



## FACT SHEET ON DUPLICATING CANDIDATES' CAMPAIGN MATERIALS

The City's Election Campaign Control Ordinance [ECCO] generally prohibits "independent" committees from duplicating and disseminating a City candidate's campaign materials. Such duplication is considered an in-kind contribution to the candidate, and is therefore subject to contribution limits and the ban on contributions from organizations (other than political parties). This fact sheet is designed to offer guidance to committees that are considering disseminating campaign advertisements that duplicate all or a portion of a candidate's campaign materials. It should not, however, be considered a substitute for the actual language contained in San Diego Municipal Code section 27.2947.

- ❖ When a committee duplicates all or part of a candidate's campaign materials, ECCO generally treats the effort as an in-kind contribution from the committee to the candidate. For example, if a candidate cannot afford to pay for television advertising, and a committee takes the candidate's YouTube video and pays to have it aired as a television commercial, the cost of the television commercial is an in-kind contribution from the committee to the candidate.
- ❖ Under the City's campaign laws, only individuals and political party committees may make contributions to City candidates. Accordingly, when a committee (other than a political party committee) makes an in-kind contribution to a City candidate, that committee has violated ECCO.
- ❖ The City's campaign laws also place limits on contributions from individuals to City candidates (currently \$650 per election for Council candidates and \$1,200 per election for Citywide candidates). Therefore, any individual who makes a payment greater than the applicable contribution limit to duplicate and disseminate a candidate's materials has violated ECCO.
- ❖ If a political party committee pays to duplicate and disseminate a candidate's campaign materials, it has made an in-kind contribution to that candidate subject to the applicable limit (currently \$11,850 for Council candidates and \$23,650 for Citywide candidates).
- ❖ Note that these rules apply only to the committee duplicating the candidate's materials, and not to the candidate whose materials were duplicated. Thus, even if a committee unlawfully duplicates a candidate's campaign materials, the candidate has not violated ECCO. Similarly, a candidate is not required to report receipt of an in-kind contribution if a committee duplicates its materials (lawfully or otherwise).
- ❖ These rules apply to any type of campaign material that a candidate has created, developed, or obtained for his or her campaign, including mailers, walking cards, door hangers, posters, yard signs, billboards, radio and television advertisements, photographs, audio and video recordings, etc. For example, a committee that takes a candidate's mailer to a print shop, duplicates it, and sends it out to additional prospective voters, has made a contribution to the candidate.

- ❖ The City's duplication rules apply when a committee duplicates a candidate's campaign material in full (e.g., an entire mailer) or in part (e.g., a few seconds of a video), unless an exception applies, as discussed below.
- ❖ The following are exceptions to the City's duplication rules:
  - ✓ Written Words. The written words, phrases, and sentences that appear in a candidate's campaign materials are not subject to the City's duplication rules. Thus, for example, a committee may take the bullet points, catch phrases, endorsement lists, and similar written content contained in a candidate's campaign literature and use it in its own advertisement without that advertisement being treated as a contribution to the candidate.
  - ✓ Speeches and Public Statements. A committee may duplicate statements made by a candidate during a speech, debate, forum, or similar type of public event in a campaign advertisement without triggering the duplication rules. This exemption also permits a candidate to make a video or audio recording of a candidate's speech and use the recording in a campaign advertisement. It does not, however, permit a committee to use any portion of an audio or video recording made by the candidate.
  - ✓ Photographs of the Candidate. A committee may obtain up to three photographs of a candidate from the candidate's campaign materials and use them in a campaign advertisement without making a contribution to the candidate. Note that this restriction applies only to photographs created, developed, or disseminated by the candidate; there are no limits on photographs from other sources.
  - ✓ Advocating the Defeat of the Candidate. A committee that duplicates a candidate's campaign materials in an advertisement that clearly advocates for the defeat of that candidate has not made an in-kind contribution to the candidate.
  - ✓ Member Communications. Payments by an organization for communications to its members for the purpose of supporting or opposing a candidate are not treated as contributions, regardless of any degree of duplication.
- ❖ The City's duplication rules do not impact any state or local filing obligations. A candidate whose campaign materials have been duplicated by a committee need not identify the committee as a contributor on its campaign statements. Moreover, the committee duplicating the materials (lawfully or otherwise) need not identify on its campaign statements that it made a contribution to the candidate.
- ❖ Keep in mind that the duplication rules discussed in this fact sheet apply only to situations in which there is no coordination, cooperation, consultation, etc., between the candidate (or his/her representatives) and the committee that is duplicating the candidate's campaign materials. If there is any amount of coordination between the candidate and the committee, the committee's payment will be treated as a contribution to the candidate regardless of any duplication, will be subject to source restrictions and contribution limits, and will be reportable by all involved parties on their campaign statements.

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