FACT SHEET ON SOLICITING AND ACCEPTING CONTRIBUTIONS FOR CITY OF SAN DIEGO CANDIDATES

The City's Election Campaign Control Ordinance [ECCO] includes several provisions pertaining to the acceptance of campaign contributions. This fact sheet addresses these provisions, as well as several other related campaign finance laws. Although this fact sheet refers to the rules applicable to candidates for elective City office, keep in mind that these rules also apply to a candidate's committee and treasurer. This fact sheet should not be considered a substitute for the actual language contained within ECCO.

Limitations on Source and Amount

- A candidate may solicit and accept contributions only from individuals and political parties.
  - ✓ For purposes of ECCO, a contribution from a sole proprietorship is treated as a contribution from the individual who owns the sole proprietorship. It is the candidate's responsibility to confirm that a contribution is from a sole proprietorship and not from another type of small business (which would constitute an unlawful contribution).
  - ✓ Contributions from personal trust accounts are also permissible.
  - ✓ Contributions from all other types of entities, including companies, corporations, partnerships, joint ventures, associations, committees, labor unions, and groups of individuals acting in concert, may not be accepted.
- City candidates may solicit and accept contributions from an individual only up to $550 per election for Council offices and $1,050 per election for Citywide offices (Mayor and City Attorney).
- City candidates may solicit and accept contributions from all levels of the same political party up to $10,300 per election for Council offices, and up to $20,650 per election for Citywide offices.

Soliciting Contributions

- For regularly scheduled elections, candidates may not solicit contributions prior to January 1 of the odd-numbered year immediately prior to the election. This restriction does not apply to a candidate's personal funds. See the Ethics Commission's fact sheet entitled Campaigning for Elective Office Before the One-Year Pre-Election Fundraising Time Period for more information on this subject.
- A candidate may not solicit contributions later than 180 days after his or her withdrawal, defeat, or election to office. This restriction does not apply to a candidate's personal funds. The 180 day post-election time period begins on the date of the election. See the Ethics Commission's fact sheet entitled After the Election – Guidelines for City of San Diego Candidates for more information on this subject.
- Post-election contributions may only be accepted if the candidate has existing debts (including loans) from that election.

- Campaign literature (e.g., mailers, flyers, door hangers) that is produced in quantities of 200 or more and distributed within a single calendar month must include a "paid for by" disclosure. See the Ethics Commission's Fact Sheet on Mass Campaign Literature for more information.

Primary and General Elections

- A candidate may collect contributions for the general election prior to the primary election. If a candidate wins outright in the primary, is defeated in the primary, or otherwise withdraws from the general election, the candidate must refund contributions for the general election to contributors (after subtracting any fundraising costs associated with the general election).

- A candidate may accept a contribution from an individual in an amount that exceeds $550 (Council district election) or $1,050 (Citywide election), provided that the candidate appropriately allocates the contribution between the primary and general elections and does not cause the contributor to exceed the limit per election. All contributions over $550 (Council district) or $1,050 (Citywide) should be reported as being apportioned between the two elections. For example, a $1,100 contribution for a Council district candidate should be identified on a campaign statement as $550 for the primary election and $550 for the general election.

- After the primary election, a candidate may not accept additional contributions for the primary election unless there are outstanding debts associated with that election.

- A candidate may carry over contributions raised for one election to pay for expenses incurred in connection with a subsequent election for the same office. In other words, a candidate may use leftover contributions from the primary election for the general election. A candidate may not, however, carry back contributions to a previous election, and accordingly, may not use general election funds to pay expenses incurred in the earlier primary election.

- It is not necessary to obtain written evidence regarding a contributor's intent before allocating a contribution to the primary election or the general election. A candidate who accepts a contribution that has not been designated for the primary or general election may elect to use the contribution for either election as long as the designation does not cause the amount contributed by the contributor to exceed $550 (Council district) or $1,050 (Citywide) per election.

- Note that a candidate may not override a designation made by a contributor. In other words, if a contributor indicates that a contribution is made for the general election, the candidate may not change the designation and use the funds for the primary election.

Depositing Contributions

- Candidates and primarily formed recipient committees must deposit each lawful contribution into their campaign bank account.

- Candidates and primarily formed recipient committees must obtain the name and street address of each contributor, as well as the occupation and employer for each contributor making contributions aggregating $100 or more. This information must be received by the earlier of:

  - ✓ the 60th calendar day following the receipt of the contribution; or

  - ✓ the filing of the campaign report covering the receipt of that contribution.

  For example, if a committee receives a $1,000 contribution on June 20 and has a semi-annual report due by July 31, the committee must obtain the contributor's occupation and employer information in

time to include it on the semi-annual report. Moreover, during the 24-hour filing period, the committee must obtain any required occupation and employer information before filing the Form 497.

