

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

**PROPOSED AMENDMENTS**

July 3, 2015

**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 Citywide Primary Election* [No change in text.]

*City Official* includes:

- (a) any elected or appointed *City* officeholder, including any *City* officeholder elected but not yet sworn in; and
- (b) any *City Board* member; and
- (c) any employee of the *City*, except for classified employees as that term is defined in San Diego Charter section 117, who is required to file a statement of economic interests pursuant to the California Political Reform Act of 1974, as amended; and
- (d) *City Council* members acting in their capacity as Housing Authority and Redevelopment Agency officers; and
- (e) any consultants of the *City* who are required to file a statement of economic interests pursuant to the California Political Reform Act of 1974, as amended.

For purposes of this definition, an officeholder is considered elected to office on the date the Council adopts its resolution declaring the results of the election.

*Clearly identified candidate through Independent expenditure* [No change in text.]

*Independent expenditure committee* means any person who makes *independent expenditures* totaling \$1,000 or more within a single calendar year without also receiving contributions of \$1,000 or more within a single calendar year.

*Mass campaign literature* through *Measure* [No change in text.]

*Member communication* means a communication directed solely to members, employees, or shareholders, or families of members, employees, or shareholders of an organization, including a communication to members of any political party, for the purpose of supporting or opposing one or more City measures or candidates for elective City office. Member communications do not include communications made by an organization for general public advertising such as broadcasting, billboards, and newspaper advertisements, or for communications to persons who are not members, employees, or shareholders, or families of members, employees, or shareholders of the organization. The meaning of member communication is intended to be consistent with the definitions contained in California Government Code section 85312 and title 2, section 18531.7 of the California Code of Regulations. Any amendments made to these authorities shall be deemed to be an amendment to the language of this definition.

*Payment* through *Vendor* [No change in text.]

#### **§27.2924 Surplus Campaign Funds**

(a) Upon the 90th day after leaving any elected office, or ~~at the 90th day following~~ the end of the post-election reporting period following the defeat of a *candidate* for elective office, whichever occurs last, campaign funds under the control of a *candidate* shall be considered surplus campaign funds.

(b) through (c) [No change to text.]

#### **§27.2925 Accounting and Recordkeeping**

(a) In addition to any other requirements of this division, every *candidate* or *committee* that accepts *contributions* for a *City election* shall maintain records in accordance with the requirements of title 2, section 18401 of the California Code of Regulations.

(b) The records required by section 27.2925(a) shall be kept by the *candidate* or *committee treasurer* for a period of four years following the date that the campaign statement to which they relate is filed.

(c) Every candidate or committee paying for campaign advertisements supporting or opposing one or more City candidates or City measures shall maintain records in accordance with the following requirements:

(1) for mass campaign literature subject to section 27.2970, records that identify the date(s) of dissemination, the number of pieces disseminated,

and the method of dissemination, as well as an original sample of each item of *mass campaign literature* disseminated by the committee;

(2) for *mass telephone communications* subject to section 27.2971, records that identify the date(s) the telephone calls were made and the number of calls made, as well as a transcript of the messages communicated and a copy of any recorded messages;

(3) for billboards and other large forms of advertising subject to section 27.2972, records that identify the location(s) where each advertisement was publicly displayed, the date(s) of display, the dimensions of each advertisement, the content and size of the requisite “paid for by” disclosure, as well as an advertising proof or comparable image of the advertisement in printed or electronic format; and,

(4) for mass media advertisements subject to section 27.2974, records that identify the publication or website where the advertisement appeared, the date(s) the advertisements appeared, the content and size of the requisite “paid for by” disclosure, as well as an advertising proof or comparable image of the advertisement in printed or electronic format.

(d) The records required by section 27.2925(c) shall be kept by the *candidate* or *committee* for a period of four years following the date that the campaign statement to which they relate is filed.

~~(e)~~(e) Each *candidate* and *committee* shall deliver, on demand, to any public officer having authority to enforce this division, a written authorization permitting the officer to have access to all records pertaining to the campaign *contribution* checking account.

