



OFFICE OF THE CITY CLERK

REPORT

REPORT TO THE COMMITTEE ON RULES, FINANCE AND INTERGOVERNMENTAL RELATIONS

DATE: October 25, 1999

REPORT NO: 99-07

SUBJECT: PROPOSED AMENDMENTS TO THE SAN DIEGO CAMPAIGN
CONTROL ORDINANCE

ISSUE

At the Rules Committee meeting on October 4, 1999, the City Clerk was given direction to make further amendments to the City's Campaign Control Ordinance, Chapter 2, Article 7, Division 29 of the San Diego Municipal Code, based on significant specific input from campaign treasurer April Boling. The Clerk was also directed to develop provisions for a legal and accounting compliance fund, for consideration by the committee.

CLERK'S RECOMMENDATION

Support the proposed amendments to the Campaign Control Ordinance and provide additional direction to the City Clerk if desired.

DISCUSSION

Following the Rules Committee meeting on October 4, the City Clerk made additional amendments to the Campaign Control Ordinance to provide further clarification, and to enable candidates and campaign treasurers to comply more easily with the ordinance. The latest amendments are discussed below and the revised draft is included as Attachment A. The draft incorporates many of the suggestions offered by Ms. Boling. Additionally, a separate division has been drafted with provisions for a legal and accounting compliance fund for consideration by the Rules Committee. This is included as Attachment B.

Additional Amendments to San Diego Campaign Control Ordinance

Loans to Candidates and Committees

In the latest amendments, the definition of **Contribution** has been changed to include loans, unless they are received from a commercial lending institution in the ordinary

course of business. This will make local law consistent with the provisions in state law. This change limits to \$250 (or any revised contribution limit), the amount a candidate can borrow from a family member or friend. Loan information may now be reported solely on the campaign disclosure report and there is no need for the additional information that had been required in Section 27.2942. The fact that loans are to be disclosed pursuant to the California Government Code has been codified in Section 27.2943.

Campaign Contribution Checking Account

Proposed amendments to Section 27.2921 allow the deposit of a contribution without the name, address, occupation and employer information required for contributions. If the information does not accompany the contribution, however, it must be requested, in writing, by the treasurer within ten business days of receipt of the contribution. A minor amendment in this section allows a campaign treasurer a longer period of time to get additional information about a contribution before he or she is required to return it.

Contribution Limits and Independent Expenditures

The addition of Section 27.2931 (b) provides that a committee which makes independent expenditures and participates in City candidate elections must identify on its disclosure reports those contributions that are specifically designated for a City candidate election. A companion amendment in Section 27.2941 clarifies that the contribution limits of the ordinance apply to the total contributions of an individual to a candidate, whether to the candidate's controlled committee or to a committee that makes independent expenditures, if the contributor knows, or has reason to know, at the time the contribution is made, that the funds will be used for an independent expenditure on behalf of the candidate.

The amendments distinguish between contributions made to an independent expenditure committee before that committee determines who the money will be spent to support or oppose; versus those contributions that are specifically solicited on behalf of an independent expenditure committee to support or oppose a particular candidate.

Expenditures and Anonymous Contributions

Section 27.2944 repeats information contained in state law about when an expenditure occurs, and also specifies how expenditures are to be disclosed in campaign disclosure reports. This amendment should result in more timely reporting of expenditures on campaign disclosure reports. Although the information has long been a part of state law, it has recurrently been overlooked by local candidates and their treasurers.

Section 27.2949 has been amended to limit the amount of anonymous contributions allowed for any single election.

Prohibition of Organizational Contributions

In August of 1999, the Clerk requested feedback on amendments to the Campaign Control Ordinance. Several respondents suggested that the City avoid limits on amounts and sources of contributions to committees which make independent expenditures, and also reconsider the ban on organizational contributions. Additionally, a recent federal court decision enjoined enforcement of San Francisco's limits on contributions to committees which make independent expenditures supporting San Francisco candidates. Although San Diego's campaign finance laws are similar to San Francisco's, the City Attorney has informed us that the San Francisco court decision has no direct effect on the validity of the City's ordinance. The Clerk's proposal continues to prohibit organizational contributions in candidate elections, and to limit the sources and amounts of contributions to committees which make independent expenditures. The City Attorney has said that this position is legally defensible.

Provisions for a Legal and Accounting Compliance Fund

A new Municipal Code division has been developed to address the Rules Committee's interest in considering provisions for a candidate or officeholder to establish a legal and accounting compliance fund. Such a fund was suggested by Jim Sutton of the Law Offices of Nielsen, Merksamer, Parrinello, Mueller & Naylor; and Pamela Wilson of Sullivan Wertz McDade & Wallace.

California law allows candidates and officeholders to establish separate funds, including legal defense funds, but only if such funds are coordinated through the candidate's campaign bank account. Contributions under the "compliance account" model suggested by Mr. Sutton would be consistent with state law. We are aware of several jurisdictions in the state that allow these kinds of funds. The City of Los Angeles allows legal defense funds as a sub-account of officeholder accounts, subject to contribution limits. The City of Oakland also allows legal defense funds, but these are not subject to limits. Legal and accounting funds under federal law are also subject to contribution limits.

The draft provided for your consideration is similar to federal law in that it allows expenditures for both legal and accounting services. It complies with state law in that the fund would be coordinated through the candidate's or officeholder's campaign bank account. The draft provides that candidates for City office as well as officeholders may establish a fund for legal and accounting compliance in order to more effectively comply with the complex issues of campaign finance law and disclosure requirements. Correspondence from Mr. Sutton in support of establishing such a fund is included as Attachment C.

The proposed draft provides that the legal and accounting compliance fund could be used for legal costs incurred in the candidate's or officeholder's legal defense to any civil, criminal, or other actions arising directly out of the conduct of the campaign or

election process, or the performance of the candidate's or officeholder's governmental activities and duties. The draft allows that such funds may also be used for the purpose of obtaining legal advice or accounting services to insure compliance with City election and other campaign laws.

