

**SAN DIEGO ETHICS COMMISSION REVIEW OF THE CITY'S
Election Campaign Control Ordinance
And Related Provisions of the Lobbying Ordinance**

PROPOSED AMENDMENTS

Policy Considerations & Clean-up

Rev. June 29, 2012

Chapter 2: Government

Article 7: Elections, Campaign Finance and Lobbying

Division 29: Election Campaign Control Ordinance

§27.2903 Definitions

Unless otherwise defined in this section, or the contrary is stated or clearly appears from the context, the definitions of the Political Reform Act of 1974 (Government Code sections 81000 *et seq.*) and the definitions contained in the regulations adopted by the Fair Political Practices Commission shall govern the interpretation of this division.

Agent through City Clerk [no change]

City Council means the ~~Mayor and~~ Council of the City of San Diego vested with all legislative powers of the City of San Diego pursuant to article III, section 11 of the Charter of the City of San Diego.

Citywide General Election through Expenditure [no change]

General purpose recipient committee means any person that receives contributions totaling \$1,000 or more during a calendar year to support or oppose more than one *candidate or measure*, and is intended to be consistent with the definition set forth in Government Code section 82027.5. ~~This type of committee is may not be controlled by a candidate.~~

Independent Expenditure through Mass campaign literature [no change]

Mass telephone communications means live or recorded telephone calls that are similar in nature to 500 or more individuals or households ~~in connection with the same election~~ for the purpose of (a) supporting or opposing a *clearly identified candidate* or a *clearly identified measure*; or (b) conducting a poll that mentions or refers to a *clearly identified candidate* or a *clearly identified measure*.

Measure through political purpose [no change]

Primarily formed recipient committee means a ~~any person, entity, or organization~~ that receives *contributions* totaling \$1,000 or more during a calendar year primarily to support or oppose a ~~single candidate for a City election or a single City measure~~ one or more City candidates appearing on the same ballot or one or more City measures appearing on the same ballot, and is intended to be consistent with the definition set forth in Government Code section 82047.5. ~~This type of committee is not controlled by a candidate.~~

Professional Expense Committee through Vendor [no change]

§27.2916 Campaign Contribution Checking Account

- (a) Every *controlled committee* that accepts *contributions* and every *primarily formed recipient committee* shall establish one campaign 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.*
- (c) All *contributions* of money or checks, or anything of value converted by such *committee* to money or a check, shall be placed in the *committee's* checking account within ~~thirty business~~ forty calendar days, except that no *contribution* shall be deposited to a campaign *contribution* checking account without the receipt by the *committee* of all information required by title 2, section 18401 of the California Code of Regulations.
- (d) ~~Any contribution not deposited within thirty business days shall be returned to the contributor as soon as possible after the thirtieth business day, but no later than thirty-five business days after receipt of the contribution.~~

§27.2930 Base Level of Campaign Statements and Disclosures

Each *candidate* and *committee* shall file campaign statements in the time and manner required by California Government Code sections 81000 *et seq.* and title 2 of the California Code of Regulations with the following additional requirements:

- (a) All *candidate* and *committee* campaign disclosure statements that are generated from the output of a computer software program shall be generated with the names of all contributors listed in alphabetical order by last name. *Treasurers* for any *committee* that files handwritten campaign disclosure statements shall make reasonable good faith efforts to list the names of all contributors in alphabetical order by last name.
- (b) Any payment made by a political party political party committee for member *communications* to its members who are registered with that party and that would otherwise qualify as a contribution or expenditure shall be reported on that political party's campaign disclosure statement in a manner that identifies the payment as a "member communication."

- (c) In addition to any other campaign statement required to be filed pursuant to the California Political Reform Act, every *candidate, controlled committee, and committee primarily formed to support or oppose a candidate, primarily formed recipient committee, and general purpose recipient committee* whose filing officer is the City Clerk shall file a pre-election statement on the Friday before any *election* in which the *candidate* is listed on the ballot or for which the committee has made expenditures.
- (1) This statement shall have a closing date of the Thursday before the *election* and shall cover activity and payments occurring through that day.
 - (2) This statement shall be filed using a shipping service with delivery guaranteed by the Monday before the election, or by personal delivery.
 - (3) No violation of subsection (c) shall be found for a failure to report unpaid expenses accrued during this pre-election reporting period if such expenses are reported on an amended campaign statement filed within thirty calendar days of the election.
- (d) through (h) [no change]

