose a City of San Diego candidate or a City of San Diego ballot measure. They are also required to file a Form 496 with the City Clerk if they spend $1,000 or more to support or oppose a City of San Diego candidate or a City of San Diego ballot measure during the 16 days immediately preceding the election.

Typical Filings with the City Clerk

Form 465 – independent expenditures made

Form 496 – late period independent expenditures made

Example: *A County of San Diego general purpose committee decides to support City of San Diego Proposition D in the November 2012 election. On October 10, 2012, it spends $15,000 to distribute mailers supporting the measure. On November 2, 2012, a few days before the election, it spends $4,000 on a phone bank to support the measure. In addition to any other forms it must file outside of the City of San Diego, this committee will file with the City Clerk a Form 465 to report the mailer, no later than the second pre-election period deadline, and a Form 496 within 24 hours of making the phone bank expenditure.*

Campaign Statements

The following are the general filing rules applicable to state and county general purpose recipient committees when participating in City of San Diego elections.

Form 465 Supplemental Independent Expenditure Report

Basic Rule: The Form 465 is filed if a state or county general purpose recipient committee makes independent expenditures totaling $1,000 or more in a calendar year to support or oppose a single City candidate or a single City ballot measure.

If a communication lists more than one candidate or measure, the Form 465 is filed only if $1,000 or more was expended on any candidate or measure featured. A separate Form 465 must be filed for each candidate or measure supported or opposed.

The "period covered" begins the day after the closing date of the most recent Form 465 filed related to the candidate or measure

supported or opposed. If no previous Form 465 has been filed, the reporting period begins on January 1 of the current calendar year.

The filing requirement is not triggered until the committee has reached the $1,000 calendar year threshold for a single candidate or measure. For example, spending $900 on an independent expenditure supporting a City candidate through the first pre-election period would not trigger the filing of a Form 465, but spending $100 on an independent expenditure for the same candidate during the second pre-election period would require filing a Form 465 that discloses both sets of independent expenditures.

When to File: The 465 is filed at the same time that the applicable candidate or ballot measure committee files a Form 460 (except that a candidate's third pre-election report does not trigger the filing of a Form 465).

Example: *Peter Cardinal is running for Mayor in the June 2012 primary election. Citizens for Righteous Representation, a County of San Diego general purpose recipient committee, decides to support Cardinal's mayoral efforts by paying $3,000 for a mass mailing during the first pre-election period. The committee will file a Form 465 by the first pre-election filing deadline.*

If the independent expenditure is made during the 16 day late period, the committee will file the Form 465 by the semi-annual filing deadline (and also report the expenditure on a Late Independent Expenditure Report (Form 496) within 24 hours of making the expenditure).

General purpose recipient committees do not file the Form 465 in connection with a candidate's third pre-election filing. Thus, a $1,000 payment for an independent expenditure during the candidate's third pre-election filing period is considered made during the 16 day late period, and is reported on a Form 465 filed by the semi-annual filing deadline (and on the Form 496 within 24 hours).

Example: *Citizens for Righteous Representation also makes a $1,500 independent expenditure supporting Cardinal's mayoral effort shortly before the election, after the closing date of the second pre-election period. The committee will file another Form 465 by the semi-annual filing deadline following the election (as well as a Form 496 within 24 hours; see below).*

Where to File: The 465 is filed with the City Clerk if the candidate or measure supported is a City of San Diego candidate or measure.

Form 496 Independent Expenditure Report (late period)

Basic Rule: A general purpose recipient committee files a Form 496 if it makes independent expenditures cumulatively totaling $1,000 or more to support or oppose a single City of San Diego candidate or a single City of San Diego measure during the late period (the 16 days prior to the election).

For the 2012 primary election, the late period is May 20, 2012, to June 4, 2012. For the 2012 general election, the late period is October 21, 2012, to November 5, 2012.

The 1,000 threshold is cumulative. Any independent expenditure made during the late period, even if less than $1,000, must be reported on a Form 496 if the cumulative $1,000 threshold is ultimately reached (for a single candidate or measure) during the late period.

When to File: Within 24 hours of making independent expenditures cumulatively totaling $1,000 or more to

support or oppose a single candidate or a single ballot measure during the 16 days prior to the candidate's or measure's election.

An independent expenditure is made when a communication is made, or when a payment is made for the development, production, or dissemination of the communication, whichever is earlier.

NOTE: The Form 496 must be filed within 24 hours regardless of the day of the week. An independent expenditure made on a Friday, for example, must be reported by Saturday.

Where to File: Late independent expenditures supporting or opposing a City of San Diego candidate or ballot measure are filed with the City Clerk.

NOTE: The Form 496 must be filed by fax, guaranteed overnight delivery, or personal delivery. Regular mail may not be used.

Electronic Filing

State and County general purpose recipient committees have no obligation to file any campaign statements using the City Clerk's electronic filing system. They may do so, however, on a voluntary basis.

Committees that choose to file electronically must continue to file paper copies of each campaign statement. The paper copy is considered the original campaign statement for all legal purposes. The information on the paper copy must be the same as the information provided in the online filing.

NOTE: The paper copy requirement applies to Forms 496 and 497 that are filed electronically even though these forms don't require a signature and can be filed by fax.

