



Ethics Commission

MEMORANDUM

DATE: November 1, 2017

TO: Chair and Members of the San Diego Ethics Commission

FROM: Stacey Fulhorst, Executive Director

SUBJECT: Recent State Law Amendments to Campaign Advertising Disclosure Laws Docketed for Ethics Commission Consideration on November 9, 2017, and December 14, 2017

As you know, state laws regulating campaign advertising disclosures will change significantly on January 1, 2018, due to the recent passage of Assembly Bill 249. Because local campaign laws may not be less restrictive than comparable state laws, the City's laws must be amended to be in harmony with the new state laws. In order to facilitate the discussion and relevant policy considerations, staff has prepared the attached chart which delineates the new state laws applicable to ten different types of campaign advertisements. The chart also includes information regarding the advertising disclosure laws currently contained in the City's Election Campaign Control Ordinance [ECCO].

As reflected in the attached chart, the new state laws are extremely complicated and applied inconsistently to different types of committees. In anticipation that the Commission will prefer to maintain the City's current advertising framework (which generally applies the same rules to all types of committees participating in City elections for purposes of consistency and simplicity), staff has prepared recommendations for each type of campaign advertisement, as discussed below. In general, the staff recommendations mirror the most restrictive requirements in the new state laws but apply them consistently to all types of committees.

In addition, the recommendations include maintaining ECCO's current \$10,000 major donor disclosure threshold for primarily formed recipient committees [PFRC], which are independent committees formed to support/oppose City candidates/measures. Maintaining this threshold will ensure that the public receives information regarding donations to PFRCs that are large enough to impact City elections.¹ Absent this lower threshold, PFRCs could limit major donor contributions to \$49,999, and avoid disclosure of significant sources of funding on campaign ads.

¹ Note that the City's current \$10,000 threshold does not have any impact on PFRCs already required to identify multiple donors of \$50,000 or more under state law; instead, it applies only when a PFRC's largest donors have contributed between \$10,000 and \$49,999.

Finally, staff does not recommend incorporating the new state laws that require general purpose committees to identify their major donors on campaign ads because it would likely subject the City to litigation. (Similar requirements previously imposed by the FPPC were found to be unconstitutional because there is no way to track a particular donor's contribution to a specific campaign advertisement since the committee is general purpose in nature.) Staff anticipates that the elimination of this requirement will be included in the state's "clean-up" legislation during the 2018 legislative session.

Campaign Literature (200+ mailers, flyers, door hangers, etc.)

Proposed Amendments: (1) Require all committees to state "paid for by" followed by the name of the committee in a contrasting 10 point Arial font on a solid white background in a box at the bottom of the page; also require PFRCs to state "committee major funding from" followed by the top 3 donors of \$10,000 or more on separate lines in descending order (not in all capital letters); and (2) require all committees to include a "sender ID" on the outside of any literature distributed via U.S. mail in a contrasting 6 point font (note that "sender ID" includes committee name and street address).

Signs (200+ yard signs; signs 6 square feet or larger)

Proposed Amendments: Require all committees to state "paid for by" followed by the name of the committee in contrasting Arial font at least 5% of sign height on a solid white background in a box at the bottom of the sign; also require that PFRCs state "committee major funding from" followed by the top 3 donors of \$10,000 or more separated by commas (not in all capital letters).

Telephone Calls (500+ live or recorded calls)

Proposed Amendments: Require all committees paying for 500 or more substantially similar telephone calls to include a "paid for by" disclosure (or an "on behalf of" disclosure if the caller is a volunteer²) lasting at least 3 seconds at the beginning or end of the call in the same pitch and tone as the rest of the ad; also require PFRCs to state "committee major funding from" followed by the top 2 donors of \$10,000 or more, unless the advertising portion of the call lasts 15 seconds or less or the full "paid for by" disclosure would last more than 8 seconds, in which case the disclosure of only the top 1 major donor is required.