§27.2935 Contribution Limitations

- (a) It is unlawful for an individual to make, or for a *candidate or controlled committee* to solicit or accept, a *contribution* that would cause the total amount contributed by that individual to the *candidate* and the *candidate's controlled committee* to exceed \$500 for any single *City-candidate election* for a City Council district office, or to exceed \$1,000 for any single election for the office of Mayor or City Attorney.
- (b) through (f) [no change]

§27.2938 Restrictions on Time Period of Contributions

- (a) It is unlawful for any *candidate or controlled committee* seeking ~~elective City office~~ elective City office to solicit or accept *contributions* prior to the twelve months preceding the primary *election* for the office sought. ~~This restriction does not apply to contributions made by a candidate to his or her controlled committee.~~
- (b) It is unlawful for any *candidate or controlled committee* ~~for City office to accept contributions more than 180 days after the withdrawal, defeat, or election to office. Contributions immediately following such a withdrawal, defeat, or election and up to 180 days after that date, may be accepted only by a candidate or controlled committee with outstanding debts or loans, and shall be used only to pay the outstanding debts or loans owed by the candidate or controlled committee. These restrictions do not apply to contributions made by a candidate to his or her controlled committee.~~ seeking elective City Office to solicit or accept, after the date of an election, a contribution that exceeds the net debts outstanding from the election.

- (1) The “election” means the election for which the candidate incurred bills and debts and is raising contributions to pay net debts outstanding.
- (2) The term “net debts outstanding” has the same meaning as that set forth in title 2, section 18531.61 of the California Code of Regulations.
- (3) A contribution received after the date of an election shall reduce the total amount of net debts outstanding by the amount of that contribution.
- (c) ~~Contributions pursuant to subsections (a) and (b) of this provision shall be considered contributions raised for the election in which the bills and debts were incurred and shall be subject to the contribution limits of that election.~~ Notwithstanding subsection (b), it is unlawful for any candidate or controlled committee seeking elective City office to solicit or accept a contribution more than 180 days after the date of an election.
- (d) The restrictions ~~on accepting contributions imposed by~~ set forth in this section do not apply to:
 - (1) contributions made by a candidate to his or her controlled committee; or,
 - (2) contributions made to a professional expense committee, as discussed in sections 27.2965-27.2969.
- (e) The restrictions on accepting contributions imposed by subsection (a) do not apply to contributions for recall elections.

§27.2941 Cash Contributions

- (a) ~~No contribution of \$100 or more shall be made or received in cash.~~ It is unlawful for any candidate or committee to accept cash contributions totaling \$100 or more from the same contributor for the same election.
- (b) A cash contribution includes a contribution made by money order, cashier’s check, or other instrument that is drawn from an account that does not belong to the contributor or an intermediary of the contributor.
- (c) A cash contribution shall not be deemed received if it is not deposited and is returned to the contributor before the closing date of the campaign statement on which the contribution would otherwise be reported.
- ~~(e)~~(d) A cash contribution that is deposited shall not be deemed received if it is refunded within 72 hours of receipt, or within 48 hours of receipt if it is a “late contribution” as defined in California Government Code section 82036.

§27.2945 Notification Regarding Reimbursement Prohibition

- (a) It is unlawful for any candidate, or ~~any controlled committee supporting or opposing a candidate,~~ to solicit contributions for a City candidate election from potential

contributors by distributing printed materials or using an Internet web site unless such materials or site contain at least one instance of the following statement in a prominent place printed in typeface that is easily legible, contrasts with the background, and is not smaller than the typeface used in a majority of the text in the materials or on the site: “It is unlawful for a contributor to be reimbursed by any organization, business, or similar entity for a contribution supporting or opposing a City candidate.” “It is unlawful for any type of business entity to reimburse an individual for a contribution made by that individual to a City candidate.”

- (b) Upon the discovery by the *candidate* or *controlled committee* that a violation of subsection (a) has occurred, such violation may be remedied by the *candidate* or *controlled committee* submitting written notice reciting the statement required by subsection (a) to all individuals who were sent the materials constituting the violation and to all individuals who made a *contribution* through the web site during the period of violation, and thereafter reporting in writing the nature of the violation and remedial action to the *Enforcement Authority*, provided that the remedial action takes place before the date of the *election* for which the solicitation was made, and no later than fourteen calendar days after the discovery of the violation.

§27.2946 Solicitation of Contributions from City Employees

- (a) It is unlawful for a *candidate* or a *candidate’s controlled committee* to solicit, directly or indirectly, a *contribution* from a *City* employee with knowledge that the *person* from whom the *contribution* is solicited is a *City* employee.
- (b) This section shall not prohibit a *candidate* or a *candidate’s controlled committee* from soliciting *contributions* from *City* employees if the solicitation is part of a solicitation made to a significant segment of the public that may include *City* employees, and the solicitation does not otherwise violate the provisions of this Division.
- (c) Nothing in this section prohibits a *City* employee from making a *contribution* to a *candidate*, and nothing in this section prohibits a *candidate* from accepting a *contribution* from a *City* employee.

