

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

PROPOSED AMENDMENTS

April 28, 2014

Chapter 2: Government
Article 7: Elections, Campaign Finance and Lobbying
Division 29: Election Campaign Control Ordinance

I. BANK ACCOUNTS

Amend SDMC section 27.2916 (changes shown in underline/strikeout):

§27.2916 Campaign Contribution Checking Account

- (a) Every *controlled committee* that accepts *contributions* and every *primarily formed recipient committee* shall establish one campaign checking account at ~~an office of~~ a bank or other financial institution ~~providing checking account services located in the City of San Diego~~ with an office or branch in the state of California.
- (b) Upon opening of an account, the name of the bank or other financial institution and account number thereof shall be filed with the *City Clerk* on the same forms and in the time and manner required by California Government Code sections 81000 *et seq.*
- (c) All *contributions* of money or checks, or anything of value converted by such *committee* to money or a check, shall be placed in the *committee's* checking account within forty calendar days, except that no *contribution* shall be deposited to a campaign *contribution* checking account without the receipt by the *committee* of all information required by title 2, section 18401 of the California Code of Regulations.

II. DUPLICATION OF CANDIDATE MATERIALS

Add new SDMC section 27.2947:

27.2947 Duplication of a Candidate's Campaign Materials

- (a) Any *committee* that makes a *payment* for distributing or disseminating an advertisement that duplicates, reproduces, or republishes a *candidate's* campaign materials, in whole or substantial part, has made a *contribution* to that *candidate* for purposes of the *contribution* limits set forth in sections 27.2934 and 27.2935 and the *contribution* source prohibitions set forth in sections 27.2950 and 27.2951.
- (b) The "making" of a *contribution* to a *candidate* under subsection (a) does not mean that the *candidate* has "received" a *contribution* for purposes of contribution limits or source prohibitions. Accordingly, nothing in this section shall impose any liability on a *candidate* whose campaign materials have been duplicated, reproduced, or republished.
- (c) The provisions of subsection (a) apply to a *committee's* advertisement that uses materials created, prepared, or obtained by a *candidate* or the *candidate's controlled committee* for campaign purposes, including, but not limited to, mailers; flyers; pamphlets; door hangers; walking cards; posters; yard signs; billboards; banners and large signs; business cards; campaign buttons; bumper stickers; newspaper, magazine, television, radio, and Internet advertisements; photographs; videos; audio recordings; and telephone scripts, regardless of whether such materials were accessible to members of the public on the Internet or through other means not requiring coordination with the *candidate* or the *candidate's controlled committee*.
- (d) A *committee's* advertisement duplicates, reproduces, or republishes a *candidate's* campaign materials, in whole or substantial part, if content in the *candidate's* campaign materials is the source for 50% or more of either the graphic content, the text content, or the audio content in the *committee's* advertisement.
 - (1) For graphic content in non-video advertisements, the percentage is determined by the number or size of featured photographs, images, illustrations, or artwork. For example, a *committee's* advertisement featuring four images has reached the 50% threshold if two of those images, regardless of size, were derived from a *candidate's* campaign materials. A *committee's* advertisement featuring multiple images has also reached the 50% threshold if one or more of those images were derived from a *candidate's* campaign materials and take up 50% or more of the space allocated to featured images on the *committee's* advertisement.
 - (2) For graphic content in video advertisements, the percentage is determined by the amount of time that any content from a *candidate's* campaign

materials appears in the *committee's* advertisement. For example, a *committee's* 30 second video advertisement has reached the 50% threshold if it contains 15 seconds or more of any content that was derived from the *candidate's* campaign materials.