In keeping with the City's Campaign Control Ordinance, the draft provides that only individuals may contribute to the legal and accounting compliance fund. Those contributions are subject to separate limits from any made to the campaign committee for that candidate or officeholder. Proposed limits for the Rules Committee's consideration are [\$500] [\$750] or [\$1,000] for any single election cycle to a legal and accounting compliance fund.

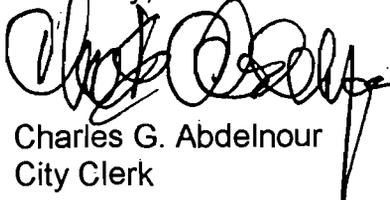
The draft provides that all activity in the legal and accounting compliance fund is to be reported on campaign disclosure reports at the same time that all other disclosure reports are filed. The proposal would prohibit transfers into a candidate or officeholder's current or future controlled campaign committee, although transfers to a candidate or officeholder's future legal and accounting compliance fund would be allowed.

SUMMARY

In summary, the City Clerk is proposing a variety of amendments to the City's Campaign Control Ordinance. Draft provisions for a legal and accounting compliance fund are also presented for your consideration.

Should you have any questions, please contact Deputy Director Joyce Lane at extension 34024.

Sincerely,



Charles G. Abdelnour
City Clerk

CGA:JL

Attachments

cc: Honorable Mayor and City Council
City Manager
Assistant City Manager
City Attorney

DRAFT 10/25/99

CHAPTER 2 - Government
ARTICLE 7 - Election Code
DIVISION 29 - San Diego Municipal Election Campaign Control Ordinance

SECTION 27.2901 - Purpose and Intent

Inherent to the high cost of election campaigning is the problem of real or potential improper or corrupting influence, ~~real or potential~~, exercised by campaign contributions over elected officials. It is the purpose and intent of the City Council of the City of San Diego in enacting this division to preserve an orderly political forum in which individuals may express themselves effectively; to place realistic and enforceable limits on the amounts of money that may be contributed to political campaigns in municipal elections; to prohibit contributions by organizations in order to develop a broader base of political efficacy within the community; to limit the use of loans and credit in the financing of municipal election campaigns; and to provide full and fair enforcement of all the provisions of this division. This division is enacted in accordance with the terms of Section 5 of Article XI of the Constitution of the State of California and Articles II and III of the Charter of The City of San Diego. The provisions of Section 27.2002 0102 of this article shall not apply to this division.

SECTION 27.2902 - Citation

This division shall be cited as the San Diego Municipal Election Campaign Control Ordinance.

SECTION 27.2903 - Definitions

Whenever in this division the following words or phrases are used in this division, they mean:

"Agent" means a person who acts on behalf of any other person.

~~(a) "Broadcast station" means any person who engages in the dissemination of radio communication as defined in the Federal Communications Act of 1934, including any cable television system franchised or otherwise licensed by the City.~~

~~(b) "Candidate" means any individual who~~

~~— (1 a) is listed on the ballot for elective City office; or~~

~~— (2 b) has begun to circulate nominating petitions or authorized others to do so on his or her behalf for nomination for or election to an City elective office; or~~

~~— (3 c) has received a contribution or made an expenditure or authorized another person to receive a contribution or make an expenditure with the intent to bring about his or her nomination for or election to any City elective office; or~~

~~— (4 d) is a City office holder who becomes the subject of a recall election. For purposes of Section 27.2903(b) (4), a City office holder "becomes the subject of a recall election" on the date a notice of intention to circulate a recall petition is published pursuant to San Diego Municipal Code section 27.2704.~~

"Candidate" has the same meaning as that term is defined in Section 27.0103 and also includes an individual who holds any elective office.

~~(c) "City office" means the offices of Mayor, Councilmember, and City Attorney of the City of San Diego.~~

"City" means the City of San Diego.

"City-wide General Election" has the same meaning as that term is defined in Section 27.0103.

"City-wide Primary Election" has the same meaning as that term is defined in Section 27.0103.

"Clerk" has the same meaning as that term is defined in Section 27.0103.

~~(d) "Committee" means any person or combination of persons, who for political purposes directly or indirectly: (1) R receives contributions totaling five hundred dollars (\$500) or more in a calendar year; or (2) Makes expenditures totaling five hundred dollars (\$500) or more in a calendar year; has the same meaning as that set forth in California Government Code Section 82013(a) through (c).~~

"Compensation" means any economic consideration for services rendered. This includes reimbursement for expenses.

~~(e) "Contribution"~~

~~(f a) "Contribution" includes:~~

~~(i 1) any payment, as defined in Section 27.2903 (f); or~~

~~(ii 2) any loan, forgiveness of a loan, payment of a loan by a third party, or any enforceable promise to make a payment, except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes; or unless the loan is received from a commercial lending institution in the ordinary course of business.~~

~~(iii 3) forgiveness of a debt or other obligation to pay for goods or services rendered, or reduction of the amount of a debt or other obligation to pay for goods or services rendered resulting from a settlement of a claim disputed by the candidate or committee, unless it is clear from the circumstances that the amount of the reduction was reasonably based on a good faith dispute; or~~

~~(iv 4) any expenditure made at the behest of a candidate; or committee or elected officer, unless full and adequate consideration is received for making the expenditure; or~~

~~(v 5) any purchase of tickets for events such as dinners, luncheons, rallies and similar fundraising events; or~~

~~(vi 6) a candidate's own money or property used on behalf of his or her candidacy; or~~

~~(vii 7) any granting of discounts or rebates not extended to the public generally, or any granting of discounts or rebates by television and radio stations and newspapers not extended on an equal basis to all candidates for the same office; or~~

~~(viii 8) any payment of compensation by any person for the personal services or expenses of any other person if such services are rendered or expenses incurred on behalf of a candidate or committee without payment of full and adequate consideration; or~~

~~(ix 9) any transfer of anything of value by a committee to another committee, unless full and adequate consideration is paid.~~

~~(z b) "Contribution" does not include:~~

~~(i 1) the transfer of anything of value if the transfer is made pursuant to an enforceable promise, to the extent that the amounts have been previously reported as a contribution; or~~

~~(ii 2) the cost of an event held in a home or office for costs related to any meeting or fundraising event and held in honor or on behalf of a candidate or committee when the total cost of the event is no more than five hundred dollars (\$500) and the event is not held for the purpose of obtaining contributions to the candidate or committee; or~~

~~(iii 3) any payment made by an individual for the individual's own travel expenses if the payment is made voluntarily and without an understanding or agreement that they shall be directly or indirectly repaid to the individual; or~~

~~(iv 4) any independent expenditure; or~~

(v 5) the rendering of volunteer personal services.