Contact the City Clerk's Office for additional information regarding its electronic filing system.

Chapter 6
"City" Independent Expenditure Committees

This chapter focuses on independent expenditure committees that spend most of their money supporting or opposing City of San Diego candidates and/or ballot measures. A City independent expenditure committee is an individual or entity that (a) uses its own funds to make contributions or expenditures to support or oppose candidates or measures voted on only in the City of San Diego that total more than 50 percent of the contributions and expenditures made by the committee; and (b) is not a state general purpose committee.

An individual or entity will become an independent expenditure committee if it makes independent expenditures totaling $1,000 or more in a calendar year. Independent expenditure committees spend their own money; they do not solicit or accept payments from others that they use for political purposes. As a result, they are subject to rules that are different from those that apply to the recipient committees discussed in Chapters 2 through 5 of this manual.

Although independent expenditure committees typically focus on making independent expenditures to support or oppose a candidate or ballot measure, they may also make contributions (except that only individuals and political parties may make contributions to City of San Diego candidates). Note that if a committee makes contributions totaling $10,000 or more in a calendar year, it may be considered a major donor committee. Contact the FPPC for assistance with major donor committee filing obligations.

Refer to the rules in Chapter 1 for determining whether a committee is, or is not, a City independent expenditure committee. Keep in mind that if a City committee spends significant sums on State or County races, it may become a State or County independent expenditure committee. All independent expenditure committees must recalculate the applicable percentage semi-annually at the end of June and December.

NOTE: Independent expenditure committees terminate automatically at the end of each calendar year. Activity from one calendar year does not trigger filing in another calendar year.

Limits and Prohibitions

Independent expenditure committees do not accept payments from others that they use for political purposes. If a committee accepts payments totaling $1,000 or more, it is no longer an independent expenditure committee and must thereafter file campaign statements as a recipient committee.

As indicated above, independent expenditure committees may not make contributions to a City candidate. Nor may they make expenditures at the request, suggestion, or direction of, or in cooperation, consultation, concert or coordination with, a City candidate. Such expenditures would not be considered "independent"; they would instead be treated as an unlawful in-kind (non-monetary) contribution to the candidate.

Filing Official

The San Diego City Clerk is the primary filling official for this type of committee. Most of the committee's campaign statements will be filed solely with the City

Clerk. If, however, the committee makes independent expenditures in another jurisdiction, it may have to file reports with the filing official in that jurisdiction.

Typical Filings with the City Clerk

Form 461 – semi-annual activity
Form 461 – pre-election activity
Form 465 – independent expenditures made
Form 496 – late period independent expenditures made

Campaign Statements

The following are the general filing rules applicable to City of San Diego independent expenditure committees.

Form 461 Independent Expenditure Committee Campaign Statement (semi-annual report)

Basic Rule: City independent expenditure committees file the Form 461 to report contributions and independent expenditures made during the semi-annual period.

The Form 461 filing requirement is not triggered until the committee has reached the $1,000 threshold in a calendar year. For example, spending a total of $900 on independent expenditures supporting various City candidates and measures from January 1 through June 30 does not trigger the filing of a Form 461, but spending another $100 in July would require the filing of a Form 461 covering all independent expenditures made during the year.

When to File: If an entity qualifies as an independent expenditure committee (reaches $1,000 threshold) during the first six months of the year, the Form 461 is due no later than July 31, covering the period January 1 through June 30. If it makes any additional contributions or independent expenditures after June 30, it will file another Form 461 no later than January 31 of the following year, covering the period from July 1 through December 31. If it does not make any additional contributions or independent expenditures after June 30, no other Form 461 is required

If an entity or individual qualifies as an independent expenditure committee during the second six months of the year, its Form 461 will be due no later than January 31, covering the period January 1 through December 31 of the prior year.

Example: *In February of 2012, J.E. Cohen spends $400 to distribute flyers in his neighborhood to support City candidate David Lariat, who is on the June ballot. In April, Mr. Cohen contributes $450 to a ballot measure committee opposing Proposition F, which is also on the June ballot. Finally, a few days before the election, Mr. Cohen spends $150 to distribute more flyers supporting candidate Lariat. Mr. Cohen will report all of these expenditures and contributions on a Form 461 filed by July 31, 2012. (Note that because all of the payments in this example were less than $500 during any one pre-election period, there is no need for Cohen to file any pre-election statements; see next section for information regarding pre-election statements.)*

Where to File: City independent expenditure committees file the Form 461 with the City Clerk.

Form 461 Independent Expenditure Committee Campaign Statement (pre-election report)

Basic Rule: City independent expenditure committees must file a pre-election statement if they make independent expenditures or contributions that total $500 or more during a pre-election period.

Example: *In February of 2012, Mid City Wireless spends $1,600 to print and distribute door hangers supporting Bruce Leigh, a candidate on the June 2012 ballot.*
Mid City Wireless will report the $1,600 expenditure on a pre-election Form 461 filed before March 22, 2012, the filing deadline for the first pre-election period. (Mid City Wireless will also file a Form 465 by the same date; see next section for more information.)

If the pre-election statement is the committee's first Form 461, the reporting period begins January 1. Otherwise, this date should be the day after the closing date of the most recently filed Form 461.