Note that FPPC Regulation 18450.1 currently applies telephone disclosure requirements to calls of 200 or more for committees making independent expenditures to support or oppose a candidate or measure. In the upcoming months, the FPPC will be amending existing Regulations

² Although state law does not apply to volunteers, the continued application of an "on behalf of" disclosure will ensure that the public receives information regarding the committee that paid for the resources associated with the call. Without this disclosure, call recipients would not receive any information regarding the committee responsible for the communication.

to conform to the new advertising rules and staff is hopeful that the 200 call threshold will be updated to be consistent with the 500 call threshold contained in Assembly Bill 249.

Also note that current state and local law require an “authorized by” disclosure whenever a committee paying for a call has coordinated with another committee and is therefore making a contribution to that committee. No amendments to these disclosure requirements are necessary.

Television and Video Internet Advertisements

Proposed Amendments: Require a “paid for by” disclosure using the entire bottom quarter of the video in a contrasting underlined Arial equivalent typeface at least 4% of the video height on a solid black background at the beginning or end of the advertisement for at least 5 seconds for an ad lasting 30 seconds or less, or for 10 seconds for an ad lasting more than 30 seconds; also require PFRCs to include “committee major funding from” followed by the top 3 donors of \$10,000 or more centered on separate lines using the bottom third of the video (not underlined or in all capital letters).

Radio and Audio-Only Internet Advertisements

Proposed Amendments: Require a “paid for by” disclosure lasting at least 3 seconds at the beginning or end of the ad in the same pitch and tone as the rest of the ad; also require PFRCs to include “committee major funding from” followed by the top 2 donors of \$10,000 or more, unless the advertising portion of the ad or call lasts 15 seconds or less or the full “paid for by” disclosure would last more than 8 seconds, in which case the disclosure of only the top 1 major donor is required.

Newspaper & Magazine Advertisements

Proposed Amendments: Require all committees to include a “paid for by” disclosure in contrasting 10 point Arial font on a solid white background in a box at the bottom of the ad; also require PFRCs to include “committee major funding from” followed by the top 3 donors of \$10,000 or more on separate lines in descending order (not in all capital letters) unless the ad is 20 square inches or less, in which case disclosure need only include the top 1 major donor.

Text/Graphic Internet Advertisements

Proposed Amendments: Require that all committee ads contain a link to a website containing a “paid for by” disclosure in contrasting 8 point type; the link must state “Who funded this ad?” in a contrasting and readable font unless impracticable; also require PFRCs to include “committee major funding from” followed by the top 3 donors of \$10,000 or more (not in all capital letters).

Other

State law requires that committees making independent expenditures include a “paid for by” disclosure on their websites; this disclosure requirement was updated as part of the recent state

law amendments (e.g., the disclosure must now include a committee's top 3 donors). The Commission previously opted not to incorporate a website disclosure requirement into ECCO because of the difficulties posed from an enforcement perspective (a person can easily create a website using a false name) and because of the relatively minor costs required to purchase a domain name and publish a website.

Additionally, state law requires that committees making independent expenditures to support or oppose a candidate include an additional disclosure indicating that the communication was "not authorized by" the candidate. The City's laws do not incorporate this requirement because the Commission previously concluded that it would be a superfluous disclosure given that, by their nature, independent expenditures may not be authorized by candidates. (Authorizing a communication constitutes coordination which results in an in-kind contribution, and City candidates may not accept contributions from any type of organization, including other committees).

With respect to both the website and "not authorized by" disclosure requirements, the City has essentially opted to remain silent, deferring to the state to regulate City committees in these areas.

Attachment

STATE LAW ADVERTISING RULES EFFECTIVE JANUARY 1, 2018

Mailers, Flyers, Door Hangers, Walking Cards (200+)