§27.2952 Contributions from Sole Proprietorships

- (a) Notwithstanding the provisions of sections 27.2950 and 27.2951, a *contribution* drawn from a checking account or credit card account held by an individual doing business as a sole proprietorship is considered a *contribution* from that individual for purposes of sections 27.2934 and 27.2935, and may lawfully be deposited by a *candidate* for *elective City office*.
- (b) Any *candidate* disclosing on a campaign statement the source of a *contribution* received pursuant to subsection (a) shall identify the full name of the individual contributor notwithstanding the name of the sole proprietorship on the face of the check or on the credit card account.
- (c) The provisions of this section apply solely to entities recognized as sole proprietorships under federal tax laws, and do not apply to a *contribution* drawn from

a checking account or credit card account held by a corporation, partnership, limited liability company, or any other type of business entity.

§27.2955 ~~Obligation to Return Contributions~~ Obligations Regarding Unlawful 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) Except as set forth in sections 27.2943 and 27.2956, 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* either:
 - (1) does not deposit the *contribution* into the campaign *contribution* checking account ~~and returns the *contribution* to the contributor within thirty business days of the calendar day the *contribution* was received;~~ or
 - (2) deposits the *contribution* into the campaign *contribution* checking account, but returns the *contribution* to the contributor within ten calendar days of the deposit or before the filing deadline for the reporting period in which the *contribution* was received, whichever occurs first.
- (c) Except as set forth in subsection (b) above and in sections 27.2943 and 27.2956, 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 calendar days of the date of the *candidate's, committee's, or committee treasurer's* discovery of the violation 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); and (5) a report of the full name and street address of the contributor.
- (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 division that has been deposited into the campaign *contribution* checking account. Such amount shall be made payable to the *City Treasurer* and delivered to the *City Clerk*. The *City Treasurer* shall deposit into the *City's* General Fund any amount he or she receives under this section.

§27.2960 Extensions of Vendor Credit

- (a) *Vendors* may extend credit to *candidates* and their *controlled committees* in the ordinary course of business in the same manner they extend it to *persons* for other than *political purposes*.
- (b) A *candidate* or *controlled committee* for *elective City office* that accepts goods or services for *political purposes* on credit under subsection (a), shall pay for those goods or services in full no later than 180 calendar days after receipt of a bill or invoice and in no event later than 180 calendar days after the last calendar day of the month in which the goods were delivered or the services were rendered, unless it is clear from the circumstances that the failure to pay is reasonably based on a good faith dispute. For purposes of this subsection, a good faith dispute shall be presumed if the *candidate* or *controlled committee* produces the following:
 - (1) evidence that the *candidate* or *controlled committee* protested the *payment* of a bill no later than 30 calendar days after the last calendar day of the month in which the goods were delivered or the services were rendered; and
 - (2) evidence that the protest was based on the quality or quantity of goods delivered or services rendered.
- (c) The provisions of subsection (b) do not apply to debt owed to a financial institution for an outstanding credit card balance.

§27.2970 Mass Campaign Literature

- (a) It is unlawful for any *candidate* or *committee* to pay for *mass campaign literature*, other than a yard sign, for the purpose of supporting or opposing a *City candidate* or *City measure* unless each item of *mass campaign literature* includes the words “paid for by” immediately followed by the name, street address, and city of that *candidate* or *committee* in a typeface that is easily legible, contrasts with the background, and is no less than 12 points in size.
- (b) In addition to the requirements set forth in subsection (a) it is unlawful for any *candidate* or *committee* to send *mass campaign literature* through the mail for the purpose of supporting or opposing a *City candidate* or *City measure* unless the name, street address, and city of the *candidate* or *committee* are shown on the outside of each item of *mass campaign literature*, and on at least one of the inserts included within each piece of mail, in a typeface that is easily legible, contrasts with the background, and is no less than 12 points in size.
 - (1) If the sender of the *mass campaign literature* is a single *candidate* or *committee*, the name, street address, and city of the *candidate* or *committee* need only be shown on the outside of each item being mailed.
 - (2) If more than one *committee* pays to mail the *mass campaign literature*, only the name, address, and city of the *committee* paying the largest portion of the costs of designing, printing, and mailing the mailer need be shown on the outside of

the mailer, and the names of all of the *committees* paying for the mailer shall be shown on at least one of the inserts included within the mailer.

