

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

## PROPOSED AMENDMENTS

Rev. May 9, 2008

Proposed Effective Date: January 1, 2009

### 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.

....

*Committee* means any *person* acting, or any combination of two or more *persons* acting jointly, who raise \$1,000 or more, or make *independent expenditures* of \$1,000 or more, within a single calendar year on behalf of or in opposition to a candidate or for the qualification to the ballot or adoption or rejection of one or more ballot *measures*. *Committees* include *controlled committees*, *independent expenditure committees*, *primarily formed recipient committees*, and *general purpose recipient committees*.

Eliminates any ambiguity that "committee" includes an IE committee.

....

*Independent expenditure committee* means any *person who makes independent expenditures* totaling \$1,000 or more within a single calendar year.

Newly defined term clarifies and expands scope of section 27.2971.

...

*Mass telephone communications* means live or recorded telephone calls to 500 or more individuals or households in connection with the same election that are similar in nature and mention or refer to a clearly identified candidate or a clearly identified measure.

#### §27.2911 Duty to Have Campaign Treasurer

Clarifies that only recipient (not IE) committees need to have a treasurer.

Every *candidate* and every *recipient committee* shall have a *treasurer*. A *candidate* may designate himself or herself as *treasurer*. A *committee* may designate an *assistant treasurer* to perform the duties and responsibilities of the *treasurer* in the event of a temporary vacancy in the office of the *treasurer* or in the event the *treasurer* is unavailable. Only an individual may be designated as a *treasurer* or *assistant treasurer*.

## §27.2912 Authority of Treasurer

Limits scope to recipient (not IE) committees.

It is unlawful for any *expenditure* to be made by or on behalf of a recipient committee without the express authorization of the *treasurer*. It is unlawful for any *contribution* to be accepted by a recipient committee or any *expenditure* to be made on behalf of a recipient committee at a time when the office of *treasurer* is vacant.

## §27.2916 Campaign Contribution Checking Account

Refers to a FPPC regulation specific to recordkeeping. Eliminates telling committees how to collect info.

- (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.
- (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 thirty business 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 ~~California Government Code section 84214~~ title 2, section 18401 of the California Code of Regulations. ~~Any information that has not been provided shall be requested, in writing, by the campaign treasurer within ten business days of receipt of the money or check.~~
- (d) Any *contribution* not deposited within thirty business days shall be returned to the contributor as soon as possible after the thirtieth business day, but no later than thirty-five business days after receipt of the *contribution*.

## §27.2917 Lawful Use of Campaign Funds by a Committee

Refers to entire PRA to avoid missing relevant provisions.

Uses of campaign funds held by any *committee* formed in accordance with this division shall be governed by ~~title 9, chapter 9.5, article 4 of the California Government Code; commencing with section 89510~~ sections 81000 *et seq.* and title 2, division 6 of the California Code of Regulations. It is unlawful to use campaign funds in any manner that would violate these provisions of ~~the California Government Code law~~.

## §27.2924 Surplus Campaign Funds

Clarifies that reference to 27.2960 pertains to vendor debts, not all debts (e.g. loans)

- (a) Upon leaving any elected office, or at the end of the post-election reporting period following the defeat of a *candidate* for elective office, whichever occurs last, campaign funds under the control of a *candidate* shall be considered surplus campaign funds.
- (b) After the failure of a recall petition or after the recall election, all remaining *controlled committee* campaign funds shall be considered surplus campaign funds.
- (c) Surplus campaign funds shall be used only for the following purposes:
  - (1) To pay outstanding campaign debts, as long as ~~such~~ any vendor debts are paid within the 180-day period set forth in section 27.2960;

- (2) To repay *contributions*;
- (3) To make a donation to any bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, where no substantial part of the proceeds will have a material financial effect on the *candidate*, any member of his or her immediate family, or his or her campaign *treasurer*.
- (4) To make a *contribution* to a political party *committee*, provided the campaign funds are not used to support or oppose candidates for *elective City office*. However, the campaign funds may be used by a political party *committee* to conduct partisan voter registration, partisan get-out-the-vote activities, and slate mailers.
- (5) To make a *contribution* to support or oppose any candidate for federal office, any candidate for elective office in a state other than California, or any ballot *measure*.
- (6) To pay for professional services reasonably required by the *candidate* or *committee* to assist in the performance of its administrative functions, including *payment* for attorney's fees for litigation that arises directly out of a *candidate's* activities or his or her status as a *candidate*, including, but not limited to, an action to enjoin defamation, defense of an action brought for a violation of state or local campaign, disclosure, or election laws, and an action from an election contest or recount.

## §27.2925 Accounting

Incorporates state law requirements, which are more detailed than what is currently in ECCO.