STATE LAW (as of Jan 1, 2018)					
Committee Type	Ad Supports:	Disclosure Requirements	Law	Formatting Requirements	Law
Candidate (own election)	own candidacy	sender ID on mailers	84305(a)(1)	any legible 6 point contrasting font on outside of mailers	84305(a)(1)
Candidate (own election)	ballot measure (IE)	"paid for by" disclosure on all formats	84502(a)(2)	any contrasting 10 point typeface	84504.5(c)(1)
Political Party	candidate (coordinated)	sender ID on mailers	84305(a)(1)	any legible 6 point contrasting font on outside of mailer	84305(a)(1)
Political Party	candidate (IE) or ballot measure (IE)	"paid for by" disclosure on all formats	84502(a)(2); 84305(f)	any contrasting 10 point typeface	84504.5(c)(1); 84305(a)(1)
Primarily Formed or General Purpose (incl. candidate ballot measure)	candidate (IE) or ballot measure	"paid for by" + "committee major funding from" disclosure for top 3 \$50K donors on all formats	84502(a)(1); 84503	contrasting 10 point Arial font against a solid white background in a box at bottom of page; top donors listed on separate lines in descending order (not in all caps)	84504.2(a); 84505(b)
Independent Expenditure	candidate (IE) or ballot measure (IE)	"paid for by" disclosure on all formats	84502(b)	contrasting 10 point Arial font against a solid white background in a box at bottom of page	84504.2(a)
CURRENT SAN DIEGO LAW					
Committee Type	Disclosure Requirements		Formatting Requirements		Law
All committees	"paid for by" + sender ID on mailers + primarily formed committees' top 2 \$10K donors disclosure		contrasting 12 point font (or for non-candidate committees a 14 point bold sans serif font to comply with 2015 state law just repealed by AB 249)		27.2970; 27.2975

Yard Signs (200+) and Billboards

STATE LAW (as of Jan 1, 2018)					
Committee Type	Ad Supports:	Disclosure Requirements	Law	Formatting Requirements	Law
Candidate (own election)	own candidacy	none	n/a	n/a	n/a
Candidate (Own election)	ballot measure (IE)	"paid for by" disclosure	84502(a)(2)	any contrasting typeface at least 5% of sign height	84504.5(c)(2)
Political Party	candidate (coordinated)	none	n/a	n/a	n/a
Political Party	candidate (IE) or ballot measure (IE)	"paid for by" disclosure	84502(a)(2)	any contrasting typeface at least 5% of sign height	84504.5(c)(2)
Primarily Formed or General Purpose (incl. candidate ballot measure)	candidate (IE) or ballot measure	"paid for by" + "committee major funding from" disclosure for top 3 \$50K donors	84502(a)(1); 84503	contrasting Arial font (at least 5% of sign height) against solid white background in a box at bottom of sign; top donors separated by commas (not in all caps)	84504.2(b); 84505(b)
Independent Expenditure	candidate (IE) or ballot measure (IE)	"paid for by" disclosure	84502(b)	contrasting Arial font (at least 5% of sign height) against solid white background in a box at bottom of sign	84504.2(b)
CURRENT SAN DIEGO LAW					
Committee Type	Disclosure Requirements		Formatting Requirements		Law
All committees	"paid for by" disclosure + primarily formed committees' top 2 \$10K donors		any contrasting typeface at least 5% of sign height		27.2970(d); 27.2972; 27.2975

Telephone Calls

STATE LAW (as of Jan 1, 2018)					
Committee Type	Ad Supports:	Disclosure Requirements	Law	Formatting Requirements	Law
Candidate (own election)	own candidacy	500 calls: "paid for by" or "authorized by"	84310	"paid for by" or "authorized by"	FPPC Reg. 18440
Candidate (own election)	ballot measure (IE)	200 calls (per FPPC threshold): "paid for by"	84502(a)(2)(A)	at the beginning or end of the ad in the same pitch and tone as rest of the ad for at least 3 seconds	84504.5(a)
Political Party	candidate (coordinated)	500 calls: "paid for by" or "authorized by"	84310	"paid for by" or "authorized by"	FPPC Reg. 18440
Political Party	candidate (IE) or ballot measure (IE)	200 calls (per FPPC threshold): "paid for by"	84502(a)(2)(A); 84310(d)	at the beginning or end of the ad in the same pitch and tone as rest of the ad for at least 3 seconds	84504.5(a)
Primarily Formed or General Purpose (incl. candidate ballot measure)	candidate (IE) or ballot measure	200 calls (per FPPC threshold): "paid for by" + "committee major funding from" disclosure	84502(a)(1); 84503	at the beginning or end of the ad in same pitch and tone as rest of the ad, for at least 3 seconds; top 1 or 2 donors	84504(a),(b)
Independent Expenditure	candidate (IE) or ballot measure (IE)	200 calls (per FPPC threshold): "paid for by"	84502(b)	at the beginning or end of the ad in same pitch and tone as rest of the ad, for at least 3 seconds	84504(a)