Filing a pre-election report does not eliminate the requirement that a committee also file a semi-annual Form 461, even if the committee makes no contributions or expenditures following the pre-election period.

When to File: By the applicable pre-election filing deadline.

For the June 5, 2012, primary election and the November 6, 2012, general election, the pre-election filing deadlines (and the applicable reporting periods) are set forth in the following chart.

2012 Primary Election

1st pre-election period
reporting period: 1/1/12 – 3/17/12
filing deadline: 3/22/12

2nd pre-election period
reporting period: 3/18/12 – 5/19/12
filing deadline: 5/24/12

2012 General Election

1st pre-election period
reporting period: 7/1/12 – 9/30/12
filing deadline: 10/5/12

2nd pre-election period
reporting period: 10/1/12 – 10/20/12
filing deadline: 10/25/12

Where to File: City independent expenditure committees file the Form 461 with the City Clerk.

NOTE: If a City of San Diego independent expenditure committee qualifies as another type of committee later in the calendar year (e.g., it becomes a County committee), it must continue to file copies of the Form 461 with the City Clerk until the end of the calendar year.

Form 465 Supplemental Independent Expenditure Report

Basic Rule: A City independent expenditure committee files a Form 465 if it makes independent expenditures totaling $1,000 or more in a calendar year to support or oppose a single candidate or a single measure.

The Form 465 is required to be filed in addition to any other pre-election, semi-annual, or late independent expenditure report required to be filed.

The filing requirement is not triggered until the primarily formed recipient committee has reached the $1,000 calendar year threshold for a single candidate or measure. For example, spending $900 on an independent expenditure supporting a candidate through the first pre-election period would not trigger the filing of a Form 465, but spending $100 on an independent expenditure for the same candidate during the second pre-election period would require filing a Form 465 that discloses both sets of independent expenditures.

The "period covered" begins the day after the closing date of the most recent Form 465 filed related to the candidate or ballot measure supported or opposed. If no previous Form 465 has been filed, the reporting period begins on January 1 of the current calendar year.

If a communication lists more than one candidate or measure, the Form 465 is filed only if $1,000 or more was expended on any candidate or measure featured. A separate Form 465 must be filed for each candidate or measure supported or opposed.

When to File: The 465 is filed at the same time that the applicable candidate or ballot measure committee files a Form 460 (except that a candidate's third pre-election report does not trigger the filing of a Form 465).

Example: *Fred Murtz is running for a City Council seat in the June 2012 primary election. Southwest Homes decides to support Murtz's campaign by paying $2,000 to have a plane fly a "Vote for Murtz" banner over City parks and beaches. It makes this independent expenditure during the second pre-election period. Southwest Homes will report the payment on a Form 465 (and on a Form 461) filed by May 24, 2012, the second pre-election filing deadline.*

If the independent expenditure is made during the 16 day late period, the committee will report it on a Form 465 (and Form 461) filed by the semi-annual filing deadline (and also report the expenditure on a Late Independent Expenditure Report (Form 496) within 24 hours of making the expenditure).

Independent expenditure committees do not file the Form 465 in connection with a candidate's third pre-election filing. Thus, a payment for an independent expenditure during the candidate's third pre-election filing period is considered made during the 16 day late period, and is reported on a Form 465 (and Form 461) filed by the semi-annual filing deadline (and on the Form 496 within 24 hours if the applicable $1,000 threshold is reached).

Example: *Southwest Homes also makes a $1,500 independent expenditure shortly before the election, after the closing date of the second pre-election period. The committee will report the payment on a Form 465 (and a Form 461) filed by the semi-annual filing deadline following the election (as well as on a Form 496 within 24 hours of making the expenditure; see below).*

Where to File: City Clerk. (If the committee spends $1,000 or more to support a candidate or measure in another jurisdiction, file a Form 465 with the filing official in that jurisdiction.)

Form 496 Independent Expenditure Report (late period)

Basic Rule: A City independent expenditure committees files a Form 496 if it makes independent expenditures cumulatively totaling $1,000 or more to support or oppose a single City of San Diego candidate or a single City of San Diego measure during the late period (the 16 days prior to the election).

Example: *Ten days before the June primary election, Millennium Manufacturing makes a $1,200 payment to a slate mailer organization to support a City ballot measure that will be listed on a slate mailer distributed throughout the City. Separate and distinct from any filings by the slate mailer organization, Millennium Manufacturing must file a Form 496 with the City Clerk within 24 hours of "making" the independent expenditure (and Forms 461 and 465 by the semi-annual filing deadline following the election).*

NOTE: When making a payment to a slate mailer organization, the independent expenditure is "made" when the payment is delivered, not when the slate mailer is distributed.

The Form 496 is filed in addition to any required pre-election or semi-annual campaign statements. Late independent expenditures must also be disclosed on the committee's next campaign statement (Form 461), and on the Supplemental Independent Expenditure Report (Form 465).

For the 2012 primary election, the late period is May 20, 2012, to June 4, 2012. For the 2012 general election, the late period is October 21, 2012, to November 5, 2012.

The 1,000 threshold is cumulative. Any independent expenditure made during the late period, even if smaller than $1,000, must be reported on a Form 496 if the cumulative $1,000 threshold is ultimately reached (for a single candidate or measure) during the late period.