(f) "Controlled committee" means any committee controlled directly or indirectly by a candidate or which acts jointly with a candidate or controlled committee in connection with the making of expenditures. A candidate controls a committee if the candidate, the candidate's agent or any other committee controlled by the candidate has a significant influence on the actions or decisions of the committee.

"Council" has the same meaning as that term is defined in Section 27.0103.

"Day" means calendar day unless otherwise specified.

"District General Election" has the same meaning as that term is defined in Section 27.0103.

"District Primary Election" has the same meaning as that term is defined in Section 27.0103.

~~(g) "Election" has the same meaning as that term is defined in Section 27.0103, but does not include elections of the San Diego Unified School District. means any primary, general or special election held in the City of San Diego, including any initiative, referendum or recall election. Primary, general and special elections are separate elections for purposes of this Division.~~

(a) For the purpose of this division, a District or City-wide Primary Election, a District or City-wide General Election, and a special election are single and separate elections.

(b) For the purpose of this division, a single election includes the election that puts a candidate in office and his or her term of office held as a result of winning that election.

"Elective Office" has the same meaning as that term is defined in Section 27.0103, but does not include the office of a member of the governing board of the San Diego Unified School District.

~~(h) "Enforcement Authority" means the City Attorney or other special prosecutor designated by resolution of the City Council. Nothing in this Division limits the authority of any law enforcement agency or prosecuting attorney to enforce the provisions of this Division under any circumstances where the law enforcement agency or prosecuting attorney otherwise has lawful authority to do so.~~ has the same meaning as that term is defined in Section 27.0103.

(i) "Expenditure" means a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, unless it is clear from the circumstances that it is not made for political purposes. An expenditure is made on the date the payment is made or on the date consideration, if any, is received, whichever is earlier.

"Gift" has the same meaning as that set forth in California Government Code Section 82028.

(j) "Independent expenditure" means any expenditure made by any person in connection with a communication which:

(1 a) expressly supports or opposes the nomination, election, defeat or recall of a clearly identified candidate; or

(2 b) expressly supports or opposes the qualification for the ballot, adoption or defeat of a clearly identified measure; or

(3 c) taken as a whole and in context, unambiguously urges a particular result in a City election.

An expenditure that is made to or at the behest of a candidate or a committee supporting or opposing a measure is not an independent expenditure.

(k) "Measure" has the same meaning as that term is defined in Section 27.0103 and means any City Charter amendment or proposition which is:

~~(1 a) submitted to a popular vote at a City election by action of the City Council; or~~

~~(2 b) submitted or intended to be submitted to a popular vote at a City election by the~~

~~procedure of initiative or referendum whether or not it qualifies for the ballot.~~

The term "measure" does not include a recall election.

(f) "Payment" means any payment, reimbursement, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or any other thing of value, whether tangible or intangible.

(m) "Person" means any individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, labor union, or any other organization or group of persons acting in concert.

"Petition" has the same meaning as that term is defined in Section 27.0103.

(n) "Political purpose" means the purpose of influencing or attempting to influence the action of the voters for or against the nomination, election, defeat or recall of any candidate ~~or holder of a City office~~, for or against the qualification of a City measure for the ballot, or for or against the adoption or defeat of any City measure.

"Special election" has the same meaning as that term is defined in Section 27.0103, but does not include elections of the San Diego Unified School District.

"Travel expenses" has the same meaning as that term is defined in Section 27.4002.

(o) "Treasurer" or "Committee treasurer" means the individual designated to perform the duties of treasurer under ~~San Diego Municipal Code section~~ Section 27.2912.

"Voter" has the same meaning as that term is defined in Section 27.0103.

(p) "Vendor" means any person who delivers goods or renders services to a candidate or committee, unless it is clear from the circumstances that they were not made for political purposes.

SECTION 27.2904 - Candidate and Committee Status; Duration

(a) For purposes of this ~~D~~division, any individual who is a candidate retains the status of candidate, ~~and any person or combination of persons constituting a committee retains the status of committee~~, until that status is terminated either:

(a1) pursuant to California Government Code section 84214 ~~and all vendors granting credit for goods or services have been paid in full~~; or

(b2) pursuant to Sections 27.2971(c) or 27.2971(d) of this Municipal Code.

(b) For purposes of this division, any committee retains the status of committee until that status is terminated pursuant to California Government Code section 84214.

SECTION 27.2905 - Recall Elections

(a) An elective officer becomes the subject of a recall election on the date a notice of intention to circulate a recall petition is published pursuant to the recall provisions of this code.

(b) For purposes of this ~~D~~division, a recall election begins on the date a notice of intention to circulate a recall petition is published pursuant to the recall provisions of this article; ~~SDMC section 27.2704~~; and, a recall election occurs whether voters cast ballots pertaining to the recall or not.

SECTION 27.2911 - Duty to Have Campaign Treasurer

Every candidate and every committee shall have a ~~F~~Treasurer. A candidate may designate

him_ or herself as ~~T~~reasurer. ~~No person other than an~~ Only an individual may be designated as a ~~T~~reasurer.

SECTION 27.2912 - Authority of Treasurer

No expenditure may be made by or on behalf of a committee without the authorization of the ~~T~~reasurer. No contribution may be accepted or expenditure made by or on behalf of a committee at a time when the office of ~~T~~reasurer is vacant.