(c) It is unlawful for any *candidate* or *committee* to pay for mass campaign literature in the form of yard signs for the purpose of supporting or opposing a *City candidate* or *City measure* unless the face of each yard sign includes the words “paid for by” immediately followed by the name, street address, and city of that *candidate* or *committee* in a typeface that is easily legible, contrasts with the background, and has a height no less than five percent of the height of the yard sign.

~~(e)~~(d) For purposes of this section, an organization’s post office box may be stated in lieu of a street address if that organization’s address is a matter of public record with the Secretary of State.

~~(d)~~(e) If a *controlled committee* pays for mass campaign literature, the name of the *candidate* controlling the *committee* shall be included in addition to the information required by this section.

~~(e)~~(f) The requirements set forth in this section do not apply to *member communications* distributed by an organization that is not a political party, e-mail communications, Internet web pages, or slate mailers.

§27.2972 ~~Billboard Advertising~~ Billboards and other Large Forms of Advertising

(a) It is unlawful for any *candidate* or *committee* to ~~place~~ pay for any advertising on a billboard or other large form of advertising for the purpose of supporting or opposing one of ~~or~~ more ~~City~~ *City measures* or *candidates* for *elective City office* unless the communication includes the ~~word~~ words “paid for by” followed by the name of that *candidate* or *committee*.

(b) The typeface used in the disclosure statement required by subsection (a) shall ~~constitute at least~~ have a height no less than five percent of the height of the advertisement and be printed in a contrasting color.

(c) As used in this section, the term “other large form of advertising” pertains to any sign, banner, poster, or other form of campaign advertising that is 30 square feet or larger and visible to the general public.

§27.2973 Paid Spokespersons — Ballot Measures

(a) A ~~committee~~ *committee* that makes an *expenditure* of \$5,000 or more to an individual for his or her appearance in an advertisement to support or oppose the qualification, passage, or defeat of a ~~City~~ *City measure* shall file a report with the City Clerk within 10 days of the *expenditure*. The report shall identify the *measure*, the date of the *expenditure*, the name of the recipient, and the amount expended.

(b) Any advertisement subject to the provisions of subsection (a) shall include the following statement: “(spokesperson's name) is being paid by ~~this campaign or its~~”

~~donors~~ (committee's name) for appearing in this campaign advertisement" in highly visible roman font shown continuously a typeface that is easily legible, contrasts with the background, and is no less than 12 points in size if the advertisement consists of printed ~~or televised~~ material, or spoken in a clearly audible format if the advertisement is a ~~radio broadcast or telephone message~~.

§27.2975 Expenditures Supporting Ballot Measures Major Funding of Advertisements Supporting Candidates and Ballot Measures

- (a) In addition to all other applicable disclosure requirements set forth in this Division, it is unlawful for any ~~candidate or primarily formed recipient committee~~ to ~~place pay for~~ an advertisement supporting or opposing a City candidate or ballot measure unless ~~the advertisement includes a disclosure statement identifying any person whose cumulative contributions are \$50,000 or more. each person who has contributed \$10,000 or more to the committee is identified in the advertisement as providing major funding to the committee.~~
- (1) If there are more than two donors of \$10,000 or more, the *committee* is only required to disclose the highest and second highest in that order.
 - (2) In the event that ~~more than two donors meet this disclosure threshold at identical contribution levels, the highest and second highest shall be selected according to the order in which the contributions were made.~~ two or more donors of identical amounts meet the threshold for the top two contributors, the order of disclosure shall be made beginning with the most recent contributor of that amount.
 - (3) The disclosure shall be in a typeface that is easily legible, contrasts with the background, and is no less than 12 points in size, except that if the advertisement is on a yard sign, billboard, or any other large form of advertising, as defined in section 27.2972, the disclosure's typeface shall have a height no less than five percent of the height of the advertisement.
 - (4) The disclosure shall reflect information that is accurate as of the date the committee places the order to purchase the advertisement.
- (b) The provisions of this section do not apply to advertisements that are *member communications*, ~~made by a general purpose recipient committee~~, made through an e-mail communication, ~~or by placement~~ placed on a slate mailer, printed on small promotional items on which the disclosure cannot reasonably be printed or displayed in an easily legible typeface, printed on wearing apparel, or skywriting.

Chapter 2: Government
Article 7: Elections, Campaign Finance and Lobbying
Division 40: Municipal Lobbying

§27.4002 Definitions

All defined terms in this division appear in italics. Unless the context otherwise indicates, the defined terms have the meanings set forth below.