When to File: Within 24 hours of making independent expenditures that cumulatively total $1,000 or more to support or oppose a single candidate or a single ballot measure during the 16 days prior to the candidate's or measure's election.

An independent expenditure is made when a communication is made, or when a payment is made in connection with the development, production, or dissemination of the communication, whichever is earlier.

NOTE: The Form 496 must be filed within 24 hours regardless of the day of the week. An independent expenditure made on a Friday, for example, must be reported by Saturday.

Where to File: Late independent expenditures supporting or opposing a City candidate or City ballot measure are reported on a Form 496 filed with the City Clerk.

NOTE: The Form 496 must be filed by fax, guaranteed overnight delivery, or personal delivery. Regular mail may not be used.

Form 497 Late Contribution Report

Basic Rule: This report is required when an independent expenditure committee makes contributions cumulatively totaling $1,000 during the late period to particular entities.

In particular, an independent expenditure committee must file a Form 497 if it:

- makes contributions aggregating $1,000 or more to a candidate or to a primarily formed recipient committee ("candidate" or "ballot measure") during the 16 days before the election on which the applicable candidate or ballot measure is on the ballot; or

- makes contributions totaling $1,000 or more to a state or county political party committee during the 16 days before a state election.

Example: *North Bay Electric became an independent expenditure committee when it spent $5,000 on a billboard urging support for Proposition F on the City's June ballot. Ten days before the election, San Diego Citizens for Stronger Neighborhoods Yes on F asks North Bay Electric to help offset the costs of the measure being listed on a slate mailer. North Bay Electric agrees to the committee's request and makes a $1,600 payment to the slate mailer organization. Because North Bay Electric's payment was made at the behest of a committee, it is considered a non-monetary contribution to that committee. North Bay Electric will file a Form 497 with the City Clerk within 24 hours of making the payment, stating that it made a $1,600 non-monetary contribution to San Diego Citizens for Stronger Neighborhoods Yes on F.*

NOTE: Only an independent expenditure committee that is an individual may make contributions (up to $500) to City of San Diego candidates. Restrictions applicable to candidates in other jurisdictions are outside the scope of this manual.

Late contributions must also be disclosed on the committee's next campaign statement (Form 461).

Example: *In the above example, North Bay Electric will also file a Form 461 to report its independent expenditure as well as the non-monetary contribution, and will do so by the semi-annual filing deadline following the election.*

If it is a non-monetary contribution, the committee must also notify the recipient of the value of the contribution within 24 hours (no particular form must be used).

Example: *In the above example, North Bay Electric will notify San Diego Citizens for Stronger Neighborhoods Yes on F of the non-monetary contribution (the payment to the slate mailer organization at the committee's request) within 24 hours.*

If a late contribution is made to a City primarily formed recipient committee, that recipient committee must file its own Form 497 (within 24 hours if it is a monetary contribution and within 48 hours if it is a non-monetary contribution) with the City Clerk to report its receipt of the contribution from the independent expenditure committee.

Example: *In the above example, San Diego Citizens for Stronger Neighborhoods Yes on F will file its own Form 497 to disclose its receipt of the non-monetary contribution, and will do so within 48 hours of North Bay Electric making the payment to the slate mailer organization.*

When to File: Within 24 hours of making a $1,000 contribution.

A late contribution is made on the date the contribution is mailed, delivered, or otherwise transmitted to a candidate or committee.

NOTE: The Form 497 must be filed within 24 hours regardless of the day of the week. A contribution made on a Friday, for example, must be reported by Saturday.

Where to File: City independent expenditure committees file the Form 497 with the City Clerk.

Electronic Filing

Every City independent expenditure committee that has made expenditures totaling $10,000 in connection with a City of San Diego election must file its campaign statements using the City Clerk's electronic filing system.

A committee that has reached the $10,000 threshold must continue to file electronically until it has terminated.

Committees that have not reached the $10,000 threshold may file electronically on a voluntary basis.

A committee filing electronically must continue to file paper copies of each campaign statement. The paper copy is considered the original campaign statement for audit and other legal purposes. The information on the paper copy must be the same as the information provided in the online filing.

NOTE: The paper copy requirement applies to all statements that are filed electronically (including Forms 496 and 497, even though these forms don't require a signature and can be filed by fax).

All of the campaign statements discussed in this Chapter may be filed electronically. Contact the City Clerk's Office for additional information regarding its electronic filing system.

Chapter 7
State & County Independent Expenditure Committees

This chapter focuses on independent expenditure committees that make most of their political expenditures outside the City of San Diego, but do participate to some extent in City of San Diego elections.

Because these committees file most of their campaign statements with filing officers in other jurisdictions (the Form 461 in particular), this chapter is not intended to provide comprehensive guidance regarding their overall filing obligations. Instead, it focuses on the rules and filing guidelines directly related to their participation in City of San Diego elections.

State independent expenditure committees are individuals or entities that use their own funds to make contributions or independent expenditures to support or oppose candidates or measures voted on in state elections (including making contributions to other state general purpose committees, or in more than one county) that total more than 50 percent of the contributions and expenditures made by the committee.

County independent expenditure committees are persons or entities that (a) use their own funds to make contributions or expenditures to support or oppose candidates or measures voted on in a single county, or in more than one jurisdiction within one county (including contributions to county general purpose committees in the same county) that total more than 50 percent of the contributions and expenditures made by the committee, and (b) are not state or city general purpose committees.