SECTION 27.2921 - Campaign Contribution Checking Account

~~(a) Every candidate and every committee receiving contributions of five hundred dollars (\$500) or more shall establish one campaign contribution checking account at an office of a bank or other financial institution providing checking account services located in the City of San Diego.~~

~~(b) Upon opening of an account, the name of the bank or other financial institution and account number thereof shall be filed with the City Clerk on the same forms and in the time and manner required by California Government Code Sections 81000 et seq. and the enforcement authority within twenty-four (24) hours.~~

~~(c) Upon opening of an account, all contributions of money or checks, or anything of value converted by such candidate or committee to money or a check, made to a candidate, to a person an individual on behalf of a candidate, to a committee supporting or opposing a candidate or a City measure, or to a person an individual on behalf of a committee supporting or opposing a candidate or a City measure shall be placed in the candidate's or committee's checking account within ten (10) business days.~~

~~(d) No contribution shall be deposited to a campaign contribution checking account without the receipt by the candidate or committee of that~~ Contributions must include the information required by California Government Code Sections 84210 and 84211. concerning the contribution to be deposited. Any information that has not been provided shall be requested, in writing, by the Treasurer within ten business days of receipt of the check.

~~(e) Any contribution not deposited within twenty ten (10) business days shall be returned to the contributor as soon as possible after the twentieth tenth (10) business day, but no later than twenty-five fifteen (15) business days after receipt of the contribution. A candidate and a committee formed solely for the purpose of acting in aid of the nomination or election of the candidate may establish and maintain one joint checking account for the candidate and the committee.~~

SECTION 27.2922 - Disbursements

Funds shall be disbursed from a campaign contribution checking account established pursuant to Section 27.2921 hereof only by check signed by the candidate or by the candidate's or committee's campaign treasurer or designated agents of the campaign treasurer. ~~Each candidate or committee shall maintain a written record of the payee of each check drawn on a campaign contribution checking account and an itemized record of the goods or services for which each check is issued.~~

SECTION 27.2923 - Petty Cash Fund

~~Section 27.2922 notwithstanding, the candidate or campaign treasurer or other designated agents authorized to issue checks on a campaign contribution checking account may disburse to the candidate or committee establishing the checking account an amount not greater than \$20 per week to be used for petty cash purposes by the candidate or committee. An amount not greater than \$40 per week may be disbursed to a candidate and committee jointly establishing a campaign contribution checking account, to be used for petty cash purposes.~~

A petty cash fund may be established for each campaign bank account under the following conditions:

- (a) No more than \$100 may be held in the petty cash fund at any one time.
- (b) No expenditure that totals \$100 or more may be made from the petty cash fund.
- (c) Expenditures of less than \$100 from a petty cash fund are deemed to be expenditures from the campaign bank account.
- (d) The petty cash fund may be used for expenses associated with the candidate's election to that office or for the expenses of holding the office for which the fund was established.

SECTION 27.2924 - Liquidation of Accounts

In the event that payment has been made for all goods and services furnished in connection with the campaign of a candidate or committee, a campaign contribution checking account may be liquidated by paying the remaining balance in the checking account to the candidate or to the committee for his or its use in any lawful manner pursuant to California Government Code Sections 81000 et seq.

SECTION 27.2925 - ~~Accountability~~ Accounting

(a) In addition to any other requirements of this ~~D~~ivision, every candidate or committee establishing a campaign contribution checking account pursuant to this ~~D~~ivision shall maintain a record of each of the following:

- (1) any contribution offered to and refused in whole or in part by the candidate or committee; and
- (2) any contribution received by the candidate or committee and returned ~~in whole or in part~~ to the contributor; and
- (3) any contribution received by the candidate or committee and deposited in whole or in part into the campaign contribution checking account; and
- (4) any disbursement made from the campaign contribution checking account.

(b) The records required by Section 27.2925(a) shall include, but not be limited to, all of the following:

- (1) the name and address of the contributor; and
- (2) the amount of the contribution, and the date on which it was received or offered; and
- (3) if the contribution is made by check, a legible photocopy of the check; and
- (4) if the contribution offered or received consists of cash, an indication that cash was offered or received, and a legible photocopy of the bank deposit slip indicating that the cash contribution was deposited into the campaign contribution checking account; and
- (5) legible photocopies or originals of all bank records pertaining to the campaign contribution checking account; and

(6) if a contribution is ~~self-funded~~ made by the candidate to his or her own campaign, a statement disclosing the source of the funds; and

(7) if a contribution is of something other than money, a description of what was contributed, a reasonable good faith estimate of the monetary value of the contribution, and the basis for the estimate; and

(8) for each disbursement made from or check drawn on the campaign contribution checking account, the canceled check, the bank statement showing the disbursement, the name of the payee of each check, an itemized record of the goods or services for which each check is issued or disbursement made, and legible photocopies or originals of any invoices, bills, or other supporting documents for which funds were disbursed.

(c) The records required by Section 27.2925 (a) and (b) shall be kept by the candidate or committee treasurer establishing the account for a period of four ~~(4)~~ years following the date that the campaign statement to which they relate is filed.

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

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

~~(f) Each committee that also participates in elections other than City candidate elections shall segregate contributions received and expenditures made for political purposes in connection with City candidate elections from all other contributions or expenditures made.~~

SECTION 27.2931 - Campaign Statements and Disclosures

~~(a) Each candidate and committee shall file campaign statements in the time and manner required by the Political Reform Act of 1974 as amended (California Government Code Sections 81000 et seq. et seq). Compliance with the disclosure requirements of the Political Reform Act of 1974, as amended California Government Code Sections 81000 et seq. is deemed to be compliance with this Section.~~

(b) Any City committee that makes independent expenditures and that participates in City candidate elections must identify on its disclosure reports contributions received that are specifically designated for a City candidate election.

SECTION 27.2940 - ~~Reserved for Future Use~~ Lawful Use of Campaign Funds

Campaign funds held by any committee formed in accordance with this division shall be governed by California Government Code Sections 81000 et seq.

