

**CITY OF SAN DIEGO  
ETHICS COMMISSION**

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

**DATE:** August 17, 2016

**TO:** Council President and Members of the City Council

**FROM:** Stacey Fulhorst, Executive Director

**SUBJECT:** Recommended Changes to City's Campaign Laws (ECCO)  
Docketed for City Council Consideration on September 27, 2016

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One of the responsibilities of the Ethics Commission, as set forth in SDMC section 26.0414(g), is to “undertake a review of the City’s existing governmental ethics laws, and to propose updates to those laws to the City Council for its approval.” The Commission recently completed a review of local campaign laws with a view toward identifying specific provisions that might benefit from harmonization with corresponding state laws and ensuring that the City’s campaign laws are serving their intended purpose. Following a public workshop, input from professional campaign treasurers, and deliberations at two Commission meetings, the Commission voted to recommend Council consideration and adoption of the proposed amendments discussed below which were approved by the Rules Committee on August 3, 2016.

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 (before the City created an electronic filing system) and was intended to make it easier for the public and Commission staff to locate and identify individual contributors on campaign statements. This requirement has essentially become obsolete because the City’s electronic filing system allows users to easily search online filings for specific contributor names. Users may also download online filings as Excel spreadsheets that can be sorted in a variety of ways, including alphabetically by contributor. Accordingly, the Commission recommends eliminating this requirement.

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 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 Commission 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 Commission 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 occupation and employer information for individuals who have made contributions 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 Commission 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.

#### 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 initially 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 years before their next election from individuals with business pending before the City, a practice that also dissuades challengers seeking to replace incumbents who have amassed substantial 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. Rushing to solicit and deposit contributions can result in a failure to comply with other applicable campaign laws (e.g., source restrictions, contribution limits, securing accurate contributor information, etc.). The Commission therefore recommends extending the fundraising time period to January 1 of odd-numbered years.

It’s relevant to note that the Commission considered several alternatives before arriving at the January 1 date. Specifically, the Commission considered an April 1 start date but ultimately decided January 1 was preferable because it coincides with a campaign reporting period. Additionally, the Commission decided against a July 1 start date after considering the fact that the only other comparable jurisdiction with a pre-election fundraising time period (Los Angeles)

allows fundraising for 18 months (district candidates) and 24 months (citywide candidates) before the primary election.

#### 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 Commission, 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 Commissioners noted that they have 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 Commission 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. (Primarily formed committees are more likely to receive large contributions because they are not subject to contribution limits or source restrictions.) Because the third pre-election filing requirement for primarily formed committees is resulting in little or no meaningful information for the public, the Commission recommends eliminating it.

#### Additional Updates

In addition to the foregoing, the proposed amendments include the following updates that are less significant in nature and intended primarily to increase consistency with state law:

- Recent amendments adopted by the City Council require 24-hour disclosure of monetary contributions of \$1,000 or more received during an initiative or referendum signature drive. The Commission recommends adding a provision that requires 48-hour disclosure of nonmonetary contributions received during the same period.
- State laws concerning identification disclosures on campaign ads sent through the mail and website advertising were recently updated. The Commission recommends adopting corresponding updates to ECCO.
- As part of a package of amendments adopted a few years ago, the identification disclosure on yard signs was updated from 12 point type size to 5% of the sign height, which corresponded to similar updates in state law. The Commission now recognizes, however, that state law applies the 5% rule to other types of publicly-displayed signs (e.g., posters, placards) distributed in quantities of 200 or more, and therefore recommends updating local law accordingly.

As you know, 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 hopeful, therefore, that the Rules Committee will promptly approve and forward the proposed recommendations to the full City Council in order to achieve a January 1, 2017, effective date.

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Stacey Fulhorst  
Executive Director