An individual or entity will become an independent expenditure committee if it makes independent expenditures totaling $1,000 or more in a calendar year. Independent expenditure committees spend their own money; they do not solicit or accept political contributions from others, and thus they are subject to rules that are different from those that apply to the recipient committees discussed in Chapters 2 through 5 of this manual.

Although independent expenditure committees typically focus on making independent expenditures to support or oppose a candidate or ballot measure, they may also make contributions (except that only individuals and political parties may make contributions to City of San Diego candidates). Note that if a committee makes contributions totaling $10,000 or more in a calendar year, it may be considered a major donor committee. Contact the FPPC for assistance with major donor committee filing obligations.

NOTE: The rules in this chapter also apply to a city independent expenditure committee in situations where the "city" is not the City of San Diego. Because such committees do not typically participate in City of San Diego elections, this chapter will discuss the applicable rules only in the context of state and county committees.

Refer to the rules in Chapter 1 for determining whether a committee is, or is not, a state or county independent expenditure committee. Keep in mind that if a state or county committee spends significant sums on races in other jurisdictions, its committee type may change (e.g., a county committee could become a city committee). All independent expenditure committees must recalculate

the applicable percentage semi-annually at the end of June and December.

NOTE: Independent expenditure committees terminate automatically at the end of each calendar year. Activity from one calendar year does not trigger filing in another calendar year.

Limits and Prohibitions

Independent expenditure committees do not accept payments from others that they use for political purposes. If a committee accepts payments totaling $1,000 or more, it is no longer an independent expenditure committee and must thereafter file campaign statements as a recipient committee.

As indicated above, independent expenditure committees may not make contributions to a City candidate. Nor may they make expenditures at the request, suggestion, or direction of, or in cooperation, consultation, concert or coordination with, a City candidate. Such expenditures would not be considered "independent"; they would instead be treated as an unlawful in-kind (non-monetary) contribution to the candidate.

Filing Official

The San Diego City Clerk is not the primary filling official for this type of committee. Instead, these committees file most of their campaign statements with filing officers in their respective jurisdictions. Nevertheless, as indicated above, state and county independent expenditure committees must file some campaign statements with the City Clerk when participating in City of San Diego elections. In particular, they are required to file a Form 465 with the City Clerk if they spend $1,000 or more to support or oppose a City of San Diego candidate or a City of San Diego ballot measure. They are also required to file a Form 496 with the City Clerk if they spend $1,000 or more to support or oppose a City of San Diego candidate or a City of San Diego ballot measure during the 16 days immediately preceding the election.

Typical Filings with the City Clerk

Form 465 – independent expenditures made

Form 496 – late period independent expenditures made

Campaign Statements

The following are the general filing rules applicable to state and county independent expenditure committees.

Form 465 Supplemental Independent Expenditure Report

Basic Rule: State and county independent expenditure committees file a Form 465 if they make independent expenditures totaling $1,000 or more in a calendar year to support or oppose a single City candidate or a single City measure.

The filing requirement is not triggered until the independent expenditure committee has reached the $1,000 threshold in a calendar year for a single candidate or measure. For example, spending $900 on an independent expenditure supporting a candidate through the first pre-election period would not trigger the filing of a Form 465, but spending $100 on an independent expenditure for the same candidate during the second pre-election period would require filing a Form 465 that discloses both sets of independent expenditures.

The “period covered” begins the day after the closing date of the most recent Form 465 filed related to the candidate or ballot measure supported or opposed. If no previous Form 465 has been filed, the reporting period begins on January 1 of the current calendar year.

If a communication lists more than one candidate or measure, the Form 465 is filed only if $1,000 or more was expended on any candidate or measure featured. A separate Form 465 must be filed for each candidate or measure supported or opposed.

When to File: The 465 is filed at the same time that the applicable City of San Diego candidate or ballot measure committee files a Form 460 (except that a candidate’s third pre-election report does not trigger the filing of a Form 465).

Example: *Ethel Murtz is running for a City Council seat in the June 2012 primary election. California Construction opposes Murtz by paying $1,500 for door hangers criticizing Murtz’s qualifications. It makes this independent expenditure during the second pre-election period. California Construction will report the payment on a Form 465 filed by the second pre-election filing deadline.*

If the independent expenditure is made during the 16 day late period, the committee will file the Form 465 by the semi-annual filing deadline (and also report the expenditure on a Late Independent Expenditure Report (Form 496) within 24 hours of making the expenditure).

Example: *California Construction also makes a $2,500 independent expenditure a week before the election. The committee will report the payment on a Form 465 filed by the semi-annual filing deadline following the election (as well as on a Form 496 within 24 hours; see below).*

Independent expenditure committees do not file the Form 465 in connection with a candidate’s third pre-election filing. Thus, a payment for an independent expenditure during the candidate’s third pre-election filing period is considered made during the 16 day late period, and is reported on a Form 465 filed by the semi-annual filing deadline (and on the Form 496 within 24 hours if the applicable $1,000 threshold is reached).

Where to File: State and county committees file the Form 465 with the City Clerk if they spend $1,000 or more to support a single City of San Diego candidate or a single City of San Diego ballot measure.

