

# SAN DIEGO ETHICS COMMISSION REVIEW OF THE CITY'S Election Campaign Control Ordinance

## PROPOSED AMENDMENTS

Related to the *Thalheimer* Rulings

Rev. April 26, 2012

### Chapter 2: Government

#### Article 7: Elections, Campaign Finance and Lobbying

#### Division 29: Election Campaign Control Ordinance

#### §27.2903 Definitions

Unless otherwise defined in this section, or the contrary is stated or clearly appears from the context, the definitions of the Political Reform Act of 1974 (Government Code sections 81000 *et seq.*) and the definitions contained in the regulations adopted by the Fair Political Practices Commission shall govern the interpretation of this division.

*Agent through Professional fees and costs* [no change]

~~*Shared management* means an organizational structure in which there is common management and control of two or more *general purpose recipient committees*. In determining whether there is common management and control, consideration shall be given to the following factors:~~

- ~~(a) The same *person* or substantially the same *person* manages the operation of the different *general purpose recipient committees*;~~
- ~~(b) There are common or commingled funds or assets;~~
- ~~(c) The *general purpose recipient committees* share the use of the same offices or employees, or otherwise share activities, resources, or personnel on a regular basis;~~
- ~~(d) There is otherwise a regular and close working relationship between the *general purpose recipient committees*.~~

*Special Election through Vendor* [no change]

#### §27.2930 Base Level of Campaign Statements and Disclosures

Each *candidate* and *committee* shall file campaign statements in the time and manner required by California Government Code sections 81000 *et seq.* and title 2 of the California Code of Regulations with the following additional requirements:

- (a) All *candidate* and *committee* campaign disclosure statements that are generated from the output of a computer software program shall be generated with the names of all contributors listed in alphabetical order by last name. *Treasurers* for any *committee* that files handwritten campaign disclosure statements shall make reasonable good faith efforts to list the names of all contributors in alphabetical order by last name.
- ~~(b)~~ A *general purpose recipient committee* attributing *contributions* pursuant to section 27.2936 totaling \$100 or more to the same individual for purposes of supporting or opposing a *candidate* in an *election* shall, within six months of the attribution, separately disclose such *contributions* on a campaign statement filed with the *City Clerk* by supplying all identifying information regarding the contributor, reporting the date of the attribution as the “date received,” showing the amount attributed to the individual at that time, identifying the applicable *candidate* and *election* for which the attribution was made, and indicating that the *contribution* is being re-reported per San Diego Municipal Code section 27.2930.
- ~~(c)~~ A *general purpose recipient committee* that submits all of the information required by subsection (b) in a supplemental document attached to a campaign statement filed with the *City Clerk* will be deemed to have complied with the provisions of subsection (b).
- ~~(d)~~(b) Any payment made by a political party for *member communications* to its members who are registered with that party and that would otherwise qualify as a *contribution* or *expenditure* shall be reported on that political party’s campaign disclosure statement in a manner that identifies the payment as a “member communication.”
- ~~(e)~~(c) In addition to any other campaign statement required to be filed pursuant to the California Political Reform Act, every *candidate*, *controlled committee*, and *committee* primarily formed to support or oppose a *candidate*, shall file a pre-election statement on the Friday before any *election* in which the *candidate* is listed on the ballot. This statement shall have a closing date of the Thursday before the *election* and shall cover activity and payments occurring through that day.
- ~~(f)~~(d) When reporting *contributions* for regularly scheduled *City candidate elections*, *candidates* and *committees* shall include the notation “(P)” for all *contributions* that the contributor has designated for a primary *election*, and shall include the notation “(G)” for all *contributions* that the contributor has designated for a general *election*. In instances where the contributor has not designated his or her *contribution* for a particular *election*, the *candidate* or *committee* shall include the notation “(P)” for all *contributions* the *candidate* or *committee* has allocated for the primary *election*, and shall include the notation “(G)” for all *contributions* the *candidate* or *committee* has allocated for the general *election*.
- ~~(g)~~(e) When reporting *contributions* for specially scheduled *City candidate elections*, *candidates* and *committees* shall include the notation “(S)” for all *contributions* that the contributor has designated for a *special election*, and shall include the notation “(R)” for all *contributions* that the contributor has designated for a *special run-off*

*election*. In instances where the contributor has not designated his or her *contribution* for a particular *election*, the *candidate* or *committee* shall include the notation “(S)” for all *contributions* the *candidate* or *committee* has allocated for the *special election*, and shall include the notation “(R)” for all *contributions* the *candidate* or *committee* has allocated for the *special run-off election*.

- ~~(h)~~(f) In conjunction with making the notations required by subsections ~~(f)~~(d) and ~~(g)~~(e), *candidates* and *committees* shall disclose the cumulative amount of *contributions* received from the contributor for each *election*.
- ~~(i)~~(g) *Sponsors* and *sponsored committees* participating in *City elections* are subject to the reporting obligations set forth in title 2, section 18419 of the California Code of Regulations.
- ~~(j)~~(h) It is unlawful to fail to comply with the disclosure requirements of California Government Code sections 81000 *et seq.*, the disclosure requirements of title 2 of the California Code of Regulations, and the additional requirements of this section.