SECTION 27.2941 - Contribution Limits

(a) It is unlawful for a candidate, committee supporting or opposing a candidate, or individual person acting on behalf of a candidate or committee to solicit or accept from any other individual person a contribution which will cause the total amount contributed by that other individual person in support of or opposition to a candidate to exceed ~~two hundred fifty dollars (\$250)~~ [\$500] [\$750] [\$1,000] for any single election.

(b) It is unlawful for any individual person to make to any candidate or committee supporting or opposing a candidate a contribution that will cause the total amount contributed

by that individual person in support of or opposition to a candidate to exceed ~~two hundred fifty dollars (\$250)~~ [\$500] [\$750] [\$1,000] for any single election.

(c) Nothing in this section is intended to limit the amount that a candidate may contribute to or expend on behalf of the candidate's own campaign.

(d) ~~For purposes of Section 27.2941(a) and (b), the term "committee" includes but is not limited to a committee that makes independent expenditures.~~ The contribution limits contained in 27.2941(b) apply to the total contributions of an individual to a candidate, whether to the candidate's controlled committee or to a committee that makes independent expenditures, if the contributor knows, or has reason to know, at the time the contribution is made, that the funds will be used for an independent expenditure on behalf of that candidate.

(e) These contribution limits shall be adjusted on January 1, 2005, and every four years thereafter, based on the San Diego Consumer Price Index percentage change.

(f) The City Clerk shall publish the contribution limits on or before January 10 of the year the contribution limit is adjusted.

(g) As of January 1, 2001, a candidate with an open committee from a prior election may solicit contributions from individuals who have already contributed to his or her controlled committee, to the extent that those additional contributions do not cause the total amount contributed by any individual to exceed the contribution limits.

(h) As of January 1, 2005, and every four years thereafter when the contribution limits are adjusted pursuant to Section 27.2941(e), a candidate with an open committee from a prior election may solicit contributions from individuals who have already contributed to his or her controlled committee, to the extent that those additional contributions do not cause the total amount contributed by any individual to exceed the adjusted contribution limits.

SECTION 27.2942 - ~~Limits on Loans to Candidates and Committees~~

~~(a) Except as provided in Section 27.2942(b), (c) and (d), a candidate or committee may not obtain a loan in excess of the monetary limits set forth in Section 27.2941 from any person for the purpose of supporting or opposing a candidate in a City election.~~

~~(b) Subject to the disclosure requirements of Section 27.2943, a candidate may, as an individual, personally borrow any amount of money and contribute that money to the candidate's his or her own campaign.~~

~~(c) A committee may borrow any amount of money from any source for the purpose of supporting or opposing the qualification of a City measure for the ballot, or adopting or defeating a City measure, so long as the committee is organized solely for either of these two purposes, and pursues no other purpose.~~

SECTION 27.2943 - ~~Disclosure, Evidence and Terms and Disclosure of Loans~~

(a) A candidate who makes a loan to his or her committee from his or her personal funds is not required to charge interest on that loan, but may charge a rate of interest comparable to or less than that which would be charged by a commercial lending institution for loans not made for political purposes.

(b) Every candidate and committee shall disclose loans in the same time and manner required by California Government Code Sections 84211, 84216 and 84216.5.

~~(a) If a candidate or committee obtains or makes a loan in compliance with Section~~

~~27.2942 the candidate or committee shall comply with all of the following requirements:~~

~~— (1) The candidate or committee shall document the loan by a written agreement that sets forth the lender, loan amount, funding source if different from the lender, interest rate, repayment terms, asset(s) pledged for the loan, records of payments on the loan including legible photocopies of any canceled checks, and any other promises or conditions pertaining to the loan; and~~

~~— (2) The candidate or committee shall file with the City Clerk a legible photocopy of the written agreement required by Section 27.2943(a) with the within five (5) calendar days of the execution of the agreement or the receipt of the loan proceeds, whichever occurs first; and~~

~~— (3) (2) The candidate or committee treasurer shall personally sign a promissory note for the amount borrowed and with a specific payment schedule and other terms comparable to that which would be imposed by a commercial lending institution for loans not made for political purposes; and~~

~~— (4) (3) Except as provided for by Section 27.2943(a)(4), the candidate or committee shall agree to repay the loan at a rate of interest comparable to that which would be charged by a commercial lending institution for loans not made for political purposes;~~

~~— (5) A candidate shall not pledge security for the loan other than the personal assets of the candidate or the joint assets or community property of the candidate and the candidate's spouse, except that other individuals may pledge security for the loan in an amount not to exceed the monetary limits set forth in Section 27.2941; and~~

~~— (6) A candidate or committee shall maintain copies of all loan documents, and make legible copies available for inspection, in the manner provided in Section 27.2925.~~

~~— (b) Section 27.2943 does not apply to committees that are organized solely for the purpose of supporting or opposing the qualification of a City measure for the ballot or solely for the purpose of adopting or defeating a City measure, and that pursue no other purpose.~~

SECTION 27.2944 - Payment for and Disclosure of Goods or Services

(a) An expenditure is made on the date the payment is made or the date that the candidate or committee receives the goods or services, whichever is earlier.

(b) Every candidate and committee shall disclose expenditures in the same time and manner required by California Government Code Section 84211. An expenditure which has been incurred but not paid during a reporting period shall be disclosed as an accrued expense.

(c) (a) Except as provided in Section 27.2945, each candidate or treasurer of a controlled committee that supports or opposes a candidate shall pay, or cause to be paid, each vendor upon receipt of the vendor's goods or services in whole or in part.

(d) (b) Except as provided in Section 27.2945, the treasurer of a committee that makes independent expenditures in support of or in opposition to a candidate shall pay, or cause to be paid, each vendor upon receipt of the vendor's goods or services in whole or in part.

SECTION 27.2945 - Extensions of Vendor Credit

(a) Vendors may extend credit to candidates or committees in the ordinary course of business in the same manner as extended to persons for other than political purposes.

(b) For leases or rentals of one (1) month or more, candidates or committees that rent or lease real or personal property for political purposes shall pay at least one month's rent in advance of taking possession. Thereafter, candidates or committees shall pay rent in advance.

(c) For leases or rentals of less than one (1) month, candidates or committees that rent or lease real or personal property for political purposes shall pay in full in advance.

