

SAN DIEGO ETHICS COMMISSION REVIEW OF THE CITY'S Election Campaign Control Ordinance

PROPOSED AMENDMENTS

February 28, 2018

Chapter 2: Government

Article 7: Elections, Campaign Finance and Lobbying

Division 29: Election Campaign Control Ordinance

§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.

Replaces "mass campaign literature"; number threshold removed per state law; billboards added

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.

Newly defined term; includes tv, radio, Internet ads

Enforcement Authority through Independent Expenditure Committee [No change in text]

Replaced with "campaign literature"; see above

~~*Mass campaign literature* means more than 200 substantially similar pieces of campaign literature, including, but not limited to, mailers, flyers, pamphlets, door hangers, walking cards, posters, yard signs, business cards, campaign buttons 10 inches in diameter or larger, or bumper stickers 60 square inches or larger, which are distributed within a single calendar month, regardless of whether distributed through the mail, by campaign workers, or any other means. *Mass 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.~~

Replaced with "telephone communications"; see below

~~*Mass telephone communications* means live or recorded telephone calls that are substantially similar in nature to 500 or more individuals or households for the purpose of (a) supporting or opposing a *clearly identified candidate* or a *clearly identified measure*; or (b) conducting a poll that mentions or refers to a *clearly identified candidate* or a *clearly identified measure*.~~

Measure through Sponsored Committee [No change in text]

Replaces "mass telephone communications"

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) In addition to any other requirements of this division, every *candidate* or *committee* that accepts *contributions* for a *City election* shall maintain records in accordance with the requirements of title 2, section 18401 of the California Code of Regulations.
- (b) The records required by section 27.2925(a) shall be kept by the *candidate* or *committee treasurer* for a period of four years following the date that the campaign statement to which they relate is filed.
- (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 *mass campaign literature* ~~subject to section 27.2970~~, 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 *mass 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

Amended to address billboard size

when the size of the item makes maintaining an original sample impracticable;

(2) for ~~mass telephone communications subject to section 27.2971~~, 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,

Billboards
now covered
in (c)(1)

(3) for ~~billboards and other large forms of advertising subject to section 27.2972~~, 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 requisite “paid for by” disclosure, as well as an advertising proof or comparable image of the advertisement in printed or electronic format; and

Now covers
tv and radio
ads

(4)(3) for mass media advertisements subject to section 27.2974 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) The records required by section 27.2925(c) shall be kept by the *candidate* or *committee* for a period of four years following the date that the campaign statement to which they relate is filed.

(e) Each *candidate* and *committee* shall deliver, on demand, to any public officer having authority to enforce this division, a written authorization permitting the officer to have access to all records pertaining to the campaign *contribution* checking account.

(f) Each *candidate* and *committee* shall, on demand, make available to any public officer having authority to enforce this division all records required by this division to be maintained by the *candidate* or *committee*.

§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) the *vendor* is providing goods or services relating to designing, creating, printing, mailing, posting, broadcasting, or disseminating a campaign advertisement;

\$10K threshold now applies to website disclosure instead of ad disclosure

- (2) the balance in the *committee's* bank account, including funds received but not yet available, is insufficient to cover in full the *committee's* advertising debt liability; and,
- (3) the identity of the *committee's* ~~sponsors~~ or ~~top two donors~~ 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 sections section 27.2970, 27.2971, 27.2972, or 27.2974, and any television or radio advertisement that requires a "paid for by" or similar funding disclosure pursuant to state or federal campaign law;
- (2) through (4) [No change in text]

§27.2970 ~~Mass Campaign Literature~~ Disclosures on Campaign Advertisements

Remove existing laws; incorporate state law

- (a) It is unlawful for any ~~candidate or committee~~ to pay for *mass campaign literature* for the purpose of supporting or opposing a *City candidate* or ballot *measure* unless each item of *mass campaign literature* includes the words "paid for by" immediately followed by the name, street address, and city of that ~~candidate or committee~~.
- (b) For ~~mass campaign literature~~ sent through the mail, the disclosure required by subsection (a) shall appear on the outside of each item of *mass campaign literature*.
 - (1) If more than one ~~candidate or committee~~ is paying for the mailing, the ~~candidate or committee~~ paying the largest portion of the costs relating to the designing, printing, and posting of the mailing shall be identified on the outside of each mailing in the disclosure required by subsection (a).
 - (2) If two or more ~~candidates or committees~~ are paying equally for the mailing, at least one of the ~~candidates or committees~~ shall be identified on the outside of each mailing in the disclosure required by subsection (a); and all of the ~~candidates and committees~~ paying for the mailing shall be identified on an insert included within each mailing in the disclosure required by subsection (a).
- (c) For ~~candidates and candidate-controlled committees~~ supporting the *candidate's* candidacy, the disclosures required by subsections (a) and (b) shall be in a typeface that is easily legible, contrasts with the background, and is no less than 12 points in size. For all other ~~committees~~, the disclosures required by subsections (a) and (b) shall be in a bold, sans-serif typeface that is easily legible, contrasts with the background, and is no less than 14 points in size. These disclosure requirements do not apply to signs that are subject to the provisions of subsection (d).

