

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 7, DIVISION 29 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 27.2903, 27.2925 AND, 27.2959; RETITLING AND AMENDING SECTION 27.2970; REPEALING SECTIONS 27.2971, 27.2972, 27.9273 AND 27.2974; RETITLING AND AMENDING SECTIONS 27.2975 AND 27.2976; AND AMENDING SECTION 27.2980, RELATING TO THE SAN DIEGO MUNICIPAL ELECTION CAMPAIGN CONTROL ORDINANCE AND CAMPAIGN ADVERTISING DISCLOSURES.

WHEREAS, pursuant to San Diego Municipal Code (Municipal Code) section 26.0414, the City of San Diego Ethics Commission (Ethics Commission) has the responsibility of regularly reviewing the San Diego Municipal Election Campaign Control Ordinance (ECCO), and proposing updates to these laws to the City Council for its approval; and

WHEREAS, Division 29 of ECCO includes provisions related to campaign advertising; and

WHEREAS, the California State Assembly recently changed certain state laws governing campaign advertising through Assembly Bill 249, effective January 1, 2018; and

WHEREAS, the City's municipal campaign advertising laws may not be less restrictive than those imposed at the state level, but are allowed to be more restrictive; and

WHEREAS, the Ethics Commission has identified local laws that require amendments to bring them into compliance with and, in some cases, mirror state law, has approved such amendments, and now recommends that such amendments be adopted in this ordinance; and

WHEREAS, new rules relate to printed materials, signs, telephone calls, television and radio advertisements, newspaper and magazine advertisements, and paid Internet ads; and

WHEREAS, new requirements also include detailed formatting requirements; and

WHEREAS, amendments would repeal almost all of the current advertising disclosure rules in ECCO, creating consistency with state law for political committees; and

WHEREAS, amendments would incorporate state law by reference found in the California Government Code and Regulations of the California Fair Political Practices Commission, rather than delineate all state law in the Municipal Code, helping to avoid the need for future Municipal Code amendments as state laws continue to be amended; and

WHEREAS, in many instances state laws exempt candidate advertisements from disclosure requirements, but City candidates have been required since 2005 to include “paid for by” disclosures on all advertisements; and

WHEREAS, the Ethics Commission proposes to retain City laws requiring such disclosures, but apply the least restrictive formatting requirements in the new state laws to such disclosures; and

WHEREAS, new state laws regarding disclosure of major donors require primarily formed committees to identify their top three donors of \$50,000 or more on campaign advertisements, while the City has required disclosure of the top two donors of \$10,000 or more since 2013; and

WHEREAS, the Ethics Commission maintains that donations between \$10,000 and \$50,000 can significantly impact municipal elections, and thus such donations must be prominently disclosed; and

WHEREAS, the Ethics Commission thus proposes that advertisements be required to refer to a website, after providing a “paid for by” disclosure, stating “Funding Details at

www.sandiego.gov/donors,” and donors of \$10,000 or more would be listed on the Ethics Commission’s website; and

WHEREAS, the website disclosure provisions are modeled on state law applicable to state committees, which will create consistency, but be simpler as the City’s provisions will not require ranking donors or updating dollar amounts; and

WHEREAS, additional amendments will update definitions and record retention laws, and also include housekeeping changes; and

WHEREAS, the City Council’s Rules Committee heard and approved the proposed amendments on April 11, 2018, and voted unanimously to forward the amendments to Council for adoption; and

WHEREAS, the amendments are proposed now so that they will take effect before the November 6, 2018 Municipal General Election and Municipal Special Election are called; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. Chapter 2, Article 7, Division 29 of the San Diego Municipal Code is amended by amending sections 27.2903, 27.2925, and 27.2959; retitling and amending section 27.2970; repealing sections 27.2971, 27.2972, 27.9273, and 27.2974; retitling and amending sections 27.2975 and 27.2976; and amending section 27.2980, relating to the San Diego Municipal Election Campaign Control Ordinance and campaign advertising disclosures, to read as follows:

**§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.

*Agent through Assistant Treasurer* [No change in text]

*Campaign literature* means any printed communication that is authorized and paid for by a *candidate* or *committee* for the purpose of supporting or opposing one or more *City candidates* or *City measures*, including, but not limited to, mailers, flyers, pamphlets, door hangers, walking cards, posters, yard signs, billboards, business cards, campaign buttons 10 inches in diameter or larger, and bumper stickers 60 square inches or larger, regardless of whether distributed through the mail, by campaign workers, or any other means. *Campaign literature* does not include pens, pencils, or other similarly small promotional items on which the disclosures required by this Division cannot reasonably be printed or displayed in an easily legible typeface; wearing apparel; skywriting; communication from an organization to its members, other than a communication from a political party to its members; or any web-based or Internet-based communication.