- (a) In addition to any other requirements of this division, every *candidate* or *committee* that accepts *contributions* for a *City election* shall maintain records in accordance with the requirements of title 2, section 18401 of the California Code of Regulations. ~~maintain a record of each of the following:~~
  - (1) ~~any *contribution* received by the *candidate* or *committee* and deposited into the campaign *contribution* checking account; and,~~
  - (2) ~~any disbursement made from the campaign *contribution* checking account.~~
- (b) ~~The records required by section 27.2925(a) shall include, but not be limited to, all of the following:~~
  - (1) ~~the name and address of the contributor; and~~
  - (2) ~~the amount of the *contribution*, and the date on which it was received or offered; and~~
  - (3) ~~if the *contribution* is made by check, a legible photocopy of the check; and~~
  - (4) ~~if the *contribution* offered or received consists of cash, an indication that cash was offered or received, and a legible photocopy of the bank deposit slip indicating that the cash *contribution* was deposited into the campaign *contribution* checking account; and~~
  - (5) ~~legible photocopies or originals of all bank records pertaining to the campaign *contribution* checking account; and~~

- ~~(6)~~ if a *contribution* is made by the *candidate* to his or her own campaign, a statement disclosing the source of the funds; and
  - ~~(7)~~ if a contribution is of 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; and,
  - ~~(8)~~ for each disbursement made from or check drawn on the campaign *contribution* checking account, the canceled check, the bank statement showing the disbursement, the name of the payee of each check, an itemized record of the goods or services for which each check is issued or disbursement made, and legible photocopies or originals of any invoices, bills, or other supporting documents for which funds were disbursed.
- ~~(e)~~(b) The records required by section 27.2925(a) ~~and (b)~~ shall be kept by the *candidate* or *committee treasurer* for a period of four years following the date that the campaign statement to which they relate is filed.
- ~~(d)~~(c) Each *candidate* and *committee* shall deliver, on demand, to any public officer having authority to enforce this division, a written authorization permitting the officer to have access to all records pertaining to the campaign *contribution* checking account.
- ~~(e)~~(d) Each *candidate* and *committee* shall, on demand, make available to any public officer having authority to enforce this division all records required by this division to be maintained by the *candidate* or *committee*.

### **§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) 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) Contributions shall be reported in a manner consistent with the provisions of title 2, section 18421.1 of the California Code of Regulations, except that a monetary contribution is deemed to have been made or received only after a candidate or committee obtains:~~

(e)(2) is impermissibly less restrictive than state law. No need for (e)(1) because it is state law, which is already incorporated.

~~(1) possession or control of the check or other negotiable instrument by which the contribution is made, and~~

~~(2) possession of all of the information required by California Government Code section 84211.~~

~~(f)~~(e) 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)~~(f) 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)~~(g) In conjunction with making the notations required by subsections ~~(f)~~ (e) and ~~(g)~~ (f), *candidates* and *committees* shall disclose the cumulative amount of *contributions* received from the contributor for each *election*.

~~(i)~~(h) *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)~~(i) 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.

### §27.2935 Contribution Limitations

(a) It is unlawful for an individual to make to any *candidate* or *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

Increase contribution limits to \$1,000 for district and Citywide elections

contributed by that individual to support or oppose the *candidate* to exceed ~~\$250~~ \$1,000 for any single *election* ~~if the candidate is seeking City Council district office, or to exceed \$300 for any single election if the candidate is seeking the office of the Mayor or City Attorney.~~

- (b) 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.
- (c) The *contribution* limits imposed by this section do not apply to *general purpose recipient committees*, which are discussed in section 27.2936.
- (d) The *contribution* limits imposed by this section do not apply to *contributions* made to a legal defense fund, as discussed in sections 27.2965-27.2969.
- (e) 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

For GPRCs, increase contribution limits to \$1,000 for district and Citywide elections

- (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* ~~seeking City Council district office~~ unless the *contribution* is attributable to an individual in an amount that does not exceed ~~\$250~~ \$1,000 per *candidate* per *election*.
- (~~e~~) It is unlawful for any *general purpose recipient committee* to use a *contribution* for the purpose of supporting or opposing a *candidate* ~~seeking the office of Mayor or City Attorney unless the contribution is attributable to an individual in an amount that does not exceed \$300 per candidate per election.~~
- (~~d~~)(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 ~~subsections~~ subsection (b) and (~~e~~).
- (~~e~~)(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).
- (~~f~~)(e) 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~~)(f) The dollar amounts set forth in this section are subject to changes in the Consumer Price Index as described in section 27.2937.