Activity expense to Expenditure lobbyist [no change in text]

Fundraising activity means soliciting, or directing others to solicit, *contributions* from one or more contributors, either personally or by hosting or sponsoring a fundraising event, and either (a) personally delivering \$2,000 or more in *contributions* to a ~~*candidate*~~ or to a candidate's controlled committee, or to a committee primarily formed to support or oppose one or more candidates, or (b) identifying oneself to a ~~*candidate*~~ or a candidate's controlled committee or to a committee primarily formed to support or oppose one or more candidates as having any degree of responsibility for \$2,000 or more in *contributions* received as a result of that solicitation.

Gift to Travel expenses [no change in text]

§27.4009 Contents of Registration Form

(a) Every *lobbying firm* shall file with the *City Clerk* a registration form that contains the following information:

(1) through (2) [no change in text]

(3) a listing of all owners, officers, and *lobbyists* of the *lobbying firm* who engaged in *fundraising activities* for a current elected *City Official* or a committee primarily formed to support a current elected *City Official* during the two year period preceding the filing date, along with the name of each applicable *City Official*.

(4) through (9) [no change in text]

(b) Every *organization lobbyist* shall file with the *City Clerk* a registration form that contains the following information:

(1) through (5) [no change in text]

(6) a listing of all owners, compensated officers, and *lobbyists* of the *organization lobbyist* who engaged in *fundraising activities* for a current elected *City Official* or a committee primarily formed to support a current elected *City Official* during the two year period preceding the filing date, along with the name of each applicable *City Official*.

(7) through (11) [no change in text]

§27.4017 Contents of Quarterly Disclosure Report

(a) Each *lobbying firm's* quarterly disclosure report shall contain the following information:

(1) through (3) [no change in text]

(4) an itemization of any *contributions* totaling \$100 or more made by the lobbying firm or any of its owners, officers, or lobbyists of the lobbying firm during the reporting period to a ~~candidate~~ or a ~~candidate-controlled~~ candidate's election committee or to a committee primarily formed to support or oppose one or more candidates, during the reporting period, including the date and amount of the ~~contributions~~ each contribution and the name of the ~~candidate~~ supported applicable committee.

(5) [no change in text]

(6) for each fundraising effort by an owner, officer, or *lobbyist* of the *lobbying firm* who engaged in *fundraising activities* during the reporting period:

(A) the name of the owner, officer, or *lobbyist* who engaged in the *fundraising activity*;

(B) the name of the ~~elected City Official or candidate~~ campaign committee benefiting from the *fundraising activity*;

(C) a description of the ballot measure, if any;

(D) the date(s) of the *fundraising activity*;

(E) a brief description of the *fundraising activity*; and

(F) the approximate amount of (i) all *contributions* personally delivered by the owner, officer, or *lobbyist* to a the candidate or a ~~candidate's controlled~~ campaign committee; and (ii) all *contributions* for which the owner, officer, or *lobbyist* has identified himself or herself to a the candidate or a ~~candidate's controlled~~ campaign committee as having some degree of responsibility for raising.

(7) through (11) [no change in text]

(b) Each *organization lobbyist's* quarterly disclosure report shall contain the following information:

(1) through (3) [no change in text]

- (4) an itemization of any *contributions* totaling \$100 or more made by the organization lobbyist or any of its owners, compensated officers, or lobbyists of the organization lobbyist during the reporting period to a ~~candidate~~ or a ~~candidate-controlled~~ candidate's election committee or to a committee primarily formed to support or oppose one or more candidates, during the reporting period, including the date and amount of ~~the contributions~~ each contribution and the name of the ~~candidate~~ supported applicable committee.
- (5) [no change in text]
- (6) for each fundraising effort by any of the *organization lobbyist's* owners, compensated officers, or *lobbyists* who engaged in *fundraising activities* during the reporting period:
- (A) the name of the owner, officer, or *lobbyist* who engaged in the *fundraising activity*;
 - (B) the name of the ~~elected City Official or candidate~~ campaign committee benefiting from the *fundraising activity*;
 - (C) a description of the ballot measure, if any;
 - (D) the date(s) of the *fundraising activity*;
 - (E) a brief description of the *fundraising activity*; and
 - (F) the approximate amount of (i) all *contributions* personally delivered by the owner, officer, or *lobbyist* to a the candidate or a ~~candidate's controlled~~ campaign committee; and (ii) all *contributions* for which the owner, officer, or *lobbyist* has identified himself or herself to a the candidate or a ~~candidate's controlled~~ campaign committee as having some degree of responsibility for raising.
- (7) through (11) [no change in text]

(c) [no change in text]