Form 496 Independent Expenditure Report (late period)

Basic Rule: An independent expenditure committee files a Form 496 if it makes independent expenditures cumulatively totaling $1,000 or more to support or oppose a single City of San Diego candidate or a single City of San Diego measure during the late period (the 16 days prior to the election).

Late independent expenditures must also be disclosed on the committee’s next campaign statement (Form 461, filed with the committee’s primary filing officer), and on the Supplemental Independent Expenditure Report (Form 465, filed with the City Clerk).

For the 2012 primary election, the late period is May 20, 2012, to June 4, 2012. For the 2012 general election, the late

period is October 21, 2012, to November 5, 2012.

The 1,000 threshold is cumulative. Any independent expenditure made during the late period, even if less than $1,000, must be reported on a Form 496 if the cumulative $1,000 threshold is ultimately reached (for a single candidate or measure) during the late period.

When to File: Within 24 hours of making independent expenditures that cumulatively total $1,000 or more to support or oppose a single City of San Diego candidate or a single City of San Diego ballot measure during the 16 days prior to the candidate's or measure's election.

An independent expenditure is made when a communication is made, or when a payment is made in connection with the development, production, or dissemination of the communication, whichever is earlier.

NOTE: The Form 496 must be filed within 24 hours regardless of the day of the week. An independent expenditure made on a Friday, for example, must be reported by Saturday.

Where to File: State and county committees file the Form 496 with the City Clerk if they spend $1,000 or more to support or oppose a single City of San Diego candidate or a single City of San Diego ballot measure during the late period.

NOTE: The Form 496 must be filed by fax, guaranteed overnight delivery, or personal delivery. Regular mail may not be used.

Electronic Filing

State and county independent expenditure committees have no obligation to file any campaign statements using the City Clerk's electronic filing system. They may do so, however, on a voluntary basis.

Committees that choose to file electronically must continue to file paper copies of each campaign statement. The paper copy is considered the original campaign statement for all legal purposes. The information on the paper copy must be the same as the information provided in the online filing.

NOTE: The paper copy requirement applies to all statements that are filed electronically (including Form 496, even though it doesn't require a signature and can be filed by fax).

Contact the City Clerk's Office for additional information regarding its electronic filing system.

Chapter 8
Making Independent Expenditures in the City of San Diego

Under the City's campaign laws, the committees discussed in this manual are not permitted to make contributions to City candidates (except that political party committees may make contributions up to $1,000). Therefore, as a general rule, primarily formed recipient committees, general purpose recipient committees, and independent expenditure committees may not make monetary contributions to a City candidate, may not provide non-monetary contributions to a City candidate, and may not make any kind of payment to anyone else at the behest of a City candidate.

Instead of making contributions, the committees discussed in this manual will typically make independent expenditures to advocate for or against City candidates. This chapter provides guidance with respect to what is, and what is not, an independent expenditure in a City of San Diego candidate election.

At the Behest

An independent expenditure is a payment for a communication that expressly advocates the election or defeat of a clearly identified candidate when the communication is not coordinated with or made "at the behest" of the affected candidate or committee.

A communication is "made at the behest of" a candidate when it is made:

- ✓ under the control of the candidate or candidate's agent;
- ✓ at the direction of the candidate or candidate's agent;
- ✓ in cooperation with the candidate or candidate's agent;
- ✓ in consultation with the candidate or candidate's agent;
- ✓ in coordination with the candidate or candidate's agent;
- ✓ in concert with the candidate or candidate's agent;
- ✓ at the request or suggestion of the candidate or candidate's agent; or
- ✓ with the express prior consent of the candidate or candidate's agent.

A committee is making a payment "at the behest" of a candidate if the candidate or candidate's agent discusses with the committee any decisions regarding a communication's:

- ✓ content;
- ✓ timing;
- ✓ location;
- ✓ mode;
- ✓ intended audience;
- ✓ volume of distribution; or
- ✓ frequency of placement.

A payment made at the behest of a candidate is not "independent" of the candidate, and is therefore not considered an "independent expenditure." It is instead considered a contribution to the candidate. As stated above, the committees discussed in this manual (other than political party committees) are not permitted to make contributions to City candidates.

Example: *Grace McGuffin is running for Mayor and mentions to friends at a social gathering that she has insufficient campaign funds to pay for mailers attacking her opponent's record on tax increases. Roger Thornhill is one of McGuffin's friends at the event. After listening to*

McGuffin, he spends $5,000 to pay for mailers attacking the opponent's record on tax increases. In doing this, Thornhill has made an unlawful in-kind contribution to Grace McGuffin.

When a committee makes a payment that advocates for or against a City candidate, it is presumed that the payment is not "independent" if:

- ✓ it is based on information about the candidate's campaign needs or plans that the candidate has provided to the committee, or
- ✓ it is made by or through an agent of the candidate in the course of the agent's involvement in the current campaign, or
- ✓ the committee retains the services of a person who provides the candidate with professional services related to campaign or fundraising strategy for that election, or
- ✓ the communication duplicates, in whole or in substantial part, a communication designed, produced, paid for, or distributed by the candidate.

