FACT SHEET ON ELECTIONEERING COMMUNICATIONS

The City's Election Campaign Control Ordinance [ECCO] includes laws regarding electioneering communications, i.e., communications that do not expressly advocate for a candidate's election or defeat, but mention or refer to a City candidate in the months leading up to an election. Under ECCO, these communications are subject to "paid for by" disclosures and filing requirements. This fact sheet is designed to provide a general description of the applicable laws, but should not be considered a substitute for the actual language contained in San Diego Municipal Code section 27.2980.

- With certain specified exceptions (see page two of this Fact Sheet), if a printed or spoken communication mentions or refers to a candidate, the payment for that communication is generally either an "expenditure" or an "electioneering communication."
  - ✓ If a communication expressly advocates the nomination, election, defeat, or recall of a candidate, or unambiguously urges people to vote for or against a candidate, then the payment is an "expenditure" that must be reported on regular campaign statements. For such communications, please refer to the Ethics Commission's "Fact Sheet on Campaign Advertising."
  - ✓ On the other hand, if the communication mentions a candidate's name, but does not expressly advocate the nomination, election, defeat, or recall of the candidate, or otherwise does not unambiguously urge people to vote for or against the candidate, it is an electioneering communication.

- An electioneering communication is any form of communication (including mailers, flyers, pamphlets, door hangers, telephone calls, and radio and television advertisements) that mentions a clearly identified candidate, but doesn't expressly advocate the nomination, election, defeat, or recall of the candidate, and is disseminated, broadcast, or published within 90 days of the election.

- A "clearly identified candidate" means a candidate who is identified in a communication by name, by an unambiguous reference to the candidate's office or status as a candidate, or by any other unambiguous description. A candidate is also clearly identified if a communication contains the voice or a visual depiction of the candidate.

- Printed materials, such as mailers and door hangers, are subject to the City's electioneering communications rules only when distributed in quantities of more than 200 within a single calendar month. Live or recorded telephone calls are subject to these rules only when made to 500 or more individuals or households.

- If the electioneering communication is disseminated in a printed format, it must include the words "paid for by" immediately followed by the name, street address, and city of the person who paid for the communication in an easily legible bold sans serif contrasting typeface that is at least 14 points in size.

- If the electioneering communication is made in a spoken form (e.g., radio advertisement, telephone communication), it must include the words "paid for by" immediately followed by the name of the person who paid for the communication. The disclosure must be clearly audible and at the same general volume and speed as the rest of the communication.

- If a person or entity (other than a political committee) makes a payment, or promises to make a payment, totaling $1,000 or more for an electioneering communication, that person or entity must file an "Electioneering Communication Disclosure Report" with the City Clerk. The Electioneering Communication Disclosure Report" form may be obtained from the Ethics Commission's web site.

- The Electioneering Communication Disclosure Report must be filed in person, by fax, or by overnight delivery within 24 hours of making the payment or the promise to make the payment. The report must be accompanied by a legible copy of the electioneering communication (or a transcript if the communication was made in spoken form).

- The Electioneering Communication Disclosure Report must include the following information for each person who paid $100 or more toward the electioneering communication: name, address, occupation, employer, amount received, and the date of payment.

- The following are not considered electioneering communications:
  - ✓ news stories and editorials by broadcast outlets or regularly published newspapers, periodicals, or magazines of general circulation;
  - ✓ communications that are considered expenditures or independent expenditures under ECCO;
  - ✓ member communications, except those made by a political party;
  - ✓ slate mailer communications;
  - ✓ communications paid for by a governmental entity;
  - ✓ communications that occur during a candidate debate or forum;
  - ✓ communications that promote a candidate debate or forum without discussing the positions or experience of a candidate; or,
  - ✓ communications in which a candidate's name is required by law to appear and the candidate is not singled out in the manner of display.

- Note that a payment for a communication made at the behest of, or in coordination with, a candidate or a candidate's controlled committee, is an "in-kind contribution" to that candidate (and not an "electioneering communication") if the communication expressly advocates for the candidate or makes reference to the candidate's candidacy for elective office, the candidate's election campaign, or the candidate's or his or her opponent's qualifications for office.

- The Ethics Commission does not regulate the truth or accuracy of electioneering communications. It has no control over the dissemination of false or misleading statements.

- Under the City's Lobbying Ordinance, a person or entity that spends money on an electioneering communication may also qualify as an "Expenditure Lobbyist" if the communication is designed to influence a municipal decision. For more information concerning this type of lobbyist, including the applicable disclosure requirements, please refer to the Lobbying Ordinance and the Ethics Commission's Fact Sheet on Expenditure Lobbyists.

For additional information, please contact the Ethics Commission at (619) 533-3476 or ethicscommission@sandiego.gov.

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