(d) A candidate or committee that accepts goods or services for political purposes on credit under section 27.2945(a), shall pay for those goods or services in full no later than ninety (90) calendar days after receipt of a bill or invoice and in no event later than ninety (90) calendar days after the last day of the month in which the goods were delivered or the services were rendered.

SECTION 27.2946 - Continuing Violations

A candidate or committee treasurer violates Section 27.2945(b), (c) or (d) whenever the candidate or committee treasurer fails to pay any rent or for goods or services in full within the time periods set forth in Section 27.2945. Each and every day any obligation remains partially or wholly unpaid after the time periods set forth in Section 27.2945 constitutes a separate violation.

SECTION 27.2947 - Prohibitions and Limits on Contributions From Organizations

(a) It is unlawful for a candidate, committee, committee treasurer or other person acting on behalf of a candidate or committee to accept a contribution from any person other than an individual.

(b) It is unlawful for a person other than an individual to make a contribution to any candidate or committee, except to a committee that is organized solely for the purpose of supporting or opposing the qualification of a City measure for the ballot, or the adoption or defeat of a City measure, and the committee pursues no other purpose.

(c) For purposes of Section 27.2947(a) and (b), the term "committee" includes any committee that makes independent expenditures, in addition to any controlled committee.

(d) Notwithstanding Section 27.2947(a), a committee may accept a contribution from any person if the committee is organized solely for the purpose of supporting or opposing the qualification of a City measure for the ballot, or the adoption or defeat of a City measure, and the committee pursues no other purpose.

(e) For purposes of Section 27.2947(b) and (d), a recall election is not an election on a City measure.

SECTION 27.2948 - Obligation to Return Contributions

(a) If a candidate, committee, or committee treasurer is offered a contribution the acceptance of which would constitute a violation of this Division, the candidate, committee or committee treasurer shall refuse the offer.

(b) If a candidate, committee, or committee treasurer receives a monetary contribution the acceptance of which would constitute a violation of this Division, neither the candidate, committee, nor committee treasurer shall be subject to any penalty for receipt of that contribution if the candidate, committee, or committee treasurer:

(1) does not deposit the contribution into the campaign contribution checking account; and,
(2) returns the contribution within ten ~~five~~ (5) calendar days of the day the contribution was received.

(c) If a candidate, committee, or committee treasurer deposits into the campaign contribution checking account a monetary contribution the acceptance of which constitutes a violation of this Division, the candidate, committee, or committee treasurer shall within ten

~~five (5)~~ calendar days of the date of the candidate's, committee's or committee treasurer's discovery of the violation report provide in writing to the City Clerk all facts pertaining to the contribution, including but not limited to:

(1) a copy of any check(s), draft(s), or other instrument(s) by which the contribution was made; and

(2) if made in cash, a report of the amount and denominations of currency tendered and a legible photocopy of the bank deposit slip; and

(3) if by wire or other electronic fund transfer, a legible printout or photocopy of the transaction; and

(4) a report of the means of tender, delivery or confirmation of the contribution (e.g. U.S. Postal Service or private mail, courier service, in person, etc.). If delivered in person by the contributor or the contributor's agent, the report shall include the full name, address, and telephone number of the contributor or agent.

(d) The candidate or committee treasurer shall promptly deliver from available funds, if any, an amount equal to any monetary contribution constituting a violation of this dDivision that is deposited into the campaign contribution checking account to the City Clerk and made payable to the City Treasurer. The City Treasurer shall deposit any contribution or equivalent amount he or she receives under Section 27.2948 into the City's General Fund.

SECTION 27.2949 - Prohibition of Anonymous Contributions

Total anonymous contributions to a candidate or committee which exceed in the aggregate one two hundred dollars (\$100 200) with respect to a single election shall not be used by the candidate or committee for whom it was intended. To the extent that total anonymous contributions exceed one two hundred dollars (\$100 200) the excess shall be paid promptly, from available campaign funds, if any, to the City Clerk and made payable to the City Treasurer for deposit in the General Fund of the City.

SECTION 27.2950 - Prohibition of Assumed Name Contributions in the Name of Another Individual

~~No contribution shall be made, directly or indirectly, by any person or combination of persons acting jointly in a name other than the name by which they are identified for legal purposes; nor in the name of another person or combination of persons. No person shall make a contribution in his or its name of anything belonging to another person or received from another person on the condition that it be used as a contribution. When it is discovered by the campaign treasurer that a contribution has been received in violation of this section, the campaign treasurer shall pay promptly, from available funds, if any, the amount received in violation of this section to the City Treasurer for deposit in the General Fund of the City.~~

(a) It is unlawful for any individual, or combination of individuals acting jointly, to make directly or indirectly a contribution in a name other than the name by which he or she or they are identified for legal purposes.

(b) It is unlawful for any individual, or combination of individuals acting jointly, to make directly or indirectly a contribution in the name of another individual or combination of individuals.

(c) It is unlawful for any individual, or combination of individuals acting jointly, to make directly or indirectly a contribution in his or her or their name of:

(1) anything belonging to another individual; or

(2) anything received from another individual on the condition that it be used as a contribution.

(d) When it is discovered by the campaign treasurer that a contribution has been received and deposited in violation of Section 27.2950, the campaign treasurer shall pay promptly from available campaign funds, if any, the amount received in violation of this section. That amount shall be delivered to the City Clerk and made payable to the City Treasurer for deposit in the General Fund of the City.

~~SECTION 27.2951 - Campaign Expenditures Uncontrolled by Candidate or Committee~~

~~Any Persons, or organization s not subject to the control of a candidate or committee but who makes independent expenditures for or against a candidate or committee indicate clearly on any material published, displayed or broadcast: notice that it was not authorized by a candidate or committee. , when such expenditures in whole or part would have been covered by the provisions of this ordinance if they were subject to the control of a candidate or committee.~~

SECTION 27.2952 - Advertising Rates; Service Fees and Charges

To the extent that any person sells space in any newspaper or magazine or sells time on a broadcast station to a candidate or committee or performs other services in connection with the campaign of the candidate or for or against the measure, the charges made for the use of such space or time shall not exceed or be less than the charges normally made for comparable use of such space or time by other users thereof.

