

**CITY OF SAN DIEGO
ETHICS COMMISSION**

Office of the Executive Director

MEMORANDUM

DATE: October 11, 2007
TO: Chair and Members of the San Diego Ethics Commission
FROM: Stacey Fulhorst, Executive Director
SUBJECT: Election Campaign Control Ordinance [ECCO]

In accordance with the Commission's legislative calendar for 2007, the Ethics Commission will begin discussion of several major policy issues concerning the City's campaign laws at the October 11, 2007, Ethics Commission meeting. Specifically, the Commission staff will be seeking preliminary direction from the Commission on the following:

- Should contribution limits (\$270/district; \$320 citywide) be raised?
- Should ECCO require candidates to disclose the fundraising activities conducted by their supporters?
- Should the 180-day post-election fundraising time period include an exemption for accepting contributions from the candidate to pay for recurring administrative costs and/or late vendor invoices?
- Should ECCO require candidates and committees to provide the Ethics Commission with a copy of all mass produced campaign literature?

In order to facilitate a productive discussion of these issues, the staff has compiled relevant background information, which is set forth below.

Contribution Limits

The City of San Diego's candidate contribution limits were initially set at \$250 per election in 1973, when ECCO was first adopted by the City Council. (At that time, City Council candidates ran in citywide races.) When the Commission worked on a complete overhaul of ECCO from 2002 through 2004, it received a great deal of input concerning contribution limits, with suggestions ranging from lowering the limit to \$50 to increasing it to \$500 per election. The

Commission ultimately decided to recommend leaving the limit for district races at \$250, and increasing the limit for citywide races to \$300. The Commission also recommended adding a biennial indexing factor. These changes were adopted by the City Council in 2004, and went into effect in January of 2005. As a result of indexing in March of 2007, the City's contribution limits are currently \$270 for district candidates and \$320 for citywide candidates.

The Commission considered the following factors when it formulated its previous recommendations concerning contribution limits:

- The Commission found sufficient evidence to conclude that candidates could run successful and professional campaigns with the existing contribution limits. In fact, the Commission noted a dramatic increase in fundraising associated with the 2000 and 2002 election cycles in which some citywide candidates raised as much as \$1.7 million and some district candidates raised as much as \$500,000.
- The Commission noted that many individual contributors (without any special interest affiliation) made contributions in amounts less than the \$250 limit.
- The Commission decided to recommend raising the contribution limit slightly for citywide elections because such elections are generally more costly to run, and because it is not uncommon in other cities for citywide races to have higher contribution limits than those imposed for district elections. The larger geographical area makes it harder to contact constituents on a door-to-door basis, and thus requires citywide candidates to adopt the more expensive approach of using mass media.
- The Commission recommended removing an aggregation rule that combined a contributor's contributions to a candidate with that contributor's contributions to a general purpose recipient committee supporting the same candidate. Under the prior law, for example, if a contributor gave \$100 to the Sierra Club, and the Sierra Club used those funds to support a candidate, then the contributor could only give \$150 directly to the same candidate. As a result of eliminating this aggregation rule, the Commission noted that contributors could give more money to support the candidates of their choice even without an increase in the contribution limits.

Since the time that the Commission last considered the issue of contribution limits, candidates and their staffs have continued to contend that the City's contribution limits are inadequate and should be raised. In support of their contention, they assert the following:

- Because the City imposed time limits on fundraising (12 months before an election and 180 days after an election) candidates are now essentially required to engage in full-time fundraising within the limited time periods in order to amass sufficient funds.

- The City's campaign laws include a host of requirements associated with the acceptance of each contribution, and the current limits discourage candidates from paying qualified campaign staffers to ensure compliance with the City's laws. In particular, ECCO requires candidates to obtain a contributor's full name and street address, as well as occupation and employer information for contributions of \$100 or more, before a contribution is accepted and deposited. Additionally, because ECCO prohibits contributions from organizations, candidates must ensure that a contribution check is not drawn off an account belonging to a partnership, sole proprietorship, limited liability company, etc.
- The costs associated with campaign advertising (postage, printing, and media advertising) have increased and the current limits do not enable candidates to effectively reach voters.
- The City's current limits have the unintended consequence of encouraging City candidates to align themselves with various special interest groups and political parties because these groups have the means to support them financially via independent expenditures and member communications. Candidates contend that they would prefer to raise their own campaign funds from individual supporters and control the spending associated with their campaigns.
- Although there is evidence of high levels of fundraising by City candidates in recent elections, the ability to raise contributions from thousands of contributors is generally limited to individuals who currently hold an elective office.

