

**CITY OF SAN DIEGO
ETHICS COMMISSION**

Office of the Executive Director

MEMORANDUM

DATE: November 30, 2010

TO: Chair and Members of the San Diego Ethics Commission

FROM: Stephen Ross, Program Manager

SUBJECT: 2012 Primary Election - Potential Date Change
Docketed for Ethics Commission open session meeting on December 9, 2010

San Diego Municipal Code section 27.2938(a) creates a one-year pre-election fundraising window within which candidates for elective City office may solicit and accept contributions. The 2012 primary election is currently scheduled for June 5, 2012, and accordingly, City candidates may begin soliciting and accepting contributions on June 5, 2011. We have learned from the City Clerk's office, however, that the date of the City's primary election may change as a result of activity taking place at the state and federal level. A change in the primary election date would alter the date on which City candidates may begin to accept contributions.

By way of background, the City of San Diego consolidates its regular elections with California elections as required by the City Charter. Thus, the City's 2012 primary election will be held on the same date that California holds its 2012 statewide primary election. In 2007, the state split the presidential primary election from the statewide primary election in order to allow California voters earlier access to the presidential nomination process. The presidential primary election was moved to the first Tuesday in February, and the statewide primary election remained in June. Accordingly, in 2008, the California presidential primary election was held on February 5, 2008, and the California statewide primary election was held on June 3, 2008. The City of San Diego held its primary election on June 3, 2008, in conjunction with the state election held that date.

The state's separate presidential primary election resulted in significant additional expenses. According to an Assembly Appropriations Committee's analysis prepared in connection with the state's decision to hold a separate presidential primary election, the additional election would cause the Secretary of State to incur \$3.3 million in printing and mailing costs, with counties throughout the state incurring \$48 million to \$80 million in reimbursable election-related costs.

In the summer of 2010, the Republican National Committee and the Democratic National Committee adopted new primary rules under which no states other than Iowa, New Hampshire,

Nevada, and South Carolina may hold a presidential caucus or primary election prior to the first Tuesday in March. Other states' primary elections are to be held in April or later, although states have the option of holding a primary election as early as the first Tuesday in March (March 6 in 2012) on the condition that its delegates are awarded in proportion to the percentage of the vote, rather than in a winner-take-all format. Under these rules, March 6, 2012, is the earliest date on which California could hold its next presidential primary election.

As a result of the above political party rule changes, coupled with a desire to eliminate the substantial extra costs associated with holding a separate presidential primary election, there have been discussions at the state level with respect to reuniting the presidential primary election with the statewide primary election, and to hold the next such election on March 6, 2012. To date, however, nothing official has been released. The Secretary of State's office has not disseminated any information regarding different dates for 2012 elections. They have advised us that they are taking a "wait and see" approach pending any legislative action that would change the dates. Neither the Assembly nor the Senate has introduced a bill to amend the Elections Code to move the presidential primary from February 7, 2012, or to move the statewide primary election from June 5, 2012. When the state split off the presidential primary election several years ago, it was the result of a bill introduced on January 22, 2007, and signed by the governor on March 15, 2007. A bill to establish a re-consolidated March 6, 2012, primary election could likewise follow a similar timeline, i.e., go into effect roughly a year before the election.

Based on the above, it is possible that state legislative action will result in the City of San Diego moving its next primary election to March 6, 2012 (or later), and also possible that such a law will not go into effect until sometime after March 6, 2011. If candidates are not permitted to fundraise until sometime after March 6, 2011, for an election taking place on March 6, 2012, they will have less than one year to raise contributions for that election. As stated above, City candidates are currently being advised that they must wait until June 5, 2011, to begin fundraising because the City's primary election is still scheduled to take place on June 5, 2012.

As 2011 draws closer, the Commission may wish to begin considering how and when to address the possibility of candidates accepting contributions prior to June 5, 2011. Available options include, but are not limited to, the following:

- (1) maintain June 5, 2011, as the beginning of the pre-election fundraising period unless and until the state adopts a law moving the statewide primary election date (even if it may result in City candidates having less than a year to accept contributions);
- (2) maintain June 5, 2011, as the beginning of the pre-election fundraising period unless and until the state introduces a bill moving the statewide primary election date (which would likely occur early enough to give candidates a full year to fundraise); or,
- (3) anticipate that the City's primary election will likely take place earlier than June 5, 2012, and move the beginning of the pre-election fundraising period to March 6, 2011 (which would give candidates more than a year to fundraise if the election ultimately takes place after March 6, 2012).

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It is relevant to note that the City Council typically adopts a resolution calling for a primary election approximately four or five months before the election is held. As a result, it is not advisable to wait for City Council action before determining the date on which City candidates may begin soliciting and accepting contributions. It is also relevant to note that any decisions made by the Commission in this regard would be with respect to its own enforcement of SDMC section 27.2938(a), and would not be binding on the City Attorney's criminal enforcement of this ECCO provision.

Staff will monitor developments at the state level and update the Commission at the January and February Commission meetings. We anticipate, however, that prospective City candidates will be looking to the Ethics Commission for as much advance guidance as possible with regard to the date they may begin soliciting and accepting contributions.

Stephen Ross
Program Manager