*Candidate through Elective City office* [No change in text]

*Electronic media communication* means any electronic mass media communication that is authorized and paid for by a *candidate* or *committee* for

the purpose of supporting or opposing one or more *City candidates* or *City measures*, including, but not limited to, television advertisements; radio advertisements; and video, audio, and written advertisements disseminated over the Internet. *Electronic media communications* do not include email communications; text messages; social media posts; or websites under the control of a *candidate* or *committee*.

*Enforcement Authority through Independent expenditure committee* [No change in text]

*Measure through Sponsored Committee* [No change in text]

*Telephone communications* mean any live or recorded telephone calls that are authorized or paid for by a *candidate* or *committee* for the purpose of supporting or opposing one or more *City candidates* or *City measures*.

*Treasurer through Vendor* [No change in text]

**§27.2925 Accounting and Recordkeeping**

(a) through (b) [No change in text]

(c) Every *candidate* or *committee* paying for campaign advertisements supporting or opposing one or more *City candidates* or *City measures* shall maintain records in accordance with the following requirements:

- (1) for *campaign literature*, records that identify the date(s) of dissemination, the number of pieces disseminated, and the method of dissemination, as well as an original sample of each item of *campaign literature* disseminated by the *candidate* or *committee*,

except that an advertising proof or comparable image of the item in printed or electronic format will comply with this requirement when the size of the item makes maintaining an original sample impracticable;

- (2) for *telephone communications*, records that identify the date(s) the telephone calls were made and the number of calls made, as well as a transcript of the messages communicated and a copy of any recorded messages; and
- (3) for *electronic media communications*, newspapers, magazines, and periodicals, records that identify the publication or website or media outlet where the advertisement appeared, the date(s) the advertisements appeared, the content and size of the requisite “paid for by” disclosure, as well as an advertising proof or comparable image or recording of the advertisement in printed or electronic format.

(d) through (f) [No change in text]

**§27.2959 Extensions of Vendor Credit – Primarily Formed Recipient Committees**

(a) [No change in text]

(b) A *primarily formed recipient committee* may not accept credit from a *vendor*, but shall instead pay the *vendor* in full from existing funds at the time of placing the order, if all three of the following conditions are met:

(1) through (2) [No change in text]

(3) the identity of the *committee's sponsors* or contributors of \$10,000 or more would change if any *person* made a *contribution* to the *committee* in an amount equal to the *committee's* advertising debt liability.

(c) For purposes of this section:

(1) “a campaign advertisement” means any tangible or intangible campaign content that requires a “paid for by” or similar funding disclosure under section 27.2970;

(2) through (4) [No change in text]

**§27.2970 Disclosures on Campaign Advertisements**

(a) Subject to the additional requirements and exceptions expressly noted in section 27.2970, and limited to advertisements concerning *City candidates* and *City measures*, the campaign advertising disclosure rules included in the Political Reform Act of 1974, as amended, including but not limited to California Government Code sections 84305 through 84511, and the regulations of the California Fair Political Practices Commission, as amended, including but not limited to Regulations 18440 through 18450.11, are adopted by reference and incorporated into the San Diego Municipal Election Campaign Control Ordinance as if fully set forth herein.

(b) When a *candidate* or *candidate-controlled committee* established for *elective City office* is not required to make a “paid for by” advertising

disclosure under state law, the *candidate* or *committee* shall make such a disclosure as if the advertisement is an *independent expenditure*.