- (3) For text and audio content, the percentage is determined by the sentences or phrases that appear in the *candidate's* campaign materials that are repeated in the *committee's* advertisement. For example, a *committee's* advertisement containing 60 words has reached the 50% threshold if 30 or more of those words are in sentences or phrases that were derived from the *candidate's* campaign materials. For purposes of this section, a sentence or phrase is repeated notwithstanding the substitution of one or more words with synonymous language.
- (e) None of the following shall be considered when determining whether the 50% threshold has been met:
- (1) the *candidate's* or *committee's* name, address, *committee* number, or website address;
 - (2) disclosure notices required by this division, such as a "paid for by" disclosure;
 - (3) the date of the election;
 - (4) statements encouraging people to vote on election day that do not mention the *candidate's* name or political party affiliation;
 - (5) text in the *committee's* advertisement printed in a font size less than half the smallest font size used for sentences or phrases that are repeated from the *candidate's* campaign materials, because such text may artificially increase the overall word count of the advertisement; or
 - (6) background designs and images, other than those that appear within photographs or videos derived from a *candidate's* campaign materials.
- (f) The provisions of this section do not apply to:
- (1) the use of duplicated, reproduced, or republished campaign materials:
 - (A) by the *candidate* or the *candidate's controlled committee*;
 - (B) in a communication that clearly advocates the defeat of the *candidate*;
 - (C) in a communication directed to voters or potential voters as part of voter registration activities or activities encouraging or assisting

persons to vote, so long as the communication does not advocate for the *candidate's* election; or,

(D) in a *member communication*.

(2) instances in which a *payment* has been “made at the behest” of a *candidate*, as that term is defined in title 2, section 18225.7 of the California Code of Regulations. Such a *payment* is treated as a *contribution* regardless of whether the 50% duplication threshold has been reached.

(g) Nothing in this section imposes on any *candidate* or *committee* any filing obligations in addition to those set forth in California Government Code sections 81000 *et seq.* and title 2 of the California Code of Regulations.

III. VENDOR CREDIT

Add new SDMC section 27.2959:

§27.2959 Extensions of Vendor Credit – Primarily Formed Recipient Committees

- (a) *Vendors* may extend credit to *primarily formed recipient committees* in the ordinary course of business in the same manner they extend it to *persons* for other than *political purposes*, except as set forth in subsection (b).
- (b) A *primarily formed recipient committee* may not accept credit from a *vendor*, but shall instead pay the *vendor* in full from existing funds at the time of placing the order, if all three of the following conditions are met:
 - (1) the *vendor* is providing goods or services relating to designing, creating, printing, mailing, posting, broadcasting, or disseminating a campaign advertisement;
 - (2) the current cash balance in the *committee's* bank account is insufficient to cover in full the *committee's* advertising debt liability; and,
 - (3) the identity of the *committee's sponsors* or top two donors of \$10,000 or more would change if any *person* made a *contribution* to the *committee* in an amount equal to the *committee's* advertising debt liability.
- (c) For purposes of this section:
 - (1) “a campaign advertisement” means any tangible or intangible campaign content that requires a “paid for by” or similar funding disclosure under sections 27.2970, 27.2971, 27.2972, or 27.2974, and any television or radio advertisement that requires a “paid for by” or similar funding disclosure pursuant to state or federal campaign law;
 - (2) “a *contribution* to the *committee*” refers to a potential *contribution* by any *person* who would be contributing to the *committee* for the first time as well as by any *person* who has already contributed to the *committee*;
 - (3) “advertising debt liability” means the full costs of the campaign advertisement being considered by the *committee* plus the remaining balance owed for all other campaign advertisements purchased by the *committee* on credit; and,
 - (4) the costs of a campaign advertisement do not include costs owed solely to a *vendor* who is paid at regular intervals for providing consulting services to the *committee* over and above those associated with campaign advertisements.

IV. TELEPHONE COMMUNICATIONS

Amend SDMC section 27.2971 (changes shown in underline/strikeout):