### §27.2937 Indexing of Campaign Contribution Limits

Delay indexing to 2011 to avoid immediate adjustment of new limits; round to the nearest \$50

- (a) On a biennial basis commencing in ~~2007~~ 2011, the *contribution* limits set forth in sections 27.2935 and 27.2936 shall be subject to adjustment.
- (b) The *City Clerk* shall adjust the *contribution* limits to reflect any changes in the Consumer Price Index for the San Diego area for the two-year period ending December 31 of the previous year. Adjustments shall be rounded to the nearest ~~ten~~ fifty dollars.
- (c) The *City Clerk* shall publish a public notice of any adjustments by March 1, or as soon as practicable, following the Bureau of Labor Statistics’s release of the applicable Consumer Price Index data.
- (d) *Contribution* limits adjusted in accordance with this section shall go into effect immediately upon the release of the *City Clerk*’s public notice of the adjustment.
- (e) Notwithstanding subsection (d), adjustments to *contribution* limits shall be effective only with regard to *elections* held in subsequent calendar years, and shall not be construed to raise the *contribution* limits applicable to past *elections* or to *special elections* or *special run-off elections* held in the same calendar year that the limits are adjusted.

### §27.2939 Pre-Primary Contributions for General Election

Incorporates new FPPC regulation that deals with general election refunds

- (a) A *candidate* for *elective City office* may raise contributions for a general election prior to a primary election for the same *elective City office* if the *candidate* sets aside these *contributions* and uses them only for the general election.
- (b) If the *candidate* wins outright in the primary election, is defeated in the primary election, or otherwise withdraws from the general election, the *contributions* raised for the general election shall be refunded to the *contributors* on a pro rata basis less any expenses associated with the raising and administration of general election *contributions*. Candidates who are obligated to refund contributions raised for the general election shall be subject to the same provisions applicable to candidates for elective state office under title 2, section 18531.2 of the California Code of Regulations.

~~(b)~~(c) For purposes of this section, a “primary election” includes a *district primary election*, a *citywide primary election*, and a *special election*, and a “general election” includes a *district general election*, a *citywide general election*, and a *special run-off election*.

~~(e)~~(d) The particular *election* for which *contributions* are received shall be reported in accordance with section 27.2930 ~~(e)~~ and (f).

### §27.2945 Notification Regarding Reimbursement Prohibition

- (a) It is unlawful for any *candidate*, or any *committee* supporting or opposing a *candidate*, to solicit *contributions* from potential contributors by distributing printed materials or using an Internet web site unless such materials or site contain at least one instance of the following statement in a prominent place printed in typeface that is easily legible, contrasts with the background, and is not smaller than the typeface used in a majority of the text in the materials or on the site: “It is unlawful for a

contributor to be reimbursed by any organization, business, or similar entity for a contribution supporting or opposing a City candidate.”

- (b) Upon the discovery by the *candidate* or *committee* that a violation of subsection (a) has occurred, such violation may be remedied by the *candidate* or *committee* submitting written notice reciting the statement required by subsection (a) to all individuals who were sent the materials constituting the violation and to all individuals who made a *contribution* through the web site during the period of violation, and thereafter reporting in writing the nature of the violation and remedial action to the *Enforcement Authority*, provided that the remedial action takes place before the date of the *election* for which the solicitation was made, and no later than fourteen calendar days after the discovery of the violation.

Remedial action taken after the election serves no apparent purpose.

### §27.2960 Extensions of Vendor Credit

- (a) *Vendors* may extend credit to *candidates* ~~or~~ and their *controlled* committees in the ordinary course of business in the same manner they extend it to *persons* for other than *political purposes*.
- (b) A *candidate* or *controlled* committee that accepts goods or services for *political purposes* on credit under subsection (a), shall pay for those goods or services in full no later than 180 calendar days after receipt of a bill or invoice and in no event later than 180 calendar days after the last calendar day of the month in which the goods were delivered or the services were rendered, unless it is clear from the circumstances that the failure to pay is reasonably based on a good faith dispute. For purposes of this subsection, a good faith dispute shall be presumed if the *candidate* or *controlled* committee produces the following:
- (1) evidence that the *candidate* or *controlled* committee protested the *payment* of a bill no later than 30 calendar days after the last calendar day of the month in which the goods were delivered or the services were rendered; and
  - (2) evidence that the protest was based on the quality or quantity of goods delivered or services rendered.
- (c) The provisions of subsection (b) do not apply to debt owed to a financial institution for an outstanding credit card balance.

Clarifies that vendor debt rules only apply to controlled committees.

### §27.2971 Telephone Communications

- (a) It is unlawful for any *candidate* or *committee* to engage or hire others to engage in *mass telephone communications* ~~live or recorded telephone communications with 500 or more individuals or households for the purpose of supporting or opposing a *City candidate* or *City measure*~~ 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:

Some language moved to definitions section; expands scope of provision to apply to all mass calling by candidates and committees that mentions a candidate's name.



Changes necessitated by new, more stringent state law requiring "paid for" and "authorized" by disclosures.

- (1) A call is "paid for" 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.

Current City law (but not state law) requires disclosure from volunteers.

- (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).

New state law requires copy of any recording to be maintained.

- (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:

Eliminates exemption in order to be consistent with new state law, which does not exempt a committee's member communications.

- ~~(1) a candidate personally engaging in a live telephone communication, or~~
- ~~(2) member communications made by an organization that is not a political party.~~