CURRENT SAN DIEGO LAW					
Committee Type	Disclosure Requirements	Formatting Requirements	Law		
All committees	500 calls: "paid for by" or "authorized by" or "on behalf of"	clearly audible and at same general volume as rest of message	27.2971; 27.2975		

Television Advertisements

STATE LAW (as of Jan 1, 2018)					
Committee Type	Ad Supports:	Disclosure Requirements	Law	Formatting Requirements	Law
Candidate (own election)	own candidacy	"paid for by" disclosure	84502(a)(2)(C)	4 seconds in any font at least 4% of screen height	84504.4(b)
Candidate (Own election)	ballot measure (IE)	"paid for by" disclosure	84502(a)(2)	4 seconds at beginning or end of ad in any font large enough to be readily legible; also spoken disclosure if written disclosure appears for less than 5 seconds of 30 second broadcast or for less than 10 seconds of 60 second broadcast	84504.5(b)
Political Party	candidate (coordinated)	"paid for by" disclosure	84502(a)(2)(C)	4 seconds in any font at least 4% of screen height	84504.4(b)
Political Party	candidate (IE) or ballot measure (IE)	"paid for by" disclosure	84502(a)(2)	4 seconds at beginning or end of ad in any font large enough to be readily legible; also spoken disclosure if written disclosure appears for less than 5 seconds of 30 second broadcast or for less than 10 seconds of 60 second broadcast	84504.5(b)
Primarily Formed or General Purpose (incl. candidate ballot measure)	candidate (IE) or ballot measure	"paid for by" + "committee major funding from" disclosure for top 3 \$50K donors	84502(a)(1); 84503	5 seconds for broadcast of 30 seconds or less, or 10 seconds for broadcast longer than 30 seconds, in contrasting underlined Arial font (4% of screen height) at beginning or end of ad against solid black background on bottom 1/3 (or 1/4 if no top donors); top donors centered on separate lines, not underlined, not in all caps	84504.1; 84505(b)
Independent Expenditure	candidate (IE) or ballot measure (IE)	"paid for by" disclosure	84502(b)	5 seconds for broadcast of 30 seconds or less, or 10 seconds for broadcast longer than 30 seconds, in contrasting underlined Arial font (4% of screen height) at beginning or end of ad against solid black background on bottom 1/4	84504.1
CURRENT SAN DIEGO LAW					
Committee Type	Disclosure Requirements		Formatting Requirements		Law
Primarily Formed Committees	top 2 \$10K donors		none		27.2975

Radio Advertisements

STATE LAW (as of Jan 1, 2018)					
Committee Type	Ad Supports:	Disclosure Requirements	Law	Formatting Requirements	Law
Candidate (own election)	own candidacy	"paid for by" disclosure	84502(a)(2)(C)	at the beginning or end of the ad in the same pitch and tone as rest of the ad; no time restrictions	84504.4(a)
Candidate (own election)	ballot measure (IE)	"paid for by" disclosure	84502(a)(2)	at the beginning or end of the ad in the same pitch and tone as rest of the ad for at least 3 seconds	84504.5(a)
Political Party	candidate (coordinated)	"paid for by" disclosure	84502(a)(2)(C)	at the beginning or end of the ad in the same pitch and tone as rest of the ad; no time restrictions	84504.4(a)
Political Party	candidate (IE) or ballot measure (IE)	"paid for by" disclosure	84502(a)(2)	at the beginning or end of the ad in the same pitch and tone as rest of the ad for at least 3 seconds	84504.5(a)
Primarily Formed or General Purpose (incl. candidate ballot measure)	candidate (IE) or ballot measure	"paid for by" + "committee major funding from" disclosure	84502(a)(1); 84503	at the beginning or end of the ad in the same pitch and tone as rest of the ad, for at least 3 seconds; top 2 donors (or top 1 donor if ad lasts 15 seconds or less or the disclosure would last more than 8 seconds)	84504(a),(b)
Independent Expenditure	candidate (IE) or ballot measure (IE)	"paid for by" disclosure	84502(b)	same pitch and tone as rest of the advertisement, for at least 3 seconds	84504(a)

