

**CITY OF SAN DIEGO  
ETHICS COMMISSION**

**M E M O R A N D U M**

**DATE:** May 5, 2016

**TO:** Commissioners Cochran, Fuller, Potter, and Zinser

**FROM:** Commissioners Baber, Kreit, and Voorakkara  
Members of Ad Hoc Subcommittee

**SUBJECT:** Recommended Changes to City's Campaign Laws (ECCO)  
Docketed for Discussion at Ethics Commission Meeting on May 12, 2016

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As you know, the Commission Vice Chair previously formed an ad hoc subcommittee to review local campaign laws with a view toward identifying specific provisions that might benefit from harmonization with corresponding state laws as well as other necessary and/or appropriate updates. Following a series of meetings with Commission staff as well as a public workshop and input from professional campaign treasurers, the subcommittee recommends that the Commission consider the amendments discussed below.

Pre-Election Fundraising Time Period (SDMC §27.2938)

Currently, ECCO prohibits candidates from soliciting or receiving campaign contributions more than twelve months before the primary election. This time limit was adopted in 2004 in response to a recommendation by the Commission. In particular, the Commission recommended that a pre-election fundraising time period be established in order to prevent the appearance of corruption that exists when officeholders solicit contributions from individuals with business pending before the City years before their next election, a practice that also dissuades challengers seeking to replace incumbents who have amassed significant funds in their "war chests."

In the years since the twelve month time limit went into effect, an unintended consequence has developed: candidates now engage in frenzied fundraising during the three week time period between the fundraising start date and the June 30 campaign reporting cutoff in order to demonstrate their viability to prospective supporters. Because any situation in which candidates are rushing to solicit and deposit contributions can result in the failure to comply with other applicable campaign laws (e.g., source restrictions, limits, securing accurate contributor information, etc.) the subcommittee concluded that the current twelve month fundraising time period is problematic. The subcommittee also observed that the current twelve month time limit could adversely affect challengers because incumbents are better able to raise funds in an abbreviated time frame.

For the foregoing reasons, the subcommittee recommends extending the twelve month fundraising time period to January 1 of odd-numbered years. It should be noted that two professional campaign treasurers preferred an April 1 start date because January is typically a very busy month for treasurers as they are preparing year-end campaign statements due January 31. Although the subcommittee considered this input, we ultimately decided that the January 1 start date would most effectively address the issues discussed above.

It's relevant to note that, during the course of our meetings, the Commission's General Counsel reminded us that placing limits on time periods for fundraising requires the City to balance its interests in preventing corruption with the rights of individuals to financially support the candidates of their choice. She noted that the current twelve month time limit passed constitutional muster in federal court rulings several years ago, and opined that an extension of the current fundraising time period would not trigger any constitutional concerns.

#### Extension of Vendor Credit (SDMC §27.2960)

Under current law, candidates must pay their vendors within 180 days of the receipt of an invoice or the last day of the month in which they receive the goods or services, whichever is earlier. Because of the hectic nature of most campaigns, it can be very difficult for candidates to effectively track the dates that goods and services are received, and it is not uncommon for vendors to submit invoices many months after they provide goods or services. Additionally, because campaign disclosure statements do not include the specific dates that debts are incurred or paid, it is very difficult for the public or Commission staff to monitor compliance with the current law. For these reasons, the subcommittee recommends modifying this provision to require that candidates pay their vendors no later than 180 days after the election, which would coincide with the 180 day post-election fundraising time period. The subcommittee believes that this amendment will not undermine the underlying purpose of the vendor credit law, which is to ensure that unpaid debts do not become in-kind contributions that violate source and amount restrictions.

#### Deposit of Contributions (SDMC §27.2916)

State and local law require candidates to obtain and disclose the occupation and employer information for individuals who have contributed a total of \$100 or more. In addition to this requirement, ECCO currently prohibits candidates from depositing contributions before they have obtained all requisite contributor information. In contrast, state law permits candidates to deposit contributions before they obtain all contributor information, but requires that the contributions be returned if the information is not obtained within 60 days. In order to more closely mirror state law, while also ensuring that contributor information is available to the public at the time campaign statements are filed, the subcommittee recommends modifying the current law to require candidates to obtain all contributor information within 60 days or by the time they file the relevant campaign statement, whichever is earlier.

Alphabetizing Contributors (SDMC §27.2930)

Candidates and committees are currently required to disclose contributors in alphabetical order on campaign statements. This requirement was part of a package of amendments proposed by the Commission in 2004 and was intended to make it easier for the public and Commission staff to locate and identify individual contributors on campaign statements, which in some cases are extremely lengthy. This requirement is essentially now obsolete because the City's electronic filing system allows users to easily search online filings for specific contributor names. Users may also convert the online filings to Excel spreadsheets that can be sorted in a variety of ways, including alphabetically by contributor (as well as chronologically by date, which can enhance transparency by revealing the donors who may have attended the same event). Accordingly, the subcommittee recommends eliminating this requirement.

Notification Regarding Reimbursement Prohibition (SDMC §27.2945)

ECCO currently requires candidates to include the following warning on any campaign materials or websites that include solicitations for campaign contributions: "It is unlawful to reimburse an individual's contribution to a City candidate unless the reimbursement is made by another individual and the names of both individuals are provided to the candidate." This requirement was initially adopted by the City Council in 2004 at the request of a Councilmember who wanted inexperienced contributors to receive a warning before inadvertently violating the laws that prohibit campaign money laundering. According to input received by the subcommittee, this warning, coupled with the "paid for by" disclosure requirement in ECCO, can consume a significant percentage of smaller campaign materials such as remittance envelopes. Moreover, it is difficult, if not impossible, to word the warning in a legally precise manner that fully conveys the prohibition to potential contributors in a simple, concise, and easily understood manner; the current warning language is the City's third effort to accomplish this goal, and it still falls short.

Although the warning might occasionally serve its intended purpose, the subcommittee noted that the Commission has the option to consider any extenuating circumstances the warning was meant to address (e.g., a naïve contributor who openly admits to including a campaign contribution on an expense reimbursement request submitted to an employer). The subcommittee therefore recommends eliminating this requirement.

Third Pre-Election Filing (SDMC §27.2930)

Local and state laws require candidate committees and primarily formed committees to file two pre-election campaign statements. In addition, ECCO requires that such committees file a third pre-election statement limited to the disclosure of previously unreported contributions of \$100 or more received after the closing date of the second pre-election filing. According to input received from campaign treasurers (and verified by Commission staff), primarily formed committees usually have nothing to disclose on their third pre-election statements; their filings are essentially blank. These committees typically receive the bulk of their funding prior to the

third pre-election reporting period, and if they do receive contributions during this period they are typically in an amount (\$1,000 or more) that requires them to be reported on a Form 497 twenty-four hour report. (As you know, primarily formed committees are not subject to contribution limits or source restrictions.) Because the third pre-election filing requirement for primarily formed committees results in little or no meaningful information disclosed to the public, the subcommittee recommends eliminating it.

In preparing the foregoing recommendations, the subcommittee was mindful of the timing involved in City Council consideration and adoption of amendments that have a proposed effective date of January 1, 2017. (It is the City's custom and practice to put new campaign laws into effect on January 1 of odd numbered years in order to ensure that the laws are consistent throughout an election cycle.) We are therefore hopeful that the Commission will complete its review of these recommendations at the May and June meetings, which will allow sufficient time for a Council Committee and the full City Council to consider and approve them.