- A contribution is considered "received" on the date that the candidate or committee, or an agent of the candidate or committee (including a vendor processing credit card contributions), obtains possession or control of the check or other negotiable instrument by which the contribution is made.

- All contributions "received" during a reporting period must be reported on the campaign statement applicable to that reporting period, even those that have not yet been deposited. For example, if during the last days of a reporting period a committee takes possession of a $100 check, it will report that contribution on its next campaign statement even if the check has not yet been deposited.

- If a candidate is running for multiple elective offices or the same office multiple times (and has more than one committee) and receives a contribution check made out to one of his or her committees, that check may be deposited only into the bank account of the committee identified on the check. The candidate has no discretion to deposit the check into a different committee's checking account.

- Candidates and their staffs must use due diligence to ensure the accuracy of information they report on a campaign statement. To avoid reporting inaccurate information, missing contributor information should be obtained directly from the contributor rather than by relying on information in an old database.

Returning Unlawful Contributions

- If a candidate discovers that a contribution has been deposited in violation of ECCO, such as a contribution that exceeds the allowable limit or a contribution deposited before all required information has been obtained, there is a grace period (within ten calendar days of the deposit or before the filing deadline for the reporting period in which the contribution was received, whichever occurs first) during which time the contribution may be returned to the contributor without penalty to the candidate. This grace period does not apply to contributions unlawfully made in the name of another person (also known as "laundered" contributions).

- There is another grace period for instances in which a candidate discovers that confusion regarding a contributor's name led to the deposit of a contribution that exceeds the contribution limits. A candidate will not be penalized if (1) the candidate has received more than one contribution from that contributor for that election; (2) variations in the spelling of the contributor's name reasonably resulted in confusion regarding the contributor's identity (e.g. Kate Jones / Katherine Jones); and (3) the candidate returns the contribution to the contributor before the filing deadline for the reporting period in which the contribution was received.

- If none of the above grace periods apply, the candidate must notify the City Clerk of any unlawful contribution deposited into the campaign bank account within ten calendar days of discovery, and provide the City Clerk with documentation regarding the contribution. The candidate must also deliver to the City Clerk a check payable to the City Treasurer in an amount equal to the unlawful contribution.

Loans

- A loan to a candidate from anyone other than a commercial lending institution is considered a "contribution," and subject to ECCO's rules regarding sources and amounts of contributions. For this reason, a candidate may not accept a loan from a family member unless the amount of the loan,

when added to any other contributions to the candidate by that family member, is within contribution limits.

- ❖ Candidates may loan their own money to their campaign committee. Because candidates are not subject to contribution limits, they may loan their committees more than $550 (Council district) or $1,050 (Citywide) per election. They are, however subject to a different limit - the total amount of personal loans outstanding at any one time may not exceed $100,000. If a candidate with $100,000 in outstanding loans wants to put more money into his or her campaign, those additional funds must be contributions (not loans).

Soliciting Contributions from City Employees

- ❖ Candidates and their committees may not knowingly solicit campaign contributions from City employees. The term "City employees" includes all paid City officers and employees, as well as the paid officers and employees of the City's agencies (Civic San Diego; San Diego Housing Commission; and San Diego Convention Center Corporation).

- ❖ This prohibition applies to solicitations made to City employees regardless of whether or not they are at work. For example, you may not send a campaign solicitation to the personal e-mail address of someone you know is a City employee.

- ❖ A candidate may lawfully send a solicitation to a significant segment of the public if the solicitation doesn't intentionally target any City employees, even if some City employees are inadvertently solicited.

  - ✓ For this exception to apply, you must have no reason to believe that a City employee is receiving the solicitation. Thus, if you are creating the list of recipients, you may not add someone to the list who you know is a City employee, regardless of the size of your recipient list. For lists that you purchase, you should exercise reasonable due diligence to filter out the names of City employees.

  - ✓ For e-mail solicitations, you should comb the list of e-mail addresses to remove those that end with a domain name associated with the City of San Diego or any of its agencies:

    - sandiego.gov (City of San Diego)
    - civicsd.com (Civic San Diego)
    - sdhc.org (San Diego Housing Commission)
    - visitsandiego.com (San Diego Convention Center Corporation)

  - ✓ For paper mailings, you should review the recipient list to remove the names of individuals you know to be City employees.

  - ✓ Under no circumstances should you use the City's Outlook address book or a list of City employees to target potential contributors.

- ❖ This prohibition pertains only to the solicitation of a campaign contribution. It does not in any way restrict an individual's right to contribute to your campaign.

