

FACT SHEET ON CAMPAIGN ADVERTISING

NOTE: The State of California has adopted many new and significantly different campaign advertising laws, effective January 1, 2018. The City of San Diego is in the process of updating its advertising laws to correspond with the new state laws. In the meantime, please keep in mind that campaign committees will be expected to follow state law instead of local law whenever the state law is more restrictive. For information regarding the state's new advertising laws, please refer to the California Fair Political Practices Commission's website: <http://www.fppc.ca.gov/learn/campaign-rules/campaign-advertising-requirements-restrictions.html>

The City's Election Campaign Control Ordinance [ECCO] includes laws regarding communications made to support or oppose City candidates and ballot measures, including mass campaign literature, telephone communications, mass media advertising, and electioneering communications. This fact sheet is designed to provide a general description of these laws, but should not be considered a substitute for the actual language contained in San Diego Municipal Code sections 27.2970, 27.2971, 27.2972, 27.2974, and 27.2980.

Committees Subject to Advertising Rules

- ❖ The following types of committees are subject to the disclosure rules described in this fact sheet:
 - ✓ candidates who make payments for campaign advertising to support their election campaigns;
 - ✓ recipient committees primarily formed to support or oppose City candidates or ballot measures that pay for campaign advertising to advocate for or against those candidates or measures;
 - ✓ state, county, and city general purpose recipient committees that pay for campaign advertising to advocate for or against City candidates or City ballot measures;
 - ✓ individuals and entities that use their own money to pay for campaign advertising to advocate for or against City candidates or ballot measures ("independent expenditures committees");
 - ✓ political party committees that make payments to communicate with their members for the purpose of supporting or opposing City candidates or measures (member communications by other entities are not subject to these advertising disclosure rules).

Communications Subject to Advertising Rules

- ❖ Campaign advertisements subject to the rules in this fact sheet generally include communications that:
 - ✓ expressly support or oppose a City candidate, or
 - ✓ expressly support or oppose a City ballot measure, or
 - ✓ taken as a whole and in context, unambiguously urge a particular result in a City election.
- ❖ In order to determine whether a communication is expressly advocating for or against a candidate or ballot measure, or unambiguously urging someone to vote a certain way, consider the words being used in the context of the overall message. The following words indicate express advocacy

- ✓ “vote for,” “elect,” “support,” “cast your ballot,” “vote against,” “defeat,” “reject,” and other similar phrases when referring to a clearly identified candidate or measure;
- ✓ a candidate’s qualifications, or words implying that a candidate is qualified for a particular office (e.g., “a proven leader,” “a caring statesman,” or “a dedicated public servant”);
- ✓ a list of voters who are supporting, or would vote for, a particular candidate;
- ✓ a candidate’s voting record and suggestions that he or she is qualified for office;
- ✓ grades assigned to one or more candidates on a particular issue or issues; and,
- ✓ evaluations of a candidate’s education, professional experience, or community activities.

Advertising Disclosure Rules

- ❖ If a candidate’s election campaign committee distributes more than 200 substantially similar items of printed campaign materials (e.g., mailers, door hangers) in a calendar month, each item must contain a “paid for by” disclosure in at least a 12 point font. All other types of committee must make this disclosure in a bold sans serif typeface that is 14 points or larger. Note that if the campaign advertisement is a yard sign, poster, placard, or similar sign designed to be viewed in passing by members of the public, then the “paid for by” disclosure must be at least 5% of the sign height.
 - ✓ Committees paying for mass campaign literature must maintain records that identify the date(s) of dissemination, the number of pieces disseminated, the method of dissemination, and an original sample of each item disseminated.
 - ✓ For additional details regarding printed campaign materials, please refer to the Ethics Commission’s “Fact Sheet on Mass Campaign Literature.”
- ❖ The above disclosure rules do not apply when organizations, other than political parties, are making payments for “member communications.” For example, if a company distributes to all of its employees a newsletter that urges the employees to vote for a particular City candidate, that newsletter does not require a “paid for by” disclosure.
- ❖ If a candidate or committee makes 500 or more substantially similar live or recorded telephone calls (e.g., a phone bank) to support or oppose a candidate or measure, or to conduct a poll that mentions a clearly identified candidate or measure, each call must contain disclosure information identifying who is paying for or authorizing the call.
 - ✓ Committees paying for telephone communications must maintain records that identify the date(s) the telephone calls were made, the number of calls made, as well as a transcript of the messages communicated and a copy of any recorded messages.
 - ✓ For additional details regarding campaign-related telephone calls, please refer to the Ethics Commission’s “Fact Sheet on Telephone Communications.”
- ❖ If a candidate or committee pays for an advertisement that appears in a newspaper, periodical, or magazine, the advertisement must contain a “paid for by” disclosure that includes the name of the candidate or committee paying for the advertisement. The disclosure must be in at least a 12 point font (if a candidate committee) or a 14 point bold sans serif font (if any other type of committee).
- ❖ If a candidate or committee pays for a text or graphic advertisement on a website (other than a candidate’s or committee’s own website), the advertisement must contain a “paid for by” disclosure that includes the name of the candidate or committee paying for the advertisement. The disclosure must be at least as large as the majority of the text in the advertisement.