CURRENT SAN DIEGO LAW					
Committee Type	Disclosure Requirements		Formatting Requirements	Law	
Primarily Formed Committees	top 2 \$10K donors		none	27.2975	

Newspaper & Magazine Advertisements

STATE LAW (as of Jan 1, 2018)					
Committee Type	Ad Supports:	Disclosure Requirements	Law	Formatting Requirements	Law
Candidate (own election)	own candidacy	none	n/a	n/a	n/a
Candidate (own election)	ballot measure (IE)	"paid for by" disclosure	84502(a)(2)	any contrasting 10 point typeface	84504.5(c)(1)
Political Party	candidate (coordinated)	none	n/a	n/a	n/a
Political Party	candidate (IE) or ballot measure (IE)	"paid for by" disclosure	84502(a)(2)	any contrasting 10 point typeface	84504.5(c)(1)
Primarily Formed or General Purpose (incl. candidate ballot measure)	candidate (IE) or ballot measure	"paid for by" + "committee major funding from" disclosure for top 3 \$50K donors	84502(a)(1); 84503	solid white background in a box at bottom of ad in contrasting 10 point Arial font; top donors listed on separate lines in descending order (not in all caps); only single donor if 20 square inches or less	84504.2(a),(c); 84505(b)
Independent Expenditure	candidate (IE) or ballot measure (IE)	"paid for by" disclosure	84502(b)	solid white background in a box at bottom of page in contrasting 10 point Arial font	84504.2(a),(c)

CURRENT SAN DIEGO LAW				
Committee Type	Disclosure Requirements	Formatting Requirements	Law	
All committees	"paid for by" + primarily formed committees' top 2 \$10K donors	contrasting 12 point font (or for non-candidate committees a 14 point bold sans serif font to comply with 2015 state law just repealed by AB 249)	27.2974(a); 27.2975	

Internet Advertisements – Video

STATE LAW (as of Jan 1, 2018)					
Committee Type	Ad Supports:	Disclosure Requirements	Law	Formatting Requirements	Law
Candidate (own election)	own candidacy	none	n/a	n/a	n/a
Candidate (own election)	ballot measure (IE)	"paid for by" disclosure	84502(a)(2)	4 seconds at beginning or end of ad in any font large enough to be readily legible; also spoken disclosure if written disclosure appears for less than 5 seconds of 30 second broadcast or for less than 10 seconds of 60 second broadcast	84504.5(b)
Political Party	candidate (coordinated)	none	n/a	n/a	n/a
Political Party	candidate (IE) or ballot measure (IE)	"paid for by" disclosure	84502(a)(2)(A)	4 seconds at beginning or end of ad in any font large enough to be readily legible; also spoken disclosure if written disclosure appears for less than 5 seconds of 30 second broadcast or for less than 10 seconds of 60 second broadcast	84504.5(b)
Primarily Formed or General Purpose (incl. candidate ballot measure)	candidate (IE) or ballot measure	"paid for by" + "committee major funding from" disclosure for top 3 \$50K donors	84502(a)(1); 84503	5 or 10 seconds (depending on length of ad) in contrasting underlined Arial font (4% of screen height) at beginning or end of ad against solid black background on bottom 1/3 (or 1/4 if no top donors); top donors centered on separate lines, not underlined, not in all caps	84504.1; 84505(b)
Independent Expenditure	candidate (IE) or ballot measure (IE)	"paid for by" disclosure	84502(b)	5 or 10 seconds (depending on length of ad) in contrasting underlined Arial font (4% of screen height) at beginning or end of ad against solid black background on bottom 1/4	84504.1
CURRENT SAN DIEGO LAW					
Committee Type	Disclosure Requirements		Formatting Requirements		Law
All committees	"paid for by" + primarily formed committees' top 2 \$10K donors		legible font for at least 4 seconds with spoken disclosure unless written disclosure is at least 5/10 seconds depending on length of video		27.2974(c); 27.2975