~~(d)~~(f) Each *candidate* and *committee* shall, on demand, make available to any public officer having authority to enforce this division all records required by this division to be maintained by the *candidate* or *committee*.

#### **§27.2945 Notification Regarding Reimbursement Prohibition**

(a) It is unlawful for any *candidate* or *controlled committee* 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 any type of business entity to reimburse an individual for a contribution made by that individual to a City candidate.”~~ “It is unlawful to reimburse an individual’s contribution to a City candidate unless the reimbursement is made by another individual and the names of both individuals are provided to the 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.

#### **§27.2952 Contributions from Sole Proprietorships**

- (a) Notwithstanding the provisions of sections 27.2950 and 27.2951,
- (1) 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 section 27.2935, and may lawfully be received by a candidate for elective City office; and,
- (2) a non-monetary contribution in the form of goods or services donated by an individual doing business as a sole proprietorship is considered a contribution from that individual for purposes of section 27.2935, and may lawfully be received 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~~ a check or on ~~the~~ a credit card account.
- (c) The provisions of this section apply solely to ~~entities recognized~~ individuals treated 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, or to a non-monetary contribution made by such entities.

#### **§27.2965 Professional Expense Funds**

- (a) Every elected *City Official* and every *candidate* for *elective City office* shall be permitted to establish and maintain one *professional expense committee* and one professional expense checking account for the purpose of soliciting, accepting, and spending professional expense funds.
- (b) In addition to *contributions* received in connection with seeking an elective *City office*, any elected *City Official* or *candidate* for *elective City office* may receive professional expense fund *contributions* from individuals and may use such *contributions* solely for the following purposes:

- (1) to defray *professional fees and costs* incurred in the *City Official's* or *candidate's* response to an audit of his or her campaign activity conducted by the City of San Diego Ethics Commission, the California Fair Political Practices Commission, or the California Franchise Tax Board; or
  - (2) to defray *professional fees and costs* incurred in the *City Official's* or *candidate's* legal defense to one or more civil, criminal, or administrative proceedings arising directly out of the conduct of an election campaign, the electoral process, or the performance of the *City Official's* governmental activities and duties.
- (c) It is unlawful for any individual to make, or for any elected *City Official* or *candidate* to solicit or accept from any individual, professional expense fund *contributions* totaling more than \$500 during a single calendar year in connection with an audit or a civil, criminal, or administrative proceeding identified in the Statement of Organization required by section 27.2966(b). This dollar amount is subject to changes in the Consumer Price Index as described in section 27.2937.
- (d) An individual's *contributions* to a *professional expense committee* do not count toward the campaign *contribution* limits set forth in section 27.2935, and are not subject to the time limits set forth in section 27.2938.
- ~~(e) It is unlawful for any individual to make a *contribution* to a *professional expense committee* without accompanying the *contribution* with a disclosure form identifying the particulars of all matters, if any, that such individual has pending before the board, commission, department, or agency of which the *City Official* or *candidate* maintaining the *professional expense committee* is a member or employee. When filing the campaign statements required by section 29.2967, the *professional expense committee* shall attach to such statement a copy of each disclosure form received pursuant to this subsection.~~
- (e) Every individual making a *contribution* to a *professional expense committee* shall accompany such *contribution* with a signed disclosure form indicating whether the individual has a financial interest in any municipal decisions pending before the applicable *City Official* or *candidate*. If the individual has such a financial interest, he or she shall describe the nature of the interest on the disclosure form.
- (1) For purposes of this subsection:
    - (A) the term "municipal decision" has the same meaning as set forth in San Diego Municipal Code section 27.4002;
    - (B) a municipal decision is pending before a *City Official* or *candidate* if it is reasonably foreseeable that it will be acted on by the *City*

Official or candidate or by any governmental body of which that City Official or candidate is a member;

