



## FACT SHEET ON TELEPHONE COMMUNICATIONS

The City's Election Campaign Control Ordinance [ECCO] includes laws regarding mass telephone communications (e.g., "phone banks") used to support or oppose City candidates and ballot measures. This fact sheet is designed to help candidates and committees gain a better understanding of the applicable laws, but should not be considered a substitute for the actual language contained in San Diego Municipal Code section 27.2971.

### Basic Rule

- ❖ The City's campaign laws require candidates and 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
  - ✓ be part of a poll that mentions a City candidate or 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 candidate or committee that is 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 candidate or committee when the candidate or committee pays directly for the call or pays another person to make the call on its behalf.
  - ✓ 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.
  - ✓ 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 (even if a candidate or committee has paid for a contact list, telephone charges, etc.).

### Disclosure Requirements

- ❖ If the communication is paid for by a candidate-controlled committee, then the name of the candidate must be included in the disclosure.
- ❖ 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.

### **Reaching the 500 Call Threshold**

- ❖ A call is subject to one of the above disclosure requirements if a reasonable person would conclude that the call was intended to support or oppose a City candidate or ballot measure, or if the call is made for the purpose of conducting a poll (even if it is not a “push poll”).
- ❖ Calls need not use the same script or be similar in nature to count toward the 500-call threshold. All calls made to support or oppose a City candidate or ballot measure will count toward the 500-call threshold. All polling calls that mention a City candidate or ballot measure will count toward the 500-call threshold.
- ❖ A call made to support or oppose a candidate or ballot measure counts toward the 500-call threshold even if it is answered by a machine or if the person answering the call hangs up the telephone before the entire message is communicated. A call that concludes without any connection (busy signal or no answer) to the party being called does not count toward the 500-call threshold.
- ❖ For purposes of the 500-call threshold, calls made to support a candidate or ballot measure are combined with calls made to oppose the opposition. For example, 400 calls supporting Candidate A and 200 calls opposing Candidate B (who is running against Candidate A in the election) would exceed the 500-call threshold.
- ❖ The 500-call threshold applies to each election. In other words, calls made to support a candidate in a primary election are not aggregated with calls made to support the candidate in a general election.

### **Exceptions**

- ❖ Only candidates and political committees (registered with the Secretary of State) are subject to the disclosure requirement. A polling company not retained by a candidate or committee is not subject to the rules contained in this fact sheet. For example, if a newspaper retains a company to conduct polling in connection with a news story, the polling calls do not need to include a disclosure statement.
- ❖ A candidate who personally engages in a live telephone communication is not subject to these disclosure requirements.
- ❖ Routine calls between campaign staffers, calls to vendors, and similar type calls that are not advocacy calls or polling calls do not count toward the 500-call threshold.

### **Additional Information**

- ❖ Each candidate or committee making mass telephone communications must maintain for four years a transcript of the message communicated as well as a record of the number of calls made for each message.

- ❖ An organization that is registered with the state as a political committee is subject to these disclosure requirements, even when making telephone communications to its own members.
- ❖ A committee making independent expenditures may not pay for telephone communications at the behest of, or in coordination with, a candidate or candidate-controlled committee. (Doing so would make the expenditure an unlawful in-kind contribution instead of an independent expenditure; organizations may not make contributions to support or oppose candidates.) Note that the prohibition on coordination with candidates does not apply to situations in which an organization is communicating with the members of its organization.
- ❖ If two committees jointly pay for telephone communications supporting or opposing a City ballot measure, then both committees must be identified in the “paid for by,” “authorized by,” or “on behalf of” disclosure. Please see the Ethics Commission’s Fact Sheet on Campaign Advertising for additional information regarding two committees coordinating independent expenditures.
- ❖ 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 Ethics Ordinance; 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 (i.e., it has no control over the dissemination of false or misleading information).

For additional information, please contact the Ethics Commission at (619) 533-3476.

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