

SAN DIEGO ETHICS COMMISSION REVIEW OF THE CITY'S Election Campaign Control Ordinance

PROPOSED AMENDMENTS

June 2, 2014

Chapter 2: Government Article 7: Elections, Campaign Finance and Lobbying Division 29: Election Campaign Control Ordinance

I. DUPLICATION OF CANDIDATE MATERIALS

Add new SDMC section 27.2947:

27.2947 Duplication of a Candidate's Campaign Materials

- (a) Any *committee* that makes a *payment* for distributing or disseminating an advertisement that duplicates, reproduces, or republishes a *candidate's* campaign materials, in whole or substantial part, has made a *contribution* to that *candidate* for purposes of the *contribution* limits set forth in sections 27.2934 and 27.2935 and the *contribution* source prohibitions set forth in sections 27.2950 and 27.2951.
- (b) The "making" of a *contribution* to a *candidate* under subsection (a) does not mean that the *candidate* has "accepted" or "received" a *contribution* for purposes of contribution limits or source prohibitions. Accordingly, nothing in this section shall impose any liability on a *candidate* whose campaign materials have been duplicated, reproduced, or republished.
- (c) The provisions of this section apply to a *committee's* advertisement that uses materials created, prepared, or obtained by a *candidate* or the *candidate's controlled committee* for campaign purposes, including, but not limited to, mailers; flyers; pamphlets; door hangers; walking cards; posters; yard signs; billboards; banners and large signs; business cards; campaign buttons; bumper stickers; newspaper, magazine, television, radio, and Internet advertisements; photographs; videos; audio recordings; and telephone scripts, regardless of whether such materials were accessible to members of the public on the Internet or through other means not requiring coordination with the *candidate* or the *candidate's controlled committee*. For purposes of this section, a *candidate's* campaign materials do not include a speech or other statement made by the *candidate* at a debate, forum, or similar public appearance.
- (d) A *committee's* advertisement duplicates, reproduces, or republishes a *candidate's* campaign materials, in whole or substantial part, if content in the

The list of campaign materials in subsection (c) will be amended if text and/or audio are not regulated

Final sentence added to clarify that a campaign speech is not considered "campaign materials."

candidate's campaign materials is the source for 50% or more of either the graphic content, the text content, or the audio content in the *committee's* advertisement.

- (1) For graphic content in non-video advertisements, the percentage is determined by the number or size of featured photographs, images, illustrations, or artwork. For example, a *committee's* advertisement featuring four images has reached the 50% threshold if two of those images, regardless of size, were derived from a *candidate's* campaign materials. A *committee's* advertisement featuring multiple images has also reached the 50% threshold if one or more of those images were derived from a *candidate's* campaign materials and take up 50% or more of the space allocated to featured images on the *committee's* advertisement.
- (2) For graphic content in video advertisements, the percentage is determined by the amount of time that any content from a *candidate's* campaign materials appears in the *committee's* advertisement. For example, a *committee's* 30 second video advertisement has reached the 50% threshold if it contains 15 seconds or more of any content that was derived from the *candidate's* campaign materials.

Option A: do not regulate text or audio

(3)

Option B: regulate text and audio, based on # of statements

- (3) For text and audio content, the percentage is determined by the number of statements in the *candidate's* campaign materials that are repeated in the *committee's* advertisement. For example, a *committee's* advertisement containing 10 statements relating to the election of a *candidate* has reached the 50% threshold if 5 or more of those statements were clearly and unambiguously derived from the *candidate's* campaign materials.

Option C: regulate text, but not audio, based on # of statements

- (3) For text content, the percentage is determined by the number of statements in the *candidate's* campaign materials that are repeated in the *committee's* advertisement. For example, a *committee's* advertisement containing 10 statements relating to the election of a *candidate* has reached the 50% threshold if 5 or more of those statements were clearly and unambiguously derived from the *candidate's* campaign materials.

Option D: regulate audio, but not text, based on # of seconds

- (3) For audio content, the percentage is determined by the amount of time that any audio content from a *candidate's* campaign materials appears in the *committee's* advertisement. For example, a *committee's* 30 second radio or television advertisement has reached the 50% threshold if it contains 15 seconds or more of any audio content derived from the *candidate's* campaign materials.