(C) the term “governmental body” means the City Council, any City Council committee, the board of directors of any City agency, and any City board, commission, committee, or task force; and,

(D) an individual has a financial interest in a municipal decision if:

(i) the individual or any member of the individual’s immediate family is a claimant, applicant, respondent, contracting party, or otherwise named as a party to the decision; or,

(ii) the individual or any member of the individual’s immediate family holds a managerial level position, or has a 10% or greater ownership interest, in a business entity that is a claimant, applicant, respondent, contracting party, or otherwise named as a party to the decision; or,

(iii) the individual or any member of the individual’s immediate family has an ownership interest in real property that is the subject of the decision; or,

(iv) it is reasonably foreseeable that the decision will have a direct or substantial financial impact on real property in which the individual or any member of the individual’s family has an ownership interest.

(E) An individual who makes an electronic or telephonic contribution to a professional expense committee is deemed to be in compliance with this section if, within one calendar day of making the contribution, the individual provides the signed disclosure form to the committee or deposits it with the U.S. Postal Service or a comparable service for delivery to the committee.

(2) It is unlawful for a professional expense committee to deposit a contribution from any individual without first obtaining a signed disclosure form from that individual.

(3) Within 10 calendar days of the filing deadline applicable to the campaign statement required by section 29.2967, the professional expense committee shall file with the City Clerk a copy of each disclosure form received during the reporting period pursuant to this subsection.

(4) Notwithstanding any other provisions of this subsection, an individual is not required to identify a financial interest in a municipal decision on the disclosure form if both of the following are true:

(A) the individual's contributions are required to be disclosed by a lobbying firm or organization lobbyist in accordance with San Diego Municipal Code section 27.4017; and,

(B) the specific municipal decision in which the individual has a financial interest has been identified on the most recent registration form or quarterly disclosure report filed by the lobbying firm or organization lobbyist.

- (f) It is unlawful for a *person* other than an individual to make a *contribution* to a *professional expense committee*. It is unlawful for a *City Official* or *candidate* to solicit or accept a *contribution* for a *professional expense committee* from any *person* other than an individual.

### §27.2971 Telephone Communications

- (a) It is unlawful for any *candidate* or *committee* to engage or hire others to engage in *mass telephone communications* unless the communications include a statement that the communications are “paid for by,” “authorized by,” or are otherwise being made “on behalf of” immediately followed by the name of each *candidate* or *committee* that is paying for any of the resources used for the communications or that is otherwise authorizing the communication. For purposes of this subsection, “resources” include the purchase of a contact list, the development of a script, overhead expenses, and telephone charges. The type of disclosure required by this section shall be determined as follows:
- (1) A call is “paid for by” a *candidate* or *committee* when the *candidate* or *committee* pays directly for the call or pays another *person* to make the call on its behalf.
  - (2) A call is “authorized by” a *candidate* or *committee* if a *person* pays for the call at the behest of the *candidate* or *committee* and that *payment* is a *contribution* to the *candidate* or *committee*.
  - (3) Notwithstanding subsections (a)(1) and (a)(2), a call is made “on behalf of” a *candidate* or *committee* when it is made by a volunteer at the direction of the *candidate* or *committee*.
- (b) The statement required pursuant to subsection (a) shall be clearly audible and at the same general volume as the rest of the telephone message.
- (c) If the telephone communication is a recording, the statement required pursuant to subsection (a) shall be played at the same speed as the rest of the message.
- (d) If the telephone communication is paid for by a *controlled committee*, the name of the *candidate* controlling the *committee* shall be included in addition to the information required by subsection (a).

- (e) Any *candidate* or *committee* paying for a live or recorded telephone communication subject to this section shall maintain ~~for four years a transcript of the message being communicated, a copy of any recorded messages, and a record of the number of calls for each message~~ records relating to such communications in accordance with section 27.2925(c).
- (f) The disclosure requirements set forth in this section shall not apply to a *candidate* personally engaging in a live telephone communication or to a *member communication* by an organization that is not a political party.