Example: *Walt Huston is running for City Attorney and has employed Marly Dietrich to provide consulting services for his campaign. The Hoover Society would like to support Huston so they hire Dietrich to oversee design and distribution of a campaign mailer. Because Dietrich is providing consulting services to both the candidate and the Hoover Society, there will be a presumption that the mailers disseminated by the Hoover Society to support Walt Huston are not "independent," but are instead unlawful in-kind contributions to Huston.*

Example: *Pete Lorry is a campaign volunteer for Sid Greenstreet's City Council campaign committee. Lorry is aware of Greenstreet's campaign strategies and planned expenditures. Lorry is also a member of MoveUp, an organization interested in supporting Greenstreet's campaign. Lorry must avoid any involvement with MoveUp's political expenditures to ensure that MoveUp's expenditures are independent of Greenstreet's committee.*

There are many situations in which a connection between a person and a candidate do not rise to the level of coordinating expenditures. An expenditure is not made at the behest of a candidate or committee merely when:

- ✓ the person making the expenditure interviews the candidate on issues without discussing campaign strategy, or
- ✓ the person making the expenditure has obtained a photograph, biography, position paper, press release, or similar material from the candidate or the candidate's agents, or
- ✓ the person making the expenditure has made a contribution to the candidate, or
- ✓ the person making the expenditure is responding to a general, non-specific request for support by the candidate or the candidate's agent, provided that there is no discussion with the candidate or candidate's agent prior to the expenditure relating to details of the expenditure, or
- ✓ the person making the expenditure has invited the candidate to make an appearance before the person's members, employees, shareholders, or the families thereof, provided that there is no discussion with the candidate or candidate's agent prior to the expenditure relating to details of the expenditure, or
- ✓ an expenditure is made at the request or suggestion of the candidate or candidate's agent for the benefit of another candidate or committee.

Example: *Jim Stewart is running for a Council District seat and is invited to speak at the Aardvark Club's monthly meeting. At the meeting, Stewart discusses his platform and asks for the Aardvark Club's support, but does not provide any details regarding his advertising strategies or needs. After the meeting, the Aardvark Club sends out mailers to residents of Stewart's district. Because Stewart did not provide the Aardvark Club with any information regarding the content, timing, location, mode, intended audience, volume of distribution, or frequency of placement of the mailers, the Aardvark Club has made an "independent" expenditure.*

Limits on Contributions and Expenditures

Recipient committees that make independent expenditures are not subject to contribution limits. Such committees may accept unlimited contributions from individuals and non-individual entities, including business entities and organizations, for the purpose of making independent expenditures.

NOTE: Committees can accept contributions from other committees, but must be careful when accepting contributions from committees that are controlled by a candidate. Candidate-controlled committees are prohibited under state law from making contributions to other committees for the purpose of making independent expenditures supporting or opposing a candidate.

Except as indicated in the note below, there are no limits on the amount of money a committee may spend on independent expenditures to support or oppose a candidate or ballot measure.

NOTE: Candidate-controlled committees may not make expenditures to support that candidate or to support or oppose any other candidate.

Coordination Between Committees

Committees making independent expenditures may exchange information with other such committees regarding campaign advertising, such as when two such committees discuss a scenario in which one committee will pay for mailers and the other committee will pay for a phone bank.

Committees making independent expenditures may also share the costs of campaign advertising. For example, Committee A and Committee B may jointly purchase a campaign mailer if each committee submits a check to the printer for their equal share of the cost of printing the mailer.

If, however, a committee gives anything of value to another committee without receiving full compensation in return, the item of value would be considered a contribution. For example, if Committee A pays for mailers and later receives a check equal to half the cost of the mailers from Committee B, then Committee A has received a contribution from Committee B.

Chapter 9
Campaign Advertising and Advocacy in the City of San Diego

This Chapter is intended to provide guidance to primarily formed recipient committees, general purpose recipient committees, and independent expenditure committees that make expenditures to support or oppose City of San Diego candidates or ballot measures.

Mass Campaign Literature

Mass campaign literature includes mailers, flyers, pamphlets, door hangers, walking cards, posters, yard signs, business cards, campaign buttons 10 inches in diameter or larger, and bumper stickers 60 square inches or larger.

If a committee distributes 200 or more substantially similar items of mass campaign literature in a calendar month, each item must contain the following disclosure: the words **"paid for by"** immediately followed by the name, street address, and city of the committee paying for the items.

The "paid for by" disclosure must be in a typeface that is easily legible, contrasts with the background, and is no less than 12 points in size.

A recipient committee distributing the mass campaign literature must identify itself using the same name that appears on the Statement of Organization (Form 410) that it filed with the Secretary of State. It may not use an informal, abbreviated, or past version of its name. In the case of an independent expenditure committee, the name on the campaign literature must be the same name that appears on its Form 461.

A post office box may be used instead of a street address if the committee's street address is a matter of public record with the Secretary of State (i.e., identified on the committee's Form 410).

Note that the Ethics Commission does not regulate the truth or accuracy of the content of mass campaign literature. It has no control over the dissemination of false or misleading information.

For additional details concerning mass mailing rules, please refer to the "Fact Sheet on Mass Campaign Literature," which is available on the Ethics Commission's website.

Telephone Communications

The City's campaign laws require committees to include a disclosure statement when making live or recorded campaign-related telephone calls to 500 or more individuals or households in connection with the same election.