§27.2971 Telephone Communications

- (a) It is unlawful for any *candidate* or *committee* to engage or hire others to engage in *mass telephone communications* unless the communications include a statement that the communications are “paid for by,” “authorized by,” or are otherwise being made “on behalf of” immediately followed by the name of each *candidate* or *committee* that is paying for any of the resources used for the communications or that is otherwise authorizing the communication. For purposes of this subsection, “resources” include the purchase of a contact list, the development of a script, overhead expenses, and telephone charges. The type of disclosure required by this section shall be determined as follows:
 - (1) A call is “paid for by” a *candidate* or *committee* when the *candidate* or *committee* pays directly for the call or pays another *person* to make the call on its behalf.
 - (2) A call is “authorized by” a *candidate* or *committee* if a *person* pays for the call at the behest of the *candidate* or *committee* and that *payment* is a *contribution* to the *candidate* or *committee*.
 - (3) Notwithstanding subsections (a)(1) and (a)(2), a call is made “on behalf of” a *candidate* or *committee* when it is made by a volunteer at the direction of the *candidate* or *committee*.
- (b) The statement required pursuant to subsection (a) shall be clearly audible and at the same general volume as the rest of the telephone message.
- (c) If the telephone communication is a recording, the statement required pursuant to subsection (a) shall be played at the same speed as the rest of the message.
- (d) If the telephone communication is paid for by a *controlled committee*, the name of the *candidate* controlling the *committee* shall be included in addition to the information required by subsection (a).
- (e) Any *candidate* or *committee* paying for a live or recorded telephone communication subject to this section shall maintain for four years a transcript of the message being communicated, a copy of any recorded messages, and a record of the number of calls for each message.
- (f) The disclosure requirements set forth in this section shall not apply to a *candidate* personally engaging in a live telephone communication or to a *member communication* by an organization that is not a political party.

V. ELECTIONEERING COMMUNICATIONS

Amend SDMC section 27.2980 (changes shown in underline/strikeout):

§27.2980 Disclosure of Electioneering Communications

- (a) Every *electioneering communication* in printed form shall include the words “paid for by” immediately followed by the name, street address, and city of the *person* who paid for the communication in a typeface that is easily legible, contrasts with the background, and is no less than 12 points in size.
- (b) Every *electioneering communication* in spoken form shall include the words “paid for by” immediately followed by the name of the *person* who paid for the communication in a manner that is clearly audible and at the same general volume and speed as the rest of the communication.
- (c) Any *person* who makes a payment or a promise of payment totaling \$1,000 or more for an *electioneering communication* shall file with the *City Clerk* an “Electioneering Communication Disclosure Report” disclosing the *person’s* name, address, occupation, and employer, and the amount of the payment. The report shall be filed within 24 hours of making the payment or the promise to make the payment, and shall be accompanied by a legible copy of the *electioneering communication* if in printed form or a transcript of the *electioneering communication* if in spoken form.
- (d) Except as provided in subsection (e), if any *person* has received a payment or a promise of a payment from another *person* totaling \$100 or more for the purpose of making an *electioneering communication*, the *person* receiving the payments shall disclose on the report the other *person’s* name, address, occupation, and employer; the amount received; and the date of the payment.
- (e) A *person* who receives or is promised a payment that is otherwise reportable under subsection (d) is not required to report the payment if the *person* provides goods or services in the normal course of business and receives or is promised the payment in exchange for providing goods or services.
- (f) The communications subject to the provisions of this section do not include:
 - (1) news stories and editorials by broadcast outlets or regularly published newspapers, periodicals, or magazines of general circulation;
 - ~~(2) communications that are considered expenditures or independent expenditures under this Division;~~
 - ~~(3)~~(2) *member communications*, except those made by a political party;
 - ~~(4)~~(3) communications made in the form of a slate mailer;

- ~~(5)~~(4) communications paid for by a governmental entity;
- ~~(6)~~(5) communications that occur during a *candidate* debate or forum;
- ~~(7)~~(6) communications made solely to promote a *candidate* debate or forum made by or on behalf of the *person* sponsoring the debate or forum, provided that such communications do not otherwise discuss the positions or experience of a *candidate*; ~~or~~
- ~~(8)~~(7) communications in which a *candidate's* name is required by law to appear and the *candidate* is not singled out in the manner of display;
- (8) printed materials in quantities of 200 or less distributed within a single calendar month; or,
- (9) live or recorded telephone calls made to less than 500 individuals or households.
- (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 and 27.2950.
- (h) The obligation to file an "Electioneering Communication Disclosure Report" under subsection (c) shall not apply to any entity that is a committee ~~whose primary filing officer is not the City Clerk.~~