#### **§27.2934 Contribution Limitations for Political Party Committees**

~~Notwithstanding the provisions of sections 27.2935, 27.2936, 27.2950, and 27.2951:~~

- (a) A political party committee, as defined in California Government Code section 85205, as may be amended, shall not be prohibited from making *contributions* to a *candidate* or *controlled committee* in a *City candidate election*, but shall be subject to the ~~*contribution limit set forth in subsection (b)*~~ restrictions set forth in this section.
- (b) It is unlawful for a political party committee to make, or for a *candidate* or *controlled committee* to solicit or accept, a *contribution* that would cause the total amount contributed by ~~the political party committee~~ all local, state, and federal committees of the same political party to the *candidate* and the *candidate's controlled committee* to exceed \$1,000 for any single ~~*City candidate election*~~ \$3,000 for any council district election or to exceed \$12,000 for any citywide *election*.
- (c) It is unlawful for a political party committee to make a *contribution* to a *City candidate* unless the *contribution* is attributable to donations received from one or more individuals.
- (d) It is unlawful for a political party committee to make a *contribution* to a *City candidate* by attributing more than \$500 to the same individual per *candidate* per *election*.
- (e) It is unlawful for any portion of an individual's donation used by a political party committee for attribution purposes to be used again as a funding source for a different attribution made under this section.
- ~~(e)~~(f) The dollar ~~amount~~ amounts set forth in ~~this section~~ subsection (b) ~~is~~ are subject to changes in the Consumer Price Index as described in section 27.2937.

### §27.2935 Contribution Limitations

- (a) It is unlawful for an individual to make, ~~to~~ or for any a candidate or controlled committee supporting or opposing a candidate, or for any candidate or committee supporting or opposing a candidate to solicit or accept, a *contribution* that would cause the total amount contributed by that individual to ~~support or oppose the candidate and the candidate's controlled committee~~ to exceed \$500 for any single City candidate election.
- (b) For purposes of this section, an officeholder who is the subject of a recall *election* is deemed to be a *candidate* seeking elective office, and the *contribution limits limit* set forth in subsection (a) shall apply to any *payment* made to any candidate controlled committee for purposes of supporting or opposing the recall of that officeholder, regardless of whether such *payment* is made before, during, or after the circulation of a recall *petition*.
- (c) Nothing in this section is intended to limit the amount of his or her own money or property that a *candidate* may contribute to, or expend on behalf of, the *candidate's* own campaign.
- (d) The *contribution* limits imposed by this section do not apply to contributions made to general purpose recipient committees or primarily formed recipient committees; ~~which are discussed in section 27.2936.~~
- (e) The *contribution* limits imposed by this section do not apply to *contributions* made to a *professional expense committee*, as discussed in sections 27.2965-27.2969.
- (f) The dollar amounts set forth in this section are subject to changes in the Consumer Price Index as described in section 27.2937.

### §27.2936 Contribution Limitations for General Purpose Recipient Committees

- (a) ~~General purpose recipient committees may participate in City candidate elections by using contributions from individuals, subject to the contribution limits established by this section.~~
- (b) It is unlawful for any *general purpose recipient committee* to use a *contribution* for the purpose of supporting or opposing a *candidate* unless the *contribution* is attributable to an individual in an amount that does not exceed \$500 per *candidate* per *election*.
- (c) It is unlawful for two or more *general purpose recipient committees with shared management* to ~~attribute contributions to the same individual for the purpose of supporting or opposing one or more candidates seeking elective City office if it causes the total amount those committees attribute to that individual to exceed the contribution limits set forth in subsection (b).~~

- (d) ~~A general purpose recipient committee that attributes a contribution to an individual for the purpose of supporting or opposing one or more candidates seeking elective City office shall comply with the reporting requirements set forth in section 27.2930(b) and (c).~~
- (e) ~~For purposes of this section, an officeholder who is the subject of a recall election is deemed to be a candidate seeking elective office, and the contribution limits set forth in subsections (b) and (c) shall apply to any payment made to a general purpose recipient committee for purposes of supporting or opposing the recall of that officeholder, regardless of whether such payment is made before, during, or after the circulation of a recall petition.~~
- (f) ~~This section shall not be construed to limit the amount of money that an individual or any other person may give to a general purpose recipient committee in the form of contributions, dues, donations, fees, or other forms of monetary transactions, but shall be construed to limit the source and amount of contributions a general purpose recipient committee may use to participate in City candidate elections.~~
- (g) ~~The dollar amounts set forth in this section are subject to changes in the Consumer Price Index as described in section 27.2937.~~