- (d) It is unlawful for any *candidate* or *committee* to pay for *mass campaign literature* in the form of signs that are publicly displayed for the purpose of supporting or opposing a *City candidate* or *ballot measure* unless the face of each sign includes the words “paid for by” immediately followed by the name, street address, and city of that *candidate* or *committee* in a typeface that is easily legible, contrasts with the background, and has a height no less than five percent of the height of the sign. This disclosure requirement applies to yard signs, posters, placards, and similar forms of advertising that are intended to be viewed in passing by members of the public rather than individually distributed to such members.
- (e) For purposes of this section, an organization’s post office box may be stated in lieu of a street address if that organization’s address is a matter of public record with the Secretary of State.
- (d) The requirements set forth in this section do not apply to *member communications* distributed by an organization that is not a political party, email communications, Internet web pages, or slate mailers.

(a) Subject to the additional requirements and exceptions expressly noted below, and limited to advertisements concerning *City candidates* and *City measures*, the campaign advertising disclosure rules contained 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 hereby adopted by reference and incorporated into the San Diego Municipal Election Campaign Control Ordinance as if fully set forth herein.

Incorporates state law except as specified below.

(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*.

Candidates will be subject to least restrictive disclosure requirements when state law is silent.

(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.”

Carries over existing rules for volunteers.

(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.

Disclosure of top donors since committee inception (more restrictive than state law) + 7 day grace period (same as state law)

(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.” on or during its campaign advertisements in the following manner:

Replace \$10K donor disclosure threshold on ads with notice that its \$10K donors will be posted on Commission’s website.

- (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 San Diego Municipal Code requirement:

Establish areas that ECCO will not cover

Applies state’s exemption for candidate mailers less than 201 and phone calls less than 500

84506.5: “This advertisement was not authorized or paid for by a candidate”

State law still applies in areas where ECCO is silent

- (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 contained in state law.

§27.2971 Telephone Communications

Remove existing laws; incorporate state law

- (a) It is unlawful for any *candidate* or *committee* to engage or hire others to engage in *mass telephone communications* unless the communications include a statement that the communications 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 any of the resources used for the communications or that is otherwise authorizing the communication. For purposes of this subsection, “resources” include the purchase of a contact list, the development of a script, overhead expenses, and telephone charges. The type of disclosure required by this section shall be determined as follows:
- (1) 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.
 - (2) 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*.
 - (3) Notwithstanding subsections (a)(1) and (a)(2), 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*.
- (b) The statement required pursuant to subsection (a) shall be clearly audible and at the same general volume as the rest of the telephone message.
- (c) If the telephone communication is a recording, the statement required pursuant to subsection (a) shall be played at the same speed as the rest of the message.
- (d) If the telephone communication is paid for by a *controlled committee*, the name of the *candidate* controlling the *committee* shall be included in addition to the information required by subsection (a).
- (e) Any *candidate* or *committee* paying for a live or recorded telephone communication subject to this section shall maintain records relating to such communications in accordance with section 27.2925(c).
- (f) The disclosure requirements set forth in this section shall not apply to a *candidate* personally engaging in a live telephone communication or to a *member communication* by an organization that is not a political party.

§27.2972 ~~Billboards and other Large Forms of Advertising~~

Remove existing law; incorporate state law

- (a) It is unlawful for any *candidate* or *committee* to pay for any advertising on a billboard or other large form of advertising for the purpose of supporting or opposing one or more ballot *measures* or *candidates* for *elective City office* unless the communication includes the words “paid for by” followed by the name of that *candidate* or *committee*.

- (b) The typeface used in the disclosure statement required by subsection (a) shall have a height no less than five percent of the height of the advertisement and be printed in a contrasting color.
- (c) As used in this section, the term “other large form of advertising” pertains to any sign, banner, poster, or other form of campaign advertising that is 30 6 square feet or larger and visible to the general public.

§27.2973 Paid Spokespersons — Ballot Measures

Remove existing law; incorporate state law

- (a) A *committee* that makes an *expenditure* of \$5,000 or more to an individual for his or her appearance in an advertisement to support or oppose the qualification, passage, or defeat of a ballot *measure* shall file a report with the *City Clerk* within 10 days of the *expenditure*. The report shall identify the *measure*, the date of the *expenditure*, the name of the recipient, and the amount expended.
- (b) Any advertisement subject to the provisions of subsection (a) shall include the following statement: “(spokesperson's name) is being paid by (committee's name) for appearing in this campaign advertisement in a bold, sans serif typeface that is easily legible, contrasts with the background, and is no less than 14 points in size if the advertisement consists of printed material, or spoken in a clearly audible format if the advertisement is a telephone message