Non-Monetary "In-Kind" Contributions

- ❖ When a candidate accepts a non-monetary contribution, the fair market value of the goods or service must be reported. Non-monetary contributions include discounts not offered to the public in the

regular course of business, forgiveness of loans, payments made by third parties on the candidate's behalf, and expenditures made at the candidate's behest.

- ❖ A candidate may not purchase an item and then donate that item to his or her committee as an in-kind contribution; all of the candidate's personal funds spent in connection with the election must first be deposited into the committee's campaign account.

- ❖ A candidate may, however, donate existing personal assets to his or her committee. For example, a candidate may donate an old computer to his or her committee and report the fair market value of the donation as an in-kind contribution. The committee may use that computer for campaign purposes or convert it to cash by selling it in a yard sale.

- ❖ In-kind contributions can include tickets and invitations to social events (e.g., galas, annual dinners, charitable events, etc.) that are given to a candidate or a member of a candidate's staff.

  - ✓ If a candidate wants to attend an event for political purposes (e.g., to be recognized as a candidate; to meet potential supporters and voters; to discuss campaign issues, etc.), and someone offers the candidate a ticket to attend, the candidate can accept the ticket and report it as an in-kind contribution from the individual or, in the alternative, use campaign funds to pay the cost of the ticket.

  - ✓ Even if a candidate doesn't stay for an entire event (e.g., he or she leaves before dinner is served), if it costs $100 to gain access to the event, then the individual who provided the candidate with the ticket has made a $100 in-kind contribution to that candidate.

  - ✓ Because of the City's ban on contributions from non-individuals and the City's contribution limits, a candidate may not accept a ticket or invitation that constitutes an in-kind contribution unless it comes from an individual (or a political party) and has a fair market value that does not exceed the contribution limits.

  - ✓ Only if the candidate attends an event for personal purposes (i.e., does not in any way use the event to promote or advance his or her candidacy, or obtain information that will benefit his or her campaign) will the invitation fall outside the scope of a reportable in-kind contribution.

  - ✓ Note that if a candidate accepts a ticket to an event for personal purposes (i.e., there is no political purpose in attending the event), that ticket may constitute a "gift" instead of a contribution. Candidates are subject to a $460 per year limit on gifts from the same source; contact the Ethics Commission for more information regarding gift limits.

- ❖ In-kind contributions also include goods donated to a candidate's fundraising event, unless the goods are donated by the occupants of a home or office who are hosting the event and the total cost of the event is $500 or less. See the Ethics Commission's "Fact Sheet on Home or Office Fundraisers for City Candidates" for more information concerning these types of events.

Miscellaneous

- ❖ Individuals may make separate contributions from a joint checking account. For reporting purposes, the full amount of the contribution should be reported as coming from the individual who signs the check. If two or more individuals sign the check, the contribution should be divided equally unless an accompanying document attributes specific amounts to each contributor.

- ❖ A candidate's controlled committee may not keep more than $100 in a petty cash fund at any one time.

- A candidate may not accept more than $200 in anonymous contributions per election (this is a candidate limit, not a per-contributor limit).

- Contributions include the purchase of tickets for events such as dinners, luncheons, rallies, and similar fundraising events. For example, if a candidate charges $100 per ticket for people to attend a campaign fundraiser, each ticket purchased is a $100 "monetary" contribution to the campaign committee (note that there is no offset for the costs of hosting the event).

- Cash contributions (including money orders and cashier's checks) are limited to $99 per contributor, per election. Keep in mind that cash contributions are not the same as anonymous contributions. Cash contributions up to $99 may be accepted and deposited only if the candidate has obtained the contributor's name and street address. In addition, if a contributor's aggregate contribution is $100 or more (e.g., $50 check and $50 cash), the candidate also needs to obtain the contributor's occupation and employer information.

- Credit card contributions are permitted. A candidate may accept credit card contributions directly or may make arrangements with a vendor to process credit card transactions (e.g., PayPal, a vendor's website). Note that a candidate may not open a second bank account to accept credit card contributions. For credit card contributions processed by a vendor, note the following rules:

  - ✓ Credit card contributions processed by a vendor are deemed to be "received" by the candidate upon receipt by the vendor.

  - ✓ Such contributions must be forwarded to the candidate and deposited into the candidate's campaign bank account within forty calendar days.

  - ✓ The entire amount authorized by the contributor is the amount of the contribution. Do not deduct from the contribution amount any fee charged by the vendor; instead, report such fees as expenditures.

  - ✓ There is no requirement that a candidate report the vendor as an "intermediary" on the candidate's campaign statement.

  - ✓ Candidates should obtain both the name of the "cardholder" and the name of the "contributor" from vendors processing their credit card transactions, and should compare these names before transferring the funds to the committee bank account. This will ensure that the "contributor" is the true source of the funds, and enable the committee to determine whether the contributor is an individual or an organization.

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

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