Option E: regulate audio (candidate's voice only), but not text, based on # of seconds

(3) For audio content, the percentage is determined by the amount of time that a recording of the candidate's voice appears in the *committee's* advertisement. For example, a *committee's* 30 second radio or television advertisement has reached the 50% threshold if it contains 15 seconds or more of an audio recording of the *candidate's* voice.

(e) None of the following shall be considered when determining whether the 50% threshold has been met:

Subsection (e) is subject to deletion or amendment depending on whether text and/or audio are regulated in subsection (d).

- (1) the *candidate's* or *committee's* name, address, *committee* number, or website address;
- (2) disclosure notices required by this division, such as a "paid for by" disclosure;
- (3) the date of the election;
- (4) statements encouraging people to vote on election day that do not mention the *candidate's* name or political party affiliation;
- (5) text in the *committee's* advertisement printed in a font size less than half the smallest font size used for sentences or phrases that are repeated from the *candidate's* campaign materials, because such text may artificially increase the overall word count of the advertisement; or
- (6) background designs and images, other than those that appear within photographs or videos derived from a *candidate's* campaign materials.

(f) The provisions of this section do not apply to:

- (1) the use of duplicated, reproduced, or republished campaign materials:
 - (A) by the *candidate* or the *candidate's controlled committee*;
 - (B) in a communication that clearly and unambiguously advocates the defeat of the *candidate*;
 - (C) in a communication directed to voters or potential voters as part of voter registration activities or activities encouraging or assisting persons to vote, so long as the communication does not advocate for the *candidate's* election; or,
 - (D) in a *member communication*.
- (2) instances in which a *payment* has been "made at the behest" of a *candidate*, as that term is defined in title 2, section 18225.7 of the California Code of Regulations. Such a *payment* is treated as a

contribution regardless of whether the 50% duplication threshold has been reached.

- (g) Nothing in this section imposes on any *candidate* or *committee* any filing obligations in addition to those set forth in California Government Code sections 81000 *et seq.* and title 2 of the California Code of Regulations.

II. VENDOR CREDIT

Add new SDMC section 27.2959:

§27.2959 Extensions of Vendor Credit – Primarily Formed Recipient Committees

- (a) *Vendors* may extend credit to *primarily formed recipient committees* in the ordinary course of business in the same manner they extend it to *persons* for other than *political purposes*, except as set forth in subsection (b).
- (b) A *primarily formed recipient committee* may not accept credit from a *vendor*, but shall instead pay the *vendor* in full from existing funds at the time of placing the order, if all three of the following conditions are met:
- (1) the *vendor* is providing goods or services relating to designing, creating, printing, mailing, posting, broadcasting, or disseminating a campaign advertisement;
 - (2) the balance in the *committee's* bank account, including funds received but not yet available, is insufficient to cover in full the *committee's* advertising debt liability; and,
 - (3) the identity of the *committee's sponsors* or top two donors of \$10,000 or more would change if any *person* made a *contribution* to the *committee* in an amount equal to the *committee's* advertising debt liability.
- (c) For purposes of this section:
- (1) “a campaign advertisement” means any tangible or intangible campaign content that requires a “paid for by” or similar funding disclosure under sections 27.2970, 27.2971, 27.2972, or 27.2974, and any television or radio advertisement that requires a “paid for by” or similar funding disclosure pursuant to state or federal campaign law;
 - (2) “a *contribution* to the *committee*” refers to a potential *contribution* by any *person* who would be contributing to the *committee* for the first time as well as by any *person* who has already contributed to the *committee*;
 - (3) “advertising debt liability” means the full costs of the campaign advertisement being considered by the *committee* plus the remaining balance owed for all other campaign advertisements purchased by the *committee* on credit; and,
 - (4) the costs of a campaign advertisement do not include costs owed solely to a *vendor* who is paid at regular intervals for providing consulting services to the *committee* over and above those associated with campaign advertisements.

Expanded to cover checks not yet cleared and credit card payments not yet deposited into the account