Internet Advertisements – Text/Graphic

STATE LAW (as of Jan 1, 2018)					
Committee Type	Ad Supports:	Disclosure Requirements	Law	Formatting Requirements	Law
Candidate (own election)	own candidacy	none	n/a	n/a	n/a
Candidate (own election)	ballot measure (IE)	“paid for by” disclosure	84502(a)(2)	ad contains a link to website containing “paid for by” information in contrasting 8 point font; link must state “Who funded this ad?” in contrasting and readable font unless impracticable	84504.5(d), 84504.3(a)
Political Party	candidate (coordinated)	none	n/a	n/a	n/a
Political Party	candidate (IE) or ballot measure (IE)	“paid for by” disclosure	84502(a)(2)	ad contains a link to website containing “paid for by” information in contrasting 8 point font; link must state “Who funded this ad?” in contrasting and readable font unless impracticable	84504.5(d), 84504.3(a)
Primarily Formed or General Purpose (incl. candidate ballot measure)	candidate (IE) or ballot measure	link to “paid for by” + “committee major funding from” disclosures for top 3 \$50K donors	84502(a)(1); 84503	ad contains a link to website containing “paid for by” information in contrasting 8 point font; link must state “Who funded this ad?” in contrasting and readable font unless impracticable; website also contains top donor information in contrasting 8 point font (not in all caps)	84504.3(a); 84505(b)
Independent Expenditure	candidate (IE) or ballot measure (IE)	link to “paid for by” disclosure	84502(b)	ad contains a link to website containing “paid for by” information in contrasting 8 point font; link must state “Who funded this ad?” in contrasting and readable font unless impracticable	84504.3(a)
CURRENT SAN DIEGO LAW					
Committee Type	Disclosure Requirements		Formatting Requirements		Law
All committees	“paid for by” + primarily formed committees’ top 2 \$10K donors		typeface at least as large as the majority of text in the ad		27.2974(b); 27.2975

Internet Advertisements - Audio-Only

STATE LAW (as of Jan 1, 2018)					
Committee Type	Ad Supports:	Disclosure Requirements	Law	Formatting Requirements	Law
Candidate (own election)	own candidacy	none	n/a	n/a	n/a
Candidate (own election)	ballot measure (IE)	none	n/a	n/a	n/a
Political Party	candidate (coordinated)	none	n/a	n/a	n/a
Political Party	candidate (IE) or ballot measure (IE)	none	n/a	n/a	n/a
Primarily Formed or General Purpose (incl. candidate ballot measure)	candidate (IE) or ballot measure	"paid for by" + "committee major funding from" disclosure	84504.3(e); 84502(a)(1); 84503	same pitch and tone as rest of the advertisement, for at least 3 seconds; top 2 donors, or top 1 donor if ad lasts 15 seconds or less or the disclosure would last more than 8 seconds	84504(a),(b)
Independent Expenditure	candidate (IE) or ballot measure (IE)	"paid for by" disclosure	84504.3(e); 84502(b)	same pitch and tone as rest of the advertisement, for at least 3 seconds	84504(a)

CURRENT SAN DIEGO LAW					
Committee Type	Disclosure Requirements			Formatting Requirements	Law
All committees	none			n/a	n/a

Websites

STATE LAW (as of Jan 1, 2018)					
Committee Type	Ad Supports:	Disclosure Requirements	Law	Formatting Requirements	Law
Candidate (own election)	own candidacy	none	n/a	n/a	n/a
Candidate (own election)	ballot measure (IE)	none	n/a	n/a	n/a
Political Party	candidate (coordinated)	none	n/a	n/a	n/a
Political Party	candidate (IE) or ballot measure (IE)	none	n/a	n/a	n/a
Primarily Formed or General Purpose (incl. candidate ballot measure)	candidate (IE) or ballot measure	"paid for by" + "committee major funding from" disclosure for top 3 \$50K donors	84504.3(c)	contrasting 8 point font	84504.3(c)
Independent Expenditure	candidate (IE) or ballot measure (IE)	"paid for by" disclosure	84504.3(c)	contrasting 8 point font	84504.3(c)

CURRENT SAN DIEGO LAW						
Committee Type	Disclosure Requirements			Formatting Requirements		Law
All committees	none			n/a		n/a