§27.2974 Disclosure on Advertisements in Mass Media

Remove existing law; incorporate state law

- (a) It is unlawful for any *candidate* or *committee* to pay for advertising in a regularly published newspaper, periodical, or magazine of general circulation for the purpose of supporting or opposing one or more *City measures* or *candidates for elective City office* unless the advertisement includes the words “paid for by” followed by the name of that *candidate* or *committee*.
 - (1) For *candidates* and *candidate-controlled committees* paying for advertising supporting the *candidate's* candidacy, the disclosure statement required by this subsection shall be in a typeface that is easily legible, contrasts with the background, and is no less than 12 points in size.
 - (2) For all other *committees*, the disclosure statement required by subsection (a) shall be in a bold, sans serif typeface that is easily legible, contrasts with the background, and is no less than 14 points in size.
- (b) It is unlawful for any *candidate* or *committee* to pay for text or graphic advertising on an Internet web page for the purpose of supporting or opposing one or more *City measures* or *candidates for elective City office* unless the advertisement includes the words “paid for by” followed by the name of that *candidate* or *committee* in letters at least as large as the majority of the text in the advertisement
 - (1) In the event that it is impractical to comply with the provisions of this subsection because of the limited size of the advertisement, the disclosure may be displayed via rollover display, a link to a webpage with the

disclosure information, or any other technological means that readily provide the user with the disclosure information.

- (2) The disclosure information required by this subsection must be legible, contrast with the background, and be visible for a period of at least four seconds.
- (e) It is unlawful for any *candidate or committee* to pay for video advertising on an Internet web page for the purpose of supporting or opposing one or more *City measures or candidates for elective City office* unless the advertisement includes the words “paid for by” followed by the name of that *candidate or committee* in a contrasting typeface of sufficient size to be readily legible to an average viewer for not less than four seconds. This 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.
- (b) It is unlawful for any *candidate or committee* to pay for text or graphic advertising on an Internet web page for the purpose of supporting or opposing one or more *City measures or candidates for elective City office* unless the advertisement includes the words “paid for by” followed by the name of that *candidate or committee* in letters at least as large as the majority of the text in the advertisement

§27.2975 Major Funding of Advertisements Supporting or Opposing Candidates and Ballot Measures Primarily Formed Recipient Committees

Remove existing laws; incorporate state law

- (a) In addition to all other applicable disclosure requirements set forth in this Division, it is unlawful for any *primarily formed recipient committee* to pay for an advertisement supporting or opposing a *City candidate* or ballot measure unless each *person* who has cumulatively contributed \$10,000 or more to the *committee* is identified in the advertisement as providing major funding to the *committee*.
 - (1) If there are more than two donors of \$10,000 or more, the *committee* is only required to disclose the highest and second highest in that order.
 - (2) In the event that two or more donors of identical amounts meet the threshold for the top two contributors, the order of disclosure shall be made beginning with the most recent contributor of that amount.
 - (3) The disclosure shall be in a bold, sans serif typeface that is easily legible, contrasts with the background, and is no less than 14 points in size, except that if the advertisement is a sign subject to the disclosure requirements of section 27.2970(d), a billboard, or any other large form of advertising as defined in section 27.2972, the disclosure’s typeface shall have a height no less than five percent of the height of the advertisement.
 - (4) The disclosure shall reflect information that is accurate as of the date the committee places the order to purchase the advertisement.

- (b) ~~The provisions of this section do not apply to advertisements that are member communications, made through an e-mail communication, placed on a slate mailer, printed on small promotional items on which the disclosure cannot reasonably be printed or displayed in an easily legible typeface, printed on wearing apparel, or skywriting.~~
- (e) ~~Except as expressly stated herein, the requirements of this section are intended to be consistent with the advertising regulations imposed by title 2, sections 18450.4 and 18450.5 of the California Code of Regulations on primarily formed recipient committees with contributors of \$50,000 or more.~~
- (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 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.

Require PFRCs to provide \$10K donor names to Commission for web posting.

§27.2976 Identification of Entities Supporting Ballot Measures Measure Committees

- (a) ~~Any committee that supports or opposes one or more ballot measures shall name and identify itself using a name or phrase that clearly identifies the economic or other special interest of its major donors of \$50,000 or more in any reference to the committee required by law, including, but not limited, to its statement of organization filed pursuant to California Government Code section 84101.~~
- (b) ~~If the major donors of \$50,000 or more share a common employer, the identity of the employer shall also be disclosed.~~
- (e) ~~Any committee, other than a general purpose recipient committee, that supports or opposes a ballot measure, shall print or broadcast its name as provided in this section as part of any advertisement or other paid public statement.~~
- (d) ~~If candidates or their controlled committees, as a group or individually, meet the contribution thresholds for a person, they shall be identified by the controlling candidate's name.~~

Remove committee naming rules that have been eliminated from state law

- (e) Within 30 days of the designation of the alphabetical order of propositions 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 Proposition Measure _____” or, “Yes on Measure _____” or “Yes on _____” or, if opposing the *measure*, include the statement, “a committee against Proposition Measure _____” or “No on Measure _____” or “No on _____” 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 ~~bold, sans serif typeface that is easily legible, contrasts with the background, and is no less than 14 points in size~~ contrasting Arial equivalent typeface that is easily legible and no less than 10 points in size.

Update for consistency with new state law formatting requirements

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