

**CITY OF SAN DIEGO
ETHICS COMMISSION**

Office of the Executive Director

M E M O R A N D U M

DATE: January 14, 2011

TO: Chair and Members of the San Diego Ethics Commission

FROM: Stacey Fulhorst, Executive Director

SUBJECT: Identification Disclosures on Billboard Advertisements
Docketed for Ethics Commission open session meeting on January 20, 2011

During the course of the 2010 election season, the Commission staff realized that the requirement in the City's campaign laws concerning identification disclosures on billboard advertisements is subject to an interpretation that is contrary to the underlying legislative intent. Specifically, San Diego Municipal Code [SDMC] section 27.2972 requires candidates and committees to include a "paid for by" disclosure on any billboard advertisement supporting or opposing any City candidate or ballot measure, as follows:

The disclosure statement . . . shall constitute at least five percent of the height of the advertisement and be printed in a contrasting color.

SDMC section 27.2972(b).

This provision was added to the City's campaign laws in 2005 at the same time that similar disclosure requirements were implemented for mass campaign literature and telephone communications. The underlying purpose of these identification disclosures is to ensure that a member of the public who receives a campaign mailer, listens to a robo-call, or views a campaign billboard is provided with relevant information regarding the identity of the person(s) who paid for it. To achieve this purpose, the law requires certain font sizes, contrasting colors, volume specifications, etc., for the disclosures.

As stated above, the provision concerning disclosures on billboard advertisements requires the disclosure to "constitute at least five percent of the height of the advertisement." It has come to the attention of Commission staff that this provision could be interpreted to mean that a disclosure with several lines of text may, in the aggregate, constitute five percent of the height of the billboard even if the individual lines of text are smaller than five percent. In other words, this

Page 2
Chair and Members of the San Diego Ethics Commission
January 14, 2011

interpretation would apply the five percent rule to the height of multiple lines of text in the disclosure rather than to the font size. By way of example, the two disclosures below contain the same text and have the same overall height.

PAID FOR BY CONCERNED CITIZENS AGAINST TAX HIKES

PAID FOR BY
CONCERNED CITIZENS
AGAINST TAX HIKES

As is readily apparent, the first disclosure is very legible whereas the second disclosure is not. An interpretation suggesting that both disclosures on a billboard would fully comply with SDMC section 27.2972(b) essentially renders the disclosure requirement meaningless. Because this interpretation leads to an absurd conclusion that contradicts the underlying intent of the law, it is staff's position that this provision of ECCO must instead be interpreted to mean that the five percent height rule applies to the font size in the disclosure.

In order to confirm that the Commission agrees with the foregoing staff interpretation, I have asked the Chair to docket this issue for discussion and action at our upcoming meeting on January 20, 2011.

Stacey Fulhorst
Executive Director