In order to count toward the 500-call threshold, a telephone call must be:

- made to support or oppose a City candidate or City ballot measure, or
- part of a poll that mentions a City candidate or City ballot measure.

The disclosure requirement is triggered as soon as the committee arranges for the placement of calls that will take it to or past the 500-call threshold for a single election. Once a committee knows that it will reach that threshold, it must begin making the disclosure; it may not wait until the 500th call.

Such telephone calls must include a statement that the calls are "paid for by,"

"authorized by," or are otherwise being made "on behalf of" immediately followed by the name of each committee paying for the resources used for the calls (e.g., the purchase of a contact list, the development of a script, overhead expenses, and telephone charges).

The applicable disclosure is determined by the following criteria:

- a call is **"paid for by"** a committee when the committee pays directly for the call or pays another person to make the call on its behalf.

- a call is **"authorized by"** a committee if a person pays for the call at the behest of the committee and that payment is a contribution to the committee.

- a call is made **"on behalf of"** a committee when it is made by a volunteer at the direction of the committee (even if the committee has paid for a contact list, telephone charges, etc.).

Example: *A month before the primary election, the California Conservation Coalition, a state general purpose committee, makes an independent expenditure by hiring a "phone bank" company to make 2,000 advocacy calls in support of a City candidate. Each call made by the phone bank to support the candidate must include a statement that the call is "paid for by the California Conservation Coalition."*

If the telephone communication is a recording, the disclosure statement must be played at the same speed as the rest of the message. The disclosure statement must be clearly audible and at the same volume as the rest of the call. The disclosure may be made any time during the telephone call. If a person receiving a telephone call asks who paid for the call, the caller may tell the person that the disclosure will be made at the end of the call.

State law contains prohibitions regarding "robocalls" (calls placed by machines using automatic dialing features). These prohibitions do not fall within the scope of the City's campaign laws; see California Public Utilities Code sections 2871 through 2876 for more information.

Note that the Ethics Commission does not regulate the truth or accuracy of the content of telephone communications. It has no control over the dissemination of false or misleading information.

For additional details regarding the applicable rules, please refer to the "Fact Sheet on Telephone Communications," which is available on the Ethics Commission's website.

Billboards

If a committee pays for an advertisement that appears on a billboard, the advertisement must contain a **"paid for by"** disclosure that includes the name of the committee paying for the advertisement.

Example: *The committee No on F, Stop the Stadium, sponsored by the Downtown Owners Association purchases a billboard to urge voters to vote against Proposition F. The billboard must contain the words "Paid for by No on F, Stop the Stadium, sponsored by the Downtown Owners Association."*

The size of the disclosure must be at least five percent of the height of the advertisement and printed in a contrasting color. The height requirement applies to the height of the font used in the disclosure. Accordingly, if a disclosure is spread across multiple lines of text, the height of each line of text in the disclosure must be equal to or

greater than five percent of the height of the billboard.

Mass Media Advertisement

Committees must include a **"paid for by"** disclosure in any advertisement purchased in a newspaper, periodical, or magazine of general circulation.

The "paid for by" disclosure must also appear in any Internet web page advertisement. This disclosure requirement does not apply to the committee's own website, but instead to websites that sell a portion of their web page for advertising purposes.

NOTE: if a web advertisement is too small to allow the full "paid for by" disclosure, make sure the advertisement contains a link to a webpage clearly displaying that information.

The disclosure must be in the form of "paid for by" followed by the name of the committee, and must be in a typeface that is easily legible, contrasts with the background, and is no less than 12 points in size.

Example: *The committee No on F, Stop the Stadium, sponsored by the Downtown Owners Association purchases advertising space in the Union-Tribune newspaper and on The Voice of San Diego website. Both advertisements must include the words "Paid for by No on F, Stop the Stadium, sponsored by the Downtown Owners Association."*

Radio and Television Advertising

The City's campaign laws do not regulate radio and television advertising. There are, however, state and federal laws that apply to these forms of advertising. Such rules are beyond the scope of this manual.

Electronic Advertising

In addition to the local rules discussed in this chapter, state law now imposes "paid for by" disclosures on certain campaign advertising that appears on Internet web pages, blogs, mobile devices, and other electronic communication systems. These rules are outside the scope of this manual; consult the California Fair Political Practices Commission for more information.

Identification of $50,000 Donors

A committee that is primarily formed to support or oppose a City of San Diego ballot measure must include an additional disclosure statement on its advertisements if the committee has received contributions totaling $50,000 or more from a single source.

Example: *BioChem makes a $50,000 contribution to Citizens Mobilizing Against Change - Yes on A - with Support from the Petrochemical Industry, a committee supporting a measure on the June ballot. When ordering door hangers advocating for the ballot measure, the committee will include a disclosure on the door hangers stating that they are "paid for by Citizens Mobilizing Against Change - Yes on A - with Support from the Petrochemical Industry, 101 Main Street, San Diego, and major funding by BioChem."*

If there are more than two $50,000+ contributors, the committee is required only to disclose the highest and second highest contributor, in that order. In the event that more than two donors meet this disclosure threshold at identical contribution levels, the highest and second highest shall be selected according to the order in which the contributions were made.

NOTE: the $50,000 disclosure requirement does not apply to general purpose recipient committees.