**§27.2937 Indexing of Campaign Contribution Limits**

- (a) ~~The contribution limits set forth in sections 27.2934, and 27.2935, and 27.2936 shall be adjusted on a biennial basis in accordance with this section. Such adjustments shall commence in 2011 for the contribution limits set forth in sections ~~27.2935 and 27.2936~~ 27.2934(d) and 27.2935(a) and in ~~2013~~ 2015 for the contribution limits set forth in section ~~27.2934~~ 27.2934(b).~~
- (b) through (e) [no changes in text]

**§27.2950 Prohibitions and Limits on Contributions From Organizations**

- (a) ~~It is unlawful for a candidate or controlled committee, or any treasurer thereof, or any other person acting on behalf of any candidate or controlled committee, to solicit or accept a contribution from any person other than an individual or a political party committee for the purpose of supporting or opposing a candidate for elective City office a City candidate election.~~
- (b) ~~It is unlawful for a person other than an individual or a political party committee to make a contribution to a candidate or controlled committee for the purpose of supporting or opposing a candidate for elective City office a City candidate election.~~
- (c) ~~It is unlawful for any primarily formed recipient committee to solicit or accept from any person other than an individual, or for any person other than an individual to make, a contribution supporting or opposing a candidate for elective City office.~~
- (d)(c) ~~The prohibitions in subsections (a) through (c) and (b) shall not be construed to prevent a person other than an individual or political party committee from making a~~

*contribution* to a controlled committee that is organized solely for the purpose of supporting or opposing the qualification, of a ~~City measure for the ballot, or the~~ adoption, or defeat of a ~~City measure~~ one or more ballot measures, and the controlled committee pursues no other purpose.

- (~~e~~)(d) For purposes of ~~section 27.2950(d)~~ subsection(c), a recall *election* is not an a ballot measure election on a City measure.
- (~~f~~)(e) For purposes of this section, a *contribution* made from a personal or family trust account is considered a *contribution* made by an individual.
- (g) It is unlawful for a ~~general purpose recipient committee to attribute a contribution to a person other than an individual for the purpose of supporting or opposing one or more candidates for elective City office.~~
- (h) This section shall not be construed to prevent a ~~general purpose recipient committee~~ from accepting a *contribution* from any *person* for any purpose, but shall be construed to limit the source of ~~contributions a general purpose recipient committee may use to participate in City candidate elections.~~

#### **§27.2951 Prohibition on Contributions From Organization Bank Accounts**

For purposes of ~~supporting or opposing a candidate seeking elective City office, and for~~ purposes of supporting or opposing the recall of an individual holding ~~elective City office~~ a City candidate election, including a City recall election:

- (a) It is unlawful for any individual to make ~~, or any committee to accept,~~ a *contribution* to a candidate or controlled committee drawn against a checking account or credit card account unless such account belongs to one or more individuals in their individual capacity.
- (b) It is unlawful for any candidate or controlled committee to accept a contribution unless it is drawn against a checking account or credit card account belonging to a political party committee or to one or more individuals in their individual capacity.
- (~~b~~)(c) For purposes of this section, a *contribution* made from a personal or family trust account is considered a *contribution* made by an individual in his or her individual capacity.
- (e) This section shall not be construed to prevent a ~~general purpose recipient committee~~ from accepting checks or credit card ~~payments~~ from any *person* for any purpose, but shall be construed to prohibit accounts not owned by individuals from being the source of ~~contributions a general purpose recipient committee may use to participate in City candidate elections.~~

#### **§27.2953 Contributions for Recall Elections**

- (a) For purposes of making, soliciting, and accepting *contributions* under this division, the eventual occurrence of a recall *election* may be presumed upon the earlier of:

- (1) the date a notice of intention to circulate a recall *petition* is published pursuant to the recall provisions of this article; or,
  - (2) the date a statement of organization for a *committee* to recall the officeholder is filed with the City Clerk or the Secretary of State pursuant to state and local law.
- (b) The limits on *contributions* set forth in sections 27.2934 and 27.2935 ~~and 27.2936~~ and the prohibition against *contributions* from non-individuals other than political party committees set forth in ~~section~~ sections 27.2950 and 27.2951 shall apply to every *payment* made to support or oppose the recall of an individual holding *elective City office*, regardless of whether such *payment* is made before, during, or after the circulation of a recall *petition*.
  - (c) *Contributions* accepted for a recall *election* shall not count toward the *contribution* limits applicable to any other *election* even if ballots pertaining to the recall effort are never cast.
  - (d) After the failure of a recall *petition* or after the recall election, all remaining *controlled committee* campaign funds shall be considered surplus campaign funds subject to the provisions of section 27.2924(c).

**§27.2980 Disclosure of Electioneering Communications**

- (a) through (f) [no changes in text]
- (g) Any communication, other than a *member communication*, made at the behest of a *candidate* is a *contribution* to that *candidate* and is subject to the limits and prohibitions specified in sections 27.2935, ~~27.2936~~, and 27.2950.
- (h) [no changes in text]