SECTION 27.2954 - Suppliers of Goods and Services — Disclosure of Records Required

It is unlawful for any ~~No~~ person who supplies goods or services or both goods and services to a candidate or committee for use in connection with the campaign of ~~the~~ a candidate or for or against ~~the~~ a measure ~~shall~~ to refuse knowingly to divulge or disclose to the Enforcement Authority his or her record of any expenditures made by the candidate or committee in payment for such goods or services or both.

SECTION 27.2961 - Duties of City Clerk

In addition to other duties required of him under the terms of this division, the City Clerk shall:

(a) Supply appropriate forms and manuals prescribed ~~by~~ the state Fair Political Practices Commission. These forms and manuals shall be furnished to all candidates and committees, and to all other persons required to report.

(b) Determine whether required documents have been filed and, if so, whether they conform on their face with the requirements of state and local law.

(c) Notify promptly all persons and known committees ~~who~~ have failed to file a document in the form and at the time required by state and local law.

(d) Report apparent violations of this division and applicable state law to the Enforcement Authority.

(e) Compile and maintain a current list of all statements or parts of statements filed with the his office pertaining to each candidate and each measure.

(f) Cooperate with the Enforcement Authority in the performance of the duties of the Enforcement Authority as prescribed in this division and applicable state law.

SECTION 27.2963 - Enforcement Authority — Duties, Complaints, Legal Action, Investigatory Powers

(a) The Enforcement Authority shall enforce the provisions of this division.

(b) Any person who believes that a violation of any portion of this division has occurred may file a complaint with the Enforcement Authority. If the Enforcement Authority determines that there is reason to believe a violation of this division has occurred, it shall make an investigation. Whenever the Enforcement Authority has reason to believe a willful violation of this division has occurred or is about to occur, it may institute such legal action at such time as it deems necessary to prevent further violations.

(c) The Enforcement Authority shall have such investigative powers as are necessary for the performance of the duties prescribed in this division, and The Enforcement Authority may demand and shall be furnished records of campaign contributions and expenses at any time.

(d) The Enforcement Authority shall determine whether required statements and declarations have been filed as required and, if so, whether they conform with the requirements of this division.

SECTION 27.2971 - Penalties

(a) Any person who violates any part of this dDivision, or who counsels, aids, abets, advises, or participates with another to commit any such violation, is guilty of a misdemeanor and is subject to the penalties set forth in Chapter I of this Municipal Code.

(b) In addition to being subject to the penalties set forth in Chapter I of this Municipal Code, any person found guilty of violating Sections 27.2941 or 27.2947, or both, shall be required to forfeit the amount received in violation of this dDivision and pay over these funds to the City Treasurer for deposit in the City's General Fund.

(c) If, after an election, a candidate or office holder is convicted of a violation of any provision of this Division, the election to office of such candidate or office holder shall be void and the office shall become vacant immediately upon the later of the following two (2) dates:

(1) the date of the candidate or office holder's conviction; or

(2) the date the candidate would have taken office, if the candidate is not an incumbent.

In the event of a vacancy resulting from application of Section 27.2971(c), the vacancy shall be filled in accordance with the procedures set forth in the City Charter for the filling of vacant City offices.

(d) If a candidate is convicted of violating any provision of this dDivision any time prior to the election, the candidacy shall be terminated immediately and the person shall be no longer eligible for election.

(e) Any person convicted of a violation of any provision of this dDivision shall be ineligible to hold a City elective office for a period of five (5) years from and after the date of the conviction.

(f) Any limitation of time prescribed by law within which prosecution for a violation of any part of this dDivision must be commenced shall not begin to run until the City's discovery of the violation.

SECTION 27.2973 - Effect of Violation on Certification of Election Results

(a) The City Clerk shall not issue any certificate of nomination or election to any candidate until his or her campaign statements required in Section 27.2931, or, if no campaign statement is required, the written declaration permitted under Section 84212 of the California Government Code have been filed in the form and at the place required by the ~~Political Reform Act of 1974~~, California Government Code Sections 81000 et seq.

(b) The City Council shall not adopt a resolution declaring any candidate to be nominated or elected until such statements or declaration have been filed in the form and at the place required of the candidate in this division.

SECTION 27.2974 - Rules of Construction

This division shall be construed liberally in order to effectuate its purposes. No error, irregularity, informality, neglect or omission of any officer in any procedure taken under this division which does not directly affect the jurisdiction of the Council or the City to control campaign contributions and expenditures shall avoid the effect of this division.

~~SECTION 27.2975 - Severability~~

~~If any provision of this division, or the application thereof to any person or circumstance, is held invalid, the validity of the remainder of the division and the applicability of such provisions to other persons and circumstances shall not be affected thereby.~~

**CHAPTER 2 - Government
ARTICLE 7 - Election Code
DIVISION 30 - Legal and Accounting Compliance Fund**

SECTION 27.3001 - Purpose and Intent

The purpose and intent of this division is to provide the means for candidates for elective City office and City officeholders to more effectively comply with the complex issues of campaign finance law and disclosure requirements by creating a legal and accounting compliance fund separate from campaign funds.

SECTION 27.3002- Legal and Accounting Compliance Fund

(a) Each candidate for City office and each City officeholder may receive contributions for a legal and accounting compliance fund, separate from campaign funds, to pay for legal costs incurred in the candidate's or officeholder's legal defense to any civil, criminal, or other action arising directly out of the conduct of the campaign or the election for which the fund was established, or the performance of the candidate's or officeholder's governmental activities and duties. This fund may also be used for the purpose of obtaining legal advice or accounting services related to the election for which the fund was established, to ensure compliance with the San Diego Municipal Code and other campaign laws.

SECTION 27.3003-Definitions

Whenever the following words or phrases are used in this division they mean:

"Election Cycle" means the district or city-wide primary and, if one is required, a district or city-wide general election for any City office. An election cycle may also be a special election to fill a vacancy and any run-off election required for that purpose. When a candidate wins an election, the election cycle includes his or her ensuing term of office.