In addition, the proponents of raising the City's contribution limits point out that cities of similar size throughout the state and country have higher limits than San Diego. In order to help facilitate the discussion concerning contribution limits, the Commission staff has compiled the attached chart listing the contribution limits currently in effect in the country's fifteen largest cities.

Disclosure of Fundraising Activities by Candidates

The new lobbying laws that will take effect on January 1, 2008, will require registered lobbyists to disclose information related to their campaign fundraising activities. "Fundraising activity" is defined in the Lobbying Ordinance as follows:

Fundraising activity means soliciting, or directing others to solicit, campaign contributions from one or more contributors, either personally or by hosting or sponsoring a fundraising event, and either (a) personally delivering \$1,000 or more in contributions to a candidate or to a candidate's controlled committee, or (b) identifying oneself to a candidate or a candidate's controlled committee as having any degree of responsibility for \$1,000 or more in contributions received as a result of that solicitation.

During the Commission's work on amending the Lobbying Ordinance, several lobbyists suggested that the burden for reporting fundraising activities should fall on the candidates, not the lobbyists, in order that the public is informed of all fundraising efforts conducted by a candidate's supporters. At that time, the Commission indicated that it might ultimately recommend such disclosure by candidates under the City's campaign laws, but that it was also appropriate to impose the disclosure requirement on paid lobbyists because of the role that they play in influencing municipal decisions.

Although staff is not aware of any other jurisdiction in California that requires candidates to disclose fundraising activities by their supporters, it is relevant to note that recently-enacted federal lobbying laws will require federal candidates to identify the lobbyists who engage in fundraising activities on behalf of the candidate.

Post-Election Fundraising Time Period

ECCO currently prohibits City candidates from soliciting or accepting contributions more than 180 days after a City election. When the Commission proposed this time limit back in 2003, it expressed its interest in reducing the amount of time that an elected official engages in fundraising while also conducting business as a City Official. The Commission noted that most post-election contributors are individuals who have business before the City, and the act of making a contribution long after a City election suggests a desire to curry favor with an elected official.

Since the time that this law took effect in January of 2005, the staff has realized, through the course of its audit and enforcement activities, that because the language of the statute prohibits the acceptance of all contributions more than 180 days after an election, candidates are also prohibited from contributing personal funds to their committees after the 180-day period expires. (ECCO requires candidates to deposit their personal funds into their committee bank accounts before spending their own money on their campaigns.) Accordingly, a candidate who has no leftover campaign funds arguably has no legal means to pay a campaign debt if he or she receives an invoice or discovers the existence of a campaign debt more than 180-days after an election. Such a candidate also has no means of paying for recurring administrative expenses (e.g., treasurer and software fees associated with post-election filings) incurred more than 180 days after an election. Because the underlying intent of the prohibition was to prevent City candidates from accepting contributions from third parties long after a City election, the Commission may wish to consider amending the current language to exempt a candidate's own contributions to his or her committee.

Production of Campaign Literature to Ethics Commission

ECCO currently requires candidates and committees to include "paid for by" disclosures on mass produced campaign literature. Since this law took effect in October of 2004, the Commission has received numerous complaints regarding campaign literature that allegedly does not comply

Chair and Members of the San Diego Ethics Commission
October 11, 2007
Page 5

with the City's disclosure requirements. In order to ensure that this law is enforced in an even-handed manner, and in order to encourage compliance by all City candidates and committees, the Commission might want to consider adding a provision in ECCO that requires candidates and committees to send a copy of every mass produced campaign piece to the Ethics Commission at the same time that the piece is mailed or otherwise distributed. It is relevant to note that some other jurisdictions in California currently have such a requirement.

In addition to the foregoing issues that will be discussed at the October Commission meeting, the issue of public financing of City candidate elections will be addressed at the Commission's December meeting.

Stacey Fulhorst
Executive Director

Attachment