THE CITY OF SAN DIEGO
ETHICS COMMISSION

FACT SHEET ON CAMPAIGN ADVERTISING

Note: this fact sheet has been updated in response to the U.S. District Court's February 16, 2010, preliminary injunction in *Thalheimer v. City of San Diego,* which precludes the City's enforcement of any limits on the source or amount of contributions to committees that make independent expenditures.

The City's Election Campaign Control Ordinance [ECCO] includes laws regarding mass campaign literature, telephone communications, mass media advertising, and electioneering communications used to support or oppose City candidates and ballot measures. This fact sheet is designed to provide a general description of these laws, but should not be considered a substitute for the actual language contained in San Diego Municipal Code sections 27.2970, 27.2971, 27.2974, and 27.2980.

Campaign advertising is generally paid for in one of four ways: (1) by a candidate or candidate-controlled committee; (2) by a committee making an "independent expenditure"; (3) by an organization communicating with its members; or (4) by a committee or other type of entity making an "electioneering communication." If you are unsure about the category in which a communication belongs, please contact the Ethics Commission for assistance.

Candidate Expenditures

All payments that a candidate or his or her controlled committee makes for campaign advertising are considered expenditures subject to the disclosure rules contained in this fact sheet.

Independent Expenditures

An independent expenditure may generally be described as any payment for a campaign communication that is made independently of the candidate it is intended to support. Independent expenditures are made by general purpose recipient committees, primarily formed recipient committees, and persons or entities who qualify as a committee by making $1,000 or more in independent expenditures. Keep in mind that when a person or entity pays for campaign advertising at the behest of, or in coordination with, a candidate, that payment is not an independent expenditure, but is instead an "in-kind contribution" to the candidate.

- More specifically, ECCO defines an "independent expenditure" as any payment for political purposes in connection with a communication, not made at the behest of a candidate, that:
  - ✓ expressly supports or opposes a City candidate, or
  - ✓ expressly supports or opposes a City ballot measure, or
  - ✓ taken as a whole and in context, unambiguously urges a particular result in a City election.
- In order to determine whether a communication is expressly advocating for or against a candidate or ballot measure, or unambiguously urging someone to vote a certain way, consider the words being used in the context of the overall message. The following words indicate express advocacy:
  - ✓ "vote for," "elect," "support," "cast your ballot," "vote against," "defeat," "reject," and other similar phrases when referring to a clearly identified candidate or measure;
  - ✓ a candidate's qualifications, or words implying that a candidate is qualified for a particular office (e.g., "a proven leader," "a caring statesman," or "a dedicated public servant");

- ✓ a list of voters who are supporting, or would vote for, a particular candidate;
- ✓ a candidate's voting record and suggestions that he or she is qualified for office;
- ✓ grades assigned to one or more candidates on a particular issue or issues;
- ✓ evaluations of a candidate's education, professional experience, or community activities.

Member Communications

- ❖ Member communications are campaign-related communications that are paid for by an organization or its members and are directed solely to members of that organization.

- ❖ Communications that reach an audience beyond an organization's members (e.g., a billboard, yard signs, door hangers left at every house) are not considered member communications.

- ❖ Payments for member communications do not need to be disclosed on a campaign statement (unless the communication is made by a political party).

- ❖ Campaign literature that qualifies as a member communication does not need to include a "paid for by" disclosure unless it is paid for by a political party.

- ❖ Political parties must disclose on their campaign statements any payments they make for their member communications. Such disclosure must identify the payments as "member communications." Also, as stated above, political parties must make "paid for by" and "on behalf of" disclosures for their member communications.

- ❖ Unlike independent expenditures, member communications may be coordinated with a candidate.

Electioneering Communications

- ❖ If a communication does not expressly advocate for or against a candidate, or does not unambiguously urge someone to vote a certain way, but still mentions a candidate within ninety days of an election, it may be an "electioneering communication."

- ❖ The following are examples of communications that do not indicate express advocacy with regard to a City candidate, and therefore would fall within the scope of an "electioneering communication":
  - ✓ a mailer that states the candidate's position on a particular topic;
  - ✓ a telephone survey that mentions a candidate's name in the context of an unpopular development project;
  - ✓ a door hanger that recites action taken by a candidate and tells you to "send a message" to that candidate.