- (c) When a *candidate* or *committee* uses volunteers to make *telephone communications*, such volunteers shall disclose the name of the *candidate* or *committee* during the communication in the same manner required of paid callers under state law, except that this disclosure may follow the words “on behalf of” instead of “paid for by.”
- (d) For purposes of identifying a *committee*’s “top contributors,” as defined in California Government Code section 84501, a *committee*’s “cumulative contributions” means the cumulative amount of *contributions* received by the *committee* since the filing of its original Statement of Organization and ending seven calendar days before the *committee* submits the advertising order.
- (e) Every *primarily formed recipient committee* that has received *contributions* cumulatively totaling \$10,000 or more from any single contributor since the filing of its original Statement of Organization shall include the text “Funding details at [www.sandiego.gov/donors](http://www.sandiego.gov/donors)” on or during its campaign advertisements in the following manner:
  - (1) The disclosure statement shall be made on campaign literature, visual *electronic media communications*, and newspaper and periodical advertisements immediately below and in the same font size and format as the “paid for by” disclosure. For advertisements



disseminated over the Internet, the web address portion of the disclosure statement shall be a hyperlink whenever practicable.

(2) The disclosure statement shall be made during *telephone communications* and audio-only *electronic media communications* immediately following the “paid for by” or “on behalf of” disclosure in the same pitch and tone as the rest of the advertisement.

(3) A *committee* has not violated subsection (e) by failing to include the disclosure statement on a campaign advertisement if the advertising order was placed less than seven calendar days after first receiving *contributions* cumulatively totaling \$10,000 or more from any single contributor.

(f) Nothing in this section establishes a Municipal Code requirement:

(1) that any *candidate* or *committee* include advertising disclosures on email communications; text messages; social media posts; or websites under the control of the *candidate* or *committee*; or

(2) that any *candidate* or *candidate-controlled committee* established for *elective City office* make an advertising disclosure on *telephone communications* or items sent through the U.S. mail unless already required to do so under state law; or

(3) that any *committee* make an advertising disclosure on a *member communication* unless already required to do so under state law; or

- (4) that any *candidate* or *committee* comply with California Government Code section 84506.5; or
  - (5) that any *general purpose recipient committee* disclose its “top contributors” on campaign advertisements; or
  - (6) that is applicable to any slate mailer organization.
- (g) Nothing in this section relieves any *candidate* or *committee* from its obligation to comply with the advertising disclosure requirements included in state law.

**§27.2975 Major Funding of Primarily Formed Recipient Committees**

- (a) Every *primarily formed recipient committee* shall notify the City of San Diego Ethics Commission within three business days of receiving *contributions* cumulatively totaling \$10,000 or more from a single contributor. The notice shall be sent by email and include:
- (1) the *committee*’s full name and identification number;
  - (2) the contributor’s name; and
  - (3) if the contributor is a *primarily formed recipient committee* or a *general purpose recipient committee*, the contributor’s identification number.
- (b) The information provided shall be made available to the public on the City of San Diego Ethics Commission’s website.
- (c) The aggregation rules of California Government Code section 85311 and any implementing regulations adopted by the California Fair

Political Practices Commission shall apply for purposes of identifying the *committee's* contributors.

**§27.2976 Identification of Ballot Measure Committees**

Within 30 days of the designation of the alphabetical order of the *measures* appearing on the ballot, any *committee* that is primarily formed to support or oppose a ballot *measure*, shall, if supporting the *measure*, include the statement, “a committee for Measure \_\_,” or “Yes on Measure \_\_” or, if opposing the *measure*, include the statement, “a committee against Measure \_\_,” or “No on Measure \_\_,” in any reference to the *committee* required by law.

**§27.2980 Disclosure of Electioneering Communications**

(a) Every *electioneering communication* in printed form shall include the words “paid for by” immediately followed by the name, street address, and city of the *person* who paid for the communication in a contrasting Arial-equivalent typeface that is easily legible and no less than 10 point in size.

(b) through (h) [No change in text]

Section 2. A full reading of this ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 3. This ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By \_\_\_\_\_  
Sharon B. Spivak  
Deputy City Attorney

SBS:MW:jvg  
05/03/18  
Or.Dept: Ethics Commission  
Doc. No.: 1741114

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of \_\_\_\_\_.

ELIZABETH S. MALAND  
City Clerk

By \_\_\_\_\_  
Deputy City Clerk

Approved: \_\_\_\_\_  
(date)

\_\_\_\_\_  
KEVIN L. FAULCONER, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
KEVIN L. FAULCONER, Mayor