The definitions contained in Municipal Code Section 27.2903 apply to this division.

SECTION 27.3004- Contributions to the Compliance Fund

Each contributor must earmark his or her contribution for the legal and accounting compliance fund at the time the contribution is made. Such a contribution must be deposited first into the appropriate campaign bank account. Contributions earmarked for the legal and accounting compliance fund shall be moved into a savings account or legal and accounting compliance fund account within ten business days of the date the contribution is received. The fund may be in the form of a certificate of deposit, interest-bearing savings account, money market account, or similar account which shall be established only for the legal and accounting compliance fund.

SECTION 27.3005-Contribution Limits

(a) It is unlawful for any individual to make, and unlawful for any candidate or officeholder to solicit or accept from any individual, contributions totaling more than [\$500] [\$750] [\$1,000] for

any election cycle to a legal and accounting compliance fund.

(b) Only individuals may contribute to a legal and accounting compliance fund.

(c) Subject to the contribution limits of Division 29 and 30, an individual may contribute to a candidate's or officeholder's campaign committee and also to the same candidate's or officeholder's legal and accounting compliance fund.

SECTION 27.3006-Transfer of Funds

(a) Subject to the contribution limits of Division 30, funds from the legal and accounting compliance fund may be transferred to a legal and accounting compliance fund for a future election cycle.

(b) Candidates and officeholders shall not transfer funds from the legal and accounting compliance fund to any current or future campaign fund or committee, and shall not authorize others to transfer funds on their behalf, into any other campaign fund or committee.

SECTION 27.3007-Accounting

Separate records shall be kept for contributions to the legal and accounting compliance fund. All other accounting requirements shall be the same as those required for campaign committees pursuant to Municipal Code Section 27.2925. The legal and accounting compliance fund shall be administered pursuant to Municipal Code Sections 27.2911 through 27.2944.

SECTION 27.3008- Disclosure of Contributions and Expenditures

Each candidate and officeholder shall file campaign disclosure statements for the legal and accounting compliance fund, separate from other disclosure reports, in the time and manner required by California Government Code Sections 81000 et seq. Compliance with the disclosure requirements of California Government Code Sections 81000 et seq. is deemed to be compliance with this section.

SECTION 27.3009- Distribution of Surplus Funds

If not used by the end of an officeholder's tenure in office, or by the time an unsuccessful candidate terminates his or her campaign committee, surplus funds in the legal and accounting compliance fund may be distributed as follows:

(a) returned to donors on a pro rata basis;

(b) donated to any bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, where no substantial part of the proceeds will have a material financial effect on the former candidate or elected officer, any member of his or her immediate family, or his or her campaign treasurer; or

(c) given to the City's General Fund.

LAW OFFICES OF
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October 14, 1999

Mr. Charles Abdelnour, Jr.
San Diego City Clerk
202 C Street
San Diego, CA 92101

RECEIVED
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99 OCT 18 PM 12:51
SAN DIEGO, CALIF.

RE: Proposed Revisions to Campaign Finance Ordinance

Dear Mr. Abdelnour:

Although I was unable to attend the Rules Committee Hearing last Monday regarding the proposed changes to the City's Campaign Finance Ordinance, I understand that Mayor Golding discussed at the hearing a suggestion raised in my earlier letter to you; namely, that the City should consider exempting "compliance costs" (i.e., legal and accounting fees) from the limits on contributions. This letter follows up on that suggestion.

At the outset, I want to note an obvious criticism of our suggestions: that exempting compliance costs from the contribution limits is a "self-serving" suggestion, coming from a law firm which specializes in political and election law. Although I would assume that our firm, and other firms like ours, would see an increase in inquiries were the City to adopt this suggestion, I also want to assure you that this suggestion stems from our extensive experience working with candidates and ballot measure committees attempting to comply with campaign finance laws, rather than an interest in increasing business for our firm. (Frankly, as we enter a busy election year, we have more work than we can handle as it is!)

Compliance costs should be exempt from contribution limits for several reasons. First, the City should encourage candidates to understand and comply with the law, and should make it easier for candidates and ballot measures to contact experts when needed. As you know, campaign finance laws are surprisingly complex, and recent court cases have added to this complexity. Even if the candidate is an attorney, he or she is unlikely to have the expertise in this very specialized area of the law. Next, the public's desire for better disclosure on campaign reports has required candidates to purchase more expensive software packages, and to hire trained personnel to run the programs; these expenses will only increase as the state moves to on-line disclosure.

Mr. Charles Abdelnour, Jr.
San Diego City Clerk
October 14, 1999
Page 2

Finally, requiring candidates to pay for compliance costs out of their limited campaign funds directly impacts their ability to communicate their message to voters. We are very often contacted by candidates for legal advice about a transaction after it has happened (i.e., we are asked to "unravel a problem"); when we ask the candidates why he or she did not contact us earlier, we typically hear: "I needed the money for a mailer" or "My consultant would not let me spend the money on an attorney when we were trying to get on TV." Although limits on contributions serve the compelling governmental purpose of preventing corruption in the political process, the limits should not be so onerous as to affect the ability of candidates to communicate with voters.

As mentioned in my earlier letter, federal law currently allows Presidential candidates to maintain separate bank accounts for compliance costs during the general election (11 Code Fed. Regs. section 9003.3(a)); I have enclosed a copy of this law for your reference. I have also enclosed a copy of the laws in both the City and County of Los Angeles which permit candidates to raise money to a separate legal defense fund (although the City law, in my opinion, is too limited, because it only applies to money raised by a candidate to defend him or herself against a lawsuit or enforcement action). (L.A., Muni. Code section 49.7.12(B)(5); L.A. County Code section 2.190.110.)

Please feel free to contact me if you have any questions about this suggestion, and thank you very much for the opportunity to participate in this process.

Sincerely,



James R. Sutton

JRS/djf

Enclosures

cc: Mayor Susan Golding
Ms. Cristie C. McGuire