- ✓ If there is insufficient space on the advertisement for the disclosure, the disclosure may be displayed via rollover display, a link to a website containing the disclosure information, or any other technological means that readily provide the user with the disclosure information.
- ✓ The “paid for by” disclosure must be legible, contrast with the background, and be visible for a period of at least four seconds.
- ❖ If a candidate or committee pays for a video advertisement on a website (other than a candidate’s or committee’s own website), the advertisement must contain a “paid for by” disclosure that includes the name of the candidate or committee paying for the advertisement. The disclosure must be in a contrasting typeface large enough to be easily read by an average viewer for at least four seconds. The disclosure must also be spoken at the beginning or end of the video unless the written disclosure is shown for at least five seconds on a video lasting less than one minute or at least ten seconds on a video lasting one minute or more.
- ❖ Committees paying for mass media advertising must maintain records that identify the publication or website where the advertisement appeared, the date(s) the advertisement appeared, the content and size of the “paid for by” disclosure, as well as an advertising proof or comparable image of the advertisement in printed or electronic format.
- ❖ Although it’s not a part of ECCO, you should know that state law requires campaign advertisements printed in a newspaper to also contain the words “Paid Political Advertisement.” See California Elections Code section 20008 for details.
- ❖ State law also requires advertisements supporting or opposing a candidate that are paid for by independent expenditures to include a statement that the advertisement was not authorized by a candidate or a committee controlled by a candidate. See California Government Code section 84506.5 for details.
- ❖ If a candidate or committee pays for an advertisement that appears on a billboard or other large advertisement at least 30 square feet in size, the advertisement must contain a “paid for by” disclosure that includes the name of the candidate or committee paying for the advertisement.
 - ✓ The size of the disclosure must be at least five percent of the height of the billboard or sign.
 - ✓ The size requirement applies to the height of the font used in the disclosure. Accordingly, if a disclosure is spread across multiple lines of text, the height of each line of text in the disclosure must be equal to or greater than five percent of the height of the billboard or sign.
 - ✓ The disclosure must be printed in a contrasting color.
 - ✓ Committees paying for billboards or other large forms of advertising must maintain records that identify the location(s) where each advertisement was publicly displayed, the date(s) of display, the dimensions of each advertisement, the content and size of the “paid for by” disclosure, as well as an advertising proof or comparable image of the advertisement in printed or electronic format.
- ❖ Even though ECCO does not regulate disclosures on radio and television advertisements, you should be aware that there are federal and state laws that do so.
- ❖ Candidates and committees should carefully review their campaign advertisements to ensure that the disclosures discussed above fully comply with the letter and spirit of the law such that a reasonable person can easily determine who paid for the campaign materials, telephone call, billboard, or other type of campaign advertising. Any candidate or committee that conceals or obscures the identity of the entity paying such costs by omitting required information, inserting extraneous information, adding lengthy pauses to telephonic disclosures, or engaging in any other

action that prevents a full, accurate, and clear disclosure risks being the subject of an Ethics Commission enforcement action.

- ❖ A committee that is primarily formed to support or oppose one or more City of San Diego candidates or ballot measures must include an additional disclosure statement on its advertisements if the committee has received contributions totaling \$10,000 or more from a single source. This is a lower threshold than the one imposed by the state (\$50,000).
 - ✓ If there are more than two entities contributing \$10,000, the committee is required to disclose only the highest and second highest contributor, in that order.
 - ✓ In the event that more than two donors meet this disclosure threshold at identical contribution levels, the highest and second highest shall be selected according to the order in which the contributions were made.
 - ✓ For additional details regarding this disclosure requirement, please refer to the Ethics Commission's "Fact Sheet on Disclosure Requirements for Committees with \$10,000 Donors."

Additional Rules and Prohibitions

- ❖ When a person or entity pays for campaign advertising at the behest of, or in coordination with, a candidate, that payment is an "in-kind contribution" to the candidate. Only individuals and political parties may make contributions to City candidates.
- ❖ Campaign-related communications from an organization to its members may be coordinated with a City candidate; however, communications that reach an audience beyond an organization's members (e.g., a billboard, yard signs, door hangers left at every house) may not be coordinated with a City candidate (unless the organization is a political party, in which case the communication is considered an "in-kind contribution" to the candidate).
- ❖ Committees that make independent expenditures to support or oppose City candidates and measures may exchange information with other such committees regarding campaign advertising, such as when two such committees discuss a scenario in which Committee A will pay for mailers and Committee B will pay for a phone bank. Committees making independent expenditures may also share the costs of campaign advertising.
- ❖ Candidates and committees that pay for campaign advertising must disclose their expenditures on campaign statements filed with the City Clerk. Contact the Ethics Commission for additional information regarding the various types of campaign statements and filing deadlines.
- ❖ If a communication does not expressly advocate for or against a candidate, or does not unambiguously urge someone to vote a certain way, but still mentions a candidate within ninety days of an election, it may be an "electioneering communication." For details regarding the disclosure rules applicable to these types of communications, please refer to the "Fact Sheet on Electioneering Communication."
- ❖ Records relating to campaign advertisements must be kept by the committee for a period of four years following the filing of the campaign statement that reflects the payment made for the advertisement.
- ❖ For additional information, please contact the Ethics Commission at (619) 533-3476 or ethicscommission@sandiego.gov.