- ❖ Keep in mind that when a person or entity pays for a communication at the behest of, or in coordination with, a candidate, that communication is not an "electioneering communication," but is instead an "in-kind contribution" to the candidate.

- ❖ For details regarding the disclosure rules applicable to these types of communications, please refer to the "Fact Sheet on Electioneering Communications," which is available on the Ethics Commission's website. The rules and limits set forth below in this Fact Sheet do not apply to electioneering communications.

Identification Disclosure Rules

- If any candidate or committee distributes 200 or more substantially similar items of printed campaign materials (e.g., mailers, door hangers, or yard signs) in a calendar month, each item must contain a "paid for by" disclosure in at least a 12 point font. For additional details regarding printed campaign materials, please refer to the "Fact Sheet on Mass Campaign Literature," which is available on the Ethics Commission's website.

- The above disclosure rules do not apply when organizations, other than political parties, are making payments for "member communications." For example, if a company distributes to all of its employees a newsletter that urges the employees to vote for a particular City candidate, that newsletter does not need to contain a "paid for by" disclosure.

- If a candidate or committee makes 500 or more live or recorded telephone calls (e.g., a phone bank) to support or oppose a candidate or measure, or to conduct a poll that mentions a clearly identified candidate, each call must contain disclosure information identifying who is paying for or authorizing the call. For additional details regarding campaign-related telephone calls, please refer to the "Fact Sheet on Telephone Communications," which is available on the Ethics Commission's website.

- If a candidate or committee pays for an advertisement that appears in a newspaper, periodical, or magazine, or on a website (other than a candidate's or committee's own website), the advertisement must contain a "paid for by" disclosure that includes the name of the candidate or committee paying for the advertisement. The disclosure must be in at least a 12 point font.

- Although it's not a part of ECCO, you should know that state law requires campaign advertisements printed in a newspaper to also contain the words "Paid Political Advertisement." See California Elections Code section 20008 for details.

- State law also requires advertisements supporting or opposing a candidate that are paid for by independent expenditures to include a statement that the advertisement was not authorized by a candidate or a committee controlled by a candidate. See California Government Code section 84506.5 for details.

- If a candidate or committee pays for an advertisement that appears on a billboard, the advertisement must contain a "paid for by" disclosure that includes the name of the candidate or committee paying for the advertisement. The size of the disclosure must be at least five percent of the height of the advertisement and printed in a contrasting color.

- Even though ECCO does not regulate expenditures made to purchase radio and television airtime, you should be aware that there are federal and state laws that do so.

Limits and Prohibitions

- To pay for any campaign expenditures, including advertising, candidates and their controlled committees may only accept contributions from individuals, and may not accept more than $500 per contributor per election.

- Committees that make independent expenditures (i.e., expenditures that are not coordinated with a candidate or a candidate's controlled committee) are not subject to contribution limits. Such committees may accept unlimited contributions from individuals and non-individual

entities, including business entities and organizations, for the purpose of making independent expenditures.

- Member communications are not subject to ECCO's contribution limits or to any prohibitions regarding the source of a contribution (see page two for more information regarding member communications).

- Committees that pay for campaign advertising to support or oppose a City ballot measure may accept contributions from individuals and non-individuals in any amount to pay for such advertising.

- There are no limits on the amount of money a candidate may spend on campaign advertising to support his or her own candidacy, or to oppose the candidacy of his or her opponents.

- There are no limits on the amount of money a person or committee may spend on independent expenditures to support or oppose a candidate or ballot measure.

- There are no limits on the amount of money a person or committee may spend on campaign advertising to support or oppose a candidate or ballot measure.

Coordination of Committees Making Independent Expenditures

- Committees making independent expenditures may exchange information with other such committees regarding campaign advertising, such as when two such committees discuss a scenario in which Committee A will pay for mailers and Committee B will pay for a phone bank.

- Committees making independent expenditures may also share the costs of campaign advertising. For example, Committee A and Committee B may jointly purchase a campaign mailer if each committee submits a check to the printer for their equal share of the cost of printing the mailer.

- If a committee gives anything of value to another committee without receiving full compensation in return, the item of value would be considered a contribution. For example, if Committee A pays for mailers and receives a check for half the cost of the mailers from Committee B, then Committee A has received a contribution from Committee B.

For additional information, please contact the Ethics Commission at (619) 533-3476.

Rev. 03/02/10